

WESTERN AUSTRALIA

PUBLIC WORKS ACT 1902

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WESTERN AUSTRALIA

PUBLIC WORKS ACT 1902

AN ACT to consolidate and amend the laws relating to
public works.

Short title

1. This Act may be cited as the *Public Works Act 1902*¹.

[Section 1 inserted by No. 123 of 1984 s.3.]

PART I — PRELIMINARY

Interpretation

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 licence, or for any other estate or interest, or land reserved and classified as of class A under section 31 (1) (a) of the *Land Act 1933* or any national park referred to in section 6 (3) (b) of the *Conservation and Land Management Act 1984*.

“**Government work**” means any work constructed or intended to be constructed by or under the control of the Crown, 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.

“**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

incidental to the taking or acquisition of such land as aforesaid and to claims for compensation and the settlement and enforcement thereof means the Minister of the Crown for the time being administering this Act but as regards railways, save and except as aforesaid, “Minister” means the Minister of the Crown for the time being administering the *Government Railways Act 1904*.

“Principal Registrar of the Supreme Court” means the person for the time being holding or acting in the office designated under the *Supreme Court Act 1935*, by that name.

“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 39 of the *Land Act 1898* ², 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 the Crown, or the Governor, or the Government of Western Australia, or any Minister of the Crown, or any local authority is authorized to undertake under this or any other Act.
- (2) Any railway authorized by special Act or any work whatsoever authorized by any Act.
- (3) Tramways.

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- (4) Any works for or in connection with the supply of water to, or for or in connection with the sewerage of, any city, town, or district, including all reticulations.
- (5) Buildings for the occupation of either or both of the Houses of Parliament or for public offices.
- (6) Hospitals within the meaning given to that term by section 2 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 authorized 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.
- (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 of 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*) 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 authorizing the same.
- (17B) Buildings and structures required for fire brigade purposes.
- (17C) The establishment and the extension by the Governor of sites for towns.
- (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.

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- (19) Any building or structure of whatsoever kind which, in the opinion of the Governor, is necessary for any public purpose.
- (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 95.

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

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

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

“Road”: See section 84.

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

“Surveyor” means a surveyor licensed under the *Licensed Surveyors Act 1895* ³.

[Section 2 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; No. 27 of 1974 s.19; No. 67 of 1979 s.35; No. 112 of 1984 s.27; No. 7 of 1991 s.3.]

[3. Omitted under the Reprints Act 1984 s.7 (4) (f).]

Governor may make regulations for conduct of officers

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

Minister for Works

5. [(1) deleted]

[(2) deleted]

(3) The Minister of the Crown for the time being administering this Act 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.

[Section 5 amended by No. 35 of 1933 s.4; No. 41 of 1945 s.3; No. 27 of 1974 s.20.]

Delegation by Minister

5A. The Minister may, either generally or as otherwise provided by the notice concerned, by notice published in the *Gazette* delegate to —

- (a) any officer of the Public Service of the State under the administrative control of the Minister and assisting him in the administration of this Act;

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- (b) the Minister of the Crown to whom the administration of the *Land Act 1933* is for the time being committed by the Governor;
- (c) the Minister of the Crown to whom the administration of the *Main Roads Act 1930* is for the time being committed by the Governor;
- (d) the Minister of the Crown to whom the administration of the *State Energy Commission Act 1979* is for the time being committed by the Governor;
- (e) the Minister of the Crown to whom the administration of the *Water Authority Act 1984* is for the time being committed by the Governor; or
- (f) the Minister of the Crown to whom the administration of the department known as the Office of Government Accommodation, established under section 21 of the *Public Service Act 1978*, is for the time being allocated,

any of his powers or duties under this Act, except this power of delegation.

[Section 5A inserted by No. 126 of 1987 s.38; amended by No. 7 of 1991 s.4.]

Subdelegation of delegated power or duty

5B. (1) A Minister of the Crown to whom a power or duty has been delegated under section 5A may, either generally or as otherwise provided by the notice concerned, by notice published in the *Gazette* delegate —

- (a) in the case of the Minister of the Crown referred to in section 5A (b), to the chief executive officer⁴ of the Department principally assisting that Minister of the Crown in the administration of the *Land Act 1933* or to any other officer of that Department;

- (b) in the case of the Minister of the Crown referred to in section 5A (c), to the Commissioner within the meaning of the *Main Roads Act 1930* or to any officer of that Commissioner;
- (c) in the case of the Minister of the Crown referred to in section 5A (d), to the Commission within the meaning of the *State Energy Commission Act 1979* or to any officer of that Commission, or
- (d) in the case of the Minister of the Crown referred to in section 5A (e), to the Authority within the meaning of the *Water Authority Act 1984* or to any officer of the Authority within the meaning of that Act,

the whole or any part of the power or duty.

(2) A Minister of the Crown shall as soon as is practicable after exercising the power of delegation conferred on him by subsection (1) transmit to the Minister a copy of the notice by which that power was exercised.

[Section 5B inserted by No. 126 of 1987 s.38.]

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.

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Appointment of engineers and other officers

7. (1) 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.

(2) Notwithstanding anything in subsection (1), to the extent that there is in the case of a person who is appointed under that subsection to be an engineer, architect, clerk or other officer or other person and who is a member of the Senior Executive Service within the meaning of the *Public Service Act 1978* an inconsistency between this Act and that Act that Act shall prevail.

[Section 7 amended by No. 113 of 1987 s.32.]

[8, 9 Repealed by No. 98 of 1985 s.3.]

**PART IA — WESTERN AUSTRALIAN
BUILDING AUTHORITY**

[Heading inserted by No. 123 of 1984 s.4.]

Interpretation in Part IA

9A. In this Part, unless the contrary intention appears —

“**authorized buildings**” means buildings or structures which are public works and works ancillary to any such buildings or structures;

“**borrow**” includes —

- (a) reborrow;
- (b) obtain credit; and
- (c) arrange for financial accommodation;

“**the Account**” means the Western Australian Building Authority Account established by section 9E (1);

“**the Building Authority**” means the Western Australian Building Authority established by section 9B (1).

[Section 9A inserted by No. 123 of 1984 s.4.]

**Western Australian Building Authority
established as body corporate**

9B. (1) There is hereby established a body corporate to be called the Western Australian Building Authority.

(2) The Building Authority —

- (a) consists of the Minister for Works referred to in section 5 (3); and

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- (b) under its corporate name —
 - (i) has perpetual succession and a common seal;
 - (ii) may sue and be sued in any court; and
 - (iii) subject to this Part, is capable of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

(3) The common seal of the Building Authority shall —

- (a) be kept in such custody as the Building Authority directs; and
- (b) not be used except as authorized by the Building Authority.

(4) When a document purporting to bear the common seal of the Building Authority is produced before any court, judge or person acting judicially, that court, judge or person shall, unless the contrary is proved, presume that —

- (a) that document bears that common seal; and
- (b) that common seal was duly affixed to that document.

