

Western Australia

Public Works Act 1902

Reprinted as at 27 August 1999

Western Australia

Public Works Act 1902

CONTENTS

1.	Short title	1
Part I — Preliminary		
2.	Interpretation	2
4.	Governor may make regulations for conduct of officers	5
5.	Minister for Works	6
5A.	Delegation by Minister	6
5B.	Subdelegation of delegated power or duty	7
6.	Contracts, etc., of Minister to devolve on his successor	9
7.	Appointment of engineers and other officers	9
Part IA — Western Australian Building Management Authority		
9A.	Interpretation in Part IA	10
9B.	Western Australian Building Management Authority continued as body corporate	10
9C.	Functions and powers of Building Management Authority	11
9D.	Use of staff and facilities of departments, agencies and instrumentalities	13
9E.	Funds of Building Management Authority	14
9F.	Delegation by Building Management Authority	15
9G.	Application of <i>Financial Administration and Audit Act 1985</i>	16
9I.	Regulations	16

Part II — Authorizing public works		
10.	Entry on land required for a public work	17
11.	Governor may authorize works	17
28.	Power may be exercised after initiation of a public work	18
Part IV — Surveys		
82.	Powers of entry on lands, etc., for survey purposes	19
83.	Penalty for destroying survey marks, etc.	19
Part IVA — Investigations for water		
83A.	Interpretation	21
83B.	Offences	22
83C.	Compensation	22
Part V — Roads, rivers, and bridges		
84.	Definition of road for purposes of Act	24
85.	Roads vested in the Crown	24
86.	Minister may repair any road	24
87.	Government roads under exclusive care of Minister	25
88.	Effect of local laws	25
90.	Breach of local law not to relieve offender	26
91.	Governor may vest control of any bridge, etc., in local authority	26
92.	Stopping or diverting of road	28
93.	Removal of driftwood, etc., from rivers	28
94.	Minister may erect bridges	29
Part VI — Railways		
95.	Definition of “railway”	30
96.	Railways to be made only under special Act	30
99.	Powers to make railways and railway stations, etc.	31
100.	Rights of way and traffic where railway made along or across road on a level	32
101.	Compensation where road interfered with or wholly closed	33
102.	Government to make crossings to give access to lands	34
103.	Maintenance of public roads at railway crossings on the level	34

104.	Alterations in roads, drains, pipes, etc., to be made without detriment to the public or to owners	35
106.	Local authorities may agree with Minister as to conversion of railway bridge into one for combined traffic	35
107.	Right-of-way on joint railway and common bridges	36
108.	Tree dangerous to railway to be removed	36
109.	Penalties for trespassing on railway in course of construction	36
110.	Crown may elect to erect fences along boundaries of railways	37
111.	Railway servants may impound trespassing animals	37

Part VII — General provisions

113A.	Property in things placed on the land	38
114.	Buildings exempted from local building regulations	38
115.	Governor may execute instruments	38
116.	Tramways	38
118.	Moneys due by local authority may be deducted from moneys payable to it by Government	39
120.	Penalty for obstructing workmen or destroying fences marks, etc.	39
121.	Penalties recoverable in a summary way	40
122.	Works authorized or anything commenced under repealed enactments	40
123.	Public works under previous Acts to be deemed constructed under this Act	40

Schedule 1

Notes

Defined Terms

Western Australia

Public Works Act 1902

An Act relating to public works.

[Long title inserted by No. 31 of 1997 s.38.]

1. Short title

This Act may be cited as the *Public Works Act 1902*¹.

[Section 1 inserted by No. 123 of 1984 s.3; amended by No. 52 of 1995 s.5; No. 31 of 1997 s.39.]

Part I — Preliminary

2. Interpretation

In this Act, if not inconsistent with the context —

“**Crown land**” means and includes all land of the Crown, whether designated for any public purpose or not, except land granted or agreed to be granted in fee simple, or held or occupied under the Crown by lease or licence, or for any other estate or interest, or land reserved and classified as a class A reserve under the *Land Administration Act 1997*, or any national park referred to in section 6(3)(b) of the *Conservation and Land Management Act 1984* or land in relation to which native title exists.

“**Government work**” means any work constructed or intended to be constructed by or under the control of the Crown, or the Governor, or the Government of Western Australia, or any Minister of the Crown.

“**Judge**” means a Judge of the Supreme Court.

“**Local authority**” means any local government or any other persons or body, however designated, having authority under any statute to undertake the construction of any public work.

“**Local work**” means a work constructed or intended to be constructed by or under the control of a local authority.

“**Minister**” as regards all public works other than railways, means the Minister of the Crown for the time being administering this Act but as regards railways, “**Minister**” means the Minister of the Crown for the time being administering the *Government Railways Act 1904*.

“**Public reserve**” means a reserve under the *Land Administration Act 1997*.

“**Public work**” and “**work**” mean and include —

- (1) Every work which the Crown, or the Governor, or the Government of Western Australia, or any Minister of

the Crown, or any local authority is authorized to undertake under this or any other Act.

- (2) Any railway authorized by special Act or any work whatsoever authorized by any Act.
- (3) Tramways.
- (4) Any works for or in connection with the supply of water to, or for or in connection with the sewerage of, any city, town, or district, including all reticulations.
- (5) Buildings for the occupation of either or both of the Houses of Parliament or for public offices.
- (6) Hospitals within the meaning given to that term by section 2 of the *Hospitals and Health Services Act 1927*, medical clinics, hostels and institutions including residences for staff, court-houses, gaols, watch-houses, lock-ups, police barracks, or quarters.
- (7) Observatory.
- (8) Public schools or any other schools authorized to be established wholly or in part at the public cost by any Act in force for the time being, universities, colleges, technical and other educational institutions, including residences or hostels for teachers or students, and play-grounds.
- (9) Public libraries, mechanics' or miners' institutes, agricultural halls, or schools of art.
- (10) Wharves, ferries, piers, jetties and bridges.
- (11) Parks or gardens or grounds for public recreation or places for bathing, and for the reclamation of land for or in connection therewith.
- (12) Public cemeteries.
- (13) Public wells or works for the conservation of water.
- (14) The protection and preservation of any cave or place of scientific or historical interest.

s. 2

- (14A) The protection and preservation of indigenous flora and fauna.
- (15) The establishment of public abattoirs.
- (16) Harbours and ports, including the provision of storage, handling and wharfage areas and other facilities normally ancillary to the conduct of shipping operations, break-waters, leading marks, navigational aids, docks, slips, the alteration or improvement of channels, waterways and rivers, the protection of foreshores and banks, the provision of new channels and related works, including the landing and disposal of silt.
- (17) Quarries or works for procuring stone, gravel, earth, or any other material required for the construction of, or any purpose connected with any public work as aforesaid.
- (17A) The procuring from land (other than Crown Lands and public reserves) of timber, stone, gravel, earth and any other material required by or for the State for or in connection with the carrying on of any industrial or other undertaking or activity which is being carried on by or for the State under any law authorizing the same.
- (17B) Buildings and structures required for fire brigade purposes.
- (17C) The establishment and the extension by the Governor of sites for towns.
- (17D) The establishment and the extension by the Governor of agricultural research stations.
- (18) Drainage works in connection with any city, town, or district, and the improvement of rivers, watercourses, lakes, or inlets, including deepening, widening, straightening or otherwise altering, and disposal of silt.

- (19) Any building or structure of whatsoever kind which, in the opinion of the Governor, is necessary for any public purpose.
- (20) Any road, stock route, viaduct, or canal.
- (21) Any work incidental to any of the aforesaid works.
- (22) Any land required for or in connection with any work as aforesaid.
- (23) Any survey in connection with any proposed public work.

“**Railway**”: See section 95.

“**Registrar**” means the Registrar of Titles under the *Transfer of Land Act 1893*.

“**River**” means a river, stream, creek, or water-course, in which water flows permanently or intermittently.

“**Road**”: See section 84.

“**Special Act**” means any Act of the Parliament of Western Australia with which this Act is incorporated, authorizing the construction of a public work.

