

Approved for Reprint 22nd December, 1972.

PUBLIC WORKS ACT, 1902.

(2° Edward VII., No. 47.)

ARRANGEMENT.

Sec.

1. Short title and division into parts.

PART I.—PRELIMINARY.

2. Interpretation.
3. Repeal.
4. Governor may make regulations for conduct of officers.
5. Minister for Works.
6. Contracts, etc., of Minister to devolve on his successor.
7. Appointment of engineers and other officers.
8. Annual estimates.
9. Appropriation Bill for railways.
9. Annual accounts and expenditure.

PART II.—TAKING LAND FOR PUBLIC WORKS. *Power to take.*

10. Empowering the taking of land for public work.
11. Governor may authorise works.

What may and what may not be taken.

12. Crown lands, reserves, etc.
13.
 - (1) Power to Minister to take water or acquire land for purpose of supplying water for railway or other purposes.
 - (2) Definition of term "waterworks."
 - (3) Power to Minister to enter on land to lay pipes and examine and repair waterworks.
 - (4) How damage ascertained.
- 13A. Acquisition of underground land.
14. Certain lands, etc., not to be entered on without consent of Governor or owner.
15. Mines and minerals excluded from land taken.
16. As to mineral leaseholds.
17. Procedure for taking land.

ARRANGEMENT—*continued.*

- 17A. Authorised persons may enter land at reasonable times to inspect, etc.
- 18. Effect of notice taking land.
- 19. Notice of taking land to be served on owner.
- 20. Effect of notice on reserves.
- 21. Notice taking land may be annulled or amended.
- 22. Compensation on notice taking land being annulled.
- 23. Registrar to register vested land in name of Her Majesty or local authority, or record vesting in Register of Deeds.
- 24. Crown lands taken to be shown on the maps and records in the Lands Office.

Severed Land.

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

Agreements for taking or purchase.

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

Fencing.

- 27. Protection of adjacent lands before removal of fences.

Taking additional lands.

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

Dealing with lands taken or otherwise acquired.

- 29. Land not wanted may be sold, etc.
- 29A. Previous owner in fee simple may request Minister to ascertain whether land taken is or is not required for public work.
- 29B. Use or disposal of certain land taken etc. under this Act.
- 30. Application of purchase money.
- 31. Notice of sale and receipt of price to operate as transfer.
- 32. Lands not wanted for immediate use may be let.
- 33. Her Majesty or the local authority may grant easements over lands acquired for public work.
- 33A. Easements in gross.
- 33B. Certificate not to issue for easements.

PART III.—COMPENSATION.

For what and when it may be claimed.

- 34. All persons suffering damage entitled to compensation.
- 35. On resumption of land, no compensation payable if otherwise provided in grant or enabling Act.
- 36. Limit of time for making claim for compensation.

The Claim.

- 37. By whom compensation may be claimed.
- 38. Master to be guardian, etc., in certain cases.
- 39. Procedure in unrepresented absentee claims.
- 40. [Repealed.]
- 41. (1) Particulars to be inserted in claim to compensation.
(2) Documents of title to be sent with claim.
(3) Place where claim to be lodged.
- 42. Respondent may require further particulars.
- 43. Time for respondent to serve notice disputing title.
- 44. If notice disputing title not served title is admitted.

ARRANGEMENT—continued.

- 45. Claimant may apply to Court to direct issue or give opinion on question of law.
- 46. If title is not disputed offer to be made.
- 46A. Claim and offer may be amended.
- 47. If offer not rejected by claimant equivalent to acceptance.
- 47A. Method of determining compensation when offer rejected.
- 47B. If offer not made within 120 days of service of claim, claimant may commence proceedings.
- 47C. Claimant failing to proceed after serving notice of rejection of offer on respondent.
- 47D. When action for compensation lies.
- 48. Rejection of offer equivalent to a submission to Court.
- 49. Consent of assessor to act.
- 49A. Advance payments.

The Compensation Court.

- 50. (1) Constitution of Court.
- (2) Stipendiary Magistrate to be president where claim does not exceed \$1000.
- (3) Judge to be president where claim exceeds \$1000.
- 51. When claim exceeds \$1000, Judge, with consent of parties, may appoint a Magistrate to preside.
- 52. Parties may agree on a single person to constitute the Court.
- 53. Court may hear other claims by consent.
- 54. Assessors may be objected to.
- 55. Case of member of Court dying or unable to act.

The Hearing by the Compensation Court.

- 56. Sittings of Court.
- 57. Hearing to proceed in absence of parties.
- 58. Court may adjourn..
- 59. Court to examine witnesses etc.
- 60. Questions to be determined by majority.
- 61. If Court unable to agree.
- 62. When questions of law alone to be determined, President may determine the same.

The Award.

- 63. How compensation to be estimated for land taken.
- 63A. Apportionment of Rates and Taxes.
- 64. How compensation to be estimated in other cases.
- 65. Anything done by claimant to make execution of work more costly to be taken into account.

Assessor's Fees, Costs and Award of Compensation Court.

- 66. Gross sum, or separate sums, may be awarded, and conditions attached.
- 67. Fees to assessors hearing claims.
- 68. Costs.
- 69. Costs may be deducted from compensation awarded.
- 70. Award not void for informality.

ARRANGEMENT—*continued.*

Sec.

71. (1) Award to be in writing.
 (2) And final as to amount, but not as to title.
 (3) When and how enforced.

Title to and application of Compensation and Purchase Money.

72. (1) When title doubtful, compensation or purchase-money to be paid into the Supreme Court.
 (2) Procedure when purchase-money paid into Supreme Court.
 (3) Order as to costs.
73. (1) How compensation in case of limited interests to be dealt with.
 (2) Saving as to partial interests of an absolute character.
74. Master may invest compensation money.
75. Case of mortgaged lands taken.
- 75A. Land being sold on payment by instalments.
76. Case of lands subject to rent-charge.
77. Where rent is payable out of lands of which part only is taken.

Payment and other satisfaction of Compensation and Purchase Money.

78. Minister may agree to grant easements in lieu of compensation or purchase money.
79. Court may award easements in lieu of compensation.
80. Governor may grant surplus land in lieu of compensation.
81. Out of what funds compensation to be paid.

PART IV.—SURVEYS.

82. Powers of entry on lands, etc., for survey purposes.
83. Penalty for destroying survey marks, etc.

PART IVA.—INVESTIGATIONS FOR WATER.

- 83A. Interpretation.
- 83B. Offences.
- 83C. Compensation.

PART V.—ROADS, RIVERS, AND BRIDGES.

84. Definition of road for purposes of Act.
85. Roads vested in the Crown.
86. (1) Minister may repair any road.
 (2) Governor may declare Government roads.
87. Government roads under exclusive care of Minister.
88. Effect of by-laws.
89. Special provisions as to heavy traffic.
90. Breach of by-law not to relieve offender.
91. Governor may vest control of any bridge, etc., in local authority.
92. Stopping or diverting of road.

ARRANGEMENT—*continued.*

Sec.

Rivers.

- 93. Removal of driftwood, etc., from rivers.
- 94. Minister may erect bridges.

PART VA.—ELECTRICITY

- 94A. Interpretation.
- 94B. Minister empowered to generate electricity or acquire undertaking.
- 94C. Minister to be a supply authority.
- 94D. By-laws.

PART VI.—RAILWAYS.

- 95. Definition of "railway."
Land purchased for a railway to be deemed part of the railway.

Construction.

- 96. Railways to be made only under special Act.
- 97. Procedure for making railways.
 - (a) After passing of special Act, land may be occupied.
 - (b) Governor may take land for railway.
 - (c) *Gazette* notice conclusive evidence of taking and vesting of land.
 - (d) Notice to be deposited with Registrar.
 - (e) Before or after the time of taking land notice to be given to person whose land is taken.
 - (f) Notice to be indefeasible.
- 98. (1) Area of Crown land or reserves used or set apart to be deemed to be of two chains width.
(2) Land not used to revert as Crown land or reserve.
- 99. Powers to make railways and railway stations, etc.
- 100. Rights of way and traffic where railway made along or across road on a level.
- 101. Compensation where road interfered with or wholly closed.
- 102. Government to make crossings to give access to lands.
- 103. (1) Maintenance of public roads at railway crossings on the level.
(2) Over or under railway.
- 104. Alterations in roads, drains, pipes, etc., to be made without detriment to the public or to owners.
- 105. Governor may declare land taken for railway to be road or street, and vest it in local authority.
- 106. Local authorities may agree with Minister as to conversion of railway bridge into one for combined traffic.
- 107. Right-of-way on joint railway and common bridges.
- 108. Tree dangerous to railway to be removed.
- 109. Penalties for trespassing on railway in course of construction.
- 110. Crown may elect to erect fences along boundaries of railways.
- 111. Railway servants may impound trespassing animals.

