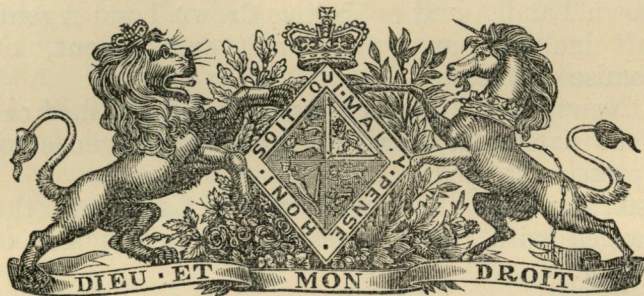


New South Wales.



ANNO SEXAGESIMO PRIMO

VICTORIÆ REGINÆ.

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No. V. (A.D. 1897.)

An Act to amend and consolidate the law relating to the opening, closing, and survey of roads; to make provision for the disposal of unnecessary roads and of lands resumed or withdrawn but not required for roads, and of certain other lands; for the prevention of the obstruction and injury of roads; for the alignment and the alteration of the alignment of streets in Municipalities; for granting leave to place public gates in certain cases; and for other matters of the like nature; and for that purpose to amend the Act 4 Wm. IV No. 11; the Public Gates Act of 1875; and the Crown Lands Acts of 1884 and 1889. [Assented to, 30th June, 1897.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

- 1. This Act may be cited as the "Public Roads Act of 1897." Short title.
- 2. In the construction of this Act and the regulations thereunder, unless the context requires another meaning—
  - "Governor" means the Governor with the advice of the Executive Council.
  - "Chief Surveyor" means the chief surveyor or acting chief surveyor of the Department of Lands.

Interpretation clause.

*Public Roads.*

- “Crown Lands” means lands vested in Her Majesty and not permanently dedicated to any public purpose or granted or lawfully contracted to be granted in fee simple or conditionally leased under any of the Acts relating to Crown Lands.
- “Crown Lands Acts” means the Acts for the time being in force relating to Crown lands.
- “Incomplete purchase” means a conditional purchase under any Crown Lands Act, or a purchase by auction or otherwise from the Crown in respect of which a balance of the purchase money remains unpaid.
- “Land Agent” means any person duly appointed to the office of Crown Land Agent or Acting Crown Land Agent.
- “Lease” includes any unexpired engagement, contract, or promise of a lease.
- “Local Newspaper” means a newspaper published or circulating in the particular district or place in reference to which the expression is used.
- “Minister” means the Secretary for Lands or other Minister charged with the administration of this Act or any part thereof.
- “Prescribed” means prescribed by this Act or by any regulation made thereunder.
- “Regulations” means the regulations made under the authority of this Act.
- “Road,” wherever used in this Act, includes any land proclaimed, dedicated, resumed, or otherwise provided, before or after the commencement of this Act, as a public thoroughfare or way; and, wherever used in sections six, sixteen, seventeen, eighteen, nineteen, twenty, and twenty-one of this Act, also includes any land defined, reserved, or left, before or after the commencement of this Act, as a road in any subdivision of Crown land, or in the measurement or granting of Crown land as indicated upon the official plans of the same; but, where used in section twenty-eight of this Act, does not include any land not proclaimed or expressly or impliedly dedicated to the public as a road.

## Repeal of existing enactments.

Repeal.

3. Section sixty-seven of the Crown Lands Act of 1884 and section forty-two of the Crown Lands Act of 1889, so far as it relates to roads, is hereby repealed, and so much of the Act fourth William the Fourth number eleven as applies to the opening and altering and improving of roads (other than private roads) by agency of the Surveyor-General, or relates to the assessment of damages upon claims for compensation, or is inconsistent with this Act, is hereby repealed; but any proceedings lawfully commenced under the enactments hereby repealed, may be carried to completion thereunder unless the provisions hereinafter contained can be applied thereto.

## Preliminary notification of road.

Notices of intention to resume for the purpose of opening a road.

4. Whenever the Minister deems it expedient that a road should be opened through any lands which are not Crown lands, notice to that effect shall be published in the Gazette, and in some local newspaper, giving a description of the land which it is proposed to resume. Such notice shall refer to a plan of the proposed road, which shall be kept for inspection at the offices of the Department of Lands in Sydney, and of which a copy shall be exhibited for one month from the

*Public Roads.*

the date of the publication of such notice in the Gazette at the office of the land agent of the district in which the road is situated; and shall call upon all persons interested to set forth in writing, and forward to the Minister within one month from the date thereof, any objection which may appear to them to exist to the opening of such road, and a notice, wholly or partly in print or writing, to the like effect shall be posted by registered letter to the owner or occupier of such land, if the name and address of such owner or occupier be known.

## Resumption by notice in Gazette.

5. After due consideration of all such objections (if any), the Governor may, after the expiration of the month, by notification in the Gazette, resume such land as he may think necessary for the road in accordance with the terms of the notice, and may with the consent of the owner by the same or a subsequent notification resume any adjoining parcel of land which by reason of severance is, in the opinion of the Minister, rendered of little or no value to the owner thereof; the notification shall state when deemed necessary the depth below the surface to which the land is resumed, and the land so resumed shall, to the depth so stated as aforesaid, forthwith vest in Her Majesty, and the said land or any part thereof may by the same or a subsequent notification be dedicated as a road: Provided always that no land shall be resumed under the provisions of this Act which is situated within two hundred yards of any dwelling-house and used in connection therewith as a yard, garden, or orchard, unless the owner of such land consent to the same being so resumed, or in the opinion of the Minister, after inquiry and report by the Local Land Board, the object of the resumption cannot otherwise be attained.

the Governor may resume by notification in the Gazette.

## Compensation.

6. Compensation for the land resumed shall be made with the consent of the owner by the Crown either in money or in land, or partly in land and partly in money. For the purpose of making compensation as aforesaid, the Minister shall have power, when the land resumed was held in fee simple, to grant Crown land in fee simple, and shall, when the resumption is made from an incomplete purchase from the Crown or a conditional lease, have power—

Compensation for land resumed.

- (I) to add to such incomplete purchase or conditional lease such adjoining Crown lands as may be available, to be held as part of such incomplete purchase; or conditional lease or
- (II) to grant Crown lands in fee simple.

The land so added as aforesaid shall be as nearly as practicable equal in area and value to the land resumed, but the Minister with the consent of the owner shall, where he thinks it to the interest of the public to do so, have power to add lands either greater or less in area and value than the land resumed, notwithstanding that the maximum area prescribed for any conditional purchase or conditional lease by the Crown Lands Acts be thereby exceeded; but the holder of the incomplete purchase or conditional lease shall not be required to make any payments in respect of any excess of area added to his land where the land added is not greater in value than that resumed.

For the purposes of this section the expression "Crown lands" shall include roads which the Minister considers to be unnecessary.

When there is any difference of value between lands granted as aforesaid and the land resumed (whether the subject of an incomplete purchase or conditional lease or not) such difference shall be paid by the person receiving compensation or by the Crown, according as the value

Conditional purchaser to deposit unpaid balance on area resumed.

*Public Roads.*

value of the lands granted is greater or less than that of the land resumed; and where land has been resumed which is the subject of an incomplete purchase and Crown lands of equal or greater value are granted in fee simple in compensation, the person receiving such compensation shall also pay a sum of money equal to the unpaid balance of purchase money upon the land resumed.

Disposal of small areas of Crown land.

If, after land has been granted in compensation, an adjoining area of Crown lands is left of less than forty acres in extent such area may be granted by the Minister in fee simple at a price to be fixed by the Local Land Board,

Minister may make arrangements for the exchange of land subject to preceding sections.

Subject to the provisions herein contained, the Minister and the person entitled to compensation may make such arrangements in connection with the exchange of land for road purposes as may be deemed by the Minister expedient in the interests of the public.

For the purpose of making compensation under this section the Governor may, by proclamation in the Gazette, withdraw land from any lease other than a conditional lease under which it may be held under the Crown Lands Acts on payment to the lessee of the value of the improvements thereon, to be appraised by the Local Land Board in such manner as may be prescribed, unless an agreement be arrived at between the Minister and the lessee.

Receipt to be a discharge.

The receipt of any person receiving compensation under this Act either in money or land shall, unless the contrary is stated therein, be a complete discharge to the Crown of all claims in connection with the land resumed or withdrawn.

Road in certain cases may be opened without preliminary notice.

7. In cases where—

- (I) an agreement has been made with the persons whose land would be traversed by a proposed road to permit the road to be opened; or
- (II) a road not yet proclaimed has been formed by the expenditure of public funds, and is in use,

the Governor may, without any such notice as aforesaid by notification in the Gazette, resume the lands required for the road, and the land so resumed or any part thereof may by the same or a subsequent notification be dedicated as a road; provided that before notification of resumption notice of the proposed resumption be posted by registered letter to the owners or occupiers of the land through which the proposed road will pass, if the name and address of such owner or occupier be known.

#### Reference to the Local Land Board.

Disputes as to matters under the preceding section may be submitted to the Land Board.

8. Any question that may arise in connection with any of the matters dealt with in this Act, either in respect of the amount payable as compensation, the persons entitled thereto, the proportion in which such persons are so entitled, or otherwise, may, in the prescribed manner, be referred to the Local Land Board for determination, and the decision of the Land Board shall be subject to appeal to the Land Court in the prescribed manner.

#### Compensation—How to be determined; betterment to be an element for consideration.

Mode of assessing compensation.

9. In estimating the amount payable as compensation, the value of the land resumed and of all improvements thereon shall in every case be determined by the Local Land Board, unless an agreement be arrived at between the Minister and the owner, and the damage, if any, to be sustained from the severance of the property by the road. If the value of a property or holding from which a resumption is made is increased by the opening of the road or by any additional

*Public Roads.*

additional facilities of access afforded thereby, or by the addition or grant by way of compensation of any road within, separating or bounding the said property or holding, the increase of value shall be deducted from the amount estimated as aforesaid, and the balance, if any, shall alone be payable:

Provided that, in estimating the amount payable as compensation, no damages for severance shall be allowed where—

- (a) the land is comprised within a grant from the Crown, which contains a reservation to the Crown of so much of the land as may be required for a public way, or a reservation to the Crown of a right or power under which the road might have been opened without compensation; or
- (b) the land is comprised within an incomplete purchase, or conditional lease, or a promise of a grant from Crown of such kind that a similar reservation would in due course have been inserted in the grant thereof when issued.

Land taken for a road out of leasehold; compensation only for improvements.

10. Where the proposed road passes through Crown lands held or occupied under any homestead selection, lease, other than a conditional lease, license, right, or permit under the Crown Lands Acts, the Mining Act, 1874, or any Act relating to mining, or any regulations thereunder, the Governor may without any such notice as aforesaid by notification in the Gazette withdraw from any such selection, lease, license, right, or permit such land as he may think necessary for the road, and the land so withdrawn, or any part thereof, may by the same or a subsequent notification be dedicated as a road, and compensation (to be assessed in the same way as in the case of lands resumed) shall be made in money, but only for improvements thereon and not for the land withdrawn or for severance, and the rent or fee payable to the Crown in respect thereof shall be reduced in proportion to the area withdrawn.

Withdrawal of land for a road from lands under lease or license.

Compensation.

No compensation for minerals underlying the road; permission may be granted to proprietor to mine.

11. In no case shall compensation be payable for mines or minerals existing or presumed to exist in land resumed or withdrawn under this Act, and the Acts relating to mining on Crown lands now or hereafter to be in force shall not apply to mines or minerals resumed as aforesaid; but a resumption shall not in any way affect the mines or minerals below the depth to which the land is resumed: Provided always that in working such mines or minerals sufficient support be left for the road; and if in consequence of such working a subsidence of the road take place, or the safety or stability of the road be endangered, the Commissioner for Roads may repair the same, or the Minister on the invitation of the said Commissioner may open a new road in its stead, and the said Commissioner may recover the cost of repairing the injured road, or of the resumption of land for the new road together with the cost of constructing it, from the person working such mines or minerals in an action in any Court of competent jurisdiction.

No compensation for mines or minerals, but Minister may grant permission to work them.

Where a road passes through enclosed lands the cost of fencing may be granted or permission given to place public gates.

12. If any fenced enclosure of land, not being Crown lands, be broken by the road, the Minister may grant such a sum of money towards the cost of fencing the road as he may think the circumstances warrant, not exceeding the cost of erecting a fence on both

Where a fenced enclosure is broken the Minister may grant cost of fencing, or may grant permission to place gates.

