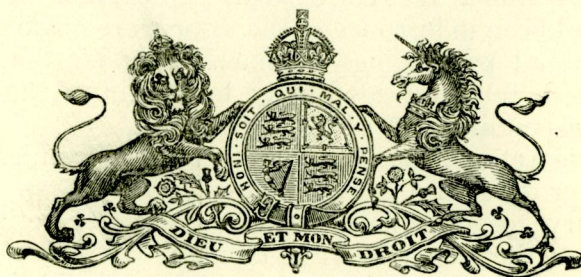


I Certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Legislative Council Chamber,
Sydney, 3rd December, 1902. }*

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO SECUNDO

EDWARDI VII REGIS.

Act No. 95, 1902.

An Act to consolidate the Acts relating to the opening closing survey altering and improving of Roads and the alignment and alteration of the alignment of Streets in Municipalities.
[Assented to, 12th December, 1902.]

BE it enacted by the King'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:—

Repeal Savings and Interpretation.

1. This Act may be cited as the "Public Roads Act 1902." Short title.
2. The Acts mentioned in the Schedule hereto are to the extent **Repeal** therein expressed hereby repealed.
3. All officers and persons appointed under any enactment Existing officers. hereby repealed and holding office at the time of the passing of this Act shall remain in office as if this Act had been in force at the time they were appointed and they had been appointed hereunder and this Act shall apply to them accordingly.
- 4.

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Existing regulations.

4. All regulations duly made under the authority of any enactment hereby repealed and in force at the time of the passing of this Act shall be deemed to have been duly made under the corresponding provisions of this Act.

Existing proclamations and notifications &c.

Proceedings commenced may be prosecuted.

5. All proclamations notifications and notices made or given and all acts and things done under the authority of any enactment hereby repealed and having any force or effect at the time of the passing of this Act shall be deemed to have been duly made given or done respectively under the corresponding provisions of this Act and as if this Act had been in force when the same were made given or done and all matters and proceedings commenced under the authority of any enactment hereby repealed may be continued and prosecuted under the corresponding provisions of this Act.

Interpretation.

No. 5, 1897, s. 2.

6. In this Act and the regulations thereunder unless the context or subject-matter otherwise indicates or requires—

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

“Crown lands” means lands vested in His 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.

“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 passing of this Act as a public thoroughfare or way and wherever used in sections twelve eighteen to twenty-two inclusive and thirty-four of this Act also includes any land defined reserved or left before or after the passing 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

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plans of the same but where used in sections thirty-two and thirty-three of this Act does not include any land not proclaimed or expressly or impliedly dedicated to the public as a road.

Opening of roads.

7. (1) 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. Notices of intention to open a road. No. 5, 1897, s. 4.

(2) Such notice shall—

- (a) 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
- (b) call upon all persons interested to set forth in writing and forward to the Minister within one month from the date of the publication of the notice in the Gazette any objection which may appear to them to exist to the opening of such road.

(3) A copy of such plan 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.

(4) A written notice to the like effect shall be posted by registered letter to the owner or occupier of the land which it is proposed to resume if the name and address of such owner or occupier be known.

8. (1) Upon the expiration of one month from the date of the publication of such notice the Governor may after considering any objections duly forwarded resume by notification in the Gazette so much land as he thinks necessary for the road in accordance with the terms of the said notice. Resumption of lands necessary for road. Ibid. s. 5.

(2) When deemed necessary the notification shall state the depth below the surface to which the land is resumed. Depth below surface.

(3) The land so resumed shall to the depth so stated as aforesaid forthwith vest in His Majesty. Vesting of land.

(4) The land resumed or any part thereof may by the same or a subsequent notification be dedicated as a road. Dedication of road.

(5) The Governor 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. Resumption of adjoining land.

(6) No land situated within two hundred yards of any dwelling-house and used in connection therewith as a yard garden or orchard shall be resumed under the provisions of this Act unless Certain lands may not be resumed.

(a) the owner consents or

(b)

Public Roads.

(b) the Minister after inquiry and report by the local land board considers that the object of the resumption cannot otherwise be attained.

Roads in certain cases may be opened without preliminary notice.

No. 5, 1897, s. 7.

9. (1) In cases where—

(a) 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

(b) 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.

(2) Before notification of resumption a notice of the proposed resumption shall 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 is known.

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

Ibid. s. 15.

10. (1) If any person applies or petitions for the opening of a road through any land and the Minister is of opinion that the said road may be reasonably opened for the convenience and benefit of such person as aforesaid but that there is no public necessity for it the Minister may require the said person to deposit with the Treasurer a sum sufficient to cover the cost of opening the road and paying compensation in connection therewith.

(2) If the said road (or any road which in the opinion of the Minister will be of equal or nearly equal convenience or benefit to such person as aforesaid) is 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.

(3) Any balance which remains shall be repaid to such person as aforesaid or his representatives.

(4) If the person applying for the road can obtain the written and witnessed consent of the 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.

Withdrawal of land under lease or license for a road.

Ibid. s. 10.

11. 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 thinks 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.

Compensation

*Public Roads.**Compensation for land resumed.*

12. (1) For the purposes of this section the expression "Crown lands" shall include roads which the Minister considers to be unnecessary. Interpretation. No. 5, 1897, s. 6.

(2) 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. Compensation.

(3) For the purpose of making compensation as aforesaid the Minister may— Powers of Minister.

(a) when the land resumed was held in fee-simple grant land in fee-simple or

(b) when the resumption is made from an incomplete purchase from the Crown or a conditional lease add to such incomplete purchase or conditional lease such adjoining Crown lands as are available to be held as part of such incomplete purchase or additional lease or grant Crown lands in fee-simple.

(4) 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 may where he thinks it to the interest of the public to do so 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. Land added to be equal to land resumed.

(5) 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 of the lands granted is greater or less than that of the land resumed. Difference in value to be paid.

(6) 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.

(7) 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.

(8) 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 are deemed by the Minister expedient in the interests of the public. Minister may make arrangements for the exchange of land.

(9)

Public Roads.

Withdrawal of lands.

(9) 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 the prescribed manner unless an agreement is arrived at between the Minister and the lessee.

Receipt to be a discharge.

(10) 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.

Mode of assessing compensation.

No. 5, 1897, s. 9.

13. (1) In estimating the amount payable as compensation the value of the land resumed and of all improvements thereon and the damage if any to be sustained from the severance of the property by the road shall in every case be determined by the local land board unless an agreement be arrived at between the Minister and the owner.

(2) 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 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.

(3) 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.

Compensation in the case of lands withdrawn under s. 11.

Ibid. s. 10.

14. In the case of lands withdrawn from any selection lease license right or permit under section eleven 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 shall be reduced in proportion to the area withdrawn.

No compensation for mines or minerals in resumed land.

Ibid. s. 11.

15. (1) In no case shall compensation be payable for mines or minerals existing or presumed to exist in land resumed or withdrawn under this Act.

(2) The Acts in force for the time being in relation to mining on Crown lands shall not apply to such mines or minerals in lands so resumed or withdrawn.

(3)

Public Roads.

(3) A resumption under this Act shall not in any way affect mines or minerals below the depth to which the land is resumed.

(4) In working mines or minerals below such depth sufficient support shall be left for the road and if in consequence of such working a subsidence of the road takes place or the safety or stability of the road is 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 in an action in any court of competent jurisdiction recover from the person working such mines or minerals the cost of repairing the injured road or of the resumption of land for the new road together with the cost of constructing it.

Fencing roads.

16. (1) If any fenced enclosure of land not being Crown lands is broken by the road the Minister may—

(a) either grant such a sum of money towards the cost of fencing the road as he thinks the circumstances warrant not exceeding the cost of erecting a fence on both sides of the road within the enclosure of the same kind as the fence which forms the enclosure or

(b) grant in lieu thereof permission to place public gates under the Public Gates Act 1901.

(2) In the event of increased traffic requiring the revocation of such permission within ten years the Minister may grant a part of the estimated cost of fencing the road which shall be proportionate to the unexpired portion of the ten years.

Disposal of surplus land.

17. 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—

(a) be dealt with under the provisions of the Crown Lands Acts or

(b) be sold by public auction or by private contract as seems to the Minister expedient or

(c) be added by notice in the Gazette to adjoining Crown lands if any held under any lease license right or permit on such terms and conditions as the Minister approves.

Dedication of roads.

18. (1) 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.

(2)

Where a fenced enclosure is broken the Minister may grant cost of fencing or may grant permission to place gates. No. 5, 1897, s. 12.

Surplus lands, how disposed of. *Ibid.* s. 14.

Lands reserved as roads may be declared public roads. *Ibid.* s. 16.

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(2) If the road be situate within a municipality such notification 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 seventy-five of the Municipalities Act 1897.

(3) Where any road so declared 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 evidence of the width and position of the same.

(4) Nothing in this section shall prevent any alteration of the width of any road prior to or by any such notification as aforesaid.

Closing of unnecessary roads.

Notices of intention
to close unnecessary
road.

No. 5, 1897, s. 18.

19. (1) If the Minister is 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 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 are known.

(2) Such notice shall call upon all persons interested to set forth in writing addressed to the Minister within one month from the date of the publication thereof any objections which may appear to them to exist to the closing of the said road or such part thereof.

(3) Where it is proposed to close a road and to open a road under section eight 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 seven of this Act and thereupon no separate notice under this section shall be necessary.

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

Closing of
unnecessary road.
Ibid. s. 19.

20. (1) 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.