“**Surveyor**” means a surveyor licensed under the *Licensed Surveyors Act 1909*.

[Section 2 amended by No. 35 of 1933 s.3; No. 41 of 1945 s.2; No. 48 of 1953 s.3; No. 19 of 1972 s.2; No. 27 of 1974 s.19; No. 67 of 1979 s.35; No. 112 of 1984 s.27; No. 7 of 1991 s.3; No. 103 of 1994 s.18; No. 52 of 1995 s.6; No. 14 of 1996 s.4; No. 79 of 1996 s.28; No. 31 of 1997 s.40.]

[3. *Omitted under the Reprints Act 1984 s.7(4)(f).]*

4. Governor may make regulations for conduct of officers

The Governor may make regulations for the conduct of all persons employed by the Government under this Act, or in or about any works which may be constructed by the Government under the authority thereof.

5. Minister for Works

[(1) and (2) repealed]

- (3) The Minister of the Crown for the time being administering this Act shall for the purposes of this Act become and continue to be a body corporate under the name of the “Minister for Works” with perpetual succession and a common seal; and by that name shall be capable of suing and being sued, acquiring, holding, letting and taking land on lease, and alienating real and personal property, and of doing and suffering all such other acts and things as may be necessary or expedient for carrying out the purposes of this Act.

[Section 5 amended by No. 35 of 1933 s.4; No. 41 of 1945 s.3; No. 27 of 1974 s.20.]

5A. Delegation by Minister

The Minister may, either generally or as otherwise provided by the notice concerned, by notice published in the *Gazette* delegate to —

- (a) any officer of the Public Service of the State under the administrative control of the Minister and assisting him in the administration of this Act;
- (b) the Minister of the Crown to whom the administration of the *Land Administration Act 1997* is for the time being committed by the Governor;
- (c) the Minister of the Crown to whom the administration of the *Main Roads Act 1930* is for the time being committed by the Governor;
- (d) the Minister of the Crown to whom the administration of the *Electricity Corporation Act 1994* is for the time being committed by the Governor;
- (da) the Minister of the Crown to whom the administration of the *Gas Corporation Act 1994* is for the time being committed by the Governor;

- (db) the DBNGP Land Access Minister established by section 29(1) of the *Dampier to Bunbury Pipeline Act 1997*;
- (e) the Minister of the Crown to whom the administration of the *Water Corporation Act 1995* is for the time being committed by the Governor;
- (ea) the Minister of the Crown to whom the administration of the *Water and Rivers Commission Act 1995* is for the time being committed by the Governor;
- (f) the Minister of the Crown to whom the administration of the department known as the Government Property Office, continued under the *Public Sector Management Act 1994*, is for the time being allocated; or
- (g) the Minister of the Crown to whom the administration of the *Marine and Harbours Act 1981* is for the time being committed by the Governor,

any of his powers or duties under this Act, except this power of delegation.

[Section 5A inserted by No. 126 of 1987 s.38; amended by No. 7 of 1991 s.4; No. 32 of 1994 s.19; No. 59 of 1994 s.3; No. 89 of 1994 s.109; No. 73 of 1995 s.188; No. 31 of 1997 ss.41 and 141; No. 53 of 1997 s.52.]

5B. Subdelegation of delegated power or duty

- (1) A Minister of the Crown to whom a power or duty has been delegated under section 5A may, either generally or as otherwise provided by the notice concerned, by notice published in the *Gazette* delegate —
 - (a) in the case of the Minister of the Crown referred to in section 5A(b), to the chief executive officer of the department principally assisting that Minister of the Crown in the administration of the *Land Administration Act 1997* or to any other officer of that department;
 - (b) in the case of the Minister of the Crown referred to in section 5A(c), to the Commissioner within the meaning

s. 5B

- of the *Main Roads Act 1930* or to any officer of that Commissioner;
- (c) in the case of the Minister of the Crown referred to in section 5A(d), to the Electricity Corporation established by the *Electricity Corporation Act 1994* or an officer of that corporation;
 - (ca) in the case of the Minister of the Crown referred to in section 5A(da), to the Gas Corporation established by the *Gas Corporation Act 1994* or an officer of that corporation; or
 - (cb) in the case of the DBNGP Land Access Minister established by section 29(1) of the *Dampier to Bunbury Pipeline Act 1997*, to the chief executive officer of the department principally assisting the DBNGP Land Access Minister in the administration of Part 4 of that Act or to any other officer of that department;
 - (d) in the case of the Minister of the Crown referred to in section 5A(e), to the Water Corporation established by the *Water Corporation Act 1995* or an officer of that corporation;
 - (da) in the case of the Minister of the Crown referred to in section 5A(ea), to the Water and Rivers Commission established by the *Water and Rivers Commission Act 1995* or an officer of that commission; or
 - (e) in the case of the Minister of the Crown referred to in section 5A(g), to the chief executive officer of the department principally assisting that Minister of the Crown in the administration of the *Marine and Harbours Act 1981* or to any other officer of that department,

the whole or any part of the power or duty.

- (2) A Minister of the Crown shall as soon as is practicable after exercising the power of delegation conferred on him by subsection (1) transmit to the Minister a copy of the notice by which that power was exercised.

[Section 5B inserted by No. 126 of 1987 s.38; amended by No. 59 of 1994 s.4; No. 89 of 1994 s.109; No. 73 of 1995 s.188; No. 31 of 1997 s.141; No. 53 of 1997 s.52.]

6. Contracts, etc., of Minister to devolve on his successor

Where the Minister enters into any contract or agreement, under seal or otherwise, or makes any lease or grants any easement, under this or any other Act, all the rights and liabilities in respect thereof, and all benefit and advantage thereunder, or interest therein, shall vest in and be enforceable by and against his successor or successors in office, without the necessity of any transfer or assignment whatsoever.

7. Appointment of engineers and other officers

- (1) The Governor may create such offices, and appoint such engineers, architects, clerks, and other officers and persons as may be necessary for the administration of this Act, and for the execution of all Government works; and may assign such functions as he shall think fit to such persons respectively, all of whom shall hold office at the Governor's pleasure, and shall receive such salaries as Parliament determines.
- (2) Notwithstanding anything in subsection (1), to the extent that there is in the case of a person who is appointed under that subsection to be an engineer, architect, clerk or other officer or other person and who is a member of the Senior Executive Service within the meaning of the *Public Service Act 1978*² an inconsistency between this Act and that Act that Act shall prevail.

[Section 7 amended by No. 113 of 1987 s.32.]

[8, 9.] *Repealed by No. 98 of 1985 s.3.]*

Part IA — Western Australian Building Management Authority

[Heading inserted by No. 123 of 1984 s.4; amended by No. 59 of 1994 s.9.]

9A. Interpretation in Part IA

In this Part, unless the contrary intention appears —

“authorized buildings” means buildings or structures which are public works and works ancillary to any such buildings or structure;

“borrow” includes —

- (a) reborrow;
- (b) obtain credit; and
- (c) arrange for financial accommodation;

“the Account” means the Western Australian Building Management Authority Account continued in existence by section 9E(1);

“the Building Management Authority” means the body corporate called the Western Australian Building Management Authority continued in existence by section 9B(1).

[Section 9A inserted by No. 123 of 1984 s.4; amended by No. 59 of 1994 s.5.]

9B. Western Australian Building Management Authority continued as body corporate

- (1) From the commencement of the *Public Works Amendment Act 1994*¹, the Western Australian Building Authority previously established by this section continues in existence as a body corporate but is called the Western Australian Building Management Authority.
- (1a) The change of name of the body corporate does not affect its legal identity.

