

PUBLIC ROADS (AMENDMENT) ACT.

New South Wales



ANNO SEPTIMO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 27, 1968.

An Act to make further provisions with respect to public roads; to validate certain matters; for these and other purposes to amend the Public Roads Act 1902, and certain other Acts; and for purposes connected therewith. [Assented to, 10th October, 1968.]

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

1. (1) This Act may be cited as the "Public Roads (Amendment) Act, 1968".
- (2) Short title, citation and commencement.

Public Roads (Amendment).

No. 27, 1968 (2) The Public Roads Act 1902, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Public Roads Act, 1902–1968.

(4) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment
of Act No.
95, 1902.
Sec. 6.
(Interpre-
tation.)

2. The Principal Act is amended—

(a) (i) by omitting from section six the definition of “Crown lands” and by inserting in lieu thereof the following definitions :—

“Council” has the meaning ascribed to that expression in the Local Government Act, 1919, as amended by subsequent Acts.

“Crown Land Agent” in relation to a matter affecting land or a road means the person holding office under the provisions of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, as Crown land agent, assistant Crown land agent or acting Crown land agent of the land district in which the land or road affected is situated.

“Crown lands” means lands vested in Her Majesty and not permanently dedicated to any public purpose or granted or lawfully contracted to be granted in fee-simple or held as a homestead selection or lease in perpetuity under any of the Crown Lands Acts.

(ii)

Public Roads (Amendment).

(ii) by inserting in the same section in the definition of "Crown Lands Acts" after the word "lands" the words "and includes the Returned Soldiers Settlement Act, 1916, the Closer Settlement Acts, the Prickly-pear Act, 1924, the Irrigation Act, 1912, and any Act amending those Acts whether passed before or after the commencement of the Public Roads (Amendment) Act, 1968";

(iii) by omitting from the same section the definition of "Land agent";

(iv) by omitting from the same section the definition of "Local newspaper" and by inserting in lieu thereof the following definitions :—

"Local newspaper" in relation to a matter affecting land or a road means a newspaper published or circulating in the district or place in which the land or road affected is situated.

"Owner" includes the holder of a homestead selection or lease in perpetuity under the Crown Lands Acts and the purchaser under an incomplete purchase.

(v) by inserting in the same section next after the definition of "Regulations" the following new definition :—

"Resumed" means resumed under this Act and includes appropriated.

(vi) by omitting from the definition of "Road" in the same section the word "twenty-two" and by inserting in lieu thereof the word "twenty-three";

(b)

*Public Roads (Amendment).***No. 27, 1968****Sec. 7.**

(Notices of intention to open a road.)

(b) (i) by omitting subsection one of section seven and by inserting in lieu thereof the following subsections :—

(1) Where the Minister proposes to consider the opening of a road through land that is not—

(a) Crown land or

(b) land referred to in paragraph (b) or (c) of subsection three of section eight of this Act

he shall cause to be published in the Gazette a notice of the proposal together with a description in such form as he thinks fit of the land to which the proposal relates.

(1A) Where a notice is published under subsection one of this section the Minister shall—

(a) cause to be published in a local newspaper an advertisement drawing attention to the notice and

(b) cause a like notice and description to be posted—

(i) where the land is not dedicated to any public purpose—to the owner of the land to which the proposal relates if his name and address are available to the Minister or

(ii) where the land is dedicated to any public purpose and trustees have been appointed in respect thereof—to those trustees.

(ii)

Public Roads (Amendment).

- (ii) by omitting from subsection two of the same section the words "Minister within one month from the date of the publication of the notice in the Gazette" and by inserting in lieu thereof the words "officer specified in the notice for the purpose and within a period so specified";
- (iii) by inserting in subsection three of the same section after the words "office of the" the word "Crown";
- (iv) by omitting from the same subsection the words "of the district in which the road is situated";
- (v) by omitting subsection four;

- (c) by omitting section eight and by inserting in lieu thereof the following sections :—

No. 27, 1968
Subst.
sec. 8 and
new sec. 8A.

8. (1) This section shall not apply to or in respect of Crown lands.

Resumption
for road.

(2) Subject to this section and section ten of this Act the Minister may by notification in the Gazette declare that the land referred to therein has been resumed by the Crown and thereupon the land so referred to shall be deemed to have been resumed accordingly.

(3) The power conferred by subsection two of this section may be exercised only in respect of land that—

- (a) is comprised within the land described in a notice published under subsection one of section seven of this Act or
- (b) is required for a road to the opening of which the owner of the land has consented or
- (c) is comprised within a proposed road established by the expenditure of public funds and in use or
- (d) adjoins land referred to in paragraph (a) (b) or (c) of this subsection.