(2) 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 granted at Quarter Sessions under the twenty-first section of that Act or are so granted under section twenty-six of this Act

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Act as an access road in which cases the lands comprised therein shall vest in and be held by the owners of the adjoining land) shall become Crown lands and may—

- (a) be granted to the owners of adjoining lands in fair proportions or in accordance with any agreement made by such owners upon payment of the value thereof to be determined as hereinafter provided or
- (b) 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 is thereby exceeded or
- (c) 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 or the Public Roads Act of 1897 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 His Majesty or to any Constructing Authority for and on behalf of His Majesty in exchange for Crown land or any unnecessary road or roads or
- (d) be added by notice in the Gazette to adjoining Crown lands if any held under lease or license on such terms and conditions as the Minister approves.

(3) The value of any land which it is proposed to grant under paragraph (a) of the last subsection shall be determined by the local land board and if any owner of land adjoining a road so closed does not within three months from receipt of notice of the determination of value by the land board 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 the Minister thinks expedient.

21. 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 appears to him 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.

Temporary closing
of roads.
No. 5, 1897, s. 19.

22. Notwithstanding anything hereinbefore contained the Minister may without 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

Alteration of roads
in incomplete
purchases.
Ibid. s. 20.

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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 or conditional lease.

Re-marking roads.

Minister may re-mark.
No. 5, 1897, s. 22.

Cost where road is in a municipality.
Ibid.

Notice of re-marking of road to be published.
Ibid. s. 23.

23. 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.

24. 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.

25. (1) 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.

(2) Such notice shall—

- (a) refer 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
- (b) state that it is intended to submit the plan to the Governor for approval and
- (c) call 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.

(3) A copy of such plan may if the Minister thinks fit 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.

(4) After due consideration of all such objections (if any) the Governor may by notice in the Gazette after the expiration of the month 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.

Roads of access through other persons' lands.

Proprietor desiring a road of access may apply to Quarter Sessions.

4 Wm. IV No. 11, ss. 21, 22, 23, 36.

Matters to be set forth in application.

26. (1) Any proprietor of land alienated by grant from the Crown to no part of which grant any road has been traced or established as a thoroughfare by usage from the nearest highway who is desirous to have a road from the said highway or other way communicating therewith to his land through the lands of any other person may make application in writing to the Court of Quarter Sessions for the district in which such road is required.

(2) Such application shall set forth in a particular manner—

- (a) the situation of such land and the direction of the proposed road and

(b)

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(b) the lands through which the said road is required to pass in order to reach such nearest highway or other way.

(3) The applicant shall give notice in writing of his intention to make such application one month at least previous to the holding of such Quarter Sessions to all proprietors or occupiers of the lands through which the proposed road will pass and also to the Chief Surveyor. Notice of application.

(4) Upon such application and notice being duly made and given the Court of Quarter Sessions shall hear the parties and the Chief Surveyor or some person deputed by him and shall decide as to the propriety of such road being made and the direction in which the same ought to be made with reference as well to the application of the parties then before the Court as to the general benefit and convenience of all other persons owning or occupying lands adjacent to those of the said parties and to the general advantage of the district in which such lands are situate. Duties of Quarter Sessions.

(5) The said Court shall cause all the evidence produced in support of and against the application to be taken down in writing and to be repeated to the several witnesses giving the same and shall swear such witnesses to the truth thereof and subscribe such evidence and transmit the same to the office of the Chief Surveyor to be kept as a record of his office. Evidence to be taken in writing.

(6) If any party considers himself aggrieved by the decision of the Court of Quarter Sessions he may within one month thereafter appeal unto the Governor whose decision shall be final binding and conclusive upon all parties and persons whomsoever. Appeal by party aggrieved.

(7) No new or further evidence shall be given or laid before the Governor on appeal. No fresh evidence on appeal.

(8) Nothing herein contained shall extend to authorise the several possessors or occupiers of land which originally forming one grant from the Crown has been subsequently divided to use or claim the right of more than one common road through the lands of any other persons for the purpose of communicating with the whole and every part of the land so divided as aforesaid. Provisions as to lands originally one grant.

(9) Whenever the propriety of making a road under the provisions of this section has been determined the Chief Surveyor shall within three months next after such decision trace and mark out the said intended road by such permanent marks as the nature of the country permits and as nearly as is practicable and convenient in the direction approved by such decision. Surveyor to mark out road.

(10) Such road shall not be not more than twenty feet wide in the clear. Width of road.

(11) The line of such road so traced and laid out shall be from thenceforth a private road for the use of the party applying for and all other persons requiring to use the same and shall be subject to such and the like laws as other private roads. Road when traced to be a private road.

(12)

Public Roads.

Rights of Crown not interfered with by this Act.

(12) Nothing in this section contained shall be deemed or construed to limit alter or diminish or in any manner soever to interrupt or interfere with the right of the Crown to make or repair public or private roads ways passages or streets in or through any lands whatsoever or any towns or villages where such right has been duly reserved to the Crown in the granting of such lands or otherwise belongs to or is vested in the Crown.

Actions to be commenced within three months.

(13) Every action or suit against any person for anything done in pursuance of this section shall be commenced or prosecuted within three months after the fact committed and not afterwards.

Defendant may plead general issue.

(14) The defendant in any such action or suit may plead the general issue and at the trial thereof give this Act and the special matter in evidence.

Verdict for defendant.

(15) If—

(a) the matter or thing complained of appears to have been done under the authority and in the execution of this Act or

(b) any such action or suit is brought after the time limited for bringing the same

the jury shall find for the defendant.

Defendant may have treble costs.

(16) If the plaintiff—

(a) becomes nonsuit or

(b) discontinues his action after the defendant has appeared or

(c) has a verdict against him or

(d) upon demurrer has judgment given against him

the defendant shall have treble costs and the like remedy for the recovery thereof as any defendant hath in any cases by law.

Alignment of streets within municipalities.

Minister on application of council may define streets.

No. 5, 1897, s. 24.

27. (1) 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 the Minister may cause the carriage-way and footways in any street or public place in such municipality to be surveyed set out and defined and a plan thereof to be prepared which plan may be submitted by the Minister to the Governor for approval.

Evidence of boundaries.

(2) 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 footways set out and defined according to the said plan shall for the purposes of the Municipalities Act of 1897 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 two hundred and thirty-four of the said Act.

Public Roads.

28. (1) 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 the Minister may cause the width and the position of the carriage-way and the footways in any street or public place that has been previously aligned under this or any other Act to be re-marked or altered and a plan thereof to be prepared which plan may be submitted by the Minister to the Governor for approval.

Minister on application of council may re-mark streets. No. 5, 1897, s. 25.

(2) 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 footways as re-marked or altered according to the said plan shall for the purposes of the Municipalities Act of 1897 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 two hundred and thirty-four of the said Act.

Evidence of boundaries.

(3) 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 appear to them to exist to the proposed alteration.

Gazette notice of intended re-marking.

(4) 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.

Reference of objections to council.

29. 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.

Protection to Crown. *Ibid.* s. 26.

Powers of Chief Surveyor.

30. (1) For the purpose of making any survey and of performing every act matter or thing under the provisions of this Act the surveyor or other person duly authorised by the Chief Surveyor in that behalf and his assistants agents and servants may---

Power to enter lands to survey and trace roads. *Ibid.* s. 27.

- (a) enter into and upon the lands of any person
- (b) survey and take levels of the same and ascertain and set out by stakes trenches and marks such parts thereof as may be required for a road
- (c) trace and determine the boundaries of such lands as may be affected by the proposed road.
- (d) mark and fell trees

(e)

Public Roads.

(e) open and remove fences and
 (f) do all other acts necessary for such purpose as aforesaid :
 Damage to be repaired. 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.

Powers given to Commissioner. (2) 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 in that behalf.

Penalties.

Obstructing officers or removing marks. No. 5, 1897, s. 27. 31. Whosoever obstructs any person in the exercise of the powers conferred by section thirty or wilfully removes alters or defaces any such stakes trenches or marks as are in the said section mentioned shall be liable to a penalty not exceeding ten pounds.

Obstructing or damaging a road. *Ibid.* s. 28. 32. Whosoever 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.

Cost of removing obstructions and repairing damages to roads.

Commissioner may bring actions. *Ibid.* 33. The Commissioner for roads may by action in any court of competent jurisdiction recover from any person who wilfully obstructs or damages any road whether opened or dedicated under this Act or not the cost of removing the obstruction and repairing the damage.

References to local land board.

Matters referred for decision. *Ibid.* s. 8. 34. (1) Any question that arises 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 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.

Matters referred for report. *Ibid.* s. 21. (2) The Minister may in the prescribed manner refer to the local land board any questions which 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.

Gazette notices.

Gazette notice conclusive evidence of due publication. *Ibid.* s. 13. 35. (1) 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. (2)

Public Roads.

(2) 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.

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

Power to make regulations.

36. (1) The Governor may make regulations for the purpose of—
- (a) 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
- (b) generally carrying this Act into full effect.
- (2) The Governor 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.
- (3) 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.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
4 Wm. IV No. 11 ...	An Act for making altering and improving the Roads throughout the Colony of New South Wales and for opening and improving the Streets in the Towns thereof.	Sections 1-18 (inclusive) 20 21 and 22 and so much of sections 33 and 36 as refers to the said sections.
No. 5, 1897... ..	The Public Roads Act of 1897 ...	The whole Act.

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

State Government House,
Sydney, 12th December, 1902.

HARRY H. RAWSON,
Governor.

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY

REPORT OF THE

COMMISSIONERS OF THE BOARD OF EDUCATION
OF THE CITY OF CHICAGO
FOR THE YEAR 1900

CHICAGO, ILL., 1901

REPORT OF THE

COMMISSIONERS OF THE BOARD OF EDUCATION

OF THE CITY OF CHICAGO

FOR THE YEAR 1900

CHICAGO, ILL., 1901

PRINTED BY THE UNIVERSITY OF CHICAGO PRESS

Certificate to accompany the Public Roads Bill.

