

Western Australia

Main Roads Act 1930

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Main Roads Act 1930

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Main Roads Act 1930

An Act to consolidate and amend the law relating to and making provision for the construction, maintenance, and supervision of highways, main and secondary roads, and other roads, the control of access to roads and for other relative purposes.

[Long title amended by No. 34 of 1952 s.2; No. 96 of 1975 s.3.]

Preliminary

1. Short title, commencement and extent of operation

- (1) This Act may be cited as the *Main Roads Act 1930*, and shall come into operation on a day to be fixed by proclamation¹.
- (2) This Act shall apply to such portions of the State as shall from time to time be defined by proclamation².

[2. Repealed by No. 53 of 1976 s.2.]

[3. Repealed by No. 10 of 1996 s.4.]

4. All matters and things subsisting under repealed Acts to enure for this Act

Every regulation, rule, proclamation, order in council, declaration, determination, appointment, instrument, book, document, valuation, and every Act of authority and other act, matter or thing which was subsisting or operative immediately before the commencement of this Act under or for the purposes of any statutory provision which is hereby repealed and hereby re-enacted with or without modification shall, subject to this Act, subsist and enure for the purposes of this Act as fully and effectually as if it had originated under the corresponding provision hereof; and accordingly shall, when necessary, be deemed to have so originated, and this Act shall apply thereto.

[Section 4 amended by No. 96 of 1975 s.4.]

[5. Repealed by No. 10 of 1996 s.5.]

6. Interpretation

In this Act, subject to the context —

“**Commissioner**” means the Commissioner of Main Roads appointed under this Act;

“**control of access**” in relation to any road means that a section or part of that road is intended for use by prescribed traffic without avoidable hindrance, whether from traffic from an intersecting road or otherwise, and that such section or part of the road has been declared by proclamation to be subject to control of access and may be entered or departed from at specified places only;

“**declared road**” means a road declared to be a highway, main road or secondary road under this Act, and includes any part of any such road;

“**district**” means an area that has been declared to be a district under the *Local Government Act 1995*;

“financial year” or **“year”** means the period of 12 months ending on 30 June in any year;

“highway” means a road declared by proclamation to be a highway for the purposes of this Act, and includes any part thereof;

“interest” in relation to land means —

- (a) a legal or equitable estate or interest in the land; or
- (b) an easement, right, power or privilege in, under, over, affecting, or in connection with the land;

“land” includes an interest in land;

“main road” means a road declared by proclamation to be a main road for the purposes of this Act, and includes any part thereof;

“motor traffic pass” means a pass that is constructed across a gap in a fence and that is designed to enable motor traffic to pass on any road made through the gap and to prevent the straying of livestock through the gap;

“proclaimed area” means a portion of the State to which this Act applies;

“road” means any thoroughfare, highway or road that the public is entitled to use and any part thereof, and all bridges (including any bridge over or under which a road passes), viaducts, tunnels, culverts, grids, approaches and other things appurtenant thereto or used in connection with the road;

“road construction” includes —

- (a) the improvement and reconstruction of roads and, for that purpose, the acquisition of land, the demolition of buildings and the taking or defending of legal proceedings;
- (b) the purchase and maintenance of plant, and the supply of labour and materials, for road construction;

- (c) the administration of road construction, including planning, research, investigation, survey and design; and
- (d) the maintenance of roads and the provision and maintenance of street lights and traffic lights and any equipment necessary for or incidental to the proper management of a road,

and “**construct**”, in relation to a road, has a corresponding meaning;

“**secondary road**” means a road declared to be a secondary road for the purposes of this Act, and includes any part thereof.

[Section 6 amended by No. 34 of 1952 s.3; No. 7 of 1966 s.2; No. 70 of 1966 s.3; No. 57 of 1967 s.3; No. 47 of 1969 s.4; No. 27 of 1974 s.27; No. 96 of 1975 s.5; No. 53 of 1976 s.3; No. 10 of 1996 s.6; No. 14 of 1996 s.4.]

Commissioner of Main Roads

7. Commissioner of Main Roads

- (1) The Governor may appoint for the due administration of this Act, some person to be Commissioner of Main Roads.
- (2) In case of the illness or other incapacity, suspension or absence of the Commissioner, or any vacancy in the office of Commissioner, the Governor may appoint some person to act as the deputy of the Commissioner during such illness, incapacity, suspension, absence or vacancy, and until such appointment is terminated by the Governor. Every person so appointed shall while so acting have all the powers and perform all the duties of the Commissioner.
- (3) The Commissioner shall be appointed for a term not exceeding 5 years, but he may be removed from office by the Governor at any time on the happening of any one of the events following, namely —
 - (a) for misbehaviour or incompetence;

- (b) if he commits an act of bankruptcy under the law relating to bankruptcy and in force in this State;
- (c) if he wilfully fails to perform his duties for 14 consecutive days, except when on leave of absence granted by the Minister;
- (d) if he becomes in any way, except as Commissioner, concerned or interested in any contract made by or on behalf of the Commissioner; or in any way participates or is entitled to participate either directly or indirectly in the profits or benefits derived from any such contract.

[Section 7 amended by No. 96 of 1975 s.6; No. 10 of 1996 s.7.]

8. Salaries of Commissioner and deputy

The Commissioner shall receive an annual salary, to be fixed by the Governor; and every person appointed to act as his deputy, while so acting, such remuneration as the Governor shall decide.

9. Commissioner to be a body corporate

For the purposes of this Act the Commissioner shall be a body corporate under the name of the “Commissioner of Main Roads”, and shall have perpetual succession and a common seal, and power to acquire, hold and dispose of real and personal property, and to sue and be sued, and to do and exercise all such acts and powers as may, in the opinion of the Minister, be necessary or convenient for carrying into effect any of the purposes or objects of this Act.

9A. Borrowing powers may be guaranteed

- (1) For carrying out the purposes of this Act the Commissioner, subject to the approval of the Minister, shall have power upon the guarantee and with the prior approval in writing of the Treasurer of the State to borrow money upon such terms and conditions only as the Treasurer approves.

s. 10

- (2) The Treasurer is hereby authorized to so approve and to give the guarantee, including a guarantee of interest, referred to in subsection (1), for and on behalf of the Crown in right of the State.
- (3) Any moneys borrowed by the Commissioner under this section may be raised as one loan or as several loans in such manner as the Treasurer may approve, but the amount of the moneys so borrowed shall not in any one year exceed in the aggregate such amount as the Treasurer approves.
- (4) Before a guarantee is given by the Treasurer under this section, the Commissioner shall give to the Treasurer such security as the Treasurer may require and shall execute all instruments necessary for the purpose.
- (5) The Commissioner shall use moneys borrowed under the power conferred by this section for the purpose of carrying this Act into effect and for no other purpose.

[Section 9A inserted by No. 96 of 1975 s.7.]

10. Officers and employees

- (1) The Minister may on the recommendation of the Commissioner, for the purposes of this Act, appoint persons to be officers of the Commissioner.
- (2) The Commissioner may —
 - (a) employ such employees as are required for road or other construction;
 - (b) in accordance with the regulations, employ persons as cadets;
 - (c) employ and remunerate students; and
 - (d) with the approval of the Minister, make use of the services of any officer or employee employed in the Public Service of the State.

- (3) No officer, employee or servant of the Commissioner shall —
- (a) engage in any employment outside the duties of his office, except with the approval of the Commissioner; or
 - (b) in any way participate, or claim to be entitled to participate, in the profits of or in any benefit or emolument arising from any contract or agreement made by or on behalf of the Commissioner; or
 - (c) acquire any Crown lands without the approval of the Minister.

[Section 10 amended by No. 6 of 1955 s.2; No. 7 of 1966 s.3; No. 53 of 1976 s.4; No. 38 of 1984 s.3³; No. 10 of 1996 s.8.]

10A. Delegation of power of appointment to Commissioner

- (1) The Minister may, either generally or as provided by the instrument of delegation, by writing signed by him, delegate to the Commissioner his power of appointment under section 10(1).
- (2) For the purposes of this Act, the exercise of a power of appointment under section 10(1) by the Commissioner under this section shall be deemed to be the exercise of that power by the Minister.

[Section 10A inserted by No. 38 of 1984 s.4; amended by No. 10 of 1996 s.9.]

10B. Delegation by Commissioner

- (1) The Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer of the Commissioner any of his powers or duties under this Act, other than this power of delegation or a power of appointment delegated to him under section 10A by the Minister.

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- (2) If a function of the Commissioner is performed in accordance with a delegation under this section, that function is deemed to be performed by the Commissioner.

[Section 10B inserted by No. 10 of 1996 s.10.]

11. Officers to be subject to control of Commissioner

Every engineer and other officer shall, in the exercise and discharge of their respective powers and duties under this Act, in all things be subject to the direction and control of the Commissioner.

[Section 11 amended by No. 53 of 1976 s.5.]

11A. Status of Commissioner, and of officers of Commissioner, who are members of Senior Executive Service

Notwithstanding anything in sections 7, 8, 10 and 11, to the extent that there is in the case of a person who is appointed under —

- (a) section 7 to be the Commissioner; or
- (b) section 10 to be an officer of the Commissioner,

and who is a member of the Senior Executive Service within the meaning of the *Public Service Act 1978*⁴ an inconsistency between this Act and that Act that Act shall prevail.