(5) The Building Authority shall not be deemed to represent the Crown for any purpose whatsoever.

[Section 9B inserted by No. 123 of 1984 s.4.]

Functions and powers of Building Authority

9C. (1) The functions of the Building Authority are —

- (a) to acquire, hold, lease, take on lease, dispose of, exchange, provide, construct, alter, protect or manage authorized buildings, and to acquire, hold, take on lease or dispose of land for that purpose;

- (b) to borrow moneys for the purpose of the acquisition, provision, construction, alteration, protection or management of authorized buildings and for the purpose of acquiring, holding or taking on lease land in connection with that acquisition, provision, construction, alteration, protection or management; and
- (c) generally to develop land acquired, held or taken on lease by it for the purposes of this Part.

(2) Subject to this Part, the Building Authority may, with the approval of the Treasurer, borrow moneys from any person in the performance of the functions of the Building Authority on such terms and conditions and in such manner as the Treasurer approves.

(3) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee —

- (a) repayment of; and
- (b) payment of interest on, and of brokerage, commission, fees and other expenses incurred in respect of,

moneys borrowed by the Building Authority under subsection (2), and any liability of the Crown arising out of any such guarantee is payable out of moneys in the Consolidated Revenue Fund, which to the necessary extent is hereby appropriated accordingly.

(4) A guarantee given under subsection (3) shall be in such form and subject to such terms and conditions as the Treasurer determines and, without limiting the generality of the foregoing, shall be subject to a condition that the lender shall not, without the consent in writing of the Treasurer, assign or encumber the benefit of the guarantee.

(5) The Building Authority may —

- (a) subdivide, and grant easements and other interests in or rights over; and

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- (b) provide, arrange for the provision of or cause to be provided energy resources, roads, sewerage, drainage or water or any other resource or service conducive to the development of,

land acquired, held or taken on lease by it in the performance of its functions.

(6) The Building Authority has power to do all things necessary or convenient for or in connection with the performance of its functions.

[Section 9C inserted by No. 123 of 1984 s.4.]

**Use of staff and facilities of Departments,
agencies and instrumentalities**

9D. The Building Authority may by arrangement made between it and the Minister concerned, and on such terms and conditions as may be mutually arranged by it with that Minister and, if appropriate, with the Public Service Commissioner⁵, make use, either full time or part time, of —

- (a) the services of any person for the time being holding or acting in any office under the *Public Service Act 1978* or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) any facilities of a department or of a State agency or instrumentality.

[Section 9D inserted by No. 123 of 1984 s.4; amended by No. 113 of 1987 s.32.]

Funds of Building Authority

9E. (1) There is hereby established an account at the Treasury to be called the Western Australian Building Authority Account.

(2) The funds available for the purpose of enabling the Building Authority to perform its functions under this Part consist of —

- (a) moneys from time to time appropriated by Parliament for the purposes of this Part;
- (b) all moneys borrowed by the Building Authority under this Part;
- (c) the proceeds of sales by the Building Authority of any of its assets;
- (d) rents derived from authorized buildings of the Building Authority leased by it to other persons;
- (e) interest earned on moneys temporarily invested under subsection (5); and
- (f) any moneys, other than moneys referred to in paragraphs (a), (b), (c), (d) and (e), lawfully received by, made available to or payable to the Building Authority.

(3) The funds referred to in subsection (2) shall be paid into and placed to the credit of the Account.

(4) The Building Authority shall pay from the funds from time to time paid into and placed to the credit of the Account —

- (a) interest on and repayments of moneys borrowed by the Building Authority under this Part, and brokerage, commission, fees and other expenses incurred in connection with that borrowing;
- (b) into the Consolidated Revenue Fund an amount equal to the amount of any moneys paid out of the Consolidated Revenue Fund in meeting any liability of the Crown referred to in section 9C (3);

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- (c) the expense of acquiring, holding, taking on lease, providing, constructing, altering, protecting or managing authorized buildings and of acquiring, holding or taking on lease land or any interest therein for the purpose of that acquisition, provision, alteration, protection or management;

and

- (d) all expenditure, other than expenditure referred to in paragraphs (a), (b) and (c), lawfully incurred by the Building Authority in the performance of its functions under this Part.

(5) The Building Authority may, with the approval of the Treasurer, temporarily invest any moneys standing to the credit of the Account which are not immediately required for the purposes of this Part in one or more of the ways in which moneys standing to the credit of the Public Bank Account may be invested under the *Financial Administration and Audit Act 1985*.

(6) Moneys standing to the credit of the Account shall be applied by the Building Authority only for the purposes of this Part.

(7) The Treasurer shall in each financial year include in the Consolidated Revenue Fund Estimates of Revenue and Expenditure in respect of the Building Authority a sum of money (whether nominal or otherwise) for the purposes of this Part.

[Section 9E inserted by No. 123 of 1984 s.4; amended by No. 98 of 1985 s.3.]

Delegation by Building Authority

9F. (1) The Building Authority may, either generally or as otherwise provided by the instrument of delegation, by writing signed by it delegate to any person for the time being holding or acting in an office referred to in section 9D (a) of whose services he makes use under section 9D all or any of the functions imposed on the Building Authority by this Part.

(2) For the purposes of this Part, the performance of a function by a delegate under this section shall be deemed to be the performance of the function by the Building Authority.

[*Section 9F inserted by No. 123 of 1984 s.4.*]

Application of *Financial Administration and Audit Act 1985*

9G. The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Building Authority and its operations.

[*Section 9G inserted by No. 98 of 1985 s.3.*]

[**9H.** *Repealed by No. 98 of 1985 s.3.*]

Regulations

9I. The Governor may make regulations prescribing all matters that are required or permitted by this Part to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Part.

[*Section 9I inserted by No. 123 of 1984 s.4.*]

PART II — TAKING LANDS FOR PUBLIC WORKS

Power to take

Empowering the taking of land for public work

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

Governor may authorize works

11. The Governor, by order in council, may authorize the Minister to undertake, construct, or provide any public work subject as to railways to section 96, and such authorization shall be deemed an authority to such Minister by and under this Act.

What may and what may not be taken

Crown lands, reserves, etc.

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

Includes the power —

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

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

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

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

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

(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.

Acquisition of underground land

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

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(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.

[*Section 13A inserted by Act No. 8 of 1906 s.2, (numbered as 13A in 1927 Reprint of Act).*]

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

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 authorize —

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.

Mines and minerals excluded from land taken

15. (1) Where prior to the coming into operation of the *Public Works Act Amendment Act 1953*¹, 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

- (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 the Crown as of its 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*¹, is deemed to be the date of the publication mentioned in section 36 of the notice of the taking.