I CERTIFY that this Bill solely consolidates and in no way alters, adds to, or amends the law as contained in the enactments therein consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

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THE END OF THE WORLD

THE END OF THE WORLD

Public Roads Bill.

TABLE showing how the sections of Acts consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
4 WILLIAM IV, No. 11.		
1-18	.....	Repealed by No. 5, 1897, s. 3.
19	.....	Not dealt with in this Act.
20	.....	Repealed by No. 5, 1897, s. 3.
21, 22	26	
No. 5, 1897.		
1	.....	Omitted. Short title.
2	6	
3	.....	Omitted. Repealing section.
4	7	
5	8	
6	12	
7	9	
8	34 (1)	
9	13	
10	11, 14	
11	15	
12	16	
13	35	
14	17	
15	10	
16	18	
17	.....	Omitted. Repealed by "Public Gates Act, 1901."
18	19	
19	20, 21	
20	22	
21	34 (2)	
22	23, 24	
23	25	
24	27	
25	28	
26	29	
27	30, 31	
28	32, 33	
29	36	

The first part of the report deals with the general situation of the country and the position of the various groups.

The second part of the report deals with the various groups and their activities.

THE FIRST PART

The first part of the report deals with the general situation of the country and the position of the various groups.

THE SECOND PART

The second part of the report deals with the various groups and their activities.

The third part of the report deals with the various groups and their activities.

The third part of the report deals with the various groups and their activities.

The fourth part of the report deals with the various groups and their activities.

THE FIFTH PART

The fifth part of the report deals with the various groups and their activities.

The sixth part of the report deals with the various groups and their activities.

The seventh part of the report deals with the various groups and their activities.

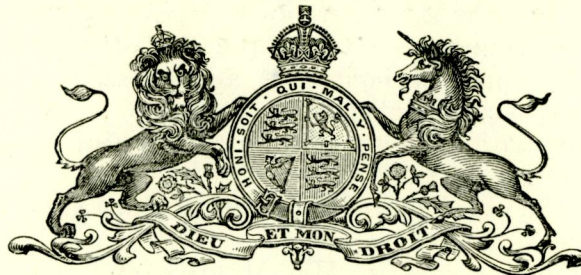
The eighth part of the report deals with the various groups and their activities.

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

*Legislative Council Chamber,
Sydney, 26th November, 1902.* }

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO SECUNDO

EDWARDI VII REGIS.

Act No. , 1902.

An Act to consolidate the Acts relating to the opening closing survey altering and improving of Roads and the alignment and alteration of the alignment of Streets in Municipalities.

BE it enacted by the King'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:—

Repeal Savings and Interpretation.

1. This Act may be cited as the "Public Roads Act 1902." Short title.
2. The Acts mentioned in the Schedule hereto are to the extent Repeal. therein expressed hereby repealed.
3. All officers and persons appointed under any enactment Existing officers hereby repealed and holding office at the time of the passing of this Act shall remain in office as if this Act had been in force at the time they were appointed and they had been appointed hereunder and this Act shall apply to them accordingly. 4.

Public Roads.

4. All regulations duly made under the authority of any enactment hereby repealed and in force at the time of the passing of this Act shall be deemed to have been duly made under the corresponding provisions of this Act. Existing regulations.

5. All proclamations notifications and notices made or given and all acts and things done under the authority of any enactment hereby repealed and having any force or effect at the time of the passing of this Act shall be deemed to have been duly made given or done respectively under the corresponding provisions of this Act and as if this Act had been in force when the same were made given or done and all matters and proceedings commenced under the authority of any enactment hereby repealed may be continued and prosecuted under the corresponding provisions of this Act. Existing proclamations and notifications &c. Proceedings commenced may be prosecuted.

6. In this Act and the regulations thereunder unless the context or subject-matter otherwise indicates or requires— Interpretation. No. 5, 1897, s. 2.

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

“Crown lands” means lands vested in His 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.

“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 passing of this Act as a public thoroughfare or way and wherever used in sections twelve eighteen to twenty-two inclusive and thirty-four of this Act also includes any land defined reserved or left before or after the passing 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

Public Roads.

plans of the same but where used in sections thirty-two and thirty-three of this Act does not include any land not proclaimed or expressly or impliedly dedicated to the public as a road.

Opening of roads.

7. (1) 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. Notices of intention to open a road. No. 5, 1897, s. 4.

(2) Such notice shall—

- (a) 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
- (b) call upon all persons interested to set forth in writing and forward to the Minister within one month from the date of the publication of the notice in the Gazette any objection which may appear to them to exist to the opening of such road.

(3) A copy of such plan 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.

(4) A written notice to the like effect shall be posted by registered letter to the owner or occupier of the land which it is proposed to resume if the name and address of such owner or occupier be known.

8. (1) Upon the expiration of one month from the date of the publication of such notice the Governor may after considering any objections duly forwarded resume by notification in the Gazette so much land as he thinks necessary for the road in accordance with the terms of the said notice. Resumption of lands necessary for road. Ibid. s. 5.

(2) When deemed necessary the notification shall state the depth below the surface to which the land is resumed. Depth below surface.

(3) The land so resumed shall to the depth so stated as aforesaid forthwith vest in His Majesty. Vesting of land.

(4) The land resumed or any part thereof may by the same or a subsequent notification be dedicated as a road. Dedication of road.

(5) The Governor 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. Resumption of adjoining land.

(6) No land situated within two hundred yards of any dwelling-house and used in connection therewith as a yard garden or orchard shall be resumed under the provisions of this Act unless Certain lands may not be resumed.

(a) the owner consents or

(b)

Public Roads.

(b) the Minister after inquiry and report by the local land board considers that the object of the resumption cannot otherwise be attained.

9. (1) In cases where—

(a) 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

(b) 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.

(2) Before notification of resumption a notice of the proposed resumption shall 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 is known.

10. (1) If any person applies or petitions for the opening of a road through any land and the Minister is of opinion that the said road may be reasonably opened for the convenience and benefit of such person as aforesaid but that there is no public necessity for it the Minister may require the said person to deposit with the Treasurer a sum sufficient to cover the cost of opening the road and paying compensation in connection therewith.

(2) If the said road (or any road which in the opinion of the Minister will be of equal or nearly equal convenience or benefit to such person as aforesaid) is 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.

(3) Any balance which remains shall be repaid to such person as aforesaid or his representatives.

(4) If the person applying for the road can obtain the written and witnessed consent of the 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.

11. 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 thinks 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.

Roads in certain cases may be opened without preliminary notice.

No. 5, 1897, s. 7.

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

Ibid. s. 15.

Withdrawal of land under lease or license for a road.

Ibid. s. 10.

Compensation

*Public Roads.**Compensation for land resumed.*

12. (1) For the purposes of this section the expression "Crown lands" shall include roads which the Minister considers to be unnecessary. Interpretation. No. 5, 1897, s. 6.

(2) 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. Compensation.

(3) For the purpose of making compensation as aforesaid the Minister may— Powers of Minister.

(a) when the land resumed was held in fee-simple grant Crown land in fee-simple or

(b) when the resumption is made from an incomplete purchase from the Crown or a conditional lease add to such incomplete purchase or conditional lease such adjoining Crown lands as are available to be held as part of such incomplete purchase or additional lease or grant Crown lands in fee-simple.

(4) 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 may where he thinks it to the interest of the public to do so 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. Land added to be equal to land resumed.

(5) 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 of the lands granted is greater or less than that of the land resumed. Difference in value to be paid.

(6) 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.

(7) 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.

(8) 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 are deemed by the Minister expedient in the interests of the public. Minister may make arrangements for the exchange of land.

(9)

Public Roads.

(9) 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 the prescribed manner unless an agreement is arrived at between the Minister and the lessee. Withdrawal of lands.

(10) 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.

13. (1) In estimating the amount payable as compensation the value of the land resumed and of all improvements thereon and the damage if any to be sustained from the severance of the property by the road shall in every case be determined by the local land board unless an agreement be arrived at between the Minister and the owner. Mode of assessing compensation. No. 5, 1897, s. 9.

(2) 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 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.

(3) 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.

14. In the case of lands withdrawn from any selection lease license right or permit under section eleven 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 shall be reduced in proportion to the area withdrawn. Compensation in the case of lands withdrawn under s. 11. Ibid. s. 10.

15. (1) In no case shall compensation be payable for mines or minerals existing or presumed to exist in land resumed or withdrawn under this Act. No compensation for mines or minerals in resumed land. Ibid. s. 11.

(2) The Acts in force for the time being in relation to mining on Crown lands shall not apply to such mines or minerals in lands so resumed or withdrawn.

Public Roads.

(3) A resumption under this Act shall not in any way affect mines or minerals below the depth to which the land is resumed.

(4) In working mines or minerals below such depth sufficient support shall be left for the road and if in consequence of such working a subsidence of the road takes place or the safety or stability of the road is 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 in an action in any court of competent jurisdiction recover from the person working such mines or minerals the cost of repairing the injured road or of the resumption of land for the new road together with the cost of constructing it.

Fencing roads.

16. (1) If any fenced enclosure of land not being Crown lands is broken by the road the Minister may—

- (a) either grant such a sum of money towards the cost of fencing the road as he thinks the circumstances warrant not exceeding the cost of erecting a fence on both sides of the road within the enclosure of the same kind as the fence which forms the enclosure or
- (b) grant in lieu thereof permission to place public gates under the Public Gates Act 1901.

