

# Roads Act 1993 No 33

[1993-33]



New South Wales

## Status Information

### Currency of version

Historical version for 1 June 2016 to 5 January 2017 (accessed 26 March 2025 at 21:56)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Environmental Planning and Assessment Amendment Act 2008 No 36](#) (not commenced)
  - [Water Management Amendment Act 2010 No 133](#) (not commenced)
  - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2016 No 55](#) (not commenced — to commence on 6.1.2017)

### Authorisation

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File last modified 25 October 2016

# Roads Act 1993 No 33



New South Wales

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# Roads Act 1993 No 33



New South Wales

An Act to make provision with respect to the roads of New South Wales; to repeal the *State Roads Act 1986*, the *Crown and Other Roads Act 1990* and certain other enactments; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Roads Act 1993*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are:

- (a) to set out the rights of members of the public to pass along public roads, and
- (b) to set out the rights of persons who own land adjoining a public road to have access to the public road, and
- (c) to establish the procedures for the opening and closing of a public road, and
- (d) to provide for the classification of roads, and
- (e) to provide for the declaration of RMS and other public authorities as roads authorities for both classified and unclassified roads, and
- (f) to confer certain functions (in particular, the function of carrying out road work) on RMS and on other roads authorities, and
- (g) to provide for the distribution of the functions conferred by this Act between RMS and other roads authorities, and
- (h) to regulate the carrying out of various activities on public roads.

## **4 Definitions**

Expressions used in this Act which are defined in the dictionary at the end of this Act have the meanings set out in the dictionary.

### **4A Notes in text**

Notes in the text of this Act do not form part of this Act.

## **5 Right of passage along public road by members of the public**

- (1) A member of the public is entitled, as of right, to pass along a public road (whether on foot, in a vehicle or otherwise) and to drive stock or other animals along the public road.
- (1A) The right conferred by this section extends to the right of passage of members of the public in a light rail or other railway vehicle.
- (2) The right conferred by this section does not derogate from any right of passage that is conferred by the common law, but those rights are subject to such restrictions as are imposed by or under this or any other Act or law.
- (3) For example, those rights are subject to such restrictions as are imposed:
  - (a) by or under the road transport legislation within the meaning of the *Road Transport Act 2013*, or
  - (b) by or under section 72 of the *Crown Lands Act 1989* (Cultivation of enclosed roads).

## **6 Right of access to public road by owners of adjoining land**

- (1) The owner of land adjoining a public road is entitled, as of right, to access (whether on foot, in a vehicle or otherwise) across the boundary between the land and the public road.
- (2) The right conferred by this section does not derogate from any right of access that is conferred by the common law, but those rights are subject to such restrictions as are imposed by or under this or any other Act or law.

## **7 Roads authorities**

- (1) RMS is the roads authority for all freeways.
- (2) The Minister is the roads authority for all Crown roads.
- (3) The regulations may declare that a specified public authority is the roads authority for a specified public road, or for all public roads within a specified area, other than any freeway or Crown road.



- (4) The council of a local government area is the roads authority for all public roads within the area, other than:
  - (a) any freeway or Crown road, and
  - (b) any public road for which some other public authority is declared by the regulations to be the roads authority.
- (5) A roads authority has such functions as are conferred on it by or under this or any other Act or law.

## **Part 2 Opening of public roads**

### **Division 1 Methods of opening public roads**

#### **8 Opening of public roads**

- (1) A public road may not be opened otherwise than in accordance with the provisions of this or some other Act.
- (2) This section does not bind the Crown.

#### **9 Public road created by registration of plan**

- (1) A person may open a public road by causing a plan of subdivision or other plan that bears a statement of intention to dedicate specified land as a public road (including a temporary public road) to be registered in the office of the Registrar-General.
- (2) On registration of the plan, the land is dedicated as a public road.
- (3) (Repealed)

#### **10 Land held by RMS or by councils**

- (1) RMS or a council may, by notice published in the Gazette, dedicate any land held by it (including land acquired by it under Division 1 of Part 12) as a public road.
- (2) On the publication of the notice, the land is dedicated as a public road.

#### **11 Land acquired by Minister**

- (1) The Minister may, by notice published in the Gazette, dedicate any land acquired by the Minister under Division 1 or 2 of Part 12 as a public road.
- (2) The notice must declare whether or not the road is to be a Crown road.
- (3) On the publication of the notice, the land is dedicated as a public road and (if the notice declares it to be a Crown road) becomes a Crown road.

## **12 Minister may open road over unoccupied Crown land**

- (1) The Minister may, by notice published in the Gazette, dedicate any unoccupied Crown land as a public road.
- (2) The notice must declare whether or not the road is to be a Crown road.
- (3) On the publication of the notice, the land is dedicated as a public road and (if the notice declares it to be a Crown road) becomes a Crown road.

## **13 Governor may proclaim certain public land to be public road**

- (1) The Governor may, by proclamation, dedicate as a public road any land that is owned by a public authority and is used by the public as a road.
- (2) Such a proclamation may not be made except on the recommendation of the Minister responsible for the authority.
- (3) On the publication of the proclamation, the land is dedicated as a public road.

## **14 Acquired land becomes public road without further dedication**

Land that is acquired under Division 3 of Part 12 for the purpose of widening an existing public road becomes part of the public road without the need for any separate dedication.

## **15 (Repealed)**

# **Division 2 Resolution of doubts concerning status of certain roads**

## **16 Council may dedicate certain land as a public road**

- (1) This section applies to land that is set aside for the purposes of a road left in a subdivision of land effected before 1 January 1907 (the date of commencement of the [Local Government Act 1906](#)) or in a plan of subdivision that was registered by the Registrar-General before 1 January 1920 (the date of commencement of the [Local Government Act 1919](#)).
- (2) The council of the local government area within which such land is situated may, by notice published in the Gazette, dedicate the land as a public road.
- (3) On the publication of the notice in the Gazette:
  - (a) the land described in the declaration becomes free of all trusts, restrictions, dedications, reservations, obligations and interests, and
  - (b) the land is dedicated as a public road.
- (4) No compensation is payable to any person with respect to any loss or damage arising from the operation of this section.

- (5) Land may not be dedicated as a public road under this section if the Land and Environment Court has made a declaration under section 17 to the effect that the land may not be so dedicated or if an application for such a declaration is pending before that Court.

### **17 Application to Land and Environment Court against proposed dedication**

- (1) Before dedicating land as a public road under section 16, the council must cause at least 28 days' notice of its intention to do so to be served on the owner of the land.
- (2) During that period of 28 days, the owner of the land may, in accordance with rules of court, apply to the Land and Environment Court for a declaration that the land should not be dedicated as a public road.
- (3) The Land and Environment Court may make such decision as it thinks fit with respect to the application.

## **Part 3 Road boundaries and road levels**

### **Division 1 Identification of road boundaries**

#### **18 Surveys may be carried out to identify boundaries of public road**

- (1) A roads authority may cause surveys to be carried out to identify the boundaries of a public road if those boundaries have not previously been properly identified or if the survey marks used to identify those boundaries cannot be located or ascertained.
- (2) If the surveys are conducted on the application of a person other than a public authority, the applicant is liable to pay to the roads authority the costs incurred in carrying out the surveys.

#### **19 Public notice to be given of proposed boundaries**

- (1) On completing the surveys, the roads authority must cause notice of the proposed boundaries:
  - (a) to be published in a local newspaper, and
  - (b) to be served on the owner of each parcel of land affected by the proposed boundaries.
- (2) The notice:
  - (a) must identify the survey plan that indicates the proposed boundaries of the road concerned, and
  - (b) must indicate the place at which, and the times during which, the survey plan is available for inspection by members of the public, and

- (c) must state that any person is entitled to make submissions to the roads authority with respect to the proposed boundaries indicated by the survey plan, and
  - (d) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.
- (3) The roads authority must ensure that copies of the survey plan are available for inspection by members of the public at the place, and during the times, specified in the notice.

## **20 Public submissions**

Any person may make submissions to the roads authority with respect to the proposed boundaries indicated by the survey plan.

## **21 Decision on proposed boundaries**

- (1) After considering any submissions that have been duly made with respect to the proposed boundaries, the roads authority may approve the survey plan, either with or without alteration.
- (2) The roads authority must lodge the survey plan with the Registrar-General for registration and, on registration, the boundaries identified by the survey plan become the boundaries of the public road.
- (3) As soon as practicable after the survey plan is registered, the roads authority:
  - (a) must cause a notice of the effect of the survey plan with respect to the boundaries of any land to be served on the owner of the land, and
  - (b) must lodge a copy of the survey plan with the Valuer-General and, if the authority is not a council, with the council concerned.
- (4) No compensation is payable to any person with respect to any loss or damage arising from the operation of this section.

## **Division 2 Road widening**

### **22 Preparation of road widening plan**

- (1) A roads authority may submit to the Minister a proposed plan for the widening of a public road.
- (2) Before doing so, the roads authority must cause notice of the proposed plan:
  - (a) to be published in a local newspaper, and
  - (b) to be served on the owner of any land to which the proposed plan applies.
- (3) The notice:

- (a) must identify the plan, and
  - (b) must indicate the place at which, and the times during which, the plan is available for inspection by members of the public, and
  - (c) must state that any person is entitled to make submissions to the Minister or to the roads authority with respect to the proposed plan, and
  - (d) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.
- (4) The roads authority must ensure that copies of the proposed plan are available for inspection by members of the public at the place, and during the times, specified in the notice.

### **23 Public submissions**

- (1) Any person may make submissions to the roads authority with respect to the proposed plan.
- (2) The roads authority must ensure that any submissions received by it with respect to the proposed plan are forwarded to the Minister.

### **24 Decision on proposal**

- (1) After considering any submissions that have been duly made, the Minister may approve the proposed plan, either with or without alteration, or may refuse approval.
- (2) An approval may not be given with respect to a classified road except on the recommendation of RMS.

### **25 Making of road widening order**

- (1) On receiving the Minister's approval to a proposed plan, the roads authority may give effect to the plan by means of an order published in the Gazette (in this Act referred to as a **road widening order**).
- (2) The order must describe the land to which it applies by reference to a survey plan.
- (3) The order takes effect on the date on which it is published in the Gazette.
- (4) The roads authority:
  - (a) must cause a notice of the effect of the order on any land to be served on the owner of the land, and
  - (b) must lodge the survey plan referred to in the order with the Registrar-General for registration, and
  - (c) must lodge a copy of the survey plan with the Valuer-General and, if the authority

is not a council, with the council concerned.

## **26 No constructions on land affected by road widening order**

- (1) A person must not construct, replace or repair a building or work on land to which a road widening order applies.

Maximum penalty: 10 penalty units.

- (2) This section does not prevent a person from carrying out minor repairs or improvements to a building so long as:
  - (a) they are designed merely to enable the reasonable preservation of the building for temporary use, and
  - (b) they are carried out with the consent of the appropriate roads authority.
- (3) A consent may not be given with respect to a classified road except with the concurrence of RMS.
- (4) If, in contravention of this section, a person constructs, replaces or repairs a building or work on land affected by a road widening order, the roads authority may direct the owner of the land to carry out such work as is necessary to restore the land to the state it was in before the contravention occurred.

## **27 Variation and revocation of road widening orders**

- (1) A roads authority may, by order published in the Gazette:
  - (a) vary a road widening order, but only by excluding land from the operation of the order, or
  - (b) revoke a road widening order.
- (2) Such an order may not be made with respect to a classified road except with the consent of the Minister given on the recommendation of RMS.

## **28 Effect of road widening order for purposes of hardship provisions of [Land Acquisition \(Just Terms Compensation\) Act 1991](#)**

For the purposes of Division 3 of Part 2 of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#), land affected by a road widening order is taken to be land designated for acquisition by an authority of the State for a public purpose.

## **Division 3 Road levels**

### **29 Fixing the levels of public road**

- (1) A roads authority may prepare a proposal:

- (a) to fix the levels of a public road, or
  - (b) to vary the existing levels of a public road.
- (2) Before making an order to give effect to the plan, the roads authority must cause notice of the proposal:
- (a) to be published in a local newspaper, and
  - (b) to be conspicuously displayed at regular intervals along the road concerned.
- (3) The notice:
- (a) must indicate the place at which, and the times during which, a plan of the proposed levels is available for inspection by members of the public, and
  - (b) must state that adjoining landowners are entitled to make submissions to the roads authority with respect to the proposal, and
  - (c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.
- (4) The roads authority must ensure that copies of the plan of proposed levels are available for inspection by members of the public at the place, and during the times, specified in the notice.

### **30 Public submissions**

Any owner of land adjoining such part of a public road as is affected by the proposed order may make submissions to the roads authority with respect to the proposed levels of the road.

### **31 Decision on proposal**

- (1) After considering any submissions that have been duly made concerning the proposal, the roads authority may decide to proceed with the proposal, either with or without alteration, or to abandon the proposal.
- (2) On deciding to proceed with the proposal, the roads authority may give effect to it by means of an order published in the Gazette.
- (3) The order must fix or vary the levels of a public road by reference to a plan of levels held by the roads authority.
- (4) The order takes effect on the date on which it is published in the Gazette.
- (5) The roads authority must cause a notice of the effect of the order to be published in a local newspaper.

### **32 Rights of adjoining landowners in relation to the fixing of levels**

- (1) If the fixing of the levels of a public road results in loss of access across the boundary between the road and land adjoining the road, the roads authority must restore access between the road and that land.
- (2) If the varying of levels so fixed results in loss of access across the boundary between a public road and land adjoining the road, the roads authority must pay compensation to the owner of the land for any loss or damage arising from the loss of access.

### **32A Extension of RMS's functions under sec 64**

Without limiting the operation of section 64, RMS may exercise the functions of a roads authority under this Division with respect to any classified road and any public road adjoining a classified road.

## **Part 4 Closing of public roads**

### **Division 1 Closing of public roads by Minister**

#### **33 Proposal to close public road**

- (1) The Minister may, whether or not on an application under section 34, propose the closing of a public road other than a freeway.
- (2) RMS may propose the closing of a freeway.

#### **34 Applications for closing of public road**

- (1) An application for the closing of a public road (other than a freeway) may be made:
  - (a) in the case of a Crown road, by any person, and
  - (b) in the case of any other public road, by the roads authority for the road or by any other public authority.
- (2) An application may be transferred, in accordance with the regulations:
  - (a) in the case of a Crown road, to any person, and
  - (b) in the case of any other public road, to the roads authority for the road or to any other public authority.
- (3) The Minister may from time to time, by notice in writing served on an applicant, require the applicant to lodge with the Minister:
  - (a) any fee required to cover the cost of processing the application, and
  - (b) any sum of money necessary to defray a cost incurred by the Minister or any other person with respect to the proposed closing of the road, and



(c) any further information relevant to the application.

(4) Such a notice may be served either before or during the consideration of the application.

(5) An application is taken to have been abandoned if any requirement of the notice is not complied with within the period specified in the notice.

### **35 Publication of proposal to close public road**

(1) The Minister (or, in the case of the proposed closing of a freeway, RMS) must cause notice of the proposed closing of a public road to be published in a local newspaper.

(2) The notice:

(a) must identify the road that is proposed to be closed, and

(b) must state that any person is entitled to make submissions to the Minister (or, in the case of the proposed closing of a freeway, to RMS) with respect to the closing of the road, and

(c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

### **36 Public submissions**

Any person may make submissions to the Minister (or, in the case of the proposed closing of a freeway, to RMS) with respect to the closing of the road.

### **37 Decision on proposal**

(1) After considering any submissions that have been duly made with respect to the proposal, the Minister (or, in the case of the proposed closing of a freeway, RMS) may, by notice published in the Gazette, close the public road concerned.

(2) However, a public road may not be closed:

(a) in the case of a classified road—unless RMS consents to the closure of the road, or

(b) in the case of a road owned by a council—unless the council consents to the closure of the road, or

(c) in the case of a classified road that is owned by a council—unless both RMS and the council consent to the closure.

### **38 Effect of notice of closure**

(1) On publication of the notice closing the public road concerned:

(a) the road ceases to be a public road, and

(b) the rights of passage and access that previously existed in relation to the road are extinguished.

(2) The land comprising a former road:

(a) in the case of a freeway, remains vested in RMS, and

(b) in the case of a public road that was previously vested in a council (other than a public road in respect of which no construction has ever taken place), remains vested in the council, and

(c) in any other case, becomes (or, if previously vested in the Crown, remains) vested in the Crown as Crown land.

## **Division 2 Closing of temporary public roads**

### **39 Roads authority may close temporary public road**

(1) A roads authority may, by notice published in the Gazette, close a temporary public road if, and only if, the road does not give access to an isolated road.

(2) On the publication of the notice:

(a) the temporary public road ceases to be a public road, and

(b) the rights of passage and access that previously existed in relation to the road are extinguished.

### **40 Land to be transferred to original subdivider etc**

(1) A roads authority that closes a temporary public road must take reasonable steps to notify the original subdivider, or the original subdivider's successor in title, of the fact of the closing of the temporary public road and of that person's right to the ownership of the land on which it was situated.

(2) At any time within 5 years after the road is closed, the original subdivider, or the original subdivider's successor in title, may apply to the roads authority to become the owner of the land on which the road was situated.

(3) If no application is made within 5 years after the road is closed or if such an application is made but is rejected or withdrawn, the rights of the original subdivider, and of each of the original subdivider's successors in title, cease.

(4) The roads authority must convey or transfer the land to an applicant if satisfied that the applicant is the original subdivider or the original subdivider's successor in title.

(5) No stamp duty is payable under the [Stamp Duties Act 1920](#) in respect of the conveyance or transfer of the land and no fee is payable for the registration or recording under any Act of the conveyance or transfer of the land.

- (6) In this section, **original subdivider**, in relation to a temporary public road, means the person who owned the land comprised in the temporary public road immediately before the land was subdivided to create the temporary public road.

### **Division 3 Closing of public roads by compulsory acquisition**

#### **41 Compulsory acquisition of land operates to close public road**

A public road that is compulsorily acquired under this or any other Act or law ceases to be a public road as a consequence of its compulsory acquisition.

### **Division 4 Miscellaneous**

#### **42 Disposal of Crown land arising from closure of public road**

- (1) Crown land forming part of a former public road may not be dealt with otherwise than under the Crown Lands Acts.
- (2) The provisions of:
- (a) section 35 of the [Crown Lands Act 1989](#) (Assessment of land), and
  - (b) Part 3 of that Act (Land assessment),

do not apply to the sale or lease of the land if it is sold or leased to a public authority or to an owner or lessee of land adjoining the former public road.

#### **43 Disposal of land comprising former public road owned by council**

- (1) This section applies to land vested in a council and forming part of a former public road.
- (2) Land to which this section applies is operational land for the purposes of the [Local Government Act 1993](#) unless, before the land becomes vested in the council, the council resolves that it is to be community land, in which case the land is community land.
- (3) If the land is disposed of by sale, the proceeds of sale (less the costs of the sale) are to be paid to the council.
- (4) Money received by a council from the proceeds of sale of the land is not to be used by the council except for acquiring land for public roads or for carrying out road work on public roads.

#### **44 Land of former public road may be given in compensation**

Land forming part of a former public road may be given, by or with the consent of the person in whom it is vested, in compensation for other land acquired for the purposes of this Act.

#### **45 Transfer of land following variation or revocation of road widening order**

- (1) This section applies to land that is owned by a council as a result of:
  - (a) some other roads authority having made a road widening order under Division 2 of Part 3, and
  - (b) the land having been acquired under Division 3 of Part 12, and
  - (c) the land having become part of a public road, and the council having become the owner of the land, by operation of section 14.
- (2) If land to which this section applies ceases to be subject to the road widening order because of the variation or revocation of the order, the land ceases to be part of the public road.
- (3) The roads authority that made the road widening order may, by the same order as that by which the road widening order is varied or revoked or by a subsequent order published in the Gazette, declare that it acquires the land under this section.
- (4) The declaration operates to transfer the land from the council concerned to the roads authority.

### **Part 5 Classification of roads**

#### **Division 1 General**

##### **46 Main roads**

The Minister may, by order published in the Gazette, declare to be a main road:

- (a) any public road, or
- (b) any other road that passes through public open space and joins a main road, highway, freeway, tollway, transitway or controlled access road.

##### **47 Highways**

The Minister may, by order published in the Gazette, declare to be a highway any main road that is a principal avenue of road communication within the State.

##### **48 Freeways**

- (1) The Minister may, by order published in the Gazette, declare to be a freeway any main road that is designed to facilitate the movement of motor traffic.
- (2) On the publication in the Gazette of an order declaring a main road to be a freeway, RMS becomes the owner of the land on which the freeway is situated.

#### **49 Controlled access roads**

The Minister may, by order published in the Gazette, declare to be a controlled access road:

- (a) any main road that is designed to facilitate the movement of motor traffic, and
- (b) any road that joins a main road referred to in paragraph (a).

#### **50 Secondary roads**

The Minister may, by order published in the Gazette, declare to be a secondary road any public road that, by carrying a substantial amount of through traffic, relieves a neighbouring main road of traffic.

#### **51 Tourist roads**

The Minister may, by order published in the Gazette, declare to be a tourist road:

- (a) any public road, or
- (b) any other road that passes through public open space and joins a main road, highway, freeway, tollway, transitway or controlled access road,

being, in either case, a road that provides access to places that are visited, or are likely to be visited, by tourists.

#### **52 Tollways**

(1) The Minister may, by order published in the Gazette, declare to be a tollway:

- (a) any road that is owned by RMS and that is designed to facilitate the movement of motor traffic, or
- (b) any road proposed to be constructed on land owned or to be owned by RMS.

(2) A public road that is declared to be a tollway ceases to be a public road by virtue of the declaration.

(3) A tollway is not a road or road related area within the meaning of section 4 (1) of the [Road Transport Act 2013](#) for the purposes of any Act or law, or any provision of an Act or law, prescribed by the regulations for the purposes of this section.