(2) Where on or after the coming into operation of the *Public Works Act Amendment Act 1953*¹, the State 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 including the rights to mines of coal or other minerals under the land, and those rights revert in the Crown as of its 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 subsection (1) (a), or under a taking mentioned in subsection (2), 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) the whole or part of those rights no compensation is payable in respect of the taking of the rights so reverted.

[Section 15 amended by No. 48 of 1953 s.4; No. 3 of 1954 s.2.]

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Compensation as to mines

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 35.

Procedure for taking land

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

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

- (i) cause a copy of the notice to be published in one issue of a newspaper circulating in the district in which the land is situated;
- (ii) cause a copy of the notice to be served on the owner or each of the owners, and on the occupier or each of the occupiers of the land, residing within the State, or such of them as can with reasonable diligence be ascertained, either personally or by registered letter posted to their last known place of residence;
- (iii) cause a copy of the notice to be delivered to the Registrar of Titles if any land referred to therein is under the operation of the *Transfer of Land Act 1893*, to the Registrar of Deeds if any land referred to therein is not under the operation of that Act, and to the Minister for the time being administering the *Land Act 1933* if a register is kept by the Department of Land Administration ⁷ of any land referred to therein.

(d) (i) Within 30 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 ⁶ 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.

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

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

(e) Where at the expiry of 30 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 authorization, if required, for the undertaking, constructing or providing of the public work, is duly obtained, the provisions of subsection (1) shall apply as though this subsection had not been enacted.

(2a) The provisions of subsection (2) 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).

(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), 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), but not being a transaction mentioned in subsection (4), 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;

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

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

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

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

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

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

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

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

(6) The Registrar of Titles, the Minister for Lands or any other appropriate officer shall, upon submission for registration of any instrument relating to a transaction in connection with land included in a current notice of intention to take or resume land, require the production of the consent in writing of the Minister, if his consent is required to that transaction, or such evidence as he thinks necessary that the transaction to which the instrument relates is not in contravention of any of the provisions of subsection (3), 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).

(7) The provisions of subsection (2) to (6) 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*¹.

[Section 17 amended by No. 59 of 1955 s.2; No. 19 of 1972 s.4; No. 27 of 1974 s.21.]

s. 17A

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

17A. (1) At any time after the publication in the *Gazette* of a notice of intention to take or resume any land, a person authorized 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.

(2) The provisions of subsection (1) do not prejudice or otherwise affect the provisions of section 13, section 97 or section 112.

[Section 17A inserted by No. 59 of 1955 s.3.]

Effect of notice taking land

18. Upon the publication of the notice referred to in section 17 (1) in the *Government Gazette* —

- (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 the Crown, 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.

[Section 18 amended by No. 23 of 1950 s.3; No. 59 of 1955 s.3A.]

Notice of taking land to be served on owners

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 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*⁶, 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 re-vest the land in the Crown.

Notice taking land may be annulled or amended

21. (1) Any notice whereby land is set apart, taken, or resumed under this Act may, at any time within 90 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*, 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.

s. 22

(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.

(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.

[Section 21 amended by No. 23 of 1950 s.4.]

Compensation on notice taking land being annulled

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

[Section 22 amended by No. 23 of 1950 s.5.]

Registrar to register vested land in name of the Crown or local authority, or record vesting in Register of Deeds

23. (1) Upon the vesting of the land in the Crown or in a local authority pursuant to the provisions of section 18 —

- (a) if the land is of an estate in fee simple and is not under the operation of the *Transfer of Land Act 1893*, the Registrar shall bring the land under the operation of that Act by registering the land in the name of the Crown, 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*, 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*, the Registrar shall register the land in the name of the Crown, 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 section 17 (1) and a description of the land referred to in the notice accompanied, when required by the Registrar, by a plan of that land.

[(2) *deleted*]

(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 \$100.

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

s. 24

(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.

[Section 23 amended by No. 23 of 1950 s.5; No. 41 of 1966 s.2.]

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

24. Where a notice sets apart any Crown land or reserve, the Minister shall cause a copy of the notice to be lodged at the office of the Minister for the time being administering the *Land Act 1933*, 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.

[Section 24 amended by No. 27 of 1974 s.21.]

Severed Land

Owner may require small parcel of land severed to be taken

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 1000 square metres 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.

(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*⁹, or a townsite according to the interpretation of that expression on section 5

of the *Road Districts Act 1919*⁹, 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 4 000 square metres; 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.

[Section 25 amended by No. 23 of 1950 s.5; No. 94 of 1972 s.4 (as amended by No. 19 of 1973).]

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.

s. 27

(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.

(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 97 shall be read as if clauses (a) and (b) were omitted therefrom.

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

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

Dealings with lands taken or otherwise acquired

Land not wanted may be sold, etc.

29. (1) Subject to section 29B, 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), 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.

(2) Before land referred to in subsection (1) 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

s. 29

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

(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), within 3 months after the publication in the *Gazette* of the notice referred to in subsection (2), 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) has applied for an option within the prescribed period, he shall, subject to paragraph (d), grant an option to that person.

(ca) Notwithstanding the provisions of paragraph (c) 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) to grant to him the option applied for may within 21 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), 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.

(e) (i) Where the Minister receives applications for 2 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) is final, except where a decision made under paragraph (c) is so made by virtue of the provisions of paragraph (ca).

(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) 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), 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.

(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), 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

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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.

[Section 29 inserted 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.]

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

29A. (1) Subject to section 29B, 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 section 29 (2) 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 29 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), relating to that land, is received by the Minister within a period of 12 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), the Governor's decision is that the land is not required for that work, the provisions of section 29 (2) to (6) 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).

[Section 29A inserted by No. 59 of 1955 s.6; amended by No. 55 of 1956 s.3; No. 59 of 1965 s.3.]

**Use or disposal of certain land
taken etc. under this Act**

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 10 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 29 and 29A 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 10 years since it was last so taken or resumed, sections 29 and 29A 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 first-mentioned section, shall be such reasonable price as the Minister determines.

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(2) The reasonable price determined by the Minister under subsection (1) (b) 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 $\frac{1}{10}$ 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), he may, within 21 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 \$1 000; 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 \$1 000 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.

[Section 29B inserted by No. 59 of 1965 s.4; No. 41 of 1966 s.4.]

Application of purchase money

30. The proceeds of land sold under sections 29 or 29B 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.

[Section 30 amended by No. 59 of 1965 s.5.]

Notice of sale and receipt of price to operate as transfer

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.

(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.

Lands not wanted for immediate use may be let

32. (1) Subject to subsections (2) and (3), 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 21 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.

(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 the time being administering the *Land Act 1933*; or

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- (b) grant a lease for a term exceeding 3 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.

[Section 32 amended by No. 53 of 1967 s.2; No. 27 of 1974 s.21.]