*Public Roads.*

both sides of the road within the enclosure of the same kind as the fence which forms the enclosure, or he may grant in lieu thereof permission to place public gates under the Public Gates Act of 1875; and in the event of increased traffic requiring the revocation of such permission within ten years, it shall be lawful for the Minister to grant a part of the estimated cost of fencing the road, which shall be proportionate to the unexpired portion of the ten years.

Gazette notice to be evidence; Governor may alter notification under section forty-two of Crown Lands Act of 1889.

Gazette notice conclusive evidence of due publication.

Notification under this Act or section 42 of Crown Lands Act of 1889 may be altered.

13. The production of a copy of the Gazette containing a notification purporting to be made under this Act shall in all cases be conclusive evidence of the due publication of such notification in accordance with the provisions of this Act, and of the regularity of all proceedings relating thereto. The Governor may, by notification in the Gazette, limit, correct, or alter the terms of any such notification as aforesaid, or any notification relating to roads made before the passing of this Act under the provisions of section forty-two of the Crown Lands Act of 1889, and such limitation, correction, or alteration shall, unless otherwise specified, relate back to the date of the original notification.

#### Disposal of surplus land.

Surplus lands, how disposed of.

14. Any lands resumed or withdrawn under this Act, or resumed under the provisions of section forty-two of the Crown Lands Act of 1889, which are not required for the purpose for which they were resumed or withdrawn, or for the purpose of making compensation, may be dealt with under the provisions of the Crown Lands Acts, or may be sold by public auction or by private contract as may seem to the Minister expedient, or may, by notice in the Gazette, be added to adjoining Crown lands, if any, held under any lease, license, right, or permit, on such terms and conditions as the Minister may approve.

Road may be opened on the petition of and at the cost of any person.

Minister may open a road on the petition of a private person on payment of expenses.

15. If any one or more persons apply or petition for the opening of a road through any land, and the Minister be of opinion that the said road may be reasonably opened for the convenience and benefit of such person or persons as aforesaid, but that there is no public necessity for it, the Minister may require the said person or persons to deposit with the Colonial Treasurer a sum sufficient to cover the cost of opening the road and paying compensation in connection therewith; and if the said road or any road which in the opinion of the Minister for the time being will be of equal or nearly equal convenience or benefit to such person or persons as aforesaid be thereafter opened, the sum so deposited, or such part thereof as may be necessary, may be applied towards opening the road and paying compensation in connection therewith. And any balance which remains shall be repaid to such person or persons as aforesaid or his or their representatives: Provided that if the persons applying for the road can obtain the written and witnessed consent of the owner or owners of the land through which the road sought would pass, to allow it to be established without cost to the Crown, the deposit required shall be the cost of survey only.

Boundary

*Public Roads.*

## Boundary roads and other roads so called may be declared public roads.

16. The Governor may, by notification in the Gazette, declare any road to be a public road, and thereupon the same shall be dedicated to the public accordingly, and shall be withdrawn from any lease or license from the Crown under which it was held, and no compensation shall be payable in respect thereof; and if the road be situate within a Municipality, such notification as aforesaid shall have the effect of vesting the care, construction, and management thereof in the Council of the Municipality within the meaning of section one hundred and seventeen of the Municipalities Act of 1867. And where any road so declared as aforesaid has been provided in subdivision of the Crown estate for alienation or reserved in the measurement of Crown lands, the official plans of survey which show the road in question, or part thereof, in connection with the lands subdivided or measured, shall be accepted as prima facie evidence of the width and position of the same, but nothing in this section shall prevent any alteration of the width of any road prior to or by the notification as aforesaid.

Lands reserved as roads may be declared public roads.

## Public gates may be placed on boundary roads.

17. (I) It shall be lawful for the Minister to grant permission to place public gates on boundary roads where such roads separate lands held by the same person, or the lands of persons who unite in making application to the Minister for permission to place gates, and such gates shall for all purposes be deemed to be public gates within the Public Gates Act of 1875.

Public gates may be placed on boundary roads.

(II) Notwithstanding anything contained in section three of the Public Gates Act of 1875, the Minister may revoke and cancel permission granted under the said Act or under this Act for the erection of a public gate, upon notice of not less than one month to the occupant of the land.

Permission to erect a public gate may be revoked on one month's notice.

## Closing of unnecessary roads—Preliminary notification.

18. If the Minister be of opinion that it is expedient to close any road or part thereof, notice to that effect shall be published in the Gazette and in some local newspaper, and printed or written notice to the like effect shall be posted by registered letter to the owners or occupiers of all lands having frontage to such road or part thereof (as the case may be), if their names and addresses be known, and shall call upon all persons interested to set forth in writing addressed to the Minister within one month from the date thereof any objections which may appear to them to exist to the closing of the said road or such part thereof: Provided always that, where it is proposed to close a road and to open a road under section five of this Act in lieu thereof, the matters to be specified in the notices herein provided for may be specified in the notices published and posted under section four of this Act, and thereupon no separate notice under this section shall be necessary.

Notices of intention to close unnecessary road.

Nothing in this section shall apply to the closing of roads under section one hundred and eleven of the Crown Lands Act of 1884.

Objections to be considered; road to be notified as closed; final disposal thereof; road may be temporarily closed.

19. After due consideration of all such objections (if any) the Governor may, after the expiration of the month, by notification in the

Closing of unnecessary road.

*Public Roads.*

the Gazette, close the aforesaid road, and the lands comprised therein shall thereupon be freed and discharged from any rights of the public or any person to the same as a highway and (except in the case of a road opened or made under the Act fourth William the Fourth number eleven, and roads which have been or may hereafter be granted at Quarter Sessions under the twenty-first section of that Act as an access road, in which cases the lands comprised therein shall vest in and be held by the owner of the adjoining land) shall become Crown lands, and may be granted to the owner or owners of adjoining lands in fair proportions or in accordance with any agreement made by such owners, and the value of such land to be determined by the Local Land Board shall be paid for the same, or may be added to any lands the subject of an incomplete purchase or conditional lease through or adjoining which the road passed, to be held as part of such incomplete purchase or conditional lease, notwithstanding that the maximum area prescribed for any conditional or other purchase by the Crown Lands Acts be thereby exceeded or may be granted in exchange for lands taken or resumed, or hereafter to be taken or resumed under the provisions of any Act, other than this Act, authorising the resumption or acquisition of land for public purposes, or for lands contracted or hereafter to be contracted by instrument in writing to be conveyed or to be transferred from the owners to Her Majesty, or to any Constructing Authority for and on behalf of Her Majesty, in exchange for Crown land or any unnecessary road or roads, or may by notice in the Gazette be added to adjoining Crown Lands, if any, held under lease or license, on such terms and conditions as the Minister may approve: Provided that if any owner of land adjoining a road so closed shall not within three months from receipt of notice of the determination of value by the Land Board as aforesaid, agree to pay such value and receive a grant of such land, the said land may be dealt with under the provisions of the Crown Lands Acts, or may be sold by auction or private contract as may seem to the Minister to be expedient.

Temporary closing  
of roads.

The Minister, without giving any such previous notices as are hereinbefore required, may, by notification in the Gazette, close any road or part of a road for any period not exceeding six months for any reason which may appear to him to be sufficient, and thereupon the lands comprised in such road or part thereof shall be freed and discharged from any rights of the public or any person to the same as a road for the time expressed in such notification.

Road may be altered in land with consent of proprietor.

The Minister may,  
without notice, alter  
roads in incomplete  
purchase with  
consent of purchaser.

20. Notwithstanding anything hereinbefore contained, the Minister may, without such previous notice, with the consent of the holder of an incomplete purchase from the Crown or conditional lease, alter the position of any reserved road within such holding, and thereupon such new road shall be in lieu of the old road, and the land comprised in the old road shall become and be held as part of such incomplete purchase as aforesaid.

Power to refer to a Local Land Board for inquiry and report.

Reference to Local  
Land Board.

21. The Minister may, in the prescribed manner, refer to the Local Land Board any questions which may arise in connection with the opening or proposed opening of any road, or with the closing or proposed closing of any road; and the Local Land Board shall thereupon hold an inquiry, and report to the Minister for his information.

Road



*Public Roads.*

Road may be re-marked ; part or whole of cost to be borne by Municipality.

22. Whenever the position and boundaries of a road required for public traffic cannot be identified through the absence or loss of the survey marks, the Minister may cause the road to be re-marked; and if such road or part thereof be situate in a Municipality, the whole or such part of the cost as may be agreed upon by the Minister and the Municipal Council shall be borne by the Municipality.

Road may be redefined by survey and re-marked.  
Part or whole of cost to be borne by the Council when road is situated in a municipality.

Notice of re-marking of a road to be published ; plan of re-marking may be approved and notified accordingly.

23. After the road has been re-marked as aforesaid, notice may be published in the Gazette, and in some local newspaper setting forth generally the extent and direction of the road, and referring to a plan of survey of the re-marking of the road which shall be kept for inspection at the Department of Lands in Sydney (and of which a copy may, if the Minister thinks fit, be exhibited as is provided in section four of this Act), and stating that it is intended to submit the plan to the Governor for approval, and calling upon all persons interested to set forth in writing, addressed to the Minister, within one month of the date of such notice, any objections they may have to the road as re-marked; and after due consideration of all such objections (if any) it shall be lawful for the Governor, by notice in the Gazette, after the expiration of the month, to approve the plan either with or without alteration, and the road as re-marked according to the plan so approved shall represent and be deemed to be the original road.

Notice of re-marking of road to be published.  
Objections may be lodged.  
Road may be approved.

Carriage and foot ways may be aligned for a Municipal Council, the Council to bear part or whole of cost ; alignment to be approved, and approval to be published.

24. On written application by the Council of any Municipality, and on their undertaking to pay, when called upon, the whole or such part of the cost as may be agreed upon by the Minister and the Council, it shall be lawful for the Minister to cause the carriage-way and foot-ways in any street or public place in such Municipality to be surveyed, set out, and defined, and to cause a plan thereof to be prepared, which plan may be submitted by the Minister to the Governor for approval, and when such approval has been given and published in the Gazette, the said plan shall for all purposes be conclusive evidence of the limits and boundaries of the said street or public place, and the carriage-ways and foot-ways set out and defined according to the said plan shall for the purposes of the Municipalities Act of 1867 and all enactments relating to the alignment of streets or public places be deemed to have been set out and defined by the Council within the meaning of section one hundred and twenty-eight of the said Act.

Alignment of streets at instance of Municipal Council.  
Council to pay whole or part of cost of survey.  
Plan to be approved by the Governor and the Executive Council.  
Alignment to be as effective as if performed under the Municipalities Act.

Alignment of a street may be altered subject to objections or claims being settled by Municipal Council.

25. On written application by the Council of any Municipality, and on their undertaking to pay when called upon such part or the whole of the cost as may be agreed upon as aforesaid, it shall be lawful for the Minister to cause the width and the position of the carriage-way and the foot-ways in any street or public place that has been previously aligned under this or any other Act to be re-marked or altered, and to

Alignment may be altered on application by Municipality and undertaking by them to pay cost.

*Public Roads.*

Plan to be approved by the Governor.

Powers of Council over streets so altered.

Notice to be published.

Objections to be referred to Council for settlement.

cause a plan thereof to be prepared, which plan may be submitted by the Minister to the Governor for approval, and when such approval has been given and published in the Gazette, the said plan shall be for all purposes conclusive evidence of the limits and boundaries of the said street or public place, and the carriage-ways and foot-ways as remarked or altered according to the said plan shall, for the purposes of the Municipalities Act of 1867 and all enactments relating to the alignment of streets or public places, be deemed to have been set out and defined by the Council within the meaning of section one hundred and twenty-eight of the said Act: Provided always that no alignment shall be altered under this section until one month after notice has been published in the Gazette and in some local newspaper indicating the proposed alteration, and calling upon all persons interested to set forth in writing, addressed to the Minister, within one month of the date of such notice, any well grounded objections that may appear to them to exist to the proposed alteration, and in the event of any apparently valid objection being received from any person whose property might be directly affected in an injurious manner should the alteration be effected as proposed, such objection shall be referred by the Minister to the Council of the Municipality for settlement, and the proposed alteration shall not be carried into effect until the objection is withdrawn, or otherwise dealt with by the Council to the satisfaction of the Minister.