#### **52A Transitways**

(1) The Minister may, by order published in the Gazette, declare to be a transitway:

- (a) any public road, or
- (b) any road that is owned by RMS and that is designed to facilitate the movement of vehicular traffic, or

- (c) any road proposed to be constructed on land owned, leased or controlled, or to be owned, leased or controlled, by RMS.
- (2) A transitway is not a road or road related area within the meaning of section 4 (1) of the *Road Transport Act 2013* for the purposes of any Act or law, or any provision of an Act or law, prescribed by the regulations for the purposes of this section.
- (3) The provisions of any Act forming part of the road transport legislation within the meaning of the *Road Transport Act 2013* and any other Act prescribed by the regulations, and of any regulations under any such Act, apply to and in respect of:
  - (a) such part of a transitway as is not a road within the meaning of the road transport legislation (but is developed for, or has as one of its main uses, the driving or riding of motor vehicles) in the same way as if it were such a road, and
  - (b) such part of a transitway as is not a road related area within the meaning of the road transport legislation (but is an area that divides, or is a footpath or nature strip adjacent to, a part of a transitway referred to in paragraph (a)) in the same way as if it were such a road related area.
- (4) The regulations may prescribe the classes of traffic that are permitted to enter or travel along, or are prohibited from entering or travelling along, a transitway or any part of a transitway.

### **53 State works**

The Minister may, by order published in the Gazette, declare to be a State work any public road or any other public work (including a bridge, tunnel and road-ferry) which, because of its nature, size, location or importance, the Minister considers should be a responsibility of the State.

### **54 Orders generally**

- (1) An order may not be made under this Division otherwise than on the recommendation of RMS.
- (2) An order under this Division may be made in relation to a proposed road.
- (3) An order that is made as referred to in subsection (2) takes effect when the land to which it relates is opened to the public as a road.
- (4) In making an order under this Division, the Minister may include in the order a statement to the effect that specified land held by RMS is dedicated as a public road and, in that event, the statement is taken to be a notice published by RMS under section 10 (1), and section 10 (2) has effect accordingly.

### **55 Separate classifications etc of different lengths, lanes and levels of roads**

- (1) The whole of a road, or part only of the length or width of a road or a single level only of a road, may be classified under this Division.
- (2) Different lengths and widths and different levels of the same road may be differently classified under this Division.
- (3) The same length or width of public road may have more than one classification under this Division.
- (4) A road that is not a public road does not become a public road merely because it is classified under this Division.
- (5) Subsection (4) does not limit any provision of this Act whereby a private road that is classified under this Division is, for certain purposes, taken to be a public road.

### **56 Variation of route etc of classified roads**

The changing of the route or boundaries of a classified road does not affect the classification of the road and the road has the same classification along the new route or between the new boundaries as it had along the old route or between the old boundaries.

## **Division 2 Consultation with roads authorities**

### **57 Application of Division**

This Division applies to the following actions of RMS:

- (a) the recommendation by RMS of the making, amendment or revocation of an order under Division 1 with respect to the declaration of a road as a main road,
- (b) the refusal by RMS of a roads authority's application for the recommendation of the making, amendment or revocation of such an order.

### **58 Consultation with roads authorities**

- (1) RMS may not take any action to which this Division applies unless:
  - (a) it has given written notice of the proposed action to each roads authority for the road concerned, and
  - (b) it has given each such roads authority a reasonable opportunity to make submissions with respect to the proposed action.
- (2) RMS must notify any roads authority from which it has received a submission objecting to the taking of the proposed action if RMS decides to proceed with the action.
- (3) This section does not apply with respect to a roads authority that has requested the

proposed action.

### **59 Matters to be considered by RMS**

RMS must take the following matters into consideration before deciding on what to recommend to the Minister:

- (a) the submissions made by any roads authority concerned with respect to the proposed action,
- (b) whether the main road or proposed main road is or may become a major route for long-distance traffic,
- (c) the amount of money available or likely to become available for the construction and maintenance of the main road or proposed main road,
- (d) such other factors as are relevant to the decision.

### **60 Roads authorities may appeal to Minister**

- (1) Any roads authority that has made a submission with respect to the taking of any action to which this Division applies and is aggrieved by RMS's decision in connection with that action may appeal to the Minister against the decision.
- (2) An appeal:
  - (a) must be in writing, and
  - (b) must specify the grounds of appeal, and
  - (c) must be served on RMS not later than 28 days after the roads authority is notified that RMS has decided to proceed with the proposed action.
- (3) RMS must serve a copy of the notice of appeal on each other roads authority for the road concerned.
- (4) At the hearing of the appeal, the Minister may allow roads authorities other than the appellant to be heard.
- (5) After hearing the appeal, the Minister:
  - (a) may make, amend or revoke the relevant order, or
  - (b) may refuse to make, amend or revoke the relevant order.

## **Division 3 Distribution of certain functions between RMS and other roads authorities**



### **61 Road works on certain classified roads**

- (1) It is exclusively the function of RMS to make decisions as to what road work is to be carried out:
  - (a) on any freeway, highway or metropolitan main road, or
  - (b) on any other classified road in respect of which the carrying out of that kind of road work is, by virtue of an agreement or direction under this Division, the responsibility of RMS.
- (2) It is exclusively the function of RMS to construct and maintain State works.

### **62 Roads agreements between RMS and roads authorities**

- (1) RMS and a roads authority may enter into an agreement under which some or all of the functions of the roads authority with respect to a classified road become, to the extent provided by the agreement, the responsibility of RMS.
- (2) While an agreement under this section has effect, the functions of the roads authority with respect to the road are, to the extent provided by the agreement, to be exercised by RMS.
- (3) This section does not limit the power of RMS to exercise any function conferred on it by or under any other provision of this Act with respect to a classified road.

### **63 Ministerial directions**

- (1) The Minister may, if of the opinion that special circumstances so require, direct that some or all of the functions of a roads authority with respect to a classified road are to become, to the extent provided by the direction, the responsibility of RMS.
- (2) While a direction under this section has effect, the functions of the roads authority with respect to the road are, to the extent provided by the direction, to be exercised by RMS.

### **64 RMS may exercise functions of roads authority with respect to certain roads**

- (1) RMS may exercise the functions of a roads authority with respect to any classified road, whether or not it is the roads authority for that road and, in the case of a classified road, whether or not that road is a public road.
  - (1A) RMS may, for the purposes of the carrying out of a project approved under Part 3A, State significant development for which development consent has been granted under Part 4, or State significant infrastructure approved under Part 5.1, of the [Environmental Planning and Assessment Act 1979](#), exercise the functions of a roads authority with respect to any road.
- (2) The roads authority for a road with respect to which RMS is exercising a particular

function may not exercise its functions with respect to the road in any manner that is inconsistent with that in which the function is being exercised by RMS.

**Note—**

See Division 5 of Part 9 as to the exercise by RMS of the functions of another roads authority in respect of certain actions undertaken on a public road for the purposes of, or incidental to, development or operation of a light rail system.

**65 RMS has immunities of a roads authority**

While exercising the functions of a roads authority under this Division with respect to a road for which it is not the roads authority, RMS has the immunities of a roads authority with respect to that road.

**66 RMS may exercise the functions of a roads authority in the unincorporated area**

RMS may exercise the functions of a roads authority with respect to all roads (whether public or private) that are outside a local government area as if those roads were public roads.

**Division 4 Loss of access to a freeway, transitway or controlled access road**

**67 Restriction of access to freeways, transitways etc**

- (1) An order declaring a road to be a freeway, transitway or controlled access road may restrict access to or from the freeway, transitway or controlled access road.
- (2) In that event, the order:
  - (a) must specify the points along the freeway, transitway or controlled access road at which access may be gained to or from other public roads, and
  - (b) must, in addition to being published in the Gazette, be published in one or more newspapers circulating in the locality in which the freeway, transitway or controlled access road is located.

**68 Entitlement to compensation**

- (1) If access across the boundary between any land and a public road is restricted or denied as a result of the road becoming a freeway, transitway or controlled access road, or if a person has started to construct a means of access to a freeway, transitway or controlled access road before its declaration as such and the consent of RMS to its completion is refused, the roads authority must pay compensation to the owner of the land for any loss or damage arising from the loss of access.
- (2) Compensation is not payable to the owner of any land merely because:
  - (a) adjacent land is acquired by RMS for the purpose of opening a new freeway,

transitway or controlled access road or widening an existing freeway, transitway or controlled access road, and

(b) access is restricted or denied across the boundary between the owner's land and such part of the freeway, transitway or controlled access road as comprises the land so acquired.

(3) Compensation is payable under this Division only if a claim for the compensation is made within 12 months after the land concerned has been declared to be a freeway, transitway or controlled access road.

#### **69 Amount of compensation payable**

(1) The amount of compensation payable under this Division is an amount equal to the difference between the market value of the land immediately before, and the market value of the land immediately after, the right of access was restricted or denied.

(2) In determining the amount of compensation:

(a) the assessment of the market value of the land at the time it became subject to the restrictions must take into account any modifications of the restrictions that are attributable to any consent given by RMS and any conditions attached to such a consent, or that are attributable to any undertaking that RMS has given or promised, and

(b) there must be taken into consideration any benefit that may accrue to any other land in which the claimant has an interest because of the construction or improvement (whether by RMS or any other person) on land adjacent to that in respect of which the compensation is claimed of any road after the restrictions took effect or because of the effect of the restrictions, and

(c) no account may be taken of the fact that, since the land became subject to the restrictions, the interest of the claimant has become, or has ceased to be, the same as the interest of the claimant in other land.

#### **70 Construction of access to freeways, transitways etc prohibited**

A person:

(a) must not construct any means of access to or from a freeway, transitway or controlled access road otherwise than in accordance with the consent of RMS, and

(b) must not enter or leave a freeway, transitway or controlled access road except by a means of access or a route provided for that purpose.

Maximum penalty: 10 penalty units.

## **Part 6 Road work**

### **Division 1 General**

#### **71 Powers of roads authority with respect to road work**

A roads authority may carry out road work on any public road for which it is the roads authority and on any other land under its control.

#### **72 RMS may carry out road work on unclassified roads**

- (1) RMS may carry out road work on a public road that is not a classified road:
  - (a) if, in the opinion of RMS, it is necessary to do so in connection with the carrying out of road work on an adjoining classified road, or
  - (b) if, in the opinion of RMS, the carrying out of the work would be of benefit to classified roads in the vicinity of the road on which the work is being carried out, or
  - (c) if the carrying out of the road work by RMS is funded by money appropriated by Parliament for that purpose, or
  - (d) if the carrying out of the road work has been requested by, and is to be funded by, some other public authority.
- (2) When carrying out road work on a public road under this section, RMS has the immunities of a roads authority with respect to that road.

#### **73 RMS may carry out road work on local access roads etc**

- (1) RMS may construct a road to connect with, or to pass over or under, a freeway, transitway or controlled access road.
- (2) Any such road, on being opened to the public, is taken to be a public road (but not part of the freeway, transitway or controlled access road) for the purposes of this Act.
- (3) RMS may construct a freeway, transitway or controlled access road over or under an existing public road.

#### **74 Standard plans and specifications**

- (1) RMS may cause standard plans and specifications to be prepared for the carrying out of road work on a classified road, either generally or in a particular case, and may require a roads authority to carry out any such road work in accordance with those plans and specifications.
- (2) Any road work in respect of which RMS has made such a requirement must be carried out by the roads authority in accordance with the requirement.

**75 Public authorities to notify RMS of proposal to carry out road work on classified roads**

A public authority may not carry out road work on a classified road, being work that involves:

- (a) the deviation or alteration of the road, or
- (b) the construction of a bridge, tunnel or level crossing in the road,

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

**76 Roads authorities to notify RMS of proposal to carry out major road work**

- (1) A roads authority may not carry out road work on a public road (being work that has an estimated cost of more than \$2,000,000 or such other amount as may be prescribed by the regulations) unless it has forwarded particulars of the proposed work to RMS at least 28 days before the commencement of the work.
- (2) If it appears that the proposed work may affect the development, or further development, of a main road, tollway or transitway, RMS may, within that period of 28 days, require the roads authority:
  - (a) to give effect to specified amendments or alterations in the construction of the work, or
  - (b) to defer construction of the work for a specified period.
- (3) A roads authority must comply with any requirement under this section.

**77 RMS may enter into interstate agreements for border roads, bridges, tunnels and road-ferries**

RMS may enter into, and may perform its obligations under, any agreement with an appropriate roads authority in Victoria, Queensland, South Australia, the Australian Capital Territory or the Jervis Bay Territory:

- (a) for the construction, maintenance and repair of roads, bridges and tunnels, or
- (b) for the establishment, maintenance and repair of road-ferries,

at the boundaries between New South Wales and that other State or Territory.

**Division 2 Bridges and tunnels across navigable waters**

**78 Roads authorities may construct bridges and tunnels**

- (1) A roads authority may construct bridges and tunnels across navigable waters.
- (2) A bridge or tunnel that is constructed across navigable waters is taken to be a lawful obstruction of those waters.

- (3) Subsection (2) does not limit any person's right of action with respect to loss or damage arising from the construction of the bridge or tunnel, but any such right of action is subject to the other provisions of this Division.

#### **79 Notice of proposal to be given**

- (1) Before constructing a bridge or tunnel across navigable waters, the roads authority may cause notice of the proposal to be published in a local newspaper.
- (2) The notice:
  - (a) must indicate the place at which, and the times during which, a plan of the proposed construction is available for inspection by members of the public, and
  - (b) must state that any person is entitled to make submissions to the roads authority with respect to the proposal, and
  - (c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.
- (3) The roads authority must ensure that copies of the proposal are available for inspection by members of the public at the place, and during the times, specified in the notice.

#### **80 Public submissions**

- (1) Any person may make submissions to the roads authority with respect to the proposal.
- (2) In particular, any person may object to the proposed construction of the bridge or tunnel across navigable waters on the ground that the person would suffer special damage, as specified in the objection, if the bridge or tunnel were constructed, being damage arising from the restriction of public rights of navigation of those waters.

#### **81 Decision on proposal**

- (1) After considering any submissions that have been duly made with respect to the proposal, the roads authority must decide whether or not to construct the bridge or tunnel.
- (2) If the roads authority decides to construct the bridge or tunnel, the roads authority must give notice of its decision to each person who has objected to the proposal.

#### **82 Limitation on right to seek injunction**

Proceedings for the purpose of restraining the construction of the bridge or tunnel, whether by means of a declaration or injunction or otherwise:

- (a) may not be taken in any court unless the person by or on whose behalf the

proceedings are taken has duly objected to the construction of the bridge or tunnel, and

- (b) may not in any case be taken later than 28 days after the date on which the person was notified of the decision to construct the bridge or tunnel, and
- (c) may be taken only on a ground specified in the objection.

### **83 Mitigating factors in proceedings for damages arising from construction of bridge**

In proceedings for damages claimed because of the adverse effects of a bridge on public rights of navigation, the court is required to take the following matters 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 passage past the bridge may be lowered or otherwise altered in order to allow passage,
- (b) any refusal by the claimant to remove a boat-building business conducted by the claimant to an alternative site provided by the appropriate roads authority,
- (c) the age, condition and future useful life of buildings and equipment used for the purposes of such a business,
- (d) any benefits that might accrue from a removal of such a business.

### **84 No right of action in relation to bridges and tunnels constructed before 21.5.1986** (cf sec 26 (7) of Act No 85, 1986)

A bridge across navigable waters whose construction was commenced or completed before 21 May 1986 (the date of commencement of the [State Roads Act 1986](#)) is taken not to be a public nuisance merely because of its effect on public rights of navigation of those waters.

## **Division 3 Miscellaneous**

### **85 Location of conduits for utility services**

A roads authority that proposes to provide conduits across a public road for the carriage of utility services must consult, as to the location and construction of the conduits, with all persons:

- (a) who are providing utility services along or in the vicinity of the road, or
- (b) who are, in the opinion of the roads authority, likely to provide utility services along or in the vicinity of the road.

## **86 Functions of council in respect of private roads**

- (1) A council may direct the owner of a private road (other than a classified road) to carry out such work as, in the opinion of the council, is necessary to prevent the road from becoming unsafe or unsightly or, if of the opinion that it is appropriate that the work should be carried out by the council at its own expense, may carry out any such work itself.
- (2) If there is more than one owner of a private road, the respective owners are liable to pay those expenses in such proportions as the council decides.
- (3) In deciding the proportion of expenses to be paid by the respective owners, the council must have regard to:
  - (a) the benefit that any particular land will derive from the work, and
  - (b) the amount and value of any work carried out in respect of the road by the respective owners or occupiers of the land.

## **87 Traffic control facilities**

- (1) RMS may carry out traffic control work on all public roads, on all parts of transitways that are not public roads and on all roads or road related areas within the meaning of section 4 (1) of the [Road Transport Act 2013](#) (other than roads or road related areas that are the subject of any declaration made under section 18 (1) (b) of that Act relating to all of the provisions of that Act).
- (2) The appropriate roads authority may carry out traffic control work on any classified road, but only with the consent of RMS.
- (3) The appropriate roads authority may carry out traffic control work on any unclassified road, on any part of a transitway that is not a public road and on any road or road related area within the meaning of section 4 (1) of the [Road Transport Act 2013](#) (other than a road or road related area that is the subject of any declaration made under section 18 (1) (b) of that Act relating to all of the provisions of that Act) that is not a public road, other than one in respect of which RMS has notified the authority that RMS proposes to carry out traffic control work.
- (4) However, the construction, erection, installation, maintenance, repair, removal or replacement of a traffic control light may not be carried out otherwise than by or with the consent of RMS.

## **88 Tree felling**

A roads authority may, despite any other Act or law to the contrary, remove or lop any tree or other vegetation that is on or overhanging a public road if, in its opinion, it is necessary to do so for the purpose of carrying out road work or removing a traffic hazard.



### **89 Roads authorities not liable for damage by tar**

- (1) A roads authority is not liable for any damage caused by moist or liquid tar that it applies to any portion of a road in the course of carrying out road work if:
  - (a) that portion of the road is closed to traffic while the tar is applied and for a reasonable time after it is applied, and
  - (b) the tarred portion of the road is covered with sand or road metal before it is re-opened to traffic.
- (2) In this section, **tar** includes bitumen and bituminous compounds.

### **90 Application of [Public Works Act 1912](#) to certain work**

Sections 34, 35, 36 and 37 of the [Public Works Act 1912](#) do not apply to or in respect of road work and traffic control work carried out under this Act.

## **Part 7 Protection of public roads and traffic**

### **Division 1 Protection of public roads**

#### **91 Adjoining landowner to provide support for public road**

- (1) The duty of care in relation to support for land as referred to in section 177 of the [Conveyancing Act 1919](#) applies in relation to land on which a public road is situated and land adjoining that land as if the land on which the public road is situated were private land and the appropriate roads authority were the owner of that land.
- (2) The rights of a roads authority under this section may be exercised by RMS in relation to any classified road.

#### **92 Roads authority may alter landform of land adjoining public road without acquiring land**

- (1) A roads authority may alter the landform of land adjoining a public road so as to ensure the stability of the road.
- (2) The roads authority must pay compensation to the owner of the land for any loss or damage arising from the alteration.

#### **93 Roads authority may direct landowner to fill in excavation**

- (1) A roads authority may direct the owner of any land adjoining a public road to fill in any excavation that, in the opinion of the roads authority, threatens the stability of the public road.
- (2) The direction may specify the period within which the direction must be complied with.

**94 Roads authority may carry out drainage work across land adjoining public road etc**

- (1) A roads authority may, for the purpose of draining or protecting a public road, carry out drainage work in or on any land in the vicinity of the road.
- (2) The powers conferred by this section may not be exercised in or on land on which rail infrastructure facilities owned by Rail Corporation New South Wales, Transport Infrastructure Development Corporation or Rail Infrastructure Corporation are situated.
- (2A) In this section, **rail infrastructure facilities** has the same meaning as it has in the [Transport Administration Act 1988](#).
- (3) The roads authority must pay compensation to the owner of the land for any loss or damage arising from the exercise of any power under this section.

**95 Removal of windblown sand etc**

- (1) The appropriate roads authority may direct the occupier of land from which sand, soil or other such matter has been washed or blown onto a public road to take such action as is necessary to remove the obstruction and prevent its recurrence.
- (2) The direction may specify the period within which the direction must be complied with.

**96 Fences and floodgates**

- (1) For the purpose of preventing obstruction to the free flow of surface drainage from a public road, or to the free flow of a watercourse that crosses a public road, the appropriate roads authority may direct the occupier of any land in the vicinity of the public road:
  - (a) to alter a fence (including a rabbit proof fence) on the land, or
  - (b) to provide floodgates in any such fence, or
  - (c) to repair any such fence or floodgates.
- (2) The direction may specify:
  - (a) the manner in which or the standard to which, and
  - (b) the period (being at least 28 days) within which, the direction must be complied with.

**97 Utility services to be located in conduits**

- (1) The roads authority for a public road in which there are conduits for the carriage of utility services across the road may direct any person who is entitled to place utility services in, on or over the road:

- (a) to locate any new or replacement services in any such conduit, and
  - (b) to pay to the roads authority such proportion as may be prescribed by the regulations of the costs incurred by the roads authority in connection with the construction of the conduit.
- (2) The direction may specify the manner in which or the standard to which the direction must be complied with.
- (3) A provision of an Act that authorises the provision of services in, on or over a public road does not authorise the provision of the services in contravention of this section.

**98 Roads authority may require alteration of work located in, on or over public roads**

- (1) A roads authority may direct the person having control of any work or structure that is situated in, on or over a public road to alter the work or structure or the location of the work or structure.
- (2) The direction may specify:
- (a) the manner in which or the standard to which, and
  - (b) the period (being at least 28 days) within which, the direction must be complied with.
- (3) If a person fails to comply with a direction under this section, the appropriate roads authority:
- (a) may make the alteration directed, and
  - (b) must, if it makes the alteration, make any necessary consequential alteration to any connecting branch work.
- (4) In making any such alteration, the roads authority must ensure that it does not do anything that might cause permanent damage to the work or structure concerned or that might prejudicially affect its use.
- (5) The cost of an alteration made by, or at the direction of, the appropriate roads authority must be borne by that authority.
- (6) Subsection (5) is subject to the provisions of:
- (a) any agreement between the roads authority and the person having control of the work or structure, and
  - (b) any Act or law.