[Section 11A inserted by No. 113 of 1987 s.32.]

12. Deputations

Any deputation in which a member of Parliament takes part or at which he is present shall interview the Minister and not the Commissioner.

Main Roads Advisory Board

[Heading inserted by No. 10 of 1996 s.11.]

12A. Board established

- (1) A body called the Main Roads Advisory Board is established.
- (2) The Board is to consist of 5 members appointed by the Minister.
- (3) The First Schedule has effect.

[Section 12A inserted by No. 10 of 1996 s.11.]

12B. Board's functions

The Board's functions are —

- (a) to advise the Minister about the present and future needs of the State for roads and for infrastructure relating to road transport, after taking into account the views of all kinds of users of roads;
- (b) to advise the Minister of any concerns as to the State's roads and infrastructure relating to road transport that are held by any body of persons concerned with road transport or with users of roads; and
- (c) to report in writing to the Minister about any matter referred to the Board by the Minister.

[Section 12B inserted by No. 10 of 1996 s.11.]

Highways and main roads

[Heading inserted by No. 96 of 1975 s.8.]

13. Proclamation of highways and main roads

- (1) On the recommendation of the Commissioner the Governor may by proclamation declare that any section or part of a road shall be —
 - (a) a highway; or
 - (b) a main road,

s. 13

or shall cease so to be and may by the same or a subsequent proclamation declare that the footpaths of any such road shall, or shall not, be excluded from the road.

- (2) In considering whether to make any recommendation to the Governor that a road should be declared to be a highway, the Commissioner shall take into account —
- (a) the moneys available or likely to be available for highways;
 - (b) whether the road is or will be the direct connection between the capital of this and any other State;
 - (c) whether the road is or will be the principal route between the capital and the major producing regions of the State;
 - (d) whether the road is or will be the principal route between 2 or more of the major producing regions or major centres of population of the State; and
 - (e) whether the road is or will be the principal route for high volume traffic movements within large urban areas.
- (3) In considering whether to make any recommendation to the Governor that a road should be declared to be a main road, the Commissioner shall take into account —
- (a) the moneys available or likely to be available for main roads;
 - (b) whether the road is or will be the main route connecting any large producing area, or any area capable of becoming in the near future a large producing area, with its market or closest port or railway station;
 - (c) whether the road is or will be the main route of intercommunication between 2 or more large producing areas, or areas capable of becoming in the near future large producing areas, or between large centres of population; and

- (d) whether the road is or will be a major route for high volume traffic movements within large urban areas.
- (4) All highways and main roads shall, for the purposes of the *Road Traffic Act 1974*, be deemed to be Government roads.
- (5) A declaration under this section may be revoked or varied by the Governor on the recommendation of the Commissioner.

[Section 13 inserted by No. 96 of 1975 s.9.]

13A. Local government to be consulted

- (1) The Commissioner shall cause the local government of each district in which the road is situated to be notified in writing of the details of any proposed permanent improvements to any highway or main road before commencing the improvements.
- (2) Before making any recommendation to the Governor —
 - (a) that any road be declared to be a highway or main road; or
 - (b) that the plans of any proposed new highway or main road or deviation from an existing highway or main road be approved,

the Commissioner shall cause a notification to be given in writing to the local government of each district in which the road so to be declared is situated or the new road or deviation is proposed to be made of his intention to make the recommendation and shall inform the local government of a date, being not less than 30 days from the date of the notification, before which any objections by that local government may be made, and any such objection shall be considered by the Commissioner and responded to by him before making his recommendation.

- (3) Any local government which feels aggrieved by any recommendation may, within 30 days after notification of the response of the Commissioner following his consideration of

s. 14

that local government's objections, appeal to the Minister, who may vary or disallow the proposed recommendation.

[Section 13A inserted by No. 96 of 1975 s.10; amended by No. 14 of 1996 s.4; No. 57 of 1997 s.84(1).]

14. Power to provide highways and main roads

- (1) The Governor, on the recommendation of the Commissioner, may authorize and empower the Commissioner to provide highways and to provide main roads, and where such a road is provided it shall be deemed to have been proclaimed when it is opened to traffic as such.
- (2) Before making any such recommendation the Commissioner shall take into account such matters as are mentioned in subsection (2) or subsection (3), as the case may require, of section 13.

[Section 14 amended by No. 96 of 1975 s.11.]

15. Property in and control of main roads

- (1) The absolute property in the land over which a highway or main road is declared shall vest in the Crown.
- (2) The Commissioner shall have the care, control and management of the land over which a highway or main road is declared.
- (3) The property in —
 - (a) the materials of all highways and main roads, and all live and dead timber and vegetation thereon, and all matters and things appurtenant thereto; and
 - (b) all buildings, fences, gates, posts, boards, stones, erections, and structures placed upon any highway or main road; and

- (c) the scrapings of any highway or main road and all gravel, sand, and other material on any highway or main road,

shall vest in the Commissioner.

[Section 15 inserted by No. 35 of 1972 s.3; amended by No. 96 of 1975 s.12.]

15A. Offences relating to damage to plants and litter

- (1) No person shall cut, break, bark, root up or otherwise damage, destroy or remove the whole or any part of any timber, tree, sapling, shrub, undergrowth, or wildflower in or upon any highway or main road without the prior consent in writing of the Commissioner except when such action is taken to remove a hazard.
- (2) No person shall deposit any litter upon any highway or main road.

Penalty: \$200.

[Section 15A inserted by No. 35 of 1972 s.4; amended by No. 96 of 1975 s.13.]

Powers and duties of Commissioner

16. Powers of Commissioner

- (1) The Commissioner may —
 - (a) construct all highways or main roads, and do all things necessary for or incidental to the proper management thereof;
 - (b) exercise in regard to any highway or main road any power which a local government could exercise in regard thereto if such road were within its district.
- (1a) The Commissioner has power under this Act, and is to be taken to have always had power under this Act, to operate any equipment necessary for or incidental to the proper management

of a highway or main road, not being equipment used to control or regulate traffic, or any person, on the highway or main road.

- (1b) Apart from any power to do so expressly conferred by this Act, the Commissioner's power to control or regulate traffic, or any person, on a highway or main road by any means is such as is from time to time conferred on the Commissioner by regulations made under the *Road Traffic Act 1974*.
- (1c) The Commissioner is to be taken as always having been authorized by the regulations referred to in subsection (1b) to operate traffic signs and traffic control signals and similar devices, the erection of which is authorized by those regulations.
- (2) Subject to the provisions of section 15, the powers of any local government over any highway or main road shall not be deemed to be taken away by this Act, but the exercise of such powers shall be subject to the control and direction of the Commissioner.
- (3) A local government may, at the request in writing of the Commissioner and as his agent, and at a cost to the Commissioner to be stated in such request, undertake, or may at its discretion, tender for and enter into any contract with the Commissioner for the construction of any highway or main road within its district, or the construction of any secondary road within its district; and, subject to the work being done to the satisfaction of the Commissioner the cost to the Commissioner stated in the request, or the amount stated in the contract, as the case may be, shall, subject to the conditions (if any) stated in such request or contract, be payable to the local government out of moneys standing to the credit of the Main Roads Trust Fund.
- (4) The Commissioner may, for the purposes of this Act, exercise such powers as may be delegated to him in writing from time to time under Division 4 of Part 9 of the *Land Administration Act 1997*, by the Minister for the time being administering that Act, who is hereby authorized so to delegate his powers, and in

any such case section 203 of that Act applies, and section 113A of the *Public Works Act 1902* applies as if the powers had been conferred under that Act.

- (5) The Commissioner may provide, construct and supervise all or any of the works and undertakings mentioned in sections 32 and 32A.

[Section 16 amended by No. 7 of 1966 s.4; No. 57 of 1967 s.4; No. 35 of 1972 s.5; No. 27 of 1974 s.28; No. 96 of 1975 s.14; No. 25 of 1982 s.4; No. 10 of 1996 s.12; No. 14 of 1996 s.4; No. 49 of 1996 s.64; No. 31 of 1997 s.68(1).]

16A. Road closure

- (1) Where in the opinion of the Commissioner —
- (i) a highway or main road or a part thereof has become unsafe for traffic generally or traffic of any particular class; or
 - (ii) a highway or main road or part thereof would be damaged by the passage of traffic generally or traffic of any particular class;

the Commissioner may cause that highway, main road or part to be closed to traffic generally or to traffic of any particular class, and may from time to time authorize the re-opening of that highway, main road or part to traffic generally or to traffic of any particular class.

- (2) The Commissioner shall not cause a highway or main road or part thereof to be closed for any period of more than 28 consecutive days or for periods aggregating more than 28 days in the space of one year, unless the consent of the Minister has first been obtained but may with that consent authorize the closure for any greater period or periods.
- (3) Where a highway or main road or a part thereof is closed pursuant to this provision, the Commissioner shall cause signs to be erected at each end of that highway, main road or part; and

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a person who, without the authority of the Commissioner, interferes with any such sign commits an offence.

Penalty: \$200.

- (4) Every person who, without the authority of the Commissioner, drives a vehicle or causes a vehicle to be driven on a highway or main road or a part thereof that is closed to traffic generally, or drives a vehicle of any class or causes a vehicle of any class to be driven on a highway or main road or a part thereof that is closed to that class of vehicle, commits an offence.

