

South Australia

# Roads (Opening and Closing) Act 1991

An Act to provide for the opening and closing of roads; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Roads (Opening and Closing) Act 1991*.

### **3—Interpretation**

(1) In this Act, unless the contrary intention appears—

***agreement for exchange*** means an agreement between a council and another person for the exchange of land subject to a proposed road opening for land subject to a proposed road closure under which the land subject to the proposed road closure—

- (a) is to be transferred to that other person in fee simple; or
- (b) is to be added to land held by that other person under a Crown lease or agreement to purchase,

whether or not an amount is agreed to be paid for equality of exchange;

***agreement to purchase*** means an agreement within the meaning of the *Crown Lands Act 1929*;

***agreement for transfer*** means an agreement (other than an agreement for exchange) between a council and another person under which land subject to a proposed road closure—

- (a) is to be transferred to that other person in fee simple; or
- (b) is to be added to land held by that other person under a Crown lease or agreement to purchase,

whether or not an amount is agreed to be paid in consideration of such transfer or other dealing;

***certificate of title*** means a certificate as defined in section 3 of the *Real Property Act 1886*;

***council*** means a council under the *Local Government Act 1999*;

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

***Crown lease*** means a perpetual lease, pastoral lease or miscellaneous lease;

***document of title*** includes a certificate of title, a Crown lease or an agreement to purchase or a duplicate or copy of such a certificate, lease or agreement;

***easement*** includes, in relation to land held or to be held under a Crown lease, an underlease;

***interest*** in relation to land, means—

- (a) any legal or equitable estate or interest in the land; or
- (b) any easement, right, power or privilege in, over, affecting, or in connection with, the land;

***land*** includes an interest in land;

***miscellaneous lease*** means a miscellaneous lease within the meaning of the *Crown Lands Act 1929*;

***pastoral lease*** means a pastoral lease within the meaning of the *Pastoral Land Management and Conservation Act 1989*;

***perpetual lease*** means a perpetual lease within the meaning of the *Crown Lands Act 1929*;

***person affected***, in relation to a road process or proposed road process, means—

- (a) a person who has an interest in land subject to the road process or proposed road process; and
- (b) a person who has an interest—
  - (i) in land adjoining land subject to the road process or proposed road process; or
  - (ii) where the process relates to less than the full width of a road or proposed road—in land adjoining the opposite side of the road or proposed road; and
- (c) a prescribed public utility; and
- (d) in relation to land of a prescribed class—a public authority (other than a prescribed public utility) prescribed in relation to land of that class; and
- (e) any other person who would be substantially affected by the process;

***prescribed easement***, in relation to land subject to a proposed road closure, means an easement required by a prescribed public utility in connection with any drains, pipes, wires, cables or other works that are, or may be required to be, located in, on or over the land for the purposes of services provided or to be provided by the prescribed public utility;

***prescribed public utility*** means a Minister, statutory authority or other person declared by regulation to be a prescribed public utility for the purposes of this Act;

***relevant authority***, in relation to a road process or proposed road process, means—

- (a) where the road process is part of or directly associated with a development or proposed development under the *Development Act 1993* that requires development approval from the Development Assessment Commission or the Governor—the Development Assessment Commission; or
- (b) where the road process is part of or directly associated with a development or proposed development under the *Development Act 1993* that requires development approval from the Minister for the time being administering the *Development Act 1993*—that Minister; or
- (c) in any other case—the council;

***the repealed Act*** means the *Roads (Opening and Closing) Act 1932*;

***road*** means—

- (a) a public road within the meaning of section 4 of the *Local Government Act 1999*; or

- (ab) an alley, laneway, walkway or other similar thoroughfare vested in a council; or
- (b) in relation to a part of the State not within a council area—
  - (i) a road or street delineated and shown on a public map or plan of the State as laid out for public purposes by the Crown; or
  - (ii) a road or street opened under this Act or any other Act relating to the opening of new roads and streets; or
  - (iii) a road or street transferred or surrendered to the Minister of Local Government or the Crown by the owner or lessee for use as a public road or street; or
  - (iv) a road or street declared or dedicated under any other Act to be a public road or street,

and includes part of a road;

**road closure** means closure of a road pursuant to this Act other than a closure by the Minister pursuant to section 6;

**road opening** means the opening of a road pursuant to this Act;

**road process** means—

- (a) a road opening; or
- (b) a road closure; or
- (c) a combination of a road opening and a road closure;

**road process order** means an order made by a relevant authority for a road process pursuant to this Act, including, in relation to a road closure, any further order made as part of the order;

**stock route** means a stock route for the purposes of section 45 of the *Pastoral Land Management and Conservation Act 1989*.

- (2) In this Act, a reference—
  - (a) to the opening of a road extends to the widening of a road;
  - (b) to closure of a road extends to the narrowing of a road.
- (3) For the purposes of this Act, a road process is discontinued in respect of land if—
  - (a) the relevant authority determines that no road process order is to be made; or
  - (b) a road process order is made by the relevant authority but does not deal with the land; or
  - (c) a road process order is made by the relevant authority dealing with the land but the road process lapses by virtue of section 20(2) or the Minister declines to confirm the order.

**Note—**

For definition of divisional penalties (and divisional expiation fees) see Appendix.

## Part 2—General provisions

### 4—Power to open and close roads

A road may be opened or closed by a road process order made by the relevant authority, confirmed by the Minister and notified in the Gazette in accordance with this Act.

### 5—Commencement of road process

A road process may be commenced by a council in relation to a road or proposed road within the area of the council.

### 6—Special power to close roads

- (1) A road to which this section applies may be closed by the Minister, on the recommendation of the Surveyor-General, in accordance with Part 7.
- (2) This section applies to a road—
  - (a) where all of the land adjoining the road is land—
    - (i) belonging to the Crown or an instrumentality of the Crown and not granted, lawfully contracted to be granted or leased to a person (other than an instrumentality of the Crown) or subject to an agreement to purchase; or
    - (ii) used or occupied by the Crown or an instrumentality of the Crown; or
  - (b) where—
    - (i) the road is not within a council area; and
    - (ii) the Minister is satisfied that the road is not in public use and will not be required for such use in the foreseeable future.