Protection of the Crown against claims for damages in respect of alignment of streets.

Crown not responsible for claims in respect of alignment or alteration of alignment.

26. No suit or action shall be maintainable against the Crown for injury or damage resulting from any alignment or alteration of alignment under this Act.

Power of entry on any lands for purposes of surveying roads, and penalty for obstructing a Surveyor duly authorised.

Powers of surveyors and others under this Act.

Power to enter and survey and mark proposed road, and to determine boundaries of lands affected, and to fell trees, and to remove fences.

Proviso to re-erect fences and to avoid wilful damage.

Penalty for obstructing surveyor.

How to be recovered.

27. For the purpose of making any survey and of performing every act, matter, or thing under the provisions of this Act, it shall be lawful for the surveyor or other person duly authorised by the chief surveyor in that behalf, and his assistants, agents, and servants, to enter into and upon the lands of any person, to survey and take levels of the same, and to ascertain and set out by stakes, trenches, and marks such parts thereof as may be required for a road; to trace and determine the boundaries of such lands as may be affected by the proposed road; to mark and fell trees; to open and remove fences; and to do all other acts which may be necessary for such purpose as aforesaid: Provided that no damage shall be done further than is necessary for carrying out the purpose of this Act, and that all damage shall so far as practicable be repaired. And similar powers subject to the same provisions and limitations are, for the purpose of grading and marking roads, hereby conferred upon the Commissioner for Roads and persons duly authorised by him on that behalf. And any person obstructing any person in the exercise of the powers hereby conferred, or wilfully removing, altering, or defacing any such stakes, trenches, or marks as aforesaid, shall be liable to a penalty not exceeding ten pounds, which may be recovered summarily before any Police Magistrate or any two Justices of the Peace in Petty Sessions.

Penalty for obstructing or damaging a road.

Penalty for obstructing or damaging a road.

28. Any person who wilfully obstructs or damages any road, whether opened and dedicated under this Act or not, shall be liable to

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*Public Roads.*

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a penalty not exceeding one hundred pounds, which may be recovered summarily before any Police Magistrate or any two Justices of the Peace in Petty Sessions ; and the Commissioner for Roads may recover from him the cost of removing the obstruction and repairing the damage in an action in any Court of competent jurisdiction.

Power to make regulations.

29. The Governor may make regulations for the purpose of giving effect to the provisions of any section of this Act in which the expression "prescribed" is used in connection with any matter referred to in the context, and generally for the purpose of carrying this Act into full effect, and may by such regulations impose for the enforcement thereof penalties not exceeding in any case fifty pounds, and provide for the recovery of such penalties, and such regulations shall upon being published in the Gazette have the force of law : Provided that a copy of such regulations shall be laid before both Houses of Parliament within fourteen days from the publication thereof, if Parliament be then in Session, or otherwise within fourteen days after the commencement of the next ensuing Session.

Power to make regulations

and a penalty not exceeding one hundred pounds, which may be recovered summarily before any Justice of the Peace, or any other Justice of the Peace in the County, and the Commission for Lands may recover from him the cost of removing the obstruction and repairing the damage to the action in any Court of competent jurisdiction.

29. The Governor may make regulations for the purpose of giving effect to the provisions of any section of this Act in which the Commission is empowered to issue in connection with any matter referred to in the context, and generally for the purpose of carrying this Act into effect, and may by such regulations impose for the enforcement thereof penalties not exceeding in any case fifty pounds, and provide for the recovery of such penalties, and such regulations shall upon being published in the Gazette have the force of law. Provided that a copy of such regulations shall be laid before both Houses of Parliament within fourteen days from the publication thereof, if Parliament be then in Session, or otherwise within fourteen days after the commencement of the next ensuing Session.

30. The Commission may make regulations for the purpose of giving effect to the provisions of any section of this Act in which the Commission is empowered to issue in connection with any matter referred to in the context, and generally for the purpose of carrying this Act into effect, and may by such regulations impose for the enforcement thereof penalties not exceeding in any case fifty pounds, and provide for the recovery of such penalties, and such regulations shall upon being published in the Gazette have the force of law.

31. The Commission may make regulations for the purpose of giving effect to the provisions of any section of this Act in which the Commission is empowered to issue in connection with any matter referred to in the context, and generally for the purpose of carrying this Act into effect, and may by such regulations impose for the enforcement thereof penalties not exceeding in any case fifty pounds, and provide for the recovery of such penalties, and such regulations shall upon being published in the Gazette have the force of law.

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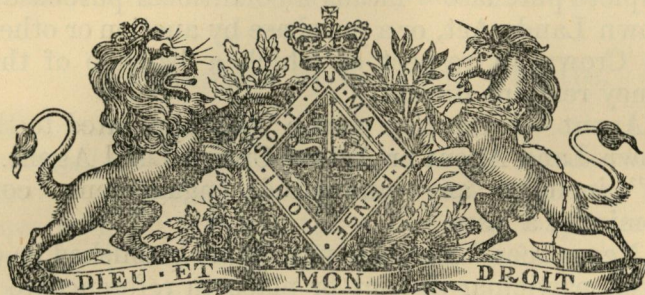
34. The Commission may make regulations for the purpose of giving effect to the provisions of any section of this Act in which the Commission is empowered to issue in connection with any matter referred to in the context, and generally for the purpose of carrying this Act into effect, and may by such regulations impose for the enforcement thereof penalties not exceeding in any case fifty pounds, and provide for the recovery of such penalties, and such regulations shall upon being published in the Gazette have the force of law.

*I Certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Assembly Chamber,  
Sydney, 18 June, 1897, A.M. }*

*F. W. WEBB,  
Clerk of the Legislative Assembly.*

## New South Wales.



ANNO SEXAGESIMO PRIMO

# VICTORIÆ REGINÆ.

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## No. V. (A.D. 1897.)

An Act to amend and consolidate the law relating to the opening, closing, and survey of roads; to make provision for the disposal of unnecessary roads and of lands resumed or withdrawn but not required for roads, and of certain other lands; for the prevention of the obstruction and injury of roads; for the alignment and the alteration of the alignment of streets in Municipalities; for granting leave to place public gates in certain cases; and for other matters of the like nature; and for that purpose to amend the Act 4 Wm. IV No. 11; the Public Gates Act of 1875; and the Crown Lands Acts of 1884 and 1889. [Assented to, 30th June, 1897.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Public Roads Act of 1897." Short title.
2. In the construction of this Act and the regulations thereunder, unless the context requires another meaning—  
"Governor" means the Governor with the advice of the Executive Council.  
"Chief Surveyor" means the chief surveyor or acting chief surveyor of the Department of Lands.

"Crown

*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

WILLIAM McCOURT,  
*Chairman of Committees of the Legislative Assembly.*

*Public Roads.*

- “Crown Lands” means lands vested in Her Majesty and not permanently dedicated to any public purpose or granted or lawfully contracted to be granted in fee simple or conditionally leased under any of the Acts relating to Crown Lands.
- “Crown Lands Acts” means the Acts for the time being in force relating to Crown lands.
- “Incomplete purchase” means a conditional purchase under any Crown Lands Act, or a purchase by auction or otherwise from the Crown in respect of which a balance of the purchase money remains unpaid.
- “Land Agent” means any person duly appointed to the office of Crown Land Agent or Acting Crown Land Agent.
- “Lease” includes any unexpired engagement, contract, or promise of a lease.
- “Local Newspaper” means a newspaper published or circulating in the particular district or place in reference to which the expression is used.
- “Minister” means the Secretary for Lands or other Minister charged with the administration of this Act or any part thereof.
- “Prescribed” means prescribed by this Act or by any regulation made thereunder.
- “Regulations” means the regulations made under the authority of this Act.
- “Road,” wherever used in this Act, includes any land proclaimed, dedicated, resumed, or otherwise provided, before or after the commencement of this Act, as a public thoroughfare or way; and, wherever used in sections six, sixteen, seventeen, eighteen, nineteen, twenty, and twenty-one of this Act, also includes any land defined, reserved, or left, before or after the commencement of this Act, as a road in any subdivision of Crown land, or in the measurement or granting of Crown land as indicated upon the official plans of the same; but, where used in section twenty-eight of this Act, does not include any land not proclaimed or expressly or impliedly dedicated to the public as a road.

## Repeal of existing enactments.

Repeal.

3. Section sixty-seven of the Crown Lands Act of 1884 and section forty-two of the Crown Lands Act of 1889, so far as it relates to roads, is hereby repealed, and so much of the Act fourth William the Fourth number eleven as applies to the opening and altering and improving of roads (other than private roads) by agency of the Surveyor-General, or relates to the assessment of damages upon claims for compensation, or is inconsistent with this Act, is hereby repealed; but any proceedings lawfully commenced under the enactments hereby repealed, may be carried to completion thereunder unless the provisions hereinafter contained can be applied thereto.

## Preliminary notification of road.

Notices of intention to resume for the purpose of opening a road.

4. Whenever the Minister deems it expedient that a road should be opened through any lands which are not Crown lands, notice to that effect shall be published in the Gazette, and in some local newspaper, giving a description of the land which it is proposed to resume. Such notice shall refer to a plan of the proposed road, which shall be kept for inspection at the offices of the Department of Lands in Sydney, and of which a copy shall be exhibited for one month from the

the

*Public Roads.*

the date of the publication of such notice in the Gazette at the office of the land agent of the district in which the road is situated; and shall call upon all persons interested to set forth in writing, and forward to the Minister within one month from the date thereof, any objection which may appear to them to exist to the opening of such road, and a notice, wholly or partly in print or writing, to the like effect shall be posted by registered letter to the owner or occupier of such land, if the name and address of such owner or occupier be known.

**Resumption by notice in Gazette.**

5. After due consideration of all such objections (if any), the Governor may, after the expiration of the month, by notification in the Gazette, resume such land as he may think necessary for the road in accordance with the terms of the notice, and may with the consent of the owner by the same or a subsequent notification resume any adjoining parcel of land which by reason of severance is, in the opinion of the Minister, rendered of little or no value to the owner thereof; the notification shall state when deemed necessary the depth below the surface to which the land is resumed, and the land so resumed shall, to the depth so stated as aforesaid, forthwith vest in Her Majesty, and the said land or any part thereof may by the same or a subsequent notification be dedicated as a road: Provided always that no land shall be resumed under the provisions of this Act which is situated within two hundred yards of any dwelling-house and used in connection therewith as a yard, garden, or orchard, unless the owner of such land consent to the same being so resumed, or in the opinion of the Minister, after inquiry and report by the Local Land Board, the object of the resumption cannot otherwise be attained.

**Compensation.**

6. Compensation for the land resumed shall be made with the consent of the owner by the Crown either in money or in land, or partly in land and partly in money. For the purpose of making compensation as aforesaid, the Minister shall have power, when the land resumed was held in fee simple, to grant Crown land in fee simple, and shall, when the resumption is made from an incomplete purchase from the Crown or a conditional lease, have power—

- (I) to add to such incomplete purchase or conditional lease such adjoining Crown lands as may be available, to be held as part of such incomplete purchase; or conditional lease or
- (II) to grant Crown lands in fee simple.

The land so added as aforesaid shall be as nearly as practicable equal in area and value to the land resumed, but the Minister with the consent of the owner shall, where he thinks it to the interest of the public to do so, have power to add lands either greater or less in area and value than the land resumed, notwithstanding that the maximum area prescribed for any conditional purchase or conditional lease by the Crown Lands Acts be thereby exceeded; but the holder of the incomplete purchase or conditional lease shall not be required to make any payments in respect of any excess of area added to his land where the land added is not greater in value than that resumed.

For the purposes of this section the expression "Crown lands" shall include roads which the Minister considers to be unnecessary.

When there is any difference of value between lands granted as aforesaid and the land resumed (whether the subject of an incomplete purchase or conditional lease or not) such difference shall be paid by the person receiving compensation or by the Crown, according as the

Conditional purchaser to deposit unpaid balance on area resumed.

value

*Public Roads.*

value of the lands granted is greater or less than that of the land resumed; and where land has been resumed which is the subject of an incomplete purchase and Crown lands of equal or greater value are granted in fee simple in compensation, the person receiving such compensation shall also pay a sum of money equal to the unpaid balance of purchase money upon the land resumed.

Disposal of small areas of Crown land.