(2) In the event of increased traffic requiring the revocation of such permission within ten years the Minister may grant a part of the estimated cost of fencing the road which shall be proportionate to the unexpired portion of the ten years.

Disposal of surplus land.

17. 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—

- (a) be dealt with under the provisions of the Crown Lands Acts or
- (b) be sold by public auction or by private contract as seems to the Minister expedient or
- (c) be added by notice in the Gazette to adjoining Crown lands if any held under any lease license right or permit on such terms and conditions as the Minister approves.

Dedication of roads.

18. (1) 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.

(2)

Where a fenced enclosure is broken the Minister may grant cost of fencing or may grant permission to place gates. No. 5, 1897, s. 12.

Surplus lands, how disposed of. *Ibid.* s. 14.

Lands reserved as roads may be declared public roads. *Ibid.* s. 16.

Public Roads.

(2) If the road be situate within a municipality such notification 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 seventy-five of the Municipalities Act 1897.

(3) Where any road so declared 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 evidence of the width and position of the same.

(4) Nothing in this section shall prevent any alteration of the width of any road prior to or by any such notification as aforesaid.

Closing of unnecessary roads.

19. (1) If the Minister is 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 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 are known.

Notices of intention
to close unnecessary
road.
No. 5, 1897, s. 18.

(2) Such notice shall call upon all persons interested to set forth in writing addressed to the Minister within one month from the date of the publication thereof any objections which may appear to them to exist to the closing of the said road or such part thereof.

(3) Where it is proposed to close a road and to open a road under section eight 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 seven of this Act and thereupon no separate notice under this section shall be necessary.

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

20. (1) 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.

Closing of
unnecessary road.
Ibid. s. 19.

(2) 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 granted at Quarter Sessions under the twenty-first section of that Act or are so granted under section twenty-six of this

Act

Public Roads.

Act as an access road in which cases the lands comprised therein shall vest in and be held by the owners of the adjoining land) shall become Crown lands and may—

- (a) be granted to the owners of adjoining lands in fair proportions or in accordance with any agreement made by such owners upon payment of the value thereof to be determined as hereinafter provided or
- (b) 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 is thereby exceeded or
- (c) 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 or the Public Roads Act of 1897 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 His Majesty or to any Constructing Authority for and on behalf of His Majesty in exchange for Crown land or any unnecessary road or roads or
- (d) be added by notice in the Gazette to adjoining Crown lands if any held under lease or license on such terms and conditions as the Minister approves.

(3) The value of any land which it is proposed to grant under paragraph (a) of the last subsection shall be determined by the local land board and if any owner of land adjoining a road so closed does not within three months from receipt of notice of the determination of value by the land board 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 the Minister thinks expedient.

21. 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 appears to him 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.

Temporary closing
of roads.
No. 5, 1897, s. 19.

22. Notwithstanding anything hereinbefore contained the Minister may without 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

Alteration of roads
in incomplete
purchases.
Ibid. s. 20.

Public Roads.

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 or conditional lease.

Re-marking roads.

23. 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.

Minister may re-mark.
No. 5, 1897, s. 22.

24. 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.

Cost where road is in a municipality.
Ibid.

25. (1) 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.

Notice of re-marking of road to be published.
Ibid. s. 23.

(2) Such notice shall—

- (a) refer 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
- (b) state that it is intended to submit the plan to the Governor for approval and
- (c) call 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.

(3) A copy of such plan may if the Minister thinks fit 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.

(4) After due consideration of all such objections (if any) the Governor may by notice in the Gazette after the expiration of the month 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.

Roads of access through other persons' lands.

26. (1) Any proprietor of land alienated by grant from the Crown to no part of which grant any road has been traced or established as a thoroughfare by usage from the nearest highway who is desirous to have a road from the said highway or other way communicating therewith to his land through the lands of any other person may make application in writing to the Court of Quarter Sessions for the district in which such road is required.

Proprietor desiring a road of access may apply to Quarter Sessions.
4 Wm. IV No. 11, ss. 21, 22, 23, 36.

(2) Such application shall set forth in a particular manner—

- (a) the situation of such land and the direction of the proposed road and

Matters to be set forth in application.

(b)

Public Roads.

(b) the lands through which the said road is required to pass in order to reach such nearest highway or other way.

(3) The applicant shall give notice in writing of his intention to make such application one month at least previous to the holding of such Quarter Sessions to all proprietors or occupiers of the lands through which the proposed road will pass and also to the Chief Surveyor. Notice of application.

(4) Upon such application and notice being duly made and given the Court of Quarter Sessions shall hear the parties and the Chief Surveyor or some person deputed by him and shall decide as to the propriety of such road being made and the direction in which the same ought to be made with reference as well to the application of the parties then before the Court as to the general benefit and convenience of all other persons owning or occupying lands adjacent to those of the said parties and to the general advantage of the district in which such lands are situate. Duties of Quarter Sessions.

(5) The said Court shall cause all the evidence produced in support of and against the application to be taken down in writing and to be repeated to the several witnesses giving the same and shall swear such witnesses to the truth thereof and subscribe such evidence and transmit the same to the office of the Chief Surveyor to be kept as a record of his office. Evidence to be taken in writing.

(6) If any party considers himself aggrieved by the decision of the Court of Quarter Sessions he may within one month thereafter appeal unto the Governor whose decision shall be final binding and conclusive upon all parties and persons whomsoever. Appeal by party aggrieved.

(7) No new or further evidence shall be given or laid before the Governor on appeal. No fresh evidence on appeal.

(8) Nothing herein contained shall extend to authorise the several possessors or occupiers of land which originally forming one grant from the Crown has been subsequently divided to use or claim the right of more than one common road through the lands of any other persons for the purpose of communicating with the whole and every part of the land so divided as aforesaid. Provisions as to lands originally one grant.

(9) Whenever the propriety of making a road under the provisions of this section has been determined the Chief Surveyor shall within three months next after such decision trace and mark out the said intended road by such permanent marks as the nature of the country permits and as nearly as is practicable and convenient in the direction approved by such decision. Surveyor to mark out road.

(10) Such road shall not be not more than twenty feet wide in the clear. Width of road.

(11) The line of such road so traced and laid out shall be from thenceforth a private road for the use of the party applying for and all other persons requiring to use the same and shall be subject to such and the like laws as other private roads. Road when traced to be a private road.

(12)

Public Roads.

(12) Nothing in this section contained shall be deemed or construed to limit alter or diminish or in any manner soever to interrupt or interfere with the right of the Crown to make or repair public or private roads ways passages or streets in or through any lands whatsoever or any towns or villages where such right has been duly reserved to the Crown in the granting of such lands or otherwise belongs to or is vested in the Crown.

Rights of Crown not interfered with by this Act.

(13) Every action or suit against any person for anything done in pursuance of this section shall be commenced or prosecuted within three months after the fact committed and not afterwards.

Actions to be commenced within three months.

(14) The defendant in any such action or suit may plead the general issue and at the trial thereof give this Act and the special matter in evidence.

Defendant may plead general issue.

(15) If—

(a) the matter or thing complained of appears to have been done under the authority and in the execution of this Act or
(b) any such action or suit is brought after the time limited for bringing the same
the jury shall find for the defendant.

Verdict for defendant.

(16) If the plaintiff—

(a) becomes nonsuit or
(b) discontinues his action after the defendant has appeared or
(c) has a verdict against him or
(d) upon demurrer has judgment given against him
the defendant shall have treble costs and the like remedy for the recovery thereof as any defendant hath in any cases by law.

Defendant may have treble costs.

Alignment of streets within municipalities.

27. (1) 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 the Minister may cause the carriage-way and footways in any street or public place in such municipality to be surveyed set out and defined and a plan thereof to be prepared which plan may be submitted by the Minister to the Governor for approval.

Minister on application of council may define streets.
No. 5, 1897, s. 24.

(2) 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 footways set out and defined according to the said plan shall for the purposes of the Municipalities Act of 1897 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 two hundred and thirty-four of the said Act.

Evidence of boundaries.

Public Roads.

28. (1) 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 the Minister may cause the width and the position of the carriage-way and the footways in any street or public place that has been previously aligned under this or any other Act to be re-marked or altered and a plan thereof to be prepared which plan may be submitted by the Minister to the Governor for approval.

Minister on application of council may re-mark streets. No. 5, 1897, s. 25.

(2) 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 footways as re-marked or altered according to the said plan shall for the purposes of the Municipalities Act of 1897 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 two hundred and thirty-four of the said Act.

Evidence of boundaries.

(3) 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 appear to them to exist to the proposed alteration.

Gazette notice of intended re-marking.

(4) 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.

Reference of objections to council.

29. 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.

Protection to Crown. *Ibid.* s. 26.

Powers of Chief Surveyor.

30. (1) For the purpose of making any survey and of performing every act matter or thing under the provisions of this Act the surveyor or other person duly authorised by the Chief Surveyor in that behalf and his assistants agents and servants may--

Power to enter lands to survey and trace roads. *Ibid.* s. 27.

- (a) enter into and upon the lands of any person
- (b) survey and take levels of the same and ascertain and set out by stakes trenches and marks such parts thereof as may be required for a road
- (c) trace and determine the boundaries of such lands as may be affected by the proposed road
- (d) mark and fell trees

(e)

Public Roads.

(e) open and remove fences and

(f) do all other acts 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.

Damage to be repaired.

(2) 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 in that behalf.

Powers given to Commissioner.

Penalties.

31. Whosoever obstructs any person in the exercise of the powers conferred by section thirty or wilfully removes alters or defaces any such stakes trenches or marks as are in the said section mentioned shall be liable to a penalty not exceeding ten pounds.