(4)

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(4) The power conferred by subsection two of this section shall not be exercised unless—

(a) in the case of land referred to in paragraph (a) of subsection three of this section that is not within a State forest national forest flora reserve or nature reserve—

(i) the provisions of section seven of this Act have been complied with and

(ii) a period of not less than twenty-one days has expired since publication of the advertisement referred to in subsection (1A) of that section and

(iii) the Minister has considered all objections duly forwarded within the period specified in the notice referred to in subsection one of that section or such further period as the Minister may allow or

(b) in the case of land referred to in paragraph (a) of subsection three of this section that is within a State forest national forest flora reserve or nature reserve—the provisions of subparagraphs (i) (ii) and (iii) of paragraph (a) of this subsection have been complied with and—

(i) in the case of a State forest national forest or flora reserve—the Commissioner appointed under the Forestry Act, 1916, as amended by subsequent Acts so recommends and the Minister administering that Act as so amended consents or

(ii) in the case of a nature reserve—the Director of National Parks

and

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and Wildlife appointed under the No. 27, 1968
National Parks and Wildlife Act,
1967, so recommends or

- (c) in the case of land referred to in paragraph (b) or (c) of subsection three of this section that is not land dedicated to any public purpose—a notice of the proposed resumption has been posted to the owner thereof if his name and address are available to the Minister or
- (d) in the case of land referred to in paragraph (c) of subsection three of this section—
 - (i) that is land dedicated to any public purpose and
 - (ii) in respect of which trustees have been appointeda notice of the proposed resumption has been posted to those trustees or
- (e) in the case of land referred to in paragraph (d) of subsection three of this section that is not dedicated to any public purpose—
 - (i) the owner consents and
 - (ii) the land would by reason of severance be in the opinion of the Minister rendered of little or no value to the owner or
- (f) in the case of land referred to in paragraph (d) of subsection three of this section that is dedicated to any public purpose—the land would by reason of severance be in the opinion of the Minister rendered of little or no value for that purpose and—
 - (i) where the land is within a State forest national forest or flora reserve—the provisions of subparagraph (i) of paragraph (b) of this subsection have been complied with or
 - (ii)

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(ii) where the land is within a nature reserve—the provisions of subparagraph (ii) of paragraph (b) of this subsection have been complied with.

Resumed land to vest in Her Majesty for purposes of this Act.

8A. (1) This section shall have effect notwithstanding anything contained in any other Act including any specification of an exclusive method of revoking a dedication or setting apart of land.

(2) Resumed land shall upon publication of the notification of resumption vest in Her Majesty for the purposes of this Act.

(3) Except to the extent provided by subsection two of this section the provisions of sections forty-two and forty-three of the Public Works Act, 1912, as amended by subsequent Acts shall mutatis mutandis apply to and in respect of resumed land as if it had been appropriated or resumed under Division 1 of Part V of that Act as so amended.

Sec. 9.
(Roads in certain cases may be opened without preliminary notice.)

(d) by omitting section nine;

Subst. sec. 10.

(e) by omitting section ten and by inserting in lieu thereof the following section :—

Compensation, &c., to be provided for road opening.

10. (1) This section shall not apply to or in respect of the opening of a road on the application of a council or such other person as the Minister may either generally or in a particular case direct.

(2)

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(2) Application for the opening of a road No. 27, 1968 shall be made to the Under Secretary for Lands in a form approved by the Minister and shall be accompanied by the prescribed deposit and an undertaking in accordance with subsection three of this section.

(3) The undertaking referred to in subsection two of this section shall be an undertaking to pay to the Under Secretary for Lands when called upon to do so such amounts as may from time to time be specified by him as amounts required to be paid towards the cost of opening the road including compensation interest and all other expenses that are in the opinion of the Under Secretary for Lands properly attributable thereto.

(4) An amount specified by the Under Secretary for Lands under subsection three of this section shall for the purposes of section two hundred and fifty-one of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts be a sum due to the Crown payable by the person giving the undertaking.

(f) by omitting section eleven and by inserting in lieu thereof the following sections :— Subst. sec. 11 and new sec. 11A.

11. (1) In this section—

“holder” in the case of a travelling stock reserve means the pastures protection board having the control thereof and in the case of a reserve under the control of trustees means those trustees and Withdrawal of land subject to certain leases, &c.

“holding” means land that is—

(a) held under a lease under the Crown Lands Acts other than a lease in perpetuity or an annual lease or

(b)

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- (b) held or occupied under any lease license right or permit under the Acts relating to mining or any regulations thereunder or
- (c) a travelling stock reserve that has been placed under the control of a pastures protection board or
- (d) a reserve that has been placed under the control of trustees and notified under section twenty-eight of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts or section one hundred and one of the Crown Lands Act of 1884.

(2) Where the Minister proposes to consider the opening of a road through a holding he shall cause notice of the proposal to be posted to the holder thereof if his name and address are available to the Minister calling upon him to set forth in writing and forward to the officer specified in the notice for the purpose and within a period so specified any objection that may appear to the holder to exist to the opening of the road.

(3) Subject to this section and section ten of this Act the Minister may by notification in the Gazette declare that the land referred to therein has been withdrawn and thereupon the land so referred to shall be deemed to have been withdrawn from any holding of which it forms part.

(4) The power conferred by subsection three of this section shall be exercised only in respect of land that is within a holding and—

- (a) is required for a road or
- (b) adjoins land that is required for a road.

(5)

Public Roads (Amendment).

