

(Reprint No. 2)

**SOUTH AUSTRALIA**

**HIGHWAYS ACT, 1926**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 11 November 1991.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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## HIGHWAYS ACT, 1926

being

Highways Act, 1926, No. 1769 of 1926 [Assented to 16 December 1926]<sup>1</sup>

as amended by

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

<sup>1</sup> S. 11(2) Came into operation on assent: s. 4; remainder of Act came into operation 3 February 1927: *Gaz.* 3 February 1927, p. 258.

<sup>2</sup> Came into operation 1 July 1937: s. 3.

<sup>3</sup> Came into operation 1 October 1938: s. 2.

<sup>4</sup> Came into operation 21 May 1970: *Gaz.* 21 May 1970, p. 1842.

<sup>5</sup> Came into operation 6 April 1972: *Gaz.* 6 April 1972, p. 1369.

<sup>6</sup> Came into operation 7 December 1972: *Gaz.* 7 December 1972, p. 2534.

<sup>7</sup> Came into operation 1 October 1974: s. 2.

<sup>8</sup> S. 8(1) came into operation 1 July 1976: s. 8(3); remainder of Act came into operation on assent.

<sup>9</sup> Came into operation 1 October 1979: s. 2.

<sup>10</sup> Came into operation 1 July 1981: s. 2.

<sup>11</sup> Came into operation 4 November 1982: *Gaz.* 4 November 1982, p. 1304.

<sup>12</sup> Came into operation 1 July 1982: s. 2.

<sup>13</sup> Came into operation 1 July 1983: s. 2.

Statutes Amendment (Remuneration) Act, 1985, No. 59 of 1985 [Assented to 30 May 1985]<sup>1</sup>  
 Highways Act Amendment Act, 1989, No. 62 of 1989 [Assented to 26 October 1989]<sup>2</sup>  
 Statutes Repeal and Amendment (Remuneration) Act, 1990, No. 18 of 1990 [Assented to 19 April 1990]<sup>3</sup>  
 Roads (Opening and Closing) Act 1991 No. 11 of 1991 [Assented to 28 March 1991]<sup>4</sup>

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

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

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

## PART I

### PRELIMINARY

#### Short title

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

#### Act not to apply to the City of Adelaide

2. This Act shall not apply to the City of Adelaide: Provided that the council of the said city shall, when so required by notice in writing from the Commissioner, construct or reconstruct any portion of a main road within the said city to conform with the construction or reconstruction of that portion of such main road immediately adjoining the city.

#### Incorporation of the Compulsory Acquisition of Land Act, 1925

3. (1) The *Compulsory Acquisition of Land Act, 1925*, except sections 79, 80, 81, and 82 is incorporated with this Act.

(2) The Commissioner shall be regarded as the promoter of an undertaking and this Act as the Special Act within the meaning of the said incorporated Act.

#### Commencement of Act

4. This Act (with the exception of subsection (2) of section 11 hereof which shall come into operation on the passing of this Act) shall come into operation on a date to be fixed by proclamation.

#### Repeal of 1475, 1921

5. The *Roads Improvement Act, 1921*, is hereby repealed.

#### Repeal of Anzac Highway Agreement Act, 1937-1940

5a. The *Anzac Highway Agreement Act, 1937*, and the *Anzac Highway Agreement Act Amendment Act, 1940*, are repealed and the Agreement set out in the schedule to the *Anzac Highway Agreement Act, 1937*, as varied by the *Anzac Highway Agreement Act Amendment Act, 1940*, shall, on and after the commencement of the *Highways Act Amendment Act, 1969*, have no further force or effect.

<sup>1</sup>Came into operation 13 June 1985: *Gaz.* 13 June 1985, p. 2132.

<sup>2</sup>Came into operation 28 March 1990, being the day on which the Road Traffic Act Amendment Act (No. 3), 1989, came into operation: *Gaz.* 8 March 1990, p. 659: s. 2.

<sup>3</sup>Came into operation 19 April 1990: *Gaz.* 19 April 1990, p. 1136.

<sup>4</sup>Came into operation 11 November 1991: *Gaz.* 31 October 1991, p. 1198.

**Arrangement of Act**

6. The provisions of this Act are arranged as follows:—

PART I—Preliminary.

PART II—Administration.

PART IIA—Proclamation of controlled-access roads.

PART III—Financial provisions.

PART IIIA—Construction of Birkenhead Bridge.

PART IV—Miscellaneous provisions.

**Interpretation of terms**

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

“Commissioner” means the Commissioner of Highways appointed by or pursuant to this Act:

“controlled-access road” means any road or part of any road or any land acquired by the Commissioner which is declared under this Act to be a controlled-access road:

“council” means a municipal or district council:

“district” means a district council district or a municipality:

“financial year” means a period of twelve months ending on the thirtieth day of June in any year:

“inspector” means inspector of roads and bridges appointed or deemed to be appointed under this Act:

“local-access road” in relation to a controlled-access road means—

(a) any road that provides access to land which abuts or is adjacent to that controlled-access road;

or

(b) any road that provides access to or egress from the means of passage over or the means of passage under the controlled-access road:

“main road” means any road which is declared under this Act to be a main road:

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

“road” means any street, road, thoroughfare, terrace, court, lane, alley, cul-de-sac, or place commonly used by the public, or to which the public are permitted to have access, and includes main road:

“work” includes any footpath, bridge, ford-crossing, causeway, road-ferry, culvert, drain, embankment, fence, and any work connected with any road.

## PART II

## ADMINISTRATION

*The Commissioner of Highways***Creation of Commissioner of Highways**

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

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

**Judicial notice of seal of Commissioner**

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

**Appointment of Commissioner**

10. (1) The present Engineer for Roads and Bridges is hereby appointed the first Commissioner, and, subject to this Act, shall hold office until the thirty-first day of December, 1938.

(2) After the thirty-first day of December, 1938, the Governor shall from time to time appoint a fit and proper person to fill the office of Commissioner of Highways. Every person so appointed shall hold office for five years from the date of his appointment, and shall be eligible upon the expiration of his term for re-appointment.

If at the expiration of the term of office of any Commissioner no further appointment to that office has been made, the person then holding office as Commissioner shall continue in office during the Governor's pleasure.

**Remuneration of the Commissioner**

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

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

**Dismissal of Commissioner from office**

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

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

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

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

#### **Delegation of powers, etc., by Commissioner**

**12a.** (1) The Commissioner may, by instrument in writing, delegate any of his powers or functions under this Act to any officer of the Department.

(2) A delegation under subsection (1) of this section—

(a) is revocable at will;

and

(b) shall not prevent the Commissioner from acting personally in any matter.

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

#### **Deputy Commissioner**

**13.** (1) There shall be a Deputy Commissioner of Highways.

(2) The Deputy Commissioner shall be appointed under, and shall hold office subject to, the *Public Service Act, 1967-1978*.

(3) The Deputy Commissioner may, in addition to his other duties of office, act on behalf of the Commissioner at any time when the Commissioner is absent, or is unable to perform the duties of his office, and, for that purpose, the Deputy Commissioner may exercise any of the powers, discharge any of the duties, or perform any of the functions, vested in or imposed upon the Commissioner under this Act.

#### *Officers and employees of the Commissioner*

#### **Employment and appointment of officers and employees**

**14.** (1) For the purpose of carrying out the powers, duties, authorities, and obligations conferred or imposed upon the Commissioner by this or any other Act the Commissioner, with the approval of the Minister of the department concerned, may make use of the services of any of the officers and employees of the public service.

(2) The staff of the Commissioner shall be appointed under and be subject to the provisions of the *Public Service Act, 1967*.

(3) The Commissioner may, subject to any direction of the Minister, appoint, employ, and dismiss such casual employees as he deems necessary for the purposes of this Act, and may, subject to any direction of the Minister, fix wages and conditions of employment where these are not fixed in accordance with the provisions of other Acts.

(4) Every inspector of roads and bridges appointed under the *Roads Improvement Act, 1921*, or under any Act repealed by that Act, and every other person employed in the public service at the commencement of this Act for the purposes of the *Roads Improvement Act, 1921*, shall be deemed to have been appointed to the staff of the Commissioner under this Act.

**Control of staff by Commissioner**

15. All officers, servants, and other persons, whilst employed for the purposes of this Act, shall, subject to any direction of the Minister, be under the sole direction and control of the Commissioner.

**Payment of wages and salaries**

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

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

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

**Duties of inspectors**

17. It shall be the duty of every officer who is so directed by the Commissioner—

- (a) to inspect and report on public roads and works;
- (b) to supervise and inspect works being carried out by any council on or in connection with roads and works, wholly or partly by means of moneys by this Act required to be expended by a council on main roads;
- (c) to supervise and inspect works being carried out by any council on or in connection with public roads and works, wholly or partly by means of money voted by Parliament for the purpose; and
- (d) to inspect the materials used in carrying out any of such works, and to advise such councils as to the methods to be adopted, and the materials to be used, in carrying out any of such works.

