

SOUTH AUSTRALIA

ROADS (OPENING AND CLOSING) ACT, 1932

SUMMARY OF PROVISIONS

Section

1. Short title
2. Repeal of 314, 1884, and 1224, 1915
3. Interpretation
4. References to Roads Act, 1884
5. Acquisition of land
6. Vesting of roads
7. Exemption of gardens, parks, etc.
8. Exemption of stock routes
- 8a. Orders as to opening, closing, etc., of roads
- 8b. Proceedings to be taken by Commission or council
9. Opening and closing, etc., of roads
10. Requirements of order for exchange of roads
11. Procedures for opening, closing, etc., of roads
- 11a. Provision as to amounts paid for equality of exchange or as purchase-money, and for stamp duty
12. Duties of Surveyor-General on receiving plans
13. Proceedings at meeting
14. Proceedings where opening, closing, etc., of road allowed
15. Publication of notice of confirmation
16. Right of adjoining owner to acquire closed road
18. Issue of certificate of title by Minister
19. Duties of Registrar-General
20. Application of Real Property Act, 1886, to land for which certificate of title has issued
- 20a. Consolidation of certificates of title to be issued
- 20b. Consolidation of existing title to closed roads
- 20c. Alteration of register book
- 20d. Provision where owner of closed road is unknown
21. Certain orders not to be reviewable by Supreme Court
22. Compensation
23. Closing of certain roads
24. Width of roads
25. Power to make order affecting more than one road
26. Duty to fence
28. Regulations
29. Application of Act to Real Property Act, 1886, and saving provision

SCHEDULES

APPENDIX LEGISLATIVE HISTORY

ROADS (OPENING AND CLOSING) ACT, 1932

being

Roads (Opening and Closing) Act, 1932, No. 2096 of 1932
[Assented to 30 November 1932]

as amended by

Statute Law Revision Act, 1935, No. 2246 of 1935 [Assented to 19 December, 1935]

Statute Law Revision Act, 1936, No. 2293 of 1936 [Assented to 8 October 1936]

Roads (Opening and Closing) Act Amendment Act, 1946, No. 47 of 1946 [Assented to 19 December 1946]

Statute Law Revision Act, 1975, No. 24 of 1975 [Assented to 27 March 1975]

Roads (Opening and Closing) Act Amendment Act, 1978, No. 43 of 1978 [Assented to 13 April 1978]¹

Statutes Amendment (Planning) Act, 1982, No. 62 of 1982 [Assented to 1 July 1982]²

Roads (Opening and Closing) Act Amendment Act, 1985, No. 27 of 1985 [Assented to 28 March 1985]³

Roads (Opening and Closing) Act Amendment Act, 1986, No. 47 of 1986 [Assented to 4 September 1986]

¹ Came into operation 20 July 1978: *Gaz.* 20 July 1978, p. 190.

² Came into operation 4 November 1982: *Gaz.* 4 November 1982, p. 1304.

³ Came into operation 11 April 1985: *Gaz.* 11 April 1985, p. 1158.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act to make provision for the opening and closing of roads, to repeal the Roads Act, 1884, and the Roads Amendment Act, 1915, and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title

1. This Act may be cited as the *Roads (Opening and Closing) Act, 1932*.

Repeal of 314, 1884, and 1224, 1915

2. (1) The *Roads Act, 1884*, and the *Roads Amendment Act, 1915*, are hereby repealed.

(2) All proceedings under the said Acts hereby repealed for the opening or closing of any road shall be continued as if the said Acts had not been repealed, and to such extent the said Acts shall be deemed to continue in force. Provided that any certificate of title or grant which is to be issued in pursuance of any such proceedings under any of the said Acts hereby repealed or in pursuance of any proceedings under any Act repealed by any such Act shall be issued as a certificate of title in the form provided by this Act and otherwise in accordance with and subject to the provisions of this Act.

Interpretation

3. In this Act, unless the context otherwise requires:—

"Commissioner" means the Commissioner of Highways:

"council" means a municipal council or a district council:

"district" means a municipality or a district council district:

"road" means—

- (a) within a district, any public street or road as defined by section 301 of the *Local Government Act, 1934*, as amended;
- (b) outside a district, any public road as defined by section 27ca of the *Highways Act, 1926*, as amended.

References to Roads Act, 1884

4. Any reference in any other Act to the *Roads Act, 1884*, shall be deemed to be a reference to this Act.

Acquisition of land

5. The Commissioner or a council may, subject to, and in accordance with, the *Land Acquisition Act, 1969-1972*, acquire land for the purposes of this Act.

Vesting of roads

6. (1) All roads opened pursuant to this Act which are outside a district or any irrigation area within the meaning of the *Irrigation Act, 1930*, shall be vested in the Minister of Local Government and be under the care, control, and management of the Commissioner. If any moneys are appropriated or allotted for expenditure by the Engineer-in-Chief upon the construction or repair of any such road or any works incidental thereto, the Engineer-in-Chief shall for the purpose of such expenditure be deemed to have and may exercise any of the powers under this Act which the Commissioner may exercise in that behalf.

(2) Subject to the *Highways Act, 1926*, all roads opened pursuant to this Act which are or become within a district shall be vested in and be under the care, control, and management of the council thereof.

(3) Nothing in this section shall be deemed to affect any power of the Minister for the time being administering the *Crown Lands Act, 1929*, as amended, under section 9 of that Act.

Exemption of gardens, parks, etc.

