

# CROWN AND OTHER ROADS ACT 1990 No. 54

## NEW SOUTH WALES



### TABLE OF PROVISIONS

#### PART 1 - PRELIMINARY

1. Short title
2. Commencement
3. Definitions

#### PART 2 - OPENING OF ROADS

##### Division 1 - Prerequisites to the opening of a road

4. Power of the Minister to open a road
5. Application to the Minister to open a road
6. Notice to be given of an intention to open a road over prescribed land
7. Opening of roads over prescribed land
8. Restrictions on the exercise of the power to open roads over prescribed land
9. Effect of acquiring land for the purposes of a road
10. Opening a road over unoccupied Crown land
11. Crown road may be declared to be a public road
12. Power of the Minister to limit the acquisition of land to a specified stratum

##### Division 2 - Compensation

13. Entitlement to compensation
14. How to make a claim for compensation
15. Waiver of compensation rights in respect of certain interests in land
16. Compensating authority to accept or reject claim
17. Appeal to the Land and Environment Court against the rejection of a claim
18. Compensation to be determined by agreement of the parties in the first instance
19. Compensation to be determined by the local land board when the parties cannot agree
20. Agreement or determination to lapse if land or interest is not acquired within 90 days

21. Amount of compensation - principles for assessment
22. Special provision where the market value is determined on the basis of the land's potential
23. What happens when there is no market for an acquired interest
24. What happens where land etc. is affected by a planning restriction
25. What factors are to be disregarded in assessing compensation
26. What effect the acquisition of a mortgage interest has
27. Interest to accrue in respect of compensation not paid at the appropriate time
28. Compensation not to be made for mines or minerals in land acquired for a road
29. Effect of receipt for compensation
30. What happens when the compensation to be provided is in the form of an interest in land
31. Special provisions that apply where compensation is to be provided in the form of a leasehold interest
32. What happens when a person entitled to compensation cannot be located

Division 3 - Supplementary provisions

33. How surplus land may be disposed of
34. Use of Crown road
35. Provisions applicable to public roads
36. Crown road to continue to be Crown land

PART 3 - RE-MARKING, RE-ALIGNMENT AND  
ALTERATION OF ROADS

37. Part 3 not to apply to classified roads
38. Power of the Minister to re-mark road
39. Notice of re-marking of road to be published
40. Defining the boundaries of and re-aligning roads
41. Power of the Minister to rescind or vary a re-alignment

PART 4 - CLOSURE OF ROADS

42. Power of the Minister to close a road
43. Application to the Minister to close a road
44. Notice to be given of an intention to close a road
45. Procedure for closing a road
46. Disposal of land that formerly constituted a closed road
47. Temporary closing of Crown roads on notice
48. Temporary closing of Crown roads without notice
49. Power of the Minister to limit the closure of a road to a specified stratum

PART 5 - REGULATION OF CROWN ROADS

50. Power of the Minister to declare a Crown road to be a controlled Crown road
51. Power of the Minister to vary the prohibitions, restrictions and conditions applicable to a controlled Crown road

- 52. Offences in relation to the use of a controlled Crown road
- 53. Regulations relating to Crown roads

#### PART 6 - LEGAL PROCEEDINGS

##### Division 1 - Offences

- 54. Obstructing an authorised person in the exercise of a power conferred by s. 66
- 55. Offence to damage or obstruct a road
- 56. Proceedings for offences
- 57. Offences committed by corporations

##### Division 2 - Appeals etc. to the Land and Environment Court

- 58. Definition of "decision" for the purposes of Division 2
- 59. Persons may appeal to the Land and Environment Court against local land board decisions
- 60. Local land board may refer matters to the Land and Environment Court
- 61. How an appeal under this Act is to be lodged
- 62. Powers of the Land and Environment Court under this Division

##### Division 3 - Other matters

- 63. Crown not to be liable for injury etc. resulting from alignment or re-alignment of a road
- 64. Appropriate roads authority to have power to bring proceedings for the recovery of costs of repairing road etc.

#### PART 7 - MISCELLANEOUS PROVISIONS

- 65. Exclusions, exceptions and reservations from a disposal of land in accordance with this Act
- 66. Power of authorised persons to enter land for the purposes of this Act
- 67. Certificate as to authorised persons
- 68. Power of the Minister to refer disputed matters to the local land board for report
- 69. Power of the Minister to delegate functions
- 70. Gazette to be evidence of orders, notices etc.
- 71. Power of the Minister to correct defective orders, notices etc.
- 72. Power of the Minister to include more than one matter in the same order or notice
- 73. Notices
- 74. Lodgment of documents with the Minister etc.
- 75. Regulations
- 76. Act to bind the Crown
- 77. Repeals
- 78. Savings and transitional provisions

SCHEDULE 1 - REPEALS

SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS

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# CROWN AND OTHER ROADS ACT 1990 No. 54

## NEW SOUTH WALES



### Act No. 54, 1990

An Act to provide for the opening, closing, marking and alignment of roads; to provide for the regulation of certain roads; to provide for related matters; and to repeal the Public Roads Act 1902 and certain other enactments. [Assented to 26 September 1990]

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See also the Miscellaneous Acts (Crown and Other Roads) Amendment Act 1990.

**The Legislature of New South Wales enacts:**

**PART 1 - PRELIMINARY**

**Short title**

1. This Act may be cited as the Crown and Other Roads Act 1990.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions** (see Act No. 95, 1902, s. 6)

**3. (1)** In this Act:

"**acquired**" means resumed or withdrawn, and includes appropriated;

"**authorised person**" means a person appointed by a roads authority to exercise the functions of an authorised person under this Act, and also means:

- (a) where the roads authority is the Minister - the Minister; or
- (b) where the roads authority concerned is a council or the Roads and Traffic Authority - a member of the council or that Authority;

"**compensating authority**" means:

- (a) in a case where compensation is to be provided by the Crown - the Minister; or
- (b) in a case where compensation is to be provided by a council - the council;

"**Crown land**" has the same meaning as in the Crown Lands Act 1989;

"**Crown Lands Acts**" has the same meaning as in the Crown Lands Act 1989 but with the addition of the Irrigation Act 1912 and the Western Lands Act 1901;

"**Crown road**" means:

- (a) any road or land which was, before the commencement of this section, vested in the Crown and indicated on official maps or plans as being reserved for or left as a road;

- (i) in a subdivision of Crown land; or
- (ii) in the measurement or granting of Crown land; or
- (iii) as a consequence of an approval by the Minister administering the Crown Lands Acts,

but which was not notified, proclaimed or dedicated as a public thoroughfare or public way before that commencement and which has not been declared to be a public road under Part 2 since that commencement; or

- (b) any land declared to be a Crown road under Part 2;

**"council"** has the same meaning as in the Local Government Act 1919;

**"deal with"**, in relation to land, includes dispose of the land;

**"former Act"** means the Public Roads Act 1902;

**"interest"**, in relation to land, means:

- (a) any legal or equitable estate or interest in the land; or
- (b) a restriction on the use of the land, whether or not annexed to other land; or
- (c) any other right (including a right under an option and a right of redemption), charge, power or privilege over or in connection with the land or an interest in the land;

**"irrigation area"** has the same meaning as in the Crown Lands Act 1989;

**"Land Register"** means the Register kept under the Real Property Act 1900;

**"lease"** includes any unexpired engagement, contract or promise of a lease;

**"local land board"** means, in relation to a matter arising in connection with land located in a land district situated within the Eastern and Central Division or in an administrative district situated within the Western Division, the local land board constituted for the land district or administrative district;

**"local newspaper"**, in relation to a matter affecting land or a road, means a newspaper published or circulating in the district in which the land or road is situated;

**"major interest"**, in relation to land, means:

- (a) the fee simple estate in the land; or
- (b) the interest in the land of any person in lawful occupation of the land; or
- (c) if a folio of the Land Register has been created in respect of the land - any estate or interest recorded on the folio; or
- (d) any legal or equitable estate in the land of which the Minister has notice;

**"market value"** has the meaning given to that expression by subsection (5);

**"mineral"** has, except in section 65, the same meaning as it has in the Crown Lands Act 1989;

**"mortgage"** means a security over land or an interest in land securing the payment or repayment of money;

**"prescribed land"** means:

- (a) Crown land other than unoccupied Crown land; or
- (b) any other land that is not Crown land;

**"price"** includes any valuable consideration whether in the form of money or not;

**"public authority"** means a body constituted or established by an Act for a public purpose;

**"public road"** means any land proclaimed, dedicated, notified, resumed or otherwise established, whether before or after the commencement of this section, as a public thoroughfare or public way, but does not include a Crown road;

**"quarter sessions road"** means a road granted at Quarter Sessions as an access road before 18 October 1968 (the date on and after which no further quarter sessions roads could be created);

**"road"**, when used without qualification, means a public road, a Crown road or a quarter sessions road;

**"roads authority"** means:

- (a) in relation to a public road within the local government area of a council - that council; or
- (b) in relation to a Crown road or a quarter sessions road - the Minister; or



- (c) in relation to a classified road within the meaning of the State Roads Act 1986 or a road constructed, provided or maintained by the Roads and Traffic Authority in accordance with section 17 of that Act - that Authority; or
- (d) in relation to any other kind of road that is open for use as a public thoroughfare or public way - the Roads and Traffic Authority;

**"unoccupied Crown land"** means Crown land other than:

- (a) Crown land that is the subject of a contract of sale under the Crown Lands Acts but for which the Crown has not received the sale price; or
- (b) Crown land that is held under a lease in perpetuity under those Acts; or
- (c) Crown land that is held under a lease for a term of years under those Acts; or
- (d) Crown land that is included in a travelling stock reserve under the control of a rural lands protection board; or
- (e) Crown land that is included in a reserve in respect of which a reserve trust is established in accordance with Part 5 of the Crown Lands Act 1989; or
- (f) Crown land that is included in a common within the meaning of the Commons Management Act 1989; or
- (g) Crown land that is subject to the Trustees of Schools of Arts Enabling Act 1902; or
- (h) Crown land that is subject to an easement,  
and includes Crown land held under a yearly lease;

**"yearly lease"** means a tenure listed in Part 4 of Schedule 1 to the Crown Lands (Continued Tenures) Act 1989.

(2) In this Act, a reference to a road includes a reference to a part of a road.

(3) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(4) In this Act, a reference to the Eastern and Central Division or the Western Division is a reference to the Eastern and Central Division

or the Western Division within the meaning of section 4 of the Crown Lands Act 1989.

(5) For the purposes of this Act, the market value of land or an interest in land at a particular time is the amount that would have been paid for the land or interest if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.

## **PART 2 - OPENING OF ROADS**

### **Division 1 - Prerequisites to the opening of a road**

#### **Power of the Minister to open a road**

4. (1) A road may be opened by the Minister but only in accordance with this Part.

(2) The Minister may exercise the functions conferred or imposed by this Part on his or her own initiative or as a result of an application made in accordance with section 5.

#### **Application to the Minister to open a road**

5. (1) Any person may make an application to the Minister for the opening of a road.

(2) Such an application must:

(a) be in a form approved by the Minister; and

(b) be accompanied by:

(i) the application fee (if any) prescribed by the regulations; and

(ii) a map or diagram showing the route of the proposed road.

(3) Whenever an application has been made under this section, the Minister may, by notice in writing served on the applicant, require the applicant to lodge with the Minister:

(a) any additional fee required to cover the cost of processing the application; and

(b) any sum of money necessary to provide compensation payable for an interest in land to be acquired for the purposes of the road concerned; and

- (c) any sum of money necessary to defray a cost connected with the opening of that road; and
- (d) particulars, relevant to the application, of the financial resources available to the applicant; and
- (e) further information that the applicant has relevant to the application; and
- (f) a plan of survey, in a form approved by the Minister, of the land proposed to be acquired in connection with the application.

**(4) If:**

- (a) a sum of money specified in a notice served under subsection (3) is not paid; or
- (b) information or a plan so specified is not lodged,

within 28 days after the service of the notice, or within such extended period as the Minister may allow, the application concerned lapses at the end of that period of 28 days or that extended period.

**(5)** The Minister may refuse an application under this section for any reason that appears to the Minister to be appropriate.

**(6)** If the Minister refuses such an application, the Minister must notify the applicant in writing of the refusal and of the reason for it.

**(7)** An applicant under this section may withdraw the application at any time before the proposed road is opened in accordance with this Part.

**(8)** If an application under this section is refused or withdrawn or lapses, the Minister:

- (a) may, after deducting an amount sufficient to cover the cost of processing the application, refund to the applicant the whole or any part of the application fee; and
- (b) must refund to the applicant any other money that has been paid to the Minister under this section but has not been spent in connection with the application.

**Notice to be given of an intention to open a road over prescribed land**  
(see Act No. 95, 1902, s. 7 (1), (1A), (2))

**6. (1)** Whenever the Minister proposes to consider opening a road over prescribed land, the Minister must publish in the Gazette a notice of the proposal, including a description of the land concerned.

(2) Such a notice must:

- (a) refer to a plan of the proposed road which must be kept for public inspection at an office of the Department of Lands specified in the notice; and
- (b) invite any person who wishes to object to the proposal to set out the objection in writing and lodge it at the office of the Department of Lands specified in the notice on or before such date, or within such period, as is specified in the notice; and
- (c) invite any person who wishes to make a claim for compensation in respect of the acquisition of the interest in land required for the proposed road to lodge the claim at that office on or before that date or within that period.

(3) As soon as practicable after such a notice has been published, the Minister must:

- (a) publish in a local newspaper an advertisement drawing attention to the contents of the notice; and
- (b) serve a copy of the notice on the owners of the major interests in each parcel of land to which the proposal relates.

(4) The Minister does not have to comply with subsection (3) (b) if:

- (a) the owners of the major interests in the land proposed to be acquired have already consented to the opening of the proposed road; or
- (b) the land proposed to be acquired is already in use as a road which has been established by the expenditure of public funds.

**Opening of roads over prescribed land (see Act No. 95, 1902, s. 8 (2))**

7. (1) The Minister may, by notice published in the Gazette, declare that any prescribed land described in the notice is acquired by the Crown for the purposes of a road.

(2) In such a notice, the Minister must:

- (a) specify whether the whole or only part of the land acquired is to become road; and
- (b) if only a part of the land acquired is to become road, specify which part of that land is to become road; and
- (c) declare the road to be a public road or a Crown road.

- (3) On the publication of such a notice:
- (a) the land described in the notice is acquired for the purposes of a road; and
  - (b) that part of the land specified in the notice as road is opened as a public road or Crown road as indicated by the notice and, if declared to be opened as a public road, is dedicated to the public.

**Restrictions on the exercise of the power to open roads over prescribed land** (see Act No. 95, 1902, s. 8 (3), (4))

**8. (1)** The power conferred by section 7 is not exercisable in respect of prescribed land unless:

- (a) the requirements of section 6 have been satisfied in relation to that land; and
- (b) a period of not less than 28 days has elapsed since the advertisement referred to in section 6 (3) (a) was published; and
- (c) if within that period of 28 days objections have been lodged in response to the invitation contained in the notice published in accordance with section 6 (1) - the Minister has properly considered those objections; and
- (d) any compensation to be provided in respect of the proposed acquisition of the land has been agreed to or, if not agreed to, has been determined in accordance with this Part.

(2) If the land referred to in subsection (1) is within a State forest, national forest or flora reserve, the power conferred by section 7 is not exercisable unless, in addition to the requirements specified in subsection (1) (a)-(d):

- (a) the Forestry Commission has recommended that the power be exercised; and
- (b) the Minister administering the Forestry Act 1916 has consented to its exercise.

(3) If the land referred to in subsection (1) is dedicated for a public purpose and trustees of the land have been appointed or a trust has been established, the power conferred by section 7 is not exercisable unless, in addition to the requirements specified in subsection (1) (a)-(d), a notice giving particulars of the proposed acquisition has been served on those trustees or that trust.

**Effect of acquiring land for the purposes of a road**

9. (1) When land is acquired in accordance with section 7, the land is freed from all trusts, reservations, obligations and interests and, subject to subsection (2) and sections 35 and 36, becomes Crown land.

(2) There may be excepted from an acquisition effected under section 7:

- (a) any easement which is specified in the notice effecting the acquisition and to which the land was subject immediately before the acquisition; and
- (b) any easement specified in that notice which is appurtenant to an easement referred to in paragraph (a).

(3) If:

- (a) in accordance with subsection (2), an easement is excepted from a vesting of land; and
- (b) immediately before that vesting, the benefit of a restriction as to user was annexed to the easement,

then, unless otherwise specified in the notice by which the acquisition is effected, that restriction continues to have effect as if the acquisition had not taken place.

**Opening a road over unoccupied Crown land**

10. (1) The Minister may, by notice published in the Gazette, declare any unoccupied Crown land specified in the notice to be set aside for the purposes of a public road or a Crown road.

(2) Such a notice must refer to a plan of the proposed road which must be kept for public inspection at an office of the Department of Lands specified in the notice.

(3) On the publication of a notice in accordance with this section:

- (a) the land described in the notice is freed from all trusts, reservations, obligations and interests; and
- (b) that part of the land specified in the notice as road is opened as a public road or Crown road as indicated by the notice and, if declared to be opened as a public road, is dedicated to the public.

**Crown road may be declared to be a public road** (see Act No. 95, 1902, s. 18)

11. (1) The Minister may, by notice published in the Gazette, declare any Crown road to be opened as a public road.

(2) On the publication of a notice in accordance with this section, the Crown road is dedicated to the public.

(3) If any such public road has been provided in a subdivision of Crown land for alienation or has been reserved in the measurement of Crown land, the official plans of survey which show the road juxtaposed to the land subdivided or measured are evidence of the width, extent and position of the road.

(4) Nothing in this section precludes the making of any alteration to the width of a road before the publication of, or by, a notice referred to in subsection (1).

**Power of the Minister to limit the acquisition of land to a specified stratum** (see Act No. 95, 1902, s. 35 (3))

12. Whenever the Minister, in accordance with a power conferred by this Part, declares land to be acquired for the purposes of a road or to be opened as a public road or a Crown road, the Minister may, in the notice by which the declaration is made, also declare that the notice applies only to:

- (a) land down to a specified depth below the surface of the land;  
or
- (b) airspace up to a specified height above the surface of the land;  
or
- (c) land lying between specified depths below the surface; or
- (d) airspace between specified heights above the surface of the land; or
- (e) land and airspace between a specified depth below, and a specified height above, the surface of the land,

and, in such a case, the declaration has effect accordingly.

**Division 2 - Compensation**

**Entitlement to compensation**

**13. (1)** A person from whom an interest in land is to be acquired under this Part is entitled to receive compensation in accordance with this Division:

- (a) if the interest is to be acquired on the application of a council - from that council; or
- (b) in any other case - from the Crown.

**(2)** However, a person is not entitled to receive compensation in respect of a proposed acquisition under this Part of:

- (a) a right, licence, permit, permissive occupancy or yearly lease of Crown land; or
- (b) a claim, right, permit, licence, authorisation or lease of land under the Mining Act 1973, the Coal Mining Act 1973 or the Petroleum Act 1955.

**(3)** A person is entitled to receive compensation in the form of money, but if the Minister directs and the person consents, the compensation may, subject to sections 30 and 31, be provided in the form of an interest in land or partly in the form of an interest in land and partly in the form of money.

**How to make a claim for compensation**

**14. (1)** A person who wishes to claim compensation under this Division must lodge a claim with the relevant compensating authority in accordance with this section.

**(2)** Such a claim must:

- (a) contain the particulars prescribed by the regulations; and
- (b) describe the interest of the claimant that is to be acquired under this Part; and
- (c) if the relevant compensating authority so requires - specify the amount of compensation claimed; and
- (d) be lodged:
  - (i) within 28 days after the date on which the person was served with a notice in accordance with section 6 (3) (b) or within such further period as the relevant compensating authority allows; or



- (ii) if the person was not served with a notice in accordance with section 6 (3) (b) - within 28 days after the date on which the Minister publishes an advertisement in respect of that interest in accordance with section 6 (3) (a) or within such further period as the relevant compensating authority allows.

(3) The claimant may withdraw a claim lodged under this section.

(4) If such a claim is withdrawn, this Act has effect as if the claim had never been lodged.

#### **Waiver of compensation rights in respect of certain interests in land**

15. (1) A person entitled to compensation under this Division may, by notice in writing given to the relevant compensating authority, waive the entitlement.

(2) The relevant compensating authority may, by notice in writing, require a person, at the person's option, either to make a claim under this Division or waive the person's entitlement to compensation.

(3) If a person who is entitled to compensation under this Division does not make a claim for that compensation within the period allowed by section 14 (2) (d), that person is to be taken to have waived the entitlement.

(4) Subsection (3) is subject to section 17 (1).

(5) If a mortgagee has waived or is taken to have waived an entitlement to compensation under this Division, the mortgagee nevertheless retains in respect of the mortgage debt any rights that the mortgagee has against the mortgagor or in respect of any interest in land that remains subject to the mortgage.

#### **Compensating authority to accept or reject claim**

16. (1) If the relevant compensating authority is satisfied that the interest in land described in a claim under section 14 is an interest in land that is to be acquired under this Part, that authority must serve on the claimant a notice in writing informing the claimant that the claim is accepted in principle.

(2) If the relevant compensating authority is not satisfied that the interest in land specified in the claim is an interest in land that is to be acquired under this Part, the compensating authority must serve on the

claimant a notice rejecting the claim and stating the reasons for the rejection.

(3) If, within 42 days after receiving a claim under section 14 or within such extended period as the claimant may agree to, the relevant compensating authority has not served on the claimant a notice under subsection (1) or (2), that authority is, at the end of that period, to be taken:

- (a) to have rejected the claim; and
- (b) to have served on the claimant a notice under subsection (2).

(4) The claimant may, before the end of the period referred to in subsection (3), serve on the relevant compensating authority a notice in writing agreeing to extend that period and such a notice has effect according to its tenor.

#### **Appeal to the Land and Environment Court against the rejection of a claim**

17. (1) If the relevant compensating authority has refused to entertain a claim for compensation under this Division because it was not lodged within the permitted period, the claimant may appeal to the Land and Environment Court against the authority's refusal to entertain the claim.

(2) If the relevant compensating authority has served, or is taken to have served, a notice rejecting a claim for compensation under this Division, the claimant may appeal to the Land and Environment Court against the authority's rejection of the claim.

