

No. XVI.

An Act to provide for the Acquisition by Government of Lands for Public Purposes. LANDS FOR PUBLIC PURPOSES ACQUISITION. [12th July, 1880.]

WHEREAS it is expedient to make provision for the acquisition Preamble. on behalf of the Crown of Lands required for the construction of works for Water Supply and Sewerage throughout the Colony as well as for sites for Public Schools light-houses free libraries court-houses gaols hospitals wharfs ferries bridges fortifications and other purposes of defence and for buildings or works of any kind whatsoever to be erected or constructed for public purposes and to provide compensation for lands so acquired Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

Preliminary.

1. This Act may be cited for all purposes as the "Lands for Short title. Public Purposes Acquisition Act."

2. The Act eighteenth Victoria number ten intituled "*An Act to Repeal of 18 Vic.
authorize the resumption or occupation and use of any lands required for
No. 10.
purposes of Military Defence and to make compensation to the owners
thereof*" is hereby repealed but without prejudice to any resumption or occupation of land authorized thereby And any proceeding or matter commenced or instituted under the authority of the said Act before the passing of this Act shall be continued be completed and be accompanied by the same consequences rights and remedies as if this Act had not been passed.

3. So much of the third section of the "Crown Lands Alienation Act of 1861" as enacts that Crown lands may lawfully be dedicated to any public purpose under and subject to the provisions of the said Act but not otherwise and so much of any other Act as is inconsistent with the provisions hereof shall be and the same are hereby repealed to the extent of such inconsistency but not further or otherwise. Partial repeal of
certain Acts.

4. In the construction and for the purposes of this Act the Interpretation of
terms. following words and expressions in inverted commas shall unless there be something in the subject or context repugnant thereto or

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inconsistent therewith bear the meanings and include the persons or things hereby respectively set against such words and expressions that is to say—

“*Gazette*”—The *Government Gazette*.

“Governor”—The Governor with the advice of the Executive Council.

“Lands”—Any real estate messuages tenements or hereditaments of whatsoever tenure.

“Lease” includes an agreement for a lease.

“Crown Lands”—All lands vested in Her Majesty whether dedicated to any public purpose or not or which have not been granted or lawfully contracted to be granted in fee simple.

“Minister”—The Minister for Public Works and his successors in that office with relation to lands appropriated or resumed for any other purpose than the establishment of Public Schools and Schools referred to in section seven class (6) hereof as to which the word “Minister” shall for the purposes of this Act and the Schedules hereto mean the “Minister of Public Instruction” for the time being and his successors in office as well as any other responsible Minister of the Crown charged with the administration of the Department of Public Instruction but without implying incorporation as hereinafter provided in the case of the Minister for Public Works.

Provisions as to
vesting of lands
under 43 Vic. No. 9
and saving of
Government
Railways Acts.

5. All lands declared to be vested in the Minister for Lands under the Act forty-third Victoria number nine shall vest in him and his successors in office for the estate in the said Act limited and defined as a Corporation Sole. And nothing in this Act contained shall abridge or otherwise affect the provisions of the Acts twenty-second Victoria number nineteen and thirty-seventh Victoria number eighteen in respect of lands purchased or to be purchased or taken for railway purposes under either of the said Acts.

The acquisition and appropriation of Lands for Public Purposes.

When lands can be
taken for public
purposes.

6. Whenever Parliament shall have appropriated a sum or sums of money out of the Consolidated Revenue Fund for or towards the construction establishment or carrying out of any of the public works or undertakings in the next following section specified or whenever the Governor shall have sanctioned the carrying out of any such work or undertaking for or towards the completion of which public funds are lawfully available or shall have sanctioned the acquisition of any lands for school sites then and in any such case it shall be lawful for the Governor by notification to be published in the *Gazette* and in one or more newspapers published or circulated in the Police District wherein is situated the land the subject of such notification to declare that the land described in such notification has been appropriated (if Crown land) or resumed (if private property) for the public purpose therein expressed. And an abstract of the land so appropriated or resumed together with the purpose for which the same is required shall in every case be laid before Parliament if in session at the date of such notification within seven days after its publication in the *Gazette* and if not then within fourteen days after the commencement of the next ensuing session.

7. The following shall for the purposes of this Act be deemed to be Public Works and undertakings that is to say—

(1.) Works for and in connection with the supply of water to or for the sewerage of any city town or district.