### 6A—Special powers to open or close roads in cases involving major developments

- (1) A road to which this section applies may be opened or closed by the Governor in accordance with Part 7A.
- (2) This section applies to a road or a proposed road that is directly associated with development—
  - (a) within the ambit of a declaration under section 46 of the *Development Act 1993*; or
  - (b) subject to a Ministerial direction under section 49(16a) or 49A(20) of the *Development Act 1993*.

### 7—Stock routes excluded from power to close roads

No power to close a road pursuant to this Act extends to a road that is a stock route or part of a stock route.

## 8—Vesting of roads

Every road opened pursuant to this Act—

- (a) is, subject to the *Highways Act 1926*, vested in and under the care, control and management of the council for the area in which it is situated; and
- (b) is, while still open, dedicated as a public road.

## Part 3—Road process

### Division 1—Preliminary proceedings

#### 9—Deposit of preliminary plan and statement of persons affected

- (1) Where a council proposes to commence a road process, the council must cause to be prepared—
  - (a) a preliminary plan of the land subject to the proposed road process, in a form approved by the Surveyor-General; and
  - (b) a statement in a form approved by the Surveyor-General containing—
    - (i) the names and addresses of those persons affected who can be identified by reasonable inquiry; and
    - (ii) such information in relation to the land subject to the proposed road process as is required by the Surveyor-General.
- (2) A copy of the preliminary plan and statement referred to in subsection (1) must be deposited at the Adelaide office of the Surveyor-General, together with the prescribed fee.

#### 10—Notification of proposed road process

- (1) Where a council commences a road process, the council, where it is the relevant authority in relation to the proposed road process, or, in any other case, the Surveyor-General, must—
  - (a) after compliance with the requirements of section 9, give public notice, in accordance with the regulations, of the proposal; and
  - (b) at the same time serve notice in writing of the proposal on each person affected who can be identified by reasonable inquiry.
- (2) Where the relevant authority in relation to a proposed road process is a council, the council must, as soon as practicable after giving public notice under subsection (1) in relation to the process, deposit a copy of the notice at the Adelaide office of the Surveyor-General.

#### 11—Dealings in land after commencement of process for road opening

Where a council commences a road process under which a road is proposed to be opened over land not owned by the council—

- (a) the following provisions apply if the land has been brought under the *Real Property Act 1886*:

- (i) the Surveyor-General must forthwith after receipt of the preliminary plan and statement pursuant to section 9 notify the Registrar-General of the proposed road opening who must forthwith enter a note of the proposed road opening on the title to the land;
  - (ii) the council may lodge a caveat with the Registrar-General forbidding any dealing with the land without the consent of the council;
  - (iii) if the road process is discontinued in respect of the land or a road is opened over the land, the Surveyor-General must forthwith notify the Registrar-General of that fact who must forthwith remove the note and any caveat lodged by the council;
- (b) the following provisions apply if the land has not been brought under the *Real Property Act 1886*:
- (i) a person with an interest in the land on whom notice of the proposed road opening has been served pursuant to section 10 must not enter into any transaction in respect of the land without first disclosing the fact that the road process has commenced in respect of the land;
  - (ii) if any agreement in respect of the land is entered into without disclosure as required by this paragraph, the agreement is voidable at the option of the person to whom disclosure should have been made;
  - (iii) the council may lodge a copy of the notice of the proposed road opening at the General Registry Office and may, by notice in writing served on any person, require the person to deliver up to the Registrar-General any instrument evidencing the person's interest in the land;
  - (iv) if a person on whom a notice has been served pursuant to this paragraph fails, without reasonable excuse, to deliver up within the time specified in the notice, any instrument that the person is required by the notice to deliver up to the Registrar-General, the person is guilty of a summary offence and liable to a penalty of a division 7 fine.

## **12—Power to make preliminary agreements**

- (1) The council may in accordance with this section make agreements for exchange or transfer in relation to land subject to a proposed road closure with the owners of land adjoining that land.
- (2) An agreement for exchange or transfer may be made before or after deposit of the preliminary plan and statement pursuant to section 9 but must be made before the making of a road process order for closure of the road.
- (3) A council may not make an agreement for transfer in relation to land subject to a proposed road closure unless—
  - (a) where adjoining land is owned by a person who owns land subject to a proposed road opening—the council first endeavours to secure an agreement for exchange with that person; and
  - (b) in any case—the council first invites offers from the owners of land adjoining the land subject to the proposed road closure.



- (4) An agreement for exchange or transfer in relation to land is void—
  - (a) unless made in substantial compliance with this section; or
  - (b) if the road process is discontinued in respect of the land.
- (5) In this section—

*owner* means—

  - (a) the owner in fee simple;
  - (b) the lessee under a Crown lease;
  - (c) the purchaser under an agreement to purchase from the Crown.

### **13—Objection or application for easement**

- (1) Any person may object to a proposed road process.
- (2) Any person affected by a proposed road closure may apply for an easement to be granted in the person's favour over land subject to the proposed road closure.
- (3) An objection or application must be made by lodging a notice in the prescribed form at the office of the relevant authority within 28 days of the date of the public notice under section 10 and by lodging a copy of the notice, within the same period, at the Adelaide office of the Surveyor-General.

## **Division 2—Making of road process order**

### **14—Meeting to consider objection or application**

- (1) Where a council has commenced a road process and a person has made an objection or application in relation to the proposed road process, the relevant authority must notify that person in writing of a time and place at which the relevant authority will meet to consider all such objections and applications.
- (2) A person who has made an objection or application in relation to the proposed road process may, personally or by a representative, attend at the meeting held by the relevant authority to consider the objections and applications, or at an adjournment of that meeting, and make submissions in support of his or her objection or application.

### **15—Making of road process order**

- (1) The relevant authority must, as soon as practicable after the expiration of the time allowed for the making of objections and applications and after considering the objections and applications (if any) made in relation to a proposed road process—
  - (a) make a road process order in relation to all or part of the land to which the proposed road process relates; or
  - (b) determine that no road process order is to be made.
- (2) A road process order for a road opening must specify any land subject to the order that is, in accordance with an agreement for exchange, to be taken for a road in exchange for land subject to a road closure.

