



ANNO VICESIMO PRIMO

# ELIZABETHAE II REGINAE

A.D. 1972

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## No. 13 of 1972

An Act to amend the Highways Act, 1926-1971.

[Assented to 30th March, 1972]

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

**Short titles.**

1. (1) This Act may be cited as the "Highways Act Amendment Act, 1972".

(2) The Highways Act, 1926-1971, as amended by this Act, may be cited as the "Highways Act, 1926-1972".

(3) The Highways Act, 1926-1971, is hereinafter referred to as "the principal Act".

**Commencement.**

2. This Act shall come into operation on a day to be fixed by proclamation.

**Amendment of principal Act, s. 6—  
Arrangement of Act.**

3. Section 6 of the principal Act is amended by striking out from the description of the heading to Part III the passage "relating to the construction and maintenance of roads".

**Amendment of principal Act, s. 7—  
Interpretation of terms.**

4. Section 7 of the principal Act is amended—

(a) by inserting immediately after the definition of "inspector" the following definition:—

"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;

and

(b) by inserting immediately after the definition of "main road" the following definition:—

"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.

5. Section 20 of the principal Act is amended—

(a) by inserting in subsection (1) immediately after paragraph (b) the following paragraphs:—

(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) instal 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

Amendment of  
principal Act,  
s. 20—  
General powers  
to Com-  
missioner.

(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;;

and

(b) by inserting after subsection (1) the following subsection:—

(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.

Amendment of principal Act, s. 27a—

Powers of Commissioner to open and close roads.

Enactment of ss. 27aa, 27ab and 27ac of principal Act—  
Closing of roads.

6. Section 27a of the principal Act is amended by striking out from subsection (1) the word “main”.

7. The following sections are enacted and inserted in the principal Act immediately after section 27a thereof:—

27aa. 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.

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,

Effect of  
proclamation  
under s. 27aa.

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 shall cease and determine and the land comprised therein shall be vested in fee simple in the Commissioner 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.

**8. Section 27b of the principal Act is amended—**

- (a) by inserting in subsection (1) after the passage "is desirable to widen" the passage "or to make any deviation of";
- (b) by inserting in paragraph (b) of subsection (5) immediately before the passage "the owner" the passage "where the whole of such land is clear of buildings";

Amendment of  
principal Act,  
s. 27b—  
Widening and  
deviation of  
roads.

(c) by inserting after the word "section" in subsection (11) the following passage:—

—  
"building" includes a part of a building;

and

(d) by inserting after the word "Crown" being the last word in paragraph (c) of the definition of "owner" the following passage:—

"structure" includes part of a structure.

Amendment of  
principal Act,  
s. 27c—  
Duty to  
register effect  
of plan.

9. Section 27c of the principal Act (as enacted by Act No. 6 of 1949 and incorrectly referred to as section 27ba on page 13 of the South Australian Statutes, 1949 Volume) is amended by inserting after paragraph II the following paragraph:—

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.

Amendment of  
principal Act,  
s. 30a—  
Power to  
proclaim  
controlled-  
access roads.

10. Section 30a of the principal Act is amended—

(a) by inserting immediately after subsection (1) the following subsection:—

(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;

and

(b) by striking out from subsection (4) the passage "or egress from".

Enactment of  
s. 30ab of  
principal Act—

11. The following section is enacted and inserted in the principal Act immediately after section 30a thereof:—

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 effect 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.

**12. Section 30b of the principal Act is amended—**

- (a) by striking out from subsection (3) the passage “proclamation of the controlled-access road concerned and the market value of the said estate or interest after such proclamation” and inserting in lieu thereof the passage “occurrence of the direct prejudice and the market value of the said estate or interest after that occurrence”;

and

- (b) by striking out from subsection (4) the passage “declaration of the controlled-access road” and inserting in lieu thereof the passage “occurrence of the direct prejudice to the estate or interest in the land in respect of which compensation is claimed”.

Amendment of  
principal Act,  
s. 30b—  
Provision for  
compensation

**13. Section 30d of the principal Act is amended—**

- (a) by inserting immediately after subsection (1) the following subsection:—

(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.;

and

- (b) by striking out subsection (2) and inserting in lieu thereof the following subsection:—

Amendment of  
principal Act,  
s. 30d—  
Closure of  
access to  
controlled-  
access roads.



(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.

Enactment of  
s. 30da of  
principal Act—

14. The following section is enacted and inserted in the principal Act immediately after section 30d thereof:—

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.

15. Section 30e of the principal Act is amended—

(a) by inserting in paragraph (a) after the passage “provided for” the passage “or approved”;

and

(b) by striking out from paragraph (b) the passage “or egress from”.

Amendment of principal Act, s. 30e—  
Offences in relation to controlled-access road.

16. The heading to Part III of the principal Act is amended by striking out the passage “RELATING TO THE CONSTRUCTION AND MAINTENANCE OF ROADS”.

Amendment of heading to Part III of principal Act.

17. Section 31 of the principal Act is amended by striking out from paragraph (i) of subsection (2) the passage “the ferry service to Kangaroo Island” and inserting in lieu thereof the passage “any ferry or sea transport service operated under this Act”.

Amendment of principal Act, s. 31—  
Highways Fund.

18. Section 32 of the principal Act is amended—

(a) by striking out the word “and” occurring immediately after paragraph (m);

(b) by striking out from paragraph (n) the passage “a ferry service to Kangaroo Island” and inserting in lieu thereof the passage “any ferry service or sea transport service operated under this Act”;

and

(c) by inserting after paragraph (n) the following paragraph:—  
and

(o) in defraying the cost of installing, maintaining, operating or removing any traffic control devices that the Commissioner is authorized or required by the Road Traffic Act, 1961, as amended, to install, maintain, operate or remove.

Amendment of principal Act, s. 32—  
Application of Highways Fund.

19. Section 35 of the principal Act is amended—

(a) by striking out from paragraph (d) of subsection (2) the word “mileage” and inserting in lieu thereof the word “distance”;

Amendment of principal Act, s. 35—  
Commissioner to determine amount of each council's contribution

and

- (b) by striking out from paragraph (e) of subsection (2) the word "mileage" and inserting in lieu thereof the word "distance".

Amendment of  
principal Act,  
s. 36a—  
Payment by  
Municipal  
Tramways  
Trust.

20. Section 36a of the principal Act is amended—

- (a) by striking out paragraph I from subsection (1);
- (b) by striking out from paragraph II of subsection (1) the passage "every month subsequent to the month first mentioned in paragraph I hereof" and inserting in lieu thereof the passage "the month immediately following the commencement of the Highways Act Amendment Act, 1972, and during each succeeding month";

and

- (c) by striking out from paragraph II of subsection (1) the passage "one penny for every mile" and inserting in lieu thereof the passage "half of one cent for every kilometre".

Amendment of  
principal Act,  
s. 43—  
Regulations.

21. Section 43 of the principal Act is amended by inserting in subsection (1) after paragraph (j) the following paragraph:—

- (k) for controlling or regulating any matter or thing connected with the operation of a ferry service or sea transport service under this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor