

FIRST PRINT

**LAND ACQUISITION (JUST TERMS COMPENSATION)
BILL 1991**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

1. The objects of this Bill are:

- (a) to guarantee that, when land affected by a proposal for acquisition by an authority of the State is eventually acquired, the amount of compensation will be not less than the market value of the land (unaffected by the proposal) at the date of acquisition; and
- (b) to ensure compensation on just terms for the owners of land that is acquired by an authority of the State when the land is not available for public sale; and
- (c) to establish new procedures for the compulsory acquisition of land by authorities of the State to simplify and expedite the acquisition process; and
- (d) to require an authority of the State to acquire land designated for acquisition for a public purpose where hardship is demonstrated; and
- (e) to encourage the acquisition of land by agreement instead of compulsory process.

2. The Bill provides a uniform legislative scheme relating to the procedures for the acquisition of land for public purposes and the compensation payable for any such acquisition.

Application and other preliminary matters (clauses 1-10)

3. The Bill applies to the acquisition of land (or easements or other interests in land) by agreement or compulsory process by authorities of the State which are authorised by law to acquire land by compulsory process.

4. The authorities of the State are Ministers, statutory authorities, local government authorities and any other bodies authorised by Act of Parliament to acquire land by compulsory process.

5. The Bill does not apply to the acquisition of land by agreement where the land is available for public sale.

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6. The Bill does not authorise the acquisition of land for any particular purpose—authorities of the State continue to be limited to acquisition for purposes for which they are currently authorised to acquire land.

7. The Bill will require an authority of the State which in answer to an inquiry notifies the owner or a prospective purchaser of land that the land is affected by a proposal to acquire the land to also notify the inquirer of the guarantee mentioned in 1 (a), above.

Compulsory pre-acquisition procedures (clauses 11–18)

8. Before land may be acquired by compulsory process, a proposed acquisition notice must be given to the owners of land who have a registered interest in the land, who are in lawful occupation of the land or who are known by the authority of the State to have an interest in the land.

9. The minimum period of notice is 90 days or such shorter period as is agreed to by the owner or (in urgent or other cases) by the Minister responsible for the authority.

10. Compulsory acquisition must be effected as soon as practicable after the required minimum period of notice. If the land is not acquired within 120 days after the proposed acquisition notice is given, the notice lapses. The notice may be withdrawn by the authority which gave it. If a notice is withdrawn or lapses, a further notice may not generally be given within 12 months.

11. The proposed acquisition notice must give the owners the relevant details of the proposed acquisition and request the owners to lodge a claim for compensation.

12. The Bill requires the authority of the State to notify the following persons of a proposed acquisition notice:

- (a) the Registrar-General (so that relevant property registers may be noted);
- (b) any person who has lodged a caveat against any dealing in land under the Real Property Act 1900 (so that the interest of the caveator can be settled);
- (c) the Valuer-General (so that valuations for the purposes of offers of compensation may be undertaken).

Compulsory acquisition procedures (clauses 19 and 20)

13. Compulsory acquisition is to be effected by a notice published in the Gazette, with the approval of the Governor-in-Council, after the expiration of the minimum period of notice.

14. The acquisition notice vests the land acquired in the authority of the State concerned free of all other interests or restrictions applying to the land.

Owner-initiated acquisition (clauses 21–28)

15. The Bill enables an owner of a freehold interest in land designated for acquisition for a public purpose to require the relevant authority of the State to acquire the land in cases in which the owner would suffer hardship if there were any delay in the acquisition of the land. The authority does not have to acquire the land unless it has become necessary for the owner to dispose of it for pressing personal, domestic or social reasons or in order to avoid the loss of (or a substantial reduction in) the owner's income. Furthermore, the authority does not have to acquire the land unless the owner is unable to sell the land (or to sell it at its market value) because of the designation for acquisition. Public companies and their subsidiaries are excluded.

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16. The land concerned must be acquired by compulsory process or agreement within 90 days after the owner requires the acquisition unless the authority of the State gives notice that it no longer requires the land for future acquisition.

17. Land is taken to be designated for acquisition if:

- (a) the authority of the State has, in connection with an application for development consent or building approval, given the person dealing with the application a formal written notice indicating that the land has been so designated; or
- (b) the land is reserved exclusively for a public purpose referred to in section 26 (c) of the Environmental Planning and Assessment Act 1979 (e.g. open space, public reserve, public school, public railway).

18. The Bill (in Schedule 1) amends section 26 of that Act to add national parks and other reservations and dedications under the National Parks and Wildlife Act 1974 to the list of public purposes. The Bill does not affect owner-initiated acquisitions required under the Environmental Planning and Assessment Act 1979 for land reserved exclusively for public purposes specified in section 26 (c) of that Act.

Miscellaneous provisions relating to acquisition (clauses 29–36)

19. The Bill contains miscellaneous provisions relating to compulsory acquisition, including the following:

- (a) the application of the compulsory acquisition procedures to Crown land and land of other authorities of the State;
- (b) provision for compulsory acquisition with the consent of owners;
- (c) provision for the rescission of compulsory acquisition notices (e.g. in the case of clerical errors or mistakes);
- (d) preservation of the validity of compulsory acquisitions despite failures to comply with the requisite procedure;
- (e) the right of former owners to remain in occupation until they are paid compensation in full or until at least 90 per cent of the amount of compensation offered is either accepted without prejudice to future objection or paid into a trust account;
- (f) the right of a former owner to remain in possession for a maximum period of 3 months despite any payment if the land is the principal place of residence or a place of business (provision is made for the Minister responsible for an authority to approve of a demand for immediate vacant possession if necessary);
- (g) provision for the Land and Environment Court to restrain or remedy the use of land compulsorily acquired (by a former owner who remains in possession) in a manner inconsistent with the purpose for which it was acquired.

Entitlement to compensation (clauses 37 and 38)

20. The Bill provides that the owners of land compulsorily acquired are entitled to be paid compensation by the acquiring authority in accordance with the requirements of the Bill for “just terms compensation”.

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21. If land not available for sale is acquired by agreement after an approach by the authority of the State, that authority is required to take into account the same requirements for "just terms compensation".

Claims for compensation (clauses 39–41)

22. The Bill provides for the lodgment of claims for compensation, before or after the compulsory acquisition of the land.

23. The owner is required to disclose in the claim any other person who the owner knows has an interest in the land.

Post-acquisition procedures relating to compensation (clauses 42–53)

24. Within 30 days after a compulsory acquisition, the acquiring authority is required to give the former owner of the land a compensation notice. The compensation notice is to be given to the same class of owners as the proposed acquisition notice.

25. The compensation notice must inform the former owners of the acquisition and offer a specified amount of compensation (determined by the Valuer-General).

26. A former owner may accept the offer and, if so, is entitled to be paid within 28 days.

27. If the former owner does not accept the offer or object to the Land and Environment Court within 90 days, the amount of compensation is to be paid into a trust account.

28. Provision is made for:

- (a) advance payments of compensation;
- (b) payment of interest on compensation at a rate determined by the Treasurer;
- (c) the maintenance of trust accounts by authorities of the State for holding payments of compensation if the settlement of the matter is delayed or the payment of compensation is disputed; and
- (d) the payment of money in a trust account into the Consolidated Fund after 6 years (with that Fund continuing to be liable for the payment of compensation).

29. If a person is not paid compensation because the person's interest in the land was not known to the acquiring authority, the entitlement to compensation is extinguished against the authority but the interest is preserved against the former owner to whom compensation was paid.

Determination of amount of compensation (clauses 54–65)

30. The Bill provides that the amount of compensation must justly compensate the former owners.

31. The relevant matters to be taken into account in determining the amount of compensation are as follows:

- (a) the market value of the land (unaffected by the proposal for which the land was acquired);
- (b) any special value of the land to the former owner;
- (c) loss attributable to the severance of land from other land of the former owner;

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- (d) loss attributable to disturbance, including the following:
 - * legal costs
 - * valuation fees
 - * financial costs of relocation
 - * an amount equivalent to stamp duty on the purchase of land of equivalent value
 - * an amount equivalent to mortgage costs for a discharge of mortgage and a new mortgage for the balance of the amount owing on the acquired land
 - * other direct financial costs resulting from the acquisition
- (e) solatium (maximum amount of \$15,000) for the necessity to relocate a principal place of residence (one payment only for each separately occupied parcel of land, but in certain cases further payments for additional families residing on the same land);
- (f) any increase or decrease in the value of other land of the former owner resulting from the carrying out of the public work.

32. The Bill contains special provisions relating to compensation in respect of easements and tunnels.

33. The Bill enables agreements to be entered into relating to the compensation to be paid and for payment of compensation in the form of other land or the carrying out of works.

Objections and appeals to the Land and Environment Court (clauses 66–68)

34. The Bill enables a former owner who is offered compensation to object to the Court against the amount of compensation. An appeal may also be made by a person who claims compensation but whose claim is rejected.

35. Under amendments to the Land and Environment Court Act 1979 (Schedule 1), the parties may request a conference with an assessor or the registrar of the Court. Advance payments of 90 per cent of the amount offered are to be made within 28 days after Court proceedings are instituted.

Compensation for abandoned acquisition of land (clauses 69–71)

36. The Bill provides for the payment of compensation for actual financial costs or damage suffered by an owner as a result of the abandonment of a compulsory acquisition.

Miscellaneous (clauses 72–77)

37. The Bill contains miscellaneous provisions relating to service of notice (which may be personal or by newspaper advertisement if necessary), power to make regulations etc.

Schedule 1

38. The Schedule contains amendments to other Acts. In particular, the existing provisions for land acquisitions in the Public Works Act 1912 are omitted. Also compensation is to be payable in accordance with the Bill for land compulsorily acquired in the Western Division.

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Schedule 2

39. Provides for the repeal of certain superseded Acts.

Schedule 3

40. Contains savings and transitional provisions.

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**LAND ACQUISITION (JUST TERMS COMPENSATION)
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NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act relating to the acquisition of land on just terms by authorities of the State.

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The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Land Acquisition (Just Terms Compensation) Act 1991.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Objects of Act

3. (1) The objects of this Act are:

- (a) to guarantee that, when land affected by a proposal for acquisition by an authority of the State is eventually acquired, the amount of compensation will be not less than the market value of the land (unaffected by the proposal) at the date of acquisition; and
- (b) to ensure compensation on just terms for the owners of land that is acquired by an authority of the State when the land is not available for public sale; and
- (c) to establish new procedures for the compulsory acquisition of land by authorities of the State to simplify and expedite the acquisition process; and
- (d) to require an authority of the State to acquire land designated for acquisition for a public purpose where hardship is demonstrated; and
- (e) to encourage the acquisition of land by agreement instead of compulsory process.

(2) Nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

Definitions

4. (1) In this Act:

“acquisition” of land means an acquisition of land or of any interest in land;

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“acquisition notice” means a notice under section 19 which declares that land has been acquired by compulsory process;

“authority of the State” means:

- (a) a Minister of the Crown; or
- (b) a statutory body representing the Crown; or
- (c) a local government council or county council; or
- (d) any other authority authorised to acquire land by compulsory process;

“compensation notice” means a notice under section 42 which notifies the former owners of land of a compulsory acquisition, their entitlement to compensation and the amount of compensation offered;

“compulsory acquisition” of land means the acquisition of the land by compulsory process under this Act;

“Crown land” means:

- (a) Crown land within the meaning of the Crown Lands Act 1989; or
- (b) Crown land dedicated for a public purpose; or
- (c) any other land of the Crown or of an authority of the State;

“interest” in land means:

- (a) a legal or equitable estate or interest in the land; or
- (b) an easement, right, charge, power or privilege over, or in connection with, the land;

“land” includes any interest in land;

“loss attributable to disturbance” of land is defined in section 59;

“loss attributable to severance” of land is defined in section 58;

“market value” of land is defined in section 56;

“owner” of land means any person who has an interest in the land;

“proposed acquisition notice” means a notice under section 11 of intention to acquire land by compulsory process;

“public purpose” means any purpose for which land may by law be acquired by compulsory process under this Act;

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“registered interest” in land means an interest in the land:

- (a) recorded in the Register kept under the Real Property Act 1900; or
- (b) recorded in the General Register of Deeds kept under the Conveyancing Act 1919;

“solatium” is defined in section 60;

“special value” of land is defined in section 57.

(2) For the purposes of this Act, an authority is authorised to acquire land by compulsory process if:

- (a) the authority is authorised by law to acquire land by compulsory process under this Act; or
- (b) land is authorised by law to be acquired for the authority by resumption or appropriation under any provision of the Public Works Act 1912 or the authority is declared by law to be a Constructing Authority in connection with any such resumption or appropriation.

(3) In this Act, a reference to the Minister responsible for an authority of the State is:

- (a) if that authority is constituted by or under an Act—a reference to the Minister administering that Act; or
- (b) if that authority is a Minister—a reference to that Minister.

(4) For the purposes of this Act, the owners of Crown land not vested in any other person include:

- (a) the person having the care and control of the land; or
- (b) if the land is not under the care and control of any person—the Minister administering the Crown Lands Act 1989.

Acquisition of land to which Act applies

5. (1) This Act applies to the acquisition of land (by agreement or compulsory process) by an authority of the State which is authorised to acquire the land by compulsory process.

(2) This Act does not apply to any such acquisition if the land is available for public sale and the land is acquired by agreement.

(3) Land is available for public sale if:

- (a) the land is advertised by the owner as being available for sale; or
- (b) the land is listed by the owner with a real estate agent as being available for sale; or
- (c) the land is otherwise held out by the owner as being available for sale.

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Acquisition of land to which Act does not apply

6. This Act does not apply to an acquisition of land if:
- (a) the acquisition is made for a road in accordance with the Crown and Other Roads Act 1990; or
 - (b) the acquisition consists of the taking of a mortgage, charge or other similar security over an interest in land; or
 - (c) the acquisition consists of an interest in land which is acquired otherwise than by agreement or compulsory process.

Act not to empower authority to acquire land

7. This Act does not empower an authority of the State to acquire land if it does not have the power (apart from this Act) to acquire the land.

Act to prevail over other Acts relating to acquisition of land

8. This Act prevails, to the extent of any inconsistency, over the provisions of any other Act relating to the acquisition of land by an authority of the State.

Act binds Crown

9. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, in all its other capacities.

Statement of guaranteed acquisition at market value

10. (1) When, on request by or on behalf of an owner or prospective purchaser of land, an authority of the State gives a person written notice to the effect that the land is affected by a proposal for acquisition by the authority, the notice must contain the following:

- (a) a statement that the Land Acquisition (Just Terms Compensation) Act 1991 guarantees that, if and when the land is acquired by (*insert name of authority*) under that Act, the amount of compensation will not be less than market value (assessed under that Act) unaffected by the proposal;
- (b) such other information as the regulations may require.

(2) This section does not apply to a proposal to acquire an easement, or right to use land, under the surface for the construction and maintenance of works.

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(3) Nothing in this section or in a statement made in a notice pursuant to this section gives rise to, or can be taken into account in, any civil cause of action.

**PART 2—ACQUISITION OF LAND BY COMPULSORY
PROCESS**

Division 1—Pre-acquisition procedures

Notice of intention to acquire land by compulsory process

11. (1) An authority of the State may not acquire land by compulsory process unless the authority has given the owners of the land written notice of its intention to do so.

(2) The authority of the State is not prevented from acquiring the land by agreement after giving the proposed acquisition notice.

Owners to be given notice

12. (1) A proposed acquisition notice need only be given to all the owners of the land who:

- (a) have a registered interest in the land; or
- (b) are in lawful occupation of the land; or
- (c) have, to the actual knowledge of the authority of the State, an interest in the land.

(2) If the proposed acquisition notice relates only to a particular interest in land, the notice need only be given to all such owners of that interest.

(3) If the proposed acquisition notice relates to an interest which does not exist (such as a proposed easement), the notice need only be given to all the owners of the land who:

- (a) have a registered interest in the land (other than a mortgage interest); or
- (b) are in lawful occupation of the land.

(4) If the proposed acquisition notice relates to land under the Real Property Act 1900, the authority of the State must give a copy of the notice to any person who has lodged a caveat which is recorded in respect of the land in the Register kept under that Act.

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Minimum period of notice

13. (1) A proposed acquisition notice must be given at least 90 days before the land is compulsorily acquired.

(2) A shorter period of notice may be given if:

- (a) the authority of the State and the owners of the land agree in writing to the shorter period; or
- (b) the Minister responsible for that authority approves of the shorter period, but only if that Minister is satisfied that the urgency of the matter or other circumstances of the case make it impracticable to give any longer period of notice.

Compulsory acquisition to be completed as soon as practicable

14. (1) As soon as practicable after the expiration of the minimum period of notice of a proposed compulsory acquisition, the authority of the State must:

- (a) acquire the land by compulsory process or by agreement; or
- (b) withdraw the proposed acquisition notice.

(2) The proposed acquisition notice is taken to have been withdrawn if the authority of the State has not acquired the land or withdrawn the proposed acquisition notice:

- (a) except as provided by paragraph (b)—within 120 days after it gave that notice; or
- (b) within such longer period as that authority and the owner of the land have agreed to in writing.

(3) If the proposed acquisition notice is withdrawn or taken to have been withdrawn, the authority of the State may not give a further proposed acquisition notice in respect of the land within 12 months after the date of withdrawal unless the Minister responsible for that authority is satisfied that in the circumstances of the case a further notice within that period is justified.

Particulars to be included in proposed acquisition notice

15. A proposed acquisition notice given to an owner of land must:

- (a) be in the form prescribed by the regulations or (if no such form is prescribed) in the form approved by the Minister; and
- (b) specify the authority of the State proposing to acquire the land; and

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- (c) contain a description sufficient to identify the land proposed to be acquired; and
- (d) specify the period within which the land will be compulsorily acquired; and
- (e) request any owner who wishes to claim compensation for the acquisition to lodge with the authority of the State a claim for compensation within the period specified in the notice (being not less than 60 days after the notice is given to the owner); and
- (f) be accompanied by the form for a claim for compensation under section 39.

Withdrawal or amendment of proposed acquisition notice

16. (1) An authority of the State may, before the land is compulsorily acquired, withdraw a proposed acquisition notice by a further notice.

(2) Part 4 deals with the compensation payable when a proposed acquisition notice is withdrawn.

(3) An authority of the State may, by a further notice, amend a proposed acquisition notice for the purpose of correcting a clerical error or an obvious mistake in the notice. Any such amendment has effect from the date of the original notice unless otherwise specified in the further notice.

(4) A further notice under this section is to be given in the same manner as the proposed acquisition notice concerned was given.

Registrar-General to be notified of proposed acquisition notice and withdrawal or amendment of such notice

17. (1) An authority of the State must, as soon as practicable after giving a proposed acquisition notice (or after such a notice is withdrawn or amended), lodge with the Registrar-General notification of the proposed acquisition notice (or its withdrawal or amendment).

(2) Any such notification must be in such form as the Registrar-General approves.

(3) On receipt of the notification, the Registrar-General must make such recordings as the Registrar-General considers appropriate:

- (a) in the case of land under the Real Property Act 1900—in the Register kept under that Act; or
- (b) in the case of other land—in the General Register of Deeds or other relevant Register.

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Valuer-General to be notified of proposed acquisition notice

18. An authority of the State must, as soon as practicable after giving a proposed acquisition notice, notify the Valuer-General of the proposed acquisition notice.

Division 2—Acquisition procedures

Compulsory acquisition by notice in Gazette

19. (1) An authority of the State that is authorised to acquire land by compulsory process may, with the approval of the Governor, declare, by notice published in the Gazette, that any land described in the notice is acquired by compulsory process.

(2) A copy of the acquisition notice is, if practicable, to be published in at least one newspaper circulating in the district in which the land concerned is situated.

(3) An acquisition notice may relate to part only of the land described in the relevant proposed acquisition notice.

Effect of acquisition notice

20. (1) On the date of publication in the Gazette of an acquisition notice, the land described in the notice is, by force of this Act:

- (a) vested in the authority of the State acquiring the land; and
- (b) freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land.

(2) If:

- (a) the acquisition notice excepted an easement from acquisition; and
- (b) immediately before the vesting, the benefit of a restriction as to user was annexed to the easement,

then (unless otherwise specified in the acquisition notice) the restriction continues to have effect as if the acquisition had not taken place.

Division 3—Owner-initiated acquisition in cases of hardship

Definition of “land designated for acquisition for a public purpose”

21. (1) For the purposes of this Division, land is designated for acquisition by an authority of the State for a public purpose if:

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- (a) an authority of the State has, in connection with an application for development consent or building approval, given the local authority or other person dealing with the application written notice that the land has been designated by the authority of the State for future acquisition by it for a public purpose; or
 - (b) the land is reserved by an environmental planning instrument for use exclusively for a purpose referred to in section 26 (c) of the Environmental Planning and Assessment Act 1979 and the instrument (or some other environmental planning instrument) specifies that authority as the authority required to acquire the land.
- (2) For the purposes of subsection (1) (a), a notice given by an authority of the State constitutes notice that the land has been designated for future acquisition by that authority only if the notice states that the authority will acquire the land at some future time or that the land is affected by a proposal of that authority that requires the acquisition of the land at some future time.
- (3) For the purposes of determining, under subsection (1) (b), whether land is reserved for use exclusively for a particular purpose, the reservation of the land for use for other purposes is to be disregarded if, in all the circumstances of the case, those other purposes do not constitute a reasonable use of the land.
- (4) The Minister administering the Environmental Planning and Assessment Act 1979 is to institute any relevant proceedings under that Act to enable the designation of the public authority required to acquire land referred to in subsection (1) (b) in any case in which the relevant authority has not been designated.
- (5) Pending the designation of the relevant authority, the relevant authority is (if the land is required to be acquired under this Division) to be such authority as is determined by order in writing of the Minister administering the Environmental Planning and Assessment Act 1979.
- (6) A notice of a kind referred to in subsection (1) (a) is to be ignored for the purposes of this section unless it is given after the commencement of this section. However, a reference in subsection (1) (b) to a reservation extends to a reservation effected before that commencement.

Owners of land to whom Division applies

22. (1) This Division applies to the following owners of designated land:
- (a) a person who has the fee simple estate in the land;
 - (b) a person who has become entitled to exercise a power of sale of the land.

