

South Australia

HIGHWAYS ACT 1926

An Act to provide for the appointment of a Commissioner of Highways, and to make further and better provision for the construction and maintenance of roads and works, and for other purposes.

*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **24 November 2003**.*

Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.

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being

Highways Act 1926 No. 1769 of 1926
[Assented to 16 December 1926]¹

as amended by

Highways Act Amendment Act 1927 No. 1841 of 1927 [Assented to 5 January 1928]
Highways Act Amendment Act 1928 No. 1883 of 1928 [Assented to 7 November 1928]
Highways Act 1929 No. 1920 of 1929 [Assented to 27 November 1929]
Highways Act 1930 No. 1992 of 1930 [Assented to 20 November 1930]
Highways Act Amendment Act 1932 No. 2078 of 1932 [Assented to 15 November 1932]
Highways Act Amendment Act 1933 No. 2124 of 1933 [Assented to 9 November 1933]
Highways Act Amendment Act 1934 No. 2148 of 1934 [Assented to 20 September 1934]
Highways Act Amendment Act 1935 No. 2243 of 1935 [Assented to 19 December 1935]
Statute Law Revision Act 1935 No. 2246 of 1935 [Assented to 19 December 1935]
Highways Act Amendment Act 1936 No. 2292 of 1936 [Assented to 8 October 1936]
Highways (Birkenhead Bridge) Act 1936 No. 2315 of 1936 [Assented to 26 November 1936]
Highways Act Amendment Act 1937 No. 2350 of 1937 [Assented to 27 October 1937]²
Highways Act Amendment Act 1938 No. 2388 of 1938 [Assented to 25 August 1938]³
Highways Act Amendment Act 1944 No. 36 of 1944 [Assented to 14 December 1944]
Loans for Water Conservation Act 1948 No. 38 of 1948 [Assented to 16 December 1948]
Highways Act Amendment Act 1949 No. 6 of 1949 [Assented to 6 October 1949]
Highways Act Amendment Act 1953 No. 47 of 1953 [Assented to 17 December 1953]
Highways Act Amendment Act 1954 No. 40 of 1954 [Assented to 16 December 1954]
Highways Act Amendment Act 1955 No. 33 of 1955 [Assented to 1 December 1955]
Highways Act Amendment Act 1960 No. 34 of 1960 [Assented to 3 November 1960]
Highways Act Amendment Act 1963 No. 37 of 1963 [Assented to 28 November 1963]
Highways Act Amendment Act 1967 No. 26 of 1967 [Assented to 10 August 1967]
Highways Act Amendment Act 1969 No. 27 of 1969 [Assented to 18 September 1969]
Highways Act Amendment Act (No. 2) 1969 No. 54 of 1969 [Assented to 4 December 1969]⁴
Highways Act Amendment Act 1970 No. 37 of 1970 [Assented to 3 December 1970]
Highways Act Amendment Act 1971 No. 9 of 1971 [Assented to 1 April 1971]
Highways Act Amendment Act 1972 No. 13 of 1972 [Assented to 30 March 1972]⁵
Highways Act Amendment Act (No. 2) 1972 No. 83 of 1972 [Assented to 19 October 1972]⁶
Highways Act Amendment Act 1973 No. 55 of 1973 [Assented to 22 November 1973]
Highways Act Amendment Act 1974 No. 86 of 1974 [Assented to 21 November 1974]⁷
Highways Act Amendment Act 1975 No. 50 of 1975 [Assented to 10 April 1975]
Highways Act Amendment Act 1979 No. 36 of 1979 [Assented to 15 March 1979]⁸
Highways Act Amendment Act 1980 No. 10 of 1980 [Assented to 3 April 1980]⁹
Highways Act Amendment Act 1982 No. 6 of 1982 [Assented to 25 February 1982]¹⁰
Statutes Amendment (Planning) Act 1982 No. 62 of 1982 [Assented to 1 July 1982]¹¹
Highways Act Amendment Act 1983 No. 30 of 1983 [Assented to 16 June 1983]¹²
Highways Act Amendment Act 1984 No. 36 of 1984 [Assented to 24 May 1984]¹³
Statutes Amendment (Remuneration) Act 1985 No. 59 of 1985 [Assented to 30 May 1985]¹⁴
Highways Act Amendment Act 1989 No. 62 of 1989 [Assented to 26 October 1989]¹⁵
Statutes Repeal and Amendment (Remuneration) Act 1990 No. 18 of 1990 [Assented to 19 April 1990]¹⁶
Roads (Opening and Closing) Act 1991 No. 11 of 1991 [Assented to 28 March 1991]¹⁷
Highways (Miscellaneous) Amendment Act 1998 No. 5 of 1998 [Assented to 26 March 1998]¹⁸
Highways (Road Closures) Amendment Act 1999 No. 68 of 1999 [Assented to 18 November 1999]¹⁹
Highways (Miscellaneous) Amendment Act 2000 No. 48 of 2000 [Assented to 20 July 2000]²⁰
Statute Law Revision Act 2003 No. 44 of 2003 [Assented to 23 October 2003]²¹

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

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- ¹ S. 11(2) Came into operation on assent: s. 4; remainder of Act came into operation 3 February 1927: *Gaz.* 3 February 1927, p. 258.
- ² Came into operation 1 July 1937: s. 3.
- ³ Came into operation 1 October 1938: s. 2.
- ⁴ Came into operation 21 May 1970: *Gaz.* 21 May 1970, p. 1842.
- ⁵ Came into operation 6 April 1972: *Gaz.* 6 April 1972, p. 1369.
- ⁶ Came into operation 7 December 1972: *Gaz.* 7 December 1972, p. 2534.
- ⁷ Came into operation 1 October 1974: s. 2.
- ⁸ S. 8(1) came into operation 1 July 1976: s. 8(3); remainder of Act came into operation on assent.
- ⁹ Came into operation 1 October 1979: s. 2.
- ¹⁰ Came into operation 1 July 1981: s. 2
- ¹¹ Came into operation 4 November 1982: *Gaz.* 4 November 1982, p. 1304.
- ¹² Came into operation 1 July 1982: s. 2.
- ¹³ Came into operation 1 July 1983: s. 2.
- ¹⁴ Came into operation 13 June 1985: *Gaz.* 13 June 1985, p. 2132.
- ¹⁵ Came into operation 28 March 1990, being the day on which the Road Traffic Act Amendment Act (No. 3) 1989 came into operation: *Gaz.* 8 March 1990, p. 659: s. 2.
- ¹⁶ Came into operation 19 April 1990: *Gaz.* 19 April 1990, p. 1136.
- ¹⁷ Came into operation 11 November 1991: *Gaz.* 31 October 1991, p. 1198.
- ¹⁸ Came into operation (except ss. 3 and 4) 7 May 1998: *Gaz.* 7 May 1998, p. 2115; ss. 3 and 4 came into operation 1 December 1998: *Gaz.* 26 November 1998, p. 1600.
- ¹⁹ Came into operation 9 December 1999: *Gaz.* 9 December 1999, p. 3113.
- ²⁰ Came into operation 1 September 2000: *Gaz.* 24 August 2000, p. 592.
- ²¹ **Schedule 1 came into operation 24 November 2003: *Gaz.* 13 November 2003, p. 4048.**

N.B. The amendments effected to this Act by the *Highways (Authorised Transport Infrastructure Projects) Amendment Act 2003* have not been brought into operation.

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APPENDIX LEGISLATIVE HISTORY

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

Short title

1. This Act may be cited as the *Highways Act 1926*.

Act not to apply to City of Adelaide

2. (1) This Act does not apply to or in relation to the City of Adelaide.

(2) However, the Adelaide City Council must comply with any notice in writing given by the Commissioner to the Council requiring the Council to construct or reconstruct a portion of road in the City of Adelaide so as to conform with the construction or reconstruction of an adjoining portion of road under the care, control and management of the Commissioner.

- (3) In this section—

"**Adelaide City Council**" and "**City of Adelaide**" have the same meaning as in the *City of Adelaide Act 1998*.

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Interpretation

7. In this Act, unless some other meaning is clearly intended—

"**Commissioner**" means the Commissioner of Highways appointed under Part 2;

"**controlled-access road**" means any road or part of any road or any land acquired by the Commissioner which is declared under this Act to be a controlled-access road;

"**council**" means a municipal or district council;

"**district**" means the area of a council;

"**financial year**" means a period of twelve months ending on the thirtieth day of June in any year;

"**local-access road**" in relation to a controlled-access road means—

- (a) any road that provides access to land which abuts or is adjacent to that controlled-access road; or
- (b) any road that provides access to or egress from the means of passage over or the means of passage under the controlled-access road;

"**means of access**" in relation to land abutting a road, means the travelled way, path or crossover leading from the edge of the vehicular carriageway of the road to any part of the boundary of that land from which access can be had to that land and includes the earth, formation, paving and structures or other surfaces together with any gate, structure or supports appurtenant thereto;

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"**privately owned land**" includes land held from the Crown under a lease or licence;

"**road**" means any street, road, thoroughfare, terrace, court, lane, alley, cul-de-sac, or place commonly used by the public, or to which the public are permitted to have access, and includes a part of a road;

"**roadwork**" means—

- (a) the construction of a road; or
- (b) the maintenance or repair of a road; or
- (c) the alteration of a road; or
- (d) the construction of drains and other structures for the drainage of water from a road; or
- (e) the installation of fences, railings, barriers or gates; or
- (f) the installation of traffic control devices, traffic islands or parking bays; or
- (g) the improvement of a road including (for example)—
 - (i) landscaping and beautification; or
 - (ii) installation of road lighting; or
- (h) the installation of amenities or equipment on or adjacent to a road for the use, enjoyment or protection of the public; or
- (i) the installation of signs on or adjacent to a road for the use or benefit of the public; or
- (j) any work in connection with a road.

Part 2—Administration

Division 1—Commissioner of Highways

Creation of Commissioner of Highways

8. (1) There shall be a Commissioner of Highways who shall, subject to the Minister, be charged with the duty of carrying this Act into effect.

(2) The Commissioner shall be a body corporate by the name of the "Commissioner of Highways", and by that name shall have perpetual succession and a common seal.

Judicial notice of seal of Commissioner

9. Judicial notice shall be taken of the incorporation and of the common seal of the Commissioner; and the production of any deed, instrument, or writing, if sealed with the said seal, shall be sufficient proof of the due making and execution of such deed, instrument, or writing.

Appointment of Commissioner

10. (1) The Governor may appoint a person as Commissioner of Highways.

(2) A person appointed under this section will, subject to this Act, hold office for a term of five years from the date of appointment, and is, on expiration of a term of office, eligible for reappointment.

Remuneration of the Commissioner

11. (1) The Commissioner shall be paid such salary and allowances as are determined from time to time by the Governor in relation to the office of the Commissioner.