ARRANGEMENT—*continued.**Sec.*

PART VII.—GENERAL PROVISIONS.

- 112. (1) Land may be occupied temporarily.
(2) Seven days' notice of occupation to be given.
- 112A. Land may be entered with a view to permanent occupation.
- 113. Owner may require compensation.
- 113A. Property in things placed on the land.
- 114. Buildings exempted from local building regulations.
- 115. Governor may execute instruments.
- 116. Tramways.
- 117. Local authority may sell stone, etc.
- 118. Moneys due by local authority may be deducted from moneys payable to it by Government.
- 119. Proceeding in case of refusal to give up land.
- 120. Penalty for obstructing workmen or destroying fences, marks, etc.
- 121. Penalties recoverable in a summary way.
- 122. Works authorised or anything commenced under repealed enactments.
- 123. (1) Public works under previous Acts to be deemed constructed under this Act.
(2) Existing proclamations, orders, regulations, etc., to remain in force.
- 124. Application of 63 Victoria, No. 53, in certain cases.
- 125. Administration of 57 Vict., No. 20, and 63 Vict., No. 53.
- 126. Incorporation of Interpretation Act.

 SCHEDULES.

Approved for Reprint 22nd December, 1972.

WESTERN AUSTRALIA.

PUBLIC WORKS.

No. 47 of 1902.

[Affected by Act No. 12 of 1957, s. 6.]

[As amended by Acts:

No. 8 of 1906 assented to 18/9/06;
No. 60 of 1926 assented to 24/12/26;
No. 35 of 1934 assented to 4/6/34¹;
No. 41 of 1945 assented to 30/1/46;
No. 23 of 1950 assented to 5/12/50;
No. 48 of 1953 assented to 29/12/53;
No. 3 of 1954 assented to 25/8/54;
No. 59 of 1955 assented to 13/12/55;
No. 55 of 1956 assented to 27/12/56;
No. 46 of 1961 assented to 23/11/61;
No. 59 of 1965 assented to 19/11/65;
No. 41 of 1966 assented to 4/11/66;
No. 53 of 1967 assented to 5/12/67;
No. 19 of 1972 assented to 26/5/72.

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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

[Assented to 20th December, 1902.]

BE it enacted—

1. This Act may be cited as the *Public Works Act, 1902-1972*, and is divided into the following parts:—

PART I.—PRELIMINARY, ss. 2-9

PART II.—TAKING LANDS FOR PUBLIC WORKS,
ss.10-33B.

PART III.—COMPENSATION, ss. 34-81.

PART IV.—SURVEYS, ss. 82, 83.

PART IVA.—INVESTIGATIONS FOR WATER, ss.
83A-83C.

PART V.—ROADS, RIVERS and BRIDGES, ss. 84-
94.

PART VA.—ELECTRICITY, ss. 94A-94D.

PART VI.—RAILWAYS, ss. 95-111.

PART VII.—GENERAL PROVISIONS, ss. 112-126.

Short title
and division
into parts.
Amended by
No 48 of
1953, s. 2;
No. 46 of
1961, s. 2;
No. 19 of
1972, s. 1.

¹ Came into operation on 12th Feb., 1934. See *Gazette* of 9/2/34, p. 143.

PART I.— PRELIMINARY.

Interpre-
tation.
Amended by
No. 35 of
1933, s. 3;
No. 41 of
1945, s. 2;
No. 48 of
1953, s. 3.
No. 19 of
1972, s. 2.

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

“Claimant” means any person entitled to claim 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 and classified as of Class A under paragraph (a) of subsection (1) of section thirty-one of the Land Act, 1933.

“Government work” means any work constructed or intended to be constructed by or under the control of Her 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” as regards all public works other than railways, and also as regards the provisions of this Act relating to the taking or acquisition of land required for railways, and the making of claims for compensation in respect of land taken for railways and the settlement or enforcement of such claims and relating to all matters in-

cidental to the taking or acquisition of such land as aforesaid and to claims for compensation and the settlement and enforcement thereof means the Minister for Works appointed under this Act and also any member of the Executive Council acting as Minister for Works; but as regards railways, save and except as aforesaid, "Minister" means the Minister for Railways and any Minister of the Crown for the time being administering the Government Railways Act, 1904. S. 2.

"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, 1898,¹ 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 Her 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

¹ See now Land Act, 1933.

s. 2.

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 within the meaning given to that term by section two of the Hospitals Act, 1927, medical clinics, hostels and institutions including residences for staff, court-houses, gaols, watch-houses, lock-ups, police barracks, or quarters.
- (7) Observatory.
- (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, universities, colleges, technical and other educational institutions, including residences or hostels for teachers or students, 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 or historical interest.

- (14A) The protection and preservation of indigenous flora and fauna. S. 2.
- (15) The establishment of public abattoirs.
- (16) Harbours and ports, including the provision of storage, handling and wharfage areas and other facilities normally ancillary to the conduct of shipping operations, break-waters, leading marks, navigational aids, docks, slips, the alteration or improvement of channels, waterways and rivers, the protection or foreshores and banks, the provision of new channels and related works, including the landing and disposal of silt.
- (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.
- (17A) The procuring from land (other than Crown Lands and reserves within the meaning of the Land Act, 1933-1939¹ of timber, stone, gravel, earth and any other material required by or for the State for or in connection with the carrying on of any industrial or other undertaking or activity which is being carried on by or for the State under any law authorising the same.
- (17B) Buildings and structures required for fire brigade purposes.
- (17C) The establishment and the extension by the Governor of sites for towns.

¹ See now Land Act. 1933-1972.

s. 2.

(17D) The establishment and the extension by the Governor of agricultural research stations.

(18) Drainage works in connection with any city, town, or district, and the improvement of rivers, watercourses, lakes, or inlets, including deepening, widening, straightening or otherwise altering, and disposal of silt.

(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 or 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.¹

“Respondent” means the Minister, in the case of Government works, and the local authority, in the case of local works.

¹ Now see Stipendiary Magistrates Act, 1957, s. 6 (2).

“River” means a river, stream, creek, or water-course, in which water flows permanently or intermittently.

[Cf. No. 19 of 1914, s. 2, “Water-course.”]

“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, 1895.¹

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

Repeal. First Schedule.

(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.

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.

Governor may make regulations for conduct of officers.

5. (1) The Governor shall appoint some member of the Executive Council to be the Minister for Works, who shall, subject to the definition of “Minister” in section two of this Act, 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. The Minister for Railways and any Minister of the Crown for the time being administering the Government Railways Act, 1904, shall, subject to the definition of “Minister” in section two of this Act, be charged with the administration of this Act as regards railways.

Minister for Works. Amended by No. 35 of 1933, s. 4; No. 41 of 1945, s. 3.

(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

¹ See now Licensed Surveyors Act, 1909.

in any Act or document to the Director of Public Works shall be read as a reference to the Minister for Works.

(3) The Minister in office at the commencement of this subsection and his successors in office shall for the purposes of this Act become and continue to be a body corporate under the name of the "Minister for Works" with perpetual succession and a Common Seal; and by that name shall be capable of suing and being sued, acquiring, holding, letting and taking land on lease, and alienating real and personal property, and of doing and suffering all such other acts and things as may be necessary or expedient for carrying out the purposes of this Act.

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

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.

Appointment
of engineers
and other
officers.

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.

Annual
estimates.

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.

(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 by or for him under the authority of this Act during the preceding financial year; also a full and correct statement of the expenditure during such year incurred by or for him on all the works and services chargeable to the fund appropriated for public works.

Annual accounts and expenditure. Amended by No. 8 of 1906, s. 4; No. 35 of 1933, s. 5.

(2) The Minister shall, on the annual estimates for his 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.

10. Whenever Her 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.

Empowering the taking of land for public work.

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.

Governor may authorise works.

What may and what may not be taken.

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—

Crown lands, reserves, etc.

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, 1899¹, 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.

Definition of term "Waterworks."

(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.

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

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

How damage ascertained.

(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.

(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.

¹ Repealed by Land Act, 1933 (No. 37 of 1933, s. 4).

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. No. 3 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—

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

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 *bona 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.