If, after land has been granted in compensation, an adjoining area of Crown lands is left of less than forty acres in extent such area may be granted by the Minister in fee simple at a price to be fixed by the Local Land Board.

Minister may make arrangements for the exchange of land subject to preceding sections.

Subject to the provisions herein contained, the Minister and the person entitled to compensation may make such arrangements in connection with the exchange of land for road purposes as may be deemed by the Minister expedient in the interests of the public.

For the purpose of making compensation under this section the Governor may, by proclamation in the Gazette, withdraw land from any lease other than a conditional lease under which it may be held under the Crown Lands Acts on payment to the lessee of the value of the improvements thereon, to be appraised by the Local Land Board in such manner as may be prescribed, unless an agreement be arrived at between the Minister and the lessee.

Receipt to be a discharge.

The receipt of any person receiving compensation under this Act either in money or land shall, unless the contrary is stated therein, be a complete discharge to the Crown of all claims in connection with the land resumed or withdrawn.

Road in certain cases may be opened without preliminary notice.

7. In cases where—

- (I) an agreement has been made with the persons whose land would be traversed by a proposed road to permit the road to be opened; or
- (II) a road not yet proclaimed has been formed by the expenditure of public funds, and is in use,

the Governor may, without any such notice as aforesaid by notification in the Gazette, resume the lands required for the road, and the land so resumed or any part thereof may by the same or a subsequent notification be dedicated as a road; provided that before notification of resumption notice of the proposed resumption be posted by registered letter to the owners or occupiers of the land through which the proposed road will pass, if the name and address of such owner or occupier be known.

#### Reference to the Local Land Board.

Disputes as to matters under the preceding section may be submitted to the Land Board.

8. Any question that may arise in connection with any of the matters dealt with in this Act, either in respect of the amount payable as compensation, the persons entitled thereto, the proportion in which such persons are so entitled, or otherwise, may, in the prescribed manner, be referred to the Local Land Board for determination, and the decision of the Land Board shall be subject to appeal to the Land Court in the prescribed manner.

#### Compensation—How to be determined; betterment to be an element for consideration.

Mode of assessing compensation.

9. In estimating the amount payable as compensation, the value of the land resumed and of all improvements thereon shall in every case be determined by the Local Land Board, unless an agreement be arrived at between the Minister and the owner, and the damage, if any, to be sustained from the severance of the property by the road. If the value of a property or holding from which a resumption is made is increased by the opening of the road or by any additional



*Public Roads.*

additional facilities of access afforded thereby, or by the addition or grant by way of compensation of any road within, separating or bounding the said property or holding, the increase of value shall be deducted from the amount estimated as aforesaid, and the balance, if any, shall alone be payable:

Provided that, in estimating the amount payable as compensation, no damages for severance shall be allowed where—

- (a) the land is comprised within a grant from the Crown, which contains a reservation to the Crown of so much of the land as may be required for a public way, or a reservation to the Crown of a right or power under which the road might have been opened without compensation; or
- (b) the land is comprised within an incomplete purchase, or conditional lease, or a promise of a grant from Crown of such kind that a similar reservation would in due course have been inserted in the grant thereof when issued.

Land taken for a road out of leasehold; compensation only for improvements.

10. Where the proposed road passes through Crown lands held or occupied under any homestead selection, lease, other than a conditional lease, license, right, or permit under the Crown Lands Acts, the Mining Act, 1874, or any Act relating to mining, or any regulations thereunder, the Governor may without any such notice as aforesaid by notification in the Gazette withdraw from any such selection, lease, license, right, or permit such land as he may think necessary for the road, and the land so withdrawn, or any part thereof, may by the same or a subsequent notification be dedicated as a road, and compensation (to be assessed in the same way as in the case of lands resumed) shall be made in money, but only for improvements thereon and not for the land withdrawn or for severance, and the rent or fee payable to the Crown in respect thereof shall be reduced in proportion to the area withdrawn.

Withdrawal of land for a road from lands under lease or license.

Compensation.

No compensation for minerals underlying the road; permission may be granted to proprietor to mine.

11. In no case shall compensation be payable for mines or minerals existing or presumed to exist in land resumed or withdrawn under this Act, and the Acts relating to mining on Crown lands now or hereafter to be in force shall not apply to mines or minerals resumed as aforesaid; but a resumption shall not in any way affect the mines or minerals below the depth to which the land is resumed: Provided always that in working such mines or minerals sufficient support be left for the road; and if in consequence of such working a subsidence of the road take place, or the safety or stability of the road be endangered, the Commissioner for Roads may repair the same, or the Minister on the invitation of the said Commissioner may open a new road in its stead, and the said Commissioner may recover the cost of repairing the injured road, or of the resumption of land for the new road together with the cost of constructing it, from the person working such mines or minerals in an action in any Court of competent jurisdiction.

No compensation for mines or minerals, but Minister may grant permission to work them.

Where a road passes through enclosed lands the cost of fencing may be granted or permission given to place public gates.

12. If any fenced enclosure of land, not being Crown lands, be broken by the road, the Minister may grant such a sum of money towards the cost of fencing the road as he may think the circumstances warrant, not exceeding the cost of erecting a fence on both

Where a fenced enclosure is broken the Minister may grant cost of fencing, or may grant permission to place gates.

*Public Roads.*

both sides of the road within the enclosure of the same kind as the fence which forms the enclosure, or he may grant in lieu thereof permission to place public gates under the Public Gates Act of 1875; and in the event of increased traffic requiring the revocation of such permission within ten years, it shall be lawful for the Minister to grant a part of the estimated cost of fencing the road, which shall be proportionate to the unexpired portion of the ten years.

**Gazette notice to be evidence; Governor may alter notification under section forty-two of Crown Lands Act of 1889.**

Gazette notice conclusive evidence of due publication.

Notification under this Act or section 42 of Crown Lands Act of 1889 may be altered.

13. The production of a copy of the Gazette containing a notification purporting to be made under this Act shall in all cases be conclusive evidence of the due publication of such notification in accordance with the provisions of this Act, and of the regularity of all proceedings relating thereto. The Governor may, by notification in the Gazette, limit, correct, or alter the terms of any such notification as aforesaid, or any notification relating to roads made before the passing of this Act under the provisions of section forty-two of the Crown Lands Act of 1889, and such limitation, correction, or alteration shall, unless otherwise specified, relate back to the date of the original notification.

**Disposal of surplus land.**

Surplus lands, how disposed of.

14. Any lands resumed or withdrawn under this Act, or resumed under the provisions of section forty-two of the Crown Lands Act of 1889, which are not required for the purpose for which they were resumed or withdrawn, or for the purpose of making compensation, may be dealt with under the provisions of the Crown Lands Acts, or may be sold by public auction or by private contract as may seem to the Minister expedient, or may, by notice in the Gazette, be added to adjoining Crown lands, if any, held under any lease, license, right, or permit, on such terms and conditions as the Minister may approve.

**Road may be opened on the petition of and at the cost of any person.**

Minister may open a road on the petition of a private person on payment of expenses.

15. If any one or more persons apply or petition for the opening of a road through any land, and the Minister be of opinion that the said road may be reasonably opened for the convenience and benefit of such person or persons as aforesaid, but that there is no public necessity for it, the Minister may require the said person or persons to deposit with the Colonial Treasurer a sum sufficient to cover the cost of opening the road and paying compensation in connection therewith; and if the said road or any road which in the opinion of the Minister for the time being will be of equal or nearly equal convenience or benefit to such person or persons as aforesaid be thereafter opened, the sum so deposited, or such part thereof as may be necessary, may be applied towards opening the road and paying compensation in connection therewith. And any balance which remains shall be repaid to such person or persons as aforesaid or his or their representatives: Provided that if the persons applying for the road can obtain the written and witnessed consent of the owner or owners of the land through which the road sought would pass, to allow it to be established without cost to the Crown, the deposit required shall be the cost of survey only.

Boundary

*Public Roads.*

## Boundary roads and other roads so called may be declared public roads.

16. The Governor may, by notification in the Gazette, declare any road to be a public road, and thereupon the same shall be dedicated to the public accordingly, and shall be withdrawn from any lease or license from the Crown under which it was held, and no compensation shall be payable in respect thereof; and if the road be situate within a Municipality, such notification as aforesaid shall have the effect of vesting the care, construction, and management thereof in the Council of the Municipality within the meaning of section one hundred and seventeen of the Municipalities Act of 1867. And where any road so declared as aforesaid has been provided in subdivision of the Crown estate for alienation or reserved in the measurement of Crown lands, the official plans of survey which show the road in question, or part thereof, in connection with the lands subdivided or measured, shall be accepted as prima facie evidence of the width and position of the same, but nothing in this section shall prevent any alteration of the width of any road prior to or by the notification as aforesaid.

Lands reserved as roads may be declared public roads.

## Public gates may be placed on boundary roads.

17. (I) It shall be lawful for the Minister to grant permission to place public gates on boundary roads where such roads separate lands held by the same person, or the lands of persons who unite in making application to the Minister for permission to place gates, and such gates shall for all purposes be deemed to be public gates within the Public Gates Act of 1875.

Public gates may be placed on boundary roads.

(II) Notwithstanding anything contained in section three of the Public Gates Act of 1875, the Minister may revoke and cancel permission granted under the said Act or under this Act for the erection of a public gate, upon notice of not less than one month to the occupant of the land.

Permission to erect a public gate may be revoked on one month's notice.

## Closing of unnecessary roads—Preliminary notification.

18. If the Minister be of opinion that it is expedient to close any road or part thereof, notice to that effect shall be published in the Gazette and in some local newspaper, and printed or written notice to the like effect shall be posted by registered letter to the owners or occupiers of all lands having frontage to such road or part thereof (as the case may be), if their names and addresses be known, and shall call upon all persons interested to set forth in writing addressed to the Minister within one month from the date thereof any objections which may appear to them to exist to the closing of the said road or such part thereof: Provided always that, where it is proposed to close a road and to open a road under section five of this Act in lieu thereof, the matters to be specified in the notices herein provided for may be specified in the notices published and posted under section four of this Act, and thereupon no separate notice under this section shall be necessary.

Notices of intention to close unnecessary road.

Nothing in this section shall apply to the closing of roads under section one hundred and eleven of the Crown Lands Act of 1884.

Objections to be considered; road to be notified as closed; final disposal thereof; road may be temporarily closed.

19. After due consideration of all such objections (if any) the Governor may, after the expiration of the month, by notification in the

Closing of unnecessary road.

*Public Roads.*

the Gazette, close the aforesaid road, and the lands comprised therein shall thereupon be freed and discharged from any rights of the public or any person to the same as a highway and (except in the case of a road opened or made under the Act fourth William the Fourth number eleven, and roads which have been or may hereafter be granted at Quarter Sessions under the twenty-first section of that Act as an access road, in which cases the lands comprised therein shall vest in and be held by the owner of the adjoining land) shall become Crown lands, and may be granted to the owner or owners of adjoining lands in fair proportions or in accordance with any agreement made by such owners, and the value of such land to be determined by the Local Land Board shall be paid for the same, or may be added to any lands the subject of an incomplete purchase or conditional lease through or adjoining which the road passed, to be held as part of such incomplete purchase or conditional lease, notwithstanding that the maximum area prescribed for any conditional or other purchase by the Crown Lands Acts be thereby exceeded or may be granted in exchange for lands taken or resumed, or hereafter to be taken or resumed under the provisions of any Act, other than this Act, authorising the resumption or acquisition of land for public purposes, or for lands contracted or hereafter to be contracted by instrument in writing to be conveyed or to be transferred from the owners to Her Majesty, or to any Constructing Authority for and on behalf of Her Majesty, in exchange for Crown land or any unnecessary road or roads, or may by notice in the Gazette be added to adjoining Crown Lands, if any, held under lease or license, on such terms and conditions as the Minister may approve: Provided that if any owner of land adjoining a road so closed shall not within three months from receipt of notice of the determination of value by the Land Board as aforesaid, agree to pay such value and receive a grant of such land, the said land may be dealt with under the provisions of the Crown Lands Acts, or may be sold by auction or private contract as may seem to the Minister to be expedient.

Temporary closing  
of roads.

The Minister, without giving any such previous notices as are hereinbefore required, may, by notification in the Gazette, close any road or part of a road for any period not exceeding six months for any reason which may appear to him to be sufficient, and thereupon the lands comprised in such road or part thereof shall be freed and discharged from any rights of the public or any person to the same as a road for the time expressed in such notification.

