

Western Australia

## **Kalgoorlie Racecourse Tramways Act 1904**

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# Kalgoorlie Racecourse Tramways Act 1904

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# Kalgoorlie Racecourse Tramways Act 1904

**An Act to authorise The Kalgoorlie Electric Tramways, Limited, to construct, maintain, and manage a line of Tramways on the Racecourse at Kalgoorlie.**

*[Assented to 24th December 1904.]*

## Preamble

Whereas the Kalgoorlie Electric Tramways, Limited, being a company properly incorporated under the Companies Act of the Imperial Parliament, and registered and carrying on business in the State of Western Australia, is desirous of constructing, maintaining, and managing a Tramway on the racecourse at Kalgoorlie, being part of Hampton Location 2: And whereas the said Company has agreed with the lessees of the said land, who are trustees for the Kalgoorlie Racing Club, and with the said club, for the construction, maintenance, and management by the Company of the said Tramway: And whereas the Minister for Lands, as lessor of the said land, has consented to the said Agreement: And whereas it is expedient that the Company should be authorised to construct, maintain, and manage the said Tramway: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows: —

## 1. Interpretation

In the interpretation of this Act, save where there is something in the context inconsistent therewith, the following terms shall have the meanings set opposite them respectively: —

“**Minister,**” the Minister for Works in Western Australia.

**“The Company,”** the Kalgoorlie Electric Tramways, Limited, and its assigns.

**“The Tramway,”** the tramway authorised by this Act to be constructed, and works in connection therewith.

**2. Power to construct tramway**

Subject to the provisions of this Act, and subject to and in accordance with an agreement made the ninth day of September, 1903, between Robert Gibson, Patrick Whelan, and John Albert O’Meehan, Trustees of the Kalgoorlie Racing Club of the first part, the Kalgoorlie Racing Club of the second part, and the Company of the third part, which said agreement is set forth in the Second Schedule of this Act, the Company may construct, maintain, and manage a double line of tramway, with all necessary and usual works and conveniences, in the lines and upon the lands described in the First Schedule to this Act.

**3. How constructed**

The tramway shall be constructed of sound material and upon a three feet six inch gauge, with steel rails of the T pattern and of a weight of not less than forty-five pounds to the yard. The tramway shall in all respects be constructed in accordance with the agreement hereinafter mentioned, and with the *Tramways Act 1885*.

**4. Motive power**

The tramway shall be moved by electrical or other power approved of by the Minister. The Company may erect and maintain on the said lands all such poles and posts, with wires attached thereto, as may be necessary or required for supplying electricity to cars on the said tramway.

**5. Minister may prohibit traffic when line is unsafe**

Any person acting under the authority of the Minister shall at all times during the construction of the tramway, and after its

completion, be allowed to inspect the tramway without let or hindrance; and on his report that the tramway or any portion thereof is unsafe, the Minister may, by order, prohibit the continuance of public traffic thereupon until the Minister is satisfied that the tramway is safe and fit for public traffic; and if the Company in any way disobey such order, they shall be liable, for every offence, to forfeit to the Minister a sum not exceeding one hundred pounds, to be recovered by complaint before any two justices.

The tramway shall be used for the conveyance of carriage of passengers and passengers' luggage only. Every passenger travelling on the tramway may take with him ordinary personal luggage belonging to him, not exceeding in weight 20lbs, without any charge being made for the carriage thereof.

**6. Rate of speed**

The rate of speed to be observed in travelling on the tramway shall not exceed ten miles an hour, and cars may be stopped at any point on the said lines for the purpose of picking up and setting down passengers.

**7. Tolls and charges**

The Company may demand and take, in respect of such tramways, the tolls and charges fixed and agreed upon by the parties to the said agreement of the ninth day of September, 1903; but the Company shall not be entitled to charge the fare mentioned in Clause 4 of the said agreement in addition to the fare payable by persons travelling on the Company's line between Kalgoorlie and the Kalgoorlie Racecourse.