- (3) Where the relevant authority determines that no road process order is to be made, the relevant authority must, as soon as practicable, give notice in writing of that decision—
- (a) to the Surveyor-General; and
  - (b) to any person who made an objection or application in relation to the proposed road process pursuant to Division 1; and
  - (c) in addition, in the case of a proposed road opening—to any person who has an interest in land over which a road was proposed to be opened.

### **16—Criteria in relation to road process orders**

In determining whether to make a road process order and what order should be made, the relevant authority must have regard to—

- (a) any objections made by any person pursuant to this Act; and
- (b) the plans, principles, regulations and other matters to which regard must be had by assessment authorities for determining applications for development authorisation under the *Development Act 1993* in relation to developments in the area to which the proposed road process order relates; and
- (c) whether the land subject to the road process is reasonably required as a road for public use in view of present and likely future needs in the area; and
- (d) alternative uses of the land subject to the road process that would benefit the public or a section of the public; and
- (e) any other matter that the authority considers relevant.

### **17—Further orders to be made in conjunction with order for road closure**

Where the relevant authority makes a road process order for a road closure, the relevant authority must, as part of that order, make one or more of the following orders dealing, or together dealing, with all of the land subject to the road closure:

- (a) if an agreement for exchange or transfer has been made in respect of land subject to the road closure—an order that the land be transferred or added to other land in accordance with the agreement;
- (b) if the relevant authority considers that land subject to the road closure can conveniently be used separately from other land—an order that the land be sold by public auction or tender;
- (c) an order that land subject to the road closure be sold, or transferred, for use for some public, charitable or beneficial community purpose;
- (d) if land subject to the road closure is required by the council for some purpose—an order that the land be retained by the council and a certificate of title be issued to the council;
- (e) an order that land subject to the road closure—
  - (i) be added to adjoining land that is dedicated under the *Crown Lands Act 1929*; or
  - (ii) be transferred to the proprietor of adjoining land that is alienated in fee simple in trust under the *Crown Lands Act 1929*; or

(iii) be vested in the Crown.

### **18—Orders for road closure may include orders for easements**

- (1) Where the relevant authority makes a road process order for a road closure, the relevant authority may, as part of that order, make an order for the granting of an easement over land subject to the road closure.
- (2) The following provisions apply in relation to the making of an order under this section:
  - (a) subject to this subsection, no order may be made except in favour of a person who has made an application to the relevant authority pursuant to Division 1 for the granting of the easement;
  - (b) where an application for a prescribed easement has been made pursuant to Division 1 by a prescribed public utility, the relevant authority must make an order for the granting of the easement in favour of the prescribed public utility;
  - (c) where a council is the relevant authority, the council may make an order for the granting of an easement in its own favour without application having been made by the council pursuant to Division 1;
  - (d) where an application for an easement has been made pursuant to Division 1 by a person as the owner of adjoining or nearby land, the relevant authority may only make an order for the granting of the easement in favour of that person if the relevant authority is satisfied that the person's use or enjoyment of that adjoining or nearby land would be substantially affected if the easement were not granted;
  - (e) where an order is made for an easement in favour of the owner of adjoining or nearby land, the order must be for the granting of an easement annexed to that land as the dominant tenement.

### **19—Notice of road process order**

The relevant authority must, as soon as practicable after a road process order is made—

- (a) give notice in writing of the order to any person who made an objection or application in relation to the proposed road process pursuant to Division 1; and
- (b) in addition, in the case of an order for a road opening—
  - (i) give notice in writing of the order to any person who has an interest in land over which a road is proposed by the order to be opened; and
  - (ii) if the order does not deal with part of the land specified in the public notice of the proposed road opening given pursuant to Division 1—give notice in writing of the discontinuance of the road process in respect of that land to any person who has an interest in that land; and

- (c) deliver to the Adelaide office of the Surveyor-General a copy of the minutes of all meetings held by it in relation to the proposed road process certified by the chief executive officer of the council or the Chairman of the City of Adelaide Planning Commission or the South Australian Planning Commission, as the case may require; and
- (d) in any case where the council is not the relevant authority—deliver two copies of the order to the council.

## **20—Deposit of documents after making road process order**

- (1) The council must, within three months after a road process order is made, deposit at the Adelaide office of the Surveyor-General—
  - (a) two copies of the order; and
  - (b) survey plans as required by the Registrar-General for the purposes of this section; and
  - (c) in the case of an order for a road closure that includes an order that land be transferred or added to other land in accordance with an agreement for exchange or transfer—a copy of the agreement for transfer or exchange on which is denoted all stamp duty payable in respect of the agreement; and
  - (d) in the case of an order for a road opening or the narrowing of a road—a statement that the order complies with the requirements of Part 8 as to the minimum width of roads; and
  - (e) any other document required by the Surveyor-General; and
  - (f) any fee prescribed by regulation including any fee required to be paid by a person in whom land or an interest in land would be vested on publication in the Gazette of notice of the order and its confirmation by the Minister.
- (2) If the requirements of subsection (1) are not complied with within the period specified in that subsection, the order may not be confirmed by the Minister and the road process lapses.
- (3) Where a road process lapses by virtue of subsection (2), the council must, as soon as practicable, give notice in writing of that fact—
  - (a) to any person who made an objection or application in relation to the proposed road process pursuant to Division 1; and
  - (b) in addition, in the case of a proposed road opening—to any person who has an interest in land over which a road was proposed to be opened.

## **Division 3—Review and confirmation of road process order**

### **21—Review of road process order**

On receipt by the Surveyor-General of the copies of a road process order and other associated documents pursuant to Division 2, the Surveyor-General must review the order and may, for that purpose, seek such expert advice on any aspect of the order as the Surveyor-General thinks fit.

