

PUBLIC WORKS.

4° Elizabeth II., No. LIX.

No. 59 of 1955.

AN ACT to amend the Public Works Act, 1902-1954.*[Assented to 13th December, 1955.]*

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Public Works Act Amendment Act, 1955.* Short title and citation.

(2) In this Act the Public Works Act, 1902-1954, Act No. 47 of 1902 as reprinted as amended by Acts Nos. 8 of 1906 and 60 of 1926 in the Appendix to the Sessional Volume of Acts, 1927, and as further amended by Acts Nos. 35 of 1933, 41 of 1945, 23 of 1950, 48 of 1953 and 3 of 1954, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Public Works Act, 1902-1955.

S. 17
amended.

2. Section seventeen of the principal Act is amended—

(a) by adding after the section designation, “17” the subsection designation, “(1)”;

(b) by adding after the word, “may” in line two, the passage, “, subject to the provisions of subsection (2) of this section”;

(c) by adding subsections as follow—

(2) (a) In this subsection, “occupier” of any land means a person who, in exercise of a right of possession, is in actual occupation of the land, but does not include anyone who is in occupation of the land merely as a member of the family or household of that person.

(b) Before the publication of the notice referred to in subsection (1) of this section, the Minister shall cause to be published in the *Government Gazette* a notice of intention to take or resume the land which notice is to include the following particulars:—

(i) The place where persons interested may at any reasonable time inspect a plan of the land;

(ii) a statement of the nature of the work proposed to be carried out; and

(iii) a description of the land required.

(c) As soon as possible after the publication in the *Gazette* of the notice of intention to take or resume the land in accordance with the provisions of

paragraph (b) of this subsection or of a notice cancelling or amending the notice of intention in accordance with the provisions of subparagraph (iii) of paragraph (d) of this subsection the Minister shall—

- (i) cause a copy of the notice to be published in one issue of a newspaper circulating in the district in which the land is situated;
 - (ii) cause a copy of the notice to be served on the owner or each of the owners, and on the occupier or each of the occupiers of the land, residing within the State, or such of them as can with reasonable diligence be ascertained, either personally or by registered letter posted to their last known place of residence;
 - (iii) cause a copy of the notice to be delivered to the Registrar of Titles if any land referred to therein is under the operation of the Transfer of Land Act, 1893, to the Registrar of Deeds if any land referred to therein is not under the operation of that Act, and to the Minister for Lands if a register is kept by the Department of Lands of any land referred to therein.
- (d) (i) Within thirty days after the publication in the *Gazette* of the notice of intention to take or resume the land or such further time as the Minister may allow, any person having an estate or interest in the land as owner or occupier may, by himself or jointly with any other person so qualified, serve on the Minister

at the office of the Department of Public Works written objections to the taking or resuming of the land, not having reference to the matter of compensation, which objections are to include a description of the land, the nature of the estate or interest of the objector or objectors therein, the address of the objector or objectors and the grounds of objection.

(ii) The Minister may, by notice served on an objector either personally or by registered letter posted to his address as shown in his objections, notify the objector that he may make representations in support of his objections in such manner and at such time and place as the notice specifies.

(iii) The Minister shall consider the objections and representations as are made pursuant to the notice, and having done so, if he is of the opinion that the objections are sufficient to warrant the cancellation or amendment of the notice of intention to take or resume any land, he may, by subsequent notice published in the *Gazette*, cancel or amend, as the case requires, the notice of intention.

(iv) Where a subsequent notice amending a notice of intention to take or resume land includes land not before included in the amended notice, the provisions of this section apply to the subsequent notice as though it were a notice of intention to take or resume that land.

(e) Where at the expiry of thirty days or such further time as is allowed by the Minister after the publication of the notice of intention to take or resume any land no objections are received by the Minister from any owner or occupier, or

where the objections, if any, received by him are in his opinion not sufficient to warrant the cancellation or amendment of the notice and in the foregoing cases, the approval or authorisation, if required, for the undertaking, constructing or providing of the public work, is duly obtained, the provisions of subsection (1) of this section shall apply as though this subsection had not been enacted.

(3) (a) (i) A person shall not enter into any transaction affecting land which is included in a current notice of intention to take or resume land except with the consent in writing of the Minister, unless the transaction is one mentioned in subsection (4) of this section.

(ii) A transaction affecting land which is included in a current notice of intention to take or resume land, not being a transaction mentioned in subsection (4) of this section, if entered into without the consent in writing of the Minister, is void.

