

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

[1991-22]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Crown Land Legislation Amendment Act 2017 No 17](#) (not commenced)
  - [Local Government Amendment \(Regional Joint Organisations\) Act 2017 No 65](#) (not commenced)
- **See also**
  - [Local Government Amendment \(Parliamentary Inquiry Recommendations\) Bill 2016](#) [Non-government Bill: Rev the Hon F J Nile, MLC]

### Authorisation

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# 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

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

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

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

### 3 Objects of Act

(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.

#### 4 Definitions

(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 council or a county council within the meaning of the [Local Government Act 1993](#), 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.

**disadvantage resulting from relocation** is defined in section 60.

**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 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).

**special value** of land is defined in section 57.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (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 and Procurement 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*.
- (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.

#### **4A Notes in the text**

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

#### **5 Acquisition of land to which Act applies**

- (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.

#### **6 Acquisition of land to which Act does not apply**

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

- (a) (Repealed)
- (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, or

- (d) the acquisition consists of the revocation of exclusive rights of burial that have been granted under an Act in relation to a public cemetery.

## **7 Act not to empower authority to acquire land**

- (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) The power of an authority of the State to acquire land under another Act is affected by sections 7A and 7B of this Act. Any such acquisition to which section 7A or 7B applies remains, for all purposes, an acquisition of land under and subject to that other Act.

### **7A Authority empowered to acquire native title**

- (1) An authority of the State that is authorised by law to acquire land by compulsory process in accordance with 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.
- (2) For the purposes of any such acquisition of native title rights and interests, the authority of the State is, despite any provision of this or any other Act to the contrary, authorised to comply with any relevant procedure under the Commonwealth Native Title Act for a valid acquisition of those rights and interests.

#### **Note—**

Relevant procedures under the NTA include the following different procedures:

- (a) the right to negotiate procedure under Subdivision P of Division 3 of Part 2,
- (b) the procedure under section 24MD (6B),
- (c) the procedure under an indigenous land use agreement.

Section 26 NTA makes provision with respect to the application of the right to negotiate procedure—see section 26 (1) (c) (iii) (A) NTA with respect to compulsory acquisitions that confer rights on a Government party. Section 24MD NTA sets out a number of requirements for extinguishment of native title by compulsory acquisition that passes the freehold test (including the need to acquire the whole or relevant part of all non-native title rights and interests—see subsection (2) (b)).

### **7B Authority empowered to acquire its own land**

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.

## **8 Act to prevail over other Acts relating to acquisition of land**

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.

## **9 Act binds Crown**

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.

## **10 Statement of guaranteed acquisition at market value**

- (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.

## **10A Minimum period of negotiation for acquisition by agreement before initiation of compulsory acquisition process**

- (1) This section applies to land that is affected by a proposal for acquisition by an authority of the State, other than a proposal to acquire:
  - (a) Crown land, or
  - (b) an easement, or right to use land, under the surface for the construction or maintenance of works, or
  - (c) a stratum under the surface for the construction of a tunnel.
- (2) The authority of the State is to make a genuine attempt to acquire the land by agreement for at least 6 months before giving a proposed acquisition notice.
- (3) The owner of the land and the authority of the State may agree to a shorter or longer period of negotiation for the acquisition of the land by agreement.
- (4) The Minister responsible for the authority of the State may approve a shorter period of negotiation, but only if the Minister is satisfied that the urgency of the matter or other circumstances of the case make it impracticable to have any longer period of negotiation. Any such approval requires the concurrence of the Minister administering this Act (being concurrence given for the particular approval or given generally for an

approval of that kind).

- (5) This section does not prevent a continuation of negotiation after the giving of a proposed acquisition notice.
- (6) The authority of the State is not required to comply with this section if:
  - (a) the owner of the land notifies the authority that the owner is not prepared to negotiate with the authority for the acquisition of the land by agreement, or
  - (b) the owner of the land cannot be located after the making of reasonable inquiries.
- (7) Nothing in 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**

#### **11 Notice of intention to acquire land by compulsory process**

- (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.

#### **12 Owners to be given notice**

- (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.

- (5) If the proposed acquisition notice relates to land that is the subject of a registered native title claim under the Commonwealth Native Title Act, the authority of the State must give a copy of the notice to the registered native title claimant under that Act.

