

The Public Works Act, 1902.
(2° Edward VII., No. 47.)

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PUBLIC WORKS.

No. 47 of 1902.

(As amended by No. 8 of 1906 and No. 60 of 1926.)

**AN ACT to consolidate and amend the Laws relating
to Public Works.**

[Assented to 20th December, 1902.]

BE it enacted by the King'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 *Public Works Act, 1902*, and is divided into the following parts:—

Short title and
division into
parts.

PART I.—PRELIMINARY, SS. 2-9.

PART II.—TAKING LANDS FOR PUBLIC WORKS, SS.
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PART I.—PRELIMINARY.

2. In this Act, if not inconsistent with the context,—

Interpretation.

“Claimant” means any person claiming compensation under this Act.

“Crown land” means and includes all land of the Crown, whether dedicated to any public purpose or not, except land granted or agreed to be granted in fee simple, or held or occupied under the Crown by lease or license, or for any other estate or interest, or land reserved under the Permanent Reserves Act, 1899.

“Government work” means any work constructed or intended to be constructed by or under the control of His Majesty, or the Governor, or the Government of Western Australia, or any Minister of the Crown.

“Judge” means a Judge of the Supreme Court.

“Local authority” means and includes any municipal council or road board, and any persons or body, however designated, having authority under any statute to undertake the construction of any public work.

“Local work” means a work constructed or intended to be constructed by or under the control of a local authority.

“Master” means the Master of the Supreme Court.

“Minister” means the Minister for Works appointed under this Act, and also any member of the Executive Council acting as Minister for Works.

“Public notice” means a notice by advertisement in the *Government Gazette*, but the Minister may give notice or direct notice to be given of any matter or thing by such additional means as to the Minister may seem fit.

“Publicly notified” means notified by public notice.

“Public reserve” means any land reserved for public purposes in accordance with section thirty-nine of the Land Act, 1898, or any Act thereby repealed, and whether vested in any local authority or trustees or not.

“Public work” and “work” mean and include:—

- (1) Every work which His Majesty, or the Governor, or the Government of Western Australia, or any Minister of the Crown, or any local authority is authorised to undertake under this or any other Act.

- (2) Any railway authorised by special Act or any work whatsoever authorised by any Act.
- (3) Tramways.
- (4) Any works for or in connection with the supply of water to, or for or in connection with the sewerage of, any city, town, or district, including all reticulations.
- (5) Buildings for the occupation of either or both of the Houses of Parliament or for public offices.
- (6) Hospitals, lunatic asylums, courthouses, gaols, watch-houses, lock-ups, police barracks, or quarters.
- (7) Observatories.
- (8) Public schools or any other schools authorised to be established wholly or in part at the public cost by any Act in force for the time being, including teachers' residences and play-grounds.
- (9) Public libraries, mechanics' or miners' institutes, agricultural halls, or schools of art.
- (10) Wharves, ferries, piers, jetties, and bridges.
- (11) Parks or gardens or grounds for public recreation or places for bathing, and for the reclamation of land for or in connection therewith.
- (12) Public cemeteries.
- (13) Public wells or works for the conservation of water.
- (14) The protection and preservation of any cave or place of scientific interest.
- (15) The establishment of public abattoirs.
- (16) Breakwaters, leading marks, or beacons for purposes of navigation, docks, slips, the protection of river banks, reclamations, the excavation of new channels, landing places for silt, any other works for the improvement of harbours or rivers, or for use in connection with any harbour.
- (17) Quarries or works for procuring stone, gravel, earth, or any other material required for the construction of, or any purpose connected with any public work as aforesaid.

(18) Drainage works in connection with any city, town, or district.

(19) Any building or structure of whatsoever kind which, in the opinion of the Governor, is necessary for any public purpose.

No. 8 of 1906,
s. 3.

(20) Any road, stock route, viaduct, or canal.

(21) Any work incidental to any of the aforesaid works.

(22) Any land required for on in connection with any work as aforesaid.

(23) Any survey in connection with any proposed public work.

“Public Works Acts” means and includes this and all other Acts relating to Public Works, and all proclamations, Orders in Council, and regulations made under any such Acts.

“Railway”: See section ninety-five.

“Registrar” means the Registrar of Titles under the Transfer of Land Act, 1893.

“Resident Magistrate” includes Government Resident and Police Magistrate.

“Respondent”: See section forty.

“Road”: See section eighty-four.

“Special Act” means any Act of the Parliament of Western Australia with which this Act is incorporated, authorising the construction of a public work.

“Surveyor” means a surveyor licensed under the Licensed Surveyors Act, 1895.

Repeal.
First Schedule.

3. (1.) The several Acts specified in the First Schedule hereto are hereby repealed to the extent therein stated.

(2.) Compensation for lands taken or resumed for public works before the commencement of this Act, unascertained at the passing of this Act, shall be ascertained in the manner provided by this Act.

Governor may
make regulations
for conduct of
officers.

4. The Governor may make regulations for the conduct of all persons employed by the Government under this Act, or in or about any works which may be constructed by the Government under the authority thereof.

5. (1.) The Governor shall appoint some member of the Executive Council to be the Minister for Works, who shall be charged with the administration of this Act, and whose office shall be one of the principal executive offices of the Government under the Constitution Act.

Minister for Works.

(2.) The Minister for Works holding office at the commencement of this Act shall be deemed to have been appointed under this Act, and any reference in any Act or document to the Director of Public Works shall be read as a reference to the Minister for Works.

6. Where the Minister enters into any contract or agreement, under seal or otherwise, or makes any lease or grants any easement, under this or any other Act, all the rights and liabilities in respect thereof, and all benefit and advantage thereunder, or interest therein, shall vest in and be enforceable by and against his successor or successors in office, without the necessity of any transfer or assignment whatsoever.

Contracts, etc., of Minister to devolve on his successor.

7. The Governor may create such offices, and appoint such engineers, architects, clerks, and other officers and persons as may be necessary for the administration of this Act, and for the execution of all Government works; and may assign such functions as he shall think fit to such persons respectively, all of whom shall hold office at the Governor's pleasure, and shall receive such salaries as Parliament determines.

Appointment of engineers and other officers.

8. (1.) During each ordinary session there shall be laid before Parliament full and detailed estimates of the expenditure proposed to be made upon all Government works during the financial year.

Annual estimates.

(2.) Separate estimates shall be laid before Parliament in reference to the proposed expenditure on works constructed in whole or in part out of loan moneys.

(3.) When moneys are proposed to be voted in any session for the construction of railways, the Minister shall insert in the Appropriation Bill of such session a schedule in the form of the Second Schedule hereto.

Appropriation Bill for railways. Second Schedule.

9. (1.) The Minister shall, during each session, lay before Parliament a full departmental report of the Government works carried out under the authority of this Act during the preceding financial year; also a full and correct statement of the expenditure during such year on all the works and services chargeable to the fund appropriated for public works.

Annual accounts and expenditure.

No. 8 of 1906, s. 4.

(2.) The Minister shall, on the annual estimates for the department, show against each item the liabilities in respect thereof as at the end of the financial year.

PART II.—TAKING LANDS FOR PUBLIC WORKS.

Power to take.

Empowering the taking of land for public work.

10. Whenever His Majesty, or the Governor, or the Government of the State, or any Minister of the Crown, or any local authority is authorised, by this or any other Act, to undertake, construct or provide any public work, any land required for the purposes of such work may be taken under the provisions of this Act.

Governor may authorise works.

11. The Governor, by Order in Council, may authorise the Minister to undertake, construct, or provide any public work subject as to railways to section ninety-six, and such authorisation shall be deemed an authority to such Minister by and under this Act.

What may and what may not be taken.

Crown lands, reserves, etc.

12. Whenever power is given to take land for any public work under the provisions of this Act, such power, except where otherwise specially provided—

Includes the power—

- (1) to set apart or procure the setting apart of Crown land for such purpose, and
- (2) subject to the provisions of the Permanent Reserves Act, 1899, the power to take or set apart any part of any public reserve or of any land vested in any local authority for any purpose whatsoever, or of any land vested in trustees for any public purpose whatever, whether local or general.

Power to Minister to take water or acquire land for purpose of supplying water for railway or other purposes.

13. (1.) The Minister may from time to time impound, divert, and take any water from any stream, pool, tank, or reservoir of water, or may purchase or acquire any right or interest therein, for the purpose of supplying water for the use of any public work or in connection therewith, or for any premises connected with any public work, whether such public work is situated on land entitled to the use of such water or not, and also may take or acquire any land which shall be necessary for any such purposes.

(2.) Any water dealt with and any land taken or acquired as aforesaid, and any right or interest therein respectively, and all machinery, appliances, and works used in connection with or for the purposes of such water supply are hereinafter included in the expression "waterworks," and all such waterworks, and also all waterworks already or hereafter to be constructed or acquired, for all or any such purposes shall form a part of the railway or other public work for the use of which they have been constructed or acquired.

Definition of term "waterworks."

(3.) The Minister may enter on any land, for the purpose of laying, erecting, examining, or repairing waterworks thereon.

Power to Minister to enter on land to lay pipes and examine and repair waterworks.

(4.) In exercise of the powers conferred by this section, as little damage as possible shall be done, and compensation shall be made to the owner or occupier of land for water impounded, diverted, or taken thereon or therefrom, and for damage done or occasioned by the exercise of such powers.

How damage ascertained.

(5.) Such compensation shall be ascertained and settled in the manner provided by any agreement made by the Minister, or in the manner provided by Part III. of this Act.

13a. (1.) For the purpose of constructing any underground work, land under the surface may be acquired under this Act without acquiring the surface.

Acquisition of underground land.

Inserted by No. 8 of 1906, s. 2. See C. 1901, No. 13, s. 10.

(2.) In such case no compensation shall be allowed or awarded unless—

- (a) the surface of the overlying soil is disturbed; or
- (b) the support to such surface is destroyed or injuriously affected by the construction of the work; or
- (c) any mine, underground working, spring, reservoir, dam, or well in or adjacent to such lands is thereby injuriously affected.

14. Except for the purpose of a railway, or for roads in connection with such purposes, or for the purposes of any work to be made under the authority of a special Act, nothing in this Act contained shall authorise—

The taking of any stone or other material from any quarry, brickfield, or like place commonly used for the taking material therefrom for sale, or the taking of any land occupied by any building, yard, garden, orchard, or vineyard, or in *bonâ fide* occupation as an ornamental park or pleasure-ground, without the consent of the Governor or the consent, in writing, of the owner first obtained.

