

## Main Roads (Amendment) Bill, 1944.

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### EXPLANATORY NOTE.

THE objects of the Bill are to amend the Main Roads Act, 1924-1939, to provide for the recovery of expenses in making good damage to roads maintained, managed and administered by the Commissioner for Main Roads; for extending the protection afforded to occupiers of land in the Western Division in connection with the erection of motor by-passes, similar to that provided by the Local Government Act in respect of Local Government areas; for requiring new road junctions and intersections with main roads to be submitted to the Commissioner for Main Roads for approval.

The Bill further provides for the establishment of motorways designed to facilitate the movement of motor traffic by restricting access from adjoining roads and land; for widening main roads by the realignment method; for providing for the proclamation of main road reserves through vacant lands within Shires.

The Bill also validates certain reductions made by metropolitan councils in respect of their contribution to the County of Cumberland Main Roads Fund where rates have been written off or abandoned.

The Bill also provides for payment of the money value of extended leave not taken or completed by deceased officers of the Main Roads Department to their widow or other dependent relative.

A consequential amendment is made to the Local Government Act, 1919, defining road alignment for the purposes of that Act to include a new alignment established under the realignment method provided for in this Bill.

The Bill also contains other amendments of a machinery character.

[CONFIDENTIAL]

(Rough Draft for Consideration Only.)

No. , 1944.

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## A BILL

To amend the Main Roads Act, 1924-1939, and certain other Acts in certain respects; to validate certain matters; and for purposes connected therewith.

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**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of  
5 the same, as follows:—

1. (1) This Act may be cited as the "Main Roads  
(Amendment) Act, 1944." Short title  
and  
citation.

(2) The Main Roads Act, 1924, as amended by  
subsequent Acts, is in this Act referred to as the Principal  
10 Act.

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(3) The Main Roads Act, 1924, as amended by subsequent Acts and by this Act, may be cited as the Main Roads Act, 1924-1944.

2. The Principal Act is amended—

5 (a) by inserting next after subsection four of section 7A the following new subsection:—

10 (4A) Where a Commissioner, an Assistant Commissioner or an officer has acquired a right under this Act to extended leave with pay and dies before entering upon it, or after entering upon it dies before its termination, his widow, or in the case of a widower leaving children, his children, or their guardian, or other dependent relative, or their legal representative, shall be

15 entitled to receive the money value of the leave not taken, or not completed, computed at the rate of salary the Commissioner, Assistant Commissioner or officer, as the case may be, received at the time of his death. Such payment

20 shall be in addition to any payment due under the provisions of the Superannuation Act, 1916-1944, or any amendment of that Act:

25 Provided that where payment of the money value of leave has been made under this subsection, no action may be brought for payment of any amount in respect of such leave.

(b) by inserting at the end of section eleven the following new subsection:—

30 (10) Where any amount added by a council to any rate levied for general purposes or levied as a separate special or local rate in order to make any contribution under this section has been written off or abandoned, the council may make a corresponding reduction in the amount

35 of such contribution. Any reduction made prior to the commencement of the Main Roads (Amendment) Act, 1944, as though the provisions of this subsection were in force at the time such reduction was made, is hereby validated.

(c)

Amendment of Act No. 24, 1924.

Sec. 7A.

(Extended leave.)

cf. Act No. 43, 1919, s. 14.

Sec. 11.  
(Contribution by councils.)

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- (c) (i) by omitting subsection three of section thirty-six; Sec. 36.  
(Commissioner given powers of council.)  
(ii) by inserting next after subsection six of the same section the following new subsection:—

5                   (6A) (a) The Governor may, on the recommendation of the Commissioner, by proclamation published in the Gazette, declare any land vested in the Commissioner and not required for the purposes of this  
10                   Act to be a public reserve and may, by the same or any subsequent proclamation, if the Commissioner with the concurrence of the council so recommends, place it under the care, control and management of the  
15                   council.

                  (b) Such public reserve shall thereupon be a public reserve within the meaning of Part XIII of the Local Government Act, 1919.

- 20                   (d) by omitting subsection six of section thirty-nine and by inserting in lieu thereof the following new subsections:— Sec. 39.  
(Control of main roads.)

25                   (6) Where any sign or hoarding has been erected within or adjacent to any main road whether with the permission of the council or not, the Commissioner may, in any case where in his opinion the sign or hoarding is prejudicial to the safety of the travelling public, direct the person responsible for its erection to remove it  
30                   forthwith or within such period as the Commissioner may fix.

35                   (7) Any junction or intersection of a new road with a main road shall not be made by any council or by any person, except with the consent of the Commissioner. The Commissioner may, in giving such consent, impose such terms and conditions as he considers desirable in connection with the making of such junction or intersection.

