

ROADS (OPENING AND CLOSING) ACT, 1932-1975**SUMMARY OF PROVISIONS**

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SCHEDULES

ROADS (OPENING AND CLOSING) ACT, 1932-1975

being

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

as amended by

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

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

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

and

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

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

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

1. This Act may be cited as the "Roads (Opening and Closing) Act, 1932-1975".

Short title.
Citation
amended by 24,
1975, s. 3 (1)
(2nd Sched.).

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 (1) The Roads Act, 1884, and the Roads Amendment Act, 1915, are hereby repealed.

Repeal of 314,
1884, and 1224,
1915.

(2) All proceedings under the said Acts hereby repealed for the opening or closing of any road shall be continued as if the said Acts had not been repealed, and to such extent the said Acts shall be deemed to continue in force.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of title or grant which is to be issued in pursuance of any such proceedings under any of the said Acts hereby repealed or in pursuance of any proceedings under any Act repealed by any such Act shall be issued as a certificate of title in the form provided by this Act and otherwise in accordance with and subject to the provisions of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

Subsec. (2)
amended by 47,
1946, s. 2.

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

Interpretation.

"Commissioner" means the Commissioner of Highways:

"council" means a municipal council, a district council, the Garden Suburb Commissioner¹, and the Renmark Irrigation Trust:

Def. amended
by 47, 1946,
s. 12 (sched.).

"district" means a municipality, a district council district, the Garden Suburb¹, and the Renmark Irrigation District:

Def. amended
by 47, 1946,
s. 12 (sched.).

¹ By proclamations under the Garden Suburb Act, 1919-1973 (*Gaz.* 27th March, 1975, p.1262, and *Gaz.* 1st May, 1975, p.1698) the lands referred to in those proclamations were added to the municipality of the City of Mitcham and it was provided, *inter alia*, that all of the powers, duties and functions of the Garden Suburb Commissioner shall, as to the whole of the Garden Suburb, be exercised and discharged by the Council of the City of Mitcham. See also ss. 24 and 25 of the Garden Suburb Act, 1919, as amended.

Def. amended
by 2246, 1935,
s. 4 (2nd
Sched.); 47,
1946, s. 12
(sched.).

“road” means—

Para. (b)
amended by 47,
1946, s. 12
(sched.).

Para. (c)
amended by 47,
1946, s. 12
(sched.).

References to
Roads Act,
1884.
S. 4 amended by
2293, 1936, s. 4
(2nd Sched.).

Incorporation
of Compulsory
Acquisition of
Land Act, 1925.

Vesting of
roads.

Subsec. (3)
amended by 47,
1946, s. 12
(sched.).

Exemption of
gardens, parks,
etc.
Cf. 314, 1884,
s. 85.
Subsec. (1)
amended by
2246, 1935, s. 4
(2nd Sched.).

(a) within a municipality or the Garden Suburb¹ any public street or road as defined by section 301 of the Local Government Act, 1934²:

(b) within a district council district or the Renmark Irrigation Trust any public street or road as defined by section 301 of the Local Government Act, 1934²:

(c) outside a municipality, district council district, the Garden Suburb¹, or the Renmark Irrigation District any public road as defined by section 27c of the Highways Act, 1926³.

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

5. (1) The Compulsory Acquisition of Land Act, 1925⁴, except sections 49, 79, 80, 81, and 82, is incorporated with this Act.

(2) The Commissioner or council, as the case may be, shall be regarded as the promoters of an undertaking and this Act as the special Act within the meaning of the said incorporated Act.

6. (1) All roads opened pursuant to this Act which are outside a district or any irrigation area within the meaning of the Irrigation Act, 1930⁵, shall be vested in the Minister of Local Government and be under the care, control, and management of the Commissioner. If any moneys are appropriated or allotted for expenditure by the Engineer-in-Chief upon the construction or repair of any such road or any works incidental thereto, the Engineer-in-Chief shall for the purpose of such expenditure be deemed to have and may exercise any of the powers under this Act which the Commissioner may exercise in that behalf.

(2) Subject to the Highways Act, 1926³, all roads opened pursuant to this Act which are or become within a district shall be vested in and be under the care, control, and management of the council thereof.

(3) Nothing in this section shall be deemed to affect any power of the Minister of Lands under section 9 of the Crown Lands Act, 1929⁶.