(2) This section is sufficient authority for the payment of the salary and allowances referred to in subsection (1) from the Highways Fund.

Dismissal of Commissioner from office

12. (1) The Governor may, at any time, dismiss the Commissioner from his office—

- (a) for misbehaviour or incompetence; or
- (b) if he is adjudicated insolvent, or makes a statutory assignment for the benefit of his creditors, or compounds with his creditors for less than one hundred cents in the dollar; or
- (c) if he wilfully absents himself from his duty for a period of fourteen consecutive days except on leave granted by the Minister; or
- (d) if he becomes in any way, except as Commissioner, concerned or interested in any contract made by or on behalf of the Commissioner, or in any way participates or claims to be entitled to participate directly or indirectly in the profits thereof, or in any benefit or emolument arising therefrom.

(2) Except as provided by subsection (1) of this section no Commissioner shall be dismissed from his office during the term thereof unless an address praying for his dismissal is presented to the Governor from both Houses of Parliament in one session, or from one House in one session, and from the other in the next session.

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(3) If the Commissioner becomes a member of the Executive Council or of either House of Parliament of the State or of the Commonwealth, he shall thereupon cease to hold office as Commissioner.

Commissioner may delegate

12A. (1) The Commissioner may delegate any of his or her functions, powers or duties under this Act (except this power of delegation)—

- (a) to a public sector employee; or
- (b) to a member or employee of a council; or
- (c) to any other person.

(2) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the Commissioner to act in any matter; and
- (d) is revocable at will by the Commissioner.

(3) Where at any time before the commencement of the *Highways Act Amendment Act 1979* the Commissioner conferred, or purported to confer, upon any other person an authority to act on the Commissioner's behalf, that authority shall be deemed to have been lawfully conferred.

Ministerial control

13. (1) The Commissioner is subject to the control and direction of the Minister.

(2) A direction given by the Minister under this section must be in writing.

Division 2—Officers and employees of Commissioner

Staff

14. The Commissioner may—

- (a) with the approval of the Minister administering an administrative unit of the Public Service of the State, on terms mutually arranged, make use of the services of an employee or use any facilities of the administrative unit;
- (b) make use of the services of any other employees engaged for the purposes of this Act.

* * * * *

Payment of wages and salaries

16. (1) The wages, salaries, and expenses incurred in connection with carrying out the provisions of this Act shall be payable out of the Highways Fund without any appropriation other than this Act.

(2) If any question arises as to what sums are properly payable out of the Highways Fund under this section, that question shall be determined by the Minister, whose decision shall be final.

(3) If the amounts standing to the credit of the Highways Fund are at any time insufficient to pay all wages, salaries, and expenses payable out of that fund, the Treasurer shall advance to the fund, without any authority other than this Act, such a sum as is sufficient for those purposes. Any sum so advanced shall be recouped to the Treasurer from the Highways Fund as soon as sufficient money is available.

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Division 3—Functions and powers of Commissioner

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General powers of Commissioner

20. (1) Subject to the provisions of this Act, the Commissioner in his corporate name may—

- (a) subject to the approval of the Minister, acquire by agreement or compulsory process any land or interest in land for the purposes of present or future roadwork or any other purposes connected with this Act (including, without limitation, quarrying or the erection, storage or maintenance of plant, equipment or material used in connection with roadwork or quarrying); and
- (ab) subject to the approval of the Minister, contract for the right to remove materials from any land for the purposes of this Act; and
- (ac) subject to the approval of the Minister, sell, transfer, lease or otherwise deal with or dispose of any land or interest in land vested in the Commissioner; and
- (b) subject to the approval of the Minister, acquire by purchase or hire or otherwise, goods and chattels, including stock, machinery, and road-making plant and materials of all kinds; and
- (ba) subject to the approval of the Minister, establish and maintain ferry services or enter into and carry out any arrangement with any person for the operation of any ferry service and for that purpose he may—
 - (i) make and construct a ferry across any river, creek, stream, tidal waters or strait; and
 - (ii) install and maintain cables, wires, chains and other appliances; and
 - (iii) make and construct such wharves, retaining walls, causeways, embankments, canals, landing stages and such other works as are in his opinion necessary or desirable; and
 - (iv) make, construct or otherwise acquire any punts, barges or ferry boats; and
 - (v) erect and place masts, posts and other plant or equipment for carrying on or operating a ferry; and

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- (vi) with the approval of the Minister, make and levy fees and charges for the carriage of persons, vehicles or cargo by any such ferry service; and
- (bb) subject to the approval of the Minister, establish and maintain, or enter into and carry out any arrangements with any person for the establishment and maintenance of a sea transport service for the purpose of carrying persons and cargo between such ports and places within the State as the Minister from time to time approves and for that purpose he may—
 - (i) build, construct or otherwise acquire ships or plant necessary or convenient for the operation of the service; and
 - (ii) make and construct such wharves, retaining walls, causeways, embankments, landing stages and such other works as are in his opinion necessary or desirable for the operation of the service; and
 - (iii) with the approval of the Minister, make and levy fees and charges for the carriage of persons, vehicles or cargo by any such sea transport service; and
- (c) subject to the approval of the Minister, enter into such contracts as he thinks proper for the supply of materials or the execution of any works required to be supplied or executed for the purpose of this Act; and
- (d) sue and be sued, and submit to arbitration, in all courts and before all Judges, magistrates, justices, and arbitrators whomsoever, in all actions, suits, causes, disputes, and matters whatsoever; and
- (e) do and exercise all such further acts and powers as he is by this Act authorised to do and exercise, or as may be necessary or convenient for carrying into effect any of the purposes or objects of this Act.

(2) Nothing in paragraph (ba) of subsection (1) of this section shall be read and construed as authorising the Commissioner to cause any obstruction of the free use of any navigable waters by any ship or vessel passing and repassing a ferry.

(3) Despite subsection (1)(ac), the Commissioner may, without the approval of the Minister, grant a lease or licence for a term, or terms not exceeding in the aggregate, six years of or over land or property vested in him.

(4) As soon as practicable after the thirtieth day of June in each year the Minister shall cause to be laid on the table of each House of Parliament a report setting out with reasonable particularity details of all leases and licences granted by the Commissioner pursuant to subsection (3) of this section, during the twelve months immediately preceding that thirtieth day of June.

(5) The *Development Act 1993* does not apply in relation to land acquired under this section.

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Power to acquire land in excess of requirements

20B. Where the Commissioner acquires land by agreement or compulsory process for the purpose of roadwork, the Commissioner, in deciding the land to be so acquired, shall not be restricted to the acquisition of the land actually required for the said purpose, but may acquire such additional land as he deems expedient and as is approved by the Minister.

Acquisition in case of hardship

20BA. (1) The owner of any land may apply to the Minister for the grant, by the Minister, of a certificate in respect of that land and, subject to this section, the Minister may grant such a certificate but no proceedings shall be instituted or heard in any court or tribunal in respect of the grant of such a certificate or the failure or refusal of the Minister to grant such a certificate.

(2) The Minister shall not grant a certificate in respect of any land unless, upon such evidence as he considers adequate, he is satisfied that—

- (a) there is a possibility that the whole or part of the land may be required by the Commissioner for the purposes of this Act; and
- (b) by reason of that possibility the value of the land is adversely affected; and
- (c) by reason of the fact that the value of the land is adversely affected, the owner of the land has suffered or may suffer hardship.

(3) Upon a certificate being granted under subsection (1) of this section in respect of any land the Commissioner shall acquire that land and this Act shall apply to and in relation to the acquisition by the Commissioner as if—

- (a) the acquisition had been approved by the Minister; and
- (b) the land is to be acquired for use in connection with operations which the Commissioner is authorised by this Act to carry out.

(4) Nothing in this section shall be read as affecting, limiting or restricting any power or function in relation to land conferred on the Commissioner otherwise than under this section.

Commissioner may exercise powers of councils under section 294 of the Local Government Act 1999

20C. The Commissioner may, with the approval of the Minister, exercise the powers of a council under section 294 of the *Local Government Act 1999* and, in the exercise of those powers, the provisions of that section (other than subsection (6)(a)) apply to the Commissioner as if a reference in that section to a council were a reference to the Commissioner.

Mode of entering into contract

21. (1) The powers hereby granted to the Commissioner to make contracts may be exercised as follows:

- (a) any contract which, if made between private persons would be by law required to be in writing and under seal, the Commissioner may make in writing in his corporate name under the common seal, and in like manner may vary or discharge the same;

- (b) any contract which, if made between private persons, would be by law required to be in writing and signed by the parties thereto, the Commissioner may make in writing in his corporate name signed by him and in like manner may vary or discharge the same;
- (c) any contract which, if made between private persons, would be by law valid although made by parol only and not reduced into writing, the Commissioner may make by parol only without writing, and in like manner may vary or discharge the same.

(2) All contracts so made and duly executed by the parties thereto respectively shall be effectual in law and binding on the Commissioner and all other parties thereto, their successors, assigns, heirs, executors, and administrators (as the case may be).

(3) In case of default in the execution of any such contract, either by the Commissioner or by any other party thereto, such actions or suits may be instituted, either by or against the Commissioner in his corporate name or by or against the other parties failing in the execution thereof, and such damages and costs recovered, as might be instituted and recovered had the like contract been made between private persons.

Power of Commissioner to deal with plant

22. Subject to the approval of the Minister, the Commissioner may—

- (a) sell or otherwise dispose of, on such terms as he thinks fit, to any council any of the properties or things mentioned in section 20 which are not required for the purposes of this Act; and
- (b) let or hire out, on such terms as he thinks fit, any of the properties or things mentioned in section 20.

Research etc by Commissioner

23. (1) The Commissioner may, subject to the approval of the Minister, engage in, or cause to be undertaken, research in relation to—

- (a) the suitability of materials for road construction and maintenance; and
- (b) the extent of the resources of the State in such materials and the utilisation of those resources; and
- (c) methods of road construction and maintenance suitable for the State or any part of the State.

(2) The Commissioner may, subject to the approval of the Minister, engage in, or cause to be undertaken, road planning and research including but without limiting the generality of the expression—

- (a) the investigation of transport by road in relation to other means of transport; and
- (b) research into road safety, the design of vehicles and the behaviour of road users.

(3) The Commissioner shall make available for general information the results of research and experiments undertaken and made pursuant to this section in such manner and to such extent as the Minister directs.

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Advice to councils

24. The Commissioner shall, at the request of any council, advise the council, or any officer of the council, on any question concerning roadwork, including the suitability for such purposes of the stone from any quarry or any other material proposed to be used.

Duty of councils to furnish information

25. The Commissioner may request any council, or any officer of a council, to furnish him with information respecting any public road or work within the district of such council, and such council or officer shall, if the information requested is available to it or him, furnish the Commissioner therewith.