#### Road may be altered in land with consent of proprietor.

The Minister may,  
without notice, alter  
roads in incomplete  
purchase with  
consent of purchaser.

20. Notwithstanding anything hereinbefore contained, the Minister may, without such previous notice, with the consent of the holder of an incomplete purchase from the Crown or conditional lease, alter the position of any reserved road within such holding, and thereupon such new road shall be in lieu of the old road, and the land comprised in the old road shall become and be held as part of such incomplete purchase as aforesaid.

#### Power to refer to a Local Land Board for inquiry and report.

Reference to Local  
Land Board.

21. The Minister may, in the prescribed manner, refer to the Local Land Board any questions which may arise in connection with the opening or proposed opening of any road, or with the closing or proposed closing of any road; and the Local Land Board shall thereupon hold an inquiry, and report to the Minister for his information.

Road

*Public Roads.*

Road may be re-marked ; part or whole of cost to be borne by Municipality.

22. Whenever the position and boundaries of a road required for public traffic cannot be identified through the absence or loss of the survey marks, the Minister may cause the road to be re-marked; and if such road or part thereof be situate in a Municipality, the whole or such part of the cost as may be agreed upon by the Minister and the Municipal Council shall be borne by the Municipality.

Road may be redefined by survey and re-marked.

Part or whole of cost to be borne by the Council when road is situated in a municipality.

Notice of re-marking of a road to be published ; plan of re-marking may be approved and notified accordingly.

23. After the road has been re-marked as aforesaid, notice may be published in the Gazette, and in some local newspaper setting forth generally the extent and direction of the road, and referring to a plan of survey of the re-marking of the road which shall be kept for inspection at the Department of Lands in Sydney (and of which a copy may, if the Minister thinks fit, be exhibited as is provided in section four of this Act), and stating that it is intended to submit the plan to the Governor for approval, and calling upon all persons interested to set forth in writing, addressed to the Minister, within one month of the date of such notice, any objections they may have to the road as re-marked; and after due consideration of all such objections (if any) it shall be lawful for the Governor, by notice in the Gazette, after the expiration of the month, to approve the plan either with or without alteration, and the road as re-marked according to the plan so approved shall represent and be deemed to be the original road.

Notice of re-marking of road to be published.

Objections may be lodged.

Road may be approved.

Carriage and footways may be aligned for a Municipal Council, the Council to bear part or whole of cost; alignment to be approved, and approval to be published.

24. On written application by the Council of any Municipality, and on their undertaking to pay, when called upon, the whole or such part of the cost as may be agreed upon by the Minister and the Council, it shall be lawful for the Minister to cause the carriage-way and footways in any street or public place in such Municipality to be surveyed, set out, and defined, and to cause a plan thereof to be prepared, which plan may be submitted by the Minister to the Governor for approval, and when such approval has been given and published in the Gazette, the said plan shall for all purposes be conclusive evidence of the limits and boundaries of the said street or public place, and the carriage-ways and foot-ways set out and defined according to the said plan shall for the purposes of the Municipalities Act of 1867 and all enactments relating to the alignment of streets or public places be deemed to have been set out and defined by the Council within the meaning of section one hundred and twenty-eight of the said Act.

Alignment of streets at instance of Municipal Council.

Council to pay whole or part of cost of survey.

Plan to be approved by the Governor and the Executive Council.

Alignment to be as effective as if performed under the Municipalities Act.

Alignment of a street may be altered subject to objections or claims being settled by Municipal Council.

25. On written application by the Council of any Municipality, and on their undertaking to pay when called upon such part or the whole of the cost as may be agreed upon as aforesaid, it shall be lawful for the Minister to cause the width and the position of the carriage-way and the foot-ways in any street or public place that has been previously aligned under this or any other Act to be re-marked or altered, and to

Alignment may be altered on application by Municipality and undertaking by them to pay cost.

cause

*Public Roads.*

Plan to be approved by the Governor. cause a plan thereof to be prepared, which plan may be submitted by the Minister to the Governor for approval, and when such approval has been given and published in the Gazette, the said plan shall be for all purposes conclusive evidence of the limits and boundaries of the said street or public place, and the carriage-ways and foot-ways as remarked or altered according to the said plan shall, for the purposes of the Municipalities Act of 1867 and all enactments relating to the alignment of streets or public places, be deemed to have been set out and defined by the Council within the meaning of section one hundred and twenty-eight of the said Act: Provided always that no alignment shall be altered under this section until one month after notice has been published in the Gazette and in some local newspaper indicating the proposed alteration, and calling upon all persons interested to set forth in writing, addressed to the Minister, within one month of the date of such notice, any well grounded objections that may appear to them to exist to the proposed alteration, and in the event of any apparently valid objection being received from any person whose property might be directly affected in an injurious manner should the alteration be effected as proposed, such objection shall be referred by the Minister to the Council of the Municipality for settlement, and the proposed alteration shall not be carried into effect until the objection is withdrawn, or otherwise dealt with by the Council to the satisfaction of the Minister.

Powers of Council over streets so altered.

Notice to be published.

Objections to be referred to Council for settlement.

Protection of the Crown against claims for damages in respect of alignment of streets.

Crown not responsible for claims in respect of alignment or alteration of alignment. 26. No suit or action shall be maintainable against the Crown for injury or damage resulting from any alignment or alteration of alignment under this Act.

Power of entry on any lands for purposes of surveying roads, and penalty for obstructing a Surveyor duly authorised.

Powers of surveyors and others under this Act. 27. For the purpose of making any survey and of performing every act, matter, or thing under the provisions of this Act, it shall be lawful for the surveyor or other person duly authorised by the chief surveyor in that behalf, and his assistants, agents, and servants, to enter into and upon the lands of any person, to survey and take levels of the same, and to ascertain and set out by stakes, trenches, and marks such parts thereof as may be required for a road; to trace and determine the boundaries of such lands as may be affected by the proposed road; to mark and fell trees; to open and remove fences; and to do all other acts which may be necessary for such purpose as aforesaid: Provided that no damage shall be done further than is necessary for carrying out the purpose of this Act, and that all damage shall so far as practicable be repaired. And similar powers subject to the same provisions and limitations are, for the purpose of grading and marking roads, hereby conferred upon the Commissioner for Roads and persons duly authorised by him on that behalf. And any person obstructing any person in the exercise of the powers hereby conferred, or wilfully removing, altering, or defacing any such stakes, trenches, or marks as aforesaid, shall be liable to a penalty not exceeding ten pounds, which may be recovered summarily before any Police Magistrate or any two Justices of the Peace in Petty Sessions.

Power to enter and survey and mark proposed road, and to determine boundaries of lands affected, and to fell trees, and to remove fences.

Proviso to re-erect fences and to avoid wilful damage.

Penalty for obstructing surveyor.

How to be recovered.

Penalty for obstructing or damaging a road.

Penalty for obstructing or damaging a road. 28. Any person who wilfully obstructs or damages any road, whether opened and dedicated under this Act or not, shall be liable to

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*Public Roads.*

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a penalty not exceeding one hundred pounds, which may be recovered summarily before any Police Magistrate or any two Justices of the Peace in Petty Sessions ; and the Commissioner for Roads may recover from him the cost of removing the obstruction and repairing the damage in an action in any Court of competent jurisdiction.

**Power to make regulations.**

29. The Governor may make regulations for the purpose of giving effect to the provisions of any section of this Act in which the expression "prescribed" is used in connection with any matter referred to in the context, and generally for the purpose of carrying this Act into full effect, and may by such regulations impose for the enforcement thereof penalties not exceeding in any case fifty pounds, and provide for the recovery of such penalties, and such regulations shall upon being published in the Gazette have the force of law : Provided that a copy of such regulations shall be laid before both Houses of Parliament within fourteen days from the publication thereof, if Parliament be then in Session, or otherwise within fourteen days after the commencement of the next ensuing Session.

*In the name and on the behalf of Her Majesty I assent to this Act.*

*Government House,  
Sydney, 30 June, 1897.*

HAMPDEN,  
Governor.

a penalty not exceeding one hundred pounds, which may be recovered summarily before any Police Magistrate or any two Justices of the Peace in Petty Sessions; and the Commissioner for Roads may recover from him the cost of removing the obstruction and repairing the damage in an action in any Court of competent jurisdiction.

Power to make regulations

38. The Governor may make regulations for the purpose of giving effect to the provisions of any section of this Act in which the expression "prescribed" is used in connection with any matter referred to in the context, and generally for the purpose of carrying this Act into full effect, and any such regulations imposed for the enforcement of these provisions shall not exceed in any case fifty pounds, and such regulations shall provide for the recovery of such penalties, and such regulations shall upon being published in the Gazette have the force of law: provided that a copy of such regulations shall be laid before both Houses of Parliament within fourteen days from the publication thereof, if Parliament be then in session, or otherwise within fourteen days after the commencement of the next ensuing session of Parliament.

In the name and on the behalf of His Majesty the King, I assent to the Act.

MARLBOROUGH

Government House, Sydney, 30 June, 1897.



PUBLIC ROADS BILL.

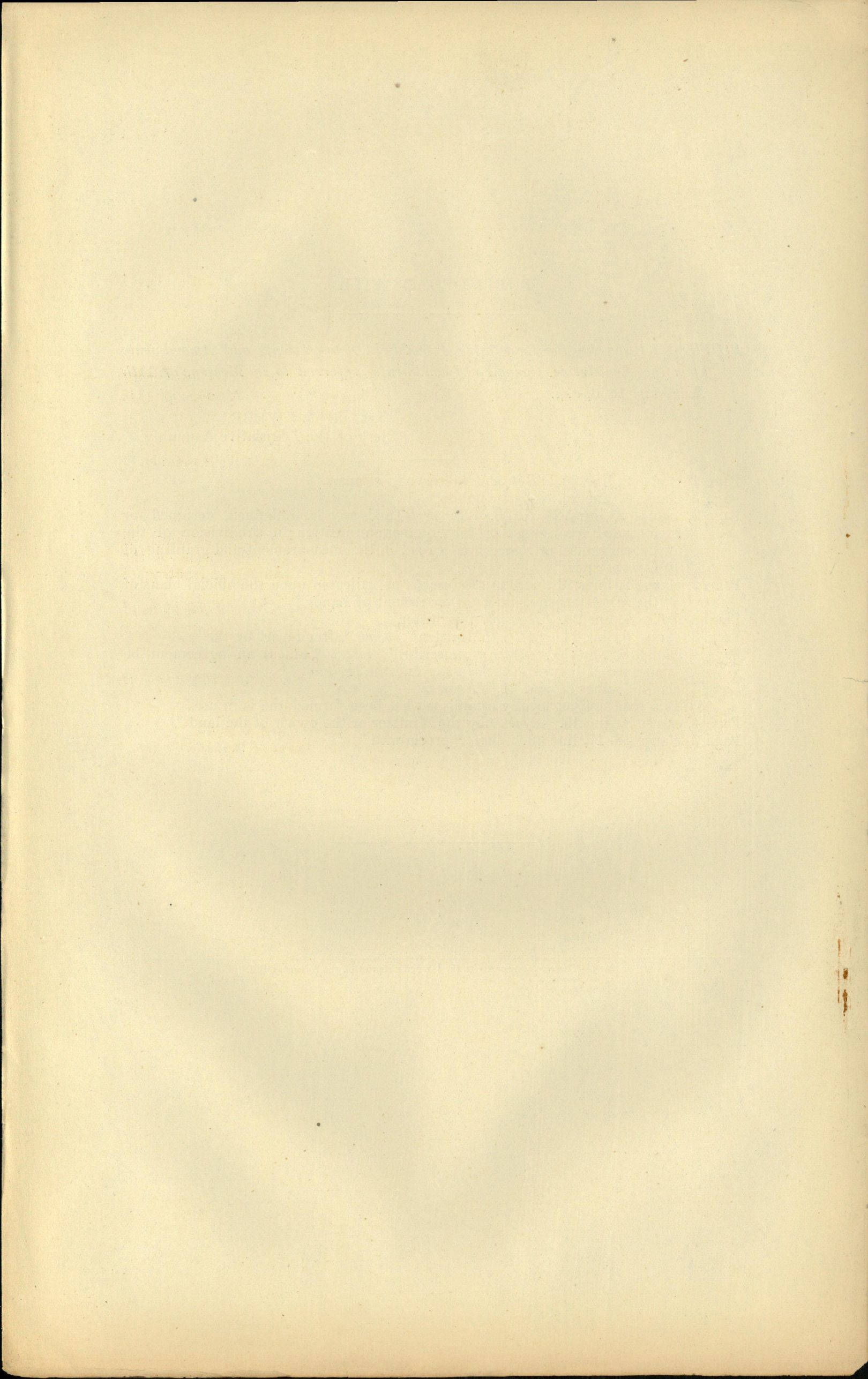
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*SCHEDULE showing the Legislative Assembly's Disagreements and Amendments upon the Legislative Council's Amendments, referred to in Message of 11th November, 1896, a.m.*

F. W. WEBB,  
Clerk of the Legislative Assembly.

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- Page 2, clause 2, line 25. *Reinsert* "reserved, set apart"  
Page 2, clause 2, line 26. *Omit* "public"  
Page 2, clause 2, lines 27 to 30. *Reinsert* "and any land defined, designed, or  
"intended for a road or for intercommunication in subdivision of the  
"Crown estate, or reserved as a road in the measurement and granting of  
"Crown lands"  
Page 2, clause 2, lines 31 and 32. *Reinsert* "as indicated upon the official plans of  
"the same deposited in the Department of Lands"  
Page 3, clause 5, line 24. *Reinsert* "Minister"  
Page 3, clause 5, line 24. *After* "Minister" *insert* "after report by the"  
Page 4, clause 6, line 18. *After* "prescribed" *insert* "unless an agreement be  
"arrived at between the Minister and the lessee"  
Page 4, clause 7, lines 30 and 31. *Reinsert*—  
" (iii) a road not yet legally established has been formed and is in use"  
Page 4, clause 8, line 45. *Omit* "by the Minister or the owner of the land"  
Page 7, clause 18. 17, line 39. *Omit* "proclaimed"
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PUBLIC ROADS BILL.

