SECTION 9

ROADS

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SECTION 9 – ROADS

9.1 Introduction and Scope

9.1.1 General

This Section deals with the topic of roads under the broad headings:

9.2 Roads Dedicated to the Public and Private Roads;
9.3 Management of Roads;
9.4 Creation of Roads;
9.5 Closing of Roads;
9.6 Licensing of Unused Roads;
9.7 Acts Dealing with Roads;
9.8 Bibliography.
9.9 Example Government Gazette Notices Related to Roads;

The intention is to generally overview the major types of "legal" roads, the responsible authorities for management, and methods of creation and closure of roads within the State of Victoria. Other matters concerning roads which are of interest to surveyors (including fencing, land acquisition, planning, design, re-establishment, set out, non-legal roads etc.) are not discussed. Within the context of the Section headings, the discussions are largely concerned with the main Acts of Parliament dealing with roads. However, the content should not be regarded as exhaustive and may not cover the finer details. Although all reasonable care has been taken in its compilation, readers are cautioned against sole reliance on this text without reference to the appropriate current legislation and other sources of information.

The principles governing roads are derived from a wide range of sources (often unrelated) and have developed over a long period of time. The principles and procedures originate from common law, statute law (current and repealed Acts), legal precedent and opinion and administrative interpretation and practice etc. Consequently, in considering any matter concerning roads, it is important to interpret any information in its correct context and within any inherent limitations. For example, the simple use of the word "road" can have a slightly different meaning depending on the particular Act being used.

Within this Section 9 references are to "legal roads" only, being those generally known to the State Cadastre.

It is important to recognise the difference between a "legal road" and a "track" or "physical roadway" which may have no legal status. Legal roads are generally those which are created under a statute such as the Subdivision Act 1988, Land Act 1958 and Crown Land (Reserves) Act 1978, Transport Act 1983 etc. Examples include subdivisional roads. Government roads and roads created by the Roads Corporation respectively. There are however, many physical roadways and tracks which have no legal status as roads. Examples are roadways formed within parklands (e.g. Melbourne Water Corporation metropolitan parks). National parks, reserved Crown land (e.g. foreshore reserve), reserved forest (e.g. forestry tracks). Crown lands etc. Under certain circumstances, some of the above can attain public highway status by implied dedication (see Section 9.2.3.2) and thus be considered a legal road.

In the following it is generally unnecessary to distinguish between roads which have been created under the General Law system compared with those created under the Torrens system, excepting that most dealings with General Law land will first require the land to be brought under the operation of the Transfer of Land Act 1958.

Note that some references are made to statutes which have been repealed, in particular the Local Government Act 1958. This is done to illustrate how many existing roads have come into being and attained their present day status, under the former legislation.
9.1.2 Recent and Proposed Legislative Changes

There are important legislative changes that have already occurred and will inevitably occur in the future. They may be through direct or consequential amendments to Acts and will have implications on the content of this Section which was written on the basis of the current situation, early 1994. Since the first edition of the Survey Practice Handbook - Part 3 in 1989, a number of important new statutes including the Subdivision Act 1988 and Local Government Act 1989 (including the Local Government (Miscellaneous Amendments) Act 1993), have been proclaimed. It should be noted that the few remaining sections of the Local Government Act 1958 which have not been repealed, are now known as the Local Government (Miscellaneous) Act 1958 but retain little information of relevance to the topic of roads. Refer also to Section 9.5.4.2.

In regard to the Local Government Act 1989, it should be noted that at the time of compiling this information, some of the recent "Provisions Relating to Roads and Public Highways and Traffic" (Division 3) have not been fully tested by practical application. Bearing in mind that parts of the legislation may be subject to differing interpretation the reader is again cautioned as to sole reliance on this text. It should be further noted that a general amending Bill (Local Government (Amendment) Bill) is being compiled by the Department of Planning and Development (Office of Local Government). It will contain some important amendments relating to roads and the anticipated changes are discussed within the text of this Section. The amendments are expected to be passed by Parliament and proclaimed by late 1994.

In 1989 a proposal was initiated for a comprehensive review and drafting of a new Lands Bill to be made available for public comment. So far, mid-1994, this has not materialized, although a significant amendment to the Land Act 1958 has occurred through the Land (Further Amendment) Act 1993. The latter deals with the alienation and licensing of strata interests in Crown land with specific application to land over and under Crown roads.

To indicate which versions of the legislation have been used to compile this material. Section 9.7 includes a reference to the Act version/reprint number and the date of the associated Anstat's Update Bulletin. It also includes a listing of some other legislation which refers to roads.

9.2 Roads Dedicated to the Public and Private Roads

9.2.1 General

For the purpose of this Section, the descriptions highway, road, street, lane, footway, bridge, alley etc., can generally be considered as synonymous. The discussion is fairly general and cannot cover all situations which are often individual in nature being subject to legal interpretation and precedent.

There are two broad categories of roads encountered in Victoria. They are:

(a) Roads Dedicated to the Public; and

(b) Private Roads.

In very simple terms, private roads differ from roads dedicated to the public in that they generally occupy privately owned land and are for the use of a defined few, as opposed to the public at large.

9.2.2 Roads Dedicated to the Public

The category of "Roads Dedicated to the Public" needs to be further broken down into the subcategories of:

(a) Roads (dedicated to the public) not being a Public Highway; and

(b) Public Highways.
9.2.2.1 Roads (Dedicated to the Public) not being a Public Highway

This coverage will be brief, as the manner in which a road becomes dedicated to the public is largely set out in Section 9.2.3.2 Public Highways. A road may be dedicated to the public (usually via a statute or executed document) but it does not consequently follow that it is a public highway. Simplistically the concept of a road being a public highway has two main requirements. Firstly, that it has been dedicated by a person/authority competent to do so, and secondly, that it has been accepted by the public.

Bearing the second requirement in mind, a number of circumstances can arise as set out in Section 9.2.3.2, whereby although a road may be dedicated to the public it may still not be considered as a public highway. Such a case in point may include some unused Government roads (e.g., a Government road unfenced and not used by the public in any form) which although dedicated to the public but may not be construed to be a public highways because it has not been “accepted by the public”.

It is important to appreciate that such an example is a simplified case and that there are no hard and fast rules governing dedication to, and acceptance by, the public. The legal precedents vary and each case must be considered on its individual characteristics.

9.2.2.2 Public Highways

At common law, "public highway" in its broadest sense includes all those portions of land over which every subject of the Crown may lawfully pass. Intrinsic to the concept of a public highway is that it should be open to all members of the public at all times and the right of the public in using it is for passage only.

Consequently land over which a person may pass only by virtue of a personal licence, an easement appurtenant to their title etc., cannot be regarded as a public highway.

It is of no consequence that some public highways are not thoroughfares. A culdesac is as much a public highway as a major road connecting two cities. However if any part of a public highway is legally closed (such as via an Act) and access across it is denied to the public, then that part will cease to be such. This should not be confused with non-use which generally does not affect the status of an existing highway. The use of a public highway which is presently not used, may be resumed at any time by the public.

Examples of public highways can be drawn from the definitions of "public highway" and "road" contained in section 3(1) Local Government Act 1989. Roads, streets, bridges, passages, bicycle paths, footpaths, fords, etc., can all be dedicated to the public as public highways.

With regard to the public's right of passage, there is no difference between a bridge and a road where a bridge has been dedicated to and used by the public. Similarly a right of navigation over a navigable river, lake or canal which is free and open to the public, constitutes a public highway. Consequently a public highway, which is a road, is uninterrupted where the road terminates at a river as the right of passage continues up and down the river.

Dedication as a public highway need not mean that all forms and means of passage are permissible. The person or authority who makes the dedication or a statute can control or regulate the use of the road.

For example, the Bourke Street Mall in the City of Melbourne (constituted by the Bourke Street Mall Act 1982) is a public highway but restrictions such as the use of motor vehicles, are placed on it by the Act. Similarly, a subdivider may set aside a strip of land connecting two roads as a footway which would have the effect of limiting its use by other than pedestrians. In both examples municipal councils also have powers relating to traffic, as set out in Schedule 11 Local Government Act 1989. The intrinsic feature of these examples which maintains their public highway status, is that the right of every subject of the Crown to pass and repass is retained.

Equally important are the basic requirements of a public highway as stated in Section 9.2.2.1. That is firstly that the dedication has been made by a competent person/authority and secondly that the road has been accepted by the public. Again, a road may be dedicated to the public but unless it is accepted and freely used, it generally cannot be regarded as a public highway.
To examine how a road, street, bridge etc. becomes a public highway, it is necessary to look at the various statutes and means by which roads attain legal status. Some of these are as follows:


Section 14 Land Act 1958 provided for Crown land to be reserved, either temporarily or permanently, for numerous purposes, including "road", and as a consequence, many road reservations came into being. This persisted until 1978 when section 4 of the new Crown Lands (Reserves) Act 1978 superseded section 14 of the Land Act 1958.

Section 25(3)(c) Land Act 1958 provides for proclamation for road purposes and section 25(4) provides that lands within a proclaimed parish or township upon which roads or streets have been proclaimed shall be deemed to be thenceforth dedicated to the public. Consequently, as stated in Section 9.2.2.1, where these roads have been “accepted” and are used by the public they will generally have public highway status.

Note that the above-mentioned sections of the Land Act 1958 and the Crown Land (Reserves) Act 1978 are effective only in respect of roads provided out of Crown land, commonly known as Crown or Government roads.

There are other methods by which Crown land can attain legal status as road and be dedicated to the public. The parameters of these are less clearly defined and should be dealt with on an individual basis. Such methods are discussed in Sections 9.4.2.1 to 9.4.2.3 of this Part of the Handbook, and also in Section 7.1.3.3 of the Survey Practice Handbook - Part 2.

(b) By Description as an Abuttal on a Crown Grant

Where a Crown grant shows a road as an abuttal to the land described therein, it is accepted thereafter that the road is dedicated to the public and that all rights are conferred to the public.

(c) Express or Implied Dedication

An owner may expressly dedicate land to the public as a public highway. Alternatively the dedication may be implied and gained by long and continuous use by the public, without protest from the owner. The circumstances under which implied dedications as public highway are upheld by the courts, are many and varied. They are subject to a wide field of evidence. For example, the intention to dedicate land as public highway cannot be presumed by long use alone. Also there are no specified minimum or maximum lengths of time which imply dedication by long continuous use. Action or inaction in terms of say maintenance and repairs, by a public or private body is relevant. Obviously many of these public highways will not be known to the State Cadastre, either directly or indirectly, until such time as they receive legal recognition through the actions of the courts or under an appropriate statute.

It is interesting to note that implied dedication by long and continuous use applies equally to the Crown as to a private land owner. Consequently a formed road, which is constructed on Crown land, maintained and repaired by the local council and is freely used by the public, can be a public highway in the eyes of the law.

Another interesting situation that is sometimes encountered, occurs where a road, constructed on private or Crown land, is closed to the public on one day each year. This is done by the registered proprietor of the land to negate any implied dedication as a public highway.

(d) The Provisions of the Local Government Act 1989

Section 204(1) Local Government Act 1989 provides that:

"A Council may, by notice published in the Government Gazette, declare a road in its municipal district to be a public highway for the purposes of this Act".

As part of this process the council is required to meet its statutory obligations under section 223 Local Government Act 1989. Any person given the right to do so, may make a submission to the council on the proposal, under that section.

Section 3(1) of the same Act also contains a useful definition of "public highway", being:
public highway is a road which is open to the public for traffic as a right, irrespective of whether the road
is in fact open to traffic, and includes road-

(a) declared to be a public highway under section 204(1) or under any other Act,
(b) which becomes a public highway under section 24(2)(c) Subdivision Act 1988' 

(e) Schedule 5 clause 2(2) Transport Act 1983

Where a new road, or deviation from, or widening of, an existing road is made by the Roads Corporation
and is to be used as a public highway, then the road, deviation or widening (whether constructed at
the level of the surface of the land or not) shall upon publication in the Government Gazette, be absolutely
dedicated to the public as a public highway

(f) Schedule 5 clause 25(1) Transport Act 1983

Under Schedule 5 clause 1(2) the Minister for Transport may, by publication of a notice in the
Government Gazette declare any bridge in the metropolitan area to be a metropolitan bridge Schedule 5
clause 25(1) provides that such a bridge shall be a public highway and shall be part of any street or road
continuous therewith

9.2.3 Private Roads

The difference between a private road and a road dedicated to the public can at times be confusing. This is in
part due to the often inconsistent usage of the terms in different statutes. In the context of this discussion it is
important to distinguish between the categories of private roads and roads dedicated to the public. Private roads
can generally be regarded as being set out on private lands, are created for the benefit of specific land and are
not public highways. Private roads are generally the responsibility of those for whom they were created and not
the responsibility of the broader community through the council, a statutory authority etc. Some examples of
private roads are as follows:

(a) A road (made or unmade) on a sealed plan of subdivision (prior to the Subdivision Act 1988) which

  (i) was not constructed under the provisions of Division 10 Local Government Act 1958 (now repealed), or
  (ii) was not fully constructed under a council scheme of street construction pursuant to section 569E
       Local Government Act 1959 (now repealed), or
  (iii) was not constructed by an urban renewal authority, or
  (iv) was not proclaimed a public highway by notice published in the Government Gazette under
       section 519 Local Government Act 1958, or
  (v) has not been gazetted a public highway under section 204(1) Local Government Act 1989

Had any of the above actions occurred, the road would have ceased to be a private road and would have
become a public highway. In summary, roads created on -pre-Sub division Act plans of subdivision are
considered private roads for the benefit of the proprietors of the lots (easements of way being appurtenant
to each lot vide section 98 Transfer of Land Act 1958 or expressly created on the plan) until they become
public highways by any of the means described.