The Crown or the local authority may grant easements over lands acquired for public works

33. (1) The Crown or the local authority may grant to any person any easement in, upon, through, over, or under any land taken required for a public work, subject to such conditions and payment of such rents as the Crown 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

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.

[Section 33A inserted by No. 23 of 1950 s.7; amended by No. 19 of 1972 s.6.]

Certificate not to issue for easements

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

[*Section 33B inserted by No. 23 of 1950 s.7.*]

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 13 or section 113 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.

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

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

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

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

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

- (a) the conditions of any Crown grant, lease, or other instrument; or
- (b) the provisions of any other Act,

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

(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 compensation

36. (1) Except where a direction for the hearing of a claim is made by a Judge under section 39 —

- (a) where land is taken or resumed prior to the coming into operation of the *Public Works Act Amendment Act 1955*¹, a person is not entitled to make a claim for

compensation under this Act in respect of that land, after the expiry of 2 years after the publication in the *Gazette* of the notice taking or resuming the land; but where the claim is for compensation under section 13 or section 113 in respect of acts committed prior to the coming into operation of the *Public Works Act Amendment Act 1955*¹, 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*¹, a person is not entitled to make a claim for compensation under this Act in respect of that land, after the expiry of 6 months after the publication in the *Gazette* of the notice taking or resuming the land; but where the claim is for compensation under section 13 or section 113 in respect of acts committed after the coming into operation of the *Public Works Act Amendment Act 1955*¹, a person is not entitled to make the claim after the expiry of 6 months after the commission of the acts complained of.

(2) (a) Any period (whether it has expired or not) limited by subsection (1) 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.

[Section 36 inserted by No. 59 of 1955 s.7.]

The claim

By whom compensation may be claimed

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.

**Principal Registrar to be guardian,
etc., in certain cases**

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 Principal Registrar of the Supreme Court shall, for the purposes of this Act, be deemed to be the legal guardian or committee of such person.

[Section 38 amended by No. 67 of 1979 s.36.]

Procedure in unrepresented absentee claims

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

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

s. 41

(3) The Principal Registrar of the Supreme Court, 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 72.

[Section 39 amended by No. 67 of 1979 s.37.]

[40. Repealed by No. 19 of 1972 s.7.]

**Particulars to be inserted in
claim to compensation**

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 Schedule 3 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 encumbered, leased, or subject to any easement, he shall give particulars of such encumbrance, 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 ⁸, 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 its 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 \$10.

(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.

[Section 41 amended by No. 41 of 1966 s.5.]

Respondent may require further particulars

42. If the claimant does not give full particulars of all or any of the matters included in section 41, the respondent may, by notice in writing, require him to furnish such particulars within a month. If such particulars are not supplied within 90 days or such extended time as a Judge may allow, the claim shall be absolutely barred.

Time for respondent to serve notice disputing title

43. Within 60 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 60 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 Schedule 4.

If notice disputing title not served title is admitted

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.

s. 45

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

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 7 clear days' notice in writing, in accordance with the form in Schedule 5 served on the respondent, may apply to a Judge for an order —

- (a) for a 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**

46. (1) (a) Within 90 days after —

- (i) the service of the claim under section 41;
or
- (ii) compliance with the demand, if any, made for further particulars under section 42,

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 45 is in favour of the claimant's title, within 90 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 Schedule 6 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.

[Section 46 inserted by No. 59 of 1955 s.8; amended by No. 41 of 1966 s.6; No. 19 of 1972 s.8.]

Claim and offer may be amended

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

[Section 46A inserted by No. 59 of 1955 s.9.]

If offer not rejected by claimant, equivalent to acceptance

47. (1) Within 60 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 Schedule 7 rejecting such offer.

s. 47A

(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.

[Section 47A amended by No. 59 of 1955 s.10.]

**Method of determining compensation
when offer rejected**

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.

[Section 47A inserted by No. 59 of 1955 s.11.]

**If offer not made within 120 days of service
of claim claimant may commence proceedings**

47B. If the respondent fails to serve on the claimant an offer of compensation within 120 days after —

- (a) the service of the claim under section 41, the claim not having been amended; or
- (b) receiving notice of amendment, where the claim is amended under section 46A; or
- (c) compliance with the demand, if any, for further particulars under section 42,

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 45, 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.

[Section 47B inserted by No. 59 of 1955 s.11.]

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

47C. (1) Where a claimant does not, within 6 months after serving on the respondent a notice rejecting the offer or amended offer as provided by section 47, 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 30 days' notice to the claimant make an application to a Judge, accompanied by the rejected offer and the claim for compensation, for determination of the compensation and thereupon the Judge may direct the offer or the amended offer, as the case may be, to be accepted or the claim to be heard and determined by a Compensation Court under this Act. There is no right of appeal against a Judge's direction under this subsection.

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

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

s. 47D

(4) If the claimant, after due notice, fails to attend the hearing, the Principal Registrar of the Supreme Court, 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 72.

[Section 47C inserted by No. 59 of 1955 s.11; amended by No. 67 of 1979 s.37.]

When action for compensation lies

47D. (1) (a) A claimant shall not commence or maintain an action for compensation except as provided in section 47A or 47B, nor unless he gives to the respondent 30 days' notice before instituting proceedings.

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

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

(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 45.

(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 63, 63A, 64, 65, 66 and 79;
- (ii) where 2 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.

[Section 47D inserted by No. 59 of 1955 s.11.]

Rejection of offer equivalent to a submission to 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 47, serve on the respondent the appointment of an assessor in the form in Schedule 8 together with the consent and declaration relating thereto in the form set out in Schedule 9.

s. 48

(b) A claimant who desires to refer his claim to the Compensation Court under section 47B shall serve on the respondent the appointment of an assessor and the consent and declaration relating thereto in the forms respectively set out in Schedules 8 and 9.

(c) Within 30 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 47, —

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 Schedule 8; or

(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 Schedule 8.

(2) (a) If within 30 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 Principal Registrar of the Supreme Court for the appointment of an assessor to act for the respondent and the Principal Registrar of the Supreme Court 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 Principal Registrar of the Supreme Court under this section or a Judge under section 39 or 47C or upon the execution of an agreement under section 52 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 Principal Registrar of the Supreme Court, 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 \$1 000 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 45.

[Section 48 amended by No. 59 of 1955 s.12; No. 41 of 1966 s.9; No. 67 of 1979 s.37.]

Consent of assessor to act

49. No appointment of an assessor shall be valid unless such person signs the consent and declaration in the form contained in Schedule 9. 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.

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Advance payments

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 $\frac{2}{3}$ 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 47 or any other provision of this Act.

[Section 49A inserted by No. 19 of 1972 s.8.]

The Compensation Court

[Heading amended by No. 59 of 1955 s.14.]

Constitution of Court

50. (1) The Compensation Court shall consist of a president, and 2 assessors, one to be appointed by the claimant and one by the respondent.

(2) When the amount claimed does not exceed \$1 000, 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.

