



Lands Acquisition Act 1989

No. 15 of 1989

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Lands Acquisition Act 1989

No. 15 of 1989

An Act relating to the acquisition of land by the Commonwealth and certain authorities and dealings with land so acquired, and for other purposes

[Assented to 17 April 1989]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Lands Acquisition Act 1989*.

Commencement

2. This Act commences on a day to be fixed by Proclamation.

Extension of Act to external Territories

3. This Act extends to every external Territory.

Application to the Crown

4. This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

Operation of Territory laws

5. (1) Subject to this section, where:

- (a) a law of a Territory authorising the acquisition or disposal of land, or the acquisition or disposal of interests in land, is in force;
- (b) that law would, but for this subsection, apply to the acquisition or disposal, by an authority, of an interest in particular land; and
- (c) this Act requires that the Authority acquire or dispose of the interest in accordance with this Act;

the law of the Territory does not apply to that acquisition or disposal.

(2) If a provision referred to in section 21A of the *Christmas Island Act 1958* is in operation, this Act does not apply to anything dealt with by the provision.

(3) This Act does not apply to grants or other dispositions of Crown land in the Territory of Norfolk Island made under section 62 of the *Norfolk Island Act 1979*.

(4) Except as provided by subsection (1), this Act is not intended to affect the making or operation of a law of a Territory of a kind referred to in paragraph (1) (a).

PART II—INTERPRETATION

Definitions

6. In this Act, unless the contrary intention appears:

“acquiring authority” means:

- (a) the Commonwealth; or
- (b) a Commonwealth authority;

“Australia” includes the external Territories;

“authorised person” has the meaning given by section 7;

“authority” does not include:

- (a) a body politic;
- (b) an incorporated association or society;
- (c) an incorporated company; or
- (d) a body of trustees;

“Commonwealth authority” means an authority:

- (a) that is incorporated by or under a law of the Commonwealth or by or under a law of a Territory, other than:

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- (i) an enactment as defined by section 3 of the *Australian Capital Territory (Self-Government) Act 1988*;
 - (ii) a law of the Northern Territory; or
 - (iii) a law of Norfolk Island; and
- (b) that is not declared by the regulations to be an exempt authority;
- “compensation claim form” means a form approved by the Minister for the purposes of subsection 67 (2);
- “Court” or “Federal Court” means the Federal Court of Australia;
- “Crown land” means land the property of the Commonwealth, a State or a Territory;
- “dispose” includes grant or create;
- “interest”, in relation to land (including overseas land), means:
- (a) any legal or equitable estate or interest in the land;
 - (b) a restriction on the use of the land, whether or not annexed to other land; or
 - (c) any other right (including a right under an option and a right of redemption), charge, power or privilege over or in connection with the land or an interest in the land;
- and includes the interest of the Commonwealth, a State or a Territory in Crown land;
- “land” means land in Australia;
- “mortgage” means a security over an interest in land (including overseas land) securing the payment or repayment of money;
- “mortgagee”, in relation to a mortgage, means the person who is or was entitled to receive payment or repayment of the money secured by the mortgage;
- “mortgage interest” means the interest in land of a mortgagee under a mortgage;
- “mortgagor”, in relation to a mortgage, means the person who is or was the owner of the interest in land subject to the mortgage;
- “overseas land” means land outside Australia;
- “planning instrument” means an instrument made under a law of the Commonwealth, a State or a Territory that relates to town planning or use of land;
- “pre-acquisition declaration” means a declaration under subsection 22 (1);
- “public park” means land that, under a law of a State or Territory, is dedicated or reserved, or is vested in trustees, as a public park or national park or otherwise for the purposes of public recreation;
- “public purpose” means a purpose in respect of which the Parliament has power to make laws and includes, in relation to land in a Territory, any purpose in relation to the Territory;
- “Tribunal” means the Administrative Appeals Tribunal;

“Trust Fund” means the Trust Fund kept pursuant to section 60 of the *Audit Act 1901*;

“unreviewable pre-acquisition declaration” means a pre-acquisition declaration that includes a statement under subsection 22 (6).

Meaning of “authorised person”

7. A person is an authorised person for the purposes of a provision of this Act if:

- (a) the Minister has, by writing, authorised the person to act under the provision; or
- (b) the Minister has, by writing, authorised the holder or occupier of a particular office or position to act under the provision and the person holds or occupies, or is performing the duties of, the office or position.

PART III—TEMPORARY ENTRY ON, AND OCCUPATION OF, LAND

Powers additional to other powers

8. The powers conferred by this Part are in addition to, and not in derogation of, the powers conferred by any other law of the Commonwealth or of a Territory.

Notice to be given before powers exercised

9. (1) A person shall not exercise a power conferred by this Part in relation to particular land unless:

- (a) the person has given written notice of his or her intention to exercise the power to each person whom the person believes, after diligent inquiry, to have an interest in the land, other than an interest under a mortgage, charge or other similar security; and
- (b) at least 7 days have elapsed since the requirements of paragraph (a) were satisfied.

(2) A notice shall:

- (a) set out particulars of the intended exercise of the power in relation to the land;
- (b) give reasons for the exercise of the power; and
- (c) include a statement to the effect that a person to whom the notice is given may, because of the exercise of the power, be entitled to compensation in accordance with Part VIII.

Power to enter on, and examine, land

10. An authorised person may, for the purpose of ascertaining whether land is suitable for a public purpose or of obtaining information in relation to land that, in the opinion of the authorised person, is, or may be, suitable for a public purpose:

- (a) enter upon the land, or upon adjoining land, with such persons, vehicles and things as are reasonably necessary for the purpose; and
- (b) make surveys, take levels, dig or bore into the land, examine the soil and do, in relation to the land, any other thing reasonably necessary for the purpose.

Power to occupy land temporarily

11. (1) Where an acquiring authority holds an interest in land (in this section called the “authority land”), an authorised person may, with such other persons as are reasonably necessary, enter upon other land (in this section called the “neighbouring land”) being land within a distance of 500 metres from the nearest boundary of the authority land, and may temporarily occupy the neighbouring land for so long as is reasonably necessary for the purposes of any works connected with the carrying out of a public purpose.

- (2) Subsection (1) does not apply to neighbouring land:
 - (a) that is a garden, orchard or plantation attached to, or belonging to, a house;
 - (b) that is a park, planted walk or avenue or ground ornamentally planted; or
 - (c) that is less than 500 metres from a dwelling-house of the occupier of the neighbouring land.