Penalty: \$200.

[Section 16A inserted by No. 96 of 1975 s.15.]

17. Commissioner may conduct surveys and experiments

The Commissioner, so far as any moneys legally available for the purpose permit, shall —

- (1) carry out all such surveys and investigations as may be necessary or expedient to ascertain —
- (a) what roads shall be highways and what roads shall be main roads;
 - (b) the nature and extent of the resources of the State in metals, minerals, and materials suitable for the purposes of road construction, and the most effective and economical methods of dealing with the same and for applying the same to, and utilizing the same for the said purposes in, the whole or any part of the State;
 - (c) the most effective methods of road construction for the whole or any part of the State; and
 - (d) what deviation (if any) in existing roads or what new roads should in his opinion be made so as to facilitate communication and improve conditions of traffic;

and

- (2) conduct or cause to be conducted experiments with different materials to test their relative durability and suitability for the construction of roads; and
- (3) record, publish, and make available for general information the results of all such surveys and investigations; and
- (4) purchase all land, machinery, tools, implements, and materials that may be needed for the purposes of this Act.

[Section 17 amended by No. 96 of 1975 s.16; No. 10 of 1996 s.13.]

18. No contract to be made exceeding \$500 000 without written consent of Minister

No contract involving an expenditure by the Commissioner of an amount exceeding \$500 000 shall be entered into without the written consent of the Minister being first obtained.

[Section 18 amended by No. 96 of 1975 s.17; No. 10 of 1996 s.14.]

18A. Power to enter into contracts and agreements

- (1) With the consent of the Minister the Commissioner may enter into an agreement with any person providing for that person to pay for, or contribute towards, the expenditure to be incurred by the Commissioner in relation to the construction, or any aspect of the construction, of any road that under this Act the Commissioner is authorized to construct.
- (2) The Commissioner has, and is to be taken to have always had, the power to enter into a contract with any person under which the person is to perform any road or other construction that the Commissioner is empowered to perform under this Act or any other written law.

s. 18A

- (3) The Commissioner may enter into an agreement with any person providing for such of the Commissioner's functions under this Act or any other written law (other than those referred to in subsection (2)) as are set out in the agreement to be performed for and on behalf of the Commissioner.
- (4) An agreement under subsection (3) may require that the functions to be performed under it be performed —
 - (a) on and subject to the terms and conditions set out in the agreement;
 - (b) only in relation to a road, or a part of a road, set out in the agreement.
- (5) Where the performance of a function set out in an agreement under subsection (3) is dependent upon the opinion, belief, or state of mind of the Commissioner it may, subject to the agreement, be performed upon the opinion, belief, or state of mind of the person with whom the agreement is made or another person set out in the agreement.
- (6) For the purposes of this Act or any other written law, an act or thing done to, or by reference to or in relation to a person in connection with the performance by that person of a function of the Commissioner under an agreement under subsection (3) is as effectual as it would be if it were done to, by reference to or in relation to the Commissioner.
- (7) For the purposes of this Act or any other written law, if —
 - (a) under an agreement under subsection (3) a function of the Commissioner is to be performed by another person; and
 - (b) the function is performed in accordance with that agreement,

then the performance has effect as if it had been performed by the Commissioner.

[Section 18A inserted by No. 10 of 1996 s.15.]

18B. Power to undertake other work

- (1) The Commissioner may enter into a contract with any person to do work, whether or not connected with the functions of the Commissioner under this Act, for that person.
- (2) A contract under subsection (1) may provide for an agreed amount or an agreed rate to be paid to the Commissioner for work done.
- (3) No contract under subsection (1) that involves, or may involve, payment to the Commissioner of more than \$500 000 shall be entered into without the written consent of the Minister being first obtained.
- (4) In this section —
“**work**” includes providing advice or facilities, supplying services and doing work jointly with another person.

[Section 18B inserted by No. 10 of 1996 s.16.]

19. Other duties of the Commissioner

The Commissioner shall also —

- (a) inspect and report on and construct or supervise roads and works when so desired by the Minister;
- (b) report to the Minister on his proceedings under this Act on such occasions as the Minister directs;
- [(c) deleted]*
- (d) supervise the construction of highways, main roads and secondary roads, and other works to be carried out under this Act; and
- (e) perform such other duties as may be prescribed.

[Section 19 amended by No. 96 of 1975 s.19; No. 98 of 1985 s.3; No. 10 of 1996 s.17.]

s. 19A

19A. Application of *Financial Administration and Audit Act 1985*

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commissioner and his operations.

[Section 19A inserted by No. 98 of 1985 s.3.]

19B. Minister may give directions

- (1) Subject to subsection (3), the Minister may give directions in writing to the Commissioner with respect to the performance of his functions, either generally or in relation to a particular matter, and the Commissioner shall give effect to any such direction.
- (2) The text of any direction given under subsection (1) shall be included in the annual report submitted by the Commissioner under section 66 of the *Financial Administration and Audit Act 1985*.
- (3) The Minister may not give a direction with respect to the Commissioner's decision to make a recommendation to the Governor under section 13, 14, 24 or 28A.

[Section 19B inserted by No. 10 of 1996 s.18.]

19C. Minister to have access to information

- (1) The Minister is entitled —
 - (a) to have information in the possession of the Commissioner; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
 - (a) request the Commissioner to furnish information to the Minister;
 - (b) request the Commissioner to give the Minister access to information;

- (c) for the purposes of paragraph (b) make use of the staff of the Commissioner to obtain the information and furnish it to the Minister.
- (3) The Commissioner shall comply with a request under subsection (2) and make his facilities and members of staff available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
- “**document**” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;
- “**information**” means information specified, or of a description specified, by the Minister that relates to the functions of the Commissioner.

[Section 19C inserted by No. 10 of 1996 s.18.]

20. Commissioner to provide access in certain cases

- (1) Subject to the provisions of section 28A where the Commissioner, in reconstructing an existing road or building a new road, prejudicially affects the access to a property having a frontage thereto, the Commissioner shall at his own expense provide reasonable access to the reconstructed or new road.
- (2) If in carrying out the provision of subsection (1) it becomes necessary for the Commissioner to acquire any land belonging to a private owner, the expense of so doing shall be borne by the person requiring such access: Provided that, before any such land is so acquired, the Commissioner shall give at least 21 days' notice of his intention to acquire, and in the event of the person requiring such access dissenting from his so doing, the Commissioner's responsibility under subsection (1) shall cease.

[Section 20 amended by No. 34 of 1952 s.4.]

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21. Commissioner may request local government to furnish information

The Commissioner may request any local government to furnish any information respecting any road or work under the control of such local government, and if the information is available it shall be furnished to the Commissioner by the local government within one month.

[Section 21 amended by No. 14 of 1996 s.4.]

22. Construction of works

The Commissioner may, with the approval of the Minister, construct and maintain on any road works necessary for facilitating the exercise of the powers conferred on the Commissioner by this Act, and the approval so given shall be sufficient authority for the carrying out of any works incidental to the exercise of those powers.

[Section 22 inserted by No. 53 of 1976 s.6.]

23. Penalty for defacing works etc.

Any person who obliterates, removes, or defaces any signs, marks, trenches, posts, pegs or the like, made, erected or inserted in or upon any land in the course of making surveys, or taking levels, or setting out any land required for the purposes of this Act, or establishing distances, warnings, directions and the like, shall be guilty of an offence and liable on conviction to a penalty not exceeding \$40.

[Section 23 amended by No. 113 of 1965 s.8.]

Secondary roads

[Heading inserted by No. 96 of 1975 s.20.]

24. Secondary roads

- (1) The Governor, on the recommendation of the Commissioner, may —
 - (a) declare any road to be a secondary road for the purposes of this Act;

- (b) authorize and empower the Commissioner to provide and construct any secondary road.
- (2) A declaration made under this section may be revoked or varied by the Governor on the recommendation of the Commissioner.
- (3) In considering whether to make any recommendation to the Governor that any road should be declared to be a secondary road, the Commissioner shall take into account —
 - (a) the funds available or likely to be available for secondary roads;
 - (b) whether the road is or will be in the near future a feeder route connecting producing areas with a highway or main road or with their market outlets or connecting centres of population;
 - (c) whether the road is, or will be, the main means of access to a national park, scenic reserve or site, or seaside resort, and

before making any recommendation the Commissioner shall consult with the local government.

- (4) The powers of a local government over a secondary road shall not be deemed to be taken away by this Act and the Commissioner may enter into agreements with local governments for the construction of secondary roads or any parts of a secondary road.
- (5) The local government of a district in which a secondary road or any part of a secondary road is situated shall be responsible for maintaining such secondary road or part; but where a secondary road, or part of a secondary road, follows the common boundary of 2 districts, the cost of the maintenance shall be apportionable between the local governments of those districts and the Commissioner may determine the respective liabilities of each local government.

- (6) Where a local government fails to maintain to the satisfaction of the Commissioner any construction works carried out by the Commissioner on a secondary road, the Commissioner may, by notice in writing, direct the local government to carry out the works of maintenance specified in the notice within the period limited by the notice.
- (7) Where a local government fails to comply with a direction given under subsection (6), the Commissioner may carry out such works and any expenses so incurred by the Commissioner shall be repaid by the local government to the Commissioner, and, if not repaid within 3 months after demand by the Commissioner, shall be deemed a debt due and payable to Her Majesty enforceable in the name of Her Majesty against the local government and the revenues of the local government.
- (8) All moneys repaid by, or recovered from a local government under this section shall be credited to the Main Roads Trust Fund.