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

(a) any garden, orchard, vineyard, yard, park, or planted walk; or

(b) any enclosed ground planted—

(i) as an ornament or shelter to a house; or

(ii) for ornamental purposes; or

(iii) as a nursery for trees,

¹ By proclamations under the Garden Suburb Act, 1919-1973 (*Gaz.* 27th March, 1975, p.1262, and *Gaz.* 1st May, 1975, p.1698) the lands referred to in those proclamations were added to the municipality of the City of Mitcham and it was provided, *inter alia*, that all of the powers, duties and functions of the Garden Suburb Commissioner shall, as to the whole of the Garden Suburb, be exercised and discharged by the Council of the City of Mitcham. See also ss. 24 and 25 of the Garden Suburb Act, 1919, as amended.

² Now Local Government Act, 1934-1975.

³ Now Highways Act, 1926-1975.

⁴ The Compulsory Acquisition of Land Act, 1925, and its amendments have been repealed by the Land Acquisition Act, 1969. (Now Land Acquisition Act, 1969-1972).

⁵ Now Irrigation Act, 1930-1975.

⁶ Now Crown Lands Act, 1929-1975.

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

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

Subsec. (2) amended by 47, 1946, s. 12 (sched.).

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

Subsec. (3) amended by 47, 1946, s. 12 (sched.).

8. Nothing in this Act shall authorize the Commissioner or any council to close any road or part thereof which is a stock route as defined by section 99 of the Pastoral Act, 1936¹.

Exemption of stock routes.
S. 8 amended by 2246, 1935, s. 4 (2nd Sched.); 47, 1946, s. 12 (sched.).

9. (1) The Commissioner, outside any district, and any council, within its district, may at any one time by one proceeding or from time to time—

Powers of closing and opening, etc., roads.
Cf. 314, 1884, s. 84.

- (a) open any new road;
- (b) alter or add to any road or part thereof;
- (c) close any road or part thereof or close the whole or any portion of the length or width of any road or part thereof;
- (d) exchange any closed road or part thereof for lands required for a new road or an alteration of a road, or for any other purpose of the Commissioner or the council;
- (e) retain any closed road as the property of the Commissioner or council for any purpose of the Commissioner or the council, or dedicate the same for any public purpose;
- (f) subject to section 16, sell any closed road (whether retained under paragraph (e) hereof or otherwise);
- (g) surrender any closed road to the Crown, or dispose of the same, in pursuance of any powers of the Commissioner or the council under any Act relating to land of the Commissioner or the council;
- (h) execute any transfer, conveyance, surrender, or lease of, or other document relating to any closed road sold, exchanged, surrendered, or otherwise disposed of pursuant to this Act.

(2) Nothing in this section shall be deemed to affect any powers conferred upon the Commissioner by the Highways Act, 1926², or any other Act.

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

Requirements of order for exchange of roads.
Cf. 314, 1884, s. 87.

¹ Now Pastoral Act, 1936-1974.

² Now Highways Act, 1926-1975.

Proceedings to open, alter, add to, close, sell, etc., roads.
Cf. 314, 1884, s. 88. 1224, 1915, s. 5.

11. (1) The proceedings of the Commissioner or a council to open new roads, or alter, add to, close, or exchange existing roads shall be as follows:—

I. A survey plan shall be deposited with the Surveyor-General, at his office in Adelaide, showing the exact position, boundaries, bearings, and admeasurements of the proposed new roads, alterations, additions, and the roads or parts proposed to be closed. If deposited by a council the said survey plan shall comprise only such roads as are within the district of the council:

II. The names of owners and occupiers of lands affected by the proposed alterations, together with their last or most usual known place of abode in the State, shall, so far as known, be shown upon the plan in a tabular form:

Para. III
amended by 47,
1946, s. 3 (a).

III. At the time of depositing the said plan as aforesaid a statement showing the names of all persons registered as the holders of, or as being entitled to, any mortgage or encumbrance or any other charge or any easement upon the land affected by the proposed alteration, together with their last or most usual known place of abode in the State, shall be deposited with the Surveyor-General by the Commissioner or council, as the case may be:

Para. IV
amended by 47,
1946, s. 3 (b).

IV. At the time of depositing the said plan as aforesaid for the purpose of closing any road, the Commissioner or council shall deposit with the Surveyor-General the documents provided to be deposited by subsection (1a):

Para. V
substituted by
24, 1975, s. 3 (1)
(2nd Sched.).