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- (2) This Division does not apply to an owner of land which is:
- (a) an authority of the State; or
 - (b) a public company (within the meaning of the Corporations Law); or
 - (c) a subsidiary (within the meaning of the Corporations Law) of such a public company.

Owner who suffers hardship may require authority of the State to acquire land designated for acquisition

23. (1) The owner of land to whom this Division applies may require an authority of the State, by notice in writing given to that authority, to acquire that land under this Act if:

- (a) the land is designated for acquisition by that authority for a public purpose; and
- (b) the owner considers that he or she will suffer hardship if there is any delay in the acquisition of the land under this Act.

(2) The authority of the State must (subject to this Division) acquire the land within 90 days after the owner gives that authority notice under this section (or such longer period as that authority and the owner may agree on in writing).

(3) If there is more than one owner of the land concerned, the notice under this section must be given by all the owners. It is sufficient if any one of those owners will suffer hardship.

(4) An authority of the State is not required to acquire (under this Division) more land than it requires for the public purpose for which the land was designated or more interests in the land than it requires for that purpose.

(5) A notice under this section must be in the form prescribed by the regulations or (if no such form is prescribed) in the form approved by the Minister.

Hardship

24. (1) An authority of the State is not required to acquire land under this Division unless it is of the opinion that the owner will suffer hardship (within the meaning of this section) if there is any delay in the acquisition of the land under this Act.

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- (2) An owner of land suffers hardship if:
 - (a) the owner is unable to sell the land, or is unable to sell the land at its market value, because of the designation of the land for acquisition for a public purpose; and
 - (b) it has become necessary for the owner to sell all or any part of the land without delay:
 - (i) for pressing personal, domestic or social reasons; or
 - (ii) in order to avoid the loss of (or a substantial reduction in) the owner's income.
- (3) However, if the owner of the land is a corporation to which this Division applies, the corporation does not suffer hardship unless it has become necessary for the corporation to sell all or any part of the land without delay:
 - (a) for pressing personal, domestic or social reasons of an individual who holds at least 20 per cent of the shares in the corporation; or
 - (b) in order to avoid the loss of (or a substantial reduction in) the income of such an individual.

Method of acquisition under this Division

- 25. (1) Land required to be acquired under this Division is to be acquired by compulsory process.
- (2) However, nothing in this Division prevents the land concerned from being acquired by agreement instead of compulsory process within the period required by this Division.
- (3) Division 1 (Pre-acquisition procedures) does not apply to an acquisition of land under this Division.

Compensation for acquisition under this Division

- 26. The special value of land, any loss attributable to severance or disturbance and solatium (as referred to in Part 3) need not be taken into account in connection with an acquisition of land under this Division, despite anything to the contrary in that Part.

Authority of the State may lift designation of land

- 27. An authority of the State is not required to acquire land under this Division if, before it is required to acquire the land:
 - (a) in the case of land designated for acquisition as referred to in section 21 (1) (a)—that authority gives the owner of the land written notice that the land is no longer designated by that authority for future acquisition; or

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- (b) in the case of land designated for acquisition as referred to in section 21 (1) (b)—that authority gives the owner a written undertaking that it will use its best endeavours to remove the relevant reservations and a written notice that the land is no longer designated by that authority for future acquisition.

Owner-initiated acquisition under Environmental Planning and Assessment Act 1979

28. (1) This Division does not affect any obligation of an authority of the State to acquire land as referred to in section 27 of the Environmental Planning and Assessment Act 1979.

(2) However, any such acquisition may be effected by compulsory process in accordance with this Division.

Division 4—Miscellaneous provisions relating to acquisition**Acquisition of Crown land**

29. (1) Land may be compulsorily acquired by an authority of the State under this Act even though it is Crown land.

(2) If Crown land is subject to a dedication or reservation that (by virtue of any Act) cannot be removed except by an Act, that land may not be compulsorily acquired.

(3) Nothing in this Act affects the acquisition by agreement of Crown land by an authority of the State.

(4) The provisions of Division 1 (Pre-acquisition procedures) and Part 3 (Compensation for acquisition of land) do not apply to the compulsory acquisition of Crown land if the owners of the land have agreed on all relevant matters concerning the compulsory acquisition and the compensation (if any) to be paid for the acquisition.

Compulsory acquisition with consent of owners

30. (1) An authority of the State and the owners of land may agree in writing that the land be compulsorily acquired by that authority.

(2) The provisions of Division 1 (Pre-acquisition procedures) and Part 3 (Compensation for acquisition of land) do not apply to any such compulsory acquisition if the owners have agreed in writing on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

Rescission of acquisition notice

31. (1) The Governor may, by notice published in the Gazette, rescind in whole or in part any acquisition notice.

(2) An acquisition notice may not be rescinded unless a Minister has certified that it is necessary to do so for the purpose of correcting a clerical error or obvious mistake or for other good cause or that the former owners of the land have agreed to the rescission.

(3) An acquisition notice published under Division 3 (Owner-initiated acquisition in cases of hardship) may not be rescinded without the consent of the owner who required the acquisition.

(4) On the publication in the Gazette of the rescission notice, the land described in the rescission notice:

- (a) reverts in the person who was entitled to it immediately before the compulsory acquisition for the estate, interest or right which the person had immediately before the compulsory acquisition, but subject to any interest in or equity binding on the land created by the authority of the State since its compulsory acquisition; and
- (b) is subject to all trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts from which it was freed and discharged by the compulsory acquisition; and
- (c) is subject to any interests in or equities binding on the compensation money that were created since the compulsory acquisition.

(5) If a resumption application relating to land described or referred to in an acquisition notice has been lodged under section 31A (2) of the Real Property Act 1900 with the Registrar-General:

- (a) a rescission notice may not rescind so much of the acquisition notice as relates to that land; and
- (b) any transfer of that land, after it has been brought under the provisions of the Real Property Act 1900, to the person who was entitled to it immediately before the resumption is, for the purposes of Part 4 of this Act, taken, on its registration under that Act:
 - (i) to revert that land under this section in the transferee; and
 - (ii) to rescind the compulsory acquisition in so far as it relates to that land.

(6) Part 4 deals with the compensation payable when an acquisition notice is rescinded under this section.

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(7) In this section, “**acquisition notice**” includes a notification of appropriation or resumption made under the Public Works Act 1912 before the commencement of this section.

New interests in land

32. An interest in land (such as an easement) may be acquired by compulsory process under this Act even though the interest did not previously exist in relation to the land.

Validity of compulsory acquisition

33. Once land has been acquired by compulsory process under this Act, the validity of the acquisition is not affected by:

- (a) a failure to comply with any requirement of this Part relating to the giving of notice of the proposed acquisition; or
- (b) a subsequent failure to comply with a requirement of this Act relating to the acquisition.

Former owner's right to occupy land until compensation paid etc.

34. (1) A person who was in lawful occupation of land immediately before it was compulsorily acquired under this Act and to whom compensation is payable under this Act is entitled to remain in occupation until:

- (a) the compensation is duly paid to the person; or
- (b) the authority of the State makes (in accordance with any other provision of this Act) an advance payment of not less than 90 per cent of the amount of compensation offered by the authority; or
- (c) the authority of the State makes (in accordance with any other provision of this Act) a payment into the trust account kept under Part 3 of not less than 90 per cent of the amount of compensation offered by the authority,

whichever first occurs.

(2) Any such person is entitled to remain in occupation of any building that is the person's principal place of residence, or the person's place of business, for 3 months after it is compulsorily acquired, even though the person has ceased to be entitled to remain in occupation under subsection (1). However, if the Minister responsible for the authority of the State is satisfied that the authority requires immediate vacant possession of land, the authority is entitled to immediate vacant possession even though the 3-month period has not expired.

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(3) The terms on which a person remains in occupation of land that has been compulsorily acquired under this Act are, in the absence of agreement, such reasonable terms as are determined by the authority of the State (including terms as to the rental to be paid and the restrictions on the use of the land). The Residential Tenancies Act 1987 does not apply to that continued occupation.

(4) Any such unpaid rent or other money due to the authority of the State may be set off against the compensation payable under this Act.

Power of authority of the State to obtain possession of compulsorily acquired land

35. (1) If, after an authority of the State becomes entitled to vacant possession of land compulsorily acquired under this Act, any person remains in or takes up occupation of the land, that authority may direct and empower the Sheriff (or any person prescribed by the regulations) to deliver possession of the land to that authority.

(2) On receipt of any such direction, the Sheriff (or prescribed person) is required to deliver possession of the land to the authority of the State.

(3) The costs incurred by the Sheriff (or prescribed person) in delivering possession of the land may be recovered as a debt by the authority of the State from the person refusing to deliver possession. The authority of the State may deduct the amount of any such costs from any compensation payable to the person under this Act.

(4) Nothing in this section operates to limit or restrict the power of the authority of the State to enforce its right to possession of land otherwise than under this section.

Adverse use of acquired land

36. (1) If a person is using, or proposes to use, land acquired by an authority of the State by compulsory process in a manner inconsistent with the public purpose for which the land was acquired, the Land and Environment Court may, on the application of that authority, make such order as it thinks fit to remedy or restrain that use.

(2) Without limiting the powers of the Land and Environment Court under subsection (1), an order made under that subsection may:

- (a) restrain the use of any building, work or land; or
- (b) require the demolition or removal of any building or work; or
- (c) require the reinstatement, as far as practicable, of a building, work or land to the condition it was in immediately before the relevant use.

(3) The Land and Environment Court may, at its discretion, by interlocutory order, restrain the continuation of the relevant use of the land pending the determination of an application under subsection (1).

PART 3—COMPENSATION FOR ACQUISITION OF LAND

Division 1—Entitlement to compensation

Right to compensation if land compulsorily acquired

37. An owner of an interest in land which is divested, extinguished or diminished by an acquisition notice is entitled to be paid compensation in accordance with this Part by the authority of the State which acquired the land.

Compensation entitlement if land (not available for public sale) acquired by agreement

38. An authority of the State is to take into account, in connection with any proposed acquisition by agreement of land not available for public sale, the same matters as are required to be taken into account under this Part in determining the compensation payable for an acquisition by compulsory process.

Division 2—Claims for compensation

Claim for compensation

39. (1) A person who wishes to claim compensation under this Part must lodge a claim in accordance with this section with the authority of the State that is acquiring the land concerned.

(2) A claim for compensation must be in the form prescribed by the regulations or (if no such form is prescribed) in the form approved by the Minister.

(3) The claim form may require information to be verified by statutory declaration.

(4) A claim for compensation may be withdrawn by the claimant.

Owner claiming compensation must disclose particulars of other persons with an interest in land

40. (1) A person who claims compensation under this Part must state, in the claim form, whether the person is aware of any other person who has an interest in the land and who may be entitled to compensation.

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(2) If the person is aware of such an interest, the claim must contain such particulars of the interest as are required by the requisite claim form.

Valuer-General to be given copy of claim for compensation

41. (1) An authority of the State must, as soon as practicable after receiving a claim for compensation in respect of a compulsory acquisition (or proposed compulsory acquisition), give the Valuer-General a copy of the claim.

(2) The Valuer-General may determine the amount of compensation to be offered to a former owner of land for a compulsory acquisition of the land:

- (a) before or after the acquisition takes effect; and
- (b) even though the former owner has not made a claim for the compensation.

Division 3—Post-acquisition procedures relating to compensation

Notice of compensation entitlement and offer of compensation

42. (1) An authority of the State which has compulsorily acquired land under this Act must, within 30 days after the publication of the acquisition notice, give the former owners of the land written notice of the compulsory acquisition, their entitlement to compensation and the amount of compensation offered (as determined by the Valuer-General).

(2) The compensation notice must be given to all former owners of the land who, immediately before the acquisition:

- (a) had a registered interest in the land; or
- (b) were in lawful occupation of the land (but only if the authority of the State considers they are entitled to compensation); or
- (c) had, to the actual knowledge of the authority of the State, an interest in the land which entitles them to compensation.

(3) If the acquisition relates only to a particular interest in land, the notice need only be given to all such former owners of that interest.

(4) The Minister responsible for an authority of the State may extend the period of 30 days within which the compensation notice is required to be given (but not by more than 60 days) if the Minister is satisfied that it is necessary to do so to enable a valuation to be made of any interest in the land concerned.

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(5) An authority of the State is not excused from the requirement to give a compensation notice because the period during which the notice is required to be given has expired or because the former owner has not lodged a claim for compensation.

(6) However, the authority of the State may delay giving a compensation notice if a number of persons claim competing interests in the land concerned.

(7) Despite any such delay, the compensation may be paid into the trust account under this Part and advance payments of compensation may be made under this Part.

Particulars to be included in notice of compensation entitlement and offer of compensation

43. A compensation notice given to a former owner of land must:
- (a) be in the form prescribed by the regulations or (if there is no prescribed form) the form approved by the Minister; and
 - (b) notify the owner that the land has been compulsorily acquired; and
 - (c) state that the owner is entitled to compensation; and
 - (d) offer to pay a specified amount of compensation as determined by the Valuer-General and be accompanied by a form of deed of release and indemnity for completion if the offer is accepted; and
 - (e) inform the owner of the right to object to the amount offered.

Acceptance of offer of compensation

44. (1) A person entitled to compensation under this Part may accept the amount of compensation offered by the authority of the State in the compensation notice.

(2) Payment of the compensation is to be made within 28 days of the receipt by the authority of the State of a claim for compensation, deed of release and indemnity (duly completed) and any relevant documents of title.

Deemed acceptance of offer of compensation

45. (1) If a person entitled to compensation under this Part does not, within 90 days after receiving a compensation notice:

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- (a) accept the amount of compensation offered by the authority of the State; or
- (b) lodge with the Land and Environment Court an objection to the amount of compensation offered,

the offer of compensation is taken to have been accepted.

(2) Such an acceptance is subject to any decision of the Land and Environment Court on an objection lodged after the 90-day period.

(3) The authority of the State must, on such an acceptance taking effect, pay the amount of money concerned into a trust account kept under this Part and pay the money to the person entitled to it on receipt of a claim for compensation, deed of release and indemnity (duly completed) and any relevant documents of title.

Claim for compensation by person not offered compensation

46. (1) A person who has not been given a compensation notice may nevertheless lodge with an authority of the State a claim for compensation under this Part.

(2) If the authority of the State considers that the person is entitled to compensation, the authority is to give the person a compensation notice. Otherwise, the authority is to reject the claim by notice in writing given to the person.

(3) A claim for compensation under this section is taken to have been rejected if the authority of the State has not dealt with the claim within 60 days after receiving the claim. However, the authority of the State is not precluded from giving the person a compensation notice after that time.

Valuer-General to determine amount of compensation offered

47. The Valuer-General is to determine the amount of compensation to be offered to a person under this Part.

Advance payments of compensation etc.

48. (1) An authority of the State may, at any time after land is acquired, make an advance payment of compensation to any person who the authority considers is entitled to the compensation.

(2) An advance payment may be made on application by the person or without any such application if the person agrees to accept the advance payment.

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(3) The acceptance by a person of an advance payment of compensation does not constitute an acceptance of any offer of compensation made by the authority of the State.

(4) A person who receives an advance payment of compensation which exceeds the amount of compensation to which the person is entitled must repay to the authority of the State the amount of the excess.

(5) Any advance or other payment of compensation to a person not entitled to the compensation must be repaid to the authority of the State that made the payment.

(6) Any amount due to an authority of the State under this section may be recovered as a debt in any court of competent jurisdiction.

Interest on compensation

49. (1) Interest is payable (subject to subsection (2)) on any amount of compensation under this Part from the date the land is acquired until the payment is made. Any such interest becomes part of the amount of compensation payable.

(2) Interest under this section is not so payable on any amount of compensation paid into a trust account under this Part or into the Consolidated Fund by the authority of the State. However, money earned from the investment of any such trust account becomes part of the compensation concerned.

Rate of interest on compensation

50. (1) The rate of interest payable on any payment of compensation under this Part is such rate as the Treasurer may from time to time determine by notification published in the Gazette.

(2) Different rates of interest may be determined under this section.

(3) The Treasurer is to have regard to the rates of interest paid by banks when determining rates of interest under this section.

(4) Rates of interest determined under this section apply even though the compensation is payable under an order of a court.

Trust account

51. (1) An authority of the State is required to keep a trust account in connection with compensation payable under this Part.

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(2) The authority of the State must pay into the trust account any amount of compensation which is required by this Act to be paid into the trust account.

(3) The authority of the State may pay into the trust account any amount of compensation which is authorised by this Act to be paid into the trust account.

(4) Money in the trust account is held in trust for the person entitled to the compensation concerned.

(5) Money in the trust account is, after the expiration of 6 years after the acquisition of the land to which it relates, to be paid to the Treasurer for payment into the Consolidated Fund if no claim for the compensation concerned has been made. Any payment of the compensation concerned required to be made after that time is to be made from the Consolidated Fund, which is appropriated accordingly.

(6) If the authority of the State is a local government authority, payment of the money to the Treasurer under subsection (5) is discretionary.

(7) Money in the trust account is (subject to any direction of the Treasurer) to be invested in accordance with Part 1 of Schedule 4 to the Public Authorities (Financial Arrangements) Act 1987.

Payments to be a good discharge

52. All payments of compensation made by an authority of the State under this Part are good and valid discharges to that authority and that authority is not bound to see to the application of any money paid or to the performance of any trust.

Compensation for interest not known to acquiring authority

53. (1) If an authority of the State pays compensation under this Act to a former owner of land without regard to the existence of an interest in the land owned by another person (being an interest that was not known to the authority when that compensation was paid):

- (a) that other person's entitlement to be paid compensation by the authority in respect of the acquisition of that land is extinguished; and
- (b) his or her rights and entitlements against the former owner in respect of the interest are not affected by the divesting, extinguishing or diminution of the interest by this Act.

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(2) For the purposes of this section, an interest is known to an authority of the State only if it is a registered interest or an interest within the actual knowledge of the authority.

Division 4—Determination of amount of compensation

Entitlement to just compensation

54. The amount of compensation to which a person is entitled under this Part is such amount as, having regard to all relevant matters under this Part, will justly compensate the person for the acquisition of the land.

Relevant matters to be considered in determining amount of compensation

55. In determining the amount of compensation to which a person is entitled, regard must be had to the following matters only (as assessed in accordance with this Division):

- (a) the market value of the land on the date of its acquisition;
- (b) any special value of the land to the person on the date of its acquisition;
- (c) any loss attributable to severance;
- (d) any loss attributable to disturbance;
- (e) solatium;
- (f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

Market value

56. (1) In this Act:

“market value” of land at any time means the amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer, disregarding (for the purpose of determining the amount that would have been paid):

- (a) any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired; and
- (b) any increase in the value of the land caused by the carrying out by the authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired; and

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- (c) any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

(2) When assessing the market value of land for the purpose of paying compensation to a number of former owners of the land, the sum of the market values of each interest in the land must not (except with the approval of the Minister responsible for the authority of the State) exceed the market value of the land at the date of acquisition.

Special value

57. In this Act:

“special value” of land means the financial value of any advantage, in addition to market value, to the person entitled to compensation which is incidental to the person's use of the land.

Loss attributable to severance

58. In this Act:

“loss attributable to severance” of land means the amount of any reduction in the market value of any other land of the person entitled to compensation which is caused by that other land being severed from other land of that person.

Loss attributable to disturbance

59. In this Act:

“loss attributable to disturbance” of land means any of the following:

- (a) legal costs reasonably incurred by the persons entitled to compensation in connection with the compulsory acquisition of the land;
- (b) valuation fees reasonably incurred by those persons in connection with the compulsory acquisition of the land;
- (c) financial costs reasonably incurred in connection with the relocation of those persons (including legal costs but not including stamp duty or mortgage costs);
- (d) stamp duty costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the purchase of land for relocation (but not exceeding the amount that would be incurred for the purchase of land of equivalent value to the land compulsorily acquired);

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- (e) financial costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the discharge of a mortgage and the execution of a new mortgage resulting from the relocation (but not exceeding the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage);
- (f) any other financial costs reasonably incurred (or that might reasonably be incurred), relating to the actual use of the land, as a direct and natural consequence of the acquisition.

Solatium

60. (1) In this Act:

“**solatium**” means compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence as a result of the acquisition.

(2) The maximum amount of compensation in respect of solatium is:

- (a) except as provided by paragraph (b)—\$15,000; or
- (b) such higher amount as may be notified by the Minister by notice published in the Gazette.

(3) In assessing the amount of compensation in respect of solatium, all relevant circumstances are to be taken into account, including:

- (a) the interest in the land of the person entitled to compensation; and
- (b) the length of time the person has resided on the land (and in particular whether the person is residing on the land temporarily or indefinitely); and
- (c) the inconvenience likely to be suffered by the person because of his or her removal from the land; and
- (d) the period after the acquisition of the land during which the person has been (or will be) allowed to remain in possession of the land.

(4) Compensation is payable in respect of solatium if the whole of the land is acquired or if any part of the land on which the residence is situated is acquired.

(5) Only one payment of compensation in respect of solatium is payable for land in separate occupation.

(6) However, if more than one family resides on the same land, a separate payment may be made in respect of each family if:

- (a) the family resides in a separate dwelling-house; or
- (b) the Minister responsible for the authority of the State approves of the payment.

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(7) If separate payments of compensation are made, the maximum amount under subsection (2) applies to each payment, and not to the total payments.

Special provision relating to market value assessed on potential of land

61. If the market value of land is assessed on the basis that the land had potential to be used for a purpose other than that for which it is currently used, compensation is not payable in respect of:

- (a) any financial advantage that would necessarily have been forgone in realising that potential; and
- (b) any financial loss that would necessarily have been incurred in realising that potential.

Special provision relating to acquisition of easements or rights, tunnels etc.

62. (1) If the land compulsorily acquired under this Act consists only of an easement, or right to use land, under the surface for the construction and maintenance of works (such as a tunnel, pipe or conduit for the conveyance of water, sewage or electrical cables), compensation is not payable except for actual damage done in the construction of the work or caused by the work.

(2) If land under the surface is compulsorily acquired under this Act for the purpose of constructing a tunnel, compensation is not payable (subject to subsection (1)) unless:

- (a) the surface of the overlying soil is disturbed; or
- (b) the support of that surface is destroyed or injuriously affected by the construction of the tunnel; or
- (c) any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected.