(b) An application for the Minister's consent under this subsection shall be in writing and the Minister may require any person who is a party to a proposed transaction in respect of which an application for the Minister's consent is made, to furnish in writing, supported or not as he may require, by statutory declaration, such particulars of the proposed transaction as the Minister requires to enable him to determine whether any party to the transaction is fully aware of the implications of the notice of intention to take or resume the land.

(c) Where the Minister is of the opinion that any party to a transaction mentioned in paragraph (a) of this subsection, but not being a transaction mentioned in subsection (4) of this section, is not fully aware of the implications of the notice of intention to take or resume the land affected by the transaction, and that the party would, if his consent were given, be likely to incur loss, the Minister may withhold his consent to the transaction.

(d) Except as provided in this paragraph, a notice of intention to take or resume any land has no force or effect after the expiry of one year after the publication of that notice in the *Gazette*.

(4) The provisions of subsection (3) do not affect any transaction—

- (a) to which the State or Commonwealth, or any authority of the State or Commonwealth, or a person acting on behalf of the State, the Commonwealth or that authority, other than the Public Trustee, is a party;
- (b) by which land is acquired on sale under a writ or warrant of execution issued out of any court;
- (c) by way of discharge of a mortgage or sub-mortgage;
- (d) by way of partition between co-owners;
- (e) by way of deed of arrangement between beneficiaries under a will or settlement;
- (f) vesting in the personal representative of a deceased person, in his capacity as such, any land or interest in any land;

- (g) which vests any land, or any interest in land, in any trustee of the estate of a deceased person, in a trustee in bankruptcy, or in any new trustee under any instrument, in his capacity as trustee;
- (h) which is without consideration in money or money's worth and the purpose of which is to vest any land, or any interest in land, in any person beneficially entitled thereto, under or by virtue of any will or intestacy or by way of gift; or
- (i) by way of a deed of assignment or deed of arrangement under the Bankruptcy Act, 1924 of the Parliament of the Commonwealth, or any Act passed in amendment of, or substitution for, that Act.

(5) Upon the publication in the *Gazette* of a notice of intention to take or resume any land or of a notice cancelling or amending or extending the operation of one,—

so far as it affects land under the operation of the Transfer of Land Act, 1893—

the Registrar shall make in the document of title relating to the land a record of the notice of intention and of the cancellation or amendment or extension, if any, thereof;

so far as it affects land which is not under the operation of that Act—

the Registrar of Deeds shall by memorial in the Register of Deeds make a record of the notice and of the cancellation or amendment or extension, if any, thereof; and

so far as it affects land subject to the provisions of the Land Act, 1933, excepting such land as is under the operation of the Transfer of Land Act, 1893—

the Minister for Lands shall cause to be made in the appropriate register relating to the land a record of the notice and of the cancellation or amendment or extension, if any, thereof.

(6) The Registrar of Titles, the Minister for Lands or any other appropriate officer shall, upon submission for registration of any instrument relating to a transaction in connection with land included in a current notice of intention to take or resume land, require the production of the consent in writing of the Minister, if his consent is required to that transaction, or such evidence as he thinks necessary that the transaction to which the instrument relates is not in contravention of any of the provisions of subsection (3) of this section, and may refuse to register the instrument until that consent or evidence is produced to him; but the Registrar of Deeds is not bound to require the production of that consent or evidence unless he has reason to believe that the transaction is one affecting land which is included in a current notice of intention and that the consent in writing of the Minister is required under subsection (3) of this section.

(7) The provisions of subsections (2) to (6) inclusive of this section apply only to land taken or resumed on or after the day of the coming into operation of the Public Works Act Amendment Act, 1955.

3. The principal Act is amended by adding after section seventeen a new section as follows:—

S. 17A added.

17A. (1) At any time after the publication in the *Gazette* of a notice of intention to take or resume any land, a person authorised in writing by the Minister may at all reasonable times lawfully enter upon the land for the purpose of inspecting the land or making an assessment of compensation payable for the taking or resumption thereof.

Authorised persons may enter land at reasonable times to inspect, etc.

(2) The provisions of subsection (1) of this section do not prejudice or otherwise affect the provisions of section thirteen, section ninety-seven or section one hundred and twelve of this Act.

3A. Section eighteen of the principal Act is amended by substituting for the words, "such notice" in line one the passage, "the notice referred to in subsection (1) of section seventeen of this Act".

S. 18 amended. (V. No. 23 of 1950, s. 3.)

4. Subsection (1) of section twenty-three of the principal Act is amended by adding after the words, "referred to in" in line eight of paragraph (d) the passage, "subsection (1) of".