(5) The power conferred by subsection No. 27, 1968 three of this section shall not be exercised unless—

- (a) the requirements of subsection two of this section have been complied with and
- (b) a period of not less than one month has expired since that compliance and
- (c) the Minister has considered all objections duly forwarded within the period specified in the notice referred to in subsection two of this section or such further period as the Minister may allow and
- (d) in the case of land referred to in paragraph (b) of subsection four of this section—
 - (i) the land would by reason of severance be in the opinion of the Minister of little or no value to the holder thereof or in the case of land referred to in paragraph (c) or (d) of the definition of “holding” in subsection one of this section of little or no value for the purposes for which it was reserved and
 - (ii) where the land is not land referred to in paragraph (c) or (d) of the definition of “holding” in subsection one of this section—the owner consents.

11A. Notwithstanding anything contained in any other Act land resumed or withdrawn under this Act shall remain and shall be deemed always to have remained vested in Her Majesty until it is or was divested from Her Majesty in consequence of—

- (a) its dedication as a public road or
 - (b) its disposal
- in accordance with the provisions of this Act.

(g)

Divesting of resumed or withdrawn land.

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No. 27, 1968
 Sec. 12.
 (Interpre-
 tation.)

(g) (i) by omitting from subsection one of section twelve the words "include roads which the Minister considers to be unnecessary" and by inserting in lieu thereof the following words :—

include—

- (a) a road that the Minister considers to have been rendered unnecessary by a resumption or withdrawal under this Act and
- (b) land withdrawn under subsection nine of this section and
- (c) land adjoining a road being land resumed or withdrawn under this Act

either before or after the commencement of the Public Roads (Amendment) Act, 1968;

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsections :—

(2) Compensation for the land resumed shall be made in money or if the owner consents and the Minister approves—

(a) in land or

(b) partly in money and partly in land

and shall where the resumption was effected after the commencement of the Public Roads (Amendment) Act, 1968, for the opening of a road on the application of a council be made by that council and in any other case by the Crown.

(2A) Where land is granted or added under subsection three of this section by way of compensation for land resumed after the commencement of the Public Roads (Amendment) Act,

(Compen-
 sation.)

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Act, 1968, for the opening of a road on the application of a council that compensation shall be deemed to have been made by that council. No. 27, 1968

(2B) No suit or action shall be maintainable against the Crown or the Minister for compensation or damages consequent upon a resumption after the commencement of the Public Roads (Amendment) Act, 1968, for the opening of a road on the application of a council.

(iii) by omitting from subsection three of the same section the words "For the purpose of making compensation as aforesaid the Minister may" and by inserting in lieu thereof the words "To enable compensation to be made in land or partly in land the Minister may"; (Powers of Minister.)

(iv) by omitting paragraph (b) of the same subsection and by inserting in lieu thereof the following paragraph :—

(b) where the resumption is made from an incomplete purchase homestead selection or lease in perpetuity—

(i) direct that adjoining Crown land available and referred to in the direction be recorded within the Department of Lands as having been added to the incomplete purchase homestead selection or lease (as the case may be) to be held as part thereof and land so recorded as having been added shall thereupon be held accordingly or

(ii)

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(ii) in the case of a resumption from an incomplete purchase—grant Crown land in fee simple.

(Land added to be equal to land resumed.)

- (v) by omitting from subsection four of the same section the words “conditional purchase or conditional lease” and by inserting in lieu thereof the words “lease in perpetuity”;
- (vi) by inserting in the same subsection after the words “incomplete purchase” the words “homestead selection”;
- (vii) by omitting from the same subsection the word “conditional” where thirdly occurring;
- (viii) by omitting from subsection five of the same section the words “or conditional lease”;
- (ix) by inserting next after subsection six of the same section the following new subsection :—

(Difference in value to be paid.)

(6A) In this subsection—

“holding” means an incomplete purchase homestead selection or lease in perpetuity and

“prescribed assessment” means the amount of the difference between the prescribed value of land resumed from a holding and—

- (a) where the holding is an incomplete purchase—that part of the price or value of the holding attributable to the land resumed or
- (b) where the holding is subject to a rent—forty times the annual rent attributable to the land resumed or

(c)

Public Roads (Amendment).

(c) in any other case—that part of No. 27, 1968
 the capital value of the
 holding attributable to the
 land resumed and

“prescribed determination” means the amount of the price value capital value rent or capital value and rent for the purposes of the Crown Lands Acts and includes in the case of a settlement purchase lease or a group purchase lease the amount applicable thereto under section three of the Closer Settlement Amendment (Conversion) Act, 1943, as amended by subsequent Acts and

“prescribed proportion” means the proportion that the area of land resumed from a holding bore to the area of the holding before the resumption and

“prescribed value” means the present day value on a freehold basis and

“rent” means the rent of a holding determined for the purposes of the Crown Lands Acts otherwise than as a percentage of the capital value of the holding.

Where land is resumed from a holding and—

(a) compensation is made only in money—

(i) that compensation shall be the prescribed assessment for the holding and

(ii) a prescribed determination applicable to the holding shall as from the day of the resumption be reduced by the prescribed proportion for the holding or

(b)

Public Roads (Amendment).