*Powers, duties, and functions of the Commissioner*

**Transfer to Commissioner of property and rights**

18. (1) All property, both real and personal, belonging to or vested in the Minister for Local Government at the time of the passing of this Act for the purposes of the *Roads Improvement Act, 1921*, is hereby transferred to and vested in the Commissioner.

(2) All the rights, interests, titles, privileges, obligations, and liabilities of the Minister of Local Government subsisting at the commencement of this Act, or thereafter accruing, in connection with any act, matter, or thing done by the said Minister under the *Roads Improvement Act, 1921*, are hereby transferred to the Commissioner.

**Works in course of construction to be completed by Commissioner**

19. (1) The construction of any works which at the time of the commencement of this Act are in course of construction by the Engineer for Roads and Bridges under authority of the Minister of Local Government (as provided in section 21 of the *Roads Improvement Act, 1921*) shall be continued, carried on, and completed by the Commissioner subject to this Act.

(2) Without in any way limiting the operation of the next preceding section, it is hereby declared that all contracts, deeds, agreements, and other instruments entered into or made and subsisting at the commencement of this Act with regard to any such works and to which the Minister of Local Government or the Engineer for Roads and Bridges is a party, may be enforced by or against the Commissioner as fully and effectually as if the Commissioner instead of the Minister of Local Government or, as the case may be, the Engineer for Roads and Bridges had been party thereto.

### General powers of the Commissioner

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

- (a) subject to the approval of the Minister, purchase, take, receive, accept, hold, acquire by agreement or otherwise, and possess lands, tenements, and hereditaments in fee simple or for any less estate or interest, or for any term of years or otherwise, and may, subject to the approval of the Minister, contract for the right to remove materials from any lands, tenements, and hereditaments for the purposes of this Act; and, subject to the approval of the Minister, may sell, grant, convey, transfer, demise, assign, or otherwise dispose of and assure any lands, tenements, or hereditaments vested in him for any estate or interest therein;
- (b) subject to the approval of the Minister, acquire by purchase or hire or otherwise, goods and chattels, including stock, machinery, and road-making plant and materials of all kinds;
- (ba) subject to the approval of the Minister, establish and maintain ferry services or enter into and carry out any arrangement with any person for the operation of any ferry service and for that purpose he may—
  - (i) make and construct a ferry across any river, creek, stream, tidal waters or strait;
  - (ii) install and maintain cables, wires, chains and other appliances;
  - (iii) make and construct such wharves, retaining walls, causeways, embankments, canals, landing stages and such other works as are in his opinion necessary or desirable;
  - (iv) make, construct or otherwise acquire any punts, barges or ferry boats;
  - (v) erect and place masts, posts and other plant or equipment for carrying on or operating a ferry;and
  - (vi) with the approval of the Minister, make and levy fees and charges for the carriage of persons, vehicles or cargo by any such ferry service;
- (bb) subject to the approval of the Minister, establish and maintain, or enter into and carry out any arrangements with any person for the establishment and maintenance of a sea transport service for the purpose of carrying persons and cargo between such ports and places within the State as the Minister from time to time approves and for that purpose he may—
  - (i) build, construct or otherwise acquire ships or plant necessary or convenient for the operation of the service;
  - (ii) make and construct such wharves, retaining walls, causeways, embankments, landing stages and such other works as are in his opinion necessary or desirable for the operation of the service;

and

- (iii) with the approval of the Minister, make and levy fees and charges for the carriage of persons, vehicles or cargo by any such sea transport service;
- (c) subject to the approval of the Minister, enter into such contracts as he thinks proper for the supply of materials or the execution of any works required to be supplied or executed for the purpose of this Act;
- (d) sue and be sued, and submit to arbitration, in all courts and before all Judges, magistrates, justices, and arbitrators whomsoever, in all actions, suits, causes, disputes, and matters whatsoever; and
- (e) do and exercise all such further acts and powers as he is by this Act authorized to do and exercise, or as may be necessary or convenient for carrying into effect any of the purposes or objects of this Act.

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

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

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

#### **Powers to acquire land**

**20a.** (1) Without limiting the general powers of the Commissioner under the last preceding section, the Commissioner may, subject to the approval of the Minister, acquire any land or interest in land by agreement or compulsory process for any of the following purposes—

- (a) for use as a quarry or as a depot for storing plant or material required in connection with the construction and maintenance of roads or works, or as a site for the erection and maintenance of any plant used in connection with any quarry, or in connection with the construction and maintenance of any roads or works;
- (b) for obtaining therefrom any road metal, gravel, sand or other material used in the construction of roads or works;
- (c) for use in connection with any other operations which the Commissioner is authorized by this Act to carry out;
- (d) for any purpose which in the opinion of the Commissioner is necessary or desirable to facilitate any scheme of road construction or development that may be undertaken by the Commissioner in the future.

(2) The *Planning Act, 1982*, shall not apply in relation to any land acquired under this section.

### Power to acquire land in excess of requirements

**20b.** Where the Commissioner acquires land by agreement or compulsory process for the purpose of opening, widening, altering, diverting, or extending any road, the Commissioner, in deciding the land to be so acquired, shall not be restricted to the acquisition of the land actually required for the said purpose, but may acquire such additional land as he deems expedient and as is approved by the Minister.

### Acquisition in case of hardship

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

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

(a) there is a possibility that the whole or part of the land may be required by the Commissioner for the purposes of this Act;

(b) by reason of that possibility the value of the land is adversely affected;

and

(c) by reason of the fact that the value of the land is adversely affected, the owner of the land has suffered or may suffer hardship.

(3) Upon a certificate being granted under subsection (1) of this section in respect of any land the Commissioner shall acquire that land and section 20a of this Act shall apply to and in relation to the acquisition by the Commissioner as if—

(a) the acquisition had been approved by the Minister;

and

(b) the land is to be acquired for use in connection with operations which the Commissioner is authorized by this Act to carry out.

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

### Power of Commissioner to take materials from land

**20c.** The Commissioner shall have and may, subject to the approval of the Minister, exercise all the powers of a council under sections 416 to 420 (both inclusive) of the *Local Government Act, 1934-1941*, and the provisions of those sections shall, *mutatis mutandis*, apply to the Commissioner in the exercise of the said powers as if the words "Commissioner of Highways" were substituted for the word "council" wherever it appears in those sections: Provided that those provisions of paragraph (a) of section 416 of the said Act which relate to the distances from any works or undertakings within which the powers conferred by that section may be exercised shall not apply to the Commissioner when exercising any power conferred by or pursuant to this section.

### Mode of entering into contract

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

- I. Any contract which, if made between private persons would be by law required to be in writing and under seal, the Commissioner may make in writing in his corporate name under the common seal, and in like manner may vary or discharge the same:
- II. Any contract which, if made between private persons, would be by law required to be in writing and signed by the parties thereto, the Commissioner may make in writing in his corporate name signed by him and in like manner may vary or discharge the same:
- III. Any contract which, if made between private persons, would be by law valid although made by parol only and not reduced into writing, the Commissioner may make by parol only without writing, and in like manner may vary or discharge the same.

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

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

#### **Power of Commissioner to deal with plant**

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

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

#### **Research, etc. by Commissioner**

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

- (a) the suitability of materials for road construction and maintenance;
- (b) the extent of the resources of the State in such materials and the utilization of those resources;

and

- (c) methods of road construction and maintenance suitable for the State or any part of the State.

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

- (a) the investigation of transport by road in relation to other means of transport;

and

- (b) research into road safety, the design of vehicles and the behaviour of road users.

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

#### Advice to councils

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

#### Duty of councils to furnish information

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

#### Power of Commissioner as to roads and works

26. (1) Subject to the approval of the Minister, the Commissioner may—

- (a) construct, reconstruct, or repair any road or any work connected with any road:
- (b) undertake for such term as he thinks fit the maintenance and repair of any road or any work connected with a road:

Provided that—

\* \* \* \* \*

- (ii) before exercising any of his powers under this subsection as to a road or work which is within a district the Commissioner shall give notice in writing to the council of that district of his intention, and of the date when he proposes to commence any operations or take over the maintenance and keeping in repair of any road or work.

(2) Upon the giving of a notice under subsection (1) of this section the Commissioner shall have and may exercise all the powers for the purpose of the construction, reconstruction, repair, or maintenance of the road or work which the council in whose district the road or work is situated has or may exercise with respect to that road or work under any Act; and while operations are being carried on by the Commissioner pursuant to the notice, or during the term specified therein, the exercise by the said council of the said powers shall be suspended, except so far (if at all) as directed by the Commissioner.