*SCHEDULE of Amendments referred to in Message of 5th November, 1896.*

- Page 2, clause 2, line 3. *After* "simple" *insert* "or conditionally leased"
- Page 2, clause 2. *After* line 6 *insert* "Incomplete purchase" means a conditional purchase under "any Crown Lands Act or a purchase by auction or otherwise from the Crown in respect of which a balance of the purchase money remains unpaid"
- Page 2, clause 2, line 25. *Omit* "reserved, set apart"
- Page 2, clause 2, line 26. *Before* "thoroughfare" *insert* "public"
- Page 2, clause 2, lines 27 to 30. *Omit* "and any land defined, designed, or intended for a road, or for intercommunication in subdivision of the Crown estate, or reserved as a road in the measurement and granting of Crown lands"
- Page 2, clause 2, line 31. *After* "otherwise" *omit* remainder of clause
- Page 2, clause 4, line 51. *After* "month" *insert* "from the date of the publication of such notice in the Gazette"
- Page 3, clause 4, line 1. *Omit* "well grounded"
- Page 3, clause 5, line 10. *Omit* "either"
- Page 3, clause 5, lines 10 and 11. *Omit* "or with such modification thereof as may appear to him to be expedient"
- Page 3, clause 5, line 11. *After* "may" *insert* "with the consent of the owner"
- Page 3, clause 5, line 21. *Omit* "feet" *insert* "yards"
- Page 3, clause 5, line 24. *Omit* "Minister" *insert* "Local Land Board"
- Page 3, clause 6, line 27. *After* "made" *insert* "with the consent of the owner"
- Page 3, clause 6, line 33. *After* "Crown" *insert* "or a conditional lease"
- Page 3, clause 6, line 34. *After* "purchase" *insert* "or conditional lease"
- Page 3, clause 6, line 36. *After* "or" *insert* "conditional lease or"
- Page 3, clause 6, line 39. *After* "Minister" *insert* "with the consent of the owner"
- Page 3, clause 6, line 43. *Omit* "or other purchase" *insert* "purchase or conditional lease"
- Page 3, clause 6, line 45. *After* "purchase" *insert* "or conditional lease"
- Page 3, clause 6, line 53. *After* "purchase" *insert* "or conditional lease"
- Page 4, clause 6, line 15. *After* "lease" *insert* "other than a conditional lease"
- Page 4, clause 6, line 17. *Omit* "if necessary" *insert* "by the Local Land Board"
- Page 4, clause 7, lines 26 to 31. *Omit* "or  
 (II) The Minister is satisfied that a road as surveyed is the best in the public interests, and the opening of it is an urgent public necessity; or  
 (III) A road not yet legally established has been formed and is in use"
- Page 4, clause 8, line 42. *Omit* "the preceding sections" *insert* "this Act"
- Page 4, clause 8, line 44. *After* "may" *insert* "by the Minister or the owner of the land"
- Page 4, clause 9, line 52. *Omit* "ascertained" *insert* "determined by the Local Land Board unless an agreement be arrived at between the Minister and the owner"
- Page 5, clause 9, line 13. *After* "purchase" *insert* "or conditional lease"
- Page 5, clause 10, line 20. *After* "lease" *insert* "other than a condition lease"
- Page 7, clauses 16 and 17. *Omit* clauses 16 and 17 *insert* new clause 16
- Page 7, clause 18, line 39. *After* "on" *insert* "proclaimed"
- Page 8, clause 19, line 4. *Omit* "well grounded"
- Page 8, clause 19, line 6. *Omit* "road" *insert* "said road or such part thereof"
- Page 8, clause 19, lines 27 to 29. *Omit* "dealt with under the provisions of the Crown Lands Acts, or may be sold by auction or private contract as may seem to the Minister expedient" *insert* "granted to the owner or owners of adjoining lands in fair proportions, or in accordance with any agreement made by such owners; and the value of such land, to be determined by the Local Land Board, shall be paid for the same"
- Page 8, clause 19, line 33. *After* "purchase" *insert* "or conditional lease"
- Page 8, clause 19, line 34. *After* "purchase" *insert* "or conditional lease notwithstanding that the maximum area prescribed for any conditional or other purchase by the Crown Lands Acts be thereby exceeded, or may be granted in exchange for lands taken or resumed, or hereafter to be taken or resumed under the provisions of any Act, other than this Act, authorising the resumption or acquisition of land for public purposes, or for lands contracted or hereafter to be contracted by instrument in writing to be conveyed or to be transferred from the owners to Her Majesty, or to any Constructing Authority for and on behalf of Her Majesty, in exchange for Crown land or any unnecessary road or roads"
- Page 8, clause 19, line 46. *After* "approve" *insert* "Provided that if any owner of land adjoining a road so closed shall not within three months from receipt of notice of the determination of value by the Land Board as aforesaid agree to pay such value and receive a grant of such land, the said land may be dealt with under the provisions of the Crown Lands Acts, or may be sold by auction or private contract, as may seem to the Minister to be expedient"
- Page 8, clause 19, line 54. *Omit* "temporarily"
- Page 8, clause 19, line 55. *After* "road" *insert* "or part of a road for any period not exceeding six months"
- Page 9, clause 20, line 1. *After* "road" *insert* "or part thereof"
- Page 9, clause 21, line 7. *After* "Crown" *insert* "or conditional lease"
- Page 9, clause 21, line 8. *Omit* "purchase" *insert* "holding"

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*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Legislative Assembly Chamber,  
Sydney, 30 September, 1896.* }

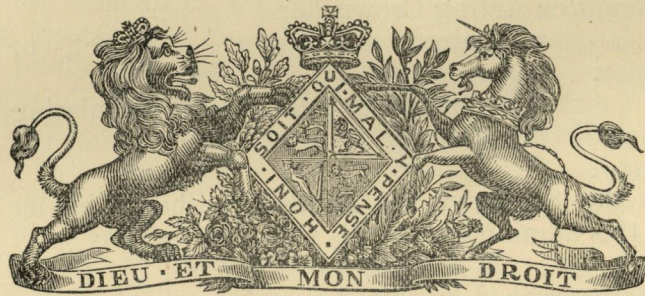
F. W. WEBB,  
*Clerk of the Legislative Assembly.*

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.*

*Legislative Council Chamber,  
Sydney, 5th November, 1896.* }

JOHN J. CALVERT,  
*Clerk of the Parliaments.*

## New South Wales.



ANNO SEXAGESIMO

# VICTORIÆ REGINÆ.

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No.

An Act to amend and consolidate the law relating to the opening, closing, and survey of roads; to make provision for the disposal of unnecessary roads and of lands resumed or withdrawn but not required for roads, and of certain other lands; for the prevention of the obstruction and injury of roads; for the alignment and the alteration of the alignment of streets in Municipalities; for granting leave to place public gates in certain cases; and for other matters of the like nature; and for that purpose to amend the Act 4 Wm. IV No. 11; the Public Gates Act of 1875; and the Crown Lands Acts of 1884 and 1889.

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5     1. This Act shall take effect on the first day of December, one thousand eight hundred and ninety-six, and may be cited as the "Public Roads Act of 1896." Commencement, short title.

2. In the construction of this Act and the regulations thereunder, unless the context requires another meaning— Interpretation clause.

10     "Governor" means the Governor with the advice of the Executive Council.

"Chief Surveyor" means the chief surveyor or acting chief surveyor of the Department of Lands.

119—A

"Crown

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter.

*Public Roads.*

- “Crown Lands” means lands vested in Her Majesty and not permanently dedicated to any public purpose or granted or lawfully contracted to be granted in fee simple or conditionally leased under any of the Acts relating to Crown Lands.
- 5 “Crown Lands Acts” means the Acts for the time being in force relating to Crown lands.
- “Incomplete purchase” means a conditional purchase under any Crown Lands Act, or a purchase by auction or otherwise from the Crown in respect of which a balance of the purchase money remains unpaid.
- 10 “Land Agent” means any person duly appointed to the office of Crown Land Agent or Acting Crown Land Agent.
- “Lease” includes any unexpired engagement, contract, or promise of a lease.
- 15 “Local Newspaper” means a newspaper published or circulating in the particular district or place in reference to which the expression is used.
- “Minister” means the Secretary for Lands or other Minister charged with the administration of this Act or any part thereof.
- 20 “Prescribed” means prescribed by this Act or by any regulation made thereunder.
- “Regulations” means the regulations made under the authority of this Act.
- 25 “Road” includes any land reserved, set apart, proclaimed, dedicated, resumed, or otherwise provided as a public thoroughfare or way; and any land defined, designed, or intended for a road or for intercommunication in subdivision of the Crown estate, or reserved as a road in the measurement and granting of Crown lands, whether under orders in Council or the Crown Lands Acts or otherwise, as indicated upon the official plans of the same deposited in the Department of Lands.
- 30

## Repeal of existing enactments.

3. Section sixty-seven of the Crown Lands Act of 1884 and <sup>Repeal.</sup> section forty-two of the Crown Lands Act of 1889, so far as it relates to roads, is hereby repealed, and so much of the Act fourth William the Fourth number eleven as applies to the opening and altering and improving of roads (other than private roads) by agency of the Surveyor-General, or relates to the assessment of damages upon claims for compensation, or is inconsistent with this Act, is hereby repealed; but any proceedings lawfully commenced under the enactments hereby repealed, may be carried to completion thereunder unless the provisions hereinafter contained can be applied thereto.
- 40

## Preliminary notification of road.

4. Whenever the Minister deems it expedient that a road should be opened through any lands which are not Crown lands, notice to that effect shall be published in the *Gazette*, and in some local newspaper, giving a description of the land which it is proposed to resume. Such notice shall refer to a plan of the proposed road, which shall be kept for inspection at the offices of the Department of Lands in Sydney, and of which a copy shall be exhibited for one month from the date of the publication of such notice in the *Gazette* at the office of the land agent of the district in which the road is situated; and shall call upon all persons interested to set forth in writing, and forward to the Minister within one month from the date thereof, any
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- well
- Notices of intention to resume for the purpose of opening a road.

*Public Roads.*

well-grounded objection which may appear to them to exist to the opening of such road, and a notice, wholly or partly in print or writing, to the like effect shall be posted by registered letter to the owner or occupier of such land, if the name and address of such owner or occupier be known.

Resumption by notice in *Gazette*.