7. (1) Subject to subsections (2) and (3) hereof, the Commissioner, a council or the *South Australian Planning Commission* shall not take or order or direct any road to be opened in or through—

- (a) any garden, orchard, vineyard, yard, park, or planted walk; or
- (b) any enclosed ground planted—
 - (i) as an ornament or shelter to a house; or
 - (ii) for ornamental purposes; or
 - (iii) as a nursery for trees,

or any part thereof respectively, without the consent in writing of the owners and of the occupiers (if any) thereof first had and obtained.

(2) If any such consent is refused the Commissioner or council, as the case may be, may give notice in writing to the person or persons refusing such consent of the intention of the Commissioner or council to apply to the Minister for a declaration authorizing the opening of the road without such consent.

(3) Upon application made by the Commissioner or the council the Minister may, upon being satisfied that notice as aforesaid has been given at least one month before the making of the declaration and after considering any representations made by or on behalf of such person or persons mentioned in subsection (2) hereof, by declaration published in the *Government Gazette* authorize the opening of the road without such consent and thereupon the road may be opened without such consent.

Exemption of stock routes

8. A road, or part of a road, shall not be closed pursuant to this Act if it is a stock route, or part of a stock route, for the purposes of section 99 of the *Pastoral Act, 1936*.

Orders as to opening, closing, etc., of roads

8a. (1) A new road may be opened or an existing road, or part of an existing road, may be altered, added to or closed by order made by the Commissioner, a council or the *South Australian Planning Commission* and confirmed by the Minister in accordance with this Act.

(2) Where the road is outside a district, the order may be made by the Commissioner.

(3) Subject to subsection (4), where the road is within the district of a council, the order may be made by the council.

(4) Where—

(a) the road is within the district of a council;

(b) the opening or closing of, or the alteration or addition to, the road is part of, or is related to, a proposed development;

and

(c) the appropriate planning authority under the *Planning Act, 1982*, in relation to that development is the *South Australian Planning Commission* or the Governor,

the order may be made by the *South Australian Planning Commission*.

Proceedings to be taken by Commission or council

8b. Proceedings under this Act that are preliminary to an order for the opening of a new road or the alteration or addition to, or the closing of, an existing road, or part of an existing road, may be taken—

(a) if the road is not situated in a district—by the Commissioner;

(b) if the road is situated in a district—by the council of the district (whether or not the meeting at which the order may be made will be held by the council or the *South Australian Planning Commission*).

Opening and closing, etc., of roads

9. (1) The Commissioner, outside any district, and any council, within its district, may—

* * * * *

(d) exchange any closed road or part thereof for lands required for a new road or an alteration of a road, or for any other purpose of the Commissioner or the council:

(e) retain any closed road as the property of the Commissioner or council for any purpose of the Commissioner or the council, or dedicate the same for any public purpose:

(f) subject to section 16, sell any closed road (whether retained under paragraph (e) hereof or otherwise):

- (g) surrender any closed road to the Crown, or dispose of the same, in pursuance of any powers of the Commissioner or the council under any Act relating to land of the Commissioner or the council:
- (h) execute any transfer, conveyance, surrender, or lease of, or other document relating to any closed road sold, exchanged, surrendered, or otherwise disposed of pursuant to this Act.

(2) Nothing in this section shall be deemed to affect any powers conferred upon the Commissioner by the *Highways Act, 1926*, or any other Act.

Requirements of order for exchange of roads

10. An order for the exchange of any land required for a new road shall not be made unless an agreement for that purpose is first entered into with the owners and occupiers (if any) of the land so required. The agreement shall be in the form in the first schedule, or as near thereto as circumstances will permit.

Procedures for opening, closing, etc., of roads

11. (1) The Commissioner or a council shall comply with the requirements set out below in relation to the opening of a new road or the alteration or addition to, or the closing of, an existing road:—

- I. A survey plan shall be deposited with the Surveyor-General, at his office in Adelaide, showing the exact position, boundaries, bearings, and admeasurements of the proposed new roads, alterations, additions, and the roads or parts proposed to be closed. If deposited by a council the said survey plan shall comprise only such roads as are within the district of the council:
- II. At the time of depositing the survey plan, a statement in the prescribed form showing the names and the last or most usual known places of residence of—
 - (a) the owners and occupiers of any land affected by the proposal;and
 - (b) all persons registered as the holders of, or as being entitled to, any mortgage, charge, easement or other encumbrance upon any land affected by the proposal,

shall be deposited with the Surveyor-General by the Commissioner or council:

* * * * *

- IV. At the time of depositing the said plan as aforesaid for the purpose of closing any road, the Commissioner or council shall deposit with the Surveyor-General the documents provided to be deposited by subsection (1a):
- V. At the time of depositing the plan in accordance with this subsection a fee of such amount as may be prescribed for the purposes of this paragraph shall be paid to the Surveyor-General by the Commissioner or the council as the case may be.

(1a) If in any proceedings before the Commissioner or the council it is proposed to close any road, then, prior to the publication of the notice required to be published under section 12 in respect of the road proposed to be closed, the Commissioner or the council, as the case may be, shall do the following:—

- (a) If any agreement has been made with any person for the exchange of the road to be closed for other land or for the sale to any person of any land comprised in the road to be closed, the Commissioner or council, as the case may be, shall deposit with the Surveyor-General—
 - (i) the said agreement; and
 - (ii) an application (upon which all stamp duties payable in respect thereof shall be denoted) by the person with whom the agreement is made for the issue of a certificate of title to the land comprised in the road to be closed; and
 - (iii) a statement that any amount to be paid by that person to the Commissioner or council for equality of exchange or as purchase-money payable in respect of the sale has been paid to the Commissioner or council,

and the Commissioner or the council, as the case may be, shall, at the time of depositing them, pay to the Surveyor-General a fee of such amount as may be prescribed for the issue of the certificate of title:

- (b) If any such agreement has not been made, the Commissioner or council, as the case may be, shall deposit with the Surveyor-General a statement as to the intentions of the Commissioner or council as to the disposition of the road to be closed and whether or not a certificate of title to any land comprised in the road is not presently required.