(3) Where the amount claimed exceeds \$1 000 a Judge shall be the president.

[Section 50 amended by No. 41 of 1966 s.8.]

When claim exceeds \$1 000, Judge, with consent of parties, may appoint a magistrate to preside

51. If the amount claimed exceeds \$1 000 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.

[Section 51 amended by No. 41 of 1966 s.8.]

Parties may agree on a single person to constitute the Court

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) 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 30 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.

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(b) Where the party giving notice under paragraph (a) fails so to apply to a court of competent jurisdiction within 60 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 47D shall apply *mutatis mutandis*.

[Section 52 amended by No. 59 of 1955 s.13.]

Court may hear other claims by consent

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

Assessors may be objected to

54. If either party objects to the appointment of any assessor, the president may, unless the objection appears to be frivolous or unreasonable, upon the application of such party, order such assessor to be discharged, and the person having appointed him shall, within 10 days after such order, appoint another, failing which the president shall forthwith appoint an assessor in his stead.

Case of member of Court dying or unable to act

55. If, before the award is given, any member of the Court dies or becomes incapable of acting, or resigns or refuses to act, then, in case of a Judge, some other Judge of the Supreme Court shall take his place; in the case of a magistrate, his successor shall take his

place; and in the case of an assessor, the person having made the appointment shall forthwith, or, if he fails to do so, the president shall appoint a successor; but the inquiry before the Court shall proceed as if no such change in its members had taken place.

The Hearing by the Compensation Court

[*Heading amended by No. 59 of 1955 s.14.*]

Sittings of Court

56. The president shall appoint the time and place for the first sitting of the Court, and shall, not less than 21 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.

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(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.

Questions to be determined by majority

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.

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

If Court unable to agree

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.

**When questions of law alone to be determined,
president may determine the same**

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

(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

[Heading inserted by No. 59 of 1955 s.14.]

How compensation to be estimated for land taken

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: —

- (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 railway or other work authorized 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 26, the date of the execution of the agreement, unless the agreement provides otherwise.

Provided that —

- (i) where land which is entered under section 112 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), be regarded as the date of the gazetting of the notice of the taking or resumption of the land;

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- (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 authorized 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.
- (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.
- (c) Where the land is taken or resumed compulsorily —
- (i) the respondent may include in the offer of compensation such amount, not exceeding 10% 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 10% 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 6% per annum, or such higher rate as the respondent or the Court considers adequate having 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).
- (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 judgment debts as determined pursuant to section 142 of the *Supreme Court Act 1935* ruling —
- (i) either as at the date of the taking or resumption;
 - or
 - (ii) where the date of entry for construction or carrying out of the work is earlier 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 taking or resumption, from the date of entry to the date of settlement of the claim,

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

- (f) Subject to the provisions of paragraph (d) and (e) —
 - (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 49A and the offer is not accepted by the claimant within 30 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 3 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

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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 Principal Registrar of the Supreme Court 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 in such persons as the Supreme Court, upon the application of any person interested, may order.

[Section 63 amended by No. 60 of 1926 s.2; No. 59 of 1955 s.15; No. 41 of 1966 s.9; No. 19 of 1972 s.9; No. 67 of 1979 s.37; No. 25 of 1985 s.367.]

Apportionment of rates and taxes

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

(b) Where the land was occupied by or on behalf of or through the claimant at the time of the taking or resumption, the rates and taxes referred to in paragraph (a) 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) —

- (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*¹, been paid or settled in full.

[Section 63A inserted by No. 59 of 1955 s.16.]

How compensation to be estimated in other cases

64. In determining the amount of compensation (if any) to be offered, paid or awarded under section 13 or section 113 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.

[Section 64 amended by No. 59 of 1955 s.17.]

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

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.

[Section 65 amended by No. 59 of 1955 s.18.]

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Gross sum or separate sums may be awarded and conditions attached

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.

[Section 66 amended by No. 59 of 1955 s.19.]

Assessors' fees, costs and award of Compensation Court

[Heading inserted by No. 59 of 1955 s.20.]

Fees to assessors hearing claims

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.

[Section 67 amended by No. 59 of 1955 s.21.]

Costs

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) deleted]

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

[Section 68 amended by No. 59 of 1955 s.22.]

**Costs may be deducted from
compensation awarded**

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.

Award not void for informality

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

Award to be in writing

71. (1) The Court shall 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 Principal Registrar of the Supreme Court, to be filed in the Supreme Court. On receipt of such award the Principal Registrar of the Supreme Court shall give notice thereof to the claimant and respondent.

(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.

(3) But if the sum awarded be not paid into the Supreme Court, under section 72 (1), within 30 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.

[Section 71 amended by No. 59 of 1955 s.23; No. 67 of 1979 s.37.]

*Title to and application of compensation and
purchase-money*

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

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

- (1) In the case of compensation awarded by the Court, the respondent may, within the period of 30 days after the award has been filed in the Supreme Court, cause the sum awarded to be paid into the Supreme Court; and the Principal Registrar of the Supreme Court 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.
- (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 Principal Registrar of the Supreme Court shall deal with and pay such purchase-money or compensation in accordance with such order.
- (3) In any case which may be heard or disposed of by the Supreme Court under the preceding provisions of this section, such Court may order that all or any costs which may have been incurred in or in relation to such case, 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.

[Section 72 amended by No. 59 of 1955 s.24; No. 67 of 1979 s.37.]

How compensation in case of limited interests to be dealt with

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 —

- (i) If the compensation is \$400 or upwards, it shall be paid into the Supreme Court, and the Principal Registrar of the Supreme Court 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 encumbrance 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;

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- (e) in payment to any party becoming absolutely entitled thereto.
- (ii) If the compensation is more than \$40 but less than \$400, it shall be paid into the Supreme Court, and the Principal Registrar of the Supreme Court 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 \$40, 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.

(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.

[Section 73 amended by No. 41 of 1966 s.10; No. 67 of 1979 s.37.]

Investment of compensation money by Principal Registrar

74. Until any compensation deposited in the Supreme Court is applied as provided by the last preceding section, the Principal Registrar of the Supreme Court 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.

[Section 74 amended by No. 67 of 1979 s.37.]

Case of mortgaged lands taken

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 6 months beyond the day when the lands affected were taken or resumed under this Act.

[Section 75 amended by No. 59 of 1955 s.25.]

Land being sold on payment by instalments

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 —

- (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 12 months commencing on the day next following that on which the land was taken or resumed.

[Section 75A inserted by No. 48 of 1953 s.5; amended by No. 59 of 1955 s.26.]

Case of lands subject to rent-charge

76. If the said land is subject to any rent-charge or annuity, the Court shall determine what part of such compensation shall be paid to the party entitled thereto in redemption thereof; and, if the land is part of land subject to any rent-charge or annuity, the Court shall determine what part of such rent-charge or annuity shall be

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redeemed, and what part of such compensation shall be paid in the redemption thereof, so that the remaining part of the lands subject to such rent-charge or annuity shall be as good security as theretofore for the part thereof remaining unredeemed.