S. 23 amended. (V. No. 23 of 1950, s. 5 (a)).

5. Section twenty-nine of the principal Act is repealed and re-enacted as follows:—

S. 29 repealed and re-enacted.

29. (1) Where any land held, taken, resumed or otherwise acquired under this or any other Act, or in any other manner, for any public work, is in the opinion of the Governor not required for that work, subject to the provisions of this section, it may be sold by public auction

Land not wanted may be sold, etc.

or private contract or used by the Minister or the local authority in which it is vested for any other public work.

(2) Where the land referred to in subsection (1) of this section is to be sold, the Minister shall cause a notice to be published in the *Gazette* to the effect that the land is available for sale and shall cause a copy of the notice to be served on such person or persons as appear to him to have had an estate in fee simple in the land immediately prior to the taking, resumption or acquisition, either personally or by registered letter posted to their last known place of abode; but the service of a notice under this subsection does not imply an acknowledgment by the Minister of any right in the person or persons to be granted an option under the provisions of paragraph (c) of subsection (3) of this section.

(3) (a) A person who, immediately prior to the taking, resumption, or acquisition, as the case may be, had an estate in fee simple in the land may, subject to paragraph (f) of this subsection, within three months after the publication in the *Gazette* of the notice referred to in subsection (2) of this section, apply to the Minister for an option to purchase the land.

(b) Where within that period the Minister does not receive any application for an option to purchase the land or where he has for good cause refused the application or the applications received by him, he shall inform the Governor or, if the land is vested in the local authority, the local authority, that no person is entitled to be granted an option to purchase the land.

(c) Where the Minister is satisfied that a person qualified to apply under paragraph (a) of this subsection has applied for an option within the prescribed period, he shall, subject to paragraph (d) of this subsection, grant an option to that person.

(d) The Minister shall grant the option on such terms and conditions including, without limiting the generality of the conditions which might be imposed, a condition prohibiting the option holder from assigning the option, and, subject to subsection (6) of this section, on payment of such purchase price, as in his opinion are reasonable having regard to all the circumstances prevailing at the time of the taking, resumption or acquisition, as the case may be, and to the merits of each application; or he may refuse to grant an option to any person who, if required so to do, does not produce the consent in writing of all other persons who prior to the taking, resumption or acquisition, had a qualified, partial or joint interest in the land, whether by way of security or not, to the grant of an option to him.

(e) (i) Where the Minister receives applications for two or more options in respect of the same land, he may grant such of the applications and determine such order or priority for the exercise of the options granted as he thinks fit.

(ii) The Minister's decision on any matter referred to in this paragraph or in paragraph (c) or (d) of this subsection is final.

(f) For the purposes of this subsection a legal representative of a deceased person who had an estate in fee simple in the land immediately prior to the date of the taking, resumption or acquisition is to be regarded as entitled to apply for and, subject to paragraphs (c), (d) and (e) of this subsection be granted, an option to purchase the land only if he has power to purchase the land in his representative capacity, but a beneficiary of a deceased person who immediately prior to that date had an estate in fee simple in the land, and a person who prior to that date sold or contracted to sell, or otherwise alienated or disposed of his

estate in fee simple in the land whether absolutely or on terms are not entitled to apply for or be granted an option to purchase the land.

(4) (a) Where the land to be sold under this section is vested in a local authority the Minister shall, as soon as possible after granting the option or options, as the case may be, under subsection (3) of this section, furnish the local authority with particulars of all options granted in respect of that land and shall not thereafter grant any option in respect thereof.

(b) The local authority shall on compliance by the option holder or holders with the terms and conditions, if any, imposed by the Minister, be bound by the option or options granted by the Minister in respect of any land vested in it as though the option were validly granted by that local authority.

(c) A local authority shall not sell any land vested in it for any public work without the consent of the Governor to the sale and shall not apply for the Governor's consent except through the Minister nor until it receives from the Minister particulars of all options granted in respect of the land or the information that no person is entitled to be granted an option in respect thereof.

(5) Where the Minister has informed the Governor or the local authority, as the case requires, that no person is entitled to be granted an option in respect of any land to be sold under this section or where the option or options granted have not been duly exercised and have expired, the Governor, or where the land is vested in a local authority, the local authority with the consent of the Governor, may, after notice published in the *Gazette*, cause the land to be sold by public auction or private contract, or the land may be used by the Minister or the local authority for any other public work.

(6) Where the total amount of compensation or consideration has been paid by the Minister or the local authority for the land which is to be sold under this section, the purchase price payable by an option holder is not to exceed the aggregate amount of the compensation or consideration and the value of improvements, if any, made on the land by the Minister or authority subsequent to the taking, resumption or acquisition as the case may be.