Powers of the Commissioner to carry out roadwork

26. (1) The Commissioner may carry out roadwork outside districts.

(2) The Commissioner may, with the approval of the Minister, carry out roadwork in a district provided that the Commissioner first gives the council notice in writing of the proposed roadwork and of the date on which it is proposed to commence the roadwork.

(3) The Commissioner may, with the approval of the Minister, by notice published in the *Gazette*, assume the care, control and management of any road in a district for a specified period (which may be until further notice published in the *Gazette*).

(4) The Commissioner may, with the approval of the Minister, by notice published in the *Gazette*, vary or revoke a notice under subsection (3).

(5) The Commissioner may carry out roadwork in relation to a road under the care, control and management of the Commissioner (and in the case of a road in a district may do so without complying with subsection (2)).

(6) The provisions of Part 2 of Chapter 11 of the *Local Government Act 1999* apply to roads under the care, control and management of the Commissioner—

- (a) as if references to a council were references to the Commissioner; and
- (b) subject to such modifications and exclusions as are prescribed by the regulations.

(7) A council must not exercise its powers under Part 2 of Chapter 11 of the *Local Government Act 1999* in relation to a road under the care, control and management of the Commissioner except to such extent (if any) as the Commissioner may approve by written notice to the council.

(8) Any action that a council takes or has taken to exclude vehicles generally or vehicles of a particular class from a road under the care, control and management of the Commissioner is of no effect unless approved by the Commissioner by written notice to the council.

(9) The provisions of this section applying to roads under the care, control and management of the Commissioner apply to such roads whether the roads are under the care, control and management of the Commissioner by virtue of this section or otherwise.

(10) The Commissioner may, when carrying out roadwork in a district, carry out such further roadwork as the council may request and any expenses incurred by the Commissioner in carrying out that further roadwork may be recovered from the council as a debt due to the Commissioner.

(11) If the Commissioner installs or causes the installation of street lighting in a district in the exercise of the Commissioner's powers under this section, the Commissioner may require the council to pay to the Commissioner for payment into the Highways Fund (by payments made at times specified from time to time by the Commissioner) half of the reasonable costs paid by the Commissioner to an electricity entity for the operation and maintenance of the lighting.

(12) The powers of the Commissioner under this section are in addition to the Commissioner's general powers under this Act.

Powers of Commissioner in relation to trees etc on roads

26A. The Commissioner may, for the purposes of road safety, remove or cut back any tree or other vegetation on or overhanging—

- (a) a road under the care, control and management of the Commissioner; or
- (b) an adjoining portion of road.

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Total or partial closure of roads to ensure safety or prevent damage

26B. (1) If the Commissioner is of the opinion that a road under the care, control and management of the Commissioner is unsafe for pedestrians or vehicles or vehicles of a class, or is likely to be damaged if used by vehicles or vehicles of a class, the Commissioner—

- (a) may close the road to pedestrians or vehicles or vehicles of a class; and
- (b) may for that purpose erect fences or barriers.

(2) If the Commissioner closes or proposes to close a road in a district under this section, the Commissioner must, as soon as practicable, give written notice of the closure to the council.

(3) If the Commissioner closes a road under this section, the Commissioner must display such signs and make such provision for lights or other warning devices as is necessary in the interests of public safety.

(4) A sign under subsection (3) may state—

- (a) that the road is closed to all pedestrians or all vehicles or both; or
- (b) that the road is closed to vehicles of a specified class.

(5) A person must not, except with the permission of the Commissioner—

- (a) drive, ride or propel a vehicle on or over a road in contravention of a sign under subsection (3); or
- (b) drive, ride or lead any horse or stock on a road that is closed to all vehicles under this section; or

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- (c) remove or damage any fence, barrier, sign, light or other warning device erected, displayed or provided under this section.

Maximum penalty:

For a first offence—\$1 250;

For a subsequent offence—\$2 500.

(6) A court may, on finding a person guilty of an offence against subsection (5), order the person to pay compensation to the Commissioner for loss or damage arising from the offence.

Certain road openings etc require Commissioner's concurrence

26C. If—

- (a) a council has excluded vehicles generally or vehicles of a particular class from a road (whether at all times or specified times only); and
- (b) the road runs into or intersects with—
 - (i) a road vested in the name of the Commissioner or the Minister; or
 - (ii) a road under the care, control and management of the Commissioner,

the council must not remove that exclusion without the concurrence of the Commissioner.

* * * * *

Closing of roads

27AA. (1) If the Commissioner—

- (a) is of opinion that it is expedient that any road or any part of a road should be closed or that any easement over or restrictive covenant on any land should be extinguished; and
- (b) has served on the owner of any land which the Commissioner after making inquiry into the matter, considers is likely to be substantially affected by such closing of a road or part of a road or extinguishment of an easement or restrictive covenant, notice of such proposed closing or extinguishment and has given to all such owners an opportunity of setting forth their objections to such closing or extinguishment; and
- (c) has made provision—
 - (i) with respect to pipes, wires, apparatus, sewers, drains, tunnels, conduits, poles, posts and fixtures lawfully upon, over, across or under any such road or part thereof; and
 - (ii) for access to any land likely to be prejudicially affected by any such closing or extinguishment; and

- (iii) for the payment of compensation to any person (other than a council) in whom the land comprised in any such road or part thereof is vested and to the owner of land abutting such road or part thereof likely to be prejudicially affected by the closing and to any person having an interest in the easement or restrictive covenant that is likely to be substantially affected by the extinguishment; and
- (iv) for the rectification or other alteration of documents of title to lands the descriptions of which are likely to be affected by any closing or extinguishment,

the Commissioner may, after considering all objections made pursuant to paragraph (b) of this section and if he is of opinion that such closing or extinguishment will not substantially injure the public or any person so objecting, with the approval of the Minister, make a recommendation to the Governor and the Governor may, by proclamation, close such road or part thereof or extinguish such easement or restrictive covenant accordingly.

(2) A notice required to be served by the Commissioner on an owner of land pursuant to this section may be served on the person—

- (a) personally or by post; or
- (b) if the person's whereabouts are not known to the Commissioner—
 - (i) by publication of a copy of the notice in a newspaper circulating generally throughout the State; or
 - (ii) by affixing it in a prominent place on that land.

Effect of proclamation under s. 27AA

27AB. (1) On the publication in the *Gazette* of a proclamation under section 27AA of this Act closing a road or part thereof, the road or part thereof (whether it is the property of the Crown or not) shall cease to be a road and thereupon all rights, easements, or privileges existing or claimed as regards the land comprised therein either in or by the public or any person or body of persons whomsoever or whatsoever as incident to any past dedication or supposed dedication thereof or by express grant or by statute or by any past user thereof or by any fiction of law (other than any easement specified in the proclamation) shall cease and determine and the land comprised therein shall be vested in fee simple in the Commissioner or, as provided by the proclamation, in the Crown, freed and discharged from all trusts, encumbrances, limitations or restrictions whatsoever.

(2) On the publication of any proclamation under section 27AA of this Act extinguishing an easement or restrictive covenant, such easement or restrictive covenant shall cease and determine.

(3) The Commissioner shall, after the publication of any such proclamation, give to the Registrar-General notice thereof in writing under his common seal.

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Duty etc of Registrar-General

27AC. (1) Where the land comprised in any road so closed under section 27AB of this Act or any part thereof is land under the *Real Property Act 1886*, the Registrar-General is hereby directed and empowered to cancel the existing grant or certificate of title therefor and any instrument, entry or memorial in the register book and any plan of subdivision altogether or to such extent as is necessary in consequence of the proclamation and the Registrar-General may issue to the Commissioner a certificate of title in respect of any such land.

(2) In cancelling any grant, certificate of title, instrument, memorial or entry in the register book or any plan of subdivision in pursuance of the power hereby conferred on him in that behalf the Registrar-General shall endorse thereon a memorandum stating the circumstances and authority under which the cancellation is made.

(3) If any such proclamation for closing a road or part thereof or extinguishing an easement or restrictive covenant affects the right, estate or interest of the registered proprietor of land under the *Real Property Act 1886*, included in any certificate of title in respect of any easement or restrictive covenant appearing thereon or implied by statute appurtenant to such land the Registrar-General shall cancel such easement or restrictive covenant to the extent to which it has been determined or extinguished upon the original of such certificate, and also upon the duplicate certificate of title when brought to him for that purpose or when the same is lodged in the Lands Titles Registration Office for the purpose of any dealing with the land comprised therein.

(4) The Registrar-General may call in such duplicate certificate of title for the purpose of such cancellation and may retain the duplicate until such cancellation is effected and refuse to register any dealing with the land comprised therein or any part thereof until the duplicate has been so brought in and lodged.

(5) Where the description of any land under the *Real Property Act 1886* or any certificate of title is or may be affected by any proclamation closing a road or part thereof or extinguishing an easement or restrictive covenant the Registrar-General is hereby empowered to make an amendment in such description or certificate which is in his opinion necessary or desirable.

(6) Where the land comprised in any road so closed or any part thereof is not land under the *Real Property Act 1886* the Registrar-General may, upon a request in writing from the Commissioner and upon payment of such fees and charges as would have been payable if the request had been an application to bring the land under the *Real Property Act 1886*, issue to and in the name of the Commissioner a certificate of title under the *Real Property Act 1886*, for the said land but before issuing a certificate of title as aforesaid the Registrar-General may require the Commissioner of Highways to deposit with him a plan or map of the land, as if the request had been an application to bring the land under the *Real Property Act 1886*.

(7) No provision of section 27AA, 27AB or this section shall be read and construed as disentitling the Registrar-General to demand any fees specified in or under the *Real Property Act 1886*, and the provisions of those sections shall apply notwithstanding the provisions of the *Real Property Act 1886*.

(8) In this section—

"**the Registrar-General**" means the person for the time being holding the office of Registrar-General under the *Real Property Act 1886* or the Registrar-General of Deeds under the *Registration of Deeds Act 1935*, as amended.

Consolidation of certificates of title to be issued

27AD. Where the Commissioner proposes to transfer an interest in land comprising a road closed pursuant to this Act to a registered proprietor of contiguous land, then, subject to any direction of the Minister, the following provisions shall apply:

- (a) the Commissioner shall give a certificate to the Registrar-General that the land is to be vested in the registered proprietor, and if the land is to be subject to any easement, the certificate shall describe the easement;
- (b) in lieu of a certificate of title being issued for the land comprised in the closed road, the Registrar-General may, upon the production of such surveys, duplicate certificates of title and other documents as he may require, issue a certificate of title comprising the contiguous land and the land comprised in the closed road and make such consequential alterations in the register book as may be necessary or expedient;
- (c) every certificate of title so issued shall be expressed to be subject, and the land therein described shall be subject, to such encumbrances, liens, interests, easements, and trusts as were shown by the certificate of title for the contiguous land immediately prior to its consolidation and by the certificate given by the Commissioner;
- (d) those easements that are appurtenant to the contiguous land shall be appurtenant to the land comprised in the certificate of title and the certificate of title shall be appropriately endorsed by the Registrar-General.

