

Approved for reprint 21st May, 1962.

WESTERN AUSTRALIA.

MAIN ROADS.

No. 5 of 1930.¹

[As amended by Acts:

- No. 2 of 1932, assented to 18th October, 1932;
- No. 3 of 1937, assented to 29th October, 1937;
- No. 4 of 1937, assented to 29th October, 1937;
- No. 29 of 1938, assented to 31st January, 1939;
- No. 48 of 1939, assented to 23rd December, 1939;
- No. 34 of 1952, assented to 5th December, 1952;
- No. 73 of 1954,² assented to 14th January, 1955;
- No. 6 of 1955, assented to 19th October, 1955;
- No. 38 of 1959, assented to 10th November, 1959;
- No. 48 of 1961, assented to 23rd November, 1961;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to consolidate and amend the law relating to and making provision for the construction, maintenance, and supervision of Main and Developmental Roads and Controlled-access Roads and Local-access Roads, and for other relative purposes.

Long title amended by No. 34 of 1952, s. 2.

[Assented to 19th November, 1930.]

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

Preliminary.

1. (1) This Act may be cited as the *Main Roads Act, 1930-1961*, and shall come into operation on a day to be fixed by proclamation.¹

Short title, commencement, and extent of operation. No. 5 of 1930, s. 1. Amended by No. 48 of 1961, s. 1.

¹ Proclaimed to come into operation 1st December, 1930. See *Gazette* 28/11/1930, p. 2564.

² Proclaimed to come into operation 1st March, 1955. See *Gazette* 18/2/1955, p. 343.

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(2) This Act shall apply to such portions of the State as shall from time to time be defined by proclamation.

S. 183 of Road Districts Act, 1919, not to apply within proclaimed area.
No. 5 of 1930, s. 2.

2. From and after the commencement of this Act section one hundred and eighty-three of the Road Districts Act, 1919,¹ shall not apply to any road that is within any portion of the State to which this Act applies.

Repeal.
No. 5 of 1930, s. 3.

3. The Acts mentioned in the schedule hereto are hereby repealed.

All matters and things subsisting under repealed Acts to enure for this Act.
No. 5 of 1930, s. 4.

4. 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 accordingly, and every main road and developmental road proclaimed under the Acts hereby repealed and subsisting immediately before the commencement of this Act shall continue to be a main road and developmental road respectively under and for the purposes of this Act.

Main Roads Board abolished.
No. 5 of 1930, s. 5.

5. (1) The Main Roads Board is hereby abolished, and the corporate body heretofore constituted under that name is dissolved.

(2) On and from the commencement of this Act, and by virtue of this Act—

(a) all the assets, rights, liabilities and obligations of the said Board under the Acts hereby repealed shall be divested from the

¹ Repealed by Local Government Act, 1960-1961.

said Board, and shall be vested in and shall attach to and may be enforced by and against the Commissioner under this Act;

- (b) all proceedings and things lawfully had and done by the said Board under the Acts hereby repealed shall be and continue to be in full force and effect as if the same had been had and done by the Commissioner under this Act, and if the same are not completed may be continued and completed by the Commissioner under this Act;
- (c) where in any regulation, proclamation, order in council, or other instrument made under or in pursuance of the Acts hereby repealed and still subsisting a reference is made to the said Board, such reference shall be deemed to be a reference to the Commissioner under this Act.

6. In this Act, subject to the context—

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

Interpretation.
No. 5 of 1930,
s. 6.
Amended by
No. 34 of 1952,
s. 3.

“controlled-access road” means a road, which is for use by prescribed traffic without avoidable hindrance by traffic from intersecting or adjoining roads or by other avoidable hindrance;

Cf. N.S.W.
No. 24 of
1924, s. 37B.

which may be entered and departed from at specified places only; and

which is proclaimed a controlled-access road pursuant to the provisions of this Act;

Cf. s. 28A
post.

“developmental road” means a road declared as such for the purposes of this Act, and includes any part thereof;

“district” means a municipal or road district;

“financial year” or “year” means the period of twelve months ending on the thirtieth day of June in any year;

“inspector” means an inspector appointed for the purposes of this Act;

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Cf. N.S.W.
No. 24 of
1924, s. 27B.

