

# STATE ROADS ACT 1986 No. 85

NEW SOUTH WALES



## TABLE OF PROVISIONS

### PART 1—PRELIMINARY

1. Short title
2. Interpretation
3. Application of Act
4. Declaration of classes of roads and works
5. Right of council to be heard

### PART 2—ADMINISTRATION

6. The Commissioner for Main Roads
7. Functions of Commissioner
8. Delegation by Commissioner
9. Appointment and employment of officers and employees
10. Extended leave of absence
11. Enforcement of judgments

### PART 3—ROADS AND WORKS

#### DIVISION 1—*General Functions of the Commissioner*

12. Functions of council conferred on Commissioner
13. Work on classified roads and toll works
14. Consequential works
15. Boundary works by councils
16. Assistance to councils
17. Roads, etc., not within a council area
18. Work on roads other than classified roads
19. Re-alignment of main road
20. Power to fix levels

21. Power to construct and improve classified roads
22. Commissioner not liable for damage caused by tar
23. Provision of conduits for services
24. Colonnading
25. Power to make drains on public or private land
26. Roads over or under navigable waters
27. Traffic control facilities
28. Use of classified road by Commissioner
29. Stoppage of traffic
30. Regulation of traffic on classified roads
31. Service centres and rest areas
32. By-passes for motor vehicles
33. Assistance to repair by-pass or detour
34. Alteration of work in classified road
35. Bridge and ferry tolls and charges
36. Transfer of certain works to Commissioner
37. Border roads, bridges and ferries
38. Co-operation with councils
39. Miscellaneous functions of Commissioner

*DIVISION 2—Freeways and Controlled Access Roads*

40. Freeways vested in Commissioner
41. Access to freeway, etc.
42. Local access roads
43. Division of carriageway
44. Restriction of use of land or access
45. Compensation

*DIVISION 3—Toll Works*

46. Declaration of toll work
47. Toll works to be carried out by Commissioner
48. Toll work not public street for certain purposes
49. Tolls and charges on toll work
50. Application of other provisions to toll work
51. Toll work may cease to be toll work

*DIVISION 4—Functions Relating to Land*

52. Acquisition of land
53. Power to enter and conduct investigations on land
54. Power to enter and inspect land
55. Temporary possession of land
56. Obligations in relation to land entered
57. Functions of Commissioner in relation to certain land
58. General functions relating to land
59. Re-establishment of resumed building

DIVISION 5 —*Obstructions and Damage*

- 60. Structures, etc., on classified roads
- 61. Hoardings, etc.
- 62. Fences obstructing vision of drivers
- 63. Vehicles, etc., obstructing classified road
- 64. Abandoned vehicles
- 65. Removal of unattended motor vehicles
- 66. Sand causing obstruction on classified road
- 67. Removal of obstructions
- 68. Liability for damage to road, etc.
- 69. Reinstatement of damaged classified road
- 70. Works under the Water Act 1912
- 71. Private railways
- 72. Damage to classified road
- 73. Weight checks

## PART 4—FINANCE

DIVISION 1—*Metropolitan Roads Fund*

- 74. Composition of Metropolitan Roads Fund
- 75. Use of Metropolitan Roads Fund

DIVISION 2—*Country Roads Fund*

- 76. Composition of Country Roads Fund
- 77. Use of Country Roads Fund

DIVISION 3—*Commonwealth Fund*

- 78. Composition of, and expenditure from, the Commonwealth Fund

DIVISION 4—*General*

- 79. Contribution by council
- 80. Disposal of revenue from toll work
- 81. Discharge of certain liabilities
- 82. Payments to Treasurer
- 83. Payments by Treasurer
- 84. Borrowing, etc., by council
- 85. Penalties, etc.
- 86. Reserves for loan repayment

## PART 5—MISCELLANEOUS

- 87. Lateral support of roads and works
- 88. Standard plans and specifications
- 89. Deviation, etc., of classified road by statutory authority

- 90. Acquisition and manufacture of plant and materials
- 91. Commissioner to be provided with particulars of certain works
- 92. Engineering and clerical charges
- 93. Council to provide information
- 94. Recovery of debts
- 95. Interest on overdue payment by council
- 96. Works for other departments and statutory authorities
- 97. Works may be executed as compensation
- 98. Service of notices, etc.
- 99. Vicarious liability
- 100. Identification of offending driver
- 101. Evidence
- 102. Enforcement of Act
- 103. Repeals
- 104. Savings and transitional provisions
- 105. Regulations

**SCHEDULE 1—REPEALS**

**SCHEDULE 2—PROVISIONS RELATING TO THE COMMISSIONER**

**SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS**

**SCHEDULE 4—FREEWAYS**

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## **STATE ROADS ACT 1986 No. 85**

**NEW SOUTH WALES**



**Act No. 85, 1986**

**An Act to provide for the construction and maintenance of the principal roads of the State and related works; to repeal the Main Roads Act 1924; and for other purposes. [Assented to, 21 May 1986]**

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See also Transport (Division of Functions) Amendment Act 1986; Sydney Harbour Bridge (Administration) Amendment Act 1986; Statutory and Other Offices Remuneration (Main Roads) Amendment Act 1986.

*State Roads 1986*

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**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:

**PART 1**  
**PRELIMINARY**

**Short title**

1. This Act may be cited as the "State Roads Act 1986".

**Interpretation**

2. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"classified road" means a road or work declared under section 4 to be—

- (a) a main road;
- (b) a secondary road;
- (c) a State highway;
- (d) a tourist road;
- (e) a State work;
- (f) a freeway; or
- (g) a controlled access road;

"Commissioner" means The Commissioner for Main Roads;

"Commonwealth Fund" means the fund established under section 78;

"construct", in relation to a classified road, toll work or other work, includes the construction or reconstruction of—

- (a) a new classified road, toll work or other work;
- (b) a deviation or widening of a classified road or toll work;
- (c) a work for the drainage of a classified road or toll work; and

*State Roads 1986*

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(d) any work (other than maintenance) that is, in the opinion of the Commissioner, a means of increasing the usefulness of a classified road, toll work or other work,

and tree planting along or in connection with a classified road or toll work;

“controlled access road” means—

(a) a main road that, immediately before the commencement of this Act, was a motorway under the Main Roads Act 1924 and is not a freeway; or

(b) a road declared under section 4 to be a controlled access road;

“council” means the council of a city, municipality or shire;

“country area” means the part of the State that is not within the metropolitan area;

“country classified road” means a classified road within the country area;

“country main road” means a main road within the country area that is not a State highway, a freeway or a controlled access road;

“Country Roads Fund” means the fund established under section 76;

“country State highway” means a State highway within the country area;

“freeway” means—

(a) a road specified in Schedule 4 that, immediately before the commencement of this Act, was a motorway under the Main Roads Act 1924; or

(b) a road declared under section 4 to be a freeway;

“maintenance” includes works that, in the opinion of the Commissioner, are designed to keep a classified road or toll work and any drainage of such a work in the same state of usefulness as it was in at the time of its declaration or construction as a classified road or toll work;

“metropolitan area” means—

(a) the county of Cumberland;

(b) the City of Blue Mountains;

*State Roads 1986*

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(c) the part of the City of Wollongong that is within the zig-zag section of State Highway No. 1—Princes Highway at Bulli Pass; and

(d) the part of the shire of Hawkesbury that comprises—

(i) main road No. 184; and

(ii) the land lying between that main road and the City of Blue Mountains;

“metropolitan classified road” means a classified road within the metropolitan area;

“metropolitan main road” means a main road within the metropolitan area that is not a State highway, a freeway or a controlled access road;

“Metropolitan Roads Fund” means the fund established under section 74;

“metropolitan State highway” means a State highway within the metropolitan area;

“owner”, in relation to a motor vehicle, does not include a lessor of the motor vehicle but otherwise includes a person who is—

(a) a joint or part owner of the motor vehicle;

(b) a lessee of the motor vehicle;

(c) the person to whom the motor vehicle is hired under a hire-purchase agreement;

(d) a person in whose name the motor vehicle is registered unless the person has sold or otherwise disposed of the motor vehicle and has complied with the regulations made under the Motor Traffic Act 1909 in relation to the sale or disposal of the motor vehicle; and

(e) where a trader’s plate issued under the Motor Traffic Act 1909 is affixed to the motor vehicle—the person to whom the trader’s plate was issued;

“pathway” means a public road provided for the use only of foot passengers and such classes of vehicles, if any, as may be prescribed;

“public road” means a road the public are entitled to use;

“public street” means—

*State Roads 1986*

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- (a) any street, road, land, thoroughfare, footpath or place open to or used by the public; or
- (b) any place open to or used by the public, whether or not on payment of money;

“registered”, in relation to a motor vehicle, means registered in accordance with the regulations under the Motor Traffic Act 1909 or registered or licensed under the law of another State, or a Territory of the Commonwealth, that corresponds to the requirements of those regulations relating to the registration of motor vehicles;

“regulations” means regulations made under section 105;

“Roads Fund” means—

- (a) the Metropolitan Roads Fund; or
- (b) the Country Roads Fund;

“service centre” means land, improvements, facilities or amenities for use by the travelling public;

“statutory authority” means a body constituted by or under an Act;

“this Act” includes the regulations;

“toll work” means a work declared under section 46 to be a toll work;

“traffic control facility” means—

- (a) traffic control lights on public streets and equipment used in connection with traffic control lights;
- (b) a sign, marking, structure or device containing or relating to a requirement of which a contravention is an offence under the Motor Traffic Act 1909 or the General Traffic Act 1900, or under a regulation made under either of those Acts;
- (c) a sign, device or line referred to in section 270N (1) (c) of the Local Government Act 1919;
- (d) a sign, marking, structure or device that is intended to promote safe or orderly traffic movement on public streets or to warn, advise or inform the drivers of vehicles, or pedestrians, of any matter or thing in relation to vehicular or pedestrian traffic or road conditions or hazards; or

*State Roads 1986*

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(e) a bridge, subway or other facility for use by pedestrians over, across, under or alongside a public street.

(2) Except as provided by subsection (3), a reference to "the council" in a provision of this Act applicable in relation to a road is a reference to the council in whose area is situated the part of the road in relation to which the provision is applied.

(3) Unless the context or subject-matter otherwise indicates or requires, in the application of a provision of this Act to, or in relation to, a road (not being a public road) that is, or is proposed as, a main road or a tourist road and is within a public reserve or passes through a public reserve and joins a main road—

(a) a reference to a council shall—

(i) where the public reserve is a national park, a historic site or a nature reserve under the National Parks and Wildlife Act 1974—be construed as a reference to the Director of National Parks and Wildlife; or

(ii) in any other case—be construed as a reference to the trustees of the public reserve; and

(b) a reference to the area of a council shall be construed as a reference to the public reserve.

(4) In this Act, a reference to a road or work is a reference to a road or work constructed before or after the commencement of this Act and includes a reference to—

- (a) a part of the road or work;
- (b) a proposed road or work; or
- (c) a part of a proposed road or work.

(5) Except in so far as the context or subject-matter otherwise indicates or requires, a reference in this Act to a main road not specifically referred to as a metropolitan main road or a country main road includes a reference to a State highway, a freeway and a controlled access road.

(6) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and

*State Roads 1986*

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(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(7) Except in so far as the context or subject-matter otherwise indicates or requires, the Commissioner may exercise a function under this Act by servants or agents or by independent contractors.

**Application of Act**

3. This Act applies throughout the State except that, to the extent that a provision of this Act requires for its operation the existence of a council, the provision does not apply in a part of the State that is not within the area of a council.

**Declaration of classes of roads and works**

4. (1) On the recommendation of the Commissioner, the Minister may, by order published in the Gazette, declare—

- (a) as a main road—a public road or a road that, although not a public road, passes through a public reserve and joins a main road, a State highway, a freeway or a controlled access road;
- (b) as a secondary road—a road that, by carrying a substantial amount of through traffic, relieves a neighbouring main road of traffic;
- (c) as a State highway—a main road that is a principal avenue of road communication between the coast and the interior or otherwise within the State and connecting similar roads in other States;
- (d) as a tourist road—a public road or a road that, although not a public road, is within a public reserve or passes through a public reserve and joins a main road, a State highway, a freeway or a controlled access road, being in any case a road providing accessibility to places used, or likely to be used, by tourists;
- (e) as a State work—a road or work (including a bridge or road ferry) that, but for the declaration, would not be a classified road but which the Minister considers by reason of its nature, size, location or importance should be constructed or maintained, or both, as a responsibility of the State;
- (f) as a freeway—a main road specifically designed to facilitate the movement of traffic;

*State Roads 1986*

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- (g) as a controlled access road—
  - (i) a main road designed to facilitate the movement of traffic; or
  - (ii) to such extent as the Minister considers it to be desirable—
    - a road that joins a main road referred to in subparagraph (i); or
- (h) the number and name of any such road or work.

**(2)** On the recommendation of the Commissioner, the Minister may, by order published in the Gazette, declare that a specified country main road, or a specified part of such a road, has the same characteristics and functions as a metropolitan main road and, while such an order remains in force, the provisions of this Act relating to metropolitan main roads apply to the road or part to which the order relates instead of the provisions relating to country main roads.

**(3)** Where an order declaring a road to be a freeway or a controlled access road restricts access to or from the freeway or controlled access road, the order shall specify the means of access or routes by which a person may enter or leave a freeway or controlled access road and shall, in addition to being published in the Gazette, be published in one or more newspapers circulating in the district in which the freeway or controlled access road is situated.

**(4)** In determining whether to recommend the declaration of a main road, the Commissioner shall consider—

- (a) whether the road is or will be a main route for traffic;
- (b) the representations of any council affected;
- (c) the money available for construction and maintenance of main roads;
- (d) the potential of the proposed route to function satisfactorily as a main route for through traffic of a general type;
- (e) the value of the proposed route for defence purposes; and
- (f) any other factors deemed to be relevant.

*State Roads 1986*

(5) Where a road or work that, but for this subsection, would not be a classified road was, immediately before the commencement of this Act being maintained from a fund established under the Main Roads Act 1924, the road or work shall be deemed to have been declared under subsection (1) as a State work and, if it was, immediately before that commencement, a national work within the meaning of the Local Government Act 1919, it ceases to be a national work.

(6) It is not necessary to declare as a classified road any correction of the route of a classified road or any relocation of, or alteration to, the route of a classified road adopted by or with the approval of the Commissioner for the purpose of securing better alignment or gradients or for improving the usefulness of the road.

**Right of council to be heard**

5. (1) Where the Commissioner proposes—

- (a) to recommend the making or revocation of an order made under section 4 in relation to a main road and the council has not informed the Commissioner that it agrees with the proposal; or
- (b) to refuse an application by the council for the making or revocation of such an order,

the Commissioner shall give the council written notice of the proposal specifying a reasonable time within which the council may notify the Commissioner that it wishes to be heard in relation to the proposal.

(2) Where a council notifies the Commissioner that it wishes to be heard, the Commissioner shall arrange for the council to be heard, and to call evidence, in relation to the proposal and shall, after considering the matters raised by the council, notify the council in writing whether or not the Commissioner intends to proceed with the proposal.

(3) Where the Commissioner notifies an intention to proceed with a proposal referred to in subsection (1), any council that would be affected if the proposal were given effect may appeal to the Minister who may—

- (a) make or revoke the relevant order; or
- (b) refuse to make or revoke the relevant order.

**(4) An appeal under subsection (3)—**

- (a) shall be by notice in writing specifying concisely the grounds of appeal; and
- (b) shall be served on the Commissioner not later than 1 month after the council is notified as provided by subsection (2),

and the Commissioner shall serve a copy of the notice on all councils that would be affected if the proposal appealed against were given effect.

**(5) On the hearing of an appeal, the Minister may allow councils other than the appellant to be heard and the Commissioner and all councils shall give effect to the decision of the Minister on the appeal.**

**(6) This section does not operate to prevent the Minister from treating a proposal by the Commissioner as a special case under section 13 (5).**

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**PART 2****ADMINISTRATION****The Commissioner for Main Roads**

**6. (1) The Governor may appoint a Commissioner for Main Roads who shall hold office for such period not exceeding 7 years as is specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.**

**(2) The Commissioner for Main Roads is a corporation sole with the corporate name “The Commissioner for Main Roads” and—**

- (a) is a continuation of, and the same legal entity as, the corporation continued by section 4A of the Main Roads Act 1924 as in force immediately before the commencement of this Act;
- (b) has perpetual succession;
- (c) shall have an official seal;
- (d) may take proceedings and be proceeded against in its corporate name;

*State Roads 1986*

- (e) may, subject to this Act, purchase, exchange, take on lease, hold, dispose of by way of lease or sale and otherwise deal with property;
- (f) may do and suffer all other things that corporations generally may, by law, do and suffer and that are necessary for or incidental to the purposes for which it is constituted; and
- (g) is, for the purpose of any Act, a statutory body representing the Crown.

(3) Subsection (2) does not limit the exercise of a function expressly conferred on the Commissioner by this or any other Act.

(4) All courts and persons acting judicially—

- (a) shall take judicial notice of the official seal of the Commissioner that has been affixed to an instrument or document; and
- (b) shall, until the contrary is proved, presume that the seal was properly affixed.

(5) Schedule 2 has effect with respect to the Commissioner.

#### Functions of Commissioner

7. (1) The Commissioner—

- (a) has, and may exercise, the functions conferred or imposed on the Commissioner by this or any other Act; and
- (b) is, in the exercise of those functions (except in relation to the contents of a report or recommendation made to the Minister), subject to the control and direction of the Minister.

(2) The exercise of a function by the Commissioner is not invalidated because it is exercised in contravention of a direction by the Minister.

(3) Where a recommendation by the Commissioner is a condition precedent to the exercise of a function by the Minister, the exercise of the function by the Minister is evidence of the making of the recommendation.

(4) The functions conferred on the Commissioner by this or any other Act may be exercised—

- (a) in relation to land or any stratum of land, whether divided horizontally, vertically or otherwise; and

(b) whether by reservation or assurance—with respect to any estate, interest, easement, right, power or privilege in, or relating to, any land or stratum of land.

**Delegation by Commissioner**

8. (1) The Commissioner may delegate to a person or to the holder of a specified office the exercise of any of the functions of the Commissioner other than this power of delegation.

(2) A delegation under this section—

- (a) shall be in writing;
- (b) may be general or limited; and
- (c) may be revoked, wholly or partly, by the Commissioner.

(3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.

(4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Commissioner.

(5) A delegation under this section does not prevent the exercise of a function by the Commissioner.