[Section 24 inserted by No. 96 of 1975 s.21; amended by No. 25 of 1982 s.5; No. 14 of 1996 s.4; No. 49 of 1996 s.64.]

[25. Repealed by No. 96 of 1975 s.22.]

26. Powers in respect of secondary roads

The Minister, the Commissioner, and the officers acting under this Act shall have the same powers with regard to secondary roads as are by this Act conferred on them regarding highways and main roads, and the provisions of this Act regarding highways and main roads, shall, as far as practicable, apply *mutatis mutandis* to secondary roads.

[Section 26 amended by No. 96 of 1975 s.23; No. 10 of 1996 s.19.]

[27. Repealed by No. 96 of 1975 s.24.]

Roads other than declared roads

[Heading inserted by No. 96 of 1975 s.25.]

27A. Roads which have not been declared as highways, main roads or secondary roads

- (1) The Commissioner may construct roads or parts of roads for the development of an area or for any other purpose, and any such road need not be declared to be a highway, a main road or a secondary road.
- (2) Before commencing the construction of any road pursuant to this section, the Commissioner shall consult with the local government and when that road, or any part thereof, has been constructed or any work executed thereon, that road or part shall be the responsibility of the local government of the district in which it is situated and shall be maintained by that local government.
- (3) The Commissioner and officers acting under this Act shall have the same powers with regard to roads under this section as are by this Act conferred on them regarding highways and main roads, and the provisions of this Act regarding highways and main roads shall, as far as practicable, apply *mutatis mutandis* to any such roads.

[Section 27A inserted by No. 96 of 1975 s.25; amended by No. 10 of 1996 s.20; No. 14 of 1996 s.4.]

Motor traffic passes

28. Motor traffic passes

- (1) In this section “**the relevant authority**” means —
 - (a) in relation to a highway or main road, the Commissioner; and
 - (b) in relation to a secondary road, the Commissioner or the local government when acting as agent of the Commissioner.

- (2) Subject to this section, where a road passes through a fence or is to be constructed to pass through a fence the relevant authority may construct a motor traffic pass and a gate.
- (3) Where a fence includes a gate at or near the point where a motor traffic pass is to be constructed and it is necessary to remove the gate during construction, the relevant authority shall on the completion of the construction re-erect the gate in the fence at a point that is reasonably near the motor traffic pass.
- (4) A motor traffic pass shall be constructed according to plans and specifications approved by the Commissioner.
- (5) Except where the land so enclosed is used only for pastoral or grazing purposes, before the relevant authority commences the construction of a motor traffic pass it shall give not less than one month's written notice of its intention to construct the motor traffic pass to the occupier of the land enclosed by the fence.
- (6) A person to whom notice is given pursuant to subsection (5) may object to the construction of the motor traffic pass at any time within one month of the date of the notice by letter addressed to the relevant authority.
- (7) Where the relevant authority gives notice of its intention to construct a motor traffic pass and receives an objection pursuant to subsection (6) it shall not construct the motor traffic pass referred to in the notice unless the objection is subsequently withdrawn.
- (8) The costs of constructing a motor traffic pass shall be borne by the relevant authority and the costs of maintaining a motor traffic pass shall be borne —
 - (a) in the case of a highway or a main road, by the Commissioner; and

- (b) in the case of a secondary road, by the local government of the district,

and where a gate is included in a fence at or near a motor traffic pass the costs of maintaining the gate in a proper state of repair shall be borne by the occupier of the land enclosed by the fence in which the motor traffic pass is constructed.

- (9) The relevant authority shall not be liable for any damage or injury to any person lawfully using a motor traffic pass or for any damage or injury to livestock caused by the motor traffic pass, unless such damage or injury arises from the failure of the relevant authority to carry out any statutory duty in relation to the motor traffic pass.
- (10) Where a gate installed at or near a motor traffic pass is not in a proper state of repair the relevant authority may serve notice to that effect on the person who pursuant to subsection (8) is liable for the costs of maintaining the gate and if that person fails to put the gate into a proper state of repair the relevant authority may itself carry out such repairs to the gate as in its opinion are necessary and may recover the costs of carrying out those repairs from that person in any court of competent jurisdiction.
- (11) Where a gate or a motor traffic pass has been, or both a gate and a motor traffic pass have been, constructed pursuant to the provisions of this Act across a road and the road passes through enclosed land from which a portion has been compulsorily taken for the purposes of the road, the relevant authority is not liable to fence or to bear the costs of any fencing along the sides of the road where it passes through the enclosed land and notwithstanding anything in Part 10 of the *Land Administration Act 1997*, where a claim for compensation is made with respect to any such taking no compensation shall be paid with respect to the costs of fencing along the sides of the road.

[Section 28 inserted by No. 53 of 1976 s.7; amended by No. 14 of 1996 s.4; No. 31 of 1997 s.68(2).]

Control of access

[Heading inserted by No. 96 of 1975 s.28.]

28A. Control of access areas

- (1)(a) Where the Commissioner is of the opinion —
- (i) that any section or part of a road should have control of access and should be entered and departed from at specified places only; or
 - (ii) that any land acquired should be reserved for a future road section with control of access,
- the Commissioner shall make a recommendation to the Governor accordingly but may in so doing exclude a part of the road reserve from that recommendation.
- (b) On the recommendation of the Commissioner the Governor may, by proclamation, declare —
- (i) that such a section or part of a road is subject to control of access, and the places only at which it may be entered or departed from; or
 - (ii) that the land acquired is to be reserved for a future road section subject to control of access.
- (c) Where the Commissioner is of opinion that a proclamation so made should be varied or cancelled, he shall make a recommendation to the Governor accordingly.
- (d) If of opinion that the recommendation should be given effect, the Governor may, by subsequent proclamation, vary or cancel a former proclamation.
- (e) Proclamations made pursuant to the provisions of this subsection, as well as being published in the *Gazette* shall also, if the Governor thinks fit, be published or made known in such other manner as will, in the opinion of the Governor, afford reasonable opportunity to all persons concerned, to know of the substance of the proclamations.

- (f) The powers conferred by this subsection may be exercised from time to time, and notwithstanding the provisions of section 92 of the *Public Works Act 1902*.
- (2)(a) There is no right of access into or from a section or part of a road subject to control of access except at the places provided pursuant to the provisions of this Act for the purpose.
 - (b) Where a right of access between a road section or part of a road not subject to control of access and the land adjoining that section or part is by operation of paragraph (a) extinguished as a result of that section or part being declared to be subject to control of access, any person, the market value of whose estate or interest in that land is depreciated by the extinguishment of the right, is entitled to compensation for the depreciation.
 - (c) The amount of compensation, if any, is a sum equal to the difference between the market value, ascertained on such of the days mentioned in paragraph (d) or paragraph (e) as is applicable, of the estate or interest when the right of access exists and that market value when the right is extinguished, less such amounts, if any, as are taken into account in respect of the matters mentioned in paragraph (j).
 - (d) If the proclamation declaring the section or part of the road to be subject to control of access is published in the *Gazette* on or before 30 June in any year, the respective values referred to in paragraph (c) are those obtaining on 1 January next preceding the publication.
 - (e) If the proclamation declaring the section or part of the road to be subject to control of access is published after 30 June in any year, the respective values mentioned in paragraph (c) are those obtaining on 30 June next preceding the publication.
 - (f) The Commissioner may enter into agreements relating to rights of access.
 - (g) By an agreement so entered into the Commissioner may agree —

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- (i) on the amount of compensation;
 - (ii) to pay that amount on execution of the agreement or upon such terms and conditions as the parties agree; and
 - (iii) to the exercise of a right of access in respect of a section or part of a road subject to control of access but subject to such conditions and undertakings as having regard to the purposes of the section or part of a road subject to control of access he thinks fit.
- (h) Where there is no agreement, Part 10 of the *Land Administration Act 1997* as modified by the provisions of this subsection applies *mutatis mutandis* in respect of the compensation.
- (i) For the purpose of the application of Part 10 of that Act to the provisions of this subsection, section 207 of that Act, which relates to the period of time within which the claim for compensation may be made, is regarded as if the period of 6 months referred to in subsection (1) of that section begins on the date of publication in the *Gazette* of the relevant proclamation made pursuant to the provisions of subsection (1).
- (j)(i) Where the compensation is to be assessed by the Court, the Court shall take into account in assessing the compensation —
agreement, if any, by the Commissioner pursuant to paragraph (g)(iii);
benefit, if any, which may accrue to land in which the claimant has an estate or interest as a result of the construction or improvement, by the Commissioner or any other authority at any time after the proclamation declaring the section or part of the road to be subject to control of access, upon land adjacent to the land in respect of which compensation is claimed, of a road whether a road to provide local access or any other road subsidiary to the road, or by reason of the proclamation declaring the section or part of the road to be subject to control of access.

