

LANDS ACQUISITION.

No. 13 of 1906.

An Act relating to the Acquisition by the Commonwealth of Land required for Public Purposes and for dealing with Land so acquired and for other purposes connected therewith.

[Assented to 12th October, 1906.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

PART I.—PRELIMINARY.

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| Short title. | 1. This Act may be cited as the <i>Lands Acquisition Act</i> 1906. |
| Commencement. | 2. This Act shall commence on a day to be fixed by proclamation. |
| Repeal. | 3. The <i>Property for Public Purposes Acquisition Act</i> 1901 is repealed. |
| Parts.
Cf. No. 13 1901
s. 1. | 4. This Act is divided into Parts, as follows :—
<div style="margin-left: 20px;">Part I.—Preliminary.</div> <div style="margin-left: 20px;">Part II.—Acquisition of Land.
 <div style="margin-left: 20px;">Division 1.—Modes of Acquisition.</div> <div style="margin-left: 20px;">Division 2.—Acquisition by Agreement.</div> <div style="margin-left: 20px;">Division 3.—Acquisition by Compulsory Process.</div> </div> <div style="margin-left: 20px;">Part III.—Powers in Relation to Lands.</div> <div style="margin-left: 20px;">Part IV.—Compensation.
 <div style="margin-left: 20px;">Division 1.—Right to Compensation.</div> <div style="margin-left: 20px;">Division 2.—Claims for Compensation.</div> <div style="margin-left: 20px;">Division 3.—Determination of Disputed Claims for Compensation.</div> <div style="margin-left: 20px;">Division 4.—Determination of Compensation where no Claim made.</div> <div style="margin-left: 20px;">Division 5.—Payment of Compensation.</div> </div> <div style="margin-left: 20px;">Part V.—Mortgages, Encumbrances, and Leases.
 <div style="margin-left: 20px;">Division 1.—Mortgages.</div> <div style="margin-left: 20px;">Division 2.—Encumbrances.</div> <div style="margin-left: 20px;">Division 3.—Leases.</div> </div> <div style="margin-left: 20px;">Part VI.—Miscellaneous.</div> |

5. In this Act, unless the contrary intention appears—

Definitions,
Cf. No. 13 1901
s. 2.

- “Convey” means convey, transfer, or lease ;
- “Crown Land” means any land the property of a State, whether reserved or dedicated for any public purpose or not, but does not include any estate or interest granted by the State to any person ;
- “Encumbrance” includes any rent-service, rent-charge, chief or other rent, or other charge or encumbrance upon land, other than a mortgage ;
- “Land” includes any estate or interest in land (legal or equitable), and any easement, right, power, or privilege over, in, or in connexion with land, and also includes Crown land, but does not include public parks vested in or under the control of municipal or local authorities and dedicated to or reserved for the recreation of the people, or such other lands dedicated to or reserved for the use and enjoyment of the people as have been specified by Proclamation ;
- “Lease” includes an agreement for a lease ;
- “Owner” includes, with respect to land, any person who under this Act is enabled to sell or convey the land to the Commonwealth, and means, with respect to Crown land, the State to which the land belongs ;
- “Public purpose” means any purpose in respect of which the Parliament has power to make laws, but shall not include the acquisition of territory for the Seat of Government of the Commonwealth under the Constitution ;
- “Special Act” means any Act authorizing the carrying out of any public work in connexion with any public purpose ;
- “The High Court” means the High Court of Australia or a Justice thereof ;
- “The Supreme Court” means the Supreme Court of the State in which the land, in reference to which the expression is used, is situated, or a Judge thereof.

6. Where the Governor of a State agrees with the Governor-General for the sale or lease of any Crown land to the Commonwealth, any instrument or assurance executed by the Governor for granting conveying or leasing the land to the Commonwealth accordingly shall (by force of this Act, and notwithstanding anything in the law of the State) be valid and effectual to vest the land in the Commonwealth according to the tenor thereof.

Sale or lease of
 land by Governor
 of State to
 Commonwealth.

7. Where under this Act a State may make a claim, or give any notice, or do or suffer any act, matter, or thing, or be made subject to any liability, the claim may be made or notice given, or act, matter, or thing done or suffered by, or the liability may be enforced against the Minister for Lands of the State, or such other Minister of the Crown for the State as the Governor of the State, with the advice of the Executive Council thereof, appoints.

Minister of
 State may act
 for State.
Cf. No. 13 1901
s. 48.

Persons under
disability may
sell land to
Commonwealth.
No. 13 1901
s. 4 (1).

8. Any person seised, possessed, or entitled to any land, particularly any—

- (a) corporation ;
- (b) tenant in tail or for life ;
- (c) married woman seised in her own right or entitled to dower ;
- (d) guardian ;
- (e) committee of a lunatic or idiot ;
- (f) trustee or feoffee in trust ;
- (g) executor or administrator ;
- (h) person for the time being entitled to the receipt of the rents and profits of any land in possession or subject to any estate in dower ; or
- (i) lessee for life, or for life and years, or for years, or for any less interest ;

may (by force of this Act and notwithstanding anything to the contrary in any law, deed of settlement, memorandum, or articles of association, deed, or instrument) sell and convey the land to the Commonwealth, and may enter into any agreement for that purpose.