**22—Error or deficiency in order**

- (1) The Surveyor-General may, at the request of or after consultation with the relevant authority, at any time before confirmation of an order by the Minister, if of the opinion that there is an error or deficiency in the order, correct or supply the error or deficiency by amendment of the copies of the order deposited with the Surveyor-General.
- (2) Where the Surveyor-General amends an order under subsection (1)—
  - (a) the Surveyor-General must, as soon as practicable, give notice in writing of that amendment to the relevant authority; and
  - (b) the relevant authority must, as soon as practicable, give notice in writing of that amendment—
    - (i) to any person who was required to be given notice in writing of the road process order under section 19(a) or (b); and
    - (ii) where the council is not the relevant authority—to the council.

**23—Recommendation by Surveyor-General as to confirmation or non-confirmation of order**

- (1) The Surveyor-General must, as soon as practicable, report to the Minister on the results of the review of an order and make a recommendation to the Minister as to whether the order should be confirmed by the Minister.
- (2) The Surveyor-General may determine whether to recommend confirmation of an order having regard to whether the procedures and requirements under this Act have been substantially complied with and any other matter that the Surveyor-General considers to be relevant.
- (3) The Surveyor-General may, if he or she thinks fit, recommend that the Minister confirm a road process order conditionally on approval and deposit of the survey plans by the Registrar-General.
- (4) The Surveyor-General must, when forwarding his or her recommendation to the Minister in relation to an order, forward both copies of the order to the Minister.

**24—Confirmation of road process order**

- (1) The Minister must confirm or decline to confirm a road process order as soon as practicable after receipt of the Surveyor-General's recommendation on that order.
- (2) Where the Minister declines to confirm a road process order—
  - (a) the Surveyor-General must, as soon as practicable, give notice in writing of that decision to the council; and
  - (b) the council must, as soon as practicable, give notice in writing of that decision—
    - (i) to any person who made an objection or application in relation to the proposed road process pursuant to Division 1; and
    - (ii) in addition, in the case of a proposed road opening—to any person who has an interest in land over which a road was proposed to be opened.

- (3) The Minister may, when confirming a road process order, if he or she thinks fit, confirm the order conditionally on approval and deposit of the survey plans by the Registrar-General.
- (4) Where a road process order is confirmed by the Minister, the Surveyor-General must cause notice of the order and its confirmation to be published in the Gazette as soon as practicable after the confirmation and fulfilment of the condition (if any) of the confirmation.
- (5) The Surveyor-General is not required to set out the full text of a road process order in a notice under this section, but may instead provide a general description of the nature and effect of the order.
- (6) Publication in the Gazette of notice of a road process order and its confirmation is sufficient evidence of the due making and confirmation of the order.

## **Part 4—Vesting and registration of land subject to road process order**

### **25—Vesting of land pursuant to road process order**

- (1) Where a road process order for a road opening is confirmed by the Minister, then, on publication in the Gazette of notice of the order and its confirmation—
  - (a) land not owned by the council over which the road is opened vests in the council for an estate in fee simple; and
  - (b) any interest in the land over which the road is opened that existed immediately before publication of the notice is extinguished.
- (2) Where a road process order for a road closure is confirmed by the Minister, then, on publication in the Gazette of notice of the order and its confirmation—
  - (a) if the order includes an order that land be transferred to a person—the land vests in the person for an estate in fee simple;
  - (b) if the order includes an order that land be added to other land held by a person under a Crown lease or agreement to purchase—the land vests in the Crown and is incorporated as part of the land subject to that lease or agreement;
  - (c) if the order includes an order that land be added to other land that is dedicated under the *Crown Lands Act 1929*—the land vests in the Crown and is incorporated as part of the dedicated land;
  - (d) if the order includes an order that land be transferred to the proprietor of other land that is alienated in fee simple in trust made under the *Crown Lands Act 1929*—the land vests in the proprietor for an estate in fee simple subject to the same trusts;
  - (e) if the order includes an order that land be vested in the Crown—the land vests in the Crown,

subject, in each case, to any easement required by the order, but free of any other interest.

- (3) Where land is sold by auction or tender or for use for a public, charitable or beneficial community purpose in accordance with a road process order, the land vests in the purchaser for an estate in fee simple on payment of the purchase price and any fee prescribed by regulation, subject to any easement required by the road process order, but free of any other interest.
- (4) Where land is not sold in accordance with a road process order for sale by auction or tender or for use for some public, charitable or beneficial community purpose within 12 months from publication in the Gazette of notice of the order and its confirmation by the Minister, the Minister may, by notice published in the Gazette, declare that the land is vested in the Crown subject to any easement required by the road process order, but free of any other interest.
- (5) Where—
  - (a) land is vested pursuant to this section subject to an easement that is annexed to other land as the dominant tenement; and
  - (b) that other land was, immediately prior to the vesting, subject to a mortgage or other encumbrance,the mortgage or encumbrance extends to that easement.

## **26—Issue of closed road title certificate by Minister**

Where in pursuance of a road process order for a road closure—

- (a) land is vested in a person for an estate in fee simple (whether immediately or on a sale made in accordance with the order); or
- (b) land is retained by the council and a certificate of title is to be issued to the council; or
- (c) land is vested in the Crown and incorporated as part of land subject to a Crown lease or agreement to purchase,

the Minister must in accordance with this Part sign and issue a closed road title certificate relating to that land and deliver the certificate as soon as practicable to the Registrar-General.