Obstructing officers or removing marks. No. 5, 1897, s. 27.

32. Whosoever 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.

Obstructing or damaging a road. *Ibid.* s. 28.

Cost of removing obstructions and repairing damages to roads.

33. The Commissioner for roads may by action in any court of competent jurisdiction recover from any person who wilfully obstructs or damages any road whether opened or dedicated under this Act or not the cost of removing the obstruction and repairing the damage.

Commissioner may bring actions. *Ibid.*

References to local land board.

34. (1) Any question that arises 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 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.

Matters referred for decision. *Ibid.* s. 8.

(2) The Minister may in the prescribed manner refer to the local land board any questions which 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.

Matters referred for report. *Ibid.* s. 21.

Gazette notices.

35. (1) 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.

Gazette notice conclusive evidence of due publication. *Ibid.* s. 13.

(2)

Public Roads.

(2) 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.

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

Power to make regulations.

- 36.** (1) The Governor may make regulations for the purpose of—
- (a) 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
- (b) generally carrying this Act into full effect.
- (2) The Governor 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.
- (3) 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.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
4 Wm. IV No. 11 ...	An Act for making altering and improving the Roads throughout the Colony of New South Wales and for opening and improving the Streets in the Towns thereof.	Sections 1-18 (inclusive) 20 21 and 22 and so much of sections 33 and 36 as refers to the said sections.
No. 5, 1897 ...	The "Public Roads Act of 1897"	The whole Act.

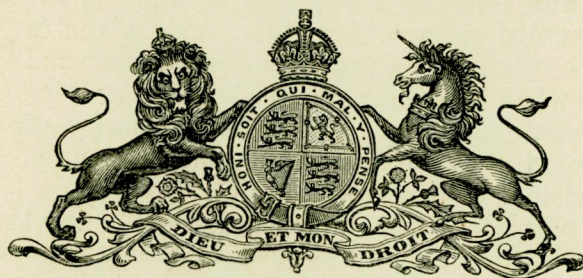
Act No. 101

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

Legislative Council Chamber,
Sydney, November, 1902. }

Clerk of the Parliaments.

New South Wales.



ANNO SECUNDO

EDWARDI VII REGIS.

Act No. , 1902.

An Act to consolidate the Acts relating to the opening closing survey altering and improving of Roads and the alignment and alteration of the alignment of Streets in Municipalities.

BE it enacted by the King'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:—

Repeal Savings and Interpretation.

1. This Act may be cited as the "Public Roads Act 1902." Short title.
2. The Acts mentioned in the Schedule hereto are to the extent Repeal. therein expressed hereby repealed.
3. All officers and persons appointed under any enactment Existing officers hereby repealed and holding office at the time of the passing of this Act shall remain in office as if this Act had been in force at the time they were appointed and they had been appointed hereunder and this Act shall apply to them accordingly. 4.

Public Roads.

4. All regulations duly made under the authority of any enactment hereby repealed and in force at the time of the passing of this Act shall be deemed to have been duly made under the corresponding provisions of this Act. Existing regulations.

5. All proclamations notifications and notices made or given and all acts and things done under the authority of any enactment hereby repealed and having any force or effect at the time of the passing of this Act shall be deemed to have been duly made given or done respectively under the corresponding provisions of this Act and as if this Act had been in force when the same were made given or done and all matters and proceedings commenced under the authority of any enactment hereby repealed may be continued and prosecuted under the corresponding provisions of this Act. Existing proclamations and notifications &c. Proceedings commenced may be prosecuted.

6. In this Act and the regulations thereunder unless the context or subject-matter otherwise indicates or requires— Interpretation. No. 5, 1897, s. 2.

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

“Crown lands” means lands vested in His 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.

“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 passing of this Act as a public thoroughfare or way and wherever used in sections twelve eighteen to twenty-two inclusive and thirty-four of this Act also includes any land defined reserved or left before or after the passing 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

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plans of the same but where used in sections thirty-two and thirty-three of this Act does not include any land not proclaimed or expressly or impliedly dedicated to the public as a road.

Opening of roads.

7. (1) 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. Notices of intention to open a road. No. 5, 1897, s. 4.

(2) Such notice shall—

- (a) 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
- (b) call upon all persons interested to set forth in writing and forward to the Minister within one month from the date of the publication of the notice in the Gazette any objection which may appear to them to exist to the opening of such road.

(3) A copy of such plan 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.

(4) A written notice to the like effect shall be posted by registered letter to the owner or occupier of the land which it is proposed to resume if the name and address of such owner or occupier be known.

8. (1) Upon the expiration of one month from the date of the publication of such notice the Governor may after considering any objections duly forwarded resume by notification in the Gazette so much land as he thinks necessary for the road in accordance with the terms of the said notice. Resumption of lands necessary for road. Ibid. s. 5.

(2) When deemed necessary the notification shall state the depth below the surface to which the land is resumed. Depth below surface.

(3) The land so resumed shall to the depth so stated as aforesaid forthwith vest in His Majesty. Vesting of land.

(4) The land resumed or any part thereof may by the same or a subsequent notification be dedicated as a road. Dedication of road.

(5) The Governor 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. Resumption of adjoining land.

(6) No land situated within two hundred yards of any dwelling-house and used in connection therewith as a yard garden or orchard shall be resumed under the provisions of this Act unless Certain lands may not be resumed.

(a) the owner consents or

(b)

Public Roads.

(b) the Minister after inquiry and report by the local land board considers that the object of the resumption cannot otherwise be attained.

9. (1) In cases where —

(a) 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

(b) a road not yet proclaimed has been formed by the expenditure of public funds and is in use

Roads in certain cases may be opened without preliminary notice.

No. 5, 1897, s. 7.

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.

(2) Before notification of resumption a notice of the proposed resumption shall 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 is known.

10. (1) If any person applies or petitions for the opening of a road through any land and the Minister is of opinion that the said road may be reasonably opened for the convenience and benefit of such person as aforesaid but that there is no public necessity for it the Minister may require the said person to deposit with the Treasurer a sum sufficient to cover the cost of opening the road and paying compensation in connection therewith.

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

Ibid. s. 15.

(2) If the said road (or any road which in the opinion of the Minister will be of equal or nearly equal convenience or benefit to such person as aforesaid) is 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.

(3) Any balance which remains shall be repaid to such person as aforesaid or his representatives.

(4) If the person applying for the road can obtain the written and witnessed consent of the 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.

11. 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 thinks 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.

Withdrawal of land under lease or license for a road.

Ibid. s. 10.

Compensation

*Public Roads.**Compensation for land resumed.*

12. (1) For the purposes of this section the expression "Crown lands" shall include roads which the Minister considers to be unnecessary. Interpretation. No. 5, 1897, s. 6.

(2) 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. Compensation.

(3) For the purpose of making compensation as aforesaid the Minister may— Powers of Minister.

(a) when the land resumed was held in fee-simple grant Crown land in fee-simple or

(b) when the resumption is made from an incomplete purchase from the Crown or a conditional lease add to such incomplete purchase or conditional lease such adjoining Crown lands as are available to be held as part of such incomplete purchase or additional lease or grant Crown lands in fee-simple.

(4) 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 may where he thinks it to the interest of the public to do so 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. Land added to be equal to land resumed.

(5) 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 of the lands granted is greater or less than that of the land resumed. Difference in value to be paid.

(6) 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.

(7) 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.

(8) 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 are deemed by the Minister expedient in the interests of the public. Minister may make arrangements for the exchange of land.

(9)

Public Roads.

(9) 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 the prescribed manner unless an agreement is arrived at between the Minister and the lessee. Withdrawal of lands.

(10) 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.

13. (1) In estimating the amount payable as compensation the value of the land resumed and of all improvements thereon and the damage if any to be sustained from the severance of the property by the road shall in every case be determined by the local land board unless an agreement be arrived at between the Minister and the owner. Mode of assessing compensation. No. 5, 1897, s. 9.

(2) 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 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.

(3) 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.

14. In the case of lands withdrawn from any selection lease license right or permit under section eleven 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 shall be reduced in proportion to the area withdrawn. Compensation in the case of lands withdrawn under s. 11. Ibid. s. 10.

15. (1) In no case shall compensation be payable for mines or minerals existing or presumed to exist in land resumed or withdrawn under this Act. No compensation for mines or minerals in resumed land. Ibid. s. 11.

(2) The Acts in force for the time being in relation to mining on Crown lands shall not apply to such mines or minerals in lands so resumed or withdrawn.

Public Roads.

(3) A resumption under this Act shall not in any way affect mines or minerals below the depth to which the land is resumed.

(4) In working mines or minerals below such depth sufficient support shall be left for the road and if in consequence of such working a subsidence of the road takes place or the safety or stability of the road is 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 in an action in any court of competent jurisdiction recover from the person working such mines or minerals the cost of repairing the injured road or of the resumption of land for the new road together with the cost of constructing it.

Fencing roads.

16. (1) If any fenced enclosure of land not being Crown lands is broken by the road the Minister may—

- (a) either grant such a sum of money towards the cost of fencing the road as he thinks the circumstances warrant not exceeding the cost of erecting a fence on both sides of the road within the enclosure of the same kind as the fence which forms the enclosure or
- (b) grant in lieu thereof permission to place public gates under the Public Gates Act 1901.

(2) In the event of increased traffic requiring the revocation of such permission within ten years the Minister may grant a part of the estimated cost of fencing the road which shall be proportionate to the unexpired portion of the ten years.

Disposal of surplus land.

17. 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—

- (a) be dealt with under the provisions of the Crown Lands Acts or
- (b) be sold by public auction or by private contract as seems to the Minister expedient or
- (c) be added by notice in the Gazette to adjoining Crown lands if any held under any lease license right or permit on such terms and conditions as the Minister approves.