(6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

**Appointment and employment of officers and employees**

9. (1) The Commissioner may appoint and employ such officers as are necessary for the execution of this Act and shall, subject to the provisions of the Industrial Arbitration Act 1940, determine the salaries, wages, allowances and conditions of employment of officers so appointed.

(2) Where an officer of the Public Service is appointed and employed by the Commissioner under subsection (1)—

- (a) the officer has a right to be considered for appointment to a position under the Public Service Act 1979;

*State Roads 1986*

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- (b) the officer may continue to contribute to, and may receive benefits under, any superannuation scheme constituted by an Act to which the officer was contributing immediately before being appointed to the service of the Commissioner;
- (c) the officer has rights to, and in relation to, leave and extended leave accrued or accruing to the officer under the Public Service Act 1979; and
- (d) section 122 of the Public Service Act 1979 applies in relation to any such extended leave,

as if the officer had continued as an officer of the Public Service, but the officer or any other person is not, in respect of the same period of service of the officer, entitled to claim a benefit both under the Public Service Act 1979 as applied by this subsection and under another Act.

**(3)** The Commissioner may employ such casual employees as are necessary for the execution of this Act and may fix their wages and conditions of employment in so far as they are not fixed by or under another Act.

**Extended leave of absence**

**10. (1)** An officer is entitled—

- (a) after service for 10 years—to extended leave for 2 months on full pay or 4 months on half pay; and
- (b) after service in excess of 10 years—
  - (i) to extended leave in accordance with paragraph (a); and
  - (ii) in addition—to an amount of extended leave proportionate to his or her length of service after 10 years on the basis of 5 months on full pay, or 10 months on half pay, for 10 years served after service for 10 years.

**(2)** For the purpose of calculating the entitlement of a person to extended leave under this section at any time—

- (a) service referred to in this section includes service before the commencement of the Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1971; and

(b) there shall be deducted from the amount of extended leave to which, but for this paragraph, that person would be entitled—

- (i) any extended leave, or leave in the nature of extended leave; and
- (ii) the equivalent, in extended leave, of any benefit instead of extended leave or leave in the nature of extended leave,

taken or received by that person before that time, including any such extended leave taken, or benefit received, by that person before that commencement under a provision of the Main Roads Act 1924 repealed before or after that commencement; and

(c) the provisions of the Transferred Officers Extended Leave Act 1961 have effect,

but nothing in this subsection shall be construed as authorising, in respect of the same period of extended leave taken or the same benefit received, a deduction under both paragraph (b) and section 3 (7) of the Transferred Officers Extended Leave Act 1961.

**(3)** Where the services of an officer with at least 5 years' service as an adult and less than 10 years' service are terminated by the Governor or the Commissioner for any reason other than the officer's serious and wilful misconduct, or by the officer on account of illness, incapacity or domestic or other pressing necessity, he or she is entitled for 5 years' service to extended leave of 1 month on full pay and for service after 5 years to a proportionate amount of extended leave on full pay calculated on the basis of 3 months' extended leave for 15 years' service both as an adult and otherwise than as an adult.

**(4)** An officer who has acquired a right to extended leave with pay under subsection (1) or (3) shall, on termination of his or her services—

- (a) be paid the money value of the extended leave as a gratuity (in addition to any other gratuity to which he or she may be entitled); and
- (b) any pension to which he or she is entitled under a superannuation scheme shall commence from the date on which his or her extended leave, if taken, would have commenced.

*State Roads 1986*

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(5) Where an officer who has acquired a right to extended leave with pay under subsection (1) dies before commencing the extended leave, or commences the extended leave and dies before it terminates—

- (a) the officer's widow or widower;
- (b) if there is no widow or widower—the officer's children;
- (c) if there is no widow or widower and there are no children—a dependent relative as determined by the Commissioner; or
- (d) in any other case—the personal representative of the deceased,

is entitled to be paid the money value of the extended leave that would have been payable to the deceased had he or she lived and taken the extended leave from the date of death or, if commenced, had completed it.

(6) Where an officer dies and, had his or her services then been terminated otherwise than by death, he or she would have been entitled to a payment under subsection (3)—

- (a) the officer's widow or widower;
- (b) if there is no widow or widower—the officer's children;
- (c) if there is no widow or widower and there are no children—a dependent relative as determined by the Commissioner; or
- (d) in any other case—the personal representative of the deceased,

is entitled to that payment.

(7) A payment to which a child is entitled under subsection (5) or (6) may, if there is a guardian of the child, be paid to the guardian for the maintenance, education and advancement of the child.

(8) In subsection (1), a reference to service—

- (a) includes a reference to a period of leave without pay taken before the commencement of the Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963; and
- (b) in the case of an officer who has completed at least 10 years' service (any period of leave without pay taken before that commencement being included and any period of leave without pay taken after that commencement being excluded)—includes a period of leave without pay, not exceeding 6 months, taken after that commencement.

(9) In subsection (3), a reference to service does not include a reference to any period of leave without pay, whether taken before or after the commencement of the Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963.

(10) In subsection (3), a reference to service as an adult—

- (a) in the case of an officer employed to do any work for which the price, rate or wage has been fixed by an award made under the Conciliation and Arbitration Act 1904 of the Commonwealth or the Industrial Arbitration Act 1940, or has been fixed by an industrial agreement made or registered under either of those Acts, or has been determined under this Act—is a reference to the period of service during which the remuneration applicable to the officer was at a rate not lower than the lowest rate fixed under the award, industrial agreement or determination for an adult male or adult female in the same trade, classification or calling as the officer; or
- (b) in the case of an officer employed to do any work for which no price, rate or wage has been fixed by an award, industrial agreement or determination referred to in paragraph (a)—is a reference to the period of service during which the officer was not less than 21 years of age.

(11) In subsection (4), a reference to a superannuation scheme is a reference to a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established under an Act.

(12) In this section, a reference to service includes aggregate years of service in the Public Service before or after the commencement of this Act of an officer who, immediately before being appointed as such, was an officer or temporary employee of the Public Service.

(13) In this section—

“officer” means the Commissioner or any officer employed by the Commissioner.

*State Roads 1986*

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**Enforcement of judgments**

**11.** (1) Where judgment has been entered in any court against an officer or employee of the Commissioner, or against a contractor to the Commissioner, for the payment of any sum of money, the person in whose favour the judgment is entered may serve on the Commissioner—

- (a) a copy of the judgment certified under the hand of the Registrar or other proper officer of the court in which the judgment is entered; and
- (b) a statutory declaration stating that the judgment has not been satisfied by the judgment debtor and setting out the amount due by the judgment debtor under the judgment.

(2) As soon as practicable after the service upon the Commissioner of a copy of a judgment and a statutory declaration, the Commissioner shall notify the judgment debtor in writing of the service and require the judgment debtor to state in writing within a time specified in the notice whether the judgment has been satisfied and, if so, to furnish evidence of its satisfaction or, if the judgment has not been satisfied, to state the amount then due under the judgment.

(3) If the officer, employee or contractor fails to prove to the satisfaction of the Commissioner that the judgment has been satisfied, the Commissioner may—

- (a) from time to time cause to be deducted from any money due to the officer, employee or contractor such sums as are, in the opinion of the Commissioner, necessary to enable the judgment to be satisfied; and
- (b) apply those sums as provided by this section,

but in no case shall a deduction be made from money due to an officer or employee which will reduce the amount to be received by the officer or employee to less than a sum per week equivalent to the amount ascertained in accordance with subsection (4).

(4) The amount to be ascertained in accordance with this subsection is the amount calculated by deducting \$8—

- (a) in the case of a male officer or employee—from the basic wage for adult males; and
- (b) in the case of a female officer or employee—from the basic wage for adult females,

in force within the meaning of Part V of the Industrial Arbitration Act 1940 immediately before the deduction under subsection (3) is made.

(5) Where copies of more than one judgment and statutory declaration are served upon the Commissioner in respect of one judgment debtor, the judgments shall be dealt with under this section in the order in which copies of the judgments are served upon the Commissioner.

(6) Any deduction made under subsection (3) from money due to an officer or employee shall, as between the Commissioner and the officer or employee, be deemed to be a payment by the Commissioner to the officer or employee.

(7) A person to whom a payment has been made under this section shall notify the Commissioner immediately the judgment debt in respect of which the payment was made is satisfied.

Penalty: \$100.

(8) If any deduction made under subsection (3) exceeds the amount due under the judgment against the judgment debtor, the excess is repayable by the Commissioner to the judgment debtor, and in default of payment, may be recovered by the judgment debtor from the Commissioner in any court of competent jurisdiction.

(9) This section does not apply in relation to an officer, employee or contractor who is an undischarged bankrupt.

(10) Out of the sums deducted under subsection (3) there shall be retained by the Commissioner and credited to such one of the Roads Funds as the Commissioner determines an amount equal to 5 per cent (or such other percentage as the Governor may, by order, notify in the Gazette) of those sums, and the balance of those sums shall be paid to the judgment creditor.

(11) Where a payment is made to a judgment creditor under subsection (10), the Commissioner shall forward to the judgment creditor a statement showing—

- (a) the sums deducted under subsection (3) in respect of the judgment from money due to the officer, employee or contractor concerned;
- (b) the amount retained by the Commissioner under subsection (10) out of those sums; and

*State Roads 1986*

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(c) the balance of those sums paid to the judgment creditor under subsection (10).

(12) Upon payment being made under subsection (10) to the judgment creditor, the judgment creditor shall credit the officer, employee or contractor concerned with the sums referred to in subsection (11) (a), as shown in the statement forwarded to the judgment creditor, and the judgment in respect of which the payment was made shall for all purposes be deemed to be satisfied to the extent of those sums, as so shown.

(13) In this section—

“judgment” includes a judgment against joint defendants.

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**PART 3****ROADS AND WORKS****DIVISION 1—*General Functions of the Commissioner*****Functions of council conferred on Commissioner**

12. (1) The Commissioner has, and may exercise, in relation to a classified road or a toll work, the functions and immunities of a council in relation to a public road.

(2) Except to the extent necessary for, and during the exercise of, the functions of the Commissioner, this Act does not limit or affect the powers of a council in relation to a public road.

**Work on classified roads and toll works**

13. (1) The Commissioner may, in accordance with this Act, carry out works of construction or maintenance on a classified road or a toll work.

(2) The making of a decision as to what works of construction or maintenance are to be carried out on—

(a) a freeway, a State work or a toll work;

(b) a metropolitan main road, a State highway or a controlled access road in the metropolitan area which is a main road; or

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- (c) any other classified road on which the carrying out of the works is, by agreement with the council or by authorisation of the Minister, the responsibility of the Commissioner,

is exclusively a function of the Commissioner.

(3) The carrying out of works of construction or maintenance on a freeway, a State work or a toll work is exclusively a function of the Commissioner.

(4) In relation to works of construction or maintenance to be carried out on a classified road other than a freeway or a State work, the Commissioner and the council may agree—

- (a) that the Commissioner will be responsible for carrying out the work;
- (b) that the council will be responsible for carrying out the work; or
- (c) that responsibility for carrying out the work will be shared between the Commissioner and the council as specified in the agreement.

(5) Where the Commissioner and the council are unable to agree on the responsibility for carrying out work on a classified road other than a freeway or a State work, or in a case that, in the opinion of the Minister, is a special case, the Minister may authorise the Commissioner to be responsible for carrying out the work.

(6) An agreement between the Commissioner and the council may provide for its variation or termination on notice of not less than 12 months given by either party.

(7) Except where the Commissioner proposes to recommend a special case, the Commissioner shall give to the council notice of not less than 1 month of the details of any proposal by the Commissioner to seek an authorisation by the Minister under subsection (5) where agreement with the council cannot be reached and shall, in seeking the authorisation, bring to the notice of the Minister any submissions made by the council before the expiration of that period of 1 month.

(8) Where—

- (a) an agreement under subsection (4), or an authorisation under subsection (5), is terminated or revoked; or

*State Roads 1986*

(b) the Commissioner notifies the council of the completion and handing over to the council of a work carried out under such an agreement or authorisation,

the road is then under the care, control and management of the council.

**(9)** Works of construction and maintenance to be carried out by the Commissioner in relation to a classified road may include any works which it would be within the power of the council to construct.

**(10)** The Commissioner's decision on whether a work is a work of construction or maintenance is final.

**Consequential works**

**14.** Where the Commissioner or the council carries out work on a classified road, the Commissioner may—

- (a) carry out; or
- (b) pay to the council the whole or any part of the cost of carrying out,

on an adjoining road (whether classified or not) such works as the Commissioner considers to be necessary as a consequence of the carrying out of the work on the classified road.

**Boundary works by councils**

**15. (1)** Where 2 councils have a classified road as a common boundary of their areas, the Commissioner may—

- (a) allot money and works under this Act in respect of the whole of the road to one of the councils; or
- (b) without regard to any subsequent apportionment of the cost—divide the money and works under this Act in respect of the road between the councils in the manner considered by the Commissioner to be best for the effective carrying out of the works.

**(2)** The joint share of the 2 councils in the cost of works on a road referred to in subsection (1) shall be apportioned between them—

- (a) by agreement; or

(b) where the councils do not reach agreement within 3 months after being requested by the Commissioner to do so—in such manner as is determined by the Commissioner after giving both councils an opportunity to be heard.

(3) Section 522 of the Local Government Act 1919 (Boundary roads, bridges, and ferries to be maintained at joint expense of adjoining areas) has effect subject to this section.

**Assistance to councils**

16. (1) Where the Commissioner has decided what works of construction or maintenance are to be carried out on a classified road in relation to which an agreement may be entered into under section 13, the Commissioner may agree to provide assistance to the council in carrying out the works.

(2) Where a council has decided what works of construction or maintenance are to be carried out on a classified road referred to in subsection (1), the Commissioner may—

- (a) at the request of the council; and
- (b) if the Commissioner is provided with such information as may be prescribed, and as may be required by the Commissioner, in relation to the works,

agree to provide assistance to the council in carrying out the works or such of them as the Commissioner may determine.

(3) The terms and conditions of an agreement under this section shall be such as may be prescribed and as may be determined by the Commissioner.

(4) Where the Commissioner has agreed to provide assistance to a council under subsection (1) or (2), the Commissioner shall, from the appropriate Fund—

- (a) in the case of works on a main road—pay to the council the cost of the works;
- (b) in the case of works on a secondary road—pay to the council not less than 50 per cent of the cost of the works; or
- (c) in the case of works on a tourist road—pay to the council such part of the cost of the works as the Commissioner determines,

*State Roads 1986*

in trust to expend the money in accordance with the agreement and subject to the council carrying out the works to the satisfaction of the Commissioner.

(5) Where the council offers to pay part of the cost of works of construction or maintenance on a country main road for which the Commissioner has agreed under this section to provide assistance, the amount of the assistance may be reduced by the amount offered by the council.

(6) Nothing in this section limits to financial assistance the assistance that the Commissioner may agree to provide to a council.

**Roads, etc., not within a council area**

17. The Commissioner may, in a part of the State not within the area of a council—

- (a) construct or provide a road; or
- (b) maintain a road constructed or provided before or after the commencement of this Act,

and for that purpose has, and shall be deemed always to have had, the functions and immunities of a council in relation to a public road.

**Work on roads other than classified roads**

18. (1) 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 and undertakings.

(2) The Commissioner may—

- (a) with money provided by Parliament or with money paid into the Commonwealth Fund—carry out on a road that is not a classified road any work for which expenditure of the money is authorised; or
- (b) at the request and cost of a council—carry out work on a road that is not a classified road.

(3) For the purpose of carrying out a work under this section, the Commissioner has the powers and immunities of the council.

**Re-alignment of main road**

**19. (1)** A main road may be widened by re-aligning it in accordance with this section.

**(2)** Where the Minister approves a plan submitted by the Commissioner for widening a main road by re-alignment, the Commissioner shall—

- (a) notify the approval in the Gazette;
- (b) serve notice of the re-alignment on each owner of affected land; and
- (c) lodge a copy of the plan at the Land Titles Office and with the Valuer-General and the council.

**(3)** Where notice is served under subsection (2) on an owner of affected land, the affected land vests in the council for a public road—

- (a) in the case of vacant land—on the date of service of the notice; or
- (b) in any other case—when the land is, in the opinion of the Commissioner, cleared of buildings and obstructions.

**(4)** Compensation for the vesting of affected land by re-aligning a main road—

- (a) except as provided by paragraph (b)—is payable as if the land had been resumed in accordance with this Act and vested in the Commissioner; and
- (b) is limited to the value of the land at the date of its vesting in the council together with the amount of any damage caused by its severance on that date from other land of the owner.

**(5)** A person shall not construct, build, place, reconstruct, rebuild, replace or repair a building or work on affected land.

Penalty: \$1,000.

**(6)** Where a building or work, or part of a building or work, is constructed, built, placed, reconstructed, rebuilt, replaced or repaired on affected land, the affected land may be treated as if it were a public road and the building or work as if it were an encroachment or obstruction on the road.

*State Roads 1986*

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(7) Subsections (5) and (6) do not have effect in so far as minor repairs or improvements are, with the consent of the Commissioner and the council, effected to permit the reasonable preservation of a building for temporary use.

(8) Where affected land vests in the council, the Commissioner may, for a term not exceeding 10 years, lease the land to an adjoining occupier as if the Commissioner were the council.

(9) On the recommendation of the Commissioner, the Minister may, by notification in the Gazette, rescind or vary a re-alignment of a main road and, where such a notification—

- (a) rescinds a re-alignment of a main road—the re-alignment ceases to have effect and land that, immediately before the rescission, was affected land that had not vested in the council, ceases to be affected land; or
- (b) varies a re-alignment of a main road, land that—
  - (i) immediately before the variation, was affected land that had not vested in the council; and
  - (ii) is not affected land under the varied re-alignment, ceases to be affected land.

(10) Where a re-alignment is rescinded or varied, any land that, as a consequence of the rescinded or varied re-alignment, had vested in the council for a road may be resumed in accordance with this Act without compensation.

(11) In this section—

“affected land” means land that lies between the re-alignment of a main road and the alignment of the road that immediately preceded the re-alignment.

**Power to fix levels**

20. (1) The Commissioner may fix the levels of a classified road or of a public road in the vicinity of a classified road if—

- (a) a plan of the proposed levels is publicly exhibited at the office of the council;

- (b) the prescribed notice is published in the Gazette and at least one newspaper;
- (c) a copy of the notice is served on the council and also exhibited in a conspicuous manner on or near the road;
- (d) the Commissioner considers any objections and approves the plan with or without alterations;
- (e) the approval of the Commissioner is notified in the Gazette; and
- (f) the levels are fixed in accordance with the approved plan.