(3) On the hearing of an appeal under this section, the Court may exercise all of the functions conferred by this Part on the relevant compensating authority in deciding whether or not to entertain the claimant's claim for compensation or whether to accept or reject that claim and, subject to this section, must make an order:

- (a) affirming the decision appealed against; or
- (b) directing the compensating authority to entertain the claim outside the permitted period or, as the case may be, to accept the claim.

(4) If the order of the Court in relation to an appeal under this section directs the relevant compensating authority to accept a claim for compensation that it has rejected:

- (a) the interest specified in the claim is to be regarded, for the purposes of this Act, as being compensable under this Division; and
- (b) that authority must serve a notice on the claimant accepting the claim in principle.

(5) Instead of making an order directing the relevant compensating authority to accept a claim for compensation under this Division, the Court may, with the consent of the parties, make an order determining the amount of compensation to be paid to the claimant in respect of the interest in land to be acquired from the claimant.

(6) At the hearing of an appeal under this section, the following persons are entitled to appear and be heard:

- (a) the claimant for compensation;
- (b) the relevant compensating authority;
- (c) if the proposed road is to be opened on the application of a person other than the relevant compensating authority - that person.

**Compensation to be determined by agreement of the parties in the first instance** (see Act No. 95, 1902, s. 13 (1), (1A))

18. (1) Except when the Land and Environment Court has determined the amount of compensation under section 17 (5), compensation to be made in respect of an interest in land to be acquired under this Part is to be determined:

- (a) by agreement between the person entitled to the compensation and:
    - (i) the relevant compensating authority; or
    - (ii) if the road is to be opened on the application of a person other than the relevant compensating authority - that person; or
  - (b) if agreement cannot be reached - by the relevant local land board as provided by section 19.
- (2) An agreement referred to in subsection (1) (a):
- (a) must be in writing signed by the parties; and
  - (b) except where the relevant compensating authority is the Minister - does not have effect until approved by the Minister.

(3) As soon as practicable after such an agreement is lodged with the Minister for approval, the Minister must consider the agreement and either approve or refuse to approve it.

(4) For the purpose of subsection (3), it is sufficient to lodge a copy of the agreement authenticated to the satisfaction of the Minister.

(5) If the Minister has not approved or refused to approve an agreement within 28 days after it was lodged for approval, the Minister is to be taken to have approved the agreement.

(6) If the Minister has refused to approve an agreement within that period of 28 days, the Minister must notify the parties in writing of the refusal and the reasons why approval was refused.

**Compensation to be determined by the local land board when the parties cannot agree**

19. (1) If, within 90 days after the date on which the relevant compensating authority has served on a claimant for compensation a notice accepting the claimant's claim in principle:

- (a) an agreement has not been entered into in accordance with section 18 (1) (a); or
- (b) such an agreement has been entered into but the Minister has refused to approve the agreement,

either the person entitled to the compensation or:

- (c) except where paragraph (d) applies - the relevant compensating authority; or
- (d) if the proposed road is to be opened on the application of a person other than the relevant compensating authority - that person,

may make an application to the local land board to determine that compensation.

(2) An application under this section must be made in the manner prescribed by the regulations.

(3) As soon as practicable after receiving such an application, a local land board must hear and determine the amount of compensation to be made to the person entitled.

(4) At the hearing of such an application, the following persons are entitled to appear and be heard:

- (a) the person claiming compensation;
- (b) the relevant compensating authority;
- (c) if the proposed road is to be opened on the application of a person other than the relevant compensating authority - that person.

**Agreement or determination to lapse if land or interest is not acquired within 90 days**

**20. (1)** If an interest in land for which compensation has been agreed to or determined under this Division is not acquired under this Part within 90 days after the date of the agreement or determination, the agreement or determination lapses at the end of that period.

**(2)** A person entitled to compensation under this Division may ratify such an agreement or determination whether or not it has lapsed under this section, but no later than 12 months after the date on which the agreement was entered into or the determination was made.

**(3)** An agreement or determination ratified under this section continues in force for 90 days from the date of ratification and then lapses unless within that period the interest in land to which it relates is acquired under this Part.

**(4)** If an agreement or determination made in respect of a claim lodged under section 14 has lapsed under this section and no ratification of the agreement or determination under this section is currently in force, the provisions of this Division apply to the claim as if no such agreement or determination had been made.

**Amount of compensation - principles for assessment**

**21. (1)** The amount of compensation that a person is entitled to receive under this Division in respect of the acquisition of an interest in land for the purposes of a road is an amount that will justly compensate the person for the acquisition, taking into account all relevant factors.

**(2)** For the purposes of subsection (1), the following factors are the relevant factors:

- (a) except where paragraph (b) applies:
  - (i) the market value of the interest on the date on which compensation is agreed to or determined; and

- (ii) the value on that date of any financial advantage, additional to the market value, to the person incidental to the person's ownership of the interest; and
  - (iii) any reduction in the market value of any other interest in land held by the person that is attributable to the severance of the acquired interest from that other interest; and
  - (iv) where the acquisition of an interest in land from a person under this Part will have the effect of severing the interest from another interest in land owned by the person - any increase or decrease in the market value of the interest that will continue to be held by the person after the acquisition has taken effect (but only if the increase or decrease is attributable to the opening of the road concerned);
- (b) if the person's interest in the land to be acquired will be diminished, but not extinguished, by the acquisition - the loss suffered by the person because of the diminution of the person's interest in the land;
  - (c) any loss, injury or damage likely to be suffered, or expense likely to be incurred, as a direct, natural and reasonable consequence of the acquisition of the interest;
  - (d) if an interest to be acquired from the person is limited as to time or may be terminated by another person - the likelihood of the continuation or renewal of the interest and the likely terms and conditions on which any continuance or renewal would be granted.

**Special provision where the market value is determined on the basis of the land's potential**

22. If the market value of an interest in land to be acquired under this Part is assessed on the basis that the land has potential to be used for a purpose other than that for which it is currently used, compensation is not allowable in respect of any loss or damage that would necessarily be suffered, or expense that would necessarily be incurred, in realising that potential.

**What happens when there is no market for an acquired interest**

23. (1) If:

- (a) an interest in land is to be acquired from a person under this Part; and
- (b) the person is using that land or has manifested an intention to use that land for a purpose other than the carrying on of a business; and
- (c) but for the acquisition, the land would be, or would continue to be, used for that purpose; and
- (d) at the time of assessing compensation, there is no general demand or market for land used for that purpose; and
- (e) the person has acquired or proposes to acquire for the same purpose another interest in land in substitution for the interest to be acquired,

then, for the purposes of this Act, the market value at the time of assessing compensation of the interest to be acquired is the greater of the following:

- (f) the amount that, apart from this section, would be the market value (if any) of that interest;
- (g) the net acquisition cost in relation to the interest substituted or proposed to be substituted for the acquired interest.

(2) For the purpose of subsection (1) (g), the net acquisition cost, in relation to the interest substituted or proposed to be substituted, is the amount calculated in accordance with the following formula:

$$N = C + E - V$$

where:

- N represents the net acquisition cost to be determined;
- C represents the cost or the expected cost to the person of acquiring the interest to be substituted for the acquired interest;
- E represents the amount of the expenses and losses incurred, or likely to be incurred, by the person as a result of, or incidental to, ceasing to use the interest to be acquired and starting to use the substituted interest for the same purpose;
- V represents the current value of any real and substantial saving in recurring costs that the person will derive as a result of having acquired the substituted interest in land.

**What happens where land etc. is affected by a planning restriction**

**24.** If:

- (a) an interest in land is to be acquired from a person under this Part; and
- (b) an environmental planning instrument is in force which has the effect of restricting the use of the land for a public purpose; and
- (c) the instrument was made to satisfy the requirements of the Crown, a public authority or a council; and
- (d) the instrument was not in force when the person acquired the interest,

then, in determining the amount of compensation that the person is entitled to receive for the interest, the following provisions apply:

- (e) the restriction on the use of the land is to be disregarded;
- (f) it is to be assumed that the land is subject only to such restrictions as would have been likely to apply if there had been no proposal to restrict the use of the land for the purpose permitted by the instrument.

**What factors are to be disregarded in assessing compensation**

**25.** The following factors are to be disregarded in assessing compensation under this Division for the acquisition of an interest in land for the purposes of a road:

- (a) any speciality, suitability or adaptability of the land for a purpose for which it could be used only in accordance with a power conferred by or under a law, or for which it could be used only by the Crown or by a public authority or council;
- (b) any increase in the value of the interest that is attributable to its use in a manner or for a purpose contrary to law;
- (c) any increase in the value of the interest that is attributable to the establishment of the proposed road by the expenditure of public funds or its use by the public as a public thoroughfare or public way;
- (d) any increase in the value of the interest that may reasonably be expected to be attributable to any improvements made to the land after the publication of the relevant notice in accordance with section 6 (1), unless the improvements were carried out with the written approval of the Minister.



**What effect the acquisition of a mortgage interest has**

26. (1) If a mortgage interest is acquired under this Part, the mortgagee retains, in respect of so much of the mortgage debt as is not discharged under this Division, any rights that the mortgagee has against the mortgagor or in respect of any interest in land that remains subject to the mortgage.

(2) If:

(a) an interest in land is to be acquired under this Part; and

(b) the interest is subject to one or more mortgages,

then, as a general rule, the compensation to which the owner of the interest will be entitled in respect of the acquisition is to be determined as if the land or interest had not been subject to the mortgage.

(3) However, if compensation is payable under this Division to a mortgagee in respect of a mortgage interest, the compensation payable to the owner of the interest to be acquired is to be reduced by so much of the compensation as is payable to the mortgagee.

**Interest to accrue in respect of compensation not paid at the appropriate time**

27. If monetary compensation agreed to or determined in respect of an interest in land under this Part is not paid within 28 days after the date on which notification of the acquisition is published in the Gazette:

(a) interest accrues in respect of the amount of that compensation from the end of that period:

(i) up to and including the day on which the compensation is paid; or

(ii) if payment is delayed through the fault of the person entitled to the compensation, up to and including the day on which the compensation would have been paid but for the delay,

at the rate for the time being specified in a notification in force under section 126A (5) of the Public Works Act 1912; and

(b) the relevant compensating authority is liable to pay to the person entitled to the compensation the accrued amount of that interest as well as the amount of compensation agreed to or determined under this Division.

**Compensation not to be made for mines or minerals in land acquired for a road (see Act No. 95, 1902, s. 15)**

**28. (1)** Compensation may not be made for a mine or minerals existing or presumed to exist in land an interest in which is to be acquired under this Part.

**(2)** If an interest in a stratum of land is to be acquired under this Part for the purposes of a road, a mine or minerals either below or above the stratum is not affected.

**(3)** If an interest in a stratum of land is to be acquired under this Part for the purposes of a road, any person who is working a mine or minerals below or above the stratum must ensure:

- (a) that sufficient support is left for the road; and
- (b) that the mine or mineral works will not otherwise cause damage to the road.

**(4)** If, as a result of working any such mine or minerals, the road subsides or is otherwise damaged or the safety or stability of the road is endangered:

- (a) the appropriate roads authority may repair the road; or
- (b) the Minister may open a new road to replace it.

**(5)** If the Minister is not the appropriate roads authority, the Minister may exercise the power conferred by subsection (4) (b) only on the advice of that authority.

**(6)** If a road is repaired or replaced in accordance with subsection (4), the appropriate roads authority or, as the case may be, the Minister may, by proceedings brought in a court of competent jurisdiction, recover as a debt from the person working the mine or minerals:

- (a) the cost of repairing the road; or
- (b) the cost of acquiring land to provide a new road to replace the road, together with the cost of providing the new road.

**Effect of receipt for compensation**

**29. (1)** A receipt given by a person who has received compensation under this Division for the acquisition of an interest in land, whether in the form of money or in the form of an interest in land or partly in the form of money and partly in the form of an interest in land, discharges the relevant compensating authority from all claims in connection with that acquisition.

**(2)** In this section, the reference to a person includes a reference to a trustee who does not have a power of sale.

**What happens when the compensation to be provided is in the form of an interest in land**

**30. (1)** An interest in land may be provided as compensation for the purpose of this Division only if the interest is an interest in unoccupied Crown land that adjoins an aggregate holding from which the compensable interest is to be acquired.

**(2)** An interest in land may be provided as compensation under this Division even though the interest is different from that held in the adjoining land by the person to be compensated.

**(3)** If compensation under this Division is to be provided in the form of an interest in land, the person entitled to compensation is to be treated as being fully compensated if:

- (a)** the market value of that interest is equal to or substantially equal to the amount of compensation that would otherwise have been provided in the form of money; or
- (b)** where the market value of that interest is less than the amount referred to in paragraph (a) - that person agrees to accept that interest in full satisfaction of the claim for compensation.

**(4)** If:

- (a)** the market value of the interest in land to be acquired under this Part is less than that of the interest to be provided as compensation under this Division; and
- (b)** the person entitled to compensation and the relevant compensating authority have not reached agreement as to that compensation,

that person must pay the difference in value.

(5) If:

- (a) the market value of the land or interest to be acquired under this Part is greater than that of the interest in land to be provided as compensation under this Division; and
- (b) the person entitled to compensation and the relevant compensating authority have not reached agreement as to that compensation,

then, subject to subsection (3), the relevant compensating authority must pay the difference in value.

(6) A document executed for the purpose of giving effect to a direction of the Minister given under section 13 (3):

- (a) is not liable to stamp duty under the Stamp Duties Act 1920; and
- (b) is entitled to be registered or recorded under any Act without payment of any fee that would otherwise be payable.

(7) For the purpose of this section, land is unoccupied Crown land that adjoins an aggregate holding if it adjoins any part of that holding.

(8) In this section, "**aggregate holding**" means:

- (a) the area of a lot, portion or parcel of land; or
- (b) the aggregation of 2 or more adjoining lots, portions or parcels of land in the same ownership or occupation.

**Special provisions that apply where compensation is to be provided in the form of a leasehold interest**

31. (1) If:

- (a) the Minister directs that a leasehold interest in unoccupied Crown land is to be provided as compensation under this Division; and
- (b) the land owned or occupied by the person to be compensated is held under a lease granted under the Crown Lands Acts (other than a yearly lease),

the Minister may, with the consent of the owner or occupier of that holding, also direct that the leasehold interest to be provided as compensation be added to the lease referred to in paragraph (b) or, instead, be the subject of a separate lease under those Acts.

(2) Subject to this section, a direction given under this section has effect according to its tenor.

(3) Any leasehold interest directed to be added to a lease referred to in subsection (1) (b) is to be held as part of the lease for its unexpired term and is to be subject to the payment of such rent and to compliance with such covenants and conditions as the Minister determines.

(4) If a leasehold interest referred to in subsection (1) is directed to be the subject of a separate lease, the lease is to be for such term, and is to be subject to the payment of such rent and to compliance with such covenants and conditions, as the Minister determines.

(5) For the purposes of subsection (1), it is immaterial whether a folio of the Land Register has been created in respect of the land or leasehold interest concerned.

(6) If:

- (a) a leasehold interest in land is to be provided as compensation under this Division and there are improvements on the land; and
- (b) by virtue of a covenant or condition determined for the purpose of subsection (3) or (4) or contained in the lease, the person who is to be the holder of the interest is required to purchase any of the improvements on the land,

the value of those improvements is to be disregarded in determining the market value of that interest.

(7) If:

- (a) a leasehold interest in land is to be provided as compensation under this Division and there are improvements on the land; and
- (b) by virtue of a covenant or condition determined for the purpose of subsection (3) or (4) or contained in the lease, the person who is to be the holder of the interest is not required to purchase those improvements or is required to purchase only some of those improvements,

the value of those improvements or, as the case may be, the value of the improvements not required to be purchased is to be taken into account in determining the market value of that interest.

**What happens when a person entitled to compensation cannot be located**

**32. (1)** If the relevant compensating authority:

- (a) does not know and cannot reasonably ascertain the identity or whereabouts of the owner of an interest in land that is to be acquired under this Part; or
- (b) is prevented from negotiating with a person who is the owner of such an interest because of that person's absence from New South Wales,

that authority may apply to the local land board to determine that person's entitlement to compensation for the acquisition of that interest and the amount of that compensation.

(2) If the person entitled does not claim the compensation determined under subsection (1) within the period prescribed by the regulations, the relevant compensating authority must pay the amount of that compensation to the Treasurer.

(3) The Treasurer must pay the amount paid under subsection (2) into the Consolidated Fund.

(4) The Treasurer must cause to be published in the Gazette such information as appears to the Treasurer to be necessary or desirable for the purpose of publicly notifying:

- (a) the existence of each amount paid to the Treasurer under this section; and
- (b) if known, the identity of the person entitled to receive the amount.

(5) A compensating authority which pays an amount of money to the Treasurer under this section is relieved from further liability with respect to that amount.

(6) Any person claiming to be entitled to an amount paid into the Consolidated Fund under this section may make an application to the Land and Environment Court for an order declaring the person's entitlement to that amount.

(7) If satisfied that the person is entitled to the amount, the Court must make an order declaring the person's entitlement, but otherwise it must refuse the person's application.

(8) On the making of an order in respect of a person under subsection (7) or, if the Treasurer is satisfied as a result of the

production of other evidence that a person is entitled to an amount paid into the Consolidated Fund under this section, the Treasurer must pay the amount to that person.

### **Division 3 - Supplementary provisions**

**How surplus land may be disposed of** (see Act No. 95, 1902, s. 17)

**33. (1)** If land acquired under this Part is not required for the purpose of a road or providing compensation, the Minister may deal with the land in accordance with this section or the Crown Lands Acts.

**(2)** If the Minister decides to deal with the land in accordance with this section, the Minister must serve on each person who owns a specified interest in any adjoining land a notice inviting that person to lodge at the office of the Department of Lands specified in the notice an application to acquire a specified interest in that land.

**(3)** In subsection (2), "**specified interest**" means:

- (a) an estate in fee simple; or
- (b) a lease, licence, permit or permissive occupancy granted under the Crown Lands Acts; or
- (c) an easement; or
- (d) an interest in land prescribed by the regulations for the purposes of this section.

**(4)** A notice under subsection (2) may specify terms and conditions that must be complied with as a prerequisite to the granting of such an application.

**(5)** If an application is made to the Minister in response to a notice served in accordance with subsection (2) by a person who is the holder of a lease under the Crown Lands Acts (other than a yearly lease), the Minister may:

- (a) direct that an equivalent leasehold interest in the land concerned be added to that lease; or
- (b) direct instead that a separate lease under the Crown Lands Acts be granted to the applicant in respect of that land, or that the fee simple in that land be vested in the applicant.

**(6)** If an application is made to the Minister in response to a notice served in accordance with subsection (2) by a person who is the holder of a yearly lease, licence, permit or permissive occupancy under the

Crown Lands Acts, the Minister may direct that an equivalent interest be recorded within the Department of Lands as having been added to the lease, licence, permit or permissive occupancy.

(7) Whenever an interest in land is to be disposed of under this section, it must be disposed of at the value, or (if the case so requires) subject to a rent, determined by the Minister in respect of both the interest and any improvements on the land.

(8) The disposal of an interest under this section is to be subject to such terms and conditions as are determined by the Minister.

(9) If it is proposed to dispose of the fee simple estate in land in accordance with this section, the value of any improvements on the land must be included in the price of the land.

(10) If a person on whom a notice has been served in accordance with subsection (2):

- (a) has failed to lodge an application for the interest specified in the notice within the period so specified; or
- (b) having lodged such an application within that period, has failed to comply with any term or condition specified in the notice within the period allowed for compliance,

the Minister may deal with the interest in accordance with the Crown Lands Acts.

(11) Subject to this section, a direction given under this section has effect according to its tenor.

(12) For the purposes of subsection (5), it is immaterial whether a folio of the Land Register has been created in respect of the land or leasehold interest concerned.

### **Use of Crown road**

**34. (1)** A Crown road is open to the public as of right for the purpose of passing and repassing, irrespective of whether it is formed or constructed as a road.

(2) Subsection (1) is subject to the provisions of Parts 4 and 5 of this Act and section 72 of the Crown Lands Act 1989.

(3) Until closed in accordance with section 45, a Crown road is not capable of being reserved, dedicated, sold, leased or otherwise disposed of under the provisions of the Crown Lands Acts.



(4) However, the Minister may, in accordance with the Crown Lands Acts, grant easements, licences or permits over or in respect of a Crown road so long as they are not inconsistent with the public right conferred by subsection (1).

(5) A Crown road is not a public road for the purposes of Part 9 of the Local Government Act 1919.

**Provisions applicable to public roads**

35. (1) Part 9 of the Local Government Act 1919 applies to any land or road dedicated as a public road by virtue of section 7, 10 or 11.

(2) If a notice published in accordance with section 7, 10 or 11 declares a stratum of land to be a public road:

- (a) the application of Part 9 of the Local Government Act 1919 is limited to that stratum; and
- (b) only the fee simple in that stratum vests in the council by virtue of that Act.

**Crown road to continue to be Crown land**

36. (1) Any land that:

- (a) is acquired for the purposes of a road; or
- (b) is declared to be a Crown road; or
- (c) was, immediately before the commencement of this section, a Crown road,

becomes or, as the case may be, continues to be Crown land within the meaning of the Crown Lands Act 1989 until it ceases to be Crown land by virtue of the operation of this or any other Act.

(2) This section applies irrespective of what any other Act provides.

**PART 3 - RE-MARKING, RE-ALIGNMENT AND  
ALTERATION OF ROADS**

**Part 3 not to apply to classified roads**

37. This Part does not apply to a road that is a classified road within the meaning of the State Roads Act 1986.

**Power of the Minister to re-mark road** (see Act No. 95, 1902, ss. 23, 24)

**38. (1)** Whenever the position and boundaries of a road required for public traffic cannot be identified because of the absence or loss of the survey marks, the Minister may cause the road to be re-marked in substantially the same position.

**(2)** If a road is re-marked in accordance with section 37 as a consequence of the application of any person, the applicant must bear the cost of the re-marking.

**Notice of re-marking of road to be published** (see Act No. 95, 1902, s. 25)

**39. (1)** When a road has been re-marked in accordance with section 38, the Minister must publish in the Gazette a notice specifying generally the extent and direction of the road.