- (ii) Where there is an agreement or benefit mentioned in subparagraph (i), the effect of the Court's taking it into account shall be specified in the Court's award.
- (3) The provisions of —
section 13(4);
sections 15 to 19, both inclusive;
sections 21 to 23 both inclusive;
and sections 29 to 35 both inclusive,
of this Act, apply, *mutatis mutandis* in respect of sections or parts of a road subject to control of access.
- (4) Notwithstanding the provisions of any Act a person shall not without the consent of the Commissioner use a section or part of a road subject to control of access for movement of live stock, except by transport in a vehicle in accordance with the provisions of this Act and the regulations.
- (5) (a) The Commissioner may construct roads to provide local access and may carry a road to provide local access over or under any section or part of a road subject to control of access, or may carry a section or part of a road subject to control of access over or under a road to provide local access.
- (b) The provisions of section 24(5), apply, *mutatis mutandis*, to a road to provide local access.
- (6) A section or part of a road subject to control of access may, in accordance with the regulations, be divided into zones for the use of specified classes of traffic.
- (7) A person who —
- (a) enters or leaves a section or part of a road subject to control of access otherwise than at a place provided pursuant to the provisions of this Act for that purpose;
- (b) without the consent of the Commissioner, constructs, forms or lays out any means of access to a section or part of a road subject to control of access or does not

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comply with the conditions of the consent where consent is given;

- (c) removes or damages the whole or part of an impediment erected by the Commissioner across a side road;
- (d) obliterates, removes or damages a notice erected by the Commissioner;
- (e) without the consent of the Commissioner uses a section or part of a road subject to control of access for movement of live stock, except by transport in a vehicle, in accordance with the provisions of this Act and the regulations; or
- (f) uses a zone of a section or part of a road subject to control of access for traffic otherwise than in accordance with the regulations,

commits an offence against this Act.

Penalty: \$40.

[Section 28A inserted by No. 34 of 1952 s.5; amended by No. 113 of 1965 s.8; No. 96 of 1975 s.29; No. 54 of 1977 s.2; No. 31 of 1997 s.68(3).]

28B. Prohibition on erection of structures etc. on, over or under areas for control of access

- (1) Notwithstanding the provisions of any Act, no person, local government or agent or instrumentality of the Crown, except the Commissioner, shall place on, over or under a section or part of a road subject to control of access or any land acquired, set apart, taken or resumed for a section or part of a road subject to control of access, any tower, pole, wire, pipe or other structure or apparatus of any kind, without the prior consent in writing of the Commissioner.
- (2) The Commissioner may by notice in writing, direct a person, local government, agent or instrumentality of the Crown who or which has contravened subsection (1) to remove, pull down or take up the tower, pole, wire, structure or apparatus placed on,

over or under a section or part of a road subject to control of access or any land in contravention of that subsection.

- (3) Where the person, local government, agent or instrumentality of the Crown on whom or on which a notice referred to in subsection (2) has been served, fails to comply with the notice within the time specified therein, the Commissioner —
- (a) may remove, pull down or take up the tower, pole, wire, pipe, structure or apparatus specified in the notice; and
 - (b) may recover, in a court of competent jurisdiction as a civil debt due to him from the person, local government, agent or instrumentality of the Crown, the amount of the expenses incurred by him in exercising the power conferred by paragraph (a).

[Section 28B inserted by No. 7 of 1966 s.5; amended by No. 96 of 1975 s.30; No. 14 of 1996 s.4; No. 57 of 1997 s.84(2).]

29. Modes of acquisition and procedure for taking land

- (1) When and as often as land is required for the purposes of this Act, the Commissioner —
- (a) may acquire the land by negotiation or agreement; or
 - (b) may enter upon, survey and compulsorily acquire the land under the powers contained in and in accordance with the procedure prescribed by Part 9 of the *Land Administration Act 1997*.
- (2) In addition to the other powers conferred on the Commissioner by this Act, the Commissioner may grant —
- (a) a lease or licence to occupy any land acquired by him under this section; and
 - (b) any interest in that land,
- to any person from whom the land was acquired upon such terms and conditions subject to subsection (3) as he thinks fit and of which the Minister approves.
- (3) Where the Commissioner pursuant to subsection (2)(b), grants an interest that is an easement, unless the parties concerned

otherwise agree, the easement shall not be revoked without compensation.

- (4) The Commissioner may enter into agreements relating to such other matters and things as are necessary to give effect to the powers conferred on the Commissioner by this section and for the purpose of facilitating the acquisition and dealing with any land acquired under this section.
- (5) Without limiting the generality of the powers conferred by this section, the provisions of this section relating to the acquisition of land, whether an interest is acquired separately from or together with any land, extends to the acquisition of an interest to use the subsoil or under surface of land, the surface of land or any space above the surface of land for the erection of any bridge over or under which a road is to pass and for the erection of the necessary supports therefor.
- (6) Where —
- (a) land that consists only of a space above the natural surface is acquired under this section;
 - (b) a road is constructed through that space; and
 - (c) the road is proclaimed, reserved, declared or otherwise dedicated as a road under an Act,

the land shall not, if it is under the operation of the *Transfer of Land Act 1893* at the time it is so acquired, be removed from the operation of that Act, notwithstanding the provisions of this or any other Act.

- (7) In applying the *Public Works Act 1902*, to this Act the expressions, “land” and “interest” in that Act have the same respective meanings as they respectively have in section 6 of this Act.

[Section 29 inserted by No. 70 of 1966 s.4; amended by No. 31 of 1997 s.142.]

[30. Repealed by No. 73 of 1954 ss.5 and 8.]

The Main Roads Trust Fund

[Heading inserted by No. 25 of 1982 s.6.]

31. Main Roads Trust Fund

- (1) There shall be credited, from time to time, to the fund maintained at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, and known as the Main Roads Trust Fund —
 - (a) such moneys as are, from time to time, appropriated by Parliament for the purposes of this Act;
 - (aa) moneys paid pursuant to a contract, or an agreement, entered into by the Commissioner under this Act;
 - (b) moneys paid to the Treasury, by a local government, in respect of permanent works and the maintenance of highways, main roads, and secondary roads;
 - (c) moneys paid by the Commonwealth to the State, for the purposes of road construction, whether by virtue of an Act of the Parliament of the Commonwealth or otherwise; and
 - (d) moneys that are to be credited to the fund pursuant to the *Road Traffic Act 1974*, or any other Act.
- (2) Subject to this Act there shall be maintained within the Main Roads Trust Fund such accounts as the Treasurer may from time to time approve.

[Section 31 inserted by No. 47 of 1969 s.5; amended by No. 96 of 1975 s.31; No. 25 of 1982 s.7; No. 10 of 1996 s.21; No. 14 of 1996 s.4; No. 49 of 1996 s.64.]

32. Appropriation of Main Roads Trust Fund

- (1) The moneys standing to the credit of the Main Roads Trust Fund other than those standing to the credit of the Inner Metropolitan Councils' Urban Road Account or the Outer Metropolitan Councils' Urban Road Account maintained under

subsection (5)(f) or the Railway Crossing Protection Account maintained under section 32A shall be applied —

- (a) firstly, in meeting the costs of the administration of, and the exercise by the Commissioner of his functions under, this Act;
 - (b) secondly, in payment of any amount specified or determined by the Treasurer to be credited to the Consolidated Fund as a contribution towards the payment of interest and sinking fund contributions payable on loan moneys that have, from time to time, been appropriated by Parliament for expenditure on road construction;
 - [(c) repealed]*
 - (d) thirdly, in payment to local governments of the moneys payable pursuant to the succeeding provisions of this section;
 - (e) fourthly, in expenditure, by the Commissioner, in such manner and proportions as the Minister may, on the recommendation of the Commissioner, from time to time determine, on road construction and other works, on making payments to local governments or boards for road construction, on lights and signs for the direction of traffic and on the construction, erection and maintenance of lights for the lighting of any road or bridge; and
 - (f) finally, for any other purpose that the Minister may, on the recommendation of the Commissioner, from time to time determine.
- (2) In this subsection and in subsections (3) to (12), both inclusive, unless the contrary intention appears —
- (a) **“determined”** means determined by the Minister on the recommendation of the Commissioner;
- “Group”** means a Group of local governments set out in the Second Schedule or created pursuant to subsection (12)(a)(iii), or, where such a Group has been

altered pursuant to subsection (12)(a)(i), that Group as so altered;

“Second Schedule” means the Second Schedule to this Act;

“subsection” means a subsection of this section;

“subsequent year” means a year other than the first year;

“the Commonwealth Act” means the *Roads Grants Act 1980* of the Parliament of the Commonwealth as amended from time to time, or, if that Act has expired or been repealed, the Act of that Parliament for the time being granting financial assistance to the State for expenditure on the construction or maintenance of roads for which local governments are responsible;

“the first matching period” means the period commencing on 1 July 1980 and ending on 30 June 1983;

“the first year” means the year ending on 30 June 1981;

“the prescribed table”—

- (i) in relation to the first year, means the table of grants set out in the Second Schedule;
- (ii) in relation to a subsequent year, means such table of grants to local governments as is determined in relation to that year for the purposes of subsection (3)(b) and subsection (5)(b);

“the second matching period” means the period commencing on 1 July 1983 and ending on 30 June 1985;

“year” means a financial year during the period commencing on 1 July 1980 and ending on 30 June 1985;

(b) the expressions **“arterial road”**, **“construction”**, **“local road”** and **“maintenance”** have the same respective meanings as they have in and for the purposes of the Commonwealth Act;

(c) the term **“expenditure on road works from its own resources”**, however expressed, in relation to a local government, includes, in addition to expenditure on

construction and maintenance of roads, expenditure on footpaths, street lighting and cleaning and maintaining road verges.