(3) Upon the completion of the work mentioned in the notice, the date of which shall be notified in writing by the Commissioner to the council, or upon the expiration of the term mentioned in the notice (as the case may be) the suspension of the powers of the council shall cease.

(3a) When the Commissioner is constructing, reconstructing, or repairing any public road or work under this section he may at the expense of the council in whose district the road or work is situated carry out such works on or connected with the road or work so being constructed, reconstructed or repaired as that council may in writing request.

(3b) For the purpose of constructing, reconstructing, repairing, or maintaining any road or work outside a district the Commissioner may exercise any of the powers incidental thereto which a council could exercise if the road were within its district.

(3c) When the Commissioner is of opinion that a road or work is unsafe to pedestrians or vehicles or that road or work is likely to be damaged if used by vehicles or vehicles of a class of vehicles, the Commissioner may—

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

(3d) Where the Commissioner closes or proposes to close under subsection (3c) a road or work that is within a district, the Commissioner shall as soon as practicable give notice thereof in writing to the council of that district.

(3e) The Commissioner shall display such notices and make such provision for lights or other warning devices as is necessary in the interests of public safety.

(3f) A notice under subsection (3e) may state—

- (a) that the road or work is closed to all pedestrians or all vehicles or both of them;  
or
- (b) that the road or work is closed to vehicles exceeding a specified weight or vehicles of a specified class,

and the notice shall, subject to subsection (3g), have effect according to its tenor.

(3g) A person shall not, except with the permission of the Commissioner—

- (a) drive, ride or propel a vehicle on or over a road or work in contravention of a notice under subsection (3f);
- (b) drive, ride or lead any horse or cattle on a road or work that is closed to all vehicles under this section; or
- (c) remove or damage any fence barrier notice light or other warning device erected displayed or provided under this section.

Penalty for contravention of this subsection: One hundred dollars.

(4) The powers of the Commissioner under this section are in addition to his general powers under this Act.

#### **Power of Commissioner to construct kerbing, etc.**

**26a.** (1) Subject to the approval of the Minister, the Commissioner may construct, erect, and maintain on any public road, or on the boundary of any such road, or (with the consent of the owner) on any land adjoining such a road, all or any of the following things, namely:—

- (a) kerbing;
- (b) guard fences;
- (c) posts and rails.

(2) Nothing in this section shall be held to abridge any other power of the Commissioner under this Act.

(3) Any kerbing, guard fences, posts or rails constructed, erected, or maintained before the commencement of this Act on any public road, or boundary thereof, or on any land adjoining such a road, with the consent of the owner of such land, shall be deemed to have been lawfully erected, constructed, and maintained.

**Validation of certain things done under this Act, etc.**

**26aa.** Notwithstanding anything in the *Anzac Highway Agreement Act, 1937-1940*, as in force before the day of commencement of the *Highways Act Amendment Act, 1969*, any act or thing done or purporting to have been done pursuant to this Act by or on behalf of—

(a) the Commissioner;

or

(b) any council,

before that day, in relation to the roadway referred to in clause 2 of the Agreement set out in the schedule to the *Anzac Highway Agreement Act, 1937-1940*, as then in force, shall for all purposes be deemed to be and always to have been validly, effectually and lawfully done.

**Power to plant trees**

**26b.** (1) Subject to the consent of the Minister, the Commissioner may, from time to time, plant trees in any road and may erect tree-guards, stakes, and other supports thereof.

(2) The Commissioner shall not be liable for any damage to any property which results from the planting of any tree in any road.

**Lighting of roads**

**26c.** (1) The Commissioner may with the approval of the Minister, cause any road or part of a road to be lighted as the Commissioner deems requisite. For that purpose the Commissioner shall have and may exercise all the powers of a council conferred by sections 483 and 484 of the *Local Government Act, 1934-1941*, and may enter into any contract with any person for the supply of electricity or other illuminant and for any requisite apparatus. Any person with whom the Commissioner contracts for lighting any such road or any part thereof shall, in respect of that road or part, have and may exercise the powers conferred by section 483 of the *Local Government Act, 1934-1941*.

(2) The Commissioner may require any council within whose district is situated any road or part of a road which is lighted as aforesaid to pay to him one half of the cost of lighting so much of the road as lies within the district.

(3) Any payments so required by the Commissioner shall be made at such times as are from time to time determined by the Commissioner.

\* \* \* \* \*

**Illumination of traffic islands and structures**

**26ca.** If he considers it necessary for the safety, guidance or direction of road or river traffic so to do, the Commissioner may, with the approval of the Minister, cause any traffic island, roundabout or dividing strip on any road which is outside a municipality or township within the meaning of the *Local Government Act, 1934-1961*, or any structure for the maintenance of which the Commissioner is responsible and which is outside a municipality or township within the meaning of the said Act, or any ferry or ferry approach to be illuminated as the Commissioner deems requisite. For the purposes of this section the Commissioner may enter into any contract with any person for the supply of electricity or other illuminant and for any requisite apparatus and machinery and shall have and may exercise all the powers of a council conferred by sections 483 and 484 of the *Local Government Act, 1934-1961*.

**Power of Commissioner to destroy grass, etc., on roads**

**26d.** The Commissioner may burn or otherwise destroy any grass, weeds, or other similar growth upon any road which is constructed, reconstructed, repaired, or maintained by the Commissioner or which is under the care, control and management of the Commissioner and for that purpose shall have the powers and immunities of a district council under subsection (3) of section 4 and section 5a of the *Bush Fires Act, 1933-1942*.

**Removal of vehicles causing obstruction or danger**

**26e.** (1) If a vehicle is left unattended on the road known as the South-Eastern Freeway—

(a) for a period of twenty-four hours or more;

or

(b) in a position that is likely to obstruct traffic or is likely to cause injury or damage to any person or property on the road,

any officer authorized by the Commissioner may remove that vehicle to a convenient place, and for that purpose may enter the vehicle and drive it or arrange for it to be lifted, towed or driven.

(2) As soon as practicable after removal of the vehicle, the Commissioner shall give written notice of the removal, and of the place to which the vehicle was removed, to the owner of the vehicle.

(3) A notice under subsection (2) of this section shall be given—

(a) by serving the notice personally or by post on the owner of the vehicle;

or

(b) if the identity or whereabouts of the owner has not, after reasonable inquiry, been ascertained—by publication of the notice in two daily newspapers circulating generally in the State.

(4) If the owner of the vehicle does not, within one month after the notice is given, pay all expenses in connection with the removal, custody, and maintenance of the vehicle, and of serving or advertising the notice, and take possession of the vehicle, the Commissioner may sell the vehicle and apply the proceeds as follows:—

(a) firstly, in payment of the costs of and incidental to the sale;

(b) secondly, in payment of the costs of and incidental to—

(i) the removal, custody, and maintenance of the vehicle;

and

(ii) the service or advertisement of the notice under this section;

(c) thirdly, in payment of the balance to the owner.

(5) If, after reasonable inquiry, the owner cannot be found, the balance shall be paid into the Highways Fund.

(6) Where the Commissioner is of the opinion that, due to the age or state of disrepair of the vehicle, it is not practicable to sell the vehicle, the Commissioner may dispose of it in any manner that he thinks fit.

(7) The owner of the vehicle shall be liable to the Commissioner for any expenses incurred by the Commissioner in the removal, custody, maintenance, sale or attempted sale, or otherwise in the disposal, of the vehicle under this section and the Commissioner may recover so much of those expenses as have not been satisfied by any proceeds from the sale of the vehicle as a debt due to him.

#### **Tramways may be laid on roads for transporting materials**

27. (1) The Minister may authorize the Commissioner to construct tramways, aerial tramways, steel tracks, and other works on any road for the purpose of transporting materials for facilitating the exercise of his powers under this Act; and the authority so given shall be sufficient authority for the Commissioner to construct and maintain such tramways, aerial tramways, steel tracks, and other works, and to use the same for the purpose aforesaid, and for all purposes incidental thereto.

(2) For the purposes of this section "road" shall include land used as a travelling stock road or reserve.

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

#### **Powers of Commissioner to open and close main roads**

27a. (1) The Commissioner may, subject to the approval of the Minister, widen or make any deviation of any road, and for the purpose thereof may acquire any land by agreement or compulsory process. The provisions of the *Planning and Development Act, 1966-1967*, shall not apply to any land acquired as aforesaid nor to any transfer or conveyance of any such land pursuant to this subsection.