## **27—Content of closed road title certificate**

- (1) A closed road title certificate issued pursuant to this Act must be in a form approved by the Registrar-General and must—
  - (a) describe the land to which the closed road title certificate relates; and
  - (b) in a case where the land is vested in a person for an estate in fee simple—
    - (i) state that fact and describe the person in whom the land is vested; and
    - (ii) if the land is by virtue of this Act subject to any trusts—describe the trusts; and
  - (c) in a case where the land is retained by the council and a certificate of title is to be issued—state that fact; and

- (d) in a case where the land is vested in the Crown and incorporated as part of land subject to a Crown lease or agreement to purchase—state that fact and describe the lease or agreement; and
  - (e) describe any easement to which the land is subject; and
  - (f) set out any other matter provided for by this Part or required by the Registrar-General.
- (2) In a closed road title certificate, the Minister may, on the recommendation of the Surveyor-General, specify that no land other than that described in the certificate may be included in a certificate of title issued by the Registrar-General pursuant to this Part.
- (3) Where—
  - (a) land other than that described in a closed road title certificate will be included in a certificate of title issued pursuant to this Part; and
  - (b) an interest or caveat is registered in respect of that other land,the Minister must, on the request of the registered proprietor of that other land, include in the closed road title certificate a statement that the land to which the closed road title certificate relates is not to be subject to any specified interest or caveat registered in respect of that other land.
- (4) Where—
  - (a) a closed road title certificate relates to land that is vested in the Crown and incorporated as part of other land subject to a Crown lease or agreement to purchase; and
  - (b) an interest or caveat is registered in respect of that other land,the Minister must, on the request of the registered proprietor of that other land, include in the closed road title certificate a statement that the land to which the closed road title certificate relates is not to be subject to any specified interest or caveat registered in respect of that other land.

## **28—Issue and merger of certificates of title by Registrar-General**

- (1) This section applies to a closed road title certificate that relates to land vested in a person for an estate in fee simple or for which a certificate of title is to be issued to the council.
- (2) On receipt of a closed road title certificate to which this section applies, the Registrar-General must, subject to this section, issue a certificate of title to the person entitled for the land to which the closed road title certificate relates.
- (3) Where the person entitled is the registered proprietor of land adjoining the land to which the closed road title certificate relates, then, unless the closed road title certificate otherwise provides, the Registrar-General—
  - (a) must issue a certificate of title (without payment of any fee to the Registrar-General) to the person entitled for the land to which the closed road title certificate relates together with the adjoining land; and
  - (b) may, with the consent of the person entitled, also merge in the same certificate of title other land of which the person is the registered proprietor.



- (4) A certificate of title issued pursuant to subsection (2) or (3) must be expressed to be subject to all easements and trusts that the land is certified to be subject to in the closed road title certificate.
- (5) Where a certificate of title is issued pursuant to subsection (3)—
  - (a) the land described in the certificate is, unless the closed road title certificate otherwise provides, subject to all interests and caveats registered in respect of the adjoining or other land immediately prior to the merger of that land in the new certificate of title; and
  - (b) an easement that is appurtenant to any of the land merged in the new certificate of title is appurtenant to the land comprised in the new certificate of title.

## **29—Registration in Register of Crown leases**

- (1) This section applies to a closed road title certificate that relates to land vested in the Crown and incorporated as part of land subject to a Crown lease or agreement to purchase.
- (2) On receipt of a closed road title certificate to which this section applies, the Registrar-General must register the certificate in the Register of Crown leases.
- (3) On registration of a closed road title certificate pursuant to this section, the land described in that certificate is, unless the closed road title certificate otherwise provides, subject to all interests and caveats registered in respect of the land subject to the Crown lease or agreement immediately before registration of the closed road title certificate.

## **30—Registrar-General to amend records, documents of title etc**

- (1) The Registrar-General must, following publication in the Gazette of notice of a road process order and its confirmation, amend, cancel or replace any document of title affected and make any entry in or amendment of the Register Book, the Register of Crown leases and any other applicable record as required in consequence of the order or the operation of this Act.
- (2) For the purposes of this Act, the Registrar-General may, by notice in writing, require any person to—
  - (a) furnish information; or
  - (b) produce instruments or documents (including any document of title).
- (3) Any person who, without reasonable excuse, refuses or fails to provide information, or produce an instrument or document, as required by a notice under this section, within two months of the issue of the notice, is guilty of a summary offence.

Penalty: Division 7 fine.

## **Part 5—Compensation etc**

### **31—Land Acquisition Act applies where road opened**

- (1) Where a road is opened pursuant to this Act over land not owned by the council—
  - (a) the council must—

- (i) serve notice in writing of the road process order on each person who had an interest in the land immediately before it vested in the council by virtue of the road opening; and
  - (ii) append to the notice an offer in writing stating the total amount of compensation that the council proposes to pay to the person and dividing that amount, so far as is practicable, into its separable components; and
- (b) compensation is payable by the council in respect of the land and the provisions of the *Land Acquisition Act 1969* apply in relation to the road opening as if—
  - (i) the road opening were an acquisition of the land and the council were an Authority under that Act; and
  - (ii) the notice of the road process order and its confirmation by the Minister published in the Gazette pursuant to this Act were a notice of acquisition in respect of the land published pursuant to that Act; and
  - (iii) the notice and offer of compensation served pursuant to paragraph (a) were a copy of a notice of acquisition and offer served on a claimant for compensation pursuant to that Act.
- (2) Subsection (1) does not apply in relation to land over which a road is opened if—
  - (a) a power of making roads was reserved in the original grant, Crown lease or agreement to purchase in respect of the land or, in the case of land dedicated under the *Crown Lands Act 1929*, in the notice or other instrument by which the land was so dedicated; or
  - (b) the land is specified in the road process order as land that is, in accordance with an agreement for exchange, taken for a road in exchange for land subject to a road closure.

### **32—Compensation where road opening discontinued**

- (1) Where a road opening is discontinued in respect of land, a person who has an interest in the land may, by notice in writing served on the council, claim compensation from the council.
- (2) A claim for compensation under this section must be made not later than three months after the person is served by the council or the relevant authority with notice in writing of the discontinuance of the road opening.
- (3) Compensation under this section must be recovered and assessed in accordance with the *Land Acquisition Act 1969* as if the claim were a claim for compensation under Part 3 of that Act made after an Authority determines not to proceed with the acquisition of land.