“local-access road” means a road designed to provide access to, or over, or under a controlled-access road;

“local authority” means a municipal council or a road board;

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

“Minister” means the Minister for Works;

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

“road” means and includes any thoroughfare or highway which the public are entitled to use, and every part thereof, and all bridges and culverts and other things appurtenant thereto or used in connection therewith.

Commissioner of Main Roads.

Commis-
sioner of
Main Roads.
No. 5 of 1930,
s. 7.

7. (1) The Governor may appoint for the due administration of this Act, some person to be Commissioner of Main Roads, who shall be an engineer qualified by training and experience in modern road making. The Chairman of the Main Roads Board hereby abolished holding office immediately before the commencement of this Act shall be deemed to have been appointed Commissioner of Main Roads under this Act for a period of five years from the commencement of this Act.

(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 qualified as aforesaid 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 five 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 fourteen 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.

8. 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.

Salaries of Commissioner and deputy. No. 5 of 1930, s. 8.

9. 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.

Commissioner to be a body corporate. No. 5 of 1930, s. 9.

10. (1) The Commissioner, with the approval of the Minister, may make use of the services of any of the officers and employees of the Public Service; and the Governor may appoint any persons to be officers or employees of the Commissioner for the purposes of this Act:

Officers and employees. No. 5 of 1930, s. 10. Amended by No. 6 of 1955, s. 2.

Provided that all casual employees required by the Commissioner for works of construction and maintenance may be employed by the Commissioner.

Civil
engineering
cadets.
Of. p. 963,
Gov. Gazette
of 18/4/52.

(1a) The Commissioner may in accordance with the regulations employ persons as civil engineering cadets.

(1b) The Commissioner is deemed to have, and always to have had, power to employ and remunerate engineering students.

(2) Any commissioner or officer under the Commissioner who immediately before the commencement of this Act held office as member, acting member or officer of the Main Roads Board hereby abolished, and who at the date of his appointment to such office was an officer of the Public Service, or who at the date of his appointment as or under the Commissioner under this Act was an officer of the Public Service shall, in respect of his service as member, acting member or officer of the Main Roads Board hereby abolished, and as or under the Commissioner, be deemed to serve in an established capacity in the permanent Civil Service of the State so as to preserve any pension rights that may be accruing to him, and with reference to any question as to continuity of service; and in the event of his service as or under the Commissioner being discontinued, or in the event of the office of Commissioner of Main Roads being abolished, shall be eligible on the recommendation of the Minister to be re-appointed to some office in the Public Service corresponding in classification or emolument to that which he held at the date of his appointment as or under the Commissioner as if he had not held any office as or under the Commissioner.

(3) No officer 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.

11. Every engineer, assistant engineer, inspector 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.

Officers to be subject to control of Commissioner.
No. 5 of 1930, s. 11.

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

Deputations.
No. 5 of 1930, s. 12.
See Government Railways Act, 1904, s. 80.

Main Roads.

13. (1) The Governor may, on the recommendation of the Commissioner, declare by proclamation that any road shall be a main road, and may in like manner and on the like recommendation declare that any main road shall cease to be a main road. The footpaths of any road may, by such proclamation or any subsequent proclamation, be excluded from the main road.

Main roads may be proclaimed.
No. 5 of 1930, s. 13.

(2) In considering whether to make any such recommendation 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 nearest port or railway station;
- (c) whether or not the road is or will be the main route of inter-communication between two or more large producing areas, or areas

capable of becoming in the near future large producing areas, or between one or more large centres of population; and

- (d) whether the road is or will be the main route between the capital and any large producing area or any large centre of population.

(3) The Commissioner, before recommending to the Governor—

- (a) that any road be a main road;
 (b) that the maps, plans, and estimates of any proposed new main road or deviation from an existing main road be approved;
 (c) that plans and estimates of any permanent improvements to any main road or any part thereof be approved,

shall serve on the Surveyor General and each local authority in whose district such road is or new road or deviation is proposed to be made, or improvements are proposed to be made, notice of his intention to make such recommendation.

Such notice shall fix a day not less than 30 days from the service of the notice upon which any objections which may be made by any local authority concerned will be considered by the Surveyor General and the Commissioner before making any recommendation.

Provided that any local authority which feels aggrieved by any such recommendation may, within 30 days after the consideration of such objections, appeal to the Minister, who may vary or disallow such recommendation.

(4) All main roads shall, for the purposes of the Traffic Act, 1919-1926,¹ be deemed to be Government roads.

Power to provide main roads. No. 5 of 1930, s. 14.

14. (1) The Governor may on the recommendation of the Commissioner authorise and empower the Commissioner to provide and set out main roads, and every main road set out by the Commissioner shall be deemed to have been proclaimed to be a main road under this Act.

¹ Now Traffic Act, 1919-1961.

(2) Before making any such recommendation the Commissioner shall take into account such matters as are mentioned in subsection (2) of the last preceding section.

15. Subject to the Public Works Act, 1902,¹ and without prejudice to section two hundred and forty-two of the Municipal Corporation Act, 1906,² and section one hundred and ninety-two of the Road Districts Act, 1919,³ there shall vest in the Crown—

Main roads vested in Crown.
No. 5 of 1930, s. 15.

- (a) all main roads and materials thereof and all things appurtenant thereto;
- (b) all ornamental trees and shrubs, and, subject to the provisions of the Forests Act, 1918,⁴ the timber upon any main road;

and the Commissioner shall have the care, control and management thereof.

Powers and Duties of Commissioner.

16. (1) The Commissioner may—

- (a) make, form, level, grade, pave, improve and maintain all main roads, and do all things necessary for or incidental to the proper management thereof;
- (b) exercise in regard to any main road any power which a local authority could exercise in regard thereto if such road were within its district.

Powers of Commissioner.
No. 5 of 1930, s. 15.

(2) The powers of any local authority over any 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 Minister.

(3) (a) A local authority 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

¹ Now Public Works Act, 1902-1951.

² Repealed by Local Government Act, 1960-1961.

³ Repealed by Local Government Act, 1960-1961.

⁴ Now Forests Act, 1918-1954.

request, undertake, or may at its discretion, tender for and enter into any contract with the Commissioner for the construction, maintenance, and repair of any main road within its district, or the construction of any developmental 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 as aforesaid, 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 authority out of the Main Roads Trust account. In any case where a local authority undertakes the work at the request of the Commissioner and as his agent, and the actual cost incurred by the local authority exceeds the cost to the Commissioner stated in the request, the amount of the excess shall be deemed to be expense incurred by the local authority under the authority of paragraph (b) of section thirty-three.

(b) All contracts previously made between local authorities and the Main Roads Board hereby abolished in the exercise or intended exercise by such local authorities of the authority in that behalf conferred by subsection (3) of section sixteen of the Main Roads Act, 1925, whether the same have been completed or at the commencement of this Act are only partially completed, shall be deemed to have been made under this section of this Act, and, according to the tenor thereof, shall be valid and enforceable in law and equity by or against the local authority concerned and the Commissioner to the same extent as if this section had been in operation at the time when such contracts were made, and such contracts were made pursuant to this section.

(4) The Minister may, for the purposes of this Act delegate to the Commissioner all or any of the powers conferred on the Minister by section one hundred and twelve of the Public Works Act, 1902,¹ but subject to the provisions of section one hundred and thirteen thereof.

¹ Now Public Works Act, 1902-1961.

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

Commissioner
to conduct
experiments.
No. 5 of 1930,
s. 17.

- (1) carry out all such surveys and investigations as may be necessary or expedient to ascertain—
 - (a) 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 maintenance, and the most effective and economical methods of dealing with the same and for applying the same to, and utilising the same for the said purposes in, the whole or any part of the State;
 - (c) the most effective methods of road construction and maintenance 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 and maintenance 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.

No contract to be made exceeding £1,000 without written consent of Minister.
No. 5 of 1930, s. 18.

18. No contract involving an expenditure by the Commissioner of an amount exceeding one thousand pounds shall be entered into without the written consent of the Minister being first obtained.

Other duties of the Commissioner.
No. 5 of 1930, s. 19.

19. 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 at least once a year, and on such other occasions as the Minister directs, on his proceedings under this Act;
- (c) keep a full and complete record of all stock, machinery, plant, and materials the property of the Commissioner under this Act;
- (d) supervise the construction, improvement, and maintenance of main roads and developmental roads, and other works to be carried out under this Act; and
- (e) perform such other duties as may be prescribed.

Commissioner to provide access in certain cases.
No. 5 of 1930, s. 20.
Amended by No. 34 of 1952, s. 4.

20. (1) Subject to the provisions of section twenty-eightA of this Act 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) of this section 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 twenty-one 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) hereof shall cease.