Consolidation of existing titles to closed roads

27AE. (1) The registered proprietor of land comprising a road closed pursuant to this Act who is also the registered proprietor of any land contiguous to the closed road may apply to the Registrar-General for the issue of a certificate of title comprising the contiguous land and the land in the closed road, and the Registrar-General may, upon production of such surveys, duplicate certificates of title and other documents as he may require, issue such a certificate and make such consequential alterations in the register book as may be necessary or expedient.

(2) Where a certificate of title is issued under subsection (1) of this section—

- (a) the certificate of title so issued shall be expressed to be subject, and the land therein described shall be subject, to such encumbrances, liens, interests, easements, and trusts as were shown by the certificate of title for the contiguous land immediately prior to its consolidation and by the certificate given by the Commissioner; and
- (b) those easements that are appurtenant to the contiguous land shall be appurtenant to the land comprised in the certificate of title and the certificate of title shall be appropriately endorsed by the Registrar-General.

Merger of land comprising consolidated titles

27AF. If any consolidation of title is effected pursuant to this Act, the land comprised in the closed road shall, for the purpose of the public records of the State, be deemed to be merged with and have the same identity as the contiguous land with which it is consolidated.

Widening and deviation of roads

27B. (1) If the Commissioner is of opinion that it is desirable to widen or to make any deviation of any road he may, with the consent of the Minister, cause to be prepared a plan showing—

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- (a) the existing boundaries of the road (which said boundaries are hereinafter in this section referred to as "old boundaries"); and
- (b) the boundaries of the road as they would exist after the widening of the road (which said boundaries are hereinafter in this section referred to as "new boundaries"); and
- (c) all buildings, fences and other structures and all wells, dams and other water supplies then existing upon or in any land between any such old boundary and any such new boundary.

(2) The Commissioner shall give notice in writing to the following persons:

- (a) the owner of any land which is situated between any such old boundary and any such new boundary;
- (b) the occupier of any such land;
- (c) any person who, pursuant to the *Real Property Act 1886* or the *Registration of Deeds Act 1935* is registered as the mortgagee or encumbrancee of any such land.

(2a) The notice under subsection (2) must—

- (a) state that it is the intention of the Commissioner to deposit the plan as provided by this section; and
- (b) set out the effect of such deposit and of this section; and
- (c) be accompanied by a copy of the plan or of the portion of the plan that includes the land to which the notice relates; and
- (d) state that the person to whom the notice is given may object in writing to the proposed widening of the road within the time, being not less than one month, specified in the notice.

(3) The Commissioner shall consider every such objection and may, after considering every such objection, adopt the plan for the purposes of this section with such alterations as appear necessary to the Commissioner. No such plan shall be adopted unless the Minister approves of the adoption thereof.

(4) After adopting the plan as aforesaid, the Commissioner shall—

- (a) serve upon every person aforesaid a copy of the plan or portion thereof as aforesaid;
- (b) deposit a copy of the plan with the Registrar-General, the Surveyor-General, and the council of the district in which the road is situated;
- (c) give notice in the *Gazette* of the adoption of the plan,

and shall serve upon every such person a notice stating the day from which the deposit shall become effective (which said day is hereinafter in this section referred to as "the day of deposit").

(5) At any time after the day of deposit—

- (a) the Commissioner may, subject to the approval of the Minister, acquire any land between any such old boundary and any such new boundary;
 - (b) where the whole of such land is clear of buildings the owner of any such land may, on giving one month's notice in writing to the Commissioner, require the Commissioner to acquire the land and the Commissioner shall thereupon be liable to pay compensation for the land to the persons entitled thereto.
- (6) Any compensation payable by the Commissioner on the acquisition of any land pursuant to subsection (5) of this section shall not include—
- (a) the value of any building, fence or other structure or any well, dam or other water supply erected or constructed upon or in the land after the day of deposit; or
 - (b) any enhancement of the value of the land by reason of any alteration of, addition to or repair of any building, fence, other structure, well, dam or other water supply carried out after the day of deposit and without the consent of the Commissioner.
- (7) For the purposes of this section and of any proceedings thereunder—
- (a) the plan deposited by the Commissioner shall be *prima facie* evidence as to what buildings, fences and other structures and wells, dams and other water supplies were erected or constructed upon or in the land at the day of deposit; and
 - (b) it shall lie upon the person claiming compensation to prove that any alteration, addition or repair referred to in paragraph (b) of subsection (6) of this section was carried out with the consent of the Commissioner.
- (8) The Commissioner may by notice in writing consent to any owner erecting any building, fence or structure or well, dam, or other water supply upon or in any such land after the day of deposit and in any such notice the Commissioner may agree to any special arrangements as to the removal of the building, fence or structure or well, dam, or other water supply upon the acquisition of the land by the Commissioner or otherwise as appears just to the Commissioner.
- (8a) The Commissioner may by notice in writing consent to any owner adding to, altering or repairing any building, fence or structure or well, dam or other water supply upon or in any such land, after the day of deposit and in any such notice the Commissioner may agree to any special arrangements in relation to any such addition, alteration or repair as shall apply upon the acquisition of the land by the Commissioner or otherwise as appears just to the Commissioner.
- (9) Any notice required by this section to be given to or served upon any person may be given or served—
- (a) by delivering the notice to that person; or
 - (b) by sending the notice by registered post to the last-known place of abode or business of the person,

but where any notice is required to be given to or served upon any person whose address is unknown the notice may be given or served by publishing it or a notice substantially to the same effect once in the *Gazette* and once in a daily newspaper circulating generally in South Australia.

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(10) If any notice required by this section to be given to or served upon any person is given to or served upon that person, the notice shall be binding upon all persons claiming by, from or under that person and upon all successors in title or occupancy of that person.

(11) In this section—

"**building**" includes a part of a building;

"**owner**" means—

- (a) the registered proprietor under the *Real Property Act 1886* of any estate of freehold in possession;
- (b) as regards land not under the *Real Property Act 1886*, any person who is seised of any estate of freehold in possession, or if the said estate is subject to redemption under any mortgage, the person who upon payment of moneys secured by such mortgage would be entitled to a conveyance of such an estate;
- (c) as regards land belonging to the Crown, any person who has agreed to purchase the land from the Crown or is the lessee of the land under any lease granted by the Crown;

"**structure**" includes part of a structure.

Duty to register effect of plan

27C. Forthwith after the deposit with the Registrar-General of a copy of any plan in pursuance of subsection (4) of section 27B, the Commissioner shall, in respect of any land situated between any old boundary (as defined in section 27B) and any new boundary (as defined in section 27B) shown in the said plan, do the following:

- (a) if any such land is under the provisions of the *Real Property Act 1886*, the Commissioner shall register with the Registrar-General an instrument requesting the Registrar-General to make an endorsement as provided by this paragraph and, notwithstanding the provisions of the *Real Property Act 1886*, the Registrar-General shall endorse on the certificate of title of that land a memorandum referring to the said plan and to the effect that the land is subject to acquisition by the Commissioner of Highways pursuant to section 27B;
- (b) if any such land is not under the provisions of the *Real Property Act 1886*, the Commissioner shall register a memorial of a certificate by him containing the name of the owner, the description of the land, a reference to the said plan, and a statement to the effect that the land mentioned in the memorial is subject to acquisition by the Commissioner of Highways pursuant to section 27B;

- (c) if any such land is under the provisions of any of the Acts relating to Crown lands and is included in any current registered lease or agreement with covenant to purchase, the Commissioner shall register with the Registrar-General an instrument requesting the Registrar-General to make an endorsement as provided by this paragraph and, notwithstanding the provisions of the *Real Property Act 1886*, the Registrar-General shall endorse on the relevant Crown lease or agreement with covenant to purchase a memorandum referring to the said plan and to the effect that the land is subject to acquisition by the Commissioner of Highways pursuant to section 27B of this Act.

Vesting of roads outside districts

27CA. (1) All public roads which are outside a district, together with the timber growing thereon, and the bridges thereof, and all public works connected therewith, and all lamps, direction boards, mile stones, mile posts, posts, rails, walls, chains, fences, and other things erected thereon or affixed thereto shall be vested in the Minister of Local Government and be under the care, control, and management of the Commissioner.

- (2) For the purposes of this section—

"public road" means—

- (a) all streets and roads delineated and shown on the public maps or plans of the State as laid out for public purposes by the Crown;
- (b) all streets and roads opened under any Act relating to the opening of new streets and roads;
- (c) all streets and roads conveyed or transferred to the Minister of Local Government by the owners thereof in fee simple and accepted by the said Minister as public streets or roads;
- (d) all streets and roads which have been dedicated to the public.

(3) Nothing in this section shall be deemed to affect any power of the Minister of Lands under section 9 of the *Crown Lands Act 1929*.

Fences and gates on roads in outside areas

27D. (1) The Minister may, on the recommendation of the Commissioner, grant a written permit to any person permitting him to erect and keep erected all or any of the following things, namely, any fence, gate, ramp, or petrol pump, on or across any road not within the boundaries of any district.

(1a) Such a permit shall be subject to any terms or conditions which the Minister fixes on the recommendation of the Commissioner.

(1b) Such a permit shall be a sufficient authority for the grantee thereof and his successors in title to erect and keep erected in accordance with the permit any fence, gate, ramp, or petrol pump therein mentioned.

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(2) If any fence, gate, ramp, or petrol pump is erected (whether before or after the passing of the *Highways Act Amendment Act 1944*) on or across any road not within the boundaries of any district and a permit is not granted in respect thereof pursuant to this section or section 9 of the *Crown Lands Act 1929*, or any such permit granted in respect thereof is cancelled or ceases to have effect, the Commissioner may remove the fence, gate, ramp, or petrol pump and recover the cost of removal from the owner thereof in any court of competent jurisdiction.

(3) The Commissioner may erect and keep erected any ramp on any road not within the boundaries of any district and may remove any such ramp.

Powers of councils executing works in outside areas

27E. Where any council undertakes on behalf of the Commissioner the execution of any works in connection with the construction, maintenance, or repair of any road which is not within the boundaries of any district, that council may exercise for the purpose of the execution of those works any power which it might exercise if the said road were within its district.

Power of entry on land

27F. (1) In this section—

"**owner**", in relation to land, means a person having an estate or interest (legal or equitable) in land and includes a person having any easement right power or privilege over affecting or in connection with land.

(2) For the purpose of—

- (a) surveying or taking levels of any land; or
- (b) probing boring or sinking holes or pits on or in any land or otherwise examining the soil structure of the land; or
- (c) setting out the line of any work the Commissioner proposes to undertake under this Act; or
- (d) doing any other thing necessary for the exercise of the powers of the Commissioner under this Act,

the Commissioner or a person authorised in writing by the Commissioner may, upon giving notice in writing to the owner of any land, enter upon the land and perform all or any of the functions specified in the preceding paragraphs of this subsection.

