

MAIN ROADS.

2° and 3° GEO. VI., No. XXIX.

No. 29 of 1938.

AN ACT to make provision in the Main Roads Act, 1930-1937, authorising the construction of motor traffic passes and gates in and across main roads and developmental roads.

[Assented to 31st January, 1939.]

BE 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 *Main Roads Act Amendment Act*, 1938, and shall be read as one with the Main Roads Act, 1930-1937 (No. 5 of 1930 as amended by the Acts No. 2 of 1932 and No. 3 of 1937), hereinafter referred to as the principal Act.

New section.

2. A new section is inserted in the principal Act after section twenty-seven as follows:—

Authority to construct motor traffic passes and gates in and across main roads and developmental roads.

27A. (1) For the purposes of this section the term "motor traffic pass" means a contrivance constructed in a gap in a fence crossing or near a road, which is designed to permit the passage of motor

vehicles but to prevent the passage of livestock over or through such a contrivance.

(2) Where before the commencement of this section a main road or a developmental road has been constructed under the authority of this Act through land enclosed with a fence, and a gate has been constructed in such fence at the place where such road passes through such fence to permit the passage of traffic along the road through the enclosed land aforesaid, it shall be lawful for the Commissioner, in the case of a main road, and for the local authority in the case of a developmental road at any time after the commencement of this section, subject as in this section hereinafter provided, to construct in such road for the use of motor vehicles passing along such road a motor traffic pass near or next to or in the place of the gate aforesaid. Provided that if a motor traffic pass is constructed in the place of such gate, the gate shall be re-erected in the fence near or next to such motor traffic pass.

(3) Where, after the commencement of this section, the Commissioner, or a local authority when acting as the agent of the Commissioner, acting under the authority of this Act constructs any main road or any developmental road through any land (whether freehold or leasehold) which is enclosed with a fence, it shall be lawful for the Commissioner or the local authority, as the case may be, subject as in this section hereinafter provided, to construct a motor traffic pass in such road at the place where the road passes through the fence aforesaid and also to construct a gate in such fence near or next to such motor traffic pass, with intent that the motor traffic pass may be used by motor vehicles and the gate by motor vehicles and other traffic.

(4) Every motor traffic pass constructed under the authority of this section shall be of such nature, design and material as shall be approved by the Commissioner.

(5) Every motor traffic pass constructed under the authority of this section shall for all purposes in law and equity be deemed to be incorporated in and be part of the road in which it is so constructed

save and except that neither the Commissioner nor the local authority shall be liable in the event of livestock being injured or killed in such motor traffic pass or if any person lawfully using such motor traffic pass sustains damage, whether personal or otherwise, unless due to the fact that the motor traffic pass has fallen into disrepair through neglect of a statutory duty by the Commissioner or the local authority, as the case may be.

(6) Provided that, and notwithstanding anything to the contrary contained in this section—

- (i) except where the road constructed as aforesaid passes through enclosed land held on pastoral lease, or for pastoral or grazing purposes only, no gate or motor traffic pass shall be constructed in any fence on such enclosed land, if in accordance with the next following paragraph hereof the registered owner or registered lessee of the enclosed land objects to the construction of such gate or motor traffic pass;
- (ii) where it is proposed under the authority of this section to construct a motor traffic pass in any road or a gate in any fence enclosing land, other than land held on pastoral lease or for pastoral or grazing purposes only, such motor traffic pass or such gate shall not be constructed until after the expiration of one month's notice in writing of such proposal served upon the registered owner or registered lessee of the said land, and then only if such registered owner or registered lessee has not by notice in writing to the Commissioner or the local authority, as the case may require, objected to the construction of the proposed motor traffic pass or gate;
- (iii) any registered owner or registered lessee who has received from the Commissioner or the local authority the notice provided for in the next preceding paragraph hereof may within the period of such notice, by a notice in writing under his hand served on the Commissioner or local authority, as the

case may require, object to the construction of the motor traffic pass or to the gate mentioned in the notice received by him as aforesaid; and when such notice of objection is received by the Commissioner or local authority, and thereafter until such notice of objection is withdrawn by the objector, the motor traffic pass or the gate objected to shall not be constructed.

- (iv) Before any notice as required by paragraph (ii) of this subsection is given, or at any time during the currency of any such notice which has been given, the registered owner or registered lessee affected may consent in writing to the construction of the proposed motor traffic pass or gate, and such consent shall constitute a waiver by such owner or lessee of every objection by him to the construction of such motor traffic pass or gate.
- (v) Where any motor traffic pass is constructed under the authority of this section in a road which passes through a fence which is a rabbit-proof fence constructed by the Government under the authority of the Rabbit Act, 1902, or is a rabbit-proof fence within the meaning of the Vermin Act, 1918, the motor traffic pass shall be of such nature, design and material approved by the Commissioner as will prevent the passage of rabbits over or through such motor traffic pass.

(7) The expense of constructing under the authority of this section any motor traffic pass or gate shall be borne by the Commissioner; the expense of keeping any such gate in thorough repair shall be borne by the owner of the fence in which such gate is constructed; the expense of keeping in thorough repair a motor traffic pass constructed in a main road shall be borne by the Commissioner; and the expense of keeping in thorough repair a motor traffic pass constructed in a developmental road shall be borne by the local authority charged by the Act with the maintenance of such developmental road.

(8) In case of default by the owner in keeping a gate in thorough repair the Commissioner, where the gate is across a main road, and the local authority where the gate is across a developmental road, may affect all necessary repairs and recover the expense thereof from the owner in default as a debt owing by him in any court of competent jurisdiction.

(9) Where a gate or a motor traffic pass and a gate have been constructed under the authority of this section and the road in which or across which such motor traffic pass or such gate has been constructed passes through enclosed land from which a portion has been resumed for the purposes of such road—

(a) neither the Commissioner nor any local authority concerned shall be liable to fence or to bear the cost of fencing along the sides of the road where it passes through such enclosed land; and

(b) if the owner of such land or any person claiming under him makes a claim for compensation in respect of such resumption under the provisions of the Public Works Act, 1902-1933, then, notwithstanding anything to the contrary contained in the said last-mentioned Act, such claim shall not include any amount of compensation in respect of the cost of fencing along the sides of the said road as being damage suffered by the claimant by reason of the construction of the said road through such enclosed land.

Citation of
principal Act
as amended.

3. The principal Act as amended by this Act may be cited as the Main Roads Act, 1930-1938.