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

Commissioner may request local authority to furnish information. No. 5 of 1930, s. 21.

22. The Commissioner may, with the approval of the Minister, construct tramways, aerial tramways, steel tracks, and other works on any road for the purposes of transporting materials for facilitating the exercise of his powers under this Act, and the approval so given shall be sufficient authority for the Commissioner to construct and maintain such tramways, aerial tramways, steel tracks, and other works, and to use the same for the purpose aforesaid, and for all purposes incidental thereto.

Power to lay tramways for transporting materials. No. 5 of 1930, s. 22.

23. 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 twenty pounds.

Penalty for defacing works, etc. No. 5 of 1930, s. 23.

Developmental Roads.

24. (1) The Governor may, on his own initiative or on the recommendation of the Commissioner—

Developmental roads may be declared or provided. No. 5 of 1930, s. 24.

- (a) declare any road to be a developmental road for the purposes of this Act;
- (b) authorise and empower the Commissioner to lay out and provide such developmental road.

(2) The Governor may likewise, or on the like recommendation, revoke or vary any declaration made under this section, but without prejudice to anything previously done by virtue of such declaration.

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(3) When a developmental road, or any part thereof, has been constructed or any work executed thereon, such road or part thereof shall be maintained by the local authority in whose district the road or part thereof is situated:

Provided that in case of a road, or part thereof, following the common boundary of two districts, the cost of such maintenance shall be apportionable between the local authorities of such districts and the Commissioner may determine the respective liabilities of each local authority.

Commis-
sioner to
investigate
before mak-
ing recom-
mendation.
No. 5 of 1930,
s. 25.

25. Before making any recommendation for the purposes of the last preceding section, the Commissioner, in consultation with the local authority, shall make such investigations as may be prescribed, which shall include, in case of a recommendation under subsection (1), an investigation as to whether the road or proposed road will serve to develop or further develop any district or part of a district, or will serve to develop any area of Crown or private land by providing access to a railway station or a shipping wharf, or to a road leading to a railway station or a shipping wharf.

Powers in
respect of
develop-
mental roads.
No. 5 of 1930,
s. 26.

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

Provisions in
case of
default by
local
authority.
No. 5 of 1930,
s. 27.

27. (1) If a local authority fails to maintain to the satisfaction of the Commissioner any developmental road, the Commissioner shall by notice in writing direct the local authority to carry out within a period to be named in the notice, such works of maintenance as are specified.

If the local authority fails to comply with any such direction, the Commissioner may carry out such works. Any expenses so incurred by the Commissioner shall be repaid by the local authority to the Commissioner, and if not repaid within three months after demand by the Commissioner, shall be deemed a debt due and payable to His Majesty, and all remedies therefor may be enforced in the name of His Majesty against the local authority and the revenues thereof.

(2) All moneys repaid by, or recovered from a local authority under this section shall be placed to the credit of the Main Roads Trust Account.

28. (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.

Authority to construct motor traffic passes and gates in and across main roads and developmental roads. Inserted by No. 29 of 1938, s. 2, as s. 27A, now renumbered s. 28.

(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

Main Roads.

Government under the authority of the Rabbit Act, 1902,¹ or is a rabbit-proof fence within the meaning of the Vermin Act, 1918,² 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 effect 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

¹ Repealed by Vermin Act, 1918, s. 3.

² Now Vermin Act, 1918-1960.

- (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, 1902-1933,¹ 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.

Controlled-access Roads.

28A. (1) (a) Where the Commissioner is of opinion that a controlled-access road should be provided, and should be entered and departed from at specified places only, he shall make a recommendation to the Governor accordingly.

Controlled-access roads.
Added by
No. 34 of 1952,
s. 5.
Cf. No. 24 of
1924, s. 27C,
N.S.W.

(b) If of opinion that the recommendation should be given effect, the Governor may, by proclamation, proclaim the controlled-access road, and the places only at which the controlled-access road may be entered or departed from.

(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.

¹ Now Public Works Act, 1902-1961.

(f) The powers conferred by this subsection may be exercised from time to time, and notwithstanding the provisions of section ninety-two of the Public Works Act, 1902.¹

(2) (a) There is no right of access into or from a controlled-access road except at the places provided pursuant to the provisions of this Act for the purpose.