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- (b) compensation is made partly in money and partly in land—
- (i) the compensation made in money shall be the prescribed assessment for the holding reduced by the prescribed value of the land added and
 - (ii) a prescribed determination applicable to the holding shall as from the day of the resumption be reduced by the prescribed proportion for the holding or
- (c) compensation is made only in land—the prescribed determination applicable to the holding shall as from the day of the resumption be increased—
- (i) where it is a price value or capital value—by the amount of the difference between the prescribed value of the land resumed and the prescribed value of the land added or
 - (ii) where it is a capital value and a rent—by increasing the rent in the same proportion as the capital value is increased under subparagraph (i) of this paragraph or
 - (iii) where it is a rent only—by increasing that rent by two and one-half per centum of the amount of the difference referred to in subparagraph (i) of this paragraph.

(x)

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- (x) by omitting from subsection nine of the same No. 27, 1968 section the words "Governor may by (Withdrawal of lands.) proclamation" and by inserting in lieu thereof the words "Minister may by notification";
- (xi) by omitting from the same subsection the words "conditional lease" and by inserting in lieu thereof the words "lease in perpetuity";
- (xii) by inserting in the same subsection after the word "lessee" where firstly occurring the words "(other than the lessee under an annual lease)";
- (xiii) by inserting in subsection ten of the same (Receipt to be a discharge.) section after the word "Crown" the words "or as the case may be to a council";
- (h) (i) by omitting subsection one of section thirteen Sec. 13. and by inserting in lieu thereof the following (Mode of assessing compensation.) subsections :—
- (1) Subject to subsection (1A) of this section any matter required to be determined for the purposes of subsection two of section twelve of this Act and the amount of any damage sustained by reason of severance by a road shall be determined by agreement between the person entitled to compensation and—
- (a) where the road was opened on the application of a council—that council or
- (b) where the road was opened otherwise than on the application of a council—the Minister.

(1A)

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(1A) Where in respect of any matter required by subsection one of this section to be agreed upon there has been a failure to reach agreement the matter shall be determined by the local land board and the determination of the local land board or on appeal therefrom of the Land and Valuation Court shall be deemed to be a matter agreed upon under subsection one of this section.

(ii) by omitting from subsection two of the same section the word "road" where secondly occurring and by inserting in lieu thereof the words "Crown lands";

(iii) by omitting from paragraph (b) of subsection three of the same section the words "or conditional lease" and by inserting in lieu thereof the words "homestead selection or lease in perpetuity under the Crown Lands Acts";

Sec. 14.
(Compensation in the case of lands withdrawn under s. 11.)

(i) (i) by omitting from section fourteen the word "selection" and by inserting in lieu thereof the words "travelling stock reserve";

(ii) by omitting from the same section the words "the rent or fee payable to the Crown shall be reduced in proportion to the area withdrawn" and by inserting in lieu thereof the words "any rent or fee payable to the Crown or any capital value shall be adjusted having regard to the area of the land withdrawn and to the area of any land added under this section";

(iii) by inserting at the end of the same section the following new subsections :—

(2) The Minister may with the consent of a lessee from whom land has been withdrawn under section eleven of this Act direct that Crown land within the meaning of section twelve of this Act be recorded within the Department of Lands as having been added

to

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to the lease from which the land was so with- No. 27, 1968
 drawn to be held as part thereof and land so
 recorded as having been added shall subject
 to this section be held accordingly.

(3) In the case of lands withdrawn from a travelling stock reserve the compensation shall be paid to the pastures protection board having control thereof.

(4) Compensation in respect of land withdrawn after the commencement of the Public Roads (Amendment) Act, 1968, for the opening of a road on the application of a council shall be made by that council and the provisions of subsection (2B) of section twelve of this Act shall mutatis mutandis apply in respect of a withdrawal as it does in respect of a resumption.

(j) by inserting next after section fifteen the following New sec.
 new section :— 15A.

15A. (1) Subject to subsection two of this Interest
 section the provisions of section one hundred and and costs.
 twenty-six of the Public Works Act, 1912, as amended by subsequent Acts shall apply mutatis mutandis to and in respect of monetary compensation payable under this Act in consequence of the resumption or withdrawal of land.

(2) Where in the opinion of the person required to make monetary compensation a period of undue delay in the payment thereof has been caused by the person entitled thereto subsection one of this section shall not apply to or in respect of that compensation during that period.

(3) Subject to a claim therefor being lodged within six months after publication in the Gazette of the notification of resumption or withdrawal in respect of which the claim is made

or

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or such further period as the person required to make compensation may allow costs connected with the making of that compensation shall be payable by that person not exceeding those that would be payable if the land resumed or withdrawn had been appropriated or resumed under Division 1 of Part V of the Public Works Act, 1912, as amended by subsequent Acts.

Subst.
sec. 16.

(k) by omitting section sixteen and by inserting in lieu thereof the following section :—

Grant for
breaking
of fenced
enclosure.