(2) Where the levels of a road are first fixed under this section and access to any premises is thereby directly and injuriously affected, the Commissioner shall provide reasonable means of access to the premises.

(3) Where the levels of a road are refixed under this section and the interest of a person in land is thereby directly and injuriously affected, the Commissioner is liable to compensate the person for the injury and the provisions of section 56 (5), (6) and (7) apply in relation to a claim for the compensation in the same way as they apply in relation to a claim referred to in those provisions.

(4) A plan of levels purporting to bear an approval under this section is conclusive evidence of its contents.

(5) Except to the extent of any inconsistency, this section applies to an alteration or refixing of levels in the same way as it applies to a fixing of levels.

(6) Where, immediately before 1 January 1920, a classified road, or a road in the vicinity of a classified road, was of a permanent type of construction, the levels of the road shall be deemed to have been fixed by that construction and to be levels for the purposes of this Act.

(7) In this section, a reference to the prescribed notice in relation to a proposed fixing of levels is a reference to a notice—

- (a) describing the proposal;
- (b) specifying that a person interested may, within 1 month after the publication of the notice, lodge with the Commissioner a written objection to the proposal specifying the reasons for the objection;

*State Roads 1986*


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- (c) notifying, in the case of a first fixing of levels, that a written claim may be lodged with the Commissioner within that period of 1 month for the provision of reasonable means of access to premises;
- (d) notifying, in the case of a refixing of levels, that a written claim may be lodged with the Commissioner within that period of 1 month for the payment of compensation for loss or damage that would be sustained by the refixing of levels; and
- (e) specifying such other matters as may be prescribed.

**Power to construct and improve classified roads**

**21. (1)** The functions of the Commissioner may be exercised to construct, improve, maintain, protect, repair, drain and cleanse a classified road and, without limiting the generality of those functions, the Commissioner may—

- (a) construct, improve, maintain, repair and cleanse a classified road with such materials, and in such manner, as the Commissioner thinks fit;
- (b) place and lay paving, kerbing and guttering in a classified road;
- (c) where considered by the Commissioner to be necessary—construct special crossings for the traffic of vehicles across a footway in a classified road;
- (d) light a classified road;
- (e) plant trees, lawns and gardens in a classified road with tree-guards and fences for their protection;
- (f) carry off water, mud and debris from a classified road by means of drains and sewers; or
- (g) subject to such conditions as the Commissioner thinks fit, exercise a power conferred by this section at the request and cost of a person for the benefit of that person's property, whether or not the exercise of the power confers any other benefit.

**(2)** For the purposes of this section, the Commissioner may—

- (a) temporarily stop all or some of the traffic on a classified road, or a road adjoining a classified road, including in either case a road to which the General Traffic Act 1900 or the Motor Traffic Act 1909 applies; or

(b) make and fence a temporary road adjacent to a classified road for use as a public road only during such a stoppage of traffic.

(3) The Commissioner is liable to pay compensation for any loss or damage directly caused to land by an exercise of power under subsection (2) (b).

**Commissioner not liable for damage caused by tar**

22. (1) While tar applied for the purpose of constructing, improving, maintaining or repairing a classified road is in a liquid or moist state, the Commissioner is not liable for damage caused by the tar if—

(a) before applying the tar, and for a reasonable period after application of the tar, the part of the road to which the tar was applied was closed to vehicular traffic; and

(b) the tarred part of the road was sanded or screened with metal after application of the tar.

(2) In this section—

“tar” includes bitumen, bituminous compounds and emulsions, and like substances.

**Provision of conduits for services**

23. (1) The Commissioner may, in the course of carrying out road works, provide conduits for the carrying of services across the road at that or any later time and before providing such a conduit, shall consult, and take into account the views of, persons likely to use the conduit as to the most suitable form of conduit, the method of laying it and incidental matters.

(2) Where a person (including a council or other statutory authority and a department of the Government) proposes to provide for the carriage of services across and under a road in which conduits are laid, the person shall—

(a) use a conduit for the purpose of carrying the services across the road;

(b) use the conduit as directed by the Commissioner; and

*State Roads 1986*

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(c) before using the conduit—pay to the Commissioner the prescribed fee or a fee calculated as prescribed.

Penalty: \$1,000.

(3) Where services are carried across and under a road before conduits are provided in the road and conduits are subsequently provided, the person providing the services shall, if the Commissioner so requires, instead of replacing the existing means of providing the services, use a conduit for carrying the services across the road.

Penalty: \$1,000.

(4) Where an Act authorises the provision of services, the authority does not extend to the provision of the services in contravention of this section.

(5) Any dispute arising under this section between the Commissioner and a statutory authority (including a council) or a department of the Government shall be resolved by consultation between the Minister and the Minister responsible for the statutory authority or department of the Government.

#### **Colonnading**

24. The Commissioner may widen a classified road by including in the carriageway the whole or a part of the footway and by acquiring from an owner of abutting land the whole or a part of a new footway with a reservation in favour of the owner of such one or more of the following as the Commissioner determines:

- (a) a right to use, according to law, an existing building at a specified height above, or depth below, the level of the new footway but subject to a right on the part of the Commissioner to make structural alterations;
- (b) a right to erect, and to use, according to law a building at a specified height above the new footway; and
- (c) a right of support for a building referred to in paragraph (a) or (b).

**Power to make drains on public or private land**

**25. (1)** For the purpose of draining or protecting a classified road, the Commissioner may, in or through any land (including land of the Crown and land vested in a statutory authority other than the State Rail Authority of New South Wales) lay a pipe or make, open, cleanse and keep open a ditch, gutter, tunnel, drain or watercourse.

**(2)** The Commissioner is liable to pay compensation for any loss or damage directly caused to land (other than unoccupied Crown land) by an exercise of power under subsection (1).

**(3)** For the purpose of preventing obstruction to the free flow of surface drainage from a classified road, or a watercourse across a classified road, an owner of land abutting on the road shall, in such manner, and within such time, as the Commissioner requires—

- (a) alter a fence (including a rabbit-proof fence) on the land or provide flood-gates in such a fence; or
- (b) repair such a fence or flood-gates.

**Penalty—subsection (3): \$500.**

**Roads over or under navigable waters**

**26. (1)** The Commissioner may construct a bridge over, or a tunnel under, navigable waters and shall be deemed always to have been authorised to do so.

**(2)** Before deciding to commence a work referred to in subsection (1), the Commissioner shall, in the prescribed manner, publish the prescribed information about the proposed work, the right to object to the carrying out of the work and the consequences of a failure to object.

**(3)** A person may, in the prescribed manner and within the prescribed time, object to the carrying out of a work on the ground that it would adversely affect the person's public rights of navigation.

**(4)** Where the Commissioner complies with subsection (2) in relation to a proposed work, a person who fails to object as provided by subsection (3) to the carrying out of the work has no right of action for an injunction to restrain the carrying out of the work on the ground on which objection could have been taken.

*State Roads 1986*

(5) The Commissioner shall consider each objection duly lodged and shall notify each of the objectors of the Commissioner's decision whether or not to proceed with the work.

(6) Where the Commissioner decides to proceed with a work, an objector notified by the Commissioner of the decision and the effect of this subsection has no right of action for an injunction to restrain the carrying out of the work unless the action is instituted within the prescribed time after the objector is notified of the decision.

(7) Without prejudice to any finding by a court in relation to a subsisting right of action which arose before the commencement of this Act—

(a) a bridge erected over navigable waters before the commencement of this Act; or

(b) a bridge over navigable waters in relation to which work was proceeding immediately before that commencement, is not a public nuisance by reason only of its effect on public rights of navigation of those waters.

(8) In an action for damages claimed because of the adverse effects of a bridge on public rights of navigation, the court shall take into account by way of mitigation—

(a) whether it is reasonably practicable for vessels under construction, or likely to be constructed, to be so designed or re-designed that any part of the vessel likely to prevent its clear passage past the bridge may be lowered or otherwise altered in order to effect such a passage;

(b) any refusal by the claimant to remove a boat-building business conducted by the claimant to a site provided by the Commissioner downstream of the bridge;

(c) the age, condition and future useful life of buildings and equipment used for the purposes of such a business; and

(d) any benefits that might accrue from a removal of such a business.

**Traffic control facilities**

27. (1) The Commissioner may—

(a) construct, erect, affix or mark a traffic control facility;

- (b) maintain, repair, alter, operate or remove a traffic control facility constructed, erected, affixed or marked by the Commissioner or by the Commissioner for Motor Transport;
- (c) alter or remove lines marked on a public street by a council for purposes relating to vehicular or pedestrian traffic; or
- (d) maintain, repair, alter, operate or remove any other traffic control facility with the concurrence of the person responsible for the facility.

(2) The Commissioner may make an alteration to a public street necessary for, or incidental to, anything done under subsection (1).

(3) This section has effect in addition to and does not derogate from, a provision of this Act, or of any other Act or law, conferring functions on the Commissioner or any other person in relation to traffic control facilities but has effect subject to the Traffic Authority Act 1976.

#### **Use of classified road by Commissioner**

**28.** The Commissioner may—

- (a) use part of the width of a classified road for the storage of plant and materials in a manner that, in the opinion of the Commissioner, will not unduly interfere with public convenience or access to private premises; or
- (b) use a classified road and its soil in the exercise of a power conferred on the Commissioner.

#### **Stoppage of traffic**

**29.** (1) For the purpose of doing any work on or under a classified road, or whenever in the public interest it is necessary to do so, the Commissioner may prevent the passage of any traffic along the road and may take any measures for the protection of the public from accidents.

(2) The Commissioner may, on a footpath or pathway, erect posts or barriers to prevent the passage of traffic that should not use the footpath or pathway, or to warn of danger.

(3) Where, as a result of wet weather, serious damage could be caused to a classified road by the passage of a particular class of vehicles or stock, the Commissioner may prevent the passage on the road of vehicles or stock of that class.

*State Roads 1986*

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(4) The Commissioner may prohibit heavy traffic from using earth formations or roads not less than 4 metres wide where clear side tracks have been made available.

**Regulation of traffic on classified roads**

30. (1) The Commissioner may control or regulate the use by traffic on a classified road but may do so only—

- (a) for the purpose of exercising a function conferred on the Commissioner;
- (b) for the purpose of preventing injury to persons or damage to property;
- (c) with the consent of the Traffic Authority and subject to any conditions imposed by the Traffic Authority when giving its consent; or
- (d) as prescribed.

(2) Where the Commissioner controls or regulates the use by traffic of a classified road with the consent of the Traffic Authority, the Commissioner may not cease to do so without such a consent.

(3) An application for the consent of the Traffic Authority may not be made unless, not more than 6 months and not less than 28 days, before making the application, the Commissioner has caused a notice in a form approved by the Minister for Transport to be published in the Gazette and in a newspaper.

(4) After publication of the notice, any person may, before the earliest time at which the Commissioner may make the application, lodge with the Commissioner a submission relating to the application.

(5) On application made to it by the Commissioner, accompanied by a copy of the notice published under subsection (3) and copies of any submissions made under subsection (4), the Traffic Authority may—

- (a) consent in writing to the control or regulation by the Commissioner of specified traffic on a specified classified road;
- (b) consent in writing to a specified variation of a consent already given; or

*State Roads 1986*

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(c) consent in writing to the cessation of control or regulation by the Commissioner of specified traffic on a specified classified road, whether or not subject to specified conditions.

(6) If, after considering an application, the Traffic Authority imposes conditions not satisfactory to the Commissioner, or refuses the application, the Commissioner may refer the application, and any submissions under subsection (4) objecting to the application, to the Minister for Transport who may—

- (a) after making any inquiries he or she thinks desirable; and
- (b) after considering any representations made by the Traffic Authority,

make any decision on the application that could have been made by the Traffic Authority.

(7) A decision of the Minister for Transport made under subsection (6) in relation to an application shall, except for the purposes of that subsection, be deemed to be the decision of the Traffic Authority made on the application.

(8) A person shall not—

- (a) without lawful authority, interfere with or remove an obstruction or barrier placed or maintained in or on, or a notice exhibited in, on, or in the immediate vicinity of, a classified road by, or in accordance with the direction or permission of, the Commissioner in the exercise of a function under this Act; or
- (b) in using a vehicle on a public road fail, without lawful excuse, to comply with a direction, condition or limitation specified in a notice erected or exhibited as referred to in paragraph (a).

Penalty: \$1,000.

(9) In this section, a reference to controlling or regulating the use by traffic of a classified road includes—

- (a) a reference to placing or maintaining, or directing or permitting to be placed or maintained, obstructions or barriers in or on a classified road which prevent or restrict the passage of vehicles, or a class of vehicles, along the classified road, or the access by a particular route of vehicles, or a class of vehicles, to the classified road; and

*State Roads 1986*

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(b) a reference to erecting or exhibiting, or directing or permitting to be erected or exhibited, notices in, on, or in the vicinity of, a classified road for the purpose of prohibiting or restricting the passage of vehicles, or a class of vehicles, along the classified road, or the access by a particular route of vehicles, or a class of vehicles, to the classified road, or for the purpose of permitting that passage or access subject to such directions, conditions or limitations as may be specified in the notice.

(10) In this section, a reference to ceasing to control or regulate the use by traffic of a classified road includes a reference to removing, or authorising the removal of, any obstructions or barriers placed or maintained in or on a classified road, or any notice erected or exhibited in, on, or in the vicinity of a classified road.

(11) In this section—

“Traffic Authority” means the Traffic Authority of New South Wales.

**Service centres and rest areas**

31. (1) The Commissioner may provide, or may enter into agreements for other persons to provide, on or adjacent to a freeway, toll work or controlled access road service centres for the convenience of persons using the freeway, toll work or road.

(2) The Commissioner may enter into an agreement by way of lease or licence for the provision of goods or services, or both, at a service centre.

(3) The Commissioner may, in a situation accessible from the carriageway of a classified road, provide a rest area, and facilities in the rest area, for the convenience of persons using the road.

(4) A rest area and its facilities shall be deemed to be a work on the classified road to which it is adjacent.

**By-passes for motor vehicles**

32. (1) Where permission to erect a gate across an unfenced main road that intersects a boundary fence has been granted under an Act and not revoked, an occupier of land abutting the road—

- (a) shall not, without the permission of the Commissioner; and
- (b) shall, if the Commissioner so requires,

construct a by-pass for motor vehicles at the intersection of the road with the boundary fence.

Penalty: \$1,000.

(2) Except with the consent of the local Pastures Protection Board, the Commissioner shall not give permission for, or require, the erection of a by-pass where a gate is part of a dog-proof, or marsupial-proof, fence.

(3) A person permitted or required to construct a by-pass shall not construct as the by-pass anything other than—

- (a) a ramp enabling motor vehicles to be driven over the top of the boundary fence; or
- (b) a pit dug in or alongside the road and covered with an open grille that permits the passage of motor vehicles but is an obstacle to the passage of animals,

that conforms with specifications determined by the Commissioner.

Penalty: \$1,000.

(4) If the Commissioner so requires, the person permitted or required to construct a by-pass shall remove a public gate from its position and shall—

- (a) construct the by-pass in that position; and
- (b) re-erect the gate on the side of the by-pass,

as specified by the Commissioner, and the Public Gates Act 1901 then applies in relation to the gate as re-erected.

Penalty: \$1,000.

(5) A person who constructs a by-pass shall erect near each end of the by-pass in such a position as to be readily visible to a person approaching the by-pass a notice in a form required by the Commissioner.

Penalty: \$1,000.

(6) The occupier of land on which a by-pass is constructed shall—

- (a) keep the by-pass and notice-boards in a condition satisfactory to the Commissioner;
- (b) effect such repairs to the by-pass and notices as the Commissioner may require; and

*State Roads 1986*

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(c) alter the notices so that they bear the words and symbols for the time being required by the Commissioner.

Penalty: \$500.

(7) Where the Commissioner requires a person to construct a by-pass, the Commissioner may contribute to the cost of construction and erection of the notices.

(8) Where the Commissioner exhibits at or near each end of a by-pass a notice having the effect of prohibiting a person from driving across the by-pass a vehicle that, together with its load, exceeds a specified weight, a person shall not drive a vehicle over the by-pass in contravention of the prohibition.

Penalty: \$1,000.

(9) A person who contravenes subsection (8) is, whether or not convicted for the contravention, liable in damages for—

- (a) the cost of any repairs to the by-pass necessary as a result of the contravention; and
- (b) any injury sustained by a person after the contravention and before the by-pass is repaired.

(10) Where—

- (a) the public gate in connection with which a by-pass was constructed is removed; or
- (b) the fence of which a by-pass forms part is made dog-proof or marsupial-proof,

the by-pass may be closed and the notices removed.

(11) A person who closes a by-pass shall—

- (a) give notice of the closure to the Commissioner before, or forthwith after, the closure; and
- (b) shall take such steps as the Commissioner directs to ensure the safety of persons using the road.

Penalty: \$1,000.

**(12)** Where the Commissioner serves a notice revoking permission to erect a by-pass on an occupier of land who erected the by-pass, or who is a successor in title of an occupier who erected the by-pass, the occupier shall, within the time specified in the notice—

- (a) remove the by-pass and its notices; and
- (b) take such steps as are specified in the notice to ensure the safety of persons using the road.

Penalty: \$500.

**(13)** A person shall not—

- (a) without lawful excuse—use a by-pass otherwise than by the passage of a motor vehicle; or
- (b) wilfully damage or remove a notice displayed in connection with a by-pass.

Penalty: \$500.

**(14)** A person shall not wilfully obstruct, or wilfully damage, a by-pass.

Penalty—subsection (14): \$1,000.

#### **Assistance to repair by-pass or detour**

**33.** The Commissioner may grant financial assistance to a council for the purpose of defraying costs incurred, or to be incurred, in restoring a public road that has suffered damage or deterioration by reason of its use as a by-pass or detour avoiding a classified road.

#### **Alteration of work in classified road**

**34. (1)** Where a work is lawfully on, under or over a classified road, the Commissioner may, in the public interest, by notice in writing served on the person whose work it is, direct the person to alter the work as specified in the notice.

**(2)** Where a person served with a notice under subsection (1) fails within a reasonable time to comply with the direction in the notice, the Commissioner—

- (a) may make the alteration directed; and
- (b) shall, if it makes the direction, also make any necessary consequential alteration to any connecting branch work,

*State Roads 1986*

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in such a manner as not to injure permanently the work or any branch work, or prejudicially affect its use.

(3) The cost of an alteration made by, or at the direction of, the Commissioner shall be borne by the Commissioner unless provision otherwise is made by agreement or by an Act.

(4) In this section—

“work” includes a water-pipe, gas-pipe, sewer, drain, tunnel, wire, cable, rail and structure.