(3) If the land compulsorily acquired under this Act consists of or includes an easement or right to use the surface of any land for the construction and maintenance of works (such as canals, drainage, stormwater channels, electrical cables, openings or ventilators), the easement or right is (unless the acquisition notice otherwise provides) taken to include a power, from time to time, to enter the land for the purpose of inspection and for carrying out of any additions, renewals or repairs. Compensation under this Part is payable accordingly.

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Pre-acquisition agreements on compensation

63. (1) An authority of the State and an owner of land may agree on the amount of compensation to which the owner will be entitled (or on any matter affecting the amount of any such compensation) if the land is acquired by compulsory process within a time (or in the circumstances) specified in the agreement.

(2) Any such agreement has effect according to its tenor.

Compensation in form of land or works

64. Compensation to which a person is entitled under this Part may, if the person and the authority of the State concerned agree, be provided wholly or partly in the form of land or of the carrying out of works.

Effect of acquisition of mortgage interest

65. (1) If:

- (a) land is compulsorily acquired under this Act; and
- (b) the land is subject to one or more mortgages,

then, as a general rule, the compensation to which the owner of the land will be entitled in respect of the acquisition is to be determined as if the land had not been subject to the mortgage.

(2) However, if compensation is payable under this Part to a mortgagee in respect of a mortgage interest, the compensation payable to the owner of the land acquired is to be reduced by so much of the compensation as is payable to the mortgagee.

**Division 5—Objections and appeals to Land
and Environment Court****Objection against amount of compensation offered**

66. (1) A person who has claimed compensation under this Part may, within 90 days after receiving a compensation notice, lodge with the Land and Environment Court an objection to the amount of compensation offered by the authority of the State.

(2) If any such objection is duly lodged, the Land and Environment Court is to hear and dispose of the person's claim for compensation.

(3) A person who does not lodge an objection within the 90-day period and who is taken to have accepted the offer of compensation under

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section 45 may nevertheless lodge an objection under this section, but the Land and Environment Court is not to hear and dispose of the person's claim for compensation unless satisfied that there is good cause for the person's failure to lodge the objection within that period.

(4) If the Land and Environment Court decides that the amount of compensation payable (without the addition of interest) does not exceed by more than 10% the amount of compensation offered by the authority of the State, the Court may cancel or reduce the amount of interest that has accrued under this Act in respect of the compensation since the institution of the proceedings.

Appeal against failure to entertain claim for compensation

67. (1) A person who has not been given a compensation notice and whose claim for compensation under this Part is rejected (or taken to be rejected) may appeal to the Land and Environment Court against the rejection of the claim.

(2) Any such appeal must be lodged within 90 days after the rejection of the claim.

(3) If any such appeal is duly lodged, the Land and Environment Court is to hear and dispose of the person's claim for compensation.

(4) A person who does not lodge an appeal within the 90-day period may nevertheless lodge an appeal under this section, but the Land and Environment Court is not to hear and dispose of the person's claim for compensation unless satisfied that there is good cause for the person's failure to lodge the appeal within that period.

Payment of compensation arising from court proceedings

68. (1) Payment of compensation in respect of matters before the Land and Environment Court is to be made in accordance with any agreement reached during the proceedings or, if no such agreement is reached, in accordance with the decision of the Court.

(2) Subject to any such agreement or decision:

(a) if the authority of the State gave the owner concerned a compensation notice—the authority is required to pay 90 per cent of the amount of compensation offered in the notice (as an advance payment) within 28 days after the authority is given notice of the institution of the proceedings or (if the owner does not accept that advance payment) the authority is required to pay 90 per cent of that amount into the trust account kept under this Part; or

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- (b) if the authority of the State did not give the owner concerned a compensation notice—the authority may (but is not required to) make an advance payment under this Part or pay an amount into the trust account kept under this Part.

**PART 4—COMPENSATION FOR ABANDONED
ACQUISITION OF LAND**

Compensation for withdrawal of proposed acquisition notice

69. (1) If a proposed acquisition notice is withdrawn (or taken to be withdrawn) under this Act, an owner of the land concerned is entitled to be compensated by the authority of the State who gave the notice for any financial costs or any damage actually incurred or suffered by the owner as a direct consequence of the giving of the notice and its later withdrawal.

(2) Compensation is not payable under this section in respect of any change in the value of the land.

(3) Compensation is not payable under this section unless a claim for the compensation is made within 3 years after the withdrawal of the proposed acquisition notice.

Compensation for rescission of acquisition notice

70. (1) If an acquisition notice is rescinded (in whole or in part) under this Act, a person in whom the land is revested on that rescission is entitled to be compensated by the authority of the State for any financial costs or any damage actually incurred or suffered by that person as a direct consequence of the compulsory acquisition and its rescission.

(2) Compensation is not payable under this section in respect of any change in the value of the land.

(3) The compensation payable under this section includes compensation for any easement or other interest which was created after the acquisition of the land and which subsists after the rescission of the compensation notice. Section 62 and any other relevant provision of Part 3 apply to the determination of the amount of any such compensation.

(4) Compensation is not payable under this section unless a claim for compensation is made within 3 years after the rescission of the compensation notice.

Land Acquisition (Just Terms Compensation) 1991

Claims for compensation under this Part

71. (1) A person who wishes to claim compensation under this Part must lodge a claim for compensation in accordance with this section with the authority of the State liable to pay the compensation.

(2) A claim for compensation must be in the form prescribed by the regulations or (if no such form is prescribed) in the form approved by the Minister.

(3) A claim for compensation may be withdrawn by the claimant.

(4) The authority of the State may accept a claim for compensation (in whole or in part) or reject any such claim.

(5) A claim for compensation is taken to have been rejected if the authority of the State has not dealt with the claim within 60 days after receiving the claim. However, the authority of the State is not precluded from accepting the claim after that time.

(6) A person whose claim for compensation is rejected (or taken to be rejected) or is accepted in part only may appeal to the Land and Environment Court against that decision. Section 67 applies to any such appeal in the same way as it applies to an appeal under that section.

(7) The regulations may apply any of the provisions of Part 3 relating to claims for compensation under that Part (with or without modifications) to claims for compensation under this Part.

PART 5—MISCELLANEOUS

Manner of giving or serving notices or documents

72. (1) If a notice or other document is required to be given to or served on any person under this Act, the notice or other document may be given or served:

- (a) in the case of a person other than a corporation—by delivering it to the person or by posting it to the address (if any) specified by the person for the service of documents under this Act or, if no such address is specified, by posting it to the person's usual or last known place of residence or business; or
- (b) in the case of a corporation—by leaving it at the registered office of the corporation with a person apparently employed by the corporation or by posting it to the address (if any) specified by the corporation for the service of documents under this Act or, if no such address is specified, by posting it to the last known place of business of the corporation.

Land Acquisition (Just Terms Compensation) 1991

(2) If:

- (a) an authority of the State is required or authorised under this Act to give to or serve on the owner of land a notice or other document; and
- (b) the authority is unable after due inquiry to ascertain the owner's whereabouts,

the notice or other document may be given or served by placing it on a board or other structure in a conspicuous place on the land or by publishing a copy of it in a newspaper circulating in the district in which the land is situated.

Proceedings for offences

73. Proceedings for offences against this Act or the regulations are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

Regulations

74. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Amendment of other Acts

75. Each Act specified in Schedule 1 is amended as set out in that Schedule.

Repeal of Acts

76. Each Act specified in Schedule 2 is repealed.

Savings, transitional and other provisions

77. Schedule 3 has effect.

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS

(Sec. 75)

CONVEYANCING ACT 1919 No. 6

Section 196A (Register of Resumptions):

Omit section 196A (1), insert instead:

(1) In this section, “**resumption**” means the acquisition of land by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 or any other Act.

CROWN AND OTHER ROADS ACT 1990 No. 54

Section 27 (Interest to accrue in respect of compensation not paid at the appropriate time):

Omit “section 126A (5) of the Public Works Act 1912”, insert instead “section 50 of the Land Acquisition (Just Terms Compensation) Act 1991”.

CROWN LANDS ACT 1989 No. 6

(1) **Section 135:**

Omit the section, insert instead:

Acquisition of land for public purpose

135. (1) The Minister may acquire land, for any public purpose, by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(2) For the purposes of the Public Works Act 1912, any such acquisition of land is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.

(3) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply in respect of works constructed under this Act.

(2) **Section 136 (Withdrawal from lease or licence for public purposes):**

From section 136 (5), omit “provisions of the Public Works Act 1912 relating to payment of compensation for resumed

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

land”, insert instead “provisions of the Land Acquisition (Just Terms Compensation) Act 1991 relating to the payment of compensation for land acquired by compulsory process”.

(3) Section 138 (**Certain land may be declared to be Crown Land**):

From section 138 (1), omit “appropriated or resumed” wherever occurring, insert instead “acquired by compulsory process”.

(4) Schedule 6 (**Modification of the Public Works Act 1912**):

Omit the Schedule.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
No. 203

(1) Section 9 (**Power to acquire land etc.**):

(a) From section 9 (1), omit “acquire land, including land previously appropriated or resumed for any purpose, by lease or purchase or by resumption or appropriation in accordance with the provisions of this Part”, insert instead “acquire land by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991”.

(b) At the end of section 9 (2) (c), insert:

; or

(d) a leasehold or any other interest in land.

(2) Section 10:

Omit the section, insert instead:

Application of Public Works Act 1912

10. (1) For the purposes of the Public Works Act 1912, any acquisition of land under section 9 is taken to be for an authorised work and the corporation is, in relation to that authorised work, taken to be the Constructing Authority.

(2) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply in respect of works constructed under this Act.

(3) Section 26 (**Contents of environmental planning instruments**):

In section 26 (c), before “a public cemetery”, insert “a national park or other land reserved or dedicated under the National Parks and Wildlife Act 1974,”.

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

- (4) Section 116 (Value of reserved land on compulsory acquisition):

Omit the section.

- (5) Schedule 7 (Modification of Public Works Act 1912):

Omit the Schedule.

**LAND ACQUISITION (CHARITABLE INSTITUTIONS) ACT
1946 No. 55**

Section 4:

Omit the section, insert instead:

Compulsory acquisition of land for purposes of an institution

4. (1) The Minister may acquire land, for the purposes of an institution, by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(2) The Minister may do so only if the governing body of the institution:

- (a) applies to the Minister for acquisition of the land; and
- (b) makes provision to the satisfaction of the Minister for the payment of the purchase price or of compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).

(3) The Minister may transfer land acquired under this section to the institution that has applied for the acquisition or to a nominee of that institution.

(4) For the purposes of the Public Works Act 1912, an acquisition of land under this section is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.

LAND AND ENVIRONMENT COURT ACT 1979 No. 204

- (1) Section 24 (Claim for compensation in compulsory acquisition cases):

(a) Omit section 24 (1), insert instead:

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

- (1) If:
 - (a) a claim is made for compensation because of the compulsory acquisition of land in accordance with the Land Acquisition (Just Terms Compensation) Act 1991, the Crown and Other Roads Act 1990 or any other Act; and
 - (b) no agreement is reached between the claimant and the authority required to pay the compensation, the claim is (subject to any such Act) to be heard and disposed of by the Court and not otherwise.
- (b) Omit section 24 (3).
- (2) Section 25 (**Determination of estate, interest and amount**):
Omit section 25 (3).
- (3) Section 34 (**Preliminary conferences**):
 - (a) After section 34 (1), insert:

(1A) Where proceedings are pending in Class 3 of the Court's jurisdiction in respect of a claim for compensation by reason of the compulsory acquisition of land (referred to in Division 2 of Part 3), the registrar is required to arrange (at the request of all the parties to the proceedings) a conference between the parties to the proceedings or their representatives, to be presided over by a single assessor. The conference is to be arranged within 28 days after the proceedings are commenced or within such further time as the Chief Judge directs.
 - (b) After section 34 (8), insert:

(9) The registrar may, unless otherwise directed by the Chief Judge, preside over a conference under this section, and for that purpose a reference in this section to an assessor includes a reference to the registrar.
- (4) Section 69A (**Interest payable on money ordered to be paid**):
After section 69A (2), insert:

(3) In the case of an order of the Court for the payment of compensation under the Land Acquisition (Just Terms Compensation) Act 1991, the rate of interest is the rate determined under that Act in respect of the payment of compensation.

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

LOCAL GOVERNMENT ACT 1919 No. 41

(1) Section 233 (**Proprietary rights in regard to roads**):

At the end of section 233 (5), insert:

The Land Acquisition (Just Terms Compensation) Act 1991 does not affect the operation of this subsection.

(2) Section 477 (**Purchase and resumption of land**):

Omit section 477 (1).

(3) Section 532 (**Acquisition of land**):

(a) Omit section 532 (1), insert instead:

(1) The council may acquire land within or outside its area for any purpose of this Act by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(1A) The council may not give a proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 without the approval of the Minister.

(b) From section 532 (2), omit “may acquire by lease, purchase, appropriation or resumption in accordance with this Part”, insert instead “may so acquire”.

(4) Sections 536–536D (except section 536AA) (**Machinery of resumption**):

Omit the sections and the heading before section 536.

(5) Sections 536AA, 536DA–536DF:

Omit “resumed or appropriated” and “resumption or appropriation” wherever occurring, insert instead “compulsorily acquired” and “compulsory acquisition”, respectively.

(6) Section 536E:

Omit the section, insert instead:

Ordinances

536E. Ordinances may be made for carrying this Part into effect.

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

MINE SUBSIDENCE COMPENSATION ACT 1961 No. 22

Section 13 (1A):

Omit the subsection, insert instead:

(1A) If no agreement has been entered into under subsection (1) (a) within such time as the Board considers reasonable after the claim is made under section 12 or 12A (1) (a), the Board may acquire the land (or the land and improvements or the estate or interest) by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(1AB) For the purposes of the Public Works Act 1912, any such acquisition is taken to be for an authorised work and the Board is taken to be the Constructing Authority.

(1AC) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply in respect of works constructed under this section.

PIPELINES ACT 1967 No. 90

Section 22A (Compensation):

Omit section 22A (2) and (3), insert instead:

(2) The Land Acquisition (Just Terms Compensation) Act 1991 applies (with such modifications as may be prescribed by the regulations) to the payment of any such compensation as if the vesting of lands or easements under section 21 were effected by an acquisition notice under that Act.

PUBLIC WORKS ACT 1912 No. 45

(1) Section 1:

Omit the section, insert instead:

Short title

1. This Act may be cited as the Public Works Act 1912.

(2) Section 4A (Acquisition of easement):

Omit the section.

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

(3) Sections 39, 40:

Omit the sections, insert instead:

Acquisition of land for authorised works

39. The Minister may, for the purposes of an authorised work, acquire land by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

Acquisition of land for public purposes other than authorised works

40. (1) This section applies to the acquisition of land for the purposes of any work other than an authorised work.

(2) The Minister may acquire land by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of:

- (a) a public work or undertaking specified in section 41 if money has been appropriated from the Consolidated Fund (or is otherwise lawfully available) for or towards the carrying out of the work or undertaking; or
- (b) a school site or a site for public offices or public buildings.

(3) The Minister is, in relation to the acquisition of land under this section, taken to be the Constructing Authority.

(4) Part 5 [sections 42–49] (**Methods of acquisition of land**):

Omit the Part.

(5) Part 6, Division 2 (**Purchase of lands**) [sections 50A–64], Division 3 (**Refusal to deliver possession of lands**) [section 65], Division 4 (**Mortgages and charges**) [sections 66–75], Division 5 (**Leases**) [sections 76–79]:

Omit the Divisions.

(6) Section 85:

Omit the section, insert instead:

Claims for compensation

85. (1) A person who wishes to claim compensation under this Division must lodge a claim for compensation with the Constructing Authority.

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

(2) The Constructing Authority may accept the claim for compensation (in whole or in part) or reject the claim.

(3) A claim for compensation is taken to have been rejected if the Constructing Authority has not dealt with the claim within 60 days after receiving the claim or within 60 days after completion of the public work concerned (whichever is the later). However, the Constructing Authority is not precluded from accepting the claim after that time.

(7) Section 96 (**As to damages**):

Omit “taken,”.

(8) Section 97 (**Houses not to be damaged without notice**):

(a) Omit “take,”.

(b) At the end of the section, insert:

(2) This section does not apply to anything done after land has been acquired by the Constructing Authority.

(9) Section 98 (**Sale or lease of lands not wanted for any work**):

Omit “taken or” and “so taken or”.

(10) Part 7 [sections 101–131] (**Compensation**):

Omit the Part.

(11) Section 132 (**Powers of purchasing lands**):

Omit “taking,” “, or purchasing”, “taken,” and “, or purchased”.

(12) Part 8, Division 2 [sections 134–137] (**Conveyances**), Division 3 [sections 138–140] (**Compulsory purchases**):

Omit the Divisions.

(13) Section 141 (**Constructing Authority entitled to minerals**):

At the end of the section, insert:

(10) In this section, a reference to a notification of the taking of land includes a reference to an acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991.

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

(14) Section 142 (**Working of mines on or near authorised work**):

From section 142 (4), omit "Division 2 of Part 7 hereof", insert instead "the Land Acquisition (Just Terms Compensation) Act 1991".

(15) Fifth, Sixth, Seventh and Eighth Schedules:

Omit the Schedules.

STATE ROADS ACT 1986 No. 85

(1) Section 52:

Omit the section, insert instead:

Acquisition of Land

52. (1) The Authority may acquire land for the purposes of this Act by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(2) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply in respect of works constructed under this Act.

(3) If land is compulsorily acquired, the acquisition notice may:

- (a) declare the whole or a part of the land to be a public road or a public reserve; and
- (b) if the Minister so recommends—place the land under the control of a council.

(2) Section 57 (**Functions of Authority in relation to certain land**):

From section 57 (5), omit "resumption", insert instead "compulsory acquisition".

(3) Section 58 (**General functions relating to land**):

- (a) From section 58 (1), omit "recommend its resumption", insert instead "compulsorily acquire it".
- (b) From section 58 (7), omit "recommend the resumption of land", insert instead "compulsorily acquire the land".

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

(4) Section 59 (**Re-establishment of resumed building**):

Omit “by resumption” wherever occurring, insert instead “by compulsory process”.

VALUATION OF LAND ACT 1916 No. 2

Section 68:

Omit the section, insert instead:

Valuation for compulsory acquisition

68. (1) The Valuer-General is to determine, in accordance with the Land Acquisition (Just Terms Compensation) Act 1991, the amount of compensation to be offered to an owner of land for a compulsory acquisition of the land under that Act.

(2) Any such determination does not affect, and is not affected by, any valuation of land made by the Valuer-General under this or any other Act.

WESTERN LANDS ACT 1901 No. 70

(1) Section 43B (**Power to withdraw for public purposes**):

(a) From section 43B (1), omit “, without compensation except for existing improvements,”.

(b) At the end of the section, insert:

(4) Compensation is payable for land withdrawn from a lease under this section, subject to the conditions attaching to the lease or the provisions applying to the lease.

(5) The provisions of the Land Acquisition (Just Terms Compensation) Act 1991 relating to the payment of compensation for land acquired by compulsory process apply, with such modifications as may be prescribed, to the payment of compensation under this section.

(2) Section 44 (**Power to withdraw for settlement**):

(a) Omit the second and third paragraphs from section 44 (1), insert instead:

On publication in the Gazette of such withdrawal or acquisition, the land is taken to be Crown lands.

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

(b) After section 44 (1), insert:

(1A) Compensation is payable for land withdrawn or acquired under this section, subject to (in the case of a lease) the conditions attaching to the lease or the provisions applying to the lease.

(1B) The provisions of the Land Acquisition (Just Terms Compensation) Act 1991 relating to the payment of compensation for land acquired by compulsory process apply, with such modifications as may be prescribed, to the payment of compensation under this section.

(3) Section 44A (Enhancement due to public works):

Omit the section.

SCHEDULE 2—REPEAL OF ACTS

(Sec. 76)

Public Works (Amendment) Act 1940 No. 1

Public Works (Amendment) Act 1975 No. 103

Public Works and Other Acts (Interest Rates) Amendment Act 1976
No. 66

Public Works (Declaratory) Act 1952 No. 33

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**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS**

(Sec. 77)

PART 1—SAVINGS AND TRANSITIONAL REGULATIONS

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued*

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

**PART 2—GENERAL PROVISIONS CONSEQUENTIAL
ON ENACTMENT OF THIS ACT**

Pending acquisitions

2. (1) Unless this Act otherwise expressly provides, this Act does not apply to any acquisition by an authority of the State if the acquisition was effected before the commencement of this Act.

(2) The Public Works Act 1912 and other Acts amended by this Act continue to apply to any such acquisition as if this Act had not been enacted.

(3) However, if the acquisition is notified under the Public Works Act 1912 within 30 days after the commencement of this Act, the notification is taken to be an acquisition notice under this Act and the provisions of this Act relating to any such notice then apply (to the exclusion of the Public Works Act 1912 or any other Act).

(4) In this clause, a reference to the commencement of this Act is (if different provisions of this Act commence on different days) a reference to the commencement of section 19.

Unclaimed compensation under Public Works Act

3. (1) Compensation and any interest on compensation that is or becomes payable under the Public Works Act 1912 by an authority of the State and that is unpaid may be paid by the authority into the trust account kept by the authority under section 51 of this Act.

(2) That section then applies to any such amount paid into a trust account but does not affect any entitlement that a person has to be paid compensation or interest under the Public Works Act 1912.



NEW SOUTH WALES

LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991 No. 22

Reprinted as in force at 22 May 1995
to include all amendments
up to Act 1994 No. 45

Information about this reprint

This reprint of the Land Acquisition (Just Terms Compensation) Act 1991 No. 22 is up to date as at 22 May 1995 and includes amendments up to and including the Native Title (New South Wales) Act 1994 No. 45

The reprint contains

- Table of Provisions listing all headings
- Text of the Land Acquisition (Just Terms Compensation) Act as amended and in force at 22 May 1995
- Table of Acts listing, in chronological order, the Acts amending the Land Acquisition (Just Terms Compensation) Act and providing assent and commencement details (p. 35)
- Table of Amendments listing provisions of the Land Acquisition (Just Terms Compensation) Act that have been amended, inserted, substituted or repealed since its enactment in 1991 (p. 35)

Information about the sale and distribution of authorised NSW legislation by the NSW Government Information Service is provided on the inside back cover.

LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991 No. 22

[Reprinted as at 22 May 1995]

NEW SOUTH WALES



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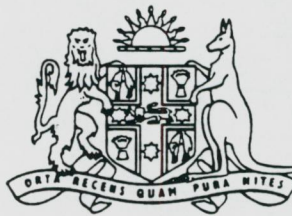
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**LAND ACQUISITION (JUST TERMS COMPENSATION)
ACT 1991 No. 22**

Reprinted under the Reprints Act 1972

[Reprinted as at 22 May 1995]

NEW SOUTH WALES



An Act relating to the acquisition of land on just terms by authorities of the State.

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Land Acquisition (Just Terms Compensation) Act 1991.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Objects of Act

3. (1) The objects of this Act are:

- (a) to guarantee that, when land affected by a proposal for acquisition by an authority of the State is eventually acquired, the amount of compensation will be not less than the market value of the land (unaffected by the proposal) at the date of acquisition; and
- (b) to ensure compensation on just terms for the owners of land that is acquired by an authority of the State when the land is not available for public sale; and

Land Acquisition (Just Terms Compensation) Act 1991 No. 22

- (c) to establish new procedures for the compulsory acquisition of land by authorities of the State to simplify and expedite the acquisition process; and
- (d) to require an authority of the State to acquire land designated for acquisition for a public purpose where hardship is demonstrated; and
- (e) to encourage the acquisition of land by agreement instead of compulsory process.

(2) Nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

Definitions

4. (1) In this Act:

“acquisition” of land means an acquisition of land or of any interest in land;

“acquisition notice” means a notice under section 19 which declares that land has been acquired by compulsory process;

“authority of the State” means:

- (a) a Minister of the Crown; or
- (b) a statutory body representing the Crown; or
- (c) a local government council or county council; or
- (d) any other authority authorised to acquire land by compulsory process;

“Commonwealth Native Title Act” or **“NTA”** means the Native Title Act 1993 of the Commonwealth;

“compensation notice” means a notice under section 42 which notifies the former owners of land of a compulsory acquisition, their entitlement to compensation and the amount of compensation offered;

“compulsory acquisition” of land means the acquisition of the land by compulsory process under this Act;

“Crown land” means:

- (a) Crown land within the meaning of the Crown Lands Act 1989; or
- (b) Crown land dedicated for a public purpose; or
- (c) any other land of the Crown or of an authority of the State;

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“interest” in land means:

- (a) a legal or equitable estate or interest in the land; or
- (b) an easement, right, charge, power or privilege over, or in connection with, the land;

“land” includes any interest in land;

“loss attributable to disturbance” of land is defined in section 59;

“loss attributable to severance” of land is defined in section 58;

“market value” of land is defined in section 56;

“native title” and **“native title rights and interests”** has the same meaning as in the Commonwealth Native Title Act;

“owner” of land means any person who has an interest in the land;

“proposed acquisition notice” means a notice under section 11 of intention to acquire land by compulsory process;

“public purpose” means any purpose for which land may by law be acquired by compulsory process under this Act;

“registered interest” in land means an interest in the land:

- (a) recorded in the Register kept under the Real Property Act 1900; or
- (b) recorded in the General Register of Deeds kept under the Conveyancing Act 1919; or
- (c) recorded in the National Native Title Register kept under the Commonwealth Native Title Act or in the native title register kept under the Native Title (New South Wales) Act 1994 if the interest is an interest in relation to land that is the subject of an approved determination of native title (other than an approved determination that no native title exists);

“solatium” is defined in section 60;

“special value” of land is defined in section 57.

(2) For the purposes of this Act, **an authority is authorised to acquire land by compulsory process** if:

- (a) the authority is authorised by law to acquire land by compulsory process under this Act; or
- (b) land is authorised by law to be acquired for the authority by resumption or appropriation under any provision of the Public Works Act 1912 or the authority is declared by law to be a Constructing Authority in connection with any such resumption or appropriation.

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(3) In this Act, a reference to **the Minister responsible for an authority of the State** is:

- (a) if that authority is constituted by or under an Act—a reference to the Minister administering that Act; or
- (b) if that authority is a Minister—a reference to that Minister.

(4) For the purposes of this Act, the **owners of Crown land** not vested in any other person include:

- (a) the person having the care and control of the land; or
- (b) if the land is not under the care and control of any person—the Minister administering the Crown Lands Act 1989.

(5) For the purposes of this Act, **owner** of land includes a holder of native title rights and interests in relation to land.

Note: “**Approved determination of native title**”, referred to in paragraph (c) of the definition of “registered interest” in s. 4 (1), is defined in s. 253 NTA.

Notes in the text

4A. Notes included in this Act are explanatory notes and do not form part of this Act.

Acquisition of land to which Act applies

5. (1) This Act applies to the acquisition of land (by agreement or compulsory process) by an authority of the State which is authorised to acquire the land by compulsory process.

(2) This Act does not apply to any such acquisition if the land is available for public sale and the land is acquired by agreement.

(3) Land is available for public sale if:

- (a) the land is advertised by the owner as being available for sale; or
- (b) the land is listed by the owner with a real estate agent as being available for sale; or
- (c) the land is otherwise held out by the owner as being available for sale.

Acquisition of land to which Act does not apply

6. This Act does not apply to an acquisition of land if:

- (a) * * * *
- (b) the acquisition consists of the taking of a mortgage, charge or other similar security over an interest in land; or
- (c) the acquisition consists of an interest in land which is acquired otherwise than by agreement or compulsory process.

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Act not to empower authority to acquire land

7. (1) This Act does not empower an authority of the State to acquire land if it does not have the power (apart from this Act) to acquire the land.

(2) This section is subject to sections 7A and 7B.

Authority empowered to acquire native title

7A. An authority of the State that is authorised by law to acquire land by compulsory process under this Act is authorised to acquire native title rights and interests in relation to the land in the same way that other interests in the land may be acquired.

Authority empowered to acquire its own land

7B. An authority of the State that is authorised by law to acquire land by compulsory process in accordance with this Act may so acquire the land even if the land is vested in the authority itself.

Act to prevail over other Acts relating to acquisition of land

8. This Act prevails, to the extent of any inconsistency, over the provisions of any other Act relating to the acquisition of land by an authority of the State.

Act binds Crown

9. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, in all its other capacities.

Statement of guaranteed acquisition at market value

10. (1) When, on request by or on behalf of an owner or prospective purchaser of land, an authority of the State gives a person written notice to the effect that the land is affected by a proposal for acquisition by the authority, the notice must contain the following:

- (a) a statement that the Land Acquisition (Just Terms Compensation) Act 1991 guarantees that, if and when the land is acquired by (*insert name of authority*) under that Act, the amount of compensation will not be less than market value (assessed under that Act) unaffected by the proposal;
- (b) such other information as the regulations may require.

(2) This section does not apply to a proposal to acquire an easement, or right to use land, under the surface for the construction and maintenance of works.

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(3) Nothing in this section or in a statement made in a notice pursuant to this section gives rise to, or can be taken into account in, any civil cause of action.

**PART 2—ACQUISITION OF LAND BY COMPULSORY
PROCESS**

Division 1—Pre-acquisition procedures

Notice of intention to acquire land by compulsory process

11. (1) An authority of the State may not acquire land by compulsory process unless the authority has given the owners of the land written notice of its intention to do so.

(2) The authority of the State is not prevented from acquiring the land by agreement after giving the proposed acquisition notice.

Owners to be given notice

12. (1) A proposed acquisition notice need only be given to all the owners of the land who:

- (a) have a registered interest in the land; or
- (b) are in lawful occupation of the land; or
- (c) have, to the actual knowledge of the authority of the State, an interest in the land.

(2) If the proposed acquisition notice relates only to a particular interest in land, the notice need only be given to all such owners of that interest.

(3) If the proposed acquisition notice relates to an interest which does not exist (such as a proposed easement), the notice need only be given to all the owners of the land who:

- (a) have a registered interest in the land (other than a mortgage interest); or
- (b) are in lawful occupation of the land.

(4) If the proposed acquisition notice relates to land under the Real Property Act 1900, the authority of the State must give a copy of the notice to any person who has lodged a caveat which is recorded in respect of the land in the Register kept under that Act.

Minimum period of notice

13. (1) A proposed acquisition notice must be given at least 90 days before the land is compulsorily acquired.

(2) A shorter period of notice may be given if:

- (a) the authority of the State and the owners of the land agree in writing to the shorter period; or
- (b) the Minister responsible for that authority approves of the shorter period, but only if that Minister is satisfied that the urgency of the matter or other circumstances of the case make it impracticable to give any longer period of notice.

Compulsory acquisition to be completed as soon as practicable

14. (1) As soon as practicable after the expiration of the minimum period of notice of a proposed compulsory acquisition, the authority of the State must:

- (a) acquire the land by compulsory process or by agreement; or
- (b) withdraw the proposed acquisition notice.

(2) The proposed acquisition notice is taken to have been withdrawn if the authority of the State has not acquired the land or withdrawn the proposed acquisition notice:

- (a) except as provided by paragraph (b)—within 120 days after it gave that notice; or
- (b) within such longer period as that authority and the owner of the land have agreed to in writing.

(3) If the proposed acquisition notice is withdrawn or taken to have been withdrawn, the authority of the State may not give a further proposed acquisition notice in respect of the land within 12 months after the date of withdrawal unless the Minister responsible for that authority is satisfied that in the circumstances of the case a further notice within that period is justified.

Particulars to be included in proposed acquisition notice

15. A proposed acquisition notice given to an owner of land must:

- (a) be in the form prescribed by the regulations or (if no such form is prescribed) in the form approved by the Minister; and
- (b) specify the authority of the State proposing to acquire the land; and
- (c) contain a description sufficient to identify the land proposed to be acquired; and

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- (d) specify the period within which the land will be compulsorily acquired; and
- (e) request any owner who wishes to claim compensation for the acquisition to lodge with the authority of the State a claim for compensation within the period specified in the notice (being not less than 60 days after the notice is given to the owner); and
- (f) be accompanied by the form for a claim for compensation under section 39.

Withdrawal or amendment of proposed acquisition notice

16. (1) An authority of the State may, before the land is compulsorily acquired, withdraw a proposed acquisition notice by a further notice.

(2) Part 4 deals with the compensation payable when a proposed acquisition notice is withdrawn.

(3) An authority of the State may, by a further notice, amend a proposed acquisition notice for the purpose of correcting a clerical error or an obvious mistake in the notice. Any such amendment has effect from the date of the original notice unless otherwise specified in the further notice.

(4) A further notice under this section is to be given in the same manner as the proposed acquisition notice concerned was given.

Registrar-General to be notified of proposed acquisition notice and withdrawal or amendment of such notice

17. (1) An authority of the State must, as soon as practicable after giving a proposed acquisition notice (or after such a notice is withdrawn or amended), lodge with the Registrar-General notification of the proposed acquisition notice (or its withdrawal or amendment).

(2) Any such notification must be in such form as the Registrar-General approves.

(3) On receipt of the notification, the Registrar-General must make such recordings as the Registrar-General considers appropriate:

- (a) in the case of land under the Real Property Act 1900—in the Register kept under that Act; or
- (b) in the case of other land—in the General Register of Deeds or other relevant Register.

Valuer-General to be notified of proposed acquisition notice

18. An authority of the State must, as soon as practicable after giving a proposed acquisition notice, notify the Valuer-General of the proposed acquisition notice.

Division 2—Acquisition procedures**Compulsory acquisition by notice in Gazette**

19. (1) An authority of the State that is authorised to acquire land by compulsory process may, with the approval of the Governor, declare, by notice published in the Gazette, that any land described in the notice is acquired by compulsory process.

(2) A copy of the acquisition notice is, if practicable, to be published in at least one newspaper circulating in the district in which the land concerned is situated.

(3) An acquisition notice may relate to part only of the land described in the relevant proposed acquisition notice.

Effect of acquisition notice

20. (1) On the date of publication in the Gazette of an acquisition notice, the land described in the notice is, by force of this Act:

- (a) vested in the authority of the State acquiring the land; and
- (b) freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land.

(1A) Subsection (1) is subject to any express provision of an Act that authorises the acquisition of land by compulsory process but preserves the operation of any trusts, restrictions, dedications, reservations, declarations, setting apart of or other matters relating to the land concerned.

(2) If:

- (a) the acquisition notice excepted an easement from acquisition; and
- (b) immediately before the vesting, the benefit of a restriction as to user was annexed to the easement,

then (unless otherwise specified in the acquisition notice) the restriction continues to have effect as if the acquisition had not taken place.

Note: Examples of express provisions of Acts to which section 20 (1A) refers are section 17AB (4) (b) of the Fisheries and Oyster Farms Act 1935, section 15 (4C) (b) of the Forestry Act 1916, section 186 (3) of the Local Government Act 1993 and section 146 (2C) (b) of the National Parks and Wildlife Act 1974.

Division 3—Owner-initiated acquisition in cases of hardship**Definition of “land designated for acquisition for a public purpose”**

21. (1) For the purposes of this Division, land is designated for acquisition by an authority of the State for a public purpose if:

- (a) an authority of the State has, in connection with an application for development consent or building approval, given the local authority or other person dealing with the application written notice that the land has been designated by the authority of the State for future acquisition by it for a public purpose; or
- (b) the land is reserved by an environmental planning instrument for use exclusively for a purpose referred to in section 26 (c) of the Environmental Planning and Assessment Act 1979 and the instrument (or some other environmental planning instrument) specifies that authority as the authority required to acquire the land.

(2) For the purposes of subsection (1) (a), a notice given by an authority of the State constitutes notice that the land has been designated for future acquisition by that authority only if the notice states that the authority will acquire the land at some future time or that the land is affected by a proposal of that authority that requires the acquisition of the land at some future time.

(3) For the purposes of subsection (1) (b), land is reserved by an environmental planning instrument for use exclusively for a purpose referred to in section 26 (c) of the Environmental Planning and Assessment Act 1979 only if:

- (a) the land is expressly set apart by that instrument for use exclusively for such a purpose; or
- (b) the land is expressly set apart by that instrument for use for such a purpose and also for other purposes, but those other purposes do not constitute a reasonable use of the land.

The aims, objectives, policies and strategies of that instrument are to be taken into account in determining whether those other purposes constitute a reasonable use of the land.

(4) The Minister administering the Environmental Planning and Assessment Act 1979 is to institute any relevant proceedings under that Act to enable the designation of the public authority required to acquire land referred to in subsection (1) (b) in any case in which the relevant authority has not been designated.

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(5) Pending the designation of the relevant authority, the relevant authority is (if the land is required to be acquired under this Division) to be such authority as is determined by order in writing of the Minister administering the Environmental Planning and Assessment Act 1979.

(6) A notice of a kind referred to in subsection (1) (a) is to be ignored for the purposes of this section unless it is given after the commencement of this section. However, a reference in subsection (1) (b) to a reservation extends to a reservation effected before that commencement.

Owners of land to whom Division applies

22. (1) This Division applies to the following owners of designated land:

- (a) a person who has the fee simple estate in the land;
- (b) a person who has become entitled to exercise a power of sale of the land.

(2) This Division does not apply to an owner of land which is:

- (a) an authority of the State; or
- (b) a public company (within the meaning of the Corporations Law); or
- (c) a subsidiary (within the meaning of the Corporations Law) of such a public company.

Owner who suffers hardship may require authority of the State to acquire land designated for acquisition

23. (1) The owner of land to whom this Division applies may require an authority of the State, by notice in writing given to that authority, to acquire that land under this Act if:

- (a) the land is designated for acquisition by that authority for a public purpose; and
- (b) the owner considers that he or she will suffer hardship if there is any delay in the acquisition of the land under this Act.

(2) The authority of the State must (subject to this Division) acquire the land within 90 days after the owner gives that authority notice under this section (or such longer period as that authority and the owner may agree on in writing).

(3) If there is more than one owner of the land concerned, the notice under this section must be given by all the owners. It is sufficient if any one of those owners will suffer hardship.

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(4) An authority of the State is not required to acquire (under this Division) more land than it requires for the public purpose for which the land was designated or more interests in the land than it requires for that purpose.

(5) A notice under this section must be in the form prescribed by the regulations or (if no such form is prescribed) in the form approved by the Minister.

Hardship

24. (1) An authority of the State is not required to acquire land under this Division unless it is of the opinion that the owner will suffer hardship (within the meaning of this section) if there is any delay in the acquisition of the land under this Act.

(2) An owner of land suffers hardship if:

- (a) the owner is unable to sell the land, or is unable to sell the land at its market value, because of the designation of the land for acquisition for a public purpose; and
- (b) it has become necessary for the owner to sell all or any part of the land without delay:
 - (i) for pressing personal, domestic or social reasons; or
 - (ii) in order to avoid the loss of (or a substantial reduction in) the owner's income.

(3) However, if the owner of the land is a corporation to which this Division applies, the corporation does not suffer hardship unless it has become necessary for the corporation to sell all or any part of the land without delay:

- (a) for pressing personal, domestic or social reasons of an individual who holds at least 20 per cent of the shares in the corporation; or
- (b) in order to avoid the loss of (or a substantial reduction in) the income of such an individual.

Method of acquisition under this Division

25. (1) Land required to be acquired under this Division is to be acquired by compulsory process.

(2) However, nothing in this Division prevents the land concerned from being acquired by agreement instead of compulsory process within the period required by this Division.

(3) Division 1 (Pre-acquisition procedures) does not apply to an acquisition of land under this Division.

Compensation for acquisition under this Division

26. The special value of land, any loss attributable to severance or disturbance and solatium (as referred to in Part 3) need not be taken into account in connection with an acquisition of land under this Division, despite anything to the contrary in that Part.

Authority of the State may lift designation of land

27. An authority of the State is not required to acquire land under this Division if, before it is required to acquire the land:

- (a) in the case of land designated for acquisition as referred to in section 21 (1) (a)—that authority gives the owner of the land written notice that the land is no longer designated by that authority for future acquisition; or
- (b) in the case of land designated for acquisition as referred to in section 21 (1) (b)—that authority gives the owner a written undertaking that it will use its best endeavours to remove the relevant reservations and a written notice that the land is no longer designated by that authority for future acquisition.

Owner-initiated acquisition under Environmental Planning and Assessment Act 1979

28. (1) This Division does not affect any obligation of an authority of the State to acquire land as referred to in section 27 of the Environmental Planning and Assessment Act 1979.

(2) However, any such acquisition may be effected by compulsory process in accordance with this Division.

Division 4—Miscellaneous provisions relating to acquisition**Acquisition of Crown land**

29. (1) Land may be compulsorily acquired by an authority of the State under this Act even though it is Crown land.

(2) If Crown land is subject to a dedication or reservation that (by virtue of any Act) cannot be removed except by an Act, that land may not be compulsorily acquired. However, this prohibition does not apply if the dedication or reservation is not affected by the compulsory acquisition of the land.

(3) Nothing in this Act affects the acquisition by agreement of Crown land by an authority of the State.

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(4) The provisions of Division 1 (Pre-acquisition procedures) and Part 3 (Compensation for acquisition of land) do not apply to the compulsory acquisition of Crown land if the owners of the land have agreed on all relevant matters concerning the compulsory acquisition and the compensation (if any) to be paid for the acquisition.

Compulsory acquisition with consent of owners

30. (1) An authority of the State and the owners of land may agree in writing that the land be compulsorily acquired by that authority.

(2) The provisions of Division 1 (Pre-acquisition procedures) and Part 3 (Compensation for acquisition of land) do not apply to any such compulsory acquisition if the owners have agreed in writing on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

Rescission of acquisition notice

31. (1) The Governor may, by notice published in the Gazette, rescind in whole or in part any acquisition notice.

(2) An acquisition notice may not be rescinded unless a Minister has certified that it is necessary to do so for the purpose of correcting a clerical error or obvious mistake or for other good cause or that the former owners of the land have agreed to the rescission.

(3) An acquisition notice published under Division 3 (Owner-initiated acquisition in cases of hardship) may not be rescinded without the consent of the owner who required the acquisition.

(4) On the publication in the Gazette of the rescission notice, the land described in the rescission notice:

- (a) reverts in the person who was entitled to it immediately before the compulsory acquisition for the estate, interest or right which the person had immediately before the compulsory acquisition, but subject to any interest in or equity binding on the land created by the authority of the State since its compulsory acquisition; and
- (b) is subject to all trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts from which it was freed and discharged by the compulsory acquisition; and
- (c) is subject to any interests in or equities binding on the compensation money that were created since the compulsory acquisition.

(5) If a resumption application relating to land described or referred to in an acquisition notice has been lodged under section 31A (2) of the Real Property Act 1900 with the Registrar-General:

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- (a) a rescission notice may not rescind so much of the acquisition notice as relates to that land; and
- (b) any transfer of that land, after it has been brought under the provisions of the Real Property Act 1900, to the person who was entitled to it immediately before the resumption is, for the purposes of Part 4 of this Act, taken, on its registration under that Act:
 - (i) to revest that land under this section in the transferee; and
 - (ii) to rescind the compulsory acquisition in so far as it relates to that land.

(6) Part 4 deals with the compensation payable when an acquisition notice is rescinded under this section.

(7) In this section, “**acquisition notice**” includes a notification of appropriation or resumption made under the Public Works Act 1912 before the commencement of this section.

New interests in land

32. An interest in land (such as an easement) may be acquired by compulsory process under this Act even though the interest did not previously exist in relation to the land.

Validity of compulsory acquisition

33. Once land has been acquired by compulsory process under this Act, the validity of the acquisition is not affected by:

- (a) a failure to comply with any requirement of this Part relating to the giving of notice of the proposed acquisition; or
- (b) a subsequent failure to comply with a requirement of this Act relating to the acquisition.

Former owner's right to occupy land until compensation paid etc.