(b) Under sections 529530 Local Government Act 1958 (now repealed), where land alienated from the Crown
had no access to the nearest highway, the owners or occupiers were able to apply to the council to have a
private road acquired. This resulted in a private road for the use of the person/s making the application.

(c) Roads created and laid out on a plan of cluster subdivision (Cluster Titles Act 1974 - now repealed) and
designated as part of the common property, are considered to be private loads. Where a public road
(public highway) was created by the plan, the Act provided for the issue of a certificate of title in the
name of the municipality and that the plan of cluster subdivision include the words Public Road.
(d) A private road can be created on a plan of subdivision registered under the Subdivision Act 1988, by vesting the road in a person or body other than the council. If vested in the council it would become a public highway. An easement of way would also be created on the plan (either expressed or implied), benefitting land in the plan or other land requiring the use of the private road.

In the case of a straightforward plan of subdivision containing lots and private property and thus being subject to a body corporate (e.g., a building subdivision), true "roads" are usually not created on the plan. As an alternative to a road, an implied easement of way over the common property (section 12(2) Subdivision Act 1988), provides the proprietors of land in the plan with legal rights of access, as necessary and consistent with the reasonable use of land in the plan. In addition, the common property may also be annotated with a name e.g., "COMMON PROPERTY No.1- Glenn Court", and a further note included in the panel sheet of the plan e.g., "Common Property No.1 is a private road called Glenn Court". Importantly, both of these references are notations only and do not provide road status - the land remains common property. Again as above, legal access is provided through the implied rights of way. The main purpose of such notations is to provide a locally recognized identifier. The option to provide a description is not frequently used, nor is it particularly desirable from the point of view of the Land Titles Office.

(e) Where land has been acquired for a road under the Transport Act 1983 (by way of a Subdivision Act plan) and constructed, prior to it being dedicated to the public as a public highway (by publication in the Government Gazette), it is technically a private road.

Specific use of the word "private road" in the Local Government Act 1989 is restricted to sections 163(7) and 221(6) and even then only refers to former provisions under the Local Government Act 1958 (now substantially repealed). Other than this, there is little specific reference to the term in this or other legislation (including the Transport Act 1983 and Subdivision Act 1988). The omission in the Local Government Act 1989 is intentional, as there is deemed to be no requirement to separately specify "private road" in the context of the new legislation. As evidenced from the above examples, the absence of the term from much of the legislation, generally does not exclude the application of those Acts to private roads where relevant and applicable.

In summary, even though the sections from which they derive have now been repealed, the following definitions still provide a relevant description of a private road.

By definition in section 3(1) Local Government Act 1958 (now repealed) "private street" or "private road" meant a carriage way either accessible to the public from a public street or forming a common access to lands and premises separately occupied, but not being a public highway.

Section 575(1) Local Government Act 1958 (now repealed) further defined "Private Street" as:

(a) any street, road, lane, yard or passage which is

- formed or set out on private property or on property of the Director of Housing or an urban renewal authority;
- formed or set out on land which at the time of the formation or setting out was private property;

(b) any street, road, lane or passage formed or set out on land of the Crown or any public body, in such a manner as to form a means of back access to, or drainage from, property adjacent to such street or any part of the length thereof, whether it is or is not a public highway.

9.3 Management of Roads

9.3.1 General

This Section gives a very general overview of some of the ways in which and by whom the "legal" road network is managed in Victoria. It touches on areas including road classification systems, road funding, and the bodies/persons responsible for construction and maintenance etc. However, the content is
not comprehensive and only covers the main features of statutes such as the *Transport Act* 1983 and *Local Government Act* 1989 and some other facilities relating to the management of roads

In the context of this Section the term "management" is used broadly, and may refer to responsibilities for planning, funding, construction, maintenance, upgrading, services, traffic control etc. Differing bodies (public and private) and individuals may be responsible in whole or in part for particular aspects of road management. See also Section 935

A broad view of road management comes under the headings of:

- Road Classification Systems (State and Commonwealth); and
- "classified roads" (under the *Transport Act* 1983), and
- "unclassified roads" (includes private roads)

**9.3.2 Road Classification Systems**

Two important road classification systems currently in use in Victoria are:

- State statutory classification
- Commonwealth statutory classification

Their purposes include facilitating the financing and management of public highways, although each is quite different and is designed for individual purposes. A single road may be covered by one or both systems.

**9.3.2.1 State Statutory Classifications**

The State Statutory Classification System is primarily an administrative and financial system under which the State through the Roads Corporation (VicRoads) and municipalities, accepts statutory responsibility for the management of Victoria's "classified roads".

The "classified roads" are those which have been declared under the *Country Roads Act* 1958 (now repealed) before 23 June 1983 or under the *Transport Act* 1983 thereafter. All (generally without exception) can be considered to be public highways.

Classified roads only account for about one sixth of the State's public roads but carry around three quarters of the traffic in terms of vehicle kilometres and freight movement (figures are indicative only). The classified roads (as defined by section 2(1) *Transport Act* 1983) fall into one of the following categories:

- Freeways and State Highways (7000km)
- Main Roads (13,000km)
- Tourists' Roads (1500km) and Forest Roads (220km)
- Stock Routes

In the context of the *Transport Act* 1983, the remainder of Victoria's roads not included above, are collectively referred to as "unclassified roads". The *VicRoads Country Directory* shows the classified roads and many of the unclassified roads (listed as Other Roads) within the State.
9.3.2.2 Commonwealth Statutory Classification

The sole purpose of this road classification system is to provide Commonwealth funding to the States. Whilst the Commonwealth has no legal or constitutional responsibility for the management of roads in Victoria, it does provide money to assist in the task of managing the National road network.

The descriptions, classifications and extent of these roads are specifically expressed by the provisions of the particular Commonwealth legislation in force at a given time. Current Commonwealth road classifications include National Highways (Hume Freeway, Western Highway, Goulburn Valley Highway (Hume Hwy to NSW border), Sturt Highway and Western Ring Road (Hume Hwy to Western Hwy)), Arterial Roads (all other Freeways, Highways and Main Roads) and Local Roads (being all other roads, excluding private roads, throughout the State).

9.3.3 Management of the Classified Roads

As discussed in Section 9.3.2.1, the "classified roads" are those which have been declared to be one of the road classifications (e.g. Freeway, Main road etc.) in Transport Act 1983 (Schedule 5 clause 1(1)) or the preceding Country Roads Act 1958 (now repealed). They total about 22,000 kilometres in length which represents about 13% of the State's roads.

Generally, management responsibilities are shared between the Roads Corporation (VicRoads) and the municipal councils, depending on the type of classified road concerned. Some of the management issues and responsibilities are as follow:

(a) National Highways & Arterial Roads (Commonwealth Classifications)

Whilst the term "National Highway" is not a road classification from the Transport Act 1983, all National Highways in Victoria (about 1000 km in length) are also either declared Freeways or State highways under that Act. The Federal Government provides full funding for construction and maintenance of National Highways with the State road construction agencies managing the road works. Those agencies, the Roads Corporation and local municipalities are also responsible for the day to day management of these roads as detailed below.

Similarly the term "Arterial Road" is also not a road classification from the Transport Act 1983 and includes Freeways, State Highways, Main Roads (excluding those referred to above) and Local roads. The Federal Government, (through the State road construction agencies), contributes to the funding of construction and maintenance of the Arterial roads.

(b) Freeways

A freeway is a road, usually having a dual carriageway with no direct access from adjoining properties and side roads. Crossings of a freeway are generally by means of overpass or underpass bridges and traffic enters and leaves the freeway carriageway by carefully designed ramps. The Roads Corporation is charged with the responsibility of carrying out permanent works on and to and the maintenance of, every freeway (refer Schedule 5 clause 21(1)&(2) Transport Act 1983). The local municipality is not liable to pay any contribution in respect of the maintenance of a freeway. Federal National Highway funding may also apply where the road is so classified.

(c) State Highways

State highways are the principal arteries forming interstate connections (e.g. Princes Highway) and links between the larger centres of population in the State (e.g. South Gippsland Highway). Some State highways in Victoria form part of the National Highways System (e.g. Western Highway) and some are heavily trafficked urban arterial roads (e.g. Nepean Highway). The Roads Corporation accepts the full cost (National Highway funding may be applicable) of both construction and maintenance works on State highways required to meet the needs of through traffic (Schedule 5 clause 17 Transport Act 1983). The cost of other works not associated with the needs of through traffic may be met by the municipal council, land developers etc. as applicable under the circumstances.
With regard to street lighting on State highways the cost of installation, operation and maintenance is borne in variable proportions by the Roads Corporation, municipalities and in some circumstances the State Electricity Commission (Schedule 5 clause 18 Transport Act 1983)

(d) Main Roads

Main roads are those linking centres of population with other centres or areas of industry, commerce or settlement (e.g., Ferntree Gully Road). Together with the State highways and freeways, they provide the basic framework of the primary road network.

Generally, main roads are constructed and maintained by municipal councils to the satisfaction of and with financial assistance from the Roads Corporation (Schedule 5 clause 5(1)(4) Transport Act 1983). In some circumstances where there is development abutting a main road, the responsibility for construction and funding may reside with the land developer in whole or in part.

In some cases, at the request of the council and with the approval of the Minister, works can be carried out under direct supervision of the Roads Corporation. Regarding the responsibilities associated with street lighting on main roads, the same applies as for State highways.

(e) Tourists' Roads

Tourists' roads provide access to places of special interest to tourists, both in summer and winter (e.g., Mt Buffalo Road). The Roads Corporation accepts full cost of construction and maintenance of Tourists' roads as required to cater for the needs of through traffic. In general, these works are carried out under the supervision of the Roads Corporation (Schedule 5 clause 22 Transport Act 1983).

(f) Forest Roads

Forest roads are situated within or adjacent to a State Forest or in areas which are considered to be timbered, mountainous or undeveloped (e.g., Tyers - Thomson Valley Road). A declared/proclaimed Forest Road should not be confused with a road constructed in a State Forest by the forestry authority to provide access for forest management, fire fighting purposes, logging etc.

The Roads Cooperation accepts the full cost of construction and maintenance of forest roads as required to cater for the needs of through traffic (Schedule 5 clause 23 Transport Act 1983). The cost of other works not associated with the needs of through traffic is usually met by the municipal council.

The majority of the work carried out on these roads is undertaken by municipal councils and others on behalf of the Roads Corporation.

(g) Stock Routes

Schedule 5 clause 24 Transport Act 1983 charges the Roads Corporation with the responsibility of carrying out all construction and maintenance on declared stock routes. Note that a road of a different classification can also be declared a stock route.

Provision is made for the Roads Corporation to recoup up to one quarter of the previous year's expenditure on maintenance from any municipality within the district.

(h) Metropolitan Bridges

The Minister for Transport may declare any bridge in the metropolitan area to be a metropolitan bridge (Schedule 5 clause 1(2) Transport Act 1983). Such a bridge (whilst not a classified road category) shall be a public highway and shall be part of the street or road continuous therewith (Schedule 5 clause 25(2) Transport Act 1983). The Roads Corporation is charged with the maintenance of every metropolitan bridge (Schedule 5 clause 25(3) Transport Act 1983).

Further important points relevant to the management of the classified roads are as follows:

- The absolute property in the land over which there is a declared road (whether the road is constructed at the level of the surface of the land or not) shall be vested in the Crown (Schedule...
5 clause 13(1) Transport Act 1983). This is recognised by the recent amendments to the Land Act 1958 which allows for the leasing of a stratum of Crown land. (Refer to Section 9.5.1(b).

- The materials of all declared roads and all buildings, fences, gates, posts, boards, stones and erections placed upon declared roads shall belong to the Roads Corporation (Schedule 5 clause 13(2) Transport Act 1983).

- In most Planning Schemes the Roads Corporation is a specified referral authority where a planning permit relates to the development of land abutting a declared road (section 55 Planning and Environment Act 1987).