(2.)

Public works &c.
specified.

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- (2.) Fortifications and all other works of defence including Depôts Stations Military Roads and any other works in connection with such Fortifications
- (3.) Buildings for the occupation of either or both of the Houses of Parliament or for Public Offices
- (4.) Hospitals—Lunatic Asylums—Court-houses—Gaols—Watch-houses—Lock-ups—Police Barracks or Quarters
- (5.) Post or Telegraph Offices—Mail Stations—Light-houses—Observatories—Pilot Stations—Quarantine Stations or Grounds and Customs Stations
- (6.) Public Schools or any other Schools authorized to be established wholly or in part at the public cost by any Act in force for the time being
- (7.) Public Libraries—Mechanics Institutes or Schools of Art
- (8.) Public Wharves—Ferries—Piers—Jetties and Bridges
- (9.) Public Parks or Grounds for Public Recreation or Places for Bathing and for the reclamation of land for or in connection therewith
- (10.) Public Cemeteries
- (11.) Public Wells or Works for the conservation of water
- (12.) The protection and preservation of any Cave or place of scientific interest
- (13.) The establishment of Public Abattoirs
- (14.) Breakwaters—Leading Marks or Beacons for purposes of Navigation—Docks—Slips—the protection of River Banks—the excavation of new Channels—Landing-places for Silt and any other works for the improvement of Harbours or Rivers
- (15.) Quarries or works for procuring Stone Gravel Earth or any other material required for the construction of or any purpose connected with any such public work or undertaking as aforesaid

And for the purposes of this section any such named work or undertaking shall be taken to include any extension of or approach to or subsidiary work in connection with any such named work or undertaking.

8. Upon the publication of the notification in the *Gazette* Vesting &c. of land upon publication of notification in Gazette. declaring that the lands therein described have been appropriated or resumed under this Act such lands shall forthwith be vested in the

Minister and his successors on behalf of Her Majesty for the purposes of this Act for an estate of inheritance in fee simple in possession freed and discharged from all trusts obligations estates interests contracts charges rates rights-of-way or other easements whatsoever and to the intent that the legal estate therein together with all powers incident thereto or conferred by this Act shall be vested in the Minister as a trustee with absolute powers of selling dealing with and disposing of such lands and of giving effectual discharges in respect thereof to any purchaser. And for the purpose of facilitating the acquisition and disposal of land under this Act the Minister for Public Works for the time being is hereby declared to be a Corporation sole under the name of "the Minister for Public Works" and by that name to have perpetual succession and an official seal to sue and be sued plead and be impleaded answer and be answered unto defend and be defended and take all legal proceedings in all Courts and places whatsoever with power to purchase take and hold lands to him and his successors for the purposes of this Act and also to sell and dispose of any superfluous lands if necessary.

9. Where the land appropriated is Crown land at the date of Effect of publication upon Crown lands. such publication or is vested in any Corporation or person on behalf of

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of Her Majesty or for public purposes by virtue of any statute or is within the limits with reference to centres of population prescribed by the Act next hereinafter cited the effect of such publication shall be to withdraw the said land (to the extent taken) from any lease or license or promise thereof and to cancel to the like extent any dedication or reservation of the said land made under the authority of the "Crown Lands Alienation Act of 1861" or any Act or Acts amending the same or to divest the estate of such Corporation or person and to vest the said land to the extent aforesaid in the Minister for the purposes mentioned and for the estate limited in the last preceding section.

Compensation for private lands taken under this Act.

10. Where the land described in any such notification consists wholly or partly of land alienated by or not the property of the Crown or is not Crown land as defined by this Act the owners thereof or the persons who but for the provisions hereinbefore contained would have been such owners shall be entitled to receive such sum of money by way of compensation for the land of which they have been deprived under this Act as shall be agreed upon or otherwise ascertained under the provisions hereinafter contained. Provided however that in the case of land conditionally or otherwise purchased from the Crown within a period of five years from the date of the notification of the resumption thereof under this Act no such compensation shall exceed per acre or portion thereof the amount or proportion prescribed by the Act thirty-seventh Victoria number eighteen but in every such case the provisions of the said Act shall subject to the provisions of this Act apply to any land so resumed under this Act.

Conversion of estate of proprietor of resumed land into a claim.