(e)

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(e) by omitting section forty and by inserting in lieu thereof the following section:—

Subst.  
s. 40.

40. (1) Any person who causes damage or injury to—

Recovery of  
cost of  
making  
good  
damage to  
roads.

5 (a) any road maintained, managed or administered by the Commissioner under this or any other Act; or

10 (b) any safety fence, barrier, treeguard, handrail or the like the property of the Commissioner or a council in any such road,

shall, except where such damage or injury is caused by ordinary wear and tear due to ordinary and reasonable user of the road, pay the cost incurred by the Commissioner or by the council, as the case may be, in making good such damage or injury.

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(2) Where the damage or injury is caused to a bridge every portion of the bridge, including any gate, pier, fender, dolphin, platform and the like incidental to the use or protection of the bridge, shall be deemed to be a road for the purposes of this section.

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(3) Where such damage or injury is caused by the use of a vehicle the driver thereof, or in the case of a bridge by the use of a vessel the owner thereof, shall pay such cost.

(f) by inserting next after section forty-one the following new section:—

New  
sec. 41A.

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41A. (1) Where any council, statutory body or Government department proposes to construct any new road, road deviation, bridge, ferry or other crossing for the use of road traffic, which is estimated to cost more than five thousand pounds, such council, statutory body or Government department shall furnish the Commissioner with particulars of such proposal.

Particulars  
of new road  
works to be  
furnished  
to Com-  
missioner.

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(2) Where the development or further development of any main road is affected by such proposal the Commissioner may, within a reasonable

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reasonable time after receipt of such particulars, notify the council, statutory body or Government department concerned—

5 (a) that the amendments or alterations specified in such notification should be observed in the construction of such new road, road deviation, bridge, ferry or other crossing; or

10 (b) that the construction of such new road, road deviation, bridge, ferry or other crossing should be postponed for such period specified in such notification as the Commissioner may determine.

15 (3) In the event of any dispute between the Commissioner and a council, statutory body or Government department arising out of the operation of this section the parties to such dispute may refer the matter in the case of a dispute between the Commissioner and a council to the Minister for Local Government and in the case of a dispute between the Commissioner and a statutory body or Government department to the Minister for the time being administering such statutory body or Government department. 20 The determination of the Minister upon any matter referred to him under this subsection shall be final and shall be given effect to by the parties concerned in such dispute.

30 (g) by omitting paragraph (h) of subsection one of section fifty-one; Sec. 51. (Ordinances.)

(h) by inserting at the end of section sixty-five the following new subsection:— Sec. 65. (Transfer of certain roads, etc., to Commissioner.)

35 (12) The provisions of the Public Gates Act, 1901, and of section 251A of the Local Government Act, 1919, shall apply, mutatis mutandis, to and in respect of unfenced roads within the Western Division maintained, managed and administered by the Commissioner pursuant to the provisions of this section. Public gates and by-passes in Western Division.

For

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For the purposes of such application—

- (a) a reference in the Public Gates Act, 1901, to the Minister shall be construed as a reference to the Commissioner;
- 5 (b) the words “in the Gazette and” in subsection two of section four of that Act shall be deemed to be omitted;
- 10 (c) a reference in section 251A of the Local Government Act, 1919, to the council shall be construed as a reference to the Commissioner.

3. The Principal Act is further amended by inserting next after Part V the following new Parts:—

Further amendments of Act No. 24, 1924.  
New Parts VA and VB.

PART VA.

15

MOTORWAYS.

27B. In this Part, unless inconsistent with the Definitions. context or subject matter—

20 “Local access road” means any road designed to provide access to, or over, or under a motorway.

“Motorway” means any main road which is proclaimed a motorway under this Part of this Act or any part of such motorway.

25 27c. (1) The Governor may, on the recommendation of the Commissioner, proclaim any main road specially designed to facilitate the movement of motor traffic to be a motorway.

Proclamation of motorways. cf. 25 and 26 Geo. V, c. 47.

(2) The Governor may in the like manner amend or repeal any such proclamation.

30 (3) (a) Any proclamation under subsection one or two of this section shall be published in the Gazette and in one or more newspapers circulating in the areas in which the motorway is situated.

35 (b) Any proclamation under this section shall specify the means of access or routes by which a person may enter or leave a motorway.

(4)

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(4) (a) Subject to the provisions of this section it shall not be lawful to enter or leave a motorway except by a means of access or route provided for that purpose. Restriction of access to motorway.

5 (b) Without the consent of the Commissioner it shall not be lawful to construct, form, or lay out any means of access to or from a motorway: Provided that the Commissioner shall not, except on  
10 payment of compensation as hereinafter provided, withhold consent in any case where such construction, formation or laying out was begun before the date of proclamation of the motorway.