- (2) The Building Management Authority —
 - (a) consists of the Minister for Works referred to in section 5(3); and
 - (b) under its corporate name —
 - (i) has perpetual succession and a common seal;
 - (ii) may sue and be sued in any court; and
 - (iii) subject to this Part, is capable of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.
- (3) The common seal of the Building Management Authority shall —
 - (a) be kept in such custody as the Building Management Authority directs; and
 - (b) not be used except as authorized by the Building Management Authority.
- (4) When a document purporting to bear the common seal of the Building Management Authority is produced before any court, judge or person acting judicially, that court, judge or person shall, unless the contrary is proved, presume that —
 - (a) that document bears that common seal; and
 - (b) that common seal was duly affixed to that document.
- (5) The Building Management Authority is an agent of the Crown in right of the State and, except as provided in section 9C(7), enjoys the status, immunities and privileges of the Crown.

[Section 9B inserted by No. 123 of 1984 s.4; amended by No. 59 of 1994 ss.6 and 9.]

9C. Functions and powers of Building Management Authority

- (1) The functions of the Building Management Authority are —
 - (a) to acquire, hold, lease, take on lease, dispose of, exchange, provide, construct, alter, protect or manage

s. 9C

- authorized buildings, and to acquire, hold, take on lease or dispose of land for that purpose;
- (b) to borrow moneys for the purpose of the acquisition, provision, construction, alteration, protection or management of authorized buildings and for the purpose of acquiring, holding or taking on lease land in connection with that acquisition, provision, construction, alteration, protection or management; and
 - (c) generally to develop land acquired, held or taken on lease by it for the purposes of this Part.
- (2) Subject to this Part, the Building Management Authority may, with the approval of the Treasurer, borrow moneys from any person in the performance of the functions of the Building Management Authority on such terms and conditions and in such manner as the Treasurer approves.
- (3) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee —
- (a) repayment of; and
 - (b) payment of interest on, and of brokerage, commission, fees and other expenses incurred in respect of,
- moneys borrowed by the Building Management Authority under subsection (2), and any liability of the Crown arising out of any such guarantee is to be charged to moneys in the Consolidated Fund, which to the necessary extent is hereby appropriated accordingly.
- (4) A guarantee given under subsection (3) shall be in such form and subject to such terms and conditions as the Treasurer determines and, without limiting the generality of the foregoing, shall be subject to a condition that the lender shall not, without the consent in writing of the Treasurer, assign or encumber the benefit of the guarantee.
- (5) The Building Management Authority may —
- (a) subdivide, and grant easements and other interests in or rights over; and

- (b) provide, arrange for the provision of or cause to be provided energy resources, roads, sewerage, drainage or water or any other resource or service conducive to the development of,

land acquired, held or taken on lease by it in the performance of its functions.

- (6) The Building Management Authority has power to do all things necessary or convenient for or in connection with the performance of its functions.
- (7) Nothing in this Part is to be read as conferring on the Building Management Authority in the performance of its functions any immunity from the operation of any written law.

[Section 9C inserted by No. 123 of 1984 s.4; amended by No. 6 of 1993 s.11; No. 59 of 1994 ss.7 and 9; No. 49 of 1996 s.64.]

9D. Use of staff and facilities of departments, agencies and instrumentalities

The Building Management Authority may by arrangement made between it and the Minister concerned, and on such terms and conditions as may be mutually arranged by it with that Minister and, if appropriate, with the Public Service Commissioner³, make use, either full-time or part-time, of —

- (a) the services of any person for the time being holding or acting in any office under Part 3 of the *Public Sector Management Act 1994* or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) any facilities of a department or of a State agency or instrumentality.

[Section 9D inserted by No. 123 of 1984 s.4; amended by No. 113 of 1987 s.32; No. 32 of 1994 s.19; No. 59 of 1994 s.9.]

s. 9E

9E. Funds of Building Management Authority

- (1) From the commencement of the *Public Works Amendment Act 1994*¹, the Western Australian Building Authority Account previously established by this section continues in existence but is called the Western Australian Building Management Authority Account.
- (2) The funds available for the purpose of enabling the Building Management Authority to perform its functions under this Part consist of —
 - (a) moneys from time to time appropriated by Parliament for the purposes of this Part;
 - (b) all moneys borrowed by the Building Management Authority under this Part;
 - (c) the proceeds of sales by the Building Management Authority of any of its assets;
 - (d) rents derived from authorized buildings of the Building Management Authority leased by it to other persons;
 - (e) interest earned on moneys temporarily invested under subsection (5); and
 - (f) any moneys, other than moneys referred to in paragraphs (a), (b), (c), (d) and (e), lawfully received by, made available to or payable to the Building Management Authority.
- (3) The funds referred to in subsection (2) shall be credited to the Account.
- (4) The Building Management Authority shall pay from the funds standing to the credit of the Account —
 - (a) interest on and repayments of moneys borrowed by the Building Management Authority under this Part, and brokerage, commission, fees and other expenses incurred in connection with that borrowing;
 - (b) to be credited to the Consolidated Fund, an amount equal to the amount of any moneys charged to the

Consolidated Fund in meeting any liability of the Crown referred to in section 9C(3);

- (c) the expense of acquiring, holding, taking on lease, providing, constructing, altering, protecting or managing authorized buildings and of acquiring, holding or taking on lease land or any interest therein for the purpose of that acquisition, provision, alteration, protection or management; and
 - (d) all expenditure, other than expenditure referred to in paragraphs (a), (b) and (c), lawfully incurred by the Building Management Authority in the performance of its functions under this Part.
- (5) The Building Management Authority may, with the approval of the Treasurer, temporarily invest any moneys standing to the credit of the Account which are not immediately required for the purposes of this Part in one or more of the ways in which moneys standing to the credit of the Public Bank Account may be invested under the *Financial Administration and Audit Act 1985*.
- (6) Moneys standing to the credit of the Account shall be applied by the Building Management Authority only for the purposes of this Part.
- (7) The Treasurer shall in each financial year include in the Consolidated Fund Estimates of Revenue and Expenditure in respect of the Building Management Authority a sum of money (whether nominal or otherwise) for the purposes of this Part.

[Section 9E inserted by No. 123 of 1984 s.4; amended by No. 98 of 1985 s.3; No 6 of 1993 s.11; No. 59 of 1994 ss.8 and 9; No. 49 of 1996 s.64.]

9F. Delegation by Building Management Authority

- (1) The Building Management Authority may, either generally or as otherwise provided by the instrument of delegation, by writing signed by it delegate to any person for the time being holding or

s. 9G

acting in an office referred to in section 9D(a) of whose services he makes use under section 9D all or any of the functions imposed on the Building Management Authority by this Part.

- (2) For the purposes of this Part, the performance of a function by a delegate under this section shall be deemed to be the performance of the function by the Building Management Authority.

[Section 9F inserted by No. 123 of 1984 s.4; amended by No. 59 of 1994 s.9.]

9G. 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 Building Management Authority and its operations.

[Section 9G inserted by No. 98 of 1985 s.3; amended by No. 59 of 1994 s.9.]

[9H. Repealed by No. 98 of 1985 s.3.]

9I. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Part to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Part.

[Section 9I inserted by No. 123 of 1984 s.4.]

[Part IB. (Sections 9J-9S.) Repealed by No. 31 of 1997 s.42.]

Part II — Authorizing public works

[Heading amended by No. 31 of 1997 s.43.]

Power to take

10. Entry on land required for a public work

- (1) Division 4 of Part 9 of the *Land Administration Act 1997* (dealing with the entry on land required for a public work) applies as if a reference in that Division to “the Minister” were a reference to the Minister responsible for the administration of this Act.
- (2) Part 10 of the *Land Administration Act 1997* (dealing with compensation) applies in relation to an act done under subsection (1) as if it had been done under that Act.

[Section 10 inserted by No. 31 of 1997 s.44.]

11. Governor may authorize works

The Governor, by Order in Council, may authorize the Minister to undertake, construct, or provide any public work subject as to railways to section 96, and such authorization shall be deemed an authority to such Minister by and under this Act.

[Heading deleted by No. 31 of 1997 s.45(2).]

[12-24. Repealed by No. 31 of 1997 s.45(1).]

[Heading deleted by No. 31 of 1997 s.45(2).]

[25. Repealed by No. 31 of 1997 s.45(1).]

[Heading deleted by No. 31 of 1997 s.45(2).]