11. The estate and interest of every person entitled to lands resumed under this Act or any portion thereof and whether to the legal or the equitable estate therein shall by virtue of this Act be deemed to have been as fully and effectually conveyed to the Minister as if the same had been conveyed by the persons legally or equitably entitled thereto by means of the most perfect assurances in the law. And every such estate and interest shall upon the publication of such notification as aforesaid be taken to have been converted into a claim for compensation in pursuance of the provisions hereinafter contained. And every person shall upon asserting his claim as hereinafter provided and making out his title in respect of any portion of the said resumed lands be entitled to compensation on account of such resumption in manner hereinafter provided.

Notice of claim for compensation.

12. Every person claiming compensation in respect of any land so resumed or work or other matter done under the authority of this Act shall within ninety days from the publication of such notification or at any time afterwards within such time as a Judge of the Supreme Court shall upon the application and at the cost of the claimant appoint in that behalf serve a notice in writing upon the Minister and a like notice upon the Crown Solicitor which notice shall set forth the nature of the estate or interest of the claimant in such land together with an abstract of his title and if he claims in respect of damage the nature of the damage which he has sustained or will sustain by reason of such resumption or work or matter as aforesaid and such notice may be in the form in the First Schedule hereto but with any modifications required by the nature of the claim.

Claim and report thereon.

13. Within sixty days after the receipt of every such notice of claim by the Crown Solicitor he shall forward the same together with his report thereon to the Minister who shall thereupon (unless no *prima facie* case for compensation shall have been disclosed) cause a valuation of the land or of the estate or interest of the claimant therein to be made in accordance with the provisions of this Act and shall inform the claimant as soon as practicable of the amount of such valuation by notice in the form of the Second Schedule hereto.

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14. If within ninety days after the service of notice of claim the claimant and the Minister shall not agree as to the amount of compensation the claimant shall be at liberty to institute proceedings in the Supreme Court in the form of an action for compensation against the Minister as nominal defendant. And any such action may be tried before a Judge of the said Court or in any Circuit Court and a special jury of four persons. Provided always that upon application either of the Minister or of the claimant a special jury of twelve may be summoned for the trial of such action. Provided also that with the consent in writing of the Minister and the claimant any such action may be so tried at any time [to be mentioned in such consent] before the expiration of ninety days from service of the notice of claim for compensation but not within fourteen days from service of the notice of valuation on such claimant.

15. The issue to be tried in any such action shall be whether the claimant is entitled to a larger sum by way of compensation than the amount of the valuation so made by the Minister and notified to the claimant as aforesaid and if so to what sum. And if upon the trial of the said action the verdict shall be for a greater sum than the amount of the said valuation the costs of the action shall be borne by the Minister but if the verdict shall be for a sum equal to or less than such valuation then the costs shall be borne by the claimant. And the power to direct a reference to arbitration shall not be exercised by the Judge before whom any such action shall be tried.

16. All moneys payable under this Act by way of compensation to any claimant whether under the verdict of a jury or otherwise shall be paid together with interest at the rate of six per cent. per annum from the time of the publication in the *Gazette* as aforesaid and costs (if any) out of the Consolidated Revenue Fund by warrant of the Governor addressed to the Colonial Treasurer within one month after the determination of such compensation to the person lawfully entitled thereto or to his agent duly authorized in that behalf in writing but the claimant shall be bound to make out his title to the estate or interest claimed by him in all cases where the claim is in respect of the deprivation of some estate or interest in land.

17. A District Court shall notwithstanding anything contained in the "District Courts Act of 1858" have jurisdiction to try any such action of compensation at the District Court holden within the district wherein any land resumed under this Act (or the greater portion of such land) is situated in any case where the whole amount of the claim in respect to such land served in pursuance of the twelfth section of this Act does not exceed two hundred pounds or if exceeding that amount in any case where the Minister and the claimant by a memorandum signed by them or by such claimant's attorney and the Crown Solicitor agree thereto. For the purposes of this section the provisions of the said District Courts Act and of any Act amending the same together with all rules made or to be made thereunder shall be deemed to apply to all proceedings taken in any District Court hereunder.