34. (1) A person who was in lawful occupation of land immediately before it was compulsorily acquired under this Act and to whom compensation is payable under this Act is entitled to remain in occupation until:

- (a) the compensation is duly paid to the person; or
- (b) the authority of the State makes (in accordance with any other provision of this Act) an advance payment of not less than 90 per cent of the amount of compensation offered by the authority; or

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- (c) the authority of the State makes (in accordance with any other provision of this Act) a payment into the trust account kept under Part 3 of not less than 90 per cent of the amount of compensation offered by the authority,

whichever first occurs.

(2) Any such person is entitled to remain in occupation of any building that is the person's principal place of residence, or the person's place of business, for 3 months after it is compulsorily acquired, even though the person has ceased to be entitled to remain in occupation under subsection (1). However, if the Minister responsible for the authority of the State is satisfied that the authority requires immediate vacant possession of land, the authority is entitled to immediate vacant possession even though the 3-month period has not expired.

(3) The terms on which a person remains in occupation of land that has been compulsorily acquired under this Act are, in the absence of agreement, such reasonable terms as are determined by the authority of the State (including terms as to the rental to be paid and the restrictions on the use of the land). The Residential Tenancies Act 1987 does not apply to that continued occupation.

(4) Any such unpaid rent or other money due to the authority of the State may be set off against the compensation payable under this Act.

Power of authority of the State to obtain possession of compulsorily acquired land

35. (1) If, after an authority of the State becomes entitled to vacant possession of land compulsorily acquired under this Act, any person remains in or takes up occupation of the land, that authority may direct and empower the Sheriff (or any person prescribed by the regulations) to deliver possession of the land to that authority.

(2) On receipt of any such direction, the Sheriff (or prescribed person) is required to deliver possession of the land to the authority of the State.

(3) The costs incurred by the Sheriff (or prescribed person) in delivering possession of the land may be recovered as a debt by the authority of the State from the person refusing to deliver possession. The authority of the State may deduct the amount of any such costs from any compensation payable to the person under this Act.

(4) Nothing in this section operates to limit or restrict the power of the authority of the State to enforce its right to possession of land otherwise than under this section.

Adverse use of acquired land

36. (1) If a person is using, or proposes to use, land acquired by an authority of the State by compulsory process in a manner inconsistent with the public purpose for which the land was acquired, the Land and Environment Court may, on the application of that authority, make such order as it thinks fit to remedy or restrain that use.

(2) Without limiting the powers of the Land and Environment Court under subsection (1), an order made under that subsection may:

- (a) restrain the use of any building, work or land; or
- (b) require the demolition or removal of any building or work; or
- (c) require the reinstatement, as far as practicable, of a building, work or land to the condition it was in immediately before the relevant use.

(3) The Land and Environment Court may, at its discretion, by interlocutory order, restrain the continuation of the relevant use of the land pending the determination of an application under subsection (1).

PART 3—COMPENSATION FOR ACQUISITION OF LAND**Division 1—Entitlement to compensation****Right to compensation if land compulsorily acquired**

37. An owner of an interest in land which is divested, extinguished or diminished by an acquisition notice is entitled to be paid compensation in accordance with this Part by the authority of the State which acquired the land.

Requests for non-monetary compensation for native title

37A. (1) This section applies to any negotiations held about a compulsory acquisition of native title rights and interests in relation to land however arising.

(2) If, during any such negotiations, a person or persons who may be entitled to compensation ask that the whole or part of the compensation should be in a form other than money, the other person or persons involved in the negotiations:

- (a) must consider the request; and
- (b) must negotiate in good faith about the request.

Note: Section 79 NTA requires that requests for non-monetary compensation by persons who may be entitled to compensation for impairment or extinguishment of native title rights and interests must be handled in the manner referred to in section 37A. The transfer of property or the supply of goods or services are examples of compensation in a form other than money.

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Compensation entitlement if land (not available for public sale) acquired by agreement

38. An authority of the State is to take into account, in connection with any proposed acquisition by agreement of land not available for public sale, the same matters as are required to be taken into account under this Part in determining the compensation payable for an acquisition by compulsory process.

Division 2—Claims for compensation

Claim for compensation

39. (1) A person who wishes to claim compensation under this Part must lodge a claim in accordance with this section with the authority of the State that is acquiring the land concerned.

(2) A claim for compensation must be in the form prescribed by the regulations or (if no such form is prescribed) in the form approved by the Minister.

(3) The claim form may require information to be verified by statutory declaration.

(4) A claim for compensation may be withdrawn by the claimant.

Owner claiming compensation must disclose particulars of other persons with an interest in land

40. (1) A person who claims compensation under this Part must state, in the claim form, whether the person is aware of any other person who has an interest in the land and who may be entitled to compensation.

(2) If the person is aware of such an interest, the claim must contain such particulars of the interest as are required by the requisite claim form.

Valuer-General to be given copy of claim for compensation

41. (1) An authority of the State must, as soon as practicable after receiving a claim for compensation in respect of a compulsory acquisition (or proposed compulsory acquisition), give the Valuer-General a copy of the claim.

(2) The Valuer-General may determine the amount of compensation to be offered to a former owner of land for a compulsory acquisition of the land:

- (a) before or after the acquisition takes effect; and
- (b) even though the former owner has not made a claim for the compensation.

Division 3—Post-acquisition procedures relating to compensation**Notice of compensation entitlement and offer of compensation**

42. (1) An authority of the State which has compulsorily acquired land under this Act must, within 30 days after the publication of the acquisition notice, give the former owners of the land written notice of the compulsory acquisition, their entitlement to compensation and the amount of compensation offered (as determined by the Valuer-General).

(2) The compensation notice must be given to all former owners of the land who, immediately before the acquisition:

- (a) had a registered interest in the land; or
- (b) were in lawful occupation of the land (but only if the authority of the State considers they are entitled to compensation); or
- (c) had, to the actual knowledge of the authority of the State, an interest in the land which entitles them to compensation.

(3) If the acquisition relates only to a particular interest in land, the notice need only be given to all such former owners of that interest.

(4) The Minister responsible for an authority of the State may extend the period of 30 days within which the compensation notice is required to be given (but not by more than 60 days) if the Minister is satisfied that it is necessary to do so to enable a valuation to be made of any interest in the land concerned.

(5) An authority of the State is not excused from the requirement to give a compensation notice because the period during which the notice is required to be given has expired or because the former owner has not lodged a claim for compensation.

(6) However, the authority of the State may delay giving a compensation notice if a number of persons claim competing interests in the land concerned.

(7) Despite any such delay, the compensation may be paid into the trust account under this Part and advance payments of compensation may be made under this Part.

(8) If a former owner of land has not been given a compensation notice as required by this section, the Valuer-General must, as soon as practicable after being requested to do so, give the former owner written notice of the amount of compensation to be offered to the former owner as determined by the Valuer-General. This subsection extends to a compulsory acquisition of land before the commencement of this subsection.

Particulars to be included in notice of compensation entitlement and offer of compensation

43. A compensation notice given to a former owner of land must:

- (a) be in the form prescribed by the regulations or (if there is no prescribed form) the form approved by the Minister; and
- (b) notify the owner that the land has been compulsorily acquired; and
- (c) state that the owner is entitled to compensation; and
- (d) offer to pay a specified amount of compensation as determined by the Valuer-General and be accompanied by a form of deed of release and indemnity for completion if the offer is accepted; and
- (e) inform the owner of the right to object to the amount offered.

Acceptance of offer of compensation

44. (1) A person entitled to compensation under this Part may accept the amount of compensation offered by the authority of the State in the compensation notice.

(2) Payment of the compensation is to be made within 28 days of the receipt by the authority of the State of a claim for compensation, deed of release and indemnity (duly completed) and any relevant documents of title.

Deemed acceptance of offer of compensation

45. (1) If a person entitled to compensation under this Part does not, within 90 days after receiving a compensation notice:

- (a) accept the amount of compensation offered by the authority of the State; or
- (b) lodge with the Land and Environment Court an objection to the amount of compensation offered,

the offer of compensation is taken to have been accepted.

(2) Such an acceptance is subject to any decision of the Land and Environment Court on an objection lodged after the 90-day period.

(3) The authority of the State must, on such an acceptance taking effect, pay the amount of money concerned into a trust account kept under this Part and pay the money to the person entitled to it on receipt of a claim for compensation, deed of release and indemnity (duly completed) and any relevant documents of title.

Claim for compensation by person not offered compensation

46. (1) A person who has not been given a compensation notice may nevertheless lodge with an authority of the State a claim for compensation under this Part.

(2) If the authority of the State considers that the person is entitled to compensation, the authority is to give the person a compensation notice. Otherwise, the authority is to reject the claim by notice in writing given to the person.

(3) A claim for compensation under this section is taken to have been rejected if the authority of the State has not dealt with the claim within 60 days after receiving the claim. However, the authority of the State is not precluded from giving the person a compensation notice after that time.

Valuer-General to determine amount of compensation offered

47. The Valuer-General is to determine the amount of compensation to be offered to a person under this Part.

Advance payments of compensation etc.

48. (1) An authority of the State may, at any time after land is acquired, make an advance payment of compensation to any person who the authority considers is entitled to the compensation.

(2) An advance payment may be made on application by the person or without any such application if the person agrees to accept the advance payment.

(3) The acceptance by a person of an advance payment of compensation does not constitute an acceptance of any offer of compensation made by the authority of the State.

(4) A person who receives an advance payment of compensation which exceeds the amount of compensation to which the person is entitled must repay to the authority of the State the amount of the excess.

(5) Any advance or other payment of compensation to a person not entitled to the compensation must be repaid to the authority of the State that made the payment.

(6) Any amount due to an authority of the State under this section may be recovered as a debt in any court of competent jurisdiction.

Interest on compensation

49. (1) Interest is payable (subject to subsection (2)) on any amount of compensation under this Part from the date the land is acquired until the payment is made. Any such interest becomes part of the amount of compensation payable.

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(2) Interest under this section is not so payable on any amount of compensation paid into a trust account under this Part or into the Consolidated Fund by the authority of the State. However, money earned from the investment of any such trust account becomes part of the compensation concerned.

Rate of interest on compensation

50. (1) The rate of interest payable on any payment of compensation under this Part is such rate as the Treasurer may from time to time determine by notification published in the Gazette.

(2) Different rates of interest may be determined under this section.

(3) The Treasurer is to have regard to the rates of interest paid by banks when determining rates of interest under this section.

(4) Rates of interest determined under this section apply even though the compensation is payable under an order of a court.

Trust account

51. (1) An authority of the State is required to keep a trust account in connection with compensation payable under this Part.

(2) The authority of the State must pay into the trust account any amount of compensation which is required by this Act to be paid into the trust account.

(3) The authority of the State may pay into the trust account any amount of compensation which is authorised by this Act to be paid into the trust account.

(4) Money in the trust account is held in trust for the person entitled to the compensation concerned.

(5) Money in the trust account is, after the expiration of 6 years after the acquisition of the land to which it relates, to be paid to the Treasurer for payment into the Consolidated Fund if no claim for the compensation concerned has been made. Any payment of the compensation concerned required to be made after that time is to be made from the Consolidated Fund, which is appropriated accordingly.

(6) If the authority of the State is a local government authority, payment of the money to the Treasurer under subsection (5) is discretionary.

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(7) Money in the trust account is (subject to any direction of the Treasurer) to be invested in accordance with Part 1 of Schedule 4 to the Public Authorities (Financial Arrangements) Act 1987.

Payments to be a good discharge

52. All payments of compensation made by an authority of the State under this Part are good and valid discharges to that authority and that authority is not bound to see to the application of any money paid or to the performance of any trust.

Compensation for interest not known to acquiring authority

53. (1) If an authority of the State pays compensation under this Act to a former owner of land without regard to the existence of an interest in the land owned by another person (being an interest that was not known to the authority when that compensation was paid):

- (a) that other person's entitlement to be paid compensation by the authority in respect of the acquisition of that land is extinguished; and
- (b) his or her rights and entitlements against the former owner in respect of the interest are not affected by the divesting, extinguishing or diminution of the interest by this Act.

(2) For the purposes of this section, an interest is known to an authority of the State only if it is a registered interest or an interest within the actual knowledge of the authority.

Division 4—Determination of amount of compensation

Entitlement to just compensation

54. (1) The amount of compensation to which a person is entitled under this Part is such amount as, having regard to all relevant matters under this Part, will justly compensate the person for the acquisition of the land.

(2) If the compensation that is payable under this Part to a person from whom native title rights and interests in relation to land have been acquired does not amount to compensation on just terms within the meaning of the Commonwealth Native Title Act, the person concerned is entitled to such additional compensation as is necessary to ensure that the compensation is paid on that basis.

Note: Section 23 (3) (c) NTA provides an entitlement to compensation on the basis set out in s. 54 (2) if an acquisition of native title is other than on just terms within the meaning of the Commonwealth Native Title Act.

Relevant matters to be considered in determining amount of compensation

55. In determining the amount of compensation to which a person is entitled, regard must be had to the following matters only (as assessed in accordance with this Division):

- (a) the market value of the land on the date of its acquisition;
- (b) any special value of the land to the person on the date of its acquisition;
- (c) any loss attributable to severance;
- (d) any loss attributable to disturbance;
- (e) solatium;
- (f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

Market value

56. (1) In this Act:

“market value” of land at any time means the amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer, disregarding (for the purpose of determining the amount that would have been paid):

- (a) any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired; and
- (b) any increase in the value of the land caused by the carrying out by the authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired; and
- (c) any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

(2) When assessing the market value of land for the purpose of paying compensation to a number of former owners of the land, the sum of the market values of each interest in the land must not (except with the approval of the Minister responsible for the authority of the State) exceed the market value of the land at the date of acquisition.

Special value

57. In this Act:

“special value” of land means the financial value of any advantage, in addition to market value, to the person entitled to compensation which is incidental to the person’s use of the land.

Loss attributable to severance

58. In this Act:

“loss attributable to severance” of land means the amount of any reduction in the market value of any other land of the person entitled to compensation which is caused by that other land being severed from other land of that person.

Loss attributable to disturbance

59. In this Act:

“loss attributable to disturbance” of land means any of the following:

- (a) legal costs reasonably incurred by the persons entitled to compensation in connection with the compulsory acquisition of the land;
- (b) valuation fees reasonably incurred by those persons in connection with the compulsory acquisition of the land;
- (c) financial costs reasonably incurred in connection with the relocation of those persons (including legal costs but not including stamp duty or mortgage costs);
- (d) stamp duty costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the purchase of land for relocation (but not exceeding the amount that would be incurred for the purchase of land of equivalent value to the land compulsorily acquired);
- (e) financial costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the discharge of a mortgage and the execution of a new mortgage resulting from the relocation (but not exceeding the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage);
- (f) any other financial costs reasonably incurred (or that might reasonably be incurred), relating to the actual use of the land, as a direct and natural consequence of the acquisition.

Solatium

60. (1) In this Act:

“solatium” means compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence as a result of the acquisition.

(2) The maximum amount of compensation in respect of solatium is:

- (a) except as provided by paragraph (b)—\$15,000; or
- (b) such higher amount as may be notified by the Minister by notice published in the Gazette.

(3) In assessing the amount of compensation in respect of solatium, all relevant circumstances are to be taken into account, including:

- (a) the interest in the land of the person entitled to compensation; and
- (b) the length of time the person has resided on the land (and in particular whether the person is residing on the land temporarily or indefinitely); and
- (c) the inconvenience likely to be suffered by the person because of his or her removal from the land; and
- (d) the period after the acquisition of the land during which the person has been (or will be) allowed to remain in possession of the land.

(4) Compensation is payable in respect of solatium if the whole of the land is acquired or if any part of the land on which the residence is situated is acquired.

(5) Only one payment of compensation in respect of solatium is payable for land in separate occupation.

(6) However, if more than one family resides on the same land, a separate payment may be made in respect of each family if:

- (a) the family resides in a separate dwelling-house; or
- (b) the Minister responsible for the authority of the State approves of the payment.

(7) If separate payments of compensation are made, the maximum amount under subsection (2) applies to each payment, and not to the total payments.

Special provision relating to market value assessed on potential of land

61. If the market value of land is assessed on the basis that the land had potential to be used for a purpose other than that for which it is currently used, compensation is not payable in respect of:

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- (a) any financial advantage that would necessarily have been forgone in realising that potential; and
- (b) any financial loss that would necessarily have been incurred in realising that potential.

Special provision relating to acquisition of easements or rights, tunnels etc.

62. (1) If the land compulsorily acquired under this Act consists only of an easement, or right to use land, under the surface for the construction and maintenance of works (such as a tunnel, pipe or conduit for the conveyance of water, sewage or electrical cables), compensation is not payable except for actual damage done in the construction of the work or caused by the work.

(2) If land under the surface is compulsorily acquired under this Act for the purpose of constructing a tunnel, compensation is not payable (subject to subsection (1)) unless:

- (a) the surface of the overlying soil is disturbed; or
- (b) the support of that surface is destroyed or injuriously affected by the construction of the tunnel; or
- (c) any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected.

(3) If the land compulsorily acquired under this Act consists of or includes an easement or right to use the surface of any land for the construction and maintenance of works (such as canals, drainage, stormwater channels, electrical cables, openings or ventilators), the easement or right is (unless the acquisition notice otherwise provides) taken to include a power, from time to time, to enter the land for the purpose of inspection and for carrying out of any additions, renewals or repairs. Compensation under this Part is payable accordingly.

Pre-acquisition agreements on compensation

63. (1) An authority of the State and an owner of land may agree on the amount of compensation to which the owner will be entitled (or on any matter affecting the amount of any such compensation) if the land is acquired by compulsory process within a time (or in the circumstances) specified in the agreement.

- (2)** Any such agreement has effect according to its tenor.

Compensation in form of land or works

64. Compensation to which a person is entitled under this Part may, if the person and the authority of the State concerned agree, be provided wholly or partly in the form of land or of the carrying out of works.

Effect of acquisition of mortgage interest**65. (1) If:**

- (a) land is compulsorily acquired under this Act; and
- (b) the land is subject to one or more mortgages,

then, as a general rule, the compensation to which the owner of the land will be entitled in respect of the acquisition is to be determined as if the land had not been subject to the mortgage.

(2) However, if compensation is payable under this Part to a mortgagee in respect of a mortgage interest, the compensation payable to the owner of the land acquired is to be reduced by so much of the compensation as is payable to the mortgagee.

Division 5—Objections and appeals to Land and Environment Court**Objection against amount of compensation offered**

66. (1) A person who has claimed compensation under this Part may, within 90 days after receiving a compensation notice, lodge with the Land and Environment Court an objection to the amount of compensation offered by the authority of the State.

(2) If any such objection is duly lodged, the Land and Environment Court is to hear and dispose of the person's claim for compensation.

(3) A person who does not lodge an objection within the 90-day period and who is taken to have accepted the offer of compensation under section 45 may nevertheless lodge an objection under this section, but the Land and Environment Court is not to hear and dispose of the person's claim for compensation unless satisfied that there is good cause for the person's failure to lodge the objection within that period.

(4) If the Land and Environment Court decides that the amount of compensation payable (without the addition of interest) does not exceed by more than 10% the amount of compensation offered by the authority of the State, the Court may cancel or reduce the amount of interest that has accrued under this Act in respect of the compensation since the institution of the proceedings.

Appeal against failure to entertain claim for compensation

67. (1) A person who has not been given a compensation notice and whose claim for compensation under this Part is rejected (or taken to be rejected) may appeal to the Land and Environment Court against the rejection of the claim.

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(2) Any such appeal must be lodged within 90 days after the rejection of the claim.

(3) If any such appeal is duly lodged, the Land and Environment Court is to hear and dispose of the person's claim for compensation.

(4) A person who does not lodge an appeal within the 90-day period may nevertheless lodge an appeal under this section, but the Land and Environment Court is not to hear and dispose of the person's claim for compensation unless satisfied that there is good cause for the person's failure to lodge the appeal within that period.

Payment of compensation arising from court proceedings

68. (1) Payment of compensation in respect of matters before the Land and Environment Court is to be made in accordance with any agreement reached during the proceedings or, if no such agreement is reached, in accordance with the decision of the Court.

(2) Subject to any such agreement or decision:

- (a) if the authority of the State gave the owner concerned a compensation notice—the authority is required to pay 90 per cent of the amount of compensation offered in the notice (as an advance payment) within 28 days after the authority is given notice of the institution of the proceedings or (if the owner does not accept that advance payment) the authority is required to pay 90 per cent of that amount into the trust account kept under this Part; or
- (b) if the authority of the State did not give the owner concerned a compensation notice—the authority may (but is not required to) make an advance payment under this Part or pay an amount into the trust account kept under this Part.

PART 4—COMPENSATION FOR ABANDONED ACQUISITION OF LAND

Compensation for withdrawal of proposed acquisition notice

69. (1) If a proposed acquisition notice is withdrawn (or taken to be withdrawn) under this Act, an owner of the land concerned is entitled to be compensated by the authority of the State who gave the notice for any financial costs or any damage actually incurred or suffered by the owner as a direct consequence of the giving of the notice and its later withdrawal.

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(2) Compensation is not payable under this section in respect of any change in the value of the land.

(3) Compensation is not payable under this section unless a claim for the compensation is made within 3 years after the withdrawal of the proposed acquisition notice.

Compensation for rescission of acquisition notice

70. (1) If an acquisition notice is rescinded (in whole or in part) under this Act, a person in whom the land is revested on that rescission is entitled to be compensated by the authority of the State for any financial costs or any damage actually incurred or suffered by that person as a direct consequence of the compulsory acquisition and its rescission.

(2) Compensation is not payable under this section in respect of any change in the value of the land.

(3) The compensation payable under this section includes compensation for any easement or other interest which was created after the acquisition of the land and which subsists after the rescission of the compensation notice. Section 62 and any other relevant provision of Part 3 apply to the determination of the amount of any such compensation.

(4) Compensation is not payable under this section unless a claim for compensation is made within 3 years after the rescission of the compensation notice.

Claims for compensation under this Part

71. (1) A person who wishes to claim compensation under this Part must lodge a claim for compensation in accordance with this section with the authority of the State liable to pay the compensation.

(2) A claim for compensation must be in the form prescribed by the regulations or (if no such form is prescribed) in the form approved by the Minister.

(3) A claim for compensation may be withdrawn by the claimant.