**(2)** Such a notice must:

- (a) refer to a plan of survey of the re-marking of the road; and
- (b) invite any person who wishes to object to the road as re-marked to set out the objection in writing and lodge it at the office of the Department of Lands specified in the notice on or before such date, or within such period, as is so specified.

**(3)** When the notice has been published in accordance with subsection (1), the Minister must:

- (a) publish in a local newspaper an advertisement drawing attention to the notice; and
- (b) ensure that, for a period of not less than 28 days after the date of the publication of the advertisement, a copy of plan of survey of the re-marking of the road is kept for inspection at the office of the Department of Lands specified in the notice.

**(4)** Subject to compliance with subsections (1)-(3) and after properly considering all objections (if any) lodged on or before such date, or within such period, as is specified in the notice for lodging objections, the Minister may approve the plan of survey, either with or without alteration, by a further notice published in the Gazette.

**(5)** A road re-marked according to a plan approved under subsection (4) is to be taken to represent and to be the original road.

**Defining the boundaries of and re-aligning roads** (see Act No. 95, 1902, s. 27)

**40. (1)** The Minister may cause surveys to be carried out and a plan to be prepared for any of the following purposes:

- (a) defining:
  - (i) the carriageway and footways of a road; and
  - (ii) the boundary between a road and any land that abuts it, or either of them;
- (b) re-marking or altering:
  - (i) the width and position of the carriageway and footways of any road that has previously been aligned under this or any other Act; and
  - (ii) the boundary between such a road and land that abuts it,  
or either of them;
- (c) re-aligning a public road vested in or under the control and management of a council for the purpose of widening it under section 262 of the Local Government Act 1919.

**(2)** The power conferred by subsection (1) is exercisable only:

- (a) on the written application of the relevant council on its written undertaking to pay when called on to do so the whole of the cost of carrying out the work referred to in that subsection; or
- (b) whenever the Minister considers the action would be in the public interest.

**(3)** When the surveys have been carried out and the plan has been prepared in accordance with subsection (1), the Minister must publish in the Gazette a notice giving details of the proposed action.

**(4)** The notice must:

- (a) refer to the plan; and
- (b) invite any person who wishes to object to the plan to set out the objection in writing and lodge it with an office of the Department of Lands on or before such date, or within such period, as is specified in the notice.

**(5)** When the notice has been published in accordance with subsection (3), the Minister must:

- (a) publish in a local newspaper an advertisement drawing attention to the notice; and
- (b) serve on each person who owns a major interest in any land having frontage to the road to which the proposed action relates a notice in writing stating the effect of the published notice; and
- (c) ensure that, for a period of not less than 28 days after the date of publication of the advertisement, a copy of the plan is kept for inspection at the office of the Department of Lands specified in the notice.

(6) Subject to compliance with subsections (1)-(5) and after properly considering all objections (if any) lodged on or before such date, or within such period, as is specified in the notice published in accordance with subsection (3), the Minister may approve the plan prepared for a purpose referred to in subsection (1) by further notice published in the Gazette.

(7) However, the Minister must not approve a plan prepared for the purpose of subsection (1) (c) in relation to a road that has been aligned unless satisfied that the road has been sufficiently measured.

(8) On the publication in the Gazette of the further notice:

- (a) any definition of a carriageway or footway or of the boundary between a road and any land that abuts it; or
- (b) any re-marking or alteration of the width or position of a carriageway or footway, or of the boundary between a road and any land that abuts it; or
- (c) any re-alignment of a road,

shown on the plan to which the approval relates is, for the purposes of any enactment relating to the alignment of streets, roads or public places, to be taken to have been carried out or caused by the council concerned as provided by Part 9 of the Local Government Act 1919.

(9) When the Minister's approval is published in accordance with subsection (6), the plan to which the approval relates is for all purposes, until superseded by another plan of survey approved under this section:

- (a) conclusive proof of the boundaries of the road; or
- (b) if the plan shows a re-alignment that has not been rescinded, conclusive proof of that re-alignment.

**Power of the Minister to rescind or vary a re-alignment**

41. (1) The Minister may, by a further notice in the Gazette:

- (a) rescind a re-alignment effected by an approval under section 40 (6); or
- (b) vary such a re-alignment by excluding land specified or described in the further notice from the re-alignment, being land:
  - (i) which is part of the land subject to the re-alignment; and
  - (ii) which has not vested in the council as a public road in accordance with section 262 (4) of the Local Government Act 1919.

(2) The function conferred on the Minister by subsection (1) is exercisable only:

- (a) on the written application of the relevant council; or
- (b) whenever the Minister considers the action would be in the public interest.

(3) If a re-alignment shown on a plan prepared for the purposes of section 40 has been varied under subsection (1) (b), the re-alignment shown on the plan is, for the purposes of that section, to be taken to be and to have always been the re-alignment as so varied.

**PART 4 - CLOSURE OF ROADS**

**Power of the Minister to close a road**

42. (1) A road may be closed only in accordance with this Part.

(2) The Minister may exercise the functions conferred or imposed by this Part on his or her own initiative or as a result of an application under section 43.

(3) This section is subject to section 276C of the Local Government Act 1919.

**Application to the Minister to close a road**

43. (1) Any person may make an application to the Minister to close a road.

(2) Such an application must:

- (a) be in a form approved by the Minister; and
- (b) be accompanied by the application fee prescribed by the regulations.

(3) Whenever an application has been made under this section, the Minister may, by notice in writing served on the applicant, require the applicant to lodge with the Minister:

- (a) any additional fee required to cover the cost of processing the application; or
- (b) any amount of money necessary to defray the cost connected with closing the road; or
- (c) any further information that the applicant has relevant to the closing of the road.

(4) If:

- (a) an amount of money specified in a notice served under subsection (3) is not paid; or
- (b) information so specified is not lodged,

within 28 days after the service of the notice, or within such extended period as the Minister may allow, the application concerned lapses at the end of that period of 28 days or that extended period.

(5) The Minister may refuse an application under this section for any reason that appears to the Minister to be appropriate.

(6) If the Minister refuses such an application, the Minister must notify the applicant in writing of the refusal and of the reasons for it.

(7) An applicant under this section may withdraw the application at any time before the road is closed in accordance with this Part.

(8) If an application under this section lapses or is refused or withdrawn, the Minister:

- (a) may, after deducting an amount sufficient to cover the cost of processing the application, refund to the applicant the whole or any part of the application fee; and
- (b) must refund to the applicant any other money that has been paid to the Minister under this section but has not been spent in connection with the application.

**Notice to be given of an intention to close a road** (see Act No. 95, 1902, s. 19)

**44. (1)** Whenever the Minister proposes to consider closing a road, the Minister must publish in the Gazette a notice:

- (a) giving particulars of the proposal; and
- (b) inviting any person who wishes to object to the proposal to set out the objection in writing and lodge it at the office of the Department of Lands specified in the notice on or before such date, or within such period, as is specified in the notice.

**(2)** When a notice has been published in accordance with subsection (1), the Minister must:

- (a) publish an advertisement in a local newspaper drawing attention to the notice; and
- (b) serve a copy of the notice on the owner of each major interest in any land having a frontage to the road that is the subject of the proposal.

**(3)** If it is proposed to close a road and to open another road under Part 2 to replace it, the particulars to be specified in the notice required by this section may be included in the notice published in accordance with section 6, 7, 10 or 11, as the case requires.

**(4)** If the particulars referred to in subsection (1) are included in the notice so published, a separate notice under this section is not required.

**Procedure for closing a road** (see Act No. 95, 1902, s. 20 (1), (2))

**45. (1)** The Minister may, by order published in the Gazette, declare a road specified in the order to be closed.

**(2)** On the publication of an order in accordance with subsection (1), the land that constitutes the road that is closed becomes free from rights of the public or of particular persons to use it as a public thoroughfare or public way and:

- (a) if that road was, immediately before the publication of the order, a quarter sessions road - vests in the owners of the adjoining land; or
- (b) if that road (not being a quarter sessions road) was, immediately before the publication of the order, vested in a person other than the Crown - becomes Crown land; or

- (c) in the case of any other road - continues to be Crown land.
- (3) The power conferred by subsection (1) is not exercisable unless:
  - (a) the requirements of section 44 have been satisfied; and
  - (b) a period of not less than 28 days has elapsed since the advertisement referred to in section 44 (2) (a) was published; and
  - (c) the Minister has considered all objections lodged with the Minister within the period specified in the notice published in accordance with section 44 (1); and
  - (d) if the road is a classified road within the meaning of the State Roads Act 1986 - the Roads and Traffic Authority has consented to the closure of the road; and
  - (e) if the road is a public road located in the local government area of a council - the council has consented to the closure of the road.

**Disposal of land that formerly constituted a closed road (see Act No. 95, 1902, ss. 20 (3), (4), 20A (1), (3))**

**46. (1)** If land that formerly constituted a road is or becomes Crown land by virtue of section 45, the Minister may deal with the land in accordance with this section or the provisions of the Crown Lands Acts.

**(2)** If the Minister decides to deal with the land in accordance with this section, the Minister must serve on each person who owns a specified interest in any adjoining land a notice inviting that person to lodge at the office of the Department of Lands specified in the notice an application to acquire a specified interest in that land.

- (3) In subsection (2), "**specified interest**" means:
  - (a) an estate in fee simple; or
  - (b) a lease, licence, permit or permissive occupancy granted under the Crown Lands Acts; or
  - (c) an easement; or
  - (d) an interest in land prescribed by the regulations for the purposes of this section.

**(4)** A notice under subsection (2) may specify terms and conditions that must be complied with as a prerequisite to the granting of such an application.



(5) If an application is made to the Minister in response to a notice served in accordance with subsection (2) by a person who is the holder of a lease under the Crown Lands Acts (other than a yearly lease), the Minister may:

- (a) direct that an equivalent leasehold interest in the land concerned be added to that lease; or
- (b) direct instead that a separate lease under the Crown Lands Acts be granted to the applicant in respect of that land, or that the fee simple in that land be vested in the applicant.

(6) If an application is made to the Minister in response to a notice served in accordance with subsection (2) by a person who is the holder of a yearly lease, licence, permit or permissive occupancy under the Crown Lands Acts, the Minister may direct that an equivalent interest be recorded within the Department of Lands as having been added to the lease, licence, permit or permissive occupancy.

(7) Whenever an interest in land is to be disposed of under this section, it must be disposed of at the value, or (if the case so requires) subject to a rent, determined by the Minister in respect of both the interest and any improvements on the land.

(8) The disposal of an interest under this section is to be subject to such terms and conditions as are determined by the Minister.

(9) If it is proposed to dispose of the fee simple estate in land in accordance with this section, the value of any improvements on the land must be included in the price of the land.

(10) If a person on whom a notice has been served in accordance with subsection (2):

- (a) has failed to lodge an application for the interest specified in the notice within the period so specified; or
- (b) having lodged such an application within that period, has failed to comply with any term or condition specified in the notice within the period allowed for compliance,

the Minister may deal with the interest in accordance with the Crown Lands Acts.

(11) Subject to this section, a direction given under this section has effect according to its tenor.

(12) For the purposes of subsection (5), it is immaterial whether a folio of the Land Register has been created in respect of the land or leasehold interest concerned.

**Temporary closing of Crown roads on notice** (see Act No. 95, 1902, s. 21)

47. (1) The Minister may, by order published in the Gazette, declare a Crown road specified in the order to be closed temporarily for a period not exceeding 12 months for any specified reason that appears to the Minister appropriate.

(2) An order under subsection (1) does not have effect unless there is displayed in a conspicuous place:

- (a) at each end of the road that is closed; and
- (b) at each point at which another road provides access to that road,

a notice in legible writing indicating that, by order of the Minister, the road beyond the notice is closed as a public thoroughfare or public way for the period specified in the notice.

(3) Whenever an order under subsection (1) is in force, the Minister may cause barriers to be erected with a view to preventing the closed road from being used as a public thoroughfare or public way.

(4) While a road is temporarily closed under this section, the rights of the public or any person to use the road as a public thoroughfare or public way are suspended.

- (5) The Minister may, by further order published in the Gazette:
- (a) revoke an order made under subsection (1) temporarily closing a road; or
  - (b) shorten the period for which the road is closed; or
  - (c) reduce the extent of road that is temporarily closed under this section.

**Temporary closing of Crown roads without notice**

48. (1) If it appears to the Minister that the continued use of a Crown road as a public thoroughfare or public way would endanger users of the road, the Minister may, by order, declare the road to be closed temporarily for such period, not exceeding 2 months, as may be specified in the order.

(2) An order under subsection (1) does not have effect unless there is displayed in a conspicuous place:

- (a) at each end of the road that is closed; and
- (b) at each point at which another road provides access to that road,

a notice in legible writing indicating that, by order of the Minister, the road beyond the notice is closed as a public thoroughfare or public way for the period specified in the notice.

(3) As soon as the Minister becomes aware that the danger referred to in subsection (1) no longer exists, the Minister must revoke the order made under that subsection in consequence of the danger.

(4) Whenever an order under subsection (1) is in force, the Minister may cause barriers to be erected with a view to preventing the closed road from being used as a public thoroughfare or public way.

(5) If:

- (a) it appears to the Minister that a danger referred to in subsection (1) is likely to continue beyond the period for which the Minister has made an order under that subsection; and
- (b) that period was less than 2 months,

the Minister may make a further order extending that period up to and including a date that is not more than 2 months from the date on which the original order took effect.

(6) While a road is temporarily closed under this section, the rights of the public or any person to use the road as a public thoroughfare or public way are suspended.

(7) No notice is required as a prerequisite to the exercise of the powers conferred by this section.

(8) The Minister may, by further order published in the Gazette:

- (a) revoke an order under subsection (1) temporarily closing a road; or
- (b) shorten the period for which the road is closed; or
- (c) reduce the extent of road that is temporarily closed under this section.

**Power of the Minister to limit the closure of a road to a specified stratum**

49. Whenever the Minister, in accordance with a power conferred by this Part, proposes to declare a road to be closed in accordance with this Part, the Minister may, in the order by which the declaration is to be made, also declare that the order applies only to:

- (a) land down to a specified depth below the surface of the land; or
- (b) airspace up to a specified height above the surface of the land; or
- (c) land lying between specified depths below the surface; or
- (d) airspace between specified heights above the surface of the land; or
- (e) land and airspace between a specified depth below, and a specified height above, the surface of the land,

and, in such a case, the declaration has effect accordingly.

**PART 5 - REGULATION OF CROWN ROADS**

**Power of the Minister to declare a Crown road to be a controlled Crown road**

50. (1) The Minister may, by order published in the Gazette, declare any specified Crown road to be a controlled Crown road.

(2) As soon as practicable after an order has been published under subsection (1), the Minister must publish in a local newspaper an advertisement giving particulars of the order.

(3) Mere failure to publish such an advertisement does not invalidate an order made under subsection (1).

(4) The Minister may, in an order referred to in subsection (1), set out the prohibitions, restrictions or conditions that apply to the road referred to in the order.

**Power of the Minister to vary the prohibitions, restrictions and conditions applicable to a controlled Crown road**

51. (1) In relation to a particular controlled Crown road, the Minister may, at any time by order published in the Gazette, add to or

modify the prohibitions, restrictions or conditions that would apply to that road apart from the order.

(2) Whenever an order is published under this section, the Minister must publish in a local newspaper an advertisement giving particulars of the order.

#### **Offences in relation to the use of a controlled Crown road**

52. Any person who, in using a controlled Crown road, knowingly contravenes a prohibition, restriction or condition applicable to the road is guilty of an offence.

Maximum penalty: 5 penalty units.

#### **Regulations relating to Crown roads**

53. (1) The regulations may:

- (a) prescribe kinds of traffic that may be prohibited from using controlled Crown roads; and
- (b) prescribe kinds of animals that may not be ridden, driven or led on controlled Crown roads; and
- (c) prescribe prohibitions, restrictions or conditions that are to apply to or in relation to controlled Crown roads; and
- (d) provide for the care, control and management by the Crown of controlled Crown roads.

(2) Prohibitions, restrictions or conditions that may be prescribed under subsection (1) (c) with respect to controlled Crown roads include, but are not limited to, prohibitions, restrictions or conditions as to the uses to which those roads may be put.

## **PART 6 - LEGAL PROCEEDINGS**

### **Division 1 - Offences**

**Obstructing an authorised person in the exercise of a power conferred by s. 66 (see Act No. 95, 1902, s. 31)**

54. (1) Any person who intentionally or recklessly:

- (a) obstructs or hinders an authorised person in the exercise of a power conferred by section 66; or

- (b) without lawful authority, removes, alters or interferes with a stake, mark or trench installed or constructed in accordance with section 66 (1) (b),

is guilty of an offence.

Maximum penalty: 10 penalty units.

(2) A person is not guilty of an offence under subsection (1) (a) unless the prosecution establishes:

- (a) that the person purporting to exercise the power concerned identified himself or herself at the relevant time as an authorised person who had that power; or
- (b) that the defendant otherwise knew that that person was an authorised person empowered to exercise that power.

**Offence to damage or obstruct a road** (see Act No. 95, 1902, s. 32)

**55. (1)** Any person who, without lawful authority, deliberately or recklessly:

- (a) damages or causes damage to a road (otherwise than by fair wear and tear); or
- (b) obstructs a road or causes a road to be obstructed,

is guilty of an offence.

Maximum penalty: 50 penalty units.

(2) In this section, "**road**" does not include:

- (a) a public road located within the local government area of a council; or
- (b) a classified road within the meaning of the State Roads Act 1986.

### **Proceedings for offences**

**56.** Proceedings for an offence against this Act or the regulations are required to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

### **Offences committed by corporations**

**57. (1)** If a corporation contravenes a provision of this Act or the regulations, each person who is:

(a) a director of the corporation; or  
(b) concerned in the management of the corporation,  
is to be treated as having contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may, under subsection (1), be proceeded against and convicted for a contravention of a provision of this Act or the regulations whether or not the corporation has been proceeded against or convicted for a contravention of the same provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

### **Division 2 - Appeals etc. to the Land and Environment Court**

#### **Definition of "decision" for the purposes of Division 2**

58. (1) In this Division, "decision" includes adjudication, determination, award and recommendation.

(2) This Division does not apply to a decision made in respect of a matter referred by the Minister to a local land board for inquiry and report under section 68.

#### **Persons may appeal to the Land and Environment Court against local land board decisions**

59. Any party to proceedings before a local land board under this Act may appeal to the Land and Environment Court against the decision of that board.

#### **Local land board may refer matters to the Land and Environment Court**

60. (1) A local land board, instead of giving a decision in a particular case arising under this Act, may, after taking evidence, refer the case and evidence for decision by the Land and Environment Court.

(2) The Land and Environment Court has power to deal with a case referred to it under subsection (1) in all respects as if the case had been brought before it in the first instance.

**How an appeal under this Act is to be lodged**

**61. (1)** An appeal under this Act to the Land and Environment Court must be lodged within 28 days after the decision that is appealed against or, if that Court allows a further period for lodging an appeal, that further period.

**(2)** Such an appeal must:

- (a)** be lodged in the manner prescribed by the regulations; and
- (b)** where so prescribed - be accompanied by security for the costs of the appeal.

**(3)** No such appeal lies in respect of the acquisition of an interest in land under Part 2 after the interest has been acquired under that Part.

**Powers of the Land and Environment Court under this Division**

**62.** The Land and Environment Court has power:

- (a)** to hear and determine all appeals lodged with it under this Act and any matters referred to it by a local land board under section 60; and
- (b)** to make any order or decision which the nature of the case may require.

**Division 3 - Other matters**

**Crown not to be liable for injury etc. resulting from alignment or re-alignment of a road** (see Act No. 95, 1902, s. 29)

**63.** No civil proceedings are maintainable against the Crown or the Minister for injury or damage attributable to the alignment or an alteration to the alignment of a road under this Act.

**Appropriate roads authority to have power to bring proceedings for the recovery of costs of repairing road etc.** (see Act No. 95, 1902, s. 33)

**64. (1)** If a person, without lawful authority, deliberately, recklessly or negligently:

- (a)** damages or causes damage to a road (otherwise than by fair wear and tear); or



(b) obstructs a road or causes a road to be obstructed, the appropriate roads authority may bring legal proceedings against the person in any court of competent jurisdiction for the recovery of the cost of repairing the damage or removing the obstruction.

(2) Proceedings in relation to a matter may be brought under this section against a person who could have been charged with an offence against section 55 concerning the same matter whether or not the person has been charged with having committed or has been convicted of such an offence.

## **PART 7 - MISCELLANEOUS PROVISIONS**

**Exclusions, exceptions and reservations from a disposal of land in accordance with this Act** (see Act No. 95, 1902, s. 22A)

**65. (1)** A disposal of land by the Crown in accordance with this Act does not include any mineral in the land.

(2) When creating a folio of the Land Register in respect of an interest in land disposed of under this Act, the Registrar-General must record any encumbrance required by the Minister and notified to the Registrar-General.

(3) A disposal of an interest in land under this Act is subject to any encumbrance approved or specified by the Minister.

(4) In this section:

"**encumbrance**" means:

- (a) a reservation, exception, covenant or easement (including an easement for public access created in accordance with section 56 of the Crown Lands Act 1989); or
- (b) without affecting any liability under the Mine Subsidence Compensation Act 1961 - a condition having the effect of protecting the Crown and any mining lessee against any other liability that could arise from subsidence as a result of mining operations;

"**mineral**", in relation to the disposal of an interest in land, has the same meaning as it has in section 3 (1) of the Crown Lands Act 1989 at the time when the disposal takes effect.

**Power of authorised persons to enter land for the purposes of this Act**  
(see Act No. 95, 1902, s. 30)

**66. (1)** To enable surveys and other functions to be carried out under or for the purposes of this Act, an authorised person may, at any reasonable time, exercise all or any of the following powers:

- (a) the power to enter the land of any person;
- (b) the power to survey and take levels of that land and to ascertain and set out, by means of stakes, marks and trenches, such parts of that land as may be required for a road;
- (c) the power to trace and determine the boundaries of any land that may be affected by a proposed road;
- (d) the power to mark and fell trees;
- (e) the power to open and remove fences;
- (f) the power to erect and exhibit notices required or authorised by this Act;
- (g) the power to do anything ancillary to the exercise of any of the powers specified in paragraphs (a)-(f).