Certain lands, etc., not to be entered on without consent of Governor or owner.

Mines and minerals excluded from land taken.

15. (1.) When any land is taken by the Governor or by any local authority for the construction or providing of any public works, the right to any mines of coal or other minerals under such land shall not be included in such taking, except only such parts thereof as shall be necessary for the proper and effectual construction, support, and maintenance of such works.

(2.) And all such mines and minerals, except as aforesaid, shall be deemed to be excepted out of the proclamation or other instrument under the authority whereof the land was taken.

As to mineral leaseholds.

16. Where any land taken shall be held under lease granted under any Act relating to the granting of leases or licenses to hold land for mining purposes, the lessee or licensee of such land shall only be entitled to claim compensation for actual loss sustained through damage to his mine, or the works connected therewith, by reason of such taking, and every such claim shall be subject to the provisions of section thirty-five of this Act.

Procedure for taking land.

17. Whenever any land is required for any public work, the Governor may, by notice published in the *Government Gazette*, declare that the land has been set apart, taken, or resumed under this Act for the public purpose therein expressed, and that a plan and more particular description of such land may be inspected at a convenient place to be stated in such notice.

Effect of notice taking land.

18. Upon the publication of such notice in the *Government Gazette*—

(1) the land referred to in such notice shall, by force of this Act, be vested in His Majesty, or the local authority, as the Governor may direct and the case require, for an estate in fee simple in possession for the public work expressed in such notice, freed and discharged from all trusts, mortgages, charges, obligations, estates, interests, rights-of-way, or other easements whatsoever; and

(2) the estate and interest of every person in such land, whether legal or equitable, shall be deemed to have been converted into a claim for compensation under the provisions hereinafter contained.

Provided that the Governor may, by the same or any subsequent notice, declare that the estate or interest of any lessee or occupier of the land shall continue uninterrupted until taken by further notice.

19. Upon the publication in the *Government Gazette* of notice that land has been taken or resumed under this Act, the Minister, in the case of Government works, and the local authority, in the case of local works, shall cause a copy of the notice to be served on the owners of the land resident 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 abode, and also on the occupiers, if any.

Notice of taking land to be served on owner.

20. Subject to the provisions of the Permanent Reserves Act, 1899, where any land, at the date of such publication, is a public reserve, and whether vested in any local authority or trustees for public purposes or otherwise, the effect of such publication shall be to cancel any dedication or reservation of the land, and to divest the estate of any local authority, trustees, or other persons, and to revest the land in His Majesty.

Effect of notice on reserves.

21. (1.) Any notice whereby land is set apart, taken, or resumed under this Act may, at any time within ninety days of the first publication thereof, be annulled or amended by a subsequent notice in the *Government Gazette*; and if annulled, and so far as amended shall, as from the publication thereof, be absolutely void and of no effect.

Notice taking land may be annulled or amended.

(2.) No person shall be prejudiced in respect of any mortgage, charge, claim, estate, or interest existing in respect of such land, by reason of his having, in consequence of the earlier notice, done or omitted any act or thing, or failed to enforce or act upon any right, or comply with any obligation in respect of such mortgage, charge, claim, estate, or interest.

(3.) Except as provided in the next following section, no person shall have any right of action or claim against the Crown, the Minister, or a local authority for anything *bonâ fide* done under such notice before the annulment or amendment thereof.

(4.) Nothing herein contained shall limit the power of the Governor to take, by any subsequent notice, the whole or any part of the land mentioned or described in any notice so annulled in whole or in part.

Compensation on notice taking land being annulled.

22. When a notice is annulled, any claimant who would otherwise have been entitled to compensation shall be paid by the Minister or local authority, as the case may be, compensation for any actual damage done to the land, and such reasonable costs incurred to the date of the notice whereby the notice taking the land was annulled, to be agreed upon, or determined by the Court of Arbitration, or a Judge.

Proceedings for registering land taken when not under the Transfer of Land Act, 1893.

23. (1.) Where the land taken is not under the operation of the Transfer of Land Act, 1893, the Minister or local authority, at the expiration of ninety days from the publication of the notice, shall deliver a copy of the notice, and of the description and plan, to the Registrar, who shall thereupon bring the land so taken under the operation of the Transfer of Land Act, 1893, by registering the same in the name of His Majesty, his heirs and successors, or the local authority in whom the land is vested as aforesaid.

Proceedings for registering land taken when already under the Transfer of Land Act, 1893.

(2.) Where the land is under the operation of the Transfer of Land Act, 1893, the Minister or local authority, at the expiration of ninety days from the publication of the notice, shall deliver a copy of the notice, and of the description and plan, to the Registrar, who shall thereupon register such land in the name of His Majesty, or the local authority in whom the land is vested as aforesaid, by memorandum upon the certificate of title comprising the land out of which the taking has been made.

(3.) Any person in possession of any deed, certificate, or other instrument evidencing the title to such land shall, upon receiving notice from the Registrar, deliver up to him such instrument, to be wholly or partially cancelled, as the case may require; and any person refusing or neglecting so to deliver up any such instrument shall be liable to a penalty not exceeding Fifty pounds.

(4.) The Registrar shall retain every such instrument, and shall issue, free of charge, a certificate of title for the land, if any, included in such instrument and not taken.

Compensation not payable until documents of title given up.

(5.) No person having in his possession any such instrument shall be entitled to receive compensation under this Act until such instrument is delivered to the Registrar.

Crown lands taken to be shown on the maps and records in the Lands Office.

24. Where a notice sets apart any Crown land or reserve, the Minister shall cause a copy of the notice to be lodged at the office of the Minister for Lands, who shall cause the land included in the notice to be shown upon the proper maps and

records of the lands affected thereby, so as to prevent such land being disposed of contrary to such notice.

Severed Land.

25. (1.) If any land, not situate in a municipality or town-site or not built upon, is so divided by the land taken as to leave on any side thereof a less quantity of land than a statute acre, the Minister or local authority, as the case may be, shall, if so required by the owners of such small portion of land, take such portion together with the other land taken for such work.

Owner may require small parcel of land severed to be taken.

(2.) If such owner has other land adjoining into which such small portion may be conveniently thrown, the Minister or local authority, as the case may be, instead of taking such small portion of land, may throw the same into the adjoining land by removing the fences.

Agreements for Taking or Purchase.

26. (1.) The Minister or local authority may enter into agreement to take the estate and interest of any person in any land required for public works without complying with the provisions aforesaid.

Contracts to purchase land required for public works may be made.

(2.) Where an estate or interest is taken by agreement, the compensation to be paid may be either agreed upon or left to be determined under Part III. of this Act.

(3.) The compensation or purchase money, if payable by the Minister, shall be paid out of moneys appropriated by Parliament for the works in respect of which the land is purchased; or if payable by a local authority, shall be paid out of the funds of such authority available for such purposes.

(4.) An estate or interest purchased under this section shall be deemed land taken under the authority of this Act; but the provisions of this Act respecting compensation shall not be applicable in any such case, except as specially provided.

Fencing.

27. Except as provided by any agreement, no fencing shall be removed from any land enclosed by a fence without making adequate provision for the security of the land fenced.

Protection of adjacent lands before removal of fences.

Taking Additional Lands.

Land may be taken for any public work after or during completion.

28. (1.) If, after or during the execution of any public work, it is found—

- (a) that any land required therefor has not been taken in the manner required by law, or that the provisions relating to the taking of such land have not been fulfilled; or
- (b) desirable to take other land for the use, convenience, or enjoyment of any public work executed or in course of execution,

such land, or the estate or interest of any person therein, may be taken in the same manner as land required for such public work in the first instance.

(2.) All the provisions of this Act relating to the taking of land, and the payment of compensation therefor, shall apply, except that in such cases section ninety-seven shall be read as if clauses (a) and (b) were omitted therefrom.

(3.) No person who has received compensation for any such land, nor any person claiming by, through, or under him, shall be entitled to any further compensation.

(4.) The provisions of this section shall be deemed to apply, with the necessary changes, to the closing of any road or street, and to the exercise of any power over any land, road, or street, after the execution of any public work for the purposes of which a road or street might have been closed, or any such power exercised in the first instance.

Dealings with Lands taken or otherwise acquired.

Land not wanted may be sold, etc.

29. If any land held, taken, purchased, or acquired under this or any other Act, or otherwise howsoever, for any public work, is not required for such public work—

- (a) the Governor, or the local authority with the consent of the Governor, may, after notice published in the *Government Gazette*, cause the same to be sold by public auction or private contract; or
- (b) such land may be used by the Minister or local authority for any other public work.

Application of purchase money.

30. The proceeds of land sold under the preceding section shall be paid into the Treasury, or to the local authority, as the case may be, and shall form part of the fund appropriated to the execution of the works in respect of which the said lands were taken.

31. (1.) Upon the payment of the purchase money, the Minister or local authority shall serve on the Registrar of Titles a copy of the notice of sale of the land, together with a certified plan thereof, and a certificate of the payment of the purchase money, with the name and address of the purchaser.

Notice of sale and receipt of price to operate as transfer.

(2.) Such notice and certificate shall be deemed a memorandum of transfer of such land to such purchaser within the meaning of the Transfer of Land Act, 1893, and the Registrar shall register the same when produced to him and deal therewith in the manner in the said Act provided.

32. If any land held, taken, purchased, or acquired under this or any other Act, or otherwise howsoever, for any public work, or if any public work other than a railway is not required for immediate use, the Minister or local authority may let the same upon such terms as he or it may respectively think fit for any period not exceeding twenty-one years, and the rents and profits thereof shall be paid to the credit of the consolidated revenue or the ordinary fund of the local authority, as the case may require; but no lease shall be granted by a local authority for a term exceeding three years without the consent in writing of the Minister.

Lands not wanted for immediate use may be let.

33. (1.) His Majesty or the local authority may grant to any person any easement in, upon, through, over, or under any land taken or acquired for a public work, subject to such conditions and payment of such rent as His Majesty or the local authority shall think fit. Such easement shall be subject to revocation, without compensation, at any time when the Minister requires it, or in case of the breach of any conditions under which such easement was granted.

