

*The Lands Resumption Act, 1894*

WESTERN AUSTRALIA

ANNO QUINQUAGESIMO OCTAVO

VICTORIÆ REGINÆ

No. 33

An Act to authorise the Acquisition of Land for certain Public Purposes. [*Assented to 28th November, 1894.*]

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

1. This Act may be cited as 'The Lands Resumption Act, 1894.' Short title

2. Lands required for any of the following purposes, that is to say :— Power to take lands

- (a) For opening, altering, or diverting roads ; or
- (b) For the erection of State schools ; or
- (c) For the accommodation of shipping, the lading and unloading of goods, or for use and occupation in connection with any harbour or other public work ; or
- (d) For the construction of, and approaches to bridges, viaducts, jetties, and wharves ; or
- (e) For botanical gardens, parks, pleasure grounds, and places for public recreation ; or
- (f) For public buildings and erections ; or
- (g) For the construction of tanks, dams, reservoirs, and wells ; or
- (h) For any works or purposes incidental to any of the purposes aforesaid—

may be taken, under and subject to the provisions of this Act, by the Governor in Council.

3. Nothing in this Act contained shall be deemed to apply Saving to the waste lands of the Crown, or to in any way affect any right in respect of any land heretofore granted or otherwise disposed of by the Crown, which is reserved to the Crown or any person or persons acting in that behalf by the authority of the Crown, to do any of the acts or things by this Act authorised to be done which, if this Act had not been passed, might lawfully have been done by Her Majesty, her heirs and successors, or any person acting in that behalf by her or their authority, under any such reservation as aforesaid.

4. With the approval of the Governor in Council, any person Power to survey lands intended to be taken or persons employed by the Commissioner of Crown Lands, or his or their servants or assistants, may, from time to time, enter upon

*The Lands Resumption Act, 1894*

any lands intended to be taken under this Act for the purpose of surveying and marking out the same, and may erect posts, pegs, or other marks thereon in such places as he or they or any of them may think proper.

Penalty on persons obstructing, &c., surveyors, &c.

5. Every person obstructing or interfering with the person or persons so employed, or his or their servants or assistants, while entering on or surveying any land, and every person wilfully or negligently moving, breaking, throwing down, altering, defacing, destroying, injuring, or concealing any such post, peg, or mark as aforesaid shall, on summary conviction before any two or more Justices of the Peace in Petty Sessions, be liable to a penalty not exceeding Ten pounds.

How lands to be taken

6. (1) When any lands are intended to be taken under this Act the Governor in Council may, by order, declare such intention; and upon the publication in the 'Government Gazette' of such order setting forth a description of such lands, the same shall be deemed to have been taken, and to have been taken upon the day of the date of such order.

Vesting

(2) Upon the publication of such Order in Council, the lands therein mentioned, and as more particularly defined in the plan thereof hereinafter referred to, and the fee simple and inheritance thereof, together with all rights or easements in or over the same, and all the estate, use, trust, and interest of every person therein shall thenceforth be vested in Her Majesty, her heirs, and successors, for ever.

Plan and description to be kept

7. The Commissioner of Crown Lands shall cause to be prepared and kept in his office a plan and description of any lands taken under this Act, and shall, in all cases in which he may know or be able to ascertain the name and address of the owner (or his agent) and occupier of such lands, give to such owner (or agent) and occupier notice of the taking of the lands, together with a copy of the said plan and description.

Compensation

8. Subject to the provisions of this Act, in all cases in which lands are taken under the authority of this Act, compensation shall be paid to the owner or owners of such lands, and every person having any estate or interest therein, legal or equitable.

No compensation if Crown can resume

9. (1) When any land is taken under the authority of this Act the whole of which the Crown is entitled to resume under a power of resumption contained in the grant or other document of title thereof, or to be contained in such grant or document when issued in pursuance of any Land Act or Regulations, then in such case no compensation shall be payable for the land taken under the authority of this Act.

Except for excess

(2) If the land taken under the authority of this Act exceeds the quantity which the Crown is entitled to resume as aforesaid, then compensation shall be payable in respect only of the difference in area between such quantity and the whole quantity taken.

*The Lands Resumption Act, 1894*

(3) The compensation payable in respect of such difference in area shall be the sum which bears the same proportion to the amount of compensation that would otherwise be payable in respect of the whole quantity of land taken, as such difference in area bears to the area of such whole quantity; and, the compensation that would otherwise be payable in respect of such whole quantity, shall be ascertained as provided in the next following section.

In which case proportionate compensation payable

10. In estimating the amount of compensation to be paid in respect of any land taken under the authority of this Act, regard shall be had solely to the matters following, that is to say:—

Compensation, how estimated

- (a) The probable and reasonable price at which such land in fee simple, with any improvements thereon, may be expected to sell at the time when taken; and
- (b) The damage, if any, sustained by the owner of such land by reason of the severance thereof from the other adjoining lands of such owner, or by reason of such other lands of such owner being otherwise injuriously affected by the taking.

11. When compensation is payable under this Act the provisions of Sections sixteen to nineteen, both inclusive, and of Sections twenty-one, twenty-three, and twenty-five of 'The Railways Act, 1878,' and of the second Section of 'The Railways Amendment Act, 1882,' and of Sections three to seven, both inclusive, of 'The Railways Amendment Act, 1893,' relating to the methods of settling compensation, arbitration, and other matters in such sections mentioned, shall apply and be followed, together with the forms in such sections referred to, as nearly as practicable.

Application of Sections of certain Railway Acts

12. The provisions of Sections eleven to twenty-nine, both inclusive, of 'The Railways Amendment Act, 1879,' and Section twenty-two of 'The Railways Amendment Act, 1881,' shall apply to compensation moneys payable under this Act, and to the payment, application, and distribution of the same as if such sections had been herein re-enacted.

Application of sections of further Acts

13. Whenever 'the Commissioner' is mentioned in any of the sections referred to in the last two preceding sections of this Act, such reference shall be deemed to be to the Commissioner of Crown Lands, and such sections shall be read as if the lands taken under this Act had been taken by the Commissioner of Crown Lands.

Commissioner of Railways to be read Commissioner of Crown Lands

14. Section A of 'The Shortening Ordinance, 1853,' shall be incorporated with and taken to form a part of this Act to all intents and purposes, and in as full and ample a manner as if the said section had been introduced and fully set forth in this Act.

Shortening Ordinance

W. C. F. ROBINSON,  
GOVERNOR.