## Part 6—Acquisition of additional land under Land Acquisition Act

### 33—Acquisition of additional land under Land Acquisition Act

- (1) Where a council proposes to open a road over any land pursuant to this Act, the council may, if it considers it appropriate in the circumstances and with the approval of the Minister, acquire additional land adjoining or near to the land to which the proposed road opening relates, and may do so whether or not the land is required in connection with the proposed road.
- (2) An approval may be given by the Minister pursuant to subsection (1) subject to any conditions as to the manner in which additional land acquired pursuant to this section may be dealt with by the council that the Minister considers necessary to ensure compliance with the provisions of a Development Plan under the *Development Act 1993*.
- (3) The acquisition of any such additional land must be effected in accordance with the *Land Acquisition Act 1969*, but subject to the following provisions:
  - (a) where a notice of intention to acquire the land is served on a person pursuant to the *Land Acquisition Act 1969* before or at the same time as notice of the proposed road opening is served on the person pursuant to Division 1 of Part 3 of this Act, the person may object to the proposed acquisition in the same way as for objections to the proposed road opening, and sections 11 and 12 of the *Land Acquisition Act 1969* do not apply in relation to the proposed acquisition;
  - (b) a notice of acquisition in respect of the land—
    - (i) may not be published by the council pursuant to the *Land Acquisition Act 1969* before a road process order for the proposed road opening is confirmed by the Minister pursuant to this Act; but
    - (ii) may, notwithstanding the *Land Acquisition Act 1969*, be published after the expiration of 12 months from the day on which notice of intention to acquire the land was served on a person interested in the land;
  - (c) an agreement for acquisition of the land—
    - (i) if made before confirmation by the Minister of a road process order for the proposed road opening, is conditional on such confirmation; and
    - (ii) may, notwithstanding the *Land Acquisition Act 1969*, be made by the council after the expiration of 12 months from the day on which notice of intention to acquire the land was served on a person interested in the land.
- (4) Subject to subsection (5), any additional land acquired pursuant to this section may be sold or otherwise dealt with in such manner as the council considers appropriate and the proceeds from sale of any such land may be applied in defraying expenses incurred by the council in connection with the road opening.

- (5) Where the Minister approves the acquisition of additional land pursuant to this section subject to conditions as to the manner in which the land may be dealt with by the council, the council must comply with those conditions.

## **Part 7—Special power of Minister to close roads**

### **34—Special power of Minister to close roads**

- (1) Where a road is proposed to be closed pursuant to section 6, the Surveyor-General must give notice of the proposal—
- (a) to the Commissioner of Highways; and
  - (b) if the land comprised in the road to be closed is within a council area—to the council for that area; and
  - (c) to each prescribed public utility.
- (2) A notice pursuant to subsection (1) must specify that representations in relation to the proposal may be made within 28 days from the date of the notice.
- (3) The Surveyor-General must forward to the Minister, at least 28 days after notices have been given pursuant to subsection (1)—
- (a) any representation in relation to the proposal by the Commissioner of Highways, a council or prescribed public utility received within that period; and
  - (b) the Surveyor-General's recommendation on the proposal.
- (4) After considering any representations and the recommendation forwarded pursuant to this section, the Minister may make an order closing the road.
- (5) The Minister may, as part of an order under this section, make an order for the granting of an easement over land subject to the order.
- (6) The Surveyor-General must, as soon as practicable after an order to close a road is made pursuant to this section, cause survey plans and any other documents to be prepared as required by the Registrar-General.
- (7) The Surveyor-General must, as soon as practicable after the survey plans and other documents have been prepared pursuant to subsection (6), publish the order in the Gazette.
- (8) On publication of the order, the land comprised in the road ordered to be closed vests in the Crown subject to any easement required by the order but free of any other interest.
- (9) The Minister may issue and deliver to the Registrar-General a closed road title certificate requiring the Registrar-General to issue to—
- (a) a Minister of the Crown; or
  - (b) an instrumentality of the Crown,

a certificate of title for land vested in the Crown pursuant to this section and, in that event, the provisions of Part 4 relating to closed road title certificates and the issue of certificates of title apply in relation to that closed road title certificate as if the land had been vested in that Minister or instrumentality for an estate in fee simple.

- (10) Nothing in subsection (9) affects any power of the Governor or the Minister to deal with the land comprised in the closed road as Crown land pursuant to any other Act.

## **Part 7A—Special powers associated with major developments**

### **34A—Interpretation**

In this Part—

*DR* means a development report under the *Development Act 1993*;

*EIS* means an environmental impact statement under the *Development Act 1993*;

*PER* means a public environmental report under the *Development Act 1993*;

*Planning Minister* means the Minister for the time being administering the *Development Act 1993*.

### **34B—Road process proposal may be included in a major development proposal**

- (1) An EIS, PER or DR may include details of a proposal to open or close a road pursuant to the exercise of powers under this Part.
- (2) If an EIS, PER or DR includes details of a proposal to open or close a road pursuant to this Part—
  - (a) written notice of the proposal must be specifically given to—
    - (i) if the land comprised in the road proposed to be opened or closed is within a council area—the council for that area; and
    - (ii) if the land comprised in the road proposed to be opened or closed is Crown land—the relevant State agency; and
    - (iii) the Surveyor-General; and
    - (iv) each person affected who can be identified by reasonable inquiry, at the time that the EIS, PER or DR (as the case may be) is made available for public inspection under the *Development Act 1993*; and
  - (b) in the case of a DR—the Minister must ensure that a public meeting in relation to the matter is conducted in accordance with the requirements of the regulations (despite the fact that such a meeting is not required under the *Development Act 1993*); and
  - (c) written submissions may be made on the proposal within the time for submissions on the EIS, PER or DR under the *Development Act 1993*; and
  - (d) the proponent must then include a response to any matters raised by written submissions made under paragraph (c) as part of any response to submissions provided to the Planning Minister under the *Development Act 1993*; and
  - (e) the relevant Assessment Report under the *Development Act 1993* must include the Planning Minister's response to any matters raised in relation to the proposal and, if the Minister considers that the proposal to open or close the road should proceed (if the relevant development is approved), specific information about the order that would need to be made to give effect to the proposal.