His Majesty or the local authority may grant easements over lands acquired for public works.

(2.) The power by this section given shall not be exercised by a local authority unless the instrument granting such easement shall have the consent of the Minister indorsed thereon.

PART III.—COMPENSATION.

For what and when it may be claimed.

34. (1.) Every person having any estate or interest in any land which is taken under this Act for any public works and every person claiming compensation under section thirteen or section one hundred and thirteen shall, subject to this Act, be

All persons suffering damage entitled to compensation.

entitled to compensation from the Minister or local authority, as the case may be, by whose authority such works may be executed.

(2.) Where compensation is claimed by a person whose estate or interest in the land taken is not duly registered or notified in the Office of Land Titles or Registry of Deeds, and any other person has applied for and obtained compensation in respect of the same land, and without giving written notice with his claim of such unregistered estate or interest, such first-mentioned person shall not be entitled to claim or receive payment of any compensation whatever in respect of such estate or interest.

(3.) No compensation shall be claimed by or awarded to any person who is lessee, tenant, or licensee of any land taken if the Minister or local authority, as the case may be, is ready and willing and agrees to allow the estate or interest of such person to continue uninterrupted until taken by subsequent notice.

(4.) No compensation shall be payable in respect of any portion of Crown lands lawfully taken or set apart for any public work, nor in respect of any land taken for a road or railway the right to make a road over which is otherwise reserved to the Crown and has not lapsed or become barred.

On resumption of land, no compensation payable if otherwise provided in grant or enabling Act.

35. (1.) When any land is taken under the authority of this Act, and such land might have been taken or resumed by His Majesty or the Governor, or any Minister or local authority for the same purpose under—

(a) the conditions of any Crown grant, lease, or other instrument; or

(b) the provisions of any other Act,

no compensation shall be payable under this Act which would not have been payable if the land had been taken or resumed under the conditions of the grant, lease, or other instrument, or the provisions of such other Act, and notwithstanding that any special provisions as to the taking or resumption may not have been complied with.

See the Lands Resumption Act, 1894 (58 Vict., No. 33, s. 9).

(2.) If the land taken under this Act exceeds the quantity which might have been taken or resumed under the grant, lease, or other instrument, or such other Act, compensation shall be payable under this Act only in respect of the excess.

(3.) The compensation in respect of such excess shall be the sum which bears the same proportion to the amount of

compensation that would otherwise be payable in respect of the whole area taken as such excess bears to the whole area taken. The compensation that would otherwise be payable in respect of such whole area shall be ascertained as hereinafter provided.

36. (1.) Except where a direction for the hearing of a claim is made by a Judge, as provided by section thirty-nine, the time limited for making a claim for compensation under this Act or any Act repealed by this Act, shall be within two years from the date of the publication in the *Government Gazette* of the notice taking the land, or where the claim is for compensation under section thirteen or section one hundred and thirteen, within one year from the acts complained of.

Limit of time for making claim for compensation.

(2.) After such period no action or proceeding shall lie, nor any claim for compensation be made.

The Claim.

37. A claim for compensation may be made by any person seised, possessed of, or entitled to the land taken or entered upon or to any estate or interest therein, or by the executor or administrator of any such person, whether such person has or has not the power to sell and convey the same. Any claim on behalf of *cestuis que trustent*, wards, lunatics, or idiots, may be made by their trustees, guardians, or committees respectively.

By whom compensation may be claimed.

38. In the case of an infant, lunatic, or idiot, not having a guardian or committee within the State, and known to the Minister or local authority, the Master of the Supreme Court shall, for the purposes of this Act, be deemed to be the legal guardian or committee of such person.

Master to be guardian, etc., in certain cases.

39. (1.) If a claim is not made within the time hereinbefore prescribed, and any person having a right or title to prefer a claim for compensation is believed to be absent from the State, or an infant, lunatic, or idiot, the Minister or local authority shall make an application to a Judge, accompanied by an offer of an amount by way of compensation, and thereupon the Judge may direct the offer to be accepted or the claim to be heard by a Compensation Court under this Act, and in such case shall appoint an assessor to act in such Court on behalf of such person.

Procedure in unrepresented absentee claims.

(2.) Thereupon the Court may proceed in the examination of such claim, as in ordinary cases where the claimant is present.

(3.) The Master, or some person nominated by him, shall represent the person entitled to claim, and may act in his behalf in all matters incident to the claim or the hearing thereof; and the moneys payable as compensation shall be paid into the Supreme Court, and shall there remain subject to the provisions of section seventy-two.

"Claimant" and
"respondent."

40. Every person claiming compensation is hereinafter called the "claimant," and the Minister, in the case of Government works, and the local authority, in the case of local works, is hereinafter called the "respondent."

Particulars to be
inserted in claim
to compensation.
Third Schedule.

41. (1.) In order to obtain compensation, the claimant shall, within the time hereinbefore prescribed, serve upon the respondent a claim, in writing, in the form in the Third Schedule hereto, stating—

- (a) the several areas and descriptions of the lands taken, or affected in respect of which he makes his claim, and the nature and particulars of his interest therein; and if the land or his estate or interest therein is incumbered, leased, or subject to any easement, he shall give particulars of such incumbrance, lease, or easement:
- (b) each matter on account of which he claims compensation, with full particulars of the nature and extent of the claim:
- (c) his name in full, together with his address, which address shall be deemed to be the last known place of abode or business of the claimant, until special notice in writing of a change of address is delivered to the respondent.

(2.) The claim shall be accompanied by all deeds and documents necessary to establish the claimant's title, which are in his custody, possession, or power, and an abstract or certified copy of all such deeds or documents as are not in his custody, possession, or power.

Place where
claim to be
lodged.

(3.) The claim shall be served, in the case of the Minister, by being delivered at the Public Works Office at Perth, or by being sent by registered letter addressed to the Minister at such office, and, in the case of the local authority, by being

left at or sent by registered letter to their office; and the claimant shall, on demand, be entitled to receive from the officer for the time being in charge of any such office a receipt stating the day on which such claim was delivered or received, and any officer refusing to give such receipt on demand shall be liable to a penalty not exceeding Five pounds.

(4.) In order to prove the service of any claim as aforesaid, it shall be necessary to produce the receipt of the officer receiving the same.

42. If the claimant does not give full particulars of all or any of the matters included in section forty-one, the respondent may, by notice in writing, require him to furnish such particulars within a month. If such particulars are not supplied within ninety days or such extended time as a Judge may allow, the claim shall be absolutely barred.

Respondent may require further particulars.

43. Within sixty days after the service of the claim, accompanied by the documents of title as aforesaid, or in case of a demand for further particulars as hereinbefore provided, within sixty days from the compliance with such demand, the respondent, if he disputes the claimant's title to the land, or to some part thereof, shall serve on the claimant a notice in the form or to the effect of the Fourth Schedule.

Time for respondent to serve notice disputing title.

Fourth Schedule.

44. If a notice disputing the title of the claimant, in whole or in part, is not served within the time hereinbefore allowed, the respondent shall be deemed to have admitted the claimant's title.

If notice disputing title not served title is admitted.

45. (1.) Upon being served with the notice that his title to the whole or any part of the land is disputed, the claimant, after seven clear days' notice in writing, in accordance with the form in the Fifth Schedule served on the respondent, may apply to a Judge for an order—

Claimant may apply to Court to direct issue or give opinion on question of law.

- (a) for the trial of any issues of fact the finding of which will be necessary to determine the question of title; and
- (b) that any question of law arising upon any objection to his title may be set down for argument in order to obtain the opinion of the Court thereon.

Fifth Schedule.

(2.) Such issue shall be tried and judgment given thereon as upon the trial of the issues in a cause and with a like effect, and such opinion shall be given and a declaratory judg-

ment may be drawn up in accordance therewith in like manner as a declaratory judgment in a cause and with the like effect.

(3.) On the trial of such issue or the argument of such question, the claimant shall not be allowed, without the respondent's consent, to adduce any deed or document in evidence of title which was not furnished with the claim or the further particulars thereof, or included in the abstract accompanying such claim or particulars.

If title is not
disputed offer to
be made.

Sixth Schedule.

46. Where the claimant's title is not disputed, or is disputed only as to part of the land, or where the judgment of the Court is in favour of the claimant's title, the respondent may, within the time limited by section forty-three, or within sixty days after the judgment (if any) of the Court, serve on the claimant an offer of compensation to the effect of one of the forms in the Sixth Schedule in respect to the land or to the part thereof the title to which is not disputed, or is decided in the claimant's favour, as the case may be, and such offer shall be deemed an admission of the claimant's title to the land in respect of which the offer is made.

If offer not re-
jected by claim-
ant, equivalent
to acceptance.
Seventh Schedule.

47. (1.) Within sixty days after the service of the offer of compensation the claimant may serve on the respondent a notice, in the form in the Seventh Schedule hereto, rejecting such offer and nominating an assessor to act for the claimant.

(2.) If notice of rejection is not given within such time the offer shall be deemed accepted.

Rejection of offer
equivalent to a
submission to
Court.
Eighth Schedule.

48. (1.) If the claimant rejects the offer, the respondent shall appoint an assessor by notice in the form in the Eighth Schedule, and thereupon the amount of compensation to be paid shall be determined by the Compensation Court.

(2.) If, within thirty days after receipt of notice rejecting his offer, the respondent does not give notice appointing an assessor, the claimant may apply to the Master to appoint an assessor to act for the respondent.

(3.) Upon the appointment of an assessor by the respondent or the Master, the claimant shall at once file a copy of his claim and of all notices and other particulars in the Court of the Resident or Police Magistrate whose Court is nearest to the land in respect of which the claim arises, if such claim does not exceed Five hundred pounds, and in the Supreme Court in any other case.

(4.) If the offer is for part only of the land taken, the title to the rest being disputed, the assessment of the compensation shall, unless the claimant admits the objections to his title, be adjourned pending the judgment of the Court under section forty-five.

49. No appointment of an assessor shall be valid unless such person signs the consent and declaration in the form contained in the Ninth Schedule. And every such consent and declaration shall be filed in the Court for filing the claim, and a copy thereof appended to the notice of appointment of such assessor.

Consent of assessor to act.
Ninth Schedule.

The Court.

50. (1.) The Compensation Court shall consist of a president, and two assessors, one to be appointed by the claimant and one by the respondent.