- (3)(a) This subsection applies to Groups C, D and E and to any other Group to which it is declared to apply pursuant to subsection (12)(b).
- (b) The prescribed amount shall be made available each year from moneys standing to the credit of the Main Roads Trust Fund and, subject to paragraph (d) and subsections (4), (7), (8) and (9)(a), is payable in that year to the local governments in the Groups to which this subsection applies as base and additional grants as specified in the prescribed table.
- (c) In paragraph (b) **“the prescribed amount”** —
- (i) in relation to the first year, means \$12 373 560;
 - (ii) in relation to a subsequent year, means such amount as is determined in relation to that year for the purposes of that paragraph.
- (d) Every base grant paid to a local government pursuant to this subsection is so paid on condition that it will be expended on maintenance or construction of roads, and every additional grant paid to a local government pursuant to this subsection is so paid on condition that it shall be expended on construction of roads, and every grant of either kind paid to a local government pursuant to this subsection is so paid on condition that expenditure thereof on construction of roads shall be in accordance with a programme to be approved by the Minister on the recommendation of the Commissioner.
- (e) Notwithstanding paragraph (d), where a local government satisfies the Minister that it cannot usefully apply the whole of its additional grant referred to in that paragraph as required by that paragraph, the Minister may, where he is satisfied that special circumstances so warranting exist, approve of the expenditure of part of the additional grant upon maintenance of roads.

- (4)(a) Notwithstanding subsection (3)(b), the amount which any local government in Group C or D may receive under subsection (3) as a base grant for a year during the first matching period shall be reduced by the amount, if any, by which its base grant as specified in the Second Schedule exceeds the amount calculated by applying the following quota of grant to quota of expenditure on road works by the local government from its own resources for that year —
- Group C — \$1 grant for each \$2 expenditure on road works from its own resources;
 - Group D — \$1 grant for each \$1 expenditure on road works from its own resources.
- (b) Where in respect of the second matching period a quota of grant to quota of expenditure formula is determined for the purposes of this paragraph in relation to a Group to which subsection (3) applies, then, notwithstanding subsection (3)(b), the amount which any local government in that Group may receive under subsection (3) as a base grant for a year during that matching period (in this paragraph called “**the subject year**”) shall be reduced by the amount, if any, by which its base grant as specified in the prescribed table for the year ending on 30 June 1984 exceeds the amount calculated by applying the formula so determined to the amount expended on road works by the local government from its own resources for the subject year.
- (5)(a) This subsection applies to Groups A and B and to any other Group to which it is declared to apply pursuant to subsection (12)(b).
- (b) The prescribed amount shall be made available each year from moneys standing to the credit of the Main Roads Trust Fund and, subject to paragraph (d) and subsections (6), (7), (8) and (9)(a), is payable in that year to the local governments in the Groups to which this subsection applies as base grants as specified in the prescribed table.

- (c) In paragraph (b) **“the prescribed amount”** —
 - (i) in relation to the first year, means \$2 996 280;
 - (ii) in relation to a subsequent year, means such amount as is determined in relation to that year for the purposes of that paragraph.
- (d) Every base grant paid to a local government pursuant to this subsection is so paid on the conditions that —
 - (i) it will be expended on construction or maintenance of local roads;
 - (ii) not less than one half of it will be expended on construction; and
 - (iii) expenditure thereof on construction shall be in accordance with a programme to be approved by the Minister on the recommendation of the Commissioner.
- (e) Notwithstanding paragraph (d) where a local government satisfies the Minister that it cannot usefully apply one half of its base grant referred to in that paragraph to the construction of local roads as required by that paragraph, the Minister may, where he is satisfied that special circumstances so warranting exist, approve of the expenditure of the whole of the base grant, or some fraction thereof exceeding one half, on the maintenance of local roads.
- (f) The prescribed amount shall be made available each year from moneys standing to the credit of the Main Roads Trust Fund and the prescribed portions thereof shall be allocated in that year to accounts to be maintained by the Commissioner within the Main Roads Trust Fund and to be known respectively as the Inner Metropolitan Councils’ Urban Road Account and the Outer Metropolitan Councils’ Urban Road Account.
- (g) In paragraph (f) —
 - “the prescribed amount”** —
 - (i) in relation to the first year, means \$5 992 560;

- (ii) in relation to a subsequent year means such amount as is determined in relation to that year for the purposes of that paragraph;

“prescribed portions” —

- (i) in relation to the first year, means \$4 104 100 to the Inner Metropolitan Councils’ Urban Road Account and \$1 888 460 to the Outer Metropolitan Councils’ Urban Road Account;
 - (ii) in relation to a subsequent year means such portions as are determined in relation to that year for the purposes of that paragraph.
- (h) Each local government in Group A or B may submit to the Commissioner each year a programme containing projects for the construction of arterial roads and local roads and the Minister may, on the recommendation of the Commissioner, approve any such project in which event moneys may be paid to the local government out of —
- (i) the Inner Metropolitan Councils’ Urban Road Account in the case of a local government specified in Group A; or
 - (ii) the Outer Metropolitan Councils’ Urban Road Account in the case of a local government specified in Group B,

to meet expenditure incurred on the projects so approved.

- (6)(a) Notwithstanding subsection (5)(b) the amount which any local government in Group A or B may receive as a base grant for a year during the first matching period shall be reduced by the amount, if any, by which its base grant as specified in the Second Schedule exceeds the amount calculated by applying the following quota of grant to quota of expenditure on road works by the local government from its own resources for that year —
- Group A — \$1 grant for each \$5 expenditure on road works from its own resources;

Group B — \$1 grant for each \$4 expenditure on road works from its own resources.

- (b) Where in respect of the second matching period a quota of grant to quota of expenditure formula is determined for the purposes of this paragraph in relation to a Group to which subsection (5) applies, then, notwithstanding subsection (5)(b), the amount which any local government in that Group may receive under subsection (5) as a base grant for a year during that matching period (in this paragraph called “**the subject year**”) shall be reduced by the amount, if any, by which its base grant as specified in the prescribed table for the year ending on 30 June 1984 exceeds the amount calculated by applying the formula so determined to the amount expended on road works by the local government from its own resources for the subject year.
- (7) Where the sum of the amounts expended by a local government on road works from its own resources over the whole of the first matching period or the second matching period exceeds the sum of the amounts required for that local government to receive its full entitlement of the base grant for each year of that matching period, that local government shall receive its full entitlement of the base grants, notwithstanding that a deficit is carried forward from one of those years to the next and notwithstanding subsection (4) or subsection (6).
- (8) Where in respect of any year a local government satisfies the Minister that because of special circumstances existing there should be a reduction in its quota of expenditure on road works from its own resources, the Minister may reduce the quota of expenditure for that local government notwithstanding subsection (4) or subsection (6).
- (9)(a) Such moneys paid to local governments under subsections (3) and (5) as are derived from payments made under the Commonwealth Act are paid on the condition that the moneys are expended in accordance with the terms and conditions specified in the Commonwealth Act, and all moneys paid to

local governments under those subsections are paid on the condition that the moneys are expended on works or projects approved by the Minister on the recommendation of the Commissioner, but the Minister may on the recommendation of the Commissioner approve of variations in work or projects previously approved.

- (b) Where moneys standing to the credit of the Inner Metropolitan Councils' Urban Road Account or the Outer Metropolitan Councils' Urban Road Account are not expended within the time specified in the Commonwealth Act, the Commissioner may re-allocate those moneys to another account within the Main Roads Trust Fund.
- (10) The Minister may delegate to the Commissioner all or any of his powers under subsection (3)(d), subsection (5)(d) and (h) and subsection (9)(a).
- (11) A local government shall not be regarded, for the purposes of subsections (4), (6), (7) and (8) as having expended any particular amounts on road works from its own resources unless such expenditure is certified to be correct by audit pursuant to Part 7 of the *Local Government Act 1995*; and, in any event, where the Minister is satisfied that an amount paid to a local government under this section exceeds the amount that was properly payable, he may require the local government to repay the amount of the excess to the credit of the Main Roads Trust Fund and may cause any amount so repayable but not repaid to be deducted from any other amount that may become payable to the local government under this Act.
- (12)(a) For the purposes of the second matching period the Minister, on the recommendation of the Commissioner, may, by instrument in writing, —
 - (i) alter any Group by adding the name of a local government thereto or removing the name of a local government therefrom;
 - (ii) abolish a Group; or

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- (iii) create a new group consisting of such local governments as are named in the instrument.
- (b) In the instrument creating a Group pursuant to paragraph (a)(iii) the Minister shall declare which of subsection (3) or subsection (5) shall apply to that Group.
- (c) In order to facilitate the application of the provisions of subsections (2) to (11), both inclusive, to and in relation to a Group created pursuant to paragraph (a)(iii) the Minister may, by instrument in writing, direct that those provisions be read with such variations and modifications as are specified in the instrument.
- (d) An instrument made under this subsection shall have and be given effect according to its tenor.
- (13) The Minister may authorize the making of advances of such amounts and at such times as he thinks fit, on account of any amount that may become payable to a local government under this section.
- (14) The warrant of the Commissioner is sufficient authority to the Treasurer to make any payment provided by this section, and in authorizing any such payment the Commissioner shall make such adjustment, in respect of moneys erroneously or improperly credited to the Main Roads Trust Fund as the circumstances may from time to time require.
- (15) Any unexpended moneys standing to the credit of the Main Roads Trust Fund at the end of a financial year may be applied under this section to any other year, without fresh appropriation.