**Note—**

Under the NTA, the registered native title claimant is the person shown in the Register of Native Title Claims as the applicant for the claim.

### **13 Minimum period of notice**

- (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.
- (3) The approval of a shorter period of notice under subsection (2) (b) requires the concurrence of the Minister administering this Act (being a concurrence given for the particular approval or given generally for an approval of that kind).

### **14 Compulsory acquisition to be completed as soon as practicable**

- (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.

### **15 Particulars to be included in proposed acquisition notice**

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.

### **16 Withdrawal or amendment of proposed acquisition notice**

- (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.

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

- (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.

### **18 Valuer-General to be notified of proposed acquisition notice**

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**

### **19 Compulsory acquisition by notice in Gazette**

- (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:
  - (a) in at least one newspaper circulating in the district in which the land is situated (whether published in print or on a website), or
  - (b) on at least one website that, in the opinion of the authority, is appropriate to cause the notice to come to the attention of persons 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.

### **20 Effect of acquisition notice**

- (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**

### **21 Definition of “land designated for acquisition for a public purpose”**

- (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 (1) (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 (1) (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.

## **22 Owners of land to whom Division applies**

- (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 Act 2001* of the Commonwealth), or
  - (c) a subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of such a public company.

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

- (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.

## **24 Hardship**

- (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.

## **25 Method of acquisition under this Division**

- (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.

## **26 Compensation for acquisition under this Division**

The special value of land, any loss attributable to severance or disturbance and disadvantage resulting from relocation (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.

## **27 Authority of the State may lift designation of land**

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.

## **27A Review of decisions on hardship applications by independent person**

- (1) An owner of land who has given an authority of the State a notice under this Division requiring the authority to acquire the land may apply to the Secretary of the Department of Finance, Services and Innovation for a review of a decision of the authority not to acquire the land because:
  - (a) the land is not designated by the operation of this Division for acquisition by the authority for a public purpose, or
  - (b) the owner will not suffer hardship if there is any delay in the acquisition of the land, or
  - (c) the authority is not otherwise required under this Division to acquire the land.
- (2) An application for the review of any such decision is to be made within 28 days after the owner of the land is notified of the decision by the authority of the State.
- (3) The Secretary is to refer the application to a reviewer for determination. The reviewer is to be a suitably qualified person appointed by the Minister who is not associated with the authority of the State or the applicant.
- (4) The reviewer:
  - (a) if satisfied that this Division requires the authority to acquire the land—is to quash the decision and decide the matter in accordance with this Division, or

(b) if not so satisfied—is to confirm the decision.

The reviewer is to endeavour to determine the application within 28 days after the application is referred to the reviewer.

- (5) The decision of the reviewer is final and is required to be given effect to by the authority of the State.
- (6) If the authority of the State fails to acquire land under this Division within 90 days after the owner of the land gives a notice to the authority under this Division to acquire the land, the authority is taken, for the purposes only of an application for review under this section, to have made a decision not to acquire the land.
- (7) The regulations may make provision for and with respect to the making of applications under this section, the appointment of reviewers and the determination of those applications.

## **28 (Repealed)**

## **Division 4 Miscellaneous provisions relating to acquisition**

### **29 Acquisition of Crown land**

- (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.
- (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.

### **30 Compulsory acquisition with consent of owners**

- (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.

### 31 Rescission of acquisition notice

- (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.

- (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.

### **32 New interests in land**

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.

### **33 Validity of compulsory acquisition**

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.

### **34 Former owner's right to occupy land until compensation paid etc**

- (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.
- (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 2010* does not apply to that continued occupation.

- (3A) Despite subsection (3), rent is not payable during the relevant 3-month period by a former owner who remains in occupation of any part of a building that is the person's principal place of residence. A former owner does not include a person who only held a leasehold interest in the acquired land.
- (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.

### **35 Power of authority of the State to obtain possession of compulsorily acquired land**

- (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.

### **36 Adverse use of acquired land**

- (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**

#### **37 Right to compensation if land compulsorily acquired**

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.

#### **37A Requests for non-monetary compensation for native title**

- (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.

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

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**

#### **39 Claim for compensation**

- (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 or with the Valuer-General.
- (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.
- (5) As soon as practicable after an authority of the State or the Valuer-General receives a claim for compensation:
  - (a) the authority must give the Valuer-General a copy of the claim, or
  - (b) the Valuer-General must give the authority a copy of the claim,as the case requires.