5. After due consideration of all such objections (if any), the Governor may, after the expiration of the month, by notification in the *Gazette*, resume such land as he may think necessary for the road Governor may resume by notification in the *Gazette*.  
 10 either in accordance with the terms of the notice, or with such modification thereof as may appear to him to be expedient, and may with the consent of the owner by the same or a subsequent notification resume any adjoining parcel of land which by reason of severance is, in the opinion of the Minister, rendered of little or no value to the owner  
 15 thereof; the notification shall state when deemed necessary the depth below the surface to which the land is resumed, and the land so resumed shall, to the depth so stated as aforesaid, forthwith vest in Her Majesty, and the said land or any part thereof may by the same or a subsequent notification be dedicated as a road: Provided always that  
 20 no land shall be resumed under the provisions of this Act which is situated within two hundred feet yards of any dwelling-house and used in connection therewith as a yard, garden, or orchard, unless the owner of such land consent to the same being so resumed, or in the opinion of  
 25 *Minister after approval of Local Land Board* the object of the resumption cannot otherwise be attained.

## Compensation.

6. Compensation for the land resumed shall be made with the consent of the owner by the Crown either in money or in land, or partly in land and partly in money. For the purpose of making  
 30 compensation as aforesaid, the Minister shall have power, when the land resumed was held in fee simple, to grant Crown land in fee simple, and shall, when the resumption is made from an incomplete purchase from the Crown or a conditional lease, have power—  
 35 (I) to add to such incomplete purchase or conditional lease such adjoining Crown lands as may be available, to be held as part of such incomplete purchase; or conditional lease or  
 (II) to grant Crown lands in fee simple.

The land so added as aforesaid shall be as nearly as practicable equal in area and value to the land resumed, but the Minister with  
 40 the consent of the owner shall, where he thinks it to the interest of the public to do so, have power to add lands either greater or less in area and value than the land resumed, notwithstanding that the maximum area prescribed for any conditional or other purchase or conditional lease by the Crown Lands Acts be thereby exceeded; but  
 45 the holder of the incomplete purchase or conditional lease shall not be required to make any payments in respect of any excess of area added to his land where the land added is not greater in value than that resumed.

For the purposes of this section the expression "Crown lands" shall include roads which the Minister considers to be unnecessary. Conditional purchaser to deposit unpaid balance on area resumed.

When there is any difference of value between lands granted as aforesaid and the land resumed (whether the subject of an incomplete purchase or conditional lease or not) such difference shall be paid by the person receiving compensation or by the Crown, according as the  
 55 value of the lands granted is greater or less than that of the land resumed; and where land has been resumed which is the subject of an incomplete

*Public Roads.*

incomplete purchase and Crown lands of equal or greater value are granted in fee simple in compensation, the person receiving such compensation shall also pay a sum of money equal to the unpaid balance of purchase money upon the land resumed.

5 If, after land has been granted in compensation, an adjoining area of Crown lands is left of less than forty acres in extent such area may be granted by the Minister in fee simple at a price to be fixed by the Local Land Board. Disposal of small areas of Crown land.

10 Subject to the provisions herein contained, the Minister and the person entitled to compensation may make such arrangements in connection with the exchange of land for road purposes as may be deemed by the Minister expedient in the interests of the public. Minister may make arrangements for the exchange of land subject to preceding sections.

For the purpose of making compensation under this section the Governor may, by proclamation in the *Gazette*, withdraw land from 15 any lease other than a conditional lease under which it may be held under the Crown Lands Acts on payment to the lessee of the value of the improvements thereon, to be appraised if necessary by the Local Land Board in such manner as may be prescribed.

20 The receipt of any person receiving compensation under this Act either in money or land shall, unless the contrary is stated therein, be a complete discharge to the Crown of all claims in connection with the land resumed or withdrawn. Receipt to be a discharge.

7. In cases where—

25 (i) an agreement has been made with the persons whose land would be traversed by a proposed road to permit the road to be opened; or Road in certain cases may be opened without preliminary notice.

(ii) the Minister is satisfied that a road as surveyed is the best in the public interests and the opening of it is an urgent public necessity; or

30 (iii) a road not yet legally established has been formed and is in use;

the Governor may, without any such notice as aforesaid by notification in the *Gazette*, resume the lands required for the road, and the land so resumed or any part thereof may by the same or a subsequent 35 notification be dedicated as a road; provided that before notification of resumption notice of the proposed resumption be posted by registered letter to the owners or occupiers of the land through which the proposed road will pass, if the name and address of such owner or occupier be known.

#### 40 Reference to the Local Land Board.

8. Any question that may arise in connection with any of the matters dealt with in the preceding sections, this Act, either in respect of the amount payable as compensation, the persons entitled thereto, the proportion in which such persons are so entitled, or otherwise, may, 45 ~~by the Minister or the owner of the land,~~ in the prescribed manner, be referred to the Local Land Board for determination, and the decision of the Land Board shall be subject to appeal ~~to the Land Board~~ in the prescribed manner. Disputes as to matters under the preceding section may be submitted to the Land Board.

#### Compensation—How to be determined; betterment to be an element for consideration.

50 9. In estimating the amount payable as compensation, the value of the land resumed and of all improvements thereon shall in every case be ascertained, determined by the Local Land Board, unless an agreement be arrived at between the Minister and the owner, and the damage, if any, to be sustained from the severance of the property by the road. If the value of a property or holding from which a resump- 55 tion is made is increased by the opening of the road or by any additional



*Public Roads.*

additional facilities of access afforded thereby, or by the addition or grant by way of compensation of any road within, separating or bounding the said property or holding, the increase of value shall be deducted from the amount estimated as aforesaid, and the balance, if  
5 any, shall alone be payable:

Provided that, in estimating the amount payable as compensation, no damages for severance shall be allowed where—

- (a) the land is comprised within a grant from the Crown, which  
10 contains a reservation to the Crown of so much of the land as may be required for a public way, or a reservation to the Crown of a right or power under which the road might have been opened without compensation; or
- (b) the land is comprised within an incomplete purchase, or  
15 conditional lease, or a promise of a grant from Crown of such kind that a similar reservation would in due course have been inserted in the grant thereof when issued.

Land taken for a road out of leasehold; compensation only for improvements.

10. Where the proposed road passes through Crown lands held or  
20 occupied under any homestead selection, lease, **other than a conditional** lease, license, right, or permit under the Crown Lands Acts, the Mining Act, 1874, or any Act relating to mining, or any regulations thereunder, the Governor may without any such notice as aforesaid by notification in the *Gazette* withdraw from any such selection, lease, license, right, or  
25 permit such land as he may think necessary for the road, and the land so withdrawn, or any part thereof, may by the same or a subsequent notification be dedicated as a road, and compensation (to be assessed in the same way as in the case of lands resumed) shall be made in money, but only for  
30 improvements thereon and not for the land withdrawn or for severance, and the rent or fee payable to the Crown in respect thereof shall be reduced in proportion to the area withdrawn.

Withdrawal of land for a road from lands under lease or license.

Compensation.

No compensation for minerals underlying the road; permission may be granted to proprietor to mine.

11. In no case shall compensation be payable for mines or  
35 minerals existing or presumed to exist in land resumed or withdrawn under this Act, and the Acts relating to mining on Crown lands now or hereafter to be in force shall not apply to mines or minerals resumed as aforesaid; but a resumption shall not in any way affect the mines or minerals below the depth to which the land is resumed: Provided  
40 always that in working such mines or minerals sufficient support be left for the road; and if in consequence of such working a subsidence of the road take place, or the safety or stability of the road be endangered, the Commissioner for Roads may repair the same, or the Minister on the invitation of the said Commissioner may open a new road in its  
45 stead, and the said Commissioner may recover the cost of repairing the injured road, or of the resumption of land for the new road together with the cost of constructing it, from the person working such mines or minerals in an action in any Court of competent jurisdiction.

No compensation for mines or minerals, but Minister may grant permission to work them.

Where a road passes through enclosed lands the cost of fencing  
50 may be granted or permission given to place public gates.

12. If any fenced enclosure of land, not being Crown lands, be broken by the road, the Minister may grant such a sum of money towards the cost of fencing the road as he may think the circumstances warrant, not exceeding the cost of erecting a fence on  
both

Where a fenced enclosure is broken the Minister may grant cost of fencing, or may grant permission to place gates.

*Public Roads.*

both sides of the road within the enclosure of the same kind as the fence which forms the enclosure, or he may grant in lieu thereof permission to place public gates under the Public Gates Act of 1875; and in the event of increased traffic requiring the revocation of such  
5 permission within ten years, it shall be lawful for the Minister to grant a part of the estimated cost of fencing the road, which shall be proportionate to the unexpired portion of the ten years.

*Gazette* notice to be evidence; Governor may alter notification under section forty-two of Crown Lands Act of 1889.

- 10 13. The production of a copy of the *Gazette* containing a notification purporting to be made under this Act shall in all cases be  
conclusive evidence of the due publication of such notification in  
accordance with the provisions of this Act, and of the regularity of  
all proceedings relating thereto. The Governor may, by notification  
15 in the *Gazette*, limit, correct, or alter the terms of any such notification as aforesaid, or any notification relating to roads made before  
the passing of this Act under the provisions of section forty-two of  
the Crown Lands Act of 1889, and such limitation, correction, or  
alteration shall, unless otherwise specified, relate back to the date of  
20 the original notification.
- Gazette* notice conclusive evidence of due publication.  
Notification under this Act or section 42 of Crown Lands Act of 1889 may be altered.

## Disposal of surplus land.

14. Any lands resumed or withdrawn under this Act, or resumed  
under the provisions of section forty-two of the Crown Lands Act of  
1889, which are not required for the purpose for which they were  
25 resumed or withdrawn, or for the purpose of making compensation,  
may be dealt with under the provisions of the Crown Lands Acts, or  
may be sold by public auction or by private contract as may seem to  
the Minister expedient, or may, by notice in the *Gazette*, be added to  
adjoining Crown lands, if any, held under any lease, license, right, or  
30 permit, on such terms and conditions as the Minister may approve.
- Surplus lands, how disposed of.

Road may be opened on the petition of and at the cost of any person.

15. If any one or more persons apply or petition for the opening  
of a road through any land, and the Minister be of opinion that the  
35 said road may be reasonably opened for the convenience and benefit  
of such person or persons as aforesaid, but that there is no public  
necessity for it, the Minister may require the said person or persons  
to deposit with the Colonial Treasurer a sum sufficient to cover the  
cost of opening the road and paying compensation in connection  
40 therewith; and if the said road or any road which in the opinion of  
the Minister for the time being will be of equal or nearly equal  
convenience or benefit to such person or persons as aforesaid be there-  
after opened, the sum so deposited, or such part thereof as may be  
necessary, may be applied towards opening the road and paying  
45 compensation in connection therewith. And any balance which  
remains shall be repaid to such person or persons as aforesaid or  
his or their representatives: Provided that if the persons applying for  
the road can obtain the written and witnessed consent of the owner or  
owners of the land through which the road sought would pass, to  
50 allow it to be established without cost to the Crown, the deposit  
required shall be the cost of survey only.
- Minister may open a road on the petition of a private person on payment of expenses.

All

*Public Roads.*~~All roads to be public roads.~~

16. All roads dedicated or opened under this Act, whether on the application or petition of any person or otherwise, shall be public roads.

All roads opened under this Act to be public roads.

5 Roads to be public thoroughfares.

17. A road as defined in section two shall, after the commencement of this Act, be a public thoroughfare dedicated to the public use :

Roads to be public thoroughfares.

10 Provided that where the road is part of land held under lease or license from the Crown the road may, until withdrawn by notification in the *Gazette*, from lease or license, be used, subject to the right of the public aforesaid for the ordinary purposes of the lease or license. If the road be situate within a Municipality, the care, construction, and management thereof shall be vested in the Council of the Municipality within the meaning of section one hundred and seventeen of the Municipalities Act of 1867. And the official plans of survey which show the road in question or part thereof shall be accepted as *prima facie* evidence of the width and position of the same.

20 Boundary roads and other roads so called may be declared public roads.

16. The Governor may, by notification in the *Gazette*, declare any road to be a public road, and thereupon the same shall be dedicated to the public accordingly, and shall be withdrawn from any lease or license from the Crown under which it was held, and no compensation shall be payable in respect thereof; and if the road be situate within a Municipality, such notification as aforesaid shall have the effect of vesting the care, construction, and management thereof in the Council of the Municipality within the meaning of section one hundred and seventeen of the Municipalities Act of 1867. And where any road so declared as aforesaid has been provided in subdivision of the Crown estate for alienation or reserved in the measurement of Crown lands, the official plans of survey which show the road in question, or part thereof, in connection with the lands subdivided or measured, shall be accepted as *prima facie* evidence of the width and position of the same, but nothing in this section shall prevent any alteration of the width of any road prior to or by the notification as aforesaid.