(3) Notice under subsection (2) may be given—

- (a) by post addressed to the owner at the home or place of business of the owner; or
- (b) to any person apparently over the age of fourteen years at the home or place of business of the owner.

(4) If an owner of land suffers loss or damage as a result of the exercise of the powers of the Commissioner under subsection (2) of this section, the owner shall be entitled to compensation.

(5) The amount of the compensation will, despite section 29 of this Act, be determined in accordance with section 29 of the *Land Acquisition Act 1969* as if the Commissioner had entered or temporarily occupied the land as an Authority pursuant to Part 5 of that Act.

Annual report

28. (1) Subject to subsection (3), the Commissioner must, on or before 30 September in each year, submit to the Minister a report on the operation of this Act during the preceding financial year.

(2) Subject to subsection (3), the Minister must, as soon as practicable after receiving a report under this section, cause a copy of the report to be laid before each House of Parliament.

(3) It is sufficient compliance with this section if a report referred to in subsection (1) is incorporated in the annual report of an administrative unit of the Public Service of the State for which the Minister is responsible and the report is laid before each House of Parliament in accordance with the *Public Sector Management Act 1995*.

Protection from liability

29. (1) No civil liability attaches to the Commissioner, any officer or any employee engaged for the purposes of this Act for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of powers, functions or duties under this Act.

(2) A liability that would, but for subsection (1), lie against a person on whom immunity is conferred by that subsection lies instead against the Crown.

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Part 2A—Proclamation of controlled-access roads

Power to proclaim controlled-access roads

30A. (1) The Governor may, on the recommendation of the Commissioner, by proclamation—

- (a) declare any road or part of any road or any land acquired by the Commissioner to be a controlled-access road; or
- (b) declare that a controlled-access road or part of a controlled-access road will cease to be a controlled-access road or part of a controlled-access road; or
- (c) make any alteration in any proclamation for the time being in force under this Part.

(1a) Every proclamation under paragraph (a) of subsection (1) of this section shall specify the routes and means of access by which persons and vehicles may enter or leave the controlled-access road.

(2) Before recommending the making of a proclamation under subsection (1) that has the effect of closing off or reducing any means of access to privately owned land from a controlled-access road, the Commissioner must—

- (a) —
 - (i) be satisfied that no means of access to the land from the controlled-access road is reasonably required for the land; or
 - (ii) be satisfied that some other reasonably convenient means of access to the land from the controlled-access road is available for the land; or
 - (iii) be of the opinion that access to the land from the controlled-access road is undesirable; and
- (b) give every person who has a registered interest in the land at least 30 days written notice of the proposed proclamation and invite the person to make written submissions to the Commissioner with respect to the proposed proclamation within the period specified in the notice (which must be at least 30 days); and
- (c) consider all submissions made in accordance with paragraph (b) and give each person making a submission a written reply indicating whether the proposed proclamation will proceed.

(3) A controlled-access road is under the care, control and management of the Commissioner.

(4) A person must not, without the consent of the Commissioner, construct, form or pave a means of access to—

- (a) a controlled-access road; or
- (b) a road in respect of which notice has, within the preceding period of 60 days, been given under subsection (2)(b) of a proposed proclamation declaring the road to be a controlled-access road.

(5) If construction, formation or paving of a means of access to a road has been commenced before notice is given under subsection (2)(b) of a proposed proclamation declaring the road to be a controlled-access road, the Commissioner must not withhold consent to the completion of that work except on the payment of compensation under this Part.

Notice of proclamations etc

30AB. Where in the opinion of the Commissioner, the making of any proclamation under this Part or the granting or amending of any permit or the taking by him of any other action under this Part is reasonably likely to affect the interests of the owners or occupiers of land abutting or adjacent to a controlled-access road, the Commissioner shall as soon as practicable after the making of the proclamation or the granting or amendment of the permit or the taking of the action serve by post a notice, setting out the substance of the proclamation, permit, amendment or action, on those owners or occupiers together with a statement of the rights of the owners or occupiers in the matter.

Provision for compensation

30B. (1) Subject to the provisions of this section any person having any estate or interest in any land abutting on a controlled-access road which estate or interest is directly prejudiced by any restriction upon the use of such land resulting from the proclamation of such controlled-access road may recover from the Commissioner compensation for any loss or damage sustained by him by reason of such prejudice.

(2) Any question as to whether any compensation is payable or as to the amount of compensation payable under this Part shall, in default of agreement (which the Commissioner is hereby authorised to make) be determined by the Land and Valuation Court constituted under the *Supreme Court Act 1935*.

(3) Compensation under this section shall, subject to the provisions of this section, be a sum equal to the difference between the market value of the estate or interest in the land concerned prior to the occurrence of the direct prejudice and the market value of the said estate or interest after that occurrence.

(3a) However—

- (a) in assessing the market value of the estate or interest in the land as so prejudiced, there shall be taken into account any modifications of the prejudice by reason of any permission given by the Commissioner under this Part and any conditions attached to such permission, or by reason of any undertaking given by the Commissioner, and any such permission, conditions or undertaking shall be embodied in the award of compensation;
- (b) there shall be taken into account any benefit which may accrue to any land in which the claimant has an estate or interest by reason of the construction or improvement by the Commissioner or by any other person or authority, at any time after the date on and from which the limitation of access in question pursuant to this Part took effect, upon land adjacent to the land in respect of which compensation is claimed, of any road or any other way subsidiary to such a road, or by reason of the proclamation of the controlled-access road concerned;

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- (c) if the land has, since the date on and from which the limitation of access in question came into force, become or ceased to be separate from other land, the amount of compensation shall not be enhanced by reason of its having so become or ceased. For the purposes of this paragraph land shall be deemed to be separate from other land when the person having the estate or interest therein in respect of which compensation is claimed has not the like estate or interest in the other land.

(4) Compensation under this section shall not be payable unless a claim therefor shall have been served on the Commissioner not later than twelve calendar months after the occurrence of the direct prejudice to the estate or interest in the land in respect of which compensation is claimed.

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Powers of Commissioner to erect fences and barriers

30D. (1) The Commissioner may erect and maintain fences, walls, posts or barriers across any road for the purpose of preventing access to or egress from any controlled-access road.

Closure of access to controlled-access roads

(1a) The Commissioner may construct, erect and maintain kerbs, fences, walls, posts or barriers on a controlled-access road, on the boundary of any such road including a distance of up to thirty metres along any road abutting or adjacent to any controlled-access road, between the carriageway of a controlled-access road and the carriageways of adjacent local access roads, or (with the consent of the owner) on any land adjoining such a controlled-access road, for the purposes of separating the movement of traffic on the carriageways of the controlled-access road from the movement of traffic entering or leaving land abutting, or adjacent to, the controlled-access road whether such movement takes place on a local access road or otherwise.

(2) Where in relation to a controlled-access road, a means of access to any land abutting that road has been closed off by an owner of the land, neither that owner nor any subsequent owner of that land nor any person claiming through or under that owner or subsequent owner has a right to re-open that means of access.

(3) This section has effect despite the provisions of the *Local Government Act 1999*.

Access to property

30DA. (1) In addition to the powers conferred by section 26 of this Act, the Commissioner may construct means of access to land abutting a controlled-access road and may construct any local access road.

(2) Subject to subsection (3) of this section, the Commissioner may—

- (a) close by fencing or otherwise a means of access (whether lawful or unlawful) to any land from a controlled-access road; or
- (b) provide a new means of access to any land from a controlled-access road.

(3) The Commissioner must not close off a lawful means of access to any privately owned land from a controlled-access road unless the Commissioner—

- (a) is satisfied that no such means of access is reasonably required for the land; or

(b) is satisfied that some other reasonably convenient means of access to the land from the controlled-access road is available for the land; or

(c) is of the opinion that access to the land from the controlled-access road is undesirable.

(4) Where the Commissioner is of the opinion that access to a controlled-access road is not reasonably available for land abutting that controlled-access road, he may by permit in writing give permission for the construction and use of a means of access to that controlled-access road from that land.

(5) A permit under subsection (4) of this section may—

(a) be issued subject to such conditions—

(i) as to the type and construction of the means of access;

(ia) as to the dimensions of the means of access;

(ii) as to the location of the means of access;

(iii) as to the times at which the means of access may be used;

(iv) as to persons, vehicles or animals that may use the means of access either generally or at specified times,

as to the Commissioner seem necessary or expedient; and

(b) be revoked or amended at any time without the payment of compensation.

Offences in relation to controlled-access roads

30E. (1) Any person who—

(a) enters a controlled-access road from any other land (whether the land is privately or publicly owned and whether it comprises another road or not) or enters such land from a controlled-access road except—

(i) by means of a route or means of access specified in a proclamation under section 30A; or

(ii) at a place provided for or approved for the purpose by the Commissioner;

(b) constructs, forms or paves a means of access to a road in contravention of section 30A or a condition of a consent given in writing by the Commissioner;

(c) removes or damages any fence, wall, post, barrier or other impediment to the passage of traffic erected by the Commissioner across a road or upon any controlled-access road;

(d) obliterates, removes or damages any traffic sign or notice erected by the Commissioner;

(e) obliterates, removes or damages any lines, words or signs marked by the Commissioner upon any road;

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- (f) uses a controlled-access road for movement of livestock except by transport in a motor vehicle in accordance with the provision of this Act and any regulations made in that behalf;
- (g) uses a traffic lane of a controlled-access road for traffic otherwise than in accordance with the provisions of this Act and any regulation made in that behalf;
- (h) contravenes or fails to comply with a condition of a permit under section 30DA,

is guilty of an offence.

Maximum penalty: \$1 250.

(2) The Commissioner may serve on a person who has constructed, formed or paved a means of access in contravention of section 30A a notice requiring the person to remove the means of access and to restore the land affected to its former state and condition.

(3) A person who fails to comply with a notice under subsection (2) is guilty of an offence.

Maximum penalty: \$1 250.

(4) A person convicted of an offence against subsection (1) or (3) in respect of a continuing act or omission—

- (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than \$125; and
- (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than \$125.

(5) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

(6) A court may, on finding a person guilty of an offence against this section, order the person to pay compensation to the Commissioner for loss or damage arising from the offence.