16. (1) If any fenced enclosure of land is broken by a road the Minister or (in the case of a road opened on the application of a council) the council shall on a claim therefor being made by the owner or holder of the land resumed or withdrawn for the road within six months after the date of notification in the Gazette of the resumption or withdrawal or within such further time as the Minister or as the case may be the council may allow grant such a sum of money towards the cost of fencing the road as subject to subsection two of this section may be agreed upon between the Minister or the council and the owner or the holder (as the case may require) or in default of any such agreement as may be determined by the local land board but except in special circumstances such a grant shall not be made in any case where the road is in lieu of an unfenced road within the same enclosure.

(2) A grant under subsection one of this section shall not exceed the sum that would be the value of a fence separating the whole of the road from the enclosure being a fence of the same type and in the same condition as the major portion of the fence that forms the enclosure so broken.

(3) A grant under this section shall not be payable in respect of a withdrawal from a lease the term of which will expire less than ten years after the date of notification in the Gazette of withdrawal.

(1)

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- (1) by omitting section seventeen and by inserting in lieu thereof the following section :—

Subst.
sec. 17.

17. (1) Subject to this section any land resumed or withdrawn under this Act (other than land resumed or withdrawn for a road) whether before or after the commencement of the Public Roads (Amendment) Act, 1968, that is not required for the purpose of making compensation may—

Surplus
lands how
disposed of.

- (a) be dealt with under the provisions of the Crown Lands Acts or
- (b) be sold by public auction or by private contract as seems to the Minister expedient or
- (c) by direction of the Minister and with the consent of the owner be recorded within the Department of Lands as having been added to an adjoining incomplete purchase homestead selection or lease (other than an annual lease) under the Crown Lands Acts to be held as part thereof and land so recorded as having been added shall thereupon be held accordingly notwithstanding in the case of a lease that the maximum area prescribed therefor by the Crown Lands Acts is thereby exceeded or
- (d) by direction of the Minister be recorded in the Department of Lands as having been added to an adjoining annual lease license permit or permissive occupancy under the Crown Lands Acts to be held as part thereof and land so recorded as having been added shall thereupon be held accordingly on such terms and conditions and at such additional annual rent as the Minister approves or

(e)

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(e) be leased under the provisions of section six of the Irrigation Act, 1912, as amended by subsequent Acts.

(2) The price value or rent or the capital value and rent of land which it is proposed to add to any adjoining land under paragraph (c) of subsection one of this section and of any improvements thereon shall be as agreed upon between the Minister and the person to whose land it is proposed to be added or failing agreement as determined by the local land board.

(3) The rent to be determined by the local land board under subsection two of this section in the case of an addition to a homestead selection or lease shall be the fair annual rent for such added land and any improvements thereon notwithstanding any requirement in any Act that the rent shall be calculated as a percentage of the capital value.

Sec. 18.
(Lands reserved as roads may be declared public roads.)

- (m) (i) by omitting from subsection one of section eighteen the word "Governor" and by inserting in lieu thereof the word "Minister";
- (ii) by inserting in the same subsection after the word "same" the words "shall be a public road and";
- (iii) by inserting in the same subsection after the word "any" where secondly occurring the word "annual";
- (iv) by omitting from the same subsection the words "or license from the Crown" and by inserting in lieu thereof the words "license right permit or permissive occupancy under the Crown Lands Acts";

(n)

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- (n) (i) by omitting subsection one of section nineteen and by inserting in lieu thereof the following subsections :—

No. 27, 1968

Sec. 19.

(Notice of intention to close unnecessary road.)

(1) Where the Minister proposes to consider the closing of a road or part thereof he shall cause to be published in the Gazette a notice of the proposal calling on all persons interested to set forth in writing and forward to the officer specified in the notice for the purpose and within a period so specified any objections that may appear to them to exist to the closing of the road.

(1A) Where a notice is published under subsection one of this section the Minister shall—

- (a) cause to be published in a local newspaper an advertisement drawing attention to the notice and
- (b) cause a like notice to be posted to the owner or holder of any land having a frontage to the road or part thereof to be closed if his name and address are available to the Minister.

- (ii) by omitting subsection two of the same section;

- (o) by omitting section twenty and by inserting in lieu thereof the following sections :—

Subst. sec. 20 and new sec. 20A.

Closing of unnecessary road.

20. (1) The Minister may by notification in the Gazette published not earlier than twenty-one days after publication of the advertisement referred to in subsection (1A) of section nineteen of this Act and after considering all objections duly forwarded within the period specified in the notice referred to in subsection one of that section or within such further period as the Minister may allow close the road referred to in the notice or part thereof.

(2)

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(2) Upon publication in the Gazette of a notification referred to in subsection one of this section the land comprised within the road or part thereof thereby closed shall be freed and discharged from any rights of the public or any person thereto as a highway and—

- (a) in the case of a road granted at Quarter Sessions as an access road before the commencement of the Public Roads (Amendment) Act, 1968, shall vest in and be held by the owners of the adjoining land or
- (b) in any other case shall become Crown land and may—
 - (i) be dedicated under section twenty-four of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts or
 - (ii) be reserved or added to a reserve under section twenty-eight of that Act as so amended or
 - (iii) be reserved or dedicated under section thirteen of the Closer Settlement (Amendment) Act, 1914, or
 - (iv) be dealt with under the provisions of the Crown Lands Acts or
 - (v) be dealt with under subsection three of this section.