\* \* \* \* \*

#### **Closing of roads**

27aa. (1) If the Commissioner—

- (a) is of opinion that it is expedient that any road or any part of a road should be closed or that any easement over or restrictive covenant on any land should be extinguished;
- (b) has served on the owner of any land which the Commissioner after making inquiry into the matter, considers is likely to be substantially affected by such closing of a road or part of a road or extinguishment of an easement or restrictive covenant, notice of such proposed closing or extinguishment and has given to all such owners an opportunity of setting forth their objections to such closing or extinguishment;

and

(c) has made provision—

- (i) with respect to pipes, wires, apparatus, sewers, drains, tunnels, conduits, poles, posts and fixtures lawfully upon, over, across or under any such road or part thereof;
- (ii) for access to any land likely to be prejudicially affected by any such closing or extinguishment;

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

and

(iv) for the rectification or other alteration of documents of title to lands the descriptions of which are likely to be affected by any closing or extinguishment,

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

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

(a) personally or by post;

or

(b) if the person's whereabouts are not known to the Commissioner—

(i) by publication of a copy of the notice in a newspaper circulating generally throughout the State;

or

(ii) by affixing it in a prominent place on that land.

#### **Effect of proclamation under s. 27aa**

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

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

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

#### **Duty, etc., of Registrar-General**

**27ac.** (1) Where the land comprised in any road so closed under section 27ab of this Act or any part thereof is land under the *Real Property Act, 1886-1969*, the Registrar-General is hereby directed and empowered to cancel the existing grant or certificate of title therefor and any instrument, entry or memorial in the register book and any plan of subdivision altogether or to such extent as is necessary in consequence of the proclamation and the Registrar-General may issue to the Commissioner a certificate of title in respect of any such land.

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

(3) If any such proclamation for closing a road or part thereof or extinguishing an easement or restrictive covenant affects the right, estate or interest of the registered proprietor of land under the *Real Property Act, 1886-1969*, included in any certificate of title in respect of any easement or restrictive covenant appearing thereon or implied by statute appurtenant to such land the Registrar-General shall cancel such easement or restrictive covenant to the extent to which it has been determined or extinguished upon the original of such certificate, and also upon the duplicate certificate of title when brought to him for that purpose or when the same is lodged in the Lands Titles Registration Office for the purpose of any dealing with the land comprised therein.

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

(5) Where the description of any land under the *Real Property Act, 1886-1969*, or any certificate of title is or may be affected by any proclamation closing a road or part thereof or extinguishing an easement or restrictive covenant the Registrar-General is hereby empowered to make an amendment in such description or certificate which is in his opinion necessary or desirable.

(6) Where the land comprised in any road so closed or any part thereof is not land under the *Real Property Act, 1886-1969*, the Registrar-General may, upon a request in writing from the Commissioner and upon payment of such fees and charges as would have been payable if the request had been an application to bring the land under the *Real Property Act, 1886-1969*, issue to and in the name of the Commissioner a certificate of title under the *Real Property Act, 1886-1969*, for the said land but before issuing a certificate of title as aforesaid the Registrar-General may require the Commissioner of Highways to deposit with him a plan or map of the land, as if the request had been an application to bring the land under the *Real Property Act, 1886-1969*.

(7) No provision of section 27aa, 27ab or this section shall be read and construed as disentitling the Registrar-General to demand any fees specified in or under the *Real Property Act, 1886-1969*, and the provisions of those sections shall apply notwithstanding the provisions of the *Real Property Act, 1886-1969*.

(8) In this section "the Registrar-General" means the person for the time being holding the office of Registrar-General under the *Real Property Act, 1886-1969*, or the Registrar-General of Deeds under the *Registration of Deeds Act, 1935*, as amended.

#### **Consolidation of certificates of title to be issued**

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

- (a) the Commissioner shall give a certificate to the Registrar-General that the land is to be vested in the registered proprietor, and if the land is to be subject to any easement, the certificate shall describe the easement;
- (b) in lieu of a certificate of title being issued for the land comprised in the closed road, the Registrar-General may, upon the production of such surveys, duplicate certificates of title and other documents as he may require, issue a

certificate of title comprising the contiguous land and the land comprised in the closed road and make such consequential alterations in the register book as may be necessary or expedient;

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

#### **Consolidation of existing titles to closed roads**

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

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

- (a) the certificate of title so issued shall be expressed to be subject, and the land therein described shall be subject, to such encumbrances, liens, interests, easements, and trusts as were shown by the certificate of title for the contiguous land immediately prior to its consolidation and by the certificate given by the Commissioner;

and

- (b) those easements that are appurtenant to the contiguous land shall be appurtenant to the land comprised in the certificate of title and the certificate of title shall be appropriately endorsed by the Registrar-General.

#### **Merger of land comprising consolidated titles**

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

#### **Widening and deviation of roads**

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

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

(2) The Commissioner shall give notice in writing as hereinafter provided in this subsection to the following persons:—

- (a) The owner of any land which is situated between any such old boundary and any such new boundary;
- (b) The occupier of any such land;
- (c) Any person who, pursuant to *The Real Property Act, 1886-1945*, or the *Registration of Deeds Act, 1935*, is registered as the mortgagee or encumbrancee of any such land.

The notice shall state that it is the intention of the Commissioner to deposit the plan as provided by this section and shall set out the effect of such deposit and of this section. The notice shall be accompanied by a copy of the plan or of such portion thereof as includes the land to which the notice relates.

The notice shall also state that the person to whom the notice is given may object in writing to the proposed widening of the road within the time, being not less than one month, specified in the notice.

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

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

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

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

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

- (a) the Commissioner may, subject to the approval of the Minister, acquire any land between any such old boundary and any such new boundary;
- (b) where the whole of such land is clear of buildings the owner of any such land may, on giving one month’s notice in writing to the Commissioner, require the Commissioner to acquire the land and the Commissioner shall thereupon be liable to pay compensation for the land to the persons entitled thereto.

(6) Any compensation payable by the Commissioner on the acquisition of any land pursuant to subsection (5) of this section shall not include—

- (a) the value of any building, fence or other structure or any well, dam or other water supply erected or constructed upon or in the land after the day of deposit;

or

- (b) any enhancement of the value of the land by reason of any alteration of, addition to or repair of any building, fence, other structure, well, dam or other water supply carried out after the day of deposit and without the consent of the Commissioner.

(7) For the purposes of this section and of any proceedings thereunder—

(a) the plan deposited by the Commissioner shall be *prima facie* evidence as to what buildings, fences and other structures and wells, dams and other water supplies were erected or constructed upon or in the land at the day of deposit;

and

(b) it shall lie upon the person claiming compensation to prove that any alteration, addition or repair referred to in paragraph (b) of subsection (6) of this section was carried out with the consent of the Commissioner.

(8) The Commissioner may by notice in writing consent to any owner erecting any building, fence or structure or well, dam, or other water supply upon or in any such land after the day of deposit and in any such notice the Commissioner may agree to any special arrangements as to the removal of the building, fence or structure or well, dam, or other water supply upon the acquisition of the land by the Commissioner or otherwise as appears just to the Commissioner.

(8a) The Commissioner may by notice in writing consent to any owner adding to, altering or repairing any building, fence or structure or well, dam or other water supply upon or in any such land, after the day of deposit and in any such notice the Commissioner may agree to any special arrangements in relation to any such addition, alteration or repair as shall apply upon the acquisition of the land by the Commissioner or otherwise as appears just to the Commissioner.

(9) Any notice required by this section to be given to or served upon any person may be given or served—

(a) by delivering the notice to that person; or

(b) by sending the notice by registered post to the last-known place of abode or business of the person,

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

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

(11) In this section—

“building” includes a part of a building:

“owner” means—

(a) the registered proprietor under *The Real Property Act, 1886-1945*, of any estate of freehold in possession;

(b) as regards land not under *The Real Property Act, 1886-1945*, any person who is seised of any estate of freehold in possession, or if the said estate is subject to redemption under any mortgage, the person who upon payment of moneys secured by such mortgage would be entitled to a conveyance of such an estate;

(c) as regards land belonging to the Crown, any person who has agreed to purchase the land from the Crown or is the lessee of the land under any lease granted by the Crown:

“structure” includes part of a structure.

**Duty to register effect of plan**

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

- I. If any such land is under the provisions of *The Real Property Act, 1886-1945*, the Commissioner shall register with the Registrar-General an instrument requesting the Registrar-General to make an endorsement as provided by this paragraph and, notwithstanding the provisions of *The Real Property Act, 1886-1945*, the Registrar-General shall endorse on the certificate of title of that land a memorandum referring to the said plan and to the effect that the land is subject to acquisition by the Commissioner of Highways pursuant to section 27b:
- II. If any such land is not under the provisions of *The Real Property Act, 1886-1945*, the Commissioner shall register a memorial of a certificate by him containing the name of the owner, the description of the land, a reference to the said plan, and a statement to the effect that the land mentioned in the memorial is subject to acquisition by the Commissioner of Highways pursuant to section 27b:
- III. If any such land is under the provisions of any of the Acts relating to Crown lands and is included in any current registered lease or agreement with covenant to purchase, the Commissioner shall register with the Registrar-General an instrument requesting the Registrar-General to make an endorsement as provided by this paragraph and, notwithstanding the provisions of the *Real Property Act, 1886-1969*, the Registrar-General shall endorse on the relevant Crown lease or agreement with covenant to purchase a memorandum referring to the said plan and to the effect that the land is subject to acquisition by the Commissioner of Highways pursuant to section 27b of this Act.