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

77. If the said land is part of land in respect of which any rent is payable, the Court shall determine what part of such rent shall cease to be payable, so that the rent ceasing to be payable shall bear the same proportion to the whole rent as the value of the land in respect of which compensation is awarded bears to the value of the whole land.

*Payment and other satisfaction of compensation and
purchase-money*

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

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

Court may award easements in lieu of compensation

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.

[Section 79 amended by No. 59 of 1955 s.27.]

Governor may grant surplus land in lieu of compensation

80. The Governor may, with the consent of the claimant, in payment or satisfaction, or in part payment or satisfaction, for any land which is taken, purchased, or acquired, grant to the person or persons from whom such land has been taken, purchased, or acquired, any Crown land or any land reserved or taken for the use, convenience, or enjoyment of the said public work, but which is not required for such public work: Provided that, before such land is conveyed or transferred, the Minister shall, as the case requires, certify that pursuant to the provisions of section 29 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.

[Section 80 amended by No. 59 of 1955 s.28.]

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Out of what funds compensation to be paid

81. Moneys payable as compensation or as costs under this Act, or on the apportionment of rates and taxes as provided in section 63A, shall —

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

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

[Section 81 amended by No. 59 of 1955 s.29.]

PART IV — SURVEYS

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

82. (1) For all the purposes of this Act the Minister, the Minister for the time being administering the *Land Act 1933*, or any local authority, or any person authorized either specially or generally by any such person or authority —

- (a) may enter or 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, 48 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.

[*Section 82 amended by No. 27 of 1974 s.21.*]

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Penalty for destroying survey marks, etc.

83. Every person who, without due authority, destroys, mutilates, defaces, takes away, or alters the position of any trigonometrical station, survey peg, mark, or pole fixed or set up by any surveyor, or other person under the authority of the last preceding section, shall be liable, on summary conviction, for the first offence to a penalty not exceeding \$40, and for any subsequent offence to a penalty not exceeding \$200; 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 \$100.

[Section 83 amended by No. 41 of 1966 s.11.]

PART IVA — INVESTIGATIONS FOR WATER

Interpretation

83A. (1) In this Part,

“authorized person” means —

- (a) the Minister, a Minister for the time being administering any Act relating to water supply, and any local authority; and
- (b) a person authorized, whether generally or specially to carry out testing work, by one of those Ministers or a local authority;

“testing work” means work which in the opinion of an authorized 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 authorized 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 authorized person intends to enter upon land he shall, if it is practicable, give to the owner or occupier of the land at least 48 hours' notice of his intention, and if required by the owner or occupier shall produce to him his authority to enter the land.

[Section 83A inserted by No. 48 of 1953 s.6; amended by No. 27 of 1974 s.22.]

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Offences

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: \$40 for a first offence; and \$200 for a subsequent offence;

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

Penalty: \$100.

[Section 83B inserted by No. 48 of 1953 s.6; amended by No. 41 of 1966 s.12.]

Compensation

83C. (1) An authorized 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 30 days of the occurrence or commencement of the damage or within 12 months where notice of intention to enter the land was not given to the owner or occupier as required by section 83A (3) he serves on the Minister or local authority a written claim for compensation for the damage.

(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.

[Section 83C inserted by No. 48 of 1953 s.6.]

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 the Crown, 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.

(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 1902*¹⁰, are given to or conferred upon a road board, and shall also have power to close any road pending repairs or in the interests of public safety.

Government roads under exclusive care of Minister

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

(2) In respect of all Government roads, and of all bridges and other public works connected therewith, the Minister may make all such by-laws as any road board may for the time being have power to make in connection with any road within its district, and may impose a penalty not exceeding \$40 for the neglect or breach of any such by-law.

[*Section 87 amended by No. 41 of 1966 s.13.*]

Effect of by-laws

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

- (a) A copy of the *Government Gazette* containing any such by-law shall be evidence in all Courts of the same having been duly made under the authority of this Act.

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- (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 10 cents.

[*Section 88 amended by No. 41 of 1966 s.14.*]

[89. *Repealed by No. 7 of 1991 s.5.*]

Breach of by-law not to relieve offender

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.

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

91. 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.

(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 the Crown 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

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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 the Crown, 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 authorized 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.

Stopping or diverting of road

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.

Rivers

Removal of driftwood, etc., from 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.

[Section 93 amended by No. 48 of 1953 s.7.]

Minister may erect bridges

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.

[Section 94 amended by No. 8 of 1906 s.5.]

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PART VA — ELECTRICITY

Interpretation

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

- (a) “**Commission**” means The State Energy Commission of Western Australia established by the *State Energy Commission Act 1945*¹¹;
- (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 Energy Commission Act 1945*¹¹ —

“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 Energy Commission Act 1945*¹¹.

[Section 94A inserted by No. 46 of 1961 s.3.]

**Minister empowered to generate electricity
or acquire undertaking**

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

- (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, licences, 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 authorized 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 Energy Commission Act 1945*¹¹, 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 150 kilowatts or more within the area to which the Minister is supplying electricity.

[Section 94B inserted by No. 46 of 1961 s.3; amended by No. 94 of 1972 s.4 (as amended by No. 19 of 1973).]

Minister to be a supply authority

94C. Upon the exercise by him of any of the powers conferred upon him by section 94B, the Minister shall be a supply authority within the meaning of the *Electricity Act 1945*¹¹, in respect to the

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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.

[Section 94C inserted by No. 46 of 1961 s.3.]

By-laws

94D. In respect of an area wherein the Minister is a supply authority pursuant to this Part, the Minister may make all such by-laws as a local authority may for the time being have power to make to have effect within the limits of its district under the provisions of section 33 of the *Electricity Act 1945*¹¹, but subject to the provisions of subsections (2) and (3) of that section, and by those by-laws may impose a penalty not exceeding \$100 for the breach of any such by-law.

[Section 94D inserted by No. 46 of 1961 s.3; amended by No. 41 of 1966 s.15.]

PART VI — RAILWAYS

Definition of “railway”

95. The word “railway” includes the land upon which any railway is made or authorized 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 the Crown, 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 2 termini thereof; but it shall be lawful to deviate from such line at a distance of 1.6 kilometres 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 Central Office of the Supreme Court, and shall be

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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 authorized by the special Act.

[Section 96 amended by No. 94 of 1972 s.4 (as amended by No. 19 of 1973); No. 67 of 1979 s.38.]

