



WESTERN AUSTRALIA.

ANNO DECIMO

VICTORIÆ REGINÆ.

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No. XIX.

**An Ordinance to repeal the existing Laws respecting the Construction and Management of Roads, and to establish a Central Board of Works.**

**W**HEREAS the system of management of the internal commu- Preamble.  
nications of the colony by means of the "General Road  
Trust" has been proved to be inefficient and unsuited to the existing  
circumstances of this colony, and it has been deemed expedient to

4th & 5th Vict. No 17  
repealed.

abolish the said system, and to establish a Central Board to perform the duties of the "General Road Trust," and also to superintend the execution and have the charge of such other Public Works as may from time to time be committed to the management of the said Board; Be it therefore enacted, by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, that the Act passed in the fourth and fifth years of the reign of Her present Majesty, entitled "an Act to provide for the construction and management of Roads and other internal communications in the Colony of Western Australia," shall be, and the same is hereby, repealed, save as to the levying of tolls thereby imposed, and as is hereinafter excepted.

General Board of Works  
to be appointed by the  
Governor.

II. AND be it enacted, that a Board shall be constituted, to be called "The Central Board of Works," and to have the management of all matters connected with the construction and repair of roads, canals, bridges, and public lines of communication, and also of all such other public works of what nature soever as may be committed to the charge of the said Board from time to time by His Excellency the Governor, or by any local Ordinance; and that the said Board shall consist of eight members, to be from time to time appointed or removed by His Excellency the Governor, with the advice of the Executive Council, by Proclamation in the Government Gazette, and that four of such members shall be persons not holding any office of emolument under the Local Government;—Provided always that the proceedings of the said Board shall be subject to such regulations as may be issued from time to time by the Governor with the advice of the Executive Council, in accordance with the provisions of this Ordinance, and that the said Board shall hold regular Meetings at certain periods, and that any five members of the said Board shall constitute a Quorum thereof for the despatch of business:

Members of Board to sub-  
scribe declaration.

III. PROVIDED always and be it enacted, that each non-official member as aforesaid shall, previous to his entering upon his duties, and at the first Meeting in each successive year at which he shall be present, subscribe a declaration to the following effect, on the minute book of the Board:—"I (A. B.) am the bonâ fide proprietor of one thousand acres of land in fee simple in the colony of Western Australia.

IV. AND be it enacted, that the right of property in all roads,

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canals, bridges, towing-paths, ferries, and other public lines of communication not laid out by the authority of the Governor as streets in any town-site in the maps and plans of the Surveyor-General's Department, and in all soil, timber, and other materials within such lines of communication, so long as the same shall continue to be used for the purposes of this Ordinance, as well as in all funds arising therefrom, or applicable thereto, together with the management, control and superintendence of the same, shall be vested in the same Board.

Property in roads, &c., vested in Board.

V. AND be it enacted, that it shall be lawful for the said Board, by themselves or their agents, at any time to enter upon any lands within the said colony, and to lay out and mark any lines of communication which they may deem advisable;—Provided always that one month's notice shall be published in the Government Gazette of their intention to survey such line before they shall proceed to clear and open the same;—Provided always that no line of road shall pass through any garden, vineyard, plantation of fruit trees, or cemetery, nor shall injure or damage any dwelling house, Church, or other permanently constructed building, nor pass within the distance of sixty-six feet from any inhabited dwelling house, without the consent of the owner thereof.

Right of entry to lay out roads, &c.

One month's notice in Government Gazette.

Road not to pass through improved land. &c.

VI. AND be it enacted, that whensoever and so soon as any line of communication shall have been laid out and marked as aforesaid, notice of such proposed line shall be published in the Government Gazette, and after the expiration of one month from the date of such notice, a report containing a description of such line, and signed by the Chairman of the Board, shall be laid by such Chairman before the Governor in Council for approval, and all such lines so approved shall be taken to be public lines of communication within the meaning of this Ordinance, and shall be forthwith published as such in three successive Government Gazettes.

Roads, &c., to be gazetted on laying out, and on approval by Governor.

VII. PROVIDED always and be it enacted, that when any line of road shall be laid out and declared a public line of communication as aforesaid, which shall pass through or over any lands which shall have been, previously to the notice aforesaid of the laying out of such road, bonâ fide improved by clearing, tillage, or building, or enclosed by a good and sufficient fence, the owner or occupier of the lands so improved and enclosed shall severally be entitled to such compensation for any actual damage thereby occasioned to the property, other

Compensation for damage to improved lands.

than the loss of the land taken for such road, or to his, her or their estate or interest therein, as a Jury may award in an action on the case by such owner or occupier against the Chairman for the time being of the said Board.