6. The principal Act is amended by adding after section twenty-nine a new section as follows:—

S. 29A added.

29A. (1) Where land taken, resumed or acquired for any public work under this Act is not being used for that work, a person who, if a notice had been published in the *Gazette* to the effect that the land was available for sale, would have been entitled under the provisions of section twenty-nine of this Act to apply for an option to purchase the land, may by application in writing to the Minister request him to ascertain whether, in the opinion of the Governor, the land is or is not required for the work.

Previous owner in fee simple may request Minister to ascertain whether land taken is or is not required for public work.

(2) On receipt of the application, the Minister shall, if it appears to him that the applicant is a person who would have been so entitled to apply for an option, refer the application to the Governor for decision, and when a decision is made shall communicate it to the applicant.

(3) Where, after a decision is made by the Governor that any land is required for the work for which the land was taken, resumed or acquired, an application under subsection (1) of this section is received by the Minister within a period of twelve months after the decision was made, the Minister may, without referring the application to the Governor, communicate that decision to the applicant.

(4) Where, upon an application under subsection (1) of this section, the Governor's decision is that the land is not required for that work, the Minister shall, as soon as practicable after communicating the decision to the applicant, cause a notice to be published in the *Gazette* as provided in subsection (2) of section twenty-nine of this Act.

S. 36
repealed and
re-enacted.

7. Section thirty-six of the principal Act is repealed and re-enacted as follows:—

Period
limited for
making
claim for
compensation.

36. (1) Except where a direction for the hearing of a claim is made by a Judge under section thirty-nine of this Act—

- (a) where land is taken or resumed prior to the coming into operation of the Public Works Act Amendment Act, 1955, a person is not entitled to make a claim for compensation under this Act in respect of that land, after the expiry of two years after the publication in the *Gazette* of the notice taking or resuming the land; but where the claim is for compensation under section thirteen or section one hundred and thirteen in respect of acts committed prior to the coming into operation of the Public Works Act Amendment Act, 1955, a person is not entitled to make the claim after the expiry of one year after the commission of the acts complained of;
- (b) where land is taken or resumed after the coming into operation of the Public Works Act Amendment Act, 1955, a person is not entitled to make a claim for compensation under this Act in respect of that land, after the expiry of six months after the publication in the *Gazette* of the notice taking or resuming the land; but where the claim

is for compensation under section thirteen or section one hundred and thirteen in respect of acts committed after the coming into operation of the Public Works Act Amendment Act, 1955, a person is not entitled to make the claim after the expiry of six months after the commission of the acts complained of.

(2) (a) Any period (whether it has expired or not) limited by subsection (1) of this section for making a claim for compensation under this Act may, on the application of a person desirous of making a claim, be extended by the Minister if he is satisfied that the application is reasonable and made in good faith.

(b) At the expiry of the appropriate period so limited or extended, as the case may be, no action or proceeding shall lie against the Minister or local authority in respect of any claim for compensation.

8. Section forty-six of the principal Act is repealed and re-enacted as follows:—

S. 46
repealed and
re-enacted.

46. (1) (a) Within ninety days after

(i) the service of the claim under section forty-one of this Act, or

(ii) compliance with the demand, if any, made for further particulars under section forty-two of this Act

If title not
disputed
claim to be
examined
within 90
days and
offer made.

if the claimant's title is not disputed, or is disputed only as to part of the land, or

- (b) where a judgment of the Court under section forty-five of this Act is in favour of the claimant's title, within ninety days after the judgment of the Court,

the respondent shall cause the claim to be examined, and a report made as to the value of the land and as to the damage sustained by the claimant by reason of the taking.

Sixth
Schedule.

(2) As soon as possible after the report is received by the respondent the respondent shall serve on the claimant in one of the forms in the Sixth Schedule an offer of compensation with respect to the land or part of the land the title to which is not disputed or is decided in the claimant's favour, as the case may be, and the offer when served is to be regarded as an admission of the claimant's title to the land in respect of which it is made.

(3) As soon as practicable after making such offer (but subject to all the other provisions of this Act) the respondent shall on application by the claimant pay to the claimant, as and by way of an advance or interim payment on account of the compensation, an amount equivalent to two-thirds of the amount of the offer and such payment may be so received and retained by the claimant without prejudice to his rights under section forty-seven or any other provision of this Act.

S. 46A added.

9. The principal Act is amended by adding after section forty-six a new section as follows:—

Claim and
offer may
be amended.

46A. At any time before a claim for compensation is settled in full, if proceedings for determination of the amount of compensation have not been commenced in any Court, the claimant may with notice to the respondent amend the claim only as to the amount claimed and the respondent may with notice to the claimant amend the offer of compensation.