Powers in relation to land temporarily occupied

12. (1) While land is temporarily occupied under section 11, an authorised person may, in connection with the carrying out of a public purpose:

- (a) construct, build or place any plant, machinery, equipment or goods on the land;
- (b) take from, or deposit on, the land sand, clay, stone, earth, gravel, timber, wood or other materials or goods;
- (c) make roads, cuttings or excavations on the land;
- (d) erect buildings (including workshops and sheds) of a temporary character on the land; and
- (e) manufacture or work materials of any kind on the land.

(2) The power to take sand, clay, stone, earth or gravel is not exercisable in respect of a quarry, brick pit or other like place worked or used for getting materials for the purpose of sale.

(3) An authorised person shall not exercise powers under subsection (1) so as to:

- (a) close, divert or narrow, or break the surface of, a road;
- (b) alter the position of any water, sewerage or gas main or pipe; or
- (c) alter the position of any electricity or telecommunications cable or wire;

unless the authorised person has given reasonable notice, in writing, of his or her intention to do so to the authority responsible for the road, main, pipe, cable or wire.

Obligations in relation to exercise of powers

13. An authorised person exercising powers under this Part shall:

- (a) take all reasonable steps to ensure that the exercise of the powers causes as little detriment and inconvenience, and does as little damage, as is practicable to the land and to anything on, or growing or living on, the land;
- (b) remain on the land only for such period as is reasonably necessary;
- (c) remove from the land at the end of the occupation all plant, machinery, equipment, goods or structures brought onto, or erected on, the land other than any of those things that the owner or occupier agrees may be left on the land; and
- (d) leave the land, as nearly as practicable, in the condition in which it was immediately before it was occupied.

Order to enforce exercise of powers

14. (1) Where:

- (a) an authorised person is entitled to exercise powers under this Part in relation to land; and
- (b) another person (in this section called the “obstructing person”) has hindered or obstructed, is hindering or obstructing, or proposes to hinder or obstruct the authorised person in the exercise of any of those powers;

a court of summary jurisdiction may, on the application of the authorised person, make an order authorising a member of the Australian Federal Police or other person named in the order to use such assistance and force as are reasonably necessary to enable those powers to be exercised.

(2) A copy of an application under subsection (1) shall be given to the obstructing person and that person is entitled to appear and be heard on the hearing of the application.

Exercise of powers not an acquisition of an interest in land

15. The exercise of a power under this Part does not constitute the acquisition of an interest in land for the purposes of this Act.

PART IV—ACQUISITION OF INTERESTS IN LAND

Modes of acquisition

16. An interest in land may be acquired under this Act:

- (a) by agreement under section 40; or
- (b) by compulsory process under section 41.

Nature of interests that may be acquired

17. (1) The interests that may be acquired under this Act are:

- (a) a legal or equitable estate or interest in land; and
- (b) any other right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with, land or an interest in land.

(2) Those interests include:

- (a) an interest of the Commonwealth, a State or a Territory in Crown land;
- (b) an interest that did not previously exist in relation to particular land;
- (c) an easement in gross; and
- (d) a restriction on the use of the land, whether or not annexed to particular land.

Authorities with limited powers

18. Nothing in this Act gives to an authority a power (for example, a power to hold an interest in land) that the authority does not otherwise have.

Steps in acquisition by agreement

19. (1) The principal steps in an acquisition by agreement are:

- (a) the making of a pre-acquisition declaration under Part V;
- (b) any reconsideration or review of the pre-acquisition declaration under Part V;
- (c) the authorisation of the acquisition under section 40;
- (d) the making of the agreement under Part VI; and
- (e) the taking of actions required by the agreement to complete the acquisition.

(2) The making of a pre-acquisition declaration is not required if:

- (a) the relevant interest is available in the market within the meaning of section 40;
- (b) the interest to be acquired is owned by another acquiring authority;
or
- (c) a certificate has been given under section 24.

Steps in acquisition by compulsory process

20. (1) The principal steps in an acquisition by compulsory process are:

- (a) the making of a pre-acquisition declaration under Part V;
- (b) any reconsideration or review of the pre-acquisition declaration under Part V; and
- (c) the making of an acquisition declaration under Part VI.

(2) The making of a pre-acquisition declaration is not required if a certificate has been given under section 24.

Acquisitions to be in accordance with Act

21. (1) Subject to subsection (2), an acquiring authority shall not acquire an interest in land otherwise than in accordance with this Act unless:

- (a) because of subsection 5 (2) or (3), this Act does not apply in relation to the acquisition;
- (b) the regulations provide that this Act does not apply in relation to the acquisition, by the acquiring authority, of interests in land in specified circumstances and the acquisition is an acquisition in those circumstances;
- (c) the acquisition is authorised by a law of the Commonwealth (including a law passed or made after the commencement of this Act) and that law, or another law of the Commonwealth, expressly provides that the first-mentioned law has effect despite anything contained in this Act;
- (d) the acquisition consists of the taking of a mortgage, charge or other similar security over an interest in land;
- (e) the acquisition is effected by a law of the Commonwealth; or
- (f) the interest is acquired otherwise than compulsorily or by agreement.

(2) Nothing in this Act prevents the benefit of a restriction on the use of land becoming vested in an authority by the operation of a law other than this Act.

(3) In spite of paragraph 48 (1) (b) of the *Acts Interpretation Act 1901*, regulations made for the purpose of paragraph (1) (b) of this section may provide that the regulations shall take effect on a date to be fixed by the Minister by notice published in the *Gazette*.

(4) The Minister shall not fix a date for the purpose of subsection (3) that is earlier than:

- (a) the last day on which a notice could be given under subsection 48 (4) of the *Acts Interpretation Act 1901* in relation to the regulations; or
- (b) if such a notice is given, the latest day on which the regulations could be disallowed by a House of the Parliament in which such a notice has been given.

PART V—PRE-ACQUISITION PROCEDURES

Division 1—Pre-acquisition declarations

Declaration that land is suitable for acquisition

22. (1) The Minister may declare in writing that the Minister is considering the acquisition by an acquiring authority of an interest in land (other than a mortgage interest) for a public purpose.

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(2) The declaration shall identify the acquiring authority, the land, the interest in the land and the public purpose.

(3) Except where the interest is a restriction on the use of land, the Minister shall include in the declaration:

- (a)** a statement that the land appears to the Minister to be suitable for use, or for development for use, for a public purpose; and
- (b)** a statement setting out:
 - (i)** particulars of the use to which the land will be put or for which it will be developed; and
 - (ii)** the reasons why the land appears to be suitable for that use or for development for that use.