15. (1) Where prior to the coming into operation of the Public Works Act Amendment Act, 1953, the estate in fee simple in land has been taken by the Governor or by any local authority for the construction or providing of any public works, and the right to any mines of coal or other minerals under such land have not, because of the provisions of this section as they were in operation prior to the coming into operation of that Act, been included in such taking, except only such parts thereof as have been necessary for the proper and effectual construction, support, and maintenance of such works

Mines and minerals excluded from land taken. Amended by No. 48 of 1953, s. 4; No. 3 of 1954, s. 2.

- (a) to the extent to which those rights have not been included in the taking, they are by virtue of this section taken, and revert in Her Majesty as of her former estate; and
- (b) for the purpose of calculating the period within which claims may be made under this Act for compensation in respect of those rights which by virtue of this section are so taken, the day of the coming into operation of the Public Works Act Amendment Act, 1953, is deemed to be the date of the publication, mentioned in section thirty-six of this Act of the notice of the taking.

(2) Where on or after the coming into operation of the Public Works Act Amendment Act, 1953, the estate in fee simple in land is taken by the Governor or a local authority for the construction or providing of a public work, the taking includes the rights to mines of coal or other minerals under the land, and those rights revert in Her Majesty as of her former estate, unless the notice effecting the taking provides otherwise.

(3) Where a claim is made for compensation in respect of rights to mines of coal, or other minerals under land, whether taken by paragraph (a) of subsection (1) of this section, or under a taking mentioned in subsection (2) of this section, the Minister or the local authority, as the case requires, may elect either to make compensation or to revert in the claimant the whole or such part of those rights, as the Minister or the local authority thinks fit.

(4) Where the Minister or the local authority reverts under subsection (3) of this section the whole or part of those rights no compensation is payable in respect of the taking of the rights so reverted.

16. Where any land taken is held for any right, title, estate, or interest under any Act relating to the use of land for mining purposes, the holder of such right, title, estate, or interest is only 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.

17. (1) Whenever any land is required for any public work, the Governor may, subject to the provisions of subsection (2) of this section, 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.

Procedure
for taking
land.
Amended by
No. 59 of
1955, s. 2.
No. 19 of
1972, s. 4.

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

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

- (i) The place where persons interested may at any reasonable time inspect a plan of the land;
- (ii) a statement of the nature of the work proposed to be carried out; and
- (iii) a description of the land required.

(c) As soon as possible after the publication in the *Gazette* of the notice of intention to take or resume the land in accordance with the provisions of paragraph (b) of this subsection or of a notice cancelling or amending the notice of intention in accordance with the provisions of subparagraph (iii) of paragraph (d) of this subsection the Minister shall—

- (i) cause a copy of the notice to be published in one issue of a newspaper circulating in the district in which the land is situated;

S. 17.

- (ii) cause a copy of the notice to be served on the owner or each of the owners, and on the occupier or each of the occupiers of the land, residing within the State, or such of them as can with reasonable diligence be ascertained, either personally or by registered letter posted to their last known place of residence;
- (iii) cause a copy of the notice to be delivered to the Registrar of Titles if any land referred to therein is under the operation of the Transfer of Land Act, 1893, to the Registrar of Deeds if any land referred to therein is not under the operation of that Act, and to the Minister for Lands if a register is kept by the Department of Lands of any land referred to therein.

(d) (i) Within thirty days after the publication in the *Gazette* of the notice of intention to take or resume the land or such further time as the Minister may allow, any person having an estate or interest in the land as owner or occupier may, by himself or jointly with any other person so qualified, serve on the Minister at the office of the Department of Public Works written objections to the taking or resuming of the land, not having reference to the matter of compensation, which objections are to include a description of the land, the nature of the estate or interest of the objector or objectors therein, the address of the objector or objectors and the grounds of objection.

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

(iii) The Minister shall consider the objections and representations as are made pursuant to the notice, and having done so, if he is of the opinion that the objections are sufficient to warrant the

cancellation or amendment of the notice of intention to take or resume any land, he may, by subsequent notice published in the *Gazette*, cancel or amend, as the case requires, the notice of intention. S. 17.

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

(e) Where at the expiry of thirty days or such further time as is allowed by the Minister after the publication of the notice of intention to take or resume any land no objections are received by the Minister from any owner or occupier, or where the objections, if any, received by him are in his opinion not sufficient to warrant the cancellation or amendment of the notice and in the foregoing cases, the approval or authorisation, if required, for the undertaking, constructing or providing of the public work, is duly obtained, the provisions of subsection (1) of this section shall apply as though this subsection had not been enacted.

(2a) The provisions of subsection (2) of this section do not apply—

(a) where the land is Crown land and no person has an estate or interest in the land as owner or occupier; and

(b) where the owner of the land has signified in writing his agreement—

- (i) to the sale of the land; or
- (ii) to the taking of the land for the purposes of the work.

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

S. 17.

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

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

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

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

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

(a) to which the State or Commonwealth, or any authority of the State or Commonwealth, or a person acting on behalf of the State, the Commonwealth or that authority, other than the Public Trustee, is a party;

(b) by which land is acquired on sale under a writ or warrant of execution issued out of any court;

- (c) by way of discharge of a mortgage or sub-mortgage; S. 17.
- (d) by way of partition between co-owners;
- (e) by way of deed of arrangement between beneficiaries under a will or settlement;
- (f) vesting in the personal representative of a deceased person, in his capacity as such, any land or interest in any land;
- (g) which vests any land, or any interest in land, in any trustee of the estate of a deceased person, in a trustee in bankruptcy, or in any new trustee under any instrument, in his capacity as trustee;
- (h) which is without consideration in money or money's worth and the purpose of which is to vest any land, or any interest in land, in any person beneficially entitled thereto, under or by virtue of any will or intestacy or by way of gift; or
- (i) by way of a deed of assignment or deed of arrangement under the Bankruptcy Act 1924 of the Parliament of the Commonwealth, or any Act passed in amendment of, or substitution for, that Act.

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

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

the Registrar shall make in the document of title relating to the land a record of the notice of in-

S. 17.

tention and of the cancellation or amendment or extension if any, thereof;

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

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

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

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

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

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

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

Authorised persons may enter land at reasonable times to inspect, etc. Added by No. 59 of 1955, s. 3.

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

18. Upon the publication of the notice referred to in subsection (1) of section seventeen of this Act in the *Government Gazette*—

Effect of notice taking land. Amended by No. 23 of 1950, s. 3; No. 59 of 1955, s. 3A.

- (1) as the Governor may direct and the case require the land referred to in such notice shall, by force of this Act, be vested in Her Majesty, or the local authority, for an estate in fee simple in possession or such lesser estate 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 the 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

Notice of taking land to be served on owner.

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.

Effect of
notice on
reserves.

20. Subject to the provisions of the Permanent Reserves Act, 1899,¹ 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 Her Majesty.

Notice
taking land
may be
annulled or
amended.
Amended by
No. 23 of
1950, s. 4.

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 and upon publication of the subsequent notice the Registrar shall record the annulment or amendment as it affects the land on the Certificate of Title of the land if under the operation of the Transfer of Land Act, 1893-1946,² or by memorial in the Register of Deeds, if the land is not under the operation of that Act.

(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 *bona fide* done under such notice before the annulment or amendment thereof.

¹ Repealed by Land Act, 1933 (No. 37 of 1933).

² Now Transfer of Land Act, 1893-1972.

(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.

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.

Compensation on notice taking land being annulled. Amended by No. 23 of 1950, s. 5.

23. (1) Upon the vesting of the land in Her Majesty or in a local authority pursuant to the provisions of section eighteen of this Act—

Registrar to register vested land in name of Her Majesty or local authority, or record vesting in Register of Deeds. Amended by No. 23 of 1950, s. 5; No. 41 of 1966, s. 2.

- (a) if the land is of an estate in fee simple and is not under the operation of the Transfer of Land Act, 1893-1946,¹ the Registrar shall bring the land under the operation of that Act by registering the land in the name of Her Majesty, Her heirs and successors, or of the local authority, as the case may be;
- (b) if the land is of an estate of less than fee simple and is not under the operation of the Transfer of Land Act, 1893-1946,¹ the Registrar shall record the vesting by memorial in the Register of Deeds;
- (c) if the land, whether of an estate in fee simple or a lesser estate is under the operation of the Transfer of Land Act, 1893-1946,¹ the Registrar shall register the land in the name of Her Majesty, Her heirs and successors, or of the local authority, as the case may be;
- (d) in any case, the Minister or the local authority, as the case may be, shall, so soon after the vesting as is practicable, deliver to the Registrar, a copy of the notice referred to in subsection (1) of section seventeen of

¹ Now Transfer of Land Act, 1893-1972.

this Act and a description of the land referred to in the notice accompanied, when required by the Registrar, by a plan of that land;

(2) [*Repealed by No. 23 of 1950, S.5*]

(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, or for the purpose of recording the vesting in the Register of Deeds 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 One hundred dollars.