(b) Where a right of access between a road, not being a controlled-access road, and land adjoining the road is, by operation of paragraph (a) of this subsection extinguished when the road is included in a controlled-access road, a 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) of this subsection 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) of this subsection.

(d) If the proclamation of the controlled-access road is published in the *Gazette* on or before the thirtieth day of June in any year, the respective values referred to in paragraph (c) of this subsection are those obtaining on the first day of January next preceding the publication.

(e) If the proclamation of the controlled-access road is published after the thirtieth day of June in any year, the respective values mentioned in paragraph (c) of this subsection are those obtaining on the thirtieth day of June next preceding the publication.

(f) The Commissioner may enter into agreements relating to rights of access.

¹ Now Public Works Act, 1902-1961.

(g) By an agreement so entered into the Commissioner may agree—

- (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 controlled-access road but subject to such conditions and undertakings as having regard to the purposes of the controlled-access road he thinks fit.

(h) Where there is no agreement, Part III of the Public Works Act, 1902¹ as modified by the provisions of this subsection apply *mutatis mutandis* in respect of the compensation.

(i) For the purpose of the application of Part III of that Act to the provisions of this subsection, section thirty-six of that Act, which relates to the period of time within which the claim for compensation may be made, is regarded as if reference in that section to the date of publication in the *Gazette* of the notice of taking land were a reference to the date of publication in the *Gazette* of the relevant proclamation made pursuant to the provisions of subsection (1) of this section.

(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 subparagraph (iii) of paragraph (g) of this subsection;

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 of the controlled-access road, upon land adjacent to the land in respect of which compensation is claimed, of a

¹ Now Public Works Act, 1902-1961.

road whether a local-access road or any other road subsidiary to the road, or by reason of the proclamation of the controlled-access road.

(ii) Where there is an agreement or benefit mentioned in subparagraph (i) of this paragraph, the effect of the Court's taking it into account shall be specified in the Court's award.

(3) The provisions of—

subsection (4) of section thirteen;
sections fifteen to nineteen, both inclusive;
sections twenty-one to twenty-three both inclusive; and
sections twenty-nine to thirty-five both inclusive;

of this Act, apply, *mutatis mutandis* in respect of controlled-access roads.

(4) Notwithstanding the provisions of any Act a person shall not use a controlled-access road 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 local-access roads and may carry a local-access road over or under any controlled-access road, or may carry a controlled-access road over or under a local-access road.

(b) The provisions of subsection (3) of section twenty-four of this Act, apply, *mutatis mutandis*, to a local-access road.

(6) A controlled-access road 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 controlled-access road 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 controlled-access road or does not 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) uses a controlled-access road 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 controlled-access road for traffic otherwise than in accordance with the regulations,

commits an offence against this Act.

Penalty: Twenty pounds.

Land Resumption.

29. Whenever any land is required for the purposes of this Act, such land may be entered upon, surveyed, and taken under the powers contained in and in accordance with the procedure prescribed by the Public Works Act, 1902.¹

Procedure for taking land.
No. 5 of 1930,
s. 28.

Protection to the Commissioner and Officers.

30. [*Section 30 repealed by No. 73 of 1954, ss. 5 and 8.*]

The Main Roads Trust Account.

31. There shall be paid every year to the credit of an account to be established at the Treasury, and to be called "The Main Roads Trust Account," the annual amount of the fees and moneys following, that is to say—

Main Roads Trust Account.
No. 5 of 1930,
s. 30; No. 3 of 1937, s. 2.

- (a) such proportion of the tax imposed on the unimproved capital value of land as has been for the time being appropriated by Parliament to the purposes of this Act;

¹ Now Public Works Act, 1902-1961.

Main Roads.

- (b) all net revenue received by the Commissioner of Taxation under any Act imposing a tax on the income of vendors of motor spirit in addition to any other income tax payable by such vendors, if and so far as such tax is payable to a fund for the purposes of main roads;
- (c) all moneys paid to the Treasury by any local authority in respect of permanent works and of the maintenance of main roads, and of the maintenance of developmental roads;
- (d) the moneys received by the State Government under the provisions of the agreement set out in the schedule to the Federal Aid Roads Act, 1926, and any variation thereof, and the moneys received by the State Government under the provisions of the Agreement made or to be made under the authority of the Federal Aid Roads (new Agreement Authorisation) Act, 1936, and any amendment of such Act and any Agreement in variation or substitution of or supplementary to such Agreement, and also all other moneys which may be received by the State Government from the Commonwealth for the purposes of construction, reconstruction, or maintenance of roads;
- (e) all moneys appropriated by Parliament or advanced by the Treasurer for the purposes of this Act: Provided that in respect of any moneys so appropriated or advanced, and which are raised under a Loan Act, the Main Roads Trust Account shall be debited with interest and Sinking Fund charges, but only to the extent that funds which can rightly be used for that purpose are available in such Trust Account, subject, however, to any provision contained in the Federal Aid Roads Act, 1926, or other Statute for the payment of Sinking Fund from other sources. The Treasurer shall determine the principal sum to be charged with interest and sinking fund, and the rates of such.