### **34C—Governor may give effect to road process proposal**

- (1) The Governor may, on the basis of a recommendation of the Planning Minister made in an Assessment Report under the *Development Act 1993* that a road be opened or closed, in conjunction with giving a development authorisation under section 48 of the *Development Act 1993* in relation to the relevant development, by notice in the Gazette, make an order that a road be opened or closed.
- (2) The Governor may, in making an order under subsection (1)—
  - (a) —
    - (i) fix a day on which the order will take effect; or
    - (ii) provide that the order will take effect on a day to be fixed by subsequent order of the Governor or the Planning Minister published in the Gazette; and
  - (b) make any other provision that the Governor considers to be necessary or expedient for the purposes of this Act.
- (3) The Governor may, by subsequent notice in the Gazette, vary or revoke an order under subsection (1).
- (4) The Surveyor-General must, as soon as practicable after an order to open or close a road is made under this section, cause survey plans and other documents to be prepared as required by the Registrar-General in order to facilitate the operation of the order under this Act.

### **34D—Dealings in land after commencement of process under this Part**

If an EIS, PER or DR includes details of a proposal to open a road pursuant to the exercise of powers under this Part—

- (a) the Planning Minister may, at any time after the EIS, PER or DR is made available for public inspection under the *Development Act 1993*, in relation to any land comprised in the proposed road that has been brought under the *Real Property Act 1886*—lodge a caveat with the Registrar-General forbidding any dealing with the land without the consent of the Planning Minister; and
- (b) if any land comprised in the proposed road has not been brought under the *Real Property Act 1886*—a person with an interest in the land who has received a notice of the proposal under section 34B(2)(a) must not (after the receipt of the notice) enter into any transaction in respect of the land without first disclosing the fact that the proposal exists in relation to the land (and if an agreement in respect of the land is entered into without the disclosure required by this paragraph then the agreement is voidable at the option of the person to whom the disclosure should have been made).

### **34E—Modification or exclusion of certain Parts of Act**

- (1) The following sections of Part 3 apply, subject to such modifications, additions or exclusions as may be specified below or as may be prescribed, or as may be necessary for the purpose, with respect to a proposal or order under this Part:
  - (a) section 13(2);
  - (b) sections 17 and 18—

- (i) as if a reference to the relevant authority were a reference to the Governor; and
  - (ii) on the basis that the Governor, as the relevant authority, can make an order under either section at any time (and not necessarily as part of the original order).
- (2) Parts 4 and 5 apply with respect to an order under this Part as if the order were an order confirmed by the Minister on the date on which the order takes effect under this Part, subject to such modifications as may be prescribed, or as may be necessary for the purpose.
- (3) Part 6 applies with respect to an order under this Part—
  - (a) as if the relevant council is proposing to open the road;
  - (b) as if a reference to the Minister were a reference to the Planning Minister.
- (4) Part 8 applies with respect to an order under this Part as if the order were an order confirmed by the Minister on the date on which the order takes effect.

### **34F—Costs**

The Planning Minister may recover, as a debt from the proponent with respect to a development that includes a proposal to open or close a road pursuant to this Part, reasonable costs incurred by the Crown in dealing with the proposal under this Part.

## **Part 8—Miscellaneous**

### **35—Certain orders not to be reviewable by Supreme Court**

- (1) No order purporting to be a road process order made under the provisions of this Act may be removed, or is removable, into the Supreme Court after publication in the Gazette of notice of the order and its confirmation by the Minister.
- (2) Before making any road process order, the relevant authority may reserve any question of law for the consideration of the Supreme Court, and if any question of law is reserved, no such order may be made until after the decision of the Supreme Court on that question.

### **36—Money payable pursuant to agreements for exchange or transfer and sale of closed roads**

- (1) Where—
  - (a) an agreement for exchange or transfer is made by a council in relation to land subject to a proposed road closure; or
  - (b) land subject to a road closure is sold in accordance with the road process order following confirmation of the order by the Minister,any amount payable in pursuance of the agreement or sale is payable to and forms part of the revenue of the council.

- (2) Where an agreement for exchange or transfer is avoided by virtue of the operation of section 12(4)—
- (a) any amount paid to the council in pursuance of the agreement must be repaid to the person by whom it was paid or such other person as is specified in the agreement; and
  - (b) any stamp duty paid on the agreement must, on receipt by the Treasurer of a certificate of the Commissioner of Stamps certifying as to the amount of the duty repayable, be repaid by the Treasurer to the person by whom it was paid or such other person as is specified in the agreement, and this section is, without any further appropriation, sufficient authority for the making of that payment.

### **37—Issue of certificate of title where owner of road is unknown**

- (1) If before the passing of the *Roads (Opening and Closing) Act Amendment Act 1946*, an order for the closing of a road was confirmed and—
- (a) a certificate of title has not been issued in respect of the land or part of the land comprised in the road ordered to be closed and the person entitled to the issue of that certificate is dead or unknown; and
  - (b) the Surveyor-General is satisfied that a person in possession of the land for which there is no certificate is entitled by purchase or otherwise to be in possession and that it is desirable that a certificate of title to the land should be issued to that person,

the Surveyor-General may publish a notice in the Gazette stating that, unless any person claiming an interest in the land objects in writing within the time specified in the notice (being not less than 28 days), a certificate of title may be issued to the person specified in the notice as the person who the Surveyor-General is satisfied is entitled to the land.

- (2) Where a notice is published pursuant to subsection (1), the Surveyor-General must give written notice to the same effect to every owner of land adjoining the land to which the notice relates, and may give such other notice as he or she thinks fit.
- (3) If within the time fixed by a notice given pursuant to subsection (1), no objection in writing to the issue of a certificate of title to the person specified in the notice is made by any person claiming an interest in the land referred to in the notice, the Minister may, on the recommendation of the Surveyor-General, issue a closed road title certificate for that land subject to any interest described in the certificate and deliver the certificate to the Registrar-General and, in that event, the provisions of Part 4 relating to closed road title certificates and the issue of certificates of title apply in relation to that closed road title certificate as if the land had been vested in the person specified in the notice for an estate in fee simple.

### **38—Width of roads**

- (1) Subject to this section, no road opened pursuant to this Act may be less than 12 metres wide in any place and no road may be closed in part so that it is less than 12 metres wide in any place.



- (2) The Surveyor-General may, by instrument in writing—
  - (a) declare that the minimum width fixed by this section does not apply to any specified road; and
  - (b) fix a minimum width for that road that is less than the minimum width otherwise required by this section.
- (3) Any road opened pursuant to this Act may be continued at a width of less than 12 metres if the continuation is at least of the same width as the road so continued.
- (4) For the purpose of this section, the width of a road is the shortest distance from one boundary of the road to the opposite boundary.