**(2)** An authorised person who is exercising a power under this section must ensure that the property of a person is not damaged any more than is necessary in order to fulfil the purposes of this Act.

**(3)** If any property is damaged while a power under subsection (1) is being exercised, the appropriate roads authority must ensure that the property is repaired and restored or, if necessary, replaced.

**Certificate as to authorised persons**

**67.** A certificate signed by the appropriate roads authority and certifying that a person named in the certificate:

- (a) is; or
  - (b) was at a particular time, or during a particular period,
- an authorised person for the purposes of this Act or the regulations or of a specified provision of this Act or the regulations is admissible in legal proceedings as evidence of the matters certified.

**Power of the Minister to refer disputed matters to the local land board for report** (see Act No. 95, 1902, s. 34 (2))

**68. (1)** The Minister may refer to the appropriate local land board, or to the chairperson of that board sitting alone, for inquiry and report:

- (a) any matter that has arisen in connection with:
  - (i) the opening or proposed opening of a road under this Act; or
  - (ii) the closure or proposed closure of a road under this Act; or
  - (iii) the exercise or proposed exercise of any function conferred or imposed on any person by or under this Act in relation to a road or proposed road or land that is included in a former road that has been closed under this Act or the former Act; or
- (b) any other matter arising out of the administration of this Act.

(2) As soon as practicable after receiving a reference under subsection (1), the local land board concerned must:

- (a) hold an inquiry into the matter that is the subject of the reference; and
- (b) prepare a report in writing of its findings with respect to the matter; and
- (c) submit that report to the Minister.

(3) No appeal lies to the Land and Environment Court from any matter arising out of a report made under subsection (2).

**Power of the Minister to delegate functions** (see Act No. 95, 1902, s. 6A)

69. The Minister may, by instrument in writing, delegate to a person any of the Minister's functions under this Act, other than this power of delegation.

**Gazette to be evidence of orders, notices etc.** (see Act No. 95, 1902, s. 35 (1))

70. The production of a copy of the Gazette containing an order or notice purporting to be made under this Act, or a notification purporting to be made under the former Act, is, for all purposes, conclusive evidence of:

- (a) the due publication of the order, notice or notification in accordance with this Act or the former Act; and

- (b) the regularity of everything done in relation to that publication.

**Power of the Minister to correct defective orders, notices etc.** (see Act No. 95, 1902, s. 35 (2))

**71. (1)** The Minister may, by notice published in the Gazette, limit, correct or alter:

- (a) any order, notice or advertisement published for the purposes of this Act; or
- (b) any notification:
  - (i) published for the purposes of the former Act; or
  - (ii) relating to roads and published before the passing of the former Act.

**(2)** A notice published under subsection (1) relates back to the date of the original order, notice or notification unless otherwise specified.

**Power of the Minister to include more than one matter in the same order or notice** (see Act No. 95, 1902, s. 35 (4))

**72.** Where the Minister is empowered by or under this Act to do anything by order or notice published in the Gazette, the Minister may, by the same order or notice, do any other thing that the Minister is empowered to do by or under this Act by publishing such an order or notice, subject to compliance with the requirements of this Act for doing each of those things by a separate order or notice.

### **Notices**

**73. (1)** If by this Act or the regulations a notice or other document is required or permitted to be given to or served on any person, the notice or other document may be given or served:

- (a) in the case of a person other than a corporation:
  - (i) by delivering it to the person; or
  - (ii) by posting it to the address (if any) specified by the person for the service of documents under this Act or the regulations or, if no such address is specified, to the person's usual or last known place of residence or last known place of business; or

- (b) in the case of a corporation:
  - (i) by leaving it at the registered office of the corporation with a person apparently not less than 16 years of age and apparently in the service of the corporation; or
  - (ii) by posting it to the address (if any) specified by the corporation for the giving of notices or service of documents under this Act or the regulations or, if no such address is specified, to the last known place of business of the corporation.

(2) A notice or other document sent by post in accordance with subsection (1) is to be taken to have been given or served at the time at which it would be delivered in the ordinary course of post.

(3) If:

- (a) a person is required or permitted by this Act or the regulations to give to or to serve on the owner of an interest in land a notice or other document; and
- (b) the person does not know the owner's identity or whereabouts, the notice or other document is to be taken to have been properly given or served for the purposes of this Act or the regulations if it is placed on a board or similar construction located in a conspicuous place on the land or on any public land that is in the immediate vicinity of the land.

**Lodgment of documents with the Minister etc.**

74. (1) If provision is made by or under this Act for the lodging of a notice or other document:

- (a) with the Minister; or
- (b) at an office of the Department of Lands (other than an office specified in a notice or advertisement),

it is sufficient if the notice or other document is lodged:

- (c) in the case of land in the Eastern and Central Division or an irrigation area in the Western Division - at any lands office of the Department of Lands; or
- (d) in the case of land in the Western Division (other than an irrigation area) - at the office of the Western Lands Commissioner.

(2) In this section:

"document" includes an application, an objection, a claim, an agreement and a notice;

"lodged" includes served or given;

"Minister" includes the Minister in his or her capacity as a compensating authority.

### **Regulations**

75. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to the following:

- (a) the functions of officers employed or acting in the administration or execution of this Act;
- (b) the circumstances in which fees, costs or deposits may be charged or required and the amount of any such fees, costs or deposits;
- (c) authorising the waiver or refund of the whole or any part of any fees, costs, deposits, interest or rent paid or payable under this Act;
- (d) determining the person to whom a refund of any fee, costs, deposit, interest or rent is payable;
- (e) prescribing the periods within which, and the manner in which, notices may be given and objections and appeals may be lodged;
- (f) the form and lodgment of, and manner of dealing with, applications under this Act.

(3) A regulation may create an offence punishable by a maximum penalty not exceeding 5 penalty units.

### **Act to bind the Crown**

76. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**Repeals**

77. (1) The Acts specified in Schedule 1 are repealed.

(2) The Public Roads Regulations and all other regulations in force under the Acts referred to in subsection (1) are repealed.

**Savings and transitional provisions**

78. Schedule 2 has effect.

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**SCHEDULE 1 - REPEALS**

(Sec. 77)

Public Roads Act 1902 No. 95

Public Roads (Amendment) Act 1968 No. 27

Public Roads (Amendment) Act 1984 No. 127

**SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 78)

**Part 1 - Regulations**

**Savings and transitional regulations**

1. (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

    this Act;

    the Miscellaneous Acts (Crown and Other Roads) Amendment Act 1990.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect on and from the date of commencement of this clause or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication.

SCHEDULE 2 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

**Part 2 - Provisions consequent on the enactment of this Act**

**Pending proposals and applications for the opening of roads under the former Act**

2. (1) If:

- (a) the Minister has, under section 7 of the former Act, caused to be published in the Gazette a notice of a proposal to open a road; or
- (b) the Minister has, under section 11 of that Act, caused to be posted notice of a proposal to open a road through a holding (as defined in that section); or
- (c) an application for the opening of a road has been made under section 10 (2) of that Act,

and the proposal or application has not been disposed of when the former Act is repealed, the proposal or application is to be dealt with under that Act as if the repeal had not yet taken effect.

(2) However, if a matter concerning such an application comes before a local land board for determination, the board must, in determining the matter, hear not only the person entitled to compensation but also, if the applicant so wishes, the applicant.

(3) Subclause (1) is subject to the regulations (if any) in force under clause 1.

**Claims pending under section 16 of the former Act (Grant for breaking of fenced enclosure)**

3. If a claim under section 16 of the former Act was pending immediately before the repeal of that Act, the claim is to be disposed of under that section as if the repeal had not yet taken effect.

**Disposal of surplus land under section 17 of the former Act**

4. (1) If:

- (a) land resumed or withdrawn under the former Act was not required for the purpose of making compensation; and
- (b) steps have, before the repeal of that Act, been taken under section 17 of that Act to dispose of that land; and



SCHEDULE 2 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

(c) the disposal has not been completed before that repeal, the disposal is to be completed under that section as if that Act had not been repealed.

(2) Subclause (1) is subject to the regulations (if any) in force under clause 1.

**Existing dedications to remain unaffected**

5. (1) A dedication in force under the former Act immediately before the repeal of that Act has effect as if it had been made under this Act.

(2) Such a dedication is for the same purpose and on the same terms as the original dedication and has effect from and including the date of the original dedication.

**Notice of intention to close road**

6. If:

(a) the Minister has caused to be published in the Gazette a notice of a proposal to close a road or part of a road under section 19 of the former Act; and

(b) the proposal has not been disposed of before the repeal of that Act,

the proposal is to be disposed of under sections 19, 20 and 20A of that Act as if the repeal had not yet taken effect.

**Temporary closure of roads**

7. Even though:

(a) the Minister has, by notification in the Gazette, temporarily closed a road or part of a road in accordance with section 21 of the former Act; and

(b) the period for which the road was closed has not expired when the former Act is repealed,

that section continues to apply to the road or part for the unexpired portion of the period as if the repeal had not yet taken effect.

SCHEDULE 2 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

**Re-marking of roads**

8. (1) If an application which was made for the purposes of section 23 of the former Act has not been disposed of before the repeal of that Act, then, despite that repeal, that section and sections 24 and 25 of that Act continue to have effect for the purpose of re-marking the road to which the application relates.

(2) If a road has been re-marked in accordance with section 23 of the former Act but any of the things referred to in section 25 of that Act in relation to the re-marking of the road have not been done before the repeal of that Act, those things may be done under section 25 of that Act as if the repeal had not yet taken effect.

**Alignment of streets within municipalities**

9. If an application referred to in section 27 of the former Act has not been disposed of before the repeal of that Act, the application is to be dealt with under that section as if that repeal had not yet taken effect.

**Actions pending under section 33 of the former Act**

10. Any action brought under section 33 of the former Act and pending immediately before the repeal of that Act may be continued under that section as if the repeal had not yet taken effect.

**Crown road included in a Crown lease or reserve before the commencement of section 34**

11. (1) If any lease or reserve under the Crown Lands Acts included a Crown road immediately before the commencement of section 34 of this Act, the rights of the lessee in respect of the area of Crown road comprised in the lease or, as the case may be, the rights of any person in respect of the area of Crown road comprised in the reserve may continue to be exercised so far as they are not inconsistent with the public right conferred by that section.

**SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS - *continued***

(2) In subclause (1), "lease" includes a yearly lease.

**Matters pending before local land boards**

12. If a reference, determination or other matter was pending before a local land board under the former Act immediately before its repeal, the matter is to be disposed of as if the repeal had not yet taken effect or is to be discontinued, as the local land board orders.

**Appeals to the Land and Environment Court**

13. (1) A right to appeal to the Land and Environment Court existing under the former Act immediately before its repeal continues, and may be exercised, as if the repeal had not yet taken effect.

(2) An appeal to the Land and Environment Court pending under the former Act immediately before its repeal is to be continued and be dealt with as if the repeal had not yet taken effect.

**Effect of repeal in transaction effected under the former Act**

14. The repeal of the former Act does not of itself operate to annul or otherwise affect a transaction effected under that Act.

**General saving**

15. The repeal of the former Act does not of itself deprive any act, matter or thing done of any effect which it was declared or otherwise caused to have by that Act.

**Plans approved under the former Act**

16. For the purposes of this Act, a plan:

- (a) approved by the Governor under section 25 of the former Act before the commencement of the Public Roads (Amendment) Act 1968; or
- (b) approved by the Minister under that section after the commencement,

is to be treated as a plan approved by the Minister under section 39 of this Act.

SCHEDULE 2 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

**References to provisions of repealed Acts**

17. (1) If the regulations made under clause 1 so provide, a reference in any other Act, or in any instrument made under that Act or in any instrument of any other kind, to a provision of the Public Roads Act 1902:

- (a) is to be read as a reference to a specified provision of this Act;  
or
- (b) if the case so requires, is to be read as including a reference to a specified provision of this Act.

(2) If such a regulation is made in respect of a reference referred to in subclause (1), that subclause ceases to have effect in respect of the reference.

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[*Minister's second reading speech made in -  
Legislative Assembly on 9 May 1990  
Legislative Council on 13 September 1990*]

FIRST PRINT

## CROWN AND OTHER ROADS BILL 1990

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The Miscellaneous Acts (Crown and Other Roads) Amendment Bill 1990 is cognate with this Bill.

The object of this Bill is to consolidate, with amendments, the provisions of the Public Roads Act 1902. The Bill:

- (a) prescribes a simpler and more effective procedure for dealing with applications to open new roads;
- (b) includes more comprehensive compensation provisions in respect of land acquired for a new road;
- (c) confers additional rights on persons who apply for the opening of new roads, in particular the right to be heard at a hearing to determine compensation;
- (d) provides for the regulation of controlled Crown roads;
- (e) prescribes a simpler procedure for the temporary closure of a road where the road has become dangerous as a result of some emergency; and
- (f) generally updates the provisions of existing legislation relating to public roads and Crown roads.

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### PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 defines certain expressions used in the proposed Act. Among the expressions defined are "acquired" (which means "resumed" and "withdrawn"), "compensating authority", "Crown road", "interest" (in relation to land), "market value", "prescribed land" (which is defined as any Crown land, other than unoccupied

## *Crown and Other Roads 1990*

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Crown land, or any other land that is not Crown land), "quarter sessions road", "road" and "unoccupied Crown land".

### **PART 2 - OPENING OF ROADS**

#### **Division 1 - Prerequisites to the opening of a road**

**Clause 4** will empower the Minister to open a new road but only in accordance with the proposed Part 2.

**Clause 5** sets out the procedure to be followed when applying to the Minister to open a new road.

**Clause 6** will require the Minister to publish in the Gazette a notice of any proposal to open a new road over prescribed land and to publish in a local newspaper an advertisement drawing attention to the notice.

**Clause 7** provides for the opening of roads over prescribed land. The clause provides for the acquisition of prescribed land for the purposes of a road to be effected by notice published in the Gazette. In publishing such a notice, the Minister must specify whether the road concerned is to be a public road or a Crown road.

**Clause 8** will restrict the exercise of the power to open a road over prescribed land. Among the restrictions that will be imposed is a restriction preventing a road from being opened under proposed section 7 unless the compensation to be provided in respect of the proposed acquisition has been agreed to or, if not agreed to, has been determined by the local land board concerned. (See proposed Division 2 of Part 2.)

**Clause 9** specifies the effect of acquiring an interest in land for the purposes of a road. An interest in land acquired in accordance with proposed section 7 is to be held by the Crown free from all trusts, reservations, obligations and interests.

**Clause 10** will enable the Minister to declare unoccupied Crown land to be a public road or a Crown road.

**Clause 11** will enable the Minister to declare any Crown road to be dedicated as a public road.

**Clause 12** provides that, whenever the Minister declares land to be acquired for the purposes of a road, or declares a road to be a public road or a Crown road, the Minister may limit the operation of the notice by which the declaration is made to a specified stratum of land or airspace.

#### **Division 2 - Compensation**

**Clause 13** provides that a person from whom an interest in land is to be acquired under proposed Part 2 is to be entitled to receive compensation in accordance with Division 2 of that Part. Compensation will normally be provided in the form of money but in certain circumstances it may be provided in the form of an interest in land or partly in the form of an interest in land and partly in the form of money.

## *Crown and Other Roads 1990*

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**Clause 14** lays down the procedure for making a claim for compensation.

**Clause 15** will enable compensation rights in respect of certain interests in land to be waived in certain cases.

**Clause 16** will require the relevant compensating authority to accept a claim for compensation in principle or to reject the claim. If a claim is rejected, the reasons for the rejection must be stated.

**Clause 17** will entitle a person whose claim for compensation is rejected to appeal to the Land and Environment Court against the rejection of the claim.

**Clause 18** provides that in the first instance an amount of compensation is to be determined by agreement between the claimant and the relevant compensating authority.

**Clause 19** provides for the determination of claims for compensation by the local land board if the parties are unable to reach agreement.

**Clause 20** provides for an agreement or determination under proposed Division 2 to lapse if the interest in the land concerned is not acquired within 90 days after the agreement is entered into or the determination is made. However, a claimant will be able to ratify such an agreement or determination provided that the agreement or determination has not lapsed more than 12 months previously.

**Clause 21** specifies the principles for assessing compensation. A person is to be entitled to such amount as will justly compensate the person for the interest in land acquired from the person for the purposes of a road, taking into account all relevant factors. The relevant factors are set out in the clause.

**Clause 22** provides that compensation is not payable for any loss arising from any potential purpose for which the acquired interest could be used.

**Clause 23** provides a mechanism for determining the value of an interest in land for which there is no market value.

**Clause 24** makes special provision where the interest acquired for a road is affected by a planning restriction.

**Clause 25** specifies the factors that are to be disregarded in assessing compensation. For instance, any increase in the value of land that is attributable to its use by the public as a road is to be disregarded.

**Clause 26** provides that, if a mortgage interest is acquired under proposed Part 2, the mortgagee is to retain any rights that the mortgagee has against the mortgagor as regards that part of the mortgage debt that remains outstanding.

**Clause 27** provides for interest to accrue in respect of monetary compensation that is not paid at the appropriate time.

**Clause 28** provides that compensation is not to be made for mines or minerals in land acquired for a road.

**Clause 29** provides that a receipt for compensation provided for an interest in land acquired under proposed Part 2 will discharge the relevant compensating authority from all claims in respect of the acquisition of that interest.

## *Crown and Other Roads 1990*

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**Clause 30** makes special provision for those cases where compensation is provided in the form of an interest in land. An interest in land may be provided as compensation only if the interest is unoccupied Crown land that adjoins the holding from which the land to be used for a road is to be acquired.

**Clause 31** makes special provision for cases where the compensation to be provided is in the form of a leasehold interest.

**Clause 32** provides for the payment of an amount of compensation to the Treasurer if the identity or whereabouts of the person entitled to the compensation is unknown.

### **Division 3 - Supplementary provisions**

**Clause 33** deals with the disposal of surplus land. On some occasions more land may be acquired for a road than is required for the road or for providing compensation. The clause specifies how the surplus land is to be dealt with or disposed of.

**Clause 34** sets out the rights of the public with respect to a Crown road.

**Clause 35** makes it clear that Part 9 of the Local Government Act 1919 applies to any land or road declared to be a public road by virtue of proposed section 7, 10 or 11.

**Clause 36** makes it clear that a Crown road is to continue to be Crown land.

### **PART 3 - RE-MARKING, RE-ALIGNMENT AND ALTERATION OF ROADS**

**Clause 37** provides that the proposed Part 3 is not to apply to classified roads within the meaning of the State Roads Act 1986.

**Clause 38** empowers the Minister to have a road re-marked in substantially the same position as it was before whenever the position and boundaries of the road cannot be identified because of the absence or loss of survey marks. The clause further provides that, where the re-marking is carried out on the application of a person, the cost of re-marking is to be borne by the applicant.

**Clause 39** will require the Minister to publish in the Gazette a notice relating to the re-marking of a road in accordance with proposed section 38.

**Clause 40** will empower the Minister to cause surveys to be carried out and a plan to be prepared for the purposes of defining the boundaries of a road, re-marking or altering the width and position of the carriageway and footways, or the boundaries, of a road or re-aligning a public road.

**Clause 41** will empower the Minister to rescind or vary a re-alignment effected under proposed section 40.



**PART 4 - CLOSURE OF ROADS**

**Clause 42** deals with the Minister's powers to close a road.

**Clause 43** will enable any person to apply to the Minister for the closure of a road. The clause also sets out the procedure for making such an application.

**Clause 44** will require the Minister to publish in the Gazette a notice giving details of a proposal to close a road and inviting interested persons to lodge objections to the proposal.

**Clause 45** sets out the procedure for formally closing a road and provides that, on publication in the Gazette of a closure notice, the right of the public to use the road as a public thoroughfare or public way will be terminated.

**Clause 46** provides for the disposal of land that was formerly included in a road that has been closed. The clause also provides for the value of a closed road to be determined. Normally a closed road will be disposed of at its market value or at an agreed rent.

**Clause 47** will enable the Minister to close a Crown road temporarily, for any reason that he or she considers appropriate, for up to 12 months by publishing in the Gazette a temporary closure order.

**Clause 48** will enable the Minister to make an order temporarily closing a Crown road without notice in the case of an emergency involving danger to the public.

**Clause 49** provides that, whenever the Minister proposes to declare a road to be closed, the Minister may limit the operation of the notice by which the declaration is made to a specified stratum of land or airspace.

**PART 5 - REGULATION OF CROWN ROADS**

**Clause 50** will enable the Minister, by order published in the Gazette, to declare any specified Crown road to be a controlled Crown road. Such an order will be able to specify prohibitions, restrictions or conditions with respect to the use of the road.

**Clause 51** will empower the Minister to vary the prohibitions, restrictions or conditions that are applicable to a controlled Crown road.

**Clause 52** will make it an offence to contravene a prohibition, restriction or condition applicable to a controlled Crown road.

**Clause 53** will enable regulations to be made under the proposed Act which include provisions with respect to the use of controlled Crown roads.

**PART 6 - LEGAL PROCEEDINGS**

**Division 1 - Offences**

**Clause 54** will make it an offence for a person to obstruct an authorised person who is exercising a power conferred by proposed section 66 (Power of authorised persons to enter land for the purposes of this Act).

## *Crown and Other Roads 1990*

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**Clause 55** will make it an offence to damage or obstruct a road (otherwise than with lawful authority). However, the clause will not apply to public roads within the local government area of a local authority or to classified roads within the meaning of the State Roads Act 1986. Damage to and obstruction of those kinds of roads are covered by the Local Government Act 1919 and the State Roads Act 1986 respectively.

**Clause 56** provides for offences under the proposed Act or any regulations in force under that Act to be dealt with by a Local Court constituted by a Magistrate sitting alone.

**Clause 57** provides that, if a corporation commits a contravention of the proposed Act or any regulations in force under that Act, a director or person concerned in the management of the corporation who knowingly authorised or permitted the contravention is to be guilty of an offence.

### **Division 2 - Appeals etc. to the Land and Environment Court**

**Clause 58** defines "decision" for the purposes of proposed Division 2 of Part 6.

**Clause 59** will enable parties to proceedings before a local land board under the proposed Act to appeal to the Land and Environment Court against a decision of the local land board.