- (f) the moneys received by the Treasurer under section thirty-four, and all moneys received by the Commissioner under the provisions of this Act.

*32. (1) (a) The amount of all fees and moneys paid into the Main Roads Trust Account shall generally—

- (i) in the first place be chargeable with the costs of collection as certified by the Minister;
- (ii) in the second place be chargeable with the costs incidental to the administration of this Act and the exercise of the functions of the Commissioner;
- (iii) in the third place to be used and applied in such manner and proportions as the Governor, on the recommendation of the Commissioner, shall from time to time determine in and for the purpose of defraying the cost of and incidental to the provision, construction, maintenance, and supervision of roads, whether main or developmental roads under this Act or not, and of any other work executed and provided under this Act.

Appropriation of Main Roads Trust Account.
No. 5 of 1930, s. 31 repealed and new s. 31 inserted by No. 48 of 1939, now renumbered s. 32.

* Section 31 of No. 5 of 1930 was amended by No. 2 of 1932, s. 3, and as so amended was repealed by No. 48 of 1939, s. 2; Section 2 of No. 2 of 1932 was amended by No. 4 of 1937, s. 2, and as so amended reads as follows:—

Effect and Operation of this Act.

(1) This Act shall have effect as from and commencing on the first day of July, one thousand nine hundred and thirty-two, and shall be deemed to have continued in operation until the commencement of this subsection, and shall continue in operation after the commencement of this subsection, pending the execution by the Honourable the Premier of the State and during the currency of the Federal Aid Roads Agreement made or about to be made between the Commonwealth of Australia and the State of Western Australia as authorised by the provisions of the Federal Aid Roads (New Agreement Authorisation) Act, 1936 (No. 33 of 1936), or any Act amending the same now in operation or hereafter to come into operation, and also during the currency of any Federal Aid Roads Agreement which may hereafter be authorised and made between the Commonwealth of Australia and the State of Western Australia, whether for the purpose of modifying, varying, extending, or supplementing the Federal Aid Roads Agreement first hereinbefore mentioned or in substitution of the same, and no longer.

(2) Nothing in this Act shall in any way affect the liabilities and obligations of local authorities under the provisions of the principal Act existing and still unsatisfied or undischarged as on the thirteenth day of June, one thousand nine hundred and thirty-two; and notwithstanding anything to the contrary in this Act contained, such local authorities may still be required to satisfy such liabilities and to discharge such obligations under and in accordance with the provisions of the principal Act as if this Act had not been passed.

See also Act No. 34 of 1941, s. 6.

(b) That portion of the moneys paid into the Main Roads Trust Account which consists of moneys received from the Commonwealth under and for the purposes mentioned in subclause (2) of clause 2 of the Federal Aid Roads Agreement as made under the authority of the Federal Aid Roads (New Agreement Authorisation) Act, 1936, and amended under the authority of the Federal Aid Roads (New Agreement Authorisation) Act Amendment Act, 1937, may particularly, but without prejudice to paragraph (a) of this subsection, be used and applied in such manner and in such amounts as the Minister, on the recommendation of the Commissioner, may from time to time determine and approve in and for the purpose of any work or matter connected with transport as authorised by the said Federal Aid Roads Agreement, or by any Agreement which may hereafter be made amending or in substitution of the said Federal Aid Roads Agreement.

(2) The warrant of the Commissioner shall be sufficient authority to the Treasurer to make any payment provided for in this section.

(3) The unexpended moneys in the Main Roads Trust Account at the end of any year may be used under this section for any other year without fresh appropriation.