(4) (a) If the land is under the operation of the Transfer of Land Act, 1893-1946¹ 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.

(b) If the land is not under operation of the Transfer of Land Act, 1893-1946¹, the Registrar, after complying with the appropriate requirements of this section, shall return to the person from whom it was received or to any person entitled to receive it on his behalf, any such instrument as is not required to be retained for giving effect to those requirements and as evidences the ownership of any land, a description of which is included in the instrument, but is not taken.

(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.

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.

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

¹ Now Transfer of Land Act, 1893-1972.

Severed Land.

25. (1) (a) Subject to the provisions of the next succeeding paragraph, if any land is so divided by the land taken as to leave on any side thereof land of an area of one rood or less, 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. Amended by No. 23 of 1950, s. 5.

(b) The provisions of the last preceding paragraph do not apply—

(i) where the land so divided—

(A) is situate in a municipal district constituted pursuant to the provisions of the Municipal Corporations Act, 1906-1947,¹ or a townsite according to the interpretation of that expression on section five of the Road Districts Act, 1919-1948,² or other area subdivided into sites for urban or suburban purposes; or

(B) is built upon; or

(C) had, prior to being so divided, an area not exceeding one statute acre; or

(ii) where the estate in the land taken is an estate of less than the fee simple.

(c) In this subsection—

“sites for urban or suburban purposes” includes, without limiting the scope of the expression, sites for residences, shops, factories, ware-houses, markets, schools, hospitals, churches, theatres, halls, offices, banks and business chambers.

(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.

¹ Repealed by Local Government Act, 1960.
² Repealed by Local Government Act, 1960.

Agreements for Taking or Purchase.

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

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.

(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.

Protection of adjacent lands before removal of fences.

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.

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 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.

29. (1) Subject to section twenty-nine B of this Act, where any land compulsorily taken or resumed under this or any other Act, for any public work, is in the opinion of the Governor not required for that work, the land may, subject to the provisions of subsections (2) to (6) inclusive of this section, be sold by public auction or private contract or used by the Minister or the local authority in which it is vested for any other public work.

Land not wanted may be sold, etc. Substituted by No. 59 of 1955, s. 5. Amended by No. 55 of 1956, s. 2; No. 59 of 1965, s. 2; No. 41 of 1966, s. 3; No. 19 of 1972, s. 5.

(2) Before land referred to in subsection (1) of this section is so sold or used the Minister shall cause a notice to be published in the *Gazette* to the effect that the land is no longer required for the work for which it was taken and shall cause a copy of the notice to be served on such person or persons as appear to him to have had an estate in fee simple in the land immediately prior to the taking or resumption, either personally or by registered letter posted to their last known place of abode; but the service of a notice under this subsection does

S. 29.

not imply an acknowledgement by the Minister of any right in the person or persons to be granted an option under the provisions of paragraph (c) of subsection (3) of this section.

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

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

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

(ca) Notwithstanding the provisions of paragraph (c) of this subsection the Minister shall not be bound to grant the option referred to in that paragraph where—

- (i) the land as a separate lot does not comply with the requirements of the Town Planning and Development Act, 1928, except where it can be amalgamated with adjoining land owned by the person who would otherwise be qualified to apply for the option and thereupon comply with those requirements;
- (ii) the land was taken or resumed because it would have been severed by the work from the remaining land of the owner thereof;

- (iii) the land taken or resumed cannot be added to other land owned by the person otherwise qualified to apply for the option by reason of that person having disposed of, or subdivided for disposal, the remainder or any part of the remainder of the land from which the first-mentioned land was taken or resumed; or
- (iv) the land is portion only of that taken or resumed and is required for a work ancillary or incidental to any public work, the remainder of the land so taken or resumed continuing to be required for the public work for which the taking or resumption was effected.

(cb) Any person aggrieved by the refusal of the Minister by virtue of paragraph (ca) of this subsection to grant to him the option applied for may within twenty-one days after notice of such refusal appeal in manner prescribed by Rules of Court against that refusal to the Supreme Court and such Court on hearing the appeal may make such order as appears to the Court to be just, including an order for the payment of costs, and the decision of the Court shall be final and conclusive.

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

S. 29.

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

(ii) The Minister's decision on any matter referred to in this paragraph or in paragraph (c) or (d) of this subsection is final, except where a decision made under paragraph (c) is so made by virtue of the provisions of paragraph (ca) of this subsection.

(f) For the purposes of this subsection a legal representative of a deceased person who had an estate in fee simple in the land immediately prior to the date of the taking or resumption is to be regarded as entitled to apply for and, subject to paragraphs (c), (d) and (e) of this subsection be granted, an option to purchase the land upon that legal representative, in the absence of any testamentary power to purchase land, obtaining an order of the Court or the consent of all the beneficiaries of the deceased person to purchase the land, but a beneficiary of a deceased person who immediately prior to that date had an estate in fee simple in the land, and a person who prior to that date sold or contracted to sell, or otherwise alienated or disposed of his estate in fee simple in the land whether absolutely or on terms are not entitled to apply for or be granted an option to purchase the land.

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

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

(c) A local authority shall not sell any land so taken or resumed and vested in it for any public work without the consent of the Governor to the sale and shall not apply for the Governor's consent except through the Minister nor until it receives from the Minister particulars of all options granted in respect of the land or the information that no person is entitled to be granted an option in respect thereof. S. 29.

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

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

(7) (a) Where any land acquired for any public work under this or any other Act otherwise than by way of compulsory taking or resumption, is not required for that work,

(i) the Minister, or if the land is vested in a local authority, that local authority, may use the land for any other public work; or

(ii) the Governor, or the local authority in which the land is vested with the consent of the Governor, may, subject to the provisions

of paragraph (b) of this subsection, cause the land to be sold by public auction or private contract.

(b) Before land is sold under the provisions of this subsection, notice advertising the land for sale shall be published in the *Government Gazette*.

(8) Where no person is qualified under this section to be granted an option to purchase land that has been acquired by having been compulsory taken or resumed under this or any other Act for any public work and in accordance with the provisions of this section it is proposed to dispose of that land or of any land that has been acquired by agreement for any public work, regard shall be had to the general principle that in such cases the land should, where in the opinion of the Minister practicable and appropriate, be first offered for sale at a reasonable price determined by the Minister to the former owner or the owner for the time being of the land from which the land proposed to be disposed of was so taken or resumed or acquired by agreement.

Previous owner in fee simple may request Minister to ascertain whether land taken is or is not required for public work. Added by No. 59 of 1955, s. 6. Amended by No. 55 of 1956, s. 3; No. 59 of 1965, s. 3.

29A. (1) Subject to section twenty-nine B of this Act, where any land compulsorily taken or resumed under this Act for a public work is not being used for any public work and a notice in respect of that land has not been published in the *Gazette* in accordance with the provisions of subsection (2) of section twenty-nine of this Act a person who, if a notice were published in the *Gazette* to the effect that the land was available for sale, would be entitled under the provisions of section twenty-nine of this Act to apply for an option to purchase the land, may by application in writing to the Minister request him to ascertain whether, in the opinion of the Governor, the land is or is not required for the work.

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

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

(4) Where, upon an application under subsection (1) of this section, the Governor's decision is that the land is not required for that work, the provisions of subsections (2) to (6) inclusive of section twenty-nine of this Act shall apply, and the Minister shall, as soon as practicable after communicating the decision to the applicant, cause a notice to be published in the *Gazette* as provided in subsection (2) of that section.

29B. (1) Where any land compulsorily taken or resumed under this Act for a public work—

(a) has been used for that public work for a period of ten years or more since it was last so taken or resumed, if at any time after that period, the land is no longer required for that public work, sections twenty-nine and twenty-nine A of this Act do not apply to the land and with the approval of the Governor, it may be—

- (i) sold by public auction or private contract; or
- (ii) used by the Minister or local authority in which it is vested for any other public work;

(b) is not required for that work, at any time after a period of ten years since it was last so taken or resumed, sections twenty-nine and twenty-nine A of this Act apply to the land but the purchase price thereof payable by the person, if any, to whom an option to purchase the land is granted under the firstmentioned section, shall be such reasonable price as the Minister determines.

Use or disposal of certain land taken etc. under this Act.
Added by No. 59 of 1965, s. 4.
Amended by No. 41 of 1966, s. 4.