9.3.4 Management of Unclassified Roads

9.3.4.1 General

In the context of this section, those roads which are not declared under the Transport Act 1983, are collectively referred to as "unclassified roads". They total about 139,000 kilometres in length which represents about 86% of the State's roads. The responsibility for their management is predominantly with the local municipal council, however other bodies and persons may also assume certain responsibilities. In the case of many private roads, the municipal council's responsibilities are minimal other than related to such matters as planning and subdivisional controls etc. Management responsibilities related to unclassified roads are very broad ranging and for this reason the following should be considered as a general commentary only. Specific cases will need to be evaluated on individual circumstances.

9.3.4.2 Management of Unclassified Roads - Municipal Councils

The responsibilities of a municipal council for the management of roads under its care, may cover amongst other things, construction, maintenance, planning, signing, drainage, bridgeworks, roadside cleanliness, vegetation, traffic control etc. The funds required to fulfil these responsibilities come from Federal, State and municipal sources of revenue (in differing proportions). The Roads Corporation may also provide financial assistance towards some construction and maintenance works, generally in accordance with priorities allotted by the municipal council.

The responsibilities of municipal councils for the management of certain unclassified roads is largely specified in the Local Government Act 1989. The following does not cover "private" unclassified roads (see Section 9.3.4.3, Management of Unclassified Roads - Private Roads).

Section 205 Local Government Act 1989 specifically provides that the council is to have the care and management of certain roads. Those roads include:

(a) all public highways vested in the council; and

(b) all roads required for public use declared open to public traffic by resolution of the council under section 204(2) Local Government Act 1989 (subject to statutory obligations under section 223); and

(c) all public highways on Crown land and roads vested in a Minister (except for roads declared under the Transport Act 1983 or public highways and roads vested in a public authority); and

(d) all roads that the council has agreed to have the care and management of.

Note that in respect to new subdivisional roads vested in the council, (thus being a public highway under section 24(2)(c) Subdivision Act 1988), the council does not assume full responsibility for the road until after the maintenance period (section 17(6)"works" Subdivision Act 1988).

Under (d) above, a council may for example assume the responsibility for the care and management of certain service or local access roads dedicated to the public as a public highway under the Transport Act 1983. Similarly the council may have particular responsibilities associated with the care and
maintenance of certain declared (classified) roads in so far as they relate to matters which are not required to meet the needs of through traffic Refer Section 9.3.3(b-d)

Section 205 Local Government Act 1989 further provides that a council that has the care and management of a road,

(a) “must ensure that if the road is required for public traffic, it is kept open for public use (subject to the exercise of any powers that it has to the contrary under Schedules 10 and 11), and

(b) may carry out work on the road; and

(c) is not obliged to do any particular work on the road, and in particular is not obliged to carry out any surface or drainage work on an unmade road”

Section 203 Local Government Act 1989 provides that, subject to stated exceptions, a public highway vests in fee simple in the council of the municipal district in which it is located (on a specified date) or on it subsequently becoming a public highway The exceptions to this are:

(a) declared roads within the meaning of the Transport Act 1983, and
(b) a road that becomes a public highway under Schedule 5 clause 2(2) Transport Act 1983 if it is agreed that the road should vest in the Roads Corporation, and
(c) roads on Crown land, and
(d) roads vested in a Minister or any public authority (other than a council)

Note that section 202 Local Government Act 1989 vests the absolute property in all land reserved as a road under the Crown Land (Reserves) Act 1978 or proclaimed as a road under the Land Act 1958, in the Crown

Other sections within the Local Government Act 1989 which relate to the management of roads include

(a) section 207F whereby the council may recover damages for extraordinary expenses in repairing a road that has been damaged as a result of the passage of extraordinary traffic or excessive weight along a road, and
(b) section 198 which relates to the vesting of certain sewers and drains in the council, and
(c) section 199 which requires certain action by the council before it concentrates or diverts any road drainage into or through any other land

Other important parts of the Local Government Act 1989 which concern the management of roads are Schedules 10 and 11 of the Act These relate to the ’Powers of Councils over Roads” and the ’Powers of Councils over Traffic’ respectively and are summarised as follows.

- In the context of management, the powers of councils over roads include provisions relating to road construction, maintenance, repairs, deviation, discontinuation, materials, naming, numbering, signing, narrowing or widening, temporary roads, rectification of dangers and access over crossings
- In the context of management, the powers of council over traffic include provisions relating to parking, removal of vehicles and obstructions, restriction of traffic, seasonal closure, erection/removal of structures and barriers, shopping malls, restriction of usage, speed limits and prohibiting traffic use

9.3.4.3 Management of Unclassified Roads - Private Roads

Private roads have been defined and discussed in some detail in Section 924. They are often subdivisional roads (pre or post Subdivision Act 1988) which have not yet become public highways or are not intended to be dedicated to the public. The responsibility for management of such roads and in particular construction, maintenance etc somewhat depends on the circumstances of their creation
and again cannot necessarily be generalized. Often, after the initial construction of the subdivision by the developer (after any maintenance or contractual period), the proprietors of the land for whom the road was created and who utilize and benefit from it are responsible. The municipal council has no legally defined responsibility for private roads other than its statutory responsibilities with regard to planning, design and construction standards, public health etc. However, in some circumstances, it may elect to assume more responsibility for care and management under section 205(l)(d) Local Government Act 1989.

The extent of an individual's responsibility may be defined by legal agreement. In the case of a "private" road within the common property on a Subdivision Act plan, (strictly not a legal road in the context of this Section - refer Section 9.2.4(d)) lot entitlement and liability is specified on the plan and the responsible body is the body corporate comprising the individual registered proprietors of the lots. The Subdivision (Body Corporate) Regulations 1989 specify the powers, duties, rights and liabilities of bodies corporate and the members.

9.3.5 Management of Roads - Other Responsible Bodies

As stated in Section 9.3.1, the management of roads in its widest sense is a very broad topic, and is rarely the total responsibility of a single body or person. Apart from the Local Government Act 1989 and the Transport Act 1983, many other Acts and administrative arrangements also deal with aspects of the management of Victoria's roads, be they private roads, public highways, classified or unclassified roads. Some of the responsibilities of other individuals, bodies and public authorities may include such issues as weed control, surface repairs, services within the road, construction etc., and all contribute to the overall management of the road. No attempt is made to cover these other than to provide the following simple examples.

Section 12(3B) Subdivision Act 1988 provides that there are implied easements and rights over roads set aside on a plan of subdivision in favour of the appropriate public authority or council to provide water, sewerage, drainage, electricity etc. where the easement or right is consistent with the use of the land as a road. Through the exercise of these rights and their statutory powers, public authorities and councils assume component responsibilities for management of the road.

Section 151G Land Act 1958 provides that the holder of a lease for commercial forest production purposes may be required to contribute towards the construction and maintenance of any road constructed by a municipality which provides access to the leased land. Similarly under an Improvement Purchase Lease the lessee may be required to contribute towards the cost of road construction (section 155(l)(e)).

Under the section 77 Forests Act 1958 a municipal council has the control and management of all trees etc. on roads under its care, except where the road passes through "State forest". All "forest produce" in a "protected forest" is under the control and management of the Department of Conservation & Natural Resources (section 58).

The municipal council is generally not responsible for the care and management of Government roads which are "unmade" and are "not used" by the public and therefore are not a public highway (refer Section 9.3.4.2 - section 205 Local Government Act 1989). However, the council may nevertheless, under the Land Act 1958, give notice to the Department of Conservation & Natural Resources that any road or part thereof is not required for public traffic and is an "unused road". Subsequently an annual Unused Road Licence may be granted by the Department permitting a person to enter a road and to use it for the purpose specified in the licence. In such cases, the body responsible for the management of the "unused road" is the Department of Conservation & Natural Resources. See Section 9.6, Licensing of Unused Roads.
9.4 Creation of Roads

9.4.1 General

This Section deals with the creation of roads including both Crown or Government Roads and freehold roads. It attempts to give a reasonably accurate general statement rather than an absolutely positive interpretation on finer legal aspects. Again the information should be read in conjunction with the actual current legislation and reference to other sources where necessary.

9.4.2 Crown or Government Roads and Freehold Roads

In this context, creation refers to land being provided and given road status of some sort, but does not include any aspect of the physical construction of a road, this being a separate subject.

Roads created in Victoria may be divided into two broad categories based on whether Crown or freehold land is involved:

- Crown or Government Roads; and
- Freehold Roads.

The text in Section 9.2, was based on the two categories of "Roads Dedicated to the Public" and "Private Roads". Obviously the topic of "roads" can be categorised in different ways and for the purpose of discussing the creation of roads the categories of "Crown or Government Roads" and "Freehold Roads" are the most appropriate.

9.4.2.1 Creation of Crown or Government Roads (General)

These are roads for which the land has been provided from Crown land. The whole land title system in Victoria is based on the concept that all land in the State is Crown land unless, and until, it has been conveyed to some person or persons by way of a Crown grant, which is the original freehold title from which all subsequent titles are derived. There are some minor exceptions to this concept, but they are not significant in this context. Prior to any Crown land being alienated by way of a Crown grant (or lease), it was surveyed into allotments, and appropriate strips of Crown land were retained as roads, both as public highways from town to town, and to provide access to allotments. There are various methods by which these strips of Crown land acquired the legal status of roads, commonly referred to as being dedicated road. These include:

a) By being proclaimed as road pursuant to section 25(3)(c) Land Act 1958, or corresponding sections of earlier Acts. The practice of proclaiming roads virtually "en masse" by reference to red colour on parish plans was very common in the 1870s and 1880s, but not nearly so common either in earlier or later periods. Many such plans, known as Proclaimed Road Plans, are kept in the Central Plan Office; and

b) By being shown or described as abutals on Crown grants. In the earlier Crown grants the land granted was defined by a technical description tracing the boundaries of the land. Where any description referred to a boundary as "by a road", whether or not named, it is accepted that the grant also conveyed the right to use of the road. Similarly, in later grants the land granted is defined by a diagram on the grant document, and where such diagram shows a road abutting the land, this is also accepted as conferring rights in respect of the road. In either case, the roads concerned are regarded as having been effectively dedicated as road.

There are other methods by which Crown land could acquire legal status as road, but these are not always clearcut, and it could be misleading to attempt to summarise them here. It is sufficient to mention the following aspects which, depending on circumstances, may be factors in assessing whether dedication has taken place; and
c) Transfer to the Crown of freehold land already dedicated as road; and

d) Reservation under the Land Act 1958 (refer Section 9.4.2.2) or the Crown Lands (Reserves) Act 1978 (refer Section 9.4.2.3), or corresponding preceding legislation. "Road" is one of the purposes for which land may have been reserved under either of these Acts. There are also circumstances in which land reserved for "public purposes" might also be regarded as having road status; and

e) Shown as road on certain departmental plans; and

f) Surveyed or set out on the ground; and

g) Implications from declarations for other purposes by other legislation. For example, a declaration pursuant to the Transport Act 1983. Portions of Crown land or reserved Crown land are at times required by the Roads Corporation for road purposes. Section 45 Transport Act 1983 allows, with the approval of the Minister administering the Land Act 1958 (and any other Ministers concerned with the management or use of the land) for the use of Crown land for road purposes. Where any Crown land proposed to be used by the Corporation for a road, is reserved under the Crown Lands (Reserves) Act 1978 and the use of that land as road is inconsistent with the reservation, the Corporation is not permitted to use the land until the reservation has been revoked in accordance with section 9 of the former Act. In the case of a permanent reserve this revocation will require an Act of Parliament.

The Crown land so taken for road purposes, attains full legal road status, becomes part of the classified road network and is dedicated to the public as a public highway when, after construction the Roads Corporation publishes the appropriate declarations in the Government Gazette (refer to Section 9.4.3.3).

A second example is where a council deviates a road through Crown land under the provisions of Schedule 10 Clause 2 Local Government Act 1989 and then declares the road to be a public highway under section 204 of the same Act. Refer also to Section 9.5.4.3(b).

9.4.2.2 Creation of Crown or Government Roads under Land Act 1958

The Governor in Council may proclaim any portion of Crown lands as a street or road by a notice published in the Government Gazette, and the land which has been proclaimed as a street or road is deemed to be dedicated to the public. These provisions are conferred under sections 25(3)(c) and 25(4) Land Act 1958.

The Land Act 1958 further provides for the following:

a) Conditions of a Selection Purchase Lease

Various conditions and covenants of a selection purchase lease are defined by section 49 Land Act 1958. One of these conditions is that the Governor in Council, or the Minister, may, during the term of the lease, resume any land in the allotment which may be required for a road, or some other purpose. Section 49(1)(k) sets out the specific conditions with respect to the resumption and compensation as the Governor in Council sees fit.

b) Exchange of Crown and Private Land

When the course of any road is to be altered, and the owner of the land over which the road is to pass is willing to exchange any part of the land for any part of the former road, the Governor in Council may execute the proper conveyances under section 208.

c) Resumption For Roads

The Governor in Council may, under section 209, resume land not exceeding 40 metres in width, which may be required for access to any portion of Crown land which, in the option of the Governor in Council, has no convenient access. The Minister may then take possession of the resumed land and provide the owner of the land with suitable compensation, including the cost of any fencing rendered necessary.
9.4.2.3 Creation of Crown or Government Roads under the *Crown Land (Reserves) Act* 1973

Under section 4 of this Act the Governor in Council may by order published in the *Government Gazette* reserve any Crown lands for various public purposes including Crown land which in his or her opinion is required for road.