Extent of
power to sell.
Ib. s. 4 (2).

9. The power to sell and convey land may be exercised—

- (a) by any person (other than a married woman entitled to dower, or a lessee for life, or for life and years, or for years, or for any less interest) not only on behalf of himself and his heirs, executors, administrators, and successors, but also on behalf of every person entitled in reversion, remainder, or expectancy after him, and in defeasance of the estate of every person so entitled ; and
- (b) in the case of a married woman, whether she is of full age or not, as if she were of full age and a feme sole ; and
- (c) in the case of a guardian, on behalf of his ward, and to the same extent as the ward could have done if he were not under a disability ; and
- (d) in the case of a committee of a lunatic or idiot, on behalf of the lunatic or idiot, and to the same extent as the lunatic or idiot could have done if he were not under a disability ; and
- (e) in the case of trustees, executors, or administrators, on behalf of their cestui que trusts (whether persons under a disability or not) to the same extent as the cestui que trusts could have done if they were not under a disability.

Application of
purchase money
or compensation
where parties
not entitled to
sell.

10.—(1.) Where any land is sold or conveyed to the Commonwealth by or acquired from any person who was not entitled to sell or convey the land to the Commonwealth except under this Act, the purchase money or compensation may be applied as follows :—

- (a) With the consent of all parties interested, the purchase money or compensation may be paid to a trustee subject to such trusts as are declared by a deed of trust approved by the Attorney-General : or

- (b) The purchase money or compensation may be paid to a Registrar of the High Court or the Master-in-Equity or other proper officer of the Supreme Court to be applied in accordance with any order of the Court.

(2.) The High Court or the Supreme Court may, on the application of any person interested, order any purchase money or compensation to be applied as follows :—

- (a) in the discharge of any debt or encumbrance affecting the land, or affecting other land settled therewith to the same or the like uses, trusts, and purposes ; or
- (b) in the purchase of other land, or of Government securities of the Commonwealth, or of a State, to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the land in respect of which the purchase money or compensation was paid ; or
- (c) if the purchase money or compensation has been paid in respect of any buildings acquired under the authority of this Act—in removing or replacing the buildings or substituting others in their stead ; or
- (d) in such manner as the High Court or the Supreme Court directs ; or
- (e) in payment to any person becoming absolutely entitled to the purchase money or compensation.

(3.) Provided that where the purchase money or compensation does not exceed Fifty pounds it may be paid to the persons who would for the time being have been entitled to the rents and profits of the land.

(4.) Where any infant, lunatic, or idiot is interested in or entitled to receive any purchase money or compensation his consent to any application or disposition of the purchase money or compensation may be given by a committee or guardian on his behalf or the purchase money or compensation may be paid to his committee or guardian.

11.—(1.) The High Court or the Supreme Court may, on the application of any person interested, order that any purchase money or compensation paid or deposited in respect of any land acquired under this Act shall be invested or applied in such manner as the Court considers will give to the parties interested therein, as nearly as may be, the same benefit as they would have had from the land if it had not been acquired under this Act.

Power of Court to make orders as to purchase money.

No. 13 1901
s. 25.

(2.) The costs of and incident to any application under this section, or to any investment ordered under this section, shall be in the discretion of the Court.

Ib. s. 26.

12. If any question arises respecting the title to any land in respect whereof any purchase money or compensation is payable under this Act, the person in possession of the land as being the owner thereof, or in receipt of the rents of the land as being entitled thereto, at the time of the land being acquired by the Commonwealth, shall be deemed

Person in possession to be deemed the owner.

Cf. No. 13 1901
s. 27.

to have been entitled to the land, until the contrary is shown; and unless the contrary is so shown, the person so in possession and all persons claiming under him or consistently with his possession shall be deemed entitled to the purchase money or compensation, and it shall be paid and applied accordingly.

PART II.—ACQUISITION OF LAND.

DIVISION 1.—MODES OF ACQUISITION.

Modes of
acquisition.

13. The Commonwealth may acquire any land for public purposes—

- (a) by agreement with the owner; or
- (b) by compulsory process.

DIVISION 2.—ACQUISITION BY AGREEMENT.

Acquisition by
agreement.
Cl. No. 13 1901
s. 3.

14.—(1.) The Governor-General may approve of the acquisition by the Commonwealth of any land by agreement with the owner.

(2.) The Minister may, in any case where the interest proposed to be acquired is a lease for a term not exceeding three years at a rental not exceeding Fifty pounds per annum, approve of the acquisition by the Commonwealth of the lease of the land by agreement with the owner.

(3.) The Attorney-General may thereupon, for and on behalf of the Commonwealth, execute or accept any conveyance or document, or enter into any covenant or agreement, and do any thing necessary, for the purpose of effecting the acquisition of the land.

DIVISION 3.—ACQUISITION BY COMPULSORY PROCESS.

Approval of
acquisition.
No. 13 1901
s. 6 (1).

15.—(1.) The Governor-General may direct that any land may be acquired by the Commonwealth from the owner by compulsory process.