(4) Where the interest is a restriction on the use of land, the Minister shall include in the declaration:

- (a)** a statement that it appears to the Minister to be appropriate for the acquiring authority to be given, for a public purpose, the benefit of the restriction on the use of the land; and
- (b)** a statement:
 - (i)** explaining the nature of the restriction; and
 - (ii)** setting out the reasons why it is appropriate for the acquiring authority to be given the benefit of the restriction.

(5) The Minister may include in the declaration a statement that the proposed use of the land, or the proposed restriction on the use of the land, as the case may be, is connected with the implementation of a policy particulars of which are set out in the declaration.

(6) If the Minister includes in the declaration a statement under subsection (5), the Minister may also include a statement:

- (a)** that it is essential, for the implementation of the policy referred to in the statement under subsection (5), that the interest in the land be acquired; and
- (b)** that the declaration is, for that reason, not subject to review by the Administrative Appeals Tribunal.

(7) The Minister shall give a copy of the declaration to each person whom the Minister believes, after diligent inquiry, to be a person affected by the declaration, together with:

- (a)** a sketch showing the location of the land to which the declaration relates; and
- (b)** a statement setting out a summary of the principal rights conferred by this Act on persons whose interests in land are affected by a pre-acquisition declaration.

(8) If documents referred to in subsection (7) are required to be given to 2 or more persons, the Minister shall, as far as practicable, ensure that the documents are given to the persons at or about the same time.

- (9) The declaration ceases to be in force if:
 - (a) the interest is acquired under this Act;
 - (b) the declaration is revoked; or
 - (c) the declaration ceases to have effect because of section 25 or subsection 44 (2) or 46 (3).
- (10) For the purposes of this Act, a person shall be taken to be affected by the declaration if, and only if:
 - (a) the person is an owner of the interest in land specified in the declaration (in this subsection called the “declaration interest”); or
 - (b) the person is an owner of some other interest in land that, if the declaration interest were acquired by compulsory process, would be in whole or in part divested, extinguished or diminished because of paragraph 41 (4) (b).
- (11) For the purposes of this Act, an interest in land shall be taken to be affected by the declaration if, and only if:
 - (a) the interest is the same as, includes or is included in, the interest in land specified in the declaration (in this subsection called the “declaration interest”); or
 - (b) the interest is some other interest in land that, if the declaration interest were acquired by compulsory process, would be in whole or in part divested, extinguished or diminished because of paragraph 41 (4) (b).

Publication of pre-acquisition declarations

23. As soon as practicable after the making of a declaration under section 22, the Minister shall cause a copy of the declaration to be published in the *Gazette* and, if practicable, in a newspaper circulating in the district in which the relevant land is situated.

Acquisitions where land required urgently etc.

24. (1) Where, in relation to the proposed acquisition of an interest in land by an acquiring authority, the Minister is satisfied that:

- (a) there is an urgent necessity for the acquisition and it would be contrary to the public interest for the acquisition to be delayed by the need for the making, and the possible reconsideration and review, of a pre-acquisition declaration; or
- (b) to require the making of a pre-acquisition declaration in respect of the proposed acquisition would result in a disclosure of information that would be prejudicial to the security, defence or international relations of Australia;

the Minister may certify in writing that he or she is so satisfied.

(2) The certificate may include such information relating to the proposed acquisition as the Minister considers appropriate.

(3) If the Minister gives a certificate, the interest may be acquired by the acquiring authority without the preparation of a pre-acquisition declaration.

(4) The Minister shall:

- (a) cause a copy of the certificate to be laid before each House of the Parliament within 3 sitting days of that House after the giving of the certificate; and
- (b) as soon as practicable, cause a copy of the certificate to be served on each person whom the Minister believes, after diligent inquiry, to be a person affected by the certificate.

(5) The Minister may cause a copy of the certificate to be published in the *Gazette*, in a newspaper circulating in the district in which the land is situated, or in both the *Gazette* and such a newspaper.

(6) The certificate ceases to be in force if:

- (a) the interest is acquired under this Act;
- (b) the certificate is revoked; or
- (c) the certificate ceases to have effect because of subsection 46 (3).

(7) For the purposes of this Act, a person shall be taken to be affected by the certificate if, and only if:

- (a) the person is an owner of the interest in land to which the certificate relates (in this subsection called the “certificate interest”); or
- (b) the person is an owner of some other interest in land that, if the certificate interest were acquired by compulsory process, would be in whole or in part divested, extinguished or diminished because of paragraph 41 (4) (b).

Effect of section 24 certificate on pre-acquisition declaration

25. Where, after a pre-acquisition declaration has been made, the Minister gives a certificate under section 24 in relation to the same interest in land, the pre-acquisition declaration immediately ceases to have effect.

Division 2—Reconsideration and review

Application for reconsideration of pre-acquisition declaration

26. (1) A person affected (within the meaning of subsection 22 (10)) by a pre-acquisition declaration may apply to the Minister for a reconsideration of the declaration.

(2) An application:

- (a) shall be in writing; and
- (b) shall set out the reasons for the application.

(3) Subject to subsection (4), an application shall be made:

- (a) if subsection 22 (7) required that a copy of the declaration be given to the person—within 28 days after the day on which the copy was given to the person; or

- (b) in any other case—within 28 days after the first day on which the Minister has complied with the requirements of subsection 22 (7) and section 23 in relation to the declaration.

(4) The Minister may, by writing and before the end of the period within which the person would otherwise be required to make an application, agree to an extension of that period.

Reconsideration of pre-acquisition declaration

27. (1) Where the Minister receives an application for a reconsideration of a pre-acquisition declaration, the Minister shall, having regard to the reasons specified in the application and to any other relevant matters, reconsider the decision to make the declaration and shall, by instrument in writing:

- (a) confirm the declaration;
- (b) revoke the declaration; or
- (c) vary the declaration.

(2) The Minister shall not vary the declaration in such a way that an interest in land that was not previously an interest affected (within the meaning of subsection 22 (11)) by the declaration becomes an interest so affected.

(3) The Minister's decision shall include a statement of the reasons for the decision to confirm, revoke or vary the declaration.

(4) Subject to subsection (5), if the Minister does not, within the period of 28 days after receiving the application, make a decision confirming, revoking or varying the declaration, the Minister shall be regarded as having confirmed the declaration on the last day of the period.

(5) The person who made the application may, by writing and before the end of the period referred to in subsection (4), agree to an extension of that period.

