

MAIN ROADS AND OTHER ACTS
(AMENDMENT) ACT.

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 71, 1975.

An Act to make further provisions with respect to financing the establishment and maintenance of main and other roads and the entry on and use of land by the Commissioner for Main Roads; to provide for the appointment of a Deputy Commissioner for Main Roads; to validate certain matters; for these and other purposes to amend the Main Roads Act, 1924, the Sydney Harbour Bridge (Administration) Act, 1932, and the Transport (Division of Functions) Act, 1932; and for purposes connected therewith. [Assented to, 6th November, 1975.]

BE

No. 71, 1975

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

Short title.

1. This Act may be cited as the "Main Roads and Other Acts (Amendment) Act, 1975".

Commencement.

2. (1) Section 1, this section and sections 3, 5 and 6 shall commence on the date of assent to this Act.

(2) Section 4 shall be deemed to have commenced on 21st August, 1974.

(3) Sections 7 and 8 shall commence on such day as may be notified by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Main Roads Act, 1924, is, in this Act, referred to as the Principal Act.

Amendment of Act No. 24, 1924.**Sec. 2.
(Division into Parts.)**

4. (1) The Principal Act is amended—

(a) by omitting from the matter relating to Part IIIA in section 2 the matter "8D" and by inserting instead the matter "8C";

(b)

Main Roads and Other Acts (Amendment).

(b) by omitting Part IIIA and by inserting instead the **No. 71, 1975**
following Part :—

Part IIIA.

PART IIIA.

COMMONWEALTH AID ROADS FUND.

8A. There shall be a Commonwealth Aid Roads Fund consisting of such moneys as are paid into that fund by the Treasurer out of moneys paid to the State by the Commonwealth. *Commonwealth Aid Roads Fund.*

8B. The moneys in the Commonwealth Aid Roads Fund may be used by the Commissioner for expenditure incurred in accordance with any Act of the Parliament of the Commonwealth relating to the expenditure of those moneys. *Purposes for which Commonwealth Aid Roads Fund may be used.*

8C. (1) Subject to section 8B but notwithstanding any other provision of this Act, any expenditure that might be made from any other fund under this Act may be made from the Commonwealth Aid Roads Fund instead of that other fund. *Method of using Commonwealth Aid Roads Fund.*

(2) Any moneys in the Commonwealth Aid Roads Fund may be transferred to any other fund under this Act.

(c) by omitting from section 10 (1) (e) the words Sec. 10.
“subsection two of section 8D of this Act” and by (County of Cumberland Main Roads Fund.) inserting instead the matter “section 8C (2);”

(d) by omitting from section 12 (1B) the words “para- Sec. 12.
graph (e) of subsection one of section ten of this (Use of fund.) Act shall be expended in accordance with section 8C of this Act” and by inserting instead the words “section 10 (1) (e) shall be expended in accordance with section 8B”;

(e) by omitting from section 20 (1) (d) the words Sec. 20.
“subsection two of section 8D of this Act” and by (Country Main Roads Fund.) inserting instead the matter “section 8C (2);”

(f)

*Main Roads and Other Acts (Amendment).***No. 71, 1975****Sec. 21.
(Expenditure.)**

(f) by omitting from section 21 (1B) the words "paragraph (d) of subsection one of section twenty of this Act shall be expended in accordance with section 8C of this Act" and by inserting instead the words "section 20 (1) (d) shall be expended in accordance with section 8B";

**Sec. 29.
(Developmental
Roads
Fund.)**

(g) (i) by omitting from section 29 (1) (b) the words "subsection two of section 8D of this Act" and by inserting instead the matter "section 8C (2)";

(ii) by omitting from section 29 (2A) the words "paragraph (b) of subsection one of this section shall be expended in accordance with section 8C of this Act" and by inserting instead the words "subsection (1) (b) shall be expended in accordance with section 8B".