(3) A closed road not disposed of under subparagraph (i) (ii) (iii) or (iv) of paragraph (b) of subsection two of this section or section twelve or fourteen of this Act may subject to subsection four of this section and section 20A of this Act—

- (a) be granted to the owners of adjoining lands upon payment of the value thereof or

(b)

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- (b) by direction of the Minister and with the consent of the owner be recorded within the Department of Lands as having been added to an incomplete purchase homestead selection or lease (other than an annual lease) under the Crown Lands Acts through which the road passed or which it adjoined to be held as part thereof and land so recorded as having been added shall thereupon be held accordingly notwithstanding in the case of a lease that the maximum area prescribed therefor by the Crown Lands Acts is thereby exceeded or
- (c) be granted in exchange for—
- (i) land taken or resumed under any Act other than this Act or the Public Roads Act of 1897 authorising the resumption or acquisition of land for public purposes or
 - (ii) land contracted by instrument in writing to be conveyed transferred or surrendered to Her Majesty or to be conveyed or transferred to a Constructing Authority on behalf of Her Majesty or to a council in exchange for Crown land or any unnecessary road or
- (d) be recorded as having been added and thereupon be held as provided by paragraph (b) of this subsection in exchange for land referred to in paragraph (c) of this subsection or
- (e) by direction of the Minister be recorded within the Department of Lands as having been added to an annual lease license permit or permissive occupancy under the Crown Lands Acts upon such terms and conditions

and

Public Roads (Amendment).

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and at such additional annual rent as the Minister may approve to be held as part thereof and land so recorded as having been added shall thereupon be held accordingly.

(4) Where land is to be granted or added under paragraph (a) or (b) of subsection three of this section it shall be so granted or added in fair proportions or in accordance with any agreement made by the owners or holders of the adjoining lands.

(5) Except in the case of a road that had been opened or made under the Act fourth William the Fourth number eleven and except in the case of a road granted at Quarter Sessions a road closed before the commencement of the Public Roads (Amendment) Act, 1968, shall for the purposes of this Act be deemed to have been closed under subsection one of this section immediately after that commencement.

Determina-
tion of
value, &c.,
of closed
road.

20A. (1) Where land is to be granted or added under section twenty of this Act (paragraph (e) of subsection three excepted) it shall subject to this section be so granted or added at a value or price or subject to a rent or a capital value and rent (as the case may require) determined in the case both of land and improvements by agreement between the Minister and the proposed grantee or person to whose holding the land is to be added or by the local land board where no such agreement is reached.

(2) In the case of an addition under section twenty of this Act to a homestead selection or lease the rent for the added land and any improvements thereon shall be the fair annual rent notwithstanding any requirement in any Act that the rent shall be calculated as a percentage of the capital value.

(3)

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(3) If the owner or holder of land adjoining a road closed or proposed to be closed under this Act does not within one month from the date of posting to him of a notice specifying that he may lodge an application for the purchase or addition of the land in the road or part thereof lodge such an application or where such an application has been lodged does not within the time specified in a notice posted to him comply with a condition so specified being a condition precedent to the granting of the application the land may be dealt with under section twenty of this Act as if subsection four of that section had not been enacted or if the Minister so directs may be sold by auction or private contract. No. 27, 1968

- (p) (i) by omitting from section twenty-two the words "or conditional lease" where firstly occurring and by inserting in lieu thereof the words "homestead selection or lease (other than an annual lease) under the Crown Lands Acts by notification in the Gazette"; Sec. 22.
(Alteration
of roads in
incomplete
purchases.)
- (ii) by omitting from the same section the words "or conditional lease" where secondly occurring and by inserting in lieu thereof the words "homestead selection or lease";
- (q) by inserting in section twenty-three after the word "re-marked" the words "in substantially the same position"; Sec. 23.
(Minister
may
re-mark.)
- (r) by omitting section twenty-four and by inserting in lieu thereof the following section :— Subst.
sec. 24.
24. Where a road is re-marked under section twenty-three of this Act upon the application of any person the cost of the re-marking shall be borne by the applicant. Cost of
re-marking.
- (s) (i) by omitting from subsection one of section twenty-five the words "and in some local newspaper"; Sec. 25.
(Notice of
re-marking
of road
to be pub-
lished.)
- (ii)

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- (ii) by inserting in the same subsection after the word "road" where secondly occurring the words "and an advertisement drawing attention to the notice may be published in some local newspaper";
- (iii) by inserting in paragraph (a) of subsection two of the same section after the word "Sydney" the word "and";
- (iv) by omitting paragraph (b) of the same subsection;
- (v) by omitting from paragraph (c) of the same subsection the words "Minister within one month of the date of such notice" and by inserting in lieu thereof the words "officer specified in the notice for the purpose and within a time so specified";
- (vi) by omitting from subsection three of the same section the words "may if the Minister thinks fit" and by inserting in lieu thereof the word "shall";
- (vii) by omitting from the same subsection the words "Land Agent of the district in which the road is situated" and by inserting in lieu thereof the words "Crown Land Agent";
- (viii) by omitting from subsection four of the same section the word "After" and by inserting in lieu thereof the words "Subject to compliance with the provisions of subsections one two and three of this section and after";
- (ix) by omitting from the same subsection the word "Governor" and by inserting in lieu thereof the word "Minister";
- (x) by omitting from the same subsection the words "the month" and by inserting in lieu thereof the words "twenty-one days after publication of the advertisement referred to in subsection one of this section";

(xi)

Public Roads (Amendment).