Procedure for making railways

97. When any railway is authorized to be constructed —

- (a) At any time after the passing of the special Act the Minister and all other persons acting under his authority may enter upon any land required to be occupied for the construction of the railway within the authorized limits of deviation, and do all things which he is empowered by this Act to do for the construction of the railway without being deemed to commit any trespass thereby.
- (b) After the passing of the special Act, the Governor may at any time and from time to time, by notice in the *Government Gazette*, take any land required for the railway, and wholly close for the full or any less part of the width thereof the whole or any part of the length of any road or street the exclusive use of which may be required for the railway, taking the soil thereof when necessary.
- (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 the Crown 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.

- (d) Every such notice, together with a map of the land taken, shall be deposited as provided by sections 23 and 24, and all things shall be done and happen thereupon as in cases provided for by those sections.
- (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.

- (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 40 metres 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 40 metres of such lands or reserve (20 metres 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.

(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

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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.

[Section 98 amended by No. 94 of 1972 s.4 (as amended by No. 19 of 1973).]

**Powers to make railways
and railway stations, etc.**

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

- (a) Enter upon and make the railway upon, over, or under any land necessary for the construction thereof, lying along the middle line defined in the map referred to in the Act, or within the authorized 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.

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

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 the last preceding section, such part of the road or street shall thereafter cease to be a highway.

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(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 400 metres 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.

[Section 100 amended by No. 94 of 1972 s.4. (as amended by No. 19 of 1973.)]

**Compensation where road interfered
with or wholly closed**

101. (1) No compensation shall be payable in respect of the use or occupation of any part of any road or street for any railway, under the powers conferred by the 2 last preceding sections, or for or in respect of any inconvenience or damage to any lands fronting or adjoining any such road or street arising out of the exercise of the said powers or the construction of the railway upon such part of such road or street.

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

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

**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 10 metres 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.

(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,

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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.

[Section 103 amended by No. 94 of 1972 s.4. (as amended by No. 19 of 1973.)]

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

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.

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

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.

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

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

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

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

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

Tree dangerous to railway to be removed

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

**Penalties for trespassing on railway
in course of construction**

109. (1) Any person trespassing upon any railway in the course of construction, or upon any land occupied or temporarily occupied for the purpose of such construction under the powers hereby given, shall be liable to a penalty not exceeding \$4.

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(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 \$10.

(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 conveniently be taken before some Justice of the Peace to be dealt with according to law.

[Section 109 amended by No. 41 of 1966 s.16.]

**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 the Crown 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 the Crown 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.

Railway servants may impound trespassing animals

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*⁹, 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 authorized generally or specially for that purpose by or on behalf of the Minister.

PART VII — GENERAL PROVISIONS

Land may be occupied temporarily

112. (1) The Minister for the time being administering the *Government Railways Act 1904*, may temporarily occupy and use any land for the purpose of constructing or repairing a railway, and the Minister for the time being administering this Act 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: —

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

(2) The engineer or other person having the charge of the railway or other public work shall, before occupying or using any land for the purposes provided in subsection (1) and except in the case of accident to the railway requiring immediate repair, give to the owner or occupier thereof not less than 7 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.

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[(4) *deleted*]

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

[Section 112 amended by No. 35 of 1933 s.6; No. 48 of 1953 s.8; No. 19 of 1972 s.10; No. 27 of 1974 s.23.]

Land may be entered with a view to permanent occupation

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 authorized to undertake, construct, or provide, the Minister and any person authorized, 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), give to the owner or occupier thereof not less than 7 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 17 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.

[Section 112A inserted by No. 19 of 1972 s.11.]

Owner may require compensation

113. (1) The owner of any land occupied under the provisions of section 112 or 112A may, at any time during such occupation, give notice in writing to the Minister that he, the owner, requires compensation; and, if the land is not taken, the said owner and all persons having any interest in such land may recover compensation for all damage done in the manner provided by Part III of this Act, but not exceeding the compensation which would have been payable had the land so temporarily occupied or used been taken.

(2) No compensation shall be payable for any act, matter, or thing done under section 112 or 112A, 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.

[Section 113 amended by No. 19 of 1972 s.12.]

s. 113A

Property in things placed on the land

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.

[*Section 113A inserted by No. 19 of 1972 s.13.*]

Buildings exempted from local building regulations

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

Governor may execute instruments

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

Tramways

116. Subject to the provisions of the *Government Tramways Act 1912*¹², the Minister shall have the administration, charge, and control of the *Tramways Act 1885*¹³, and all amendments thereof and all special Acts passed thereunder, and of all Government tramways constructed thereunder, other than Government tramways as defined in section 2 of the *Government Tramways Act*

1912¹², and all such Acts shall be read as if for the words "Commissioner of Railways" or "Commissioner" were substituted the words "Minister for the time being administering the *Public Works Act 1902*".

[Section 116 amended by No. 35 of 1933 s.7; No. 27 of 1974 s.24.]

Local authority may sell stone, etc.

117. The Governor may authorize any local authority to sell or 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.

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

118. In all cases where, under this Act or any Act hereby repealed, any money is authorized to be recovered from any local authority as a debt due to the Crown, 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 the Crown, 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 the Crown in any Court of competent jurisdiction.

Proceeding in case of refusal to give up land

119. (1) In all cases where, under this Act, the Minister is authorized to enter upon and take possession of any lands reserved, acquired, or taken for the purpose of any public work, or is

s. 120

authorized 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.

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

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

120. Every person who wilfully 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 \$100 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.

[Section 120 amended by No.48 of 1953 s.9; No. 41 of 1966 s.17.]

Penalties recoverable in a summary way

121. All penalties imposed by this Act, or any by-law thereunder, may be recovered summarily before any 2 Justices of the Peace in petty sessions.

Works authorized or anything commenced under repealed enactments

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

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

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

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

(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.

s. 124

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

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*¹⁴, shall apply in the same manner as if throughout such Act the name of such municipality, town, or district were substituted for the words "3 municipalities."

[125-126. *Repealed by No. 25 of 1985 s.368.*]

SCHEDULE 1

[Schedule 1 omitted under Reprints Act 1984 s.7 (4) (f).]

Public Works Act 1902

sch. 2

SCHEDULE 2

[Schedule 2 repealed by No. 98 of 1985 s.3.]

SCHEDULE 3

[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 in as follows: —

hectares of land	\$	c
taken, at _____ per hectare Land injuriously affected as follows: <i>[Here state reference number, and short heading of each item and claim previously detailed, and the amount in respect of each such item separately.]</i>		
Total claim		

sch. 3

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 OF 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 encumbered, or are subject to any easement, give particulars of such lease, encumbrance, or easement, etc., etc.]

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 encumbered, or are subject to any easement, give particulars of such lease, encumbrance, 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

sch. 3

claim the sum of \$ as compensation for the damage caused by such entry, made up as follows [*set forth all items making up amount claimed*].

Given under my hand this day of , 19 .