Evidentiary provision

30F. An apparently genuine document purporting to be signed by or on behalf of the Commissioner stating that—

- (a) a road was a controlled-access road;
- (b) a place was not a route or means of access specified in a proclamation under section 30A, or a means of access provided or approved by the Commissioner, for entering or leaving a controlled-access road;
- (c) a notice had been given under section 30A of a proposed proclamation declaring a road to be a controlled-access road;

- (d) a person did or did not have the consent of the Commissioner for the construction, formation or paving of a means of access to a controlled-access road or a road in respect of which notice had been given under section 30A of a proposed proclamation declaring the road to be a controlled-access road;
- (e) a provision was a condition of a consent of the Commissioner for the construction, formation or paving of a means of access to a road;
- (f) a fence, wall, post, barrier or other impediment to the passage of traffic was erected by the Commissioner;
- (g) a traffic sign or notice was erected by the Commissioner;
- (h) lines, words or signs were marked by the Commissioner on a road;
- (i) a sum of money constituted a loss suffered by the Commissioner as a result of the commission of an offence against this Part;
- (j) a sum of money was expended by the Commissioner in making good damage arising from the commission of an offence against this Part,

will be accepted in any legal proceedings, in absence of proof to the contrary, as proof of the matters stated in the document.

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Part 3—Financial provisions**Highways Fund**

31. (1) The *Highways Fund* continues in existence.

(2) The Fund consists of—

- (a) money paid into the Fund as required or authorised by this Act or any other Act; and
- (b) loans raised and appropriated for purposes of the Fund; and
- (c) any money (including interest) paid into the Fund to defray the cost of operations referred to in section 32(1)(g); and
- (d) any money (including interest) repaid by a council under section 32(1)(h); and
- (e) any other money received in repayment of money disbursed from the Fund or otherwise received under this Act; and
- (f) any amounts paid by way of fees or charges for the use of any ferry or sea transport service operated under this Act.

(3) The Treasurer must, at least once every three months, pay into the Fund the sum of all money collected or received in respect of licence fees and registration fees under the *Motor Vehicles Act 1959* after deducting from that sum such amount as is necessary to pay, during the financial year in which that money is collected or received—

- (a) any interest on the debit balance for the time being outstanding in accounts of the Treasurer in respect of loans raised for roads and bridges; and
- (b) any expenses incurred in connection with statutory or administrative powers, duties or functions exercised or performed by or under the direction of the Registrar of Motor Vehicles.

(4) The Treasurer may in any financial year advance out of the Consolidated Account and pay into the Fund any sum not exceeding the amount that the Treasurer anticipates will, in that financial year, be received or collected and be payable to the Fund under subsection (3).

(5) If an amount is paid into the Fund under subsection (4), that amount must be deducted from the amount to be paid into the Fund under subsection (3) during the relevant financial year.

Adjustment of Highways Fund

31A. (1) The Treasurer may out of the Consolidated Account pay into the Highways Fund any sum or sums not exceeding in the aggregate one million two hundred and forty thousand dollars.

(2) Every such sum shall be deemed to be an advance to the Highways Fund and shall be repaid to the Consolidated Account out of moneys in the Highways Fund in such instalments and at such times as the Treasurer directs.

(3) The Treasurer may transfer from the Highways Fund to the credit of the Consolidated Account any sum or sums not exceeding in the aggregate one million two hundred and forty thousand dollars.

(4) This section without further appropriation shall be sufficient authority for every payment and transfer mentioned in this section.

Application of Highways Fund

32. (1) The moneys standing to the credit of the Highways Fund shall be used by the Commissioner—

(a) in the payment of the wages, salaries, and expenses incurred in connection with carrying out the provisions of this Act; and

(b) to defray the cost of the operations undertaken by the Commissioner under this Act in connection with roads and works appertaining to roads; and

* * * * *

(d) in defraying the cost of any work required to be executed by the State pursuant to any Act of or agreement or arrangement with the Commonwealth relating to the construction, reconstruction and maintenance of roads; and

(e) in paying any grants to councils authorised by the Minister to be paid out of the Fund; and

* * * * *

(g) in defraying the cost of any operations in connection with any roads and works appertaining to any roads in any case where the said cost or any part thereof is undertaken to be repaid by any council or statutory or public body on such terms and conditions for the payment thereof as may, with the approval of the Minister, be agreed between the Commissioner and the council or statutory or public body, including the payment of interest; and

(h) with the approval of the Minister, in making advances to any council, on such terms and conditions as may be agreed between the Commissioner and the council for the repayment thereof and the payment of interest thereon, for the purpose of enabling the council to purchase any plant for road making purposes or for the purposes of the construction of dams or other works for the storage or supply of water; and

(i) in repaying to the Treasurer moneys advanced by him in accordance with the terms of such repayment as from time to time agreed upon between the Treasurer and the Minister; and

(j) in making advances on such terms and conditions as the Minister may approve for the purpose of assisting in the re-housing of persons dispossessed of housing as a consequence of works carried out or proposed to be carried out by the Commissioner; and

(k) in repaying to the Treasurer amounts equal to the amounts expended by the Commissioner out of moneys provided by Parliament for the purpose of the purchase of land the whole or part of which was situated within the alignment of a road proposed in the Metropolitan Adelaide Transportation Study but not approved; and

(l) in—

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- (i) allocating, at regular intervals, for the purposes of road safety services provided otherwise than by the Police Department, an amount equal to one-sixth of the fees received by the Registrar of Motor Vehicles during those intervals for the issue of driver's licences in respect of which the full licence fee has been paid, together with—
 - (A) if fees are separately charged for the registration of the prime mover and semi-trailer portions of an articulated motor vehicle—one-hundredth of the fees received by the Registrar of Motor Vehicles during those intervals for the registration of commercial motor vehicles (other than prime movers and trailers) that have an unladen mass of more than 5 tonnes and for the registration of prime movers; or
 - (B) if fees are not so charged—one-hundredth of the fees received by the Registrar of Motor Vehicles during those intervals for the registration of commercial motor vehicles that have an unladen mass of more than 5 tonnes; and
 - (ii) paying to the Treasurer from the moneys so allocated, such amounts as the Treasurer certifies have been lawfully expended in, or in connection with, the provision of those road safety services; and
- (m) in—
- (i) allocating for the purposes of road safety services provided by the Police Department—
 - (a) an amount, in respect of the financial year commencing on the first day of July, 1983, of seven million seven hundred thousand dollars; and
 - (b) an amount, in respect of each subsequent financial year, that has been prescribed by regulation; and
 - (ii) paying to the Treasurer from the moneys so allocated, such amounts as the Treasurer certifies have been lawfully expended on, or in connection with, the provision of those road safety services; and
- (n) in defraying the cost of the provision or operation of any ferry service or sea transport service operated under this Act and works ancillary thereto; and
- (o) in defraying the cost of installing, maintaining, altering, operating or removing any traffic control devices that the Commissioner is authorised or required by the *Road Traffic Act 1961* to install, maintain, alter, operate or remove; and
- (p) in defraying the administrative cost of any function carried out by the Commissioner, otherwise than under this Act, with the approval of the Minister.

* * * * *

Commissioner's control of fund

34. Subject to the provisions of this Act, the Highways Fund shall be under the control of the Commissioner.

Annual program of roadwork

35. (1) The Commissioner must, before the commencement of each financial year, prepare and submit to the Minister for approval a schedule setting out—

- (a) the program of roadwork proposed to be carried out by the Commissioner during that financial year; and
- (b) an estimate of the cost of the proposed roadwork.

(2) If after submitting a schedule to the Minister the Commissioner makes alterations to the program of roadwork proposed in respect of the financial year to which the schedule relates, the Commissioner must submit to the Minister for approval a further schedule setting out the proposed program of roadwork as altered and an estimate of the cost of the proposed roadwork.

(3) The Minister may approve a schedule submitted under this section with such alterations (if any) as the Minister thinks fit.

(4) An approval of a schedule under this section constitutes, for the purposes of this Act, an approval to carry out the roadwork proposed in the schedule.

Standing approvals etc

36. If a provision of this Act confers a power on the Commissioner the exercise of which requires the approval or consent of the Minister, the Minister may, if the Minister thinks fit, give a standing approval or consent, subject to such conditions (if any) as the Minister thinks fit to impose, to cover the exercise of that power from time to time.

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Part 3A—Gillman Highway—third Port River crossing project

Interpretation

39A. (1) In this Part—

"**Gillman Highway**" means a road on land specified by proclamation under subsection (2), including a third bridge over the Port River (the "**Third Port River Crossing**");

"**Project**" means—

- (a) the design, construction, operation, maintenance and repair of Gillman Highway; and
- (b) the financing of any activity referred to in paragraph (a);

"**Project Agreement**" means an agreement, made by the Commissioner with the approval of the Minister, under which another person (the "**private participant**") undertakes the whole or any part of the Project on behalf of the Commissioner;

"**Project property**" means—

- (a) land specified by proclamation under subsection (2) or acquired by the Commissioner for the purposes of the Project;
- (b) any structures or things constructed or acquired for the purposes of the Project;

"**relevant council**", in relation to Project property, means the council in whose district the property is situated.

(2) The Governor may—

- (a) by proclamation, specify land for the purposes of the definition of "**Gillman Highway**";
- (b) by subsequent proclamation, vary a proclamation under this subsection.

Status of Gillman Highway

39B. Gillman Highway will be regarded—

- (a) as a public road for all purposes;
- (b) as a highway for the purposes of Part 2 of Chapter 11 of the *Local Government Act 1999*.

Gillman Highway not to vest in council

39C. Despite the provisions of the *Real Property Act 1886* or any other Act, neither Gillman Highway nor any part of Gillman Highway will vest in fee simple in the relevant council unless the Commissioner, by order under this Part, vests it in the council.

Care, control and management of Gillman Highway

39D. The Commissioner will have the care, control and management of Gillman Highway subject to any order of the Commissioner under this Part.

Power to obstruct right of navigation

39E. (1) The Commissioner or, in accordance with the terms of the Project Agreement, the private participant may, for the purpose of carrying out work in relation to the Third Port River Crossing, obstruct temporarily any right of navigation.

(2) No claim lies against the Crown, the Commissioner, the private participant or any agency or instrumentality of the Crown arising out of any obstruction of a right of navigation by reason of roadwork under this section.

Dealings with property under Project Agreement

39F. (1) The Commissioner may, by written order, do one or more of the following:

- (a) in accordance with the terms of the Project Agreement, transfer to and vest in any of the following Project property (including an estate in fee simple in land):
 - (i) the private participant;
 - (ii) a person nominated for the purpose in the Project Agreement;
 - (iii) the Commissioner;
 - (iv) the relevant council;
- (b) in accordance with the terms of the Project Agreement—
 - (i) grant a lease, licence or other interest or right in respect of Project property to the private participant or a person nominated for the purpose in the Project Agreement;
 - (ii) vary or terminate a lease, licence or other interest or right that has been granted under this section;
- (c) in accordance with the terms of the Project Agreement, declare that the Third Port River Crossing or a structure that is part of Project property is for all purposes to be regarded as personal property severed from the land to which it is affixed or annexed and owned separately from the land;
- (d) in accordance with the terms of the Project Agreement, declare that the private participant has the care, control and management of all or part of Gillman Highway for the purposes of this Act or any other Act for a specified period or until further order of the Commissioner.