Constitution of Court.

(2.) When the amount claimed does not exceed Five hundred pounds, the Resident or Police Magistrate whose Court is nearest the land in respect of which the claim arises, if not interested in the case, shall be the president, and, if such Magistrate is interested in the case, a Judge shall appoint some other Resident or Police Magistrate to be the president.

Resident Magistrate to be president where claim does not exceed £500.

(3.) Where the amount claimed exceeds Five hundred pounds a Judge shall be the president.

Judge to be president where claim exceeds £500.

51. If the amount claimed exceeds Five hundred pounds, and the claimant and respondent shall consent in writing that the claim should be heard before a Resident or Police Magistrate as president, a Judge may order that such claim shall be heard accordingly, and may appoint a magistrate to preside in the Court instead of a Judge.

When claim exceeds £500, Judge, with consent of parties, may appoint a Magistrate to preside.

52. (1.) The claimant and respondent may agree in writing that the claim shall be heard and determined by any one person named therein. Such agreement shall state the fee (if any) to be paid such person for his services.

Parties may agree on a single person to constitute the Court.

(2.) The person so named shall be deemed to be the Compensation Court, and shall appoint a time and place for the sitting thereof, and shall hear and determine the claim accordingly.

(3.) Should a person so appointed die or become incapable before making an award, the claimant and respondent may appoint any other person in his stead, or if they fail so to do a Judge may make such appointment.

Court may hear other claims by consent.

53. A Court constituted to hear any claim under this Act may, by consent, in writing, of the claimant and respondent in any other claim in respect of the same or of any other land, hear and determine such last-mentioned claim as though the Court had been constituted to hear and determine the same.

Assessors may be objected to.

54. If either party objects to the appointment of any assessor, the President may, unless the objection appears to be frivolous or unreasonable, upon the application of such party, order such assessor to be discharged, and the person having appointed him shall, within ten days after such order, appoint another, failing which the President shall forthwith appoint an assessor in his stead.

Case of member of Court dying or unable to act.

55. If, before the award is given, any member of the Court dies or becomes incapable of acting, or resigns or refuses to act, then, in case of a Judge, some other Judge of the Supreme Court shall take his place; in the case of a magistrate, his successor shall take his place; and in the case of an assessor, the person having made the appointment shall forthwith, or, if he fails to do so, the President shall appoint a successor; but the inquiry before the Court shall proceed as if no such change in its members had taken place.

The Hearing.

Sittings of Court.

56. The President shall appoint the time and place for the first sitting of the Court, and shall, not less than twenty-one days before such sitting, cause a notice of such time and place to be served on each assessor and upon the claimant and respondent severally.

Hearing to proceed in absence of parties.

57. (1.) If the claimant or respondent fails to appear before the Court at the time and place appointed, the Court may, upon proof of the service of the notice of such sitting, proceed to hear and determine the claim in his absence.

(2.) Either party may appear personally, or by his counsel or solicitor.

58. The Court, or the member or members of the Court present, may adjourn its sittings from time to time.

Court may adjourn.

59. (1.) The Court shall have power to summon all persons required by either party or by the Court to give evidence before it, and may examine all such persons upon oath or affirmation, and may require the production of any documents, plans, or other papers in the custody or control of either party.

Court to examine witnesses, etc.

(2.) The claimant and respondent, and their counsel, solicitors, witnesses, and all other persons attending the Court, shall have the same rights and privileges, and shall be subject to the same obligations, fines, and penalties, as in the trial of an action at law in the Supreme Court.

(3.) The Court shall, until it shall have made its award, have all the powers of the Supreme Court, so far as may be necessary for inquiring into and determining the claim referred to it.

60. (1.) Every question before the Court shall be determined by a majority of the members thereof, but the determination of the majority shall be deemed to be the award of the whole Court.

Questions to be determined by majority.

(2.) Two members of the Court shall form a quorum.

61. If the Court is unable by a majority to agree upon an award, the President shall discharge the assessors, and cause notice thereof to be given to the claimant and respondent; and a fresh Court shall be constituted in the manner provided by this Act, which shall rehear the case.

If Court unable to agree.

62. (1.) If any question of law shall arise before a Compensation Court, the President may hear and determine the same without the assessors.

When questions of law alone to be determined, President may determine the same.

(2.) (a) The President, if a Judge of the Supreme Court, may, if he think fit, state a case for the decision of the full Court thereon.

(b) When the President is a Resident or Police Magistrate, he may, if he think fit, and shall if required by the claimant or respondent, state a case for the decision of a Judge of the Supreme Court thereon.

(3.) Such determination or decision shall be followed by the Compensation Court on making its award.

The Award.

How compensa-
tion to be esti-
mated for land
taken.

No. 60 of 1926, s. 2.

63. In determining the amount of compensation (if any) to be awarded for land taken, regard shall be had solely to the following matters:—

(a) The value of such land with any improvements thereon, or the estate or interest of the claimant therein, as on the first day of January last preceding the notice in the *Gazette* of the taking of the land if the notice is gazetted before the thirtieth day of June, or if the notice is gazetted after the thirtieth day of June then as on the first day of July last preceding such notice, without regard to any increased value occasioned by the proposed public work; or in the case of land acquired for a railway or other work authorised by a special Act, on the first day of January or the first day of July, as the case may be, last preceding the first day of the session of Parliament in which the Act was introduced.

Provided that where buildings or other improvements have been made on such land after the first day of January last preceding the notice in the *Gazette*, 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 notice in the *Gazette*, published under section seventeen or under paragraph (b) of section ninety-seven of this Act, as the case may be, the value of such buildings or improvements shall be allowed, not exceeding the actual cost.

(b) The damage, if any, sustained by the claimant by reason of the severance of such land from the other adjoining land of such claimant or by reason of such other lands being injuriously affected by the taking.

(c) The Court may award such amount as the Court deems proper, not exceeding Ten pounds per centum on the amount ascertained under the provisions of this section for compulsory taking.

(d) Where the land taken produces any rent or profits the amount thereof received by the respondent, less the reasonable cost of collection from the day the land was taken to the date of the award, shall be added to the compensation payable; or, if the

option of the respondent, interest shall be paid on the amount of compensation for the same period, at the rate of six pounds per centum per annum.

64. In determining the amount of compensation (if any) to be awarded under section thirteen or section one hundred and thirteen the compensation awarded shall not exceed the amount which would have been payable had the actual portion of the land entered upon been taken.

How compensation to be estimated in other cases.

65. If the Court is of opinion that the claimant has, at any time after the date the land is taken, done anything upon or under such land with the effect of rendering the execution of such work more difficult or costly, the Court shall take into account, by way of deduction from the amount of compensation to be awarded, any increase in the cost of executing such work likely to be caused thereby; and if, in the opinion of the Court, such increase in cost exceeds the value of the land taken, the award shall be for the payment by the claimant to the respondent of the amount of such excess, and the costs of the inquiry.

Anything done by claimant to make execution of work more costly to be taken into account.

66. The Court may award one gross sum as the compensation to be paid to the claimant on all accounts, or they may award a particular sum in respect of any one or more of the items of the claim, and subject respectively to such conditions as they may think equitable, or they may determine that no compensation is payable in respect of the whole claim or any particular item or items thereof.

Gross sum, or separate sums, may be awarded, and conditions attached.

67. Every assessor shall be entitled to a fee for every day upon which he attends a sitting of the Court in respect of each claim heard therein, the amount of such fee to be fixed by the President in each case, regard being had to the length of the sitting and the importance of the case.

Fees to assessors hearing claims.

68. (1.) The costs of the inquiry as between party and party shall be taxed by the taxing officer of the Supreme Court, and the amount thereof shall be included in the award, and the Court shall direct to whom such costs shall be paid.

Costs.

(2.) But if the compensation awarded does not exceed the amount offered by the respondent or one-half of the amount claimed, the claimant shall pay the respondent's costs.

(3.) The Court may in any case declare that no costs shall be awarded, and the fact shall be stated in the award.

69. Costs payable by the claimant may be deducted from the compensation payable to him under the award; and, if

Costs may be deducted from compensation awarded.

such costs exceed the compensation payable, the award shall be for the payment by the claimant of the amount of such excess.

Award not void for informality.

70. No award of a Compensation Court shall be void through any error or omission in matter of form.

Award to be in writing

71. (1.) The Court shall make its award in writing, which shall be drawn up and signed by the President, and by him transmitted to the Master, to be filed in the Supreme Court. On receipt of such award the Master shall give notice thereof to the claimant and respondent.

and final as to amount, but not as to title.

(2.) Such award shall be final as regards the amount awarded, but shall not be deemed to be final as regards the right or title of the claimant or any other person to receive the same, or any part thereof.

When and how enforced.

(3.) But if the sum awarded be not paid into the Supreme Court, under subsection one of section seventy-two, within thirty days after the filing of the award in the Supreme Court, the award so made and filed shall be final for all purposes, and have the effect of a judgment of the Supreme Court, and shall bear interest, and may be enforced accordingly, subject, however, to the provisions of this Act.

Title to and Application of Compensation and Purchase-money.

When title doubtful, compensation or purchase-money to be paid into the Supreme Court.

72. If any doubt or dispute arises as to the right or title of any person to receive any compensation awarded under this Act, or any purchase-money or compensation agreed to be paid by the Minister or a local authority under this Act,—

(1) In the case of compensation awarded by the Court, the respondent may, within the period of thirty days after the award has been filed in the Supreme Court, cause the sum awarded to be paid into the Supreme Court; and the Master shall deal with and apply such moneys in such manner and shall pay the same to such persons as the Supreme Court, upon the application of any person interested, may order.

Procedure when purchase money paid into Supreme Court.

(2) In the case of purchase-money, or compensation agreed to be paid, the Minister or local authority, respectively, may pay the same into the Supreme Court; and the Supreme Court may make such order in relation thereto, upon the application of any of the parties interested, as it thinks just and proper; and the Master shall deal with and pay such purchase-money or compensation in accordance with such order.

- (3) In any case which may be heard or disposed of by the Supreme Court under the preceding provisions of this section, such Court may order that all or any costs which may have been incurred in or in relation to such case, either before the Compensation Court or the Supreme Court, shall be paid by such of the parties, whether claimant, respondent, or a person interested as aforesaid, or that such costs be apportioned between such parties in such manner, respectively, as the Supreme Court may order, and such Court may vary or revoke any order previously made by a Compensation Court as to costs. Order as to costs.