10. Section forty-seven of the principal Act is amended— S. 47 amended.

- (a) by adding after the word, "offer" in line one of subsection (1) the passage, "or amended offer, as the case may be,";
- (b) by deleting the words, "and nominating an assessor to act for the claimant" in lines four and five of subsection (1);
- (c) by adding after the word, "offer" in line two of subsection (2) the passage, "or the offer as amended, as the case may be,".

11. The principal Act is amended by adding after section forty-seven new sections as follow:— Ss. 47A-47D added.

47A. Where notice rejecting an offer or amended offer of compensation is served on the respondent, the compensation payable to the claimant may be determined by any one of the following methods— Method of determining compensation when offer rejected.

- (a) by agreement between the respondent and the claimant; or
- (b) by an action for compensation by the claimant against the respondent; or
- (c) by reference of the claim to the Compensation Court.

47B. If the respondent fails to serve on the claimant an offer of compensation within one hundred and twenty days after— If offer not made within 120 days of service of claim claimant may commence proceedings.

- (a) the service of the claim under section forty-one of this Act, the claim not having been amended; or
- (b) receiving notice of amendment, where the claim is amended under section forty-six A of this Act; or

- (c) compliance with the demand, if any, for further particulars under section forty-two,

notice disputing the claimant's title in whole or in part not having been served on the claimant as prescribed by this Act; or

- (d) the judgment, if any, of the Court under section forty-five of this Act, if

in favour of the claimant's title, the claimant may either

institute an action for compensation against the respondent

or

refer his claim for compensation to the Compensation Court.

Claimant
failing to
proceed after
serving
notice of
rejection of
offer on
respondent.
(Cf. s. 39
ante.)

47C. (1) Where a claimant does not, within six months after serving on the respondent a notice rejecting the offer or amended offer as provided by section forty-seven of this Act, institute an action for compensation against the respondent or refer his claim for compensation to the Compensation Court, the Minister or local authority, as the case may be, may after giving thirty days' notice to the claimant make an application to a Judge, accompanied by the rejected offer and the claim for compensation, for determination of the compensation and thereupon the Judge may direct the offer or the amended offer, as the case may be, to be accepted or the claim to be heard and determined by a Compensation Court under this Act. There is no right of appeal against a Judge's direction under this subsection.

(2) Where the Judge directs a claim to be heard by the Compensation Court under this section, and the claimant fails to make a valid appointment of an assessor to act for the claimant, the Judge may appoint an assessor to act in that Court for the claimant.

(3) The Compensation Court shall, subject to this Act, hear and determine the claim and its determination is final.

(4) If the claimant, after due notice, fails to attend the hearing, the Master, or some person nominated by him, may represent the claimant and act on his behalf in all matters incidental to the claim or the hearing; and the moneys payable as compensation shall be paid into the Supreme Court and held there subject to the provisions of section seventy-two.

47D. (1) (a) A claimant shall not commence or maintain an action for compensation except as provided in Section 47A or 47B of this Act, nor unless he gives to the respondent thirty days' notice before instituting proceedings.

When action for compensation lies. (V. Clth. 1906, No. 13, s. 37 (1)).

(b) Where under this Act a person may bring an action for compensation, the action may be instituted and maintained in a court of competent jurisdiction and shall be heard and determined in the same manner as ordinary actions, with ordinary rights of appeal in regard to the amount of compensation awarded or to any question of law or fact or of mixed law and fact; but where provision is made for any matter before the Court to be determined by a jury, the Judge or magistrate, as the case requires, shall determine the matter without a jury.

(2) Where an action for compensation has been instituted in respect of the taking or resumption of any parcel of land, the Court may, on the application of the defendant, by order direct any other person claiming compensation in respect of the taking or resumption of that parcel of land, or who appears to have had, at the date of the taking or resumption, an estate or interest in that parcel of land, to join as a plaintiff in the action within a time specified in the order.

(V. Clth. 1906, No. 13, s. 37 (3), (4) (5)).

(3) If the person so ordered fails to join as a plaintiff in the action within the time specified in the order, he is absolutely debarred thereafter from instituting an action for compensation against the defendant or from referring to the Compensation Court any claim for compensation in respect of that parcel of land.

(4) Where, by reason of the joinder of a new plaintiff or otherwise, the total compensation claimed in an action for compensation in a Local Court exceeds the amount up to which that Court has jurisdiction, the Local Court shall refrain from proceeding further with the action which shall, on application to the Supreme Court by any party to the action, be removed to the Supreme Court, and shall proceed in that Court as if it had been instituted in that Court.