(2) A payment or transfer of moneys standing to the credit of the fund established by Part IIIA of the Principal Act as in force immediately before the commencement of subsection (1) may be made after that commencement in accordance with that Part as so in force.

**Further
amendment
of Act No.
24, 1924.****Secs.
35B-35F.****5. The Principal Act is further amended—**

(a) by inserting before section 36 the following sections :—

**Interpreta-
tion:
Sections
35C and 35D.**

35B. In sections 35C and 35D, "place" includes building, structure, mine and tunnel.

35C.

Main Roads and Other Acts (Amendment).

35C. (1) For the purpose of determining **No. 71, 1975**
whether land is suitable for use as a road or for
or in connection with the construction or mainten-
ance of a road, the Commissioner may, by his
servants or agents and subject to this section and
section 35F—

Power to
enter and
conduct
investiga-
tions on
land.

- (a) enter upon the land or a place on the land between the hours of 8.00 a.m. and 6.00 p.m. or at such other times as may be agreed upon by the owner or occupier unless in emergent circumstances with such persons, vehicles, plant and things as the Commissioner thinks fit;
- (b) take measurements, make drawings, take photographs, make surveys and take levels on the land or in a place on the land and, in connection with those surveys and the taking of levels, dig trenches, break up the soil and set up posts, stakes or marks; and
- (c) dig trenches and sink test holes or bores on the land or in a place on the land for the purpose of ascertaining the nature or composition of the top soil and underlying strata and take and carry away for analysis or testing samples of any material removed from the trenches, holes or bores.

(2) The Commissioner shall not, in relation to any land or any place on any land, exercise any of the powers conferred by subsection (1) unless he gives, or causes to be given, at least seven days' notice in writing to the owner or occupier of the land of his intention to exercise those powers.

(3) A power conferred by subsection (1)
(c) shall not be exercised on land within fifteen metres of a dwelling-house unless, before the power is exercised—

- (a) the owner or occupier of the land consents in writing; or
- (b)

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(b) where the owner or occupier of the land does not consent in writing, the Minister gives written authority for that power to be exercised.

Power to enter and inspect land.

35D. (1) For the purpose of ascertaining the physical features or condition of land or a place on land along or near the line of a road or proposed road, the Commissioner may, by his servants or agents and subject to this section and section 35F—

- (a) enter upon the land or a place on the land between the hours of 8.00 a.m. and 6.00 p.m. or at such other times as may be agreed upon by the owner or occupier with such persons and equipment as the Commissioner thinks fit ;
- (b) inspect the land and any such place;
- (c) take measurements, make drawings and take photographs on the land or in any such place; and
- (d) make such other investigations on the land or in any such place as the Commissioner thinks fit.

(2) The Commissioner shall not, in relation to any land or any place on any land, exercise any of the powers conferred by subsection (1) unless he gives, or causes to be given, at least twenty-four hours' notice to the owner or occupier of the land of his intention to exercise those powers.

Temporary possession of land.

35E. (1) For the purpose of constructing, repairing, altering, adding to or extending an existing or proposed—

- (a) main, developmental or tourist road;
- (b) toll work or developmental work; or
- (c)

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(c) bridge, tunnel or ferry,

or for purposes connected therewith, the Commissioner may, by his servants or agents and subject to this section and section 35F, use and occupy, for as long as may reasonably be necessary for that purpose or those purposes, any land along or near the line of the road, work, bridge, tunnel or ferry.

(2) Except as provided in subsection (4), the Commissioner shall not take possession of land under subsection (1) unless he gives, or causes to be given, at least seven days' notice in writing to the owner or occupier of the land of his intention to take possession of the land as provided by subsection (1). Upon the receipt of such notice the owner or occupier of the land shall have the right of appeal to the Minister. Such appeal must be lodged with the Minister within seven days of receipt of the notice.