Notification of
acquisition.
Ib. s. 6 (2).

(2.) The Governor-General may thereupon, by notification published in the *Gazette*, declare that the land has been acquired under this Act for the public purpose therein expressed.

Notification to
be laid before
Parliament.
Ib. s. 6 (3).

(3.) A copy of the notification shall be laid before both Houses of the Parliament within fourteen days after its publication in the *Gazette* if the Parliament is then sitting, and if not then within fourteen days after the next meeting of the Parliament.

Effect of
notification to
vest land in
Commonwealth.
Ib. s. 7.

16.—(1.) Upon the publication of the notification in the *Gazette*, the land described therein shall, by force of this Act—

- (a) be vested in the Commonwealth; and
- (b) be freed and discharged from all trusts, obligations, estates, interests, contracts, licences, charges, rates, and easements,

to the intent that the legal estate therein, together with all rights and powers incident thereto or conferred by this Act, shall be vested in the Commonwealth.

(2.) Where the land described in the notification is Crown land of a State, or is by virtue of any law of a State vested in any person on behalf of the Crown or for any public purpose, the notification shall also have the effect of cancelling any dedication or reservation to which the land was subject at the date of the publication of the notification.

Effect of notification in case of Crown land.
No. 13 1901 s. 8.

17. Upon the publication of the notification in the *Gazette*, the estate and interest of every person entitled to the land specified in the notification, and the title of the State to any Crown land specified in the notification, shall be taken to have been converted into a claim for compensation.

Conversion of estates and interests into claim for compensation.
Ib. s. 11 (1).

18.—(1.) Forthwith after the publication of the notification in the *Gazette*, the Minister shall cause a copy of the notification, together with a plan of the land, to be served upon the owners of the land or such of them as can with reasonable diligence be ascertained, either personally or by registered letter posted to their last known places of abode.

Notice to owner.
Cf. No. 13, 1901 s. 13 (1) (2).

(2.) If the owner cannot after diligent inquiry be found, a copy of the notification, together with a plan of the land, shall be left with the occupier of the land, or if there is no occupier, shall be affixed upon some conspicuous part of the land.

19. Where the land is Crown land of a State which is dedicated for a public park or for the recreation or amusement of the public, and in all other cases except the following :—

Parliament may declare notification to be void.
Ib. s. 12 (1).

- (a) where moneys have been appropriated out of the Consolidated Revenue Fund for or towards the purpose for which the land was acquired ; or
- (b) where the Governor-General has sanctioned the construction or carrying out of the work or undertaking in respect of which the land was acquired, and public funds are legally available for the purpose ; or
- (c) where the Minister certifies under his hand that the estimated value of the land does not exceed One hundred pounds,

either House of the Parliament may, within thirty days after a copy of the notification has been laid before it, pass a resolution that the notification shall be void and of no effect, and thereupon the notification shall be void and of no effect, and the land shall be deemed not to have been vested in the Commonwealth, and the owner of the land shall be entitled to compensation for any damage which he may have suffered by reason of the notification, or of the exercise of the powers of the Minister consequent thereupon.

20. If a copy of the notification in the *Gazette*, certified under the hand of the Attorney-General, is lodged with the Registrar-General or Registrar of Titles or other proper officer of the State or part of the Commonwealth in which the land is situated, he shall register it in the register and in the manner as nearly as may be in which dealings with land are registered, and shall deal with and give effect to the

Registration of notification.
No. 13 1901 s. 61.

notification as if it were a grant or conveyance or memorandum or instrument of transfer of the land to the Commonwealth duly executed under the laws in force in that State or part of the Commonwealth.

PART III.—POWERS IN RELATION TO LANDS.

Power to
examine lands.
No. 13 1901
s. 49 (1).

21. The Minister and all persons authorized by him may—

- (a) enter upon any land, and
- (b) make surveys, take levels, sink pits, and examine the soil, and
- (c) do any thing necessary for ascertaining the suitability of the land for any public purpose.

Power to
occupy lands
temporarily.
Ib. s. 53 (1).

22. Where any land has been purchased or taken under this Act for any public purpose, the Minister and all persons authorized by him may enter any land—

- (a) being within a distance of two hundred yards from the nearest boundary of the land so purchased or taken ; and
- (b) not being a garden, orchard, or plantation, attached or belonging to a house, or a park, planted walk, avenue, or ground ornamentally planted ; and
- (c) not being nearer to the dwelling house of the owner of the land than a distance of five hundred yards,

and may occupy the land so entered so long as may be necessary for the purposes of any works connected with the carrying out of the public purpose.

Power to take
materials,
make roads,
&c., on
adjacent lands.
Ib. s. 53 (1) (2).

23.—(1.) The Minister and all persons authorized by him may, in connexion with the carrying out of any public purpose, exercise on or in relation to any land occupied by him under this Part of this Act, all or any of the following powers :—

- (a) to take clay, stone, gravel, earth, timber, wood, or material or things required for carrying out the public purpose ;
- (b) to make cuttings or excavations ;
- (c) to deposit clay, stone, gravel, earth, timber, wood, or material ;
- (d) to manufacture goods or articles required for carrying out the public purpose ;
- (e) to erect workshops, sheds, and buildings of a temporary character ;
- (f) to make roads.