**Bridge and ferry tolls and charges**

35. (1) In this section, a reference to a bridge or ferry is a reference to a bridge or ferry that—

- (a) is on a metropolitan main road or a State highway; and
- (b) is vested in, or subject to the administration or control of, the Commissioner or is constructed or established under this Act.

(2) The Commissioner may, with the approval of the Governor, levy tolls and charges in connection with traffic across a bridge or ferry.

(3) The Commissioner may—

- (a) lease the running of a ferry; or
- (b) lease the collection of tolls on a bridge or ferry,

by public tender on such terms as the Commissioner determines.

(4) The regulations may make provision for or with respect to—

- (a) the fixing of the amount of tolls and charges levied under this section, whether by the Commissioner or a lessee from the Commissioner;
- (b) the control, management, maintenance and protection of a bridge or ferry; and
- (c) the regulation, restriction or suspension of the use by the public of a bridge or ferry.

**Transfer of certain works to Commissioner**

**36. (1)** In this section, a reference to an applicable work is a reference to—

- (a) a road, bridge or ferry that is a national work within the meaning of the Local Government Act 1919; or
- (b) a road, bridge or ferry that is maintained, managed and administered by the Minister for Public Works.

**(2)** The Minister may, with the agreement of the Minister for Public Works, by notification published in the Gazette declare that a specified applicable work is to be maintained, managed and administered by the Commissioner.

**(3)** A notification has effect according to its tenor on and from the date of its publication in the Gazette or, where a later date for the purpose is specified in the notification, on and from the later date.

**(4)** Where a notification relates to an applicable work that has not been commenced or completed, the Commissioner shall construct the work.

**(5)** Upon a notification taking effect in relation to an applicable work—

- (a) the Commissioner has, and may exercise, the functions in relation to the work that, immediately before the notification took effect, were conferred on the Minister for Public Works in relation to the work;
- (b) any contract or agreement with, or undertaking by, the Minister for Public Works in relation to the work that was in force immediately before the notification took effect shall be deemed instead to be a contract with, or undertaking by, the Commissioner;
- (c) any security given to or by the Minister for Public Works in relation to the work that was in force immediately before the notification took effect shall be deemed instead to be a security given to or by the Commissioner; and
- (d) any land, lease, right, easement or user facility that, immediately before the notification took effect, was vested in the Minister for Public Works in connection with the work vests instead in the Commissioner.

*State Roads 1986*

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(6) As soon as practicable after a notification takes effect in relation to an applicable work, the Commissioner and the Minister for Public Works shall arrange a division of any personal property held, and of any liabilities and obligations incurred, by the Minister for Public Works in connection with the work.

(7) Where, under this section, the Commissioner has the maintenance, management and administration of an applicable work that was a national work, the Minister may, by notification in the Gazette published on the recommendation of the Commissioner, hand over the work to the council to be maintained, managed and administered by the council at its own cost and subject to such prescribed conditions as are specified in the notification.

(8) Section 537 (3) of the Local Government Act 1919 continues to apply to an applicable work transferred to the Commissioner that is not the subject of a notification under subsection (7).

**Border roads, bridges and ferries**

37. The Commissioner may—

- (a) enter into an agreement with the appropriate authority in another State, or in a Territory of the Commonwealth that has a common boundary with New South Wales for the construction, maintenance and repair of roads, bridges and ferries at the boundary; and
- (b) give effect to such an agreement.

**Co-operation with councils**

38. The Commissioner may—

- (a) assist councils in carrying out works; or
- (b) carry out works,

that are not on classified roads but are directly or indirectly for the benefit of classified roads.

**Miscellaneous functions of Commissioner**

**39. (1)** The Commissioner may carry out such surveys and investigations as the Commissioner considers to be necessary or expedient to ascertain—

- (a) the location of, or routes to be followed by, proposed classified roads or toll works;
- (b) which roads or works should be classified roads;
- (c) the nature and extent of the resources of the State in materials suitable for the purposes of road construction and maintenance;
- (d) the most effective and economical methods of dealing with those materials and of supplying or utilising them on classified roads or toll works;
- (e) the most effective methods of construction and maintenance of classified roads or toll works; or
- (f) the methods of other countries in relation to the administration, financing, construction, maintenance and control of roads,

and may publish for general information the results of any of those surveys or investigations.

**(2)** The Commissioner may—

- (a) publish for general information, and sell, a periodic journal recounting the activities under this Act in connection with classified roads and toll works together with information of general interest in connection with individual projects, road finance and methods of survey, design, construction and maintenance; or
- (b) carry out research, agree with any person for the carrying out of research or make contributions to any person carrying out research, connected with the planning or design of roads, the construction and maintenance of roads and the use of roads.

*State Roads 1986***DIVISION 2—Freeways and Controlled Access Roads****Freeways vested in Commissioner**

**40.** (1) Where a public road is a freeway, the soil of the road and the materials of which the road is composed are, notwithstanding anything in the Local Government Act 1919, vested in the Commissioner for an estate in fee simple and the Commissioner is entitled to be registered under the Real Property Act 1900 as the proprietor of the road.

(2) The vesting of a road by subsection (1) is not limited to so much of the soil below, and air above, the road as is necessary for its use as a road but confers on the Commissioner the same estate and rights in the road, and in the soil below and air above the road, as would be conferred on a private person entitled in fee simple to the site of the road as private land.

(3) This section does not, in relation to a road vested under this section—

- (a) affect any right of the Crown, or of any person, in relation to minerals below the surface of the road;
- (b) except as provided by section 57, authorise the Commissioner to grant, demise, dispose of or alienate the road or the soil or materials of which the road is composed;
- (c) impose on the Commissioner any liability that would not be imposed on a council if the road were vested in the council under section 232 of the Local Government Act 1919; or
- (d) prevent any land from being considered to be adjoining land within the meaning of section 124 of the Public Works Act 1912.

(4) This section binds the Crown.

**Access to freeway, etc.**

**41.** (1) A person shall not enter or leave a freeway or a controlled access road except by a means of access or route provided for that purpose.

Penalty: \$1,000.

(2) A person shall not construct, form or lay out any means of access to or from a freeway or a controlled access road without the consent of the Commissioner or without complying with any conditions imposed by the Commissioner when giving the consent.

Penalty: \$1,000.

*State Roads 1986*

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(3) A person shall not drive any loose sheep, cattle, horses or other animals on or along a freeway or a controlled access road.

Penalty: \$1,000.

(4) Where a person commenced the construction, formation or laying out of a means of access to a freeway or a controlled access road—

- (a) in the case of a freeway or controlled access road that, before the commencement of this Act, was a motorway under the Main Roads Act 1924—before its proclamation as a motorway; or
- (b) in any other case—before its declaration under section 4 as a freeway or a controlled access road,

and the consent of the Commissioner to its completion is refused, the person is entitled to compensation.

(5) The Commissioner may erect and maintain fences or posts across a side road to prevent access to a freeway or a controlled access road.

**Local access roads**

42. (1) The Commissioner may construct a road designed to provide access to, or over or under, a freeway or a controlled access road and may carry a freeway or controlled access road over or under a road providing that access.

(2) Upon being opened to traffic, a road constructed under subsection (1) is a public road and may be placed by the Commissioner under the care, control and management of the council.

**Division of carriageway**

43. The Commissioner may, subject to the Motor Traffic Act 1909 and the Local Government Act 1919, erect notices in a freeway or a controlled access road dividing the carriageway into zones for the use of specified classes of traffic.

**Restriction of use of land or access**

44. (1) A person whose estate or interest in land adjoining a freeway or controlled access road is injuriously affected by a restriction on use of the land caused by the operation of this Division is entitled to recover compensation from the Commissioner for any loss or damage suffered by reason of the land being so affected.

*State Roads 1986*

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(2) Where land acquired by the Commissioner is used to open or widen a freeway or a controlled access road, compensation is not payable in relation to adjacent land by reason of restrictions of access imposed by this Division in relation to the freeway or controlled access road.

**Compensation**

**45.** (1) Compensation is not payable under this Division unless a claim for the compensation is made—

- (a) in the case of a freeway or controlled access road that, before the commencement of this Act, had been proclaimed as a motorway—not later than 12 months after the date of the proclamation; or
- (b) in the case of any other freeway or controlled access road—not later than 12 months after its declaration as such.

(2) Where a question as to whether compensation is payable under this Division or as to the amount of compensation is not determined by agreement, the question shall be determined by the Land and Environment Court.

(3) The amount of compensation payable in respect of an estate or interest in land is an amount equal to the difference between the market value of the estate or interest at the time the land became subject to restrictions under this Division and what would have been its value if it had not become subject to the restrictions.

(4) In determining the amount of compensation—

- (a) the assessment of the market value of the estate or interest at the time it became subject to the restrictions shall take into account any modifications of those restrictions by reason of any consent given by the Commissioner and any conditions to which such a consent is subject, or by reason of any undertaking given, or proposed to be given, by the Commissioner;
- (b) there shall be taken into consideration any benefit which may accrue to any land in which a claimant has an estate or interest by reason of the construction or improvement by the Commissioner or any other person or authority after the coming into force of restrictions under this Division on land adjacent to that in respect of which the compensation is claimed, of any road or of any carriageway or other way subsidiary to a road, or by reason of the coming into force of the restrictions; and

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(c) account shall not be taken of the fact that, since the land became subject to the restrictions, the estate or interest of the claimant has become, or ceased to be, the same as the estate or interest of the claimant in other land.

### DIVISION 3—*Toll Works*

#### **Declaration of toll work**

**46.** On the recommendation of the Commissioner, the Minister may, by order published in the Gazette, declare to be a toll work a work designed to facilitate the movement of motor traffic between Sydney and Newcastle or between Sydney and Wollongong.

#### **Toll works to be carried out by Commissioner**

**47.** The Commissioner may carry out on a toll work, or on a work that the Minister proposes to declare as a toll work, such works of construction and maintenance as are determined by the Commissioner.

#### **Toll work not public street for certain purposes**

**48. (1)** The length of a toll work is not a public road or a public street for the purposes of—

- (a) this Act or the Local Government Act 1919; or
- (b) any other Act or law prescribed by the regulations for the purposes of this section.

**(2)** The provisions of the Motor Traffic Act 1909 and the General Traffic Act 1900 apply in relation to a toll work as if it were a public street.

#### **Tolls and charges on toll work**

**49. (1)** The Commissioner may levy, and collect as prescribed, the prescribed tolls and charges in connection with traffic using a toll work.

**(2)** The money received from tolls and charges imposed in respect of a toll work shall be paid—

- (a) where the toll work is situated wholly within the metropolitan area—into the Metropolitan Roads Fund;
- (b) where the toll work is situated wholly within the country area—into the Country Roads Fund; or

*State Roads 1986*


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(c) where the toll work is situated partly within the metropolitan area and partly within the country area—into the Metropolitan Roads Fund or the Country Roads Fund, or into both those Funds, in such proportions as the Commissioner may from time to time direct.

**Application of other provisions to toll work**

50. Regulations may be made for and with respect to applying, with or without modification, specified provisions of this or any other Act, or of an instrument made under this or any other Act, to toll works and, where such a regulation is made, those provisions apply as provided by the regulation.

**Toll work may cease to be toll work**

51. (1) Where the Minister is satisfied that—

(a) in the case of the toll work between Berowra and Calga that is referred to in the proclamation by the Governor published in Gazette No. 51 of 10 April 1970—all costs, charges and expenses in respect of purposes referred to in section 80 (1) and (2); or

(b) in the case of any other toll work—all costs, charges and expenses in respect of purposes referred to in section 80 (1),

have been fully repaid out of tolls and charges collected, the Minister shall, by notification published in the Gazette, declare that the toll work has ceased to be a toll work.

(2) Upon the publication of a notification under subsection (1) in relation to a toll work, the work ceases to be a toll work and may be declared under section 4.

**DIVISION 4—*Functions Relating to Land*****Acquisition of land**

52. (1) On the recommendation of the Commissioner, the Governor may, under the Public Works Act 1912, resume or appropriate land for the purposes of this Act.

(2) Where land is resumed or appropriated as referred to in subsection (1), the Commissioner is the Constructing Authority instead of the Minister for Public Works.

(3) Where such a resumption or appropriation is of a stratum below the surface of the land or of an easement or right to use the undersurface or subsoil, compensation is not payable unless, by reason of the resumption or appropriation or the carrying out of a purpose for which the resumption or appropriation was effected—

- (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 mine or underground working in or adjacent to the land is rendered unworkable or is injuriously affected.

(4) The Commissioner may purchase land, or may take land on lease, for the purposes of this Act.

(5) Where land is resumed or appropriated, the Governor may, by the notification of resumption or appropriation—

- (a) declare the whole or a part of the land to be a public road or a public reserve; and
- (b) if the Minister so recommends—place the land under the control of the council.

#### **Power to enter and conduct investigations on land**

53. (1) For the purpose of determining whether land is suitable for use as a road or for, or in connection with, the construction or maintenance of a road, the Commissioner may—

- (a) enter the land between 8 a.m. and 6 p.m., or at another time in an emergency or as agreed upon with the owner or occupier, with such persons, vehicles, plant and other things as the Commissioner thinks fit;
- (b) take measurements, make drawings, take photographs, make surveys and take levels on the land and, in connection with the surveys and taking of levels, dig trenches, break the soil and set up posts, stakes or marks; and
- (c) dig trenches and sink test holes or bores 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 testing or analysis samples of any material removed from the trenches, holes or bores,

*State Roads 1986*

if the owner or occupier of the land is given at least 7 days' written notice of the Commissioner's intention to exercise those powers.

(2) The Commissioner shall not, under this section, dig trenches or sink test holes or bores within 15 metres of a dwelling-house unless, before the power is exercised—

- (a) the owner or occupier consents in writing; or
- (b) where that consent is not given—the Minister gives written authority for the exercise of the power.

(3) In this section—

“land” includes a building, structure, mine and tunnel.

**Power to enter and inspect land**

54. (1) For the purpose of ascertaining the physical features or condition of land along or near the line of a road, the Commissioner may—

- (a) enter the land between 8 a.m. and 6 p.m., or at another time agreed upon with the owner or occupier, with such persons and equipment as the Commissioner thinks fit;
- (b) inspect the land;
- (c) take measurements, make drawings and take photographs on the land; and
- (d) make such other investigations on the land as the Commissioner thinks fit,

if the owner or occupier of the land is given at least 24 hours' notice of the Commissioner's intention to exercise those powers.

(2) In this section—

“land” includes a building, structure, mine and tunnel.

**Temporary possession of land**

55. (1) For the purpose of constructing, repairing, altering, adding to or extending a classified road or a toll work or for related purposes, the Commissioner may use and occupy for as long as may reasonably be necessary in the circumstances any land along or near the line of the road or toll work if the owner or occupier of the land is given at least 7 days' written notice of the Commissioner's intention to exercise the power.

(2) A person given a notice under subsection (1) may, within 7 days after receipt of the notice, appeal to the Minister against the proposed use and occupation to which the notice relates by lodging with the Minister a written notice of appeal specifying the grounds of appeal, and the decision of the Minister on the appeal is binding on the Commissioner and the appellant.

(3) The notice referred to in subsection (1) is not required—

- (a) if, in the opinion of the Commissioner, it is necessary, as a matter of urgency, to use and occupy land that is more than 15 metres from a dwelling-house for the purpose of reconstructing or repairing a classified road or a toll work; and
- (b) if the Commissioner gives the owner or occupier of the land such notice (if any) as is practicable in the circumstances and, forthwith after giving the notice, reports to the Minister the circumstances requiring the notice under subsection (1) to be dispensed with.

(4) The Commissioner shall not, under this section, use or occupy land within 15 metres of a dwelling-house unless—

- (a) the owner or occupier first consents in writing; or
- (b) where that consent is not given—the Minister first gives written authority for the use or occupation.

#### **Obligations in relation to land entered**

56. (1) In the exercise of a power conferred by section 53 (Power to enter and conduct investigations on land), section 54 (Power to enter and inspect land) or section 55 (Temporary possession of land), the Commissioner—

- (a) shall do as little damage as possible; and
- (b) shall provide where necessary other means of access or works of accommodation in place of any taken away or interrupted by the Commissioner.

(2) If, in the exercise of a power referred to in subsection (1), a pit, trench, hole or bore is made, the Commissioner shall, if the owner or occupier so requires—

- (a) cause it to be fenced and kept securely fenced so long as it remains open or not sufficiently sloped down; and

*State Roads 1986*

(b) without unnecessary delay cause it to be filled or levelled or sufficiently sloped down.

(3) In respect of any damage done in the exercise of a power referred to in subsection (1), other than damage done for the purpose of an inspection, the Commissioner shall compensate the parties interested and, in the case of land of which temporary possession has been taken, or use made, the compensation may be a gross amount or a rent.

(4) In the exercise of a power referred to in subsection (1), materials may not be removed—

- (a) from land dedicated as a State forest—except with the permission of the Forestry Commission; or
- (b) from land that is a travelling stock reserve under the Pastures Protection Act 1934—except with the permission of the local Pastures Protection Board.

(5) Where notice of a claim for compensation under this section is given to the Commissioner and the claim is disputed—

- (a) the claim may, by agreement between the Commissioner and the claimant, be referred to arbitration under the Commercial Arbitration Act 1984; or
- (b) not earlier than 1 month after notice of the claim is given to the Commissioner, either the Commissioner or the claimant may refer the claim to the District Court in accordance with rules of court.

(6) Where a claim is referred to the District Court, a Judge of the District Court shall act under the Commercial Arbitration Act 1984 as sole arbitrator on the claim.

(7) Rules of court may be made prescribing the fees to be paid by either, or both, of the parties in relation to the hearing and determination of a reference under this section to the District Court and the making of an award on such a reference.

**Functions of Commissioner in relation to certain land**

57. (1) The Minister may, on the recommendation of the Commissioner, by order published in the Gazette declare that land vested in the Commissioner and described in the order is land to which this section applies.

**(2) The Commissioner may—**

- (a) lease or otherwise deal with land to which this section applies for the purpose of enabling a building, structure, improvement or fixture in respect of which Part XI of the Local Government Act 1919 and the Environmental Planning and Assessment Act 1979 have been complied with to be placed or erected on the land;
- (b) place or erect on land to which this section applies such a building, structure, improvement or fixture;
- (c) lease or otherwise deal with any building, structure, improvement or fixture erected on land to which this section applies; or
- (d) exercise in relation to land to which this section applies that is not leased or otherwise dealt with under paragraph (a), (b) or (c) any function of the Commissioner exercisable in relation to land.