(2) The reasonable price determined by the Minister under paragraph (b) of subsection (1) of this section shall not be—

- (a) less than the aggregate amount of the compensation and the value of improvements, if any, made on the land by the Minister or authority subsequent to the date on which the land was last compulsorily taken or resumed under this Act for a public work; or
- (b) more than that aggregate amount plus one-tenth of that amount for each year or part of a year since the date on which the land was last so taken or resumed.

(3) If the person to whom an option to purchase the land is granted is aggrieved by the amount of the purchase price specified therein as determined by the Minister under subsection (2) of this section, he may, within twenty-one days after being notified that he has been granted the option to purchase, appeal in manner prescribed by Rules of Court to—

- (a) the Supreme Court, if the amount of the purchase price specified in the option to purchase exceeds one thousand dollars; or
- (b) the Local Court held nearest to the land to which the option of purchase relates, if the amount of such purchase price is one thousand dollars or less,

and the Court hearing the appeal may make such order as appears to the Court to be just, including an order for the payment of costs and extension of the period of the option to purchase, whether or not the application therefor is made before or after the expiration of the time allowed for the exercise of the option to purchase.

30. The proceeds of land sold under sections twenty-nine or twenty-nine B of this Act 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. (1) Subject to subsections (2) and (3) of this section, 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, or if any land reserved under the Land Act, 1933, for a purpose that is, under this Act, a Government work or a local work, on which improvements exist or have been erected for the purposes of, or for purposes incidental to, that work, 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.

Lands not wanted for immediate use may be let. Amended by No. 53 of 1967, s. 2.

(2) A local authority shall not under this section—

- (a) let any Crown land without having first obtained the consent in writing of the Minister for Lands; or
- (b) grant a lease for a term exceeding three years without having first obtained the consent in writing of the Minister.

(3) A lease of Crown land granted under this section shall not be mortgaged, assigned or charged for any purpose unless the consent thereto in writing of the Minister for Lands has been first obtained.

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

33. (1) Her 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 Her 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.

(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.

Easements in gross. Added by No. 23 of 1950, s. 7. Amended by No. 19 of 1972, s. 6. [Cf. No. 44 of 1930, s. 19.]

33A. It shall be and shall be deemed always to have been possible—

- (a) to create in favour of the Crown or in favour of a local authority, an easement without a dominant tenement;
- (b) to make appurtenant or to annex to an easement, another easement or the benefit of a restriction as to the user of land.

Certificate not to issue for easements. Added by No. 23 of 1950, s. 7.

33B. A certificate of title shall not issue pursuant to the provisions of the Transfer of Land Act, 1893-1946,¹ for an easement acquired pursuant to the provisions of this Act.

PART III.—COMPENSATION.

For what and when it may be claimed.

All persons suffering damage entitled to compensation.

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

¹ Now Transfer of Land Act, 1893-1972.

(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.

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

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

(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.

Period
limited for
making
claim for
compen-
sation.
Substituted
by No. 59 of
1955, s. 7.

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

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

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

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

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

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

Procedure in unrepresented absentee claims.

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.

(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.

40. [*Repealed by No. 19 of 1972, S.7.*]

Particulars
to be
inserted in
claim to
compensation.
Third Schedule.
Amended by
No. 41 of
1966, s. 5.

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.

(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 Ten dollars.

Place where claim to be lodged.

(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.

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

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—

- (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.

(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 judgment 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 not disputed claim to be examined within 90 days and offer made. Substituted by No. 59 of 1955, s. 8. Amended by No. 41 of 1966, s. 6; No. 19 of 1972, s. 8.

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

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

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

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

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

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

Sixth
Schedule.

(3) [*Repealed and re-enacted as Section 49A by No. 19 of 1972, S.8.*]

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

Claim and
offer may
be amended.
Added by
No. 59 of
1955, s. 9.

47. (1) Within sixty days after the service of the offer or amended offer, as the case may be, of compensation the claimant may serve on the respondent a notice, in the form in the Seventh Schedule hereto, rejecting such offer.

If offer not
rejected by
claimant,
equivalent to
acceptance.
Seventh
Schedule.
Amended by
No. 59 of
1955, s. 10.

(2) If notice of rejection is not given within such time the offer or the offer as amended, as the case may be, shall be deemed accepted.

Method of determining compensation when offer rejected. Added by No. 59 of 1955, s. 11.

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

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

If offer not made within 120 days of service of claim claimant may commence proceedings. Added by No. 59 of 1955, s. 11.

47B. If the respondent fails to serve on the claimant an offer of compensation within one hundred and twenty days after—

- (a) the service of the claim under section forty-one of this Act, the claim not having been amended; or
- (b) receiving notice of amendment, where the claim is amended under section forty-six A of this Act; or
- (c) compliance with the demand, if any, for further particulars under section forty-two,

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

- (d) the judgment, if any, of the Court under section forty-five of this Act, if in favour of the claimant's title,

the claimant may either
institute an action for compensation against
the respondent

or

refer his claim for the compensation to the
Compensation Court.

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

Claimant failing to proceed after serving notice of rejection of offer on respondent.

(Cf. s. 39 ante.)
Added by No. 59 of 1955, s. 11.

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

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

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

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

When action for compensation lies. (V. Chh. 1906, No. 13, s. 37 (1).) Added by No. 59 of 1955, s. 11.

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

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

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

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

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

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

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

- (i) determine the amount of compensation payable by the defendant to the plaintiff in respect of the taking or resumption of the land, having regard solely to the provisions of this Act and in particular to the matters prescribed in section sixty-three, sixty-three A, sixty-four, sixty-five, sixty-six and seventy-nine;
- (ii) where two or more persons are entitled to share the compensation, determine the amount payable to each person and the manner in which it is to be paid.

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

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

Rejection of offer equivalent to a submission to Court. Amended by No. 59 of 1955, s. 12; No. 41 of 1966, s. 9.

Eighth Schedule.

Ninth Schedule.

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

Eighth and Ninth Schedules.

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

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

either

amend his offer by increasing the amount of compensation stated therein

or

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

Eighth
Schedule.

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

either

serve on the claimant an offer of compensation

or

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

Eighth
Schedule.

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

(i) amend the offer by increasing the amount of the compensation referred to therein, or

(ii) appoint an assessor and serve a copy of the appointment on the claimant, or

(iii) serve on the claimant an offer of compensation,

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

(b) Upon the service on the claimant of the copy of the appointment of assessor by the respondent, or upon the appointment of an assessor by the Master under this section or a Judge under section

thirty-nine or forty-seven C or upon the execution of an agreement under section fifty-two the amount of compensation to be paid shall be determined by the Compensation Court.

(3) Upon notice of 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 Stipendiary Magistrate whose Court is nearest to the land in respect of which the claim arises, if such claim does not exceed One thousand dollars 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.

49A. Where any land has been taken or entered upon for the purpose of carrying out public works under the provisions of this Act, or under the provisions of any other Act in any case where the payment of moneys, by way of compensation or otherwise, is to be made in the manner provided by this Act, the respondent may, as soon as practicable, offer and pay to the claimant, as and by way of an advance or interim payment on account of those moneys, such amount or amounts as the respondent thinks fit, but if required by the claimant the respondent shall pay to the claimant, by way of such advance or interim payment, an amount equivalent to two-thirds of the amount of any compensation offered; and any such payment may be so received and retained by the claimant without prejudice to his rights under section forty-seven or any other provision of this Act.

Advance
payments.
Added by
No. 19 of
1972, s. 8.

The Compensation Court.

Heading amended by No. 59 of 1955, s. 14. Constitution of Court. Amended by No. 41 of 1966, s. 8.

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.

Stipendiary Magistrate to be president where claim does not exceed \$1,000.

(2) When the amount claimed does not exceed One thousand dollars, the Stipendiary 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 Stipendiary Magistrate to be the president.

Judge to be president where claim exceeds \$1,000.

(3) Where the amount claimed exceeds One thousand dollars a Judge shall be the president.

When claim exceeds \$1,000, Judge, with consent of parties, may appoint a Magistrate to preside. Amended by No. 41 of 1966, s. 8.

51. If the amount claimed exceeds One thousand dollars and the claimant and respondent shall consent in writing that the claim should be heard before a Stipendiary 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.

Parties may agree on a single person to constitute the Court. Amended by No. 59 of 1955, s. 13.

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.

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

(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.

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

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

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

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.

Court may hear other claims by consent.

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.

Assessors may be objected to.

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

Case of member of Court dying or unable to act.

shall appoint a successor; but the inquiry before the Court shall proceed as if no such change in its members had taken place.