**Clause 60** will enable a local land board to refer matters to the Land and Environment Court.

**Clause 61** prescribes the procedure for lodging appeals under the proposed Act.

**Clause 62** specifies the powers of the Land and Environment Court with respect to the hearing and determination of appeals under proposed section 59 and any matters referred to it by a local land board under proposed section 60.

### **Division 3 - Other matters**

**Clause 63** provides that the Crown is not to be liable for injury or damage attributable to the alignment or re-alignment of a road.

**Clause 64** will enable the appropriate roads authority (i.e. the Minister, the local authority or the Roads and Traffic Authority) to bring proceedings to recover the cost of repairing a road that a person has damaged or of removing an obstruction that a person had placed on the road.

## **PART 7 - MISCELLANEOUS PROVISIONS**

**Clause 65** makes it clear that a disposal of land under the proposed Act will not include any minerals in the land.

**Clause 66** will empower an authorised person to enter land to enable surveys and other functions to be carried out for the purposes of the proposed Act. (The expression "authorised person" is defined in proposed section 3 (1).)

## *Crown and Other Roads 1990*

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**Clause 67** provides that a certificate purporting to be signed by the appropriate authority that a person is, or was at a particular time, an authorised person for the purposes of a provision of the proposed Act is to be admissible in legal proceedings as evidence of the matters certified.

**Clause 68** will empower the Minister to refer to the local land board for inquiry and report disputes relating to the opening or closing of roads under the proposed Act or to the administration of that Act.

**Clause 69** will enable the Minister to delegate the Minister's functions under the proposed Act.

**Clause 70** provides for a copy of the Gazette containing an order or a notice published in the Gazette for the purposes of the proposed Act to be conclusive evidence as to the regularity of everything done in relation to the publication of that order or notice.

**Clause 71** will empower the Minister to correct defective orders and notices.

**Clause 72** will empower the Minister to include more than one matter in the same order or Gazette notice for the purposes of the proposed Act.

**Clause 73** provides for the service of notices for the purposes of the proposed Act.

**Clause 74** provides that, in a case where the proposed Act, or an advertisement or notice published or served under the proposed Act, requires or permits a document to be lodged with the Minister or at a specified office of the Department of Lands, it is sufficient to lodge the document at any office of the Department of Lands.

**Clause 75** will empower the Governor-in-Council to make regulations for the purposes of the proposed Act.

**Clause 76** provides for the proposed Act to bind the Crown.

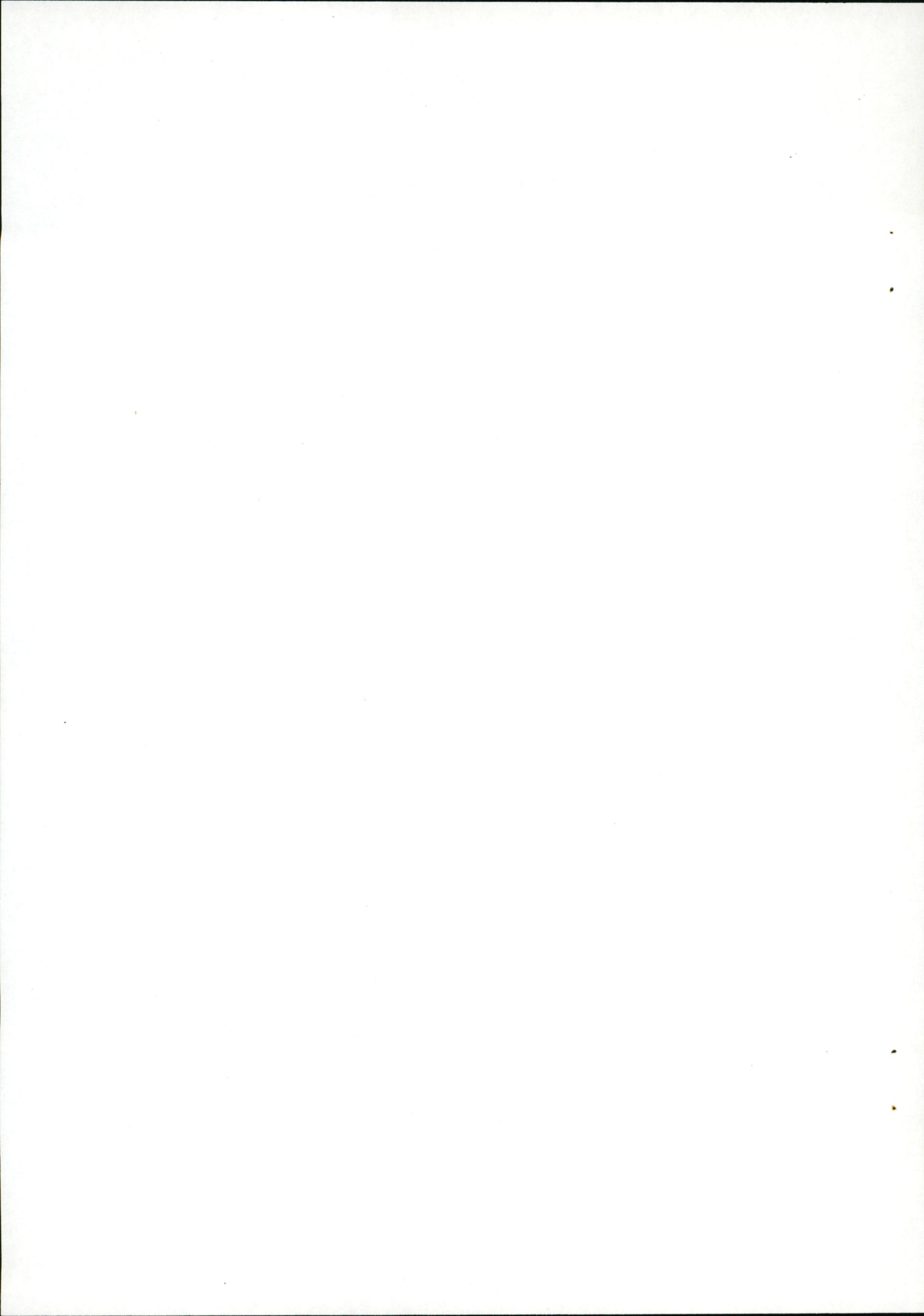
**Clause 77** provides for the repeal of the Public Roads Act 1902 and other Acts specified in Schedule 1. The clause also provides for the repeal of regulations made under those Acts.

**Clause 78** will give effect to Schedule 2, which contains savings and transitional provisions.

**Schedule 1** specifies the Acts that are to be repealed by proposed section 77.

**Schedule 2** contains savings and transitional provisions consequent on the proposed repeal of the Public Roads Act 1902. For example, an application under that Act for the opening of a road and not disposed of before the commencement of proposed section 5 will not be dealt with under the proposed Act but will be dealt with under the Public Roads Act 1902 as if that Act had not been repealed.

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FIRST PRINT

**CROWN AND OTHER ROADS BILL 1990**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

**PART 1 - PRELIMINARY**

1. Short title
2. Commencement
3. Definitions

**PART 2 - OPENING OF ROADS**

**Division 1 - Prerequisites to the opening of a road**

4. Power of the Minister to open a road
5. Application to the Minister to open a road
6. Notice to be given of an intention to open a road over prescribed land
7. Opening of roads over prescribed land
8. Restrictions on the exercise of the power to open roads over prescribed land
9. Effect of acquiring land for the purposes of a road
10. Opening a road over unoccupied Crown land
11. Crown road may be declared to be a public road
12. Power of the Minister to limit the acquisition of land to a specified stratum

**Division 2 - Compensation**

13. Entitlement to compensation
14. How to make a claim for compensation
15. Waiver of compensation rights in respect of certain interests in land
16. Compensating authority to accept or reject claim
17. Appeal to the Land and Environment Court against the rejection of a claim
18. Compensation to be determined by agreement of the parties in the first instance
19. Compensation to be determined by the local land board when the parties cannot agree
20. Agreement or determination to lapse if land or interest is not acquired within 90 days

## *Crown and Other Roads 1990*

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21. Amount of compensation - principles for assessment
  22. Special provision where the market value is determined on the basis of the land's potential
  23. What happens when there is no market for an acquired interest
  24. What happens where land etc. is affected by a planning restriction
  25. What factors are to be disregarded in assessing compensation
  26. What effect the acquisition of a mortgage interest has
  27. Interest to accrue in respect of compensation not paid at the appropriate time
  28. Compensation not to be made for mines or minerals in land acquired for a road
  29. Effect of receipt for compensation
  30. What happens when the compensation to be provided is in the form of an interest in land
  31. Special provisions that apply where compensation is to be provided in the form of a leasehold interest
  32. What happens when a person entitled to compensation cannot be located
- Division 3 - Supplementary provisions
33. How surplus land may be disposed of
  34. Use of Crown road
  35. Provisions applicable to public roads
  36. Crown road to continue to be Crown land

### PART 3 - RE-MARKING, RE-ALIGNMENT AND ALTERATION OF ROADS

37. Part 3 not to apply to classified roads
38. Power of the Minister to re-mark road
39. Notice of re-marking of road to be published
40. Defining the boundaries of and re-aligning roads
41. Power of the Minister to rescind or vary a re-alignment

### PART 4 - CLOSURE OF ROADS

42. Power of the Minister to close a road
43. Application to the Minister to close a road
44. Notice to be given of an intention to close a road
45. Procedure for closing a road
46. Disposal of land that formerly constituted a closed road
47. Temporary closing of Crown roads on notice
48. Temporary closing of Crown roads without notice
49. Power of the Minister to limit the closure of a road to a specified stratum

### PART 5 - REGULATION OF CROWN ROADS

50. Power of the Minister to declare a Crown road to be a controlled Crown road
51. Power of the Minister to vary the prohibitions, restrictions and conditions applicable to a controlled Crown road

*Crown and Other Roads 1990*

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- 52. Offences in relation to the use of a controlled Crown road
- 53. Regulations relating to Crown roads

**PART 6 - LEGAL PROCEEDINGS**

**Division 1 - Offences**

- 54. Obstructing an authorised person in the exercise of a power conferred by s. 66
- 55. Offence to damage or obstruct a road
- 56. Proceedings for offences
- 57. Offences committed by corporations

**Division 2 - Appeals etc. to the Land and Environment Court**

- 58. Definition of "decision" for the purposes of Division 2
- 59. Persons may appeal to the Land and Environment Court against local land board decisions
- 60. Local land board may refer matters to the Land and Environment Court
- 61. How an appeal under this Act is to be lodged
- 62. Powers of the Land and Environment Court under this Division

**Division 3 - Other matters**

- 63. Crown not to be liable for injury etc. resulting from alignment or re-alignment of a road
- 64. Appropriate roads authority to have power to bring proceedings for the recovery of costs of repairing road etc.

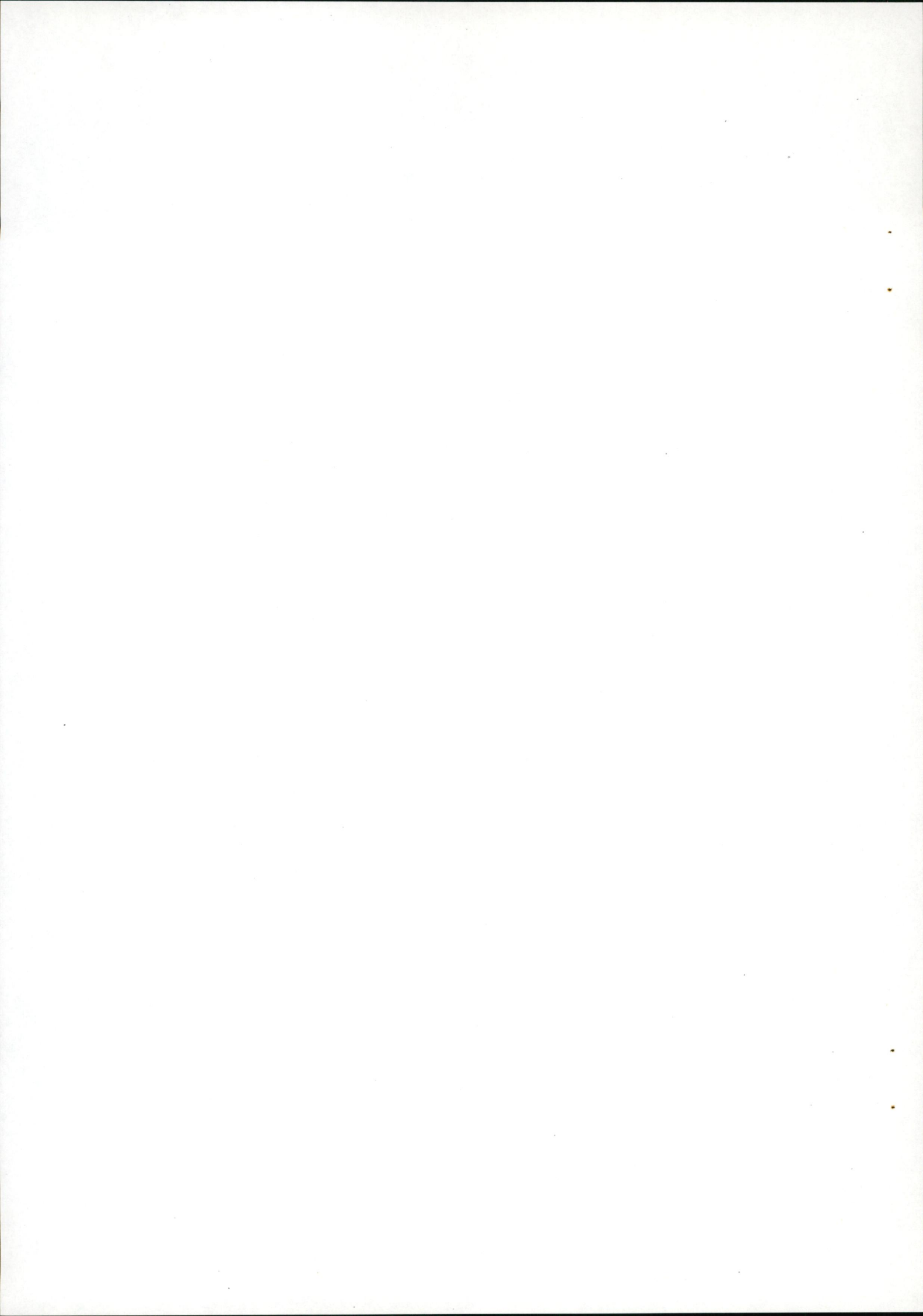
**PART 7 - MISCELLANEOUS PROVISIONS**

- 65. Exclusions, exceptions and reservations from a disposal of land in accordance with this Act
- 66. Power of authorised persons to enter land for the purposes of this Act
- 67. Certificate as to authorised persons
- 68. Power of the Minister to refer disputed matters to the local land board for report
- 69. Power of the Minister to delegate functions
- 70. Gazette to be evidence of orders, notices etc.
- 71. Power of the Minister to correct defective orders, notices etc.
- 72. Power of the Minister to include more than one matter in the same order or notice
- 73. Notices
- 74. Lodgment of documents with the Minister etc.
- 75. Regulations
- 76. Act to bind the Crown
- 77. Repeals
- 78. Savings and transitional provisions

**SCHEDULE 1 - REPEALS**

**SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS**

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# CROWN AND OTHER ROADS BILL 1990

NEW SOUTH WALES



No. , 1990

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## A BILL FOR

An Act to provide for the opening, closing, marking and alignment of roads; to provide for the regulation of certain roads; to provide for related matters; and to repeal the Public Roads Act 1902 and certain other enactments.

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See also the Miscellaneous Acts (Crown and Other Roads) Amendment Bill 1990.

**The Legislature of New South Wales enacts:**

**PART 1 - PRELIMINARY**

**Short title**

1. This Act may be cited as the Crown and Other Roads Act 1990.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions (see Act No. 95, 1902, s. 6)**

3. (1) In this Act:

"**acquired**" means resumed or withdrawn, and includes appropriated;

"**authorised person**" means a person appointed by a roads authority to exercise the functions of an authorised person under this Act, and also means:

- (a) where the roads authority is the Minister - the Minister; or
- (b) where the roads authority concerned is a council or the Roads and Traffic Authority - a member of the council or that Authority;

"**compensating authority**" means:

- (a) in a case where compensation is to be provided by the Crown - the Minister; or
- (b) in a case where compensation is to be provided by a council - the council;

"**Crown land**" has the same meaning as in the Crown Lands Act 1989;

"**Crown Lands Acts**" has the same meaning as in the Crown Lands Act 1989 but with the addition of the Irrigation Act 1912 and the Western Lands Act 1901;

"**Crown road**" means:

- (a) any road or land which was, before the commencement of this section, vested in the Crown and indicated on official maps or plans as being reserved for or left as a road:

- (i) in a subdivision of Crown land; or
- (ii) in the measurement or granting of Crown land; or
- (iii) as a consequence of an approval by the Minister administering the Crown Lands Acts,

but which was not notified, proclaimed or dedicated as a public thoroughfare or public way before that commencement and which has not been declared to be a public road under Part 2 since that commencement; or

- (b) any land declared to be a Crown road under Part 2;

**"council"** has the same meaning as in the Local Government Act 1919;

**"deal with"**, in relation to land, includes dispose of the land;

**"former Act"** means the Public Roads Act 1902;

**"interest"**, in relation to land, means:

- (a) any legal or equitable estate or interest in the land; or
- (b) a restriction on the use of the land, whether or not annexed to other land; or
- (c) any other right (including a right under an option and a right of redemption), charge, power or privilege over or in connection with the land or an interest in the land;

**"irrigation area"** has the same meaning as in the Crown Lands Act 1989;

**"Land Register"** means the Register kept under the Real Property Act 1900;

**"lease"** includes any unexpired engagement, contract or promise of a lease;

**"local land board"** means, in relation to a matter arising in connection with land located in a land district situated within the Eastern and Central Division or in an administrative district situated within the Western Division, the local land board constituted for the land district or administrative district;

**"local newspaper"**, in relation to a matter affecting land or a road, means a newspaper published or circulating in the district in which the land or road is situated;

**"major interest"**, in relation to land, means:

- (a) the fee simple estate in the land; or
- (b) the interest in the land of any person in lawful occupation of the land; or
- (c) if a folio of the Land Register has been created in respect of the land - any estate or interest recorded on the folio; or
- (d) any legal or equitable estate in the land of which the Minister has notice;

**"market value"** has the meaning given to that expression by subsection (5);

**"mineral"** has, except in section 65, the same meaning as it has in the Crown Lands Act 1989;

**"mortgage"** means a security over land or an interest in land securing the payment or repayment of money;

**"prescribed land"** means:

- (a) Crown land other than unoccupied Crown land; or
- (b) any other land that is not Crown land;

**"price"** includes any valuable consideration whether in the form of money or not;

**"public authority"** means a body constituted or established by an Act for a public purpose;

**"public road"** means any land proclaimed, dedicated, notified, resumed or otherwise established, whether before or after the commencement of this section, as a public thoroughfare or public way, but does not include a Crown road;

**"quarter sessions road"** means a road granted at Quarter Sessions as an access road before 18 October 1968 (the date on and after which no further quarter sessions roads could be created);

**"road"**, when used without qualification, means a public road, a Crown road or a quarter sessions road;

**"roads authority"** means:

- (a) in relation to a public road within the local government area of a council - that council; or
- (b) in relation to a Crown road or a quarter sessions road - the Minister; or

- (c) in relation to a classified road within the meaning of the State Roads Act 1986 or a road constructed, provided or maintained by the Roads and Traffic Authority in accordance with section 17 of that Act - that Authority; or
- (d) in relation to any other kind of road that is open for use as a public thoroughfare or public way - the Roads and Traffic Authority;

**"unoccupied Crown land"** means Crown land other than:

- (a) Crown land that is the subject of a contract of sale under the Crown Lands Acts but for which the Crown has not received the sale price; or
- (b) Crown land that is held under a lease in perpetuity under those Acts; or
- (c) Crown land that is held under a lease for a term of years under those Acts; or
- (d) Crown land that is included in a travelling stock reserve under the control of a rural lands protection board; or
- (e) Crown land that is included in a reserve in respect of which a reserve trust is established in accordance with Part 5 of the Crown Lands Act 1989; or
- (f) Crown land that is included in a common within the meaning of the Commons Management Act 1989; or
- (g) Crown land that is subject to the Trustees of Schools of Arts Enabling Act 1902; or
- (h) Crown land that is subject to an easement,  
and includes Crown land held under a yearly lease;

**"yearly lease"** means a tenure listed in Part 4 of Schedule 1 to the Crown Lands (Continued Tenures) Act 1989.

(2) In this Act, a reference to a road includes a reference to a part of a road.

(3) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(4) In this Act, a reference to the Eastern and Central Division or the Western Division is a reference to the Eastern and Central Division

or the Western Division within the meaning of section 4 of the Crown Lands Act 1989.

(5) For the purposes of this Act, the market value of land or an interest in land at a particular time is the amount that would have been paid for the land or interest if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.

## **PART 2 - OPENING OF ROADS**

### **Division 1 - Prerequisites to the opening of a road**

#### **Power of the Minister to open a road**

4. (1) A road may be opened by the Minister but only in accordance with this Part.

(2) The Minister may exercise the functions conferred or imposed by this Part on his or her own initiative or as a result of an application made in accordance with section 5.

#### **Application to the Minister to open a road**

5. (1) Any person may make an application to the Minister for the opening of a road.

(2) Such an application must:

(a) be in a form approved by the Minister; and

(b) be accompanied by:

(i) the application fee (if any) prescribed by the regulations; and

(ii) a map or diagram showing the route of the proposed road.

(3) Whenever an application has been made under this section, the Minister may, by notice in writing served on the applicant, require the applicant to lodge with the Minister:

(a) any additional fee required to cover the cost of processing the application; and

(b) any sum of money necessary to provide compensation payable for an interest in land to be acquired for the purposes of the road concerned; and

- (c) any sum of money necessary to defray a cost connected with the opening of that road; and
- (d) particulars, relevant to the application, of the financial resources available to the applicant; and
- (e) further information that the applicant has relevant to the application; and
- (f) a plan of survey, in a form approved by the Minister, of the land proposed to be acquired in connection with the application.