**(3) The Commissioner, or a person authorised by the Commissioner, may—**

- (a) enter upon, above or below the surface of a public road that is not within land to which this section applies and there place, erect, keep, maintain and repair a structure, improvement or fixture that, in the opinion of the Commissioner, is reasonably necessary for, or incidental to, the exercise of the other functions of the Commissioner in relation to land to which this section applies; and
- (b) for the purpose of exercising those functions—excavate and remove soil from a public road and do any other thing upon, above or below the surface of the public road that, in the opinion of the Commissioner, is reasonably necessary for, or incidental to, the exercise of those functions.

**(4) The powers conferred by this section in relation to a public road are not exercisable by a person other than the Commissioner or a person authorised by the Commissioner except in accordance with any conditions imposed by the Commissioner.**

**(5) The powers of resumption under this Act may be exercised in relation to land that, in the opinion of the Commissioner, should be land to which this section applies.**

*State Roads 1986*

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(6) Sections 232 (Fee-simple) and 233 (Proprietary rights in regard to roads) of the Local Government Act 1919 do not apply to land to which this section applies.

**General functions relating to land**

58. (1) Where the Commissioner proposes to open, widen or construct a road or work, the Commissioner may, before, during or after the carrying out of the works, purchase land in the neighbourhood of the road or work or recommend its resumption and may—

- (a) hold, replan, subdivide, lease or sell any such land; and
- (b) open new public roads for the purposes of any such replanning or subdivision.

(2) With the consent of the owner of any land, the Commissioner may exercise in relation to the land any function that the Commissioner might exercise in relation to the land if it were vested in the Commissioner.

(3) Where the Commissioner has an estate or interest in land, the Commissioner may exercise in relation to the land any function that could be exercised by a private person if the estate or interest were vested in the person instead of the Commissioner.

(4) Without affecting the generality of subsection (3), the Commissioner may construct or provide on land vested in the Commissioner buildings for the accommodation of officers and employees or of persons whose places of residence or business have been, or will be, demolished or substantially altered by the carrying out by the Commissioner of works in connection with the construction or maintenance of a road or work.

(5) The Minister may, on the recommendation of the Commissioner, by notification published in the Gazette declare any land vested in the Commissioner to be a public road or a public reserve.

(6) If the Minister, on the recommendation of the Commissioner (and, in the case of a public reserve, with the consent of the council) by the same or a subsequent notification published in the Gazette, places the land under the care, control and management of the council, the land—

- (a) in the case of a public road—vests in the council for a public road; or

(b) in the case of a public reserve—is under the care, control and management of the council for the purposes of Part XIII of the Local Government Act 1919.

(7) The Commissioner may not, after the carrying out of works referred to in subsection (1), recommend the resumption of land for the purposes of resale unless the owner of the land consents.

**Re-establishment of resumed building**

**59.** (1) Where, for the purposes of this Act, land on which part of a building stands is acquired by resumption or otherwise and the building is not completely demolished, the provisions of the Local Government Act 1919 and the ordinances thereunder, and the building regulations of the council, relating to the class or quality of materials do not apply to materials used for replacements, alterations or extensions to the remainder of the building if—

- (a) the materials are similar to, and of the quality of, the materials of which the remainder of the building is composed; and
- (b) the replacements, alterations or extensions do not result in the provision of accommodation in the building in excess of that which existed immediately before the acquisition.

(2) Where, for the purposes of this Act, land on which the whole of a building stands is acquired by resumption or otherwise and, in the opinion of the Commissioner, demolition of part only of the building is necessary, the Commissioner may—

- (a) notwithstanding anything in the Local Government Act 1919 or the ordinances thereunder, or anything in the building regulations of the council—effect the partial demolition required and make such alterations and extensions to the remainder of the building as the Commissioner thinks fit; or
- (b) sell any residue not required for road purposes (whether or not subject to a condition requiring the purchaser to remove the part of the building that is on the land required for road purposes) and subsection (1) then applies to the building in the same way as it applies to a partially demolished building referred to in the subsection.

*State Roads 1986***DIVISION 5—Obstructions and Damage****Structures, etc., on classified roads**

**60. (1)** A person (including a council or other statutory authority and a person acting on behalf of a department of the Government) shall not, without the prior general or particular consent of the Commissioner or without complying with any prescribed conditions and any conditions imposed by the Commissioner when giving the consent—

- (a) place or erect any structure or other work or thing on, in, under or over a classified road; or
- (b) remove or interfere with any structure or other work or thing on, in, under or over a classified road or a tree on a classified road.

Penalty: \$1,000.

**(2)** A council shall not, without the prior general or particular consent of the Commissioner or without requiring compliance with any prescribed conditions and any conditions imposed by the Commissioner when giving the consent, authorise or permit an employee of the council or other person—

- (a) to place or erect any structure or other work or thing on, in, under or over a classified road; or
- (b) to remove or interfere with any structure or other work or thing on, in, under or over a classified road or a tree on a classified road.

Penalty: \$1,000.

**(3)** A consent sought for the purposes of this section may be withheld by the Commissioner for such period as the Commissioner thinks fit.

**(4)** Before making a decision under this section (other than a decision to give an unconditional consent), the Commissioner shall consult, and take into account the views of, the council or other statutory authority, or the department of the Government, seeking the consent.

**(5)** Any dispute arising under this section between the Commissioner and a statutory authority (including a council) or a department of the Government shall be resolved by consultation between the Minister and the Minister responsible for the statutory authority or department of the Government.

(6) For the purposes of this section, the junction or intersection of a new road with a classified road is a work on the classified road.

(7) The Commissioner may—

- (a) remove or lop a tree in the course of the construction of a classified road; or
- (b) remove or lop a tree that is on a classified road and is considered by the Commissioner to be a traffic hazard.

(8) This section does not have effect in relation to anything done under—

- (a) the Pipelines Act 1967; or
- (b) any other Act that expressly excludes the operation of this section.

#### **Hoardings, etc.**

**61.** (1) Where the Commissioner considers that a sign or hoarding erected on or adjacent to a classified road is prejudicial to the safety of the travelling public, the Commissioner may, by notice in writing, direct the person responsible for its erection to remove it within a time specified in the notice.

(2) A person aggrieved by a direction to remove a sign or hoarding may, within the time specified in the notice for compliance with the direction (or within such further time as the Land and Environment Court may, in a special case, allow) appeal to the Land and Environment Court against the giving of the direction.

(3) A direction does not take effect before—

- (a) the expiration of the period within which an appeal against the direction may be lodged; or
- (b) if an appeal is duly lodged—the determination of the appeal, whichever is the later.

(4) Where a direction takes effect, the person to whom the direction was given shall comply with the direction.

Penalty: \$1,000.

*State Roads 1986*

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**(5)** For the purposes of this section—

- (a) the Commissioner may form an opinion on the basis of information received; and
- (b) a written statement under the seal of the Commissioner to the effect that a specified sign or hoarding is, in the opinion of the Commissioner, prejudicial to the safety of the travelling public is conclusive evidence that the Commissioner is of that opinion.

**(6)** This section applies to a sign or hoarding erected on or adjacent to a classified road whether or not the sign or hoarding was erected before the road became a classified road and whether or not its erection was approved by the council.

**Fences obstructing vision of drivers**

**62. (1)** Where a fence is likely to create a danger to traffic by limiting the field of vision of the driver of a motor or other vehicle on a classified road, the owner of the land bounded by the fence shall, if the Commissioner by notice in writing so directs, reduce the height of the fence within such time after the notice takes effect as is specified in the notice to a height not greater than a height so specified.

Penalty: \$500.

**(2)** The Commissioner may, on application by a person required to comply with a direction under subsection (1), make such a contribution (if any) towards any expense to be incurred in complying with the direction as the Commissioner thinks fit.

**(3)** An owner of land required to comply with a direction in a notice under subsection (1) may, within a time specified in the notice, appeal against the direction to a Local Court having jurisdiction in the district in which the land is situated and the Local Court, having regard to the danger to traffic and any contribution the Commissioner is prepared to make, may—

- (a) uphold or dismiss the appeal; or
- (b) amend the direction.

**(4)** The costs of an appeal are in the discretion of the Local Court and an order for costs operates as an order for the payment of money made under the Local Courts (Civil Claims) Act 1970.

(5) A notice under subsection (1) does not take effect—

- (a) until the time specified in the notice for lodging an appeal has expired; or
- (b) if an appeal is lodged—until the appeal is heard,

and has effect in accordance with the decision on the appeal.

(6) The decision of the Local Court is final and conclusive and not subject to appeal or variation by another notice under this section.

#### **Vehicles, etc., obstructing classified road**

63. (1) Where a danger or obstruction to traffic on a classified road is caused by—

- (a) a vehicle that has been involved in an accident or has broken down; or
- (b) anything that has fallen, escaped or been removed from a vehicle,

the Commissioner may remove it and take such other steps as may be necessary to protect the public and facilitate the free flow of traffic.

(2) The amount of the expenses incurred by the Commissioner in exercising the powers conferred by subsection (1) is recoverable by the Commissioner as a debt owed by the person who had the custody of the vehicle at the time of the accident, breakdown, fall, escape or removal.

#### **Abandoned vehicles**

64. (1) Where a vehicle standing on—

- (a) a road or land along or near the line of a road;
- (b) land vested in the Commissioner; or
- (c) a bridge or ferry vested in or subject to the administration or control of the Commissioner,

is an abandoned vehicle, an authorised officer may take custody of the vehicle and cause it to be destroyed or otherwise disposed of in accordance with this section.

*State Roads 1986*

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(2) Where an authorised officer does not have reasonable grounds for believing that an abandoned vehicle is a danger or obstruction to traffic, the authorised officer may not cause it to be removed until after the expiration of at least 3 business days after the Commissioner has left with a member of the police force at a police station the prescribed notice addressed to the officer in charge of the police station.

(3) Where an authorised officer has reasonable grounds for believing that the value of an abandoned vehicle exceeds the prescribed amount, the authorised officer may not cause the vehicle to be removed except to a place, or a place of a kind, considered by the Commissioner to be appropriate for keeping such a vehicle in custody.

(4) Where a vehicle is removed to a place referred to in subsection (3), the person in charge of the place may, unless the vehicle has been destroyed or otherwise disposed of, release the vehicle on the application of the owner, or an agent of the owner, if—

- (a) the applicant satisfies the person in charge as to the ownership of the vehicle;
- (b) the person in charge is satisfied that the applicant is the owner, or an agent of the owner, of the vehicle;
- (c) the reasonable expenses of taking custody, removing, keeping and releasing the vehicle are paid to the person in charge; and
- (d) the applicant gives a receipt for the delivery of the vehicle in a form provided by the person in charge.

(5) An authorised officer who has reasonable cause for believing that the value of a vehicle removed under this section and not released under subsection (4) does not exceed the prescribed amount may cause the vehicle to be destroyed or otherwise disposed of as directed by the Commissioner if—

- (a) the Commissioner has left with a member of the police force at a police station the prescribed notice addressed to the officer in charge of the police station and at least 3 business days have since elapsed; and

(b) where the Commissioner believes on reasonable grounds that the name and address of the person who is the owner of the vehicle are known to the Commissioner—the Commissioner has by post served on the person at that address a notice requesting the person to apply for a release of the vehicle under subsection (4), and not less than 14 days have elapsed since service of the notice.

(6) An authorised officer who believes on reasonable grounds that the value of an abandoned vehicle removed under this section and not released under subsection (4) exceeds the prescribed amount may cause the vehicle to be destroyed or otherwise disposed of as directed by the Commissioner if—

- (a) the Commissioner has left with a member of the police force at a police station the prescribed notice addressed to the officer in charge of the police station and at least 1 month has since elapsed; and
- (b) the Commissioner has published the prescribed notice in a newspaper circulating in the locality from which the vehicle was removed and at least 14 days have elapsed since the publication.

(7) Where the prescribed notice is left at a police station, the officer in charge of the police station—

- (a) shall forthwith cause inquiries to be made as to the ownership of the vehicle to which the notice relates; and
- (b) within 3 business days after the day on which the notice is left at the police station—shall send to the Commissioner a written statement of the result of those inquiries which, if the vehicle is, or has been, registered under the regulations made under the Motor Traffic Act 1909, may consist of particulars of the name and address of the person in whose name the vehicle was last registered.

(8) A matter or thing done or omitted by the Commissioner, an authorised officer or a person engaged in the administration of this Act does not, if it was done or omitted in good faith for the purposes of this section, subject any of them to any liability, action, claim or demand.

*State Roads 1986*

**(9)** Where an amount of money is paid to the Commissioner in connection with the disposal of a vehicle under this section, the Commissioner may deduct from the amount the reasonable expenses of taking custody, removal, keeping and disposal of the vehicle and shall pay the balance—

- (a) to a person who, not later than the expiration of the period of 12 months that next succeeds disposal of the vehicle, satisfies the Commissioner that the person was the owner of the vehicle at the time of disposal; or
- (b) if, during that period of 12 months, the Commissioner has not been so satisfied—to the Treasurer for deposit in the Consolidated Fund.

**(10)** Where money is paid to the Treasurer under subsection (9)—

- (a) the Commissioner does not incur any liability because of the payment; and
- (b) the Treasurer may pay the money to a person who the Treasurer is satisfied was the owner of the relevant vehicle at the time of its disposal.

**(11)** In this section—

“abandoned vehicle” means a vehicle that an authorised officer considers on reasonable grounds to have been abandoned;

“authorised officer” means a person authorised by the Commissioner to exercise the functions of an authorised officer under this section;

“prescribed amount” means \$250 or, where the Minister notifies a different amount by order published in the Gazette, the amount so notified;

“prescribed notice” means a notice that—

- (a) describes the vehicle to which it relates;
- (b) includes the particulars on any registration label and number-plate attached to the vehicle;
- (c) includes any identification stamped on or otherwise affixed to the engine (if any) of the vehicle in a reasonably conspicuous position;
- (d) specifies the location of the vehicle; and

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- (e) states that the Commissioner intends to exercise his or her powers under this section;

“vehicle” includes—

- (a) a motor vehicle within the meaning of the Motor Traffic Act 1909; and
- (b) the remains of a vehicle.

#### **Removal of unattended motor vehicles**

**65.** (1) The Commissioner, or an authorised person, may cause an unattended motor vehicle unlawfully standing on a clearway, transit lane or other prescribed place to be removed in accordance with this section if, in the opinion of the Commissioner or an authorised person, the motor vehicle is causing, or unless removed is likely to cause, danger to the public or undue traffic congestion.

(2) A motor vehicle is removed in accordance with this section if—

- (a) it is removed to a place in the vicinity, being a place in which, in the opinion of the person causing the motor vehicle to be removed, the motor vehicle may lawfully stand without being likely to cause danger to the public or undue traffic congestion; and
- (b) as soon as practicable, the Commissioner or the authorised person who caused the motor vehicle to be removed, reports the removal and the location of the motor vehicle to a member of the police force at a police station in the vicinity with a request that the owner or other person entitled to possession of the motor vehicle be notified of the place to which it has been removed.

(3) The Commissioner may arrange insurance against loss caused by damage to a motor vehicle in the course of its removal in accordance with this section.

(4) The amount of the costs (including insurance costs) incurred in removing a motor vehicle in accordance with this section is a debt due to the Commissioner jointly and severally by the owner of the motor vehicle and the person who left it unattended and may be recovered by the Commissioner in a court of competent jurisdiction.

*State Roads 1986*

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**(5) In this section—**

“authorised person” means—

- (a) a person authorised by the Commissioner; or
- (b) a member of the police force.

**Sand causing obstruction on classified road**

**66.** Where land is in such a condition that sand blown or falling from it causes obstruction on a classified road, the owner of the land shall, if so directed by the Commissioner, take such action as is necessary to remove the obstruction and prevent its recurrence.

Penalty: \$500.

**Removal of obstructions****67. (1) Where—**

- (a) a person causes an obstruction or encroachment on a classified road; or
- (b) a person is the owner of land or premises used, or able to be used, in connection with an obstruction or encroachment on a classified road,

the Commissioner may, by notice in writing duly served, direct the person to remove the obstruction or encroachment within a time specified in the notice.

**(2) A notice under subsection (1) is duly served if—**

- (a) it is served on the person to whom it is directed; and
- (b) a copy is placed on the obstruction or encroachment or on the land that it adjoins.

**(3) The time specified in a notice shall be—**

- (a) if the obstruction or encroachment first arose before the alignment of the road, or if the road has not been aligned—not less than 2 months;
- (b) if the obstruction or encroachment first arose after the alignment of the road—not less than 7 days; or
- (c) in any other case—a time determined by the Commissioner.

**(4)** A person on whom a notice is served shall comply with the direction in the notice.

Penalty: \$1,000.

**(5)** Where an obstruction or encroachment on a classified road first arose before the commencement of the Local Government Act 1906 and before alignment of the road, the Commissioner shall pay reasonable compensation for its removal unless—

- (a) it is agreed that compensation should not be paid; or
- (b) the obstruction or encroachment comprises a hedge, fence, wall in the nature of a fence, post, steps, tree, awning, verandah, post supporting an awning or verandah, drain or watercourse, or a structure of wood, iron, bark, rubberoid, canvas or other like material.

**(6)** This section does not apply to an obstruction or encroachment on a classified road where its presence on the road is authorised by an Act.

#### **Liability for damage to road, etc.**

**68. (1)** Where a person causes damage to—

- (a) a classified road or a toll work; or
- (b) a traffic control facility,

the amount of the cost incurred by the Commissioner in making good the damage is payable to the Commissioner by the person who caused the damage and is recoverable in a court of competent jurisdiction.

**(2)** Where a person causes damage to a bridge, this section applies to each part of the bridge including a gate, pier, fender, dolphin or platform or any other thing incidental to the use or protection of the bridge as if the part were a road.

**(3)** Where damage referred to in this section is caused—

- (a) by a motor vehicle—the owner and the driver of the motor vehicle; or
- (b) by a vessel—the owner and the master of the vessel,

are jointly and severally liable under this section as persons who caused the damage.

*State Roads 1986*

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**(4)** In this section, a reference to damage does not include a reference to ordinary wear and tear caused by reasonable use of a road.

**Reinstatement of damaged classified road**

**69.** (1) Where a person (including a statutory authority or a person acting on behalf of a department of the Government) for any purpose opens or breaks up a classified road, the Commissioner may require the person to make good the opening or break to the satisfaction of the Commissioner.

(2) Where a classified road is damaged as a result of a leakage from, or breaking or bursting of, any object or work placed on, in, under or over the road, the Commissioner may require the person (including any statutory authority or department of the Government)—

- (a) who was responsible for placing the object or work on, in, under or over the road;
- (b) who has the care or control of the object or work; or
- (c) whose act or default caused the leakage, breaking or bursting,

to make good the damage to the satisfaction of the Commissioner.