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

- (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.

#### **41 Valuer-General's determination of amount of compensation**

- (1) The authority of the State must, within 7 days after it compulsorily acquires land, provide the Valuer-General with a list of the issues that the authority believes are relevant to the determination of the amount of compensation by the Valuer-General.
- (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.
- (3) The Valuer-General is to provide a copy of the determination of the amount of compensation (together with any report on the value of the land prepared by or for the Valuer-General) to:
  - (a) the authority of the State concerned, and
  - (b) the former owner to whom the compensation is payable.

### **Division 3 Post-acquisition procedures relating to compensation**

#### **42 Notice of compensation entitlement and offer of compensation**

- (1) An authority of the State which has compulsorily acquired land under this Act must, within 45 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 may extend the period of 45 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) The obligation of the Valuer-General under section 41 (3) to provide a copy of the determination of the amount of compensation to the former owner applies despite a failure by the authority of the State to give a compensation notice to the former owner as required by this section.

#### **43 Particulars to be included in notice of compensation entitlement and offer of compensation**

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.

#### **43A Amendment or rescission of compensation notice**

- (1) An authority of the State may, by a further notice, amend a compensation notice to correct a clerical error or obvious mistake.
- (2) An authority of the State must, by a further notice, amend a compensation notice to correct the amount of compensation offered if the Valuer-General changes his or her determination of the amount of compensation to be offered.
- (3) A further notice under this section is to be given in the same manner as the compensation notice concerned was given.
- (4) A compensation notice cannot be amended under this section after the offer of compensation in the notice has been accepted.
- (5) An amendment of a compensation notice by a further notice under this section has effect:
  - (a) from the date of the original notice (or a later date specified in the further notice) if there has been no change in the amount of compensation offered, or
  - (b) from the date of the further notice if there has been such a change.
- (6) If an amendment made to a compensation notice under this section takes effect on a day other than the day on which the original notice was received by the former owner, the notice is taken, for the purposes of sections 45 and 66, to have been received by the former owner on the day on which the amendment takes effect.
- (7) If an acquisition notice is rescinded, the compensation notice relating to the acquisition is also rescinded.

#### **44 Acceptance of offer of compensation**

- (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.

#### **45 Deemed acceptance of offer of compensation**

- (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.

#### **46 Claim for compensation by person not offered compensation**

- (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.

#### **47 Valuer-General to determine amount of compensation offered**

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

#### **48 Advance payments of compensation etc**

- (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.

#### **49 Interest on compensation**

- (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.

#### **50 Rate of interest on compensation**

- (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.

#### **51 Trust account**

- (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.
- (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*.

## **52 Payments to be a good discharge**

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.

## **53 Compensation for interest not known to acquiring authority**

- (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**

### **54 Entitlement to just compensation**

- (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.

### **55 Relevant matters to be considered in determining amount of compensation**

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) the disadvantage resulting from relocation,
- (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.

### **56 Market value**

(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.

(3) If:

- (a) the land is used for a particular purpose and there is no general market for land used for that purpose, and



(b) the owner genuinely proposes to continue after the acquisition to use other land for that purpose,

the market value of the land is taken, for the purpose of paying compensation, to be the reasonable cost to the owner of equivalent reinstatement in some other location. That cost is to be reduced by any costs for which compensation is payable for loss attributable to disturbance and by any likely improvement in the owner's financial position because of the relocation.

### **57 Special value**

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.

### **58 Loss attributable to severance**

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.

### **59 Loss attributable to disturbance**

(1) 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 of a qualified valuer reasonably incurred by those persons in connection with the compulsory acquisition of the land (but not fees calculated by reference to the value, as assessed by the valuer, 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.

(2) Subject to the regulations, a reference in this section to a **qualified valuer** is a reference to a person who:

(a) has membership of the Australian Valuers Institute (other than associate or student membership), or

(b) has membership of the Australian Property Institute (other than student or provisional membership), acquired in connection with his or her occupation as a valuer, or

(c) has membership of the Royal Institution of Chartered Surveyors as a chartered valuer, or

(d) is of a class prescribed by the regulations.

## **60 Disadvantage resulting from relocation**

(1) In this Act:

**disadvantage resulting from relocation** means non-financial disadvantage resulting from the necessity of the person entitled to compensation to relocate the person's principal place of residence as a result of the acquisition.