(4) The authority of the State may accept a claim for compensation (in whole or in part) or reject any such claim.

(5) A claim for compensation is taken to have been rejected if the authority of the State has not dealt with the claim within 60 days after receiving the claim. However, the authority of the State is not precluded from accepting the claim after that time.

(6) A person whose claim for compensation is rejected (or taken to be rejected) or is accepted in part only may appeal to the Land and Environment Court against that decision. Section 67 applies to any such appeal in the same way as it applies to an appeal under that section.

(7) The regulations may apply any of the provisions of Part 3 relating to claims for compensation under that Part (with or without modifications) to claims for compensation under this Part.

PART 5—MISCELLANEOUS

Manner of giving or serving notices or documents

72. (1) If a notice or other document is required to be given to or served on any person under this Act, the notice or other document may be given or served:

- (a) in the case of a person other than a corporation—by delivering it to the person or by posting it to the address (if any) specified by the person for the service of documents under this Act or, if no such address is specified, by posting it to the person's usual or last known place of residence or business; or
- (b) in the case of a corporation—by leaving it at the registered office of the corporation with a person apparently employed by the corporation or by posting it to the address (if any) specified by the corporation for the service of documents under this Act or, if no such address is specified, by posting it to the last known place of business of the corporation.

(2) If:

- (a) an authority of the State is required or authorised under this Act to give to or serve on the owner of land a notice or other document; and
- (b) the authority is unable after due inquiry to ascertain the owner's whereabouts,

the notice or other document may be given or served by placing it on a board or other structure in a conspicuous place on the land or by publishing a copy of it in a newspaper circulating in the district in which the land is situated.

(3) This section is subject to section 103 of the Native Title (New South Wales) Act 1994.

Proceedings for offences

73. Proceedings for offences against this Act or the regulations are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

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Regulations

74. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Amendment of other Acts

75. Each Act specified in Schedule 1 is amended as set out in that Schedule.

Repeal of Acts

76. Each Act specified in Schedule 2 is repealed.

Savings, transitional and other provisions

77. Schedule 3 has effect.

Land Acquisition (Just Terms Compensation) Act 1991 No. 22

SCHEDULE 1—AMENDMENT OF OTHER ACTS

(Sec. 75)

(Certain amending provisions are not reprinted: Reprints Act 1972, s. 6.)

LAND ACQUISITION (CHARITABLE INSTITUTIONS) ACT 1946 No. 55

Section 4:

Omit the section, insert instead:

Compulsory acquisition of land for purposes of an institution

4. (1) The Minister may acquire land, for the purposes of an institution, by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(2) The Minister may do so only if the governing body of the institution:

- (a) applies to the Minister for acquisition of the land; and
- (b) makes provision to the satisfaction of the Minister for the payment of the purchase price or of compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).

(3) The Minister may transfer land acquired under this section to the institution that has applied for the acquisition or to a nominee of that institution.

(4) For the purposes of the Public Works Act 1912, an acquisition of land under this section is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.

SCHEDULE 2—REPEAL OF ACTS

(Sec. 76)

Public Works (Amendment) Act 1940 No. 1

Public Works (Amendment) Act 1975 No. 103

Public Works and Other Acts (Interest Rates) Amendment Act 1976 No. 66

Public Works (Declaratory) Act 1952 No. 33

Public Works (Interest) Amendment Act 1986 No. 136

Land Acquisition (Just Terms Compensation) Act 1991 No. 22

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 77)

PART 1—SAVINGS AND TRANSITIONAL REGULATIONS

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of the following Acts:

this Act

Native Title (New South Wales) Act 1994.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

PART 2—GENERAL PROVISIONS CONSEQUENTIAL ON ENACTMENT OF THIS ACT

Pending acquisitions

2. (1) Unless this Act otherwise expressly provides, this Act does not apply to any acquisition by an authority of the State if the acquisition was effected before the commencement of this Act.

(2) The Public Works Act 1912 and other Acts amended by this Act continue to apply to any such acquisition as if this Act had not been enacted.

(3) However, if the acquisition is notified under the Public Works Act 1912 within 30 days after the commencement of this Act, the notification is taken to be an acquisition notice under this Act and the provisions of this Act relating to any such notice then apply (to the exclusion of the Public Works Act 1912 or any other Act).

(4) In this clause, a reference to the commencement of this Act is (if different provisions of this Act commence on different days) a reference to the commencement of section 19.

Unclaimed compensation under Public Works Act

3. (1) Compensation and any interest on compensation that is or becomes payable under the Public Works Act 1912 by an authority of the State and that is unpaid may be paid by the authority into the trust account kept by the authority under section 51 of this Act.

Land Acquisition (Just Terms Compensation) Act 1991 No. 22

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(2) That section then applies to any such amount paid into a trust account but does not affect any entitlement that a person has to be paid compensation or interest under the Public Works Act 1912.

NOTES

This Act is reprinted with the omission of certain amending provisions authorised to be omitted under sec. 6 of the Reprints Act 1972.

Table of Acts

Land Acquisition (Just Terms Compensation) Act 1991 No. 22. Assented to, 30.8.1991. Date of commencement, 1.1.1992, sec. 2 and Gazette No. 163 of 22.11.1991, p. 9736. This Act is reprinted as amended by:

Roads Act 1993 No. 33. Assented to, 8.6.1993. Date of commencement, 1.7.1993, sec. 2 and Gazette No. 73 of 1.7.1993, p. 3343.

Land Acquisition (Just Terms Compensation) Amendment Act 1993 No. 77. Assented to, 22.11.1993. Date of commencement, assent, sec. 2.

Native Title (New South Wales) Act 1994 No. 45. Assented to, 2.6.1994. Date of commencement of the provisions of Sch. 1 relating to the Land Acquisition (Just Terms Compensation) Act 1991, 28.11.1994, sec. 2 and Gazette No. 156 of 25.11.1994, p. 6868.

Table of Amendments

Sec. 4—Am. 1994 No. 45, Sch. 1.
 Sec. 4A—Ins. 1994 No. 45, Sch. 1.
 Sec. 6—Am. 1993 No. 33, Sch. 1.
 Sec. 7—Am. 1994 No. 45, Sch. 1.
 Secs. 7A, 7B—Ins. 1994 No. 45, Sch. 1.
 Secs. 20, 29—Am. 1994 No. 45, Sch. 1.
 Sec. 37A—Ins. 1994 No. 45, Sch. 1.
 Sec. 42—Am. 1993 No. 77, s. 3.
 Secs. 54, 72—Am. 1994 No. 45, Sch. 1.
 Sch. 3—Am. 1994 No. 45, Sch. 1.

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NOTICE

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[Published in Gazette No. 94 of 27 August 1993]

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1. The Honourable John Planta Hannaford MLC, Attorney General for the State of New South Wales, make and publish this instrument on behalf of the State of New South Wales.

Definitions

1. In this instrument:

"authorisation" means the authorisation granted by this instrument;

"copyright" includes any prerogative right or privilege of the Crown in the nature of copyright;

"legislation of New South Wales" means:

- (a) Acts of the Parliament of New South Wales; and
- (b) regulations, rules, by-laws and ordinances made under an Act of New South Wales and made, approved or confirmed by the Governor acting with the advice of the Executive Council; and
- (c) any such Acts, regulations, rules, by-laws and ordinances in the form in which they are officially printed or reprinted, with or without the inclusion of amendments; and
- (d) provisions applying as a law of New South Wales, by virtue of an Act of the Parliament of New South Wales; and
- (e) official Explanatory Notes published in connection with any such legislation;

"State" means the State of New South Wales, and includes the Crown in right of the State of New South Wales.

Authorisation

2. Any publisher is by this instrument authorised to publish and otherwise deal with any legislation of New South Wales, subject to the following conditions:

- (a) copyright in the legislation of New South Wales continues to reside in the State;
- (b) the State reserves the right at any time to revoke, vary or withdraw the authorisation if the conditions of its grant are breached and otherwise on reasonable notice;

(c) any publication of material pursuant to the authorisation must not indicate directly or indirectly that it is an official version of the material;

(d) the arms of the State must not be used in connection with the publication of material pursuant to the authorisation, except with the further authority of the Governor (acting with the advice of the Executive Council) or of the Attorney General;

(e) any publication of material pursuant to the authorisation is required to be accurately reproduced in proper context and to be of an appropriate standard.

Non-enforcement of copyright

3. The State will not enforce copyright in legislation of New South Wales to the extent that it is published or otherwise dealt with in accordance with the authorisation. For this purpose, the authorisation has effect as a licence binding on the State.

Revocation, variation or withdrawal of authorisation

4. Any revocation, variation or withdrawal of the authorisation may be effected generally or in relation to specified publishers or specified classes of publishers. The authorisation may also be revoked, varied or withdrawn in relation to specified legislation of New South Wales or specified classes of such legislation. Any such revocation, variation or withdrawal may be by notice in the Government Gazette, or by notice to any particular publisher, or in any other way as determined from time to time by the Attorney General.

Unauthorised Documents Act 1922

5. Attention is drawn to the Unauthorised Documents Act 1922, which restricts use of the State coat of arms.

Copyright Act 1968 of the Commonwealth

6. Nothing in this instrument affects the rights of any person (other than the State) under the Copyright Act 1968 of the Commonwealth.

Interim arrangements

7. The authorisation does not apply to the publication of legislation of New South Wales in electronic form (including by way of disk, tape or on-line access) during the period of six months commencing on the date of publication of this instrument in the Government Gazette, except with the further approval of the Attorney General.

BY AUTHORITY

LAND ACQUISITION (JUST TERMS COMPENSATION)
ACT 1991 No. 22

NEW SOUTH WALES



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**LAND ACQUISITION (JUST TERMS COMPENSATION)
ACT 1991 No. 22**

NEW SOUTH WALES



Act No. 22, 1991

An Act relating to the acquisition of land on just terms by authorities of the State. [Assented to 30 August 1991]

Land Acquisition (Just Terms Compensation) 1991

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Land Acquisition (Just Terms Compensation) Act 1991.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Objects of Act

3. (1) The objects of this Act are:

- (a) to guarantee that, when land affected by a proposal for acquisition by an authority of the State is eventually acquired, the amount of compensation will be not less than the market value of the land (unaffected by the proposal) at the date of acquisition; and
- (b) to ensure compensation on just terms for the owners of land that is acquired by an authority of the State when the land is not available for public sale; and
- (c) to establish new procedures for the compulsory acquisition of land by authorities of the State to simplify and expedite the acquisition process; and
- (d) to require an authority of the State to acquire land designated for acquisition for a public purpose where hardship is demonstrated; and
- (e) to encourage the acquisition of land by agreement instead of compulsory process.

(2) Nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

Definitions

4. (1) In this Act:

“**acquisition**” of land means an acquisition of land or of any interest in land;

“**acquisition notice**” means a notice under section 19 which declares that land has been acquired by compulsory process;

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“authority of the State” means:

- (a) a Minister of the Crown; or
- (b) a statutory body representing the Crown; or
- (c) a local government council or county council; or
- (d) any other authority authorised to acquire land by compulsory process;

“compensation notice” means a notice under section 42 which notifies the former owners of land of a compulsory acquisition, their entitlement to compensation and the amount of compensation offered;

“compulsory acquisition” of land means the acquisition of the land by compulsory process under this Act;

“Crown land” means:

- (a) Crown land within the meaning of the Crown Lands Act 1989; or
- (b) Crown land dedicated for a public purpose; or
- (c) any other land of the Crown or of an authority of the State;

“interest” in land means:

- (a) a legal or equitable estate or interest in the land; or
- (b) an easement, right, charge, power or privilege over, or in connection with, the land;

“land” includes any interest in land;

“loss attributable to disturbance” of land is defined in section 59;

“loss attributable to severance” of land is defined in section 58;

“market value” of land is defined in section 56;

“owner” of land means any person who has an interest in the land;

“proposed acquisition notice” means a notice under section 11 of intention to acquire land by compulsory process;

“public purpose” means any purpose for which land may by law be acquired by compulsory process under this Act;

“registered interest” in land means an interest in the land:

- (a) recorded in the Register kept under the Real Property Act 1900; or
- (b) recorded in the General Register of Deeds kept under the Conveyancing Act 1919;

“solatium” is defined in section 60;

“special value” of land is defined in section 57.

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(2) For the purposes of this Act, **an authority is authorised to acquire land by compulsory process** if:

- (a) the authority is authorised by law to acquire land by compulsory process under this Act; or
- (b) land is authorised by law to be acquired for the authority by resumption or appropriation under any provision of the Public Works Act 1912 or the authority is declared by law to be a Constructing Authority in connection with any such resumption or appropriation.

(3) In this Act, a reference to **the Minister responsible for an authority of the State** is:

- (a) if that authority is constituted by or under an Act—a reference to the Minister administering that Act; or
- (b) if that authority is a Minister—a reference to that Minister.

(4) For the purposes of this Act, the **owners of Crown land** not vested in any other person include:

- (a) the person having the care and control of the land; or
- (b) if the land is not under the care and control of any person—the Minister administering the Crown Lands Act 1989.

Acquisition of land to which Act applies

5. (1) This Act applies to the acquisition of land (by agreement or compulsory process) by an authority of the State which is authorised to acquire the land by compulsory process.

(2) This Act does not apply to any such acquisition if the land is available for public sale and the land is acquired by agreement.

(3) Land is available for public sale if:

- (a) the land is advertised by the owner as being available for sale; or
- (b) the land is listed by the owner with a real estate agent as being available for sale; or
- (c) the land is otherwise held out by the owner as being available for sale.

Acquisition of land to which Act does not apply

6. This Act does not apply to an acquisition of land if:

- (a) the acquisition is made for a road in accordance with the Crown and Other Roads Act 1990; or
- (b) the acquisition consists of the taking of a mortgage, charge or other similar security over an interest in land; or

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- (c) the acquisition consists of an interest in land which is acquired otherwise than by agreement or compulsory process.

Act not to empower authority to acquire land

7. This Act does not empower an authority of the State to acquire land if it does not have the power (apart from this Act) to acquire the land.

Act to prevail over other Acts relating to acquisition of land

8. This Act prevails, to the extent of any inconsistency, over the provisions of any other Act relating to the acquisition of land by an authority of the State.

Act binds Crown

9. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, in all its other capacities.

Statement of guaranteed acquisition at market value

10. (1) When, on request by or on behalf of an owner or prospective purchaser of land, an authority of the State gives a person written notice to the effect that the land is affected by a proposal for acquisition by the authority, the notice must contain the following:

- (a) a statement that the Land Acquisition (Just Terms Compensation) Act 1991 guarantees that, if and when the land is acquired by (*insert name of authority*) under that Act, the amount of compensation will not be less than market value (assessed under that Act) unaffected by the proposal;
- (b) such other information as the regulations may require.

(2) This section does not apply to a proposal to acquire an easement, or right to use land, under the surface for the construction and maintenance of works.

(3) Nothing in this section or in a statement made in a notice pursuant to this section gives rise to, or can be taken into account in, any civil cause of action.

PART 2—ACQUISITION OF LAND BY COMPULSORY PROCESS

Division 1—Pre-acquisition procedures

Notice of intention to acquire land by compulsory process

11. (1) An authority of the State may not acquire land by compulsory process unless the authority has given the owners of the land written notice of its intention to do so.

(2) The authority of the State is not prevented from acquiring the land by agreement after giving the proposed acquisition notice.

Owners to be given notice

12. (1) A proposed acquisition notice need only be given to all the owners of the land who:

- (a) have a registered interest in the land; or
- (b) are in lawful occupation of the land; or
- (c) have, to the actual knowledge of the authority of the State, an interest in the land.

(2) If the proposed acquisition notice relates only to a particular interest in land, the notice need only be given to all such owners of that interest.

(3) If the proposed acquisition notice relates to an interest which does not exist (such as a proposed easement), the notice need only be given to all the owners of the land who:

- (a) have a registered interest in the land (other than a mortgage interest); or
- (b) are in lawful occupation of the land.

(4) If the proposed acquisition notice relates to land under the Real Property Act 1900, the authority of the State must give a copy of the notice to any person who has lodged a caveat which is recorded in respect of the land in the Register kept under that Act.

Minimum period of notice

13. (1) A proposed acquisition notice must be given at least 90 days before the land is compulsorily acquired.

(2) A shorter period of notice may be given if:

- (a) the authority of the State and the owners of the land agree in writing to the shorter period; or

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- (b) the Minister responsible for that authority approves of the shorter period, but only if that Minister is satisfied that the urgency of the matter or other circumstances of the case make it impracticable to give any longer period of notice.

Compulsory acquisition to be completed as soon as practicable

14. (1) As soon as practicable after the expiration of the minimum period of notice of a proposed compulsory acquisition, the authority of the State must:

- (a) acquire the land by compulsory process or by agreement; or
- (b) withdraw the proposed acquisition notice.

(2) The proposed acquisition notice is taken to have been withdrawn if the authority of the State has not acquired the land or withdrawn the proposed acquisition notice:

- (a) except as provided by paragraph (b)—within 120 days after it gave that notice; or
- (b) within such longer period as that authority and the owner of the land have agreed to in writing.

(3) If the proposed acquisition notice is withdrawn or taken to have been withdrawn, the authority of the State may not give a further proposed acquisition notice in respect of the land within 12 months after the date of withdrawal unless the Minister responsible for that authority is satisfied that in the circumstances of the case a further notice within that period is justified.

Particulars to be included in proposed acquisition notice

15. A proposed acquisition notice given to an owner of land must:

- (a) be in the form prescribed by the regulations or (if no such form is prescribed) in the form approved by the Minister; and
- (b) specify the authority of the State proposing to acquire the land; and
- (c) contain a description sufficient to identify the land proposed to be acquired; and
- (d) specify the period within which the land will be compulsorily acquired; and
- (e) request any owner who wishes to claim compensation for the acquisition to lodge with the authority of the State a claim for compensation within the period specified in the notice (being not less than 60 days after the notice is given to the owner); and
- (f) be accompanied by the form for a claim for compensation under section 39.

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Withdrawal or amendment of proposed acquisition notice

16. (1) An authority of the State may, before the land is compulsorily acquired, withdraw a proposed acquisition notice by a further notice.

(2) Part 4 deals with the compensation payable when a proposed acquisition notice is withdrawn.

(3) An authority of the State may, by a further notice, amend a proposed acquisition notice for the purpose of correcting a clerical error or an obvious mistake in the notice. Any such amendment has effect from the date of the original notice unless otherwise specified in the further notice.

(4) A further notice under this section is to be given in the same manner as the proposed acquisition notice concerned was given.

Registrar-General to be notified of proposed acquisition notice and withdrawal or amendment of such notice

17. (1) An authority of the State must, as soon as practicable after giving a proposed acquisition notice (or after such a notice is withdrawn or amended), lodge with the Registrar-General notification of the proposed acquisition notice (or its withdrawal or amendment).

(2) Any such notification must be in such form as the Registrar-General approves.

(3) On receipt of the notification, the Registrar-General must make such recordings as the Registrar-General considers appropriate:

- (a) in the case of land under the Real Property Act 1900—in the Register kept under that Act; or
- (b) in the case of other land—in the General Register of Deeds or other relevant Register.

Valuer-General to be notified of proposed acquisition notice

18. An authority of the State must, as soon as practicable after giving a proposed acquisition notice, notify the Valuer-General of the proposed acquisition notice.

Division 2—Acquisition procedures

Compulsory acquisition by notice in Gazette

19. (1) An authority of the State that is authorised to acquire land by compulsory process may, with the approval of the Governor, declare, by

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notice published in the Gazette, that any land described in the notice is acquired by compulsory process.

(2) A copy of the acquisition notice is, if practicable, to be published in at least one newspaper circulating in the district in which the land concerned is situated.

(3) An acquisition notice may relate to part only of the land described in the relevant proposed acquisition notice.

Effect of acquisition notice

20. (1) On the date of publication in the Gazette of an acquisition notice, the land described in the notice is, by force of this Act:

- (a) vested in the authority of the State acquiring the land; and
- (b) freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land.

(2) If:

- (a) the acquisition notice excepted an easement from acquisition; and
- (b) immediately before the vesting, the benefit of a restriction as to user was annexed to the easement,

then (unless otherwise specified in the acquisition notice) the restriction continues to have effect as if the acquisition had not taken place.

Division 3—Owner-initiated acquisition in cases of hardship

Definition of “land designated for acquisition for a public purpose”

21. (1) For the purposes of this Division, land is designated for acquisition by an authority of the State for a public purpose if:

- (a) an authority of the State has, in connection with an application for development consent or building approval, given the local authority or other person dealing with the application written notice that the land has been designated by the authority of the State for future acquisition by it for a public purpose; or
- (b) the land is reserved by an environmental planning instrument for use exclusively for a purpose referred to in section 26 (c) of the Environmental Planning and Assessment Act 1979 and the instrument (or some other environmental planning instrument) specifies that authority as the authority required to acquire the land.

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(2) For the purposes of subsection (1) (a), a notice given by an authority of the State constitutes notice that the land has been designated for future acquisition by that authority only if the notice states that the authority will acquire the land at some future time or that the land is affected by a proposal of that authority that requires the acquisition of the land at some future time.

(3) For the purposes of subsection (1) (b), land is reserved by an environmental planning instrument for use exclusively for a purpose referred to in section 26 (c) of the Environmental Planning and Assessment Act 1979 only if:

- (a) the land is expressly set apart by that instrument for use exclusively for such a purpose; or
- (b) the land is expressly set apart by that instrument for use for such a purpose and also for other purposes, but those other purposes do not constitute a reasonable use of the land.

The aims, objectives, policies and strategies of that instrument are to be taken into account in determining whether those other purposes constitute a reasonable use of the land.

(4) The Minister administering the Environmental Planning and Assessment Act 1979 is to institute any relevant proceedings under that Act to enable the designation of the public authority required to acquire land referred to in subsection (1) (b) in any case in which the relevant authority has not been designated.

(5) Pending the designation of the relevant authority, the relevant authority is (if the land is required to be acquired under this Division) to be such authority as is determined by order in writing of the Minister administering the Environmental Planning and Assessment Act 1979.

(6) A notice of a kind referred to in subsection (1) (a) is to be ignored for the purposes of this section unless it is given after the commencement of this section. However, a reference in subsection (1) (b) to a reservation extends to a reservation effected before that commencement.