[Section 32 inserted by No. 47 of 1969 s.6; amended by No. 28 of 1974 s.3; No. 96 of 1975 s.32; No. 54 of 1977 s.3; No. 9 of 1979 s.16; No. 21 of 1980 s.2; No. 106 of 1981 s.29; No. 25 of 1982 s.8; No. 6 of 1993 s.11; No. 14 of 1996 s.4; No. 49 of 1996 s.64; No. 56 of 1997 s.52.]

32A. Railway Crossing Protection Account

- (1) There shall be maintained under this Act an account within the Main Roads Trust Fund to be known as the Railway Crossing Protection Account.
- (1a) There shall be allocated to the Railway Crossing Protection Account —
 - (a) in the year ending on 30 June 1983 — \$650 000; and
 - (b) in subsequent years — such amount as the Minister may, on the recommendation of the Commissioner, from time to time determine.
- (2) Moneys standing to the credit of the Railway Crossing Protection Account shall be applied in meeting the cost of providing, improving, maintaining and repairing such crossings under, across or above railways in the State as the Minister may, on the recommendation of the Commissioner, from time to time determine.

[Section 32A inserted by No. 57 of 1967 s.7; amended by No. 25 of 1982 s.9.]

[33. Repealed by No. 14 of 1996 s.4.]

[33A. Repealed by No. 28 of 1974 s.4.]

Control of advertisements

33B. Control of advertisements

- (1) The Governor may, on the recommendation of the Commissioner, make regulations for controlling and prohibiting the erection or construction of hoardings or other advertising structures, and to enforce the removal of hoardings and other advertising structures, on or in the vicinity of highways, main roads, and sections or part of a road subject to control of access, and for restricting, preventing or controlling the exhibition of advertisements and for the removal of advertisements on or in the vicinity of highways, main roads, and sections or part of a

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road subject to control of access where such hoardings or other advertising structures are considered to be hazardous to traffic safety or are aesthetically objectionable and in the case of such hoardings or other advertising structures erected on private property where the property owner refuses either to remove the sign or transfer it to another site acceptable to the Commissioner.

- (2)(a) Any person dissatisfied with any direction given by the Commissioner under a regulation made under the provisions of this section may, within 14 days after the direction is communicated to him, appeal in writing to the Minister.
- (b) The Minister shall hear and determine such appeal and may appoint a committee to investigate and report on any matters referred to such committee by the Minister in connection with such appeal.
- (c) The decision of the Minister on any such appeal shall be final and shall be given effect to by the parties.

[Section 33B inserted by No. 35 of 1972 s.6; amended by No. 96 of 1975 s.34.]

33C. Delegation of powers to local government

- (1) The Commissioner may —
 - (a) delegate to a local government all or any of his powers and functions under a regulation made pursuant to the provisions of section 33B; and
 - (b) vary or revoke a delegation given by him.
- (2) A power or function delegated by the Commissioner may be exercised or performed by the delegate local government —
 - (a) in accordance with the instrument of delegation; and
 - (b) if the exercise of the power or the performance of the function is dependent upon the opinion or belief of the Commissioner in relation to a matter — upon the opinion or belief of the delegate local government in relation to that matter.

- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commissioner.

[Section 33C inserted by No. 35 of 1972 s.6; amended by No. 14 of 1996 s.4.]

[34. Repealed by No. 67 of 1964 s.9.]

Regulations

35. Power to make regulations

The Governor may, on the recommendation of the Commissioner, make regulations not inconsistent with this Act, prescribing all things which by this Act are required or permitted to be prescribed or which it may be necessary or convenient to prescribe for the purpose of giving effect to the objects and purposes of this Act, including regulations prescribing the travelling expenses to be allowed to the Commissioner and his officers, and may by such regulations prescribe penalties for offences against the regulations not exceeding in any case the sum of \$40 and regulations relating to the employment by the Commissioner of persons as cadets.

[Section 35 (formerly s.34⁵) amended by No. 6 of 1955 s.3; No. 113 of 1965 s.8; No. 7 of 1966 s.6; No. 35 of 1972 s.7.]

[Heading deleted by No. 10 of 1996 s.22.]

**First Schedule — Provisions applying to the Main Roads
Advisory Board**

[Section 12A]

1. Interpretation

In this Schedule —

“**member**” means a member of the Main Roads Advisory Board.

2. Tenure of office

A member —

- (a) holds office for the term, not exceeding 2 years, specified in the instrument appointing the member, and is eligible for reappointment; and
- (b) may resign from office by notice in writing delivered to the Minister.

3. Chairperson

- (1) The Minister is to appoint one member to be the chairperson.
- (2) The Board is to appoint one member to be the deputy chairperson.
- (3) The deputy chairperson is to perform the functions of the chairperson when the chairperson is unable to do so because of illness, absence or other cause, or when the office of chairperson is vacant.

4. Meetings

- (1) Subject to this clause the Board is to determine the procedure for convening and conducting its meetings.
- (2) The chairperson is to preside at Board meetings.
- (3) In the absence of the chairperson and the deputy chairperson at a meeting, a person elected by the members present is to preside.
- (4) The Board is to keep minutes of its meetings to a standard approved by the Minister.
- (5) The Board is to give the Minister a copy of the minutes of each Board meeting.

5. Remuneration and allowances

A member is entitled to the remuneration and allowances determined by the Minister from time to time on the recommendation of the Minister for Public Sector Management.

6. Funds for the Board

The funds needed for the payment of members and for the operation of the Board are to be paid out of the Main Roads Trust Fund.

[First Schedule inserted by No. 10 of 1996 s.23.]

Second Schedule

Second Schedule

[Section 32]

	Base Grant \$	Additional Grant \$
Group A:		
City of —		
Belmont	105 080	
Canning	165 490	
Cockburn	112 880	
Fremantle	76 340	
Gosnells	155 300	
Melville	178 010	
Nedlands	65 300	
Perth	288 350	
South Perth	95 320	
Stirling	505 050	
Subiaco	48 060	
Town of —		
Bassendean	38 560	
Claremont	25 840	
Cottesloe	22 990	
East Fremantle	19 320	
Mosman Park	20 300	
Shire of —		
Bayswater	124 700	
Peppermint Grove	5 160	
Group B:		
Town of —		
Armadale	124 720	
Kwinana	60 090	
Shire of —		
Kalamunda	119 870	
Mundaring	85 270	
Rockingham	84 520	
Serpentine-Jarrahdale	53 000	

Second Schedule

	Base Grant \$	Additional Grant \$
Swan	129 690	
Wanneroo	287 070	
Group C:		
City of —		
Bunbury	267 005	267 005
Town of —		
Albany	175 350	175 350
Geraldton	238 635	238 635
Kalgoorlie	109 975	109 975
Narrogin	70 520	70 520
Northam	92 440	92 440
Shire of —		
Albany	102 905	102 905
Augusta-Margaret River	77 405	77 405
Beverley	41 805	41 805
Boddington	18 800	18 800
Boyup Brook	59 275	59 275
Bridgetown-Greenbushes	56 280	56 280
Brookton	29 900	29 900
Broomehill	19 530	19 530
Bruce Rock	56 210	56 210
Busselton	116 305	116 305
Capel	39 745	39 745
Carnamah	35 240	35 240
Chapman Valley	30 960	30 960
Chittering	24 080	24 080
Collie	82 440	82 440
Coorow	34 665	34 665
Corrigin	54 985	54 985
Cranbrook	43 730	43 730
Cuballing	21 775	21 775
Cunderdin	48 825	48 825
Dalwallinu	70 660	70 660

Second Schedule

	Base Grant	Additional Grant
	\$	\$
Dandaragan	63 480	63 480
Dardanup	41 145	41 145
Denmark	35 235	35 235
Donnybrook-Balingup	53 990	53 990
Dowerin	40 190	40 190
Dumbleyung	36 945	36 945
Esperance	188 875	188 875
Gingin	38 825	38 825
Gnowangerup	97 550	97 550
Goomalling	32 355	32 355
Greenough	55 745	55 745
Harvey	90 940	90 940
Irwin	23 740	23 740
Katanning	77 785	77 785
Kellerberrin	53 115	53 115
Kent	42 010	42 010
Kojonup	61 090	61 090
Kondinin	49 395	49 395
Koorda	42 750	42 750
Kulin	51 380	51 380
Lake Grace	74 310	74 310
Mandurah	89 915	89 915
Manjimup	134 875	134 875
Merredin	118 180	118 180
Mingenew	22 275	22 275
Moora	69 755	69 755
Morawa	38 465	38 465
Mt Marshall	55 000	55 000
Mukinbudin	37 085	37 085
Mullewa	50 305	50 305
Murray	76 090	76 090
Nannup	37 520	37 520
Narembeen	57 365	57 365