(xi) by inserting at the end of the same section No. 27, 1968 the following new subsection :—

(5) For the purposes of this Act a plan approved by the Governor before the commencement of the Public Roads (Amendment) Act, 1968, under subsection four of this section shall be deemed to be a plan approved by the Minister under that subsection immediately after that commencement.

(t) by omitting section twenty-six;

Sec. 26.
(Proprietor desiring a road of access may apply to Quarter Sessions.)

(u) by omitting section twenty-seven and by inserting in lieu thereof the following section :—

Subst.
sec. 27.

27. (1) Subject to this section the Minister—

Definition of boundaries and realignment.

(a) upon the written application of a council and upon its written undertaking to pay when called upon to do so the whole of the cost or

(b) where he considers the action would be in the public interest

may cause surveys to be made and a plan prepared for the purposes of this section.

(2) A plan prepared for the purposes of this section may show—

(a) the setting out and definition of—

(i) the carriage-way and the footways of a public road or part thereof and

(ii) the boundary between a public road or part thereof and any land abutting thereon

or either of them or

(b)

Public Roads (Amendment).

No. 27, 1968

- (b) a re-marking or alteration of—
- (i) the width and position of the carriage-way and the footways of any public road or part thereof that has previously been aligned under this or any other Act and
 - (ii) the boundary between such a public road or part thereof and land abutting thereon
- or either of them or
- (c) a realignment for the widening under section two hundred and sixty-two of the Local Government Act, 1919, as amended by subsequent Acts of a public road or part thereof vested in or under the control and management of a council.

(3) Subject to this section if the Minister approves of a plan prepared for the purposes of this section he may by notification in the Gazette so declare and thereupon—

- (a) any setting out and definition of a carriage-way or footway or of the boundary between a public road or part thereof and any land abutting thereon or
- (b) any re-marking or alteration of the width or position of a carriage-way or footway or of the boundary between a public road or part thereof and any land abutting thereon or
- (c) any realignment

shown on the plan so approved shall for the purposes of any enactment relating to the alignment of streets public roads or public places be deemed to have been carried out or caused by the council as provided by Part IX of the Local Government Act, 1919, as amended by subsequent Acts and the
plan

Public Roads (Amendment).

plan shall for all purposes until superseded by another plan approved under this section be conclusive evidence of the limits and boundaries of the public road or in the case of a plan showing a realignment conclusive evidence of that realignment. No. 27, 1968

(4) For the purposes of this Act a plan in respect of which the approval of the Governor was published in the Gazette before the commencement of the Public Roads (Amendment) Act, 1968, under section twenty-seven or twenty-eight of this Act as enacted at the time of the publication shall be deemed to be a plan in respect of which the approval of the Minister was immediately after that commencement notified under subsection three of this section.

(5) The power conferred by subsection three of this section shall not be exercised unless—

(a) a notice giving such details of the action proposed as the Minister thinks fit has been published in the Gazette calling on all persons interested to set forth in writing and forward to the officer specified in the notice for the purpose and within a period so specified any objection to the proposed action that appears to them to exist and

(b) after publication of the notice—

(i) an advertisement is published in some local newspaper drawing attention to the notice and

(ii) notice in writing to the effect of the notice so published has been posted to the owner or holder of any land having frontage to the public road or part thereof to which the proposed action relates if his name and address are available to the Minister and

(c)

Public Roads (Amendment).

No. 27, 1968

- (c) a period of not less than twenty-one days has expired since publication of the advertisement referred to in paragraph (b) of this subsection and
- (d) the Minister has considered all objections duly forwarded within the period specified in the notice referred to in paragraph (a) of this subsection or within such further period as the Minister may allow and
- (e) in the case of a plan referred to in paragraph (c) of subsection two of this section—the road has first been aligned if in the opinion of the Surveyor-General it is not sufficiently measured.

Sec. 28.
(Minister on application of council may remark streets.)

- (v) by omitting section twenty-eight;

Sec. 29.
(Protection to Crown.)

- (w) by inserting in section twenty-nine after the word "Crown" the words "or the Minister";

Sec. 30.
(Statute law revision.)

- (x) by omitting from the heading to section thirty the words "*Chief Surveyor*" and by inserting in lieu thereof the words "*Surveyor-General*";

Sec. 34.
(Matters referred for decision.)