(3) Instead of making a requirement under subsection (1) or (2) for the carrying out of any work, the Commissioner may carry out the work and recover the cost from the person or department who or which would have been subject to the requirement.

(4) Where a requirement under this section relates to a matter in respect of which the Transport Authorities Act 1980 imposes a duty on the Urban Transit Authority, the performance of the duty is a sufficient compliance with the requirement.

**Works under the Water Act 1912**

**70.** (1) Where a work controlled by a trust constituted under the Water Act 1912 is on a classified road and the trust fails to keep the work in good order and condition, the Commissioner may serve written notice on the trust requiring the trust to effect the necessary repairs to the work within 1 month after service of the notice.

(2) Where a trust fails to comply with the requirements of a notice under subsection (1), the Commissioner may effect the necessary repairs and recover the cost as a debt due to the Commissioner by the trust.

**Private railways**

**71. (1)** Where a classified road crosses a private railway (whether or not constructed under the authority of an Act) by means of a bridge or level crossing, or such a railway crosses a classified road by means of an overbridge—

- (a) the owner of the railway shall, while the road is left open to traffic, keep the bridge, level crossing or overbridge, and the road under the overbridge, in a state of repair satisfactory to the Commissioner; and
- (b) the owner of the railway shall, if the Commissioner by written notice so directs, reconstruct or repair the bridge or level crossing or, in the case of an overbridge, the overbridge and the road under it, in a manner satisfactory to the Commissioner.

**(2)** For the purposes of complying with subsection (1), the owner of a railway may, on giving such notice as is directed by the Commissioner, close to traffic a bridge, level crossing, overbridge or road under an overbridge.

**(3)** If a dispute in relation to the operation of subsection (1) arises between the Commissioner and the owner of a railway, either party may submit the matter in dispute to the Minister for decision and the Minister may then—

- (a) inquire into the matter; or
- (b) appoint a person to inquire into the matter.

**(4)** On the completion of an inquiry, the Minister may, having regard to the public interest and the circumstances of the case, make such order in relation to the matter as the Minister thinks fit, including an order as to payment of the costs and expenses of the inquiry.

**(5)** An order by the Minister may, by leave of the Supreme Court given on application by the Minister or either party to the dispute, be enforced as if it were a judgment or order of the Court.

**(6)** This section—

- (a) does not have effect in relation to a bridge, level crossing or overbridge constructed under section 502 of the Local Government Act 1919; and

*State Roads 1986*

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(b) has effect subject to any agreement binding on the Commissioner and the owner of a railway.

**Damage to classified road**

72. (1) The Commissioner may, by advertisement in a newspaper, prohibit the doing on a specified classified road, or on all classified roads, of a specified act that would be likely to damage the road to an extent in excess of the ordinary wear and tear which would be caused by the ordinary and reasonable use of the road for the passage of traffic.

(2) A person shall not do anything prohibited by subsection (1).

Penalty—subsection (2): \$1,000.

**Weight checks**

73. (1) Where an authorised person ascertains that the weight of a vehicle using, or seen using, a main road or a toll work, together with its load, or the weight of the load or the vehicle or any part of the vehicle, exceeds by more than 10 per cent the weight permitted by the regulations, the driver or person in charge of the vehicle shall, if the authorised person so directs, comply with one or more of the following:

- (a) within a time specified by the authorised person—reduce or adjust the load so that the regulations are complied with;
- (b) forthwith drive the vehicle to a place designated by the authorised person that is distant not more than 20 kilometres or such other distance as is reasonable in the circumstances;
- (c) refrain from driving the vehicle on a road or toll work until the load is reduced or adjusted so that the regulations are complied with;
- (d) in reducing or adjusting the load—refrain from leaving any part of it in a place other than a place approved by the authorised person.

Penalty: \$1,000 for a first offence or \$2,000 for a second or subsequent offence.

(2) It is a defence to a prosecution of a person for a contravention of subsection (1) by failing to comply with a requirement referred to in subsection (1) (a) if the court is satisfied that it was impossible to comply, or to secure compliance, with the requirement.

(3) If a person fails to act in accordance with a direction given to the person under subsection (1) in relation to a vehicle, a member of the police force or special constable may—

- (a) drive the vehicle to a place determined by the member of the police force or special constable; or
- (b) whether or not at a place referred to in paragraph (a)—impound and detain the vehicle until the load is adjusted so that the regulations are complied with.

(4) Where the driver or person in charge of a vehicle using, or seen using, a main road or a toll work fails to comply with a requirement prescribed by, or a direction given under, the regulations for the purpose of ascertaining the weight of the vehicle together with its load, or the weight of the load on the vehicle or any part of the vehicle, a member of the police force or special constable may—

- (a) drive the vehicle, or cause it to be driven, to a place determined by the member of the police force or special constable and do, or cause to be done, anything necessary to ascertain that weight;
- (b) whether or not at a place referred to in paragraph (a)—impound and detain the vehicle until—
  - (i) where it is ascertained that the weight does not exceed by more than 10 per cent the weight permitted by the regulations—the vehicle and its load are claimed by a person apparently authorised to do so; or
  - (ii) where it is ascertained that the weight exceeds by more than 10 per cent the weight permitted by the regulations—the load is reduced or adjusted so that the regulations are complied with.

(5) The court before which proceedings are brought for—

- (a) an offence under subsection (1); or
- (b) a failure referred to in subsection (4) to comply with a requirement of, or a direction given under, the regulations,

may order the defendant to pay the costs incurred in the exercise of the powers conferred by that subsection or in removing any part of a load left in contravention of subsection (1) (d).

*State Roads 1986*

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(6) A certificate signed by a person prescribed for the purposes of this subsection as to the amount of costs incurred as referred to in subsection (5) is admissible as evidence of the matter certified.

(7) Access to an impounded vehicle for the purpose of reducing or adjusting its load shall not be unreasonably refused or withheld, and it is the duty of a member of the police force or special constable by whom a vehicle is impounded under this section to take all reasonable steps to cause the driver or person in charge of the vehicle, and such other persons as appear to the member or constable to be appropriate in the circumstances, to be promptly informed of the place where the vehicle is for the time being located.

(8) A person shall not, without the authority of a member of the police force or special constable, remove an impounded vehicle from the place where it is for the time being located.

Penalty: \$1,000 for a first offence or \$2,000 for a second or subsequent offence.

(9) A person shall not resist or hinder or incite any person to assault, resist or hinder a member of the police force or special constable in the exercise of any power under this section.

Penalty: \$1,000 for a first offence or \$2,000 for a second or subsequent offence.

(10) Neither the Crown nor any other person is liable to the driver or person in charge of a vehicle, or to any other person, for any loss or damage occasioned by or arising out of the exercise or purported exercise in good faith of any power conferred by this section.

(11) Nothing in this section authorises a person to drive a vehicle unless he or she is authorised under the regulations under the Motor Traffic Act 1909 to drive vehicles of the class to which the vehicle belongs.

(12) In this section—

“authorised person” means—

- (a) an officer or employee in the service of the Commissioner;
- (b) an employee of a council authorised by the Commissioner to act under this section; or

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(c) a member of the police force.

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**PART 4**  
**FINANCE**

**DIVISION 1—Metropolitan Roads Fund**

**Composition of Metropolitan Roads Fund**

**74.** (1) There shall be established in the Special Deposits Account in the Treasury a Metropolitan Roads Fund consisting of—

- (a) the fund that, immediately before the commencement of this Act, comprised the County of Cumberland Main Roads Fund established under the Main Roads Act 1924;
- (b) 50 per cent of the collected proceeds of the motor vehicles tax levy imposed by section 7 (1) (a) of the Motor Vehicles (Taxation) Act 1980;
- (c) 20 per cent of the collected proceeds of the motor vehicles weight tax imposed by section 7 (1) (b) of the Motor Vehicles (Taxation) Act 1980, other than proceeds in respect of motor vehicles registered under the Transport Act 1930;
- (d) the proceeds of any lease or other dealing with land that is within the metropolitan area and is land to which section 57 applies;
- (e) money transferred from the Commonwealth Fund under section 78;
- (f) contributions by councils under section 79;
- (g) loans raised under any Act and appropriated for metropolitan classified roads;
- (h) money borrowed under the Public Authorities (Financial Accommodation) Act 1981 for the construction of works under this Act within the metropolitan area and the acquisition of property in connection with the works;
- (i) money received from tolls, fees and charges in connection with any bridge, ferry or other thing within the metropolitan area;

*State Roads 1986*


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- (j) 50 per cent of the tolls and charges received in connection with a bridge or ferry that is a boundary work between the metropolitan area and the country area;
- (k) any money that under section 49, is required to be paid to the Fund;
- (l) any money paid to the Commissioner to be paid to the Fund in accordance with an Act;
- (m) any other money received by the Commissioner that is not payable to the Country Roads Fund or the Commonwealth Fund; and
- (n) such other money as may by law be required to be paid to the credit of the Fund or as may be appropriated by Parliament for payment to the Fund.

(2) The proceeds under the Motor Vehicles (Taxation) Act 1980 **that are** payable to the Metropolitan Roads Fund under subsection (1) shall **be** paid to the Fund by the Treasurer at such intervals, not exceeding 3 months, as the Treasurer thinks fit.

(3) A reference in subsection (1) to proceeds under the Motor Vehicles (Taxation) Act 1980 does not include a reference to amounts payable to the Traffic Facilities Fund under section 23 (e) and (f) of the Traffic Authority Act 1976.

**Use of Metropolitan Roads Fund**

75. (1) Subject to this section, the Commissioner may use the Metropolitan Roads Fund for—

- (a) works of construction and maintenance on classified roads in the metropolitan area;
- (b) works of construction and maintenance on roads in the metropolitan area that are not classified roads if the Commissioner is authorised by this or any other Act to carry out the works;
- (c) road planning and research in relation to the metropolitan area;
- (d) transfer to the reserve for loan repayment established in the Fund;
- (e) costs and expenses incurred in exercising functions in relation to land in the metropolitan area to which section 57 applies;

*State Roads 1986*

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- (f) the payment of expenses, interest and principal in connection with loans for the construction of metropolitan classified roads;
- (g) the payment of the appropriate proportion of the salaries and expenses of the Commissioner and the officers and employees appointed and employed for the purposes of this Act;
- (h) the payment of the appropriate proportion of the costs of administering this Act; and
- (i) the exercise of any other functions under this Act in relation to the metropolitan area.

(2) Loan money in the Metropolitan Roads Fund may be used only for the construction of metropolitan classified roads and for such proportion of the cost of administering this Act as the Commissioner determines to be applicable in relation to the construction.

(3) Money transferred from the Commonwealth Fund to the Metropolitan Roads Fund may be used only for expenditure incurred in accordance with a Commonwealth Act relating to disposal of the money.

(4) Money in the Metropolitan Roads Fund borrowed under the Public Authorities (Financial Accommodation) Act 1981 may be used only for the expenses of borrowing the money and for the purposes for which the money was borrowed.

(5) Money paid into the Metropolitan Roads Fund under section 49 (Tolls and charges on toll works) may be used only for the purposes specified in section 80 (Disposal of revenue from toll work).

(6) Except in the case of a road or work deemed by section 4 (5) to be a State work, money in the Metropolitan Roads Fund may not be used for the construction or maintenance of a State work unless it is money provided for the purpose by Parliament or from the Commonwealth Fund.

*State Roads 1986***DIVISION 2—*Country Roads Fund*****Composition of Country Roads Fund**

**76. (1)** There shall be established in the Special Deposits Account in the Treasury a Country Roads Fund consisting of—

- (a) the fund that, immediately before the commencement of this Act, comprised the Country Main Roads Fund established under the Main Roads Act 1924;
- (b) 50 per cent of the collected proceeds of the motor vehicles tax levy imposed by section 7 (1) (a) of the Motor Vehicles (Taxation) Act 1980;
- (c) 80 per cent of the collected proceeds of the motor vehicles weight tax imposed by section 7 (1) (b) of the Motor Vehicles (Taxation) Act 1980, other than proceeds in respect of motor vehicles registered under the Transport Act 1930;
- (d) the proceeds of any lease or other dealing with land that is within the country area and is land to which section 57 applies;
- (e) money transferred from the Commonwealth Fund under section 78;
- (f) loans raised under any Act and appropriated for country classified roads;
- (g) money borrowed under the Public Authorities (Financial Accommodation) Act 1981 for the construction of works under this Act within the country area and the acquisition of property in connection with the works;
- (h) money received from tolls, fees and charges in connection with any bridge, ferry or other thing within the country area;
- (i) 50 per cent of the tolls and charges received in connection with a bridge or ferry that is a boundary work between the country area and the metropolitan area;
- (j) any money that, under section 49, is required to be paid to the Fund;
- (k) any money paid to the Commissioner to be paid to the Fund in accordance with an Act;
- (l) any other money received by the Commissioner that is not payable to the Metropolitan Roads Fund or the Commonwealth Fund; and

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(m) such other money as may be by law required to be paid to the credit of the Fund or as may be appropriated by Parliament for payment to the Fund.

(2) The proceeds under the Motor Vehicles (Taxation) Act 1980 that are payable to the Country Roads Fund under subsection (1) shall be paid to the Fund by the Treasurer at such intervals, not exceeding 3 months, as the Treasurer thinks fit.

(3) A reference in subsection (2) to proceeds under the Motor Vehicles (Taxation) Act 1980 does not include a reference to amounts payable to the Traffic Facilities Fund under section 23 (e) and (f) of the Traffic Authority Act 1976.

#### **Use of Country Roads Fund**

77. (1) Subject to this section, the Commissioner may use the Country Roads Fund for—

- (a) works of construction and maintenance on classified roads in the country area;
- (b) works of construction and maintenance on roads in the country area that are not classified roads if the Commissioner is authorised by this or any other Act to carry out the works;
- (c) road planning and research in relation to the country area;
- (d) transfer to the reserve for loan repayment established in the Fund;
- (e) costs and expenses incurred in exercising functions in relation to land in the country area to which section 57 applies;
- (f) the payment of expenses, interest and principal in connection with loans for the construction of country classified roads;
- (g) the payment of the appropriate proportion of the salaries and expenses of the Commissioner and the officers and employees appointed and employed for the purposes of this Act;
- (h) the payment of the appropriate proportion of the costs of administering this Act; and
- (i) the exercise of any other functions under this Act in relation to the country area.

*State Roads 1986*

(2) Loan money in the Country Roads Fund may be used only for the construction of country classified roads and for such proportion of the costs of administering this Act as the Commissioner determines to be applicable in relation to the construction.

(3) Money transferred from the Commonwealth Fund to the Country Roads Fund may be used only for expenditure incurred in accordance with a Commonwealth Act relating to the disposal of the money.

(4) Money in the Country Roads Fund borrowed under the Public Authorities (Financial Accommodation) Act 1981 may be used only for the expenses of borrowing the money and for the purposes for which the money was borrowed.

(5) Money paid into the Country Roads Fund under section 49 (Tolls and charges on toll works) may be used only for the purposes specified in section 80.

(6) Except in the case of a road or work deemed by section 4 (5) to be a State work, money in the Country Roads Fund may not be used for the construction or maintenance of a State work unless it is money provided for the purpose by Parliament or from the Commonwealth Fund.

**DIVISION 3—Commonwealth Fund****Composition of, and expenditure from, the Commonwealth Fund**

78. (1) There shall be a Commonwealth Fund consisting of—

- (a) the fund that, immediately before the commencement of this Act, comprised the Commonwealth Aid Roads Fund established under the Main Roads Act 1924; and
- (b) money paid into the Commonwealth Fund by the Treasurer from money provided to the State by the Commonwealth.

(2) Money in the Commonwealth Fund shall be used by the Commissioner for expenditure incurred in accordance with any Commonwealth Act relating to the expenditure of the money.

(3) For the purposes of subsection (2), money in the Commonwealth Fund—

- (a) may be used to meet expenditure that might otherwise be met from a Roads Fund; or

(b) may be transferred to a Roads Fund.

#### DIVISION 4—*General*

##### **Contribution by council**

**79. (1)** A council shall pay to the Commissioner any amount required by the Commissioner as a contribution towards the cost of—

- (a) works of drainage, kerbing or guttering; or
- (b) construction and paving of footways,

carried out by the Commissioner, or by the council by agreement with the Commissioner, on or in respect of a metropolitan classified road in its area.

**(2)** A council may be required to pay a contribution under this section towards the cost of a work of drainage which serves to drain part of the area of the council, whether or not the part drained is wholly or partly outside the limits of a classified road or the area of the council.

**(3)** As a contribution under this section towards the cost of constructing or paving the footway of a bridge situated partly within the area of a council, the Commissioner may require the council to pay an amount considered reasonable by the Commissioner, whether the amount is greater or less than the cost of such of the work as is carried out in the area of the council.

**(4)** A contribution required to be paid by a council under this section shall not exceed—

- (a) in the case of works of drainage—the proportion of the cost of the works which the discharge of stormwater from the area of the council outside the classified road bears to the total discharge of stormwater from the total area to be served by the works;
- (b) in the case of works of kerbing and guttering constructed on the same side of the road as, and adjacent to, land privately owned where there was previously no kerbing or guttering or there was kerbing or guttering in respect of which a contribution had not previously been paid by an owner of the land—75 per cent of the cost of the works;
- (c) in the case of works of kerbing and guttering on the same side of the road as, and adjacent to, a public reserve where there was previously no kerbing or guttering—50 per cent of the cost of the works; or

*State Roads 1986*

(d) in the case of works of construction and paving of footways (including footways on bridges)—the cost of the works where the footway had not previously been constructed or paved, or the cost of any widening of the footway.

(5) Before the Commissioner proceeds with any work in respect of which the Commissioner proposes that a contribution will be required under this section, the Commissioner shall—

- (a) provide the council with plans and specifications of the work; and
- (b) serve notice on the council of the proposals and the estimated cost of the work.

(6) If, within 3 months after service of the notice, the council makes any written representations to the Commissioner in relation to the matters specified in the notice, the Commissioner shall—

- (a) where the council in its representations notifies the Commissioner that it desires to be heard and to call evidence in relation to the matter—within 1 month after hearing the council; or
- (b) in any other case—within 1 month after receipt of the representations,

inform the council in writing of the decision of the Commissioner in relation to the representations.

(7) A contribution under this section is payable by a council—

- (a) where the contribution exceeds \$2,000—by instalments of such amounts, payable over such period, as may be agreed upon between the Commissioner and the council; or
- (b) in any other case—within 3 months after demand by the Commissioner or such further time as the Commissioner may allow.

