

# Government Roading Powers Act 1989

Public Act 1989 No 75

Date of assent 28 September 1989

Commencement see section 1(2)

Act name: substituted, on 1 August 2008, by section 50(1) of the Land Transport Management Amendment Act 2008 (2008 No 47).

*The following section relates to unformed (paper) roads. If a Council claims that it has problems opening paper roads because it has leased them, this section provides the legislation they should have followed. Importantly, a lease may be revoked with 6 months notice.*

## 61A Controlling authority may grant lease, etc, of certain land

(1) If the whole or any part of any Government road or State highway is unformed, the controlling authority of the road or highway may grant a lease or tenancy of the land or a licence to occupy the land on such terms and conditions as the controlling authority thinks fit.

(2) **Every lease or tenancy or licence granted under subsection (1) shall be subject to the condition that it may be revoked without compensation if the controlling authority gives the lessee or licensee not less than 6 months' notice of its intention to revoke the lease or licence.**

(3) While any lease or tenancy or licence granted under subsection (1) is in force, the status of the land as a road or highway shall be suspended.

(4) All rents and profits derived from land under this section shall—

(a) be paid into a Crown Bank Account or a Departmental Bank Account in accordance with the Public Finance Act 1989; or

(b) be paid into the bank account of the Crown entity (within the meaning of the Public Finance Act 1989) holding or managing the land; or

(c) be paid into the general revenues of the local authority or controlling authority,—

as the case may require.

(5) The Minister for the time being responsible for the administration of section 45 of the Public Works Act 1981 or the controlling authority may at any time accept the surrender of any lease, tenancy, or licence to occupy granted under this section.

*The following section relates to the provisions for removal of any trees, hedges, buildings etc that a landowner has placed, planted or allowed to stray onto a road (formed or unformed).*

## **55 Removal of trees, hedges, etc, that obscure visibility or interfere with public work**

(1) In this section and in sections 56 and 57, unless the context otherwise requires,—

**cut down**, in relation to any tree, hedge, or shrub, includes the total removal of the tree, hedge, or shrub

**responsible authority**, in relation to a public work, means—

(a) any Minister of the Crown who is responsible for the work, where the work is a Government work:

(b) the local authority which has financial responsibility for the work, where the work is a local work,—

and, in relation to a road, means the authority having control of the road

**road** includes a motorway, access way, and service lane.

(2) The responsible authority may require the owner or occupier of any land adjoining a road or public work to do any of the following things:

(a) to cut down, lower, or trim any tree, hedge, or shrub that is overhanging or overshadowing a road to such an extent as to damage the road, or to endanger or obstruct the lawful use of the road, or to be detrimental to the maintenance of the road and any associated drainage system:

(b) to cut down, lower, or trim any tree, hedge, or shrub, or remove any debris, if parts of it may be blown on to any road or public work or if it may otherwise interfere with the lawful use of the road or any public work:

(c) to cut down, lower, or trim any tree, hedge, or shrub on any land that is in such a position that it interferes with or is damaging, or is likely to interfere with or damage, any road or public work or the construction, operation, or maintenance of any road or public work:

(d) to cut down or grub up, and remove any tree, hedge, or shrub that is obstructing a road or its drainage system owing to the growth of any vegetation or the spreading of roots upon or under the road up to its middle line:

(e) to cut down, lower, or trim any tree, hedge, or shrub or to lower or remove any wall, fence, or other structure, that in the opinion of the responsible

authority wholly or partially obscures visibility at any bend of a road, or at any road or railway crossing, or at any road intersection, or that causes any danger to the traffic on any road:

(f) to remove any structure that encroaches either wholly or partially on to a road or on to any land used for a public work, unless the encroachment has been authorised under section 51 and notice of termination has not been issued.

(3) Within 10 working days after service of a notice under subsection(2), the owner or occupier may apply to the District Court nearest to the land for an order setting aside the notice.

(4) A copy of any such application shall be served on the responsible authority either before or immediately after it is lodged with the court.

(5) The Registrar of the court shall give notice of the time and place fixed for the hearing of the application to the applicant and the responsible authority, and they shall be entitled to be present and to be heard, either personally or by their counsel

or by an officer of the responsible authority.

(6) On hearing the application, the court, whose decision shall be final, shall determine whether the notice should or should not be set aside, and in the former case the notice shall be deemed to be void.

(7) Every person on whom a notice has been served under this section commits an offence against this Act if the person fails to comply with the requirement contained in the notice within 1 month after—

(a) the expiry of the time in which application may be made to a court, if the person has not exercised that right; or

(b) the date of the court's order, if an application to set aside the notice has been made and it has not been set aside;

or

(c) the date on which any application to the court has been withdrawn by the applicant—whichever is the later, and shall be liable on summary conviction to a fine not exceeding \$500; and the responsible authority, by its employees or agents, may enter on the land in respect of which the requirement was made, carry out the required work, and recover the cost from the owner.

(8) All costs and expenses incurred by a responsible authority in carrying out any work under subsection (7) may be recovered from the person who failed to comply with the requirement as a debt due to the responsible authority.

(9) The power of entry conferred by subsection (7) may be exercised in addition to or instead of the laying of an information for an offence under that subsection.

## **56 Service of notice**

(1) If, under the provisions of section 55, a requirement is made by a responsible authority, the requirement shall be by notice in writing signed by any person appointed either generally or specially by the responsible authority for the purpose of giving

such notices and shall be served in accordance with section 4 of the Public Works Act 1981.

(2) If the notice is served by being published in a newspaper, the responsible authority shall also affix a copy of the notice upon a conspicuous part of the property in respect of which the notice is issued, or on some public road adjacent to it.