18. In estimating or assessing the compensation to be paid under this Act regard shall be had by the valuators and by the jury (on any issue) not only to the value of the land taken by the Minister and to the provisions of the tenth section of this Act where the same shall be applicable but also to the damage (if any) to be sustained by the claimant by reason of the severing of the lands taken from other lands or other injuries suffered by him by reason of the exercise of the powers expressed or incorporated in this Act and they shall assess the same according to what they shall find to have been the value of such lands estate or interest at the time of the resumption thereof or the extent of the damage or injury sustained. Provided that in the case of

Compensation by
action in Supreme
Court.

Issue in action of
compensation verdict
and costs.

Where claim may be
prosecuted in a
District Court.

Compensation how
to be estimated.

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of land under the surface taken for the purpose of constructing a subterranean tunnel for water supply or sewerage or railway transit no compensation shall be allowed or awarded unless the surface of the overlying soil be disturbed or the support to such surface be destroyed or injuriously affected by the construction of such tunnel or unless any mines or underground workings in or adjacent to such land be thereby rendered unworkable or be so affected as aforesaid.

General power of entry.

19. Subject to the provisions of this Act it shall be lawful for the Minister and for any officer of his department and for all persons employed in the carrying out of any authorized works and for any persons authorized by the Minister to enter upon the lands of any person whomsoever which the Minister may require to purchase or take and to take possession and appropriate the same for the purposes of this Act or of the execution of any such authorized works Provided always that entry shall not be necessary in any case to perfect the title of the Minister to any lands acquired under this Act.

Power to purchase lands by agreement

20. Notwithstanding anything hereinbefore contained it shall be lawful for the Minister if he think fit to agree with the owners of any lands the acquisition of which is authorized by this Act and with all parties having any estate or interest in such lands or by this Act enabled to sell and convey the same for the absolute purchase for a consideration in money of any such lands or such parts thereof as shall be thought proper and of all estates and interests in such lands of what kind soever.

Parties under disability enabled to sell and convey and exercise other powers.

21. It shall be lawful for all parties being seized possessed of or entitled to any such lands or any estate or interest therein to sell and convey or release the same to the Minister and to enter into all necessary agreements for that purpose and particularly it shall be lawful for all or any of the following parties so seized possessed or entitled as aforesaid so to sell convey or release that is to say all corporations tenants in tail or for life married women seized in their own right or entitled to dower guardians committees of lunatics and idiots trustees or feoffees in trust for charitable or other purposes executors and administrators and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower or to any lease for life or for lives and years or for years or any less interest and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties other than married women entitled to dower or lessees for life or for lives and years or for years or for any less interest not only on behalf of themselves and their respective heirs executors administrators and successors but also for and on behalf of every person entitled in reversion remainder or expectancy after them or in defeasance of the estates of such parties and as to such married women whether they be of full age or not as if they were sole and of full age and as to such guardians on behalf of their wards and as to such committees on behalf of the lunatics and idiots of whom they are the committees respectively and that to the same extent as such wives wards lunatics and idiots respectively could have exercised the same power under the authority of this Act if they had respectively been under no disability and as to such trustees executors or administrators on behalf of their *cestuique* trusts whether infants issue unborn lunatics *femes covert* or other persons and that to the same extent as such *cestuique* trusts respectively could have exercised the same powers under the authority of this Act if they had respectively been under no disability and the power hereinafter given to release lands from any rent-charge or incumbrance and to agree for the apportionment of any such rent-charge or incumbrance shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the Minister.

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22. In case any of the lands appropriated or resumed under the provisions of this Act shall not be required for the purposes thereof it shall be lawful for the Governor to cause such lands to be offered for sale by public auction and to convey the same to the purchasers thereof in such manner and at such times and subject to such conditions as he may think fit and the proceeds of all such sales shall be paid by the purchasers to the Colonial Treasurer and be by him carried to the credit of the Consolidated Revenue Fund.