Application for review of pre-acquisition declaration

28. (1) Subject to this section, where under section 27:

- (a) the Minister has confirmed, or is to be regarded as having confirmed, a pre-acquisition declaration; or
 - (b) the Minister has varied such a declaration;
- a person affected (within the meaning of subsection 22 (10)) by the declaration as so confirmed or varied may apply to the Administrative Appeals Tribunal for a review of the declaration.

(2) Subsection (1) does not apply to an unreviewable pre-acquisition declaration.

(3) An application:

- (a) shall be in writing;

(b) may be made in accordance with the prescribed form within the meaning of paragraph 29 (1) (b) of the *Administrative Appeals Tribunal Act 1975*; and

(c) shall set out the reasons for the application.

(4) The time within which an application must be made is 28 days after the declaration was confirmed or varied, or is to be regarded as having been confirmed or varied, as the case may be.

(5) The Tribunal may, before the end of the period referred to in subsection (4), agree to an extension of that period.

Application of Administrative Appeals Tribunal Act to applications for review

29. (1) Subject to subsection (2), the *Administrative Appeals Tribunal Act 1975* applies in relation to an application to the Administrative Appeals Tribunal for review of a pre-acquisition declaration.

(2) Sections 27, 29 and 41 and subsection 43 (1) of that Act do not apply in relation to such an application.

Review of pre-acquisition declaration

30. (1) Where an application has been made to the Administrative Appeals Tribunal for review of a pre-acquisition declaration, the Tribunal shall make a decision in writing recommending to the Minister that the declaration be confirmed, be revoked or be varied as specified in the decision.

(2) The Tribunal shall not recommend a variation that the Minister could not have made on a reconsideration of the declaration under section 27.

Considerations to be taken into account on review

31. (1) Subject to this section, the following matters are relevant to the review by the Administrative Appeals Tribunal of a pre-acquisition declaration:

- (a) the nature of the public purpose identified in the declaration;
- (b) except where the relevant interest in land is a restriction on the use of land:
 - (i) the nature of the proposed use of the relevant land;
 - (ii) the extent to which the proposed use is connected with the public purpose;
 - (iii) the extent to which the proposed use is in the public interest; and
 - (iv) the suitability of the land for, or for development for, the proposed use;
- (c) where the relevant interest in land is a restriction on the use of land:
 - (i) the nature of the proposed restriction;

- (ii) the extent to which the proposed restriction is connected with the public purpose;
 - (iii) the extent to which the proposed restriction is in the public interest; and
 - (iv) the appropriateness of the benefit of the proposed restriction being acquired by the acquiring authority;
 - (d) the effect of the acquisition of the interest in land to which the declaration relates upon persons affected (within the meaning of subsection 22 (10)) by the declaration;
 - (e) the extent to which the environment in the area in which the relevant land is situated would be affected if the land were used or developed, or the use of the land were restricted, as the case may be, in the manner proposed and, in particular, the extent to which that use or development, or that restriction, would benefit or impair:
 - (i) an area of scenic beauty;
 - (ii) a place of architectural, historical, archaeological, geological or scientific interest;
 - (iii) the conservation of flora and fauna that should, in the public interest, be preserved;
 - (iv) the amenity of the neighbourhood; or
 - (v) public utility services;
 - (f) whether there is some other means of accommodating the relevant acquiring authority's needs;
 - (g) matters contained in a statement given to the applicant under section 28 of the *Administrative Appeals Tribunal Act 1975* or lodged with the Tribunal under section 37 or 38 of that Act;
 - (h) practicable methods of avoiding or mitigating any injurious factors;
 - (j) any other matter that the Tribunal determines, on the application of the Minister or the applicant, to be relevant to the review.
- (2) The following matters are not relevant to the review:
- (a) the amount of compensation that may be payable under this Act if the acquisition proceeds;
 - (b) the fact that another interest in the land to which the declaration relates, or in other land in the vicinity of that land, has already been acquired.
- (3) If a statement under subsection 22 (5) was included in the declaration, the Tribunal shall not inquire, directly or indirectly, into:
- (a) the merits of the policy, particulars of which are given in the statement; or
 - (b) the Minister's statement in accordance with that subsection that the proposed use, or proposed restriction on the use, as the case may be, of the relevant land is connected with the implementation of the policy.

(4) If a matter being considered by the Tribunal has been the subject of an inquiry under section 11 of the *Environment Protection (Impact of Proposals) Act 1974*, the Tribunal shall accept the finding of the inquiry in relation to that matter.

Frivolous or vexatious applications for review

32. (1) Where, during the hearing of an application to the Administrative Appeals Tribunal for review of a pre-acquisition declaration, it appears to the person presiding at the hearing that the application is frivolous or vexatious, the person may:

- (a) if the person is a presidential member—dismiss the application; or
- (b) if the person is not a presidential member—adjourn the hearing so that it may be presided over by a presidential member.

(2) Where a hearing is adjourned under paragraph (1) (b), the presidential member presiding at the resumption of the adjourned hearing may dismiss the application if he or she considers that it is frivolous or vexatious.

(3) In this section:

“presidential member” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Minister to consider Administrative Appeals Tribunal’s recommendations

33. (1) Where the Administrative Appeals Tribunal recommends that the Minister take particular action in relation to a pre-acquisition declaration, the Minister shall consider the recommendation and shall:

- (a) by writing accept the recommendation, and take such action (if any) as is necessary to give effect to the recommendation; or
- (b) by writing reject the recommendation.

(2) The Minister is not entitled to reject a recommendation of the Tribunal more than 90 days after the decision of the Tribunal comes into operation.

(3) If the Minister rejects the recommendation, the Minister shall cause to be laid before each House of the Parliament, within 3 sitting days of that House after the rejection of the recommendation, a statement of the reasons for the rejection of the recommendation.

Division 3—Miscellaneous

Interpretation

34. In this Division, “authorising document” means a pre-acquisition declaration or a certificate under section 24.

Correction of mistakes in authorising documents

35. The Minister may, by writing, vary an authorising document for the purpose of correcting a clerical error or an obvious mistake in the document.

Consequences of variation of authorising documents

36. Where, under section 35 or Division 2, the Minister varies an authorising document, the following provisions have effect:

- (a) anything done in relation to the document before its variation shall be deemed to have been done in relation to the document as varied;
- (b) the Minister shall cause a copy of the document, clearly showing the variation, to be given to:
 - (i) each person to whom a copy of the original document was given in accordance with a requirement of this Part; and
 - (ii) any other person whom the Minister has reason to believe to be a person affected (within the meaning of subsection 22 (10) or 24 (7)) by the document as varied.