Notice of the intention to reserve it must be published in a local newspaper at least 30 days before any land is permanently reserved.

For any of the purposes outlined in section 4, the Minister may purchase any land by agreement, under section 5 of the Act, which he or she considers should be reserved.

For the purpose of this Act, the *Land Acquisition and Compensation Act* 1986 is incorporated with respect to the acquisition of land by the Minister.

Any land purchased or acquired under this section is deemed to be unalienated land of the Crown.

9.4.3 Creation of Freehold Roads (General)

These are roads which have come into existence by various means subsequent to the alienation of the land from the Crown. Note that some of the listed methods of creating roads are no longer available due to the proclamation of recent legislation such as the *Subdivision Act* 1988 and the *Local Government Act* 1989. However, discussion of those methods has been retained to show how roads have been created in the past and attained their present status. Other earlier repealed Acts have also been involved.

Roads have been and/or may be created by the following means:

(a) Creation on Plans of Subdivision sealed under *Local Government Act* 1958 (now repealed) and registered under *Transfer of Land Act* 1958 (this method is no longer available).

After 30 October 1989 (excepting where the transitional provisions or exemptions apply) the subdivision of any freehold land must be done under the *Subdivision Act* 1988.

Prior to the commencement of the *Subdivision Act* 1988, in the subdivision of a freehold estate, land was appropriated or set apart for, *inter alia*, easements of way (roads) under the provisions of section 98 *Transfer of Land Act* 1958.

Upon approval of the plan by the Registrar of Titles, a purchaser of an allotment thereon became entitled to the benefit of such of those easements (roads) as may be necessary for the reasonable enjoyment of the allotment.

Most roads became constructed under the provisions of the *Local Government Act* 1958 (now repealed) in the subdivision of freehold lands and if fully constructed, were usually capable of becoming or were deemed public highways under the provisions of the *Local Government Act* 1958 (now repealed), even though the land of the road may still be included in a certificate of title in the name of the subdivides. Also refer to Section 9.2.4.

Similar arrangements applied in respect of private roads being part of the common property shown on plans registered under the provisions of the *Cluster Titles Act* 1974 (now repealed). In respect of public roads shown on such plans, section 18(6) of that Act provided that a certificate of title issued in the name of the municipality.

(b) Creation by Declaration of a Municipal Council Under the *Local Government Act* 1958 (now repealed).

This method is no longer available excepting that the transitional arrangements under the *Local Government (Miscellaneous Amendment) Act* 1993 may be applicable/utilized for any act, matter or thing started under Part XIX *Local Government (Miscellaneous) Act* 1958 which may be completed as if that part was still in force. Refer also to Section 9.5.4.2.
Under Part XIX Local Government (Miscellaneous) Act 1958 ("Streets Roads Bridges Ferries Culverts Levees and Jetties" provisions (now repealed) the municipal council was able to proclaim (declare) by notice published in the Government Gazette, that any land "reserved used or by purchase or exchange acquired for street road ... etc." be a public highway. That part of the Act also included provision for opening of new roads, the deviation of existing roads (including road exchange provisions), fixing of alignments etc. through freehold land, and in certain cases Crown land. Refer also to Section 9.5.4.3

(c) Creation under the Local Government Act 1989. Refer to Section 9.4.3.1 for detail.

(d) Creation on Plans of Subdivision Certified and Registered Under the Subdivision Act 1988
Private subdivision - excluding section 35 plans of subdivision by acquiring authorities. Refer to Section 9.4.3.2 for detail.

(e) Creation under the Transport Act 1983. Refer to Section 9.4.3.3 for detail.

(f) Creation on Plans of Subdivision Certified and Registered Under the Subdivision Act 1988
Acquiring authority subdivisions - utilizing section 35 plans of subdivision. Refer Section 9.4.3.4 for detail.

(g) Creation Under the Planning & Environment Act 1987
The Planning and Environment Act 1987 is not specifically used to create roads, but plays an important part in the processes leading up to the creation of roads under the Subdivision Act 1988 and the Transport Act 1983. Subdivisional development (which often includes the creation of roads), may only proceed if it is consistent with the requirements of the municipal planning scheme. The provision of roads as part of the subdivision is usually implicit in the planning permit granted for the development and does not require separate authority. However, where an acquiring authority proposes to acquire land for a road widening deviation or a new road, a planning scheme amendment will generally first be required reserving or rezoning the land for road purposes. This having been achieved, the acquisition would then proceed by way of a section 35 plan of subdivision etc. Refer Section 9.4.3.4. If the land to be acquired is less than 10% of the total area of the allotment or is for the purpose of a minor road widening or deviation, a planning scheme amendment is not required. See regulation 6, Land Acquisition & Compensation Regulations 1987.

(h) Creation under the Transfer of Land Act 1958
The following text is deliberately general. Where necessary, it is recommended that the details of specific cases be discussed with the Land Titles Office. Further detail is available in Section 5 - Dealings in Land.

The Transfer of Land Act 1958 is generally not directly used to create roads but is an integral component in the processes resulting in the creation of roads under other Acts, in particular the Subdivision Act 1988.

However, the Act does provide for the creation of rights of carriageway which under some circumstances, in the context of this Section, can be regarded as a "road". Whilst it is not possible to make a definitive statement, given certain criteria (such as the creation of easement instrument inferring a higher status than simply an easement), some easements of way can be regarded as having road status. Each case must be individually evaluated and its potential acceptance as a road is by inference rather than statute. By way of analogy, the definition of road in section 3(1) Local Government Act 1989 is quite broad and includes "any land described or used as a road by the owner in relation to a transfer or conveyance which grants a right of way over the land".

The rights of carriageway over many older subdivisional and other freehold roads, which are appurtenant to many earlier certificates of title, were usually created or reserved with the transfer of the lots on the plan of subdivision or transfer of land by an instrument. Section 72(3) Transfer of Land Act 1958 clarifies the meaning of the words "Together with [or Reserving] a right of carriageway over..." as they appear in folios of the Register to specify roads that are subject to easements of carriageway.
Easements of way over roads shown on approved (more recent) plans of subdivision are appurtenant to all lots on the plan to the extent that they are necessary for the reasonable enjoyment of the lots (section 98 Transfer of Land Act 1958) Easements of way are also expressly created on the plan or are implied, for the benefit of specific land in the plan

(i) Section 45(3) instructs the Registrar not to register an instrument that creates or surrenders a right of carriageway unless the municipal council has consented.

Creation under the Provisions of other Acts Other Acts
also provide for the creation of roads.

9.4.3.1 Creation under the Local Government Act 1989
In reading the following, users are reminded of comments made in Section 912 concerning the limited practical testing of some of the new provisions of the Local Government Act 1989

New roads are created or existing roads are deviated/widened under this Act through the actions of the municipal council Section 206(1)/Schedule 10 Local Government Act 1989 sets out the powers of councils over roads, which includes the power to

- deviate roads,
- fix a road alignment,
- narrow or widen roads,
- provide temporary roads

(a) Power to Deviate Roads (Schedule 10 Clause 2).

'A council may deviate a road through private land. Crown land or land held by licensees under the Land Act 1958 (whether or not the land is subject to rights of way)'

'Before starting work to give effect to a deviation, the council must publish a notice in the Government Gazette describing the deviation'

In the above paragraph, the words "starting work" probably refer to physical work on the ground, though this is unconfirmed. The published notice does not have the effect of vesting the land in a council (section 206(2)), except where the land has already been acquired for a deviation, section 207(B) It is assumed that in most situations the purpose of the notice is to publicly describe the deviation and it is not clear at this stage how the vesting of land acquired for a road deviation" (section 207(B)(1)(a) occurs though the publishing of a notice

In any proposal to deviate a road, council is required to meet its statutory obligations under section 223 Local Government Act 1989 Any person given the right to do so, may make a submission to the council on the proposal, under that section

The power of the council to purchase or compulsorily acquire land for road and other purposes is given in section 187(1) Local Government Act 1989 Part (2) of the same section states that the provisions of the Land Acquisition & Compensation Act 1986 apply to the acquisition of the land

The processes (land acquisition, old road disposal, declaration etc) resulting in road deviation and its subsequent dedication as a public highway, will generally involve one of the following three processes It is important to note that a council is restricted in its ability to deal with any discontinued road which is Crown land This is discussed in more detail in (111) below

(i) If the land to be acquired can be disposed of without the need for subdivision (e.g., a whole of title) a transfer can be negotiated or a Notice of Acquisition published etc If the road deviation is through Crown land, the council must first consult with the Minister administering the Land Act 1958 Any surplus road, which is not Crown land, can be discontinued by council and transferred under section 207D Any surplus land which is down land can be discontinued but
cannot be sold by the council. Further dealings with this land would have to be undertaken by the appropriate department of the Minister administering the Land Act 1958.

Then, following construction, the new roadway can be declared a public highway by notice published in the Government Gazette. It is the final action of the published notice which gives the roadway its legal road and public highway status.

(ii) If the land to be acquired cannot be disposed of without being subdivided, the council is required by section 35(1) Subdivision Act 1988 to "submit a plan to the council for certification and lodge it for registration as if the authority were the owner of all the land to be subdivided by the acquisition". This plan is also able to deal with the disposal of discontinued road to adjoining owners, provided the land is vested in the council. This excludes discontinued road which is Crown land. Where the plan consolidates the land comprising the discontinued road with another person's land, a Not In Common Ownership (NICO) folio of the Register will result. A later NICO transfer would then divest the council of its interest.

If the deviation is also through Crown land or discontinued road being Crown land is involved, the same requirements as set out in the first paragraph of (i) above apply.

Thereafter, it is generally through the registration of the plan of subdivision that the roadway attains legal status as road and becomes dedicated to the public as a public highway. These aspects are covered in detail in Section 9.4.3.4.

(iii) The council may elect to initiate a road exchange process, vide section 207E Local Government Act 1989. This section only applies if a council agrees to exchange with the affected registered proprietor or mortgagee in possession, any land it acquires as a result of actions under Schedule 10, with other land owned by the council, e.g., as freehold estate or vested in the council by way of a road discontinuation. The provision is very similar to the former section 527 Local Government Act 1958 (now repealed).

Refer to Section 9.5.4.4(g) "Road Exchange" for the detail of this process.

(b) Power to Fix a Road Alignment (Schedule 10 clause 7).

Whilst the fixing of a road alignment is strictly not creating a road, it is still relevant to this Section. The council may fix the alignment of a road by a notice published in the Government Gazette. Prior consent of the Surveyor-General and Director of Mapping and the Land Titles Office where it is a Crown road, and the Land Titles Office for any other road, must be obtained by the council.

In any proposal to fix an alignment, the council is required to meet its statutory obligations under section 223 Local Government Act 1989. Any person given the right to do so, may make a submission to the council on the proposal, under that section.

(c) Power to Narrow or Widen Roads (Schedule 10 clause 8)

The council is empowered to narrow or widen a road and to allow a person to make minor repairs or alterations to a building between the old alignment and the new alignment.

Before starting any works, the council must first publish a notice in the Government Gazette describing the narrowing or widening. This notice does not have the effect of vesting the land in a council (section 206(2)), except where the land has already been acquired for a deviation. Refer also to comments under (a) above.

In any proposal to narrow or widen a road, the council is required to meet its statutory obligations under section 223 Local Government Act 1989. Any person given the right to do so, may make a submission to the council on the proposal, under that section.

The processes (land acquisition, declaration etc.) resulting in road widening and its subsequent dedication as a public highway, will generally involve processes similar to those discussed above in (a). Power to Deviate Roads.
In a case where a road is narrowed, the processes (discontinuation, sale etc) resulting in the narrowing, will be similar to those discussed under Section 9544, Closure of Roads under the Local Government Act 1989.

(d) Power to Provide Temporary Roads (Schedule 10 clause 9)

The council may provide temporary roads. It is conceivable under certain circumstances that the council may declare a temporary road to be a public highway until such time as it is no longer required, when it could then be discontinued. By way of comparison, the former provision under section 539(2) Local Government Act 1958 (now repealed) allowed the council to make a temporary road through any adjoining grounds to the ruinous part of the road which is being repaired (with some exceptions) and further provided for payment of compensation. It seems reasonable that the same should apply under the new provisions although the powers may be broader.

9.4.3.2 Creation on Plans of Subdivision Certified and Registered Under the Subdivision Act 1988.

The following looks at the ways in which roads are created by private subdivision under the Subdivision Act 1988. It does not cover the actions of acquiring authorities under section 35 which is dealt with separately.