(8) Where a dispute arises between the Commissioner and a council as to any matter to which this section applies, the dispute shall be submitted to, and determined by, a Judge of the District Court nominated by the Governor and acting as arbitrator.

(9) The Commercial Arbitration Act 1984 does not apply to an arbitration under this section and rules of court may be made under the District Court Act 1973 for the purposes of such an arbitration.

(10) A Judge acting as arbitrator under this section has the same powers of procuring the attendance of witnesses and the production of documents as the Judge would have if the arbitration were an action in the District Court.

(11) The decision of the Judge to whom a dispute is submitted under this section is final and an award of costs may not be made.

#### **Disposal of revenue from toll work**

80. (1) The money paid into the Roads Funds in respect of a toll work may be used for all or any of the following purposes:

- (a) the collection of tolls and charges imposed in respect of the toll work;
- (b) the administration, repair, maintenance and lighting of the toll work;
- (c) the carrying out of works of construction on the toll work;
- (d) the acquisition of property in connection with the carrying out of works of construction on the toll work;
- (e) the payment to the Treasurer of amounts for interest, exchange, flotation expenses, loan management expenses and charges and sinking fund contributions in respect of loan moneys appropriated from the Consolidated Fund to meet the cost of works of construction carried out on the toll work;
- (f) the repayment of principal, and the payment of interest and loan management expenses and charges, in respect of money borrowed pursuant to the Public Authorities (Financial Accommodation) Act 1981, to meet the cost of works of construction carried out on the toll work and of other works ancillary to the toll work;
- (g) the transfer, in respect of money borrowed as referred to in paragraph (f), of amounts to the reserve for loan repayment created in the Fund concerned under section 86;
- (h) the payment of any other costs and expenses whatsoever incurred by the Commissioner in connection with the toll work.

*State Roads 1986*

(2) Without limiting the generality of subsection (1), the money paid into the Metropolitan Roads Fund or the Country Roads Fund under section 49 (Tolls and charges on toll work) in respect of the toll work between Berowra and Calga, referred to in the proclamation made by the Governor and published in Gazette No. 51 of 10 April 1970 may, in addition to any other money used for those purposes under this Act, be used for any one or more of the following purposes:

- (a) the improvement and maintenance, in accordance with the provisions of this Act, of classified roads and works ancillary to those roads and works—
  - (i) situated within the City of Gosford or the Shire of Wyong; and
  - (ii) connected, directly or indirectly, to the toll work;
- (b) the acquisition of property in connection with the improvement and maintenance of classified roads and ancillary works referred to in paragraph (a);
- (c) the payment to the Treasurer of amounts for interest, exchange, flotation expenses, loan management expenses and charges and sinking fund contributions in respect of loan money appropriated from the Consolidated Fund to meet the cost of the improvement and maintenance of classified roads and ancillary works referred to in paragraph (a);
- (d) the repayment of principal, and the payment of interest and loan management expenses and charges, in respect of money borrowed pursuant to the Public Authorities (Financial Accommodation) Act 1981 to meet the cost of the improvement and maintenance of classified roads and ancillary works referred to in paragraph (a);
- (e) the transfer, in respect of money borrowed as referred to in paragraph (d), of amounts to the reserve for loan repayment created in the Fund concerned under section 86;
- (f) the payment of any other costs and expenses incurred by the Commissioner or a council in connection with the improvement and maintenance of classified roads and ancillary works referred to in paragraph (a).

**Discharge of certain liabilities**

81. The Commissioner may pay from the appropriate Roads Fund—

- (a) an amount due under an agreement made for the purposes of this Act;
- (b) an amount recovered from the Commissioner as such in legal or other proceedings;
- (c) an amount that the Commissioner has agreed to pay in settlement of a claim brought against the Commissioner for compensation or damages in relation to the functions of the Commissioner;
- (d) any expenses incurred by the Commissioner for the purposes of section 39 (Miscellaneous functions of the Commissioner); and
- (e) the payment of compensation under this or any other Act.

**Payments to Treasurer**

82. (1) Where the Treasurer requires the repayment of a loan appropriated for classified roads—

- (a) the terms of repayment shall be agreed upon between the Commissioner and the Treasurer; and
- (b) the Commissioner shall in each year pay to the Treasurer—
  - (i) for the credit of the Consolidated Fund—the amounts required to provide for interest on such a loan; and
  - (ii) for the credit of the General Loan Account—the amounts agreed upon for repayment of loans.

(2) This section applies in relation to—

- (a) a loan appropriated after 1 July 1928 and not repaid at the commencement of this Act; and
- (b) a loan appropriated after that commencement.

**Payments by Treasurer**

83. The Treasurer shall pay to the credit of each of the Roads Funds interest at a rate agreed upon by the Treasurer and the Commissioner on the monthly balance of the Roads Fund in the Special Deposits Account at the Treasury.

*State Roads 1986*

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**Borrowing, etc., by council**

**84.** A council is not required, in relation to an arrangement or debt under this Act—

- (a) to observe the procedure prescribed by the Local Government Act 1919 in connection with borrowing by the council; or
- (b) to levy a loan rate.

**Penalties, etc.**

**85.** Costs, expenses and penalties recovered by the Commissioner under section 102 (Enforcement of Act) shall be paid to the appropriate Roads Fund.

**Reserves for loan repayment**

**86.** (1) The Commissioner shall establish a reserve for loan repayment in—

- (a) the Metropolitan Roads Fund;
- (b) the Country Roads Fund; and
- (c) the Sydney Harbour Bridge Account under the Sydney Harbour Bridge (Administration) Act 1932,

in respect of which any loan or renewal loan, or any part of a loan or renewal loan, has been raised by the Commissioner since 19 December 1963.

(2) The Commissioner shall during each year transfer to the reserve for loan repayment in a Roads Fund or the Sydney Harbour Bridge Account an amount not less than that which the Commissioner indicated in the application for approval of the loan was proposed to be so transferred.

(3) The reserve for loan repayment that, immediately before the commencement of this Act, was established in—

- (a) the County of Cumberland Main Roads Fund—becomes at that commencement the reserve for loan repayment established in the Metropolitan Roads Fund;
- (b) the Country Main Roads Fund—becomes at that commencement the reserve for loan repayment established in the Country Roads Fund; and

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(c) the Sydney Harbour Bridge Account—continues at that commencement as the reserve for loan repayment established in the Sydney Harbour Bridge Account.

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**PART 5**  
**MISCELLANEOUS**

**Lateral support of roads and works**

**87. (1)** The rule of law as to support applies as between the Commissioner and the owners of land abutting a classified road or a toll work.

**(2)** The Commissioner may throw the batter, or make the slope, of a classified road or a toll work upon land adjoining the road or toll work and is liable to pay compensation for so doing.

**Standard plans and specifications**

**88. (1)** The Commissioner may cause standard plans and specifications to be prepared for construction and maintenance work on a classified road or a toll work and may require that works under this Act be designed and executed in accordance with—

- (a) the standard plans and specifications; or
- (b) special plans and specifications for particular work.

**(2)** The Commissioner may adopt or amend, or amend and adopt, plans, specifications and sections submitted by a council or prepared under the Commissioner's direction.

**Deviation, etc., of classified road by statutory authority**

**89.** A statutory authority, or a person acting under the authority of an Act or of a department of the Government shall not—

- (a) make a deviation or alteration of a classified road; or
- (b) construct a level crossing, bridge or tunnel in a classified road,

unless the plans and specifications for the work have been approved by the Commissioner.

*State Roads 1986*

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Penalty: \$1,000.

**Acquisition and manufacture of plant and materials**

**90. (1)** The Commissioner may—

- (a) take on lease or on hire, or purchase, personal property for use in giving effect to this Act;
- (b) manufacture, develop and produce anything of a kind that may be used for the purposes of this Act;
- (c) establish and work quarries and gravel pits;
- (d) provide buildings, structures or works for manufacturing, development, production, storage and treatment purposes; or
- (e) by way of sale, lease or licence, and whether in Australia or elsewhere, dispose of property or materials purchased, manufactured, developed or produced by the Commissioner.

**(2)** Money expended for the purposes of this section, and the proceeds of any sale, lease or licensing agreement under this section, shall be apportioned by the Commissioner between the Roads Funds on an equitable basis.

**Commissioner to be provided with particulars of certain works**

**91. (1)** Where a public authority proposes to construct a new road, road deviation, bridge, ferry, tunnel or other crossing for the use of road traffic and the estimated cost of the work is more than \$200,000 (or, where some other amount is prescribed for the purposes of this section, the amount so prescribed) the public authority shall provide the Commissioner with particulars of the proposal.

**(2)** Where it appears that such a proposal may affect the development, or further development, of a main road or toll work, the Commissioner may, within a reasonable time after being provided with particulars of the proposal, notify the public authority—

- (a) that amendments or alterations specified in the notification should be given effect in the construction of the work; or
- (b) that the construction of the work should be deferred for a period specified in the notification.

**(3)** If a dispute arises under this section between the Commissioner and a public authority, either party to the dispute may refer the matter—

- (a) where the public authority is a council—to the Minister administering the Local Government Act 1919; or
- (b) in any other case—to the Minister responsible for the public authority.

**(4)** In this section—

“public authority” means a council or other statutory authority or a department of the Government.

#### **Engineering and clerical charges**

**92.** Where a council carries out a work of construction or maintenance on a main road to the satisfaction of the Commissioner, the Commissioner may allow to the council in assessing the cost of the work—

- (a) where the working plans and specifications for the work have been prepared by the council in accordance with the standards approved by the Commissioner—2.5 per cent of the cost of the work; or
- (b) in any other case—1.5 per cent of the cost of the work.

#### **Council to provide information**

**93.** Not later than 1 month after being requested by the Commissioner to provide information specified by the Commissioner as being information required for the purpose of giving effect to this Act, or within such further time as the Commissioner may in a particular case allow, a council shall provide the Commissioner with the information requested.

**Penalty:** \$1,000.

#### **Recovery of debts**

**94.** Money payable under this Act by a person to the Commissioner may be recovered by the Commissioner in a court of competent jurisdiction as a debt due by the person to the Commissioner.

*State Roads 1986*

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**Interest on overdue payment by council**

**95.** (1) Where a council fails to pay on the due date an amount owing by the council to the Commissioner, the amount until paid bears interest accruing from day to day at the rate for the time being proclaimed under section 374 (8) of the Local Government Act 1919.

(2) The Commissioner may wholly or partly remit or postpone payment of interest under this section.

**Works for other departments and statutory authorities**

**96.** The Commissioner may, at the request and cost of—

- (a) a department of the Government of the Commonwealth or an authority constituted by a Commonwealth Act; or
- (b) a department of the Government of the State or a statutory authority,

carry out any road, bridge or ferry work of construction or maintenance for which the machinery, plant and equipment of the Commissioner could be used.

**Works may be executed as compensation**

**97.** The Commissioner may enter into an agreement for the execution of works in satisfaction, wholly or in part, of a claim for compensation or damages, or a right to purchase money, relating to the acquisition of land, or an alteration of road levels, for the purposes of this Act.

**Service of notices, etc.**

**98.** A notice, requisition or demand by the Commissioner under this Act may be served personally or by post at the address last known to the Commissioner of the person upon whom it is to be served.

**Vicarious liability**

**99.** Where a vehicle is driven or drawn on a main road or a toll work in contravention of this Act—

- (a) the person who is the owner of the vehicle;
- (b) the person who has custody of the vehicle; or

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- (c) in the case of a vehicle registered in accordance with the regulations made under the Motor Traffic Act 1909—the person in whose name the vehicle is registered,

is guilty of an offence against this Act and liable to a penalty not exceeding \$1,000 for a first offence and \$2,000 for a second or subsequent offence unless it is proved that the contravention occurred without the knowledge of the person and that the person could not, with reasonable diligence, have known of, or prevented, the contravention.

#### **Identification of offending driver**

**100.** (1) Where an authorised person suspects on reasonable grounds that the driver of a vehicle has committed an offence against this Act, the authorised person may require the person who is—

- (a) the owner of the vehicle;
- (b) the person who has custody of the vehicle; or
- (c) where the vehicle is registered in accordance with the regulations made under the Motor Traffic Act 1909—the person in whose name the vehicle is registered,

to give forthwith to the authorised person the prescribed information and any other information relevant to the suspected offence that it is in the power of the person to give.

(2) For the purposes of subsection (1), the prescribed information is—

- (a) the name and residential address of the person who was the driver of the vehicle;
- (b) the weight and description of the load being carried on the vehicle; and
- (c) the tare weight of the vehicle,

at the time of commission of the suspected offence.

(3) An authorised person referred to in subsection (1) may also require any other person to give forthwith, either verbally or in writing as may be required by the authorised person, such information as is in the power of the other person to give.

(4) A person required by an authorised person to give information may also be required by the authorised person to give the information by way of a signed statement in writing.

*State Roads 1986*

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(5) A requirement under this section may be made verbally or in writing and, if made in writing, shall be served personally on the person required to give the information or by post at the residential address of that person last known to the authorised person.

(6) A person shall not fail to comply with a requirement of an authorised person made under this section.

Penalty: \$1,000 for a first offence and \$2,000 for a second or subsequent offence.

(7) In this section—

“authorised person” means—

- (a) an officer or employee in the service of the Commissioner;
- (b) an employee of a council authorised by the Commissioner;  
or
- (c) a member of the police force.

**Evidence**

**101.** (1) In proceedings for an offence against this Act, a determination made, as prescribed, of the weight—

- (a) of a vehicle—is admissible as evidence of the weight of the vehicle;
- (b) of the load on a vehicle—is admissible as evidence of the weight of the load;
- (c) of part of the load on a vehicle—is admissible as evidence of the weight of that part of the load; and
- (d) of a vehicle together with load on it—is admissible as evidence of the weight of the vehicle together with the load on it.

(2) In proceedings for an offence against this Act, a prescribed certificate to the effect that, as at a specified date (being a date that does not precede by more than 12 months the date of commission of the alleged offence) a specified weighing device used in such manner, and in accordance with such conditions, as may be specified in the certificate weighed accurately, or weighed accurately within specified tolerances, is admissible as evidence that a weight determined by use of the weighing device in such a manner, and in accordance with any such conditions, at the time of commission of the alleged offence was accurate, or accurate within the specified tolerances, as may be specified in the certificate.

(3) In subsection (2)—

“prescribed certificate” means a certificate given by the Superintendent of Weights and Measures appointed under the Weights and Measures Act 1915 or an inspector of weights and measures so appointed.

#### **Enforcement of Act**

**102.** (1) Proceedings for an offence against this Act shall be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

(2) The Commissioner may, before, after, or instead of, prosecuting a person for a failure to comply with, or a contravention of, a provision of this Act, rectify the failure or contravention (except in relation to a time for performance) and recover from the person as a debt the expense of so doing.

#### **Repeals**

**103.** Each Act specified in Schedule 1 is, to the extent specified in that Schedule in relation to that Act, repealed.

#### **Savings and transitional provisions**

**104.** Schedule 3 has effect.

*State Roads 1986*

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**Regulations**

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

- (a) terms and conditions of employment, and discipline, of persons in the service of the Commissioner;
- (b) the care, control and management of classified roads, toll works and other works, and of land vested in the Commissioner;
- (c) the control of persons and vehicles using toll works;
- (d) preserving trees and vegetation on classified roads or toll works;
- (e) preventing damage to classified roads or toll works or to other real or personal property of the Commissioner;
- (f) preventing actions likely to cause damage to classified roads or toll works;
- (g) restricting traffic, or a specified class of traffic, to protect classified roads or toll works from damage;
- (h) prohibiting or regulating the use of a vehicle likely to damage classified roads or toll works;
- (i) stopping a vehicle using, or seen using, a main road or toll work (whether or not the stopping takes place on the main road or toll work) and inspecting the vehicle and its load;
- (j) the production and inspection of books, documents or records by the driver or person in charge of a vehicle stopped on a main road or toll work, or stopped after using, or having been seen using, a main road or toll work, being books, documents or records relating to the vehicle or its load;
- (k) the regulation and determination of the weight, and the weighing, of—
  - (i) a vehicle using, or seen using, a main road or toll work together with the load on the vehicle;
  - (ii) a vehicle using, or seen using, a main road or toll work; and

*State Roads 1986*

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- (iii) the load on a vehicle, or on any part of a vehicle, using, or seen using, a main road or toll work,  
whether or not the vehicle is still on the main road or toll work;
- (l) requiring the driver or person in charge of a vehicle using, or seen using, a main road or toll work to comply with such requirements as may be prescribed, or with such directions as may be given by a prescribed person for the purposes of prescribed weighing, whether or not the vehicle is still on the main road or toll work;
- (m) the method to be used for a prescribed weighing;
- (n) measuring the load on a vehicle using, or seen using, a main road or toll work (whether or not the vehicle is still on the main road or toll work) and determining the weight of the load on such a vehicle according to a prescribed scale for various classes of goods;
- (o) authorising the Commissioner to display notices for or with respect to any matter for or with respect to which regulations may be made and requiring persons to comply with the provisions of such a notice;
- (p) the provision and use of service centres and rest areas;
- (q) the conditions under which financial and other assistance may be given to a council or the payment of contributions by a council;
- (r) camping within a road reserve;
- (s) the control by flagmen of traffic on, or proceeding to or from, a classified road or toll work;
- (t) the control of littering on a classified road, toll work, service centre or rest area;
- (u) preventing obstruction of a person acting under the authority of the Commissioner or under the provisions of this Act;
- (v) regulating the use by the public of a work or undertaking, or of property, of the Commissioner and authorising or directing the removal of trespassers or other persons causing inconvenience or annoyance;
- (w) the handing over to a council of a work that has ceased to be a State work; or
- (x) providing for the exemption, either absolutely or subject to conditions, of any person or class of persons from the operation of a provision of a regulation.

*State Roads 1986*

(2) A regulation may impose a penalty for a contravention of the regulation not exceeding \$1,000 for a first offence or \$2,000 for a second or subsequent offence.

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body, or may do any combination of those things.