**99 Private bodies to maintain or repair certain water supply and drainage works**

- (1) A roads authority may direct an irrigation corporation, a private irrigation board, a private drainage board or a private water trust (within the meaning of the *Water Management Act 2000*) to repair or maintain any water supply work or drainage work:
  - (a) that is situated in, on or over a public road, and
  - (b) that is controlled by that body.
- (2) The direction may specify:
  - (a) the manner in which or the standard to which, and
  - (b) the period (being at least 28 days) within which, the direction must be complied with.
- (3) The private body concerned may appeal to the Minister against the direction.
- (4) The decision of the Minister on an appeal is final.

**100 Owner of private railway to maintain bridges and level crossings and roads under railway bridges**

- (1) If a public road passes over, under or across a private railway by means of a bridge or level crossing, the owner of the railway:
  - (a) must maintain the bridge or level crossing (and, in the case of an overbridge, the road under the bridge) in a satisfactory state of repair, and
  - (b) must, if the appropriate roads authority so directs, repair or replace the bridge or level crossing (or, in the case of an overbridge, the road under the bridge) in accordance with the direction.
- (2) A direction referred to in subsection (1) (b) may specify:
  - (a) the manner in which or the standard to which, and
  - (b) the period (being at least 28 days) within which, the direction must be complied with.
- (3) The owner of the private railway may appeal to the Minister against the direction.
- (4) The decision of the Minister on an appeal is final.

**101 Restoration of public road following excavation etc**

- (1) A roads authority may direct any person by whom a public road is dug up to restore the road to its previous condition.

- (2) If a public road is damaged as a result of a leakage from, or breaking or bursting of, any object or work placed in, on or over the road, the appropriate roads authority may direct the person:
  - (a) who was responsible for placing the object or work in, on or over the road, or
  - (b) who has the care or control of the object or work, or
  - (c) whose act or omission caused the leakage, breaking or bursting,to restore the road to its previous condition.
- (3) A direction under this section may specify:
  - (a) the manner in which or the standard to which, and
  - (b) the period (being at least 14 days) within which,the direction must be complied with.
- (4) Instead of giving a direction under this section, a roads authority may take such action as is necessary to restore the road to its previous condition.
- (5) The costs incurred by a roads authority in taking action under this section are recoverable from the person referred to in subsection (1) or (2), as a debt, in a court of competent jurisdiction.
- (6) Nothing in this section authorises a roads authority to recover an amount greater than that necessary to restore the road to its previous condition.

## **102 Liability for damage to public road**

- (1) A person who causes damage to a public road, or to any road work on a public road or any traffic control facility on a road or road related area within the meaning of section 4 (1) of the *Road Transport Act 2013* (other than a road or road related area that is the subject of a declaration made under section 18 of that Act relating to all of the provisions of that Act), is liable to pay to the appropriate roads authority the cost incurred by that authority in making good the damage.
- (2) If damage referred to in this section is caused by a motor vehicle or vessel, the owner and the driver of the motor vehicle or, as the case may be, the owner and the master of the vessel are jointly and severally liable for the damage.
- (3) This section does not apply to ordinary wear and tear caused by reasonable use of a public road.
- (4) This section applies to tollways and to private roads that are classified roads in the same way as it applies to public roads.

## **Division 2 Off-road traffic hazards**

### **103 Installation etc of fences, lights etc around dangerous premises**

- (1) A roads authority may direct the owner or occupier of land to erect or install fences, lights or other equipment on or around any premises on the land that are, in the opinion of the roads authority, in a sufficiently dangerous condition to threaten the safety of persons or property on a public road in the vicinity of the premises.
- (2) A direction under this section may specify:
  - (a) the manner in which or the standard to which, and
  - (b) the period within which,the direction must be complied with.

### **104 RMS may direct removal etc of traffic hazards**

- (1) RMS may direct:
  - (a) the owner or occupier of land on which any work or structure is situated, or
  - (b) the person by whom any work or structure was carried out or erected,to screen, modify or remove the work or structure if, in the opinion of RMS, the work or structure is a traffic hazard.
- (2) A direction under this section may specify:
  - (a) the manner in which or the standard to which, and
  - (b) the period within which,the direction must be complied with.
- (3) Such a direction may be given:
  - (a) on the initiative of RMS or at the request of another public authority, and
  - (b) regardless of when the work or structure was erected, and
  - (c) regardless of whether or not the carrying out or erection of the work or structure is the subject of any approval, consent, licence or permit in force under this or any other Act.
- (4) For the purposes of this section:
  - (a) RMS may form an opinion on the basis of information received, and
  - (b) a written statement under the seal of RMS to the effect that a specified structure

or thing is, in the opinion of RMS, a traffic hazard is conclusive evidence of that opinion.

#### **105 Appeal against direction to Land and Environment Court**

- (1) A person on whom a direction under this Division has been served (not being a public authority) may appeal against the direction to the Land and Environment Court.
- (2) An appeal must be made, in accordance with rules of court, within 14 days after the direction was served on the person.
- (3) The making of an appeal operates to suspend the direction to which it relates until the appeal is finally determined or is withdrawn.
- (4) The Land and Environment Court may do any one or more of the following:
  - (a) it may confirm or quash the direction,
  - (b) it may vary the period within which the direction must be complied with,
  - (c) it may vary any of the requirements of the direction.
- (5) The decision of the Land and Environment Court on an appeal is final.

#### **106 Land and Environment Court may vary etc certain contracts**

- (1) A person affected by a direction under this Division may make an application to the Land and Environment Court for an order under this section.
- (2) The Land and Environment Court may, on hearing the application, make an order under this section if satisfied:
  - (a) that the applicant is a party to a contract relating to the premises, work or structure the subject of the direction, and
  - (b) that, because of the operation of the direction, the performance of the contract has or is likely to become impossible or, so far as the applicant is concerned, has become inequitable or unduly onerous.
- (3) An order under this section may do any one or more of the following:
  - (a) it may cancel or suspend the operation of the contract,
  - (b) it may vary the terms of the contract,
  - (c) it may direct the repayment of all or part of any money paid under the contract.
- (4) The decision of the Land and Environment Court on any application under this section is final.

## **Division 3 Obstructions and encroachments**

### **107 Obstructions and encroachments**

- (1) A roads authority may direct:
  - (a) any person who causes an obstruction or encroachment on a public road, or
  - (b) the owner of any land that is used, or is able to be used, in connection with an obstruction or encroachment on a public road,to remove the obstruction or encroachment.
- (2) A direction under this section may specify the period within which the direction must be complied with.
- (3) In the case of an obstruction or encroachment that was created before the alignment of the road, or that is situated on a road that has not been aligned, the period specified in the direction must be at least 60 days.
- (4) This section does not apply to an obstruction or encroachment on a public road if its presence on the road is authorised by or under this or any other Act.
- (5) However, this section does apply to an obstruction or encroachment on a public road if its presence ceases to be authorised by or under this or any other Act.

## **Division 4**

### **108-113 (Repealed)**

## **Part 8 Regulation of traffic by roads authorities**

### **Division 1 General powers**

#### **114 Roads authorities may only regulate traffic in accordance with Part**

A roads authority may not regulate traffic on a public road otherwise than in accordance with this Part.

#### **115 Roads authority may regulate traffic in connection with road work etc**

- (1) A roads authority may regulate traffic on a public road by means of barriers or by means of notices conspicuously displayed on or adjacent to the public road.
- (2) The power conferred by this section may be exercised by RMS for any purpose but may not be exercised by any other roads authority otherwise than:
  - (a) for the purpose of enabling the roads authority to exercise its functions under this Act with respect to the carrying out of road work or other work on a public road, or



- (b) for the purpose of protecting a public road from serious damage by vehicles or animals as a result of wet weather, or
  - (c) for the purpose of protecting earth roads from damage caused by heavy vehicles or by animals, or
  - (d) for the purpose of protecting members of the public from any hazards on the public road, or
  - (e) for the purpose of protecting vehicles and other property on the public road from damage, or
  - (f) for the purpose of enabling a public road to be used for an activity in respect of which a permit is in force under Division 4 of Part 9, or
  - (g) for a purpose for which the roads authority is authorised or required, by or under this or any other Act or law, to regulate traffic.
- (3) A roads authority may not restrict the passage of heavy vehicles or animals along the roadway of an earth road unless clear side tracks have been provided for their passage.
- (4) A person:
- (a) must not, in wilful contravention of any such notice or in wilful disregard of any such barrier, pass along, or cause any vehicle or animal to pass along, a length of public road, and
  - (b) must not damage, remove or otherwise interfere with a notice or barrier erected for the purposes of this section.
- Maximum penalty: 10 penalty units.
- (5) It is the duty of a roads authority by which a notice or barrier has been erected under this section to remove the notice or barrier if there is no longer any need to regulate traffic for the purpose for which the notice or barrier was erected.

## **Division 2 Additional powers at the request of the roads authority**

### **116 Applications for consent**

- (1) A roads authority may apply to RMS for consent to:
- (a) the erection of any notice or barrier, the carrying out of any work or the taking of any other action for the purpose of regulating traffic on a public road for purposes other than those referred to in Division 1, or
  - (b) the removal of any notice or barrier, the demolition of any work or the ceasing of any action for which it has been given consent under this Division.

- (2) Before doing so, the roads authority must cause notice of the application to be published in a local newspaper.
- (3) The notice:
  - (a) must specify the particular action for which the roads authority is applying for consent, and
  - (b) must state that any person is entitled to make submissions to RMS with respect to the granting of consent, and
  - (c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.
- (4) This section does not apply to the erection of any notice, the carrying out of any work or the taking of any other action that the roads authority is required by Division 3 to erect, carry out or take.

#### **117 Public submissions**

- (1) Any person may make submissions to RMS or to the roads authority with respect to the application.
- (2) The roads authority must ensure that any submissions received by it with respect to the application are forwarded to RMS.

#### **118 Decision on application**

- (1) After considering any submissions that have been duly made with respect to an application, RMS may grant consent to the application, either unconditionally or subject to conditions, or may refuse the application.
- (2) The roads authority is authorised to take such action as is specified in a consent under this section.

#### **119 Review of RMS's decision**

- (1) A roads authority may request the Minister to review the decision of RMS:
  - (a) to refuse an application under this Division, or
  - (b) to impose conditions on a consent granted under this Division.
- (2) The request must be accompanied by copies of all submissions made in connection with the original application.
- (3) The Minister, after taking into consideration the submissions and any representations made by RMS with respect to the application, may deal with the application in any way in which the application could have been dealt with by RMS.

- (4) The Minister's decision under this section is taken to be the decision of RMS and has effect accordingly.

### **Division 3 Additional powers at the direction of the Minister**

#### **120 Minister may direct roads authorities to exercise certain traffic regulation powers**

- (1) The Minister may order a roads authority to take such action, or to forbear from taking such action, with respect to the regulation of traffic on a public road as may be specified in the order.
- (2) For example, the Minister may order a roads authority to erect or to remove any notice or barrier.
- (3) Such an order may be given whether or not the roads authority is otherwise empowered to regulate traffic in the manner specified in the order.

#### **121 Minister may regulate traffic in certain circumstances**

- (1) If a roads authority fails to comply with a direction under this Division, the Minister may take such action as is necessary to give effect to the direction.
- (2) The cost of taking action under this section is recoverable from the roads authority by the Minister as a debt in a court of competent jurisdiction.

### **Division 4 Miscellaneous**

#### **122 Temporary regulation of traffic**

- (1) A roads authority may regulate traffic on a specified public road or on all public roads for which it is the roads authority:
  - (a) in relation to a classified road, by means of an order published in a daily newspaper circulating generally throughout the State, or
  - (b) in relation to any other public road, by means of an order published in one or more local newspapers or in a daily newspaper circulating generally throughout the State.
- (2) A roads authority may, by order served on any person, prohibit the person from causing any vehicle under the person's control to pass along a specified local road unless the vehicle is being driven to a destination that cannot be reached except by means of that road.
- (3) An order under this section may not be made unless the roads authority is satisfied that it is necessary to do so in order to prevent damage in excess of the ordinary wear and tear arising from the reasonable use of the road or roads concerned.
- (4) A person must not, without reasonable excuse, contravene an order under this

section.

Maximum penalty: 30 penalty units.

- (5) A roads authority must revoke any order under this section as soon as the circumstances giving rise to its making cease to exist.
- (6) Unless sooner revoked, an order under this section ceases to have effect at the expiration of 12 months after it was made.
- (7) Subsection (6) does not prevent an order being remade.

### **123 Application of Part to police and emergency services**

The provisions of this Part do not apply to the driver of:

- (a) any motor vehicle while conveying a police officer on urgent duty, or
- (b) any fire engine or appliance while proceeding to a fire, or
- (c) any ambulance while proceeding to the scene of an accident or to a hospital with an injured person, or
- (d) any vehicle referred to in paragraph (a), (b) or (c) while proceeding to any place to deal with an emergency,

if the observance of those provisions would be likely to hinder the vehicle while so doing.

### **124 (Repealed)**

## **Part 9 Regulation of works, structures and activities**

### **Division 1 Footway restaurants**

#### **125 Approval to use footway for restaurant purposes**

- (1) A council may grant an approval that allows a person who conducts a restaurant adjacent to a footway of a public road (being a public road that is vested in fee simple in the council) to use part of the footway for the purposes of the restaurant.
- (2) An approval may be granted on such conditions (including conditions as to payments in the nature of rent) as the council determines.
- (3) An approval may not be granted in respect of a footway of a classified road except with the concurrence of RMS.
- (4) The term of an approval is to be such period (not exceeding 7 years) as is specified in the approval.
- (5) An approval lapses at the end of its term or, if the part of the footway the subject of

the approval ceases to be used for the purposes of a restaurant, when that use ceases.

### **126 Authority to erect structures**

- (1) A council:
  - (a) may authorise the holder of an approval to erect and maintain structures in, on or over any part of the footway the subject of the approval, or
  - (b) may, at the request and cost of the holder of the approval, erect and maintain any such structure.
- (2) The council may erect and maintain structures in, on or over any part of the footway the subject of an approval for the protection of public health and safety.

### **127 Effect of approval**

While an approval is in force:

- (a) the use of the footway for the purposes of a restaurant, and
- (b) the erection and maintenance of structures on the footway in accordance with an authorisation given in respect of the approval,

are taken not to constitute a public nuisance and do not give rise to an offence against this or any other Act.

## **Division 2 Public gates**

### **128 Roads authority may grant permit**

- (1) A roads authority may permit the occupier of any land through which an unfenced public road passes to erect a gate across the road at any place at which the road intersects a boundary fence.
- (2) A permit may not be granted with respect to a classified road except with the concurrence of RMS.
- (3) A roads authority must cause notice of the granting of the permit to be published in a local newspaper.
- (4) The occupier for the time being of the land to which a permit relates is taken to be the holder of the permit.

### **129 Erection and maintenance of public gates**

- (1) The holder of a public gate permit may, at any time after one month from the publication of the notice of the granting of the permit, erect a gate in accordance with the permit.

(2) The holder of a public gate permit must ensure that:

- (a) a notice is attached to both sides of the gate bearing the words "PUBLIC GATE" in letters at least 75 millimetres high, and
- (b) both the gate and the notice are maintained in good condition.

Maximum penalty: 10 penalty units.

### **130 Revocation of permit**

(1) The roads authority may at any time revoke a public gate permit.

(2) The occupier of the land the subject of a public gate permit that has been revoked must remove the gate within one month after notice of the revocation is served.

Maximum penalty: 10 penalty units.

### **131 Effect of permit**

While a public gate permit is in force, the public gate to which it relates is taken not to constitute a public nuisance and does not give rise to an offence against this or any other Act.

### **132 Offences with respect to public gates**

(1) A person must not cause any damage to a public gate or to any notice attached to the gate in accordance with this Division.

Maximum penalty: 10 penalty units.

(2) A person who opens a public gate must cause it to be closed again immediately after it has been used.

Maximum penalty: 10 penalty units.

(3) A person who fails to cause a public gate to be closed is liable for any loss or damage suffered by the occupier of the land adjoining the public road on which the gate is situated as a result of the gate having been left open.

### **133 Construction of by-pass around road gate**

(1) An occupier of land adjoining an unfenced public road across which a public gate is situated at the point where the road intersects a boundary fence:

- (a) must not, unless the appropriate roads authority so permits, and
- (b) must, if the appropriate roads authority so requires,

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

Maximum penalty: 10 penalty units.

- (2) The roads authority may not permit or require the construction of a by-pass:
  - (a) if the by-pass is to be used in connection with a public gate across a main road, except with the concurrence of RMS, and
  - (b) if the public gate is part of a rabbit proof, dog proof or marsupial proof fence, except with the concurrence of Local Land Services.
- (3) A by-pass is to consist of:
  - (a) a ramp to allow vehicles to be driven over the top of the boundary fence, or
  - (b) a cattle grid or sheep grid located beside the gate,and must be constructed in accordance with such specifications as may be approved by the roads authority.
- (4) If the appropriate roads authority so requires, the person permitted or required to construct a by-pass:
  - (a) must construct the by-pass along the line of the road, and
  - (b) must re-locate the gate beside the by-pass.

Maximum penalty: 10 penalty units.

- (5) The occupier for the time being of land to which a permit relates is taken to be the holder of the permit.

#### **134 Notice board to be erected at by-pass**

- (1) The occupier of land on which a by-pass is constructed must ensure that:
  - (a) a notice, in the form required by the appropriate roads authority, is exhibited on a conspicuous notice board near each end of the by-pass, and
  - (b) both the by-pass and the notice are maintained in good condition.

Maximum penalty: 10 penalty units.

- (2) A notice may prohibit vehicles exceeding a specified laden weight from being driven over the by-pass.
- (3) If the appropriate roads authority requires a person to construct a by-pass, that authority may contribute to the cost of construction and erection of the notices.

#### **135 Closing of by-pass**

- (1) A by-pass may be closed and the notices relating to the by-pass may be removed:

- (a) if the public gate in connection with which the by-pass was constructed is removed, or
  - (b) if the fence of which the by-pass forms part is made rabbit proof, dog proof or marsupial proof.
- (2) A person who closes a by-pass:
- (a) must give notice of the closure to the appropriate roads authority before or immediately after the closure, and
  - (b) must take such steps as the appropriate roads authority directs to ensure the safety of persons using the road.

### **136 Revocation of by-pass permit**

- (1) The roads authority may revoke a permit given with respect to a by-pass by means of a notice served on the holder of the permit.
- (2) The occupier of the land the subject of the permit must, 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.

Maximum penalty: 10 penalty units.

### **137 Offences**

- (1) A person must not:
  - (a) drive a vehicle over a by-pass in contravention of a notice displayed in connection with the by-pass, or
  - (b) wilfully damage or remove a notice displayed in connection with a by-pass, or
  - (c) wilfully obstruct or damage a by-pass.

Maximum penalty: 10 penalty units.

- (2) A person who causes damage to a by-pass as a result of driving a vehicle over the by-pass in contravention of such a notice is liable for:
  - (a) the cost of any repairs to the by-pass necessary as a result of the contravention, and
  - (b) any loss or damage suffered by any other person as a result of the damage to the by-pass.



## Division 3 Other works and structures

### 137A Definition

In this Division:

**street vending consent** means a consent under this Division that is subject to a condition referred to in section 139A.

### 138 Works and structures

(1) A person must not:

- (a) erect a structure or carry out a work in, on or over a public road, or
  - (b) dig up or disturb the surface of a public road, or
  - (c) remove or interfere with a structure, work or tree on a public road, or
  - (d) pump water into a public road from any land adjoining the road, or
  - (e) connect a road (whether public or private) to a classified road,
- otherwise than with the consent of the appropriate roads authority.

Maximum penalty: 10 penalty units.

- (2) A consent may not be given with respect to a classified road except with the concurrence of RMS.
- (3) If the applicant is a public authority, the roads authority and, in the case of a classified road, RMS must consult with the applicant before deciding whether or not to grant consent or concurrence.
- (4) This section applies to a roads authority and to any employee of a roads authority in the same way as it applies to any other person.
- (5) This section applies despite the provisions of any other Act or law to the contrary, but does not apply to anything done under the provisions of the *Pipelines Act 1967* or under any other provision of an Act that expressly excludes the operation of this section.

### 139 Nature of consent

(1) A consent under this Division:

- (a) may be granted on the roads authority's initiative or on the application of any person, and
- (b) may be granted generally or for a particular case, and

- (c) may relate to a specific structure, work or tree or to structures, works or trees of a specified class, and
  - (c1) in relation to integrated development within the meaning of section 91 of the *Environmental Planning and Assessment Act 1979*, is subject to Division 5 of Part 4 of that Act, and
  - (d) may be granted on such conditions as the appropriate roads authority thinks fit.
- (2) In particular, a consent under this Division with respect to the construction of a utility service in, on or over a public road may require the service to be located:
  - (a) in such position as may be indicated in that regard in a plan of subdivision or other plan registered in the office of the Registrar-General with respect to the road, or
  - (b) in such other position as the roads authority may direct.
- (3) In particular, a consent under this Division with respect to the erection of a structure may be granted subject to a condition that permits or prohibits the use of the structure for a specified purpose or purposes.

#### **139A Street vending consents and charges in built-up areas**

- (1) A roads authority, in granting consent under this Division to the erection of a structure in, on or over a public road and located in a built-up area, may, without limiting section 139, impose conditions:
  - (a) permitting the use of the structure for the purpose of selling any article or service, and
  - (b) requiring payments in the nature of rent.
- (2) The term of a street vending consent is to be such period (not exceeding 7 years) as is specified in the consent.
- (3) For the purposes of this section, a structure is located in a built-up area if the structure is located in, on or over a part of a public road that is lit by street lighting located at intervals of not more than 100 metres for a distance of not less than 500 metres.
- (4) Nothing in this section prevents a roads authority from granting a consent under this Division that permits the use of a structure in, on or over a public road and not located in a built-up area for the purpose of selling any article or service.

#### **139B Application of *Environmental Planning and Assessment Act 1979***

The granting of a consent under this Division that is subject to a condition of a kind referred to in section 139 (3) or 139A concerning the use of a structure does not affect the

application (if any) of the *Environmental Planning and Assessment Act 1979*.