(2) If any survey plan is deposited under this section in respect of any proceeding under this Act in which an order is not made or in which an order is made but is not confirmed within the time required by this Act, the survey plan may be re-deposited at any future time for the purpose of any further proceeding under this Act, but in any such case all necessary additions or alterations to the said survey plan and the said statements shall be made by the Commissioner or council, and a fee of such amount as may be prescribed for the purposes of this subsection shall be paid to the Surveyor-General by the Commissioner or the council, as the case may be.

(2a) Unless regulations providing otherwise have been made under this Act and have effect, the amounts of fees respectively payable under the provisions of paragraph V of subsection (1), paragraph (a) of subsection (1a) and subsection (2) of this section, as varied by regulation made under the *Fees Regulation Act, 1927*, being the amounts so payable immediately before the coming into operation of this subsection, shall continue to be the amounts of fees respectively payable under those provisions.

* * * * *

(4) Upon the deposit or re-deposit of any such plan by a council the Surveyor-General shall give notice thereof to the Commissioner and upon the deposit or re-deposit of any such plan by the Commissioner or a council, the Surveyor-General shall give notice thereof to the *South Australian Planning Commission*.

(5) Any plans deposited by the Commissioner pursuant to this section shall bear the certificate of the Surveyor-General or a licensed surveyor and shall be under the seal of the Commissioner and signed by him and any plans deposited by a council pursuant to this section shall bear the certificate of a licensed surveyor and shall be under the seal of the council and signed by the mayor and town clerk, or chairman and district clerk, as the case may be, or by two councillors and the town clerk or district clerk, as the case may be.

(6) Any plan deposited pursuant to this section shall comply with any regulations made under this Act or under the *Surveyors Act, 1975*.

(7) Any plan deposited pursuant to this section shall be open to public inspection at all reasonable times.

(8) At the time of depositing or re-depositing the said survey plan as aforesaid a copy thereof shall be deposited by the Commissioner or council with the Surveyor-General who shall after satisfying himself that the copy is a true copy of the said survey plan endorse the said copy and forward it to the Commissioner or council, as the case may be. The said copy shall thereupon be kept in the office of the Commissioner or the council and be open to public inspection at all reasonable times.

(9) If after the deposit or re-deposit of the said survey plan as aforesaid an agreement for the exchange of any road proposed to be closed is entered into, the said agreement shall forthwith be deposited with the Surveyor-General by the Commissioner or council, as the case may be.

Provision as to amounts paid for equality of exchange or as purchase-money, and for stamp duty

11a. If pursuant to any agreement such as is referred to in subsection (1a) of section 11, any amount is paid to the Commissioner or council for equality of exchange or as purchase-money, and if the order for the closing of the road to which the agreement relates is not confirmed or the order as confirmed relates only to part of the road proposed to be closed, then—

- (a) the Surveyor-General shall, if the said order is not confirmed, repay to the Commissioner or council, as the case may be, any amount paid by the Commissioner or council as provided by subsection (1a) of section 11 for the issue of a certificate of title:
- (b) the Commissioner or council shall, if the said order is not confirmed, repay to the person by whom it was paid the amount so paid for equality of exchange or as purchase-money and any amount paid for the purpose of the issue of a certificate of title for the land comprised in the road or, if the said order is confirmed only as to part of the road proposed to be closed, repay to the said person a proportionate part of the amount so paid for equality of exchange or as purchase-money:
- (c) if any stamp duty has been paid upon the instrument constituting the agreement for exchange or sale, the Treasurer, upon the Commissioner of Stamp Duties being satisfied that the provisions of this section apply to the transaction and giving a certificate to that effect and without any further appropriation than this section, shall, if the said order is not confirmed, repay from the general revenue to the person by whom it was paid the stamp duty paid upon the said instrument and, if the said order is confirmed only as to part of the road proposed to be closed, repay from the general revenue to the person by whom it was paid a proportionate part of the stamp duty paid upon the instrument.

Duties of Surveyor-General on receiving plans

12. (1) On the deposit or re-deposit of any survey plan as provided by section 11, the Surveyor-General shall cause to be prepared and inserted in the *Government Gazette*, for two consecutive weeks, a notice containing the following information, namely:—

- I. A general description of the proposed alterations, referring to the survey plan:
- II. The names of owners and occupiers of any land affected (so far as known):
- III. The date, time, and place of meeting of the Commissioner and the Surveyor-General, or of the council or of the *South Australian Planning Commission*, to decide upon effecting the object stated in such notice. The said date shall be fixed by the Surveyor-General and shall be fixed at a date not less than one month after the first publication of the said notice.

(2) Copies of such notice shall, as soon as possible, be forwarded by the Surveyor-General to the persons whose names appear on the notice as owners or occupiers of any land affected by the proposed alterations and to the persons whose names appear in the statement given to the Surveyor-General pursuant to subdivision II of subsection (1) of section 11. The notices may be forwarded by post addressed to such persons at their last or most usual known place of abode in the State, or if that be not known, then addressed to the post office nearest to the place where such proposed alterations are to be made.

(3) Any person may, within one month after the first publication of the notice, by writing addressed and served on the Commissioner, the council or the *South Australian Planning Commission*, as the case may be, or delivered at his or its office, give notice of any objection. A copy of such notice of objection shall be delivered or forwarded by post by such person to the Surveyor-General.