V. At the time of depositing the plan in accordance with this subsection a fee of such amount as may be prescribed for the purposes of this paragraph shall be paid to the Surveyor-General by the Commissioner or the council as the case may be.

Subsec. (1a)
inserted by 47,
1946, s. 3 (c).

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

Para. (a)
amended by 24,
1975, s. 3 (1)
(2nd Sched.).

(a) If any agreement has been made with any person for the exchange of the road to be closed for other land or for the sale to any person of any land comprised in the road to be closed, the Commissioner or council, as the case may be, shall deposit with the Surveyor-General—

(i) the said agreement; and

(ii) an application (upon which all stamp duties payable in respect thereof shall be denoted) by the person with whom the agreement is made for the issue of a certificate of title to the land comprised in the road to be closed; and

(iii) a statement that any amount to be paid by that person to the Commissioner or council for equality of exchange or as purchase-money payable in respect of the sale has been paid to the Commissioner or council,

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

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

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

Subsec. (2)
amended by 47,
1946, s. 3 (d);
24, 1975, s. 3 (1)
(2nd Sched.).

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

Subsec. (2a)
inserted by 24,
1975, s. 3 (1)
(2nd Sched.).

(3) For the purpose of subdivision II of subsection (1) hereof the Director of Lands shall in addition to the lessee or purchaser be deemed to be an owner of land which is comprised in a Crown lease or Crown agreement for sale and purchase.

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

Subsec. (4)
amended by 47,
1946, s. 3 (e);
24, 1975, s. 3 (1)
(2nd Sched.).

(5) Any plans deposited by the Commissioner pursuant to this section shall bear the certificate of the Surveyor-General or a licensed surveyor and shall be under the seal of the Commissioner and signed by him and any plans deposited by a council pursuant to this section shall bear the certificate of a licensed surveyor and shall be under the seal of the council and signed by the mayor and town clerk, or chairman and district clerk, as the case may be, or by two councillors and the town clerk or district clerk, as the case may be. In the cases of the Renmark Irrigation Trust and the Garden Suburb Commissioner¹ the signatures to the said plans required by this section shall be the signatures of the chairman and secretary of the said trust or of the Garden Suburb Commissioner¹, as the case may be.

Subsec. (5)
amended by 47,
1946, s. 12
(sched.).

(6) Any plan deposited pursuant to this section shall comply with any regulations made under this Act or under the Surveyors Act, 1935².

Subsec. (6)
amended by 47,
1946, s. 12
(sched.).

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

(8) At the time of depositing or re-depositing the said survey plan as aforesaid a copy thereof shall be deposited by the Commissioner or council with the Surveyor-General who shall after satisfying himself that the copy is a true copy of the said survey plan endorse the said copy and forward it to the

¹ By proclamations under the Garden Suburb Act, 1919-1973 (*Gaz.* 27th March, 1975, p.1262, and *Gaz.* 1st May, 1975, p.1698) the lands referred to in those proclamations were added to the municipality of the City of Mitcham and it was provided, *inter alia*, that all of the powers, duties and functions of the Garden Suburb Commissioner shall, as to the whole of the Garden Suburb, be exercised and discharged by the Council of the City of Mitcham. See also ss.24 and 25 of the Garden Suburb Act, 1919, as amended.

² Now Surveyors Act, 1935-1975.

Commissioner or council, as the case may be. The said copy shall thereupon be kept in the office of the Commissioner or the council and be open to public inspection at all reasonable times.

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

Provision as to amounts paid for equality of exchange or as purchase-money, and for stamp duty. S. 11a enacted by 47, 1946, s. 4.

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

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

Duties of Surveyor-General on receiving plans. Cf. 314, 1884, s. 89.

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

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

(2) Copies of such notice shall, as soon as possible, be forwarded by the Surveyor-General to the persons whose names appear on the notice as owners or occupiers of any land affected by the proposed alterations and to the

persons whose names appear in the statement given to the Surveyor-General pursuant to subdivision III of subsection (1) of section 11. The notices may be forwarded by post addressed to such persons at their last or most usual known place of abode in the State, or if that be not known, then addressed to the post office nearest to the place where such proposed alterations are to be made.

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

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

Proceedings before Commissioner or council.
Cf. 314, 1884, s. 91.

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

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

Proceedings if opening, alteration, additions, etc., allowed.
Cf. 314, 1884, s. 92.