[26. Repealed by No. 31 of 1997 s.45(1).]

[Heading deleted by No. 31 of 1997 s.45(2).]

[27. Repealed by No. 31 of 1997 s.45(1).]

[Heading deleted by No. 31 of 1997 s.46(2).]

28. Power may be exercised after initiation of a public work

A power under this Act that may be exercised in relation to a public work, including a power to close a road or street, may be exercised at any time when it is found convenient or desirable to exercise it for the construction, or during the existence, of the public work concerned.

[Section 28 inserted by No. 31 of 1997 s.46(1).]

[Heading deleted by No. 31 of 1997 s.47(2).]

[29-33B. Repealed by No. 31 of 1997 s.47(1).]

*[Part IIA: 33C-33F. Repealed by No. 32 of 1997 s.48.
33G-33L. Repealed by No.52 of 1995 s.10.]*

*[Part III: 34-39. Repealed by No. 31 of 1997 s.49.
40. Repealed by No. 19 of 1972 s.7.
41-81. Repealed by No. 31 of 1997 s.49.]*

Part IV — Surveys

82. Powers of entry on lands, etc., for survey purposes

- (1) For all the purposes of this Act the Minister, the Minister for the time being administering the *Land Administration Act 1997*, or any local authority, or any person authorized either specially or generally by any such person or authority —
 - (a) may enter or re-enter from time to time upon any land, with such assistants as he thinks fit, for the purpose of making any survey;
 - (b) may fix or set up therein trigonometrical stations, survey pegs, marks, or poles, and the same from time to time alter, remove, inspect, reinstate, and repair;
 - (c) may dig and bore into the land so as to ascertain the nature of the soil, and set out the lines of any works thereon;
 - (d) may do all things necessary for such survey in accordance with any regulations for the time being, or for any inspection, repair, or alteration thereof.
- (2) When practicable, 48 hours' notice shall be given to the owner or occupier of the land of the intention to enter thereon, and the authority under which the person entering claims to enter or has entered on such land shall, if required by such owner or occupier, be produced and shown.

[Section 82 amended by No. 27 of 1974 s.21; No. 31 of 1997 s.141.]

83. Penalty for destroying survey marks, etc.

Every person who, without due authority, destroys, mutilates, defaces, takes away, or alters the position of any trigonometrical station, survey peg, mark, or pole fixed or set up by any surveyor, or other person under the authority of the last preceding section, shall be liable, on summary conviction, for the first offence to a penalty not exceeding \$40, and for any

s. 83

subsequent offence to a penalty not exceeding \$200; and every person who wilfully obstructs any such surveyor or other person or his assistants in carrying on such survey shall, for every such offence, be liable to a penalty not exceeding \$100.

[Section 83 amended by No. 41 of 1966 s.11.]

Part IVA — Investigations for water

[Heading inserted by No.48 of 1953 s.6]

83A. Interpretation

(1) In this Part,

“authorized person” means —

- (a) the Minister, a Minister for the time being administering any Act relating to water supply, and any local authority; and
- (b) a person authorized, whether generally or specially to carry out testing work, by one of those Ministers or a local authority;

“testing work” means work which in the opinion of an authorized person is necessary for general investigation for water supply purposes, and includes, without limiting the generality of the foregoing, the carrying out of tests, gaugings, borings, the construction of gauging weirs, the sinking of shafts, the digging of trenches and other incidental work and things used for or in connection with that work.

- (2) An authorized person may from time to time lawfully enter upon land with such assistants and things as he thinks fit for the purpose and carry out testing work and alter, remove, inspect, reinstate and repair testing work upon the land.
- (3) Where an authorized person intends to enter upon land he shall, if it is practicable, give to the owner or occupier of the land at least 48 hours' notice of his intention, and if required by the owner or occupier shall produce to him his authority to enter the land.

[Section 83A inserted by No. 48 of 1953 s.6; amended by No. 27 of 1974 s.22.]

s. 83B

83B. Offences

A person who wilfully and unlawfully —

- (a) interferes with, alters, takes, injures, or destroys, testing work or part of it commits an offence.

Penalty: \$40 for a first offence; and \$200 for a subsequent offence;

- (b) obstructs an authorized person or his assistants in doing anything which he is authorized under this Part to do commits an offence.

Penalty: \$100.

[Section 83B inserted by No. 48 of 1953 s.6; amended by No. 41 of 1966 s.12.]

83C. Compensation

- (1) An authorized person or his assistants shall do as little damage as is practicable in exercising the powers conferred by this Part.
- (2) Where within one year of the exercise of a power conferred by this Part, a person suffers damage of which the exercise of the power is the proximate cause, he is entitled to compensation for the damage from the Minister or the local authority by whom, or by whose direction, the power is exercised, if within 30 days of the occurrence or commencement of the damage or within 12 months where notice of intention to enter the land was not given to the owner or occupier as required by section 83A(3) he serves on the Minister or local authority a written claim for compensation for the damage.
- (3) Subject to subsection (2), a claim shall be made and compensation assessed in accordance with Part 10 of the *Land Administration Act 1997* as if a reference in that Part to the acquiring authority were a reference to the Minister or local government.
- (4) The Minister or local government shall offer to negotiate with the occupier of, or the proprietor of any interest in, the land

affected by an act under this Act for the payment of compensation for any damage caused, or expected to be caused, by the act, and a person who enters into such an agreement shall not be entitled to claim compensation for that damage under subsection (2).

[Section 83C inserted by No. 48 of 1953 s.6; amended by No. 31 of 1997 s.50.]

Part V — Roads, rivers, and bridges

84. Definition of road for purposes of Act

Throughout this Act, the word “**road**” means a public highway, whether carriage-way, bridle-path, or footpath, and unless repugnant to the context, includes all roads which have been or may hereafter be set apart, defined, proclaimed, or declared roads under any law or authority for the time being in force, and all bridges, culverts, drains, ferries, fords, gates, buildings, and other things thereto belonging, upon, and within the limits of the road, and includes arable soil of every road.

85. Roads vested in the Crown

The soil of all roads is hereby declared to be and is hereby vested in the Crown, including, in the case of Government roads, all materials and things of which such roads are composed, or which are capable of being used for the purpose thereof, and are placed or laid upon any such roads.

86. Minister may repair any road

- (1) The Minister may construct or repair any road within any part of the State, but such road shall not, by reason of such construction or repair, become a Government road if at the time of such construction or repair it is within the limits of a local government district.
- (2) The Governor may, by Order in Council duly gazetted, declare that any road or part thereof shall be, or cease to be, a Government road, and such road or part thereof shall become or, as the case may be, shall cease to be a Government road accordingly.
- (3) The Governor may in like manner declare that any Government road or any part thereof shall be under the control of any local government, and thereupon such road or part thereof shall cease to be a Government road.

- (4) The powers hereby conferred may be exercised from time to time, and any Order in Council made hereunder may be revoked or altered, and any road declared to be a Government road may again be declared to be within the control of a local government, and any such road may again be declared to be a Government road, as often as occasion shall require.
- (5) For the purpose of making or repairing any Government or other road the Minister shall have all the powers and authorities which, by the *Roads Act 1902*⁴, are given to or conferred upon a road board, and shall also have power to close any road pending repairs or in the interests of public safety.

[Section 86 amended by No. 14 of 1996 s.4.]

87. Government roads under exclusive care of Minister

- (1) Government roads shall be under the exclusive control and management of the Minister.
- (2) In respect of all Government roads, and of all bridges and other public works connected therewith, the Minister may make all such local laws as any local government may for the time being have power to make in connection with any road within its district, and may impose a penalty not exceeding \$40 for the neglect or breach of any such local law.

[Section 87 amended by No. 41 of 1966 s.13; No. 14 of 1996 s.4.]

88. Effect of local laws

In respect to local laws made under the last preceding section the following provisions shall apply: —

- (a) A copy of the *Government Gazette* containing any such local law shall be evidence in all Courts of the same having been duly made under the authority of this Act.
- (b) A copy of all local laws having special reference to bridges and jetties shall be conspicuously displayed and maintained, in a clearly legible condition, at each and

s. 90

every bridge and jetty to which such local laws have reference.