(2.) The power to take clay, stone, or earth shall not be exercised in respect of any stone or slate quarry brickfield or other like place commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same.

Rent for
temporary
occupation.
Ib. s. 55.

24.—(1.) Where the Minister or any person authorized by him enters any land and temporarily occupies it under the powers conferred by this Act, the Commonwealth shall pay to the owner or occupier of the land, as the case requires, a rent for the occupation of the land.

(2.) The amount of rent and times of payment shall be settled by agreement between the Minister and the owner or occupier, or, if they cannot agree, then, on the application of the Minister, by any Court having jurisdiction to entertain an action for compensation under this Act.

(3.) Nothing in this section shall take away the right of any person to compensation for damage sustained by reason of the exercise of any power under this Part of this Act.

25. The Minister shall, if required by the owner or occupier of the land so to do, separate any land occupied in pursuance of this Part of this Act from any adjoining land by a sufficient fence, with such gates as may be necessary for the convenient occupation of the land.

Fencing of
lands.
Cf. No. 13 1901
s. 54.

PART IV.—COMPENSATION.

DIVISION 1.—RIGHT TO COMPENSATION.

26. Where any land (other than Crown land) is acquired by compulsory process, the owner of the land shall, if deprived of the land in whole or in part, be entitled to compensation under this Act.

Right to
compensation.
Cf. *ib.* ss. 9 (1),
11 (2).

27.—(1.) Where any Crown land is acquired by compulsory process, the State shall be entitled to compensation under this Act.

Compensation
for Crown
land.

(2.) The compensation shall be estimated as if the State were the proprietor of an estate in fee simple in the land, subject to any estate or interest which any person had in the land at the time of its acquisition by the Commonwealth.

Ib. ss. 9 (2) 45.

(3.) The State shall not be entitled to compensation in respect of the loss of any rights of dominion, taxation, or revenue.

28.—(1.) In determining the compensation under this Act, regard shall be had (subject to this Act) to the following matters :—

Compensation,
how estimated.
Cf. *ib.* s. 19.

(a) The value of the land acquired ;

(b) The damage caused by the severance of the land acquired from other land of the person entitled to compensation ; and

(c) The enhancement or depreciation in value of other land adjoining the land taken or severed therefrom of the person entitled to compensation by reason of the carrying out of the public purpose for which the acquired land was acquired.

(2.) The enhancement or depreciation in value shall be set off against or added to the amount of the value and damage specified in paragraphs (a) and (b) of sub-section (1) of this section.

29.—(1.) The value of any land acquired by compulsory process shall be assessed as follows :—

Value of land,
how estimated.
Ib. s. 19.

(a) In the case of land acquired for a public purpose not authorized by a Special Act, according to the value of the land on the first day of January last preceding the date of acquisition ; and

(b) In the case of land acquired for a public purpose authorized by a Special Act, according to the value of the land on the first day of January last preceding the first day of the Parliament in which the Special Act was passed.

(2.) The value of the land shall be assessed without reference to any increase in value arising from the proposal to carry out the public purpose.

Production of
lease where
lessee claims
greater interest
than as tenant
at will.
No. 13 1901
s. 44.

30. If any person having a greater interest than as a tenant at will of any land acquired by compulsory process makes a claim for compensation in respect of any unexpired term or interest under any lease, the Attorney-General may, by demand in writing, require him to produce the lease in respect of which the claim is made, or the best evidence thereof in his power.

If the demand is not complied with within twenty-one days after service thereof on the claimant, he shall be deemed to be a tenant holding from year to year, and shall not be entitled to further compensation than as such a tenant.

Compensation
for entry on
and occupation
of land.
Ib. ss. 49 (2),
55 (a) (c).

31.—(1.) Where, by reason of the execution of any powers under Part III. of this Act, the owner or occupier of any land suffers damage he shall be entitled to compensation under this Act.

(2.) Where the Minister or any person authorized by him enters into the temporary occupation of any land, the compensation shall include—

(a) damage of a temporary as well as of a permanent character ;
and

(b) the value of all clay, stone, gravel, earth, timber, wood, materials, or things taken for carrying out the public purpose.

DIVISION 2.—CLAIMS FOR COMPENSATION.

Claim for
compensation.
Ib. s. 13 (3).

32.—(1.) Any State or person claiming to be entitled to compensation under this Act may make a claim for compensation.

(2.) A claim for compensation shall be in writing, and shall be served on the Minister, and shall set forth the prescribed particulars, and shall be in accordance with such of the prescribed forms as is applicable to the case.

(3.) A claim for compensation shall be deemed to be made when it has been served on the Minister.

Time for
making claim
for
compensation.
Ib. s. 13 (3).

33.—(1.) Except as allowed in sub-section (2) of this section, a claim for compensation shall be made within the following times :—

(a) Where the claim is for land acquired, within one hundred and twenty days after the publication of the notification of acquisition ;

(b) Where the claim is for damage suffered by reason of the exercise of any powers under Part III., within one hundred and twenty days after the completion of the acts in respect of which compensation is claimed.