**8. Agreement with landlord**

Nothing herein contained shall prejudice or affect the agreement in the last preceding section mentioned, except so far as the same is contrary to, or in conflict with, the provisions of this Act or the *Tramways Act 1885*.

**9. Incorporation of portions of *Tramways Act 1885***

The following sections of the *Tramways Act 1885*, namely, sections 26, 27, 28, 30, 34, 35, 37 to 45 inclusive, 48, 50, and 51, shall extend to and be deemed to be incorporated and included in this Act. In the interpretation of the said sections, when applied to this Act, expressions in the *Tramways Act 1885*, “**The Promoters**” shall mean “The Company,” and “**The Local Authority**” shall mean “The Trustees of the Kalgoorlie Race Club and the Kalgoorlie Race Club.”

**10. Return or forfeiture of deposit**

If the works authorised by this Act be completed to the satisfaction of the Minister for Works within twelve months from the passing of this Act, the deposit money paid by the Company to the Public Treasury shall be returned, otherwise such deposit money shall be forfeited.

**11. Short title**

This Act may be cited as the *Kalgoorlie Racecourse Tramways Act 1904*.



### **The 1<sup>st</sup> Schedule**

On all that piece or parcel of land being part of Hampton Location 2, containing 2 roods 20 perches more or less, and being a portion of Reserve No. 3417, known as the Kalgoorlie Racecourse, and bounded as follows: — Starting at a point on the North boundary of the Racecourse Reserve, distant 320 links from its North-West corner, and thence along the North boundary bearing 109 degrees 17 minutes for a distance of 65.2 links; thence bearing 177 degrees 38 minutes for a distance of 401 links; thence bearing 166 degrees 46 minutes for a distance of 292 links; thence bearing 180 degrees 22 minutes for a distance of 103 links; thence bearing 166 degrees 46 minutes for a distance of 400 links; thence bearing 256 degrees 46 minutes for a distance of 36.3 links; thence bearing 346 degrees 46 minutes for a distance of 798 links; and thence bearing 357 degrees 38 minutes for a distance of 430 links to the point of commencement.

## **The 2<sup>nd</sup> Schedule**

THIS INDENTURE made this ninth day of September, nineteen hundred and three, between ROBERT GIBSON, PATRICK WHELAN, and JOHN ALBERT O'MEEHAN, all of Kalgoorlie, in the State of Western Australia, Trustees of the Kalgoorlie Racing Club (who, with their heirs, executors, administrators, and assigns, are hereinafter described as "The Trustees") of the first part; and the KALGOORLIE RACING CLUB, hereinafter called "The Club," of the second part; and the KALGOORLIE ELECTRIC TRAMWAYS, LIMITED, a company duly incorporated in England but registered in the said State under the provisions of the *Companies Act 1893*, which, with its assigns, is hereinafter called "the Company," of the third part; WHEREAS by Lease from the Crown, dated the twenty-third day of January, nineteen hundred, registered in Lease Register No. 2. Folio 23, the messuage, lands, and hereditaments therein particularly described, situate at Kalgoorlie in the said State, and which are known as Hampton Location No. 2, with the appurtenances thereof, were demised and granted to Patrick Whelan, Walter Gibson, and Robert Gibson therein described, from the first day of October, one thousand eight hundred and ninety-nine, for the term of ninety-nine years thence next ensuing, as Trustees for the Kalgoorlie Racing Club, subject to the payment of the rent thereby reserved and the covenants on the part of the Lessees and conditions therein contained: AND WHEREAS by Instrument of Transfer, registered 1444/1900, the lastly hereinbefore in part recited Lease was transferred to Patrick Whelan, Robert Gibson, and John Albert O'Meehan: AND WHEREAS the Company is desirous of extending its tramway service into a certain portion of the Racecourse of the Kalgoorlie Racing Club, hereinafter more particularly specified, which said Racecourse is comprised in the said Hampton Location No. 2: NOW THESE PRESENTS WITNESS that it is hereby covenanted and agreed by and between the said parties hereto, as follows: —