(4) If:

- (a) a sum of money specified in a notice served under subsection (3) is not paid; or
  - (b) information or a plan so specified is not lodged,
- within 28 days after the service of the notice, or within such extended period as the Minister may allow, the application concerned lapses at the end of that period of 28 days or that extended period.

(5) The Minister may refuse an application under this section for any reason that appears to the Minister to be appropriate.

(6) If the Minister refuses such an application, the Minister must notify the applicant in writing of the refusal and of the reason for it.

(7) An applicant under this section may withdraw the application at any time before the proposed road is opened in accordance with this Part.

(8) If an application under this section is refused or withdrawn or lapses, the Minister:

- (a) may, after deducting an amount sufficient to cover the cost of processing the application, refund to the applicant the whole or any part of the application fee; and
- (b) must refund to the applicant any other money that has been paid to the Minister under this section but has not been spent in connection with the application.

**Notice to be given of an intention to open a road over prescribed land**  
(see Act No. 95, 1902, s. 7 (1), (1A), (2))

6. (1) Whenever the Minister proposes to consider opening a road over prescribed land, the Minister must publish in the Gazette a notice of the proposal, including a description of the land concerned.

(2) Such a notice must:

- (a) refer to a plan of the proposed road which must be kept for public inspection at an office of the Department of Lands specified in the notice; and
- (b) invite any person who wishes to object to the proposal to set out the objection in writing and lodge it at the office of the Department of Lands specified in the notice on or before such date, or within such period, as is specified in the notice; and
- (c) invite any person who wishes to make a claim for compensation in respect of the acquisition of the interest in land required for the proposed road to lodge the claim at that office on or before that date or within that period.

(3) As soon as practicable after such a notice has been published, the Minister must:

- (a) publish in a local newspaper an advertisement drawing attention to the contents of the notice; and
- (b) serve a copy of the notice on the owners of the major interests in each parcel of land to which the proposal relates.

(4) The Minister does not have to comply with subsection (3) (b) if:

- (a) the owners of the major interests in the land proposed to be acquired have already consented to the opening of the proposed road; or
- (b) the land proposed to be acquired is already in use as a road which has been established by the expenditure of public funds.

**Opening of roads over prescribed land (see Act No. 95, 1902, s. 8 (2))**

7. (1) The Minister may, by notice published in the Gazette, declare that any prescribed land described in the notice is acquired by the Crown for the purposes of a road.

(2) In such a notice, the Minister must:

- (a) specify whether the whole or only part of the land acquired is to become road; and
- (b) if only a part of the land acquired is to become road, specify which part of that land is to become road; and
- (c) declare the road to be a public road or a Crown road.



- (3) On the publication of such a notice:
- (a) the land described in the notice is acquired for the purposes of a road; and
  - (b) that part of the land specified in the notice as road is opened as a public road or Crown road as indicated by the notice and, if declared to be opened as a public road, is dedicated to the public.

**Restrictions on the exercise of the power to open roads over prescribed land (see Act No. 95, 1902, s. 8 (3), (4))**

8. (1) The power conferred by section 7 is not exercisable in respect of prescribed land unless:

- (a) the requirements of section 6 have been satisfied in relation to that land; and
- (b) a period of not less than 28 days has elapsed since the advertisement referred to in section 6 (3) (a) was published; and
- (c) if within that period of 28 days objections have been lodged in response to the invitation contained in the notice published in accordance with section 6 (1) - the Minister has properly considered those objections; and
- (d) any compensation to be provided in respect of the proposed acquisition of the land has been agreed to or, if not agreed to, has been determined in accordance with this Part.

(2) If the land referred to in subsection (1) is within a State forest, national forest or flora reserve, the power conferred by section 7 is not exercisable unless, in addition to the requirements specified in subsection (1) (a)-(d):

- (a) the Forestry Commission has recommended that the power be exercised; and
- (b) the Minister administering the Forestry Act 1916 has consented to its exercise.

(3) If the land referred to in subsection (1) is dedicated for a public purpose and trustees of the land have been appointed or a trust has been established, the power conferred by section 7 is not exercisable unless, in addition to the requirements specified in subsection (1) (a)-(d), a notice giving particulars of the proposed acquisition has been served on those trustees or that trust.

**Effect of acquiring land for the purposes of a road**

9. (1) When land is acquired in accordance with section 7, the land is freed from all trusts, reservations, obligations and interests and, subject to subsection (2) and sections 35 and 36, becomes Crown land.

(2) There may be excepted from an acquisition effected under section 7:

- (a) any easement which is specified in the notice effecting the acquisition and to which the land was subject immediately before the acquisition; and
- (b) any easement specified in that notice which is appurtenant to an easement referred to in paragraph (a).

(3) If:

- (a) in accordance with subsection (2), an easement is excepted from a vesting of land; and
- (b) immediately before that vesting, the benefit of a restriction as to user was annexed to the easement,

then, unless otherwise specified in the notice by which the acquisition is effected, that restriction continues to have effect as if the acquisition had not taken place.

**Opening a road over unoccupied Crown land**

10. (1) The Minister may, by notice published in the Gazette, declare any unoccupied Crown land specified in the notice to be set aside for the purposes of a public road or a Crown road.

(2) Such a notice must refer to a plan of the proposed road which must be kept for public inspection at an office of the Department of Lands specified in the notice.

- (3) On the publication of a notice in accordance with this section:
- (a) the land described in the notice is freed from all trusts, reservations, obligations and interests; and
  - (b) that part of the land specified in the notice as road is opened as a public road or Crown road as indicated by the notice and, if declared to be opened as a public road, is dedicated to the public.

**Crown road may be declared to be a public road** (see Act No. 95, 1902, s. 18)

11. (1) The Minister may, by notice published in the Gazette, declare any Crown road to be opened as a public road.

(2) On the publication of a notice in accordance with this section, the Crown road is dedicated to the public.

(3) If any such public road has been provided in a subdivision of Crown land for alienation or has been reserved in the measurement of Crown land, the official plans of survey which show the road juxtaposed to the land subdivided or measured are evidence of the width, extent and position of the road.

(4) Nothing in this section precludes the making of any alteration to the width of a road before the publication of, or by, a notice referred to in subsection (1).

**Power of the Minister to limit the acquisition of land to a specified stratum** (see Act No. 95, 1902, s. 35 (3))

12. Whenever the Minister, in accordance with a power conferred by this Part, declares land to be acquired for the purposes of a road or to be opened as a public road or a Crown road, the Minister may, in the notice by which the declaration is made, also declare that the notice applies only to:

- (a) land down to a specified depth below the surface of the land;  
or
- (b) airspace up to a specified height above the surface of the land;  
or
- (c) land lying between specified depths below the surface; or
- (d) airspace between specified heights above the surface of the land; or
- (e) land and airspace between a specified depth below, and a specified height above, the surface of the land,

and, in such a case, the declaration has effect accordingly.

**Division 2 - Compensation**

**Entitlement to compensation**

**13. (1)** A person from whom an interest in land is to be acquired under this Part is entitled to receive compensation in accordance with this Division:

- (a) if the interest is to be acquired on the application of a council - from that council; or
- (b) in any other case - from the Crown.

**(2)** However, a person is not entitled to receive compensation in respect of a proposed acquisition under this Part of:

- (a) a right, licence, permit, permissive occupancy or yearly lease of Crown land; or
- (b) a claim, right, permit, licence, authorisation or lease of land under the Mining Act 1973, the Coal Mining Act 1973 or the Petroleum Act 1955.

**(3)** A person is entitled to receive compensation in the form of money, but if the Minister directs and the person consents, the compensation may, subject to sections 30 and 31, be provided in the form of an interest in land or partly in the form of an interest in land and partly in the form of money.

**How to make a claim for compensation**

**14. (1)** A person who wishes to claim compensation under this Division must lodge a claim with the relevant compensating authority in accordance with this section.

**(2)** Such a claim must:

- (a) contain the particulars prescribed by the regulations; and
- (b) describe the interest of the claimant that is to be acquired under this Part; and
- (c) if the relevant compensating authority so requires - specify the amount of compensation claimed; and
- (d) be lodged:
  - (i) within 28 days after the date on which the person was served with a notice in accordance with section 6 (3) (b) or within such further period as the relevant compensating authority allows; or

(ii) if the person was not served with a notice in accordance with section 6 (3) (b) - within 28 days after the date on which the Minister publishes an advertisement in respect of that interest in accordance with section 6 (3) (a) or within such further period as the relevant compensating authority allows.

(3) The claimant may withdraw a claim lodged under this section.

(4) If such a claim is withdrawn, this Act has effect as if the claim had never been lodged.

**Waiver of compensation rights in respect of certain interests in land**

15. (1) A person entitled to compensation under this Division may, by notice in writing given to the relevant compensating authority, waive the entitlement.

(2) The relevant compensating authority may, by notice in writing, require a person, at the person's option, either to make a claim under this Division or waive the person's entitlement to compensation.

(3) If a person who is entitled to compensation under this Division does not make a claim for that compensation within the period allowed by section 14 (2) (d), that person is to be taken to have waived the entitlement.

(4) Subsection (3) is subject to section 17 (1).

(5) If a mortgagee has waived or is taken to have waived an entitlement to compensation under this Division, the mortgagee nevertheless retains in respect of the mortgage debt any rights that the mortgagee has against the mortgagor or in respect of any interest in land that remains subject to the mortgage.

**Compensating authority to accept or reject claim**

16. (1) If the relevant compensating authority is satisfied that the interest in land described in a claim under section 14 is an interest in land that is to be acquired under this Part, that authority must serve on the claimant a notice in writing informing the claimant that the claim is accepted in principle.

(2) If the relevant compensating authority is not satisfied that the interest in land specified in the claim is an interest in land that is to be acquired under this Part, the compensating authority must serve on the

claimant a notice rejecting the claim and stating the reasons for the rejection.

(3) If, within 42 days after receiving a claim under section 14 or within such extended period as the claimant may agree to, the relevant compensating authority has not served on the claimant a notice under subsection (1) or (2), that authority is, at the end of that period, to be taken:

- (a) to have rejected the claim; and
- (b) to have served on the claimant a notice under subsection (2).

(4) The claimant may, before the end of the period referred to in subsection (3), serve on the relevant compensating authority a notice in writing agreeing to extend that period and such a notice has effect according to its tenor.

**Appeal to the Land and Environment Court against the rejection of a claim**

17. (1) If the relevant compensating authority has refused to entertain a claim for compensation under this Division because it was not lodged within the permitted period, the claimant may appeal to the Land and Environment Court against the authority's refusal to entertain the claim.

(2) If the relevant compensating authority has served, or is taken to have served, a notice rejecting a claim for compensation under this Division, the claimant may appeal to the Land and Environment Court against the authority's rejection of the claim.

(3) On the hearing of an appeal under this section, the Court may exercise all of the functions conferred by this Part on the relevant compensating authority in deciding whether or not to entertain the claimant's claim for compensation or whether to accept or reject that claim and, subject to this section, must make an order:

- (a) affirming the decision appealed against; or
- (b) directing the compensating authority to entertain the claim outside the permitted period or, as the case may be, to accept the claim.

(4) If the order of the Court in relation to an appeal under this section directs the relevant compensating authority to accept a claim for compensation that it has rejected:

- (a) the interest specified in the claim is to be regarded, for the purposes of this Act, as being compensable under this Division; and
- (b) that authority must serve a notice on the claimant accepting the claim in principle.

(5) Instead of making an order directing the relevant compensating authority to accept a claim for compensation under this Division, the Court may, with the consent of the parties, make an order determining the amount of compensation to be paid to the claimant in respect of the interest in land to be acquired from the claimant.

(6) At the hearing of an appeal under this section, the following persons are entitled to appear and be heard:

- (a) the claimant for compensation;
- (b) the relevant compensating authority;
- (c) if the proposed road is to be opened on the application of a person other than the relevant compensating authority - that person.

**Compensation to be determined by agreement of the parties in the first instance (see Act No. 95, 1902, s. 13 (1), (1A))**

18. (1) Except when the Land and Environment Court has determined the amount of compensation under section 17 (5), compensation to be made in respect of an interest in land to be acquired under this Part is to be determined:

- (a) by agreement between the person entitled to the compensation and:
  - (i) the relevant compensating authority; or
  - (ii) if the road is to be opened on the application of a person other than the relevant compensating authority - that person; or
- (b) if agreement cannot be reached - by the relevant local land board as provided by section 19.

(2) An agreement referred to in subsection (1) (a):

- (a) must be in writing signed by the parties; and
- (b) except where the relevant compensating authority is the Minister - does not have effect until approved by the Minister.

(3) As soon as practicable after such an agreement is lodged with the Minister for approval, the Minister must consider the agreement and either approve or refuse to approve it.

(4) For the purpose of subsection (3), it is sufficient to lodge a copy of the agreement authenticated to the satisfaction of the Minister.

(5) If the Minister has not approved or refused to approve an agreement within 28 days after it was lodged for approval, the Minister is to be taken to have approved the agreement.

(6) If the Minister has refused to approve an agreement within that period of 28 days, the Minister must notify the parties in writing of the refusal and the reasons why approval was refused.

**Compensation to be determined by the local land board when the parties cannot agree**

19. (1) If, within 90 days after the date on which the relevant compensating authority has served on a claimant for compensation a notice accepting the claimant's claim in principle:

- (a) an agreement has not been entered into in accordance with section 18 (1) (a); or
- (b) such an agreement has been entered into but the Minister has refused to approve the agreement,

either the person entitled to the compensation or:

- (c) except where paragraph (d) applies - the relevant compensating authority; or
- (d) if the proposed road is to be opened on the application of a person other than the relevant compensating authority - that person,

may make an application to the local land board to determine that compensation.

(2) An application under this section must be made in the manner prescribed by the regulations.

(3) As soon as practicable after receiving such an application, a local land board must hear and determine the amount of compensation to be made to the person entitled.

(4) At the hearing of such an application, the following persons are entitled to appear and be heard:



- (a) the person claiming compensation;
- (b) the relevant compensating authority;
- (c) if the proposed road is to be opened on the application of a person other than the relevant compensating authority - that person.

**Agreement or determination to lapse if land or interest is not acquired within 90 days**

20. (1) If an interest in land for which compensation has been agreed to or determined under this Division is not acquired under this Part within 90 days after the date of the agreement or determination, the agreement or determination lapses at the end of that period.

(2) A person entitled to compensation under this Division may ratify such an agreement or determination whether or not it has lapsed under this section, but no later than 12 months after the date on which the agreement was entered into or the determination was made.

(3) An agreement or determination ratified under this section continues in force for 90 days from the date of ratification and then lapses unless within that period the interest in land to which it relates is acquired under this Part.

(4) If an agreement or determination made in respect of a claim lodged under section 14 has lapsed under this section and no ratification of the agreement or determination under this section is currently in force, the provisions of this Division apply to the claim as if no such agreement or determination had been made.

**Amount of compensation - principles for assessment**

21. (1) The amount of compensation that a person is entitled to receive under this Division in respect of the acquisition of an interest in land for the purposes of a road is an amount that will justly compensate the person for the acquisition, taking into account all relevant factors.

(2) For the purposes of subsection (1), the following factors are the relevant factors:

- (a) except where paragraph (b) applies:
  - (i) the market value of the interest on the date on which compensation is agreed to or determined; and

- (ii) the value on that date of any financial advantage, additional to the market value, to the person incidental to the person's ownership of the interest; and
  - (iii) any reduction in the market value of any other interest in land held by the person that is attributable to the severance of the acquired interest from that other interest; and
  - (iv) where the acquisition of an interest in land from a person under this Part will have the effect of severing the interest from another interest in land owned by the person - any increase or decrease in the market value of the interest that will continue to be held by the person after the acquisition has taken effect (but only if the increase or decrease is attributable to the opening of the road concerned);
- (b) if the person's interest in the land to be acquired will be diminished, but not extinguished, by the acquisition - the loss suffered by the person because of the diminution of the person's interest in the land;
  - (c) any loss, injury or damage likely to be suffered, or expense likely to be incurred, as a direct, natural and reasonable consequence of the acquisition of the interest;
  - (d) if an interest to be acquired from the person is limited as to time or may be terminated by another person - the likelihood of the continuation or renewal of the interest and the likely terms and conditions on which any continuance or renewal would be granted.

**Special provision where the market value is determined on the basis of the land's potential**

22. If the market value of an interest in land to be acquired under this Part is assessed on the basis that the land has potential to be used for a purpose other than that for which it is currently used, compensation is not allowable in respect of any loss or damage that would necessarily be suffered, or expense that would necessarily be incurred, in realising that potential.

**What happens when there is no market for an acquired interest**

**23. (1) If:**

- (a) an interest in land is to be acquired from a person under this Part; and
- (b) the person is using that land or has manifested an intention to use that land for a purpose other than the carrying on of a business; and
- (c) but for the acquisition, the land would be, or would continue to be, used for that purpose; and
- (d) at the time of assessing compensation, there is no general demand or market for land used for that purpose; and
- (e) the person has acquired or proposes to acquire for the same purpose another interest in land in substitution for the interest to be acquired,

then, for the purposes of this Act, the market value at the time of assessing compensation of the interest to be acquired is the greater of the following:

- (f) the amount that, apart from this section, would be the market value (if any) of that interest;
- (g) the net acquisition cost in relation to the interest substituted or proposed to be substituted for the acquired interest.

(2) For the purpose of subsection (1) (g), the net acquisition cost, in relation to the interest substituted or proposed to be substituted, is the amount calculated in accordance with the following formula:

$$N = C + E - V$$

where:

- N represents the net acquisition cost to be determined;
- C represents the cost or the expected cost to the person of acquiring the interest to be substituted for the acquired interest;
- E represents the amount of the expenses and losses incurred, or likely to be incurred, by the person as a result of, or incidental to, ceasing to use the interest to be acquired and starting to use the substituted interest for the same purpose;
- V represents the current value of any real and substantial saving in recurring costs that the person will derive as a result of having acquired the substituted interest in land.

**What happens where land etc. is affected by a planning restriction**

**24. If:**

- (a) an interest in land is to be acquired from a person under this Part; and
- (b) an environmental planning instrument is in force which has the effect of restricting the use of the land for a public purpose; and
- (c) the instrument was made to satisfy the requirements of the Crown, a public authority or a council; and
- (d) the instrument was not in force when the person acquired the interest,

then, in determining the amount of compensation that the person is entitled to receive for the interest, the following provisions apply:

- (e) the restriction on the use of the land is to be disregarded;
- (f) it is to be assumed that the land is subject only to such restrictions as would have been likely to apply if there had been no proposal to restrict the use of the land for the purpose permitted by the instrument.

**What factors are to be disregarded in assessing compensation**

**25.** The following factors are to be disregarded in assessing compensation under this Division for the acquisition of an interest in land for the purposes of a road:

- (a) any speciality, suitability or adaptability of the land for a purpose for which it could be used only in accordance with a power conferred by or under a law, or for which it could be used only by the Crown or by a public authority or council;
- (b) any increase in the value of the interest that is attributable to its use in a manner or for a purpose contrary to law;
- (c) any increase in the value of the interest that is attributable to the establishment of the proposed road by the expenditure of public funds or its use by the public as a public thoroughfare or public way;
- (d) any increase in the value of the interest that may reasonably be expected to be attributable to any improvements made to the land after the publication of the relevant notice in accordance with section 6 (1), unless the improvements were carried out with the written approval of the Minister.

**What effect the acquisition of a mortgage interest has**

26. (1) If a mortgage interest is acquired under this Part, the mortgagee retains, in respect of so much of the mortgage debt as is not discharged under this Division, any rights that the mortgagee has against the mortgagor or in respect of any interest in land that remains subject to the mortgage.

(2) If:

- (a) an interest in land is to be acquired under this Part; and
- (b) the interest is subject to one or more mortgages,

then, as a general rule, the compensation to which the owner of the interest will be entitled in respect of the acquisition is to be determined as if the land or interest had not been subject to the mortgage.

(3) However, if compensation is payable under this Division to a mortgagee in respect of a mortgage interest, the compensation payable to the owner of the interest to be acquired is to be reduced by so much of the compensation as is payable to the mortgagee.

**Interest to accrue in respect of compensation not paid at the appropriate time**

27. If monetary compensation agreed to or determined in respect of an interest in land under this Part is not paid within 28 days after the date on which notification of the acquisition is published in the Gazette:

- (a) interest accrues in respect of the amount of that compensation from the end of that period:
  - (i) up to and including the day on which the compensation is paid; or
  - (ii) if payment is delayed through the fault of the person entitled to the compensation, up to and including the day on which the compensation would have been paid but for the delay,

at the rate for the time being specified in a notification in force under section 126A (5) of the Public Works Act 1912; and

- (b) the relevant compensating authority is liable to pay to the person entitled to the compensation the accrued amount of that interest as well as the amount of compensation agreed to or determined under this Division.

**Compensation not to be made for mines or minerals in land acquired for a road (see Act No. 95, 1902, s. 15)**

**28. (1)** Compensation may not be made for a mine or minerals existing or presumed to exist in land an interest in which is to be acquired under this Part.

**(2)** If an interest in a stratum of land is to be acquired under this Part for the purposes of a road, a mine or minerals either below or above the stratum is not affected.

**(3)** If an interest in a stratum of land is to be acquired under this Part for the purposes of a road, any person who is working a mine or minerals below or above the stratum must ensure:

- (a)** that sufficient support is left for the road; and
- (b)** that the mine or mineral works will not otherwise cause damage to the road.

**(4)** If, as a result of working any such mine or minerals, the road subsides or is otherwise damaged or the safety or stability of the road is endangered:

- (a)** the appropriate roads authority may repair the road; or
- (b)** the Minister may open a new road to replace it.

**(5)** If the Minister is not the appropriate roads authority, the Minister may exercise the power conferred by subsection (4) (b) only on the advice of that authority.

**(6)** If a road is repaired or replaced in accordance with subsection (4), the appropriate roads authority or, as the case may be, the Minister may, by proceedings brought in a court of competent jurisdiction, recover as a debt from the person working the mine or minerals:

- (a)** the cost of repairing the road; or
- (b)** the cost of acquiring land to provide a new road to replace the road, together with the cost of providing the new road.

**Effect of receipt for compensation**

29. (1) A receipt given by a person who has received compensation under this Division for the acquisition of an interest in land, whether in the form of money or in the form of an interest in land or partly in the form of money and partly in the form of an interest in land, discharges the relevant compensating authority from all claims in connection with that acquisition.