**Vesting of roads outside districts**

**27ca.** (1) All public roads (whether main roads or not) which are outside a district, together with the timber growing thereon, and the bridges thereof, and all public works connected therewith, and all lamps, direction boards, mile stones, mile posts, posts, rails, walls, chains, fences, and other things erected thereon or affixed thereto shall be vested in the Minister of Local Government and be under the care, control, and management of the Commissioner. If any moneys are appropriated or allotted for expenditure by the Engineer-in-Chief upon the construction or repair of any such public 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) For the purposes of this section—

“public road” means—

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

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

#### **Fences and gates on roads in outside areas**

**27d.** (1) The Minister may, on the recommendation of the Commissioner, grant a written permit to any person permitting him to erect and keep erected all or any of the following things, namely, any fence, gate, ramp, or petrol pump, on or across any road not within the boundaries of any district. Such a permit shall be subject to any terms or conditions which the Minister fixes on the recommendation of the Commissioner.

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

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

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

#### **Powers of councils executing works in outside areas**

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

#### **Power to enter upon land**

**27f.** (1) In this section, "owner", in relation to land, means a person having an estate or interest (legal or equitable) in land and includes a person having any easement right power or privilege over affecting or in connection with land.

(2) For the purpose of—

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

the Commissioner an inspector or other officer authorized by the Commissioner may, upon giving notice in writing to the owner of any land, enter upon the land and perform all or any of the functions specified in the preceding paragraphs of this subsection.

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

- (a) by post addressed to the owner at the home or place of business of the owner; or

(b) to any person apparently over the age of fourteen years at the home or place of business of the owner.

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

(5) The amount of the compensation shall, notwithstanding section 29 of this Act, be determined as provided by Division II of Part IV of the *Compulsory Acquisition of Land Act, 1925-1959*, as if the Commissioner were the promoters as defined by that Act.

### Annual report

28. The Commissioner shall not later than the thirtieth day of September in every year present to the Minister a report upon the operation of this Act during the previous financial year. The report shall as soon as practicable after the receipt thereof be laid before both Houses of Parliament.

### Protection to officers

29. (1) No matter or thing done by the Commissioner or any inspector or other officer in good faith for the purpose of executing this Act shall subject the Commissioner, or such inspector or officer, to any liability in respect thereof.

(2) No action shall be brought against the Commissioner or any inspector or other officer for or on account of any matter or thing done or committed by them or him in the execution or intended execution of their or his duty or office under this Act, unless such action is commenced within six months after the cause of action arises.

### Requirement as to approval of the Minister to certain transactions

29a. Notwithstanding any provision of this Act the Commissioner shall not—

(a) commence any works for the construction or reconstruction of any road:

(b) cut down, destroy, or injure any tree on any main road,

unless he has first obtained the approval of the Minister thereto.

The Minister may, if he thinks fit, give a standing approval, subject to any conditions which he imposes, to cover any class of works or payments.

In this section “work of reconstruction” means any work or operation whereby a road of any type is converted or is to be converted into a road of any other type.

### *Proclamation of Main Roads*

#### Main roads may be proclaimed

30. (1) The Governor may, on the recommendation of the Commissioner, by proclamation declare any road to be a main road, and may in like manner and on the like recommendation declare that any main road shall cease to be a main road or make any alteration in any proclamation for the time being in force under this section: Provided that if it is intended to make any such proclamation (not being a proclamation which re-enacts any other proclamation made under this section without making any alteration of the provisions thereof) with respect to any road situated within any district, the council of such district shall be informed of such intention one month at least before the date on which it is intended to make such proclamation.

(2) In considering whether to make any such recommendation, the Commissioner shall take into account—

- (a) the moneys voted, or likely to be voted, by Parliament for main roads;
- (b) whether the road is or will be the main trunk route connecting any large producing area, or any area capable of becoming in the near future a large producing area, with its market or nearest port or railway station;
- (c) whether the road is or will be the main trunk route of intercommunication between two or more large producing areas, or areas capable of becoming in the near future large producing areas, or between two or more large centres of population;
- (d) whether the road is or will be the main trunk route between the capital and any large producing area or any large centre of population;
- (e) whether the road is or will be the main trunk route between the capitals of this State and any other State; and
- (f) whether the area through which the road passes is, or in the near future will be, sufficiently served by a railway or railways.

(2a) The Governor, on the recommendation of the Commissioner, may by proclamation give a distinctive name to any main road or any part thereof, and may, on the said recommendation, by proclamation revoke or vary any such proclamation.

(3) All lines of road, together with all public works connected therewith, declared by any proclamation in force at the commencement of this Act to be main roads, shall be deemed to be roads declared under this Act to be main roads.

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## PART IIA

*Proclamation of Controlled-Access Roads***Power to proclaim controlled-access roads**

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

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

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

(2) Forthwith after the making of any proclamation under paragraph (a) of subsection (1) of this section the Commissioner shall forward by post to the council of the district in which the controlled-access road is situated a copy of the proclamation and thereupon the Commissioner shall have and may exercise in respect of such controlled-access road all the powers for the purpose of construction, reconstruction, repair and maintenance which the said council has or may exercise with respect to such road under any Act and the exercise by the said council of any of the said powers shall be suspended except so far as the Commissioner may direct.

(3) Upon the making of any proclamation under paragraph (b) of subsection (1) of this section the powers of the Commissioner under subsection (2) of this section shall cease and revert to the council of the district concerned.

(4) Notwithstanding the provisions of the *Local Government Act, 1934-1959*, or of any other Act, it shall not be lawful without the consent in writing of the Commissioner to construct form or pave any means of access to a controlled-access road: Provided that the Commissioner shall not, except on payment of compensation as hereinafter provided, withhold such consent in any case where such construction, formation or paving has been commenced before the making of the proclamation in respect of such controlled-access road.

**Notice of proclamations, etc.**

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

**Provision for compensation**

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

(2) Any question as to whether any compensation is payable or as to the amount of compensation payable under this Part shall, in default of agreement (which the Commissioner is hereby authorized to make) be determined by the Land and Valuation Court constituted under the *Supreme Court Act, 1935-1969*.

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

Provided that—

- (i) In assessing the market value of the estate or interest in the land as so prejudiced, there shall be taken into account any modifications of the prejudice by reason of any permission given by the Commissioner under this Part and any conditions attached to such permission, or by reason of any undertaking given by the Commissioner, and any such permission, conditions or undertaking shall be embodied in the award of compensation;
- (ii) There shall be taken into account any benefit which may accrue to any land in which the claimant has an estate or interest by reason of the construction or improvement by the Commissioner or by any other person or authority, at any time after the date on and from which the limitation of access in question pursuant to this Part took effect, upon land adjacent to the land in respect of which compensation is claimed, of any road or any other way subsidiary to such a road, or by reason of the proclamation of the controlled-access road concerned;
- (iii) If the land has, since the date on and from which the limitation of access in question came into force, become or ceased to be separate from other land, the amount of compensation shall not be enhanced by reason of its having so become or ceased. For the purposes of this paragraph land shall be deemed to be separate from other land when the person having the estate or interest therein in respect of which compensation is claimed has not the like estate or interest in the other land.

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

#### **Powers of Commissioner to erect notices and signs**

**30c.** In addition to the powers conferred by this Act and by section 22 of the *Road Traffic Act, 1961*, the Commissioner may erect notices of any kind and mark lines, words or signs on any part of any road for the purpose of indicating the division of the paved portion of that road into traffic lanes and for the direction and guidance of traffic.

#### **Powers of Commissioner to erect fences and barriers**

**30d.** (1) In addition to the powers conferred by section 26a of this Act and notwithstanding the provisions of the *Local Government Act, 1934-1959*, the Commissioner may erect and maintain fences, walls, posts or barriers across any road for the purpose of preventing access to or egress from any controlled-access road.

**Closure of access to controlled-access roads**

(1a) In addition to the powers conferred by section 26a of this Act and notwithstanding the provisions of the *Local Government Act, 1934-1971*, the Commissioner may construct, erect and maintain kerbs, fences, walls, posts or barriers on a controlled-access road, on the boundary of any such road including a distance of up to thirty metres along any road abutting or adjacent to any controlled-access road, between the carriageway of a controlled-access road and the carriageways of adjacent local access roads, or (with the consent of the owner) on any land adjoining such a controlled-access road, for the purposes of separating the movement of traffic on the carriageways of the controlled-access road from the movement of traffic entering or leaving land abutting, or adjacent to, the controlled-access road whether such movement takes place on a local access road or otherwise.