In the subdivision of land it is often necessary to create new roads or widen or deviate existing roads. This can be done utilizing a Subdivision Act plan (including a plan deriving from section 24A or 32(l)(m) Subdivision Act 1988) and may result in a private road or road dedicated to the public, depending on the circumstances and objectives of the development.

On examination of a plan of subdivision it will be noted that all roads are given a unique identifier (e.g., Road R1, R2 etc) and are encumbered by easements of way, often expressed easements but may be implied, usually in favour of the land in the plan or specified land. Further, there are implied over the roads, easements in favour of the appropriate public authority or council concerning services within the road (section 12(3B) Subdivision Act 1988).

The plan will also indicate that the roads are vested in a named council, body or person. Where the road is vested in the council (usually the case) it will automatically be dedicated to the public as a public highway (section 24(2)(c) Subdivision Act 1988) on registration of the plan at the Land Titles Office.

Where roads are vested in a body or person (other than the council) they will generally be private roads for the use of those lots or land benefiting from the easements of way, expressed or implied, created on the plan. However, these private roads may subsequently become public highways by other actions such as the council under section 204(1) Local Government Act 1989 or by the Roads Corporation under the Transport Act 1983, declaring them to be a public highway by notice published in the Government Gazette.

Upon registration, the land set aside as a road vests in the name of the council, body or person nominated on the plan, freed and discharged from any mortgage, charge etc (section 24(2)(b)). The Registrar of Titles may create a folio of the Register for the land being the road.

When land set aside as road vests in the council, body or person it continues under the operation of the Transfer of Land Act 1958 and the named entity is deemed to be the registered proprietor. In most cases, proprietorship of the land in the road is of little benefit once it becomes a public highway and the associated rights of way are exercised by the lot owners on the plan.

In the case of a straightforward plan of subdivision containing lots and common property and thus being subject to a body corporate e.g., a building subdivision, true roads are not usually created on the plan. As an alternative to a road, an implied easement of way over the common property (section 12(2) Subdivision Act 1988), provides the proprietors of land in the plan with legal rights of access, as necessary and consistent with the reasonable use of land in the plan. In addition, the common property may also be annotated with a name e.g., COMMON PROPERTY No 1 - Glenn Court, and a further note included in the panel sheet of the plan e.g., Common Property No 1 is a private road called Glenn Court. Importantly, both of these references are notations only and do not provide legal status - the land remains common property. Again, as above, legal access is provided through the implied rights.
of way. The main purpose of such notations is to provide a locally recognized identifier. The option to provide such a description is not frequently used, nor is it particularly desirable from the point of view of the Land Titles Office.

9.4.3.3 Creation under the Transport Act 1983

Under section 42(1) Transport Act 1983 the Roads Corporation (VicRoads) may, "with the approval of the Minister, purchase or compulsorily acquire any land which is or may be required by the Corporation for or in connection with the performance of its functions or the achievement of its objectives". The provisions with respect to roads, which apply to the Corporation (Schedule 5) provide that:

(a) it "may make a new road or deviation from or widening of an existing road" (clause 2(1)); and

(b) when it is fit to be used as a public highway, the road, deviation or widening (whether constructed at the level of the surface of the land or not) shall, upon the publication in the Government Gazette by that Corporation, of a notice declaring it fit to be used as a public highway, become and be absolutely dedicated to the public as a public highway (clause 2(2)).

Schedule 5 clause 1(1) Transport Act 1983 provides that the Roads Corporation may from time to time declare any road (in whole or part), any deviation or widening of a road to be a Freeway, State Highway, Main Road, Tourists' Road, Forest Road or Stock Route. Unclassified roads are also declared in this manner. As a result of this declaration the absolute property in the land over which the road is declared (whether constructed at the level of the surface of the land or not) is vested in the Crown (Schedule 5 clause 13(1)). Consequently the road which may, prior to declaration, have been categorised as a private freehold road, could now be categorised a public Crown road. The vesting of the land in the Crown does not prohibit the Roads Corporation from further dealing with the road at a later time (e.g., discontinuation/closure, sale of the discontinued road).

In order for the Roads Corporation to obtain title to freehold land to be acquired by it and which is required for road or associated purposes, the following must occur. Where that land cannot be disposed of without being subdivided, section 35(1) Subdivision Act 1988 requires that the Corporation submit a plan to council for certification and lodge it at the Land Titles Office for registration, of all the land to be subdivided by the acquisition. By way of the section 35 plan of subdivision the land to be acquired (if designated as road on the plan) attains legal road status and is vested in the acquiring authority when:

(a) the vesting date is recorded (compulsory acquisition, either before or after the registration of the plan); or

(b) the appropriate transfer is registered (acquisition by agreement after registration of the plan), as the particulars of the case dictate.

Where the Roads Corporation is acquiring land for a freeway, the required section 35 plan of subdivision will normally show the land as "Reserve No.... for use of the Roads Corporation", rather than road. In this way, rights of abuttal to the proposed freeway, which will be subject to restrictions of access under the Transport Act 1983, are not implied on the plan. There is no road status associated with the showing of the land as a reserve. Following construction, when it is fit to be declared the freeway will be declared part of the classified network and dedicated to the public as a public highway and at this point attains legal road status.

Note that acquired land cannot be vested in other than the acquiring authority and in the case of the Roads Corporation the provisions of the Land Acquisition & Compensation Act 1986 apply. Excepting for specific cases (e.g., road where the land is not being acquired but is shown vesting in council) the road will not become a public highway or part of the classified road until the appropriate notice is published in the Government Gazette as required by Schedule 5 clauses 1(1) & 2(2) Transport Act 1983. Following this gazetral, the land no longer vests in the Roads Corporation but now vests in the Crown (Schedule 5 clause 13(1) Transport Act 1983). However, the responsibility for management of the road remains with the Roads Corporation as does the ownership of the materials comprising the declared road.

Refer to Section 9.4.3.4 for further detail of this procedure.
Alternatively, a plan of subdivision under the Subdivision Act 1988 is on occasions unnecessary where a whole of title (or separately transferable portion) is involved or the transitional provisions of section 44(2) Subdivision Act 1988 apply. In cases involving the transitional provisions (which will diminish over time) the land may be acquired under the former provisions which required a transfer to be lodged and registered at the Land Titles Office (refer section 569(2A) Local Government Act 1958 (now repealed)). Where applicable, this method resulted in a certificate of title being issued in the name of the Corporation which was usually endorsed CRB Road or RCA Road or RC Road as the case may be. This notation on title (e.g., CRB Road) did not and does not give the land legal road status. The notation is to indicate that the land has been acquired for road purposes and it is not until it is dedicated as a public highway under the Transport Act 1983 (as discussed above) that it attains road status. This is particularly relevant where the abutting land is being subdivided and may require an abuttal to the new road. The action of declaring land to be part of a classified road under the Transport Act 1983 and a public highway, is done by way of a single notice published in the Government Gazette.

Clause 27 of Schedule 5 of this Act confers and imposes upon the Roads Corporation certain powers, functions and duties which are conferred and imposed upon municipal councils under Division 2 of Part 9 Local Government Act 1989, so far as relates to the declaration of the alignment, widening and opening up of declared roads (with such modifications as are necessary).

9.4.3.4 Creation by acquisition on Plans of Subdivision Certified and Registered Under the Subdivision Act 1965.

The following process is largely covered in Section 9433 (Creation under the Transport Act 1983). Generally, in order for an acquiring authority to obtain title to freehold land acquired or to be acquired by it and which is required for road purposes, the following must occur:

Where acquired land cannot be disposed of without being subdivided, section 35(1) Subdivision Act 1988 requires that the authority submit a plan to council for certification and lodge it at the Land Titles Office for registration, of all the land to be subdivided by the acquisition. By way of the section 35 plan of subdivision, the acquired land (if designated as road on the plan) attains legal road status, becomes encumbered by an easement of way and is vested in the acquiring authority when:

(a) the vesting date is recorded (compulsory acquisition, either before or after the registration of the plan), or

(b) the appropriate transfer is registered (acquisition by agreement after registration of the plan), as the circumstances of the case dictate.

In most cases the provisions of the Land Acquisition & Compensation Act 1986 will apply to the acquisition of the land. An exception is where the acquiring authority is the council or unless specified otherwise on the plan of subdivision, the road will not become a public highway until the appropriate notice of declaration/dedication is published in the Government Gazette (e.g., declaration under the Transport Act 1983 or Local Government Act 1989).

Where an acquiring authority is the council and the road is to vest in the name of the council, section 35(6)(ea) Subdivision Act 1988 states that the road will become a public highway when the land is registered in the name of the council (i.e., by way of (a) or (b) above). Note that acquired land cannot be vested in other than the acquiring authority.

Where the acquiring authority has acquired/purchased the whole of a property but only requires part for road purposes, it may submit a plan under section 35(8) Subdivision Act 1988 which creates the road (encumbered with an easement of way) and the balance of the land as a lot etc as the situation dictates. In such a case, on registration of the plan the road will vest in the council, body or person named on the plan. Only where the road is being vested in the name of the council, will it become a public highway (section 24(2)(c) Subdivision Act 1988) on registration of the plan. Where the road vests in other than the council a separate action is required to dedicate it as a public highway (e.g., declaration under the Transport Act 1983 or Local Government Act 1989).

Other points to note concerning the acquisition of land for roads include:

- When land acquired for road is registered in the name of the council, body or person named on the plan it does so freed and discharged from any mortgage, charge etc.
• When land acquired for road is registered in the name of the council, body or person named on the plan, the land continues under the operation of the *Transfer of Land Act 1958* and the council, body or person named is deemed to be the registered proprietor. The Registrar of Titles will generally create a folio of the Register for the land being the road.

As a section 35 plan of subdivision may do anything that can be done by a Subdivision Act plan, it is also possible, with the appropriate consents, to create roads on the plan other than through acquisition by the acquiring authority. In such cases the roads will generally achieve legal status, be encumbered as to an easement of way and become public highways on registration of the plan (excepting where they are specifically created as private roads). The detail of this process is essentially covered in Section 9.4.3.2.

Alternatively, a plan of subdivision under the *Subdivision Act 1988* is on occasions unnecessary where the transitional provisions of section 44(2) *Subdivision Act 1988* apply. In such cases (which will diminish over time) the land may be acquired under the former provisions which required a transfer to be lodged and registered at the Land Titles Office (refer section 569(2A) *Local Government Act 1958* (now repealed)). Refer to Section 9.4.3.3 (Creation under the *Transport Act 1983*) for more detail.

### 9.5 Closing of Roads

#### 9.5.1 General

This Section deals with the closing of roads, including Crown and freehold roads, used and unused roads. Again the information should be read in conjunction with the current legislation and reference to other sources where necessary. For the purpose of the following, the terms "close" and "discontinue" can be regarded as meaning the same thing. Similarly, the terms "closed", "discontinued" and "former" roads are also generally synonymous. The term in use at any time is usually determined by the Act from which it originates and to which it applies.

#### 9.5.2. Closure of Roads under the *Land Act 1958*

The following applies specifically to Crown or Government roads.

**(a) Section 349 Land Act 1958.**

The Governor in Council is empowered under this section, with the consent of the local municipal council and the owners of abutting land, to close any unused road by publishing an order to that effect in the *Government Gazette*. This section only applies to roads (in whole or part) which are unused and where the absolute property of the land is vested in the Crown.

Following closure of the road, the resultant land can then be dealt with as unalienated Crown land and is subject to no rights, easements or privileges which may have previously existed.

**(b) Section 134A Land Act 1958**

This section deals with the leasing of a strata of Crown land and was recently inserted into the Act by way of the *Land (Further Amendment) Act 1993*. Whilst its application to a situation involving a road does not appear to formally close the road, it nevertheless has an important effect on the same.