(3) The power conferred by subsection (1) shall not be exercised in relation to land within fifteen metres of a dwelling-house unless, before the power is exercised—

- (a) the owner or occupier of the land consents in writing; or
- (b) where the owner or occupier of the land does not consent in writing, the Minister gives written authority for that power to be exercised.

(4) Subsection (2) does not apply where—

- (a) in the opinion of the Commissioner it is necessary, as a matter of urgency, to exercise the power conferred by subsection (1) in relation to land that is not within fifteen metres of a dwelling-house for the

purpose

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purpose of reconstructing or repairing a road, work or undertaking referred to in subsection (1); and

(b) the Commissioner gives, or causes to be given, such notice (if any) as is practicable in the circumstances to the owner or occupier of the land of his intention to exercise that power.

(5) Where the Commissioner gives, or causes to be given, a notice referred to in subsection (4) (b) he shall, forthwith after the giving of such a notice, make a report to the Minister of the circumstances necessitating the giving of that notice.

Application of certain provisions of Local Government Act, 1919, for purposes of sections 35C, 35D and 35E.

35F. The provisions of section 524 (3), (4), (5), (6) and (7) and of section 581 of the Local Government Act, 1919, apply to and in respect of the Commissioner and the exercise by the Commissioner of the powers conferred on him by sections 35C, 35D and 35E in the same way as they apply to a council and the exercise by a council of the powers conferred on a council by section 524 (1) of that Act.

Sec. 37.
(Accounting for, and repayment of, grants and advances.)

(b) (i) by omitting from section 37 (1) the words "for use upon main roads" and by inserting instead the words "under this Act or a grant or advance of moneys made by the Minister for Highways under the Local Government Act, 1919";

(ii) by omitting from section 37 (1) the word "board" wherever occurring and by inserting instead the word "Commissioner";

(iii) by omitting from section 37 (1) the words "appropriate main roads fund according to whether the work for which it was granted is within or outside the county of Cumberland" and by inserting instead the words "fund from which it was appropriated";

(c)

Main Roads and Other Acts (Amendment).

(c) by inserting after section 37 the following No. 71, 1975
sections :—

Secs. 37A,
37B.

37A. The Commissioner shall, if so directed by the Minister, administer grants and advances made by the Minister administering section 539 (2) of the Local Government Act, 1919, in relation to road, bridge and ferry works or undertakings.

Administration of certain grants and advances made under Local Government Act, 1919.

37B. (1) In this section—

“road” does not include a main, developmental or tourist road or a toll work or developmental work;

Commissioner may carry out work when moneys available.

“work” means the construction, reconstruction, deviation or widening of a road, the drainage of a road and operations and activities of every description (exclusive of maintenance) in connection with a road that are, in the opinion of the Commissioner, calculated to increase the usefulness of a road, and includes tree planting.

(2) The Commissioner is authorised to carry out a work where money has been provided by Parliament for or in connection with that work or where the work is one on which moneys may be expended from the Commonwealth Aid Roads Fund established under section 8A.

(3) For the purpose of carrying out a work referred to in subsection (2), the Commissioner shall have all the powers and immunities of a council under the Local Government Act, 1919, and any other Acts conferring powers or immunities on a council.

(d)

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Sec. 49.
(Resumption
of land.)

(d) (i) by omitting from section 49 (1) the word "Board" wherever occurring and by inserting instead the word "Commissioner" ;

(ii) by inserting after section 49 (1) the following subsection :—

(1A) Notwithstanding the application of the Public Works Act, 1912, to the resumption or appropriation of land for the purpose of this Act, where a stratum below the surface of land or an easement or right to use the undersurface or subsoil of land is resumed or appropriated in accordance with that Act, no compensation shall be payable in respect of the resumption or appropriation of that land unless by reason of the resumption or appropriation or the carrying out of any purpose for which the stratum, easement or right is resumed or appropriated—

(a) the surface of the land is disturbed;

(b) the support to the surface of the land is destroyed or injuriously affected ; or

(c) any mines or underground workings in or adjacent to the land are thereby rendered unworkable or are injuriously affected.