Owners of land to whom Division applies

22. (1) This Division applies to the following owners of designated land:

- (a) a person who has the fee simple estate in the land;
- (b) a person who has become entitled to exercise a power of sale of the land.

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- (2) This Division does not apply to an owner of land which is:
- (a) an authority of the State; or
 - (b) a public company (within the meaning of the Corporations Law); or
 - (c) a subsidiary (within the meaning of the Corporations Law) of such a public company.

Owner who suffers hardship may require authority of the State to acquire land designated for acquisition

23. (1) The owner of land to whom this Division applies may require an authority of the State, by notice in writing given to that authority, to acquire that land under this Act if:

- (a) the land is designated for acquisition by that authority for a public purpose; and
- (b) the owner considers that he or she will suffer hardship if there is any delay in the acquisition of the land under this Act.

(2) The authority of the State must (subject to this Division) acquire the land within 90 days after the owner gives that authority notice under this section (or such longer period as that authority and the owner may agree on in writing).

(3) If there is more than one owner of the land concerned, the notice under this section must be given by all the owners. It is sufficient if any one of those owners will suffer hardship.

(4) An authority of the State is not required to acquire (under this Division) more land than it requires for the public purpose for which the land was designated or more interests in the land than it requires for that purpose.

(5) A notice under this section must be in the form prescribed by the regulations or (if no such form is prescribed) in the form approved by the Minister.

Hardship

24. (1) An authority of the State is not required to acquire land under this Division unless it is of the opinion that the owner will suffer hardship (within the meaning of this section) if there is any delay in the acquisition of the land under this Act.

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- (2) An owner of land suffers hardship if:
- (a) the owner is unable to sell the land, or is unable to sell the land at its market value, because of the designation of the land for acquisition for a public purpose; and
 - (b) it has become necessary for the owner to sell all or any part of the land without delay:
 - (i) for pressing personal, domestic or social reasons; or
 - (ii) in order to avoid the loss of (or a substantial reduction in) the owner's income.

(3) However, if the owner of the land is a corporation to which this Division applies, the corporation does not suffer hardship unless it has become necessary for the corporation to sell all or any part of the land without delay:

- (a) for pressing personal, domestic or social reasons of an individual who holds at least 20 per cent of the shares in the corporation; or
- (b) in order to avoid the loss of (or a substantial reduction in) the income of such an individual.

Method of acquisition under this Division

25. (1) Land required to be acquired under this Division is to be acquired by compulsory process.

(2) However, nothing in this Division prevents the land concerned from being acquired by agreement instead of compulsory process within the period required by this Division.

(3) Division 1 (Pre-acquisition procedures) does not apply to an acquisition of land under this Division.

Compensation for acquisition under this Division

26. The special value of land, any loss attributable to severance or disturbance and solatium (as referred to in Part 3) need not be taken into account in connection with an acquisition of land under this Division, despite anything to the contrary in that Part.

Authority of the State may lift designation of land

27. An authority of the State is not required to acquire land under this Division if, before it is required to acquire the land:

- (a) in the case of land designated for acquisition as referred to in section 21 (1) (a)—that authority gives the owner of the land written notice that the land is no longer designated by that authority for future acquisition; or

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- (b) in the case of land designated for acquisition as referred to in section 21 (1) (b)—that authority gives the owner a written undertaking that it will use its best endeavours to remove the relevant reservations and a written notice that the land is no longer designated by that authority for future acquisition.

Owner-initiated acquisition under Environmental Planning and Assessment Act 1979

28. (1) This Division does not affect any obligation of an authority of the State to acquire land as referred to in section 27 of the Environmental Planning and Assessment Act 1979.

(2) However, any such acquisition may be effected by compulsory process in accordance with this Division.

Division 4—Miscellaneous provisions relating to acquisition

Acquisition of Crown land

29. (1) Land may be compulsorily acquired by an authority of the State under this Act even though it is Crown land.

(2) If Crown land is subject to a dedication or reservation that (by virtue of any Act) cannot be removed except by an Act, that land may not be compulsorily acquired.

(3) Nothing in this Act affects the acquisition by agreement of Crown land by an authority of the State.

(4) The provisions of Division 1 (Pre-acquisition procedures) and Part 3 (Compensation for acquisition of land) do not apply to the compulsory acquisition of Crown land if the owners of the land have agreed on all relevant matters concerning the compulsory acquisition and the compensation (if any) to be paid for the acquisition.

Compulsory acquisition with consent of owners

30. (1) An authority of the State and the owners of land may agree in writing that the land be compulsorily acquired by that authority.

(2) The provisions of Division 1 (Pre-acquisition procedures) and Part 3 (Compensation for acquisition of land) do not apply to any such compulsory acquisition if the owners have agreed in writing on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

Rescission of acquisition notice

31. (1) The Governor may, by notice published in the Gazette, rescind in whole or in part any acquisition notice.

(2) An acquisition notice may not be rescinded unless a Minister has certified that it is necessary to do so for the purpose of correcting a clerical error or obvious mistake or for other good cause or that the former owners of the land have agreed to the rescission.

(3) An acquisition notice published under Division 3 (Owner-initiated acquisition in cases of hardship) may not be rescinded without the consent of the owner who required the acquisition.

(4) On the publication in the Gazette of the rescission notice, the land described in the rescission notice:

- (a) reverts in the person who was entitled to it immediately before the compulsory acquisition for the estate, interest or right which the person had immediately before the compulsory acquisition, but subject to any interest in or equity binding on the land created by the authority of the State since its compulsory acquisition; and
- (b) is subject to all trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts from which it was freed and discharged by the compulsory acquisition; and
- (c) is subject to any interests in or equities binding on the compensation money that were created since the compulsory acquisition.

(5) If a resumption application relating to land described or referred to in an acquisition notice has been lodged under section 31A (2) of the Real Property Act 1900 with the Registrar-General:

- (a) a rescission notice may not rescind so much of the acquisition notice as relates to that land; and
- (b) any transfer of that land, after it has been brought under the provisions of the Real Property Act 1900, to the person who was entitled to it immediately before the resumption is, for the purposes of Part 4 of this Act, taken, on its registration under that Act:
 - (i) to revert that land under this section in the transferee; and
 - (ii) to rescind the compulsory acquisition in so far as it relates to that land.

(6) Part 4 deals with the compensation payable when an acquisition notice is rescinded under this section.

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(7) In this section, “**acquisition notice**” includes a notification of appropriation or resumption made under the Public Works Act 1912 before the commencement of this section.

New interests in land

32. An interest in land (such as an easement) may be acquired by compulsory process under this Act even though the interest did not previously exist in relation to the land.

Validity of compulsory acquisition

33. Once land has been acquired by compulsory process under this Act, the validity of the acquisition is not affected by:

- (a) a failure to comply with any requirement of this Part relating to the giving of notice of the proposed acquisition; or
- (b) a subsequent failure to comply with a requirement of this Act relating to the acquisition.

Former owner's right to occupy land until compensation paid etc.

34. (1) A person who was in lawful occupation of land immediately before it was compulsorily acquired under this Act and to whom compensation is payable under this Act is entitled to remain in occupation until:

- (a) the compensation is duly paid to the person; or
- (b) the authority of the State makes (in accordance with any other provision of this Act) an advance payment of not less than 90 per cent of the amount of compensation offered by the authority; or
- (c) the authority of the State makes (in accordance with any other provision of this Act) a payment into the trust account kept under Part 3 of not less than 90 per cent of the amount of compensation offered by the authority,

whichever first occurs.

(2) Any such person is entitled to remain in occupation of any building that is the person's principal place of residence, or the person's place of business, for 3 months after it is compulsorily acquired, even though the person has ceased to be entitled to remain in occupation under subsection (1). However, if the Minister responsible for the authority of the State is satisfied that the authority requires immediate vacant possession of land, the authority is entitled to immediate vacant possession even though the 3-month period has not expired.

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(3) The terms on which a person remains in occupation of land that has been compulsorily acquired under this Act are, in the absence of agreement, such reasonable terms as are determined by the authority of the State (including terms as to the rental to be paid and the restrictions on the use of the land). The Residential Tenancies Act 1987 does not apply to that continued occupation.

(4) Any such unpaid rent or other money due to the authority of the State may be set off against the compensation payable under this Act.

Power of authority of the State to obtain possession of compulsorily acquired land

35. (1) If, after an authority of the State becomes entitled to vacant possession of land compulsorily acquired under this Act, any person remains in or takes up occupation of the land, that authority may direct and empower the Sheriff (or any person prescribed by the regulations) to deliver possession of the land to that authority.

(2) On receipt of any such direction, the Sheriff (or prescribed person) is required to deliver possession of the land to the authority of the State.

(3) The costs incurred by the Sheriff (or prescribed person) in delivering possession of the land may be recovered as a debt by the authority of the State from the person refusing to deliver possession. The authority of the State may deduct the amount of any such costs from any compensation payable to the person under this Act.

(4) Nothing in this section operates to limit or restrict the power of the authority of the State to enforce its right to possession of land otherwise than under this section.

Adverse use of acquired land

36. (1) If a person is using, or proposes to use, land acquired by an authority of the State by compulsory process in a manner inconsistent with the public purpose for which the land was acquired, the Land and Environment Court may, on the application of that authority, make such order as it thinks fit to remedy or restrain that use.

(2) Without limiting the powers of the Land and Environment Court under subsection (1), an order made under that subsection may:

- (a) restrain the use of any building, work or land; or
- (b) require the demolition or removal of any building or work; or
- (c) require the reinstatement, as far as practicable, of a building, work or land to the condition it was in immediately before the relevant use.

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(3) The Land and Environment Court may, at its discretion, by interlocutory order, restrain the continuation of the relevant use of the land pending the determination of an application under subsection (1).

PART 3—COMPENSATION FOR ACQUISITION OF LAND**Division 1—Entitlement to compensation****Right to compensation if land compulsorily acquired**

37. An owner of an interest in land which is divested, extinguished or diminished by an acquisition notice is entitled to be paid compensation in accordance with this Part by the authority of the State which acquired the land.

Compensation entitlement if land (not available for public sale) acquired by agreement

38. An authority of the State is to take into account, in connection with any proposed acquisition by agreement of land not available for public sale, the same matters as are required to be taken into account under this Part in determining the compensation payable for an acquisition by compulsory process.

Division 2—Claims for compensation**Claim for compensation**

39. (1) A person who wishes to claim compensation under this Part must lodge a claim in accordance with this section with the authority of the State that is acquiring the land concerned.

(2) A claim for compensation must be in the form prescribed by the regulations or (if no such form is prescribed) in the form approved by the Minister.

(3) The claim form may require information to be verified by statutory declaration.

(4) A claim for compensation may be withdrawn by the claimant.

Owner claiming compensation must disclose particulars of other persons with an interest in land

40. (1) A person who claims compensation under this Part must state, in the claim form, whether the person is aware of any other person who has an interest in the land and who may be entitled to compensation.

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(2) If the person is aware of such an interest, the claim must contain such particulars of the interest as are required by the requisite claim form.

Valuer-General to be given copy of claim for compensation

41. (1) An authority of the State must, as soon as practicable after receiving a claim for compensation in respect of a compulsory acquisition (or proposed compulsory acquisition), give the Valuer-General a copy of the claim.

(2) The Valuer-General may determine the amount of compensation to be offered to a former owner of land for a compulsory acquisition of the land:

- (a) before or after the acquisition takes effect; and
- (b) even though the former owner has not made a claim for the compensation.

Division 3—Post-acquisition procedures relating to compensation

Notice of compensation entitlement and offer of compensation

42. (1) An authority of the State which has compulsorily acquired land under this Act must, within 30 days after the publication of the acquisition notice, give the former owners of the land written notice of the compulsory acquisition, their entitlement to compensation and the amount of compensation offered (as determined by the Valuer-General).

(2) The compensation notice must be given to all former owners of the land who, immediately before the acquisition:

- (a) had a registered interest in the land; or
- (b) were in lawful occupation of the land (but only if the authority of the State considers they are entitled to compensation); or
- (c) had, to the actual knowledge of the authority of the State, an interest in the land which entitles them to compensation.

(3) If the acquisition relates only to a particular interest in land, the notice need only be given to all such former owners of that interest.

(4) The Minister responsible for an authority of the State may extend the period of 30 days within which the compensation notice is required to be given (but not by more than 60 days) if the Minister is satisfied that it is necessary to do so to enable a valuation to be made of any interest in the land concerned.

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(5) An authority of the State is not excused from the requirement to give a compensation notice because the period during which the notice is required to be given has expired or because the former owner has not lodged a claim for compensation.

(6) However, the authority of the State may delay giving a compensation notice if a number of persons claim competing interests in the land concerned.

(7) Despite any such delay, the compensation may be paid into the trust account under this Part and advance payments of compensation may be made under this Part.

Particulars to be included in notice of compensation entitlement and offer of compensation

43. A compensation notice given to a former owner of land must:
- (a) be in the form prescribed by the regulations or (if there is no prescribed form) the form approved by the Minister; and
 - (b) notify the owner that the land has been compulsorily acquired; and
 - (c) state that the owner is entitled to compensation; and
 - (d) offer to pay a specified amount of compensation as determined by the Valuer-General and be accompanied by a form of deed of release and indemnity for completion if the offer is accepted; and
 - (e) inform the owner of the right to object to the amount offered.

Acceptance of offer of compensation

44. (1) A person entitled to compensation under this Part may accept the amount of compensation offered by the authority of the State in the compensation notice.

(2) Payment of the compensation is to be made within 28 days of the receipt by the authority of the State of a claim for compensation, deed of release and indemnity (duly completed) and any relevant documents of title.

Deemed acceptance of offer of compensation

45. (1) If a person entitled to compensation under this Part does not, within 90 days after receiving a compensation notice:

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- (a) accept the amount of compensation offered by the authority of the State; or
- (b) lodge with the Land and Environment Court an objection to the amount of compensation offered,

the offer of compensation is taken to have been accepted.

(2) Such an acceptance is subject to any decision of the Land and Environment Court on an objection lodged after the 90-day period.

(3) The authority of the State must, on such an acceptance taking effect, pay the amount of money concerned into a trust account kept under this Part and pay the money to the person entitled to it on receipt of a claim for compensation, deed of release and indemnity (duly completed) and any relevant documents of title.

Claim for compensation by person not offered compensation

46. (1) A person who has not been given a compensation notice may nevertheless lodge with an authority of the State a claim for compensation under this Part.

(2) If the authority of the State considers that the person is entitled to compensation, the authority is to give the person a compensation notice. Otherwise, the authority is to reject the claim by notice in writing given to the person.

(3) A claim for compensation under this section is taken to have been rejected if the authority of the State has not dealt with the claim within 60 days after receiving the claim. However, the authority of the State is not precluded from giving the person a compensation notice after that time.

Valuer-General to determine amount of compensation offered

47. The Valuer-General is to determine the amount of compensation to be offered to a person under this Part.

Advance payments of compensation etc.

48. (1) An authority of the State may, at any time after land is acquired, make an advance payment of compensation to any person who the authority considers is entitled to the compensation.

(2) An advance payment may be made on application by the person or without any such application if the person agrees to accept the advance payment.

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(3) The acceptance by a person of an advance payment of compensation does not constitute an acceptance of any offer of compensation made by the authority of the State.

(4) A person who receives an advance payment of compensation which exceeds the amount of compensation to which the person is entitled must repay to the authority of the State the amount of the excess.

(5) Any advance or other payment of compensation to a person not entitled to the compensation must be repaid to the authority of the State that made the payment.

(6) Any amount due to an authority of the State under this section may be recovered as a debt in any court of competent jurisdiction.

Interest on compensation

49. (1) Interest is payable (subject to subsection (2)) on any amount of compensation under this Part from the date the land is acquired until the payment is made. Any such interest becomes part of the amount of compensation payable.

(2) Interest under this section is not so payable on any amount of compensation paid into a trust account under this Part or into the Consolidated Fund by the authority of the State. However, money earned from the investment of any such trust account becomes part of the compensation concerned.

Rate of interest on compensation

50. (1) The rate of interest payable on any payment of compensation under this Part is such rate as the Treasurer may from time to time determine by notification published in the Gazette.

(2) Different rates of interest may be determined under this section.

(3) The Treasurer is to have regard to the rates of interest paid by banks when determining rates of interest under this section.

(4) Rates of interest determined under this section apply even though the compensation is payable under an order of a court.

Trust account

51. (1) An authority of the State is required to keep a trust account in connection with compensation payable under this Part.

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(2) The authority of the State must pay into the trust account any amount of compensation which is required by this Act to be paid into the trust account.

(3) The authority of the State may pay into the trust account any amount of compensation which is authorised by this Act to be paid into the trust account.

(4) Money in the trust account is held in trust for the person entitled to the compensation concerned.

(5) Money in the trust account is, after the expiration of 6 years after the acquisition of the land to which it relates, to be paid to the Treasurer for payment into the Consolidated Fund if no claim for the compensation concerned has been made. Any payment of the compensation concerned required to be made after that time is to be made from the Consolidated Fund, which is appropriated accordingly.

(6) If the authority of the State is a local government authority, payment of the money to the Treasurer under subsection (5) is discretionary.

(7) Money in the trust account is (subject to any direction of the Treasurer) to be invested in accordance with Part 1 of Schedule 4 to the Public Authorities (Financial Arrangements) Act 1987.

Payments to be a good discharge

52. All payments of compensation made by an authority of the State under this Part are good and valid discharges to that authority and that authority is not bound to see to the application of any money paid or to the performance of any trust.

Compensation for interest not known to acquiring authority

53. (1) If an authority of the State pays compensation under this Act to a former owner of land without regard to the existence of an interest in the land owned by another person (being an interest that was not known to the authority when that compensation was paid):

- (a) that other person's entitlement to be paid compensation by the authority in respect of the acquisition of that land is extinguished; and
- (b) his or her rights and entitlements against the former owner in respect of the interest are not affected by the divesting, extinguishing or diminution of the interest by this Act.

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(2) For the purposes of this section, an interest is known to an authority of the State only if it is a registered interest or an interest within the actual knowledge of the authority.

Division 4—Determination of amount of compensation

Entitlement to just compensation

54. The amount of compensation to which a person is entitled under this Part is such amount as, having regard to all relevant matters under this Part, will justly compensate the person for the acquisition of the land.

Relevant matters to be considered in determining amount of compensation

55. In determining the amount of compensation to which a person is entitled, regard must be had to the following matters only (as assessed in accordance with this Division):

- (a) the market value of the land on the date of its acquisition;
- (b) any special value of the land to the person on the date of its acquisition;
- (c) any loss attributable to severance;
- (d) any loss attributable to disturbance;
- (e) solatium;
- (f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

Market value

56. (1) In this Act:

“market value” of land at any time means the amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer, disregarding (for the purpose of determining the amount that would have been paid):

- (a) any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired; and
- (b) any increase in the value of the land caused by the carrying out by the authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired; and

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- (c) any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

(2) When assessing the market value of land for the purpose of paying compensation to a number of former owners of the land, the sum of the market values of each interest in the land must not (except with the approval of the Minister responsible for the authority of the State) exceed the market value of the land at the date of acquisition.

Special value

57. In this Act:

“special value” of land means the financial value of any advantage, in addition to market value, to the person entitled to compensation which is incidental to the person’s use of the land.

Loss attributable to severance

58. In this Act:

“loss attributable to severance” of land means the amount of any reduction in the market value of any other land of the person entitled to compensation which is caused by that other land being severed from other land of that person.

Loss attributable to disturbance

59. In this Act:

“loss attributable to disturbance” of land means any of the following:

- (a) legal costs reasonably incurred by the persons entitled to compensation in connection with the compulsory acquisition of the land;
- (b) valuation fees reasonably incurred by those persons in connection with the compulsory acquisition of the land;
- (c) financial costs reasonably incurred in connection with the relocation of those persons (including legal costs but not including stamp duty or mortgage costs);
- (d) stamp duty costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the purchase of land for relocation (but not exceeding the amount that would be incurred for the purchase of land of equivalent value to the land compulsorily acquired);

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- (e) financial costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the discharge of a mortgage and the execution of a new mortgage resulting from the relocation (but not exceeding the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage);
- (f) any other financial costs reasonably incurred (or that might reasonably be incurred), relating to the actual use of the land, as a direct and natural consequence of the acquisition.

Solatium

60. (1) In this Act:

“solatium” means compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence as a result of the acquisition.

(2) The maximum amount of compensation in respect of solatium is:

- (a) except as provided by paragraph (b)—\$15,000; or
- (b) such higher amount as may be notified by the Minister by notice published in the Gazette.

(3) In assessing the amount of compensation in respect of solatium, all relevant circumstances are to be taken into account, including:

- (a) the interest in the land of the person entitled to compensation; and
- (b) the length of time the person has resided on the land (and in particular whether the person is residing on the land temporarily or indefinitely); and
- (c) the inconvenience likely to be suffered by the person because of his or her removal from the land; and
- (d) the period after the acquisition of the land during which the person has been (or will be) allowed to remain in possession of the land.

(4) Compensation is payable in respect of solatium if the whole of the land is acquired or if any part of the land on which the residence is situated is acquired.

(5) Only one payment of compensation in respect of solatium is payable for land in separate occupation.

(6) However, if more than one family resides on the same land, a separate payment may be made in respect of each family if:

- (a) the family resides in a separate dwelling-house; or
- (b) the Minister responsible for the authority of the State approves of the payment.

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(7) If separate payments of compensation are made, the maximum amount under subsection (2) applies to each payment, and not to the total payments.

Special provision relating to market value assessed on potential of land

61. If the market value of land is assessed on the basis that the land had potential to be used for a purpose other than that for which it is currently used, compensation is not payable in respect of:

- (a) any financial advantage that would necessarily have been forgone in realising that potential; and
- (b) any financial loss that would necessarily have been incurred in realising that potential.

Special provision relating to acquisition of easements or rights, tunnels etc.

62. (1) If the land compulsorily acquired under this Act consists only of an easement, or right to use land, under the surface for the construction and maintenance of works (such as a tunnel, pipe or conduit for the conveyance of water, sewage or electrical cables), compensation is not payable except for actual damage done in the construction of the work or caused by the work.