(2.) The Minister, if he is satisfied that any claim for compensation is *bona fide*, may allow such further time for making it (whether the time for making it has expired or not) as he thinks just, and it may be made accordingly.

34.—(1.) Within one hundred and twenty days after a claim for compensation has been made, the Minister shall cause the claim to be examined and a report made to him as to the value of the land of the claimant and the amount of damage to which the claimant is entitled.

Procedure on claim for compensation being received.
Cf. No. 13 1301 s. 14.

(2.) After the receipt of the report, the Minister shall—

- (a) notify the claimant that he admits the claim for compensation, and that the compensation claimed will be paid to the claimant on compliance with this Act; or
- (b) offer the claimant such amount as the Minister thinks reasonable in satisfaction of the claim for compensation, and notify the claimant that the amount offered will be paid to him, on compliance with this Act, if he accepts the offer; or
- (c) notify the claimant that he disputes the claim for compensation.

(3.) The claimant shall, within sixty days after the receipt of the offer of the Minister, by notice in writing, notify the Minister whether he does or does not accept the offer.

35. If—

- (a) the Minister offers the claimant an amount in satisfaction of the claim for compensation, and the claimant does not within sixty days after the receipt of the offer accept it; or
- (b) the Minister notifies the claimant that he disputes the claim for compensation,

the claim for compensation shall be a Disputed Claim for Compensation.

When claim becomes a disputed claim for compensation.

DIVISION 3.—DETERMINATION OF DISPUTED CLAIMS FOR COMPENSATION.

36. Subject to this Act, a disputed claim for compensation may be determined as follows:—

Methods of determining disputed claims.

- (a) By agreement between the Minister and the claimant; or
- (b) By an action for compensation by the claimant against the Commonwealth; or
- (c) By a proceeding in a Federal or State Court on the application of the Minister.

37. An action for compensation may be instituted by the claimant against the Commonwealth in the High Court or in any State Court of competent jurisdiction, and, subject to the following provisions,

Action for compensation.
Cf. ib. ss. 15, 16, 17.

the action shall be heard and determined in the same manner as ordinary actions :—

- (a) The action shall be tried without a jury ;
- (b) The Court shall have no power to direct a reference to arbitration unless by consent of parties ;
- (c) If the Court is of opinion that the action might have been brought in a lower Court, costs, if awarded to the claimant, shall only be allowed on the scale applicable to costs in the lower Court, unless the Court certifies that special circumstances existed which made it proper to institute the action in the higher Court ;
- (d) The costs shall be in the discretion of the Court.

Determination
of compensation
on application
of the Minister.

38.—(1.) If within six months after a claim for compensation became a disputed claim for compensation—

- (a) it has not been determined by agreement between the Minister and the claimant ; or
- (b) it has not been referred to arbitration ; or
- (c) no process in an action for compensation by the claimant against the Commonwealth to determine the claim has been served on the Minister,

the Minister may apply to the High Court, or to a State Court in which an action for compensation might be instituted, to determine the claim.

(2.) The Court shall, after such notice to such persons as it directs, hear the application and determine the claim.

(3.) The Court may make such order as to costs as it thinks just.

(4.) The determination of the Court shall be final and conclusive and without appeal, and shall be binding on the claimant, whether he was represented before the Court on the hearing of the application or not.

DIVISION 4.—DETERMINATION OF COMPENSATION WHERE NO CLAIM MADE.

Procedure to
determine
compensation
where no claim
made.

39.—(1.) Where any land has been acquired by compulsory process, and no claim for compensation has been made within six months after the right to make the claim arose, and no application to the Minister for further time to make a claim has been granted or is pending, or if, such an application having been granted, no claim has been made within the time limited by the Minister, the Minister may apply to a Court to determine the amount of compensation payable.

(2.) The application shall be made to the High Court or to the Supreme Court if the Minister considers the compensation awarded will amount to more than Five hundred pounds, but shall be made to a County, District, or Local Court if the Minister considers the compensation awarded will not amount to more than Five hundred pounds.

(3.) A County, District, or Local Court hearing any application under this section shall be constituted or presided over by a Judge, or a Police, Stipendiary, or Special Magistrate.

(4.) The Court shall, after such notice to such persons as it directs, hear the application and determine the amount of compensation payable.

(5.) The determination of the Court shall be final and conclusive and without appeal, and shall be binding on all persons having any right to compensation in respect of the acquisition of the land, whether represented before the Court on the hearing of the application or not.

DIVISION 5.—PAYMENT OF COMPENSATION.

40. Compensation shall bear interest at the rate of three per centum per annum from the date of the acquisition of the land, or the time when the right to compensation arose, until payment thereof is made to the claimant or until the amount thereof has been deposited in the Treasury.

Interest on
compensation.
Cf. No. 13 1901
s. 20 (2).

Provided that, where the compensation awarded in an action for compensation, or determined in a judicial proceeding, is not more than the amount offered by the Minister in satisfaction of the claim for compensation, the compensation shall only bear interest to the date when the offer of the Minister is communicated to the claimant.

41. The compensation payable to a State in respect of any land acquired under this Act may, at the option of the Governor-General, be paid in any of the following modes, that is to say—

Payment of
compensation
to a State.
Cf. ib. s. 46.