(iii) by omitting from section 49 (2) the word "board" wherever occurring and by inserting instead the word "Commissioner";

(iv) by omitting from section 49 (2) the word "board's" and by inserting instead the word "Commissioner's".

Main Roads and Other Acts (Amendment).

6. (1) The Sydney Harbour Bridge (Administration) **No. 71, 1975** Act, 1932, is amended by inserting after section 7 (3) (ivd) the following paragraph :—

Amendment
of Act No.
2, 1932.

(ive) such amount as is approved by the Minister, being Sec. 7.
not more than seventy-five per centum of the actual (The Sydney
costs incurred by the Public Transport Commission Harbour
of New South Wales, for the maintenance of the Bridge
steelwork supporting that part of the Circular Quay
Overhead Roadway that is between Harrington
Street and Macquarie Street.) Account.)

(2) A payment made to the Public Transport Commission of New South Wales from the Sydney Harbour Bridge Account before the commencement of section 6 of the Main Roads and Other Acts (Amendment) Act, 1975, that could have been lawfully made had that section been in force when the payment was made is hereby validated.

7. The Transport (Division of Functions) Act, 1932, is **Amendment** of Act No.
amended— 31, 1932.

(a) by inserting after section 7 the following sections :— Secs 7A—7D.

7A. (1) The Governor may appoint a Deputy **Appointment** Commissioner for Main Roads who shall hold **of Deputy** Commis-
office for such period, not exceeding seven years, sioner for as is specified in the instrument of his appointment. **Main Roads.**

(2) A person appointed to be the Deputy Commissioner for Main Roads is, subject to subsection (4), eligible for reappointment.

(3) The salary of the Deputy Commissioner for Main Roads shall be fixed by the Governor and the Deputy Commissioner for Main Roads may be paid such fees and allowances as may, from time to time, be fixed by the Governor.

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(4) No person who is of or above the age of sixty-five years shall be appointed to be the Deputy Commissioner for Main Roads and a person holding that office shall be deemed to have vacated that office upon his attaining the age of sixty-five years.

Powers, etc.,
of Deputy
Commis-
sioner for
Main Roads.

7B. (1) The Deputy Commissioner for Main Roads shall exercise and perform such of the powers, authorities, duties and functions of the Commissioner for Main Roads as the Commissioner for Main Roads may from time to time direct either generally or in any special case.

(2) The Deputy Commissioner for Main Roads shall have and may exercise and perform all the powers, authorities, duties and functions conferred or imposed on the Commissioner for Main Roads by or under this or any other Act—

- (a) during the absence from duty of the Commissioner for Main Roads;
- (b) while there is a vacancy in the office of the Commissioner for Main Roads; or
- (c) when the Commissioner for Main Roads is not available to exercise or perform that power, authority, duty or function.

Temporary
exercise
of powers,
etc., of
Commis-
sioner and
Deputy
Commis-
sioner for
Main Roads.

7C. The Minister may by order in writing authorise a person to exercise and perform the powers, authorities, duties and functions—

- (a) of the Commissioner for Main Roads where both the Commissioner for Main Roads and the Deputy Commissioner for Main Roads—
 - (i) are absent from duty; or
 - (ii)

Main Roads and Other Acts (Amendment).

- (ii) though not absent from duty, are **No. 71, 1975** not available to exercise or perform those powers, authorities, duties and functions; or

- (b) of the Deputy Commissioner for Main Roads—
 - (i) where the Deputy Commissioner for Main Roads is absent from duty;
 - (ii) where the Deputy Commissioner for Main Roads is exercising and performing the powers, authorities, duties and functions of the Commissioner for Main Roads; or
 - (iii) during any period when there is a vacancy in the office of Deputy Commissioner for Main Roads.

