



ANNO DECIMO

GEORGII VI REGIS.

A.D. 1946.

No. 47 of 1946.

An Act to amend the Roads (Opening and Closing)
Act, 1932-1936

[Assented to 19th December, 1946.]

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

1. (1) This Act may be cited as the "Roads (Opening and Closing) Act Amendment Act, 1946". Short titles.

(2) The Roads (Opening and Closing) Act, 1932-1936, as amended by this Act, may be cited as the "Roads (Opening and Closing) Act, 1932-1946".

(3) The Roads (Opening and Closing) Act, 1932-1936, is hereinafter referred to as "the principal Act".

2. Section 2 of the principal Act is amended by adding at the end of subsection (2) thereof the words "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of title or grant which is to be issued in pursuance of any such proceedings under any of the said Acts hereby repealed or in pursuance of any proceedings under any Act repealed by any such Act shall be issued as a certificate of title in the form provided by this Act and otherwise in accordance with and subject to the provisions of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".

Amendment of
principal Act,
s. 2—
Repealing
provisions.

3. Section 11 of the principal Act is amended—

(a) by inserting after the word "charge" in the fourth line of paragraph III. of subsection (1) thereof the words "or any easement";

(b) by striking out all the words in paragraph IV. of subsection (1) thereof after the word "Surveyor-

Amendment of
principal Act,
s. 11—
Procedure on
deposit of
plans.

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General” and by inserting in lieu thereof the words “the documents provided to be deposited by subsection (1a)”;

(c) by inserting therein after subsection (1) thereof the following subsection :—

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

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

(i.) the said agreement ; and

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

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

and the Commissioner or council as the case may be, shall at the time of the said deposit, pay to the Surveyor-General a fee of one pound ten shillings for the issue of the said 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.
- (d) by inserting after the word "Act" in the second line of subsection (2) thereof the words "in which an order is not made or".
- (e) by adding at the end of subsection (4) thereof the words "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 Town Planner".

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

Enactment of
s. 11a of
principal Act—

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—

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

- (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.

Amendment of
principal Act,
s. 14—
Report on
order by
Surveyor-
General.

5. Section 14 of the principal Act is amended by inserting after the word "Governor" in the seventh line of subsection (4) thereof the words "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 Governor".

Amendment of
principal Act,
s. 16—
Disposal of
closed road.

6. Section 16 of the principal Act is amended—

(a) by inserting after the word "shall" in the third line thereof the words ", except in a case such as is provided for in subsection (1a),";

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

(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.

(c) by inserting after the word "purchase-money" in the first line of subsection (2) thereof the words "received upon any sale pursuant to subsection (1) or (1a), after".

7. Section 17 of the principal Act is amended by adding at the end thereof the following subsection :—

Amendment
principal Act,
s. 17—
Easements.

(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.

8. Section 20 of the principal Act is amended by striking out subsection (3) thereof.

Amendment of
principal Act,
s. 20—
Issue of
certificate of
title.

9. The following sections are enacted and inserted in the principal Act after section 20 thereof :—

Enactment of
s. 20a of
principal Act—

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 :—

Consolidation
of certificates
of title to be
issued.

- 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.

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

Consolidation
of existing
titles to
closed roads.

the Surveyor-General, the Registrar-General may issue such a certificate.

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

(3) The provisions of 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.

Alteration of
register book.

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

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

Provision when
owner of
closed road is
unknown.

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

(a) no land grant or certificate of title has been issued in respect of the land comprised in the closed road or any portion thereof and the person entitled to the issue thereof is dead or unknown; and

(b) the 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.

10. Section 22 of the principal Act is amended by inserting after the word "land" second occurring in the second line thereof the words "or in the Crown lease or agreement for sale and purchase granted by the Crown in which the land is comprised".

Amendment of
principal Act,
s. 22—
Compensation.

Amendment of
principal Act,
s. 23—
Closing of
road adjoining
land of the
Crown.

11. (1) Section 23 of the principal Act is amended—

- (a) by inserting after the word "used" in the fourth line of subsection (2) thereof the words "or occupied";
- (b) by striking out the word "or" in the fifth line of subsection (2) thereof;
- (c) by inserting after the word "department" in the fifth and sixth lines of subsection (2) thereof the words "or any instrumentality of the Crown";
- (d) by inserting after the word "Crown" in the seventh line of subsection (2) thereof the words "or any instrumentality of the Crown";
- (e) by inserting after the word "and" in the fifth line of subsection (4) thereof the words ", except in a case such as is hereinafter mentioned in this subsection,";
- (f) by adding at the end of subsection (4) thereof the words "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.

(2) The principal Act is amended by adding the following schedule at the end thereof after the fourth schedule:—

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*].

Amendment of
principal Act.

12. The principal Act is amended in the manner shown in the schedule to this Act.

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

C. W. M. NORRIE, Governor.

THE SCHEDULE.

AMENDMENTS TO THE ROADS (OPENING AND CLOSING) ACT, 1932-1936.

Provision amended.	How amended.
Section 3	The passage " No. 1 " wherever occurring in section 3 is struck out.
Section 6	The words " Commissioner of Crown Lands " in subsection (3) are struck out and the words " Minister of Lands " are inserted in lieu thereof.
Section 7	The words " Commissioner of Crown Lands " wherever occurring in subsection (2) or subsection (3) are struck out and the words " Minister of Lands " are inserted in lieu thereof in each case.
Section 8	The passage " section 94 of the Pastoral Act, 1904 " is struck out and the passage " section 99 of the Pastoral Act, 1936 " is inserted in lieu thereof.
Section 11 (5)	The passage " No. 1 " in the tenth line of subsection (5) is struck out.
Section 11 (6)	The passage " Licensed Surveyors Act, 1896 " is struck out and the passage " Surveyors Act, 1935 " is inserted in lieu thereof.
Section 14 (2)	The passage " No. 1 " in the sixth line of subsection (2) is struck out.
Section 14 (3)	The passage " No. 1 " in the eighth line of subsection (3) is struck out.
Section 14 (4)	The words " Commissioner of Crown Lands " in the sixth line of subsection (4) are struck out and the words " Minister of Lands " are inserted in lieu thereof.
Section 17	The words " Commissioner of Crown Lands " in the first line are struck out and the words " Minister of Lands " are inserted in lieu thereof.
Section 18	The words " Commissioner of Crown Lands " wherever occurring are struck out and the words " Minister of Lands " inserted in lieu thereof in each case.
Section 23	The words " Commissioner of Crown Lands " wherever occurring are struck out and the words " Minister of Lands " are inserted in lieu thereof in every case.
Section 27	The passage " No. 1 " occurring in the second line and the last line is struck out in each case.
Second schedule ...	The words " Commissioner of Crown Lands " wherever occurring are struck out and the words " Minister of Lands " are inserted in lieu thereof in every case.
Third schedule	The words " Commissioner of Crown Lands " are struck out and the words " Minister of Lands " are inserted in lieu thereof.
Fourth schedule ...	The words " Commissioner of Crown Lands " are struck out and the words " Minister of Lands " are inserted in lieu thereof.