Notification of confirmation or revocation of authorising documents

37. Where the Minister confirms or revokes an authorising document, the Minister shall cause written notice of the confirmation or revocation to be given to each person to whom a copy of the document was given in accordance with a requirement of this Part.

Registration of authorising documents

38. (1) As soon as practicable, and, in any event, within 28 days, after an authorising document is made or given, or is varied or revoked, the Secretary to the Attorney-General's Department, or a person authorised under subsection 55E (4) of the *Judiciary Act 1903*, shall cause to be lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land to which the document relates is situated, a memorandum setting out particulars of the document, or of the variation or revocation, as the case may be.

(2) The officer with whom the memorandum is lodged may make such entries in the records kept by the officer as the officer thinks appropriate.

Owner of interest in land required to disclose existence of authorising documents

39. (1) Where a copy of an authorising document has been given to a person (in this section called the "owner") in accordance with this Part, the owner shall not, at a time when the document is in force, enter into any agreement with another person in respect of the owner's interest in the land to which the document relates without first disclosing to the other person the existence of the document.

(2) If the owner enters into an agreement with another person without making a disclosure as required by subsection (1):

- (a) the other person is entitled, by notice in writing given to the owner, to rescind or terminate the agreement; and

- (b) if the other person has suffered loss or damage because of the failure to make the disclosure, the owner is liable to pay the amount of the loss or damage to the other person.

(3) The rights conferred by subsection (2) are in addition to, and not in derogation of, any other right or remedy under the law of the Commonwealth, a State or a Territory.

PART VI—ACQUISITION PROCEDURES

Acquisition by agreement

40. (1) The Minister may authorise the acquisition by agreement of an interest in land, other than land in a public park, by an acquiring authority for a public purpose.

(2) The acquiring authority may then enter into an agreement for the acquisition of the interest if:

- (a) a pre-acquisition declaration in relation to the acquisition has become absolute and is in force;
- (b) the Minister has given a certificate under section 24 in respect of the acquisition;
- (c) the interest is available in the market; or
- (d) the interest is owned by the Commonwealth or a Commonwealth authority.

(3) The Minister shall cause to be laid before each House of the Parliament, within 15 sitting days of that House after the agreement is entered into, a statement describing:

- (a) the interest;
- (b) the situation of the land;
- (c) the price at which the interest is being, or has been, acquired; and
- (d) the public purpose for which the interest is being, or has been, acquired.

(4) Failure to comply with subsection (3) in relation to an acquisition does not invalidate the acquisition.

(5) The interest shall be taken to be available in the market if:

- (a) the interest is currently advertised as being available for sale or lease;
- (b) the interest is currently listed with a real estate agent, property manager or other person performing similar services as being available for sale or lease;
- (c) the owner of the interest has offered it to the acquiring authority in response to a publicly advertised request by the acquiring authority and the owner's offer has not been withdrawn; or

- (d) the Minister has certified under subsection (6) that the acquisition of the interest by agreement by the acquiring authority would be a standard commercial transaction.

(6) If the Minister is satisfied that the acquisition of an interest in land by an acquiring authority would amount to a normal commercial transaction between parties dealing with each other on equal terms, the Minister may give a certificate stating that the acquisition of the interest by the acquiring authority would be a standard commercial transaction.

Acquisition by compulsory process

41. (1) If, in relation to the acquisition of an interest in land by an acquiring authority:

- (a) a pre-acquisition declaration has become absolute and is in force; or
- (b) a certificate has been given under section 24;

the Minister may, subject to section 42, declare, in writing, that the interest is acquired by the acquiring authority by compulsory process.

(2) The declaration shall:

- (a) identify the land concerned; and
- (b) specify the public purpose for which the interest is being acquired.

(3) A copy of the declaration shall be published in the *Gazette* and, if practicable, in a newspaper circulating in the district in which the land is situated.

(4) On the publication in the *Gazette* of a copy of the declaration, the interest is, by force of this Act:

- (a) vested in the acquiring authority; and
- (b) freed and discharged from all other interests and from all trusts, restrictions, dedications, reservations, obligations, mortgages, encumbrances, contracts, licences, charges and rates.

(5) Where, because of paragraph (4) (b), another interest in the land is, in whole or in part, divested, extinguished or diminished, that other interest shall, to that extent, be taken, for the purposes of this Act (except section 46), to have been acquired by compulsory process.

(6) For the purposes of this Act, a person shall be taken to be affected by the declaration if:

- (a) the person is an owner of the interest identified in the declaration; or
- (b) the person is an owner of some other interest in the land that, because of paragraph (4) (b), is divested, extinguished or diminished.

Special provision regarding land in public park

42. (1) The Minister may not make a declaration under subsection 41 (1) regarding an interest in land that consists of, or is in, a public park unless:

- (a) the Government or Administration of the State or Territory in which the land is situated has consented to the acquisition of the interest;
- (b) except where both Houses of the Parliament have resolved that the acquisition may proceed without the holding of an inquiry under section 11 of the *Environment Protection (Impact of Proposals) Act 1974*—an inquiry under that section has been conducted in relation to the acquisition of the interest by the acquiring authority; and
- (c) where:
 - (i) the Houses of the Parliament have resolved as mentioned in paragraph (b); and
 - (ii) the land is, or is in, a national estate area or a world heritage area;

an environmental impact statement under the *Environment Protection (Impact of Proposals) Act 1974* has been prepared in relation to the proposed acquisition.

(2) Nothing in this section shall be regarded as limiting the operation of the *Environment Protection (Impact of Proposals) Act 1974*.

(3) In this section:

“national estate area” means an area entered in the Register of the National Estate under the *Australian Heritage Commission Act 1975*;

“world heritage area” means an area that has been included in the World Heritage List provided for in paragraph 2 of Article 11 of the Convention for the Protection of the World Cultural and Natural Heritage, being the Convention a copy of the English text of which is set out in the Schedule to the *World Heritage Properties Conservation Act 1983*.

When pre-acquisition declaration becomes absolute

43. (1) Where:

- (a) a pre-acquisition declaration is in force; and
- (b) the Minister has complied with the requirements of subsection 22 (7), sections 23, 36 and 37 and subsection 38 (1) in relation to the declaration;

the declaration becomes absolute in accordance with this section.

(2) If no application for reconsideration has been made, the declaration becomes absolute at the end of 28 days after the last day on which such an application could have been made.