Dedication of roads.

18. (1) 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.

(2)

Where a fenced enclosure is broken the Minister may grant cost of fencing or may grant permission to place gates. No. 5, 1897, s. 12.

Surplus lands, how disposed of. *Ibid.* s. 14.

Lands reserved as roads may be declared public roads. *Ibid.* s. 16.

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(2) If the road be situate within a municipality such notification 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 seventy-five of the Municipalities Act 1897.

(3) Where any road so declared 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 evidence of the width and position of the same.

(4) Nothing in this section shall prevent any alteration of the width of any road prior to or by any such notification as aforesaid.

Closing of unnecessary roads.

19. (1) If the Minister is 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 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 are known.

Notices of intention
to close unnecessary
road.

No. 5, 1897, s. 18.

(2) Such notice shall call upon all persons interested to set forth in writing addressed to the Minister within one month from the date of the publication thereof any objections which may appear to them to exist to the closing of the said road or such part thereof.

(3) Where it is proposed to close a road and to open a road under section eight 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 seven of this Act and thereupon no separate notice under this section shall be necessary.

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

20. (1) 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.

Closing of
unnecessary road.
Ibid. s. 19.

(2) 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 granted at Quarter Sessions under the twenty-first section of that Act or are so granted under section twenty-six of this Act

Public Roads.

Act as an access road in which cases the lands comprised therein shall vest in and be held by the owners of the adjoining land) shall become Crown lands and may—

- (a) be granted to the owners of adjoining lands in fair proportions or in accordance with any agreement made by such owners upon payment of the value thereof to be determined as hereinafter provided or
- (b) 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 is thereby exceeded or
- (c) 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 or the Public Roads Act of 1897 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 His Majesty or to any Constructing Authority for and on behalf of His Majesty in exchange for Crown land or any unnecessary road or roads or
- (d) be added by notice in the Gazette to adjoining Crown lands if any held under lease or license on such terms and conditions as the Minister approves.

(3) The value of any land which it is proposed to grant under paragraph (a) of the last subsection shall be determined by the local land board and if any owner of land adjoining a road so closed does not within three months from receipt of notice of the determination of value by the land board 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 the Minister thinks expedient.

21. 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 appears to him 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.

Temporary closing
of roads.
No. 5, 1897, s. 19.

22. Notwithstanding anything hereinbefore contained the Minister may without 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

Alteration of roads
in incomplete
purchases.
Ibid. s. 20.

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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 or conditional lease.

Re-marking roads.

23. 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.

Minister may re-mark.
No. 5, 1897, s. 22.

24. 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.

Cost where road is in a municipality.
Ibid.

25. (1) 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.

Notice of re-marking of road to be published.
Ibid. s. 23.

(2) Such notice shall—

- (a) refer 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
- (b) state that it is intended to submit the plan to the Governor for approval and
- (c) call 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.

(3) A copy of such plan may if the Minister thinks fit 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.

(4) After due consideration of all such objections (if any) the Governor may by notice in the Gazette after the expiration of the month 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.

Roads of access through other persons' lands.

26. (1) Any proprietor of land alienated by grant from the Crown to no part of which grant any road has been traced or established as a thoroughfare by usage from the nearest highway who is desirous to have a road from the said highway or other way communicating therewith to his land through the lands of any other person may make application in writing to the Court of Quarter Sessions for the district in which such road is required.

Proprietor desiring a road of access may apply to Quarter Sessions.

4 Wm. IV No. 11, ss. 21, 22, 23, 30.

- (2) Such application shall set forth in a particular manner—
- (a) the situation of such land and the direction of the proposed road and

Matters to be set forth in application.

(b)

Public Roads.

(b) the lands through which the said road is required to pass in order to reach such nearest highway or other way.

(3) The applicant shall give notice in writing of his intention to make such application one month at least previous to the holding of such Quarter Sessions to all proprietors or occupiers of the lands through which the proposed road will pass and also to the Chief Surveyor. Notice of application.

(4) Upon such application and notice being duly made and given the Court of Quarter Sessions shall hear the parties and the Chief Surveyor or some person deputed by him and shall decide as to the propriety of such road being made and the direction in which the same ought to be made with reference as well to the application of the parties then before the Court as to the general benefit and convenience of all other persons owning or occupying lands adjacent to those of the said parties and to the general advantage of the district in which such lands are situate. Duties of Quarter Sessions.

(5) The said Court shall cause all the evidence produced in support of and against the application to be taken down in writing and to be repeated to the several witnesses giving the same and shall swear such witnesses to the truth thereof and subscribe such evidence and transmit the same to the office of the Chief Surveyor to be kept as a record of his office. Evidence to be taken in writing.

(6) If any party considers himself aggrieved by the decision of the Court of Quarter Sessions he may within one month thereafter appeal unto the Governor whose decision shall be final binding and conclusive upon all parties and persons whomsoever. Appeal by party aggrieved.

(7) No new or further evidence shall be given or laid before the Governor on appeal. No fresh evidence on appeal.

(8) Nothing herein contained shall extend to authorise the several possessors or occupiers of land which originally forming one grant from the Crown has been subsequently divided to use or claim the right of more than one common road through the lands of any other persons for the purpose of communicating with the whole and every part of the land so divided as aforesaid. Provisions as to lands originally one grant.

(9) Whenever the propriety of making a road under the provisions of this section has been determined the Chief Surveyor shall within three months next after such decision trace and mark out the said intended road by such permanent marks as the nature of the country permits and as nearly as is practicable and convenient in the direction approved by such decision. Surveyor to mark out road.

(10) Such road shall not be not more than twenty feet wide in the clear. Width of road.

(11) The line of such road so traced and laid out shall be from thenceforth a private road for the use of the party applying for and all other persons requiring to use the same and shall be subject to such and the like laws as other private roads. Road when traced to be a private road.

(12)

Public Roads.

(12) Nothing in this section contained shall be deemed or construed to limit alter or diminish or in any manner soever to interrupt or interfere with the right of the Crown to make or repair public or private roads ways passages or streets in or through any lands whatsoever or any towns or villages where such right has been duly reserved to the Crown in the granting of such lands or otherwise belongs to or is vested in the Crown.

Rights of Crown not interfered with by this Act.

(13) Every action or suit against any person for anything done in pursuance of this section shall be commenced or prosecuted within three months after the fact committed and not afterwards.

Actions to be commenced within three months.

(14) The defendant in any such action or suit may plead the general issue and at the trial thereof give this Act and the special matter in evidence.

Defendant may plead general issue.

(15) If—

Verdict for defendant.

(a) the matter or thing complained of appears to have been done under the authority and in the execution of this Act or

(b) any such action or suit is brought after the time limited for bringing the same

the jury shall find for the defendant.

(16) If the plaintiff—

Defendant may have treble costs.

(a) becomes nonsuit or

(b) discontinues his action after the defendant has appeared or

(c) has a verdict against him or

(d) upon demurrer has judgment given against him

the defendant shall have treble costs and the like remedy for the recovery thereof as any defendant hath in any cases by law.

Alignment of streets within municipalities.

27. (1) 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 the Minister may cause the carriage-way and footways in any street or public place in such municipality to be surveyed set out and defined and a plan thereof to be prepared which plan may be submitted by the Minister to the Governor for approval.

Minister on application of council may define streets.
No. 5, 1897, s. 24.

(2) 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 footways set out and defined according to the said plan shall for the purposes of the Municipalities Act of 1897 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 two hundred and thirty-four of the said Act.

Evidence of boundaries.

Public Roads.

28. (1) 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 the Minister may cause the width and the position of the carriage-way and the footways in any street or public place that has been previously aligned under this or any other Act to be re-marked or altered and a plan thereof to be prepared which plan may be submitted by the Minister to the Governor for approval.

Minister on application of council may re-mark streets. No. 5, 1897, s. 25.

(2) 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 footways as re-marked or altered according to the said plan shall for the purposes of the Municipalities Act of 1897 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 two hundred and thirty-four of the said Act.

Evidence of boundaries.

(3) 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 appear to them to exist to the proposed alteration.

Gazette notice of intended re-marking.

(4) 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.

Reference of objections to council.

29. 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.

Protection to Crown. *Ibid.* s. 26.

Powers of Chief Surveyor.

30. (1) For the purpose of making any survey and of performing every act matter or thing under the provisions of this Act the surveyor or other person duly authorised by the Chief Surveyor in that behalf and his assistants agents and servants may--

Power to enter lands to survey and trace roads. *Ibid.* s. 27.

- (a) enter into and upon the lands of any person
- (b) survey and take levels of the same and ascertain and set out by stakes trenches and marks such parts thereof as may be required for a road
- (c) trace and determine the boundaries of such lands as may be affected by the proposed road
- (d) mark and fell trees

(e)

Public Roads.

(e) open and remove fences and

(f) do all other acts 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.

Damage to be repaired.

(2) 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 in that behalf.

Powers given to Commissioner.

Penalties.

31. Whosoever obstructs any person in the exercise of the powers conferred by section thirty or wilfully removes alters or defaces any such stakes trenches or marks as are in the said section mentioned shall be liable to a penalty not exceeding ten pounds.

Obstructing officers or removing marks. No. 5, 1897, s. 27.

32. Whosoever 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.

Obstructing or damaging a road. Ibid. s. 28.

Cost of removing obstructions and repairing damages to roads.

33. The Commissioner for roads may by action in any court of competent jurisdiction recover from any person who wilfully obstructs or damages any road whether opened or dedicated under this Act or not the cost of removing the obstruction and repairing the damage.