Proceedings at meeting

13. (1) At the time and place fixed by the notice, the Commissioner and the Surveyor-General, or the council or the *South Australian Planning Commission*, as the case requires, shall hold a meeting, and shall then, or at any adjournment of such meeting, consider the opening of the proposed new road, or the alteration of or addition to a road, or the closing of a road or portion or portions of a road, and any objections thereto.

(2) Any person objecting, who has served or delivered a notice of objection as aforesaid, may personally, or by counsel, attend any meeting and support his objections.

Proceedings where opening, closing, etc., of road allowed

14. (1) If the opening of the proposed new road, or proposed alteration of or addition to a road, or proposed closing of portion or portions of a road, or any portion thereof respectively, is allowed by the Commissioner, the council or the *South Australian Planning Commission* at the said meeting or any adjournment thereof, the Commissioner, the council or the *South Australian Planning Commission*, as the case may be, shall make an order to that effect.

(2) Forthwith after the making of the order the Commissioner, the council or the *South Australian Planning Commission* shall forward to the Surveyor-General a copy of the minutes of the meeting relating to the order. Every such copy shall be certified under the hand of the Commissioner, the town clerk or the district clerk or the Chairman of the *South Australian Planning Commission*, as the case may be, as a true copy of such minutes. The Surveyor-General shall thereupon draw up the order in duplicate in one of the forms Nos. 1, 2, or 3 in the second schedule or as near thereto as circumstances will permit and shall forward the same to the Commissioner, the council or the *South Australian Planning Commission*, as the case may be, for sealing and signature.

(3) The Commissioner, the council or the *South Australian Planning Commission*, as the case requires, shall forward two copies of the order, executed in the prescribed manner, to the Surveyor-General.

(4) The Surveyor-General shall forward both copies of the order together with his recommendations as to confirmation of the order to the Minister.

(5) The Minister may confirm the order within six months of the date on which it was made.

Publication of notice of confirmation

15. (1) On the confirmation by the Minister of any such order as aforesaid, a notice of such confirmation shall be forthwith published by the Surveyor-General in the *Government Gazette*. The notice shall be in the form No. 4 in the second schedule, or as near thereto as circumstances will permit.

(2) The publication of such notice shall be sufficient evidence of the due confirmation of any such order, and thereupon any land or area to be taken for a new road or part of a road shall become dedicated to the public and be under the care, control, and management of the Commissioner or the council, as the case may be, who shall also then be authorized to pay or receive any money agreed on for equality of exchange, and any land by the order ordered to be vested shall be vested in the person and for the estate therein mentioned; but should such order not be confirmed within the time limited by section 14, any agreement for exchange shall be absolutely void.

Right of adjoining owner to acquire closed road

16. (1) If any road or part thereof is ordered to be closed as aforesaid and the Commissioner or the council desires to sell the same, the Commissioner or council shall, except in a case such as is provided for in subsection (1a), first offer the same to the owner or owners of the adjoining lands, who, if they think fit, may acquire the said road or such part thereof as may adjoin their land respectively, either in exchange or at such price as may be fixed by agreement.

If two or more such owners are desirous of acquiring the same piece of any such land, the Commissioner or council, as the case may be, shall invite tenders for the acquisition of such piece of land, and shall dispose of the piece of land to the owner who, in the opinion of the Commissioner or council offers the best price therefor.

For the purposes of this section "owner" means—

- (a) the owner in fee simple:
- (b) the lessee under a perpetual lease granted by the Crown:

(c) the purchaser under an agreement for the sale and purchase of land from the Crown.

(1a) If any road or part thereof is ordered to be closed as aforesaid, the Minister, on the recommendation of the Surveyor-General, may, in any case in which he is of opinion that the road or part so closed can be conveniently used separate from other land, authorize the Commissioner or council to sell the road or part so closed without first offering the same to the owner or owners of the adjoining lands as required by subsection (1). In any such case the Commissioner or council may sell the land by auction or may invite tenders for the acquisition thereof.

(2) The purchase-money received upon any sale pursuant to subsection (1) or (1a), after deducting the necessary expenses (if any), shall be paid to the Commissioner or the council having the care, control, and management of the road so closed, as the case may be.

* * * * *

Issue of certificate of title by Minister

18. (1) Upon the confirmation of any order under the provisions of this Act, or upon the sale or exchange of any closed road pursuant to this Act, the Minister shall, on being satisfied that the proceedings are regular, and upon application by the person entitled to the issue of a certificate of title, cause separate certificates of title, in the form prescribed in the third and fourth schedules, as the case may require, or as near thereto as circumstances will permit, to be issued in duplicate to whomsoever shall be entitled to any road closed by such order, or sold or exchanged as aforesaid, and the Minister, after signing the certificate, shall deliver the same to the Registrar-General.

(2) If any road or part thereof is ordered to be closed subject to any easement, the certificate of title therefor issued pursuant to this Act shall be issued subject to the easement.

Duties of Registrar-General

19. (1) Upon receipt of a certificate of title under the provisions of this Act, and before binding the same, in any case where the land comprised in such certificate is comprised in any prior land grant registered under *The Real Property Act, 1886*, or in any certificate of title, the Registrar-General shall obtain from the Surveyor-General, who shall furnish the same, particulars of the width, length, bearings, and admeasurements of the land, and shall make any alterations that may be necessary on any deposited plan, and also make any entry in the register book on the prior land grant or certificate of title, and in the plan on the margin thereof, correcting and cancelling the same, as far as such land is concerned.

