

PUBLIC WORKS.

No. 19 of 1972.

AN ACT to amend the Public Works Act, 1902-1967.

[Assented to 26th May, 1972.]

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

1. (1) This Act may be cited as the *Public Works Act Amendment Act, 1972*. Short title and citation.

(2) In this Act the Public Works Act, 1902-1967, is referred to as the principal Act. Vol. 14 Reprinted Acts.

(3) The principal Act as amended by this Act may be cited as the Public Works Act, 1902-1972. Approved for reprint 27th August, 1959 as amended by Acts Nos. 46 of 1961, 59 of 1965, 41 of 1966, and 53 of 1967.

Section 2
amended.

2. Section 2 of the principal Act is amended—

- (a) in the definition “Claimant”, by substituting for the words “claiming compensation” the words “entitled to claim compensation”;
- (b) in the definition “Crown land” by substituting for the passage “under the Permanent Reserves Act, 1899”, in lines seven and eight, the passage “and classified as of Class A under paragraph (a) of subsection (1) of section thirty-one of the Land Act, 1933”;
- (c) in the definition “Public work” and “work”—
 - (i) as to paragraph (6), by substituting for the passage “Hospitals, lunatic asylums”, in line one, the passage “Hospitals within the meaning given to that term by section two of the Hospitals Act, 1927, medical clinics, hostels and institutions including residences for staff”;
 - (ii) as to paragraph (8), by substituting for the passage “including teachers’ residences and play-grounds”, in lines five and six, the passage “universities, colleges, technical and other educational institutions, including residences or hostels for teachers or students, and play-grounds”;
 - (iii) by adding after paragraph (14) a new paragraph as follows—
 - (14A) The protection and preservation of indigenous flora and fauna. ;

- (iv) by deleting paragraph (16) and substituting a new paragraph as follows—

(16) Harbours and ports, including the provision of storage, handling and wharfage areas and other facilities normally ancillary to the conduct of shipping operations, breakwaters, 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. ;

- (v) as to paragraph (18), by substituting for the passage “or district.”, in line two, the passage “or district, and the improvement of rivers, watercourses, lakes, or inlets, including deepening, widening, straightening or otherwise altering, and disposal of silt.” ; and

- (d) in the definition “Respondent”, by substituting for the passage “: See section forty”, the passage “means the Minister, in the case of Government works, and the local authority, in the case of local works”.

3. Section 16 of the principal Act is amended by substituting for the passage “shall be held under lease granted under any Act relating to the granting of leases or licenses to hold land for mining purposes, the lessee or licensee of such land shall only be”, in lines one to four, the passage “is held for any right,

Section 16
amended.

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”.

Section 17
amended.

4. Section 17 of the principal Act is amended by adding after subsection (2) a new subsection as follows—

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

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

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

(i) to the sale of the land; or

(ii) to the taking of the land for the purposes of the work. .

Section 29
amended.

5. Subsection (2) of section 29 of the principal Act is amended by substituting for the words “available for sale”, in line four, the words “no longer required for the work for which it was taken”.

Section 33A
amended.

6. Section 33A of the principal Act is amended by deleting the passage “with the consent of the Governor,”, in lines three and four.

Section 40
repealed.

7. Section 40 of the principal Act is repealed.

Section 46(3)
repealed and
re-enacted as
section 49A.

8. Subsection (3) of section 46 of the principal Act is repealed and re-enacted with amendments as a new section to follow section 49 as follows—

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 two-thirds of the amount of any compensation offered; and any such payment may be so received and retained by the claimant without prejudice to his rights under section forty-seven or any other provision of this Act. .

9. Section 63 of the principal Act is amended— Section 63
amended.

- (a) as to paragraph (a), by substituting for the word “completion”, in line fourteen of that paragraph, the word “execution”;
- (b) by substituting for paragraph (d) a new paragraph as follows—
 - (d) Where the land taken or resumed produces any rent or profits—
 - (i) either the amount of the rent or profits received by the respondent, less the reasonable cost of collection for the period from the day the land was taken or resumed to the date of the payment of compensation or the date of the award, whichever first occurs, shall be added to the compensation payable; or
 - (ii) at the option of the respondent, interest shall be paid on the amount of compensation for the same period, at the rate of six per centum per annum, or such higher rate as the

respondent 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) of this paragraph. ;

(c) by substituting for paragraph (e) a new paragraph as follows—

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

- (i) either as at the date of the taking or resumption; or
- (ii) where the date of entry for 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. ; and

(d) by adding two paragraphs as follows—

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

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

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

(g) Where the amount of any purchase money or compensation, or any payment on account thereof, is payable under the provisions of this Act and within a period of three months from the publication in the *Gazette* of a notice by the respondent

of the intention to effect payment no person is able, or being able does not agree, to give a sufficient discharge and receipt in respect of that amount, or any portion of that amount, the respondent may thereupon cause the moneys to be paid into the Supreme Court and thereafter is not liable for any further payment in respect of interest on such moneys; and the Master shall deal with and apply such moneys in such manner and shall pay the same upon such terms, which may make provision for the payment of costs, and to such persons as the Supreme Court, upon the application of any person interested, may order. .

Section 112
amended.

10. Section 112 of the principal Act is amended—

- (a) by deleting subsection (1a);
- (b) as to subsection (2), by substituting for the words “as herein provided”, in lines three and four, the words “for the purposes provided in subsection (1) of this section”; and
- (c) by deleting subsection (4).

Section 112A
added.

11. The principal Act is amended by inserting after section 112 a new section as follows—

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 authorised to undertake, construct, or provide, the Minister and any person authorised, whether generally or specially, by him to do so, with such assistants and things as the Minister or any such person considers necessary for the purpose, may—

- (a) lawfully enter on that land;

(b) do such things as the Minister is empowered by this Act to do in order to study the feasibility of any proposal or as are, in the Minister's opinion, necessary as preliminary or ancillary to the undertaking, constructing, or providing of the public work; and

(c) may carry out any such public work, in all respects as if the land entered upon was land which had in fact been taken.

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

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

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

Section 113
amended.

12. Section 113 of the principal Act is amended—

- (a) as to subsection (1), by substituting for the passage “temporarily occupied, as provided by the last preceding section,” in lines one and two, the words “occupied under the provisions of section one hundred and twelve or of section one hundred and twelve A of this Act”; and
- (b) as to subsection (2), by inserting after the word “twelve”, in line three, the words “or section one hundred and twelve A”.

Section 113A
added.

13. The principal Act is amended by adding after section 113 a new section as follows—

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. .