**139C Revocation of street vending consents**

- (1) A roads authority may revoke a street vending consent if:
  - (a) a condition of the consent or a requirement under this Division is breached, or
  - (b) it is of the opinion that it is necessary to do so because of a change in the traffic or other road safety circumstances affecting the road.
- (2) The roads authority may only revoke the street vending consent by notice in writing served on the holder of the consent.

**139D Extension and transfer of street vending and other consents**

- (1) A roads authority may, at the end of the term of a street vending consent, extend the term of the consent for such further period (not exceeding 7 years) as is specified in the consent.
- (2) An extension may be granted on the application of the holder of the consent.
- (3) A roads authority may transfer a street vending consent or another consent under this Division permitting the erection and use of a structure for a purpose to a person other than the holder of the consent.
- (4) A transfer may be granted on the application of the holder of the consent or of another person made with the holder's consent.
- (5) A roads authority may impose a condition as to payments in the nature of rent when it extends or transfers a street vending consent.
- (6) Section 139 applies to a consent extended or transferred under this section.

**139E Fresh consents**

- (1) A roads authority may grant a fresh street vending consent or other consent under this Division in respect of a structure if the previous consent is revoked, expires or otherwise lapses.
- (2) The consent granted may be granted on the roads authority's initiative or on the application of any person.
- (3) The consent granted may be a street vending consent or other consent even though the previous consent was of a different kind.

**139F Matters to be taken into account**

- (1) When considering whether to grant, extend or transfer a street vending consent, or other consent under this Division permitting the use of a structure in, on or over a

public road not in a built-up area, for the purpose of selling any article or service, the roads authority must comply with guidelines relating to street vending jointly issued by RMS and the Department of Local Government.

- (2) A street vending consent may not be granted if a structure is subject to a lease under section 149.

#### **140 Revocation of consents**

A roads authority may at any time and for any reason revoke a consent under this Division (other than a street vending consent) by notice in writing served on the holder of the consent.

#### **141 Effect of consent**

While a consent under this Division is in force, the taking of action in accordance with the consent is taken not to constitute a public nuisance and does not give rise to an offence against this or any other Act.

#### **142 Maintenance of works and structures**

- (1) A person who has a right to the control, use or benefit of a structure or work in, on or over a public road:

- (a) must maintain the structure or work in a satisfactory state of repair, and
- (b) in the case of a structure (such as a grating or inspection cover) located on the surface of the road, must ensure that the structure is kept flush with the surrounding road surface and that the structure and surrounding road surface are so maintained as to facilitate the smooth passage of traffic along the road,

and the person is, by this section, empowered to do so accordingly.

Maximum penalty: 30 penalty units.

- (2) Subsection (1) applies to all structures and works in, on or over a public road, including structures and works for which there is no consent in force under this Division.
- (3) Subsection (1) does not apply to a person whose right to the control, use or benefit of a structure or work consists merely of a right of passage that the person has as a member of the public or a right of access that the person has as the owner of adjoining land.
- (4) If:
- (a) a roads authority has granted a consent under this Division to the doing of anything, and

(b) that thing has been or is being done otherwise than in accordance with the consent,

the roads authority may direct the holder of the consent to take specified action to remedy any damage arising from the doing of that thing otherwise than in accordance with the consent.

#### **143 Roads authority may use public road in exercise of functions**

Nothing in this Division prevents a roads authority from using a public road in the exercise of a function conferred by this Act so long as the function is exercised in a way that will not unduly interfere with the rights of passage and access that exist with respect to the public road.

### **Division 4 Road events**

#### **144 Permits for road events**

- (1) A roads authority may grant a permit to any person to conduct a road event on a public road.
- (2) A permit may not be granted with respect to a classified road except with the consent of RMS.
- (3) A permit may not be granted with respect to an activity for which an approval is required under section 115 of the *Road Transport Act 2013* unless such an approval is in force.

### **Division 5 Light rail systems**

#### **144A Definitions**

In this Division:

**develop** or **operate** a light rail system has the same meaning as in section 104L of the *Transport Administration Act 1988*.

**Director-General** means the Director-General of the Department of Transport.

**light rail system** has the same meaning as in the *Transport Administration Act 1988*.

#### **144B Roads authority not to obstruct light rail system**

- (1) A roads authority, in the exercise of any of its functions under this Act, must not, without the prior consent of the Director-General:
  - (a) carry out, or authorise the carrying out, of any work, or
  - (b) grant any consent or authorisation or issue any direction, or

- (c) take any other action (including disposing of or granting any interest in land), that prevents or otherwise obstructs the passage of light rail vehicles along the route of a light rail system declared under the *Transport Administration Act 1988* or the carrying out or use of any work approved under section 144C.
- (2) The Director-General must, before granting a consent under this section consult with:
- (a) RMS, whether or not RMS is the roads authority concerned, and
  - (b) the operator of the light rail system, if the Director-General is not the operator of the system.
- (3) A consent by the Director-General:
- (a) may be granted on the Director-General's own initiative or on the application of any person, and
  - (b) may be granted generally or for a particular case, and
  - (c) may be granted for specific matters or classes of matters, and
  - (d) may be granted on such conditions as the Director-General thinks fit.
- (4) Nothing in this section prevents the temporary closure of any road or road related area within the meaning of section 4 (1) of the *Road Transport Act 2013* (other than a road or road related area that is the subject of a declaration made under section 18 (1) (b) of that Act relating to all of the provisions of that Act) or the taking of other action that is authorised by section 186 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**144C Consent for works and other action relating to light rail system**

- (1) This section applies to and in respect of the carrying out or use of works or the taking of other action in connection with the development or operation of a light rail system that cannot be carried out, used or undertaken without the prior consent or approval of a roads authority under this Act.
- (2) In the case of work or other action to which this section applies, the consent or approval of the relevant roads authority (if that roads authority is not RMS) is not required but the consent or approval of RMS must be obtained before the work is carried out or used or the other action undertaken. The provisions of this Act apply to the granting of any such consent or approval as if the relevant roads authority were RMS.
- (3) RMS is not to revoke any consent or approval for any work or other action to which this section applies unless it has first consulted the Director-General.

#### **144D Directions and other functions relating to light rail systems**

- (1) This section applies to and in respect of:
  - (a) the giving of any direction or the imposition of any requirement by, or
  - (b) the exercise of any other function of,a roads authority under this Act in connection with the development or operation of a light rail system.
- (2) A direction, requirement or function to which this section applies is, if given, made or exercised under this Act, to be given, made or exercised by RMS only, whether or not it is the relevant roads authority in the particular circumstances.

#### **144E Division prevails**

This Division has effect despite any other provision of this Act.

### **Division 6 Private railways**

#### **144F Effect of road work on private railway**

- (1) A private railway is not to be taken to have been severed, closed or otherwise not used merely because RMS carries out road work on, over, below or in the vicinity of the railway.
- (2) If, but for subsection (1), a private railway would have been severed, closed or otherwise not used because of road work carried out by RMS on, over, below or in the vicinity of the railway, this section does not operate to affect any entitlement a person would have to compensation under this Act or the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (3) This section has effect despite the provisions of any Private Act.

## **Part 10 Other road management functions**

### **Division 1 Functions with respect to land generally**

#### **145 Roads authorities own public roads**

- (1) All freeways are vested in fee simple in RMS.
- (2) All Crown roads are vested in fee simple in the Crown as Crown land.
- (3) All public roads within a local government area (other than freeways and Crown roads) are vested in fee simple in the appropriate roads authority.
- (4) All public roads outside a local government area (other than freeways and Crown

roads) are vested in fee simple in the Crown as Crown land.

#### **146 Nature of ownership of public roads**

- (1) Except as otherwise provided by this Act, the dedication of land as a public road:
  - (a) does not impose any liability on the owner of the road that the owner would not have if the owner were merely a person having the care, control and management of the road, and
  - (b) does not affect the rights or liabilities of any person under any easement or under any Act or law, and
  - (c) does not affect any rights of any person with respect to minerals below the surface of the road, and
  - (d) does not constitute the owner of the road as an occupier of the land, and
  - (e) does not authorise the owner of the road to dispose of any interest (other than an easement or covenant) in the land, and
  - (f) does not prevent any lands that were previously considered to be adjoining lands for the purposes of the *Land Acquisition (Just Terms Compensation) Act 1991* from continuing to be so considered.
- (2) This section does not restrict the power of a roads authority to regulate the digging up of public roads pursuant to the provisions of any other Act.

#### **147 Crown roads may not be sold etc**

- (1) A Crown road may not be dealt with under the Crown Lands Acts while it is a Crown road.
- (2) However, the Minister may deal with a Crown road under section 72 of the *Crown Lands Act 1989* (Cultivation of enclosed roads) and may, in accordance with the Crown Lands Acts, grant an easement, licence, permit or consent with respect to a Crown road.
- (3) An easement, licence, permit or consent may not be granted under this section with respect to a Crown road if it is inconsistent with the rights of passage and access that exist with respect to the road.

#### **148 Disposal of surplus Crown land**

- (1) Land that has been acquired by the Minister under Part 12, but that is no longer required for the purposes of this Act, may be dealt with under the Crown Lands Acts or may be given in compensation for land acquired for the purposes of this Act.
- (2) The provisions of:



(a) section 35 of the *Crown Lands Act 1989* (Assessment of land), and

(b) Part 3 of that Act (Land assessment),

do not apply to the sale or lease of the land if it is sold or leased to a public authority or to the owner or lessee of adjoining land.

#### **149 Leasing of land above or below public road**

- (1) A roads authority may lease the air space above, or land below the surface of, any public road (other than a Crown road) that is owned by the authority.
- (2) Such a lease may not be granted by a roads authority other than RMS except with the approval of the Director of Planning.
- (3) The Director of Planning must not approve a lease in respect of a public road if the granting of the lease would be inconsistent with the rights of passage and access that exist with respect to the road.
- (4) The term of a lease, together with any option to renew, must not exceed 99 years.

#### **150 Transfer of public road to other roads authority**

- (1) The Minister may, by order published in the Gazette, transfer a public road (other than a Crown road) from one roads authority to another.
- (2) An order under this section may not be made except with the consent of the roads authority from which, and the roads authority to which, the road is to be transferred.

#### **151 Transfer of Crown road to council**

- (1) The Minister may, by order published in the Gazette, transfer a specified Crown road to another roads authority.
- (2) On the publication of the order, the road ceases to be a Crown road.
- (3) An order transferring a Crown road to RMS may not be made except with the consent of RMS.
- (4) If the road has been provided in a subdivision of Crown land for alienation, or has been reserved in the measurement of Crown land, the official plans of survey showing the road adjacent to the land subdivided or measured are evidence of the width, extent and position of the road.

#### **152 Transfer of ownership does not give rise to compensation**

- (1) The transfer by this Act of the ownership of a public road does not confer any right to compensation on the person from whom the land is transferred.
- (2) This section does not apply to land that is acquired by agreement or by compulsory

acquisition.

## **Division 2 Short-term leases of unused public roads**

### **153 Short-term leases of unused public roads**

- (1) A roads authority may lease land comprising a public road (other than a Crown road) to the owner or lessee of land adjoining the public road if, in its opinion, the road is not being used by the public.
- (2) However, a lease may not be granted under this Division with respect to land that has been acquired by RMS under Division 3 of Part 12 (being land that forms part of a classified road) except by RMS.
- (3) A lease granted under this Division may be terminated by the roads authority at any time and for any reason.

### **154 Public notice to be given of proposed lease**

- (1) Before granting a lease under this Division, the roads authority must cause notice of the proposed lease:
  - (a) to be published in a local newspaper, and
  - (b) to be served on the owner of each parcel of land adjoining the length of public road concerned.
- (2) The notice:
  - (a) must identify the public road concerned, and
  - (b) must state that any person is entitled to make submissions to the roads authority with respect to the proposed lease, and
  - (c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

### **155 Public submissions**

Any person may make submissions to the roads authority with respect to the proposed lease.

### **156 Decision on proposed lease**

- (1) After considering any submissions that have been duly made with respect to the proposed lease, the roads authority may grant the lease, either with or without alteration, or may refuse to grant the lease.
- (2) If the roads authority grants a lease, the roads authority must cause notice of that fact to be published in a local newspaper.

### **157 Special provisions with respect to short-term leases**

- (1) The term of a lease, together with any option to renew, must not exceed:
  - (a) except as provided by paragraph (b), 5 years, or
  - (b) in the case of a lease of land that has been acquired by the roads authority under Division 3 of Part 12, 10 years.
- (2) A person must not erect any structure on land the subject of a lease under this Division otherwise than in accordance with the consent of the roads authority.  
Maximum penalty: 10 penalty units.
- (3) Such a consent may not be given unless the roads authority is satisfied that the proposed structure comprises a fence or a temporary structure of a kind that can easily be demolished or removed.

## **Division 3 Special functions of RMS with respect to land**

### **158 Powers of RMS in relation to land**

- (1) RMS may, with the consent of the owner of any land, exercise in relation to the land any function that it could so exercise if it were the owner of the land.
- (2) RMS may exercise in relation to any land in which it holds an interest any function that a private individual could so exercise if the private individual were the holder of the interest.

### **159 RMS may place land under control of council**

- (1) RMS, with the agreement of the council, may, by order published in the Gazette, place any land owned by RMS under the control of the council of the local government area within which the land is situated.
- (2) While such an order is in force, the land is a public reserve within the meaning of the [Local Government Act 1993](#).

### **160 Reinstatement of buildings affected by acquisition of land**

- (1) If land on which the whole of a building is situated is acquired under this Act, RMS may do any one or more of the following:
  - (a) it may demolish the whole or any part of the building,
  - (b) it may repair, renew or extend any undemolished part of the building,
  - (c) it may sell any part of the land that is not required for the purposes of this Act, whether or not on condition that the purchaser of the land must demolish any part of the building that is situated on the land retained by RMS.

- (2) If land on which part only of a building is situated is acquired under this Act, RMS may demolish that part of the building.
- (3) If any part of a building is partially demolished as a consequence of the acquisition of land under this Act, the remainder of the building may be repaired, renewed or extended with materials of a similar quality and class to those used in the undemolished part of the building regardless of any other Act or law to the contrary.
- (4) Subsection (3) does not authorise a person (other than RMS) to extend a building by more than is necessary to enable it to provide accommodation equivalent in nature and extent to that provided by it before the demolition took place.

### **161 RMS development land**

- (1) The Minister may, by order published in the Gazette, declare that specified land vested in RMS is land to which this section applies (in this Act referred to as ***RMS development land***).
- (2) Such an order may not be published except on the recommendation of RMS.
- (3) RMS:
  - (a) may deal with RMS development land for the purpose of enabling a building to be erected, or a work to be carried out, on the land, or
  - (b) may erect a building, or carry out a work, on RMS development land, or
  - (c) may deal with RMS development land on which it has erected a building or carried out a work, or
  - (d) may exercise on any RMS development land (other than land which it has dealt with or land on which it has erected a building or carried out a work) any of its functions that are exercisable in relation to land.
- (4) RMS:
  - (a) may, in, on or over any public road, construct, install, maintain, replace or renew any work or structure that, in its opinion, is reasonably necessary for or in connection with the exercise of its other functions with respect to RMS development land, and
  - (b) may, for that purpose, remove soil from the public road and carry out any other work in, on or over the public road that, in its opinion, is reasonably necessary for or in connection with the exercise of its other functions with respect to RMS development land.
- (5) The powers conferred by this section with respect to a public road are not exercisable otherwise than:

- (a) by RMS or a person authorised by RMS for the purposes of this section, or
- (b) in accordance with any conditions imposed by RMS with respect to the exercise of those powers.

## **Division 4 Miscellaneous**

### **162 Naming of public roads**

- (1) A roads authority may name and number all public roads for which it is the roads authority.
- (2) RMS may name and number all classified roads.
- (3) Neither a roads authority nor RMS may name a public road, or alter the name of a public road, unless it has given the Geographical Names Board at least one month's notice of the proposed name.

### **163 Roads authorities to keep records**

- (1) A roads authority must keep a record of the public roads for which it is the roads authority.
- (2) The record must indicate with respect to each public road:
  - (a) its location, and
  - (b) the name and number (if any) given to it by the roads authority, and
  - (c) the reference of any plan in accordance with which its boundaries or levels have been fixed or varied by the roads authority, and
  - (d) such other particulars as may be prescribed by the regulations.
- (3) The record must be available for inspection by members of the public, free of charge, during the normal business hours of the roads authority.
- (4) RMS must keep a record of all classified roads in addition to the records that it keeps in its capacity as a roads authority.
- (5) The record must indicate with respect to each classified road:
  - (a) its location, and
  - (b) the name and number (if any) given to it by RMS, and
  - (c) its classification, and
  - (d) the reference of any plan in accordance with which its boundaries or levels have been fixed or varied by RMS, and

(e) such other particulars as may be prescribed by the regulations.

(6) The record must be available for inspection by members of the public, free of charge, during the normal business hours of RMS.

## **Part 11 Entry to land and other powers**

### **Division 1 Entry to land**

#### **164 Power of entry**

- (1) For the purposes of this Act, an authorised officer may enter any land.
- (2) Except in emergencies, the power of entry may be exercised only during daylight hours.

#### **165 Inspections and investigations**

For the purposes of this Act, an authorised officer who enters land under any power of entry conferred by this Division:

- (a) may inspect the land, and
- (b) may, for the purposes of an inspection, dig up any ground and take such measures as are necessary to ascertain the character and condition of the land and of any building, structure or work that is situated in, on or over the land, and
- (c) may make surveys and take levels and, for those purposes, may dig trenches, break up the soil and set up any posts, stakes or marks, and
- (d) may take samples or photographs in connection with any inspection.

#### **166 Notice of entry**

- (1) Before an authorised officer exercises a power of entry under this Division, the roads authority must give the owner or occupier of the land written notice of the intention to enter the land.
- (2) The notice must specify the day on which the authorised officer intends to enter the land and must be given before that day.
- (3) This section does not require notice to be given:
  - (a) if entry to the land is made with the consent of the owner or occupier of the land,  
or
  - (b) if entry is required in an emergency.

### **167 Use of force**

- (1) Reasonable force may be used for the purpose of gaining entry to any land (other than such part of a building as is being used for residential purposes) under a power conferred by this Division, but only if authorised by the roads authority in accordance with this section.
- (2) The authority:
  - (a) must be in writing, and
  - (b) must be given in respect of the particular entry concerned, and
  - (c) must specify the circumstances which are required to exist before force may be used.

### **168 Notification of use of force or urgent entry**

- (1) An authorised officer:
  - (a) who uses force for the purpose of gaining entry to the land, or
  - (b) who enters land in an emergency without giving written notice to the owner or occupier,must promptly advise the roads authority of that fact.
- (2) The roads authority must give notice of the entry to such persons or authorities as appear to the roads authority to be appropriate in the circumstances.

### **169 Care to be taken**

- (1) In the exercise of a function under this Division, an authorised officer must do as little damage as possible.
- (2) The roads authority must provide, if necessary, other means of access in place of any taken away or interrupted by an authorised officer.
- (3) As far as practicable, entry on to fenced land is to be made through an existing opening in the enclosing fence or, if entry by that means is not practicable, through a new opening in the enclosing fence.
- (4) Any new opening is to be properly closed when the need for entry ceases.
- (5) If, in the exercise of a function under this Division, any pit, trench, hole or bore is made, the roads authority must, if the owner or occupier of the premises so requires:
  - (a) fence it and keep it securely fenced so long as it remains open or not sufficiently sloped down, and

(b) without unnecessary delay, fill it up or level it or sufficiently slope it down.

### **170 Recovery of cost of entry and inspection**

If an authorised officer enters any land for the purpose of making an inspection and, as a result of that inspection, the roads authority requires any work to be carried out on the land, the roads authority may recover the reasonable costs of the entry and inspection from the owner or occupier of the land.

### **171 Compensation**

A roads authority must pay compensation to the owner of the land for any loss or damage arising from the exercise of any power under this Division by an authorised officer, but is not so liable to the extent to which the loss or damage arises from work done for the purpose of an inspection which reveals that there has been a contravention by the owner of this or any other Act.

### **172 Authority to enter land**

- (1) A power of entry may not be exercised unless the authorised officer:
  - (a) is in possession of a certificate of authority issued by the appropriate roads authority, and
  - (b) produces the certificate when required to do so by the owner or occupier of the land.
- (2) The certificate of authority:
  - (a) must state that it is issued under this Act, and
  - (b) must give the name of the person to whom it is issued, and
  - (c) must describe the nature of the powers conferred and the source of the powers, and
  - (d) must state the date (if any) on which it expires, and
  - (e) must describe the kind of land to which the power extends, and
  - (f) must be under the seal of the roads authority or must bear the signature of the general manager or other principal officer of the roads authority or the signature of another officer of the authority of a class prescribed by the regulations.

### **173 Entry to residential premises**

A power of entry conferred by this Division is not exercisable in relation to such part of a building as is being used for residential purposes except:

- (a) with the permission of the occupier of that part of the premises, or



- (b) under the authority conferred by a warrant of entry.

#### **174 Warrants of entry**

- (1) A roads authority may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* if the roads authority is of the opinion that it is necessary for the authority to enter and inspect any land (including any building used for residential purposes) for the purposes of this Act.
- (2) An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a warrant of entry authorising an authorised officer under this Act named in the warrant to enter and inspect the land for the purposes of this Act.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a warrant of entry issued under this section in the same way as it applies to a search warrant issued under that Act.
- (4) (Repealed)

### **Division 2 Other powers with respect to land**

#### **175 Roads authority may take possession of land when constructing etc public road**

- (1) For the purpose of:
  - (a) carrying out road work on a road or a proposed road, or
  - (b) providing a temporary road to replace a public road that has become impassable, the appropriate roads authority 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.
- (2) However, the power may not be exercised unless the appropriate roads authority has given the occupier of the land at least 7 days' written notice of its intention to exercise the power.
- (3) A person given a notice under this section 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.
- (4) The decision of the Minister on such an appeal is binding on the appropriate roads authority and the appellant and is final.
- (5) A notice under this section is not required:
  - (a) if, in the opinion of the appropriate roads authority, 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 particular road, and

(b) if that authority gives the occupier of the land such notice (if any) as is practicable in the circumstances and, immediately after giving the notice, reports to the Minister the circumstances requiring such a notice to be dispensed with.