Lands reserved as roads may be declared public roads.

Public gates may be placed on boundary roads.

18. 17. (i) It shall be lawful for the Minister to grant permission to place public gates on ~~proclaimed~~ boundary roads where such roads separate lands held by the same person, or the lands of persons who unite in making application to the Minister for permission to place gates, and such gates shall for all purposes be deemed to be public gates within the Public Gates Act of 1875.

Public gates may be placed on boundary roads.

45 (ii) Notwithstanding anything contained in section three of the Public Gates Act of 1875, the Minister may revoke and cancel permission granted under the said Act or under this Act for the erection of a public gate, upon notice of not less than one month to the occupant of the land.

Permission to erect a public gate may be revoked on one month's notice.

Closing of unnecessary roads—Preliminary notification.

50 19. 18. If the Minister be of opinion that it is expedient to close any road or part thereof, notice to that effect shall be published in the *Gazette* and in some local newspaper, and printed or written notice to the like effect shall be posted by registered letter to the owners or occupiers

Notices of intention to close unnecessary road.

*Public Roads.*

occupiers of all lands having frontage to such road or part thereof (as the case may be), if their names and addresses be known, and shall call upon all persons interested to set forth in writing addressed to the Minister within one month from the date thereof any well-grounded  
 5 objections which may appear to them to exist to the closing of the road said road or such part thereof: Provided always that, where it is proposed to close a road and to open a road under section five of this Act in lieu thereof, the matters to be specified in the notices herein provided for may be specified in the notices published and posted  
 10 under section four of this Act, and thereupon no separate notice under this section shall be necessary.

Nothing in this section shall apply to the closing of roads under section one hundred and eleven of the Crown Lands Act of 1884.

15 Objections to be considered; road to be notified as closed; final disposal thereof; road may be temporarily closed.

20. 19. After due consideration of all such objections (if any) the Governor may, after the expiration of the month, by notification in the *Gazette*, close the aforesaid road, and the lands comprised therein  
 20 shall thereupon be freed and discharged from any rights of the public or any person to the same as a highway and (except in the case of a road opened or made under the Act fourth William the Fourth number eleven, and roads which have been or may hereafter be granted at Quarter Sessions under the twenty-first section of that Act as an access  
 25 road, in which cases the lands comprised therein shall vest in and be held by the owner of the adjoining land) shall become Crown lands, and may be dealt with under the provisions of the Crown Lands Acts, or may be sold by auction or private contract, as may seem to the Minister expedient, granted to the owner or owners of adjoining lands in fair  
 30 proportions or in accordance with any agreement made by such owners, and the value of such land to be determined by the Local Land Board shall be paid for the same, or may be added to any lands the subject of an incomplete purchase or conditional lease through or adjoining  
 35 or conditional lease, notwithstanding that the maximum area prescribed for any conditional or other purchase by the Crown Lands Acts be thereby exceeded or may be granted in exchange for lands taken or resumed, or hereafter to be taken or resumed under the provisions of any Act, other than this Act, authorising the resumption or acquisition  
 40 of land for public purposes, or for lands contracted or hereafter to be contracted by instrument in writing to be conveyed or to be transferred from the owners to Her Majesty, or to any Constructing Authority for and on behalf of Her Majesty, in exchange for Crown land or any unnecessary road or roads, or may by notice in the *Gazette*  
 45 be added to adjoining Crown lands, if any, held under lease or license, on such terms and conditions as the Minister may approve: Provided that if any owner of land adjoining a road so closed shall not within three months from receipt of notice of the determination of value by the Land Board as aforesaid, agree to pay such value and receive a  
 50 grant of such land, the said land may be dealt with under the provisions of the Crown Lands Acts, or may be sold by auction or private contract as may seem to the Minister to be expedient.

The Minister, without giving any such previous notices as are  
 55 hereinbefore required, may, by notification in the *Gazette*, temporarily close any road or part of a road for any period not exceeding six months for any reason which may appear to him to be sufficient, and thereupon

*Public Roads.*

thereupon the lands comprised in such road or part thereof shall be freed and discharged from any rights of the public or any person to the same as a road for the time expressed in such notification.

Road may be altered in land with consent of proprietor.

- 5 ~~21.~~ 20. Notwithstanding anything hereinbefore contained, the Minister may, without such previous notice, with the consent of the holder of an incomplete purchase from the Crown or conditional lease, alter the position of any reserved road within such purchase holding, and thereupon such new road shall be in lieu of the old road, and the  
10 land comprised in the old road shall become and be held as part of such incomplete purchase as aforesaid.
- The Minister may, without notice, alter roads in incomplete purchase with consent of purchaser.

Power to refer to a Local Land Board for inquiry and report.

- ~~22.~~ 21. The Minister may, in the prescribed manner, refer to the Local Land Board any questions which may arise in connection with the  
15 opening or proposed opening of any road, or with the closing or proposed closing of any road; and the Local Land Board shall thereupon hold an inquiry, and report to the Minister for his information.
- Reference to Local Land Board.

Road may be re-marked; part or whole of cost to be borne by Municipality.

- 20 ~~23.~~ 22. Whenever the position and boundaries of a road required for public traffic cannot be identified through the absence or loss of the survey marks, the Minister may cause the road to be re-marked; and if such road or part thereof be situate in a Municipality, the whole or such part of the cost as may be agreed upon by the Minister and the  
25 Municipal Council shall be borne by the Municipality.
- Road may be redefined by survey and re-marked.  
Part or whole of cost to be borne by the Council when road is situated in a municipality.

Notice of re-marking of a road to be published; plan of re-marking may be approved and notified accordingly.

- ~~24.~~ 23. After the road has been re-marked as aforesaid, notice may be published in the *Gazette* and in some local newspaper setting forth  
30 generally the extent and direction of the road, and referring to a plan of survey of the re-marking of the road which shall be kept for inspection at the Department of Lands in Sydney (and of which a copy may, if the Minister thinks fit, be exhibited as is provided in section four of this Act), and stating that it is intended to submit the plan to  
35 the Governor for approval, and calling upon all persons interested to set forth in writing, addressed to the Minister, within one month of the date of such notice, any objections they may have to the road as re-marked; and after due consideration of all such objections (if  
40 any) it shall be lawful for the Governor, by notice in the *Gazette*, after the expiration of the month, to approve the plan either with or without alteration, and the road as re-marked according to the plan so approved shall represent and be deemed to be the original road.
- Notice of re-marking of road to be published.  
Objections may be lodged.  
Road may be approved.

Carriage and footways may be aligned for a Municipal Council, the Council to bear part or whole of cost; alignment to be  
45 approved, and approval to be published.

- ~~25.~~ 24. On written application by the Council of any Municipality, and on their undertaking to pay, when called upon, the whole or such part of the cost as may be agreed upon by the Minister and the Council, it shall be lawful for the Minister to cause the carriage-way and foot-  
50 ways in any street or public place in such Municipality to be surveyed,
- Alignment of streets at instance of Municipal Council.  
Council to pay whole or part of cost of survey.

*Public Roads.*

set out, and defined, and to cause a plan thereof to be prepared, which plan may be submitted by the Minister to the Governor for approval, and when such approval has been given and published in the *Gazette*, the said plan shall for all purposes be conclusive evidence of the limits and boundaries of the said street or public place, and the carriage-ways and foot-ways set out and defined according to the said plan shall for the purposes of the Municipalities Act of 1867 and all enactments relating to the alignment of streets or public places be deemed to have been set out and defined by the Council within the meaning of section one hundred and twenty-eight of the said Act.

Plan to be approved by the Governor and the Executive Council.

Alignment to be as effective as if performed under the Municipalities Act.

Alignment of a street may be altered subject to objections or claims being settled by Municipal Council.

26. 25. On written application by the Council of any Municipality, and on their undertaking to pay when called upon such part or the whole of the cost as may be agreed upon as aforesaid, it shall be lawful for the Minister to cause the width and the position of the carriage-way and the foot-ways in any street or public place that has been previously aligned under this or any other Act to be re-marked or altered, and to cause a plan thereof to be prepared, which plan may be submitted by the Minister to the Governor for approval, and when such approval has been given and published in the *Gazette*, the said plan shall be for all purposes conclusive evidence of the limits and boundaries of the said street or public place, and the carriage-ways and foot-ways as re-marked or altered according to the said plan shall, for the purposes of the Municipalities Act of 1867 and all enactments relating to the alignment of streets or public places, be deemed to have been set out and defined by the Council within the meaning of section one hundred and twenty-eight of the said Act: Provided always that no alignment shall be altered under this section until one month after notice has been published in the *Gazette* and in some local newspaper indicating the proposed alteration, and calling upon all persons interested to set forth in writing, addressed to the Minister, within one month of the date of such notice, any well grounded objections that may appear to them to exist to the proposed alteration, and in the event of any apparently valid objection being received from any person whose property might be directly affected in an injurious manner should the alteration be effected as proposed, such objection shall be referred by the Minister to the Council of the Municipality for settlement, and the proposed alteration shall not be carried into effect until the objection is withdrawn, or otherwise dealt with by the Council to the satisfaction of the Minister.

Alignment may be altered on application by Municipality and undertaking by them to pay cost.

Plan to be approved by the Governor.

Powers of Council over streets so altered.

Notice to be published.

Objections to be referred to Council for settlement.

Protection of the Crown against claims for damages in respect of alignment of streets.

27. 26. No suit or action shall be maintainable against the Crown for injury or damage resulting from any alignment or alteration of alignment under this Act.

Crown not responsible for claims in respect of alignment or alteration of alignment.

Power of entry on any lands for purposes of surveying roads, and penalty for obstructing a Surveyor duly authorised.

28. 27. For the purpose of making any survey and of performing every act, matter, or thing under the provisions of this Act, it shall be lawful for the surveyor or other person duly authorised by the chief surveyor in that behalf, and his assistants, agents, and servants, to enter into and upon the lands of any person, to survey and take levels of the same

Powers of surveyors and others under this Act.

Power to enter and survey and mark proposed road,

*Public Roads.*

same, and to ascertain and set out by stakes, trenches, and marks such parts thereof as may be required for a road; to trace and determine the boundaries of such lands as may be affected by the proposed road; to mark and fell trees; to open and remove fences; and to do all other acts which may be necessary for such purpose as aforesaid: Provided that no damage shall be done further than is necessary for carrying out the purpose of this Act, and that all damage shall so far as practicable be repaired. And similar powers subject to the same provisions and limitations are, for the purpose of grading and marking roads, hereby conferred upon the Commissioner for Roads and persons duly authorised by him on that behalf. And any person obstructing any person in the exercise of the powers hereby conferred, or wilfully removing, altering, or defacing any such stakes, trenches, or marks as aforesaid, shall be liable to a penalty not exceeding ten pounds, which may be recovered summarily before any Police Magistrate or any two Justices of the Peace in Petty Sessions.

and to determine boundaries of lands affected,

and to fell trees, and to remove fences.

Proviso to re-erect fences and to avoid wilful damage.

Penalty for obstructing surveyor.

How to be recovered.

## Penalty for obstructing or damaging a road.

29. 28. Any person who wilfully obstructs or damages any road, whether opened and dedicated under this Act or not, shall be liable to a penalty not exceeding one hundred pounds, which may be recovered summarily before any Police Magistrate or any two Justices of the Peace in Petty Sessions; and the Commissioner for Roads may recover from him the cost of removing the obstruction and repairing the damage in an action in any Court of competent jurisdiction.

Penalty for obstructing or damaging a road.

## 25 Power to make regulations.

30. 29. The Governor may make regulations for the purpose of giving effect to the provisions of any section of this Act in which the expression "prescribed" is used in connection with any matter referred to in the context, and generally for the purpose of carrying this Act into full effect, and may by such regulations impose for the enforcement thereof penalties not exceeding in any case fifty pounds, and provide for the recovery of such penalties, and such regulations shall upon being published in the *Gazette* have the force of law: Provided that a copy of such regulations shall be laid before both Houses of Parliament within fourteen days from the publication thereof, if Parliament be then in Session, or otherwise within fourteen days after the commencement of the next ensuing Session.

Power to make regulations.

Public Roads.

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Power to make regulations.

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