- (c) Printed copies of all local laws having reference to the traffic on roads generally or on any one road in particular shall be on sale to every person applying for the same, at a price of not more than 10 cents.

[Section 88 amended by No. 41 of 1966 s.14; No. 57 of 1997 s.78(1) and (2).]

[89. Repealed by No. 7 of 1991 s.5.]

90. Breach of local law not to relieve offender

Nothing in this Act, nor in any local law made thereunder, shall relieve any person from any penalty, punishment, or action to which he would otherwise be liable in respect of anything done by him in breach of any such local law; and the Minister may sue any person for any damage done to any road or bridge or other works in contravention of any local law made under this Act, in addition to recovering the amount of the penalty for the breach of the local law.

[Section 90 amended by No. 57 of 1997 s.78(2).]

91. Governor may vest control of any bridge, etc., in local authority

- (1) For the purpose of this section, the words “**bridge**”, “**ferry**”, and “**ford**”, respectively, include such approaches to a bridge, ferry, or ford, and such protection works in connection therewith as may by any notice under this section be defined to be part of the bridge, ferry, or ford.
- (2) The Governor may, by notice in the *Government Gazette*, and in some newspaper circulating in the district, direct that any bridge already constructed or which may hereafter be constructed, and any ferry or ford already established or which may hereafter be established, over or across any river or arm of the sea respectively shall, from and after a date to be fixed in such

notice, be under the exclusive care, control, and management of the Minister, or of such local authority as shall be mentioned in that behalf in such notice; and

- (3) May by any subsequent notice publicly notified in the same way from time to time vary or alter such care, control, and management; and
- (4) May by such notice as aforesaid fix and determine whether all or any, and if so, what part of the cost, whether incurred or to be incurred, of maintaining, repairing, improving, or reconstructing any such bridge, or of managing or maintaining any such ferry or ford, and the machinery and appliances used therewith, is to be provided and paid by any local authority or local authorities (if more than one), and if so, by what local authority or authorities (if more than one); and
- (5) May by any such notice as aforesaid direct how, when, and to whom any such payment is to be made; and every payment so directed to be made shall be made as directed by such notice, and unless so made may be deducted from any subsidies or moneys at any time payable by the Crown to such local authority, and may also be recovered in any Court of competent jurisdiction at the suit of the Minister or local authority, as the case may be, as a debt due to the Crown or to the local authority to which such payment ought to be made.
- (6) In fixing and apportioning the cost of maintaining, repairing, improving, or constructing any such bridge, or of managing or maintaining any such ferry or ford, and the machinery and appliances used therewith, the Governor shall take into account the net revenue (if any) derived from or incident to the use of such bridge, ferry, or ford by the Minister or by the local authority, as the case may be, having the care, control, management, or maintenance thereof.
- (7) If any local authority or authorities shall refuse or neglect to maintain, work, improve, or repair any bridge, ferry, or ford (including the working of swing or lifting-spans in bridges

s. 92

where such have been provided) under its or their care, control, and management, or to reconstruct any such bridge, ferry, or ford when requisite, the Minister may undertake such maintenance, repairs, improvement, or reconstruction in the place of the local authority or local authorities so refusing or neglecting as aforesaid, and may provide for the care, working, and management of such bridge, ford, or ferry, and may recover all costs, charges, and expenses attending or incidental to his so doing from such local authority or local authorities as a debt due to the Crown, in any Court of competent jurisdiction.

- (8) In the exercise of the authority conferred upon him by this section, the Minister and any and every person authorized by him shall have all the powers and authorities which under any law are or may be vested in or could be exercised by the local authority or authorities in the place of which the Minister shall be acting.
- (9) Any proclamation, instrument, or notice heretofore issued, made, or published, vesting the control of any bridge, ferry, or ford, may be revoked, altered, or varied by the Governor from time to time as he may deem expedient, subject to the provisions of this Act.

[Section 91 amended by No. 31 of 1997 s.51.]

92. Stopping or diverting of road

No road shall be stopped or diverted by the Minister unless and until a way to the lands in the vicinity is left or provided, unless the owners of such lands give consent in writing to such stoppage or diversion.

Rivers

93. Removal of driftwood, etc., from rivers

The Minister and also the local authority may deepen, widen, straighten, and otherwise improve, any river, and may, without limiting the generality of the foregoing power remove from any

river, stream, or watercourse, or from the bed thereof, any earth or stone, and all weeds, refuse, and other growth, and all driftwood, logs, trees, branches, and other timber which may be lodged in the bed or against the banks thereof and be calculated to impede the free flow of water therein in its natural or deepened, widened, straightened, or otherwise improved, channel, and may dispose of the same respectively towards recouping the cost of such removal: And for the purpose aforesaid the Minister and every such local authority shall, by its servants, have the free right of ingress or egress, and regress on any land on the banks of any such river, stream, or watercourse.

[Section 93 amended by No. 48 of 1953 s.7.]

94. Minister may erect bridges

The Minister may erect any bridge or culvert upon and across the bed of any river or stream, and may repair and maintain such bridge or culvert, whether erected before or after the passing of this Act.

[Section 94 amended by No. 8 of 1906 s.5.]

[Part VA. (Sections 94A-94D.) Repealed by No. 89 of 1994 s.109.]

Part VI — Railways

95. Definition of “railway”

The word “**railway**” includes the land upon which any railway is made or authorized to be made, and all buildings and erections of every kind thereon, and all land taken, purchased, or acquired for railway purposes; and, except where inconsistent with the context, such word, when used in this Act, also includes all works, wharves, and jetties the property of the Crown, whether of a permanent or a temporary nature, used for the purposes of or in connection with such railway, and all materials and things of which such railway, buildings, erections, works, wharves, or jetties is or are composed, or which are being used for the purposes thereof, and are erected, placed, or laid upon any such land.

Construction

96. Railways to be made only under special Act

- (1) Every railway shall be made only under the authority of a special Act which shall state as nearly as may be the line of the railway and the 2 termini thereof; but it shall be lawful to deviate from such line at a distance of 1.6 kilometres on either side thereof, or such other distance as may be provided in any special Act.
- (2) Before the second reading of the special Act in the Legislative Council and Legislative Assembly respectively, the Minister shall cause a map, to be referred to in the special Act, showing the course to be taken by, and the middle line of, the railway, to be laid upon the table of the House.
- (3) On the passing of the Act, the map, signed for the purpose of identification by the Clerk of the Parliaments, shall be deposited by him in the Central Office of the Supreme Court, and shall be open to public inspection at any reasonable hour free of charge,

and shall be admitted in all Courts for all purposes as evidence of the line authorized by the special Act.

[Section 96 amended by No. 94 of 1972 s.4 (as amended by No. 19 of 1973 s.3); No. 67 of 1979 s.38.]

[97, 98. Repealed by No. 31 of 1997 s.52.]

99. Powers to make railways and railway stations, etc.

- (1) The Minister may do the following things in respect of any railway authorized by a special Act: —
 - (a) Enter upon and make the railway upon, over, or under any land necessary for the construction thereof, lying along the middle line defined in the map referred to in the Act, or within the authorized limits of deviation, and for this purpose may construct works of every kind and of every material necessary to the making thereof; and locomotive engines, machines, carriages, trucks, wagons, and vehicles of all kinds may be used upon and run over any land entered upon or taken or acquired for a railway lying within the limits aforesaid; and any kind of fuel may be used for any such locomotive engine or machine:
 - (b) Make any part of such line of railway on and along any part of any road or street:
 - (c) Make the railway upon, across, over, or under any road, street, railway, tramway, or public reserve along such line, and may alter the level of any road, street, railway, tramway, or public reserve for such purpose:
 - (d) Make the railway across any arm of the sea, river, stream, or navigable water:
 - (e) Alter the course or the level of any river not navigable, or of any stream, water-course, ditch, or drain:
 - (f) Make drains or conduits on or under any land adjacent to and for the purpose of carrying water from or to the

s. 100

railway; and may at all times maintain the same in good repair:

- (g) Remove or alter any drain or sewer, or any pipe or other material for the supply of water or of gas belonging to any company or person within or beyond the limits of the railway:
 - (h) Make or construct all such buildings, stations, engines, machinery, piers, wharves, roads, approaches, water supply works, gas works, electric works, telegraph, telephone, and other works in connection with the railway, as may be thought necessary:
 - (i) Do all acts necessary for making, equipping, maintaining, altering, repairing, and using the railway.
- (2) The powers by this section conferred upon the Minister may be exercised by him at any time, whether before, during, or after the construction of the railway, and shall extend to additional lands beyond those on which he has previously entered.
- (3) The provisions of this section shall, subject to the provisions of Part 10 of the *Land Administration Act 1997*, be deemed to have applied and shall apply to all railways constructed under any Act heretofore in force relating to the construction of public works, or in course of construction, or hereafter to be constructed.