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

**Access to property**

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

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

(a) close by fencing or otherwise a means of access to any land from a controlled-access road;

or

(b) provide a new means of access to any land from a controlled-access road.

(3) Nothing in subsection (2) of this section shall authorize the Commissioner to close off the means of access to any land from a controlled-access road unless he is satisfied that—

(a) no such means of access is reasonably required for the land;

or

(b) other reasonably convenient means of access from that controlled-access road are available for that land.

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

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

(a) be issued subject to such conditions—

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

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

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

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

as to the Commissioner seem necessary or expedient;

and

(b) be revoked or amended at any time.

**Offences in relation to controlled-access roads**

30e. Any person who—

- (a) enters or leaves a controlled-access road otherwise than at a place provided for or approved for the purpose by the Commissioner;
- (b) without the consent of the Commissioner constructs, forms or paves any means of access to a controlled-access road or does not comply with the conditions of any consent given in writing by the Commissioner;
- (c) removes or damages any fence, wall, post, barrier or other impediment to the passage of traffic erected by the Commissioner across a road or upon any controlled-access road;
- (d) obliterates, removes or damages any traffic sign or notice erected by the Commissioner;
- (e) obliterates, removes or damages any lines, words or signs marked by the Commissioner upon any road;
- (f) uses a controlled-access road for movement of livestock except by transport in a motor vehicle in accordance with the provision of this Act and any regulations made in that behalf;
- (g) uses a traffic lane of a controlled-access road for traffic otherwise than in accordance with the provisions of this Act and any regulation made in that behalf;

shall be guilty of an offence against this Act and liable to a penalty not exceeding one hundred dollars.

PART III  
FINANCIAL PROVISIONS  
*The Highways Fund*

**Highways Fund**

31. (1) There shall be a Highways Fund which shall comprise all moneys paid into the Main Roads Fund before the commencement of the *Highways Act Amendment Act, 1938*, and all moneys paid into the Highways Fund as provided by this section.

(2) There shall be paid into the Highways Fund—

- (a) any amounts paid by the Treasurer as provided by subsection (3) or subsection (4):
- (b) all moneys by any law of the State directed to be paid into the said fund or into the Main Roads Fund:
- (c) any loans raised and appropriated for purposes of the Highways Fund:
- (d) any moneys paid to defray the cost of any operations carried out pursuant to the powers conferred on the Commissioner under paragraph (g) of subsection (1) of section 32 and any interest paid pursuant to the said paragraph:
- (e) any moneys repaid by a council pursuant to paragraph (h) of subsection (1) of section 32 and any interest paid by a council pursuant to the said paragraph:
- (f) any moneys paid by a council pursuant to section 26c:

\* \* \* \* \*

- (h) any other moneys received in repayment of moneys disbursed from the Highways Fund or otherwise received under this Act:
- (i) any amounts paid by way of fees or charges for the use of any ferry or sea transport service operated under this Act.

(3) The Treasurer shall, not less frequently than once in every three months, pay into the Highways Fund all amounts collected or received in respect of licence fees and registration fees under the *Motor Vehicles Act, 1959-1963*, after deducting therefrom such amount as is sufficient during the financial year in which the said amounts are collected or received, to pay—

- (i) the interest on the debit balance for the time being outstanding in the accounts of the Treasurer in respect of loans raised for roads and bridges; and
- (ii) the sinking fund payments payable by the State under the financial agreement ratified by the *Financial Agreement Act, 1927*, in respect of loans raised for roads and bridges; and

\* \* \* \* \*

(iv) the administrative expenses of the Highways and Local Government Department and the Motor Vehicles Department.

(4) The Treasurer may in any financial year advance out of the general revenue and pay into the said fund any sum not exceeding the amount which he anticipates will in that financial year be received or collected and be payable to the said fund as provided by subsection (3). In any such case, the sum so advanced shall be deducted from the amount to be paid during the said financial year into the said fund as provided by subsection (3).

(5) Any reference in any other Act to the Main Roads Fund shall be deemed to be a reference to the Highways Fund.

#### **Adjustment of Highways Fund**

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

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

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

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

#### **Application of Highways Fund**

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

- (a) in the payment of the wages, salaries, and expenses incurred in connection with carrying out the provisions of this Act;
- (b) to defray the cost of the operations undertaken by the Commissioner under this Act in connection with roads and works appertaining to roads;
- (c) in payment to each council of the amount of its annual grant for main roads, as determined under this Act;
- (d) in defraying the cost of any work required to be executed by the State pursuant to any Act of or agreement or arrangement with the Commonwealth relating to the construction, reconstruction and maintenance of roads;
- (e) in paying any grants to municipal and district councils pursuant to Part XVI. of the *Local Government Act, 1934-1936*;
- (f) in paying any grants, authorized by the Minister on the recommendation of the Commissioner to councils for roads (other than main roads);
- (g) in defraying the cost of any operations in connection with any roads and works appertaining to any roads in any case where the said cost or any part thereof is undertaken to be repaid by any council or statutory or public body on such terms and conditions for the payment thereof as may, with the approval of the Minister, be agreed between the Commissioner and the council or statutory or public body, including the payment of interest;
- (h) with the approval of the Minister, in making advances to any council, on such terms and conditions as may be agreed between the Commissioner and the council for the repayment thereof and the payment of interest thereon, for the purpose of enabling the council to purchase any plant for road making purposes or for the purposes of the construction of dams or other works for the storage or supply of water and, notwithstanding the provisions of the *Local Government Act, 1934-1941*, any council is hereby authorized to receive any such advance and to enter into any agreement as aforesaid;

- (i) in repaying to the Treasurer moneys advanced by him in accordance with the terms of such repayment as from time to time agreed upon between the Treasurer and the Minister;
- (j) in making advances on such terms and conditions as the Minister may approve for the purpose of assisting in the re-housing of persons dispossessed of housing as a consequence of works carried out or proposed to be carried out by the Commissioner;
- (k) in repaying to the Treasurer amounts equal to the amounts expended by the Commissioner out of moneys provided by Parliament for the purpose of the purchase of land the whole or part of which was situated within the alignment of a road proposed in the Metropolitan Adelaide Transportation Study but not approved;

(l) in—

- (i) allocating, at regular intervals, for the purposes of road safety services provided otherwise than by the Police Department, an amount equal to one-sixth of the fees received by the Registrar of Motor Vehicles during those intervals for the issue of driver's licences in respect of which the full licence fee has been paid, together with—

- (A) if fees are separately charged for the registration of the prime mover and semi-trailer portions of an articulated motor vehicle—one-hundredth of the fees received by the Registrar of Motor Vehicles during those intervals for the registration of commercial motor vehicles (other than prime movers and trailers) that have an unladen mass of more than 5 tonnes and for the registration of prime movers;

or

- (B) if fees are not so charged—one-hundredth of the fees received by the Registrar of Motor Vehicles during those intervals for the registration of commercial motor vehicles that have an unladen mass of more than 5 tonnes;

and

- (ii) paying to the Treasurer from the moneys so allocated, such amounts as the Treasurer certifies have been lawfully expended in, or in connection with, the provision of those road safety services;

(m) in—

- (i) allocating for the purposes of road safety services provided by the Police Department—

- (a) an amount, in respect of the financial year commencing on the first day of July, 1983, of seven million seven hundred thousand dollars;

and

- (b) an amount, in respect of each subsequent financial year, that has been prescribed by regulation;

and

- (ii) paying to the Treasurer from the moneys so allocated, such amounts as the Treasurer certifies have been lawfully expended on, or in connection with, the provision of those road safety services;
  - (n) in defraying the cost of the provision or operation of any ferry service or sea transport service operated under this Act and works ancillary thereto;
  - (o) in defraying the cost of installing, maintaining, altering, operating or removing any traffic control devices that the Commissioner is authorized or required by the *Road Traffic Act, 1961-1976*, to install, maintain, alter, operate or remove;
- and
- (p) in defraying the administrative cost of any function carried out by the Commissioner, otherwise than under this Act, with the approval of the Minister.

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**Commissioner's control of fund**

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

**Commissioner to determine amount of each council's contribution**

35. (1) The Minister, on the recommendation of the Commissioner, shall, as early as possible in each financial year, determine—

- (a) the amount of money (if any) to be allocated to each council for the purpose of the construction, maintenance, and keeping in repair of the main roads (not being main roads which are being maintained and kept in repair by the Commissioner pursuant to section 26 of this Act) within its district during the particular financial year out of the moneys available for distribution between the councils for the said purpose;
- (b) the amount of money (if any) to be expended by each council out of its revenue for the said purpose during such financial year in addition to its proportion of the annual subsidy allocated to it pursuant to a determination under subdivision (a) hereof;

\* \* \* \* \*

\* \* \* \* \*

Provided that—

- (i) in no case shall the total amount of money determined under subdivision (b) hereof exceed one-half of the amount of money determined under subdivision (a) of this subsection; and
- (ii) nothing in this subsection shall affect the liability of any council to pay to the Commissioner the cost of any work carried out by the Commissioner (whether before or after the enactment of this proviso), at the request of the council under subsection (3a) of section 26 of this Act.