## SCHEDULE 1

(Sec. 103)

## REPEALS

Main Roads Act 1924 No. 24—the whole Act  
 Local Government (Amendment) Act 1927 No. 33—section 27  
 Main Roads (Amendment) Act 1927 No. 51—sections 2 (1), 3 and 4 (2) and (3)  
 Transport Act 1930 No. 18—section 275  
 Federal Aid Roads (Further Agreement) Act 1931 No. 49—section 4  
 Federal Aid Roads and Works Act 1937 No. 22—sections 1 (2) and 3  
 Statute Law Revision Act 1937 No. 35—so much of the Second Schedule as amends Act No. 24, 1924  
 Local Government (Areas) Act 1948 No. 30—sections 37 and 48  
 Attachment of Wages (Limitation) Act 1957 No. 28—section 9  
 Decimal Currency Act 1965 No. 33—so much of the First Schedule as amends Act No. 24, 1924 and so much of the Second Schedule as relates to that Act  
 Industrial Arbitration (Basic Wage) Amendment Act 1967 No. 86—so much of the Second Schedule as amends Act No. 24, 1924  
 Supreme Court Act 1970 No. 52—so much of the Second Schedule as amends Act No. 24, 1924  
 Motor Traffic, Transport and Main Roads (Amendment) Act 1971 No. 58—section 6  
 Supreme Court (Amendment) Act 1972 No. 41—so much of paragraph (aa) of the Second Schedule as amends the Second Schedule to the Supreme Court Act 1970 in relation to Act No. 24, 1924  
 National Parks and Wildlife Act 1974 No. 80—so much of Schedule 2 as amends Act No. 24, 1924  
 Traffic Authority Act 1976 No. 32—section 30 (4) and Schedule 4  
 Miscellaneous Acts (Planning) Repeal and Amendment Act 1979 No. 205—so much of Schedule 2 as amends Act No. 24, 1924

SCHEDULE 1—*continued*REPEALS—*continued*

Miscellaneous Acts (Motor Vehicles Taxation) Repeal and Amendment Act 1980 No. 120—so much of Schedule 2 as amends Act No. 24, 1924  
 Miscellaneous Acts (Financial Accommodation) Amendment Act 1981 No. 83—so much of Schedule 1 as amends Act No. 24, 1924  
 Main Roads (Amendment) Act 1984 No. 126—the whole Act  
 Statute Law (Miscellaneous Amendments) Act 1984 No. 153—so much of Schedule 16 as amends Act No. 24, 1924  
 Miscellaneous Acts (Commercial Arbitration) Amendment Act 1984 No. 167—so much of Schedule 1 as amends Act No. 24, 1924  
 Main Roads (Amendment) Act 1985 No. 34—the whole Act

## SCHEDULE 2

(Sec. 5)

## PROVISIONS RELATING TO THE COMMISSIONER

**Age of Commissioner**

1. A person of or above the age of 65 years is not eligible to be appointed as Commissioner or to act in the office of Commissioner.

**Acting Commissioner**

2. (1) The Minister may from time to time appoint a person to act in the office of Commissioner during the illness or absence of the Commissioner and the person, while so acting, has and may exercise all the functions of the Commissioner and shall be deemed to be the Commissioner.

(2) A person while acting in the office of Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(3) For the purposes of this clause, a vacancy in the office of Commissioner shall be deemed to be an absence of the Commissioner from the office.

(4) No person is concerned to inquire whether or not an occasion has arisen to authorise a person to act in the office of Commissioner.

**Remuneration**

3. The Commissioner is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and

*State Roads 1986*SCHEDULE 2—*continued*PROVISIONS RELATING TO THE COMMISSIONER—*continued*

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Commissioner.

**Casual vacancy**

4. (1) The Commissioner vacates that office if he or she—

- (a) dies;
- (b) absents himself or herself from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months except on leave granted by the Minister or unless the absence is occasioned by illness or other unavoidable cause;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act 1958 or a person under detention under Part VII of that Act;
- (e) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or more or is convicted elsewhere of an offence which if committed in New South Wales would be an offence so punishable;
- (f) engages in any paid employment outside the duties of the office, except with the consent of the Minister;
- (g) resigns the office by instrument in writing addressed to the Minister;
- (h) attains the age of 65 years;
- (i) is retired from office by the Governor under subclause (2); or
- (j) is removed from office by the Governor under subclause (3).

(2) The Commissioner may, after attaining the age of 60 years and before attaining the age of 65 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

(3) The Governor may remove the Commissioner from office for incapacity, incompetence or misbehaviour.

**Effect of Public Service Act 1979**

5. The Public Service Act 1979 does not apply to or in respect of the appointment of the Commissioner and the Commissioner is not, as Commissioner, subject to that Act.

SCHEDULE 2—*continued*PROVISIONS RELATING TO THE COMMISSIONER—*continued***Preservation of certain rights**

6. (1) Subject to subclause (3) and to the terms of appointment, where the Commissioner was, immediately before being appointed as Commissioner—

- (a) an officer of the Public Service or a Teaching Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she—

- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as Commissioner; and
- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as Commissioner and—

- (h) his or her service as Commissioner shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(2) A Commissioner who, before his or her term of office as Commissioner expires, is appointed by the Governor to an office under an Act—

- (a) is entitled to contribute to any superannuation scheme to which he or she was, immediately before the appointment, a contributor; and
- (b) is entitled to receive any deferred or extended leave, or any payment instead of the leave,

in the same manner, and to the same extent, as that to which he or she would have been entitled if he or she had continued in office as Commissioner during his or her service in the later appointment.

*State Roads 1986***SCHEDULE 2—continued****PROVISIONS RELATING TO THE COMMISSIONER—continued**

(3) If the Commissioner would, but for this subclause, be entitled under subclause (1) or (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled upon becoming (whether upon appointment as Commissioner or at any later time while holding office as Commissioner or an office referred to in subclause (2)) a contributor to any other superannuation scheme, and the provisions of subclause (1) (i) or (2) cease to apply to or in respect of him or her in any case where he or she becomes a contributor to any such other superannuation scheme.

(4) Subclause (3) does not prevent the payment to the Commissioner upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(5) The Commissioner is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

(6) In this clause—

“statutory body” means a body declared under clause 9 to be a statutory body for the purposes of this Schedule;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

**Entitlement to re-appointment to former employment**

7. (1) A person who—

(a) ceases to be Commissioner by reason of the expiration of the period for which the person was appointed or by reason of resignation;

(b) was, immediately before being appointed as Commissioner—

(i) an officer of the Public Service or a Teaching Service; or

(ii) an officer or employee of a statutory body; and

(c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee, is entitled to be appointed to some position in the Public Service, the Teaching Service or in the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as Commissioner.

(2) Where subclause (1) does not apply to a person who—

(a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and

**SCHEDULE 2—*continued*****PROVISIONS RELATING TO THE COMMISSIONER—*continued***

(b) is, after that appointment, appointed as Commissioner, the person shall have such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be Commissioner, as are specified in the instrument of appointment as Commissioner or as are agreed on by the person and by or on behalf of the Government.

(3) In this clause—

“statutory body” means a body declared under clause 9 to be a statutory body for the purposes of this Schedule.

**Full-time duties of Commissioner**

8. The Commissioner shall devote the whole of his or her time to the duties of the office of Commissioner except as permitted by this Act or except with the consent of the Minister.

**Declaration of statutory bodies**

9. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under an Act to be a statutory body for the purposes of this Schedule.

**Liability of Commissioner and others**

10. No matter or thing done by the Commissioner or a person acting under the direction of the Commissioner shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the Commissioner or a person so acting personally to any action, liability, claim or demand.

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**SCHEDULE 3**

(Sec. 104)

**SAVINGS AND TRANSITIONAL PROVISIONS**

**Interpretation**

1. In this Schedule—

“date of assent” means the date of assent to this Act;

“repealed Act” means the Main Roads Act 1924 as in force immediately before that date.

**Commissioner for Main Roads**

2. (1) The person who, immediately before the date of assent, held office as The Commissioner for Main Roads continues on and after that date to hold that office on the terms and conditions that, immediately before that date, were applicable to the office.

*State Roads 1986*SCHEDULE 3—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) Schedule 2 does not apply to the Commissioner continuing in office under subclause (1).

**Deputy Commissioner for Main Roads**

3. (1) The person who, immediately before the date of assent, held office as Deputy Commissioner for Main Roads continues on and from that date to hold that office but ceases to hold that office on the day appointed and notified under section 2 (2) of the Statutory and Other Offices Remuneration (Main Roads) Amendment Act 1986.

(2) The person continuing in office under subclause (1) does so on the terms and conditions that, immediately before the date of assent, were applicable to the office, other than—

- (a) terms and conditions relating to the duration of the appointment to the office; and
- (b) the provisions of sections 7A–7D and 11 of the Transport (Division of Functions) Act 1932 as in force immediately before the date of assent.

(3) Where, by the operation of subclause (1), the person continued in office as Deputy Commissioner for Main Roads ceases to hold that office, the person—

- (a) is not entitled to be paid any remuneration or compensation by reason of ceasing to hold that office; and
- (b) is entitled to be appointed to a position in the service of the Commissioner not lower in salary and classification than that which the person held immediately before being appointed as Deputy Commissioner for Main Roads.

**Prior proclamation to be treated as order**

4. Where anything done by a proclamation by the Governor in force under the repealed Act immediately before the date of assent could have been done by an order or notification by the Minister under this Act if this Act had been in force at the time the proclamation was made, the proclamation continues to have effect on and after the date of assent as if it were an order or notification by the Minister under this Act having the same effect as the proclamation.

**Authority to carry out works**

5. (1) An agreement under the repealed Act between the Commissioner and a council that was in force immediately before the date of assent continues to have effect on and after that day as if it were an agreement between the Commissioner and the council entered into under this Act having the same effect as the agreement so in force.

(2) A direction by the Governor under the repealed Act that had effect immediately before the date of assent continues to have effect on and after that date as if it were a direction by the Minister under this Act having the same effect as the direction by the Governor.

SCHEDULE 3—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***References to the Commissioner**

6. A reference in any other Act or in an instrument made under any other Act to The Commissioner for Main Roads, or the Commissioner for Main Roads, shall be construed as a reference to The Commissioner for Main Roads holding office under this Act or a person acting in that office.

**Certain motorways to be freeways**

7. Where, immediately before the date of assent, a road specified in Schedule 4 was a proclaimed motorway under the repealed Act, the proclamation as a motorway shall be deemed to be an order made on the date of assent by the Minister under section 4 declaring the road to be a freeway.

**Prescribed land under Part VID of repealed Act**

8. Land that, immediately before the date of assent, was prescribed land within the meaning of Part VID of the repealed Act shall be deemed on and from the date of assent to be land declared by the Minister under section 57 to be land to which that section applies, and the Minister may make any order in relation to the land that could be made if that declaration had been made under that section.

**Roads Funds**

9. An unpaid amount that, immediately before the date of assent, was payable under the repealed Act—

- (a) to or from the County of Cumberland Main Roads Fund—is payable instead to or from the Metropolitan Roads Fund;
- (b) to or from the Country Main Roads Fund—is payable instead to or from the Country Roads Fund; or
- (c) to or from the Commonwealth Aid Roads Fund is payable instead to or from the Commonwealth Fund.

**Certain payments to be made from Roads Funds**

10. The provisions of sections 11, 21 (3A), (3B) and (8), and 37, of the repealed Act continue to have effect on and after the date of assent as if—

- (a) the liability imposed by section 11 of that Act to pay a contribution were a liability to pay the contribution to the Metropolitan Roads Fund;
- (b) the liability to pay or provide amounts under section 21 (3A), (3B) and (8) of that Act were a liability to pay or provide the amounts from the Country Roads Fund; and
- (c) the reference in section 37 of that Act were a reference to section 82 of this Act.

*State Roads 1986*SCHEDULE 3—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Reduction in rank, etc., of officer or employee**

11. (1) The Commissioner may reduce an officer or employee in the service of the Commissioner in rank, position, grade or pay or more than one of them.

(2) Where the conditions of employment of an officer or employee of the Commissioner are regulated by an award or industrial agreement—

(a) his or her pay shall not be reduced unless he or she is also reduced in rank, position or grade; and

(b) if he or she is reduced in rank, position or grade, his or her pay shall not be reduced below the highest rate prescribed by the award or industrial agreement for the rank, position or grade to which he or she is reduced.

(3) This clause may be repealed by a regulation.

**Ordinances**

12. (1) This clause applies to Ordinance No. 30c, Ordinance No. 30E, and any other prescribed Ordinance, in force under the Local Government Act 1919 immediately before the date of assent.

(2) An Ordinance to which this clause applies has effect on and from the date of assent as if it were a regulation, and it may be repealed by a regulation.

(3) An Ordinance to which this clause applies is amended as provided by this clause and may be further amended by a regulation.

(4) Ordinance No. 30c is amended—

(a) by omitting from clause 2 the definitions of “Commissioner” and “main road”; and

(b) by inserting in clauses 11 and 11A after the word “using” wherever occurring, the words “, or seen using.”.

(5) Ordinance No. 30E is amended—

(a) by omitting from clause 1 (b) the definition of “the Commissioner”;

(b) by omitting from the definition of “officer of the Department” in clause 1 (b) the words “section 7 of the Main Roads Act, 1924, as amended”;

(c) by omitting from clause 1 (b) the definition of “toll work”;

(d) by inserting in clause 2 (a) after the word “using” the words “, or seen using.”;

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**SCHEDULE 3—*continued*****SAVINGS AND TRANSITIONAL PROVISIONS—*continued***

(e) by omitting clause 10 and by inserting instead the following clause:

**Application of State Roads Act 1986**

10. Sections 60, 68 and 69 of the State Roads Act 1986 apply to a toll work as if references in those sections to a classified road or a road were references to a toll work.

**General**

13. (1) Where anything done under the repealed Act before the date of assent and still having effect immediately before that date could have been done under this Act if it had been in force at the time the thing was done, the thing done continues to have effect on and after the date of assent as if it had been done under this Act.

(2) Subclause (1) does not apply to anything in relation to which other provision has been made by this Schedule.

**Regulations**

14. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent or a later date.

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

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule (clause 2 excepted).

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*State Roads 1986*

## SCHEDULE 4

(Sch. 3, cl. 7)

## FREEWAYS

## WARRINGAH FREEWAY

1. Gazette No. 78 of 28 June 1968 at pages 2648 and 2649— From Sydney Harbour Bridge approach at Ennis Road North Sydney to West Street Cammeray
2. Gazette No. 157 of 4 December 1970 at page 4868— Addition to Warringah Freeway at Cammeray
3. Gazette No. 4 of 14 January 1977 at pages 51 and 52— Amendment to Warringah Freeway at Cammeray
4. Gazette No. 4 of 14 January 1977 at page 52— Addition to Warringah Freeway adjoining Cammeray Park
5. Gazette No. 99 of 25 July 1980 at page 3792— Addition to Warringah Freeway at Cammeray
6. Gazette No. 8 of 10 January 1986 at page 157— Alteration to Warringah Freeway boundaries and points of access at North Sydney

## LANE COVE VALLEY FREEWAY

7. Gazette No. 103 of 23 August 1974 at pages 3248 and 3249— Tarban Creek and Fig Tree Bridges complex at Gladesville
8. Gazette No. 189 of 12 December 1980 at page 6499— Amendment to motorway boundary at Hunters Hill

## SYDNEY TO NEWCASTLE FREEWAY

9. Gazette No. 6 of 2 January 1967 at page 138— From D.R. 1160 at Peats Ridge to the Pacific Highway at Ourimbah
10. Gazette No. 125 of 26 September 1975 at page 3904— Amendment to motorway between Peats Ridge and Ourimbah

## WESTERN FREEWAY

11. Gazette No. 11 of 28 January 1966 at pages 370 and 371— Within land resumed from Metropolitan Meat Industry Board
12. Gazette No. 108 of 6 September 1968 at page 3584— Nepean River to Mulgoa Road Regentville
13. Gazette No. 52 of 10 May 1974 at pages 1729 and 1730— Between Wallgrove Road and Dog Kennel Road at Wallgrove

*State Roads 1986*SCHEDULE 4—*continued*FREEWAYS—*continued*

14. Gazette No. 18 of 18 February 1977 at page 605— Addition to Western Freeway at Eastern Creek
15. Gazette No. 145 of 25 November 1977 at page 5146— Mulgoa Road Regentville to Roper Road Colyton
16. Gazette No. 68 of 6 May 1983 at page 2005— Amendment to boundary at Orchard Hills
17. Gazette No. 36 of 28 February 1986 at page 966— Between Roper Road and Wallgrove Road at Wallgrove

## SOUTH WESTERN FREEWAY

18. Gazette No. 50 of 3 May 1974 at page 1581— Between Badgally Road and Camden Road at Campbelltown
19. Gazette No. 23 of 4 March 1977 at page 850— Through portion 1 Parish of Wilton being Lot 36 D.P. 251050 at Wilton
20. Gazette No. 43 of 29 April 1977 at page 1614— Between Station Road Aylmerton and Government Road Yerrinbool
21. Gazette No. 47 of 13 May 1977 at pages 1840 and 1841— Lots 7 and 8 D.P. 247463 at Yanderra and part of road of 6674 square metres D.P. 248774
22. Gazette No. 47 of 13 May 1977 at pages 1840 and 1841— Between Government Road Yerrinbool and Main Southern Railway at Yanderra (Lot 12 D.P. 533615)
23. Gazette No. 104 of 16 September 1977 at page 3870— Bunburry Curran Creek to Camden Road at Kenny's Hill
24. Gazette No. 124 of 14 October 1977 at pages 4510 and 4511— Campbelltown Road at Bunburry Curran Creek to City boundary at Campbelltown Road at Glenfield
25. Gazette No. 124 of 14 October 1977 at pages 4510 and 4511— From City boundary at Campbelltown Road Glenfield to Hume Highway at Prestons
26. Gazette No. 8 of 16 January 1981 at page 258— From northern boundary of W.R. 22945 at Pheasants Nest to Allen's or Moolgun Creek at Wilton
27. Gazette No. 8 of 16 January 1981 at page 258— From Nepean River at Menangle to Lot 24 D.P. 249530 on northen side of Sydney Water Supply Canal
28. Gazette No. 8 of 16 January 1981 at page 258— Lot 11 D.P. 251908 adjoining eastern boundary Main Southern Railway

*State Roads 1986*

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SCHEDULE 4—*continued*FREEWAYS—*continued*

29. Gazette No. 19 of 10 February 1984 at pages 694 and 695— From Moolgun or Allen's Creek at Douglas Park to Moreton Park Road Menangle and between a point just south of the Main Southern Railway at Glen Lee to Camden Road at Kenny's Hill
30. Gazette No. 63 of 29 March 1985 at page 1425— Additional specified means of access at Wilton

## SOUTHERN FREEWAY

31. Gazette No. 170 of 6 November 1981 at page 5678— Northern approach to Taren Point Bridge at Sans Souci

## CAHILL EXPRESSWAY

32. Gazette No. 69 of 2 May 1980 at page 2140— North Westerly from intersection with Sir John Young Crescent Woollomooloo to Macquarie Street Circular Quay.

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