As it applies to roads, subject to certain criteria (section 134A(2&3)), the section allows for the leasing of a stratum of Crown land. The lease may be granted even though the stratum is-

(j) shown as a road on a map or plan kept in the Central Plan Office; or

(ii) proclaimed as a road or public highway under an Act; or

(iii) reserved as a road; or
(iv) a declared road within the meaning of the Transport Act 1983 - provided the stratum covered by the lease does not include the level at which the road is constructed and that it does not interfere with the use of other associated strata of Crown land by the public

An example of where use of this section is being applied, is in the leasing of land under certain parts of the elevated structure of the West Gate Freeway in South Melbourne Under Schedule 5 clause 13(1) Transport Act 1983 the land under the elevated structure is vested in the Crown

The section provides that the lease for a stratum of Crown land may include any conditions, covenants, reservations, restrictions and exceptions as are necessary (section 134(6)) These may relate to access, support, rights for passage or provision of services, maintenance and management of any road above or below the stratum etc

Section 339B allows the Minister to create easements over Crown land to enable access to a stratum of Crown land or support of that land or a building or structure erected or to be erected on it or for the passage or provision of services to the stratum

(c) Section 339A & 339B Land Act 1958

Section 339A deals with the sale or alienation of Crown land in strata and was recently inserted into the Act by way of the Land (Further Amendment) Act 1993 Unlike section 134A, the application of this section to a situation involving a road does formally close the road within the alienated stratum

As it applies to roads, subject to certain criteria (section 339A(3&4)), the section allows for the alienation of a stratum of Crown land A Crown grant may be issued even though the stratum is -

(i) shown as a road on a map or plan kept in the Central Plan Office, or

(ii) proclaimed as a road or public highway under an Act, or

(iii) reserved as a road under the Crown Land (Reserves) Act 1978, or

(iv) a declared road within the meaning of the Transport Act 1983 - provided the stratum to be granted does not include the level at which the road is constructed

An example of where this section may be applicable, is in the alienation of land under or over an elevated road structure

On the date of issue of a Crown grant for a stratum of Crown land above or below any land on which a road is constructed -

(i) any reservation of the land as a road is revoked to the extent that it applies to that stratum, and

(ii) that stratum ceases to be a proclaimed road or public highway and ceases to be a declared road within the meaning of the Transport Act 1983, and

(iii) the stratum ceases to be a road and all rights, easements etc cease

The section provides that the Crown grant for a stratum of Crown land may include any conditions, covenants, reservations, restrictions and exceptions as are necessary (section 339A(8)) These may relate to access, support, protection, maintenance and management of any road above or below the stratum etc

Section 339B allows the Minister to create easements over Crown land to enable access to a stratum of Crown land or support of that land or a building or structure erected or to be erected on it or for the passage or provision of services to the stratum A Crown grant issuing on alienation of this land would be subject to those easements

(d) Section 163-177 Land Act 1958

Sections 163-177 inclusive of the Land Act 1958 deal with Residence Area Rights most of which originated in the latter part of the 19th century and the early part of the 20th century Many of
these were not based on survey. In some cases the land occupied encroached onto Government roads.

Section 172 provides, subject to certain stated conditions, for excision from a Government road or portion thereof which has been occupied by the whole or part of a habitable dwelling continuously (except during any period of demolition and rebuilding) since 20 January 1926, or by any land in connection therewith. This is one of the few instances where there is no limit on the width to which the road can be reduced.

Following gazettal of such excision from the road, by Order in Council, the excised land ceases to have road status and may be dealt with under the *Land Act* as unalienated land of the Crown. Normally, the purpose of any such excision would be for inclusion with the Residence Area Right land in any purpose or purchase lease under section 173 or 174 respectively. Instances, if any, of such excised land being otherwise dealt with, would be rare.

(e) Section 208 *Land Act* 1958

Refer to Section 9.4.2.2(b) for detail.

(f) Section 267 *Land Act* 1958

Certain unused roads in the Mallee may be closed by order published in the *Government Gazette* and thereafter deemed unoccupied Crown land forming part of the Mallee country.

(g) Section 348 *Land Act* 1958

Simplistically, this section provides for the issue of a Crown grant to the Public Transport Corporation for any road (or part thereof) taken or acquired by the Corporation under any Act and which is required in connection with railway works undertaken by the Corporation.

(h) Section 350 *Land Act* 1958

Parts of certain roads under certain conditions may, by order published in the *Government Gazette*, be declared to be set apart for the plantation of trees and will cease to be a road. Thereafter such land would be considered to be unalienated Crown land.

9.5.3 Closure of Roads under the *Planning and Environment Act* 1987

By definition in section 3 *Planning & Environment Act* 1987 a road includes "highway, street, lane, footway, square, court, alley or right of way, whether a thoroughfare or not and whether accessible to the public generally or not". Under the Act a road may be closed by an amendment to a planning scheme (section 6(2)(g)). Both Crown or Government roads and freehold roads can be closed in this way.

Prior to seeking an amendment, the planning authority must give notice of having prepared an amendment, to the persons and bodies listed in section 19 of the Act or if exemptions apply, by public notice. In the case of an amendment which seeks to close a road wholly or partly on Crown land, such notice must also be to the Minister administering the *Land Act* 1958. Under normal circumstances failure of the planning authority to give the specified notice would not prevent the adoption of the amendment or its submission to or approval by the Minister. However, this is not the case where the amendment relates to the closure of a road which provides access to land and the owner of that land was not given the specified notice or where the amendment provides for the reservation of that land for a public purpose.

The owner or occupier of any land may claim compensation from the planning authority for financial loss suffered as the natural direct and reasonable consequence of, among other things, access to the land being restricted by the closure of a road. (section 98).

The planning scheme amendment may be adopted by the planning authority after one month from the notice of amendment appearing in the *Government Gazette* if no submissions are made (section 19(4)).
Section 31 of the Act requires the planning authority to submit an adopted amendment to the Minister for approval. Where the amendment seeks to close a declared road within the meaning of the Transport Act 1983, the consent is first required of the Minister administering that Act.

Following approval, the Minister must publish a notice of approval of the amendment in the Government Gazette. The amendment comes into force on that day or as otherwise specified in the notice (section 37).

Any unalienated Crown land forming the whole or part of a road which is closed by an amendment to a planning scheme, vests in the Minister administering the Land Act 1958 (section 43). This occurs once the approval of the amendment is published in the Government Gazette. The Minister may alienate any land vested in this manner by public auction, private agreement or otherwise as he or she sees fit.

For roads on other than Crown land (i.e., freehold roads), section 44 provides as follows: "Any land in a road which is closed by an amendment to a planning scheme vests in -

(a) the municipal council in whose municipal district the land is situated, or

(b) the Minister, if the land is not in a municipal district, or

(c) the Minister administering the Transport Act 1983 despite anything to the contrary in paragraph (a) or (b), if the road was -

(i) a declared road within the meaning of that Act, or

(ii) vested in the Roads Corporation - upon publication of the notice of approval of the amendment in the Government Gazette unless the land is Crown land.'

"The publication of the notice brings the land under the operation of the Transfer of Land Act 1958 if it is not already under that Act.

Any person in whom land is vested through the closure may lease, sell or otherwise dispose of the land by public auction, private agreement or otherwise, subject to any terms and conditions deemed necessary. Where the land is to be transferred to another person, an instrument of transfer may be lodged with the Registrar of Titles together with a copy of the notice from the Government Gazette. The Registrar of Titles must make any recordings in the Register that are necessary to give effect to the transfer, without the production of any other document.'

"If the Minister or a council decides to keep the land in the road for any purpose, section 54 Transfer of Land Act 1958 applies as if the Minister or the council had acquired the land compulsorily.'

As to the effect that a road closure has on existing public utilities within the road, section 45 provides as follows: "Unless the planning scheme provides otherwise, any right, power or interest which a municipal council or a public authority had in the road in connection with any drains, pipes, wires or cables laid or erected in, on or over the road -

(i) is not affected by the closure of the road by an amendment to a planning scheme, and

(ii) continues in the land after it vests in any person or is sold under this Division, and

(iii) may be noted by the Registrar of Titles as an encumbrance on every certificate of title issued as a result of this Division.'

The Subdivision Act 1988 does not apply to the transfer of land resulting from a road closure under the Planning & Environment Act 1987."
9.5.4 Closure of Roads under the Local Government Act 1989

9.5.4.1 General

The provisions for closing roads under the Local Government Act 1989 are similar to and have been modelled on the former provisions of the Local Government (Miscellaneous) Act 1958 (being the remaining sections of the former Local Government Act 1958 which is now repealed). The old provisions have been utilized extensively over the years and for a period of time will continue under the transitional arrangements of the Local Government (Miscellaneous Amendments) Act 1993. For this reason, and from an historical perspective, a brief summary of the old provisions is included.

9.5.4.2 Repeal of Streets etc. Provisions of the Local Government (Miscellaneous) Act 1958

Refer also to Section 9.1.2.

Prior to the Local Government Act 1989 (and the associated Local Government (Consequential Provisions) Act 1989) being fully proclaimed, it was realized that the initial “Provisions Relating to Roads and Public Highways and Traffic” (Division 2) were inadequate for a number of reasons. Consequently the existing Streets etc. Provisions (Part XIX) Local Government (Miscellaneous) Act 1958 were allowed to remain in force until Division 2 could be redrafted and the Act amended.

With the inadequacies of Division 2 having been addressed, section 25(1) Local Government (Miscellaneous Amendments) Act 1993 (proclaimed 7/12/93) repealed Part XIX - Streets Roads Bridges Ferries Culverts Levees and Jetties, of the Local Government (Miscellaneous) Act 1958. In its place, the same Act inserted the new sections 203 to 207F and new Schedule 10 (Powers of Councils Over Roads) and Schedule 11 (Powers of Council Over Traffic) amongst other changes, into Division 2 Local Government Act 1989.

Importantly, section 25(2) Local Government (Miscellaneous Amendments) Act 1993 also provides for transitional arrangements whereby “any act, matter or thing started” under Part XIX may be completed as if that part was still in force. The legislation offers no indication as to what part of the former process having been commenced constitutes an act, matter or thing having been started.

9.5.4.3 Closure of Roads under the Local Government (Miscellaneous) Act 1958

The main sections of Part XIX of this Act (now repealed) which were used and which may be applicable under the transitional arrangements are sections 523, 524, 526, 527 and 528. A brief overview of these and other relevant sections is as follows. Note that the Subdivision Act 1988 does not apply to anything done under section 526, 527, 528 or 569BA Local Government (Miscellaneous) Act 1958.

(a) Section 523 (now repealed). The local council could, with the consent of the Governor in Council open, deviate alter or increase the width of any street or road within its municipality. The council could acquire land from adjoining owners and pay compensation accordingly. Where a diversion resulted in the closing of a road adjoining a property from which land had been acquired for the new road, the value of the closed area taken in exchange, was deducted from the compensation payable. Any portions so exchanged would generally be in the form of an unencumbered title. However, subject to continued convenient access for all premises serviced by the old road, they could be subject to rights of way and passage to and from these premises.

(b) Section 524 (now repealed). Similar powers were extended to deviations through Crown land or land held by licensees under the Land Act 1958, in which instance, approval was first to be sought and obtained from the Minister for Conservation and Natural Resources. The new road was gazetted as a public highway in the Government Gazette and the old road was closed, subject to convenient access requirements. Portions of the old closed road were allocated by the Minister to the adjoining allotments in proportion to the amount of land taken from each and were to be accepted as full compensation.
(c) Section 526 (now repealed) Where, by notice published in the *Government Gazette*, land taken, purchased or acquired by the council had been declared a public highway and to be *in lieu* of an existing road, that road was deemed to have been discontinued. The land comprising the discontinued road vested in the municipality, came under the operation of the *Transfer of Land Act 1958* and could be sold under certain provisions (e.g. with a right of way in favour of certain land requiring continued access over the discontinued road) or retained by the council who could apply for the issue of a certificate of title under section 54 *Transfer of Land Act 1958*.

Upon payment of purchase monies, the municipality was required to transfer the land to the purchaser and when such transfer was lodged at the Land Titles Office, together with the relevant extract from the *Government Gazette*, it was registered and a certificate of title issued. The land in the new certificate of title, where the road was originally a Crown or Government road, was described as being part of a former government road and was given a depth limitation of 15 metres below the surface. Where the discontinued road was a freehold road, the new certificate of title was only limited as to depth if the original Crown grant contained such a limitation.

Any plans of subdivision, titles or office records affected by such transfer were to be amended to accord with the transfer by the Registrar of Titles. The discontinuation and subsequent sale of the road did not extinguish any rights or interests of any public statutory authorities in relation to services within the road and those rights and interests are deemed to persist. The Registrar of Titles was able to notify these as encumbrances on any title issuing under this section.

(d) Section 527 (now repealed) Where a registered proprietor (or mortgagee in possession) of land had agreed to purchase or was required to take any portion of a load no longer considered necessary by the Governor in Council or had agreed to transfer to the municipality any portion of their land required for a road, they were entitled to apply to have their certificate of title amended to include the discontinued road and exclude the land transferred to the municipality. The application to the Registrar of Titles, sealed by the municipality and approved by the Governor in Council was to be accompanied by:

(i) a copy of the *Government Gazette* declaring the land as public highway *in lieu* of any existing road, and

(ii) any existing certificate of title (to the discontinued road) in the name of the municipality; and

(iii) the written consent to the application, of any person with a registered interest in the proclaimed land; and

(iv) survey plans, abstracts of field notes and information with regard to surveys as required by the Registrar.

On the basis of this application, the Registrar amended the certificate of title or Crown grant to include any discontinued portions of road and exclude any declared portions of road, with the effect of bringing the former road under the *Transfer of Land Act 1958*.

(e) Section 528 Where a Crown or Government road adjoined any land and was required only for access to that land and not otherwise for public use, the owner could make an application to the Governor in Council to close the road. If the application was approved, the Governor in Council was able to order the road to be closed and sold. The applicant would obtain a Crown Grant for the land which may have included such covenants, conditions etc as were deemed necessary.