1. The Trustees and the Club do hereby grant to the Company free leave, right, and liberty of way and passage, in manner hereinafter mentioned, through and over the lands of the Trustees hereinafter described, and liberty for the Company, its agents, servants, and workmen, with and without horses and carts, to enter upon and to make, lay, and repair a double track tramway in the usual way, by digging the soil and levelling the ground and making gutters through and over all those lands of the Trustees, being part of the said Hampton Location No. 2, delineated on the plan hereunto annexed and thereon coloured red, for carrying and conveying passengers to

and from the said Kalgoorlie Racecourse by the electric tram service of the Company: And also liberty for the Company, its agents, servants, and workmen, with and without horses and carts, as occasion shall require, to lay, erect, and fix wood, timber, earth, stones, gravel, rails, posts, sleepers, and other materials and poles and wires and cables in, over, and upon the said lands coloured red on the said plan, and with the approval of the Committee for the Club, for the time being, to cut, dig, and make trenches for the purpose of keeping the said tramway free from water, and to do all other things necessary and convenient as well for making and laying the said tramway as for repairing and upholding the same whenever there shall be occasion, and also liberty for the Company its agents servants, and workmen during the term of twenty-one years from the date hereof, on such days when any race, sports, or other meeting or meetings may be held at or on the racecourse of the Club, to go, pass, and repass, with and without cars, and to carry passengers by its tram service along the said tramway unto and from the said Racecourse; and all other liberties and appurtenances necessary or convenient for making, laying, altering, repairing, using, and removing the said tramway or any part thereof, the Company throughout the said term making good all damage occasioned by or in the exercise of the said liberties to the lands belonging to the said Trustees, except those actually taken and used for the line of the said tramway, and with power for the Company and its agents, servants, and workmen, with or without horses and carts, to enter upon the said land coloured red to take up and remove the rails, sleepers, poles, wires, and plant of the Company, making good all damage done thereby within three months of the expiration or sooner determination of this Agreement.

2. The work of constructing the said tramway shall be commenced within six months from the confirmation by Parliament of the Provisional Order adopting this Agreement, to be applied for by the Company, and shall be carried out with three feet six inch gauge and T rails in a good and substantial manner, and in accordance with the *Tramways Act 1885*: Provided that if the said work is not commenced within the specified time, then the Trustees or the Club may, by notice in writing, determine this Agreement.
3. The Company during the said term, on all days during which race, sports, or other meeting or meetings or entertainments shall be held at

the Racecourse of the Club, shall conduct and carry on an efficient tram service for the conveyance of passengers to and from the terminus of the Company's tramway in the Racecourse of the Club: Provided always that, after the expiration of ten years from the date of this Agreement, the Company may give notice, in writing, to the Trustees and the Club to determine this Agreement, and after the expiration of six months from the date of posting such notice in a registered letter addressed to the Secretary of the Kalgoorlie Racing Club, Hannan Street, Kalgoorlie, this Agreement shall cease and determine.

4. The Company shall have complete control over the said portion of land delineated on the said plan, coloured red, at all times during which the said tramway laid down over the said land shall be used by it. The Company may, during the continuance of this Agreement, charge each person travelling on its cars over the said land coloured red the sum of three-pence for each single journey.
5. The Company may, at its own expense, and shall, if required by the Club, after the said tramway or any part thereof shall have been made and laid, sufficiently fence off the land delineated on the said plan, and thereon coloured red, with a fence of six feet jarrah pickets: And also will at the like expense set up, hang, make, erect, and keep such good and sufficient gates, with locks and keys, as may be required by the Committee of the Club for the time being for entrance and exit to and from the said portion of land: And also will, throughout the said term, at the like expense, keep all the aforesaid tramway fencing, gates, locks, and keys in good and sufficient repair and condition: Provided always, that the Club shall have the sole charge of the keys to all of the said gates at all times during the said term, except on the day and days during which the said land and tramway are being used by the Company.
6. The Company will, within six calendar months next after the expiration or other sooner determination of the said term, take up, remove, and carry away all the rails, sleepers, iron, wood, posts, poles, wires, and other material which shall be laid, fixed, erected, or placed in, over, or upon the said land, and also will, with all convenient speed and within the space of three calendar months next after every removal of such materials as shall have been by them laid,