73. (1.) If compensation is awarded or has been agreed to be paid in respect of lands or any interest therein taken from any person having a partial or qualified interest only in such lands, and not entitled to sell or dispose of the same, or in respect of any permanent injury done to such lands, such compensation shall be dealt with as follows, that is to say—

How compensation in case of limited interests to be dealt with.

- (i.) If the compensation is Two hundred pounds or upwards, it shall be paid into the Supreme Court, and the Master shall apply the same, upon an order of the Supreme Court made on the petition of any person claiming any estate or interest in the same, to one or more of the following purposes, that is to say—
- (a) to the discharge of any debt or incumbrance affecting the said lands, or affecting any of the lands settled therewith, or to the same or like uses, trusts, or purposes;
 - (b) in the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, or purposes;
 - (c) in removing any buildings on the said land, or substituting others in their stead;
 - (d) in the purchase of such securities as the Court may direct, to be settled in the same manner as the said lands;
 - (e) in payment to any party becoming absolutely entitled thereto.
- (ii.) If the compensation is more than Twenty but less than Two hundred pounds, it shall be paid into the Supreme Court, and the Master may apply the same to any of the abovementioned purposes, but no order of the Court shall be necessary.

(iii.) If the compensation is not more than Twenty pounds, it shall be paid to the parties entitled to the rents and profits of the said lands, or, in case of the disability or incapacity of such parties, to their respective husbands, guardians, committees, or trustees, as the case may be.

Saving as to partial interests of an absolute character.

(2.) Nothing in the section shall be deemed to prevent any person who has a partial or other qualified interest in land to which interest he is solely entitled, and which he may absolutely sell or dispose of, from receiving any compensation in respect of such interest to which he may be declared entitled under any award, or which has been agreed to be paid to him as aforesaid.

Master may invest compensation money.

74. Until any compensation deposited in the Supreme Court is applied as provided by the last preceding section, the Master shall invest the same in the manner in which any moneys in the Supreme Court may by law be invested, and shall pay the annual proceeds thereof to the party for the time being entitled to the rents and profits of the lands in respect of which such compensation was awarded.

Case of mortgaged lands taken.

75. If the land in respect of which compensation is awarded is subject to a mortgage, such compensation, or so much thereof as is required for the purpose, shall, upon the application of the mortgagee, be paid in discharge of the mortgage debt, or part thereof, so far as the compensation will go.

“Mortgage debt” includes the interest payable on such mortgage up to six months beyond the day when the lands affected were taken under this Act.

Case of lands subject to rent-charge.

76. If the said land is subject to any rent-charge or annuity, the Court shall determine what part of such compensation shall be paid to the party entitled thereto in redemption thereof; and, if the land is part of land subject to any rent-charge or annuity, the Court shall determine what part of such rent-charge or annuity shall be redeemed, and what part of such compensation shall be paid in the redemption thereof, so that the remaining part of the lands subject to such rent-charge or annuity shall be as good security as theretofore for the part thereof remaining unredeemed.

Where rent is payable out of lands of which part only is taken.

77. If the said land is part of land in respect of which any rent is payable, the Court shall determine what part of such rent shall cease to be payable, so that the rent ceasing to be

payable shall bear the same proportion to the whole rent as the value of the land in respect of which compensation is awarded bears to the value of the whole land.

Payment and other Satisfaction of Compensation and Purchase-money.

78. Where the amount of compensation or purchase-money to be paid to any person is determined by agreement, the Minister may agree to grant to such person any easement, right of way, right of occupation, or any other right, privilege, or concession in, upon, over, or under any land taken or reserved for the purpose of any public work, in satisfaction or part satisfaction of the compensation claimed by such person: Provided that no such agreement shall be valid until notice of the assent of the Minister thereto shall have been duly gazetted.

Minister may agree to grant easements in lieu of compensation or purchase-money.

79. Where the amount of compensation to be paid to any claimant is determined by the Compensation Court, the respondent may offer, and the Court may award to the claimant, in satisfaction or part satisfaction of the compensation claimed, any easement, right of way, right of occupation, or any other right, privilege, or concession in, upon, over, or under any land taken or reserved for the purpose of any public work; and the Compensation Court may, by its award, declare which (if any) of such easements, rights, privileges, or concessions so offered shall be granted to the claimant in satisfaction, or part satisfaction, or mitigation of his claim to compensation.

Court may award easements in lieu of compensation.

80. The Governor may, with the consent of the claimant, in payment or satisfaction, or in part payment or satisfaction, for any land which is taken, purchased, or acquired, grant to the person or persons from whom such land has been taken, purchased, or acquired, any Crown land or any land reserved or taken for the use, convenience, or enjoyment of the said public work, but which is not required for such public work: Provided that, before such land is conveyed or transferred, the Minister shall certify that the land has been valued by a competent person, and that the total value, with money compensation (if any), does not amount to more than the sum which would probably have to be paid by the Government for the land taken and the damage done if compensation for same were made wholly in money in the usual way.

Governor may grant surplus land in lieu of compensation.

Out of what
funds compensa-
tion to be paid.

81. Moneys payable as compensation or as costs under this Act shall—

- (1) if payable by the Minister, be paid out of moneys appropriated by Parliament for the works in respect of which the claim for compensation arises;
- (2) if payable by a local authority, be paid out of the fund of such local authority available for such purposes;

but neither the Minister nor any member of a local authority shall be personally liable for any compensation or costs which may become payable under this Act.

PART IV.—SURVEYS.

Powers of entry
on lands, etc.,
for survey pur-
poses.

82. (1.) For all the purposes of this Act the Minister, the Minister for Lands, or any local authority, or any person authorised either specially or generally by any such person or authority—

- (a) may enter and re-enter from time to time upon any land, with such assistants as he thinks fit, for the purpose of making any survey;
- (b) may fix or set up thereon trigonometrical stations, survey pegs, marks, or poles, and the same from time to time alter, remove, inspect, reinstate, and repair;
- (c) may dig and bore into the land so as to ascertain the nature of the soil, and set out the lines of any Works thereon;
- (d) may do all things necessary for such survey in accordance with any regulations for the time being, or for any inspection, repair, or alteration thereof.

(2.) When practicable, forty-eight hours' notice shall be given to the owner or occupier of the land of the intention to enter thereon, and the authority under which the person entering claims to enter or has entered on such land shall, if required by such owner or occupier, be produced and shown.

Penalty for des-
troying survey
marks, etc.

83. Every person who, without due authority, destroys, mutilates, defaces, takes away, or alters the position of any trigonometrical station, survey peg, mark, or pole fixed or set up by any surveyor, or other person under the authority of the last preceding section, shall be liable, on summary conviction, for the first offence to a penalty not exceeding Twenty

pounds, and for any subsequent offence to a penalty not exceeding One hundred pounds; and every person who wilfully obstructs any such surveyor or other person or his assistants in carrying on such survey shall, for every such offence, be liable to a penalty not exceeding Fifty pounds.

PART V.—ROADS, RIVERS, AND BRIDGES.

84. Throughout this Act, the word "road" means a public highway, whether carriage-way, bridle-path, or footpath, and unless repugnant to the context, includes all roads which have been or may hereafter be set apart, defined, proclaimed, or declared roads under any law or authority for the time being in force, and all bridges, culverts, drains, ferries, fords, gates, buildings, and other things thereto belonging, upon, and within the limits of the road, and includes arable soil of every road.

Definition of road for purposes of Act.

85. The soil of all roads is hereby declared to be and is hereby vested in His Majesty, including, in the case of Government roads, all materials and things of which such roads are composed, or which are capable of being used for the purpose thereof, and are placed or laid upon any such roads.

Roads vested in the Crown.

86. (1.) The Minister may construct or repair any road within any part of the State, but such road shall not, by reason of such construction or repair, become a Government road if at the time of such construction or repair it is within the limits of a municipality or road board district.

Minister may repair any road.

(2.) The Governor may, by Order in Council duly gazetted, declare that any road or part thereof shall be, or cease to be, a Government road, and such road or part thereof shall become or, as the case may be, shall cease to be a Government road accordingly.

Governor may declare Government roads.

(3.) The Governor may in like manner declare that any Government road or any part thereof shall be under the control of any municipal council or road board, and thereupon such road or part thereof shall cease to be a Government road.

(4.) The powers hereby conferred may be exercised from time to time, and any Order in Council made hereunder may be revoked or altered, and any road declared to be a Government road may again be declared to be within the

control of a municipal council or road board, and any such road may again be declared to be a Government road, as often as occasion shall require.

(5.) For the purpose of making or repairing any Government or other road the Minister shall have all the powers and authorities which, by the Roads Act, 1902, are given to or conferred upon a road board, and shall also have power to close any road pending repairs or in the interests of public safety.

Government roads
under exclusive
care of Minister.

87. (1.) Government roads shall be under the exclusive control and management of the Minister.

(2.) In respect of all Government roads, and of all bridges and other public works connected therewith, the Minister may make all such by-laws as any road board may for the time being have power to make in connection with any road within its district, and may impose a penalty not exceeding twenty pounds for the neglect or breach of any such by-law.

Effect of by-laws.

88. In respect to by-laws made under the last preceding section the following provisions shall apply:—

- (a) A copy of the *Government Gazette* containing any such by-law shall be evidence in all Courts of the same having been duly made under the authority of this Act.
- (b) A copy of all by-laws having special reference to bridges and jetties shall be conspicuously displayed and maintained, in a clearly legible condition, at each and every bridge and jetty to which such by-laws have reference.
- (c) Printed copies of all by-laws having reference to the traffic on roads generally or on any one road in particular shall be on sale to every person applying for the same, at a price of not more than a shilling.

Special pro-
visions as to
heavy traffic.

89. For the purpose of giving effect to any by-law relating to heavy traffic, the following special provisions shall apply:—

- (a) Any person authorised in that behalf by the Minister may stop and detain any vehicle or machine which in his opinion infringes any by-law, until the width

of the tires, or the weight of such vehicle or machine and the load thereon, or the weight or measurement of the contents thereof, can be ascertained.