### **39—Duty to fence**

In any case in which—

- (a) a road is fenced along one or both of its boundaries; and
- (b) the road is altered or diverted,

the council making the alteration or diversion must cause the road as altered or diverted to be fenced along its boundaries with a substantial fence of the same nature as the fence previously on the boundary of the road and the abutting land.

### **40—Declaration of public road followed by commencement of road closure process**

Where—

- (a) a council by resolution declares land to be a public street or road and, on publication in the Gazette of notice of the resolution, the land vests in the council pursuant to the *Local Government Act 1934*; and
- (b) following the constitution of that land as a road the council commences a road process for closure of the road or part of the road,

the Registrar-General and the council are relieved from any duty under any other Act to make any entry in the Register Book or the Register of Crown Leases, issue any certificate of title, register any memorial in the General Registry Office or take any other action in respect of the vesting in the council of land subject to that road process unless the road process is discontinued in respect of that land.

### **41—Removal or variation of easement of prescribed public utility or public authority**

- (1) Where a document of title is, pursuant to this Act or the repealed Act, expressed to be subject to an easement in favour of a prescribed public utility or a public authority, the Registrar-General must, on application in a form approved by the Registrar-General by the public utility or public authority and the proprietor of the land comprised in the document of title, remove the easement from the document of title or vary the easement, as required by the applicants.
- (2) The Registrar-General must make any entry in or amendment of any applicable record necessary to give effect to an application under subsection (1).

#### **42—Interaction of Act with *Real Property Act 1886* and planning legislation**

- (1) The provisions of this Act apply notwithstanding the provisions of the *Real Property Act 1886*.
- (2) Except as provided by Part 7A, the provisions of the *Development Act 1993* do not apply in relation to any road process or other action taken in relation to land pursuant to this Act.

#### **43—Saving provision**

Nothing in this Act affects the operation of any other Act or law pursuant to which a road may be opened or closed or pursuant to which any land may become a road.

#### **44—Inspection of documents with Surveyor-General**

Any document deposited with the Surveyor-General in pursuance of this Act must be made available for inspection on request by any member of the public during ordinary office hours at the Adelaide office of the Surveyor-General.

#### **45—Delegation by Minister**

- (1) The Minister may, by instrument in writing, delegate any of the powers, duties or functions of the Minister under this Act to the person holding or acting in any specified position in the public service of the State.
- (2) A delegation under this section may be given subject to such conditions as the Minister thinks fit and specifies in the instrument of delegation.
- (3) A delegation under this section is revocable at will and does not prevent the Minister from acting personally in any matter.

#### **46—Delegation by other authorities**

- (1) The powers of delegation conferred on councils by the Act under which they are constituted extend to delegation of their powers, duties and functions under this Act.
- (2) The power of delegation conferred on the Development Assessment Commission under the *Development Act 1993* extends to delegation of its powers, duties and functions under this Act.
- (3) The power of delegation conferred on the Governor under Division 2 of Part 4 of the *Development Act 1993* extends to delegation of the Governor's powers, duties and functions under this Act.

#### **47—Service**

- (1) A notice or document required or authorised by this Act to be served on or given to a person may be served on or given to the person personally or by post.
- (2) If the whereabouts of the person are not known, the notice or document may be served on or given to the person—
  - (a) by publication of a copy of the notice or document in a newspaper circulating generally throughout the State; or
  - (b) by affixing it in a prominent place on the land to which it relates.

## **48—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), those regulations may—
  - (a) prescribe and provide for the payment of fees;
  - (b) provide for the refund of fees in specified circumstances;
  - (c) prescribe forms;
  - (d) specify information to be contained in notices or other documents under this Act.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- 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.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Roads (Opening and Closing) Act 1991* repealed the following:

*Roads (Opening and Closing) Act 1932*

### Legislation amended by principal Act

The *Roads (Opening and Closing) Act 1991* amended the following:

*Highways Act 1926*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1991	11	<b><i>Roads (Opening and Closing) Act 1991</i></b>	28.3.1991	11.11.1991 ( <i>Gazette 31.10.1991 p1198</i> )
1999	64	<i>Local Government (Implementation) Act 1999</i>	18.11.1999	s 9—1.1.2000 ( <i>Gazette 9.12.1999 p3113</i> )
2000	88	<i>Development (System Improvement Program) Amendment Act 2000</i>	21.12.2000	Sch 1 (cl 5)—2.4.2001 ( <i>Gazette 29.3.2001 p1436</i> )
2005	69	<i>Adelaide Park Lands Act 2005</i>	8.12.2005	Sch 1 (cII 20 & 21)—14.12.2006 ( <i>Gazette 7.12.2006 p4269</i> )

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		

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s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
s 3(1)		
council	substituted by 64/1999 s 9(a)	1.1.2000
relevant authority	substituted by 88/2000 Sch 1 cl 5(a)	2.4.2000
road	amended by 64/1999 s 9(b)	1.1.2000
Pt 2		
s 6A	inserted by 88/2000 Sch 1 cl 5(b)	2.4.2000
Pt 3		
s 16	amended by 88/2000 Sch 1 cl 5(c)	2.4.2000
Pt 6		
s 33		
s 33(2)	amended by 88/2000 Sch 1 cl 5(d)	2.4.2000
Pt 7A	inserted by 88/2000 Sch 1 cl 5(e)	2.4.2000
Pt 8		
s 42		
s 42(2)	substituted by 88/2000 Sch 1 cl 5(f)	2.4.2000
s 46	substituted by 88/2000 Sch 1 cl 5(g)	2.4.2000
<i>ss 49 and 50</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	

## Historical versions

Reprint No 1—1.1.2000

## Appendix—Divisional penalties and expiation fees

At the date of publication of this version divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

**Roads (Opening and Closing) Act 1991—2.4.2001 to 13.12.2006**  
Appendix—Divisional penalties and expiation fees

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*Note: This appendix is provided for convenience of reference only.*