(2) An order may be made by the Commissioner under this section in respect of Project property—

- (a) that is owned by the Commissioner, the Crown or an agency or instrumentality of the Crown; or
- (b) that has, by order under this section, been transferred to and vested in the private participant or a person nominated for the purpose in the Project Agreement,

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(and if the Commissioner makes an order in respect of property not owned by the Commissioner, the Commissioner is to be taken to be acting as the agent of the owner of the property).

(3) An order of the Commissioner under this section takes effect on the date of the order or a later date specified in the order.

(4) An order of the Commissioner under this section has effect according to its terms by force of this section and despite the provisions of any other law.

(5) The Registrar-General or any other authority required or authorised under a law of the State to register or record transactions relating to land, or documents relating to such transactions, must, on application by the Commissioner or a person nominated by the Commissioner for the purpose, register or record a transfer and vesting, grant, variation or termination effected by an order of the Commissioner under this section.

(6) No stamp duty is payable under a law of the State in respect of a transfer and vesting, grant, variation or termination effected by an order of the Commissioner under this section, and no person has an obligation under such a law to lodge a statement or return relating to such a transaction or include information about such a transaction in a statement or return.

Payments to private participant

39G. The Project Agreement may provide for the private participant to retain the proceeds of tolling under this Part (including expiation fees and prescribed reminder notice fees paid in respect of alleged offences against this Part).

Toll for access by motor vehicles to the Third Port River Crossing

39H. (1) The Minister may, by notice in the *Gazette*, fix a toll for access by motor vehicles to the Third Port River Crossing (the toll being of an amount that may vary according to the type of vehicle or any other factor specified in the notice).

(2) The Minister may, by further notice in the *Gazette*, vary or revoke a toll fixed under subsection (1).

(3) A toll fixed under subsection (1) (including expiation fees and prescribed reminder notice fees paid in respect of alleged offences against this Part)—

- (a) may be collected by the Commissioner and paid into the Highways Fund; or
- (b) if the Project Agreement so provides—
 - (i) may be collected by the private participant on behalf of the Commissioner and be paid into the Highways Fund; or
 - (ii) may be collected and retained by the private participant.

(4) A person must not, unless exempted under this section, drive a motor vehicle on the Third Port River Crossing without paying the appropriate toll (if any) fixed under subsection (1).

Maximum penalty: \$1 250.

Expiation fee: \$160.

(5) A toll fixed under subsection (1) is not payable in respect of—

- (a) an emergency vehicle; or
- (b) a motor vehicle owned or driven by a person, or a person of a specified class, exempted by the Minister from the operation of this section; or
- (c) a motor vehicle, or a motor vehicle of a specified class, exempted by the Minister from the operation of this section.

(6) An exemption under subsection (5)(b) or (c)—

- (a) must be given by notice in the *Gazette*;
- (b) may be given on conditions determined by the Minister.

(7) The Minister may, by further notice in the *Gazette*—

- (a) vary or revoke an exemption under subsection (5)(b) or (c);
- (b) vary or revoke a condition of an exemption under that subsection.

(8) A person must not contravene or fail to comply with a condition imposed under subsection (6).

Maximum penalty: \$1 250.

Expiation fee: \$160.

(9) The Minister may authorise a person or body to carry out such works as the Minister thinks fit in relation to the operation of this section.

(10) Works authorised under subsection (9) may include—

- (a) the erection or installation of devices for the collection of tolls; and
- (b) the erection or installation of notices or signs; and
- (c) the erection or installation of traffic control devices.

(11) A person must not operate a device erected or installed for the purposes of this section contrary to any operating instructions displayed on or in the vicinity of the device.

Maximum penalty: \$1 250.

Expiation fee: \$160.

(12) A person must not intentionally deface, damage or interfere with a device erected or installed for the purposes of this section.

Maximum penalty: \$5 000 or imprisonment for one year.

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(13) If the Project Agreement so provides—

- (a) a person authorised in writing by the private participant may give expiation notices for alleged offences against this Part;
- (b) the private participant is to be taken to be an issuing authority for the purposes of the *Expiation of Offences Act 1996* in relation to alleged offences against this Part.

(14) In this section—

"**emergency vehicle**" has the meaning given by the regulations.

Liability of vehicle owners and expiation of certain offences

39I. (1) In this section—

"**operator**", in relation to a motor vehicle, means a person registered or recorded as the operator of the vehicle under the *Motor Vehicles Act 1959* or a similar law of the Commonwealth or another State or a Territory of the Commonwealth;

"**owner**", in relation to a motor vehicle, means—

- (a) a person registered or recorded as an owner of the vehicle under the *Motor Vehicles Act 1959* or a similar law of the Commonwealth or another State or a Territory of the Commonwealth; and
- (b) a person to whom a trade plate, a permit or other authority has been issued under the *Motor Vehicles Act 1959* or a similar law of the Commonwealth or another State or a Territory of the Commonwealth, by virtue of which the vehicle is permitted to be driven on roads; and
- (c) a person who has possession of the vehicle by virtue of the hire or bailment of the vehicle,

and includes the operator of the vehicle.

(2) Without derogating from the liability of any other person, but subject to this section, if a motor vehicle is involved in an offence against section 39H(4) or (8), the owner of the vehicle is guilty of an offence and liable to the same penalty as is prescribed for the principal offence and the expiation fee that is fixed for the principal offence applies in relation to an offence against this section.

(3) The owner and driver of a motor vehicle are not both liable through the operation of this section to be convicted of an offence arising out of the same circumstances, and consequently conviction of the owner exonerates the driver and conversely conviction of the driver exonerates the owner.

(4) An expiation notice or expiation reminder notice given under the *Expiation of Offences Act 1996* to the owner of a motor vehicle for an alleged offence against this section involving the vehicle must be accompanied by a notice inviting the owner, if he or she was not the driver at the time of the alleged offence against section 39H(4) or (8), to provide the person specified in the notice, within the period specified in the notice, with a statutory declaration—

- (a) setting out the name and address of the driver; or
 - (b) if he or she had transferred ownership of the vehicle to another prior to the time of the alleged offence and has complied with the *Motor Vehicles Act 1959* in respect of the transfer setting out details of the transfer (including the name and address of the transferee).
- (5) Before proceedings are commenced against the owner of a motor vehicle for an offence against this section involving the vehicle, the complainant must send the owner a notice—
- (a) setting out particulars of the alleged offence against section 39H(4) or (8); and
 - (b) inviting the owner, if he or she was not the driver at the time of the alleged offence against section 39H(4) or (8), to provide the complainant, within 21 days of the date of the notice, with a statutory declaration setting out the matters referred to in subsection (4).
- (6) Subsection (5) does not apply to—
- (a) proceedings commenced where an owner has elected under the *Expiation of Offences Act 1996* to be prosecuted for the offence; or
 - (b) proceedings commenced against an owner of a motor vehicle who has been named in a statutory declaration under this section as the driver of the vehicle.
- (7) Subject to subsection (8), in proceedings against the owner of a motor vehicle for an offence against this section, it is a defence to prove—
- (a) that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of the alleged offence against section 39H(4) or (8); or
 - (b) that the owner provided the complainant with a statutory declaration in accordance with an invitation under this section.
- (8) The defence in subsection (7)(b) does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.
- (9) If—
- (a) an expiation notice is given to a person named as the alleged driver in a statutory declaration under this section; or
 - (b) proceedings are commenced against a person named as the alleged driver in such a statutory declaration,
- the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged driver.
- (10) In proceedings against a person named in a statutory declaration under this section for the offence to which the declaration relates, it will be presumed, in the absence of proof to the contrary, that the person was the driver of the motor vehicle at the time at which the alleged offence was committed.

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(11) In proceedings against the owner or driver of a motor vehicle for an offence against this Part, an allegation in the complaint that a notice was given under this section on a specified day will be accepted as proof, in the absence of proof to the contrary, of the facts alleged.

Application of Part

39J. This Part does not apply in relation to a Project Agreement unless a detailed description of the Project and its funding has been referred to the Public Works Committee of the Parliament for its inquiry and consideration.

Part 4—Miscellaneous provisions

Minister may authorise private persons to construct and work tramways etc on roads

40. (1) The Minister may grant to any person desirous of constructing a telegraph or telephone line or of constructing and working tramways, aerial tramways, steel tracks, or any other work for the conveyance of agricultural products, minerals, timber, or other things, a permit to construct, manage, and work such telegraph or telephone line, tramway, aerial tramway, steel track, or work, or any part thereof, upon, across, under, or over any road which is not situated within any district.

(2) Such consent of the Minister may be given upon and subject to such conditions, reservations, restrictions, and stipulations as the Minister thinks proper.

(3) Any permit granted under subsection (1) hereof shall be sufficient authority for the person to whom it is granted to construct, maintain, manage, and work the telegraph or telephone line, tramway, aerial tramway, steel track, or other work specified in the permit subject to the conditions, reservations, restrictions, and stipulations subject to which such permit is granted, and save insofar as such conditions, reservations, restrictions, and stipulations are not complied with and observed by the person to whom such permit is granted, such person shall not be liable in any action or proceeding, whether for nuisance or otherwise, by reason only of the existence, managing, or working of such telegraph or telephone line, tramway, aerial tramway, steel track, or other work.

(4) For the purposes of this section—

"road" shall include land used as a travelling stock road or reserve.

(5) The Minister may, in any authority or permit given pursuant to this section, authorise the enclosing with a fence of any portion of any land used as a travelling stock road or reserve for the purpose of the maintaining and working of any such tramway, aerial tramway, steel track, or other work as is referred to in this section, but so as not to obstruct the reasonable use of the said land.

Maintenance of the Birkenhead Bridge

41. (1) The portion of the Birkenhead Bridge and its approaches vested in the Minister continues to be under the care, control and management of the Commissioner.

(2) The portion of the Birkenhead Bridge and its approaches vested in the council in whose area the Bridge is situated continues to be under the care, control and management of the council.

(3) The Commissioner may, for the purpose of carrying out work in relation to the portion of the Birkenhead Bridge and its approaches under the care, control and management of the Commissioner, obstruct temporarily any right of navigation.

(4) No claim lies against the Crown, the Commissioner or any agency or instrumentality of the Crown arising out of any obstruction of a right of navigation by reason of roadwork under this section.

Offences by body corporate

41A. If a body corporate commits an offence against this Act, each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty applicable to the principal offence unless it is proved that the member could not, by the exercise of reasonable diligence, have prevented the commission of that offence by the body corporate.