(6) The appropriate roads authority must not, under this section, use or occupy land within 15 metres of a dwelling-house unless:

(a) the occupier of the land has consented in writing to the use or occupation, or

(b) if that consent is not given—the Minister has given written authority for the use or occupation.

(7) The roads authority must pay compensation to the owner of the land for any loss or damage arising from the exercise of any power under this section.

(8) While being used or occupied under this section for the purpose of providing a temporary road, the land so used or occupied is taken to be a public road for the purposes of this Act (Parts 2, 3, 4 and 10 excepted).

#### **176 Access roads across land owned by public authority**

(1) A roads authority may enter into, and perform its obligations under, an agreement under which the roads authority contributes towards the expenses of the public authority in constructing and maintaining a road across any land under the control of the public authority.

(2) While such an agreement is in force, the road is taken to be a public road for the purposes of this Act (Parts 2, 3, 4 and 10 excepted).

## **Part 12 Acquisition of land**

### **Division 1 Acquisition of land generally**

#### **177 Power to acquire land generally**

(1) The Minister, RMS or a council may acquire land for any of the purposes of this Act.

(2) Without limiting subsection (1), the Minister, RMS or a council may acquire:

(a) land that is to be made available for any public purpose for which it is reserved or zoned under an environmental planning instrument, or

(b) land that forms part of, or adjoins or lies in the vicinity of, other land proposed to be acquired for the purpose of opening, widening or constructing a road or road work.

- (3) Without limiting subsection (1), RMS may also acquire land that it proposes to declare to be RMS development land.

### **178 Procedure for acquiring land**

- (1) Land that is authorised to be acquired under this Division may be acquired by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) A council may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the Minister.

### **179 Restriction on compulsory acquisition of land for resale**

- (1) Land may not be acquired by compulsory process under this Division without the approval of the owner of the land if it is being acquired for the purpose of re-sale.
- (2) However, the owner's approval is not required if the land forms part of, or adjoins or lies in the vicinity of, other land acquired at the same time under this Division for a purpose other than the purpose of re-sale or if the land is proposed to be RMS development land.

### **180 Special provisions relating to land containing minerals**

Division 4 of Part 8 of the *Public Works Act 1912* applies to the Minister, RMS and a council, and to land acquired by the Minister, RMS or a council, in the same way as it applies to a constructing authority within the meaning of that Act and to land acquired by a constructing authority.

## **Division 2 Acquisition of land on private application**

### **181 Definitions**

- (1) In this Division:

***apparent owner of land*** means any person:

- (a) who has a registered interest in the land, or
- (b) who is in lawful occupation of the land, or
- (c) who has, to the actual knowledge of the Minister, an interest in the land.

***application*** means an application under this Division for the acquisition by the Minister of land (other than unoccupied Crown land) for the purposes of a public road.

***claim of interest*** means a claim that a person has an interest in land to be acquired under this Division.

***Commonwealth Native Title Act*** or ***NTA*** means the *Native Title Act 1993* of the

Commonwealth.

**native title** or **native title rights and interests** has the same meaning as in the Commonwealth Native Title Act.

**registered interest** in land means an interest in land recorded in:

- (a) the Register kept under the *Real Property Act 1900*, or
- (b) the General Register of Deeds kept under the *Conveyancing Act 1919*, or
- (c) the National Native Title Register kept under the Commonwealth Native Title Act if the interest is an interest in relation to land that is the subject of an approved determination of native title (other than an approved determination that no native title exists).

- (2) For the purposes of this Division, a holder of native title rights and interests in relation to land has an interest in land.

**Note—**

**Approved determination of native title**, referred to in paragraph (c) of the definition of **registered interest**, is defined in sec 253 NTA.

### **181A Notes in the text**

Notes included in this Division are explanatory notes and do not form part of this Act.

### **182 Private individuals etc may request Minister to acquire land**

- (1) Any person who is not empowered to compulsorily acquire land may apply to the Minister for the acquisition under this Division of land (other than unoccupied Crown land) for the purposes of a public road.
- (2) An application may be transferred, in accordance with the regulations, to any person who is not empowered to compulsorily acquire land.
- (3) The Minister may, by notice published in the Gazette, acquire the whole or any part of the land to which such an application relates.
- (4) Land may not be acquired under this Division unless the provisions of this Division have been complied with.

**Note—**

The NTA also imposes requirements where the native title rights and interests are compulsorily acquired.

### **183 Minister may require information and advance payments**

- (1) The Minister may from time to time, by notice in writing served on the applicant, require the applicant to lodge with the Minister any one or more of the following within

the period specified in the notice:

- (a) any fee required to cover the cost of processing the application,
  - (b) any sum of money necessary to defray a cost incurred by the Minister or any other person with respect to the proposed acquisition,
  - (c) particulars of the financial resources available to the applicant,
  - (d) any further information relevant to the application,
  - (e) a plan of survey, in a form approved by the Minister, of the land proposed to be acquired.
- (2) Such a notice may be served either before or during the consideration of the application.
- (3) An application is taken to have been abandoned if the requirements of any such notice are not duly complied with.

#### **184 Decision on whether to deal with application**

- (1) The Minister:
- (a) must decide whether to deal with the application or whether to refuse to deal with the application, and
  - (b) must give notice to the applicant of the decision and (if the Minister decides to refuse to deal with the application) of the reasons for the decision.
- (2) If the Minister decides to deal with the application, the Minister must cause notice of that fact:
- (a) to be published in a local newspaper, and
  - (b) to be served on each person who is an apparent owner of the land affected by the proposed acquisition including:
    - (i) any registered native title body corporate (within the meaning of the Commonwealth Native Title Act) in relation to the land, and
    - (ii) (Repealed)
  - (c) to be served on each person who is a registered native title claimant (within the meaning of the Commonwealth Native Title Act) in relation to the land affected by the proposed acquisition.
- (3) The notice:
- (a) must state that the Minister is considering whether to acquire the land for the

purposes of a public road, and

- (b) must identify the land, and
  - (c) must indicate the place at which, and the times during which, a plan of the land is available for inspection by members of the public, and
  - (d) must state that any person is entitled to make submissions to the Minister with respect to the proposed acquisition of the land, and
  - (e) must state that, if the land is acquired, any person having an interest in the land will be entitled to compensation so long as the person has lodged a claim of interest with the Minister, and
  - (f) must indicate the manner in which, and the period (being at least 42 days) within which, any such submission or claim should be made or lodged.
- (4) The Minister must ensure that copies of the plan of the land are available for inspection by members of the public at the place, and during the times, specified in the notice.

#### **185 Registrar-General to be notified of Minister's decision to deal with an application**

- (1) The Minister must, as soon as practicable after publishing a notice of intention to deal with an application, give notice of that fact to the Registrar-General.
- (2) Any such notice must be in such form as the Registrar-General approves.
- (3) On receipt of the notice, the Registrar-General must make such recordings as the Registrar-General considers appropriate in the Register kept under the *Real Property Act 1900*, or in the General Register of Deeds kept under the *Conveyancing Act 1919*, as the case requires.

#### **186 Public submissions and claims of interest**

- (1) Any person may make submissions to the Minister with respect to the proposed acquisition of land under this Division.
- (2) Any person who believes that he or she may have an interest in the land proposed to be acquired may lodge a claim of interest with the Minister.
- (3) A claim of interest:
  - (a) must contain the full name and residential address of the claimant, the claimant's address for service of notices and particulars of title of the land in respect of which the claim is made, and
  - (b) must specify the interest that the claimant claims to have in the land, and

- (c) must state whether the claimant is aware of any other person who has an interest in the land and, if so, must also state, to the extent to which the claimant is aware of them, the name and residential address of that person and particulars of the interest.

**187 Decision on whether to continue with proposed acquisition**

- (1) After considering any submissions that have been duly made with respect to the proposed acquisition of land, the Minister:
  - (a) must decide whether to continue with, or to abandon, the proposed acquisition, and
  - (b) if the Minister decides to abandon the proposed acquisition, must give notice to the applicant of the decision and of the reasons for the decision.
- (2) If the Minister decides to continue with the proposed acquisition, the Minister:
  - (a) must determine each claim of interest, and
  - (b) must give notice to the claimant of the determination and (if the Minister decides to reject the claim) of the reasons for the determination.
- (3) Any claim that has not been determined within 56 days after it was lodged with the Minister is, for the purposes of any appeal proceedings, taken to have been rejected.
- (4) This section does not prevent the Minister:
  - (a) from determining a claim that is lodged after the due date for lodgment of claims, or
  - (b) from determining a claim that is taken to have been rejected.

**188 Appeal against rejection of claims of interest**

- (1) A person who claims an interest in land may, in accordance with rules of court, appeal to the Land and Environment Court against the rejection of the person's claim.
- (2) Such an appeal must be made within 28 days after the date on which the claim is rejected.
- (3) The Land and Environment Court is to determine the appeal by declaring whether or not the claimant has an interest in the land and may, with the consent of the parties to the appeal, make a determination as to the compensation to be paid or otherwise provided to the claimant.
- (4) For the purposes of this section, the parties to the appeal are the Minister, the claimant and the applicant.

**189 Notice to be sent to holders of interests in land**

- (1) After the claims of interest have been determined, the Minister must give notice of the decision to continue with the proposed acquisition of the land to:
  - (a) the applicant, and
  - (b) each person whose claim of interest has been accepted.
- (2) The notice:
  - (a) must invite the applicant and each such person to agree on the amount of compensation to be paid or otherwise provided in respect of that person's interest, and
  - (b) must notify the applicant and each such person that any such agreement does not have effect unless it is approved by the Minister, and
  - (c) must notify the applicant and each such person that either of them, or the Minister, may apply to the Land and Environment Court for a determination of the amount of compensation to be paid or otherwise provided if an agreement is not made and approved within 12 weeks after service of the notice.
- (3) Notice is not required under this section if the applicant and each person whose claim of interest has been accepted have reached agreement on the compensation to be paid or otherwise provided and have lodged the agreement with the Minister for approval.

**190 Entitlement to compensation**

- (1) Any person from whom an interest in land is acquired under this Division is entitled to compensation from the Crown for the land acquired.
- (2) There is no entitlement to compensation with respect to:
  - (a) any right, licence, authority, permit, permissive occupancy or yearly lease of Crown land, or
  - (b) any authority, mineral claim or opal prospecting licence under the [Mining Act 1992](#), or
  - (c) any petroleum title under the [Petroleum \(Onshore\) Act 1991](#), or
  - (d) any interest in respect of which a claim of interest has not been duly made, or
  - (e) any interest in respect of which a claim of interest has been made but has been rejected.
- (3) If the Minister is satisfied that there is an interest in the land for which no claim has



been made, but is unaware of the identity or whereabouts of the owner of the interest, the Minister may determine that such a person is nevertheless entitled to compensation.

- (4) The provisions of sections 49, 50, 52 and 53, and Division 4 of Part 3, of the *Land Acquisition (Just Terms Compensation) Act 1991* apply to compensation to be paid or otherwise provided for the acquisition of land under this Division as if references in those provisions to an authority of the State were references to the Minister.
- (5) Interest under section 49 of the *Land Acquisition (Just Terms Compensation) Act 1991* is not payable on any amount of compensation paid within 28 days after the date of acquisition.
- (6) The applicant must pay to the Crown the amount of any compensation to be provided under this Division, together with any costs incurred by the Crown in connection with the provision of any such compensation.

### **191 Ascertainment of compensation payable**

The amount of compensation to be provided is to be determined:

- (a) by agreement between the applicant and each person whose claim has been accepted, or
- (b) failing agreement, by the Land and Environment Court, or
- (c) if the identity or whereabouts of the owner of any interest in the land concerned cannot be ascertained, by the Valuer-General.

### **191A Requests for non-monetary compensation for native title**

- (1) This section applies to any negotiations held about a compulsory acquisition of native title rights and interests under this Division.
- (2) If, during any such negotiations, a person or persons who may be entitled to compensation ask that the whole or part of the compensation should be in a form other than money, the other person or persons involved in the negotiations:
  - (a) must consider the request, and
  - (b) must negotiate in good faith about the request.

#### **Note—**

Section 79 NTA requires that requests for non-monetary compensation by persons who may be entitled to compensation for impairment or extinguishment of native title rights and interests must be handled in the manner referred to in section 191A. The transfer of property or the supply of goods or services are examples of compensation in a form other than money.

### **192 Determination by agreement**

- (1) An agreement for compensation must be in writing, must be signed by the parties to the agreement and must be approved by the Minister.
- (2) The Minister:
  - (a) must decide whether to approve the agreement for compensation or whether to refuse approval, and
  - (b) must give notice to each of the parties of the decision and (if the Minister decides to refuse approval) of the reasons for the decision.
- (3) The Minister is taken to have approved an agreement for compensation if no notice under this section has been served on any of the parties within 28 days after the agreement was lodged with the Minister.

### **193 Determination by the Land and Environment Court**

- (1) The claimant, the applicant or the Minister may, in accordance with rules of court, apply to the Land and Environment Court to determine the compensation to be provided, if no agreement has been approved:
  - (a) within 12 weeks after service of the relevant notice under section 189, or
  - (b) where no such notice is required to have been given (an agreement having been lodged as referred to in section 189 (3)), within 12 weeks after the agreement was lodged.
- (2) At the hearing of the application, the Minister, the claimant and the applicant are entitled to appear and be heard.

### **194 Determination by Valuer-General**

On the request of the Minister, the Valuer-General is to determine the compensation payable to an owner of the interest in land specified in the request.

#### **194A Entitlement of native title holders to just compensation**

If the compensation that is payable under this Part to a person from whom native title rights and interests in relation to land have been acquired does not amount to compensation on just terms within the meaning of the Commonwealth Native Title Act, the person concerned is entitled to such additional compensation as is necessary to ensure that the compensation is paid on that basis.

### **195 Payment of compensation money**

- (1) As soon as practicable after compensation has been agreed or determined under this Division, the Minister:

- (a) must require the applicant to pay to the Minister such part of the compensation so determined as is to be paid in money, and
  - (b) must pay any such amount received from the applicant into a trust account for payment to the persons entitled to the compensation, and
  - (c) must, on acquiring the land, pay the compensation to each person entitled to compensation for the acquisition of the land.
- (2) The compensation money must be refunded to the applicant if the proposed acquisition is abandoned.
- (3) Any money remaining in the trust account after 6 years from the date of the acquisition of the land is to be paid to the Chief Commissioner of Unclaimed Money for payment into the Consolidated Fund, there to be dealt with as unclaimed money under the *Unclaimed Money Act 1995*.
- (4) The Minister is relieved from further liability with respect to any amount paid into the Consolidated Fund in accordance with subsection (3).

#### **196 Compensation provided in form of land**

- (1) A person to whom compensation is provided in the form of land is to be treated as having been fully compensated:
- (a) if the land has a market value equal to or greater than the amount of compensation that would otherwise have been provided in the form of money, or
  - (b) if the land has a market value less than the amount of compensation that would otherwise have been provided in the form of money but the person has agreed to accept the land in full satisfaction of the person's claim.
- (2) No duty is payable under the *Duties Act 1997* in respect of the conveyance or transfer of any such land and no fee is payable for the registration or recording under any Act of the conveyance or transfer of any such land.

#### **197 Release and indemnity**

The Minister may require the person to whom any compensation is to be paid or otherwise provided:

- (a) to release the Minister from any liability to that person with respect to the interest in land for which the compensation is to be paid or provided, and
- (b) to indemnify the Minister from any liability to any other person with respect to that interest, and
- (c) to produce any relevant documents of title.

**198 Agreement or determination to lapse if land is not acquired within 12 weeks**

- (1) If land for which compensation has been agreed to or determined is not acquired under this Division within 12 weeks after the agreement was approved or the determination was made, as the case requires, the agreement or determination ceases to have effect.
- (2) A person entitled to compensation may ratify such an agreement or determination, whether or not it has lapsed under this section, but no later than 12 months after the date on which the agreement was entered into or the determination was made.
- (3) An agreement or determination ratified under this section continues in force for 12 weeks from the date of ratification and then lapses unless within that period the land to which it relates is acquired under this Division.
- (4) If an agreement or determination made in respect of a claim for compensation has lapsed under this section and no ratification of the agreement or determination under this section is currently in force, the provisions of this Division apply to the claim as if no such agreement or determination had been made.

**199 Abandonment of applications etc**

- (1) An applicant may, at any time, withdraw an application for the acquisition of land under this Division.
- (2) The Minister:
  - (a) may at any time and for any reason, and
  - (b) must if the relevant application is withdrawn,abandon the proposed acquisition of land under this Division.
- (3) If the Minister decides to abandon the proposed acquisition of land otherwise than because the application is withdrawn, the Minister must cause notice to be given to the applicant of the decision and of the reasons for the decision.
- (4) The applicant is entitled to be refunded all money paid by the applicant to the Minister with respect to the proposed acquisition, other than such amounts as the Minister considers appropriate to compensate the Minister and any other persons who have incurred costs with respect to the proposed acquisition.
- (5) If a proposed acquisition of land is abandoned, no further application with respect to that land is to be considered by the Minister during the period of 12 months after the acquisition is abandoned unless the Minister is satisfied that the special circumstances of the case justify the consideration of the further application within that period.

## **200 Registrar-General to be notified of abandonment of application**

- (1) The Minister must, as soon as practicable after the proposed acquisition of land is abandoned, give notice of that fact to the Registrar-General.
- (2) Any such notice must be in such form as the Registrar-General approves.
- (3) On receipt of the notice, the Registrar-General must make such recordings as the Registrar-General considers appropriate in the Register kept under the *Real Property Act 1900*, or in the General Register of Deeds kept under the *Conveyancing Act 1919*, as the case requires.
- (4) This section does not apply if the Minister has not published a notice under section 184 with respect to the proposal.

## **201 Waiver of claims**

- (1) Any person may, by notice in writing served on the Minister, waive that person's entitlement to compensation under this Division.
- (2) The Minister may require a person who has, or who in the opinion of the Minister may have, an entitlement to compensation to give notice to the Minister as to whether or not the person intends to claim compensation.
- (3) A person on whom such a notice is served is taken to have waived the person's entitlement to compensation (if any) if the person has not claimed compensation within 42 days after service of the notice.

## **202 Effect of acquisition of land**

- (1) On the acquisition of land under this Division, the land becomes free of all trusts, restrictions, dedications, reservations, obligations and interests and, subject to this section, becomes Crown land.
- (2) There may be excepted from an acquisition effected under this Division:
  - (a) any easement which is specified in the notice effecting the acquisition and to which the land was subject immediately before the acquisition, and
  - (b) any easement specified in that notice which is appurtenant to an easement referred to in paragraph (a).
- (3) If:
  - (a) in accordance with subsection (2), an easement is excepted from the acquisition, and
  - (b) immediately before the acquisition, the benefit of a restriction as to user was annexed to the easement,

then, unless otherwise specified in the notice by which the acquisition is effected, the restriction continues to have effect as if the acquisition had not taken place.

- (4) The provisions of sections 33–36 of the *Land Acquisition (Just Terms Compensation) Act 1991* apply to land acquired under this Division as if references in those provisions to an authority of the State were references to the Minister.

## **Division 3 Acquisition of land for road widening**

### **203 Acquisition of land for purposes of road widening**

- (1) A roads authority may compulsorily acquire land the subject of a road widening order by means of an acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the need for a proposed acquisition notice under that Act.
- (2) An acquisition notice may not be issued for the purposes of this Division unless the acquiring authority is satisfied that the land is clear of any building or structure.
- (3) However, an acquisition notice is not invalid merely because of the existence on the land of any building or structure as at the time the notice is given.
- (4) Nothing prevents an acquisition notice being given under this Division at the same time as notice of the road widening order is given to the owner of the land.

## **Division 4 Crown to compensate councils for compulsorily acquired public roads**

### **204 Council entitled to compensation if Crown compulsorily acquires public road**

- (1) A council is entitled to compensation under this Division for a public road owned by the council that is acquired by the Crown by compulsory process.
- (2) The provisions of this Division apply in substitution for the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* with respect to compensation.

### **205 Compensation where council has to construct new road**

- (1) This section applies where it is necessary for the council to construct a new public road to replace an existing public road that has been acquired by the Crown by compulsory process.
- (2) The amount of the compensation to which a council is entitled under this section is the sum of:
  - (a) the cost of acquiring land for the purposes of a new road, and
  - (b) the cost of constructing the new road, and

(c) the cost of erecting or constructing, in, on or over the new road, new conduits, poles or structures to replace those that are situated on the road acquired by the Crown and can no longer reasonably continue to be used by the council.

(3) Any compensation received by a council under this section may be used only for acquiring land for the purposes of the new road or for constructing the new road and erecting or constructing new conduits, poles and structures.

## **206 Compensation where council does not have to construct new road**

(1) This section applies except where it is necessary for the council to construct a new public road to replace an existing public road that has been acquired by the Crown by compulsory process.

(2) The amount of the compensation to which a council is entitled under this section is the sum of:

(a) the money (if any) that the council paid for the acquisition of the land, and

(b) the money that the council has spent on the construction of the road, and

(c) the money that the council has spent in erecting or constructing, in, on or over the road, any conduits, poles or structures for use in connection with any water, sewerage or drainage work of, or any trading undertaking carried on by, the council, which, at the time of the acquisition by the Crown, were owned and used by that council in connection with any such work or trading undertaking,

but does not include any money spent on the maintenance, replacement or repair of the road or any such conduits, poles or structures.

(3) Compensation is not payable under subsection (2) (c) to the extent to which any such conduits, poles or structures can reasonably continue to be used by the council in connection with any such work or trading undertaking.

## **Part 13 Finance**

### **Division 1 Financial assistance to roads authorities**

#### **207 RMS may provide financial and other assistance to roads authorities for road work on classified roads**

(1) RMS and a roads authority may enter into, and may perform their obligations under, an agreement under which RMS provides financial or other assistance to the roads authority to enable it:

(a) to carry out specified road work or specified traffic control work on a specified classified road, or

(b) to carry out road work or traffic control work generally.