(5) If the title of the claimant to any part of the land taken or resumed is being disputed, the proceedings under this section shall, unless the claimant admits the objections to his title, be adjourned pending the judgment of the Court on that issue under section forty-five.

(6) (a) On the trial of the action the Court shall,

(i) determine the amount of compensation payable by the defendant to the plaintiff in respect of the taking or resumption of the land, having regard solely to the provisions of this Act and in particular to the matters prescribed in sections sixty-three, sixty-three A, sixty-four, sixty-five, sixty-six and seventy-nine;

(ii) where two or more persons are entitled to share the compensation, determine the amount payable to each person and the manner in which it is to be paid.

(b) The costs of the action are in the discretion of the Court.

12. Section forty-eight of the principal Act is ^{S. 48} amended—

(a) by substituting for subsections (1) and (2) the following subsections:—

(1) (a) Where a claimant rejects an offer and desires to refer his claim to the Compensation Court, he shall, after the service of, or simultaneously with, the notice rejecting the offer referred to in section forty-seven, serve on the respondent the appointment of an assessor in the form in the Eighth Schedule together with the consent and declaration relating thereto in the form set out in the Ninth Schedule.

Eighth
Schedule.

Ninth
Schedule.

(b) A claimant who desires to refer his claim to the Compensation Court under section forty-seven B shall serve on the respondent the appointment of an assessor and the consent and declaration relating thereto in the forms respectively set out in the Eighth and Ninth Schedules.

Eighth and
Ninth
Schedules.

(c) Within thirty days after the receipt by the respondent of the appointment by the claimant of an assessor, the respondent shall—

(i) where the offer is rejected under section forty-seven,—

either

amend his offer by increasing the amount of compensation stated therein

or

appoint an assessor and serve on the claimant a copy of the appointment in the form set out in the Eighth Schedule; or

Eighth
Schedule.

- (ii) where an offer has not been previously served on the claimant—

either

serve on the claimant an offer of compensation

or

appoint an assessor and serve on the claimant a copy of the appointment in the form set out in the Eighth Schedule.

Eighth
Schedule

(2) (a) If within thirty days after the service on the respondent of the appointment of an assessor by the claimant, the respondent does not, as the case requires—

- (i) amend the offer by increasing the amount of the compensation referred to therein, or
- (ii) appoint an assessor and serve a copy of the appointment on the claimant, or
- (iii) serve on the claimant an offer of compensation,

the claimant may make application to the Master for the appointment of an assessor to act for the respondent and the Master shall appoint an assessor accordingly.

(b) Upon the service on the claimant of the copy of the appointment of assessor by the respondent, or upon the appointment of an assessor by the Master under this section or a Judge under section thirty-nine or forty-seven C or upon the execution of an agreement under section fifty-two the amount of compensation to be paid shall be determined by the Compensation Court. ;

- (b) by adding after the word, “upon” in line one of subsection (3) the words, “notice of”.

13. Section fifty-two of the principal Act is ^{S. 52} amended—

(a) by adding after subsection (1) the following subsection:—

(1a) Where the claimant and respondent fail to agree as provided in subsection (1) of this section a Judge may, on the application of the claimant appoint a person to hear and determine the claim and specify the fee to be paid to him for his services. ;

(b) by adding after subsection (3) the following subsection:—

(3a) (a) If the determination of the person appointed to hear and determine the claim under this section is not acceptable to a party, that party may, after giving, within thirty days after the determination is made known to him, notice to the other party, apply to a court of competent jurisdiction, in which an action for compensation might be instituted, to determine the claim.

(b) Where the party giving notice under paragraph (a) of this subsection fails so to apply to a court of competent jurisdiction within sixty days after the notice was given to the other party, the other party may apply to a court of competent jurisdiction to determine the claim.

(c) Where an application is made by either party to a court of competent jurisdiction under this section the court shall hear and determine the claim and the provisions of section forty-seven D of this Act shall apply *mutatis mutandis*.

P.A.
amended.

14. The principal Act is amended—

- (a) by substituting for the word, “Court” in the heading immediately preceding section fifty, the words, “Compensation Court”;
- (b) by adding after the word, “Hearing” in the heading immediately preceding section fifty-six, the words, “by the Compensation Court”;
- (c) by substituting for the heading, “The Award” immediately preceding section sixty-three the heading, “Compensation How Ascertained”.