Similarly (for other than Crown or Government roads) the council of a municipality was, subject to certain procedures (e.g. public notice, consultation with any public statutory authority etc) able to discontinue a road by publication of its resolution in the *Government Gazette*. The land comprising the discontinued road then came under the operation of the *Transfer of Land Act 1958* and vested in the council until such time as it was sold by public auction, public or private tender or the council resolved to retain the land. (Council could also apply for the issue of a certificate of title under section 54 *Transfer of Land Act 1958*).

Where the Council resolved to sell the land, certain provisions of section 526 were deemed to apply, with such adaptations as necessary (provisions relating to registration of the transfer, depth limitation etc).
The discontinuation and subsequent sale of the road did not extinguish any rights or interests of any public statutory authorities in relation to services within the road and those rights and interests were deemed to persist. The Registrar of Titles was able to notify these as encumbrances on any certificate of title issuing under this section.

9.5.4.4 Closure of Roads under the Local Government Act 1989

In reading the following, the user is reminded of comments made in Section 9.1.2 concerning the limited practical testing of some of the new provisions of the Local Government Act 1989. See also appropriate parts of Section 5.

(a) Power to Discontinue Roads

The powers of a council over roads in its municipal district include (but are not necessarily limited to) those set out in Schedule 10 Local Government Act 1989 (section 206). The powers include the ability to discontinue roads (Schedule 10 clause 3) and are in addition to any given under sections 43 and 44 Planning & Environment Act 1987 (refer Section 9.5.3).

A council may:

(i) discontinue a road, or part of a road, by a notice published in the Government Gazette; and

(ii) sell the land from that road (if it is not Crown land), transfer the land to the Crown or itself or retain the land.

Regarding land being a discontinued road which is Crown land (e.g. discontinued Government road) the legislation currently prohibits the sale by council but it is in the process of being amended to permit such, where it relates to a road deviation only. Refer to further discussion of this in (f) and (g) below.

Roads may also be discontinued and dealt with, in connection with the exercise of the council’s other powers to deviate roads, fix alignments and narrow or widen roads (Schedule 10, clauses 2, 7 and 8 respectively). Again there are restrictions if the discontinued road is Crown land.

(b) Extent of Council's Power to Discontinue Roads

On the first literal reading of Schedule 10 clause 3, it would appear that a council has the wide ranging ability to discontinue any road (without any requirement to seek consents/approvals) and thereafter to sell the land (provided it is not Crown land), transfer it to the Crown or itself or retain the land.

The council appears to have the ability to discontinue any road by a notice published in the Government Gazette. However, it is considered (unconfirmed) that the ability may only be unconditional where it relates to the discontinuation of a road for which the council has the responsibility for care and management (refer section 205). Where there is a proposal to discontinue a road for which the council does not have the responsibility for care and management, it is probable that the consent of the responsible authority, body or person must first be obtained. For example, in the case of a road declared under the Transport Act 1983, the Roads Corporation is the relevant authority.

This interpretation is consistent with the statutory requirements of section 35 Planning & Environment Act 1987, where the consent of the Minister administering the Transport Act 1983 is required prior to the approval of an amendment to a planning scheme which proposes to close part of a declared road. Also, section 44 Planning and Environment Act 1987 provides that any land in a road which is closed by an amendment to a planning scheme vests in the Minister administering the Transport Act 1983 if it was a declared road under that Act or vested in the Roads Corporation. These issues may be clarified as part of the legislative amendment process involving the Local Government Act 1989 which is being considered.
(c) Section 207B (Vesting of Land)

The vesting in council of land being a discontinued road is set out in section 207B and is summarized as follows:

The land comprising a discontinued road will vest in the council from the date the relevant notice required by Schedule 10 is published in the Government Gazette, providing:

(i) it is not Crown land (e.g., not a Crown or Government road or declared road under the Transport Act 1983 etc.), or

(ii) it has not been discontinued as part of a road deviation under Schedule 10 clause 2 whereby the council has agreed with the owner of adjoining land to exchange the discontinued road for land to be used for the deviation.

Where land comprising a discontinued road is Crown land, the sale of that land is excluded from the powers of the council and is the responsibility of the Minister administering the Land Act 1958 or the public authority in whom the Crown land is vested.

The vesting in a council of the land comprising a discontinued road (section 207B), does not affect any right, power or interest held by a public authority in the road in connection with services under the control of the authority in or near the road. The Registrar of Titles may record as an encumbrance on the relevant folio of the Register any such right, power or interest, (section 207C(2)) If a Council seeks the consent of the public authority to the extinguishment of any such right, power or interest, the authority must not unreasonably withhold its consent, (section 207C(3))

(d) Effect of Discontinuation

Land comprising a discontinued road is brought under the operation of the Transfer of Land Act 1958 and vests free of encumbrances other than those referred to in section 207C, on the date the relevant notice is published, (section 207B(3))

“The Subdivision Act 1988 does not apply to the discontinuation of a road, or part of a road, under clauses 2, 3, 7 or 8(l)(a) of Schedule 10’, (section 207B(4))

(e) Section 223

In any proposal to discontinue a road, the council is required to meet its statutory obligations under section 223 Local Government Act 1989 Any person given the right to do so, may make a submission to the council on the proposal, under that section.

(f) Section 207D (Transfer of Discontinued Road)

The following is broadly quoted from section 207D Local Government Act 1989. This section deals with the “Registration of titles of land affected by action concerning roads” Its main application is where a council sells a discontinued road or transfers the land to the Crown or itself (these provisions being similar to those previously available under section 528(2) Local Government Act 1958, now repealed. Section 207D cannot be utilized if the discontinued road is Crown land Nor is it to be used where a section 35 plan of subdivision or a road exchange (section 207E) is being utilized.

This section applies if

(i) land vests in a council under section 207B, or

(ii) a council takes any action under clause 2,3,7 or 8(l)(a) of Schedule 10, or clause 11 of Schedule 11, that affects the title to any land - and either section 35 Subdivision Act 1988 does not apply to the land or else there is no present intention to dispose of the land.

In many situations involving the actions associated with a road deviation, a fixing of a road alignment or the narrowing or widening of a road, a section 35 plan of subdivision under the
Subdivision Act 1988 will be required or will be utilized. Refer also to Section 9.4. In such a case section 207D is not used and does not apply.

However, in many cases involving the same actions, it will be directly applicable. For example, where a council elects to narrow a subdivisional road it may discontinue part of the road and transfer it to the abutting owner under 207D. Similarly, where a council deviates a subdivisional road into adjoining Crown land, it may discontinue that part of the road which is no longer required and transfer it to the abutting owner, itself or the Crown.

The Registrar may register the transfer of land (whether or not accompanied by a certificate of title), alter folios of the Register, plans of subdivision etc., notify affected persons if they have not already been given notice under section 223, require the production of any instrument or document and dispense with the production of any document. "Section 54 Transfer of Land Act 1958 does not apply to any land to which this section applies".

The council must, if required by the Registrar, give the Registrar a notice of any action referred to in section 207D(l)(b) or a transfer of land that is in an approved form, contains all the information required by the Registrar and states whether the council has given notice under section 223. "On being given that notice or transfer, the Registrar may do anything that is necessary to give effect in the Register under the Transfer of Land Act 1958 to the vesting or the action taken by the Council". The Land Titles Office is currently considering what "notices of actions" will be required to be given under this section. In particular is the case of road which has been discontinued, and where the council has no present intention to dispose of the land, the notice to the Registrar will ensure that the public records making up the cadastre are kept up to date.

Paragraph (g) below comments on an amendment being sought to the Local Government Act 1989 to allow a discontinued Crown road to vest in council, where it is associated with a road deviation proposal.

(g) Section 207E (Road Exchange)

The council may elect to initiate a road exchange process. This section only applies if a council agrees to exchange (with the affected registered proprietor or mortgagee in possession) any land it acquires as a result of actions under Schedule 10, with other land owned by the council, e.g., as freehold estate or vested in it by way of a road discontinuation. The provision is very similar to the former section 527 of the Local Government Act 1958, now repealed. Importantly, section 207E only applies to freehold land and discontinued freehold roads but does not apply to discontinued Crown roads or Crown land.

The vesting of a discontinued road in the council is subject to the exceptions in section 207B(2) Local Government Act 1989. The land will not vest in the council where:

- it is Crown land (a discontinued Crown or Government road);
- it is a discontinued road and the council has agreed with the owner of adjoining land to exchange the land for land to be used for the deviation.

Where the land comprising the discontinued road is not Crown land, (e.g., a subdivisional road has been discontinued), and there is an agreement to make an exchange, the action can be effected through an application to the Registrar of Titles (section 207E). Where the land comprising the discontinued road is Crown land (e.g., a Government road has been discontinued), the council is effectively unable to make an exchange or otherwise transfer the land other than, for example, through application to the Department of Conservation & Natural Resources for the issue of a Crown grant etc.

It has been recognized that the council's inability to deal with Crown land in a road deviation situation is most unsatisfactory. Consequently, an important amendment to the Local Government Act 1989 is being sought and should provide that where a council exercises its powers to deviate a road which is a road on Crown land, the land in the road should vest in the council. Also that the council must obtain the consent of the Minister administering the Land Act 1958 before it deviates a road which is on Crown land. The amendments are expected to be specific to road.
deviations and will not give the council wider powers over Crown roads. The amendments are anticipated by late 1994.

It is interesting to note that because a council is presently unable to transfer Crown land which is a discontinued road, there is no requirement for a depth limitation as previously existed (15 metres) under 526 Local Government Act 1958, now repealed. It is expected that the amending legislation will include a requirement for a depth limitation where the land being transferred is a discontinued Crown or Government road.

Where a road exchange is able to take place, the registered proprietor or the mortgagee in possession of the land, may apply to the Registrar of Titles under this section to have the folio of the Register amended to:

- include the land obtained from the council, and
- exclude the land acquired by the council from the folio of the Register.

The section further specifies the requirements of the Registrar and provides that on completing the necessary amendments:

- the land acquired by the council is freed of any mortgage etc, and
- the land obtained from the council is subject to any mortgage etc as if had always been part of the folio of the Register.

Prior to making application to the Registrar, the road must first have been discontinued by the council (Schedule 10 clause 3 Local Government Act 1958).

The Subdivision Act 1988 does not apply to a road exchange application.

9.5.5 Closure of Roads under the Transport Act 1983

Section 41 Transport Act 1983 provides that the further particular powers of the Roads Corporation are as set out in Schedule 4. To the extent that it relates to the closure of roads, Schedule 4 m clauses 1 & 2 empowers the Corporation to:

Clause 1 “To temporarily close any road or any part of a road and to temporarily stop all traffic or classes of traffic thereon.”

In the majority of applications of this section the use of the word close relates to traffic management and not to formal road closure in the sense that it is no longer a legal road.

Clause 2 “To discontinue any existing road or part thereof and to sell any road or part so discontinued (and the provisions of sections 204,206 and 207 and Schedule 10 of the Local Government Act 1989 shall, so far as applicable, extend to and apply in the case of any road or part so discontinued)”.

Clause 2 provides the Roads Corporation with the broad power to discontinue and sell any road or part thereof.

The important points to note with respect to Clause 2 are that:

(i) the powers apply to any road (‘road’ is essentially undefined in the Act but includes bridges, ferries, culverts and fords (section 2(1)), and
(ii) that the provisions of sections 204, 206 and 207 (should read sections 206, 207A to 207E - currently undergoing amendment) and Schedule 10 of the Local Government Act 1989 apply so far as applicable, with such alterations modifications and substitutions as are necessary, extend to and apply in the case of any road or part so discontinued).

Where the Roads Corporation proposes to discontinue any road, the consent of the Council (all roads) and Department of Conservation & Natural Resources (if it is a Government Road or abuts Crown land or reserved Crown land) and any other interested parties will first be sought.

Further to (n) above, whilst the Transport Act 1983 as amended by the Local Government (Consequential Amendments) Act 1989 currently refers to sections 204, 206, 207 and Schedule 10, it should read 206.
207A to 207E and Schedule 10. A general amendment to the Local Government Act 1989 is currently being drafted which will, inter alia, rectify these sections of the Transport Act 1983. The intention of the legislation is to permit the Roads Corporation to utilise the same powers available to the councils under the Local Government Act 1989 when discontinuing roads. (The former parallel powers under the Local Government Act 1958 (now repealed) were sections 526(2),(3)&(3B), 527(1)-(7) and Schedule 29.)

Again further to (ii) above, the actual process followed by the Roads Corporation is influenced by its ability to modify etc. the provisions in the Local Government Act 1989. For example the Gazette notice of the discontinuation required by the Local Government Act 1989 has been modified and replaced by an internal Roads Corporation Schedule of Discontinuance which is approved by the Chief Executive of the Corporation. Upon approval of the Schedule the road is deemed to have been discontinued. Records of road discontinuations are held by the Roads Corporation (Land Information & Survey Department).