(2) Under an agreement of the kind referred to in subsection (1) (a), RMS is liable to pay to the roads authority:

(a) the whole of the cost of the road work or traffic control work, in the case of work to be carried out on a main road, or

(b) no less than half of the cost of the road work or traffic control work, in the case of work to be carried out on a secondary road, or

(c) such part of the cost of the road work or traffic control work as RMS determines, in the case of work to be carried out on a tourist road,

unless the roads authority notifies RMS that it is prepared to accept a lesser amount.

**208 RMS may provide financial and other assistance to roads authorities for by-passes etc around classified roads**

RMS may grant financial assistance to a roads authority for the purpose of meeting costs incurred, or to be incurred:

(a) in carrying out road work on an unclassified road that adjoins a classified road, or

(b) in restoring an unclassified road that has suffered damage because of its use as a by-pass or detour in order to avoid a classified road, or

(c) in carrying out road work on an unclassified road if, in the opinion of RMS, the carrying out of the work would be of benefit to a classified road in the vicinity of the road on which the work is being carried out.

**209 Apportionment of cost of road work on public road forming boundary between local government areas**

(1) The cost of carrying out road work on a classified road forming the boundary between local government areas is to be apportioned between the councils of those areas:

(a) by agreement between the councils, or

(b) if the councils are unable to reach agreement within 90 days after being requested by RMS to do so, in such manner as RMS determines.

(2) Before making a determination under this section, RMS:

(a) must notify each council that it proposes to make a determination, and

(b) must give each council a reasonable opportunity to make submissions to RMS with respect to the proposed determination, and

(c) must take into consideration any submission that is duly made with respect to the



proposed determination.

**210 Financial and other assistance for classified road forming boundary between local government areas**

If a classified road forms the boundary between local government areas, RMS may allot any financial or other assistance with respect to the road to either or both of the councils of those areas:

- (a) in accordance with an agreement entered into between those councils, or
- (b) in the absence of such an agreement, in such manner as RMS considers will result in the road work being carried out most efficiently.

**211 Contributions to RMS by Rail Corporation New South Wales and State Transit Authority**

Rail Corporation New South Wales and the State Transit Authority must pay such amounts to RMS as RMS determines from time to time as contributions in relation to:

- (a) in the case of Rail Corporation New South Wales—the movement of rolling stock over railway lines vested in or owned by the Corporation on the Sydney Harbour Bridge, and
- (b) in the case of the State Transit Authority—the carriage of passengers across the Sydney Harbour Bridge.

**212 Administration of Commonwealth grants etc**

RMS may administer financial assistance that is provided, whether by Commonwealth or State grant or otherwise, for the purpose of funding the carrying out of road work by other roads authorities.

**Division 2 Tolls and charges for tollways, bridges, tunnels and road-ferries**

**213 Tolls and charges for tollways**

- (1) RMS may levy and collect tolls and charges for traffic using a tollway.
- (2) RMS may, on such terms as it may decide:
  - (a) lease the operation of a tollway, or
  - (b) lease the collection of tolls and charges on a tollway.
- (3) The amount of any toll or charge must not exceed the amount prescribed by or in accordance with the regulations.

#### **214 Tolls and charges for bridges, tunnels and road-ferries**

- (1) This section applies to a bridge, tunnel or road-ferry that forms part of a metropolitan main road or highway (but not a freeway) and that is under the control of RMS.
- (2) RMS may, with the approval of the Minister, levy tolls and charges in connection with traffic that uses a bridge, tunnel or road-ferry.
- (3) RMS may, on such terms as it may decide:
  - (a) lease the running of a road-ferry, or
  - (b) lease the collection of tolls and charges on a bridge, tunnel or road-ferry.
- (4) A lease may not be entered into under this section unless tenders have been called inviting applications for the lease.
- (5) The amount of any toll or charge must not exceed the amount (if any) prescribed by or calculated in accordance with the regulations.
- (6) This section is subject to section 215.

#### **215 Tolls and charges for the Sydney Harbour Bridge**

- (1) RMS may, by order published in the Gazette, fix the amount of the tolls and charges to be levied in connection with traffic that uses the Sydney Harbour Bridge.
- (2) In fixing the amount of the tolls and charges to be levied in connection with traffic that uses the Sydney Harbour Bridge, RMS must have regard to movements in the Consumer Price Index, being:
  - (a) the index known as the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" that is published quarterly by the Australian Bureau of Statistics, or
  - (b) if the Australian Bureau of Statistics no longer publishes that index, such other index as may be prescribed by the regulations for the purposes of this paragraph.

#### **216 Roads authorities may levy tolls on road-ferries**

- (1) This section applies to a road-ferry that forms part of a public road (other than a freeway, metropolitan main road or highway) and that is under the control of a roads authority other than RMS.
- (2) The appropriate roads authority may levy and collect tolls and charges for traffic using a road-ferry to which this section applies.
- (3) A roads authority may, on such terms as it may decide:
  - (a) lease the running of a road-ferry, or

(b) lease the collection of tolls and charges on a road-ferry.

- (4) The amount of any toll or charge must not exceed the amount (if any) prescribed by or calculated in accordance with the regulations.

### **Division 3 Kerbing and guttering etc by roads authorities**

#### **217 Roads authority may recover cost of paving, kerbing and guttering footways**

- (1) The owner of land adjoining a public road is liable to contribute to the cost incurred by a roads authority in constructing or paving any kerb, gutter or footway along the side of the public road adjacent to the land.
- (2) The amount of the contribution is to be such amount (not more than half of the cost) as the roads authority may determine.
- (3) The owner of land the subject of such a determination becomes liable to pay the amount determined on receiving notice of that amount.
- (4) This section does not apply to the renewal or repair of any paving, kerb or gutter in respect of which contributions have previously been paid and does not apply to the Crown as regards public open space.
- (5) In this section, a reference to a gutter includes, in the case of a roadway that is laid to the kerb in a permanent manner, a reference to such part of the roadway as is within 450 millimetres of the kerb.

#### **218 Roads authority may recover cost of constructing or repairing a special crossing**

- (1) The owner of land adjoining a public road is liable to pay to the appropriate roads authority the cost incurred by the roads authority in constructing or repairing any special crossing over a footway in the public road for the traffic of vehicles across the footway to or from the land.
- (2) If the crossing has been constructed or repaired at the request of the occupier of the land concerned, any amount paid to the roads authority by the owner of the land may be recovered by the owner from the occupier.

#### **219 Recovery of costs incurred**

- (1) A roads authority that gives notice of a determination under this Division to the owner of any land is required, on application by that person, to give the person particulars of the work to which the determination relates and of the costs incurred by the roads authority in carrying out that work.
- (2) In any proceedings for the recovery of an amount determined under this Division, the costs incurred by the roads authority in carrying out the work to which the determination relates may not be called into question unless the owner of the land

has given reasonable written notice to the roads authority of the owner's intention to do so.

- (3) The amount of any unpaid judgment under this Division may, if the roads authority is a council, be recovered as if it were an unpaid rate under the *Local Government Act 1993*.

## **Division 4 Payment by roads authorities to RMS for work carried out by RMS**

### **220 RMS may require roads authorities to contribute to costs of road work**

- (1) RMS may require the appropriate roads authority to pay to RMS the whole, or such part as RMS may determine, of the costs incurred by RMS:
- (a) in constructing drainage, kerbs and gutters, or
  - (b) in constructing, widening and paving footways,
- in connection with a classified road in the Sydney metropolitan area.
- (2) A council may be required to make a contribution towards the construction of drainage even if part of the land drained is outside the council's local government area.
- (3) A contribution that a roads authority is required to pay under this section must not exceed:
- (a) in the case of the work of constructing drainage—the proportion of the cost of the work which the discharge of stormwater from the area of the roads authority outside the classified road bears to the total discharge of stormwater from the total area to be served by the work, or
  - (b) in the case of the work of constructing kerbs and gutters on the same side of the road as adjoining privately owned land where there were previously no kerbs and gutters or where the only kerbs and gutters were those 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 work, or
  - (c) in the case of the work of constructing kerbs and gutters on the same side of the road as, and adjacent to, public open space where there were previously no kerbs and gutters—50 per cent of the cost of the work, or
  - (d) in the case of the work of constructing and paving footways—100 per cent of the cost of the work.
- (4) A contribution that a roads authority is required to pay under this section may be recovered by RMS, as a debt, in a court of competent jurisdiction.

### **221 Roads authority to supply RMS with plans and specifications**

- (1) Before carrying out any work for which it proposes to require a roads authority to pay the whole or any part of the cost, RMS:
  - (a) must provide the roads authority with plans and specifications of the work, and
  - (b) must serve notice on the roads authority of its proposal and of its estimate of the cost of the work.
- (2) If, within 90 days after service of the notice, the roads authority makes written submissions to RMS in relation to the matters specified in the notice, RMS must give the roads authority written notice of RMS's decision in relation to the submissions:
  - (a) if the roads authority has indicated that it wishes to be heard and to call evidence in relation to the matter, within 28 days after hearing the roads authority, or
  - (b) in any other case, within 28 days after receiving the submissions.

### **222 Payment by instalments**

An amount required to be paid to RMS by a roads authority under this Division is payable:

- (a) if the amount exceeds \$2,000, by instalments of such amounts, payable over such period, as may be agreed on between RMS and the roads authority, or
- (b) in any other case, within 90 days after demand by RMS or within such further time as RMS allows.

## **Division 5 Miscellaneous**

### **223 Roads authorities may charge fees for services**

- (1) A roads authority may charge and recover fees for any service it provides.
- (2) The services for which a fee may be charged include the following provided under this Act or the regulations:
  - (a) supplying a service, product or commodity,
  - (b) giving information,
  - (c) considering an application for an approval, permit or consent,
  - (d) carrying out an inspection in connection with an application for an approval, permit or consent,
  - (e) granting an approval, permit or consent,
  - (f) issuing a certificate.

- (2A) Without limiting subsections (1) and (2), a roads authority may charge and recover a fee for a route assessment (within the meaning of Part 4.7 of the *Heavy Vehicle National Law (NSW)*) that it carries out.
- (3) The amount of a fee must not exceed the maximum fee (if any) prescribed by or calculated in accordance with the regulations for the kind of service concerned.

### **223A Trial schemes for heavy vehicles**

- (1) The regulations may make provision for or with respect to the establishment and operation of trial schemes for the use of heavy vehicles on specified roads.
- (2) Without limiting subsection (1), the regulations may provide for the following:
  - (a) RMS or another roads authority to establish and operate a trial scheme,
  - (b) the criteria and conditions for participation in a trial scheme,
  - (c) the payment of fees or charges for participation in a trial scheme,
  - (d) the amount (or the method for calculating the amount) of fees or charges payable for participation in a trial scheme,
  - (e) the fees or charges payable in connection with a trial scheme to be paid into the RMS Fund,
  - (f) the issuing of permits to authorise participation in a trial scheme,
  - (g) record keeping requirements in connection with a trial scheme,
  - (h) the use of monitoring devices in connection with a trial scheme,
  - (i) the modification of the road transport legislation and the *Heavy Vehicle National Law (NSW)* (including the regulations in force for the purposes of that Law) to facilitate the establishment and operation of a trial scheme,
  - (j) the creation of offences in connection with a trial scheme.
- (3) In this section:

**heavy vehicle** has the same meaning as in the *Heavy Vehicle National Law (NSW)*.

**modification** includes addition, exception, omission or substitution.

### **224 RMS may allow costs to roads authorities for road work on classified roads**

If a roads authority carries out road work on a classified road to the satisfaction of RMS, RMS may allow to the roads authority in assessing the cost of the work:

- (a) an additional 2.5 per cent of the cost of the work, if the working plans and

specifications for the work have been prepared by the roads authority in accordance with the standards approved by RMS, or

(b) an additional 1.5 per cent of the cost of the work, in any other case.

## **225 Certain fines to be paid into RMS Fund**

There is appropriated for payment out of the Consolidated Fund into the RMS Fund:

(a) all amounts paid into the Consolidated Fund in respect of penalties recovered with respect to offences committed on or in connection with classified roads under:

(i) this Act or the regulations, or

(ii) Part 3.3 of the former *Road Transport (Vehicle and Driver Management) Act 2005*, or

(iii) Chapter 4 (Vehicle operations—mass, dimension and loading) of the *Heavy Vehicle National Law (NSW)* or other provisions of that Law, or regulations in force for the purposes of that Law, prescribed by the regulations, and

(b) all amounts paid into the Consolidated Fund recovered by means of penalty notices for any such offences issued under this Act, the *Road Transport Act 2013* or a former road transport Act (within the meaning of Part 2 of Schedule 4 to the *Road Transport Act 2013*).

## **226 Claims for compensation**

(1) A person who is entitled to be paid compensation under this Act (Part 12 excepted) may claim compensation by serving notice of the claim on the person by whom the compensation is payable.

(2) A claim for compensation under this Act may, by agreement between the parties, be referred for arbitration under the *Commercial Arbitration Act 2010*.

(3) Failing agreement within 28 days after notice of the claim is served on the party against whom the claim is made, either party may refer the claim to the Land and Environment Court for determination.

## **227 Roads authority may carry out work instead of paying compensation**

A roads authority may enter into, and may perform its obligations under, an agreement to carry out work in satisfaction or partial satisfaction of a claim for compensation under this Act.

## **Part 14 Enforcement of Act**

### **Division 1 Production of information**

#### **228 RMS may require roads authority to provide information**

RMS may direct a council to furnish to RMS such information relevant to the administration of this Act as is specified in the direction within such period (being at least 28 days) as is so specified.

#### **229 Authorised officer may require production of information**

- (1) If an authorised officer suspects on reasonable grounds that the driver of a vehicle has committed an offence against this Act or the regulations, the officer may require the owner of the vehicle or the person in charge of the vehicle to produce immediately to the officer:
  - (a) the name and residential address of the driver of the vehicle, the weight and description of the vehicle's load and the unladen weight of the vehicle, as at the time of commission of the suspected offence, and
  - (b) such documents as are in the person's possession or control and as relate to the vehicle or its load, and
  - (c) such other information relevant to the suspected offence as it is in the power of the person to give,

and may also require the driver of the vehicle to produce to the officer the person's driver licence.

- (2) The officer may require the information to be given either orally or by a signed statement.
- (3) The officer may also require any other person to give immediately, either orally or by a signed statement, such information relevant to a suspected offence against this Act or the regulations as it is in the power of the other person to give.
- (4) A requirement under this section may be made orally or by notice in writing served on the person concerned.
- (5) A person must not, without reasonable excuse, fail to comply with a requirement of an authorised officer made under this section.

Maximum penalty: 30 penalty units.

- (6) A person is not guilty of an offence under subsection (5) unless, before failing to comply with the requirement concerned, the person is warned that failure to comply with the requirement is an offence.



## **Division 2**

### **230-236 (Repealed)**

## **Division 3 Enforcement of certain directions**

### **237 Manner and form in which directions to be given**

- (1) A direction under this Act must be in writing, may be served personally or by post and may be varied or revoked by a further direction in writing so served.
- (2) A direction under section 93, 95, 103, 104 or 107 may instead be given orally in cases of emergency.
- (3) A direction under section 230 may be given orally.

### **238 Roads authority may give effect to direction and recover costs**

- (1) A roads authority may take such action as is necessary to give effect to a direction under this Act if the direction is not complied with in accordance with its terms.
- (2) The costs incurred by a roads authority in taking action under this section are recoverable from the person to whom the direction was given, as a debt, in a court of competent jurisdiction.
- (3) The costs incurred by an authorised officer in exercising any function under Division 2 as a result of the failure of any person to comply with a direction under that Division with respect to a vehicle are recoverable by the appropriate roads authority from the owner of the vehicle, as a debt, in a court of competent jurisdiction.
- (4) Nothing in this section authorises a roads authority to recover an amount greater than that necessary to give effect to the direction.

## **Division 4 Miscellaneous offences**

### **239 Failure to comply with directions**

A person must not, without reasonable excuse, fail to comply with a direction given to the person under this Act.

Maximum penalty: 30 penalty units (in the case of an offence arising under Division 4 of Part 7 or Division 2 of this Part) and 10 penalty units (in any other case).

### **240 Obstruction of authorised officers**

- (1) A person must not:
  - (a) intentionally or recklessly obstruct or hinder an authorised officer in the exercise of a function under this Act, or

- (b) assault or resist an authorised officer in the exercise of such a function, or
- (c) incite a person to obstruct, hinder, assault or resist an authorised officer in the exercise of such a function.

Maximum penalty: 30 penalty units (in the case of an offence with respect to an authorised officer exercising functions under Division 4 of Part 7 or Division 2 of this Part) and 20 penalty units (in any other case).

- (2) A person is not guilty of an offence under this section unless the prosecution establishes:
  - (a) that the person purporting to exercise the function concerned identified himself or herself at the relevant time as an authorised officer who had that function, or
  - (b) that the defendant otherwise knew that the person was an authorised officer empowered to exercise that function.

#### **241 Interference with survey marks**

A person must not, without lawful authority, remove, alter or interfere with a stake, mark or trench installed or constructed in connection with the exercise by a roads authority of a function under this Act.

Maximum penalty: 10 penalty units.

### **Division 5 Legal proceedings**

#### **242 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.
- (2) Proceedings for a toll offence (within the meaning of section 250A) may be commenced within 12 months after the time when the offence is alleged to have been committed.

#### **243 Penalty notices for certain offences**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the authorised officer that the person has committed (or is, by virtue of section 235 or 244, guilty of) an offence against this Act or the regulations, being an offence prescribed by the regulations for the purposes of this section.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.

- (3) If the penalty prescribed for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.
- (4) Payment in accordance with this section is not to be regarded as an admission of liability for the purposes of, nor is in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (5) The regulations:
  - (a) may prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) may prescribe the penalty payable for the offence if dealt with under this section, and
  - (c) may prescribe different penalties for different offences or classes of offences.
- (6) The penalty prescribed for an offence is not to exceed the maximum penalty provided by this Act or the regulations with respect to the offence.
- (7) This section does not limit the operation of this or any other Act in relation to proceedings that may be taken in respect of offences.

#### **244 Liability of vehicle owner for certain driving offences**

- (1) This section applies to any offence against this Act or the regulations:
  - (a) that arises from a failure or refusal to pay any toll or charge (including a private toll or charge) in respect of vehicles using any tollway, bridge, tunnel or road-ferry, or
  - (b) that arises from the driving, using, standing, waiting or parking of a vehicle and that is prescribed by the regulations for the purposes of this section,in this section referred to as a ***driving offence***.
- (2) The owner of a vehicle with respect to which a driving offence is committed is, by virtue of this section, guilty of the offence as if the person were the actual offender, unless:
  - (a) if the offence is dealt with by penalty notice, the owner satisfies an authorised officer that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used, or
  - (b) in any other case, the court is satisfied that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used.
- (3) Nothing in this section affects the liability of an actual offender in respect of a driving offence but, if a penalty has been imposed on, or recovered from, any person in

relation to a driving offence, no further penalty can be imposed on or recovered from any other person in relation to the offence.

- (4) The owner of a vehicle is not, by virtue of this section, guilty of an offence if, where the offence is dealt with by penalty notice:
  - (a) within 21 days after service on the owner of the penalty notice for the offence, the owner gives the authorised officer a relevant nomination document containing the name and address of the person who was at all relevant times in charge of the vehicle, or
  - (b) the owner satisfies the authorised officer that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.
- (5) The owner of a vehicle is not, by virtue of this section, guilty of an offence if, in any other case:
  - (a) within 21 days after service on the owner of a court attendance notice for the offence, the owner gives the informant a relevant nomination document containing the name and address of the person who was at all relevant times in charge of the vehicle, or
  - (b) the owner satisfies the court that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.
- (5A) Despite any other provision of this Act, a relevant nomination document may be provided by the owner of a vehicle served with a penalty notice within 90 days of the notice being served on the owner if the relevant nomination document is provided in the circumstances specified in section 23AA or 23AB of the *Fines Act 1996*.
- (5B) If the owner of a vehicle supplies a relevant nomination document to an authorised officer or informant for the purposes of this section, an authorised officer or informant may, by written notice served on the owner, require the owner to supply a statutory declaration for use in court proceedings that verifies the nomination contained in the relevant nomination document.
- (6) If a statutory declaration supplying the name and address of a person for the purposes of this section is produced in any proceedings against the person in respect of the driving offence to which the declaration relates, the declaration is evidence that the person was, at all relevant times relating to that offence, in charge of the vehicle involved in the offence.
- (7) A relevant nomination document or statutory declaration that relates to more than one driving offence is taken not to be a relevant nomination document or statutory declaration supplying a name and address for the purposes of this section.
- (8) This section does not limit any other provision of this Act, any provision of any other

Act or any provision of any instrument in force under this or any other Act.

- (9) If action is taken under Division 3 of Part 7.3 of the *Road Transport Act 2013* in relation to an offence to which this section applies:
- (a) a reference in this section to a penalty notice is taken to be a reference to a penalty notice under that Division, and
  - (b) a reference in this section to an owner of a vehicle is a reference to a responsible person for a vehicle within the meaning of that Act, and
  - (c) a reference in this section to an authorised officer is a reference to an authorised officer within the meaning of that Division.
- (10) In this section, a reference to a **relevant nomination document** is a reference to a relevant nomination document within the meaning of Division 2 of Part 7.3 of the *Road Transport Act 2013*.

#### **245 Directors and managers etc liable for offences committed by corporations**

- (1) If a corporation contravenes a provision of this Act or the regulations, each person who:
- (a) is a director of the corporation, or
  - (b) is concerned in the management of the corporation,
- is to be treated as having contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may, under this section, be proceeded against and convicted for a contravention of a provision of this Act or the regulations whether or not the corporation has been proceeded against or convicted for a contravention of the same provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

#### **246 Rectification of damage etc**

- (1) A roads authority may:
- (a) before or after or instead of prosecuting a person for a contravention of this Act or the regulations, and
  - (b) after having given the person reasonable notice of its intention to do so,
- take such action as is necessary to rectify the contravention.
- (2) The costs incurred by the roads authority in taking any such action are recoverable

from the person, as a debt, in a court of competent jurisdiction.

#### **247 Recovery of debts**

Any money that is owed to a roads authority under this Act may be recovered by the roads authority, as a debt, in a court of competent jurisdiction.