**Power to appoint officers.** VIII. AND be it enacted, that the said Board shall have power, subject to the previous approval of the Governor, to appoint from time to time such officers as they may deem fit and expedient for the purposes of this Ordinance, and to remove and reappoint the same.

**Local Boards.** IX AND be it enacted, that it shall be lawful for the said Board to divide the colony into districts for the purpose of this Ordinance, and that there shall be Local Boards for each district, and that every Proprietor of no less than three hundred and twenty acres of land in fee simple in the district shall be a Member of such Local Board, and the said Local Board may elect from amongst the Members thereof a Chairman or President, and a Committee consisting of not more than five;—And be it further enacted, that the Local Board or their Committee shall have the more immediate direction and management of all roads and other public works which may be made or constructed in the district, subject nevertheless in all cases to the sanction and control of the Central Board, and to propose or recommend to the Central Board such lines of communication or public works, or alterations therein, as they may deem expedient.

**Nature of available funds.** X. AND be it enacted, that the funds available for the purposes of this Ordinance shall be such as may accrue from any of the following sources, viz;—

- 1.—Tolls payable at any ferries, not being the property of any Town Trust, which the said Central Board are hereby empowered to let in the manner provided for by the Act 4th William IV, No. 1, intituled “an Act to regulate the Establishment and Management of Ferries, and the Collection of Tolls thereat.”
- 2.—All Leases of Tolls or compositions to be paid in lieu thereof.
- 3.—All Tolls, Dues, or Charges, which may hereafter be made payable at or by reason of the use of any lines or modes of communication; which Tolls, Dues, or Charges, the Governor is hereby empowered to establish, rescind, or alter by proclamation,

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provided that the amount so established shall not in any case exceed the amount recommended by the said Central Board.

4.—Voluntary Subscriptions of Money or Labor for local or general purposes.

5.—The amount of any sums which may from time to time be conceded by the Governor for special or general purposes under this Ordinance.

6.—Loans raised as hereafter provided on the credit of Tolls, Leases, or other property connected with the aforesaid lines and modes of communication.

7.—All such Funds as may be at any time committed to the Board by any Local Ordinance.

XI. AND be it enacted, that a statement of the receipts and expenditure of each year shall be presented by the said Central Board to the Governor, and shall be by him laid before the Legislative Council as soon as possible after the sitting of the said Council in each year. Accounts to be laid before Governor and Legislative Council.

XII. AND be it enacted, that it shall be lawful for the said Central Board, by and with the consent of the Governor and Executive Council, to borrow and take up at interest on the credit of tolls, dues or charges arising or to arise from any road, bridge, ferry, or other work of the like nature, any such sum of money as they shall think proper from time to time respectively, and to assign the tolls on such road, or any part thereof, or on such bridge, ferry or other work of a like nature as a security to any person or persons who shall advance such sum of money (for such a period of time as may be sufficient) for the repayment of the principal sum borrowed, together with interest at a rate not exceeding ten per centum per annum. Central Board may borrow money on tolls, &c.

XIII. AND be it enacted, that assignments of tolls or charges shall be in the words or to the effect following, viz.:— Form of assignment.

“ By virtue of an Ordinance passed in the tenth year of the reign of Queen Victoria, intituled ‘an Ordinance to repeal the existing laws respecting the constuction and management of roads, and to establish a Central Board of Works,’ we, the Chair-

man and Members of the Central Board of Works, in consideration of the sum of \_\_\_\_\_, advanced and paid to the Treasurer of the said Board, do hereby grant and assign unto A. B., his Executors and Assigns, (*here specify the matter assigned*), to be held from this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, until the said sum of \_\_\_\_\_, with interest at the rate of \_\_\_\_\_ per centum per annum, shall be paid and discharged."

And copies of such assignments shall be entered by the clerk in the book of proceedings, and such assignments shall be transferable by indorsation to any other person whatsoever, which indorsation shall be in the words, or to the effect, following, viz:—

"I, A. B, do hereby transfer all my right to the within written assignment of \_\_\_\_\_ to \_\_\_\_\_ and his Executors and Assigns."

And all persons to whom any such assignment or indorsation shall be made, as aforesaid, shall, in proportion to the sum of money thereby secured, be creditors on the tolls and charges so assigned, in equal degree one with another in respect to payment of the interest on such sum, or in such order or manner, and at such time with respect to payment of the principal sum, as shall be agreed upon and stipulated by the said Central Board at the time of the advance of their respective sums of money.