Commissioner may bring actions. Ibid.

References to local land board.

34. (1) Any question that arises 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 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.

Matters referred for decision. Ibid. s. 8.

(2) The Minister may in the prescribed manner refer to the local land board any questions which 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.

Matters referred for report. Ibid. s 21.

Gazette notices.

35. (1) 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.

Gazette notice conclusive evidence of due publication. Ibid. s. 13.

(2)

Public Roads.

(2) 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.

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

Power to make regulations.

- 36.** (1) The Governor may make regulations for the purpose of—
- (a) 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
- (b) generally carrying this Act into full effect.
- (2) The Governor 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.
- (3) 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.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
4 Wm. IV No. 11 ...	An Act for making altering and improving the Roads throughout the Colony of New South Wales and for opening and improving the Streets in the Towns thereof.	Sections 1-18 (inclusive) 20 21 and 22 and so much of sections 33 and 36 as refers to the said sections.
No. 5, 1897... ..	The "Public Roads Act of 1897" ...	The whole Act.

Certificate to accompany the Public Roads Bill.

I CERTIFY that this Bill solely consolidates and in no way alters, adds to, or amends the law as contained in the enactments therein consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

Legislative Council.

No. , 1902.

A BILL

To consolidate the Acts relating to the opening closing survey altering and improving of Roads and the alignment and alteration of the alignment of Streets in Municipalities.

[MR. SUTTON ;—12 November, 1902.]

BE it enacted by the King'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 :—

Repeal Savings and Interpretation.

1. This Act may be cited as the "Public Roads Act 1902." Short title.
2. The Acts mentioned in the Schedule hereto are to the extent Repeal. therein expressed hereby repealed.
3. All officers and persons appointed under any enactment Existing officers hereby repealed and holding office at the time of the passing of this Act shall remain in office as if this Act had been in force at the time they were appointed and they had been appointed hereunder and this Act shall apply to them accordingly. 4.

Existing regulations.

4. All regulations duly made under the authority of any enactment hereby repealed and in force at the time of the passing of this Act shall be deemed to have been duly made under the corresponding provisions of this Act.

Existing proclamations and notifications &c.

Proceedings commenced may be prosecuted.

5. All proclamations notifications and notices made or given and all acts and things done under the authority of any enactment hereby repealed and having any force or effect at the time of the passing of this Act shall be deemed to have been duly made given or done respectively under the corresponding provisions of this Act and as if this Act had been in force when the same were made given or done and all matters and proceedings commenced under the authority of any enactment hereby repealed may be continued and prosecuted under the corresponding provisions of this Act.

Interpretation.

No. 5, 1897, s. 2.

6. In this Act and the regulations thereunder unless the context or subject-matter otherwise indicates or requires—

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

“Crown lands” means lands vested in His 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.

“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 passing of this Act as a public thoroughfare or way and wherever used in sections twelve eighteen to twenty-two inclusive and thirty-four of this Act also includes any land defined reserved or left before or after the passing 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

plans of the same but where used in sections thirty-two and thirty-three of this Act does not include any land not proclaimed or expressly or impliedly dedicated to the public as a road.

Opening of roads.

7. (1) 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.

Notices of intention to open a road.
No. 5, 1897, s. 4.

(2) Such notice shall—

(a) 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

(b) call upon all persons interested to set forth in writing and forward to the Minister within one month from the date of the publication of the notice in the Gazette any objection which may appear to them to exist to the opening of such road.

(3) A copy of such plan 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.

(4) A written notice to the like effect shall be posted by registered letter to the owner or occupier of the land which it is proposed to resume if the name and address of such owner or occupier be known.

8. (1) Upon the expiration of one month from the date of the publication of such notice the Governor may after considering any objections duly forwarded resume by notification in the Gazette so much land as he thinks necessary for the road in accordance with the terms of the said notice.

Resumption of lands necessary for road.
Ibid. s. 5.

(2) When deemed necessary the notification shall state the depth below the surface to which the land is resumed.

Depth below surface.

(3) The land so resumed shall to the depth so stated as aforesaid forthwith vest in His Majesty.

Vesting of land.

(4) The land resumed or any part thereof may by the same or a subsequent notification be dedicated as a road.

Dedication of road.

(5) The Governor 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.

Resumption of adjoining land.

(6) No land situated within two hundred yards of any dwelling-house and used in connection therewith as a yard garden or orchard shall be resumed under the provisions of this Act unless

Certain lands may not be resumed.

(a) the owner consents or

(b)

Roads in certain cases may be opened without preliminary notice.

No. 5, 1897, s. 7.

(b) the Minister after inquiry and report by the local land board considers that the object of the resumption cannot otherwise be attained.

9. (1) In cases where—

(a) 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

(b) 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.

(2) Before notification of resumption a notice of the proposed resumption shall 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 is known.

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

Ibid. s. 15.

10. (1) If any person applies or petitions for the opening of a road through any land and the Minister is of opinion that the said road may be reasonably opened for the convenience and benefit of such person as aforesaid but that there is no public necessity for it the Minister may require the said person to deposit with the Treasurer a sum sufficient to cover the cost of opening the road and paying compensation in connection therewith.

(2) If the said road (or any road which in the opinion of the Minister will be of equal or nearly equal convenience or benefit to such person as aforesaid) is 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.

(3) Any balance which remains shall be repaid to such person as aforesaid or his representatives.

(4) If the person applying for the road can obtain the written and witnessed consent of the 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.

Withdrawal of land under lease or license for a road.

Ibid. s. 10.

11. 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 thinks 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.

Compensation

Compensation for land resumed.

12. (1) For the purposes of this section the expression "Crown lands" shall include roads which the Minister considers to be unnecessary. Interpretation. No. 5, 1897, s. 6.

(2) 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. Compensation.

(3) For the purpose of making compensation as aforesaid the Minister may— Powers of Minister.

(a) when the land resumed was held in fee-simple grant Crown land in fee-simple or

(b) when the resumption is made from an incomplete purchase from the Crown or a conditional lease add to such incomplete purchase or conditional lease such adjoining Crown lands as are available to be held as part of such incomplete purchase or additional lease or grant Crown lands in fee-simple.

(4) 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 may where he thinks it to the interest of the public to do so 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. Land added to be equal to land resumed.

(5) 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 of the lands granted is greater or less than that of the land resumed. Difference in value to be paid.

(6) 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.

(7) 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.

(8) 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 are deemed by the Minister expedient in the interests of the public. Minister may make arrangements for the exchange of land.

(9)

Withdrawal of lands.

(9) 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 the prescribed manner unless an agreement is arrived at between the Minister and the lessee.

Receipt to be a discharge.

(10) 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.

Mode of assessing compensation.

No. 5, 1897, s. 9.

13. (1) In estimating the amount payable as compensation the value of the land resumed and of all improvements thereon and the damage if any to be sustained from the severance of the property by the road shall in every case be determined by the local land board unless an agreement be arrived at between the Minister and the owner.

(2) 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 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.

(3) 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.

Compensation in the case of lands withdrawn under s. 11.

Ibid. s. 10.

14. In the case of lands withdrawn from any selection lease license right or permit under section eleven 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 shall be reduced in proportion to the area withdrawn.

No compensation for mines or minerals in resumed land.
Ibid. s. 11.

15. (1) In no case shall compensation be payable for mines or minerals existing or presumed to exist in land resumed or withdrawn under this Act.

(2) The Acts in force for the time being in relation to mining on Crown lands shall not apply to such mines or minerals in lands so resumed or withdrawn.

(3)

(3) A resumption under this Act shall not in any way affect mines or minerals below the depth to which the land is resumed.

(4) In working mines or minerals below such depth sufficient support shall be left for the road and if in consequence of such working a subsidence of the road takes place or the safety or stability of the road is 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 in an action in any court of competent jurisdiction recover from the person working such mines or minerals the cost of repairing the injured road or of the resumption of land for the new road together with the cost of constructing it.

Fencing roads.

16. (1) If any fenced enclosure of land not being Crown lands is broken by the road the Minister may—

Where a fenced enclosure is broken the Minister may grant cost of fencing or may grant permission to place gates. No. 5, 1897, s. 12.

(a) either grant such a sum of money towards the cost of fencing the road as he thinks the circumstances warrant not exceeding the cost of erecting a fence on both sides of the road within the enclosure of the same kind as the fence which forms the enclosure or

(b) grant in lieu thereof permission to place public gates under the Public Gates Act 1901.

(2) In the event of increased traffic requiring the revocation of such permission within ten years the Minister may grant a part of the estimated cost of fencing the road which shall be proportionate to the unexpired portion of the ten years.

Disposal of surplus land.

17. 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—

Surplus lands, how disposed of. *Ibid.* s. 14.

(a) be dealt with under the provisions of the Crown Lands Acts or

(b) be sold by public auction or by private contract as seems to the Minister expedient or

(c) be added by notice in the Gazette to adjoining Crown lands if any held under any lease license right or permit on such terms and conditions as the Minister approves.

Dedication of roads.

18. (1) 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.

Lands reserved as roads may be declared public roads. *Ibid.* s. 16.

(2)

(2) If the road be situate within a municipality such notification 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 seventy-five of the Municipalities Act 1897.

(3) Where any road so declared 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 evidence of the width and position of the same.

(4) Nothing in this section shall prevent any alteration of the width of any road prior to or by any such notification as aforesaid.

Closing of unnecessary roads.

Notices of intention
to close unnecessary
road.

No. 5, 1897, s. 18.

19. (1) If the Minister is 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 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 are known.

(2) Such notice shall call upon all persons interested to set forth in writing addressed to the Minister within one month from the date of the publication thereof any objections which may appear to them to exist to the closing of the said road or such part thereof.