23. The several sections of the Government Railways Act twenty-second Victoria number nineteen hereinafter specified together with the respective powers authorities duties liabilities obligations and other the provisions therein contained are hereby declared to be incorporated with and embodied in this Act to the intent that the same may be applied as fully and effectually to the lands taken under the authority of this Act as if the said sections had been specifically enacted herein Provided that wheresoever in any section so incorporated the word "Commissioner" occurs there shall for the purposes of this Act be substituted in lieu of such word the expression "Minister for Public Works" or "Minister of Public Instruction" (as the case may require) And whenever the word "Railway" or words implying works connected with a railway occur there shall be substituted such words respectively as denote the nature of the public work undertaking or purpose in respect of which the land in question has been appropriated or resumed The following are the sections so declared to be incorporated with this Act—

- (1.) As to the deposit of compensation money in certain cases with the Master in Equity and the application and investment thereof As to payment of such money in certain cases to trustees or to the parties themselves and the exoneration of the Minister in respect thereof after payment Sections forty-seven to fifty-two both inclusive
- (2.) As to the deposit and application of compensation money on refusal of the owner to accept the same or on his failing to make out a satisfactory title and as to presumption of ownership Sections fifty-three to fifty-six both inclusive
- (3.) As to the procedure by the Minister in case the owner or occupier of any lands resumed under this Act shall refuse to give up possession thereof or hinder the Minister from entering upon or taking possession of the same Section sixty-one
- (4.) As to the purchase or redemption of the interests of mortgagees and the deposit of principal and interest due on mortgages with the Master in Equity the procedure to be observed when the mortgaged lands are of less value than the mortgage debt and where part only of lands in mortgage is taken Sections sixty-five to seventy both inclusive
- (5.) As to the release of lands from rent charges and other incumbrances and procedure thereon Sections seventy-one to seventy-four both inclusive
- (6.) As to the apportionment of rent where lands taken are under lease and as to compensation to tenants Sections seventy-five to seventy-eight both inclusive.
- (7.) As to the entry upon or temporary occupation of lands the crossing of roads and other highways the making of bridges and other works of accommodation and the provisions consequent thereon Section ten and sections eighty-four to ninety-seven both inclusive

Provided that compensation shall in all respects be ascertained in accordance with this Act.

24. Whenever under the sixth section of this Act land shall be resumed for any public purpose authorized by this Act a copy of the *Gazette* Provisions as to Registration and Transfer in certain cases.

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Gazette notification declaring such land to be so resumed certified under the hand of the Minister shall in every case be lodged with the Registrar General and be registered by him in the General Register of Deeds unless the land so resumed be wholly or in part comprised in a grant or certificate of title under the Real Property Acts in which case upon production of such notification so certified as aforesaid it shall be the duty of the Registrar General to deal with and give effect to such notification as if the same were a memorandum of transfer duly executed under the said Acts. A conveyance upon sale of any land authorized by the twenty-second section of this Act to be offered for sale by public auction may if the same shall be comprised in any memorandum of transfer under the said Acts be made by a like memorandum of transfer to be executed by the Minister as transferee and the purchaser as transferor which shall have the like effect for all purposes of the said Acts as a memorandum of transfer thereunder. It shall be lawful for the Governor to make regulations prescribing the mode in which the provisions of this section shall be carried out by all persons concerned therewith.

SCHEDULES.

FIRST SCHEDULE.

(*) *Notice of claim and abstract.*

To the Minister for Lands (or Crown Solicitor).

In pursuance of the "Lands for Public Purposes Acquisition Act" and of the enactments therewith incorporated I (or we) hereby give you notice that I (or we) claim compensation in respect of the land hereunder described which has been resumed under the said Act. The amount of such claim and other the particulars required by the said Act are stated in the subjoined abstract [If the claim is not for land resumed this form may be modified in accordance with the nature of the claim].

Abstract.

Names and descriptions of parties claiming and nature of their interests whether tenants for life in tail or otherwise.	Situation and description of property.	Quit rents payable if leasehold name of landlord term of lease and rent reserved	Names of occupiers distinguishing whether tenants-at-will or under lease rent reserved terms &c.	Particulars of claim specifying separately the amount claimed for value of property and for compensation.	Dates and other short particulars of documents of title.	Names of persons having the custody of documents and place or places where the same may be inspected and name of claimants' solicitor or agent.

(Signature)
(Address)
(Date)

SECOND SCHEDULE.

Notice of Valuation.

To A.B. claimant in respect of the land hereunder described resumed under the "Lands for Public Purposes Acquisition Act."

TAKE notice that the land hereunder described being that in respect of the resumption whereof under the authority of the aforesaid Act your claim for compensation has been lodged has been valued at the sum of £

T. H.

(*) Minister for Public Works.

Description of land or damage in respect of which claim has been made.

ALL that piece or parcel of land &c. &c. &c.

(*) If the land is taken for School purposes. See Section 4.