(3) If:

- (a) the declaration is an unreviewable declaration; and
- (b) as a result of one or more applications for reconsideration, the declaration has been confirmed or varied;

the declaration, as confirmed or varied, becomes absolute at the end of 28 days after the day, or the last day, as the case may be, on which the declaration was confirmed or varied.

(4) If:

- (a) the declaration is reviewable by the Administrative Appeals Tribunal;
- (b) as a result of one or more applications for reconsideration, the declaration has been confirmed or varied; and
- (c) no application has been made for review of the declaration by the Tribunal;

the declaration, as confirmed or varied, becomes absolute at the end of 28 days after the last day on which an application for review could have been made.

(5) If:

- (a) the declaration is reviewable by the Administrative Appeals Tribunal;
- (b) as a result of one or more applications for reconsideration, the declaration has been confirmed or varied;
- (c) one or more applications have been made for review, by the Tribunal, of the declaration as so confirmed or varied; and
- (d) the Minister has complied with the requirements of subsection 33 (1) in relation to the recommendation or recommendations made by the Tribunal and, in complying with those requirements, did not revoke the declaration;

the declaration, as confirmed or varied on reconsideration and, if applicable, as further varied by the Minister under subsection 33 (1), becomes absolute at the end of 28 days after the first day on which the Minister had complied with those requirements in relation to the recommendation or recommendations.

Notice requiring acquisition

44. (1) Where:

- (a) at least 28 days have elapsed since a pre-acquisition declaration became absolute;
- (b) the declaration is still in force; and
- (c) the interest in land to which the declaration relates has not been acquired;

a person who is an owner of the interest may, by written notice given to the Minister, require that the interest be acquired.

(2) If the interest is not acquired by an acquiring authority within 3 months after the giving of the notice, the declaration ceases to have effect at the end of that period.

(3) The person may, in writing and before the end of the period referred to in subsection (2), agree to an extension of that period.

Acquisitions not affected by failure to comply with post-acquisition requirements

45. Once an interest in land has been acquired by compulsory process, the acquisition is not affected by any later failure to comply with a requirement of this Part that relates to the acquisition.

Disallowance of acquisition of interest in land in public park

46. (1) Where an acquiring authority has acquired an interest in land in a public park by compulsory process, the Minister shall cause a copy of the declaration under subsection 41 (1) to be laid before each House of the Parliament within 14 sitting days of that House after the day on which the copy of the declaration was published in the *Gazette*.

(2) Either House of the Parliament may, within 7 sitting days of that House after a copy of the declaration has been laid before it, pass a resolution disallowing the acquisition.

(3) If the Minister fails to comply with subsection (1) or a House of the Parliament passes a resolution disallowing the acquisition:

- (a) the declaration shall be deemed to be, and always to have been, void;
- (b) the interest shall be deemed never to have been vested in the acquiring authority; and
- (c) the pre-acquisition declaration or certificate under section 24 relating to the acquisition of the interest ceases to be in force.

Entry into possession by acquiring authority

47. (1) Where:

- (a) an interest in land is acquired by an acquiring authority by compulsory process; and
- (b) the interest entitles the authority to possession of the land;

a person occupying the land on the date of acquisition is entitled, subject to this section, to remain in occupation of the land or of such part of the land as the person specifies, by notice in writing given to the Minister, for the period of 6 months or for a longer period fixed by agreement between the Minister and the person.

(2) If the Minister is satisfied that it is essential that the acquiring authority enter into possession of the land or part of the land urgently, the Minister may give to the occupier written notice:

- (a) stating his or her reasons for being so satisfied; and
- (b) fixing the date on which the person is to vacate the land or part of the land, as the case may be.

(3) The person to whom the notice is given ceases to be entitled to remain in occupation of the land, or the part of the land, as the case may be, on the date fixed by the notice.

(4) The terms and conditions (including any amount payable in respect of occupation on and after the date of acquisition) on which the person remains in occupation of the land are the terms and conditions agreed upon by the Minister and the person or, if they cannot agree, the terms and conditions as determined by the Minister and set out in a notice given to the occupier.

(5) A notice under subsection (2) or (4) shall set out the reasons for the Minister's decision.

(6) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Minister under subsection (4).

(7) Where a right conferred by subsection (1) expires, nothing in this section precludes the making of an agreement between the occupier and the acquiring authority regarding the further occupation of the land by the occupier.

Notification of compulsory acquisition declarations

48. The Minister shall, within 14 days after the publication in the *Gazette* of a declaration under section 41, cause to be given to each person whom the Minister believes, after diligent inquiry, to be a person affected (within the meaning of subsection 41 (6)) by the declaration the following documents:

- (a) a copy of the declaration;
- (b) a notice:
 - (i) stating that the person appears to be entitled to compensation in respect of the acquisition; and
 - (ii) setting out such other information with respect to the operation of this Act as the Minister considers appropriate;
- (c) a compensation claim form.

Effect of acquisition of mortgage interest on rights of mortgagee

49. Where a mortgage interest is acquired by compulsory process, the mortgagee retains, in respect of so much of the mortgage debt as is not discharged by section 68, any rights and remedies that the mortgagee may have:

- (a) against the mortgagor; or
- (b) in respect of any interest in land that is still subject to the mortgage.

Correction of compulsory acquisition declarations

50. (1) The Minister may, by notice published in the *Gazette*, vary a declaration under subsection 41 (1) for the purpose of correcting a clerical error, or an obvious mistake, in the declaration.

(2) Where the Minister varies a declaration, the following provisions have effect:

- (a) if a copy of the declaration has been published in the *Gazette*, or in a newspaper, this Part has effect as if the copy published had been a copy of the declaration as varied;
- (b) the Minister shall cause a copy of the declaration, clearly showing the variation, to be given to:
 - (i) each person to whom a copy of the original declaration was given in accordance with section 48; and
 - (ii) any other person whom the Minister has reason to believe to be a person affected (within the meaning of subsection 41 (6)) by the declaration as varied.

Registration of compulsory acquisition declarations

51. (1) As soon as practicable, and, in any event, within 28 days, after the publication in the *Gazette* of a copy of a declaration under subsection 41 (1) or of a notice varying such a declaration, the Secretary to the Attorney-General's Department or a person authorised under subsection 55E (4) of the *Judiciary Act 1903* shall cause to be lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the relevant land is situated a memorandum setting out particulars of the declaration, or of the variation, as the case may be.

