

VICTORIA.



ANNO DECIMO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 6794.

An Act to repeal Part XLVIII. of the *Local Government Act 1958* and to amend the *Land Act 1958*, and for other purposes.

[8th November, 1961.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. (1) This Act may be cited as the *Land (Unused Roads and Water Frontages) Act 1961*. Short title.

(2) The *Land Act 1958* as amended is in this Act referred to as the Principal Act. Principal Act.
No. 6284 as
amended by
Nos. 6504, 6521,
6612

(3) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*. Commencement.

2. In section one of the Principal Act after the expression "Part XII.—Mineral Springs on Crown Lands ss. 385–398." there shall be inserted the expression "Part XIII.—Unused Roads and Water Frontages ss. 399–412." Amendment of
No. 6284 s. 1.
Division into
Parts.

3. After

New Division
inserted in
No. 6284.

3. After Part XII. of the Principal Act there shall be inserted the following Part :—

'PART XIII.—UNUSED ROADS AND WATER FRONTAGES.

Interpretation. 399. In this Division unless inconsistent with the context or subject-matter—

"Council." "Council" means council of a municipality constituted under the *Local Government Act* 1958.

"Occupier." "Occupier" in relation to land which is apparently not occupied by a tenant means owner.

"Private land." "Private land" means land which has been or is in course of being alienated from the Crown in fee simple or is held under a lease or a licence under Part I. of this Act or as a residence area under Division 11 of that Part.

"Road." "Road" includes "street" and also includes—

- (i) any portion of Crown land delineated or shown as a road in any original map or plan in the Department of Crown Lands and Survey in accordance with which any Crown land has or may have been sold leased or licensed or become subject to a residence area right and which road so delineated or shown has not under any Act relating to Crown lands been closed or sold by the Crown, save and except any formed or metalled roads ;
- (ii) any portion of Crown land which by a general or particular description has been or purports to have been proclaimed by the Governor in Council as a road under the provisions of any Act relating to Crown lands ; or
- (iii) any portion of Crown land which may have been or may be by a general or particular description reserved from sale as a road and the reservation of which has been duly published in the *Government Gazette* under the provisions of any such Act—

but does not include any road or street formed or set out on private land ; and such map or plan or a copy of the *Government Gazette* containing any such proclamation of a road or any such reservation shall until the contrary is shown be evidence that the portion so delineated shown or described respectively is a road within the meaning of this section.

"Unused

“Unused road” means so much of any road or of any part of a road as is specified as unused in any notice given as hereinafter provided to the Secretary for Lands by the council of the municipality in whose municipal district the road or part of the road is situated or as is declared by the Governor in Council to be an unused road.

“Unused road.”

“Water frontage” means any portion of Crown land (including land permanently or temporarily reserved from sale and not vested in trustees or in a municipality or in respect of which no committee of management has been appointed pursuant to this Act) which has a frontage to the sea or any river creek lake or swamp and which is not for the time being held under lease or licence or residence area right or reserved as a water reserve along any public road under the provisions of this or any other Act relating to Crown lands.

“Water frontage.”

400. (1) The council of a municipality may give notice to the Secretary for Lands that any road or part of a road which is within the municipal district of that municipality and which it considers is not required for public traffic is an unused road and upon the giving of any such notice any road or part of a road specified therein shall be an unused road.

Power to municipal councils to specify roads as unused.

(2) Every such notice shall be in the prescribed form and shall contain such particulars as may be prescribed.

401. (1) Notwithstanding anything in any Act or in any proclamation or order of the Governor in Council or in any map or plan, the Governor in Council or any person duly authorized by him in that behalf may grant licences for the occupation and use of any unused road or of any water frontage.

Power of Governor in Council to grant licences to occupy unused roads and water frontages.
No. 6299 s. 904.

(2) No such licence shall be granted unless the Secretary for Lands has consulted in relation thereto with the council of the municipality within whose municipal district the unused road or the water frontage or any part thereof is situated.

402. (1) Where the land on one side only of an unused road is fenced off from such road the occupier of any unfenced private land on the opposite side of such road shall obtain a licence to occupy and use the whole of such road to the extent to which his land abuts thereon. The occupier of such unfenced private land while he is the licensee of such unused road shall when any dividing fence between such road and any private land on the

other

other side of the road is out of repair or becomes insufficient be liable for one-half the cost of repairing such fence as if he were an occupier within the meaning of the *Fences Act 1958*.