(2) Upon the confirmation of any order under the provisions of this Act for the opening or closing of any road or part thereof which affects any land grant or certificate of title to freehold land, the Surveyor-General shall furnish to the Registrar-General particulars of the width, length, bearings, and admeasurements of the road or part thereof opened or closed and the Registrar-General shall make any alteration that may be necessary on any deposited plan and shall also make in the register book on the land grant or certificate of title, and in any plan in the margin thereof, any entry or alteration that may be necessary.

(3) The Registrar-General shall by notice in writing require the registered proprietor, or any mortgagee or encumbrancee who may hold the same, to deliver up such grant or certificate of title for the purpose of being cancelled, corrected, or altered, as provided by subsections (1) and (2) hereof. The said notice may be given by registered post.

(4) Every such registered proprietor, mortgagee, or encumbrancee who neglects or refuses to deliver up such grant or certificate of title for such purpose within one week after the Registrar-General demands the same, shall be liable on summary conviction to a penalty not exceeding twenty dollars.

Application of Real Property Act, 1886, to land for which certificate of title has issued

20. (1) Upon being satisfied that the provisions of section 19, where applicable, have been complied with, the Registrar-General shall bind up one of the certificates of title as a separate folium of the register book, and shall register the same under the provisions of *The Real Property Act, 1886*, and shall deliver the duplicate certificate of title to whomsoever is entitled thereto.

(2) After registration of any such certificate of title as hereinbefore provided, the provisions of *The Real Property Act, 1886*, shall be applicable to the land therein mentioned, to all intents and purposes whatsoever, as fully as if the said land had been brought under the provisions of such Act upon the application of a proprietor.

* * * * *

Consolidation of certificates of title to be issued

20a. If pursuant to any of the provisions of this Act, apart from this section, a certificate of title to land comprised in a closed road, whether the order for closing of which is made before or after the passing of the *Roads (Opening and Closing) Act Amendment Act, 1946*, would be issued to the registered proprietor of land contiguous to the closed road then, unless the Minister, upon the recommendation of the Surveyor-General, otherwise directs, the following provisions shall apply:—

- I. The Minister shall, upon the recommendation of the Surveyor-General, give a certificate to the Registrar-General that the land comprised in the road is to be vested in the said registered proprietor and, if the said land is to be subject to any easement, the certificate shall describe the easement:
- II. In lieu of a certificate of title being issued for the land comprised in the closed road, a certificate of title shall, without payment of any fee to the Registrar-General, be issued by the Registrar-General comprising the contiguous land and the land comprised in the closed road:
- III. 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 Minister as aforesaid:
- IV. Those easements that are appurtenant to the contiguous land shall be appurtenant to the land comprised in the certificate of title issued under paragraph II of this section and the certificate of title shall be appropriately endorsed by the Registrar-General.

Consolidation of existing title to closed roads

20b. (1) Any registered proprietor of any closed road 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. With the consent of the Surveyor-General, the Registrar-General may issue such a certificate.

(2) If the registered proprietor of a closed road who is also the registered proprietor of any land contiguous to the closed road produces to the Registrar-General for the purpose of any registration the certificates of title or land grants thereto, the Registrar-General may give notice to the registered proprietor or the party deriving benefit under such registration that it is the intention of the Registrar-General to issue a certificate of title comprising the contiguous land and the land comprised in the closed road. If the person to whom notice is given as aforesaid does not object in writing within the time specified in the notice, the Registrar-General, with the consent of the Surveyor-General, may issue a certificate of title accordingly.

(3) The provisions of paragraphs III and IV of section 20a shall apply with respect to any certificate issued pursuant to this section and to the land comprised therein. Every such certificate shall be issued without the payment of any fee to the Registrar-General.

Alteration of register book

20c. (1) For the purpose of giving effect to section 20a and section 20b the Registrar-General may make such alterations in the register book as are necessary.

(2) If any consolidation of title is effected as provided by section 20a or section 20b, 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. If any consolidation would affect land in any plan deposited in the General Registry Office or the Lands Titles Registration Office, the Registrar-General may call for any survey and may describe the land in the consolidated certificate of title in such manner as he deems advisable.

Provision where owner of closed road is unknown

20d. (1) If before the passing of the *Roads (Opening and Closing) Act Amendment Act, 1946*, any order for the closing of any road was made and confirmed and—

- (a) no land grant or certificate of title has been issued in respect of the land comprised in the closed road or any portion thereof and the person entitled to the issue thereof is dead or unknown; and
- (b) the Surveyor-General is satisfied that some person being in possession of the said land is entitled by purchase or otherwise to the possession of the land and that it is desirable that a certificate of title to the land should be issued to that person,

the Surveyor-General may publish notice in the *Gazette* stating that, unless objection by any person claiming any interest in the land is made in writing within a time to be stated in the notice (being not less than one month), a certificate of title may be issued as aforesaid.

(2) If before the passing of the *Roads (Opening and Closing) Act Amendment Act, 1946*, any order for the closing of any road was made and—

- (a) a land grant or certificate of title was issued in respect of the land comprised in the closed road or any portion thereof but the registered proprietor thereunder is dead or unknown; and

- (b) the Surveyor-General is satisfied that some person is in possession of the said land and that there is apparently no other known person entitled to possession thereof and that it is desirable that a certificate of title to the land should be issued to the person in possession,

the Surveyor-General may publish notice in the *Gazette* stating that, unless objection by any person claiming any interest in the land is made in writing within a time to be stated in the notice (being not less than one month) a certificate of title may be issued as aforesaid.