(2) If land under the surface is compulsorily acquired under this Act for the purpose of constructing a tunnel, compensation is not payable (subject to subsection (1)) unless:

- (a) the surface of the overlying soil is disturbed; or
- (b) the support of that surface is destroyed or injuriously affected by the construction of the tunnel; or
- (c) any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected.

(3) If the land compulsorily acquired under this Act consists of or includes an easement or right to use the surface of any land for the construction and maintenance of works (such as canals, drainage, stormwater channels, electrical cables, openings or ventilators), the easement or right is (unless the acquisition notice otherwise provides) taken to include a power, from time to time, to enter the land for the purpose of inspection and for carrying out of any additions, renewals or repairs. Compensation under this Part is payable accordingly.

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Pre-acquisition agreements on compensation

63. (1) An authority of the State and an owner of land may agree on the amount of compensation to which the owner will be entitled (or on any matter affecting the amount of any such compensation) if the land is acquired by compulsory process within a time (or in the circumstances) specified in the agreement.

(2) Any such agreement has effect according to its tenor.

Compensation in form of land or works

64. Compensation to which a person is entitled under this Part may, if the person and the authority of the State concerned agree, be provided wholly or partly in the form of land or of the carrying out of works.

Effect of acquisition of mortgage interest

65. (1) If:

(a) land is compulsorily acquired under this Act; and

(b) the land is subject to one or more mortgages,

then, as a general rule, the compensation to which the owner of the land will be entitled in respect of the acquisition is to be determined as if the land had not been subject to the mortgage.

(2) However, if compensation is payable under this Part to a mortgagee in respect of a mortgage interest, the compensation payable to the owner of the land acquired is to be reduced by so much of the compensation as is payable to the mortgagee.

**Division 5—Objections and appeals to Land
and Environment Court****Objection against amount of compensation offered**

66. (1) A person who has claimed compensation under this Part may, within 90 days after receiving a compensation notice, lodge with the Land and Environment Court an objection to the amount of compensation offered by the authority of the State.

(2) If any such objection is duly lodged, the Land and Environment Court is to hear and dispose of the person's claim for compensation.

(3) A person who does not lodge an objection within the 90-day period and who is taken to have accepted the offer of compensation under

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section 45 may nevertheless lodge an objection under this section, but the Land and Environment Court is not to hear and dispose of the person's claim for compensation unless satisfied that there is good cause for the person's failure to lodge the objection within that period.

(4) If the Land and Environment Court decides that the amount of compensation payable (without the addition of interest) does not exceed by more than 10% the amount of compensation offered by the authority of the State, the Court may cancel or reduce the amount of interest that has accrued under this Act in respect of the compensation since the institution of the proceedings.

Appeal against failure to entertain claim for compensation

67. (1) A person who has not been given a compensation notice and whose claim for compensation under this Part is rejected (or taken to be rejected) may appeal to the Land and Environment Court against the rejection of the claim.

(2) Any such appeal must be lodged within 90 days after the rejection of the claim.

(3) If any such appeal is duly lodged, the Land and Environment Court is to hear and dispose of the person's claim for compensation.

(4) A person who does not lodge an appeal within the 90-day period may nevertheless lodge an appeal under this section, but the Land and Environment Court is not to hear and dispose of the person's claim for compensation unless satisfied that there is good cause for the person's failure to lodge the appeal within that period.

Payment of compensation arising from court proceedings

68. (1) Payment of compensation in respect of matters before the Land and Environment Court is to be made in accordance with any agreement reached during the proceedings or, if no such agreement is reached, in accordance with the decision of the Court.

(2) Subject to any such agreement or decision:

(a) if the authority of the State gave the owner concerned a compensation notice—the authority is required to pay 90 per cent of the amount of compensation offered in the notice (as an advance payment) within 28 days after the authority is given notice of the institution of the proceedings or (if the owner does not accept that advance payment) the authority is required to pay 90 per cent of that amount into the trust account kept under this Part; or

- (b) if the authority of the State did not give the owner concerned a compensation notice—the authority may (but is not required to) make an advance payment under this Part or pay an amount into the trust account kept under this Part.

PART 4—COMPENSATION FOR ABANDONED ACQUISITION OF LAND

Compensation for withdrawal of proposed acquisition notice

69. (1) If a proposed acquisition notice is withdrawn (or taken to be withdrawn) under this Act, an owner of the land concerned is entitled to be compensated by the authority of the State who gave the notice for any financial costs or any damage actually incurred or suffered by the owner as a direct consequence of the giving of the notice and its later withdrawal.

(2) Compensation is not payable under this section in respect of any change in the value of the land.

(3) Compensation is not payable under this section unless a claim for the compensation is made within 3 years after the withdrawal of the proposed acquisition notice.

Compensation for rescission of acquisition notice

70. (1) If an acquisition notice is rescinded (in whole or in part) under this Act, a person in whom the land is revested on that rescission is entitled to be compensated by the authority of the State for any financial costs or any damage actually incurred or suffered by that person as a direct consequence of the compulsory acquisition and its rescission.

(2) Compensation is not payable under this section in respect of any change in the value of the land.

(3) The compensation payable under this section includes compensation for any easement or other interest which was created after the acquisition of the land and which subsists after the rescission of the compensation notice. Section 62 and any other relevant provision of Part 3 apply to the determination of the amount of any such compensation.

(4) Compensation is not payable under this section unless a claim for compensation is made within 3 years after the rescission of the compensation notice.

Claims for compensation under this Part

71. (1) A person who wishes to claim compensation under this Part must lodge a claim for compensation in accordance with this section with the authority of the State liable to pay the compensation.

(2) A claim for compensation must be in the form prescribed by the regulations or (if no such form is prescribed) in the form approved by the Minister.

(3) A claim for compensation may be withdrawn by the claimant.

(4) The authority of the State may accept a claim for compensation (in whole or in part) or reject any such claim.

(5) A claim for compensation is taken to have been rejected if the authority of the State has not dealt with the claim within 60 days after receiving the claim. However, the authority of the State is not precluded from accepting the claim after that time.

(6) A person whose claim for compensation is rejected (or taken to be rejected) or is accepted in part only may appeal to the Land and Environment Court against that decision. Section 67 applies to any such appeal in the same way as it applies to an appeal under that section.

(7) The regulations may apply any of the provisions of Part 3 relating to claims for compensation under that Part (with or without modifications) to claims for compensation under this Part.

PART 5—MISCELLANEOUS**Manner of giving or serving notices or documents**

72. (1) If a notice or other document is required to be given to or served on any person under this Act, the notice or other document may be given or served:

- (a) in the case of a person other than a corporation—by delivering it to the person or by posting it to the address (if any) specified by the person for the service of documents under this Act or, if no such address is specified, by posting it to the person's usual or last known place of residence or business; or
- (b) in the case of a corporation—by leaving it at the registered office of the corporation with a person apparently employed by the corporation or by posting it to the address (if any) specified by the corporation for the service of documents under this Act or, if no such address is specified, by posting it to the last known place of business of the corporation.

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(2) If:

- (a) an authority of the State is required or authorised under this Act to give to or serve on the owner of land a notice or other document; and
- (b) the authority is unable after due inquiry to ascertain the owner's whereabouts,

the notice or other document may be given or served by placing it on a board or other structure in a conspicuous place on the land or by publishing a copy of it in a newspaper circulating in the district in which the land is situated.

Proceedings for offences

73. Proceedings for offences against this Act or the regulations are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

Regulations

74. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Amendment of other Acts

75. Each Act specified in Schedule 1 is amended as set out in that Schedule.

Repeal of Acts

76. Each Act specified in Schedule 2 is repealed.

Savings, transitional and other provisions

77. Schedule 3 has effect.

SCHEDULE 1—AMENDMENT OF OTHER ACTS

(Sec. 75)

CONVEYANCING ACT 1919 No. 6Section 196A (**Register of Resumptions**):

Omit section 196A (1), insert instead:

(1) In this section, “**resumption**” means the acquisition of land by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 or any other Act.

CROWN AND OTHER ROADS ACT 1990 No. 54Section 27 (**Interest to accrue in respect of compensation not paid at the appropriate time**):

Omit “section 126A (5) of the Public Works Act 1912”, insert instead “section 50 of the Land Acquisition (Just Terms Compensation) Act 1991”.

CROWN LANDS ACT 1989 No. 6

(1) Section 135:

Omit the section, insert instead:

Acquisition of land for public purpose

135. (1) The Minister may acquire land, for any public purpose, by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(2) For the purposes of the Public Works Act 1912, any such acquisition of land is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.

(3) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply in respect of works constructed under this Act.

(2) Section 136 (**Withdrawal from lease or licence for public purposes**):

From section 136 (5), omit “provisions of the Public Works Act 1912 relating to payment of compensation for resumed

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land”, insert instead “provisions of the Land Acquisition (Just Terms Compensation) Act 1991 relating to the payment of compensation for land acquired by compulsory process”.

(3) Section 138 (**Certain land may be declared to be Crown Land**):

From section 138 (1), omit “appropriated or resumed” wherever occurring, insert instead “acquired by compulsory process”.

(4) Schedule 6 (**Modification of the Public Works Act 1912**):

Omit the Schedule.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
No. 203(1) Section 9 (**Power to acquire land etc.**):

(a) From section 9 (1), omit “acquire land, including land previously appropriated or resumed for any purpose, by lease or purchase or by resumption or appropriation in accordance with the provisions of this Part”, insert instead “acquire land by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991”.

(b) At the end of section 9 (2) (c), insert:

; or

(d) a leasehold or any other interest in land.

(2) Section 10:

Omit the section, insert instead:

Application of Public Works Act 1912

10. (1) For the purposes of the Public Works Act 1912, any acquisition of land under section 9 is taken to be for an authorised work and the corporation is, in relation to that authorised work, taken to be the Constructing Authority.

(2) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply in respect of works constructed under this Act.

(3) Section 26 (**Contents of environmental planning instruments**):

In section 26 (c), before “a public cemetery”, insert “a national park or other land reserved or dedicated under the National Parks and Wildlife Act 1974,”.

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SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

- (4) Section 116 (**Value of reserved land on compulsory acquisition**):

Omit the section.

- (5) Schedule 7 (**Modification of Public Works Act 1912**):

Omit the Schedule.

**LAND ACQUISITION (CHARITABLE INSTITUTIONS) ACT
1946 No. 55**

Section 4:

Omit the section, insert instead:

Compulsory acquisition of land for purposes of an institution

4. (1) The Minister may acquire land, for the purposes of an institution, by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(2) The Minister may do so only if the governing body of the institution:

- (a) applies to the Minister for acquisition of the land; and
- (b) makes provision to the satisfaction of the Minister for the payment of the purchase price or of compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).

(3) The Minister may transfer land acquired under this section to the institution that has applied for the acquisition or to a nominee of that institution.

(4) For the purposes of the Public Works Act 1912, an acquisition of land under this section is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.

LAND AND ENVIRONMENT COURT ACT 1979 No. 204

- (1) Section 24 (**Claim for compensation in compulsory acquisition cases**):

- (a) Omit section 24 (1), insert instead:

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

- (1) If:
 - (a) a claim is made for compensation because of the compulsory acquisition of land in accordance with the Land Acquisition (Just Terms Compensation) Act 1991, the Crown and Other Roads Act 1990 or any other Act; and
 - (b) no agreement is reached between the claimant and the authority required to pay the compensation,
the claim is (subject to any such Act) to be heard and disposed of by the Court and not otherwise.
- (b) Omit section 24 (3).
- (2) Section 25 (**Determination of estate, interest and amount**):
Omit section 25 (3).
- (3) Section 34 (**Preliminary conferences**):
 - (a) After section 34 (1), insert:
 - (1A) Where proceedings are pending in Class 3 of the Court's jurisdiction in respect of a claim for compensation by reason of the compulsory acquisition of land (referred to in Division 2 of Part 3), the registrar is required to arrange (at the request of all the parties to the proceedings) a conference between the parties to the proceedings or their representatives, to be presided over by a single assessor. The conference is to be arranged within 28 days after the proceedings are commenced or within such further time as the Chief Judge directs.
 - (b) After section 34 (8), insert:
 - (9) The registrar may, unless otherwise directed by the Chief Judge, preside over a conference under this section, and for that purpose a reference in this section to an assessor includes a reference to the registrar.
- (4) Section 69A (**Interest payable on money ordered to be paid**):
After section 69A (2), insert:
 - (3) In the case of an order of the Court for the payment of compensation under the Land Acquisition (Just Terms Compensation) Act 1991, the rate of interest is the rate determined under that Act in respect of the payment of compensation.

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued***LOCAL GOVERNMENT ACT 1919 No. 41**(1) Section 233 (**Proprietary rights in regard to roads**):

At the end of section 233 (5), insert:

The Land Acquisition (Just Terms Compensation) Act 1991 does not affect the operation of this subsection.

(2) Section 477 (**Purchase and resumption of land**):

Omit section 477 (1).

(3) Section 532 (**Acquisition of land**):

(a) Omit section 532 (1), insert instead:

(1) The council may acquire land within or outside its area for any purpose of this Act by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(1A) The council may not give a proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 without the approval of the Minister.

(b) From section 532 (2), omit “may acquire by lease, purchase, appropriation or resumption in accordance with this Part”, insert instead “may so acquire”.

(4) Sections 536–536D (except section 536AA) (**Machinery of resumption**):

Omit the sections and the heading before section 536.

(5) Sections 536AA, 536DA–536DF:

Omit “resumed or appropriated” and “resumption or appropriation” wherever occurring, insert instead “compulsorily acquired” and “compulsory acquisition”, respectively.

(6) Section 536E:

Omit the section, insert instead:

Ordinances

536E. Ordinances may be made for carrying this Part into effect.

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued***MINE SUBSIDENCE COMPENSATION ACT 1961 No. 22****Section 13 (1A):**

Omit the subsection, insert instead:

(1A) If no agreement has been entered into under subsection (1) (a) within such time as the Board considers reasonable after the claim is made under section 12 or 12A (1) (a), the Board may acquire the land (or the land and improvements or the estate or interest) by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(1AB) For the purposes of the Public Works Act 1912, any such acquisition is taken to be for an authorised work and the Board is taken to be the Constructing Authority.

(1AC) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply in respect of works constructed under this section.

PIPELINES ACT 1967 No. 90**Section 22A (Compensation):**

Omit section 22A (2) and (3), insert instead:

(2) The Land Acquisition (Just Terms Compensation) Act 1991 applies (with such modifications as may be prescribed by the regulations) to the payment of any such compensation as if the vesting of lands or easements under section 21 were effected by an acquisition notice under that Act.

PUBLIC WORKS ACT 1912 No. 45**(1) Section 1:**

Omit the section, insert instead:

Short title

1. This Act may be cited as the Public Works Act 1912.

(2) Section 4A (Acquisition of easement):

Omit the section.

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

(3) Sections 39, 40:

Omit the sections, insert instead:

Acquisition of land for authorised works

39. The Minister may, for the purposes of an authorised work, acquire land by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

Acquisition of land for public purposes other than authorised works

40. (1) This section applies to the acquisition of land for the purposes of any work other than an authorised work.

(2) The Minister may acquire land by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of:

- (a) a public work or undertaking specified in section 41 if money has been appropriated from the Consolidated Fund (or is otherwise lawfully available) for or towards the carrying out of the work or undertaking; or
- (b) a school site or a site for public offices or public buildings.

(3) The Minister is, in relation to the acquisition of land under this section, taken to be the Constructing Authority.

(4) Part 5 [sections 42–49] (**Methods of acquisition of land**):

Omit the Part.

(5) Part 6, Division 2 (**Purchase of lands**) [sections 50A–64], Division 3 (**Refusal to deliver possession of lands**) [section 65], Division 4 (**Mortgages and charges**) [sections 66–75], Division 5 (**Leases**) [sections 76–79]:

Omit the Divisions.

(6) Section 85:

Omit the section, insert instead:

Claims for compensation

85. (1) A person who wishes to claim compensation under this Division must lodge a claim for compensation with the Constructing Authority.

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

(2) The Constructing Authority may accept the claim for compensation (in whole or in part) or reject the claim.

(3) A claim for compensation is taken to have been rejected if the Constructing Authority has not dealt with the claim within 60 days after receiving the claim or within 60 days after completion of the public work concerned (whichever is the later). However, the Constructing Authority is not precluded from accepting the claim after that time.

(7) Section 96 (**As to damages**):

Omit “taken,”.

(8) Section 97 (**Houses not to be damaged without notice**):

(a) Omit “take,”.

(b) At the end of the section, insert:

(2) This section does not apply to anything done after land has been acquired by the Constructing Authority.

(9) Section 98 (**Sale or lease of lands not wanted for any work**):

Omit “taken or” and “so taken or”.

(10) Part 7 [sections 101–131] (**Compensation**):

Omit the Part.

(11) Section 132 (**Powers of purchasing lands**):

Omit “taking,” “, or purchasing”, “taken,” and “, or purchased”.

(12) Part 8, Division 2 [sections 134–137] (**Conveyances**), Division 3 [sections 138–140] (**Compulsory purchases**):

Omit the Divisions.

(13) Section 141 (**Constructing Authority entitled to minerals**):

At the end of the section, insert:

(10) In this section, a reference to a notification of the taking of land includes a reference to an acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991.

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

(14) Section 142 (**Working of mines on or near authorised work**):

From section 142 (4), omit “Division 2 of Part 7 hereof”, insert instead “the Land Acquisition (Just Terms Compensation) Act 1991”.

(15) Fifth, Sixth, Seventh and Eighth Schedules:

Omit the Schedules.

STATE ROADS ACT 1986 No. 85

(1) Section 52:

Omit the section, insert instead:

Acquisition of Land

52. (1) The Authority may acquire land for the purposes of this Act by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(2) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply in respect of works constructed under this Act.

(3) If land is compulsorily acquired, the acquisition notice may:

(a) declare the whole or a part of the land to be a public road or a public reserve; and

(b) if the Minister so recommends—place the land under the control of a council.

(2) Section 57 (**Functions of Authority in relation to certain land**):

From section 57 (5), omit “resumption”, insert instead “compulsory acquisition”.

(3) Section 58 (**General functions relating to land**):

(a) From section 58 (1), omit “recommend its resumption”, insert instead “compulsorily acquire it”.

(b) From section 58 (7), omit “recommend the resumption of land”, insert instead “compulsorily acquire the land”.

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued*

(4) Section 59 (**Re-establishment of resumed building**):

Omit “by resumption” wherever occurring, insert instead “by compulsory process”.

VALUATION OF LAND ACT 1916 No. 2

Section 68:

Omit the section, insert instead:

Valuation for compulsory acquisition

68. (1) The Valuer-General is to determine, in accordance with the Land Acquisition (Just Terms Compensation) Act 1991, the amount of compensation to be offered to an owner of land for a compulsory acquisition of the land under that Act.

(2) Any such determination does not affect, and is not affected by, any valuation of land made by the Valuer-General under this or any other Act.

WESTERN LANDS ACT 1901 No. 70

(1) Section 43B (**Power to withdraw for public purposes**):

(a) From section 43B (1), omit “, without compensation except for existing improvements,”.

(b) At the end of the section, insert:

(4) Compensation is payable for land withdrawn from a lease under this section, subject to the conditions attaching to the lease or the provisions applying to the lease.

(5) The provisions of the Land Acquisition (Just Terms Compensation) Act 1991 relating to the payment of compensation for land acquired by compulsory process apply, with such modifications as may be prescribed, to the payment of compensation under this section.

(2) Section 44 (**Power to withdraw for settlement**):

(a) Omit the second and third paragraphs from section 44 (1), insert instead:

On publication in the Gazette of such withdrawal or acquisition, the land is taken to be Crown lands.

*Land Acquisition (Just Terms Compensation) 1991***SCHEDULE 1—AMENDMENT OF OTHER ACTS—*continued***

(b) After section 44 (1), insert:

(1A) Compensation is payable for land withdrawn or acquired under this section, subject to (in the case of a lease) the conditions attaching to the lease or the provisions applying to the lease.

(1B) The provisions of the Land Acquisition (Just Terms Compensation) Act 1991 relating to the payment of compensation for land acquired by compulsory process apply, with such modifications as may be prescribed, to the payment of compensation under this section.

(3) Section 44A (**Enhancement due to public works**):

Omit the section.

SCHEDULE 2—REPEAL OF ACTS

(Sec. 76)

Public Works (Amendment) Act 1940 No. 1

Public Works (Amendment) Act 1975 No. 103

Public Works and Other Acts (Interest Rates) Amendment Act 1976
No. 66

Public Works (Declaratory) Act 1952 No. 33

Public Works (Interest) Amendment Act 1986 No. 136

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 77)

PART 1—SAVINGS AND TRANSITIONAL REGULATIONS**Savings and transitional regulations**

1. (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

Land Acquisition (Just Terms Compensation) 1991

**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued***

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

**PART 2—GENERAL PROVISIONS CONSEQUENTIAL
ON ENACTMENT OF THIS ACT**

Pending acquisitions

2. (1) Unless this Act otherwise expressly provides, this Act does not apply to any acquisition by an authority of the State if the acquisition was effected before the commencement of this Act.

(2) The Public Works Act 1912 and other Acts amended by this Act continue to apply to any such acquisition as if this Act had not been enacted.

(3) However, if the acquisition is notified under the Public Works Act 1912 within 30 days after the commencement of this Act, the notification is taken to be an acquisition notice under this Act and the provisions of this Act relating to any such notice then apply (to the exclusion of the Public Works Act 1912 or any other Act).

(4) In this clause, a reference to the commencement of this Act is (if different provisions of this Act commence on different days) a reference to the commencement of section 19.

Unclaimed compensation under Public Works Act

3. (1) Compensation and any interest on compensation that is or becomes payable under the Public Works Act 1912 by an authority of the State and that is unpaid may be paid by the authority into the trust account kept by the authority under section 51 of this Act.

Land Acquisition (Just Terms Compensation) 1991

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued*

(2) That section then applies to any such amount paid into a trust account but does not affect any entitlement that a person has to be paid compensation or interest under the Public Works Act 1912.

[Minister's second reading speech made in—
Legislative Assembly on 2 July 1991
Legislative Council on 21 August 1991]