(4) Where, prior to the commencement of this section—

- (a) any expenditure has been incurred by the Commissioner in or in connection with the provision, construction, maintenance, and supervision of roads other than main or developmental roads under this Act, or in connection with the maintenance of developmental roads not in accordance with section twenty-seven of this Act; and
- (b) any payment of any such expenditure has been made out of moneys in the Main Roads Trust Account; and
- (c) any payment has been made out of moneys in the Main Roads Trust Account for any purpose which at the time when the

payment was made was a purpose in relation to which the said payment was authorised by the Federal Aid Roads Agreement hereinbefore mentioned, although at the time not authorised by this Act as then in force—

the payment of such expenditure, as mentioned in paragraph (b) hereof, or the payment as mentioned in paragraph (c) hereof, out of moneys in the Main Roads Trust Account is hereby validated.

33. It shall be lawful for any local authority to expend out of its ordinary revenue, or money borrowed for the purpose under its borrowing powers, such sums as the local authority may in its discretion think fit—

Authority for expenditure by local authorities. No. 5 of 1930, s. 32.

- (a) in payment to the Commissioner of contribution to the cost of the construction of any main road, or developmental road; or
- (b) in payment of the expense incurred by the local authority in the construction, maintenance, or repair of any main road or developmental road undertaken by the local authority,

so far as any such road is within the district of the local authority.

34.* (1) There shall be established at the Treasury an account, to be called "The Main Roads Contribution Trust Account," into which shall be paid the moneys to be appropriated by the Treasurer as provided for in subsection two of this section.

The Main Roads Contribution Trust Account and application of moneys therein.

No. 5 of 1930, s. 33, repealed by No. 2 of 1932, s. 4, and new s. 33 inserted in lieu thereof. Amended by No. 38 of 1959, s. 2; No. 48 of 1961, s. 2.

* Section 33 of No. 5 of 1930 was repealed and a new section 33 was inserted in lieu thereof by s. 4 of No. 2 of 1932; section 2 of No. 2 of 1932 was amended by No. 4 of 1937, s. 2, and as so amended reads as shown in note to section 32 of this reprint. See also Act No. 34 of 1941; s. 5.

Main Roads.

(2) (a) The Treasurer shall appropriate and pay into the Main Roads Contribution Trust Account—

- (i) the amount of the balance of the moneys remaining in the Central Road Trust Fund referred to in subsection (5) of section eleven A of the Traffic Act, 1919¹; and
- (ii) the amount of the remaining one-half of the net balance of the moneys referred to in subparagraph (ii) of paragraph (b) of subsection (2) of section fourteen of the Traffic Act, 1919,¹ less any amount deducted therefrom under the provisions of the Main Roads Act (Funds Appropriation) Act, 1955.

(b) Subparagraph (ii) of paragraph (a) of this subsection shall be deemed to have come into operation on the same day as that proclaimed for the coming into operation of the Traffic Act Amendment Act (No. 3), 1959, namely, the first day of January, one thousand nine hundred and sixty.

(3) The Commissioner shall utilise and expend the moneys paid by the Treasurer pursuant to subsection (2) of this section into the Main Roads Contribution Trust Account as follows—

- (a) as to the moneys referred to in subparagraph (i) of paragraph (a) of subsection (2) of this section, in accordance with the provisions of subsection (5) of section eleven A of the Traffic Act, 1919¹; and
- (b) as to the moneys referred to in subparagraph (ii) of paragraph (a) of subsection (2) of this section, in accordance with the provisions of subsection (2c) of section fourteen of the Traffic Act, 1919.¹

¹ Now Traffic Act, 1919-1961.

(4) The Commissioner may provide, construct, reconstruct, improve, maintain and supervise all or any of the works and undertakings referred to in paragraphs (a), (b) and (c) of subsection (5) of section eleven A and in subsection (2c) of section fourteen of the Traffic Act, 1919¹; and may make such payments as are authorised under paragraphs (c) and (d) of the latter subsection.

Regulations.

35. 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 to authorise local authorities to grant permission for the erection on main roads, in return for advertising concessions, of highway lighthouses or beacons, and 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 twenty pounds, and regulations relating to the employment by the Commissioner of persons as civil engineering cadets.

Power to
make
regulations.
No. 5 of 1930,
s. 34.
Amended by
No. 6 of 1955,
s. 3.

SCHEDULE.

The Main Roads Act, 1925.

The Main Roads Act Amendment Act, 1929.

¹ Now Traffic Act, 1919-1961.