(2) The maximum amount of compensation in respect of the disadvantage resulting from relocation is \$75,000.

### **Note—**

Schedule 1A provides for the amendment of this section to enable the maximum amount of compensation to be increased by regulation and for the automatic indexation of the maximum amount in line with inflation.

(3) In assessing the amount of compensation in respect of the disadvantage resulting from relocation, 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 the disadvantage resulting from relocation 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 the disadvantage resulting from relocation 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.

#### **61 Special provision relating to market value assessed on potential of land**

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.

#### **62 Special provision relating to acquisition of easements or rights, tunnels etc**

- (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.

### **63 Pre-acquisition agreements on compensation**

- (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.

### **64 Compensation in form of land or works**

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.

### **65 Effect of acquisition of mortgage interest**

- (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**

### **66 Objection against amount of compensation offered**

- (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.

#### **67 Appeal against failure to entertain claim for compensation**

- (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.

#### **68 Payment of compensation arising from court proceedings**

- (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 and return of acquired land**

### **69 Compensation for withdrawal of proposed acquisition notice**

- (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.

### **70 Compensation for rescission of acquisition notice**

- (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 acquisition 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 acquisition notice.

### **71 Claims for compensation under this Part**

- (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.

**71A Land not required for acquired purpose to be first offered to former owner**

- (1) This section applies to land:
  - (a) that has been acquired by an authority of the State (being an acquisition to which this Act applied as referred to in section 5), and
  - (b) that the authority proposes to dispose of because the land is no longer required for the public purpose for which it was acquired.
- (2) The authority must, if practicable, first offer the land for sale to the former owner at the market value of the land at the time the offer is made if:
  - (a) not more than 10 years has elapsed since the acquisition, and
  - (b) the authority has not made substantial improvements to the land, and
  - (c) the land is not Crown land, and
  - (d) the land is not proposed to be disposed of to another authority of the State for a public purpose.
- (3) For the purposes of this section, land is no longer required for the public purpose for which it was acquired if:
  - (a) the land has not been used and is no longer proposed to be used for the public purpose for which it was acquired, or
  - (b) the regulations otherwise provide that the land is no longer required for the public purpose for which it was acquired.
- (4) The regulations may make provision for or with respect to offers for sale, the review of decisions of authorities and other matters arising under this section.

(5) A person dealing with an authority of the State is not concerned to inquire whether this section has been complied with, and the vesting in a person of an interest in land is not affected by any contravention of this section.

(6) In this section:

**former owner** of land means:

(a) if the land was acquired by the authority of the State from only one individual who is still alive or from only one corporation that is still in existence—that individual or corporation, or

(b) in any other case—such persons (if any) that the authority of the State considers, having regard to the interests in the land that existed immediately before the land was acquired, should be fairly entitled to the benefit of this section.

**market value** of land at any time means the amount that would be paid for the land if it is sold by a willing but not anxious seller to a willing but not anxious buyer.

## Part 5 Miscellaneous

### 72 Manner of giving or serving notices or documents

(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 displaying the notice or document in accordance with this section.

(2A) For the purposes of subsection (2), a notice or document may be displayed by:



- (a) placing it on a board or other structure in a conspicuous place on the land to which it relates, or
- (b) publishing a copy of it in a newspaper circulating in the district in which the land is situated (whether published in print or on a website), or
- (c) publishing a copy of it on a website that, in the opinion of the authority, is appropriate to cause the notice to come to the attention of persons 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*.

### **73 Proceedings for offences**

Proceedings for offences against this Act or the regulations are to be dealt with summarily by the Local Court.

### **74 Regulations**

- (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.

### **75 (Repealed)**

### **76 Repeal of Acts**

Each Act specified in Schedule 2 is repealed.

### **77 Savings, transitional and other provisions**

Schedule 3 has effect.

## **Schedule 1 (Repealed)**

### **Schedule 1A Increase and indexation of maximum amount of compensation for disadvantage resulting from relocation**

#### **1 The “maximum compensation amount”**

In this Schedule, the *maximum compensation amount* means the maximum amount of compensation in respect of the disadvantage resulting from relocation.

#### **2 Increase by regulation**

The regulations may amend section 60 to increase the maximum compensation amount. Any such regulation may exclude or modify the application of clause 3 as a consequence

of the increase in the maximum compensation amount.