### **Division 6 Evidentiary provisions**

#### **248 Evidentiary certificates**

- (1) A certificate that is issued on behalf of a roads authority by a person prescribed by the regulations, or by a person belonging to a class of persons so prescribed, being a certificate that states that on a date or during a period specified in the certificate:
- (a) a specified road was or was not of a specified classification, or
  - (b) the boundaries or levels of a specified road were as specified in the certificate, or
  - (c) a specified person was or was not an authorised officer for that authority for the purposes of this Act and the regulations or for the purposes of a specified provision of this Act or the regulations, or
  - (d) a specified toll or charge was in force with respect to a specified tollway, bridge, tunnel or road-ferry, or
  - (d1) a specified toll was or was not a relevant toll in relation to a specified toll point on a specified date for the purposes of this Act and the regulations or for the purposes of a specified provision of this Act or the regulations, or
  - (d2) a specified person was or was not a toll operator in relation to a specified tollway, bridge, tunnel or road-ferry, or
  - (d3) a specified point was or was not a toll point in relation to a specified tollway, bridge, tunnel or road-ferry, or
  - (d4) a specified person was or was not the registered operator of a specified vehicle, or
  - (e) a specified part of a footway was or was not the subject of a specified approval for a footway restaurant, or
  - (f) a specified gate was or was not the subject of a public gate permit, or
  - (g) a specified work or structure was or was not the subject of a consent given, extended or transferred by the roads authority, or
  - (g1) a specified structure in, on or over a specified road was or was not the subject of a specified consent referred to in section 139A, or

- (h) a specified activity was or was not the subject of a road event permit with respect to a specified public road, or
- (i) a specified notice was or was not erected in a specified location, or
- (j) a specified vehicle was or was not the subject of a specified excess weight permit, or
- (k) a specified vehicle was measured as having had a specified laden or unladen weight or as having had a load of a specified weight, or
- (l) a specified part of a vehicle or a specified part of a vehicle's load was measured as having had a specified weight,

is admissible in any legal proceedings and is evidence of the fact or facts so stated.

- (2) A certificate that is issued on behalf of a roads authority by a person prescribed by the regulations, or by a person belonging to a class of persons so prescribed, being a certificate that states that:
  - (a) a specified amount represents the costs incurred by the roads authority in carrying out specified work or in taking any specified action, or
  - (b) a specified amount represents the costs incurred by the roads authority in relation to the exercise by an authorised officer of a function under Division 2,

is admissible in any legal proceedings and is evidence of the fact or facts so stated.

- (3) A certificate that is issued by a trade measurement inspector within the meaning of the *National Measurement Act 1960* of the Commonwealth, or by the holder of a servicing licence within the meaning of that Act, being a certificate that states that on a date specified in the certificate a specified weighing device was tested and was found to measure accurately (or accurately within specified tolerances), is admissible in any legal proceedings and is evidence of the fact that the device measured accurately (or accurately within those tolerances) at all times within the period of 12 months after that date.
- (4) A copy of any record, map or plan kept by RMS, by a roads authority or by any other public authority for the purposes of this Act, being a copy that is certified by a person prescribed by the regulations, or by a person belonging to a class of persons so prescribed, as being a true copy of the record, map or plan, is admissible in any legal proceedings and is evidence of the matter or matters contained in the record, map or plan.
- (5) Without limiting subsection (1), a statement in a certificate that is issued on behalf of a roads authority by a person prescribed by the regulations, or by a person belonging to a class of persons so prescribed, as to any matter that appears in or can be

calculated from records:

- (a) that relate to motor vehicles using tollways or payment of tolls (or both), and
- (b) that are kept or accessed by the roads authority or the person,

is admissible in any legal proceedings and is evidence of the fact or facts so stated.

#### **249 Evidence as to whether a place is a public road**

- (1) Evidence that a place is or forms part of a thoroughfare in the nature of a road, and is so used by the public, is admissible in any legal proceedings and is evidence that the place is or forms part of a public road.
- (2) This section is subject to section 178 of the [Conveyancing Act 1919](#) (No way by user against Crown etc).

#### **250 Presumption of validity of orders and notices**

Section 45 of the [Interpretation Act 1987](#) applies to any order or notice published in the Gazette in accordance with this Act in the same way as it applies to instruments made by the Governor.

#### **250A Approved camera recording devices—toll offences**

- (1) In this section:

**approved toll camera** means a digital camera of a type approved by the Governor by order published in the Gazette as being designed:

- (a) to take a photograph of a vehicle as it is driven past a toll point, and
- (b) to record on the photograph:
  - (i) the date on which the photograph is taken, and
  - (ii) the time and location at which the photograph is taken, and
  - (iii) the direction in which the vehicle activating the camera is travelling, and
  - (iv) such ancillary information in connection with the toll and the photographing of the vehicle at that time and location as may be prescribed by the regulations.

**authorised person** means a person authorised by RMS to install and inspect approved toll cameras.

**digital camera** means a camera recording device that is capable of recording images in a digitalised format.

**photograph** includes a digitalised, electronic or computer generated image in a form approved by RMS.



**toll** includes a charge or a private toll or charge.

**toll offence** means an offence under the regulations of failing or refusing to pay a toll.

- (1A) The fact that a camera takes a photograph of a vehicle only if it is driven in contravention of a requirement to pay a toll, or records the information referred to in paragraph (b) of the definition of **approved toll camera** only on such a photograph, does not prevent the camera from being an approved toll camera.
- (2) In proceedings for a toll offence:
- (a) a photograph tendered in evidence as a photograph taken by means of the operation, on a day specified on the photograph, of an approved toll camera installed at a location specified on the photograph, and as bearing a security indicator of a kind prescribed by the regulations, is admissible and is to be presumed:
    - (i) to have been so taken unless evidence sufficient to raise doubt that it was so taken is adduced, and
    - (ii) to bear such a security indicator unless evidence sufficient to raise doubt that it does so is adduced, and
  - (b) evidence that a photograph tendered in evidence bears a security indicator of a kind prescribed by the regulations is prima facie evidence that the photograph has not been altered since it was taken, and
  - (c) any such photograph is prima facie evidence of the matters shown or recorded on the photograph.
- (3) When a photograph referred to in subsection (2) is tendered in evidence in proceedings for a toll offence, a certificate purporting to be signed by an authorised person and certifying the following particulars is also to be tendered in evidence and is admissible and is prima facie evidence of those particulars:
- (a) that the person is an authorised person,
  - (b) that within 30 days (or such other period as may be prescribed by the regulations) before the day recorded on the photograph as the day on which the photograph was taken, the person carried out the inspection specified in the certificate on the approved toll camera that took the photograph,
  - (c) that on that inspection the approved toll camera was found to be operating correctly.
- (4) A person who acquires information in the exercise of functions in connection with the use or operation of an approved toll camera must not directly or indirectly make a

record of or make use of the information or divulge it to another person, except in the exercise of functions:

- (a) in connection with the payment and collection of tolls, or such other functions with respect to tolls as may be prescribed by the regulations, or
- (b) in connection with the enforcement of a provision of this Act or the regulations under this Act.

Maximum penalty: 50 penalty units.

(5) Subsection (4) does not apply to the divulging of information by an officer of RMS or a person exercising functions on behalf of or otherwise acting under the authority of RMS, or to the divulging of information, in accordance with any protocol approved by the Privacy Commissioner, to any of the following:

- (a) the Independent Commission Against Corruption,
- (b) the Australian Crime Commission,
- (c) the New South Wales Crime Commission,
- (d) the Ombudsman,
- (e) any other person prescribed for the purpose of this paragraph.

(5A) Subsection (5) applies only in respect of information acquired in relation to a vehicle driven in contravention of a requirement to pay the relevant toll.

(6) If a certificate under subsection (3) is tendered in proceedings for an offence, evidence:

- (a) of the accuracy or reliability of the approved toll camera, or
- (b) as to whether or not the camera operated correctly or operates correctly (generally or at a particular time or date or during a particular period),

is not required in those proceedings unless evidence sufficient to raise doubt that, at the time of the alleged offence, the camera was accurate, reliable and operating correctly is adduced.

(7) For the purposes of this section, an assertion that contradicts or challenges:

- (a) the accuracy or reliability, or the correct or proper operation, of an approved toll camera, or
- (b) the accuracy or reliability of information (including a photograph) derived from such a camera,

is capable of being sufficient to rebut prima facie evidence or a presumption, or to

raise doubt about a matter, only if it is evidence adduced from a person who has relevant specialised knowledge (based wholly or substantially on the person's training, study or experience).

## **Part 15 Administration**

### **251 Appointment of authorised officers**

A roads authority may appoint authorised officers for the purposes of this Act and the regulations or for the purposes of any specified provision of this Act or the regulations.

### **252 Delegation of functions**

The Minister may delegate to any person any of the Minister's functions under this Act, other than this power of delegation.

### **253 Roads authority may act through employees, agents and contractors**

A roads authority may exercise a function under this Act by its employees (including Crown employees), by its agents or by independent contractors.

### **254 Service of documents on persons generally**

- (1) Any document that is authorised or required by or under this Act to be given to or served on any person (other than a corporation) may be given or served:
  - (a) personally, or
  - (b) by means of a letter addressed to the person and sent by post to the person's address, or
  - (c) by means of a letter addressed to the person and left at the person's address with a person who appears to be of or above the age of 16 years and to reside at that address.
- (2) Any document that is authorised or required by or under this Act to be given to or served on any person (being a corporation) may be given or served:
  - (a) by means of a letter addressed to the corporation and sent by post to the address of any of its registered offices, or
  - (b) by means of a letter addressed to the corporation and left at the address of any of the corporation's registered offices with a person who appears to be of or above the age of 16 years and to be employed at that address.
- (3) Without limiting subsections (1) and (2), any document that is authorised or required by or under this Act to be given to or served on the owner or occupier of land may be given or served by means of a letter addressed to the owner or occupier and affixed to some conspicuous part of the land.

- (4) Any direction or notice that is required to be served on the owner or occupier of land is taken to be duly served if, where there is more than one owner or occupier, it is served on any one of the owners or occupiers.

**Note—**

Section 103 of the *Native Title (New South Wales) Act 1994* makes special provision with respect to the service of notices on native title holders where there is no approved determination of native title. Relevant provisions are also made by the Commonwealth Native Title Act.

**255 Service of documents on roads authorities**

If provision is made by or under this Act for the lodging of a notice or other document with a roads authority, it is sufficient if the notice or other document is sent by post to, or lodged at, an office of that authority.

**256 Exemption of certain persons from personal liability**

No matter or thing done by a member of staff of a roads authority, by an authorised officer or by a person acting under the direction of a roads authority or authorised officer subjects the member, officer or person so acting personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purpose of executing this Act.

**257 Correction of defective instruments**

- (1) A person by whom an instrument is published for the purposes of section 10, 11, 12, 13, 16, 35, 37, 39, 182 or 184, may, by order published in the Gazette, correct any error in the instrument.
- (2) An order published under this section has effect on and from the date of the original instrument unless otherwise specified in the order.
- (3) This section does not operate so as:
  - (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 publication of the order, 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 publication of the order.

**258 Orders, directions, notices generally**

- (1) A roads authority may, by the same order or notice published in the Gazette, do 2 or more things that the roads authority is, by or under the provisions of this or any other Act, required or permitted to do by such an order or notice, subject to compliance with the requirements of those provisions for the doing of each of those things.

- (2) An order, direction or notice under this Act takes effect on the date on which it is made or given or on such later date as may be specified in the order, direction or notice.

**259 Exercise of certain functions may be limited to stratum**

Any function that may be exercised under this Act with respect to land may be restricted to:

- (a) land down to a specified depth below the surface of the land, or
- (b) airspace up to a specified height above the surface of the land, or
- (c) land lying between specified depths below the surface of the land, or
- (d) airspace between specified heights above the surface of the land, or
- (e) land and airspace between a specified depth below, and a specified height above, the surface of the land.

**260 Reference of certain matters to Director-General**

- (1) A roads authority may refer to the Director-General for inquiry and report any matter that has arisen in connection with:
- (a) the opening or proposed opening of a road under this Act, or
  - (b) the closure or proposed closure of a road under this Act, or
  - (c) the exercise or proposed exercise of any function conferred on a person by or under Part 2, 3, 4, 10 or 12 in relation to a road or proposed road or in relation to land that is included in a former road that has been closed under this Act.
- (2) As soon as practicable after receiving a reference under this section, the Director-General:
- (a) must hold an inquiry into the matter that is the subject of the reference, and
  - (b) must prepare a report of the Director-General's findings with respect to the matter, and
  - (c) must submit that report to the roads authority.
- (3) No appeal lies from any matter arising out of a report made under this section.
- (4) This section does not apply to a matter in respect of which the Land and Environment Court has jurisdiction under this Act.
- (5) In this section:

**Director-General** has the same meaning as in the [Crown Lands Act 1989](#).

### **261 Resolution of disputes between public authorities**

- (1) Any dispute arising under this Act between 2 or more public authorities may be resolved by agreement between the Ministers responsible for those public authorities or, if agreement cannot be reached, by the Premier.
- (2) A public authority must comply with any direction arising out of the resolution of the dispute under this section.

## **Part 16 Miscellaneous**

### **262 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities, except to the extent to which this Act otherwise provides.

### **263 Lord Howe Island**

- (1) For the purposes of this Act:
  - (a) Lord Howe Island is taken to be a local government area, and
  - (b) the Lord Howe Island Board is taken to be the council of that area.
- (2) The Lord Howe Island Board is the responsible authority for all roads on Lord Howe Island.

### **264 Regulations**

- (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) the naming of public roads, and
  - (b) the care, control and management of roads, and
  - (c) the regulation of traffic on, and the restriction or suspension of the use by the public of, any tollway, transitway, bridge, tunnel or road-ferry, and
  - (d) the regulation of traffic for the purpose of protecting roads from damage, and
  - (e) the payment, collection and enforcement of any toll or charge (including a private toll or charge) levied or imposed in relation to a tollway, bridge, tunnel or road-ferry, and
  - (f) the provision and use of service centres and rest centres, and

(g) the making of applications for the purposes of this Act.

(2) A regulation may create an offence punishable by a maximum penalty not exceeding 30 penalty units.

#### **264A, 264B (Repealed)**

#### **265 Repeal of other Acts etc**

The following Acts and regulations are repealed:

*Public Gates Act 1901 No 11*

*Width of Streets and Lanes Act 1902 No 39*

*Traffic Safety (Lights and Hoardings) Act 1951 No 7*

*State Roads Act 1986 No 85*

*Crown and Other Roads Act 1990 No 54* and the *Crown and Other Roads Regulation 1992*.

#### **266 (Repealed)**

#### **267 Savings, transitional and other provisions**

Schedule 2 has effect.

#### **268 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

### **Schedule 1 (Repealed)**

### **Schedule 2 Savings, transitional and other provisions**

(Section 267)

## **Part 1 Preliminary**

### **1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent

on the enactment of the following Acts:

this Act

*Native Title (New South Wales) Act 1994*

*Roads Amendment (Street Vending) Act 1996*

*Traffic Legislation Amendment Act 1997*, but only in relation to the amendments made to this Act

*Roads and Traffic Legislation Amendment (Load Restraint) Act 1998*

*Roads Amendment (Transitways) Act 1999*

*Road Transport Legislation Amendment (Evidence) Act 2006*

*Road Transport Legislation Amendment Act 2008*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect on and from the date of commencement of this clause or a later day.
- (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 so as:
  - (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, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on the enactment of this Act**

### **Division 1 General**

#### **2 Definitions**

In this Division:

**relevant commencement**, in relation to a provision of this Act, means the day on which that provision commences.

**repealed Act** means:

- (a) the *State Roads Act 1986*, or
- (b) the *Crown and Other Roads Act 1990*, or



- (c) the *Local Government Act 1919*, or
- (d) the *Public Gates Act 1901*, or
- (e) the *Width of Streets and Lanes Act 1902*.

### **3 Regulations**

- (1) The following ordinances and regulations are taken to be regulations under this Act and may be amended and repealed accordingly:

*State Roads (Excess Vehicle Weight Permit) Regulation 1987* (under the *State Roads Act 1986*).

*State Roads (Toll Works) Regulation 1988* (under the *State Roads Act 1986*).

*Ordinance No 30* (under the *Local Government Act 1919*).

*Ordinance No 30C* (formerly under the *Local Government Act 1919* and subsequently deemed to be a regulation under the *State Roads Act 1986*).

*Ordinance No 30D* (under the *Local Government Act 1919*).

*Ordinance No 33* (under the *Local Government Act 1919*).

*Ordinance No 59* (under the *Local Government Act 1919*).

- (2) A reference in any such ordinance or regulation to a provision of the Act under which it was in force is taken to extend to the corresponding provision (if any) of this Act.

### **4 References in other Acts etc**

In any other Act, or in any instrument under any other Act:

- (a) a reference to a repealed Act is taken to extend to this Act, and
- (b) a reference to a provision of a repealed Act is taken to extend to the corresponding provision of this Act.

### **5 Application of section 138**

- (1) Section 138 does not require a public authority, or a network operator under the *Gas Supply Act 1996* or the *Electricity Supply Act 1995*, to obtain a roads authority's consent to the exercise of the public authority's or network operator's functions in, on or over an unclassified road other than a Crown road.
- (2) This clause ceases to have effect on a day to be appointed by proclamation published on the NSW legislation website.

## **6 Application of section 145**

- (1) This clause applies to any public road (other than a freeway or a Crown road) within a local government area, being a road that was, immediately before the relevant commencement, vested in a public authority other than the council of the area.
- (2) Section 145 (3) does not operate to divest any such public road from the public authority in which the road is vested for so long as this clause remains in effect with respect to the road.
- (3) This clause ceases to have effect with respect to any public road if a regulation is made declaring that the same or some other public authority is the roads authority for the road.
- (4) This clause ceases to have effect on a day to be appointed by proclamation published on the NSW legislation website.

### **6A Application of section 145 (3) to new public roads**

- (1) This clause applies to any public road (other than a freeway or a Crown road) within a local government area, being a road that is owned by a public authority (other than the council of the area) after 1 July 1993 but before the day appointed by proclamation under clause 6 (4).
- (2) Section 145 (3) does not operate to divest any such public road from the public authority in which it is vested for so long as this clause remains in effect with respect to the road.
- (3) This clause ceases to have effect with respect to any public road if a regulation is made under this Act declaring that the same or some other public authority is the roads authority for the road.
- (4) This clause ceases to have effect on the day appointed by proclamation under clause 6 (4).
- (5) This clause is taken to have commenced on 1 July 1993.

## **7 Application of section 224**

Section 224 (RMS may allow costs to roads authorities for road work on classified roads) applies to matters arising before the relevant commencement in the same way as it applies to matters arising after that commencement.

## **8 Application of section 227**

Section 227 (Roads authority may carry out work instead of paying compensation) applies to matters arising before the relevant commencement in the same way as it applies to matters arising after that commencement.

## **9 Application of section 234**

Section 234 (Exemption from liability) applies to matters arising before the relevant commencement in the same way as it applies to matters arising after that commencement.

## **10 Application of section 235**

Section 235 (Liability of owners and drivers etc for certain offences) applies to matters arising before the relevant commencement in the same way as it applies to matters arising after that commencement.

## **11 Application of section 246**

Section 246 (Rectification of damage etc) applies to matters arising before the relevant commencement in the same way as it applies to matters arising after that commencement.

## **12 Application of section 257**

Section 257 (Correction of defective notices) applies to instruments published before the relevant commencement in the same way as it applies to instruments published after that commencement.

## **13 Existing alignments**

The boundaries of a public road as fixed immediately before the relevant commencement are taken to be the boundaries of the public road on and after that commencement until they are varied in accordance with this Act.

## **14 Existing levels**

The levels of a public road as fixed immediately before the relevant commencement are taken to be the levels of the road on and after that commencement until they are varied in accordance with this Act.

## **15 Existing public roads**

Any road that, immediately before the relevant commencement, was a public road is taken to be a public road within the meaning of this Act.

## **15A Preservation of delegations and authorisations**

(1) Any delegation or authorisation in force under a provision of the *State Roads Act 1986*, the *Crown and Other Roads Act 1990*, Part 9 of the *Local Government Act 1919*, the *Public Gates Act 1901* or the *Traffic Safety (Lights and Hoardings) Act 1951* continues to have effect as if it had been granted under the corresponding provision of this Act, and may be amended or revoked accordingly.

(2) This clause is taken to have commenced on 1 July 1993.

## 16 General saving

(1) If anything done under a repealed Act still has effect immediately before the repeal of that Act and that thing could have been done under a provision of this Act if it had been in force at the time when the thing was done, the thing continues to have effect after that repeal as if it had been done under that provision.

(2) This clause does not apply to anything in relation to which other provision has been made by this Part and is subject to the regulations (if any) in force under clause 1.

## 16A Transferred provisions to which [Interpretation Act 1987](#) applies (section 30A)

Clauses 6A, 15A, 64A and 64B re-enact (with minor modification) clauses 4–7 of the [Roads \(Savings and Transitional\) Regulation 1993](#). Clauses 6A, 15A, 64A and 64B are transferred provisions to which section 30A of the [Interpretation Act 1987](#) applies.

## Division 2 State Roads Act 1986

### 17 Definitions

In this Division:

**relevant commencement**, in relation to a provision of this Act, means the day on which that provision commences.

**repealed Act** means the [State Roads Act 1986](#).

### 18 Existing classifications

Any road or work that, immediately before the relevant commencement, was a main road, a State highway, a freeway, a controlled access road, a secondary road, a tourist road, a toll work or a State work is declared to be a main road, a State highway, a freeway, a controlled access road, a secondary road, a tourist road, a tollway or a State work for the purposes of this Act.

### 19 Sydney Harbour Bridge

The Sydney Harbour Bridge is declared to be a main road for the purposes of this Act.

### 20 Section 4 orders

An order in force under section 4 (3) of the repealed Act is taken to be an order under section 67 of this Act.

### 21 Section 13 agreements

An agreement in force under section 13 (4) of the repealed Act is taken to be a roads agreement for the purposes of this Act.

