

**CLOSED ROADS ALIENATION.**

23° GEO. V., No. III.

No. 3 of 1932.

**AN ACT to make provision for the alienation of land comprised in Closed Roads, and for other purposes relating thereto.**

[Assented to 18th October, 1932.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the *Closed Roads Alienation Act, 1932.*

This Act to be read with the Land Act, 1898, and the Transfer of Land Act, 1893.

2. (1.) This Act shall be read in conjunction with the Land Act, 1898, and the Transfer of Land Act, 1893.

(2.) Sections three, four, and five of this Act shall not apply to—

- (a) any closed road situate within a municipality; or
- (b) any closed road situate within a road district to or in connection with which subsection (3) or subsection (6) of section one hundred and fifty of the Road Districts Act, 1919, has heretofore had effect or become applicable, or to any closed road aforesaid where the closure has been or hereafter shall be effected under the said section one hundred and fifty, if and so far as the land comprised in the closed road had, when reserved for road purposes, been alienated from the Crown in fee simple; or
- (c) any closed road situate within a road district which has or shall become dedicated as a road under subsection five of section one hundred and fifty-five of the Road Districts Act, 1919.

Save as aforesaid, this Act and sections three, four, and five of this Act shall apply to all closed roads situate within a road district whether the same have been closed under the provisions of section one hundred and fifty of the Road Districts Act, 1919, or under the provisions of section six of the Land Act Amendment Act, 1902.

3. Where a road has hitherto been, or hereafter is, closed, and the land comprised therein has become Crown land, and land of any person, through whose land such closed road passes or to whose land such closed road adjoins, is resumed for the purpose of a road to take the place of the closed road in exercise of a right of resumption without payment of compensation, the Governor may, on the recommendation of the Minister and without any consideration, by Order in Council, declare that so much of the land comprised in the closed road, which passes through or adjoins the land of such person, as, in the opinion of the Minister, is equivalent to the land resumed as aforesaid, shall vest in such person for an estate or interest similar to that held by such person in his land immediately contiguous to the land so vested.

Where a road is closed and land is resumed without payment of compensation for the purpose of a road to take the place of the closed road, land in the closed road equivalent to the land resumed may be vested in the owner of the land resumed.

4. Where a road has heretofore been or hereafter is closed, and the land comprised therein has become Crown land, and land of any person through whose land such closed road passes, or to whose land such closed road adjoins, is resumed for the purpose of a road to take the place of the closed road, and by reason of such resumption such person is entitled to claim and recover compensation from a road board, the Governor may, on the recommendation of the Minister, and with the consent of such person and of such road board, by Order in Council declare that as and by way of satisfaction or part satisfaction of the compensation payable, so much of the land comprised in the closed road, which passes through or adjoins the land of such person as, in the opinion of the Minister, is equivalent in value to the amount of the compensation payable or to a definite portion of such compensation, shall vest in such person for an estate or interest similar to that held by such person in his land immediately contiguous to the land so vested. In such case the road board shall forthwith, if required so to do by the Minister, pay to the Minister the amount of the compensation in satisfaction whereof such land has been vested as aforesaid.

Where a road is closed and land is resumed for a road to take the place of the closed road and compensation on such resumption is payable by a road board, land in the closed road may be vested in the owner of the land resumed in satisfaction of such compensation.

Where a road is closed, the land comprised therein may be vested in owners of land adjoining the closed road at a price to be fixed by the Minister.

5. Where a road has heretofore been, or hereafter is, closed as being no longer required as a road and is Crown land, or where any land remains in a closed road after the powers conferred by sections three and four of this Act have been exercised in relation to such road, and such remaining land is Crown land, the Governor may, on the recommendation of the Minister, by Order in Council declare that upon payment of the price fixed for the same by the Minister, so much of the land in the closed road as adjoins the land of a person holding land contiguous thereto shall vest in such person for an estate or interest similar to that held by such person in the land adjoining the closed road as aforesaid:

Provided that, where the land on the opposite sides of a closed road is held by different owners, the contiguous half of the land in the closed road to the middle thereof may be vested in each such owner.

Land in a closed road which is vested in the owner of land adjoining the closed road is so vested for an estate similar to the estate held by such person in such adjoining land.

6. Where land comprised in a closed road has or hereafter shall become vested by virtue of or under any Act in the person who is entitled to an estate or interest in land through which such closed road passes or to which such closed road adjoins, the land in the closed road shall be deemed to have been or to be vested in such person for an estate or interest similar to that held by him in the land through which the closed road passes or to which the closed road adjoins as aforesaid.

Where land in a closed road is vested or becomes vested in owner of adjoining land such land shall be deemed to be incorporated with and form part of such adjoining land.