(2) Where the land on both sides of an unused road is not fenced off from such road the occupier of any private land on either side of such road shall obtain a licence to occupy and use the half of such road on which his land abuts :

Provided that—

- (a) if the occupier of the land on one side of the road consents in writing the occupier of the land on the opposite side may obtain a licence to occupy and use the whole of the road to the extent to which his land abuts thereon ; or
- (b) if both occupiers agree in writing as to the parts of the road for which each of them shall obtain a licence and those parts together comprise the whole of the road to the extent to which their lands abut thereon they may obtain licences accordingly but no fence shall be placed on the road except at right angles thereto.

Duty to obtain
licence to use
water frontage.
No. 6299 s. 906.

403. Where private land abutting on a water frontage is not fenced off from the water frontage the occupier of that private land shall obtain a licence to occupy and use the whole of the water frontage to the extent to which his land abuts thereon ; and no person whosoever shall occupy a water frontage or use a water frontage otherwise than for traffic unless he has a licence in respect thereof under this Part.

Liability to pay
occupation fees
after notice.
No. 6299 s. 908.

404. (1) Where by this Part a duty is imposed upon any person to obtain a licence to occupy and use an unused road or a water frontage, he shall after receiving from the Secretary for Lands written notice of his duty so to do and until he constructs a fence on the common boundary of his land and the unused road or water frontage as provided in this section pay a licence-fee for the occupation of so much of the unused road or water frontage as is specified in the notice as from the first day of January in the year in which he received the notice whether he obtains a licence or not, and such fee shall be due and payable to the Crown and may be recovered accordingly.

Default by
occupiers.

(2) Every person who refuses or neglects to obtain a licence to occupy and use an unused road or a water frontage after receiving any such notice shall within six months from the date of such notice in lieu of obtaining or paying for a licence construct a fence (which shall be a sufficient fence within the meaning of the *Fences Act 1958*) on the common boundary of his land and the unused road or water frontage and shall keep the fence in good repair.

(3) If

(3) If any licence-fee is not duly paid or if (as the case may be) any fence is not constructed or kept in good repair as aforesaid the person in default shall be liable to a penalty of not more than One pound for every day the licence-fee is unpaid or the fence is not constructed as aforesaid or is not kept in good repair.

Penalty.

405. (1) Every licence to occupy and use an unused road or a water frontage shall be for a term not exceeding three years and shall commence to run as from the first day of January in any year and may be renewed from time to time and shall contain—

Term, conditions, &c., of licences.
No. 6299 s. 909.

- (a) a condition that the Governor in Council may, at any time after giving to the licensee three months' notice in writing, cancel the licence either as to the whole or part of the unused road or water frontage ;
- (b) a condition for the payment of a yearly licence-fee in advance ;
- (c) a condition that the yearly licence-fee specified in the licence may be varied during the currency of the licence as from the first day of January in any year ;
- (d) a condition that the licensee shall not, except with the written consent of the Secretary for Lands and the council of the municipality in whose municipal district the unused road or water frontage is situated and upon payment of such additional licence-fee as may be determined by the Secretary for Lands, cultivate or break the soil of the licensed land ;
- (e) a condition that the licence may be forthwith cancelled for the breach of any condition thereof ; and
- (f) such other conditions and provisions as may be necessary for carrying out the objects and intention of this Part including a condition requiring the erection and maintenance of suitable unlocked swing gates cattle pits or ramps or other suitable means of passage when in the opinion of the Governor in Council such a condition is reasonable.

(2) The amount of the yearly licence-fee referred to in paragraph (b) of sub-section (1) of this section shall be such amount, not exceeding Five pounds per centum of the capital value of the land in respect of which the licence is granted, as the Secretary for Lands determines.

406. (1) If a licence is cancelled during its currency for any reason other than a breach of a condition thereof there shall be refunded to the licensee such part of the licence-fee paid by him as is referable to the unexpired part of the term of the licence.

Effect of cancellation of a licence.
No. 6299 s. 910.

(2) On

(2) On the cancellation of a licence for any reason whatever the owner or occupier of land abutting on the part of the road or water frontage which was subject to the licence—

- (a) shall, if required by the Secretary for Lands by notice in writing so to do, within six months after being so required construct at his own cost a fence (which shall be a sufficient fence within the meaning of the *Fences Act* 1958) on the common boundary of his land and the road or water frontage; and
- (b) after he has constructed the fence shall keep it in good repair.

(3) An owner or occupier who is so required to construct a fence and who fails to construct a fence accordingly or having constructed it fails to keep it in good repair shall be liable to a penalty of not more than One pound for every day the fence is not constructed or is not in good repair.

Re-opening of
licensed closed
road or water
frontage.
Comp. No. 6299
s. 911.

407. (1) If the council of a municipality proves to the satisfaction of the Governor in Council that it is desirable that any unused road or water frontage in the municipal district of that municipality in respect of which a licence has been issued under this Part should be made available for traffic, the Governor in Council or any person authorized by him in that behalf may require the licensee to open the unused road or water frontage for traffic or for use by the public and may cancel his licence therefor.