[Section 99 amended by No. 31 of 1997 s.53.]

100. Rights of way and traffic where railway made along or across road on a level

- (1) Where any part of a road or street, except where it crosses a railway on a level, is used or occupied for a railway under the powers conferred by the last preceding section, such part of the road or street shall thereafter cease to be a highway.
- (2) Where a road, street, or thoroughfare crosses a railway on a level, the public right of way at such crossing shall cease whenever any engine or carriage on the railway is approaching

and within a distance of 400 metres from such crossing; and shall at all other times extend only to the right of crossing the line of railway with all convenient speed, but not stopping or continuing thereon.

- (3) Whenever a railway is constructed upon or across a road, or street, upon the same level, the Minister may carry on and conduct the working and management of such railway in every respect upon or across such road or street: the Minister may also, if he so desires, erect and maintain gates across such road or street on each side of the railway, and may keep such gates closed across such road or street on both sides of the railway, except when passengers on foot or with horses, cattle, and carriages passing along the same shall have the right, under subsection (2), to cross the railway, and may safely do so.

[Section 100 amended by No. 94 of 1972 s.4 (as amended by No. 19 of 1973 s.3)]

101. Compensation where road interfered with or wholly closed

- (1) No compensation shall be payable in respect of the use or occupation of any part of any road or street for any railway, under the powers conferred by the 2 last preceding sections, or for or in respect of any inconvenience or damage to any lands fronting or adjoining any such road or street arising out of the exercise of the said powers or the construction of the railway upon such part of such road or street.
- (2) (a) No compensation shall be payable in respect of any road or street being wholly closed under the powers conferred by this Act, or in respect of the use or occupation thereof for any railway, or for or in respect of any such inconvenience or damage as mentioned in the last subsection, if reasonable and sufficient access to the nearest road or street crossing over such railway be afforded by some other road or street, whether such last-mentioned road or street has been provided or constructed by the Minister or not.

s. 102

- (b) If any question arises as to whether such other reasonable and sufficient access as aforesaid is afforded, the same shall be determined in such manner as shall be agreed upon between the local authority having the control of roads or streets in the district and the Minister; or if they disagree, as shall be determined upon by some independent person appointed by the Governor; and every such determination shall be conclusive as to the rights or claims of all persons affected.

102. Government to make crossings to give access to lands

Where the making of a railway line has cut off all access by road to land other than Crown land, the Minister shall make such crossing or crossings as may be necessary to give access to such land.

103. Maintenance of public roads at railway crossings on the level

- (1) Where a road or a street crosses a railway on the level, the Minister shall, until the railway is opened for traffic, maintain the road and crossing on the railway, and for a distance on each side of 10 metres outside the railway so crossed; but the local authority having charge of the roads or streets in the district shall maintain and metal the same when the railway is open for traffic.
- (2) Where a road or street crosses over or passes under any railway by means of a bridge or subway, such bridge or subway shall, until the railway is opened for traffic, be maintained by the Minister; but when the railway is open for traffic, shall be maintained by the local authority having charge of the roads or streets in the district, but in case of decay from any cause other than the default of the local authority, the same shall be repaired, or reinstated by the Minister.
- (3) Where a road or street is constructed by the Minister to lead to a railway station, or otherwise for railway purposes, such road or

street shall be, until the railway is opened for traffic, maintained by the Minister, except so far as and until the management thereof is handed over to a local authority or it is closed as herein provided.

[Section 103 amended by No. 94 of 1972 s.4 (as amended by No. 19 of 1973 s.3).]

104. Alterations in roads, drains, pipes, etc., to be made without detriment to the public or to owners

Where it is found necessary for the construction of a railway to alter any public work, or any road, street, tramway, watercourse, sewer, drain, water-pipe or gas-pipe for the supply of water or gas belonging to a private person or company, such alterations shall be made at the request and cost of the Minister and in such manner as to interfere as little as possible with the work so altered.

[105. Repealed by No. 31 of 1997 s.54.]

106. Local authorities may agree with Minister as to conversion of railway bridge into one for combined traffic

- (1) The Minister may convert any railway bridge into a combined road and railway bridge. Any local authority is hereby authorized to pay the cost of such conversion, and also to pay annually to the Minister such further amount as may be necessary to maintain the roadway of the said bridge, and any approaches, gates, or other works or structures in connection therewith, and also to pay the wages of one or more caretakers to the said bridge.
- (2) All moneys hereby authorized to be paid by a local authority shall be paid out of the fund under its control, and charged accordingly.

s. 107

107. Right-of-way on joint railway and common bridges

Where a bridge is used for railway and ordinary traffic jointly, the public right-of-way on such bridge shall extend only so far as shall be defined in any by-law or local law made under any Act relating to the management of railways open for traffic. The Minister may at any time close such bridge to public traffic during repairs or whilst the bridge is in his opinion dangerous.

[Section 107 amended by No. 57 of 1997 s.78(3).]

108. Tree dangerous to railway to be removed

If the Minister is of the opinion that any tree on private land adjacent to a railway is likely, by falling or otherwise, to obstruct the traffic or endanger the travellers thereon, he may cause the tree to be removed.

109. Penalties for trespassing on railway in course of construction

- (1) Any person trespassing upon any railway in the course of construction, or upon any land occupied or temporarily occupied for the purpose of such construction under the powers hereby given, shall be liable to a penalty not exceeding \$4.
- (2) Any person riding or driving any animal or vehicle upon such railway or land without lawful authority shall be liable to a penalty not exceeding \$10.
- (3) Any such person refusing to leave such railway or land, or to remove such animal or vehicle therefrom, when warned so to do by the overseer, contractor, or any other person in charge of or employed upon such railway, may be seized and detained by such overseer or other person until he can be conveniently taken before some Justice of the Peace to be dealt with according to law.

[Section 109 amended by No. 41 of 1966 s.16.]

110. Crown may elect to erect fences along boundaries of railways

The Governor may, by notice published in the *Government Gazette*, declare that any fences constructed or intended to be constructed by or on behalf of the Crown for separating land taken for the use of any railway in such notice mentioned from the adjoining lands not taken, shall, to such extent as is mentioned in such notice be thereafter maintained, or erected and maintained as the case may require, at the cost of the Crown during such time as the railway may continue to be used by or on behalf of the Government of the State; and such fences shall thereafter be maintained, or erected and maintained as the case may require, by the Minister accordingly.

111. Railway servants may impound trespassing animals

Any person employed on or about any railway in the course of construction may impound animals trespassing upon such railway; and any act or matter required under the *Cattle Trespass, Fencing, and Impounding Act 1882*⁵, and any Acts amending or extending the same, to be done by the owner or occupier of land, may be done in respect of a railway by any person authorized generally or specially for that purpose by or on behalf of the Minister.

Part VII — General provisions

[112, 112A, 113. Repealed by No. 31 of 1997 s.55.]

113A. Property in things placed on the land

Where in exercise of a power conferred by this Act the Minister causes anything to be placed in, on, over, or under, land, it is deemed to be the property of the Minister unless the Minister certifies otherwise.

[Section 113A inserted by No. 19 of 1972 s.13.]