S 63
amended

15. Section sixty-three of the principal Act is amended—

- (a) by adding before the word, “awarded” in line two the words, “offered, paid, or”;
- (b) by adding after the word, “taken” in line two the words, “or resumed”;
- (c) by substituting for the passage commencing with the words “first day” and ending with the words “such notice” in lines three, four, five, six, seven and eight of paragraph (a) the words “sixtieth consecutive day preceding the date of the gazetting of the notice of the taking or resumption”;
- (d) by substituting for the proviso to paragraph (a) the following proviso:—

Provided that where any building or other improvements have been made on such land after the sixtieth consecutive day preceding the date of the gazetting of the notice of the taking or resumption but before the date of the gazetting of that notice, or, in the case of a railway or other work authorised by a special Act

after the first day of January or the first day of July, as the case may be, last preceding the first day of the session as aforesaid, but before the date of the gazetting of the notice of the taking or resumption, the value of those buildings or improvements shall be allowed, not exceeding their actual cost. ;

- (e) by adding a proviso to follow the proviso to paragraph (a) as follows:—

Provided also that

- (i) where a notice of intention to take or resume any land is published in the *Gazette*, whether or not that notice is amended by a subsequent notice, the date of the gazetting of the notice first referred to in this proviso shall, in order to ascertain the value of the land for the purposes of paragraph (a) of this section, be regarded as the date of the gazetting of the notice of the taking or resumption of the land;
 - (ii) where land which is entered under section one hundred and twelve is subsequently taken or resumed, the date of first entry under that section shall, in order to ascertain the value of the land for the purposes of paragraph (a) of this section, be regarded as the date of the gazetting of the notice of the taking or resumption of the land;
- (f) by inserting after paragraph (a) the following paragraph:—
- (aa) The loss or damage, if any, sustained by the claimant by reason of—
 - (i) removal expenses; or
 - (ii) disruption and reinstatement of a business; or

- (iii) the discontinuance of building works in progress at the date when such land is taken or resumed and the termination of building contracts in consequence thereof; or
 - (iv) architect's fees or quantity surveyor's fees actually incurred by the claimant in respect to proposed buildings or improvements which cannot be commenced or continued in consequence of the taking or resumption of such land; or
 - (v) any other facts which the respondent or the Court considers it just to take into account having regard to the circumstances of each case. ;
- (g) by substituting for paragraph (c) the following paragraph:—
- (c) Where the land is taken or resumed compulsorily—
 - (i) the respondent may include in the offer of compensation such amount, not exceeding ten per centum of the amount of compensation determined under this section, as the respondent considers sufficient, for compulsory taking; or
 - (ii) if a Court is determining the amount of compensation, the Court may include in the award such amount, not exceeding ten per centum of the amount of compensation determined under this section, as the Court deems proper, for compulsory taking.;

- (h) (i) by adding after the word, "taken" occurring firstly in line one and secondly in line four of paragraph (d), the words, "or resumed";
 - (ii) by adding after the word, "date" in line four of paragraph (d) the words, "of the payment of compensation or the date";
 - (iii) by adding before the word, "shall" in line four of paragraph (d) the passage, "whichever occurs first,";
 - (iv) by adding after the word, "annum" in the last line of paragraph (d) the passage, "or such higher rate as the respondent or the Court considers adequate, having regard to the circumstances of each case";
- (i) by adding after paragraph (d) the following paragraph:—
- (e) (i) Where the land taken or resumed does not produce any rent or profits, interest shall, subject to subparagraph (ii) of this paragraph, be paid on the amount of compensation ascertained under this section. The rate of interest shall be the rate ruling as at the date of the taking or resumption, in respect of overdraft accommodation granted by the Commonwealth Trading Bank of Australia.
 - (ii) The interest is payable from the date of the service of the claim on the respondent to the date of settlement of the claim, or where the land was entered for the construction or carrying out of the work prior to the taking or resumption, from the date of

entry to the date of settlement of the claim; but if the compensation awarded by the Compensation Court or other court of competent jurisdiction is not more than the amount offered by the respondent, the compensation shall only bear interest to the date when the offer was served on the claimant.

- (iii) Subject to subparagraph (ii) of this paragraph, when any amount representing an advance payment of the compensation is paid to a claimant, interest is payable on the total amount of compensation only to the date of the first of such payments, and is payable thereafter only on the balance outstanding from time to time.

S. 63A added.

16. The principal Act is amended by adding after section sixty-three a new section as follows:—

Apportionment of rates and taxes.

63A. (1) (a) Where the land was not occupied by or on behalf of or through the claimant at the time of the taking or resumption all rates and taxes which, under the provisions of any Act are a charge on the land and are payable or paid by the claimant, shall be apportioned between the claimant and respondent as at the date of publication in the *Gazette* of the notice taking or resuming the land.