(2) Forthwith after the making of the order the Commissioner or council shall forward to the Surveyor-General a copy of the minutes of the meeting relating to the order. Every such copy shall be certified under the hand of the Commissioner, the town clerk, district clerk, Garden Suburb Commissioner¹, or secretary of the Renmark Irrigation Trust, as the case may be, as a true copy of such minutes. The Surveyor-General shall thereupon draw up the order in duplicate in one of the forms Nos. 1, 2, or 3 in the second schedule or as near thereto as circumstances will permit and shall forward the same to the Commissioner or council, as the case may be, for sealing and signature.

Subsec. (2) amended by 47, 1946, s. 12 (sched.).

(3) If made by the Commissioner the order shall be under the seal of the Commissioner and signed by the Commissioner and the Surveyor-General and if made by a council the order shall be under the seal of the council and signed by the mayor and town clerk or chairman and district clerk, as the case may be, or by two councillors and the town clerk or district clerk, as the case may be. In the cases of the Renmark Irrigation Trust and the Garden Suburb Commissioner¹ the signatures to the order required by this subsection shall be the signatures of the chairman and secretary of the said trust or of the Garden Suburb Commissioner¹, as the case may be.

Subsec. (3) amended by 47, 1946, s. 12 (sched.).

(4) Upon the order being executed as aforesaid the Commissioner or council, as the case may be, shall forthwith forward the same together with the duplicate thereof duly sealed and executed in manner provided by subsection (3) hereof to the Surveyor-General who shall transmit the same to the Minister of Lands for confirmation by the Governor together with a report by the Surveyor-General upon the matters dealt with by the order and a recommendation whether or not the order should be confirmed by the

Subsec. (4) amended by 47, 1946, ss. 5, 12 (sched.).

¹ By proclamations under the Garden Suburb Act, 1919-1973 (*Gaz.* 27th March, 1975, p. 1262, and *Gaz.* 1st May, 1975, p. 1698) the lands referred to in those proclamations were added to the municipality of the City of Mitcham and it was provided, *inter alia*, that all of the powers, duties and functions of the Garden Suburb Commissioner shall, as to the whole of the Garden Suburb, be exercised and discharged by the Council of the City of Mitcham. See also ss. 24 and 25 of the Garden Suburb Act, 1919, as amended.

Governor. Unless the order is duly confirmed by the Governor within six months from the date of the meeting at which the order was made, the order shall be utterly void to all intents and purposes whatever.

Publication of
notice of
confirmation.
Cf. 314, 1884,
s. 93.

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

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

Rights of
adjoining owner
to acquire
closed road.
Cf. 314, 1884,
s. 94.
Subsec. (1)
amended by 47,
1946, s. 6 (a).

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

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

For the purposes of this section "owner" means—

- (a) the owner in fee simple:
- (b) the lessee under a perpetual lease granted by the Crown:
- (c) the purchaser under an agreement for the sale and purchase of land from the Crown.

Subsec. (1a)
inserted by 47,
1946, s. 6 (b).

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

Subsec. (2)
amended by 47,
1946, s. 6 (c).

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

Reservation of
minerals and
easements.
Subsec. (1)
amended by 47,
1946, s. 12
(sched.).

17. (1) The Minister of Lands may, at any stage in any proceeding under this Act, direct that in any certificate of title issued pursuant to this Act there shall be reserved to the Crown gold, silver, copper, tin or other metals, ore, mineral, or other substances containing metals, or gems or precious stones, or coal or mineral oil, in or upon the land comprised in the certificate of title and

the certificate of title shall be issued subject to such reservation accordingly: Provided that stone ordinarily used for building or road purposes shall be exempted from any such reservations.

(2) No such direction shall affect the validity of any agreement for the sale or exchange of the land comprised in the certificate of title notwithstanding that the direction is given after the making of the agreement; and every such agreement shall be deemed to be made subject to any such direction.

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

Subsec. (3)
inserted by 47,
1946, s. 7.

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

Issue of
certificate of
title by the
Minister of
Lands.
Cf. 314, 1884,
s. 96.
S. 18 amended
by 47, 1946,
s. 12 (sched.).

19. (1) Upon receipt of a certificate of title under the provisions of this Act, and before binding the same, in any case where the land comprised in such certificate is comprised in any prior land grant registered under The Real Property Act, 1886¹, or in any certificate of title, the Registrar-General shall obtain from the Surveyor-General, who shall furnish the same, particulars of the width, length, bearings, and admeasurements of the land, and shall make any alterations that may be necessary on any deposited plan, and also make any entry in the register book on the prior land grant or certificate of title, and in the plan on the margin thereof, correcting and cancelling the same, as far as such land is concerned.