114. Buildings exempted from local building regulations

No building or other erection built or erected upon a railway or upon any land taken as or in connection with a Government work shall be subject to any Act, or any by-laws, local laws or regulations made under the same, except such as relate to public health, by which any local authority is empowered to regulate the erection, construction, or use of any buildings or erection within the boundaries of such local authority.

[Section 114 amended by No. 14 of 1996 s.4.]

115. Governor may execute instruments

The Governor may execute any deed or instrument for the purpose of granting and confirming any land, easement, right, privilege, concession, payment, or satisfaction which may have been or may hereafter be agreed to be granted or awarded under this or any other Act empowering such grant or award.

116. Tramways

Subject to the provisions of the *Government Tramways Act 1912*⁶, the Minister shall have the administration, charge, and control of the *Tramways Act 1885*⁷, and all amendments thereof and all special Acts passed thereunder, and of all Government tramways constructed thereunder, other than Government tramways as defined in section 2 of the

Government Tramways Act 1912 ⁶, and all such Acts shall be read as if for the words “Commissioner of Railways” or “Commissioner” were substituted the words “Minister for the time being administering the *Public Works Act 1902*”.

[Section 116 amended by No. 35 of 1933 s.7; No. 27 of 1974 s.24; No. 52 of 1995 s.14; No. 31 of 1997 s.56.]

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

118. Moneys due by local authority may be deducted from moneys payable to it by Government

In all cases where, under this Act or any Act hereby repealed, any money is authorized to be recovered from any local authority as a debt due to the Crown, the Treasurer may deduct the same or any portion thereof from any subsidies or other moneys (if any) that may be payable by or on behalf of the Crown, from time to time, to such local authority under any law for the time being in force, but without prejudice to the right of the Minister to recover the unsatisfied balance (if any) of such debt from such local authority as a debt due to the Crown in any Court of competent jurisdiction.

[119. Repealed by No. 31 of 1997 s.57.]

120. Penalty for obstructing workmen or destroying fences marks, etc.

Every person who wilfully and unlawfully obstructs or interferes with any engineer, architect, surveyor, overseer, workman, or other person in the performance of any duty or in doing any work which he has lawful authority to do under the provisions of this Act, or obstructs, injures, interferes with, alters, or removes anything, constructed, provided, or done, under those provisions or cuts down, breaks, removes, or destroys any fence in or upon any land taken under the provisions of this Act shall be liable to a penalty not exceeding \$100 for every such offence and the cost of repairing or

s. 121

reinstating it, or clearing it of obstruction is recoverable by the Minister from the person in a court of competent jurisdiction.

[Section 120 amended by No. 48 of 1953 s.9; No. 41 of 1966 s.17.]

121. Penalties recoverable in a summary way

All penalties imposed by this Act, or any local law thereunder, may be recovered summarily before any 2 Justices of the Peace in petty sessions.

[Section 121 amended by No. 57 of 1997 s.78(2).]

122. Works authorized or anything commenced under repealed enactments

- (1) Any public work authorized by any Act now in force, or by any Act repealed by this or by any former Act, may be continued, executed, carried out, enforced, and completed under the provisions of this Act:
- (2) Provided that, where in the opinion of the Governor the provisions of this Act are not applicable to such work, land, or thing, then, for the purpose of carrying out and completing such public work, land, or thing, the said repealed provisions shall be deemed to be in full force and operation.

[Section 122 amended by No. 31 of 1997 s.58.]

123. Public works under previous Acts to be deemed constructed under this Act

- (1) Subject to the provisions of the last preceding section, all railways and public works of every kind constructed, and all things done under any Act now in force, or under any Act repealed by this or any former Act, shall be deemed to have been constructed or done under this Act.
- (2) And all proclamations, Orders in Council, notices, by-laws, regulations and appointments issued, published, or made under any Act hereby repealed and subsisting at the commencement of

this Act shall be deemed respectively to have been issued, published, or made under this Act, and shall have effect accordingly.

[Section 123 amended by No. 31 of 1997 s.59.]

[124. Repealed by No. 73 of 1995 s.188.]

[125-126. Repealed by No. 25 of 1985 s.368.]

Schedule 1

Schedule 1

[Omitted under the Reprints Act 1984 s.7(4)(f).]

[Schedule 2. Repealed by No. 98 of 1985 s.3.]

[Schedules 3 – 9. Repealed by No. 31 of 1997 s.60.]



Notes

¹ This reprint is a compilation as at 27 August 1999 of the *Public Works Act 1902* and includes the amendments effected by the other Acts referred to in the following Table.

Table of Acts

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Public Works Act 1902</i>	47 of 1902	20 December 1902	20 December 1902	
<i>Public Works Amendment Act 1906</i>	8 of 1906	18 September 1906	18 September 1906	
<i>Public Works Act Amendment Act 1926</i>	60 of 1926	24 December 1926	24 December 1926	
<i>Public Works Act Amendment Act 1933</i>	35 of 1933	4 January 1934	12 February 1934 (see section 2(1) and <i>Gazette</i> 9 February 1934 p.143)	
<i>Public Works Act Amendment Act 1945</i>	41 of 1945	30 January 1946	30 January 1946	
<i>Public Works Act Amendment Act 1950</i>	23 of 1950	5 December 1950	5 December 1950	
<i>Public Works Act Amendment Act 1953</i>	48 of 1953	29 December 1953	29 December 1953	
<i>Public Works Act Amendment Act 1954</i>	3 of 1954	25 August 1954	Deemed operative 29 December 1953 (see section 1(1))	
<i>Public Works Act Amendment Act 1955</i>	59 of 1955	13 December 1955	13 December 1955	
<i>Public Works Act Amendment Act 1956</i>	55 of 1956	27 December 1956	27 December 1956	

Public Works Act 1902

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Public Works Act Amendment Act 1961</i>	46 of 1961	23 November 1961	23 November 1961	
<i>Public Works Act Amendment Act 1965</i>	59 of 1965	19 November 1965	19 November 1965	
<i>Public Works Act Amendment Act 1966</i>	41 of 1966	4 November 1966	4 November 1966	
<i>Public Works Act Amendment Act 1967</i>	53 of 1967	5 December 1967	5 December 1967	
<i>Public Works Act Amendment Act 1972</i>	19 of 1972	26 May 1972	26 May 1972	
<i>Metric Conversion Act 1972</i>	94 of 1972	4 December 1972	The relevant amendments as set out in Schedule 2 took effect on 1 May 1974 (see section 2 and <i>Gazette</i> 26 April 1974 p.1393)	Schedule 2 was inserted by the <i>Metric Conversion Act Amendment Act 1973</i> (No. 19 of 1973)
<i>Ministers of the Crown (Statutory Designations) and Acts Amendment Act 1974, Part VI</i>	27 of 1974	29 October 1974	1 December 1974 (see section 2 and <i>Gazette</i> 6 December 1974 p.5204)	
<i>Acts Amendment (Master, Supreme Court) Act 1979, Part VI</i>	67 of 1979	21 November 1979	11 February 1980 (see section 2 and <i>Gazette</i> 8 February 1980 p.383)	
<i>Acts Amendment (Conservation and Land Management) Act 1984, section 27</i>	112 of 1984	19 December 1984	22 March 1985 (see section 2 and <i>Gazette</i> 15 March 1985 p.931)	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Public Works Amendment Act 1984</i>	123 of 1984	27 December 1984	27 December 1984 (see section 2)	
<i>Acts Amendment and Repeal (Water Authorities) Act 1985, Part XIII</i>	25 of 1985	6 May 1985	1 July 1985 (see section 2 and <i>Gazette</i> 7 June 1985 p.1931)	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 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 December 1987	16 March 1988 (see section 2 and <i>Gazette</i> 16 March 1988 p.813)	
<i>Acts Amendment (Land Administration) Act 1987, Part VIII</i>	126 of 1987	31 December 1987	16 September 1988 (see section 2 and <i>Gazette</i> 16 September 1988 p.3637)	Section 39: validation ⁸
<i>Public Works Amendment Act 1991</i>	7 of 1991	13 June 1991	11 July 1991	
<i>Financial Administration Legislation Amendment Act 1993, section 11</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2(1))	
<i>Land (Titles and Traditional Usage) Act 1993, section 45</i>	21 of 1993	2 December 1993	2 December 1993 (see section 2)	
<i>Acts Amendment (Public Sector Management) Act 1994, section 19</i>	32 of 1994	29 June 1994	1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)	