- (b) Any by-law may prescribe the manner of ascertaining the weight or measurement of such contents, by either weighing the same at any weighbridge or computing the weight or measurement from the cubical or superficial measurement of such contents or otherwise.
- (c) For the purpose of such computation such by-law may prescribe what quantity of timber, agricultural produce, mineral, or any material of any description whatever shall be deemed to be of a specified weight or measurement, and such weight or measurement so computed shall be final and conclusive in any proceedings to recover a penalty for the breach of such by-law.
- (d) Any such by-law may also provide for the driver of any vehicle or machine giving such information as to the load or contents thereof, and the quantity, weight, size, or measurement of the same, or doing such acts for the purpose of enabling the same to be ascertained as such authorised person requests.

90. Nothing in this Act, nor in any by-law made thereunder, shall relieve any person from any penalty, punishment, or action to which he would otherwise be liable in respect of anything done by him in breach of any such by-law; and the Minister may sue any person for any damage done to any road or bridge or other works in contravention of any by-law made under this Act, in addition to recovering the amount of the penalty for the breach of the by-law.

Breach of by-law not to relieve offender.

91. (1.) For the purpose of this section, the words "bridge," "ferry," and "ford," respectively, include such approaches to a bridge, ferry, or ford, and such protection works in connection therewith as may by any notice under this section be defined to be part of the bridge, ferry, or ford.

Governor may vest control of any bridge, etc., in local authority.

(2.) The Governor may, by notice in the *Government Gazette*, and in some newspaper circulating in the district, direct that any bridge already constructed or which may hereafter be constructed, and any ferry or ford already estab-

lished or which may hereafter be established, over or across any river or arm of the sea respectively shall, from and after a date to be fixed in such notice, be under the exclusive care, control, and management of the Minister, or of such local authority as shall be mentioned in that behalf in such notice; and

(3.) May by any subsequent notice publicly notified from time to time vary or alter such care, control, and management; and

(4.) May by such notice as aforesaid fix and determine whether all or any, and if so, what part of the cost, whether incurred or to be incurred, of maintaining, repairing, improving, or reconstructing any such bridge, or of managing or maintaining any such ferry or ford, and the machinery and appliances used therewith, is to be provided and paid by any local authority or local authorities (if more than one), and if so, by what local authority or authorities (if more than one); and

(5.) May by any such notice as aforesaid direct how, when, and to whom any such payment is to be made; and every payment so directed to be made shall be made as directed by such notice, and unless so made may be deducted from any subsidies or moneys at any time payable by the Crown to such local authority, and may also be recovered in any Court of competent jurisdiction at the suit of the Minister or local authority, as the case may be, as a debt due to His Majesty or to the local authority to which such payment ought to be made.

(6.) In fixing and apportioning the cost of maintaining, repairing, improving, or constructing any such bridge, or of managing or maintaining any such ferry or ford, and the machinery and appliances used therewith, the Governor shall take into account the net revenue (if any) derived from or incident to the use of such bridge, ferry, or ford by the Minister or by the local authority, as the case may be, having the care, control, management, or maintenance thereof.

(7.) If any local authority or authorities shall refuse or neglect to maintain, work, improve, or repair any bridge, ferry, or ford (including the working of swing or lifting-spans in bridges where such have been provided) under its or their care, control, and management, or to reconstruct any such bridge, ferry, or ford when requisite, the Minister may undertake such maintenance, repairs, improvement, or

reconstruction in the place of the local authority or local authorities so refusing or neglecting as aforesaid, and may provide for the care, working, and management of such bridge, ford, or ferry, and may recover all costs, charges, and expenses attending or incidental to his so doing from such local authority or local authorities as a debt due to His Majesty, in any Court of competent jurisdiction.

(8.) In the exercise of the authority conferred upon him by this section, the Minister and any and every person authorised by him shall have all the powers and authorities which under any law are or may be vested in or could be exercised by the local authority or authorities in the place of which the Minister shall be acting.

(9.) Any proclamation, instrument, or notice heretofore issued, made, or published, vesting the control of any bridge, ferry, or ford, may be revoked, altered, or varied by the Governor from time to time as he may deem expedient, subject to the provisions of this Act.

92. No road shall be stopped or diverted by the Minister unless and until a way to the lands in the vicinity is left or provided, unless the owners of such lands give consent in writing to such stoppage or diversion.

Stopping or diverting of road.

Rivers.

93. The Minister and also the local authority may remove from any river, stream, or watercourse, or from the bed thereof, any earth or stone, and all weeds, refuse, and other growth, and all driftwood, logs, trees, branches, and other timber which may be lodged in the bed or against the banks thereof and be calculated to impede the free flow of water therein in its natural channel, and may dispose of the same respectively towards recouping the cost of such removal: And for the purpose aforesaid the Minister and every such local authority shall, by its servants, have the free right of ingress or egress, and regress on any land on the banks of any such river, stream, or watercourse.

Removal of driftwood, etc., from rivers.

94. The Minister may erect any bridge or culvert upon and across the bed of any river or stream, and may repair and maintain such bridge or culvert, whether erected before or after the passing of this Act.

Minister may erect bridges.
No. 8 of 1906, sec. 5.

PART VI.—RAILWAYS.

Definition of
"railway."

Land purchased
for a railway to
be deemed part
of the railway.

95. The word "railway" includes the land upon which any railway is made or authorised to be made, and all buildings and erections of every kind thereon, and all land taken, purchased, or acquired for railway purposes; and, except where inconsistent with the context, such word, when used in this Act, also includes all works, wharves, and jetties the property of His Majesty, whether of a permanent or a temporary nature, used for the purposes of or in connection with such railway, and all materials and things of which such railway, buildings, erections, works, wharves, or jetties is or are composed, or which are being used for the purposes thereof, and are erected, placed, or laid upon any such land.

Construction.

Railways to be
made only under
special Act.

96. (1.) Every railway shall be made only under the authority of a special Act which shall state as nearly as may be the line of the railway and the two termini thereof; but it shall be lawful to deviate from such line at a distance of one mile on either side thereof, or such other distance as may be provided in any special Act.

(2.) Before the second reading of the special Act in the Legislative Council and Legislative Assembly respectively, the Minister shall cause a map, to be referred to in the special Act, showing the course to be taken by, and the middle line of, the railway, to be laid upon the table of the House.

(3.) On the passing of the Act, the map, signed for the purpose of identification by the Clerk of the Parliaments, shall be deposited by him in the office of the Master of the Supreme Court, and shall be open to public inspection at any reasonable hour free of charge, and shall be admitted in all Courts for all purposes as evidence of the line authorised by the special Act.

Procedure for
making railway.

After passing of
special Act, land
may be occupied.

97. When any railway is authorised to be constructed—

- (a) At any time after the passing of the special Act the Minister and all other persons acting under his authority may enter upon any land required to be occupied for the construction of the railway within the authorised limits of deviation, and do all things which he is empowered by this Act to do for the construction of the railway without being deemed to commit any trespass thereby.

- (b) After the passing of the special Act, the Governor may at any time and from time to time, by notice in the *Government Gazette*, take any land required for the railway, and wholly close for the full or any less part of the width thereof the whole or any part of the length of any road or street the exclusive use of which may be required for the railway, taking the soil thereof when necessary. Governor may take land for railway.
- (c) The notice, when published in the *Government Gazette*, shall be conclusive evidence that the land therein referred to is from the date named in such notice, not being earlier than the date of the first reading of the special Act in the Legislative Assembly, taken by and vested in His Majesty in fee simple freed and discharged from all mortgages, charges, claims, estates, and interests of what kind soever, for the use of the railway, and that any part of any road or street thereby closed has ceased to be a public highway. Gazette notice conclusive evidence of taking and vesting of land.
- (d) Every such notice, together with a map of the land taken, shall be deposited as provided by sections twenty-three and twenty-four, and all things shall be done and happen thereupon as in cases provided for by those sections. Notice to be deposited with Registrar.
- (e) At any time either before or after issuing any notice taking land for a railway, the Minister shall cause notice to be served on every owner or occupier of such land, so far as they can be ascertained, and in such notice shall state that the land therein described is taken or intended to be taken for a railway, and that claims for compensation in respect thereof must be sent to the Minister pursuant to the provisions of this Act: With such notice a reference to the plan of the land taken or intended to be taken shall be sent. Before or after the time of taking land notice to be given to person whose land is taken.
- The omission to send any such notice or plan shall not invalidate any notice taking the land, nor confer any right of action or remedy against the Minister or the Crown, or otherwise howsoever.
- (f) No notice taking land or closing a road or street shall be impeached or defeasible on any ground whatsoever. Proclamations to be indefeasible.

Area of Crown land or reserves used or set apart to be deemed to be of two chains width.

98. (1.) Where, out of any Crown lands or public reserve upon which any railway has been or may be constructed, no definite area or part of such lands or reserve is set apart or taken by notice, it shall be deemed that a width of two chains of such lands or reserve (one chain on each side of the middle line of the railway) has been set apart or taken for the purposes of such railway, and is included within the limits and for all purposes is part of such railway.

Land not used to revert as Crown land or reserve.

(2.) If at any time it is desired that any such lands or portion of a reserve so deemed to be part of any railway, or any part thereof respectively, shall cease to be part of such railway, the Governor may, by a notice in the *Government Gazette*, define the portion desired to be retained as part of the railway, and declare that the residue thereof shall again become lands of the Crown, or a part of the public reserve from which it was originally taken, as the case may be.

(3.) Nothing herein shall interfere with any public road or street on any such land or reserve within the area so included in the railway and lying along or adjacent to or crossed by any such railway except under and subject to this Act, nor shall anything herein affect any sale, lease, or other disposition of any such lands or reserve heretofore made and which may be at variance herewith.

Powers to make railways and railway stations, etc.