(2) In this section, the reference to a person includes a reference to a trustee who does not have a power of sale.

**What happens when the compensation to be provided is in the form of an interest in land**

30. (1) An interest in land may be provided as compensation for the purpose of this Division only if the interest is an interest in unoccupied Crown land that adjoins an aggregate holding from which the compensable interest is to be acquired.

(2) An interest in land may be provided as compensation under this Division even though the interest is different from that held in the adjoining land by the person to be compensated.

(3) If compensation under this Division is to be provided in the form of an interest in land, the person entitled to compensation is to be treated as being fully compensated if:

- (a) the market value of that interest is equal to or substantially equal to the amount of compensation that would otherwise have been provided in the form of money; or
- (b) where the market value of that interest is less than the amount referred to in paragraph (a) - that person agrees to accept that interest in full satisfaction of the claim for compensation.

(4) If:

- (a) the market value of the interest in land to be acquired under this Part is less than that of the interest to be provided as compensation under this Division; and
- (b) the person entitled to compensation and the relevant compensating authority have not reached agreement as to that compensation,

that person must pay the difference in value.

(5) If:

- (a) the market value of the land or interest to be acquired under this Part is greater than that of the interest in land to be provided as compensation under this Division; and
- (b) the person entitled to compensation and the relevant compensating authority have not reached agreement as to that compensation,

then, subject to subsection (3), the relevant compensating authority must pay the difference in value.

(6) A document executed for the purpose of giving effect to a direction of the Minister given under section 13 (3):

- (a) is not liable to stamp duty under the Stamp Duties Act 1920; and
- (b) is entitled to be registered or recorded under any Act without payment of any fee that would otherwise be payable.

(7) For the purpose of this section, land is unoccupied Crown land that adjoins an aggregate holding if it adjoins any part of that holding.

(8) In this section, "aggregate holding" means:

- (a) the area of a lot, portion or parcel of land; or
- (b) the aggregation of 2 or more adjoining lots, portions or parcels of land in the same ownership or occupation.

**Special provisions that apply where compensation is to be provided in the form of a leasehold interest**

31. (1) If:

- (a) the Minister directs that a leasehold interest in unoccupied Crown land is to be provided as compensation under this Division; and
- (b) the land owned or occupied by the person to be compensated is held under a lease granted under the Crown Lands Acts (other than a yearly lease),

the Minister may, with the consent of the owner or occupier of that holding, also direct that the leasehold interest to be provided as compensation be added to the lease referred to in paragraph (b) or, instead, be the subject of a separate lease under those Acts.



(2) Subject to this section, a direction given under this section has effect according to its tenor.

(3) Any leasehold interest directed to be added to a lease referred to in subsection (1) (b) is to be held as part of the lease for its unexpired term and is to be subject to the payment of such rent and to compliance with such covenants and conditions as the Minister determines.

(4) If a leasehold interest referred to in subsection (1) is directed to be the subject of a separate lease, the lease is to be for such term, and is to be subject to the payment of such rent and to compliance with such covenants and conditions, as the Minister determines.

(5) For the purposes of subsection (1), it is immaterial whether a folio of the Land Register has been created in respect of the land or leasehold interest concerned.

(6) If:

- (a) a leasehold interest in land is to be provided as compensation under this Division and there are improvements on the land; and
- (b) by virtue of a covenant or condition determined for the purpose of subsection (3) or (4) or contained in the lease, the person who is to be the holder of the interest is required to purchase any of the improvements on the land,

the value of those improvements is to be disregarded in determining the market value of that interest.

(7) If:

- (a) a leasehold interest in land is to be provided as compensation under this Division and there are improvements on the land; and
- (b) by virtue of a covenant or condition determined for the purpose of subsection (3) or (4) or contained in the lease, the person who is to be the holder of the interest is not required to purchase those improvements or is required to purchase only some of those improvements,

the value of those improvements or, as the case may be, the value of the improvements not required to be purchased is to be taken into account in determining the market value of that interest.

**What happens when a person entitled to compensation cannot be located**

**32. (1)** If the relevant compensating authority:

- (a) does not know and cannot reasonably ascertain the identity or whereabouts of the owner of an interest in land that is to be acquired under this Part; or
- (b) is prevented from negotiating with a person who is the owner of such an interest because of that person's absence from New South Wales,

that authority may apply to the local land board to determine that person's entitlement to compensation for the acquisition of that interest and the amount of that compensation.

(2) If the person entitled does not claim the compensation determined under subsection (1) within the period prescribed by the regulations, the relevant compensating authority must pay the amount of that compensation to the Treasurer.

(3) The Treasurer must pay the amount paid under subsection (2) into the Consolidated Fund.

(4) The Treasurer must cause to be published in the Gazette such information as appears to the Treasurer to be necessary or desirable for the purpose of publicly notifying:

- (a) the existence of each amount paid to the Treasurer under this section; and
- (b) if known, the identity of the person entitled to receive the amount.

(5) A compensating authority which pays an amount of money to the Treasurer under this section is relieved from further liability with respect to that amount.

(6) Any person claiming to be entitled to an amount paid into the Consolidated Fund under this section may make an application to the Land and Environment Court for an order declaring the person's entitlement to that amount.

(7) If satisfied that the person is entitled to the amount, the Court must make an order declaring the person's entitlement, but otherwise it must refuse the person's application.

(8) On the making of an order in respect of a person under subsection (7) or, if the Treasurer is satisfied as a result of the

production of other evidence that a person is entitled to an amount paid into the Consolidated Fund under this section, the Treasurer must pay the amount to that person.

**Division 3 - Supplementary provisions**

**How surplus land may be disposed of (see Act No. 95, 1902, s. 17)**

**33. (1)** If land acquired under this Part is not required for the purpose of a road or providing compensation, the Minister may deal with the land in accordance with this section or the Crown Lands Acts.

**(2)** If the Minister decides to deal with the land in accordance with this section, the Minister must serve on each person who owns a specified interest in any adjoining land a notice inviting that person to lodge at the office of the Department of Lands specified in the notice an application to acquire a specified interest in that land.

**(3)** In subsection (2), "specified interest" means:

- (a)** an estate in fee simple; or
- (b)** a lease, licence, permit or permissive occupancy granted under the Crown Lands Acts; or
- (c)** an easement; or
- (d)** an interest in land prescribed by the regulations for the purposes of this section.

**(4)** A notice under subsection (2) may specify terms and conditions that must be complied with as a prerequisite to the granting of such an application.

**(5)** If an application is made to the Minister in response to a notice served in accordance with subsection (2) by a person who is the holder of a lease under the Crown Lands Acts (other than a yearly lease), the Minister may:

- (a)** direct that an equivalent leasehold interest in the land concerned be added to that lease; or
- (b)** direct instead that a separate lease under the Crown Lands Acts be granted to the applicant in respect of that land, or that the fee simple in that land be vested in the applicant.

**(6)** If an application is made to the Minister in response to a notice served in accordance with subsection (2) by a person who is the holder of a yearly lease, licence, permit or permissive occupancy under the

Crown Lands Acts, the Minister may direct that an equivalent interest be recorded within the Department of Lands as having been added to the lease, licence, permit or permissive occupancy.

(7) Whenever an interest in land is to be disposed of under this section, it must be disposed of at the value, or (if the case so requires) subject to a rent, determined by the Minister in respect of both the interest and any improvements on the land.

(8) The disposal of an interest under this section is to be subject to such terms and conditions as are determined by the Minister.

(9) If it is proposed to dispose of the fee simple estate in land in accordance with this section, the value of any improvements on the land must be included in the price of the land.

(10) If a person on whom a notice has been served in accordance with subsection (2):

- (a) has failed to lodge an application for the interest specified in the notice within the period so specified; or
- (b) having lodged such an application within that period, has failed to comply with any term or condition specified in the notice within the period allowed for compliance,

the Minister may deal with the interest in accordance with the Crown Lands Acts.

(11) Subject to this section, a direction given under this section has effect according to its tenor.

(12) For the purposes of subsection (5), it is immaterial whether a folio of the Land Register has been created in respect of the land or leasehold interest concerned.

### **Use of Crown road**

**34. (1)** A Crown road is open to the public as of right for the purpose of passing and repassing, irrespective of whether it is formed or constructed as a road.

(2) Subsection (1) is subject to the provisions of Parts 4 and 5 of this Act and section 72 of the Crown Lands Act 1989.

(3) Until closed in accordance with section 45, a Crown road is not capable of being reserved, dedicated, sold, leased or otherwise disposed of under the provisions of the Crown Lands Acts.

(4) However, the Minister may, in accordance with the Crown Lands Acts, grant easements, licences or permits over or in respect of a Crown road so long as they are not inconsistent with the public right conferred by subsection (1).

(5) A Crown road is not a public road for the purposes of Part 9 of the Local Government Act 1919.

**Provisions applicable to public roads**

35. (1) Part 9 of the Local Government Act 1919 applies to any land or road dedicated as a public road by virtue of section 7, 10 or 11.

(2) If a notice published in accordance with section 7, 10 or 11 declares a stratum of land to be a public road:

- (a) the application of Part 9 of the Local Government Act 1919 is limited to that stratum; and
- (b) only the fee simple in that stratum vests in the council by virtue of that Act.

**Crown road to continue to be Crown land**

36. (1) Any land that:

- (a) is acquired for the purposes of a road; or
- (b) is declared to be a Crown road; or
- (c) was, immediately before the commencement of this section, a Crown road,

becomes or, as the case may be, continues to be Crown land within the meaning of the Crown Lands Act 1989 until it ceases to be Crown land by virtue of the operation of this or any other Act.

(2) This section applies irrespective of what any other Act provides.

**PART 3 - RE-MARKING, RE-ALIGNMENT AND  
ALTERATION OF ROADS**

**Part 3 not to apply to classified roads**

37. This Part does not apply to a road that is a classified road within the meaning of the State Roads Act 1986.

**Power of the Minister to re-mark road** (see Act No. 95, 1902, ss. 23, 24)

**38. (1)** Whenever the position and boundaries of a road required for public traffic cannot be identified because of the absence or loss of the survey marks, the Minister may cause the road to be re-marked in substantially the same position.

**(2)** If a road is re-marked in accordance with section 37 as a consequence of the application of any person, the applicant must bear the cost of the re-marking.

**Notice of re-marking of road to be published** (see Act No. 95, 1902, s. 25)

**39. (1)** When a road has been re-marked in accordance with section 38, the Minister must publish in the Gazette a notice specifying generally the extent and direction of the road.

**(2)** Such a notice must:

- (a)** refer to a plan of survey of the re-marking of the road; and
- (b)** invite any person who wishes to object to the road as re-marked to set out the objection in writing and lodge it at the office of the Department of Lands specified in the notice on or before such date, or within such period, as is so specified.

**(3)** When the notice has been published in accordance with subsection (1), the Minister must:

- (a)** publish in a local newspaper an advertisement drawing attention to the notice; and
- (b)** ensure that, for a period of not less than 28 days after the date of the publication of the advertisement, a copy of plan of survey of the re-marking of the road is kept for inspection at the office of the Department of Lands specified in the notice.

**(4)** Subject to compliance with subsections (1)-(3) and after properly considering all objections (if any) lodged on or before such date, or within such period, as is specified in the notice for lodging objections, the Minister may approve the plan of survey, either with or without alteration, by a further notice published in the Gazette.

**(5)** A road re-marked according to a plan approved under subsection (4) is to be taken to represent and to be the original road.

**Defining the boundaries of and re-aligning roads** (see Act No. 95, 1902, s. 27)

**40. (1)** The Minister may cause surveys to be carried out and a plan to be prepared for any of the following purposes:

- (a) defining:
  - (i) the carriageway and footways of a road; and
  - (ii) the boundary between a road and any land that abuts it, or either of them;
- (b) re-marking or altering:
  - (i) the width and position of the carriageway and footways of any road that has previously been aligned under this or any other Act; and
  - (ii) the boundary between such a road and land that abuts it, or either of them;
- (c) re-aligning a public road vested in or under the control and management of a council for the purpose of widening it under section 262 of the Local Government Act 1919.

**(2)** The power conferred by subsection (1) is exercisable only:

- (a) on the written application of the relevant council on its written undertaking to pay when called on to do so the whole of the cost of carrying out the work referred to in that subsection; or
- (b) whenever the Minister considers the action would be in the public interest.

**(3)** When the surveys have been carried out and the plan has been prepared in accordance with subsection (1), the Minister must publish in the Gazette a notice giving details of the proposed action.

**(4)** The notice must:

- (a) refer to the plan; and
- (b) invite any person who wishes to object to the plan to set out the objection in writing and lodge it with an office of the Department of Lands on or before such date, or within such period, as is specified in the notice.

**(5)** When the notice has been published in accordance with subsection (3), the Minister must:

- (a) publish in a local newspaper an advertisement drawing attention to the notice; and
- (b) serve on each person who owns a major interest in any land having frontage to the road to which the proposed action relates a notice in writing stating the effect of the published notice; and
- (c) ensure that, for a period of not less than 28 days after the date of publication of the advertisement, a copy of the plan is kept for inspection at the office of the Department of Lands specified in the notice.

(6) Subject to compliance with subsections (1)-(5) and after properly considering all objections (if any) lodged on or before such date, or within such period, as is specified in the notice published in accordance with subsection (3), the Minister may approve the plan prepared for a purpose referred to in subsection (1) by further notice published in the Gazette.

(7) However, the Minister must not approve a plan prepared for the purpose of subsection (1) (c) in relation to a road that has been aligned unless satisfied that the road has been sufficiently measured.

(8) On the publication in the Gazette of the further notice:

- (a) any definition of a carriageway or footway or of the boundary between a road and any land that abuts it; or
- (b) any re-marking or alteration of the width or position of a carriageway or footway, or of the boundary between a road and any land that abuts it; or
- (c) any re-alignment of a road,

shown on the plan to which the approval relates is, for the purposes of any enactment relating to the alignment of streets, roads or public places, to be taken to have been carried out or caused by the council concerned as provided by Part 9 of the Local Government Act 1919.

(9) When the Minister's approval is published in accordance with subsection (6), the plan to which the approval relates is for all purposes, until superseded by another plan of survey approved under this section:

- (a) conclusive proof of the boundaries of the road; or
- (b) if the plan shows a re-alignment that has not been rescinded, conclusive proof of that re-alignment.



**Power of the Minister to rescind or vary a re-alignment**

41. (1) The Minister may, by a further notice in the Gazette:
- (a) rescind a re-alignment effected by an approval under section 40 (6); or
  - (b) vary such a re-alignment by excluding land specified or described in the further notice from the re-alignment, being land:
    - (i) which is part of the land subject to the re-alignment; and
    - (ii) which has not vested in the council as a public road in accordance with section 262 (4) of the Local Government Act 1919.

(2) The function conferred on the Minister by subsection (1) is exercisable only:

- (a) on the written application of the relevant council; or
- (b) whenever the Minister considers the action would be in the public interest.

(3) If a re-alignment shown on a plan prepared for the purposes of section 40 has been varied under subsection (1) (b), the re-alignment shown on the plan is, for the purposes of that section, to be taken to be and to have always been the re-alignment as so varied.

**PART 4 - CLOSURE OF ROADS**

**Power of the Minister to close a road**

42. (1) A road may be closed only in accordance with this Part.

(2) The Minister may exercise the functions conferred or imposed by this Part on his or her own initiative or as a result of an application under section 43.

(3) This section is subject to section 276C of the Local Government Act 1919.

**Application to the Minister to close a road**

43. (1) Any person may make an application to the Minister to close a road.

- (2) Such an application must:
- (a) be in a form approved by the Minister; and
  - (b) be accompanied by the application fee prescribed by the regulations.
- (3) Whenever an application has been made under this section, the Minister may, by notice in writing served on the applicant, require the applicant to lodge with the Minister:
- (a) any additional fee required to cover the cost of processing the application; or
  - (b) any amount of money necessary to defray the cost connected with closing the road; or
  - (c) any further information that the applicant has relevant to the closing of the road.
- (4) If:
- (a) an amount of money specified in a notice served under subsection (3) is not paid; or
  - (b) information so specified is not lodged,
- within 28 days after the service of the notice, or within such extended period as the Minister may allow, the application concerned lapses at the end of that period of 28 days or that extended period.
- (5) The Minister may refuse an application under this section for any reason that appears to the Minister to be appropriate.
- (6) If the Minister refuses such an application, the Minister must notify the applicant in writing of the refusal and of the reasons for it.
- (7) An applicant under this section may withdraw the application at any time before the road is closed in accordance with this Part.
- (8) If an application under this section lapses or is refused or withdrawn, the Minister:
- (a) may, after deducting an amount sufficient to cover the cost of processing the application, refund to the applicant the whole or any part of the application fee; and
  - (b) must refund to the applicant any other money that has been paid to the Minister under this section but has not been spent in connection with the application.

**Notice to be given of an intention to close a road** (see Act No. 95, 1902, s. 19)

**44. (1)** Whenever the Minister proposes to consider closing a road, the Minister must publish in the Gazette a notice:

- (a) giving particulars of the proposal; and
- (b) inviting any person who wishes to object to the proposal to set out the objection in writing and lodge it at the office of the Department of Lands specified in the notice on or before such date, or within such period, as is specified in the notice.

**(2)** When a notice has been published in accordance with subsection (1), the Minister must:

- (a) publish an advertisement in a local newspaper drawing attention to the notice; and
- (b) serve a copy of the notice on the owner of each major interest in any land having a frontage to the road that is the subject of the proposal.

**(3)** If it is proposed to close a road and to open another road under Part 2 to replace it, the particulars to be specified in the notice required by this section may be included in the notice published in accordance with section 6, 7, 10 or 11, as the case requires.

**(4)** If the particulars referred to in subsection (1) are included in the notice so published, a separate notice under this section is not required.

**Procedure for closing a road** (see Act No. 95, 1902, s. 20 (1), (2))

**45. (1)** The Minister may, by order published in the Gazette, declare a road specified in the order to be closed.

**(2)** On the publication of an order in accordance with subsection (1), the land that constitutes the road that is closed becomes free from rights of the public or of particular persons to use it as a public thoroughfare or public way and:

- (a) if that road was, immediately before the publication of the order, a quarter sessions road - vests in the owners of the adjoining land; or
- (b) if that road (not being a quarter sessions road) was, immediately before the publication of the order, vested in a person other than the Crown - becomes Crown land; or

- (c) in the case of any other road - continues to be Crown land.
- (3) The power conferred by subsection (1) is not exercisable unless:
  - (a) the requirements of section 44 have been satisfied; and
  - (b) a period of not less than 28 days has elapsed since the advertisement referred to in section 44 (2) (a) was published; and
  - (c) the Minister has considered all objections lodged with the Minister within the period specified in the notice published in accordance with section 44 (1); and
  - (d) if the road is a classified road within the meaning of the State Roads Act 1986 - the Roads and Traffic Authority has consented to the closure of the road; and
  - (e) if the road is a public road located in the local government area of a council - the council has consented to the closure of the road.

**Disposal of land that formerly constituted a closed road (see Act No. 95, 1902, ss. 20 (3), (4), 20A (1), (3))**

**46. (1)** If land that formerly constituted a road is or becomes Crown land by virtue of section 45, the Minister may deal with the land in accordance with this section or the provisions of the Crown Lands Acts.

**(2)** If the Minister decides to deal with the land in accordance with this section, the Minister must serve on each person who owns a specified interest in any adjoining land a notice inviting that person to lodge at the office of the Department of Lands specified in the notice an application to acquire a specified interest in that land.

**(3)** In subsection (2), "specified interest" means:

- (a) an estate in fee simple; or
- (b) a lease, licence, permit or permissive occupancy granted under the Crown Lands Acts; or
- (c) an easement; or
- (d) an interest in land prescribed by the regulations for the purposes of this section.

**(4)** A notice under subsection (2) may specify terms and conditions that must be complied with as a prerequisite to the granting of such an application.

(5) If an application is made to the Minister in response to a notice served in accordance with subsection (2) by a person who is the holder of a lease under the Crown Lands Acts (other than a yearly lease), the Minister may:

- (a) direct that an equivalent leasehold interest in the land concerned be added to that lease; or
- (b) direct instead that a separate lease under the Crown Lands Acts be granted to the applicant in respect of that land, or that the fee simple in that land be vested in the applicant.

(6) If an application is made to the Minister in response to a notice served in accordance with subsection (2) by a person who is the holder of a yearly lease, licence, permit or permissive occupancy under the Crown Lands Acts, the Minister may direct that an equivalent interest be recorded within the Department of Lands as having been added to the lease, licence, permit or permissive occupancy.

(7) Whenever an interest in land is to be disposed of under this section, it must be disposed of at the value, or (if the case so requires) subject to a rent, determined by the Minister in respect of both the interest and any improvements on the land.

(8) The disposal of an interest under this section is to be subject to such terms and conditions as are determined by the Minister.

(9) If it is proposed to dispose of the fee simple estate in land in accordance with this section, the value of any improvements on the land must be included in the price of the land.

(10) If a person on whom a notice has been served in accordance with subsection (2):

- (a) has failed to lodge an application for the interest specified in the notice within the period so specified; or
- (b) having lodged such an application within that period, has failed to comply with any term or condition specified in the notice within the period allowed for compliance,

the Minister may deal with the interest in accordance with the Crown Lands Acts.

(11) Subject to this section, a direction given under this section has effect according to its tenor.

(12) For the purposes of subsection (5), it is immaterial whether a folio of the Land Register has been created in respect of the land or leasehold interest concerned.

**Temporary closing of Crown roads on notice** (see Act No. 95, 1902, s. 21)

47. (1) The Minister may, by order published in the Gazette, declare a Crown road specified in the order to be closed temporarily for a period not exceeding 12 months for any specified reason that appears to the Minister appropriate.

(2) An order under subsection (1) does not have effect unless there is displayed in a conspicuous place:

- (a) at each end of the road that is closed; and
- (b) at each point at which another road provides access to that road,

a notice in legible writing indicating that, by order of the Minister, the road beyond the notice is closed as a public thoroughfare or public way for the period specified in the notice.

(3) Whenever an order under subsection (1) is in force, the Minister may cause barriers to be erected with a view to preventing the closed road from being used as a public thoroughfare or public way.

(4) While a road is temporarily closed under this section, the rights of the public or any person to use the road as a public thoroughfare or public way are suspended.