(2) In determining the matters mentioned in subsection (1) of this section the Minister shall take into account—

- (a) the total amount of money available or likely to be available for distribution between the councils for main roads;
- (b) the amount of the revenue received by each council during the preceding financial year, and the amount appropriated and carried to the account of the Main Roads Fund by each council;
- (c) the balance standing to the credit of the Main Roads Fund of each council;
- (d) the relative distance of main roads within the districts of the councils, and the traffic thereon;
- (e) the distance of main roads which are being kept in repair and maintained by the Commissioner for a term pursuant to a notice under section 26 of this Act;
- (f) the cost of constructing, reconstructing, or repairing any main or other public road within the district of any council, or of carrying out any work connected therewith; and
- (g) the area of land within the district of such council which is not ratable.

(2a) Where a main road or any part of a main road abuts on or is substantially coincident with the boundary between two districts, the Commissioner shall determine what part of the total length of that road or part of a road shall be deemed to be in each of such districts and the part so determined to be in each district shall be treated as a main road within such district for all purposes of this section.

\* \* \* \* \*

#### **Council's contribution may be paid out of revenue or raised by special rate**

36. (1) The amount of the moneys mentioned in subdivision (b) of subsection (1) of the next preceding section shall be appropriated by the council out of its revenue.

(2) For the purpose of raising the money to pay such amount, or any part of such amount, the council may, without the consent of the ratepayers, declare a special rate not exceeding two cents in the dollar on the ratable property within its district, or in the case of any district as regards which Division III of Part X of the *Local Government Act, 1934*, is in operation, not exceeding an amount in the dollar that would produce a sum equal to that which could, if the said Division were not in operation in the district be raised by a rate of two cents in the dollar. Such special rate shall be in addition to any special rate authorized to be declared and levied by a council under the *Local Government Act, 1934*, and the amount of such special rate shall not be taken into consideration in determining whether the limit up to which a council may rate has been reached.

(3) Except in so far as inconsistent with this Act, all the provisions of the *Local Government Act, 1934*, shall apply to and in respect of the declaring, levying, and recovery of the said special rate.

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**Annual schedule of works**

**36b.** (1) Before the commencement of every financial year the Commissioner shall prepare and submit to the Minister a schedule setting out—

- (a) the programme proposed for that financial year for the construction or reconstruction of main and other roads and of any works connected with any such roads;
- (b) the programme proposed for that financial year for the repair of main and other roads and for the repair or maintenance of any works connected with any such roads;
- (c) the programme proposed for that financial year for any other works under this Act.

(2) The schedule shall give an estimate of the cost of what is proposed.

(3) From time to time during the financial year the Commissioner shall submit to the Minister any additions or alterations proposed to be made to the schedule aforesaid together with an estimate of the cost thereof.

(4) The Minister may approve of any such schedule or addition or alteration thereto, with such variations as the Minister thinks proper. If approval is given as aforesaid that approval shall, for the purpose of any provision of this Act under which the approval or consent of the Minister is required to the carrying out of any work, be sufficient approval or consent thereto.

**Calling of tenders**

**36c.** The Minister may direct that, before commencing any work under this Act, the Commissioner shall invite public tenders for the carrying out of the work, and if so directed, the Commissioner shall invite public tenders for the work.

**Power of Minister to authorize expenditure generally**

**36d.** (1) The Minister may authorize the Commissioner to expend pursuant to this section an amount not exceeding ten thousand dollars.

(2) If authority is given as aforesaid, then, notwithstanding anything to the contrary in this Act, the authority of the Minister so given shall be sufficient authority for the Commissioner to expend the sum authorized by the Minister or any part thereof for any purpose for which, under this Act, the Commissioner may expend money and no further authority or consent of the Minister and no further authority of any kind shall be required for the expenditure by the Commissioner.

(3) The power conferred on the Minister by this section may be exercised from time to time but so that the amount authorized by the Minister to be expended under this section but not expended shall not at any time exceed ten thousand dollars.

**Provision as to approval of Minister**

**36e.** Where under any provision of this Act, it is provided that the approval or consent of the Minister is required to the doing of any act by the Commissioner, the Minister may, if he thinks fit, from time to time give a standing approval or consent, subject to any conditions which he imposes, to the doing of such act and any act done by the Commissioner pursuant to any such standing approval or consent shall not require any further approval or consent of the Minister.

**How moneys to be dealt with by council**

37. (1) It shall be the duty of each council to construct and maintain all main roads, not being main roads which are being maintained and kept in repair by the Commissioner pursuant to section 26 of this Act, within its district in good and trafficable condition.

(2) There shall be carried by each council to the account of a fund to be called "The Main Roads Fund"—

- (a) all moneys allocated to and received by such council under this Act for the purpose of the construction, maintenance, and keeping in repair of the main roads within its district;
- (b) all moneys appropriated by the council out of its revenue for the said purpose; and
- (c) all moneys, at the commencement of this Act, standing to the credit of the council's Main Roads Fund under any Act hereby repealed.

(3) The said fund shall be expended by the council in the construction, maintenance, and keeping in repair of the main roads and the works connected therewith within its district, and shall be applied to no other purpose.

(4) If the Minister is of opinion that any council has not, during any financial year, expended on the construction, maintenance, and keeping in repair of the main roads within its district the amount determined by the Minister as the amount to be expended by such council for that purpose, the Minister may—

- (a) refrain from allocating to the council any moneys under this Act; and
- (b) withhold any moneys allocated to the council under this Act,

until the council has expended the amount so determined, or has made provision for its expenditure, to the satisfaction in all things of the Minister.

(5) Nothing in this Act or any other Act shall preclude or exempt any council from expending any of its moneys in addition to the moneys standing to the credit of its Main Roads Fund in performing any duty imposed upon it by this Act or any other Act.

(6) In this section the term "main road" does not include any main road which is being kept in repair and maintained by the Commissioner pursuant to section 26 of this Act.

**Neglect or default of councils**

38. (1) Where the Commissioner considers that—

- (a) any main road, or the maintenance of any works upon a main road, is being neglected by any council; or
- (b) any works upon which the Commissioner has under this Act directed any sum to be expended are not being carried out,

he may, with the approval of the Minister, cause notice to be served requiring the council, within such reasonable time as is specified in the notice, to construct or reconstruct or to repair or maintain such road or works in such manner and to such extent, as may be specified in the notice.

(2) Where the Commissioner considers that any work in progress upon a main or other public road for which any grant has been made, is not being carried out in the manner directed by him, or where any such work does not meet with his approval, he may,

with the approval of the Minister, cause notice to be served on the council requiring it to comply within a reasonable time stated in the notice with the requirements and conditions specified in the notice.

(3) Where the Commissioner considers that it is necessary that certain work should be carried out upon a main road he may, with the approval of the Minister, cause notice to be served requiring the council to carry out such work within a reasonable time stated in the notice.

(4) It shall be the duty of the council to comply with any notice served under this section, and on default by the council in compliance therewith the Commissioner may carry out the work specified in the notice. Such proportion of the cost of such work, not exceeding one-third, as the Commissioner determines, shall be a debt due to the Commissioner from the council, and—

(a) may be recovered by the Commissioner by action in his corporate name in any court of competent jurisdiction as a debt due to him by such council; or

(b) may be withheld from any moneys voted by Parliament and allocated to such council by the Commissioner under this Act.

(5) In this section the term "main road" does not include any main road which is being kept in repair and maintained by the Commissioner pursuant to section 26 of this Act.

**Expenditure by councils from public moneys to be subject to direction of Commissioner**

39. All moneys allocated to a council under this Act for main roads, or provided out of moneys received by the State pursuant to any Act of or agreement or arrangement with the Commonwealth relating to roads or out of moneys voted by Parliament for other public roads, shall be expended upon such roads and works and in such manner as the Commissioner, with the approval of the Minister, directs, and subject to the approval of the Commissioner.

PART IIIA  
CONSTRUCTION OF BIRKENHEAD BRIDGE

**Power to construct**

**39a.** (1) The Commissioner shall construct or cause to be constructed a bridge over and across the Gawler Reach of the Port Adelaide River, and may form and make, or cause to be formed and made, all necessary embankments, approaches, roads, piers, buildings, and other works necessary for the completion of the said bridge.

(2) The said bridge shall include a Bascule double leaf opening span to permit the passage of shipping.