(a) by payment to the State of the amount of the compensation ;
or

(b) by the Commonwealth becoming responsible to the State for its liability for principal and interest in respect of such a part of the public debt of the State as is the actuarial equivalent of a three and one-half per cent. loan of the same currency and of the amount of the compensation.

42. Any claimant or person entitled to any compensation shall, upon application to the Minister and upon making out to the satisfaction of the Attorney-General a title to the land in respect of which the compensation is payable, and upon executing such conveyances or assurances as the Attorney-General directs, be entitled to receive payment of the compensation.

Payment of
compensation
to claimant.
Ib. s. 20 (1).

43.—(1.) If at the expiration of three months after the determination of the amount of compensation—

Deposit of
compensation
in the
Treasury.
Ib. s. 23.

(a) no application has been made for payment of the compensation ; or

(b) an application has been made for payment of the compensation, but the applicant has, by reason of some default or delay on his part or by reason of failure on his part to make title, not received payment of the compensation,

the Minister may deposit the amount of compensation in the Treasury.

(2.) At the time of the depositing of the amount of compensation, the Minister shall also deposit in the Treasury a statement of the material facts relating to the matter.

Investment of
compensation
deposited in
Treasury.
Cf. No. 13 1901
24 (2).

44. The Treasurer may, if he thinks fit, and at the risk of the person entitled, invest the compensation deposited with him in the purchase of Government securities of the Commonwealth or of a State, and any interest received in respect thereof, less a fair charge to reimburse the Commonwealth for the costs of investment and management, shall be deemed to be part of the compensation.

Payment out of
compensation.
Cf. ib. s. 24.

45.—(1.) Any compensation deposited in the Treasury may be paid to any claimant—

- (a) upon the direction of the Attorney-General; or
- (b) upon an order of the High Court or the Supreme Court, and upon the certificate of the Attorney-General that the claimant has complied with this Act to his satisfaction.

(2.) No direction shall be given by the Attorney-General under this section until the claimant has produced to him evidence of title and has executed conveyances of his title or interest to the Commonwealth to the satisfaction of the Attorney-General.

(3.) No certificate under this section shall be given by the Attorney-General until the claimant has executed conveyances of his title or interest to the Commonwealth to the satisfaction of the Attorney-General.

(4.) In this section "compensation deposited in the Treasury" means compensation so deposited or the securities in which it has been invested or the proceeds of those securities together with any interest thereon which is deemed part of the compensation.

Order that
claimant is
entitled to
compensation
deposited in
Treasury.
Cf. ib. s. 25.

46. The High Court or the Supreme Court may, upon the application of any person claiming to be entitled to any compensation deposited in the Treasury and on proof of his title to its satisfaction, make an order that the person claiming is entitled to the compensation, and may make such other order in the premises as it thinks fit.

Payments
to be a good
discharge.
Ib. s. 29.

47. All payments and deposits made on behalf of the Commonwealth by virtue of this Act shall be good and valid discharges to the Commonwealth, which shall not be bound to see to the application of any money so paid or deposited, or to see to the performance of any trusts.

PART V.—MORTGAGES, ENCUMBRANCES, AND LEASES.

DIVISION I.—MORTGAGES.

Power to
redeem
mortgages.
Ib. s. 30.

48.—(1.) If any land acquired under this Act by agreement is subject to a mortgage, the Minister may pay off the mortgage.

(2.) In order thereto the Minister shall give notice to the mortgagee that he intends at or before the expiration of six months from the date of the notice to pay off the mortgage and to pay to the mortgagee the amount to which he is entitled under this section.

(3.) The amount to which a mortgagee is entitled under this section shall be—

- (a) the principal secured by the mortgage ; and
- (b) the interest due at the date of the notice and six months additional interest ; and
- (c) the costs and charges (if any) due to the mortgagee under the mortgage ; and
- (d) the mortgagee's costs of discharging the mortgage and conveying his interest in the land to the Commonwealth ; and
- (e) in case the mortgage is paid off prematurely, a sum to meet the costs of reinvestment of the principal ; and
- (f) in case the mortgage is paid off prematurely and the rate of interest secured by the mortgage is higher than the interest which can reasonably be expected to be obtained on the reinvestment, regard being had to the then current rate of interest, a sum to meet the loss sustained by the mortgagee by reason of the premature repayment of the principal.

(4.) The mortgagee shall thereupon, and upon payment or tender to him, within the time specified in the notice, of the amount to which he is entitled under this section, execute a discharge of the mortgage and any conveyance necessary to convey his interest in the land to the Commonwealth.

(5.) If a mortgagee fails to execute a discharge of the mortgage and any conveyance necessary to convey his interest in the land to the Commonwealth as required by this section, the Minister may assess the amount to which the mortgagee is entitled, and may deposit the amount in the Treasury with a statement of the facts relating to the deposit.

Execution of deed poll where mortgagee fails to convey.
No. 13 1901 s. 31.

(6.) After the deposit has been made, the Attorney-General may, for and on behalf of the Commonwealth, execute a Deed Poll containing a description of the land in respect of which and describing the circumstances under which the deposit was made, and the names of parties concerned, and may cause the Deed Poll to be registered.