(3) In addition to giving notice as provided by subsection (1) or subsection (2) the Surveyor-General shall give notice in writing as aforesaid to every owner of land which abuts upon the land to which the notice relates and may give such other notice as he thinks fit.

(4) If within the time fixed by notice given pursuant to subsection (1) or subsection (2), no objection in writing is made by any person claiming any interest in the land referred to in the notice to the issue of a certificate of title, the Minister may, upon the recommendation of the Surveyor-General, cause a certificate of title to be issued accordingly and if the notice is given pursuant to subsection (2), the Registrar-General shall thereupon cancel any existing land grant or certificate of title to the land referred to in the notice.

Certain orders not to be reviewable by Supreme Court

21. (1) No order purporting to be made under the provisions of this Act shall, after the registration of any such certificate of title as aforesaid, be removed or removable into the Supreme Court.

(2) Before making any order, the Commissioner, a council or the *South Australian Planning Commission* may reserve any question of law for the consideration of the Supreme Court, and if any such question be reserved no certificate of title shall be issued until after the decision of the said Supreme Court thereupon.

Compensation

22. (1) If any road or part of a road is ordered to be opened through any land, in the original grant of which land or in the Crown lease or agreement for sale and purchase granted by the Crown in which the land is comprised no power of making roads has been reserved, any person who is not a party to the agreement for exchange, who after confirmation of any order for exchange, or for opening a new road without any agreement for exchange, has any estate, right, title, or interest in the land taken, may serve a notice in writing on the Commissioner or on the council within eighteen months from the date of the *Government Gazette* in which notice of confirmation of the order has been published, claiming compensation for damages for land required for the said road or part of a road, and so taken or exchanged.

(2) In default of service of notice as aforesaid, such person as aforesaid, and all persons claiming by, through, from, or under them, or claiming the estate, right, title, or interest, in the land so taken or exchanged, shall be for ever foreclosed from any benefit or claim whatsoever to any compensation for any portion of such land.

(3) If any land so taken or exchanged is land comprised in a Crown lease or Crown agreement for sale and purchase the Minister or his nominee may give notice as aforesaid claiming compensation on behalf of the Crown for any lands so taken and may take any proceedings for the purpose of recovering such compensation as a debt due to His Majesty.

(4) Compensation under this section shall, subject to this section, be recoverable and assessed in manner provided by the *Land Acquisition Act, 1969-1972*.

Closing of certain roads

23. (1) In addition to the other methods provided by this Act, a road or any portion thereof may be closed upon the order of the Minister in manner provided by this section. No such order shall be made except upon the recommendation of the Surveyor-General.

(2) No road or portion thereof shall be closed pursuant to this section unless all the land abutting the road or portion thereof to be closed is land—

- (a) used or occupied by or on behalf of the Government, any Minister of the Crown, any Government department or any instrumentality of the Crown; or
- (b) belonging to the Crown or any instrumentality of the Crown which is not granted or lawfully contracted to be granted to any person or leased to any person or in the occupation of any person under any agreement for the sale and purchase of such land.

(3) No road or portion thereof shall be closed under this section until after the expiration of one month after notice in writing of the proposal to close the road or portion thereof is given by the Surveyor-General to the Commissioner, and, if the road is within a district, to the council of such district.

(3a) The Surveyor-General shall forward any representations made to him by the Commissioner or the council in relation to the proposal together with his recommendation thereupon.

(4) After considering any such representation and recommendation, the Minister may make an order in the form No. 5 in the second schedule or as near thereto as circumstances will permit. Every such order shall be published in the *Government Gazette* and, except in a case such as is hereinafter mentioned in this subsection, upon such publication the land comprised in the order shall revert to the Crown and be deemed to be land of the Crown. In any case in which the Minister thinks fit, the Minister may issue in the form prescribed in the fifth schedule, a certificate of title to the land comprised in the order to any Minister of the Crown, or any instrumentality of the Crown, and the provisions of this Act relating to the issue and registration of certificates of title shall, *mutatis mutandis*, apply in respect of every such certificate of title.

(5) The Registrar-General shall make any correction of the register book necessary to give effect to any such order.

Width of roads

24. (1) Subject to subsection (3) hereof, no road opened pursuant to this Act which is an extension of any main road within the meaning of the *Highways Act, 1926*, shall be of less width in any place than twenty metres and no main road shall be closed in part so that its width in any place is less than twenty metres.

(2) Subject to subsection (3) hereof, no road opened pursuant to this Act (not being a main road described in subsection (1) hereof) shall be of less width in any place than twelve metres and no such road shall be closed in part so that its width in any place is less than twelve metres.

(3) The Surveyor-General and the Commissioner may declare in writing that the minimum width fixed by this section shall not apply to any specified road or portion thereof and may fix a minimum width for such road or portion which may be less than the minimum width fixed as aforesaid, and thereupon the minimum width so fixed shall be the minimum width for such road or portion.

(4) For the purpose of this section the width of a road shall be deemed to be the shortest distance from one boundary of the road to the opposite boundary.

Power to make order affecting more than one road

25. An order made for the opening, closing, altering, adding to, or exchanging of roads may affect more than one road, and may affect more than one act or thing with regard to any road or roads.

Duty to fence

26. In any case where—

- (a) a road is fenced along the boundaries thereof; and
- (b) such road is altered or diverted,

the Commissioner or council making the alteration or diversion shall cause the road to be fenced so that the boundaries thereof are fenced with a substantial fence of the same nature as the fence previously on the boundary of the road and the abutting land.