- (2) The officer with whom memorandum is lodged may:
 - (a) deal with and give effect to the declaration as if it were a grant, conveyance, or transfer of the acquired interest to the acquiring authority duly executed under the law in force in the State or Territory; and
 - (b) make such entries in the records kept by the officer as are necessary having regard to the effect of subsection 41 (4).

PART VII—COMPENSATION FOR COMPULSORY ACQUISITION OF INTERESTS IN LAND

Division 1—Entitlement to compensation

Entitlement to compensation

52. A person from whom an interest in land is acquired by compulsory process is entitled to be paid compensation by the Commonwealth in accordance with this Part in respect of the acquisition.

Mortgagees may waive rights in respect of mortgage interests

53. (1) The mortgagee under a mortgage may, by written notice given to the Minister, waive the mortgagee's right to any compensation under this Act in respect of the acquisition of a mortgage interest.

(2) The Minister may, by written notice given to a mortgagee from whom a mortgage interest has, or may have been, acquired by compulsory process, require the mortgagee, at his or her option:

- (a) to make a claim under Division 4; or
- (b) to waive the right to compensation.

(3) If a mortgagee does not, within 30 days after a notice is given to the mortgagee or such further period as the Minister, by writing, allows, make a claim for compensation, the mortgagee shall be deemed to have waived the right to compensation in respect of the acquisition of the mortgage interest.

(4) A mortgagee who waives the right to compensation in respect of the acquisition of a mortgage interest:

- (a) is debarred from recovering any compensation from the Commonwealth in respect of the acquisition; but
- (b) retains, in respect of the mortgage debt, any rights and remedies that the mortgagee may have:
 - (i) against the mortgagor; or
 - (ii) in respect of any interest in land that is still subject to the mortgage.

Division 2—Amount of compensation—interests other than mortgage interests

Division does not apply in relation to acquisition of mortgage interests

54. This Division does not apply in relation to the acquisition of a mortgage interest.

Amount of compensation—general principles

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

(2) In assessing the amount of compensation to which the person is entitled, regard shall be had to all relevant matters, including:

- (a) except in a case to which paragraph (b) applies:
 - (i) the market value of the interest on the day of the acquisition;
 - (ii) the value, on the day of the acquisition, of any financial advantage, additional to market value, to the person incidental to the person's ownership of the interest;
 - (iii) any reduction in the market value of any other interest in land held by the person that is caused by the severance by the acquisition of the acquired interest from the other interest; and
 - (iv) where the acquisition has the effect of severing the acquired interest from another interest, any increase or decrease in the

market value of the interest still held by the person resulting from the nature of, or the carrying out of, the purpose for which the acquired interest was acquired;

- (b) if:
- (i) the interest acquired from the person did not previously exist as such in relation to the land; and
 - (ii) the person's interest in the land was diminished, but not extinguished, by the acquisition;

the loss suffered by the person because of the diminution of the person's interest in the land;

- (c) any loss, injury or damage suffered, or expense reasonably incurred, by the person that was, having regard to all relevant considerations, including any circumstances peculiar to the person, suffered or incurred by the person as a direct, natural and reasonable consequence of:
- (i) the acquisition of the interest; or
 - (ii) the making or giving of the pre-acquisition declaration or certificate under section 24 in relation to the acquisition of the interest;

other than any such loss, injury, damage or expense in respect of which compensation is payable under Part VIII;

- (d) if the interest is limited as to time or may be terminated by another person—the likelihood of the continuation or renewal of the interest and the likely terms and conditions on which any continuation or renewal would be granted;
- (e) any legal or other professional costs reasonably incurred by the person in relation to the acquisition, including the costs of:
- (i) obtaining advice in relation to the acquisition, the entitlement of the person to compensation or the amount of compensation; and
 - (ii) executing, producing or surrendering such documents, and making out and providing such abstracts and attested copies, as the Secretary to the Attorney-General's Department or a person authorised under subsection 55E (4) of the *Judiciary Act 1903* requires.

Meaning of "market value"

56. For the purposes of this Division, the market value of an interest in land at a particular time is the amount that would have been paid for the interest if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.

Special provision where market value determined upon basis of potential of land

57. Where the market value of an interest in land acquired by compulsory process is assessed upon the basis that the land had potential to be used for a purpose other than the purpose for which it was used at the time of

acquisition, compensation shall not be allowed in respect of any loss or damage that would necessarily have been suffered, or expense that would necessarily have been incurred, in realising that potential.

No general market for interest acquired

58. (1) This section applies where:

- (a) an interest in land (in this section called the “old land”) is acquired from a person by compulsory process;
- (b) immediately before the acquisition, the person was using the old land, or intended to use the old land, for a purpose other than the carrying on of a business;
- (c) but for the acquisition, the land would have been, or would have continued to be, used for that purpose;
- (d) at the time of the acquisition, there was no general demand or market for land used for that purpose; and
- (e) the person has acquired, or intends to acquire, another interest in other land (in this section called the “new land”) in substitution for the acquired interest and intends to use the new land for the same purpose.

(2) The market value of the acquired interest on the day of acquisition shall be taken to be the greater of:

- (a) the amount that, apart from this section, would be the market value (if any) of that interest on that day; and
- (b) the net acquisition cost in relation to the interest in the new land.

(3) The net acquisition cost, in relation to the interest in the new land, is the amount calculated in accordance with the formula:

$$CA + E - FI$$

where:

CA is the amount of the cost, or the likely cost, to the person of the acquisition of the interest in the new land;

E is the amount of the expenses and losses incurred, or likely to be incurred, by the person as a result of, or incidental to, ceasing to use the old land and commencing to use the new land for the same purpose; and

FI is the present value of any real and substantial saving in recurring costs (relating to land or an interest in land) gained by the person as a result of the relocation.

Interest affected by planning restriction

59. (1) This section applies where:

- (a) an interest in land is acquired from a person by compulsory process;
- (b) immediately before the acquisition, a planning instrument was in force having the effect of limiting or restricting the permissible use of the land to use for a purpose of a public nature;

- (c) the planning instrument was made to meet the needs of an acquiring authority; and
- (d) the planning instrument was not in force in relation to the land at the time the person acquired the interest.

(2) In determining the amount of compensation to which the person is entitled in respect of the acquisition of the interest:

- (a) the limitation or restriction on the use of the land imposed by the planning instrument shall be disregarded;
- (b) it shall be assumed that the land was subject only to such limitations and restrictions as would have been likely if there had been no proposal to limit or restrict the use of the land to use for the purpose permitted by the planning instrument; and
- (c) the amount of any compensation paid or payable to the person in consequence of the planning instrument shall be deducted from the compensation to which the person would otherwise be entitled.