- (y) (i) by omitting subsection one of section thirty-four and by inserting in lieu thereof the following subsection :—

(1) In so far as by this Act any matter or thing is required or permitted to be done by a local land board this Act shall be read and construed with and as if it formed part of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts except to the extent that by that Act as so amended an

appeal

Public Roads (Amendment).

appeal would lie to the Land and Valuation Court from any matter arising out of a report made under subsection two of this section. No. 27, 1968

- (ii) by omitting from subsection two of the same section the words "in the prescribed manner";
 - (iii) by inserting in the same subsection after the word "road" where secondly occurring the words "or with the exercise or proposed exercise of any other power conferred by this Act in relation to a road";
- (z) (i) by omitting from subsection two of section thirty-five the word "Governor" and by inserting in lieu thereof the word "Minister";
- (ii) by inserting in the same subsection after the word "aforesaid" the words "(whether published before or after the commencement of the Public Roads (Amendment) Act, 1968)";
- (iii) by inserting at the end of the same section the following new subsections :—

(3) Where the Minister pursuant to the powers conferred upon him by this Act declares land to be resumed or withdrawn or to be a public road he may by the notification by which the declaration is made specify the depth of land below the surface thereof in respect of which the declaration is to take effect and the resumption withdrawal or declaration as a public road shall subject to the provisions of any other Act thereupon have effect only to the depth so specified in respect thereof.

(4) Where by this Act the Minister is empowered to do any thing by notification in the Gazette he may by the same notification do any other thing he is empowered to do by such a notification subject to compliance with the requirements of this Act for doing each of those things by a separate notification.

(aa)

Sec. 35.
(Notifica-
tion under
this Act
or section
42 of
Crown
Lands Act
of 1889
may be
altered.)

Public Roads (Amendment).

No. 27, 1968 (aa) by inserting next after the same section the
 New sec. following new heading and section :—
 35A.

Notices.

Notices to
 be sent by
 registered
 post
 or certified
 mail.

35A. Any notice posted as required or permitted
 by this Act shall be sent by registered post or
 certified mail.

Amendment
 of Act No.
 41, 1919.
 Sec. 262.
 (Realign-
 ment.)

3. The Local Government Act, 1919, as amended by
 subsequent Acts is amended by omitting from subsection one
 of section two hundred and sixty-two the word "aligned".

Cessation of
 operation of
 Act No. 12,
 1923, s. 2.
 (Meaning of
 "descrip-
 tion" in s. 7
 of the
 Principal
 Act.)

4. On and after the commencement of this Act, section
 two of the Public Roads (Amendment) Act, 1923, shall have
 no force or effect.

Validation
 of certain
 matters.

5. Notwithstanding anything contained in the Principal
 Act the powers thereby conferred upon the Governor before
 the commencement of this Act shall be deemed always to
 have included—

- (a) power to dedicate a road under section eight nine or
 eleven of the Principal Act to a specified depth
 below the surface thereof and
- (b) power to withdraw under section eleven of the
 Principal Act Crown land within the meaning of
 that Act that if it had not been Crown land could
 have been resumed under subsection five of section
 eight of that Act and
- (c) power to declare a road to be a public road to a
 specified depth below the surface thereof.

Public Roads (Amendment).

6. (1) Where immediately before the commencement of this Act effect had not been given to a proposal by the Minister to open a road (whether or not notice of the proposal had been given before that commencement)—

- No. 27, 1968
Transitional
provisions.
- (a) compliance before or after (or partly before and partly after) that commencement with the conditions imposed by the Principal Act upon the exercise of the power conferred by that Act to resume land in connection with that proposal shall be deemed to be compliance with the conditions imposed by the Principal Act as amended by this Act upon the exercise of the power to resume that land conferred by the Principal Act as so amended and
 - (b) land that immediately before that commencement could have been withdrawn in connection with the proposal under section eleven of the Principal Act may if it is comprised within a homestead selection or lease in perpetuity—
 - (i) where it is not land referred to in subsection three of section eight of the Principal Act as amended by this Act—be resumed as if it were land referred to in paragraph (a) of that subsection or
 - (ii) where it is land referred to in paragraph (a) of subsection three of that section—be resumed under subsection two of that section

notwithstanding non-compliance with subparagraph (i) (ii) or (iii) of paragraph (a) of subsection four of that section and

- (c) the power of withdrawal conferred by section eleven of the Principal Act as amended by this Act may be exercised in connection with the proposal notwithstanding non-compliance with paragraph (a) (b) or (c) of subsection five of that section.

(2)

Public Roads (Amendment).

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(2) A notice or objection given or made before the commencement of this Act shall be deemed to be a notice or objection given or made under the Principal Act as amended by this Act if the giving of the notice or the making of the objection would have been required or permitted by the Principal Act as so amended had it been in force when the notice was given or the objection made and for the purposes of this subsection a copy published in a newspaper of a notice published in the Gazette shall be deemed to be an advertisement drawing attention to the notice in the Gazette.

(3) The amendment made by paragraph (k) of section two of this Act shall not apply to or in respect of a road for which resumption or withdrawal was effected before the commencement of this Act and the provisions of section sixteen of the Principal Act as enacted immediately before that commencement shall apply thereto.

SURVEYORS