Penalty for injury to  
property of Boards.

XIV. AND be enacted, that any person who shall wilfully injure, damage, or destroy any road, pathway, ferry, bridge, ferry-boat, jetty, Quay, well, Spring, gate, fence, post, or other Public Work, or any article or material, matter or thing, employed for the purposes of this Ordinance, or in charge of the Central Board under this Ordinance, or shall upon any way used, or appointed to be used as a footway only, drive any cart or carriage, except directly across on necessary occasions,—or shall lead, ride, or drive any horse or other beast on any such footway, except directly across the same as aforesaid,—or shall suffer to stand, or shall tie or fasten any horse or other beast on or across the same,—or shall do or commit any act, or shall leave or place or set up any material or thing whatsoever,

which shall cause or create any impediment, obstruction, nuisance, damage, or annoyance in or to the free passage of any such lines of communication as aforesaid, shall forfeit and pay a sum not exceeding five pounds, over and above the amount of any damages occasioned thereby; and the amount of such damages shall be handed over to the Treasurer appointed by such Central Board;—Provided, that if the property damaged be that of a private Individual, the amount of such damage shall be paid to such Individual, notwithstanding that such Individual may have been examined as a witness,

XV. AND be it enacted, that the said Central Board may sue <sup>Central Board to sue and be sued in name of Chairman.</sup> and be sued in the name of their Chairman for the time being, to be appointed by the Governor; and that no proceedings by or against the said Board shall abate by reason of the death or removal of such Chairman; and that in any proceedings, civil, criminal, or otherwise, by or against any of the Members of the Board under this Ordinance, he or they shall be sufficiently described as a Member or Members of the Board appointed by virtue of this Ordinance.

XVI. AND be it enacted, that the said Central Board shall not <sup>Members not personally liable.</sup> be held to have rendered themselves personally responsible for the repayment of any money borrowed, or interest thereof, by reason of having signed any securities in pursuance of this Ordinance, but such securities shall be held and considered as granted upon the sole credit and security of the tolls; nor shall any Members of any Board be held personally liable for the payment of any sum, or performance of any contract, for which he shall not have bound himself personally, independent of his office as Member of the said Board, nor for any such compensation as aforesaid.

XVII. PROVIDED always and be it enacted, that all existing <sup>Existing contracts to be valid.</sup> contracts whatsoever which may have been entered into by the General Road Trust of the colony, under or by virtue of the Act of the fourth and fifth years of Her present Majesty number Seventeen, now repealed, shall be deemed and taken to have the same force and validity, and shall and may be acted upon as if the same had been done under or by virtue of this Ordinance, and shall be deemed to have been made by and with the Central Board of Works with and by the several parties respectively.

XVIII. AND be it enacted, that all actions and prosecutions to

Limitation of proceedings  
against Board, &c.

be commenced against any person for any thing done in pursuance of this Ordinance, shall be commenced within three calendar months after the fact committed, and not otherwise;—And notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action;—and in any such action the defendant may plead the general issue, and give this Ordinance and the special matter in evidence on any trial to be had thereupon;—And no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of defendant;—And if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases;—And though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the Judge before whom the trial shall be shall certify his approbation of the action, and of the verdict obtained thereupon.

Limitation of proceedings  
for offences.

XIX. AND be it enacted, that all informations and proceedings for offences against this Ordinance shall be commenced within six calendar months after the offences thereby respectively charged shall have been committed; and shall be heard and determined, and the forfeitures and penalties in respect of the same shall be awarded and enforced in a summary manner before any two Justices of the Peace, according to the provisions of an Act passed in the seventh year of the reign of Her present Majesty, entitled “an Act to regulate summary proceedings before Justices of the Peace.”

Jurisdiction under 7 Vict.  
No. 12.

Appropriation of penalties.

XX. AND be it enacted, that all fines and forfeitures recovered under this Ordinance shall be divided, paid and applied as follows; that is to say, after deducting charges of prosecution and sale from the produce thereof, one moiety shall be paid to the Chairman of the said Central Board to be appropriated toward the purposes of this Ordinance, and the other moiety to the party or parties informing.

Ordinance not to affect 4  
& 5 Vict. No. 18.

XXI PROVIDED always and be it enacted, that no part of



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this Ordinance shall be deemed or taken to affect the provisions of an Act passed in the fourth and fifth years of the reign of Her present Majesty, entitled "an Act to provide for the improvement of Towns in Western Australia."

FREDERICK CHIDLEY IRWIN,  
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Council* }  
*4th Nov., 1847.*    }

WALKINSHAW COWAN,  
Clerk of the Councils.