(2) Where a licence for the occupation of an unused road has been so cancelled and the licensee in accordance with sub-section (1) of section four hundred and two of this Act—

- (a) has paid for one-half the cost of repairing the whole or any part of the dividing fence between the unused road and private land abutting on the road on the side opposite to the licensee's land; or
- (b) has himself under an agreement with the occupier of such private land repaired or renewed such fence or any part thereof—

the licensee may in a court of petty sessions recover from the occupier of that private land so much of the said one-half cost or of the cost of such repair or renewal as the court, taking into consideration the value then remaining of such repair or renewal, may consider just and reasonable.

Comp. ib. ss. 553
(1), 558 (2).

(3) Where a licence for the occupation of an unused road has been cancelled under sub-section (1) of this section the council of the municipality in whose municipal district the unused road is situated—

- (a) shall keep the unused road open for public use and free from obstruction; and
- (b) may

- (b) may cause any building hedge ditch fence hole heap drain or obstruction which has been made on across or in the unused road to be taken down or filled up or removed or otherwise made good at the expense of any person by whom the same was made or to whom it belongs and may in default of payment of such expense recover the amount thereof in a court of petty sessions.

408. Where an unused road or water frontage has been made available and opened for traffic as provided in sub-section (1) of section four hundred and seven of this Act, the provisions of section four hundred and four or section four hundred and six (as the case may be) of this Act requiring the owner or occupier of land abutting on the unused road or water frontage to keep in good repair the fence constructed pursuant to the said section four hundred and four or the said section four hundred and six (as the case may be) on the common boundary of his land and the unused road or water frontage shall cease to have any effect with regard to such fence and thereafter no proceedings shall be taken for the recovery of the penalty provided by either of the said sections for failing to keep such fence in repair.

Effect of opening unused road or water frontage.
No. 6299 s. 915.

409. A person who wilfully damages or destroys any fence gate cattle pit ramp or other means of passage erected upon an unused road or water frontage under the provisions of this Part shall be liable to a penalty of not more than Ten pounds for each such offence, and a person who opens and wilfully or negligently leaves open any such gate shall be liable to a penalty of not more than Two pounds for each such offence.

Penalty for damaging fence or leaving open gate.
No. 6299 s. 916.

410. (1) All proceedings for the recovery of fees or penalties under this Part may be dealt with in a summary manner before a court of petty sessions.

Recovery of fees and penalties.
No. 6299 s. 912.

(2) No such proceedings shall be taken except by a person authorized in writing in that behalf by the Governor in Council.

411. Particulars of every licence granted under this Part for the occupation and use of an unused road or water frontage and of any transfer amendment or cancellation thereof and of the termination thereof shall be supplied by the Secretary for Lands to the council of the municipality within whose municipal district the unused road or water frontage or any part thereof is situated.

Municipal councils to be notified of grant, transfer, &c. of licences.

412. (1) The Governor in Council may make regulations for or with respect to—

Regulations.

- (a) the forms of licences to be issued under this Part and other forms to be used for the purposes of this Part ;

the

- (b) the fees to be paid upon the grant, renewal or transfer of licences under this Part ;
- (c) generally, all matters or things required or permitted to be prescribed by this Part or necessary or expedient to be prescribed for carrying this Part into effect.

(2) All such regulations shall be published in the *Government Gazette* and shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament, and a copy thereof shall be posted or delivered to each Member of Parliament.'

Consequential
amendments of
No. 6299.

4. (1) The *Local Government Act* 1958 shall be amended as follows :—

- (a) For sub-section (2) of section two hundred and fifty-two there shall be substituted the following sub-section :—

"(2) All unused roads and water frontages in respect of which any person has or ought to have a licence under or pursuant to the provisions of Part XIII. of the *Land Act* 1958 or any corresponding previous enactment shall be deemed to be rateable property and such person shall be deemed to be the occupier thereof" ;

- (b) Part XLVIII. shall be repealed.

Saving.

(2) All licences and notices granted or given under the provisions of Part XLVIII. of the *Local Government Act* 1958 and in force at the commencement of this Act shall have the same force and effect after the commencement of this Act as if Part XIII. of the *Land Act* 1958 was in operation at the time they were granted or given and they were granted or given under the provisions of that Part.

Consequential
amendment of
No. 6254 s. 3
(1).

5. In the interpretation of "Protected forest" in sub-section (1) of section three of the *Forests Act* 1958 for the expression "Part XLVIII. of the *Local Government Act* 1958" there shall be substituted the expression "Part XIII. of the *Land Act* 1958".