99. (1.) The Minister may do the following things in respect of any railway authorised by a special Act:—

- (a) Enter upon and make the railway upon, over, or under any land necessary for the construction thereof, lying along the middle line defined in the map referred to in the Act, or within the authorised limits of deviation, and for this purpose may construct works of every kind and of every material necessary to the making thereof; and locomotive engines, machines, carriages, trucks, wagons, and vehicles of all kinds may be used upon and run over any land entered upon or taken or acquired for a railway lying within the limits aforesaid; and any kind of fuel may be used for any such locomotive engine or machine:
- (b.) Make any part of such line of railway on and along any part of any road or street:
- (c) Make the railway upon, across, over, or under any road, street, railway, tramway, or public reserve

along such line, and may alter the level of any road, street, railway, tramway, or public reserve for such purpose:

- (d) Make the railway across any arm of the sea, river, stream, or navigable water:
- (e) Alter the course or the level of any river not navigable, or of any stream, watercourse, ditch, or drain:
- (f) Make drains or conduits on or under any land adjacent to and for the purpose of carrying water from or to the railway; and may at all times maintain the same in good repair:
- (g) Remove or alter any drain or sewer, or any pipe or other material for the supply of water or of gas belonging to any company or person within or beyond the limits of the railway:
- (h) Make or construct all such buildings, stations, engines, machinery, piers, wharves, roads, approaches, water supply works, gas works, electric works, telegraph, telephone, and other works in connection with the railway, as may be thought necessary:
- (i) Do all acts necessary for making, equipping, maintaining, altering, repairing, and using the railway.

(2) The powers by this section conferred upon the Minister may be exercised by him at any time, whether before, during, or after the construction of the railway, and shall extend to additional lands beyond those on which he has previously entered.

(3.) The provisions of this section shall, subject to the provisions of Part III., be deemed to have applied and shall apply to all railways constructed under any Act heretofore in force relating to the construction of public works, or in course of construction, or hereafter to be constructed.

100. (1.) Where any part of a road or street, except where it crosses a railway on a level, is used or occupied for a railway under the powers conferred by the last preceding section, such part of the road or street shall thereafter cease to be a highway.

Rights of way
and traffic where
railway made
along or across
road on a level.

(2.) Where a road, street, or thoroughfare crosses a railway on a level, the public right of way at such crossing shall cease whenever any engine or carriage on the railway is approaching and within a distance of a quarter of a mile from

such crossing; and shall at all other times extend only to the right of crossing the line of railway with all convenient speed, but not stopping or continuing thereon.

(3.) Whenever a railway is constructed upon or across a road, or street, upon the same level, the Minister may carry on and conduct the working and management of such railway in every respect upon or across such road or street; the Minister may also, if he so desires, erect and maintain gates across such road or street on each side of the railway, and may keep such gates closed across such road or street on both sides of the railway, except when passengers on foot or with horses, cattle, and carriages passing along the same shall have the right, under subsection two, to cross the railway, and may safely do so.

Compensation
where road inter-
fered with or
wholly closed.

101. (1.) No compensation shall be payable in respect of the use or occupation of any part of any road or street for any railway, under the powers conferred by the two last preceding sections, or for or in respect of any inconvenience or damage to any lands fronting or adjoining any such road or street arising out of the exercise of the said powers or the construction of the railway upon such part of such road or street.

(2.) (a) No compensation shall be payable in respect of any road or street being wholly closed under the powers conferred by this Act, or in respect of the use or occupation thereof for any railway, or for or in respect of any such inconvenience or damage as mentioned in the last subsection, if reasonable and sufficient access to the nearest road or street crossing over such railway be afforded by some other road or street, whether such last-mentioned road or street has been provided or constructed by the Minister or not.

(b) If any question arises as to whether such other reasonable and sufficient access as aforesaid is afforded, the same shall be determined in such manner as shall be agreed upon between the local authority having the control of roads or streets in the district and the Minister; or if they disagree, as shall be determined upon by some independent person appointed by the Governor; and every such determination shall be conclusive as to the rights or claims of all persons affected.

102. Where the making of a railway line has cut off all access by road to land other than Crown land, the Minister shall make such crossing or crossings as may be necessary to give access to such land.

Government to make crossings to give access to lands.

103. (1.) Where a road or a street crosses a railway on the level, the Minister shall, until the railway is opened for traffic, maintain the road and crossing on the railway, and for a distance on each side of thirty-three feet outside the railway so crossed; but the local authority having charge of the roads or streets in the district shall maintain and metal the same when the railway is open for traffic.

Maintenance of public roads at railway crossings on the level.

(2.) Where a road or street crosses over or passes under any railway by means of a bridge or subway, such bridge or subway shall, until the railway is opened for traffic, be maintained by the Minister; but when the railway is open for traffic, shall be maintained by the local authority having charge of the roads or streets in the district, but in case of decay from any cause other than the default of the local authority, the same shall be repaired, or reinstated by the Minister.

Over or under railway.

(3.) Where a road or street is constructed by the Minister to lead to a railway station, or otherwise for railway purposes, such road or street shall be, until the railway is opened for traffic, maintained by the Minister, except so far as and until the management thereof is handed over to a local authority or it is closed as herein provided.

104. Where it is found necessary for the construction of a railway to alter any public work, or any road, street, tramway, watercourse, sewer, drain, water-pipe or gas-pipe for the supply of water or gas belonging to a private person or company, such alterations shall be made at the request and cost of the Minister and in such manner as to interfere as little as possible with the work so altered.

Alterations in roads, drains, pipes, etc., to be made without detriment to the public or to owners.

105. Whenever the Minister certifies that any portion of land reserved, taken, purchased, or otherwise acquired for a railway is not required for railway purposes, and should be used as a road or street, the Governor may declare by notice in the *Government Gazette* that such portion of such land as is defined in such notice is a road or street, and may by such notice vest the control of such road or street in the local authority most capable in his opinion to construct, control, and maintain the same. From the date of the publication of such

Governor may declare land taken for railway to be road or street, and vest it in local authority.

notice in the *Government Gazette*, such portion of land shall become a road or street, and shall be under the control of and be liable to be maintained by such local authority in like manner as other public highways are controlled and maintained by such authority.

Local authorities may agree with Minister as to conversion of railway bridge into one for combined traffic.

106. (1.) The Minister may convert any railway bridge into a combined road and railway bridge. Any local authority is hereby authorised to pay the cost of such conversion, and also to pay annually to the Minister such further amount as may be necessary to maintain the roadway of the said bridge, and any approaches, gates, or other works or structures in connection therewith, and also to pay the wages of one or more caretakers to the said bridge.

(2.) All moneys hereby authorised to be paid by a local authority shall be paid out of the fund under its control, and charged accordingly.

Right-of-way on joint railway and common bridges.

107. Where a bridge is used for railway and ordinary traffic jointly, the public right-of-way on such bridge shall extend only so far as shall be defined in any by-law made under any Act relating to the management of railways open for traffic. The Minister may at any time close such bridge to public traffic during repairs or whilst the bridge is in his opinion dangerous.

Tree dangerous to railway to be removed.

108. If the Minister is of opinion that any tree on private land adjacent to a railway is likely, by falling or otherwise, to obstruct the traffic or endanger the travellers thereon, he may cause the tree to be removed.

Penalties for trespassing on railway in course of construction.

109. (1.) Any person trespassing upon any railway in the course of construction, or upon any land occupied or temporarily occupied for the purpose of such construction under the powers hereby given, shall be liable to a penalty not exceeding Two pounds.

(2.) Any person riding or driving any animal or vehicle upon such railway or land without lawful authority shall be liable to a penalty not exceeding Five pounds.

(3.) Any such person refusing to leave such railway or land, or to remove such animal or vehicle therefrom, when warned so to do by the overseer, contractor, or any other person in charge of or employed upon such railway, may

be seized and detained by such overseer or other person until he can be conveniently taken before some Justice of the Peace to be dealt with according to law.

110. The Governor may, by notice published in the *Government Gazette*, declare that any fences constructed or intended to be constructed by or on behalf of His Majesty for separating land taken for the use of any railway in such notice mentioned from the adjoining lands not taken, shall, to such extent as is mentioned in such notice be thereafter maintained, or erected and maintained as the case may require, at the cost of His Majesty during such time as the railway may continue to be used by or on behalf of the Government of the State; and such fences shall thereafter be maintained, or erected and maintained as the case may require, by the Minister accordingly.

Crown may elect to erect fences along boundaries of railways.

111. Any person employed on or about any railway in the course of construction may impound animals trespassing upon such railway; and any act or matter required under the Cattle Trespass, Fencing, and Impounding Act, 1882, and any Acts amending or extending the same, to be done by the owner or occupier of land, may be done in respect of a railway by any person authorised generally or specially for that purpose by or on behalf of the Minister.

Railway servants may impound trespassing animals.

PART VII.—GENERAL PROVISIONS.

112. (1.) The Minister may temporarily occupy and use any land for the purpose of constructing or repairing a railway, or any other public work, and may do the following things thereon:—

Land may be occupied temporarily.

- (a) May take therefrom stone, gravel, earth, and other materials;
- (b) May deposit thereon any such material;
- (c) May form and use temporary roads thereon;
- (d) May manufacture bricks or other materials thereon;
- (e) May erect workshops, sheds, and other buildings of a temporary nature thereon.

(2.) The engineer or other person having the charge of the railway or other public work shall, before occupying or using any land as herein provided, and except in the case of accident to the railway requiring immediate repair, give to

Seven days' notice of occupation to be given.

the owner or occupier thereof not less than seven days' notice in writing, and shall state in such notice the use proposed to be made of such land and an approximate period during which such use is expected to continue.

Owner may require compensation.

113. (1.) The owner of any land temporarily occupied, as provided by the last preceding section, may, at any time during such occupation, give notice in writing to the Minister that he, the owner, requires compensation; and, if the land is not taken, the said owner and all persons having any interest in such land may recover compensation for all damage done in the manner provided by Part III. of this Act, but not exceeding the compensation which would have been payable had the land so temporarily occupied or used been taken.

(2.) No compensation shall be payable for any act, matter, or thing done under section one hundred and twelve, the right or authority to exercise which is reserved by this or any other Act, or by any regulation, Crown grant, or other instrument except to the extent therein mentioned, notwithstanding that the terms and conditions imposed by such Act, regulation, grant, or instrument have not been performed.

Buildings exempted from local building regulations.

114. No building or other erection built or erected upon a railway or upon any land taken as or in connection with a Government work shall be subject to any Act, or any by-laws or regulations made under the same, except such as relate to public health, by which any local authority is empowered to regulate the erection, construction, or use of any buildings or erection within the boundaries of such local authority.

Governor may execute instruments.

115. The Governor may execute any deed or instrument for the purpose of granting and confirming any land, easement, right, privilege, concession, payment, or satisfaction which may have been or may hereafter be agreed to be granted or awarded under this or any other Act empowering such grant or award.

Tramways.