Duties of
Registrar-
General.
Cf. 314, 1884,
ss. 97, 98.

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

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

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

Subsec. (4)
amended by 24,
1975, s. 3 (1)
(2nd Sched.).

¹ Now Real Property Act, 1886-1975.

Application of
Real Property
Act, 1886, to
land for which
certificate of
title has issued.
Cf. 314, 1884,
s. 99.

20. (1) Upon being satisfied that the provisions of section 19, where applicable, have been complied with, the Registrar-General shall bind up one of the certificates of title as a separate folium of the register book, and shall register the same under the provisions of The Real Property Act, 1886¹, and shall deliver the duplicate certificate of title to whomsoever is entitled thereto.

(2) After registration of any such certificate of title as hereinbefore provided, the provisions of The Real Property Act, 1886¹, shall be applicable to the land therein mentioned, to all intents and purposes whatsoever, as fully as if the said land had been brought under the provisions of such Act upon the application of a proprietor.

Subsec. (3)
struck out by 47,
1946, s. 8.

* * * * *

Consolidation
of certificates of
title to be
issued.
S. 20a enacted
by 47, 1946,
s. 9.

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

- I. The Minister of Lands shall, upon the recommendation of the Surveyor-General, give a certificate to the Registrar-General that the land comprised in the road is to be vested in the said registered proprietor and, if the said land is to be subject to any easement or reservation, the certificate shall describe the easement or reservation:
- II. In lieu of a certificate of title being issued for the land comprised in the closed road, a certificate of title shall, without payment of any fee to the Registrar-General, be issued by the Registrar-General comprising the contiguous land and the land comprised in the closed road:
- III. Every certificate of title so issued shall be expressed to be subject and the land therein described shall be subject to such encumbrances, liens, interests, reservations, easements, and trusts as were shown by the certificate of title for the contiguous land immediately prior to its consolidation and by the certificate given by the Minister as aforesaid.

Consolidation
of existing titles
to closed roads.
S. 20b enacted
by 47, 1946,
s. 9.

20b. (1) Any registered proprietor of any closed road who is also the registered proprietor of any land contiguous to the closed road may apply to the Registrar-General for the issue of a certificate of title comprising the contiguous land and the land in the closed road. With the consent of the Surveyor-General, the Registrar-General may issue such a certificate.

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

¹ Now Real Property Act, 1886-1975.

specified in the notice, the Registrar-General, with the consent of the Surveyor-General, may issue a certificate of title accordingly.

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

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

Alteration of register book.
S. 20c enacted by 47, 1946, s. 9.

(2) If any consolidation of title is effected as provided by section 20a or section 20b, the land comprised in the closed road shall for the purpose of the public records of the State, be deemed to be merged with and have the same identity as the contiguous land with which it is consolidated. If any consolidation would affect land in any plan deposited in the General Registry Office or the Lands Titles Registration Office, the Registrar-General may call for any survey and may describe the land in the consolidated certificate of title in such manner as he deems advisable.

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

Provision when owner of closed road is unknown.
S. 20d enacted by 47, 1946, s. 9.

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

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

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

- (a) a land grant or certificate of title was issued in respect of the land comprised in the closed road or any portion thereof but the registered proprietor thereunder is dead or unknown; and
- (b) the Minister of Lands is satisfied that some person is in possession of the said land and that there is apparently no other known person entitled to possession thereof and that it is desirable that a certificate of title to the land should be issued to the person in possession,

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

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

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

Prohibition of removal into Supreme Court of order upon which certificate of title granted.
Cf. 314, 1884, s. 100.

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

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

Compensation.
Cf. 314, 1884, s. 101.
Subsec. (1) amended by 47, 1946, s. 10.

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

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

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

(4) Compensation under this section shall, subject to this section, be recoverable and assessed in manner provided by the Compulsory Acquisition of Land Act, 1925¹.

Closing of certain roads.
Subsec. (1) amended by 47, 1946, s. 12 (sched.).

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

Subsec. (2) amended by 47, 1946, s. 11 (1) (a), (b), (c), (d).

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

Para. (a) amended by 47, 1946, s. 11 (1) (a), (b), (c).