(5) The Minister may, by further order published in the Gazette:

- (a) revoke an order made under subsection (1) temporarily closing a road; or
- (b) shorten the period for which the road is closed; or
- (c) reduce the extent of road that is temporarily closed under this section.

**Temporary closing of Crown roads without notice**

48. (1) If it appears to the Minister that the continued use of a Crown road as a public thoroughfare or public way would endanger users of the road, the Minister may, by order, declare the road to be closed temporarily for such period, not exceeding 2 months, as may be specified in the order.

(2) An order under subsection (1) does not have effect unless there is displayed in a conspicuous place:

- (a) at each end of the road that is closed; and
- (b) at each point at which another road provides access to that road,

a notice in legible writing indicating that, by order of the Minister, the road beyond the notice is closed as a public thoroughfare or public way for the period specified in the notice.

(3) As soon as the Minister becomes aware that the danger referred to in subsection (1) no longer exists, the Minister must revoke the order made under that subsection in consequence of the danger.

(4) Whenever an order under subsection (1) is in force, the Minister may cause barriers to be erected with a view to preventing the closed road from being used as a public thoroughfare or public way.

(5) If:

- (a) it appears to the Minister that a danger referred to in subsection (1) is likely to continue beyond the period for which the Minister has made an order under that subsection; and
- (b) that period was less than 2 months,

the Minister may make a further order extending that period up to and including a date that is not more than 2 months from the date on which the original order took effect.

(6) While a road is temporarily closed under this section, the rights of the public or any person to use the road as a public thoroughfare or public way are suspended.

(7) No notice is required as a prerequisite to the exercise of the powers conferred by this section.

(8) The Minister may, by further order published in the Gazette:

- (a) revoke an order under subsection (1) temporarily closing a road; or
- (b) shorten the period for which the road is closed; or
- (c) reduce the extent of road that is temporarily closed under this section.

**Power of the Minister to limit the closure of a road to a specified stratum**

49. Whenever the Minister, in accordance with a power conferred by this Part, proposes to declare a road to be closed in accordance with this Part, the Minister may, in the order by which the declaration is to be made, also declare that the order applies only to:

- (a) land down to a specified depth below the surface of the land;  
or
- (b) airspace up to a specified height above the surface of the land;  
or
- (c) land lying between specified depths below the surface; or
- (d) airspace between specified heights above the surface of the land; or
- (e) land and airspace between a specified depth below, and a specified height above, the surface of the land,

and, in such a case, the declaration has effect accordingly.

**PART 5 - REGULATION OF CROWN ROADS**

**Power of the Minister to declare a Crown road to be a controlled Crown road**

50. (1) The Minister may, by order published in the Gazette, declare any specified Crown road to be a controlled Crown road.

(2) As soon as practicable after an order has been published under subsection (1), the Minister must publish in a local newspaper an advertisement giving particulars of the order.

(3) Mere failure to publish such an advertisement does not invalidate an order made under subsection (1).

(4) The Minister may, in an order referred to in subsection (1), set out the prohibitions, restrictions or conditions that apply to the road referred to in the order.

**Power of the Minister to vary the prohibitions, restrictions and conditions applicable to a controlled Crown road**

51. (1) In relation to a particular controlled Crown road, the Minister may, at any time by order published in the Gazette, add to or



modify the prohibitions, restrictions or conditions that would apply to that road apart from the order.

(2) Whenever an order is published under this section, the Minister must publish in a local newspaper an advertisement giving particulars of the order.

#### **Offences in relation to the use of a controlled Crown road**

52. Any person who, in using a controlled Crown road, knowingly contravenes a prohibition, restriction or condition applicable to the road is guilty of an offence.

Maximum penalty: 5 penalty units.

#### **Regulations relating to Crown roads**

53. (1) The regulations may:

- (a) prescribe kinds of traffic that may be prohibited from using controlled Crown roads; and
- (b) prescribe kinds of animals that may not be ridden, driven or led on controlled Crown roads; and
- (c) prescribe prohibitions, restrictions or conditions that are to apply to or in relation to controlled Crown roads; and
- (d) provide for the care, control and management by the Crown of controlled Crown roads.

(2) Prohibitions, restrictions or conditions that may be prescribed under subsection (1) (c) with respect to controlled Crown roads include, but are not limited to, prohibitions, restrictions or conditions as to the uses to which those roads may be put.

## **PART 6 - LEGAL PROCEEDINGS**

### **Division 1 - Offences**

**Obstructing an authorised person in the exercise of a power conferred by s. 66 (see Act No. 95, 1902, s. 31)**

54. (1) Any person who intentionally or recklessly:

- (a) obstructs or hinders an authorised person in the exercise of a power conferred by section 66; or

- (b) without lawful authority, removes, alters or interferes with a stake, mark or trench installed or constructed in accordance with section 66 (1) (b),

is guilty of an offence.

Maximum penalty: 10 penalty units.

(2) A person is not guilty of an offence under subsection (1) (a) unless the prosecution establishes:

- (a) that the person purporting to exercise the power concerned identified himself or herself at the relevant time as an authorised person who had that power; or
- (b) that the defendant otherwise knew that that person was an authorised person empowered to exercise that power.

**Offence to damage or obstruct a road (see Act No. 95, 1902, s. 32)**

55. (1) Any person who, without lawful authority, deliberately or recklessly:

- (a) damages or causes damage to a road (otherwise than by fair wear and tear); or
- (b) obstructs a road or causes a road to be obstructed,

is guilty of an offence.

Maximum penalty: 50 penalty units.

(2) In this section, "road" does not include:

- (a) a public road located within the local government area of a council; or
- (b) a classified road within the meaning of the State Roads Act 1986.

**Proceedings for offences**

56. Proceedings for an offence against this Act or the regulations are required to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Offences committed by corporations**

57. (1) If a corporation contravenes a provision of this Act or the regulations, each person who is:

(a) a director of the corporation; or  
(b) concerned in the management of the corporation,  
is to be treated as having contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may, under subsection (1), be proceeded against and convicted for a contravention of a provision of this Act or the regulations whether or not the corporation has been proceeded against or convicted for a contravention of the same provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

### **Division 2 - Appeals etc. to the Land and Environment Court**

#### **Definition of "decision" for the purposes of Division 2**

58. (1) In this Division, "decision" includes adjudication, determination, award and recommendation.

(2) This Division does not apply to a decision made in respect of a matter referred by the Minister to a local land board for inquiry and report under section 68.

#### **Persons may appeal to the Land and Environment Court against local land board decisions**

59. Any party to proceedings before a local land board under this Act may appeal to the Land and Environment Court against the decision of that board.

#### **Local land board may refer matters to the Land and Environment Court**

60. (1) A local land board, instead of giving a decision in a particular case arising under this Act, may, after taking evidence, refer the case and evidence for decision by the Land and Environment Court.

(2) The Land and Environment Court has power to deal with a case referred to it under subsection (1) in all respects as if the case had been brought before it in the first instance.

**How an appeal under this Act is to be lodged**

**61. (1)** An appeal under this Act to the Land and Environment Court must be lodged within 28 days after the decision that is appealed against or, if that Court allows a further period for lodging an appeal, that further period.

**(2)** Such an appeal must:

- (a)** be lodged in the manner prescribed by the regulations; and
- (b)** where so prescribed - be accompanied by security for the costs of the appeal.

**(3)** No such appeal lies in respect of the acquisition of an interest in land under Part 2 after the interest has been acquired under that Part.

**Powers of the Land and Environment Court under this Division**

**62.** The Land and Environment Court has power:

- (a)** to hear and determine all appeals lodged with it under this Act and any matters referred to it by a local land board under section 60; and
- (b)** to make any order or decision which the nature of the case may require.

**Division 3 - Other matters**

**Crown not to be liable for injury etc. resulting from alignment or re-alignment of a road (see Act No. 95, 1902, s. 29)**

**63.** No civil proceedings are maintainable against the Crown or the Minister for injury or damage attributable to the alignment or an alteration to the alignment of a road under this Act.

**Appropriate roads authority to have power to bring proceedings for the recovery of costs of repairing road etc. (see Act No. 95, 1902, s. 33)**

**64. (1)** If a person, without lawful authority, deliberately, recklessly or negligently:

- (a)** damages or causes damage to a road (otherwise than by fair wear and tear); or

(b) obstructs a road or causes a road to be obstructed, the appropriate roads authority may bring legal proceedings against the person in any court of competent jurisdiction for the recovery of the cost of repairing the damage or removing the obstruction.

(2) Proceedings in relation to a matter may be brought under this section against a person who could have been charged with an offence against section 55 concerning the same matter whether or not the person has been charged with having committed or has been convicted of such an offence.

### **PART 7 - MISCELLANEOUS PROVISIONS**

**Exclusions, exceptions and reservations from a disposal of land in accordance with this Act (see Act No. 95, 1902, s. 22A)**

65. (1) A disposal of land by the Crown in accordance with this Act does not include any mineral in the land.

(2) When creating a folio of the Land Register in respect of an interest in land disposed of under this Act, the Registrar-General must record any encumbrance required by the Minister and notified to the Registrar-General.

(3) A disposal of an interest in land under this Act is subject to any encumbrance approved or specified by the Minister.

(4) In this section:

"encumbrance" means:

- (a) a reservation, exception, covenant or easement (including an easement for public access created in accordance with section 56 of the Crown Lands Act 1989); or
- (b) without affecting any liability under the Mine Subsidence Compensation Act 1961 - a condition having the effect of protecting the Crown and any mining lessee against any other liability that could arise from subsidence as a result of mining operations;

"mineral", in relation to the disposal of an interest in land, has the same meaning as it has in section 3 (1) of the Crown Lands Act 1989 at the time when the disposal takes effect.

**Power of authorised persons to enter land for the purposes of this Act**  
(see Act No. 95, 1902, s. 30)

66. (1) To enable surveys and other functions to be carried out under or for the purposes of this Act, an authorised person may, at any reasonable time, exercise all or any of the following powers:

- (a) the power to enter the land of any person;
- (b) the power to survey and take levels of that land and to ascertain and set out, by means of stakes, marks and trenches, such parts of that land as may be required for a road;
- (c) the power to trace and determine the boundaries of any land that may be affected by a proposed road;
- (d) the power to mark and fell trees;
- (e) the power to open and remove fences;
- (f) the power to erect and exhibit notices required or authorised by this Act;
- (g) the power to do anything ancillary to the exercise of any of the powers specified in paragraphs (a)-(f).

(2) An authorised person who is exercising a power under this section must ensure that the property of a person is not damaged any more than is necessary in order to fulfil the purposes of this Act.

(3) If any property is damaged while a power under subsection (1) is being exercised, the appropriate roads authority must ensure that the property is repaired and restored or, if necessary, replaced.

**Certificate as to authorised persons**

67. A certificate signed by the appropriate roads authority and certifying that a person named in the certificate:

(a) is; or

(b) was at a particular time, or during a particular period,

an authorised person for the purposes of this Act or the regulations or of a specified provision of this Act or the regulations is admissible in legal proceedings as evidence of the matters certified.

**Power of the Minister to refer disputed matters to the local land board for report** (see Act No. 95, 1902, s. 34 (2))

68. (1) The Minister may refer to the appropriate local land board, or to the chairperson of that board sitting alone, for inquiry and report:

- (a) any matter that has arisen in connection with:
    - (i) the opening or proposed opening of a road under this Act; or
    - (ii) the closure or proposed closure of a road under this Act; or
    - (iii) the exercise or proposed exercise of any function conferred or imposed on any person by or under this Act in relation to a road or proposed road or land that is included in a former road that has been closed under this Act or the former Act; or
  - (b) any other matter arising out of the administration of this Act.
- (2) As soon as practicable after receiving a reference under subsection (1), the local land board concerned must:
- (a) hold an inquiry into the matter that is the subject of the reference; and
  - (b) prepare a report in writing of its findings with respect to the matter; and
  - (c) submit that report to the Minister.
- (3) No appeal lies to the Land and Environment Court from any matter arising out of a report made under subsection (2).

**Power of the Minister to delegate functions** (see Act No. 95, 1902, s. 6A)

69. The Minister may, by instrument in writing, delegate to a person any of the Minister's functions under this Act, other than this power of delegation.

**Gazette to be evidence of orders, notices etc.** (see Act No. 95, 1902, s. 35 (1))

70. The production of a copy of the Gazette containing an order or notice purporting to be made under this Act, or a notification purporting to be made under the former Act, is, for all purposes, conclusive evidence of:

- (a) the due publication of the order, notice or notification in accordance with this Act or the former Act; and

- (b) the regularity of everything done in relation to that publication.

**Power of the Minister to correct defective orders, notices etc. (see Act No. 95, 1902, s. 35 (2))**

**71. (1)** The Minister may, by notice published in the Gazette, limit, correct or alter:

- (a) any order, notice or advertisement published for the purposes of this Act; or
- (b) any notification:
  - (i) published for the purposes of the former Act; or
  - (ii) relating to roads and published before the passing of the former Act.

**(2)** A notice published under subsection (1) relates back to the date of the original order, notice or notification unless otherwise specified.

**Power of the Minister to include more than one matter in the same order or notice (see Act No. 95, 1902, s. 35 (4))**

**72.** Where the Minister is empowered by or under this Act to do anything by order or notice published in the Gazette, the Minister may, by the same order or notice, do any other thing that the Minister is empowered to do by or under this Act by publishing such an order or notice, subject to compliance with the requirements of this Act for doing each of those things by a separate order or notice.

### **Notices**

**73. (1)** If by this Act or the regulations a notice or other document is required or permitted to be given to or served on any person, the notice or other document may be given or served:

- (a) in the case of a person other than a corporation:
  - (i) by delivering it to the person; or
  - (ii) by posting it to the address (if any) specified by the person for the service of documents under this Act or the regulations or, if no such address is specified, to the person's usual or last known place of residence or last known place of business; or



- (b) in the case of a corporation:
  - (i) by leaving it at the registered office of the corporation with a person apparently not less than 16 years of age and apparently in the service of the corporation; or
  - (ii) by posting it to the address (if any) specified by the corporation for the giving of notices or service of documents under this Act or the regulations or, if no such address is specified, to the last known place of business of the corporation.

(2) A notice or other document sent by post in accordance with subsection (1) is to be taken to have been given or served at the time at which it would be delivered in the ordinary course of post.

(3) If

- (a) a person is required or permitted by this Act or the regulations to give to or to serve on the owner of an interest in land a notice or other document; and
- (b) the person does not know the owner's identity or whereabouts, the notice or other document is to be taken to have been properly given or served for the purposes of this Act or the regulations if it is placed on a board or similar construction located in a conspicuous place on the land or on any public land that is in the immediate vicinity of the land.

**Lodgment of documents with the Minister etc.**

74. (1) If provision is made by or under this Act for the lodging of a notice or other document:

- (a) with the Minister; or
- (b) at an office of the Department of Lands (other than an office specified in a notice or advertisement),

it is sufficient if the notice or other document is lodged:

- (c) in the case of land in the Eastern and Central Division or an irrigation area in the Western Division - at any lands office of the Department of Lands; or
- (d) in the case of land in the Western Division (other than an irrigation area) - at the office of the Western Lands Commissioner.

(2) In this section:

"document" includes an application, an objection, a claim, an agreement and a notice;

"lodged" includes served or given;

"Minister" includes the Minister in his or her capacity as a compensating authority.

### **Regulations**

75. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to the following:

- (a) the functions of officers employed or acting in the administration or execution of this Act;
- (b) the circumstances in which fees, costs or deposits may be charged or required and the amount of any such fees, costs or deposits;
- (c) authorising the waiver or refund of the whole or any part of any fees, costs, deposits, interest or rent paid or payable under this Act;
- (d) determining the person to whom a refund of any fee, costs, deposit, interest or rent is payable;
- (e) prescribing the periods within which, and the manner in which, notices may be given and objections and appeals may be lodged;
- (f) the form and lodgment of, and manner of dealing with, applications under this Act.

(3) A regulation may create an offence punishable by a maximum penalty not exceeding 5 penalty units.

### **Act to bind the Crown**

76. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**Repeals**

77. (1) The Acts specified in Schedule 1 are repealed.

(2) The Public Roads Regulations and all other regulations in force under the Acts referred to in subsection (1) are repealed.

**Savings and transitional provisions**

78. Schedule 2 has effect.

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**SCHEDULE 1 - REPEALS**

(Sec. 77)

Public Roads Act 1902 No. 95

Public Roads (Amendment) Act 1968 No. 27

Public Roads (Amendment) Act 1984 No. 127

**SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 78)

**Part 1 - Regulations**

**Savings and transitional regulations**

1. (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

    this Act;

    the Miscellaneous Acts (Crown and Other Roads) Amendment Act 1990.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect on and from the date of commencement of this clause or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication.

**SCHEDULE 2 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued***

**Part 2 - Provisions consequent on the enactment of this Act**

**Pending proposals and applications for the opening of roads under the former Act**

**2. (1) If:**

- (a) the Minister has, under section 7 of the former Act, caused to be published in the Gazette a notice of a proposal to open a road; or
- (b) the Minister has, under section 11 of that Act, caused to be posted notice of a proposal to open a road through a holding (as defined in that section); or
- (c) an application for the opening of a road has been made under section 10 (2) of that Act,

and the proposal or application has not been disposed of when the former Act is repealed, the proposal or application is to be dealt with under that Act as if the repeal had not yet taken effect.

(2) However, if a matter concerning such an application comes before a local land board for determination, the board must, in determining the matter, hear not only the person entitled to compensation but also, if the applicant so wishes, the applicant.

(3) Subclause (1) is subject to the regulations (if any) in force under clause 1.

**Claims pending under section 16 of the former Act (Grant for breaking of fenced enclosure)**

3. If a claim under section 16 of the former Act was pending immediately before the repeal of that Act, the claim is to be disposed of under that section as if the repeal had not yet taken effect.

**Disposal of surplus land under section 17 of the former Act**

**4. (1) If:**

- (a) land resumed or withdrawn under the former Act was not required for the purpose of making compensation; and
- (b) steps have, before the repeal of that Act, been taken under section 17 of that Act to dispose of that land; and

**SCHEDULE 2 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued***

(c) the disposal has not been completed before that repeal, the disposal is to be completed under that section as if that Act had not been repealed.

(2) Subclause (1) is subject to the regulations (if any) in force under clause 1.

**Existing dedications to remain unaffected**

5. (1) A dedication in force under the former Act immediately before the repeal of that Act has effect as if it had been made under this Act.

(2) Such a dedication is for the same purpose and on the same terms as the original dedication and has effect from and including the date of the original dedication.

**Notice of intention to close road**

6. If:

- (a) the Minister has caused to be published in the Gazette a notice of a proposal to close a road or part of a road under section 19 of the former Act; and
- (b) the proposal has not been disposed of before the repeal of that Act,

the proposal is to be disposed of under sections 19, 20 and 20A of that Act as if the repeal had not yet taken effect.

**Temporary closure of roads**

7. Even though:

- (a) the Minister has, by notification in the Gazette, temporarily closed a road or part of a road in accordance with section 21 of the former Act; and
- (b) the period for which the road was closed has not expired when the former Act is repealed,

that section continues to apply to the road or part for the unexpired portion of the period as if the repeal had not yet taken effect.

**SCHEDULE 2 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued***

**Re-marking of roads**

8. (1) If an application which was made for the purposes of section 23 of the former Act has not been disposed of before the repeal of that Act, then, despite that repeal, that section and sections 24 and 25 of that Act continue to have effect for the purpose of re-marking the road to which the application relates.

(2) If a road has been re-marked in accordance with section 23 of the former Act but any of the things referred to in section 25 of that Act in relation to the re-marking of the road have not been done before the repeal of that Act, those things may be done under section 25 of that Act as if the repeal had not yet taken effect.

**Alignment of streets within municipalities**

9. If an application referred to in section 27 of the former Act has not been disposed of before the repeal of that Act, the application is to be dealt with under that section as if that repeal had not yet taken effect.

**Actions pending under section 33 of the former Act**

10. Any action brought under section 33 of the former Act and pending immediately before the repeal of that Act may be continued under that section as if the repeal had not yet taken effect.

**Crown road included in a Crown lease or reserve before the commencement of section 34**

11. (1) If any lease or reserve under the Crown Lands Acts included a Crown road immediately before the commencement of section 34 of this Act, the rights of the lessee in respect of the area of Crown road comprised in the lease or, as the case may be, the rights of any person in respect of the area of Crown road comprised in the reserve may continue to be exercised so far as they are not inconsistent with the public right conferred by that section.

SCHEDULE 2 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

(2) In subclause (1), "lease" includes a yearly lease.

**Matters pending before local land boards**

12. If a reference, determination or other matter was pending before a local land board under the former Act immediately before its repeal, the matter is to be disposed of as if the repeal had not yet taken effect or is to be discontinued, as the local land board orders.

**Appeals to the Land and Environment Court**

13. (1) A right to appeal to the Land and Environment Court existing under the former Act immediately before its repeal continues, and may be exercised, as if the repeal had not yet taken effect.

(2) An appeal to the Land and Environment Court pending under the former Act immediately before its repeal is to be continued and be dealt with as if the repeal had not yet taken effect.

**Effect of repeal in transaction effected under the former Act**

14. The repeal of the former Act does not of itself operate to annul or otherwise affect a transaction effected under that Act.

**General saving**

15. The repeal of the former Act does not of itself deprive any act, matter or thing done of any effect which it was declared or otherwise caused to have by that Act.

**Plans approved under the former Act**

16. For the purposes of this Act, a plan:

- (a) approved by the Governor under section 25 of the former Act before the commencement of the Public Roads (Amendment) Act 1968; or
- (b) approved by the Minister under that section after the commencement,

is to be treated as a plan approved by the Minister under section 39 of this Act.

SCHEDULE 2 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

**References to provisions of repealed Acts**

17. (1) If the regulations made under clause 1 so provide, a reference in any other Act, or in any instrument made under that Act or in any instrument of any other kind, to a provision of the Public Roads Act 1902:

- (a) is to be read as a reference to a specified provision of this Act;  
or
- (b) if the case so requires, is to be read as including a reference to a specified provision of this Act.

(2) If such a regulation is made in respect of a reference referred to in subclause (1), that subclause ceases to have effect in respect of the reference.

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