116. The Minister shall have the administration, charge, and control of the Tramways Act, 1885, and all amendments thereof and all special Acts passed thereunder, and of all Government tramways constructed thereunder, and all such Acts shall be read as if for the words "Commissioner of Railways" or "Commissioner" were substituted the words "Minister for Works."

117. The Governor may authorise any local authority to sell or to contract to sell and remove any timber, stone, mineral, metal, or other substance upon or under any land vested in it, or placed under its control, for a public road or other public work: Provided that nothing herein contained shall limit the liability of the local authority in respect to damage to person or property by reason of the removal of such timber, stone, mineral, metal, or other substance.

Local authority may sell stone, etc.

118. In all cases where, under this Act or any Act hereby repealed, any money is authorised to be recovered from any local authority as a debt due to His Majesty, the Colonial Treasurer may deduct the same or any portion thereof from any subsidies or other moneys (if any) that may be payable by or on behalf of His Majesty, from time to time, to such local authority under any law for the time being in force, but without prejudice to the right of the Minister to recover the unsatisfied balance (if any) of such debt from such local authority as a debt due to His Majesty in any Court of competent jurisdiction.

Moneys due by local authority may be deducted from moneys payable to it by Government.

119. (1.) In all cases where, under this Act, the Minister is authorised to enter upon and take possession of any lands reserved, acquired, or taken for the purpose of any public work, or is authorised to temporarily occupy and use any land, and the owner or occupier of any such lands, or any other person, refuses to give up possession thereof, or hinders the Minister or any person appointed in writing by him, the Minister may issue his warrant to the sheriff to deliver possession of the same to the person appointed in the warrant to receive possession, and, on receipt of the warrant, the sheriff shall deliver possession of any such lands accordingly.

Proceeding in case of refusal to give up land.

(2.) The costs accruing by reason of the issue and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted from the compensation (if any) then payable to him, or if no such compensation be payable to him, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond the amount of such compensation, if not paid on demand, shall be levied by distress upon the goods and chattels of such person, and, upon application by any person appointed in

that behalf by the Minister, to any Justice of the Peace for that purpose, he shall issue his warrant accordingly, and such costs shall be paid to the Public Works account.

Penalty for obstructing workmen or destroying fences, marks, etc.

120. Every person who wilfully obstructs or interferes with any engineer, architect, surveyor, overseer, workman, or other person in the performance of any duty or in doing any work which he has lawful authority to do under the provisions of this Act, or cuts down, breaks, removes, or destroys any fence in or upon any land taken under the provisions of this Act shall be liable to a penalty not exceeding Fifty pounds for every such offence.

Penalties recoverable in a summary way.

121. All penalties imposed by this Act, or any by-law thereunder, may be recovered summarily before any two Justices of the Peace in Petty Sessions.

Works authorised or anything commenced under repealed enactments.

122. (1.) Any public work authorised by any Act now in force, or by any Act repealed by this or by any former Act, and any land required to be taken, purchased, or acquired for such work, or anything commenced under any such authority as aforesaid, may be continued, taken, purchased, or acquired, executed, carried out, enforced, and completed under the provisions of this Act:

(2.) Provided that, where in the opinion of the Governor the provisions of this Act are not applicable to such work, land, or thing, then, for the purpose of carrying out, taking, and completing such public work, land, or thing, the said repealed provisions shall be deemed to be in full force and operation.

Public works under previous Acts to be deemed constructed under this Act.

123. (1.) Subject to the provisions of the last preceding section, all railways and public works of every kind constructed, and all lands taken or things done under any Act now in force, or under any Act repealed by this or any former Act, shall be deemed to have been constructed, taken, or done under this Act.

Existing proclamations, orders, regulations, etc., to remain in force.

(2.) And all proclamations, Orders in Council, notices, by-laws, regulations and appointments issued, published, or made under any Act hereby repealed and subsisting at the commencement of this Act shall be deemed respectively to have been issued, published, or made under this Act, and shall have effect accordingly.

124. Where any public work in connection with the supply of water to or for any municipality, town, or district is maintained by the Minister, the Governor may by proclamation direct that to the town or district therein mentioned the provisions of the Fremantle Water Supply Act, 1899, shall apply in the same manner as if throughout such Act the name of such municipality, town, or district were substituted for the words "three municipalities."

Application of the 63 Victoria, No. 53, in certain cases.

125. The Water Supply Act, 1893, and the Fremantle Water Supply Act, 1899, shall be administered by the Minister for Works, and throughout those Acts the words "Minister" and "Director of Public Works" shall mean "Minister for Works."

Administration of 57 Vict., No. 20, and 63 Vict., No. 53.

126. Sections D, F, G, and H of the Second Schedule of the Interpretation Act, 1898, shall be incorporated with this Act.

Incorporation of Interpretation Act.

In the name and on behalf of the King I hereby assent to this Act.

E. A. STONE, Administrator.

THIRD SCHEDULE.

Sec. 41.

Form A.

For Cases where Lands are taken.

THE PUBLIC WORKS ACT, 1902.

To [here insert either "The Minister for Works" or the name of the local authority, as the case may be].

Whereas by a notice in the *Government Gazette*, dated the day of _____, 19____, the lands mentioned in Table A hereunder, in which I have an interest, as described in Table B hereunder, have been taken for the purposes of [here insert the name of the public work mentioned in the Notice]:

And whereas the lands mentioned in Table C hereunder adjacent to the lands so taken, in which I have an interest as described in Table D hereunder, will be injuriously affected by severance by reason that: [Here state fully items of claim, with a reference number to each, and give in each case full particulars of the grounds, nature, and extent of claim.] And whereas I have set forth in Table E my estate, right, or interest in land adjoining the land taken:

This is to give notice that I claim the sum of £ _____ as compensation for all loss arising out of the taking of the aforesaid lands mentioned in Table A, which sum is made up as follows:—

acres taken, at	roods per acre	perches of land	£	s.	d.
Land injuriously affected as follows: [Here state reference number, and short heading of each item and claim previously detailed, and the amount claimed in respect of each such item separately.]					
Total claim			£		

(Given under my hand this _____ day of _____, 19____.

Claimant: [Surname and other names in full.]

Address: [Address in full.]

TABLE A.

Description of Lands taken.

[Here give description, area, and situation of lands taken, naming location, portion, or subdivision.]

TABLE B.

Nature of interest in Lands taken.

[Here state in full the nature of the interest (as, for example, owner in fee simple, mortgagee, lessee, or occupier), and, if the lands are leased or incumbered, or are subject to any easement, give particulars of such lease, incumbrance, or easement, etc., etc.]

Public Works.

TABLE C.

Description of Lands injuriously affected by severance.

[Here give description, area, and situation of the lands injuriously affected, naming location, portion, or subdivision, or other means of identification.]

TABLE D.

Nature of interest in Lands injuriously affected by severance.

[Here state in full the nature of the interest (as, for example, owner in fee simple, mortgagee, lessee, or occupier), and, if the lands are leased or incumbered, or are subject to any easement, give particulars of such lease, incumbrance, etc. etc.]

TABLE E.

Land adjoining the Land taken.

[Here set out such lands and nature of estate or interest.]

Form B.

THE PUBLIC WORKS ACT, 1902.

To [here insert either "The Minister for Works" or the name of the local authority, as the case may be].

Whereas the lands mentioned in Table A hereunder, in which I have an interest as described in Table B hereunder, have been entered upon under Section [as the case may be], of the above Act, and whereas the value of the land so entered upon is £ , and whereas by such entry the following damage has been done to the said land, namely [here set forth heads and particulars of all damage done]. This is to give notice that I claim the sum of £ as compensation for the damage caused by such entry, made up as follows [set forth all items making up amount claimed].

Given under my hand this day of , 19 .

[Name in full.]

[Address.]

TABLE A.

Description of Lands entered upon.

[Here give description, area, and situation of lands, naming location, portion, or subdivision.]

TABLE B.

Nature of interest in Lands.

[Here state in full the nature of the interest (as for example, owner in fee simple, mortgagee, lessee, or occupier), and, if the lands are leased or incumbered, or are subject to any easement, give particulars of such lease, incumbrance, or easement, etc., etc.]

Offer for a part of the land, the title to the rest being disputed.

To

This is to inform you that I make you an offer of _____ pounds for your interest in that part of the lands comprised in your claim for compensation, dated the _____ day of _____, 19____, your interest in which as [*here state the estate or interest which is claimed*] is undisputed, viz. [*here describe the part of the lands for which the offer is made*] and for all damages arising from the taking of the same.

Dated this _____ day of _____, 19____.

(Signature.)

Sec. 47.

SEVENTH SCHEDULE.

THE PUBLIC WORKS ACT, 1902.

To the Minister for Works.

This is to inform you that I reject your offer served on me the day of _____, 19____, of £_____ for my interest in all the lands comprised in my claim for compensation, dated the _____ day of _____, 19____, and for all damages arising from taking the same. I herewith enclose a notice appointing an assessor on my behalf, together with a copy of his consent and declaration.

Dated this _____ day of _____, 19____.

(Signature.)

Sec. 48.

EIGHTH SCHEDULE.

THE PUBLIC WORKS ACT, 1902.

Appointment of Assessor by Respondent or Claimant.

In reference to the claim for compensation made on the _____ day of _____, 19____, by _____ in respect of land taken for the purposes of [*here insert the name of the public work*] and in reference to the notice dated the _____ day of _____, 19____, rejecting an offer of £_____, made by the Minister for Works, I [*name of claimant or respondent*] hereby refer the matter to a Compensation Court, and appoint [*name and address in full*] to act as my assessor to fix the amount of compensation payable under the provisions of the above Act.

Dated this _____ day of _____, 19____.

NINTH SCHEDULE.

Sec. 49.

THE PUBLIC WORKS ACT, 1902.

Consent and Declaration of Assessor.

In reference to the matter referred to in the annexed document [*annex a copy of the notice of appointment of the assessor*], I [*name and address in full*] hereby consent to act as assessor on behalf of the claimant (*or respondent*) and do solemnly and sincerely declare that I have no interest, direct or indirect, in the question involved or in any claim arising out of or in connection with the public work in the annexed document mentioned, or with any land taken in connection therewith, and I make this solemn declaration [*complete the form as is usual in case of a statutory declaration*].

Declared at _____ in the presence of me, this _____ day of

19 .

Justice of the Peace.