15 (c) The Commissioner may erect and maintain fences or posts across any side road for the purpose of preventing access to a motorway.

20 (5) (a) Subject to the provisions of this section any person having an estate or interest in land adjacent to a motorway which is directly affected in an injurious manner by reason of any restriction in the use of such land consequent upon the operation of this section shall be entitled to recover from the Commissioner compensation for any loss or damage which he may sustain by reason of the land being so affected. Compensation.

25 (b) Any question as to whether compensation is payable under this section or as to the amount of compensation shall, in default of agreement, be determined by the Land and Valuation Court under the Land and Valuation Court Act, 1921, and jurisdiction is hereby conferred upon such court  
30 to hear and determine such question.

35 (c) Where any land acquired by the Commissioner is used for the purpose of opening a motorway or for widening a motorway no compensation shall be payable under this section in respect of adjacent land by reason of restrictions as to means of access in force under this section relating to the motorway so opened or widened.

(d)



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(d) In awarding compensation under this section in respect of any estate or interest in land the compensation shall, subject to the provisions of this section, be a sum equal to the difference between the market value of the estate or interest when the piece of land is subject to the restrictions and what would have been the market value of that estate or interest if the piece of land had not been so subject: Provided that—

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- 10 (i) in assessing the market value of the estate or interest when the piece of land is subject to the restrictions there shall be taken into account any modifications of those restrictions by reason of any consent given by the
- 15 Commissioner under this section and any conditions attached to such consent, or by reason of any undertaking given or proposed to be given by the Commissioner, and any such consent, conditions, or undertaking shall be embodied in the award of compensation;
- 20
- (ii) there shall be taken into account any benefit which may accrue to any land in which the claimant has an estate or interest by reason
- 25 of the construction or improvement by the Commissioner or by any other person or authority at any time after the coming into force of restrictions under this section upon land adjacent to the land in respect of which compensation is claimed, of any road or of any local access road, carriageway or other way subsidiary to such a road or by reason
- 30 of the coming into force of the restrictions;
- (iii) if the piece of land has, since the date on
- 35 which the restrictions came into force, become or ceased to be separate from other land, the amount of compensation shall not be enhanced by reason of its having so become or ceased. For the purposes of this subparagraph a piece of land shall be
- 40 deemed to be separate from other land when the
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the person having the estate or interest therein in respect of which compensation is claimed has not the like estate or interest in the other land.

5 (e) Compensation under this section shall not be payable unless a claim therefor shall have been served on the Commissioner within twelve calendar months from the proclamation of the motorway.

10 (6) The provisions of this Act with respect to works of construction and maintenance on a State highway shall, *mutatis mutandis*, apply to a motorway.

15 (7) Notwithstanding the provisions of any Act a person shall not drive any loose sheep, cattle, horses or other animals on or along a motorway.

20 (8) (a) The Commissioner may construct local access roads and may carry any local access road over or under any motorway, or may carry any motorway over or under any local access road.

(b) Any local access road shall be deemed to be a public road and may be handed over by the Commissioner to the council and thereupon the council shall have the care and control of the local access road.

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(9) The Commissioner may, subject to the Local Government Act, 1919, and the Motor Traffic Act, 1909, and any Act amending such Acts, erect notices in any motorway dividing the carriageway into zones for the use of specified classes of traffic.

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PART VB.

SPECIAL PROVISIONS RELATING TO MAIN ROADS.

DIVISION 1.—*Widening of main roads by re-alignment.*

35 27D. In this Part "re-alignment" means any alteration of the alignment of a main road for the purpose of widening the road, and "re-aligned" has a corresponding meaning. Definition.

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27E. (1) Notwithstanding the provisions of any Act the Commissioner may cause the alignment of any main road to be re-aligned.

Re-align-  
ment.  
cf. Act No.  
58, 1932, s.  
78; Act No.  
41, 1919,  
s. 262.

5 (2) Any such re-alignment may be carried into effect by the acquisition under this Act or any amendment thereof of the necessary land, or under the succeeding provisions of this section relating to the re-alignment method of acquiring land, or by a combination of those methods.

10 (3) Where the Commissioner proposes to apply the re-alignment method of acquisition to any lands affected by a re-alignment he shall—

- (a) cause a plan of the proposal to be submitted for the approval of the Governor;
- 15 (b) cause to be served a notice upon the owners of lands affected by the re-alignment and upon the council of the area; and
- (c) notify the approval of the Governor in the Gazette.

20 Until such plan has been approved and such notices are served and such approval notified as aforesaid the interests of such owners shall not be affected by the re-alignment.