Heading amended by No. 59 of 1955, s. 14. Sittings of Court

The Hearing by the Compensation 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.

Court may adjourn.

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

Court to examine witnesses, etc.

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.

(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 Stipendiary 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.

Compensation: How Ascertained.

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

Heading substituted by No. 59 of 1955, s. 14.

How compensation to be estimated for land taken.

Amended by No. 59 of 1955, s. 15;

No. 60 of 1926, s. 2; No. 41 of 1966, s. 9; No. 19 of 1972, s. 9.

(a) The value of such land with any improvements thereon, or the estate or interest of the claimant therein, as on the date of the gazetting of the notice of the taking or resumption, without regard to any increased value occasioned by the proposed public work; or in the case of land acquired for a

S. 63.

railway or other work authorised by a special Act, on the first day of the session of Parliament in which the Act was introduced; or in the case of land taken by agreement pursuant to section twenty-six of this Act, the date of the execution of the agreement, unless the agreement provides otherwise.

Provided that—

- (i) where land which is entered under section one hundred and twelve of this Act is subsequently taken or resumed, the date of first entry under that section shall, in order to ascertain the value of the land for the purposes of paragraph (a) of this section, be regarded as the date of the gazetting of the notice of the taking or resumption of the land;
- (ii) where a notice of intention to take or resume any land or to carry out a public work under this or any other Act is published in the *Gazette*, whether or not that notice is amended by a subsequent notice, any transaction relating to that land or affecting the value thereof or the compensation payable that is entered into by the claimant after the date of the gazetting of the notice first referred to in this subparagraph may at the discretion of the respondent or the Court be disregarded;
- (iii) where any buildings or improvements have been made on such land after the date of the gazetting of the notice first referred to in subparagraph (ii) of this proviso but before the gazetting of the notice of the taking or resumption, or in the case of a railway or other work authorised by a special Act after the first day of the session of Parliament in which the Act was introduced but

before the date of the gazetting of the notice of the taking or resumption, the value of those buildings or improvements shall be allowed, not exceeding their actual cost. S. 63.

- (aa) The loss or damage, if any, sustained by the claimant by reason of—
- (i) removal expenses; or
 - (ii) disruption and reinstatement of a business; or
 - (iii) the discontinuance of building works in progress at the date when such land is taken or resumed and the termination of building contracts in consequence thereof; or
 - (iv) architect's fees or quantity surveyor's fees actually incurred by the claimant in respect to proposed buildings or improvements which cannot be commenced or continued in consequence of the taking or resumption of such land; or
 - (v) any other facts which the respondent or the Court considers it just to take into account having regard to the circumstances of each case.
- (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, but where the value of other land of the claimant is enhanced by reason of the carrying out of, or the proposal to carry out, the public work for which the land was taken or resumed, the enhancement shall be set off against the amount of compensation that would otherwise be payable by reason of such other land being injuriously affected by the taking.

S. 63.

(c) Where the land is taken or resumed compulsorily—

- (i) the respondent may include in the offer of compensation such amount, not exceeding ten per centum of the amount of compensation determined under this section, as the respondent considers sufficient, for compulsory taking; or
- (ii) if a Court is determining the amount of compensation, the Court may include in the award such amount, not exceeding ten per centum of the amount of compensation determined under this section, as the Court deems proper, for compulsory taking;

but where the respondent or the Court, as the case may be, is of the opinion that the application of the provisions of this Act would not result in the assessment of compensation adequate to meet the special circumstances of the case, the respondent, or the Court, may determine such compensation as it considers adequate for compulsory taking.

(d) Where the land taken or resumed produces any rent or profits—

- (i) either the amount of the rent or profits received by the respondent, less the reasonable cost of collection for the period from the day the land was taken or resumed to the date of the payment of compensation or the date of the award, whichever first occurs, shall be added to the compensation payable; or
- (ii) at the option of the respondent, interest shall be paid on the amount of compensation for the same period, at the rate of six per centum per annum,

or such higher rate as the respondent ^{S. 63.}
or the Court considers adequate hav-
ing regard to the circumstances of
each case; and

(iii) where after such taking or resumption
the land ceases to produce any rent or
profits, interest shall be paid as
though the respondent had exercised
the option provided in subparagraph
(ii) of this paragraph.

(e) Where the land taken or resumed does not
produce any rents or profits, interest shall
be paid at the rate payable in respect of
overdraft accommodation granted by the
Commonwealth Trading Bank of Australia
ruling—

(i) either as at the date of the taking or
resumption; or

(ii) where the date of entry for construc-
tion or carrying out of the work is earl-
ier than the date of the gazetting of
the notice of the taking or resumption,
then at that date of entry,

and the interest shall be payable—

(iii) either from the date of the service of
the claim on the respondent to the
date of settlement of the claim; or

(iv) where the land was entered for the
construction or the carrying out of the
work earlier than the date of the tak-
ing or resumption, from the date of
entry to the date of settlement of the
claim,

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

S. 63.

(f) Subject to the provisions of paragraph (d) and paragraph (e) of this section—

(i) when any amount representing an advance payment of compensation is paid to a claimant, interest on the total amount of compensation is payable only to the date of the first such payment, and interest is payable thereafter only on the balance outstanding from time to time; and

(ii) when any amount is offered by the respondent as an advance payment of compensation in accordance with section forty-nine A of this Act and the offer is not accepted by the claimant within thirty days of the day on which it was made, no interest shall be payable thereafter in respect to the amount so offered.

(g) Where the amount of any purchase money or compensation, or any payment on account thereof, is payable under the provisions of this Act and within a period of three months from the publication in the *Gazette* of a notice by the respondent of the intention to effect payment no person is able, or being able does not agree, to give a sufficient discharge and receipt in respect of that amount, or any portion of that amount, the respondent may thereupon cause the moneys to be paid into the Supreme Court and thereafter is not liable for any further payment in respect of interest on such moneys; and the Master shall deal with and apply such moneys in such manner and shall pay the same upon such terms, which may make provision for the payment of costs, and to such persons as the Supreme Court, upon the application of any person interested, may order.

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

Apportionment of rates and taxes. Added by No. 59 of 1955, s. 16.

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

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

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

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

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

How compensation to be estimated in other cases. Amended by No. 59 of 1955, s. 17.

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

Anything done by claimant to make execution of work more costly to be taken into account. Amended by No. 59 of 1955, s. 18.

65. If the Compensation Court or the court hearing the action for compensation 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 inquiry.

Gross sum, or separate sums, may be awarded and conditions attached. Amended by No. 59 of 1955, s. 19.

66. The Compensation Court or the court hearing the action for compensation may award one gross sum as the compensation to be paid to the claimant on all accounts, or it 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 the Court may think equitable, or the Court may determine that no compensation is payable in respect of the whole claim or any particular item or items thereof.

Heading added by No. 59 of 1955, s. 20.

Assessors' Fees, Costs and Award of Compensation Court.

Fees to assessors hearing claims. Amended by No. 59 of 1955, s. 21.

67. Every assessor who is a member of the Compensation Court shall be entitled to a fee 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.

Costs. Amended by No. 59 of 1955, s. 22.

68. (1) The costs of the inquiry as between party and party are in the discretion of the Compensation Court and shall be taxed by the taxing

officer of the Supreme Court, and the amount thereof shall be included in the award, and the Compensation Court shall direct to whom such costs shall be paid.

(2) [*Subsection (2) repealed by No. 59 of 1955, s. 21.*]

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

Costs may be deducted from compensation awarded.

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

Award not void for informality.

71. (1) The Court shall give reasons for and 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.

Award to be in writing. Amended by No. 59 of 1955, s. 23.

(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.

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

(3) But if the sum awarded be not paid into the Supreme Court, under subsection (1) 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.

When and how enforced.

Title to and Application of Compensation and Purchase-money.

When title doubtful, compensation or purchase-money to be paid into the Supreme Court.
Amended by No. 59 of 1955, s. 24.

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.

Order as to costs.

(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, whether before the Compensation Court, the Court hearing an action for compensation, 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 or a Court hearing an action for compensation 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. Amended by No. 41 of 1966, s. 10.

- (i) If the compensation is four hundred dollars 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 forty dollars but less than four hundred dollars, 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 forty dollars, 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.

Savings 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. Amended by No. 59 of 1955, s. 25.

75. If the land in respect of which compensation is payable or 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 or resumed under this Act.