Second Schedule

	Base Grant	Additional Grant
	\$	\$
Narrogin	31 485	31 485
Northam	55 295	55 295
Northampton	55 715	55 715
Nungarin	19 080	19 080
Perenjori	49 595	49 595
Pingelly	36 250	36 250
Plantagenet	84 690	84 690
Quairading	44 250	44 250
Ravensthorpe	43 865	43 865
Tambellup	23 370	23 370
Tammin	22 685	22 685
Three Springs	30 190	30 190
Toodyay	29 915	29 915
Trayning	30 995	30 995
Victoria Plains	45 395	45 395
Wagin	51 310	51 310
Wandering	15 550	15 550
Warooka	32 505	32 505
West Arthur	39 130	39 130
Westonia	26 590	26 590
Wickepin	36 110	36 110
Williams	29 785	29 785
Wongan-Ballidu	68 150	68 150
Woodanilling	17 955	17 955
Wyalkatchem	33 630	33 630
York	46 410	46 410
Group D:		
Shire of —		
Boulder	125 990	125 990
Carnarvon	114 630	114 630
Coolgardie	74 030	74 030
Exmouth	30 950	30 950
Port Hedland	119 870	119 870

Second Schedule

	Base Grant	Additional Grant
	\$	\$
Roebourne	116 520	116 520
Yilgarn	96 625	96 625
Group E:		
Shire of —		
Broome	29 605	29 605
Cue	7 865	7 865
Dundas	29 145	29 145
East Pilbara	45 735	45 735
Halls Creek	28 010	28 010
Laverton	14 930	14 930
Leonora	21 500	21 500
Meekatharra	30 300	30 300
Menzies	14 420	14 420
Mt Magnet	8 860	8 860
Murchison	14 930	14 930
Sandstone	9 900	9 900
Shark Bay	11 225	11 225
Upper Gascoyne	17 010	17 010
West Kimberley	47 070	47 070
West Pilbara	43 965	43 965
Wiluna	25 480	25 480
Wyndham-East Kimberley	39 780	39 780
Yalgoo	11 410	11 410

[Second Schedule inserted by No. 21 of 1980 s.3.]

Notes

- ¹ This is a compilation of the *Main Roads Act 1930* and includes all amendments effected by the other Acts referred to in the following Table.

Compilation table

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Main Roads Act 1930</i>	5 of 1930	19 Nov 1930	1 December 1930 (see section 1 and <i>Gazette</i> 28 November 1930 p.2564)	
<i>Main Roads Act Amendment Act 1932</i>	2 of 1932	18 Oct 1932	1 July 1932 (see section 2)	
<i>Limitation Act 1935, Schedule 2</i>	35 of 1935	7 Jan 1935	1 March 1955 (see section 2 of No. 73 of 1954 and <i>Gazette</i> 18 February 1955 p.343)	As amended by the <i>Limitation Act Amendment Act 1954</i> (No. 73 of 1954) s.8
<i>Main Roads Act Amendment Act 1937</i>	3 of 1937	29 Oct 1937	29 October 1937	
<i>Main Roads Act Amendment Act 1932, Amendment Act 1937</i>	4 of 1937	29 Oct 1937	29 October 1937	
<i>Main Roads Act Amendment Act 1938</i>	29 of 1938	31 Jan 1939	31 January 1939	
<i>Main Roads Act Amendment Act 1939</i>	48 of 1939	23 Dec 1939	23 December 1939	
<i>Main Roads Act (Funds Appropriation) Act 1951</i>	10 of 1951	20 Nov 1951	Deemed operative 1 July 1950 (see section 3)	Repealed by No. 67 of 1964

Main Roads Act 1930

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Main Roads Act Amendment Act 1952</i>	34 of 1952	5 Dec 1952	5 December 1952	
<i>Main Roads Act Amendment Act 1955</i>	6 of 1955	19 Oct 1955	19 October 1955	
<i>Main Roads Act Amendment Act 1959</i>	38 of 1959	10 Nov 1959	10 November 1959	
<i>Main Roads Act Amendment Act 1961</i>	48 of 1961	23 Nov 1961	23 November 1961	
<i>Traffic Act Amendment Act (No. 2) 1964, section 9</i>	67 of 1964	4 Dec 1964	1 January 1965 (see section 2 and <i>Gazette</i> 24 December 1964 p.4094)	
<i>Road Maintenance (Contribution) Act 1965, section 13</i>	69 of 1965	25 Nov 1965	1 April 1966 (see section 2 and <i>Gazette</i> 18 March 1966 p.761)	
<i>Decimal Currency Act 1965, section 8</i>	113 of 1965	21 Dec 1965	14 February 1966 (see section 2 (2))	
<i>Main Roads Act Amendment Act 1966</i>	7 of 1966	16 Sep 1966	16 September 1966	
<i>Main Roads Act Amendment Act (No. 2) 1966</i>	70 of 1966	12 Dec 1966	10 February 1967 (see section 2 and <i>Gazette</i> 10 February 1967 p.441)	
<i>Main Roads Act Amendment Act 1967</i>	57 of 1967	5 Dec 1967	1 January 1968 (see section 2)	
<i>Main Roads Act Amendment Act 1969</i>	47 of 1969	30 Jun 1969	1 July 1969 (see section 2)	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Main Roads Act Amendment Act 1972</i>	35 of 1972	16 Jun 1972	2 February 1973 (see section 2 and <i>Gazette</i> 2 February 1973 p.280)	
<i>Ministers of the Crown (Statutory Designations) and Acts Amendment Act 1974, Part VII</i>	27 of 1974	29 Oct 1974	1 December 1974 (see section 2 and <i>Gazette</i> 6 December 1974 p.5204)	
<i>Main Roads Act Amendment Act 1974</i>	28 of 1974	29 Oct 1974	1 July 1974 (see section 2)	
<i>Main Roads Act Amendment Act 1975</i>	96 of 1975	20 Nov 1975	Sections 7, 15, 17, 18, 31(a) and 32: 5 December 1975; balance 1 July 1976; (see section 2 and <i>Gazette</i> 5 December 1975 p.4359)	
<i>Main Roads Act Amendment Act 1976</i>	53 of 1976	10 Sep 1976	10 September 1976	
<i>Main Roads Act Amendment Act 1977</i>	54 of 1977	23 Nov 1977	23 November 1977	
<i>Acts Amendment and Repeal (Road Maintenance) Act 1979, Part IV</i>	9 of 1979	18 May 1979	18 May 1979 (see section 2)	
<i>Main Roads Amendment Act 1980</i>	21 of 1980	15 Oct 1980	15 October 1980	
<i>Acts Amendment (Traffic Board) Act 1981, Part VI</i>	106 of 1981	4 Dec 1981	2 February 1982 (see section 2 and <i>Gazette</i> 2 February 1982 p.394)	

Main Roads Act 1930

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Motor Vehicle Fees) Act 1982, Part II</i>	25 of 1982	27 May 1982	1 July 1982 (see section 2)	Section 10 transitional
<i>Main Roads Amendment Act 1984</i>	38 of 1984	20 Jun 1984	17 August (see section 2 and <i>Gazette</i> 17 August 1984 p.2440)	Section 3(2) transitional; Section 5: validation ³
<i>Acts Amendment (Financial Administration and Audit) Act 1985 (as amended by Act No. 4 of 1986), section 3</i>	98 of 1985	4 Dec 1985	1 July 1986 (see section 2 and <i>Gazette</i> 30 June 1986 p.2255	
<i>Acts Amendment (Public Service) Act 1987, section 32</i>	113 of 1987	31 Dec 1987	16 March 1988 (see section 2 and <i>Gazette</i> 16 March 1988 p.813)	
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 Aug 1993	Deemed operative 1 July 1993 (see section 2(1))	
<i>Main Roads Amendment Act 1996</i>	10 of 1996	27 Jun 1996	27 June 1996 (see section 2)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 Jun 1996	1 July 1996 (see section 2)	
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 Oct 1996	25 October 1996 (see section 2(1))	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Land Administration) Act 1997, Part 41 and section 142</i>	31 of 1997	3 Oct 1997	30 March 1998 (see section 2 and <i>Gazette</i> 27 March 1998 p.1765)	
<i>Acts Amendment (Franchise Fees) Act 1997, Part 5</i>	56 of 1997	12 Dec 1997	31 January 1998 (see section 2 and <i>Gazette</i> 30 January 1998 p.577)	
<i>Statutes (Repeals and Minor Amendments) Act 1997, section 84</i>	57 of 1997	15 Dec 1997	15 December 1997 (see section 2)	

² Proclamation published in *Gazette* 28 November 1930 p. 2564.

³ Section 5 of the *Main Roads Amendment Act 1984* (No. 38 of 1984) reads as follows —

“

5. Validation of appointment

Where before the coming into operation of this Act a person was appointed by the Governor under section 10(1) of the principal Act as in force immediately before the coming into operation of this Act and the appointment purported to be made with retrospective effect, the appointment shall not be invalid by reason only that it purported to be so made and shall have effect from the day specified in the instrument of appointment.

”.

⁴ Under section 112(1) of the *Public Sector Management Act 1994* references to the *Public Service Act 1978* may be construed as references to the *Public Sector Management Act 1994* (No. 31 of 1994).

⁵ Section 35 was renumbered as section 34 in the 1943 reprint (in Volume 2 of the Reprinted Acts of the Parliament of Western Australia).