(7.) Upon the registration of the Deed Poll the land mentioned therein shall be freed and discharged from the mortgage, and all interest of the mortgagee in the land shall vest in the Commonwealth.

49. Where any land acquired by compulsory process is at the time of acquisition subject to a mortgage, the mortgagee may—

Rights of mortgagee on acquisition of land.

- (a) join with the mortgagor in making a claim for compensation ;
- or
- (b) make an independent claim for compensation ; or
- (c) by notice to the Minister, waive his rights to compensation.

50. Where any land acquired by compulsory process is at the time of acquisition subject to a mortgage, the amount of compensation shall be determined by agreement between the Minister and the mortgagor and the mortgagee.

Determination of amount of compensation.

In default of agreement the claims for compensation shall be determined in the same manner as disputed claims for compensation.

Compensation
to a mortgagee.

51. The compensation to a mortgagee shall be estimated in accordance with the following principles :—

- (a) the mortgage shall be taken to be discharged as from the date of the acquisition of the land, to the extent to which the compensation payable in respect of the land is sufficient to satisfy the mortgage :
- (b) the mortgagee shall be entitled to interest at the rate secured by the mortgage for six months after the date of the acquisition of the land on so much of the principal as the compensation payable in respect of the land would, after payment of back interest and charges, be sufficient to satisfy :
- (c) the mortgagee shall also be entitled to the costs of discharging the mortgage and of conveying his interest in the land to the Commonwealth :
- (d) the mortgagee shall also be entitled, if the principal was not repayable (with or without notice) at the date of the acquisition of the land, to the costs of reinvesting any principal paid off, and, should a loss of interest reasonably be expected, regard being had to the rate of interest secured by the mortgage and the rate of interest likely to be obtained on the reinvestment, to compensation for loss of interest.

Mortgagee to
have a charge
on compen-
sation.

52.—(1.) The compensation in respect of the land shall be charged with the mortgage unless the mortgagee has waived his rights to compensation.

(2.) Upon payment or tender of the compensation or any part of it to the mortgagee, he shall execute a discharge of the mortgage to the extent to which the amount paid or tendered is sufficient to satisfy it.

(3.) The rights and remedies of the mortgagee shall not be affected as regards the remainder, if any, of the mortgage debt, or as regards any other land subject to the mortgage.

Rights of
mortgagee not
affected in
certain cases.

53. Where the mortgagee has waived his rights to compensation, the acquisition of the land acquired shall not affect the mortgage as regards any other land subject thereto, or as regards his rights and remedies against the mortgagor.

DIVISION 2.—ENCUMBRANCES.

Apportionment
of charges
where part of
land only
taken.
Cf. No. 13 1901
s. 38.

54. If a part only of any land subject to any encumbrance is acquired under this Act, the apportionment of the encumbrance may be settled by agreement between the party entitled to the encumbrance, the owner of the land subject to the encumbrance, and the Commonwealth, or in default of agreement by the High Court or the Supreme Court, on the application of the Minister.

Encumbrance
to continue as
to land not
taken.
Ib. s. 40.

55.—(1.) If any land acquired under this Act, whether by agreement or by compulsory process, was, immediately prior to its acquisition, subject to any encumbrance jointly with any other land, and the

land so acquired is released by virtue of this Act or any release or instrument from the encumbrance, then, subject to any agreement between the parties, the other land shall continue to be subject to the whole of the encumbrance or part thereof as the case requires, and the party entitled to the encumbrance shall have the same rights and remedies in respect of the land continuing subject to the encumbrance or part thereof as he previously had in respect of the whole of the land.

(2.) If any encumbrance is released in pursuance of this Act, the Attorney-General shall, upon the deed or instrument creating or transferring the encumbrance being tendered to him for the purpose, sign a memorandum indorsed on the deed or instrument specifying the part of the land originally subject to the encumbrance which has been acquired under this Act, and—

- (a) how much, if any, of the encumbrance has been released and how much continues payable; or
- (b) that the remaining land is thenceforward to remain exclusively charged with the whole of the encumbrance.

(3.) The memorandum shall be made and executed at the expense of the Commonwealth, and shall be *prima facie* evidence of the facts stated therein.

DIVISION 3.—LEASES.

56.—(1.) If a part of any land comprised in a lease for a term of years unexpired is acquired under this Act, the rent payable in respect of the land comprised in the lease shall be apportioned between the part so acquired and the part not acquired.

Apportionment
of rent where
part of leased
land acquired.
Cf. No. 13 1901
s. 41.

(2.) The apportionment shall be settled by agreement between the lessor, the lessee, and the Minister, or by the High Court or the Supreme Court.

(3.) After the apportionment has been settled—

- (a) the lessee shall as to all future accruing rent be liable only to the rent apportioned in respect of the part not acquired; and
- (b) the lessor shall, as against the part not acquired, and as against the lessee, have the same rights and remedies for the rent so apportioned as he had, previously to the apportionment, for the whole rent; and
- (c) all covenants, conditions, and agreements in the lease (except as to the amount of rent) shall remain in force with regard to the part not acquired.