* * * * *

Regulations

28. The Governor may, from time to time, on the recommendation of the Surveyor-General, make regulations under and for the purposes of this Act, prescribing all matters and things which may be necessary or desirable for giving effect thereto, including regulations prescribing any requirements with respect to plans or other documents deposited under this Act.

Application of Act to Real Property Act, 1886, and saving provision

29. (1) The provisions of this Act shall apply notwithstanding the provisions of *The Real Property Act, 1886*.

(2) Nothing in this Act shall be deemed to affect the operation of any other Act or law whereby any road or highway may be opened or closed or whereby any land may become a road or highway.

SCHEDULES

THE FIRST SCHEDULE

Agreement made pursuant to the *Roads (Opening and Closing) Act, 1932*, between the undersigned [the Commissioner of Highways, or the Corporation of _____ or the District Council of _____], of the one part, and [owner of the land to be taken in exchange], of _____ and [occupier, if any other than the owner], of _____, of the other part.

Whereas the said _____ is the owner [or the owner and occupier], [and the said _____ is the occupier] of a piece of land situated at [here describe the land to be taken in exchange], and it is considered expedient that the road [or part of a road] situate at [here describe the road or part of a road] should be exchanged for the land first described, it is hereby agreed that such exchange shall be made, and that the said _____ shall pay to the said _____ the sum of _____, for equality of exchange: Provided that if no order shall be made and confirmed in manner and within the period by the said Act prescribed, this agreement shall be void.

Dated the _____ day of _____, 19 _____.

Receipt to be endorsed

We, the within-named, do hereby acknowledge to have duly received from the within-mentioned _____, the sum of _____, within agreed to be paid for equality of exchange.

Dated the _____ day of _____, 19 _____.

THE SECOND SCHEDULE

No. 1—Order to open New Roads

Whereas at a meeting duly held under the provisions of the *Roads (Opening and Closing) Act, 1932*, this day of _____, 19 _____, it appears to us, the Commissioner of Highways and the Surveyor-General, or to the Corporation of _____ or to the District Council of _____ that it is expedient and necessary that the lands hereinafter described should be opened as a new line of road, and it having been proved that the notice required by the said Act has been duly given, and that all other requirements thereof have been complied with, and no valid objection to the opening of such new line of road having been made: Now, therefore, we or the Corporation of _____ or the District Council of _____ hereby, by virtue of the powers given by the said Act, order that all [here describe the land as fully as in the notice, and also by reference to the plan deposited with the Surveyor-General] shall be forthwith opened as a new line of road.

Dated this _____ day of _____, 19 _____.

No. 2—Order to close Old Roads

Whereas at a meeting held under the provisions of the *Roads (Opening and Closing) Act, 1932*, this _____ day of _____, nineteen hundred and _____, it appears to us, the Commissioner of Highways and the Surveyor-General, or to the Corporation of _____, or to the District Council of _____, that the piece of land hereinafter mentioned and heretofore used as a road is no longer required for such purpose, and it having been proved that the notice required by the said Act has been duly given, and that all other requirements thereof have been complied with, and no valid objection to the closing of such road having been made: Now, therefore, we or the Corporation of _____, or the District Council of _____, do hereby, by virtue of the powers given by the said Act, order that all [here describe the road to be discontinued as fully as in the notice, and also by reference to the plan deposited with the Surveyor-General] shall henceforth be discontinued and cease to be used as a road [if the old road has been agreed to be sold add], and do further order that the said piece of land shall be sold to _____, for the sum of _____, and that the same shall be vested in him, his heirs or assigns, for ever [if the old road has not been agreed to be sold, instead of the above substitute] and do further order that the said piece of land shall be sold and vested in the purchaser, his heirs or assigns [or and do further order that the said piece of land shall be set apart and dedicated to the use of the Municipal Corporation of the Town of _____, or the District Council District of _____, or as the case may be.]

Dated this _____ day of _____, 19 _____.

No. 3—*Order to open New and exchange Old Roads*

Whereas at a meeting duly held under the provisions of the *Roads (Opening and Closing) Act, 1932*, this day of _____, one thousand nine hundred and _____, it appears to us, the Commissioner of Highways and the Surveyor-General, *or* to the Corporation of _____, *or* to the District Council of _____, that it is expedient and necessary that the lands hereinafter firstly described should be opened as a new line of road, and that the lands hereinafter secondly described are no longer required for the purposes of a road: and it having been proved that the notice required by the said Act has been duly given, and that all other requirements thereof have been complied with, and no valid objection to the opening of such new line of road or to the closing of such old road having been made: Now, therefore, we *or* the Corporation of _____, *or* the District Council of _____, do hereby, by virtue of the powers given by the said Act, order that all [*here describe the piece of land to be opened as a road as fully as in the notice, and by reference to the plan deposited with the Surveyor-General*] shall be forthwith opened as a new line of road: and do further order that all [*here describe the old road to be exchanged as fully as in the notice, and by reference to the plan deposited with the Surveyor-General*] shall henceforth be discontinued and cease to be used as a road; and do further order that the piece of land lastly described and heretofore used as a road shall be exchanged with _____ for the piece of land firstly described, and that the same shall be vested in the said _____, his heirs and assigns for ever. [*If any money is to be paid on either side by way of equality of exchange, alter the form accordingly.*]

Dated this _____ day of _____, 19 _____.

No. 4—*Notice of Confirmation*

Notice is hereby given that by order, dated the _____ day of _____, 19 _____, the [*here describe how the order has been made*] that [*give a general description of the nature and effect of the order*]: The Honourable the Minister [*here insert description of Minister*] has been pleased to confirm the said order, and to direct that, upon application by the person entitled to the lands mentioned in the said order, a certificate of title shall issue to such person.