(3) The said bridge and the approaches thereto shall be constructed at or near the site shown in the plan signed "D. V. Fleming, Commissioner of Highways", and deposited in the Land Office on the fifth day of November, 1936, and numbered No. 325.

(4) The said bridge and the other works mentioned in this section shall be constructed out of moneys to be provided by Parliament for the purpose.

**Authority to obstruct navigation**

**39b.** (1) The Commissioner may for the purposes of carrying out any work authorized by this Part obstruct either temporarily or permanently any right of navigation.

(2) No claim of any kind shall lie or be brought against the Crown, the Commissioner, or any instrumentality of the Crown, by reason of any obstruction of any right of navigation by reason of the construction of the bridge or any other work authorized by this Part.

**Maintenance of bridge**

**39c.** After the construction thereof, that part of the bridge and the approaches thereto constructed pursuant to this Part, which is situated between the boundaries delineated in red on the plan referred to in section 39a and therein marked "Harbors Board Boundary" and any road constructed over or upon any such part of the said bridge and approaches shall be vested in the Minister, and be under the care, control, and management of and maintained by the Commissioner, and all other parts of the said bridge and the approaches thereto, and any road constructed over or upon any such part of the said bridge and approaches shall be vested in and under the care, control, and management of and maintained by the Corporation of the City of Port Adelaide.

**Regulations**

**39d.** (1) The Governor, on the recommendation of the Commissioner, may make regulations regulating the time and conditions upon which the opening span of the bridge shall be opened for the passage of shipping, but no fees shall be charged for any such services for shipping.

(2) The Governor, on the recommendation of the Commissioner, may make regulations—

- (a) to regulate and control traffic upon the said bridge and the approaches thereto and upon the bridge at Port Adelaide known as Jervois Bridge and the approaches thereto;
- (b) to regulate or prohibit fishing from the said bridge and the said Jervois Bridge;
- (c) fixing penalties, recoverable summarily, not exceeding in any case the sum of forty dollars for the breach of any regulation made under this subsection.

**Tenders**

**39e.** (1) The Commissioner may with the approval of the Minister call for tenders for the construction of the whole or any part of any of the works authorized to be constructed by this Part to be sent in within such time, to such place, and to be on and subject to such terms, conditions, and provisions as he deems advisable, and may accept or reject any tender.

(2) The Commissioner may construct any of the said works or any part thereof if no tender for the construction thereof is invited or accepted.

**Application of other provisions of this Act**

**39f.** (1) For the purposes of carrying out any work authorized by this Part, the Commissioner shall have and may exercise all the powers conferred upon him by this Act.

(2) The said bridge and the works connected therewith shall be deemed to be a "work" within the meaning of section 7.

**Provision as to means of communication with consent of Minister of Marine**

**39g.** In the construction of the works authorized by this Part, the Commissioner shall not, except with the consent in writing of the Minister of Marine in his corporate capacity, permanently obstruct or interfere with any means of communication to or railway lines serving any wharf or land of the said Minister.

## PART IV

## MISCELLANEOUS PROVISIONS

**Minister may authorize private persons to construct and work tramways, etc., on roads**

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

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

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

(4) For the purposes of this section "road" shall include land used as a travelling stock road or reserve.

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

**Highway lighthouses and traffic beacons**

41. (1) Subject to the provisions of the *Control of Advertisements Act, 1916*, and any regulations made thereunder, the Commissioner may upon such terms and conditions as he thinks fit license any person to erect on any main road, highway lighthouses, traffic beacons, traffic signs or direction signs which may be used for advertising purposes.

(2) After the commencement of this Act no council shall license any person to erect any highway lighthouse, traffic beacon, traffic sign, or direction sign on any main road without first obtaining the consent of the Commissioner thereto.

(3) If any highway lighthouse, traffic beacon, traffic sign, or direction sign erected, whether before or after the passing of the *Highways Act, 1930*, on any main road otherwise than pursuant to a licence granted by the Commissioner under subsection (1) hereof or, with the consent of the Commissioner, by the council of the district within which the highway lighthouse, traffic beacon, traffic sign, or direction sign is erected under subsection (2) hereof, is used for any advertising purpose, the Commissioner or the council may remove the same or cause the same to be removed and may, either summarily or by action in any court of competent jurisdiction, recover the cost of so doing from the person who erected the highway lighthouse, traffic beacon, traffic sign, or direction sign, or from the person causing the same to be erected. The liability imposed upon such persons shall be joint and several.

(4) In any proceedings pursuant to subsection (3) hereof, proof that a person is either—

- (a) the person who, or whose business, is referred to in any advertisement upon the highway lighthouse, traffic beacon, traffic sign, or direction sign the subject matter of the proceedings; or
- (b) the person who is registered under any Act of the Parliament of the Commonwealth as the proprietor of any trade mark used or referred to in any such advertisement,

shall be *prima facie* evidence that that person is the person who caused the highway lighthouse, traffic beacon, traffic sign, or direction sign to be erected.

#### **Advertisements on the Anzac Highway**

41a. (1) In this section—

“advertisement” includes any hoarding, placard, sign, light, or other device used as an advertisement or for exhibiting or supporting any advertisement, but does not include any advertisement relating to any business carried on on the land on which the advertisement is erected:

“Anzac Highway” means the road named the “Anzac Highway” by the proclamation made under the *Roads Improvement Act, 1921*, on the sixth day of November, 1924.

(2) The Commissioner may give to the occupier of any land which abuts on the Anzac Highway and on which there is any advertisement, visible from any part of that Highway, not less than three months’ notice in writing to remove that advertisement.

(3) A notice under this section may be given by letter sent by post and addressed to the usual place of abode or business of the occupier, or by delivering it to the occupier personally, or to some person of the apparent age of sixteen years at the occupier’s usual place of abode or business; or if, after reasonable inquiry, the usual place of abode or business of the occupier cannot be ascertained or is not in Australia, the notice may be given by affixing it in a conspicuous position upon the land to which it relates.

(4) If within three months after the giving of the notice, the advertisement is not removed from the land in accordance with the notice the Commissioner may himself remove the advertisement and the cost of so doing shall be a debt due to him by the occupier of the land and recoverable by action in any court of competent jurisdiction.

(5) Where the occupier of any land expends any sum in removing any advertisement pursuant to this section or pays the Commissioner any sum under subsection (4) of this section, he may recover the amount so expended or paid from the owner of the advertisement, as a debt, by action in any court of competent jurisdiction.

#### **If construction of public work causes damage to road, expenses may be recovered by council**

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

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

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

### Regulations

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

- (a) the planting and preservation of trees and vegetation on main roads;
- (b) the prevention of damage to main roads;
- (c) the prevention of the doing of things likely to injure main roads, including the prevention of the deposit of rubbish or any other specified substance or articles on or near main roads;
- (d) the regulation or prohibition of the use of vehicles likely to injure main roads;
- (e) the restriction of traffic or of any specified class of traffic, and the limitation of the speed of any classes or types of motor vehicles or of motor vehicles over any specified weight, to protect main roads from injury;
- (f) the regulation of the speed of vehicles on controlled-access roads;
- (g) the regulation, control or, prohibition of the standing of vehicles on controlled-access roads;
- (h) the control of the movement of vehicles on controlled-access roads;
- (i) the prohibition of the use of controlled-access roads by pedestrians or animals;
- (j) the control of the size, weight, power and type of vehicles using controlled-access roads;
- (k) for controlling or regulating any matter or thing connected with the operation of a ferry service or sea transport service under this Act.

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

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

## 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 4 of The Public General Acts of South Australia 1837-1975 at page 665.

Section 11:	substituted by 59, 1985, s. 7
Section 11(1):	amended by 18, 1990, s. 12
Section 12a:	inserted by 36, 1979, s. 2
Section 13:	substituted by 36, 1979, s. 3
Section 20(1):	amended by 36, 1979, s. 4(a)
Section 20(3):	amended by 36, 1979, s. 4(b)
Section 20a:	amended by 62, 1982, s. 3(5) (Sched. Pt. V)
Section 26e:	inserted by 36, 1979, s. 5
Section 27a(2):	repealed by 11, 1991, s. 50(a)
Section 27aa:	redesignated as s. 27aa(1) by 11, 1991, s. 50(b)
Section 27aa(2):	inserted by 11, 1991, s. 50(b)
Section 27ab(1):	amended by 36, 1979, s. 6; 11, 1991, s. 50(c)
Sections 27ad - 27af:	inserted by 36, 1979, s. 7
Section 31(2)(g):	repealed by 6, 1982, s. 3
Section 32(1):	amended by 36, 1979, s. 8; 10, 1980, s. 3; 6, 1982, s. 4; 30, 1983, s. 3; 36, 1984, s. 3; 62, 1989, s. 3
Section 36a:	repealed by 6, 1982, s. 5