### 3 Indexation for inflation

(1) The maximum compensation amount is to be adjusted for inflation as provided by this clause on 1 July 2017 and on 1 July in each subsequent year.

(2) The maximum compensation amount is to be adjusted on each 1 July by multiplying the maximum compensation amount immediately before that 1 July by

$$\frac{B}{A}$$

where:

**B** is the Consumer Price Index number for the last quarter for which such a number was published before that 1 July.

**A** is the Consumer Price Index number for the last quarter for which such a number was published before the previous 1 July.

(3) However, the maximum compensation amount is not to be adjusted if

$$\frac{B}{A}$$

is less than 1 (as a result of deflation).

(4) If the adjusted maximum compensation amount results in an amount that is not a whole number multiple of \$1, the adjusted amount is to be rounded up to the nearest whole number multiple of \$1.

(5) The Secretary of the Department of Finance, Services and Innovation is to publish notice of each adjusted maximum compensation amount under this clause on the NSW legislation website.

(6) In this clause:

**Consumer Price Index** means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

**Consumer Price Index number**, in relation to a quarter, means the number for that quarter appearing in the Consumer Price Index.

### 4 Application of Schedule

Any increase in the maximum compensation amount under this Schedule applies to an acquisition of land on or after the increase has effect.

## Schedule 2 Repeal of Acts

(Section 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**

(Section 77)

### **Part 1 Savings and transitional regulations**

#### **1 Savings and transitional regulations**

- (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*

*Land Acquisition (Just Terms Compensation) Amendment Act 2009*

any Act that amends this Act

- (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 consequent on enactment of this Act**

#### **2 Pending acquisitions**

- (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.

### **3 Unclaimed compensation under Public Works Act**

- (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*.

## **Part 3 Provisions consequent on enactment of *Land Acquisition (Just Terms Compensation) Amendment Act 2009***

### **4 Acquisitions before enactment of 2009 amending Act**

- (1) In this clause, the **2009 amending Act** means the *Land Acquisition (Just Terms Compensation) Amendment Act 2009*.
- (2) Section 7 of this Act (as substituted by the 2009 amending Act) extends to an acquisition of land by compulsory process before the commencement of the 2009 amending Act (including a proposed acquisition commenced but not completed before the commencement of the 2009 amending Act).
- (3) Subclause (2) does not affect any determination made by a court before the commencement of the 2009 amending Act in relation to a purported acquisition of land that has been the subject of proceedings before the court.
- (4) Despite anything to the contrary in this clause, any acquisition or proposed acquisition of native title rights and interests at any time after the enactment of section 7A of this Act and before the commencement of the 2009 amending Act that would not have been a valid acquisition if the 2009 amending Act had been in force at that time does not operate to extinguish or otherwise affect those native title rights and interests.

### **5 Restriction on compulsory acquisition of land by councils for re-sale**

Before approval is given to the acquisition of land by a council for the purposes of resale without the owner's approval because of an acquisition at the same time of other land vested in the council as referred to section 188 (2) (a) of the *Local Government Act 1993*, the council must provide a written explanation to the Minister administering that Act as to the purpose (not being the purpose of resale) for which the other land vested in the council is being wholly or partly compulsorily acquired.

## **Part 4 Provisions consequent on the enactment of [Land Acquisition \(Just Terms Compensation\) Amendment Act 2016](#)**

### **6 Definition**

In this Part:

**amending Act** means the [Land Acquisition \(Just Terms Compensation\) Amendment Act 2016](#).

### **7 Amendment relating to minimum period of negotiation**

Section 10A (as inserted by the amending Act) applies to any proposed acquisition by compulsory process made after the commencement of that section. Any period of negotiation that occurred before that commencement may be taken into account for the purposes of that section.

### **8 Amendment relating to hardship acquisition**

Section 27A (as inserted by the amending Act) applies to any decision made by an authority of the State after the commencement of that section.

### **9 Amendment relating to compensation on reinstatement basis**

Section 56 (3) (as inserted by the amending Act) applies to compensation for an acquisition by compulsory process made after the commencement of that subsection.

### **10 Amendment relating to restoration of acquired land**

Section 71A (as inserted by the amending Act) applies to any land acquired by compulsory process under this Act after the commencement of that section.