7D. No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising the Deputy Commissioner for Main Roads, or any person authorised pursuant to section 7C, to exercise and perform any of the powers, authorities, duties and functions of the Commissioner for Main Roads or the Deputy Commissioner for Main Roads, as the case may be, and all acts and things exercised or performed by the Deputy Commissioner for Main Roads or a person so authorised shall have the same consequences as they would have had if they had been exercised or performed by the Commissioner for Main Roads.

(b)

No. 71, 1975**Sec. 8.**

(Appointment and powers of Assistant Commissioners.)

(b) by inserting at the end of section 8 (1) the following paragraph :—

After the commencement of section 7 of the Main Roads and Other Acts (Amendment) Act, 1975, no appointment of an Assistant Commissioner for Main Roads shall be made pursuant to this subsection.

Sec. 9.
(Saving of rights.)

(c) (i) by inserting in section 9 (1) after the words “a Commissioner,” the words “a Deputy Commissioner”;

(ii) by inserting in section 9 (2) after the words “a Commissioner” wherever occurring the words “, a Deputy Commissioner”;

(iii) by inserting in section 9 (3) and (4) after the words “such Commissioner” wherever occurring the words “, Deputy Commissioner”;

(iv) by inserting in section 9 (5) after the words “appointed a Commissioner” the words “, a Deputy Commissioner”;

(v) by inserting in section 9 (5) after the words “as a Commissioner,” the words “as a Deputy Commissioner”;

Sec. 10.
(Public Service Act, 1902, not to apply to certain appointments.)

(d) by inserting in section 10 after the words “a Commissioner” the words “, a Deputy Commissioner”;

(e)

Main Roads and Other Acts (Amendment).

(e) (i) by inserting in section 11 after the words "A **No. 71, 1975**
 Commissioner" wherever occurring the words
 "a Deputy Commissioner"; Sec. 11.
 (Suspension
 or removal
 from
 office.)

(ii) by inserting in section 11 (b) after the word "Commissioner" where thirdly and fifthly occurring the words "Deputy Commissioner";

(f) (i) by inserting in section 12 after the words "A **Sec. 12.**
 Commissioner" the words "a Deputy **(Vacation
 of office.)**
 Commissioner";

(ii) by omitting section 12 (b) and by inserting instead the following paragraph :—

(b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit ;

(iii) by omitting from section 12 (c) the word "Governor" and by inserting instead the word "Minister";

(g) by inserting at the end of section 13 the following **Sec. 13.**
 subsection :— (Appoint-
 ment of
 deputy.)

(4) This section ceases to apply in respect of the offices of the deputy of the Commissioner for Main Roads and the Assistant Commissioner for Main Roads after the commencement of section 7 of the Main Roads and Other Acts (Amendment) Act, 1975.

No. 71, 1975**8. The Principal Act is further amended—**

Further
amendment
of Act No.
24, 1924.

Sec. 7A.
(Leave of
absence
after
years of
service.)

- (a) by inserting in section 7A (1) after the matter "1932," the words "a Deputy Commissioner and";
- (b) by inserting in section 7A (2) after the words "A Commissioner," the words "a Deputy Commissioner,";
- (c) by inserting in section 7A (2) after the words "such Commissioner," the words "Deputy Commissioner,";
- (d) by inserting in section 7A (4) after the word "Commissioner" where firstly, thirdly, fifthly and seventhly occurring the words ", Deputy Commissioner" ;
- (e) by inserting in section 7A (4A) (a) after the words "a Commissioner," the words "a Deputy Commissioner," ;
- (f) by inserting in section 7A (4A) (a) after the words "such Commissioner," wherever occurring the words "Deputy Commissioner," ;
- (g) by inserting in section 7A (4A) (d) after the word "Commissioner," wherever occurring the words "Deputy Commissioner," ;
- (h) by inserting in section 7A (5) (c) after the words "a Commissioner" the words ", Deputy Commissioner" ;
- (i) by inserting in section 7A (5) after the words "such Commissioner," the words "Deputy Commissioner,".

METRIC