(3) Where it is proposed to close a road and to open a road under section eight 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 seven of this Act and thereupon no separate notice under this section shall be necessary.

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

Closing of
unnecessary road.

Ibid. s. 19.

20. (1) 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.

(2) 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 granted at Quarter Sessions under the twenty-first section of that Act or are so granted under section twenty-six of this Act

Act as an access road in which cases the lands comprised therein shall vest in and be held by the owners of the adjoining land) shall become Crown lands and may—

- (a) be granted to the owners of adjoining lands in fair proportions or in accordance with any agreement made by such owners upon payment of the value thereof to be determined as hereinafter provided or
- (b) 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 is thereby exceeded or
- (c) 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 or the Public Roads Act of 1897 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 His Majesty or to any Constructing Authority for and on behalf of His Majesty in exchange for Crown land or any unnecessary road or roads or
- (d) be added by notice in the Gazette to adjoining Crown lands if any held under lease or license on such terms and conditions as the Minister approves.

(3) The value of any land which it is proposed to grant under paragraph (a) of the last subsection shall be determined by the local land board and if any owner of land adjoining a road so closed does not within three months from receipt of notice of the determination of value by the land board 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 the Minister thinks expedient.

21. 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 appears to him 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.

22. Notwithstanding anything hereinbefore contained the Minister may without 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

Temporary closing of roads. No. 5, 1897, s. 19.

Alteration of roads in incomplete purchases. Ibid. s. 20.

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 or conditional lease.

Re-marking roads.

Minister may re-mark.
No. 5, 1897, s. 22.

Cost where road is in a municipality.
Ibid.

Notice of re-marking of road to be published.
Ibid. s. 23.

23. 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.

24. 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.

25. (1) 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.

(2) Such notice shall—

(a) refer 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

(b) state that it is intended to submit the plan to the Governor for approval and

(c) call 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.

(3) A copy of such plan may if the Minister thinks fit 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.

(4) After due consideration of all such objections (if any) the Governor may by notice in the Gazette after the expiration of the month 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.

Roads of access through other persons' lands.

Proprietor desiring a road of access may apply to Quarter Sessions.

4 Wm. IV No. 11, ss. 21, 22, 23, 36.

Matters to be set forth in application.

26. (1) Any proprietor of land alienated by grant from the Crown to no part of which grant any road has been traced or established as a thoroughfare by usage from the nearest highway who is desirous to have a road from the said highway or other way communicating therewith to his land through the lands of any other person may make application in writing to the Court of Quarter Sessions for the district in which such road is required.

(2) Such application shall set forth in a particular manner—

(a) the situation of such land and the direction of the proposed road and

(b)

(b) the lands through which the said road is required to pass in order to reach such nearest highway or other way.

(3) The applicant shall give notice in writing of his intention to make such application one month at least previous to the holding of such Quarter Sessions to all proprietors or occupiers of the lands through which the proposed road will pass and also to the Chief Surveyor. Notice of application.

(4) Upon such application and notice being duly made and given the Court of Quarter Sessions shall hear the parties and the Chief Surveyor or some person deputed by him and shall decide as to the propriety of such road being made and the direction in which the same ought to be made with reference as well to the application of the parties then before the Court as to the general benefit and convenience of all other persons owning or occupying lands adjacent to those of the said parties and to the general advantage of the district in which such lands are situate. Duties of Quarter Sessions.

(5) The said Court shall cause all the evidence produced in support of and against the application to be taken down in writing and to be repeated to the several witnesses giving the same and shall swear such witnesses to the truth thereof and subscribe such evidence and transmit the same to the office of the Chief Surveyor to be kept as a record of his office. Evidence to be taken in writing.

(6) If any party considers himself aggrieved by the decision of the Court of Quarter Sessions he may within one month thereafter appeal unto the Governor whose decision shall be final binding and conclusive upon all parties and persons whomsoever. Appeal by party aggrieved.

(7) No new or further evidence shall be given or laid before the Governor on appeal. No fresh evidence on appeal.

(8) Nothing herein contained shall extend to authorise the several possessors or occupiers of land which originally forming one grant from the Crown has been subsequently divided to use or claim the right of more than one common road through the lands of any other persons for the purpose of communicating with the whole and every part of the land so divided as aforesaid. Provisions as to lands originally one grant.

(9) Whenever the propriety of making a road under the provisions of this section has been determined the Chief Surveyor shall within three months next after such decision trace and mark out the said intended road by such permanent marks as the nature of the country permits and as nearly as is practicable and convenient in the direction approved by such decision. Surveyor to mark out road.

(10) Such road shall not be not more than twenty feet wide in the clear. Width of road.

(11) The line of such road so traced and laid out shall be from thenceforth a private road for the use of the party applying for and all other persons requiring to use the same and shall be subject to such and the like laws as other private roads. Road when traced to be a private road.

(12)

Rights of Crown not interfered with by this Act.

(12) Nothing in this section contained shall be deemed or construed to limit alter or diminish or in any manner soever to interrupt or interfere with the right of the Crown to make or repair public or private roads ways passages or streets in or through any lands whatsoever or any towns or villages where such right has been duly reserved to the Crown in the granting of such lands or otherwise belongs to or is vested in the Crown.

Actions to be commenced within three months.

(13) Every action or suit against any person for anything done in pursuance of this section shall be commenced or prosecuted within three months after the fact committed and not afterwards.

Defendant may plead general issue.

(14) The defendant in any such action or suit may plead the general issue and at the trial thereof give this Act and the special matter in evidence.

Verdict for defendant.

(15) If—

(a) the matter or thing complained of appears to have been done under the authority and in the execution of this Act or

(b) any such action or suit is brought after the time limited for bringing the same

the jury shall find for the defendant.

Defendant may have treble costs.

(16) If the plaintiff—

(a) becomes nonsuit or

(b) discontinues his action after the defendant has appeared or

(c) has a verdict against him or

(d) upon demurrer has judgment given against him

the defendant shall have treble costs and the like remedy for the recovery thereof as any defendant hath in any cases by law.

Alignment of streets within municipalities.

Minister on application of council may define streets.

No. 5, 1897, s. 24.

27. (1) 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 the Minister may cause the carriage-way and footways in any street or public place in such municipality to be surveyed set out and defined and a plan thereof to be prepared which plan may be submitted by the Minister to the Governor for approval.

Evidence of boundaries.

(2) 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 footways set out and defined according to the said plan shall for the purposes of the Municipalities Act of 1897 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 two hundred and thirty-four of the said Act.

28. (1) 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 the Minister may cause the width and the position of the carriage-way and the footways in any street or public place that has been previously aligned under this or any other Act to be re-marked or altered and a plan thereof to be prepared which plan may be submitted by the Minister to the Governor for approval.

Minister on application of council may re-mark streets. No. 5, 1897, s. 25.

(2) 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 footways as re-marked or altered according to the said plan shall for the purposes of the Municipalities Act of 1897 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 two hundred and thirty-four of the said Act.

Evidence of boundaries.

(3) 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 appear to them to exist to the proposed alteration.

Gazette notice of intended re-marking.

(4) 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.

Reference of objections to council.

29. 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.

Protection to Crown. *Ibid.* s. 26.

Powers of Chief Surveyor.

30. (1) For the purpose of making any survey and of performing every act matter or thing under the provisions of this Act the surveyor or other person duly authorised by the Chief Surveyor in that behalf and his assistants agents and servants may---

Power to enter lands to survey and trace roads. *Ibid.* s. 27.

- (a) enter into and upon the lands of any person
- (b) survey and take levels of the same and ascertain and set out by stakes trenches and marks such parts thereof as may be required for a road
- (c) trace and determine the boundaries of such lands as may be affected by the proposed road
- (d) mark and fell trees
- (e)

(e) open and remove fences and

(f) do all other acts necessary for such purpose as aforesaid :

Damage to be repaired.

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.

Powers given to Commissioner.

(2) 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 in that behalf.

Penalties.

Obstructing officers or removing marks.
No. 5, 1897, s. 27.

31. Whosoever obstructs any person in the exercise of the powers conferred by section thirty or wilfully removes alters or defaces any such stakes trenches or marks as are in the said section mentioned shall be liable to a penalty not exceeding ten pounds.

Obstructing or damaging a road.
Ibid. s. 28.

32. Whosoever 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.

Cost of removing obstructions and repairing damages to roads.

Commissioner may bring actions.
Ibid.

33. The Commissioner for roads may by action in any court of competent jurisdiction recover from any person who wilfully obstructs or damages any road whether opened or dedicated under this Act or not the cost of removing the obstruction and repairing the damage.

References to local land board.

Matters referred for decision.
Ibid. s. 8.

34. (1) Any question that arises 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 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.

Matters referred for report.
Ibid. s. 21.

(2) The Minister may in the prescribed manner refer to the local land board any questions which 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.

Gazette notices.

Gazette notice conclusive evidence of due publication.
Ibid. s. 13.

35. (1) 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.

(2)

(2) 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.

Power to make regulations.

- 36.** (1) The Governor may make regulations for the purpose of—
- (a) giving effect to the provisions of any section of this Act which the expression "prescribed" is used in connection with any matter referred to in the context, and
- (b) generally carrying this Act into full effect.

(2) The Governor 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.

(3) 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.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
4 Wm. IV No. 11 ...	An Act for making altering and improving the Roads throughout the Colony of New South Wales and for opening and improving the Streets in the Towns thereof.	Sections 1-18 (inclusive) 20 21 and 22 and so much of sections 33 and 36 as refers to the said sections.
No. 5, 1897 ...	The "Public Roads Act of 1897" ...	The whole Act.

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