(a) used or occupied by or on behalf of the Government, any Minister of the Crown, any Government department or any instrumentality of the Crown; or

¹ The Compulsory Acquisition of Land Act, 1925 and its amendments have been repealed by the Land Acquisition Act, 1969. (Now Land Acquisition Act, 1969-1972).

(b) belonging to the Crown or any instrumentality of the Crown which is not granted or lawfully contracted to be granted to any person or leased to any person or in the occupation of any person under any agreement for the sale and purchase of such land.

Para. (b)
amended by 47,
1946, s. 11 (1)
(d).

(3) No road or portion thereof shall be closed under this section until after the expiration of one month after notice in writing of the proposal to close the road or portion thereof is given by the Surveyor-General to the Commissioner, and, if the road is within a district, to the council of such district. The Minister of Lands shall consider any representations relating to the closing of such road or portion thereof which may be made to him by the Commissioner or the council.

Subsec. (3)
amended by 47,
1946, s. 12
(sched.).

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

Subsec. (4)
amended by 47,
1946,
ss. 11 (1) (e), (f),
12 (sched.).

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

24. (1) Subject to subsection (3) hereof, no road opened pursuant to this Act which is an extension of any main road within the meaning of the Highways Act, 1926¹, shall be of less width in any place than sixty-six feet and no main road shall be closed in part so that its width in any place is less than sixty-six feet.

Width of roads.

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

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

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

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

Power to make
order affecting
more than one
road.
314, 1884,
s. 105.

26. In any case where—

(a) a road is fenced along the boundaries thereof; and

Duty to fence.
Cf., *ibid.*,
s. 113.

¹ Now Highways Act, 1926-1975.

(b) such road is altered or diverted,

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

Special provisions as to the Renmark Irrigation District.
S. 27 amended by 47, 1946, s. 12 (sched.).

27. If any of the land comprised within the Renmark Irrigation District is included within a municipality or any other district council district the powers under this Act shall after such inclusion be exercised by the municipal or district council of the municipality or district council district within which such land is included and not by the Renmark Irrigation Trust.

Regulations.

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

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

29. (1) The provisions of this Act shall apply notwithstanding the provisions of The Real Property Act, 1886¹.

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

SCHEDULES

THE FIRST SCHEDULE

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

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

Dated the day of , 19 .

Receipt to be endorsed

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

Dated the day of , 19 .

¹ Now Real Property Act, 1886-1975.

THE SECOND SCHEDULE

2nd Sched.
amended by 47,
1946, s. 12
(sched.).

No. 1—Order to open New Roads

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

Dated this day of , 19 .

No. 2—Order to close Old Roads

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

Dated this day of , 19 .

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

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

Dated this day of , 19 .

No. 4—Notice of Confirmation

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

Dated the day of , 19 .

Roads (Opening and Closing) Act, 1932-1975

No. 5—Order by the Minister of Lands

The Minister of Lands upon the recommendation of the Surveyor-General, and in pursuance of the powers conferred by section 23 of the Roads (Opening and Closing) Act, 1932, hereby closes the road (*or* portion of road) described in the schedule hereunder.

Dated this day of , 19 .

THE SCHEDULE

[*Here describe the road or portion thereof to be closed*]

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

3rd Sched.
amended by 47,
1946, s. 12
(sched.).

THE THIRD SCHEDULE

SOUTH (Royal Arms) AUSTRALIA

Certificate of Title under Road Order

[In Duplicate]

Register Book
Vol. Folio

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

4th Sched.
amended by 47,
1946, s. 12
(sched.).

THE FOURTH SCHEDULE

SOUTH (Royal Arms) AUSTRALIA

Certificate of Title under Road Order

[In Duplicate]

Register Book
Vol. Folio

I, , Minister of Lands of the State of South Australia, pursuant to the direction of His Excellency the Governor, published in the *Government Gazette* of day of , in confirming a road order made by therein referred to, dated the day of , do hereby certify that is [*or are*] now seized of an estate in fee-simple in that [*here describe land with any reservation.*]

5th Sched.
inserted by 47,
1946, s. 11 (2).

THE FIFTH SCHEDULE

SOUTH (Royal Arms) AUSTRALIA

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

I, , Minister of Lands of the State of South Australia, in pursuance of an order made under section 23 of the Roads (Opening and Closing) Act, 1932, do hereby certify that is now seized of an estate in fee simple in that [*here describe land with any reservations.*]