(b) Where the land was occupied by or on behalf of or through the claimant at the time of the taking or resumption, the rates and taxes referred to in paragraph (a) of this subsection shall be apportioned between the claimant and respondent as at the date when possession was given up by the claimant to the respondent or

when by agreement with the respondent the claimant ceased to be responsible for the payment of rates and taxes.

(2) On the apportionment of rates and taxes in accordance with the provisions of subsection (1) of this section—

(a) the aggregate amount, if any, due by the claimant as rates and taxes at the date as at which the rates and taxes are required to be apportioned shall, if not paid by the claimant, be deducted from the amount of the compensation;

(b) the aggregate amount, if any, paid by the claimant as rates and taxes in respect of any period subsequent to the date as at which the rates and taxes are required to be apportioned, shall be added to the amount of compensation. S. 80 amended.

(3) The provisions of this section apply to any land taken or resumed, except land for the taking or resumption of which the compensation has, at the date of the coming into operation of the Public Works Act Amendment Act, 1955, been paid or settled in full.

17. Section sixty-four of the principal Act is amended by adding before the word, "awarded" occurring firstly in line two and secondly in line three, the passage, "offered, paid or". S. 64 amended.

18. Section sixty-five of the principal Act is amended by substituting for the word, "Court" in line one the words, "Compensation Court or the court hearing the action for compensation". S. 65 amended.

S. 66
amended.

19. Section sixty-six of the principal Act is amended—

- (a) by substituting for the word, “Court” in line one the words, “Compensation Court or the court hearing the action for compensation”;
- (b) by substituting for the word, “they” in line two the word, “it”;
- (c) by substituting for the word, “they” occurring twice in line five the words, “the Court”.

P.A.
amended.

20. The principal Act is amended by adding as a heading immediately preceding section sixty-seven the words,

“Assessors’ Fees, Costs and Award of
Compensation Court.”

S. 67
amended.

21. Section sixty-seven of the principal Act is amended by substituting for the passage “shall be entitled to a fee for every day upon which he attends a sitting of the Court” in lines one and two, the passage, “who is a member of the Compensation Court shall be entitled to a fee”.

S. 68
amended.

22. Section sixty-eight of the principal Act is amended—

- (a) by adding after the word, “party” in line two of subsection (1) the words, “are in the discretion of the Compensation Court and”;
- (b) by adding after the word “the” in line four of subsection (1) the word, “Compensation”;
- (c) by repealing subsection (2).

23. Section seventy-one of the principal Act is amended by substituting for the words, "make its award" in line one the passage, "give reasons for, and make its award,".

S. 71
amended.

24. Section seventy-two of the principal Act is amended—

S. 72
amended.

- (a) by substituting for the word, "either" in line five of subsection (3) the word, "whether";
- (b) by adding after the words, "Compensation Court" in lines five and six of subsection (3) the passage, ", the Court hearing an action for compensation,";
- (c) by adding after the words, "Compensation Court" in the last line of subsection (3) the words, "or a Court hearing an action for compensation".

25. Section seventy-five of the principal Act is amended—

S. 75
amended.

- (a) by adding after the word, "is" in line one the words, "payable or";
- (b) by adding after the word, "taken" in the last line the words, "or resumed".

26. Section seventy-five A of the principal Act is amended—

S. 75A
amended.
(V, No. 48
of 1953, s. 5.)

- (a) by adding after the word, "is" in line two the words, "payable or";
- (b) by adding after the word, "taken" in the third and the last lines the words, "or resumed".

S. 79
amended.

27. Section seventy-nine of the principal Act is amended—

- (a) by adding after the words, “Compensation Court” in line two the words, “or a court hearing an action for compensation”;
- (b) by deleting the word, “Compensation” in line eight.

28. Section eighty of the principal Act is amended—

- (a) by adding after the word, “shall” in line nine the passage, “, as the case requires,”;
- (b) by adding after the word, “certify” in line nine the passage, “that pursuant to the provisions of section twenty-nine of this Act a notice to the effect that the land was available for sale was duly published in the *Gazette* and that no person is entitled to be granted an option to purchase the land or that the option or options granted in respect thereof have not been duly exercised and have expired, and”.

S. 81
amended.

29. Section eighty-one of the principal Act is amended by adding after the word, “Act” in line two the passage, “, or on the apportionment of rates and taxes as provided in section sixty-three A of this Act,”.

Seventh
Schedule
amended.

30. The Seventh Schedule of the principal Act is amended by deleting the words, “I herewith enclose a notice appointing an assessor on my behalf, together with a copy of his consent and declaration” in the last three lines of the notice.