Public Works Act 1902

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Public Works Amendment Act 1994</i>	59 of 1994	7 November 1994	5 December 1994	Section 10: transitional ⁹ ; section 11: validation ¹⁰
<i>Statutes (Repeals and Minor Amendments) Act 1994, section 4</i>	73 of 1994	9 December 1994	9 December 1994 (see section 2)	
<i>Energy Corporations (Transitional and Consequential Provisions) Act 1994, section 109</i>	89 of 1994	15 December 1994	1 January 1995 (see section 2(2) and <i>Gazette</i> 23 December 1994 p.7069)	
<i>Hospitals Amendment Act 1994, section 18</i>	103 of 1994	11 January 1995	3 February 1995 (see section 2 and <i>Gazette</i> 3 February 1995 p.333)	
<i>Acts Amendment and Repeal (Native Title) Act 1995, Part 2</i>	52 of 1995	24 November 1995	9 December 1995 (see section 2 and <i>Gazette</i> 8 December 1995 p.5935)	
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995, section 188</i>	73 of 1995	27 December 1995	1 January 1996 (see section 2(2) and <i>Gazette</i> 29 December 1995 p.6291)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Financial Legislation Amendment Act 1996</i> , section 64	49 of 1996	25 October 1996	25 October 1996 (see section 2(1))	
<i>Licensed Surveyors Amendment Act 1996</i> , section 28	79 of 1996	14 November 1996	5 April 1997 (see section 2 and <i>Gazette</i> 4 April 1997 p.1750)	
<i>Transfer of Land Amendment Act 1996</i> , section 153(1)	81 of 1996	14 November 1996	14 November 1996 (see section 2(1))	
<i>Acts Amendment (Land Administration) Act 1997</i> , Part 35 and section 141	31 of 1997	3 October 1997	30 March 1998 (see section 2 and <i>Gazette</i> 27 March 1998 p.1765)	
<i>Dampier to Bunbury Pipeline Act 1997</i> , Division 5 of Schedule 4	53 of 1997	12 December 1997	12 December 1997 (see section 2(1))	
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> , section 78	57 of 1997	15 December 1997	15 December 1997 (see section 2(1))	

NB. The *Public Works Act 1902* is affected by the *Dampier to Bunbury Pipeline Act 1997* (No. 53 of 1997). Clauses 24-28 of Schedule 4 read as follows —

“

24. Sections 29, 29A, and 29B not to apply

Sections 29, 29A, and 29B of the principal Act do not apply to or in relation to land in the DBNGP corridor as defined in section 27 of this Act.

25. Application of section 33A

For the purposes of section 33A of the principal Act, the DBNGP Land Access Minister is a local authority.

26. Section 33F not to apply

Section 33F of the principal Act does not apply to or in relation to the taking of land for the purpose of a conferral of rights by the DBNGP Land Access Minister under section 34 of this Act.

27. Section 45A not to apply

Section 45A of the principal Act does not apply to or in relation to —

- (a) the taking of land for the purposes of this Act; or
- (b) the determination of a question arising upon a claim for compensation under section 42 of this Act.

28. Taking of land to be as if for the conferral of rights

When applying the principal Act, the taking of land for the purposes of Part 4 or Schedule 2 of this Act is to be regarded as being for the purpose of the conferral of rights under Part 4 of this Act, whether or not rights have already been conferred under that Part in respect of the land.

”

² Under section 112(1) of the *Public Sector Management Act 1994* (No. 31 of 1994), this is to be read as a reference to the *Public Sector Management Act 1994*.

³ Under section 112(2) of the *Public Sector Management Act 1994* (No. 31 of 1994) this is to be read as a reference to the Minister for Public Sector Management.

⁴ Repealed by the *Roads Act 1911* (No. 29 of 1911) which was repealed by the *Road Districts Act 1919* (No. 38 of 1919) which was repealed by the *Local Government Act 1960* (No. 84 of 1960) which is now cited as the *Local Government (Miscellaneous Provisions) Act 1960*.

⁵ Repealed by the *Dividing Fences Act 1961* (No. 44 of 1961) section 2(1).

⁶ Repealed by the *Western Australian Government Tramways and Ferries Act 1948* (No. 52 of 1948) which was repealed by the *State Transport Co-ordination Act 1966* (No. 91 of 1966) which was repealed by the *State Transport Co-ordination Act 1981* (No. 14 of 1981) which was repealed by the *Acts Amendment and Repeal (Transport Co-ordination) Act 1985* (No. 54 of 1985).

⁷ Repealed by the *State Transport Co-ordination Act 1966* (No. 91 of 1966) which was repealed by the *State Transport Co-ordination Act 1981* (No. 14 of 1981) which was repealed by the *Acts Amendment and Repeal (Transport Co-ordination) Act 1985* (No. 54 of 1985).

⁸ Section 39 of the *Acts Amendment (Land Administration) Act 1987* (No. 126 of 1987) reads as follows —

“

39. Validation

- (1) The purported exercise or performance on behalf of the Minister for Works by —
- (a) any Minister of the Crown other than the Minister for Works or by a State agency or instrumentality or other public authority; or
 - (b) any person employed by the Government or by a State agency or instrumentality or other public authority,
- with the consent of the Minister for Works during the period beginning on 1 January 1970 and ending immediately before the commencement of this Part of any power conferred or duty imposed on the Minister for Works by the principal Act is hereby validated and declared to have been lawfully done by that Minister of the Crown or the State agency or instrumentality or other public authority or person employed by the Government or by the State agency or instrumentality or other public authority, as the case requires.
- (2) In this section —
“**the Minister for Works**” has the meaning given by the principal Act.

”

⁹ Section 10 of the *Public Works Amendment Act 1994* (No. 59 of 1994) reads as follows —

“

10. Transitional

- (1) A reference in a document executed before the commencement of this Act to the Western Australian Building Authority is to be construed, unless the context otherwise requires, as if that reference had been amended to be a reference to the Western Australian Building Management Authority.
- (2) A reference in a document executed before the commencement of this Act to the Western Australian Building Authority Account is to be construed, unless the context otherwise requires, as if that reference had been amended to be a reference to the Western Australian Building Management Authority Account.

”

¹⁰ Section 11 of the *Public Works Amendment Act 1994* (No. 59 of 1994) reads as follows —

“

11. Validation

- (1) The purported exercise or performance on behalf of the Minister for Works by —
- (a) the Minister of the Crown to whom the administration of the *Marine and Harbours Act 1981* is or was committed by the Governor; or
 - (b) the chief executive officer of the Department principally assisting that Minister of the Crown in the administration of the *Marine and Harbours Act 1981* or any other officer of that Department,
- with the consent of the Minister for Works during the period beginning on 1 July 1985 and ending immediately before the commencement of this Act of any power conferred or duty imposed on the Minister for Works by the principal Act is hereby validated and declared to have been lawfully done by that Minister of the Crown or that officer of that Department, as the case requires.
- (2) In this section —
“**the Minister for Works**” has the meaning given by the principal Act.

”

¹¹ Renumbering effected in 1927 reprint.

Defined Terms

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
authorized buildings.....	9A
authorized person	83A(1)
borrow	9A
bridge	91(1)
Crown land.....	2
ferry.....	91(1)
ford.....	91(1)
Government work	2
Judge	2
Local authority	2
Local work	2
Minister	2
Public reserve.....	2
Public work	2
Railway	2, 95
Registrar	2
River.....	2
Road.....	2, 84
Special Act.....	2
Surveyor	2
testing work.....	83A(1)
the Account	9A
the Building Management Authority	9A
work	2