placed, erected, or fixed, as aforesaid, at its own expense, well and sufficiently dig, fill up, throw down, and level all and every the embankments, cuts, and trenches raised and made for the use of or occasioned by such tramway, or by reasons or means of the liberties hereby granted.

7. The Company will at all times hereinafter indemnify, and deep indemnified, the Trustees and the Club from all actions, proceedings, claims and demands, costs, damages, and expenses which may be brought or made against the said Trustees or the Club, or against both the Trustees and the Club, or which they or the Club may sustain or incur by reason of the License hereby granted, or by reason of the Company constructing, maintaining, and working the tramway under the said License, or by reason of any accident which may occur on any portion of the Racecourse, hereinbefore specified and coloured red on the said plan, during such period as the Company have control thereof and are running trams thereon, whether the said Company, its agents, servants, or workmen have or have not been guilty of negligence in any way.
8. Provided always, and these presents are upon the express condition that, if and whenever there shall be a breach of any of the several covenants and agreements by the Company herein contained, the Trustees and the Club may give to the Company in manner aforesaid a notice, in writing, declaring that the License hereby granted for the said term of twenty-one years is determined, and thereupon the said License, and all other powers and liberties granted under these presents, except the liberty to enter on the land and remove its rails, sleepers, poles, wires, and plant hereinbefore granted, shall absolutely cease and determine.
9. This Agreement is made conditionally on the consent of the Crown being obtained to the terms hereof.
10. And it is hereby declared that any and every dispute, difference, or question which shall at any time arise between the said parties hereto, or their respective executors, administrators, successors, or assigns, or of any of them, touching the construction, meaning, or effect of these presents, or any clause or thing therein contained, or the rights and liabilities of the said parties respectively, or their respective heirs, executors, administrators, successors, or assigns, or any of them,

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under these presents, or otherwise howsoever, in relation to the premises: then every such, dispute, difference, or question shall be referred to the arbitration of two persons (one to be appointed by each party to the reference), or their umpire, and this shall be deemed a submission to Arbitration within *Arbitration Act 1895*, or any statutory modification or re-enactment thereof for the time being in force, the provisions whereof shall apply as far as applicable. In witness whereof the parties hereto have hereunto set their hands and seals the day and year first before written.

Signed, sealed, and delivered by  
Robert Gibson, Patrick Whelan, and  
John Albert O'Meehan, as Trustees      ROBERT GIBSON.      [L.S.]  
of the Kalgoorlie Racing Club, in the      P. WHELAN.      [L.S.]  
presence of      J.A. O'MEEHAN.      [L.S.]

HARRY HALE,  
Solicitor, Kalgoorlie

Signed, sealed, and delivered by  
Alexander John Meldrum, Chairman  
of the Kalgoorlie Racing Club, for      A.J. MELDRUM.      [L.S.]  
and on behalf of the said Club, in the  
presence of

HARRY HALE.

Signed, sealed, and delivered on  
behalf of the Kalgoorlie Electric  
Tramways, Limited, by its Attorney      The KALGOORLIE  
under power, Edward Graham Price,      ELECTRIC TRAMWAYS,  
in the presence of      LIMITED, by its Attorney E.  
GRAHAM PRICE      [L.S.]

E. THO. RANDALL,  
Kalgoorlie, Solicitor.

**NOTES**

<sup>1</sup> This is a compilation of the *Kalgoorlie Racecourse Tramways Act 1904* and includes all amendments effected by the other Acts referred to in the following Table.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Kalgoorlie Racecourse Tramways Act 1904</i>	4 Edw. VII, 1904 (Private Act)	24 December 1904	