[*Name in full.*]

[*Address.*]

TABLE A

DESCRIPTION OF LANDS ENTERED UPON

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

TABLE B

NATURE OF INTEREST IN LANDS

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

[*Schedule 3 amended by No. 94 of 1972 s.4 (as amended by No. 19 of 1973.)*]

SCHEDULE 4

[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*)

SCHEDULE 5

[Sec. 45]

Public Works Act 1902

To the Minister for Works.

This is to give you notice that at 11 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 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)

SCHEDULE 6

[Sec. 46]

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)

Public Works Act 1902

sch. 7

SCHEDULE 7

[Sec. 47]

Public Works Act 1902

To the Minister for Works.

This is to inform you that I reject your offer served on me the day of , 19 , of \$ for my interest in all the lands comprised in my claim for compensation, dated the day of , 19 , and for all damages arising from taking the same.

Dated this day of , 19 .

(Signature)

[*Schedule 7 amended by No. 59 of 1955 s.30.*]

SCHEDULE 8

[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 .

SCHEDULE 9

[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 there with, and I make this solemn declaration [*complete the form as is usual in case of a statutory declaration*].

Declared at
this day of in the presence of me,
19 .

Justice of the Peace.

Public Works Act 1902

NOTES

¹ This reprint is a compilation as at 22 June 1992 of the *Public Works Act 1902* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Public Works Act 1902</i>	47 of 1902	20 December 1902	20 December 1902	
<i>Public Works Amendment Act 1906</i>	8 of 1906	18 September 1906	18 September 1906	
<i>Public Works Act Amendment Act 1926</i>	60 of 1926	24 December 1926	24 December 1926	
<i>Public Works Act Amendment Act 1933</i>	35 of 1933	4 January 1934	12 February 1934 (see <i>Gazette</i> 9 February 1934 p.143)	
<i>Public Works Act Amendment Act 1945</i>	41 of 1945	30 January 1946	30 January 1946	
<i>Public Works Act Amendment Act 1950</i>	23 of 1950	5 December 1950	5 December 1950	
<i>Public Works Act Amendment Act 1953</i>	48 of 1953	29 December 1953	29 December 1953	
<i>Public Works Act Amendment Act 1954</i>	3 of 1954	25 August 1954	25 August 1954	

Public Works Act 1902

Table of Acts — *continued*

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Public Works Act Amendment Act 1955</i>	59 of 1955	13 December 1955	13 December 1955	
<i>Public Works Act Amendment Act 1956</i>	55 of 1956	27 December 1956	27 December 1956	
<i>Public Works Act Amendment Act 1961</i>	46 of 1961	23 November 1961	23 November 1961	
<i>Public Works Act Amendment Act 1965</i>	59 of 1965	19 November 1965	19 November 1965	
<i>Public Works Act Amendment Act 1966</i>	41 of 1966	4 November 1966	4 November 1966	
<i>Public Works Act Amendment Act 1967</i>	53 of 1967	5 December 1967	5 December 1967	
<i>Public Works Act Amendment Act 1972</i>	19 of 1972	26 May 1972	26 May 1972	
<i>Metric Conversion Act 1972</i>	94 of 1972	4 December 1972	The relevant amendments as set out in Schedule 2 took effect on 1 May 1974 (see section 4 (2) and <i>Gazette</i> 26 April 1974 p.1393)	Schedule 2 was inserted by the <i>Metric Conversion Act Amendment Act</i> 1973 (No. 19) of

Public Works Act 1902

Table of Acts — *continued*

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Ministers of the Crown (Statutory Designations) and Acts Amendment Act 1974 Part VI</i>	27 of 1974	29 October 1974	1 December 1974 (see <i>Gazette</i> 6 December 1974 p.5204)	
<i>Acts Amendment (Master, Supreme Court) Act 1979 Part VI</i>	67 of 1979	21 November 1979	11 February 1980 (see <i>Gazette</i> 8 February 1980 p.383)	
<i>Acts Amendment (Conservation and Land Management) Act 1984 Part VII</i>	112 of 1984	19 December 1984	22 March 1985 (see section 2 and <i>Gazette</i> 15 March 1985 p.931)	
<i>Public Works Amendment Act 1984</i>	123 of 1984	27 December 1984	27 December 1984	
<i>Acts Amendment and Repeal (Water Authorities) Act 1985 Part XIII</i>	25 of 1985	6 May 1985	1 July 1985 (see <i>Gazette</i> 7 June 1985 p.1931)	
<i>Acts Amendment (Financial Administration and Audit) Act 1985 section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see <i>Gazette</i> 30 June 1986 p.2255)	

Public Works Act 1902

Table of Acts — *continued*

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Public Service) Act 1987 section 32</i>	113 of 1987	31 December 1987	16 March 1988 (see <i>Gazette</i> 16 March 1988 p.813)	
<i>Acts Amendment (Land Administration) Act 1987 Part VIII</i>	126 of 1987	31 December 1987	16 September 1988 (see <i>Gazette</i> 16 September 1988 p.3637)	Section 39 validation ¹⁵
<i>Public Works Amendment Act 1991</i>	7 of 1991	13 June 1991	11 July 1991	

² Now see *Land Act 1933*.

³ Now see *Licensed Surveyors Act 1909*.

⁴ Title amended under section 7 (5) (a) of the *Reprints Act 1984* to give effect to section 31 (1) (f) of the *Acts Amendment (Public Service) Act 1987*.

⁵ Title amended under section 7 (5) (a) of the *Reprints Act 1984* to give effect to section 31 (1) (g) of the *Acts Amendment (Public Service) Act 1987*.

⁶ Repealed by Act No. 37 of 1933 s.4.

⁷ Title substituted under section 7 (3) (h) of the *Reprints Act 1984*.

⁸ Now Department of Land Administration.

⁹ Repealed by Act No. 84 of 1960 s.4.

¹⁰ Repealed by Act No. 29 of 1911 s.4.

¹¹ Now see *State Energy Commission Act 1979*.

Public Works Act 1902

¹² Repealed by Act No. 52 of 1948 s.3.

¹³ Repealed by Act No. 91 of 1966 s.3.

¹⁴ Repealed by Act No. 14 of 1904 s.3.

¹⁵ Section 39 of Act No. 126 of 1987 reads as follows —

“ **Validation**

39. (1) The purported exercise or performance on behalf of the Minister for Works by —

- (a) any Minister of the Crown other than the Minister for Works or by a State agency or instrumentality or other public authority; or
- (b) any person employed by the Government or by a State agency or instrumentality or other public authority,

with the consent of the Minister for Works during the period beginning on 1 January 1970 and ending immediately before the commencement of this Part of any power conferred or duty imposed on the Minister for Works by the principal Act is hereby validated and declared to have been lawfully done by that Minister of the Crown or the State agency or instrumentality or other public authority or person employed by the Government or by the State agency or instrumentality or other public authority, as the case requires.

(2) In this section —

“the Minister for Works” has the meaning given by the principal Act. ”.

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