PART VI.—MISCELLANEOUS.

57.—(1.) For the purposes of this Act the Commonwealth shall be a corporation by the name of “The Commonwealth of Australia,” with power to acquire and hold land.

Incorporation
of Common-
wealth.
Ib. s. 50.

(2.) All instruments, receipts, and other documents in relation to land to which the Commonwealth is a party may be executed by the Attorney-General for and on behalf of the Commonwealth.

(3.) Notice shall be taken of the signature of the Attorney-General to any instrument, executed by him for and on behalf of the Commonwealth, if the signature purports to be attested by the Secretary to the Attorney-General's Department, or by the Crown Solicitor of the Commonwealth, or by an officer acting for the Secretary to the Attorney-General's Department, and the Registrar-General, or Registrar of Titles, or other proper officer, of the State, or part of the Commonwealth in which the land referred to in the instrument is situate, may register any instrument so signed and attested without further proof of the Attorney-General's signature thereto or of the signature of the witness.

Conveyances
and leases
executed before
commencement
of Act.
No. 13 1901
s. 60 (2).

58. Where before the commencement of this Act, the Attorney-General has, for or on behalf of the Commonwealth, executed a conveyance or lease of any land vested in the Commonwealth, the conveyance or lease shall be as valid and effectual for all purposes whatever as if it had been executed after the commencement of this Act.

Warrant to
enforce
possession of
land.
Ib. s. 52.

59. If—

- (a) any person in possession of any land acquired by the Commonwealth under this Act refuses to give up possession of the land, or hinders the Minister or any person authorized by the Minister from taking possession of the land ; or
- (b) any person in occupation of any land refuses to permit the Minister or any person authorized by the Minister to enter upon the land,

a Justice of the High Court may, on the application of the Attorney-General, grant a warrant authorizing the Marshal to deliver the possession of the land or to enforce the entry on the land.

Claimants to
produce title.
Ib. s. 28.

60. All persons claiming any purchase money or compensation shall, at their own expense, when required, produce to the Attorney-General all deeds and documents relating to or evidencing their title to the land in respect of which such purchase money or compensation is payable, and particulars of any damage claimed by them.

Costs of
conveyances,
&c.
Cl. ib. ss. 57, 58.

61.—(1.) In the case of all land acquired under this Act, the Commonwealth shall bear all costs, charges, and expenses—

- (a) of all conveyances and assurances of the land and of any outstanding interests therein ; and
- (b) of making out and furnishing such abstracts and attested copies as the Attorney-General requires.

(2.) If the Attorney-General and the party entitled do not agree to the amount of the costs, they shall be taxed by the Registrar or other proper officer of the High Court or of the Supreme Court upon the application of either party.

(3.) The expense of taxing the costs shall be borne by the Commonwealth, unless on the taxation one-sixth part of the costs or more is disallowed, in which case the expense shall be borne by the party whose costs are taxed, and be deducted from the amount of his costs against the Commonwealth.

(4.) The Commonwealth shall forthwith pay to the party entitled the amount which the Registrar or other officer certifies to be due in respect of the costs.

62.—(1.) The Governor-General may authorize the grant of a lease or licence to any person to mine for any metals or minerals on any land the property of the Commonwealth. Mining leases and licences.

(2.) Subject to the regulations, the laws of the State in which the land is situate relating to mining shall, so far as applicable, apply to leases and licences under this section and to mining carried on by virtue thereof.

(3.) The Governor-General may enter into any arrangement with the Governor in Council of any State for carrying this section into effect by State officers.

63. (1.) If any land acquired or deemed to have been acquired under this Act, or under any Act repealed by this Act, is not required for any public purpose— Power to dispose of superfluous lands.
Cf. No. 13 1901
s. 51.

(a) the Governor-General may authorize the disposal of it as he thinks fit; or

(b) where the estimated annual value of the land does not exceed Fifty pounds, the Minister may authorize the leasing of the land for such period not exceeding three years and on such terms and conditions as he thinks fit, and the land may be disposed of accordingly.

(2.) A return of all land disposed of under this section, showing the manner of its disposal, shall be laid before both Houses of the Parliament within thirty days after the disposal if the Parliament is then sitting, and if not then within thirty days after the next meeting of the Parliament.

64. Any land which, before the commencement of this Act, has been acquired by the Commonwealth from any State or person, or has by virtue of section eighty-five of the Constitution become vested in the Commonwealth, shall for the purposes of this Act be deemed to have been acquired under this Act, and to be vested in the Commonwealth as if acquired under this Act. Land acquired before commencement of Act.
Ib. ss. 47, 66 (1).

65. Any notice, claim, or document required by this Act to be served on the Minister or on any person may be served by post. Service by post.

66. The Governor-General may, by proclamation, set apart for or dedicate to any public purpose any land which is vested in the Commonwealth, or in any officer or person on behalf of the Commonwealth; and may, by proclamation, revoke, cancel, or alter the setting apart or dedication. Power to dedicate lands.
Ib. s. 62.

Regulations,
No. 13 1901
s. 63.

67. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters and things which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to or carrying out this Act.