7. (1.) Where land comprised in a closed road becomes vested in any person under this Act, or has become vested in any person in the manner mentioned in section six of this Act, such land shall be deemed to be incorporated with and to form part of the parcel of land through which the closed road passes or to which the closed road adjoins, as the same is denoted and identified in the records of the Department of Lands and Surveys, or the Office of Land Titles, or the Deeds Office, as the case may be:

Provided that, where the same person holds the land on both sides of a closed road, and the land on one side thereof is held under an instrument of title different from that under which the land on the other side of the closed road is held, the Minister shall decide with which parcel of land the land in the closed road is to be incorporated as aforesaid.

(2.) When any land part of a closed road has become vested under this Act in any person as owner of any lands through which the said road passed or to which it adjoined, the Minister, or the Under Secretary for Lands, or any officer appointed by the Governor for the purpose, shall issue to such person a certificate in writing setting forth the particulars of such vesting and specifying the land affected.

(3.) The Registrar of Titles or the Under Secretary for Lands, as the case may require, shall, upon receipt of an application in writing from the person in whom the land is vested and production of the certificate issued to him under subsection (2) hereof, and on payment of the fee prescribed where a fee is payable, make such alterations in any lease from the Crown issued under the Land Act, 1898, or in any certificate of title issued under the Transfer of Land Act, 1893, or in any other records under his control and relating to such parcel of land as may be necessary to show that the land in the closed road has become incorporated with and forms part of the parcel of land aforesaid. No fee shall be payable except in the case of land in a closed road which is vested in a person under section five of this Act.

Registrar of Titles and Under Secretary for Lands to make necessary alterations in records.

(4.) Where such parcel of land aforesaid is freehold land under the Transfer of Land Act, 1893, the Registrar of Titles may, and shall, upon the application of the owner thereof and production of the certificate issued to such owner under subsection (2) hereof, and on payment of the fee prescribed by or under the said Act, cancel the relative certificate of title and issue a new certificate of title in which he shall include the land in the closed road which has become incorporated with and forms part of the parcel of land aforesaid comprised in such certificate of title.

Where land freehold, Registrar of Titles may cancel existing certificate of title and issue new certificate of title.

(5.) Where any person has possession or control of any lease from the Crown, or any certificate of title or other instrument in which the Registrar of Titles or Under Secretary for Lands desires to make any alterations as required by this section, and where any person has possession or control of any certificate of title which has been cancelled by the Registrar of Titles under subsection four hereof, the Registrar of Titles or the Under Secretary for Lands, as the case may require, may serve upon such person a notice in writing requiring him, within a time specified in the notice, to deliver to him the lease, certificate of title, or other instrument mentioned and described in the notice.

Persons having possession of instruments of title may be required to deliver the same to the Registrar of Titles or Under Secretary for Lands.

Failure to deliver instruments of title an offence.

(6.) If any person fails or neglects to comply with any notice served on him under subsection five hereof, he shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding twenty pounds, and in addition to a daily penalty not exceeding forty shillings.

Where land in a closed road is incorporated with adjoining land which is subject to a mortgage or other encumbrance or caveat, such land also becomes subject to such mortgage or other encumbrance.

8. Where land comprised in a closed road has become incorporated with and forms part of other land as in this Act provided, and such other land is subject to a mortgage or other encumbrance or caveat, then upon the lease or certificate of title of such other land being altered as provided for in section seven of this Act, the land in the closed road then shown to be included in such lease or certificate of title shall, by virtue of this Act, become subject to such mortgage or other encumbrance or caveat as if such land had originally been included therein.

Where prior to this Act land in a closed road has been added to other land which was and still is subject to a mortgage or other encumbrance, such land shall be deemed to have become and to be subject to such mortgage or other encumbrance.

9. Where prior to the commencement of this Act land comprised in a closed road has by virtue of or under any Act been added to or incorporated with other land, and the lease or certificate of title of such other land has been altered accordingly, and the land originally comprised in such lease or certificate of title was, at the time of such alteration aforesaid, and still is, subject to a mortgage or other encumbrance or caveat, then the land in the closed road shown by such alteration aforesaid to have been included in such lease or certificate of title shall by virtue of this Act be deemed to have been subject as from the date of the alteration of the lease or certificate of title, and to continue subject to such mortgage or other encumbrance or caveat as if such land had originally been included therein.

Provision for increase of purchase price of land under contract of sale in certain cases.

10. Notwithstanding anything to the contrary in this Act contained, where any parcel of land or the estate or interest therein is in the course of being sold by the legal owner thereof under a contract of sale, and during the currency of such contract, and with the approval in writing of the purchaser land in a closed road is vested in the said legal owner under section four or section five of this Act and is incorporated with the said parcel of land under this Act, the purchase price or consideration expressed in the said contract of sale shall be deemed to be increased by the amount of compensation referred to in section four aforesaid or the amount of the purchase price referred to in section five aforesaid, as the

ase may require, and to be payable by the purchaser accordingly, and the terms and conditions of such contract shall extend and apply to the land incorporated as aforesaid as if such land had originally formed part of the parcel of land the subject of the said contract:

Provided that this section shall not affect the rights of any person in respect of any claim which has already been settled or decided.

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