75A. If the purchase price of land in respect of which compensation is payable or awarded was at the time the land was taken or resumed being paid by instalments, the compensation or so much of it as is required for the purpose, shall, upon the application of the vendor, be paid in discharge—

Land being sold on payment by instalments. Added by No. 48 of 1953, s. 5. Amended by No. 59 of 1955, s. 26.

- (a) of the balance of the purchase price owing; and
- (b) of interest, if any, payable in respect of the purchase price with a limit of interest accrued during the period of twelve months commencing on the day next following that on which the land was taken or resumed.

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.

Case of lands subject to rent-charge.

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.

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

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

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

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.

Court
may award
easements
in lieu of
compensa-
tion.
Amended by
No. 59 of
1955, s. 27.

79. Where the amount of compensation to be paid to any claimant is determined by the Compensation Court, or a court hearing an action for compensation 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 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.

Governor
may grant
surplus land
in lieu of
compensa-
tion.
Amended by
No. 59 of
1955, s. 28.

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, as the case requires, certify that pursuant to the provisions of section twenty-nine of this Act a notice to the effect that the land was available for sale was duly published in the *Gazette* and that no person is entitled to be granted an option to purchase the land or that the option or options granted in respect thereof have not been duly exercised and have expired, and 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.

81. Moneys payable as compensation or as costs under this Act, or on the apportionment of rates and taxes as provided in section sixty-three A of this Act, shall—

Out of what funds compensation to be paid. Amended by No. 59 of 1955, s. 29.

- (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.

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—

Powers of entry on lands, etc., for survey purposes.

- (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 therein 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
destroying
survey
marks, etc.
Amended by
No. 41 of
1966, s. 11.

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 Forty dollars, and for any subsequent offence to a penalty not exceeding Two hundred dollars; 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 One hundred dollars.

PART IVA.—INVESTIGATIONS FOR WATER.

Interpre-
tation.
Added by
No. 48 of
1953, s. 6.

83A. (1) In this Part,

“authorised person” means

- (a) the Minister, the Minister for Water Supply, and any local authority; and
- (b) a person authorised, whether generally or specially to carry out testing work, by either of those Ministers or a local authority;

“testing work” means work which in the opinion of an authorised person is necessary for general investigation for water supply purposes, and includes, without limiting the generality of the foregoing, the carrying out of tests, gaugings, borings, the construction of gauging weirs, the sinking of shafts, the digging of trenches and other incidental work and things used for or in connection with that work.

(2) An authorised person may from time to time lawfully enter upon land with such assistants and things as he thinks fit for the purpose and carry out testing work and alter, remove, inspect, reinstate and repair testing work upon the land.

(3) Where an authorised person intends to enter upon land he shall, if it is practicable, give to the owner or occupier of the land at least forty-eight hours' notice of his intention, and if required by the owner or occupier shall produce to him his authority to enter the land.

83B. A person who wilfully and unlawfully—

- (a) interferes with, alters, takes, injures, or destroys, testing work or part of it commits an offence.

Penalty: Forty dollars for a first offence; and Two hundred dollars for a subsequent offence;

- (b) obstructs an authorised person or his assistants in doing anything which he is authorised under this Part to do commits an offence.

Penalty: One hundred dollars.

83C. (1) An authorised person or his assistants shall do as little damage as is practicable in exercising the powers conferred by this Part.

(2) Where within one year of the exercise of a power conferred by this Part, a person suffers damage of which the exercise of the power is the proximate cause, he is entitled to compensation for the damage from the Minister or the local authority by whom, or by whose direction, the power is exercised, if within thirty days of the occurrence or commencement of the damage or within twelve months where notice of intention to enter the land was not given to the owner or occupier as required by subsection (3) of section eighty-three A he serves on the Minister or local authority a written claim for compensation for the damage.

Offences.
Added by
No. 48 of
1953, s. 6.
Amended by
No. 41 of
1966, s. 12.

Compensation.
Added by
No. 48 of
1953, s. 6.

(3) Within, but not later than, one year after service of his claim, the claimant may, if his claim has not been settled in the meantime, sue in a court of competent jurisdiction to recover compensation for the damage.

(4) The parties may compromise, compound, or otherwise settle the claim, whether proceedings have or have not been commenced in a court of competent jurisdiction and the Minister or local authority may, before exercising a power conferred by this Part, enter into such agreements relating to compensation as the Minister or local authority thinks fit.

PART V.—ROADS, RIVERS, AND BRIDGES.

Definition of road for purposes of Act.

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.

Roads vested in the Crown.

85. The soil of all roads is hereby declared to be and is hereby vested in Her 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.

Minister may repair any road.

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.

Governor may declare Government roads.

(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.

(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, 1902¹, 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.

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

Government roads under exclusive care of Minister. Amended by No. 41 of 1966, s. 13.

(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 Forty dollars for the neglect or breach of any such by-law.

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

Effect of by-laws. Amended by No. 41 of 1966, s. 14.

- (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.

¹ Repealed by Road Districts Act, 1919, which was itself repealed by Local Government Act, 1960.

- (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 ten cents.

Special provisions as to heavy traffic.

89. ¹ 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 tyres, 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

¹ Ceased to have effect. See No. 60 of 1919, s. 34 and Order in Council published in the *Gazette* of 25th June, 1920, p. 1185.

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 established 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 Her 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 Her 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 deepen, widen, straighten, and otherwise improve, any river, and may, without limiting the generality of the foregoing power 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 or deepened, widened, straightened, or otherwise improved, 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. Amended by No. 48 of 1953, s. 7.

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. Amended by No. 8 of 1906, s. 5.

PART VA.—ELECTRICITY.

Interpre-
tation.
Added by
No. 46 of 1961,
s. 3.

94A. In this Part, unless the context requires otherwise—

- (a) “Commission” means The State Electricity Commission of Western Australia established by the State Electricity Commission Act, 1945;
- (b) where any of the following words or expressions are used in this Part they shall when so used have the same respective meanings as are given to them in and for the purposes of the State Electricity Commission Act, 1945—

“consumer”, “distribution works”, “electric works”, “generating station”, “linking up scheme”, “metropolitan area”, “power”, “service apparatus”, “supply authority”, “transmission works”; and

- (c) where the word “undertaking” is used in this Part it shall when so used have the same meaning as given to it when used with respect to any supply authority in and for the purposes of the State Electricity Commission Act, 1945.

Minister
empowered
to generate
electricity
or acquire
undertaking.

94B. (1) The Minister may, with the consent of the Commission,—

Added by
No. 46 of
1961, s. 3.

- (a) construct, establish and maintain a generating station at any place outside the metropolitan area where there is no supply authority generating electricity, and supply and distribute electricity within such limits from that place as the Commission approves from time to time;
- (b) take on lease and carry on, or purchase as a going concern and carry on, the undertaking of any supply authority generating electricity at a place outside the metropolitan area, if the supply authority requests the Minister so to do.

(2) For the purpose of the effectual exercise of his powers under this section the Minister may, with the consent of the Commission—

- (a) purchase or otherwise acquire freehold and leasehold land, sell or exchange lands of either freehold or leasehold tenure, or let or lease any land of any tenure belonging to the Minister at such rent and upon and subject to such terms and conditions as the Minister may think fit; and
- (b) acquire patent rights, licenses, apparatus, machinery, appliances and things; and
- (c) exercise and use all or any of the powers and authorities conferred on the Minister by this Act in respect to any public work which he is authorised to undertake.

(3) Nothing in this section shall operate so as to interfere in any way with or prevent the exercise by the Commission of its powers under the State Electricity Commission Act, 1945, in respect of the supply direct of electricity required by any Government Department or any Crown instrumentality, or by any industrial consumer having a connected load of two hundred horse-power or more within the area to which the Minister is supplying electricity.

94C. Upon the exercise by him of any of the powers conferred upon him by section ninety-four B of this Act, the Minister shall be a supply authority within the meaning of the Electricity Act, 1945, in respect to the area in which that power is exercised, and as such shall have and may exercise the powers and authorities, and shall be subject to the duties and obligations, as are conferred and imposed respectively on supply authorities under the provisions of that Act, so far as the same may be applicable to the Minister.

Minister to be a supply authority. Added by No. 46 of 1961, s. 3.

94D. In respect of an area wherein the Minister is a supply authority pursuant to this Part of this Act, the Minister may make all such by-laws as a local authority may for the time being have power

By-laws. Added by No. 46 of 1961, s. 3. Amended by No. 41 of 1966, s. 15.

to make to have effect within the limits of its district under the provisions of section thirty-three of the Electricity Act, 1945, but subject to the provisions of subsections (2) and (3) of that section, and by those by-laws may impose a penalty not exceeding One hundred dollars for the breach of any such by-law.