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Right of council to recover costs for repair of road damaged by construction of public works

42. (1) If a public road within the district of any council is subject to more than ordinary traffic by reason of the construction or carrying out of any railway, tramway, drain, reservoir, or other public work, the council may recover from the department, company, body, or person constructing or carrying out such railway, tramway, reservoir, drain, or other public work such sum as will suffice to keep such road in reasonable repair during such traffic, and fully to reconstruct such road after the construction of such railway, tramway, reservoir, drain, or other public work is completed.

(2) Any dispute with respect to any matter arising under this section shall be settled by reference to the Minister, whose decision shall be final.

(3) Any sum so paid may be added to the cost of the railway, tramway, reservoir, drain, or other public work.

Service of notices etc

42A. (1) Where this Act requires or authorises a notice or other document to be served on, or given to, a person, the notice or document may—

- (a) be served on, or given to, the person or an agent of the person; or
- (b) be left for the person at his or her place of residence or business with someone apparently over the age of 16 years; or
- (c) be sent by post to the person or an agent of the person at his or her last known address; or
- (d) be sent to the person by facsimile transmission.

(2) Without limiting subsection (1), a notice or document to be served on or given to a company may be served on the company in accordance with section 109X of the *Corporations Law*.

(3) Subsections (1) and (2) are in addition to and do not derogate from any other provision of this Act prescribing the manner in which a notice or other document may be served or given.

Regulations

43. (1) The Governor may, upon the recommendation of the Commissioner, make all such regulations as are necessary or convenient for carrying this Act into effect, and in particular for all or any of the following purposes, namely:

- (a) the planting and preservation of trees and vegetation on roads under the care, control and management of the Commissioner;
- (b) the prevention of damage to roads under the care, control and management of the Commissioner;
- (c) the prevention of the doing of things likely to injure roads under the care, control and management of the Commissioner, including the prevention of the deposit of rubbish or any other specified substance or articles on or near roads under the care, control and management of the Commissioner;

- (d) the regulation or prohibition of the use of vehicles likely to injure roads under the care, control and management of the Commissioner;
- (e) the restriction of traffic or of any specified class of traffic, and the limitation of the speed of any classes or types of motor vehicles or of motor vehicles over any specified weight, to protect roads under the care, control and management of the Commissioner from injury;

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- (g) the regulation, control or, prohibition of the standing of vehicles on controlled-access roads;
- (h) the control of the movement of vehicles on controlled-access roads;
- (i) the prohibition of the use of controlled-access roads by pedestrians or animals;
- (j) the control of the size, weight, power and type of vehicles using controlled-access roads;
- (k) for controlling or regulating any matter or thing connected with the operation of a ferry service or sea transport service under this Act.

(2) Any such regulation may fix penalties, recoverable summarily, not exceeding in any case the sum of \$1 250, for breach of the same or any other regulation.

(3) Any such regulation may be binding on any person in the employ of the Government of the State.

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APPENDIX**LEGISLATIVE HISTORY****Transitional Provisions**

(Transitional provision from *Highways (Miscellaneous) Amendment Act 2000*, s. 36)

36. If—

- (a) the Commissioner has, in accordance with section 26 of the principal Act as in force before the commencement of this section, undertaken the maintenance or repair of a road for a term; and
- (b) the term has not at that commencement expired,

the road will be taken to be the subject of a notice published in the *Gazette* under section 26 of the principal Act as in force after that commencement by which the Commissioner has assumed the care, control and management of the road until further notice published in the *Gazette* under that section.

Legislative History

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 4 of *The Public General Acts of South Australia 1837-1975* at page 665.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

Section 2:	substituted by 48, 2000, s. 3
Sections 3 - 6:	repealed by 48, 2000, s. 3
Section 7:	definition of "Commissioner" substituted by 48, 2000, s. 4(a) definition of "district" substituted by 48, 2000, s. 4(b) definition of "inspector" repealed by 48, 2000, s. 4(c) definition of "main road" repealed by 48, 2000, s. 4(d) definition of "privately owned land" inserted by 48, 2000, s. 4(e) definition of "road" amended by 48, 2000, s. 4(f) definition of "roadwork" inserted by 48, 2000, s. 4(g) definition of "work" repealed by 48, 2000, s. 4(g)
Heading preceding section 8:	repealed by 44, 2003, s. 3(1) (Sched. 1)
Part 2 Division 1 heading:	inserted by 44, 2003, s. 3(1) (Sched. 1)
Section 10:	substituted by 48, 2000, s. 5
Section 11:	substituted by 59, 1985, s. 7
Section 11(1):	amended by 18, 1990, s. 12
Section 12A:	inserted by 36, 1979, s. 2
Section 12A(1) and (2):	substituted by 5, 1998, s. 3
Section 13:	substituted by 36, 1979, s. 3; 48, 2000, s. 6
Heading preceding section 14:	repealed by 44, 2003, s. 3(1) (Sched. 1)
Part 2 Division 2 heading:	inserted by 44, 2003, s. 3(1) (Sched. 1)
Section 14:	substituted by 48, 2000, s. 7
Section 15:	repealed by 48, 2000, s. 7
Section 17:	repealed by 48, 2000, s. 8
Sections 18 and 19:	repealed by 48, 2000, s. 9
Heading preceding section 20:	repealed by 44, 2003, s. 3(1) (Sched. 1)
Part 2 Division 3 heading:	inserted by 44, 2003, s. 3(1) (Sched. 1)
Section 20(1):	amended by 36, 1979, s. 4(a); 48, 2000, s. 10(a)
Section 20(3):	amended by 36, 1979, s. 4(b); 48, 2000, s. 10(b)
Section 20(5):	inserted by 48, 2000, s. 10(c)
Section 20A:	amended by 62, 1982, s. 3(5) (Sched. Pt. 5); repealed by 48, 2000, s. 11
Section 20B:	amended by 48, 2000, s. 12
Section 20BA(3):	amended by 48, 2000, s. 13
Section 20C:	substituted by 48, 2000, s. 14
Section 21 I - III:	redesignated as s. 21(a) - (c) by 44, 2003, s. 3(1) (Sched. 1)
Section 24:	amended by 48, 2000, s. 15

Section 26:	amended by 5, 1998, s. 4; 68, 1999, s. 3; substituted by 48, 2000, s. 16
Section 26A:	substituted by 48, 2000, s. 16
Section 26AA:	repealed by 48, 2000, s. 16
Sections 26B and 26C:	substituted by 48, 2000, s. 16
Sections 26CA and 26D:	repealed by 48, 2000, s. 16
Section 26E:	inserted by 36, 1979, s. 5; repealed by 48, 2000, s. 16
Section 27:	repealed by 48, 2000, s. 16
Section 27A:	amended by 11, 1991, s. 50(a); repealed by 48, 2000, s. 16
Section 27AA(1): (previously section 27AA)	redesignated as s. 27AA(1) by 11, 1991, s. 50(b)
Section 27AA(2):	inserted by 11, 1991, s. 50(b)
Section 27AB(1):	amended by 36, 1979, s. 6; 11, 1991, s. 50(c)
Sections 27AD - 27AF:	inserted by 36, 1979, s. 7
Section 27B(2):	amended by 44, 2003, s. 3(1) (Sched. 1)
Section 27B(2a):	inserted by 44, 2003, s. 3(1) (Sched. 1)
Section 27C I - III:	redesignated as s. 27C(a) - (c) by 44, 2003, s. 3(1) (Sched. 1)
Section 27CA(1):	amended by 48, 2000, s. 17
Section 27CA(2):	definition of "public road" paras. I - IV redesignated as paras. (a) - (d) by 44, 2003, s. 3(1) (Sched. 1)
Section 27D(1)	
Second sentence:	designated as s. 27D(1a) by 44, 2003, s. 3(1) (Sched. 1)
Third sentence:	designated as s. 27D(1b) by 44, 2003, s. 3(1) (Sched. 1)
Section 27F(2):	amended by 48, 2000, s. 18(a)
Section 27F(5):	substituted by 48, 2000, s. 18(b)
Sections 28 and 29:	substituted by 48, 2000, s. 19
Section 29A:	repealed by 48, 2000, s. 20
Heading preceding section 30:	repealed by 48, 2000, s. 20
Section 30:	repealed by 48, 2000, s. 20
Section 30A(1):	amended by 5, 1998, s. 5
Section 30A(2) - (4):	substituted by 48, 2000, s. 21
Section 30A(5):	inserted by 48, 2000, s. 21
Section 30B(3)	
Second sentence:	amended and designated as s. 30B(3a)(a) - (c) by 44, 2003, s. 3(1) (Sched. 1)
Section 30C:	repealed by 48, 2000, s. 22
Section 30D(1):	amended by 48, 2000, s. 23(a)
Section 30D(1a):	amended by 48, 2000, s. 23(b)
Section 30D(3):	inserted by 48, 2000, s. 23(c)
Section 30DA(2):	amended by 5, 1998, s. 6(a)
Section 30DA(3):	amended by 5, 1998, s. 6(b); substituted by 48, 2000, s. 24(a)
Section 30DA(5):	amended by 48, 2000, s. 24(b), (c)
Section 30E(1): (previously section 30E)	amended and redesignated as s. 30E(1) by 5, 1998, s. 7; amended by 48, 2000, s. 25(a), (b)
Section 30E(2):	inserted by 5, 1998, s. 7(c); amended by 48, 2000, s. 25(c)
Section 30E(3) - (6):	inserted by 5, 1998, s. 7(c)
Section 30F:	inserted by 48, 2000, s. 26
Heading preceding section 31:	repealed by 48, 2000, s. 27
Section 31:	amended by 6, 1982, s. 3; substituted by 48, 2000, s. 27
Section 31A(1) and (2):	amended by 48, 2000, s. 28(a)
Section 31A(3):	amended by 48, 2000, s. 28(b)
Section 32(1):	amended by 36, 1979, s. 8; 10, 1980, s. 3; 6, 1982, s. 4; 30, 1983, s. 3; 36, 1984, s. 3; 62, 1989, s. 3; 48, 2000, s. 29(b), (c)
Section 32(1)(c):	repealed by 48, 2000, s. 29(a)
Section 32(1)(f):	repealed by 48, 2000, s. 29(b)
Sections 35 and 36:	substituted by 48, 2000, s. 30
Section 36A:	repealed by 6, 1982, s. 5
Sections 36B - 39:	repealed by 48, 2000, s. 30
	Part 3A comprising ss. 39A - 39G and heading amended by 5, 1998, s. 8; repealed and ss. 39A - 39J and heading inserted in its place by 48, 2000, s. 31
Sections 41 and 41A:	substituted by 48, 2000, s. 32
Section 42(1):	amended by 48, 2000, s. 33

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Section 42A:	inserted by 5, 1998, s. 9
Section 42A(2):	amended by 48, 2000, s. 34
Section 43(1):	amended by 48, 2000, s. 35(a)
Section 43(1)(f):	repealed by 48, 2000, s. 35(b)
Section 43(2):	amended by 5, 1998, s. 10