**22 Section 16 agreements**

An agreement in force under section 16 of the repealed Act is taken to be an agreement under section 207 of this Act.

**23 Section 19 notices**

A notice in force under section 19 (2) of the repealed Act is taken to be a road widening order under this Act.

**24 Section 23 requirements**

A requirement in force under section 23 (3) of the repealed Act is taken to be a direction under section 97 of this Act.

**25 Section 32 permissions and requirements**

A permission or requirement in force under section 32 (1) of the repealed Act is taken to be a permission or requirement under section 133 of this Act.

**26 Section 34 directions**

A direction in force under section 34 (1) of the repealed Act is taken to be a direction under section 98 of this Act.

**27 Section 35 leases and orders**

- (1) A lease in force under section 35 (3) of the repealed Act is taken to be a lease under section 214 of this Act.
- (2) An order in force under section 35 (5) of the repealed Act is taken to be an order under section 215 of this Act.

**28 Section 57 land and leases**

- (1) Land which was land to which section 57 of the repealed Act applied is taken to be RMS development land for the purposes of this Act.
- (2) A lease or other dealing in force under section 57 of the repealed Act is taken to be a lease or dealing under section 161 of this Act.

**29 Section 60 consents**

A consent in force under section 60 (2) of the repealed Act is taken to be a consent under Division 3 of Part 9 of this Act.

**30 Section 61 and 62 notices**

- (1) A notice in force under section 61 or 62 of the repealed Act is taken to be a direction under section 104 of this Act.

(2) An appeal under section 61 (2) or 62 (3) of the repealed Act may be disposed of under that Act as if that Act had not been repealed, and any decision on the appeal is taken to be the decision of the Land and Environment Court under section 105 of this Act.

**31 Section 66 directions**

A direction in force under section 66 of the repealed Act is taken to be a direction under section 95 of this Act.

**32 Section 67 directions**

A direction in force under section 67 (1) of the repealed Act is taken to be a direction under section 107 of this Act.

**33 Section 67: pre-1907 obstructions etc**

Section 67 (5) of the repealed Act continues to apply in respect of an obstruction or encroachment that first arose before 1 January 1907 (the date on which the [Local Government Act 1906](#) commenced) as if the repealed Act had not been repealed.

**34 Section 68 expenses**

Section 68 of the repealed Act continues to apply to work carried out before the relevant commencement, and to the recovery of the cost of carrying out that work, as if that Act had not been repealed.

**35 Section 70 directions**

A notice in force under section 70 of the repealed Act is taken to be a direction under section 99 of this Act.

**36 Section 71 directions**

A direction in force under section 71 (1) of the repealed Act is taken to be a direction under section 100 of this Act.

**37 Section 72A permits**

An excess vehicle weight permit in force under section 72A of the repealed Act is taken to be an excess weight permit under section 109 of this Act.

**38 Section 100B penalty notices**

A penalty notice in force under section 100B of the repealed Act is taken to be a penalty notice under section 243 of this Act.

## **Division 3 Local Government Act 1919**

### **39 Definitions**

In this Division:

**relevant commencement**, in relation to a provision of this Act, means the day on which that provision commences.

**repealed Act** means the *Local Government Act 1919*.

### **40 Section 224 appeals**

- (1) An appeal under section 224 of the repealed Act that had not been finally disposed of before the relevant commencement is to be finally disposed of in accordance with that section as if that Act had not been repealed.
- (2) A decision of a district court judge under that section has the same effect as a decision of the Land and Environment Court under section 17 of this Act.

### **41 Section 233A notices**

A notice in force under section 233A of the repealed Act is taken to be a direction under section 100 of this Act.

### **42 Section 241 orders**

An order of the Minister for Local Government in force under section 241 of the repealed Act is taken to be a direction under section 261 of this Act.

### **43 Section 241A, 243, 244 and 245 expenses**

Sections 241A, 243, 244 and 245 of the repealed Act continue to apply to work carried out before the relevant commencement, and to the recovery of the cost of carrying out that work, as if that Act had not been repealed.

### **44 Section 249 (v) permits**

A permit in force under section 249 (v) of the repealed Act is taken to be a permit under section 144 of this Act.

### **45 Section 249E orders**

An order in force under section 249E of the repealed Act is taken to be a direction under section 103 of this Act.

### **46 Section 251A by-passes**

A permission or requirement in force under section 251A (1) of the repealed Act is taken to be a permission or requirement under section 133 of this Act.

**47 Section 262 notices**

- (1) A notice served on the owner of land under section 262 of the repealed Act is taken to be a road widening order within the meaning of this Act.
- (2) A lease in force immediately before the relevant commencement under section 262 (8) of the repealed Act is taken to be a lease referred to in section 157 (1) (b) of this Act.

**48 Section 267 orders**

An order in force under section 267 (1) of the repealed Act is taken to be a direction under section 107 of this Act.

**49 Section 268 orders**

An order in force under section 268 of the repealed Act is taken to be a direction under section 95 of this Act.

**50 Section 269A consents**

- (1) A consent given by the RTA for the purposes of section 269A (7) of the repealed Act is taken to be a consent given by the RTA for the purposes of Division 2 of Part 8 of this Act.
- (2) An application made for the purposes of such a consent is taken to be an application made under section 116 of this Act.
- (3) An approval given under section 269A (10) of the repealed Act is taken to be a decision given under section 118 of this Act.

**51 Section 271 notices**

A notice given under section 271 of the repealed Act is taken to be a direction given under section 99 of this Act.

**52 Section 276A leases**

A lease in force immediately before the relevant commencement under section 276A of the repealed Act is taken to be a lease referred to in section 157 (1) (a) of this Act.

**53 Section 519B leases**

A lease in force immediately before the relevant commencement under section 519B of the repealed Act is taken to be a lease referred to in section 149 of this Act.

**54 Section 520B leases**

A lease in force immediately before the relevant commencement under section 520B of the repealed Act is taken to be an approval referred to in section 125 of this Act.



## **Division 4 Crown and Other Roads Act 1990**

### **55 Definitions**

In this Division:

**relevant commencement**, in relation to a provision of this Act, means the day on which that provision commences.

**repealed Act** means the *Crown and Other Roads Act 1990*.

### **56 Existing Crown roads**

Any road that, immediately before the commencement of this Act, was a Crown road within the meaning of the repealed Act is dedicated as a public road and is declared to be a Crown road within the meaning of this Act.

### **57 Section 5 applications**

- (1) Any application that had been made under section 5 of the repealed Act but had not been finally disposed of before the relevant commencement, and any proposal with respect to which notice had been published under section 6 of that Act before the relevant commencement, is to be finally disposed of in accordance with the repealed Act as if that Act had not been repealed.
- (2) Any public road or Crown road opened in accordance with this clause is declared to be a public road and clauses 15 and 56 apply as if the road had been opened before the relevant commencement.

### **58 Surplus land**

Land acquired under Part 2 of the repealed Act or resumed or withdrawn under the former *Public Roads Act 1902* is taken to have been acquired under Division 2 of Part 12 of this Act and, to the extent to which it is not required for the purposes of a road or for compensation, may be disposed of in accordance with section 148 of this Act.

### **59 Section 40 and 41 notices**

A notice under section 40 or 41 of the repealed Act is taken to be a road widening order under Division 2 of Part 3 of this Act.

### **60 Section 43 applications**

- (1) Any application that had been made under section 43 of the repealed Act but that had not been finally disposed of before the relevant commencement, and any proposal with respect to which notice had been published under section 44 of that Act before the relevant commencement, is to be finally disposed of in accordance with the repealed Act as if that Act had not been repealed.

- (2) Land that formed a public road that has been closed in accordance with this clause may be disposed of in accordance with Division 4 of Part 4 of this Act.

**61 Section 47 and 48 orders**

An order in force under section 47 or 48 of the repealed Act continues to have effect as if that Act had not been repealed.

**62 Section 59, 60 and 68 appeals and references**

Sections 59, 60 and 68 of the repealed Act continue to have effect for the purposes of the disposal of applications in accordance with this Division.

**63 Quarter sessions roads**

- (1) Any road that, immediately before the commencement of this provision, was a quarter sessions road within the meaning of the repealed Act is dedicated as a public road.
- (2) No compensation is payable with respect to any loss or damage arising from the operation of this clause.

**64 Schedule 2 to the repealed Act**

Subject to this Division, Schedule 2 to the repealed Act continues to have effect as if it had not been repealed.

**64A Continued application of savings and transitional provisions under the repealed Act**

- (1) Without affecting clause 64, clauses 2 and 6 of Schedule 2 to the repealed Act, and the remaining provisions of that Act to the extent to which it is necessary to give effect to those clauses, continue to have effect as if that Act had not been repealed.
- (2) This clause is taken to have commenced on 1 July 1993.

**64B Disposal of land from roads closed under the repealed Act**

- (1) Without affecting clause 64, sections 38 (2), 42, 43 and 44 apply to and in respect of land comprising a former road closed in accordance with:
- (a) clause 60, or
  - (b) clause 64A,
- in the same way as they apply to and in respect of land comprising a former public road closed under Part 4.
- (2) This clause is taken to have commenced on 1 July 1993.

## Division 5 Public Gates Act 1901

### 65 Definitions

In this Division:

**relevant commencement**, in relation to a provision of this Act, means the day on which that provision commences.

**repealed Act** means the *Public Gates Act 1901*.

### 66 Section 4 permissions

Any permission in force under section 4 of the repealed Act immediately before the relevant commencement is taken to be a public gate permit under this Act.

## Division 6 Traffic Safety (Lights and Hoardings) Act 1951

### 67 Definitions

In this Division:

**relevant commencement**, in relation to a provision of this Act, means the day on which that provision commences.

**repealed Act** means the *Traffic Safety (Lights and Hoardings) Act 1951*.

### 68 Section 3 notices

- (1) Any notice in writing in force immediately before the relevant commencement under section 3 (1) of the repealed Act is taken to be a direction under section 104 of this Act and may be enforced accordingly.
- (2) Any appeal under section 3 (1) of the repealed Act that had not been finally disposed of before the relevant commencement is to be disposed of as if that Act had not been repealed and any decision on the appeal is final.

### 69 Section 5 directions

Any direction in force immediately before the relevant commencement under section 5 (2) of the repealed Act is taken to be a direction under section 261 of this Act and may be enforced accordingly.

### 70 Section 6 applications

Any application under section 6 (1) of the repealed Act that had not been finally disposed of before the relevant commencement is to be disposed of as if that Act had not been repealed and any decision on the application is final.

## Part 3 Provisions consequent on the enactment of the Roads

## Amendment (Street Vending) Act 1996

### 71 Existing consents

- (1) Nothing in the *Roads Amendment (Street Vending) Act 1996* affects a person's right, under a consent granted under Division 3 of Part 9 before the commencement of this clause, to continue, in accordance with the consent, to use a structure in, on or over a public road for a purpose that was lawful immediately before that commencement.
- (2) However, any such consent may be revoked or transferred, and if it is revoked a fresh consent may be granted, in accordance with this Act as amended by the *Roads Amendment (Street Vending) Act 1996*.
- (3) The roads authority for the road in, on or over which the structure is situated may impose conditions on the consent, on its own initiative or at the request of the holder of the consent.

## Part 4 Provisions consequent on enactment of Statute Law (Miscellaneous Provisions) Act (No 2) 2005

### 72 Definition

In this Part:

**amending Act** means the *Statute Law (Miscellaneous Provisions) Act (No 2) 2005*.

### 73 State highways taken to be classified as highways

An order in force under section 47 immediately before the date of assent to the amending Act is taken to have been made under section 47 as amended by Schedule 1.20 to the amending Act.

### 74 References to State highways

Subject to the regulations, in any other Act or instrument, a reference to a State highway (within the meaning of this Act immediately before the date of assent to the amending Act) is taken to be a reference to a highway.

## Part 5 Provisions consequent on enactment of Road Transport Legislation Amendment (Evidence) Act 2006

### 75 Definition

In this Part, **amending Act** means the *Road Transport Legislation Amendment (Evidence) Act 2006*.

### 76 Amendments not to apply to proceedings instituted before commencement of

### **amendments**

- (1) An amendment made to this Act by the amending Act does not apply to proceedings for an offence that were instituted before the commencement of the amendment.
- (2) An amendment made to this Act by the amending Act applies to proceedings for an offence that are instituted on or after the commencement of the amendment even if the proceedings involve an offence that was committed before that commencement.

## **Part 6 Provisions consequent on enactment of Road Transport Legislation Amendment Act 2008**

### **77 Definitions**

In this Part:

**Amending Act** means the *Road Transport Legislation Amendment Act 2008*.

**toll offence** has the same meaning as it has in section 250A.

### **78 Application of amendments**

- (1) Section 242, as amended by Schedule 5 [1] to the Amending Act, does not apply in respect of any alleged toll offence that occurred before that section was so amended.
- (2) The amendments made by Schedule 5 [2] and [3] to the Amending Act apply only in relation to legal proceedings commenced on or after the commencement of the amendments but extend to matters and events occurring before that commencement.
- (3) The amendments made by Schedule 5 [4] and [5] to the Amending Act have effect in relation to proceedings for a toll offence whether the proceedings were commenced before, on or after the commencement of the amendments but not proceedings determined before that commencement.

### **79 Existing approved toll cameras**

An approval of a camera given by the Governor pursuant to the definition of **approved toll camera** in section 250A (1) and in force immediately before the commencement of the amendments made by Schedule 5 [4] and [5] to the Amending Act is taken to be an approval given by the Governor pursuant to that definition as amended and qualified by those items.

## **Dictionary**

(Section 4)

**authorised officer**, in relation to this Act or any provision of this Act, means:

- (a) an employee in the service of RMS who is authorised by RMS to exercise the functions of an authorised officer under this Act or that provision, or

- (b) an employee of any other roads authority who is authorised by the roads authority or by RMS to exercise the functions of an authorised officer under this Act or that provision, or
- (c) a person of a class prescribed by the regulations who is authorised by RMS or any other roads authority to exercise the functions of an authorised officer under this Act or that provision, or
- (d) a police officer.

**bridge** includes any gate, pier, fender, dolphin or platform or any other thing incidental to the use or protection of the bridge.

**classified road** means any of the following:

- (a) a main road,
- (b) a highway,
- (c) a freeway,
- (d) a controlled access road,
- (e) a secondary road,
- (f) a tourist road,
- (g) a tollway,
- (g1) a transitway,
- (h) a State work.

**controlled access road** means a road that is declared to be a controlled access road by an order in force under section 49.

**council** means the council of a local government area.

**Crown land** has the same meaning as it has in the [Crown Lands Act 1989](#).

**Crown Lands Acts** has the same meaning as it has in the [Crown Lands Act 1989](#) and the [Western Lands Act 1901](#).

**Crown road** means a public road that is declared to be a Crown road for the purposes of this Act.

**excess weight permit** means a permit in force under section 109.

**fence** has the same meaning as it has in the [Dividing Fences Act 1991](#).

**footway** means that part of a road as is set aside or formed as a path or way for pedestrian traffic (whether or not it may also be used by bicycle traffic).

**footway restaurant** means a restaurant the subject of an approval in force under section 125.

**freeway** means a road that is declared to be a freeway by an order in force under section 48.

**function** includes power, duty and authority, **confer a function** includes impose a duty and **exercise a function** includes perform a duty.

**highway** means a road that is declared to be a highway by an order in force under section 47.

**interest in land** means an estate, interest, right or power, at law or in equity, in or over or in connection with the land.

**isolated road** means a road that gives vehicular access to a public road (other than an isolated road or temporary public road) by means only of a temporary public road.

**land** includes any estate or interest in land.

**land affected by a road widening order** means land that lies between:

- (a) the boundary of a public road as it is before the order is made, and
- (b) the boundary of the road as it is after the order is made.

**local newspaper**, in relation to a particular locality, means a newspaper circulating in the locality at intervals of not more than 14 days.

**main road** means a road that is declared to be a main road by an order in force under section 46.

**metropolitan main road** means a main road within the Sydney metropolitan area.

**occupier of land** has the same meaning as it has in the [Local Government Act 1993](#).

**owner of a vehicle** does not include a lessor of the vehicle, but does include any of the following:

- (a) a joint or part owner of the vehicle,
- (b) a lessee of the vehicle,
- (c) an Australian registered operator of the vehicle within the meaning of the [Road Transport Act 2013](#),
- (d) in the case of a vehicle to which a trader's plate (within the meaning of the [Road Transport Act 2013](#)) is attached, the person to whom the trader's plate is issued.

**owner of land** means any person who has an interest in the land.

**person in charge of a vehicle** includes the driver of the vehicle.

**private road** means any road that is not a public road.

**private toll or charge** means a toll or charge levied or imposed by a person other than RMS or a roads authority, in connection with traffic using the tollway, bridge, tunnel or road-ferry to which the toll or charge applies.

**public authority** means a public or local authority constituted by or under an Act or a statutory body representing the Crown, and includes a Minister and any body or class of bodies prescribed by the regulations for the purposes of this Act and the regulations or of any specified provision of this Act or

the regulations.

**public gate** means a gate the subject of a public gate permit.

**public gate permit** means a permit in force under section 128.

**public open space** means:

- (a) a national park, state conservation area, regional park, historic site or nature reserve within the meaning of the [National Parks and Wildlife Act 1974](#), or
- (b) a public reserve within the meaning of the [Local Government Act 1993](#), or
- (c) a common within the meaning of the [Commons Management Act 1989](#).

**public road** means:

- (a) any road that is opened or dedicated as a public road, whether under this or any other Act or law, and
- (b) any road that is declared to be a public road for the purposes of this Act.

**regulate traffic** means restrict or prohibit the passage along a road of persons, vehicles or animals.

**responsible Minister** includes:

- (a) in relation to the council of a local government area, the Minister for Local Government, and
- (b) in relation to a public authority for which no other Minister is the responsible Minister, such Minister as may be declared by the regulations to be the responsible Minister in relation to that authority.

**restaurant** means premises in which food is regularly supplied on sale to the public for consumption on the premises.

**RMS** means Roads and Maritime Services constituted under the [Transport Administration Act 1988](#).

**RMS development land** means land that is declared by RMS to be land to which section 161 applies.

**RMS Fund** means the Roads and Maritime Services Fund established under the [Transport Administration Act 1988](#).

**road** includes:

- (a) the airspace above the surface of the road, and
- (b) the soil beneath the surface of the road, and
- (c) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of the road.

**road event** means a speed contest or such other activity as may be prescribed by the regulations for the purposes of this definition.

**road event permit** means a permit in force under section 144.



**road widening order** means an order in force under section 25.

**road work** includes any kind of work, building or structure (such as a roadway, footway, bridge, tunnel, road-ferry, rest area, transitway station or service centre or rail infrastructure) that is constructed, installed or relocated on or in the vicinity of a road for the purpose of facilitating the use of the road as a road, the regulation of traffic on the road or the carriage of utility services across the road, but does not include a traffic control facility, and **carry out road work** includes carry out any activity in connection with the construction, erection, installation, maintenance, repair, removal or replacement of a road work.

**roads agreement** means an agreement between RMS and a roads authority in force under section 62.

**roads authority** means a person or body that is, by or under this Act, declared to be a roads authority and, in relation to a particular public road, means the roads authority for that road.

**secondary road** means a road that is declared to be a secondary road by an order in force under section 50.

**State work** means a road or work that is declared to be a State work by an order in force under section 53.

**Sydney Harbour Bridge** means:

- (a) the works authorised by, or constructed under, the [Sydney Harbour Bridge Act 1922](#), and
- (b) the works authorised by, or constructed under, Part 2 of the [Sydney Harbour Bridge \(Further Works\) and Main Roads \(Amendment\) Act 1960](#).

**Sydney metropolitan area** means:

- (a) the County of Cumberland, and
- (b) the City of Blue Mountains, and
- (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 City of Hawkesbury that comprises Main Road No 184 and the land lying between that main road and the City of Blue Mountains.

**temporary public road** means a public road that has been dedicated by means of a plan of subdivision that bears a statement of intention that the public road is to be a temporary public road.

**toll operator** means:

- (a) RMS, or
- (b) any other person who is declared by the Minister by order published in the Gazette to be a toll operator in respect of a tollway for the purposes of this definition.

**toll point** means the point designated by a toll operator (by signs or otherwise) as the point at which the liability to pay a toll is incurred for driving a motor vehicle on a tollway or a particular lane of the

tollway.

**tollway** means a road that is declared to be a tollway by an order in force under section 52.

**tourist road** means a road that is declared to be a tourist road by an order in force under section 51.

**traffic** includes vehicular, pedestrian and all other kinds of traffic.

**traffic control facility** has the same meaning as it has in Part 6 of the [Transport Administration Act 1988](#), and **carry out traffic control work** includes carry out any activity in connection with the construction, erection, installation, maintenance, repair, removal or replacement of a traffic control facility.

**traffic hazard** means a structure or thing that is likely:

- (a) to obscure or limit the view of the driver of a motor vehicle on a public road, or
- (b) to be mistaken for a traffic control device, or
- (c) to cause inconvenience or danger in the use of a public road, or
- (d) to be otherwise hazardous to traffic.

**transitway** means a road that is declared to be a transitway by an order in force under section 52A.

**unclassified road** means a public road that is not a classified road.

**unoccupied Crown land** means Crown land other than:

- (a) Crown land that is the subject of a contract of sale under the Crown Lands Acts but for which the Crown has not received the sale price, or
- (b) Crown land that is held under a lease in perpetuity or for a term of years under those Acts, or
- (c) Crown land that is included in a travelling stock reserve under the care, control and management of Local Land Services, or
- (d) Crown land that is included in a reserve in respect of which a reserve trust is established in accordance with Part 5 of the [Crown Lands Act 1989](#), or
- (e) Crown land that is included in a common within the meaning of the [Commons Management Act 1989](#), or
- (f) Crown land that is subject to the [Trustees of Schools of Arts Enabling Act 1902](#), or
- (g) Crown land that is subject to an easement,

and includes Crown land held under a yearly lease.

**utility service** includes any water, sewerage, drainage, gas, electricity, telephone, telecommunication or other like service.

**weight** includes mass.

**yearly lease** means a tenure listed in Part 4 of Schedule 1 to the *Crown Lands (Continued Tenures) Act 1989*.