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 Her 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.

97. When any railway is authorised to be constructed—

Procedure for making railways.

- (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.
- After passing of special Act, land may be occupied.
- (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 Her 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.

Notice to be deposited with Registrar.

- (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.

Before or after the time of taking land notice to be given to person whose land is taken.

- (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.

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.

Proclamations to be indefeasible.

- (f) No notice taking land or closing a road or street shall be impeached or defeasible on any ground whatsoever.

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.

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

Powers to
make
railways
and railway
stations, etc.

- (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, water-course, 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 (2), to cross the railway, and may safely do so.

Tree dangerous to railway to be removed.

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.

Compensation where road interfered with or wholly closed.

(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.

Government to make crossings to give access to lands.

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.

Maintenance of public roads at railway crossings on the level.

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.

Over or under railway.

(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.

(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 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.

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

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.

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

(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.

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. Amended by No. 41 of 1966, s. 16.

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 four dollars.

(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 ten dollars.

(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.

Crown may elect to erect fences along boundaries of railways.

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 Her 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 Her 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.

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, 1882,¹ 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 for Railways may temporarily occupy and use any land for the purpose of constructing or repairing a railway, and the Minister for Works may temporarily occupy and use any land for the purpose of constructing or repairing any other public work, and the said Ministers respectively may do the following things thereon:—

Land may be occupied temporarily. Amended by No. 35 of 1933, s. 6; No. 48 of 1953, s. 8; No. 19 of 1972, s. 10.

- (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.

¹ Repealed by Local Government Act, 1960.

(1a). [*Added by No. 48 of 1953, S.8.*]
 [*Deleted by No. 19 of 1972. S.10.*]

Seven days' notice of occupation to be given.

(2) The engineer or other person having the charge of the railway or other public work shall, before occupying or using any land for the purposes provided in subsection (1) of this section and except in the case of accident to the railway requiring immediate repair, give to 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.

(3) Where land which has been entered in exercise of the powers conferred by this section is being taken, after it has been so entered the Governor may cause to be specified in the notice of the taking as the date of the taking, a day being not earlier than that on which the land was so entered, and on publication of the notice in the *Gazette*, the notice as so published is conclusive proof of the taking of the land on the date so specified.

(4) [*Deleted by No. 19 of 1972, S.10.*]

(5) The provisions of this section are in addition to and not in derogation of any of the other provisions of this Act.

Land may be entered with a view to permanent occupation. Added by No. 19 of 1972, s. 11.

112A. (1) Where it appears to the Minister that it may be necessary to take any land, or any portion thereof, for a public work which the Minister is authorised to undertake, construct, or provide, the Minister and any person authorised, whether generally or specially, by him to do so, with such assistants and things as the Minister or any such person considers necessary to the purpose, may—

- (a) lawfully enter on that land;
- (b) do such things as the Minister is empowered by this Act to do in order to study the feasibility of any proposal or as are, in the Minister's opinion, necessary as

preliminary or ancillary to the undertaking, constructing, or providing of the public work; and

(c) may carry out any such public work,

in all respects as if the land entered upon was land which had in fact been taken.

(2) The Minister or other person having the charge of the public work shall, where it is practicable in the circumstances, before entering upon any land for the purposes provided in subsection (1) of this section, give to the owner or occupier thereof not less than seven days notice in writing, and shall state in that notice the approximate description and an indication of the area of the land to be entered upon, the use proposed to be made of the land and the anticipated period during which that use is to continue.

(3) As soon as practicable after any land has been entered upon in exercise of the powers conferred by this section, the Minister shall determine the area of the land which he requires to take and thereupon the Governor shall cause the relevant notices to be published in respect of that taking in accordance with the provisions of section seventeen of this Act and may in such notices specify as the date of the taking a day not being earlier than that on which the land was so entered, and on publication of the notice in the *Gazette*, the notice as so published is conclusive proof of the taking of the land on the date so specified.

(4) The provisions of this section are in addition to and not in derogation of any of the other provisions of this Act.

113. (1) The owner of any land occupied under the provisions of section one hundred and twelve or of section one hundred and twelve A of this Act 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

Owner may
require
compensa-
tion.
Amended by
No. 19 of
1972, s. 12.

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 or section one hundred and twelve A, 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.

Property in things placed on the land. Added by No. 19 of 1972, s. 13.

113A. Where in exercise of a power conferred by this Act the Minister causes anything to be placed in, on, over, or under, land, it is deemed to be the property of the Minister unless the Minister certifies otherwise.

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. Amended by No. 35 of 1933, s. 7.

116. Subject to the provisions of the Government Tramways Act, 1912-1933,¹ the Minister for Works shall have the administration, charge, and control of the Tramways Act, 1885,² and all amendments thereof and all special Acts passed thereunder, and of all Government tramways constructed thereunder, other than Government tramways as

¹ Repealed by Western Australian Government Tramways and Ferries Act, 1948, which was itself repealed by State Transport Co-ordination Act, 1966.

² Repealed by State Transport Co-ordination Act, 1966.

defined in section two of the Government Tramways Act, 1912-1933,' 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 Her Majesty, the 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 Her 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 Her 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.

¹ Repealed by Western Australian Government Tramways and Ferries Act, 1948, which was itself repealed by State Transport Co-ordination Act, 1966.

(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. Amended by No. 48 of 1953, s. 9; No. 41 1966, s. 17.

120. Every person who wilfully and unlawfully 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 obstructs, injures, interferes with, alters, or removes anything, constructed, provided, or done, under those provisions 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 one hundred dollars for every such offence and the cost of repairing or reinstating it, or clearing it of obstruction is recoverable by the Minister from the person in a court of competent jurisdiction.

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.

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.

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

(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.

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

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, 1899,¹ 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 63 Victoria, No. 53, in certain cases.

125. The Water Supply Act, 1893, and the Fremantle Water Supply Act, 1899,¹ 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, 1898,² shall be incorporated with this Act.

Incorporation of Interpretation Act.

¹ Repealed by Act No. 14 of 1904, s. 3, which was itself repealed by Act No. 43 of 1909, s. 4.

² For corresponding provisions see Interpretation Act, 1918; 2nd Sch., and s. 47 (2).

THIRD SCHEDULE.

Sec. 41.

Form A.
FOR CASES WHERE LANDS ARE TAKEN.
[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	roods	perches of land	\$	c
taken, at _____ per acre				
Land injuriously affected as follows: [Here state reference number, and short heading of each item and claim previously detailed, and the amount 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.

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.]

Public Works

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.]



FOURTH SCHEDULE.

Sec. 43.

Public Works Act, 1902.

To

This is to give you notice that I dispute your claim to be tenant in fee simple in possession [or as the claim may be] of the following parcel of land, viz. [here name the parcel] the evidence furnished to me not showing you to have [any title thereto, or any greater title than as tenant for life or as the case may be].

Dated this day of , 19 . (Signature.)



FIFTH SCHEDULE.

Sec. 45.

Public Works Act, 1902.

To the Minister for Works.

This is to give you notice that at eleven of the clock in the forenoon of the day of instant, or so soon thereafter as counsel can be heard, it is my intention to apply to a Judge of the Supreme Court at Chambers to direct an issue as to whether, under the will of the late deceased, and by reason of the events that have happened [or as the

Public Works

facts may be], I am entitled, as I affirm, to a vested estate of inheritance in remainder [*or whatever estate is claimed*] in the following parcel of land, viz.:—

(*or, that the following question of law arising upon your objection to my title to the following parcel of land, viz.:—*

may be set down for argument before the Court, in order to obtain the opinion of that Court thereon, namely:—

Whether, as I affirm [*here state the question of law*].

[*Here it will be convenient for the claimant to give the name and address of his solicitor, if any.*.]

Dated this day of , 19 .

(*Signature.*)

Sec. 46.

SIXTH SCHEDULE.

Public Works Act, 1902.

OFFER FOR THE WHOLE OF THE LAND.

To

This is to inform you that I make you an offer of dollars for your interest as [*here state the estate or interest which the claimant claims*] in all the lands comprised in your claim for compensation, dated the day of , 19 , and for all damages arising from the taking of the same.

Dated this day of , 19 .

(*Signature.*)

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 dollars 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.*)

SEVENTH SCHEDULE.

Public Works Act, 1902.

Sec. 47.

Seventh Sched-
ule
amended by
No. 59 of
1955, s. 30.

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.

Dated this _____ day of _____, 19____.

(Signature.)

EIGHTH SCHEDULE.

Sec. 48.

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.

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.