Dated the _____ day of _____, 19 _____.

No. 5—*Order by the Minister*

The Honourable the Minister [*here insert description of Minister*] in pursuance of the powers conferred on him by the *Roads (Opening and Closing) Act, 1932-1975*, hereby closes the road (*or* portion of road) described in the schedule hereunder.

Dated the _____ day of _____, 19 _____.

[NOTE—The above forms are given as a guide in drawing up orders, and are to be adhered to as far as practicable; but they may be departed from should the circumstances of any particular case render it necessary.]

THE THIRD SCHEDULE

SOUTH (Royal Arms) AUSTRALIA

Certificate of Title under Road Order

[In Duplicate]

Register Book
Vol. Folio

Pursuant to the *Roads (Opening and Closing) Act, 1932*, and of an order of the Commissioner of Highways and the Surveyor-General, *or* the Corporation of _____, *or* the District Council of _____, made on the day of _____ 19 _____, in consideration of the sum of _____ paid by _____ to the Commissioner of Highways, *or* Corporation of _____, *or* District of _____, I, _____ Minister of Lands of the State of South Australia, do hereby certify that _____ is now seized of an estate in fee-simple in that [*here describe the road to be conveyed with any reservation.*]

18.

THE FOURTH SCHEDULE

SOUTH (Royal Arms) AUSTRALIA

Certificate of Title under Road Order

[In Duplicate]

I, _____ Minister of the State of South Australia, in confirming a road order made by _____, dated the _____ day of _____, 19____, do hereby certify that _____ is (or are) now seised of an estate in fee simple in that [*here describe land*].

THE FIFTH SCHEDULE

SOUTH (Royal Arms) AUSTRALIA

Certificate of Title under Road Order made under section 23 of the Roads (Opening and Closing) Act, 1932-1978

I, _____ Minister [*here insert description of Minister*] in pursuance of an order under section 23 of the *Roads (Opening and Closing) Act, 1932-1978*, do hereby certify that _____ is now seised of an estate in fee simple in that [*here describe land*].

APPENDIX

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 9 of The Public General Acts of South Australia 1837-1975 at page 574.

Section 3:	definition of "council" substituted by 43, 1978, s. 3 definition of "district" substituted by 43, 1978, s. 3 definition of "road" substituted by 43, 1978, s. 3
Section 5:	substituted by 43, 1978, s. 4
Section 6(3):	amended by 43, 1978, s. 5
Section 7(1):	amended by 27, 1985, s. 3
Section 7(2):	amended by 43, 1978, s. 6(a)
Section 7(3):	amended by 43, 1978, s. 6(b)
Section 8:	substituted by 27, 1985, s. 4
Sections 8a and 8b:	inserted by 27, 1985, s. 4
Section 9(1):	amended by 27, 1985, s. 5(a)
Section 9(1)(a) - (c):	repealed by 27, 1985, s. 5(b)
Section 11(1):	amended by 43, 1978, s. 7(a); 27, 1985, s. 6
Section 11(1)III:	repealed by 43, 1978, s. 7(a)
Section 11(3):	repealed by 43, 1978, s. 7(b)
Section 11(4):	amended by 62, 1982, s. 3(11) (Sched. Pt. XI)
Section 11(5):	amended by 43, 1978, s. 7(c)
Section 11(6):	amended by 43, 1978, s. 7(d)
Section 12(1):	amended by 27, 1985, s. 7(a)
Section 12(2):	amended by 43, 1978, s. 8
Section 12(3):	amended by 27, 1985, s. 7(b)
Section 13(1):	amended by 27, 1985, s. 8
Section 14(1):	amended by 27, 1985, s. 9(a)
Section 14(2):	amended by 43, 1978, s. 9(a); 27, 1985, s. 9(b), (c)
Section 14(3):	amended by 43, 1978, s. 9(b); substituted by 27, 1985, s. 9(d)
Section 14(4):	amended by 43, 1978, s. 9(c)-(f); substituted by 27, 1985, s. 9(d)
Section 14(5):	inserted by 27, 1985, s. 9(d)
Section 15(1):	amended by 43, 1978, s. 10
Section 16(1a):	amended by 43, 1978, s. 11
Section 17:	repealed by 43, 1978, s. 12
Section 18:	amended and redesignated to read as s. 18(1) by 43, 1978, s. 13
Section 18(2):	inserted by 43, 1978, s. 13(b)
Section 20a:	amended by 43, 1978, s. 14
Section 20b(3):	amended by 43, 1978, s. 15
Section 20d(1) - (3):	amended by 43, 1978, s. 16(a)
Section 20d(4):	amended by 43, 1978, s. 16(b)
Section 21(2):	amended by 27, 1985, s. 10
Section 22(3):	amended by 43, 1978, s. 17(a)
Section 22(4):	amended by 43, 1978, s. 17(b)
Section 23(1):	amended by 43, 1978, s. 18(a)
Section 23(3):	amended by 43, 1978, s. 18(b)
Section 23(3a):	inserted by 43, 1978, s. 18(c)
Section 23(4):	amended by 43, 1978, s. 18(d), (e)
Section 24(1):	amended by 43, 1978, s. 19(a); 47, 1986, s. 2
Section 24(2):	amended by 43, 1978, s. 19(b)
Section 27:	repealed by 43, 1978, s. 20
Second schedule - Forms 4 and 5:	substituted by 43, 1978, s. 21
Fourth schedule:	substituted by 43, 1978, s. 22
Fifth schedule:	substituted by 43, 1978, s. 23