25 (4) A plan showing the re-alignment shall be lodged by the Commissioner in the office of the Registrar-General, with the Department of Lands and with the Valuer-General.

30 (5) Under the re-alignment method compensation for any injurious effects suffered by reason of such re-alignment may be claimed, but shall be limited to payment of the value of the land taken from any owner by reason of the re-alignment together with the damage, if any, caused by the severing of the land from other land of the owner.

Compensa-  
tion.

35 Such value and damage shall be ascertained and such compensation shall be payable—

- (a) in the case of vacant land, as at the date when the notice referred to in paragraph
- 40 (b) of subsection three of this section is served upon the owners of such land; and
- (b).

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5 (b) in all other cases, as at the date when such land is cleared of buildings and obstructions by the owner or lessee whether for the purpose of building to the new alignment or not.

From the date upon which such compensation shall be payable the land shall vest in the council for a public road.

10 (6) Where any main road is re-aligned and where the re-alignment method is applied the owner of any land or building or work affected by such re-alignment shall not construct, build, place, reconstruct, rebuild, replace, or repair any building or work or portion of a building or work standing upon the land between the old alignment and the new:

Restrictions on construction and repair of buildings.

15 Provided that with the approval of the Commissioner the council may approve of the execution of minor and not substantial repairs and improvements in order to permit of the reasonable preservation and temporary use of any existing building or work, but not so as to violate the intention of this section.

20 (7) Whether or not the Commissioner has elected to apply the re-alignment method he may at any time and notwithstanding any such election decide to purchase or resume any or all of the lands affected by the re-alignment.

25 (8) In any case where compensation may be claimed under this section such claim in case of dispute shall be made and determined in the same manner as a claim for compensation for the resumption of land under this Act.

30 (9) Where land is acquired by the re-alignment method the Commissioner may, notwithstanding anything contained in any Act, lease the whole or any part of such land to any landowner from whom the land is acquired or his sequels in title for not more than ten years at any one time.

*Main Roads (Amendment).*DIVISION 2.—*Main road reserves.*

5 27F. (1) The Governor may on the recommenda-  
 tion of the Commissioner proclaim a main road  
 reserve in and through any land not being situated  
 in a municipality and not built upon at the date of  
 such proclamation.

Proclama-  
 tion of  
 main road  
 reserves.

10 (2) Notification of any such proclamation  
 shall be published in the Gazette and in a newspaper  
 circulating in the police district wherein the land is  
 situated.

15 (3) As from the date of such notification the  
 owner and any other person having an interest in  
 the land affected by such proclamation shall not  
 construct, build or place any building or portion of  
 a building on such main road reserve.

20 (4) Until the Commissioner acquires title to  
 so much of the land comprised in a main road  
 reserve as is required for road purposes or until  
 dedication of such land as a public road the interests  
 of the owners and occupiers of land comprised in a  
 main road reserve shall not be affected except as  
 provided by this section.

25 (5) The Governor may on the recommenda-  
 tion of the Commissioner amend or repeal any pro-  
 clamation of a main road reserve and any such  
 amendment or repeal shall be notified in the Gazette.

30 (6) Where a main road reserve is proclaimed  
 under this section a plan thereof shall be lodged with  
 (a) the Registrar-General; (b) the Department of  
 Lands; (c) the Valuer-General; and (d) the council  
 of the area in which the land is situated.

(7) This section shall apply to all land  
 whether owned privately or by the Crown or by a  
 statutory body representing the Crown.

35 4. (1) The Principal Act is further amended by  
 inserting in section two next after the matter relating to  
 Part V the following new matter:—

PART VA.—MOTORWAYS—ss. 27B, 27C.

Further  
 amendment  
 of Act  
 No. 24,  
 1924, s. 2.  
 (Conse-  
 quential.)

PART

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*Main Roads (Amendment).*

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PART VB.—SPECIAL PROVISIONS RELATING TO MAIN  
ROADS.

DIVISION 1.—*Widening of main roads by re-align-  
ment—ss. 27D, 27E.*

5      DIVISION 2.—*Main road reserves—s. 27F.*

(2) The Local Government Act, 1919, as amended  
by subsequent Acts, is amended—

Amendment  
of Act  
No. 41,  
1919, s. 260.

10      (a) by inserting in subsection two of section two  
hundred and sixty after the word “aligned” the  
word “re-aligned”;

(Existing  
align-  
ments.)

15      (b) by omitting from the same subsection the words  
and figures “or the Public Roads Act, 1902,”  
and by inserting in lieu thereof the words and  
figures “the Public Roads Act, 1902, or the Main  
Roads Act, 1924, or any Acts amending such  
Acts”;

(Conse-  
quential.)

(c) by inserting in the same subsection after the  
word “aligning” the word “re-aligning.”

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