An overview of the process of discontinuing a road under the Transport Act 1983 is as follows:

(a) That part of the road to be discontinued is defined by a Roads Corporation survey plan.

(b) The necessary consents are sought from the municipal council and the Department of Conservation & Natural Resources (if applicable).

(c) A Schedule of Discontinuance (which refers to parcels of land on the survey plan) is prepared and submitted to the Roads Corporation Chief Executive for approval.

(d) On approval of the Schedule the road is thereby discontinued and the land vests in the Roads Corporation.

(e) Where the land is to be transferred to an abutting owner appropriate Transfer of Land Act 1958 transfer documents are prepared and lodged at the Land Titles Office. This is similar to the process under section 207D Local Government Act 1989. Where the land comprising the discontinued road is to be exchanged with an abutting owner for land required for road purposes, an application is prepared under section 46 Transport Act 1983 (similar to the process under section 207E Local Government Act 1989) and lodged at the Land Titles Office. The discontinued road may also be dealt with on a plan of subdivision under sections 35 and 35(8) Subdivision Act 1988. Alternatively the Roads Corporation may retain the land as vesting in itself for other purposes (e.g., roadside reserve) or apply for the issue of a Crown Grant (section 46 Transport Act 1983).

In accordance with the Local Government Act 1989, actions involving the discontinuation and sale of roads under the Transport Act 1983 are exempt from the provisions of the Subdivision Act 1988. However, as indicated above, land vested in the Corporation may alternatively be included in a plan of subdivision under section 35 of the Act.

The authority to dispose of surplus land is given in section 47 Transport Act 1983.

It is important to note that, even though under Schedule 5 clause 13(1) the land over which there is a declared road is vested in the Crown, the discontinuation of that road (under the Transport Act 1983) has the effect of vesting that land in the Roads Corporation. Thereafter the land can be dealt with as described above. As provided for in the Local Government Act 1989 the registration of any dealing with the discontinued road at the Land Titles Office, will have the effect of bringing that land under the Transfer of Land Act 1958 if it is not already so.

9.5.6 Closure of Roads under the Transfer of Land Act 1958

It is possible under this Act to close (although the Act does not use this term specifically) all or part of a private street or way, where it has been exclusively, continuously and adversely occupied. Where a person makes application to the Registrar of Titles to bring land under the operation of the Transfer of Land Act 1958 e.g., under section 6 or 26E, or to amend a folio of the Register, and can provide the necessary evidence, the Registrar is empowered by section 73A of the same Act to create a folio of the Register for the land which is not encumbered as to any right or easement of way. There appears to be some limitations on the application of this section.
As stated in Section 9.4.3(h), Creation under the Transfer of Land Act 1958, it is possible, given certain criteria, for some easements of way to be regarded as having road status. Consequently, some of the sections of the Transfer of Land Act 1958, in addition to section 73A, which deal with the removal of easments, may be applicable in removal of that status. It is recommended that specific cases and detail be discussed with the Land Titles Office. Reference should also be made to Section 5.

9.5.7 Closure of Roads under the provisions of other Acts

Other Acts, such as the Urban Land Authority Act 1979, Casino Control Act 1991 and the Housing Act 1983 etc., also specifically provide mechanisms for the closure of roads.

Note that section 23 of the Subdivision Act 1988 cannot be used to remove road status.

9.5.8 Closure of Roads by Merger or Resubdivision

Upon the resubdivision in a different manner by the proprietor of the whole of the land in an existing subdivision, which may include roads, all existing subdivisional easements will be regarded as extinguished on approval of the existing subdivision. Easements of way associated with roads will also be extinguished and the roads effectively closed. Before a road can be closed in this manner, the council must consent and provide a statement that the road is not a public highway.

Some freehold roads may also effectively be closed on application for the issue of a single consolidated folio of the Register, free from encumbrance, where all dominant and servient tenements are in the one proprietorship. The easements of way associated with the roads may be deemed to be "merged" on issue of the new folio. As above, the council must consent and provide a statement that the road is not a public highway. Where implied easements are to be removed further consent of council is required.

See also appropriate parts of Section 5.

9.6 Licensing of Unused Roads

9.6.1 General

This Section deals with the licensing of unused (Crown or Government) roads.

Part XIII - sections 399 to 411 inclusive - Land Act 1958 deal with the licensing to adjoining land holders, under a temporary tenure, of unused roads and water frontages. Under the subheading "Interpretation", the wording of section 399 continues as follows - "In this part unless inconsistent with the context or subject matter" Then follows a number of definitions relevant to Part XIII, including the following definition of "road" and "street".

"Roads" includes "street" and also includes -

(a) any portion of Crown land delineated or shown as a road in any original map or plan in the Department of Conservation, Forests and Lands in accordance with which any Crown land has or may have been sold, leased or licensed or become subject to a residence area right but does not include formed or metalled roads in respect of which the council of a municipality has incurred expense in construction and on which it carries out regular maintenance.

(b) any portion of Crown land which by a general or particular description has been or purpose to have been proclaimed by the Governor in Council as a road under the provisions of any Act relating to Crown lands, or

(c) 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
(d) *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 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 or described respectively is a road within the meaning of this section”.

The above definitions specifically relate to Part XIII *Land Act* 1958 and do not necessarily apply elsewhere. The latter part of (a) above (i.e. but does not include......on which it carries out regular maintenance) precludes the roads mentioned from being licensed to adjoining land holders as an Unused Road licence.

The intention of the original *Land Act* legislation relating to unused roads and water frontages (Act 6794 of 1961) with respect to “any original map or plan”, although not specifically stated, would have been to include cadastral survey plans, record plans, road plans and the like held in the Central Plan Office, Division of Survey and Mapping, part of the then Department of Crown Lands and Survey, along with other plans held in the Division of Occupation and District Land Offices of the same Department.

It is unlikely that it would have been intended to include the wide variety of plans held in other Departments and Authorities subsequently amalgamated into the Department of Conservation, Forests and Lands, now the Department of Conservation and Natural Resources.

The bulk of the original maps and plans to which the definition was intended to refer have been and are still in the custody of the Central Plan Office.

It will be seen that where evidence of road status is being assembled, there is a need for caution to be exercised.

### 9.6.2 Interpretation of Unused Road

Section 400 goes on to interpret an unused road as a road or any part of a road which is subject to a notice under subsection (1) which states:

“The council of a municipality may give notice to the Director-General of Conservation and Natural Resources 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”.

### 9.6.3 Dealing with Unused Roads

The Governor in Council is empowered under section 401 to grant a specified purpose licence to satisfy certain conditions spelt out in section 402.

If the road is fenced on one side only, the occupier abutting the unfenced side shall obtain a licence to use the road to the extent that his land abuts. The recipient of the licence in this case is liable for repairs to the fence between the other side of the road and any private land.

If neither side of the road is fenced, the occupiers on both sides of the road shall obtain a licence to use half of the road to which their land abuts. In this case subject to the agreement of one of the abutting occupiers the other may obtain a licence for the whole of the road.

Both occupiers may also agree in writing to using various parts of the road comprising the whole, subject to fences being constructed only at right angles to the road.

These licences are renewable every twelve months and unless special circumstances prevail, do not allow cultivation - section 405.

These licences are subject to cancellation on three months notice by the Minister should the local municipality deem it in the public interest. Should this occur, the licensee may be compensated for...
any new fencing he or she has carried out and made liable for any work required to make the unused road suitable for traffic section 407.

Where the licence is cancelled under this section, the land to which the licence related ceases to be an unused road and the local municipal Council is obliged to keep the road open for public use and free from obstructions.

Particulars of every licence granted, transferred amended or cancelled relating to the entry and use of an unused road under Part XIII Land Act shall be supplied to the local municipality in which the unused road is situated.

9.7 Acts Dealing with Roads

The following list is a guide to the sections of the main Acts which make specific reference to "roads" and are generally relevant to this Section. The list is not comprehensive and is provided as a guide only. It is important that each section be read in its correct context. Sections which indirectly impact on roads are not necessarily listed.

Subdivision Act 1988
[Reprint No. 3 and Anstat's Update Bulletin - March 1994] Sections 3(1) definition of "lot", "public works", 6(l)(a), 6(l)(h), 12(2)(b), (d)&(e), 12(3B), 17(6) definition of "works", 18(3), 20A(1)&(2), 24(2)(b),(c),(2A), 32(l)(m), 35(6)(ea), 37(3)(c)(iiia), 38(1A), and 44(6E).

Transport Act 1983
[Reprint No. 2 and Anstat's Update Bulletin - January 1993] (The following list does not include all references to "Roads") Section 2(1) numerous definitions including "Bridge", Declared road", "Forest road", "Freeway", "Main roads", "Maintenance", "Road", "State highway", "Stock route", "Tourist road". Sections 2(3), 15, 16, 41, 42(3), 43, 44, 46, 47(5)&(6), 55(1), 56(2)&(4), 86(1) definition of "Highway", Schedule 3, Schedule 4 (in particular clause 2) and Schedule 5.

Local Government Act 1989

Planning & Environment Act 1987

Transfer of Land Act 1958

Land Act 1958

Crown Land (Reserves) Act 1978
[Reprint No. 2] Section 4(l)(b).

The following are further references to sections of other Acts specifically dealing with "roads", in the context of this Section. They are provided by way of example only and do not necessarily reflect the full extent of the roads provisions in the particular Act,
Conservation Forests & Lands Act 1987
[Reprint No. 1 and Anstat's Update Bulletin - July 1993]
Sections 25 and 94.

Forest Act 1958
[Reprint No. 4 and Anstat's Update Bulletin - July 1993]
Sections 3(1) definition of “Protected forest”, 42(6) and 77.

Fences Act 1968
[Reprint No. 4]
Section 13.

Housing Act 1983
[Reprint No. 1 and Anstat's Update Bulletin - January 1993]
Section 16(1) and Part II of Schedule 2.

Fences Act 1968
[Reprint No. 4]
Section 13.

Housing Act 1983
[Reprint No. 1 and Anstat's Update Bulletin - January 1993]
Section 16(1) and Part II of Schedule 2.

Water Act 1989
[Reprint No 1, the Water (Amendment) Act 1993 and Anstat's Update Bulletin - July 1993]
Sections 131, 137, and 239.

Urban Land Authority Act 1979
[Reprint No. 1 and Anstat's Update Bulletin - January 1993]
Section 4(2)(f), 15, 16, and 17.

Casino Control Act 1991
Sections 128A(2), 128K, and 128L.

Victorian Plantations Corporation Act 1993
The sections referring to roads are not listed.

There are also many other Acts which contain provisions for dealing with "roads".

9.8 Bibliography


AUSTROADS *RoadFacts (An Overview of Australia's Road System and Its Use)*. AUSTROADS Publication No. AP 18/94

Lucas, P.E. *The Effect of a Road Discontinuance in Relation to an Adverse Possession Claim Concerning the Same Land*. Leo Cussen Institute, Continuing Legal Education Program


9.9 Example Government Gazette Notices Related to Roads

The following are extracts from the Victorian *Government Gazette* which provide actual illustrations of how some of the legislation referred to in this Section on "Roads" is applied in practice. The examples do not necessarily represent appropriate standards of presentation and wording.
The Roads Corporation, pursuant to the Transport Act 1983, upon publication of this notice declares, or varies the declaration of, the roads as described below and on the plans attached, and further declare that such roads are fit to be used as a public highway and are now absolutely dedicated to the public for use as public highways within the meaning of any law now or hereafter in force.

**FREeways**

32/93 Princess Freeway in the Shire of Narracan, shown hatched on plan numbered GP15814A

33/93 Omeo Highway in the Shire of Omeo, shown hatched on plan numbered GP18781

**MAIN ROADS**

34/93 Cranbourne–Frankston Road in the City of Frankston, shown hatched and cross hatched on plan numbered GP 106 MR

35/93 Varying the declaration of Binscarp–Rainbow Road in the Shire of Karkaroon, shown by heavy line and heavy broken line on plan numbered GP 107 MR.

36/93 Traralgon–Maffra Road in the City of Traralgon, shown hatched on plan numbered GP18560.

37/93 High Street in the City of Kew, shown hatched on plan numbered GP17906

**ROADS**

38/93 The road in the City of Kew, shown hatched on plan numbered GP17905B

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Dated 11 November 1993

COLIN JORDON
Chief Executive—Roads Corporation
Pursuant to section 1978 of the Local Government Act 1989, the Council of the Shire of Tambo, after consultation with all relevant statutory authorities, the advertising of its intention in the Tambo Advertiser having notified the registered proprietors adjoining the land and having received no submissions pursuant to section 133 of the Local Government Act 1989 resolved at a meeting held on 1 February 1994 as follows:

(a) That the land as shown on the attached plan is not reasonably required as a road for public use and that it be disannexed upon publication of this resolution in the Victoria Government Gazette.

(b) That the land conveyed in this part of the road disannexed shall be sold by private treaty and be part of a road exchange as per the following plan.