Matters to be disregarded in assessing compensation

60. In assessing compensation, there shall be disregarded:

- (a) any special suitability or adaptability of the relevant land for a purpose for which it could only be used pursuant to a power conferred by or under law, or for which it could only be used by a government, public or local authority;
- (b) any increase in the value of the land caused by its use in a manner or for a purpose contrary to law;
- (c) any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the purpose for which the interest was acquired; and
- (d) any increase in the value of the land caused by the carrying out, after a copy of the pre-acquisition declaration or certificate under section 24 in relation to the acquisition of the interest was given to the person, of any improvements to the land, unless the improvements were carried out with the written approval of the Minister.

Acquisition of a dwelling

61. (1) This section applies where:

- (a) an interest in land is acquired from a person by compulsory process;
- (b) the interest entitled the person to occupy a dwelling on the land;
- (c) immediately before the acquisition the person was occupying the dwelling as his or her principal place of residence; and
- (d) because of the acquisition, the person has ceased to be entitled to occupy the dwelling as his or her principal place of residence.

(2) The amount of compensation to which the person is entitled in respect of the acquisition is the sum of \$10,000 (or that amount as indexed by section 126) and the greater of the following amounts:

- (a) the amount of compensation to which the person would, apart from this section, be entitled;
- (b) the amount necessary to reimburse the person for the costs of acquiring a reasonably equivalent interest in land that entitles the person to occupation of a reasonably equivalent dwelling.

Interest subject to mortgage

62. (1) This section applies where:

- (a) an interest in land is acquired from a person (in this section called the “owner”) by compulsory process; and
- (b) immediately before the acquisition, the interest was subject to one or more mortgages.

(2) As a general rule, the compensation to which the owner is entitled in respect of the acquisition shall be determined as if the interest had not been subject to any mortgage.

(3) If compensation is payable under this Part to a mortgagee, the compensation payable to the owner is reduced by so much of the compensation payable to the mortgagee as represents the amount calculated according to paragraph 65 (1) (a).

(4) If a mortgagee waives the right to compensation in respect of the acquisition of a mortgage interest, the compensation to which the owner would otherwise be entitled is increased by such amount as the owner should justly receive as compensation in respect of interest upon the mortgage debt accruing from the time of the acquisition, or in respect of any other liability to the mortgagee.

Crown land

63. Where the interest of a State or Territory in Crown land of the State or Territory is acquired by compulsory process, the State or Territory is entitled to compensation as if:

- (a) it had been the proprietor of an estate in fee simple in the land or of any relevant lesser interest in the land, as the case requires; and
- (b) that estate or interest had been subject to any interest which a person other than the State or Territory had in the land immediately before the acquisition.

Division 3—Amount of compensation—mortgage interests

Interpretation

64. (1) For the purposes of this Division, money shall be taken to have been due to a mortgagee under, or to have been secured by, a mortgage at the time of acquisition of a mortgage interest only to the extent that, at that time:

- (a) the right of the mortgagee to recover the money secured by the mortgage was not barred by a law relating to the limitation of actions; or

- (b) the mortgagee was entitled to recover money secured by the mortgage by exercising a power of sale of, or other remedy in relation to, the interest in land subject to the mortgage.

(2) For the purposes of this Division, the interest due to the mortgagee under a mortgage at a particular time is the interest that would be payable to the mortgagee if the mortgage were discharged at that time, other than so much (if any) of that interest as represents:

- (a) costs of re-investing the principal under the mortgage; or
- (b) a loss, or possible loss, of interest on the re-investment of the principal under the mortgage.

Amount of compensation

65. (1) The amount of compensation to which a mortgagee is entitled under this Part in respect of the acquisition of a mortgage interest under a mortgage (in this section called the “relevant mortgage”) is an amount equal to the sum of:

- (a) so much of the sum of:
 - (i) the amount of the principal secured by the relevant mortgage at the time of acquisition of the mortgage interest; and
 - (ii) the amount of any interest, costs or charges due to the mortgagee under the relevant mortgage at that time;as does not exceed the amount of compensation payable under this Act to the mortgagor in respect of the acquisition of the interest in land that was subject to the relevant mortgage; and
- (b) any legal or other professional costs reasonably incurred by the mortgagee in relation to the acquisition of the mortgage interest, including costs of:
 - (i) obtaining advice in relation to the acquisition, the entitlement of the mortgagee to compensation or the amount of compensation; and
 - (ii) executing, producing or surrendering such documents, and making out and providing such abstracts and attested copies, as the Secretary to the Attorney-General’s Department or a person authorised under subsection 55E (4) of the *Judiciary Act 1903* requires.

(2) For the purposes of subsection (1), if:

- (a) the relevant mortgage was the only mortgage over the interest in land immediately before the acquisition; or
- (b) there were 2 or more mortgages over the interest in land immediately before the acquisition and the relevant mortgage had, at that time, priority over the other mortgage or mortgages;

the compensation payable to the mortgagor in respect of the acquisition of the interest in land shall be taken to be the compensation that would have been payable to the mortgagor if there had been no mortgage over the interest.

- (3) For the purposes of subsection (1), if:
 - (a) there were 2 or more mortgages over the interest in land immediately before the acquisition; and
 - (b) the relevant mortgage did not have, at that time, priority over the other mortgage or mortgages;

the compensation payable to the mortgagor in respect of the acquisition of the interest in land shall be taken to be the compensation that would have been payable to the mortgagor if there had been no mortgage over the interest, reduced by the principal secured at the time of the acquisition by, and the interest, costs and charges due at that time under, a mortgage or mortgages having priority over the relevant mortgage.

Particulars of mortgages may be required

66. (1) The Minister may, by written notice require a person from whom an interest in land, other than a mortgage interest, has been acquired by compulsory process, to provide the Minister with the following particulars:

- (a) whether the interest was, immediately before the acquisition, subject to any mortgages;
- (b) in relation to each mortgage (if any) to which the interest was, immediately before its acquisition, subject:
 - (i) the name and address of the mortgagee;
 - (ii) the amount of principal secured by the mortgage at the time of the acquisition of the interest; and
 - (iii) the amount of interest, costs and charges due under the mortgage at that time.

(2) If the person fails to provide the Minister with the particulars within 30 days after the giving of the notice, or such further period as the Minister, by writing, allows, the Minister may agree with any person claiming to be a mortgagee of the interest in land as to the amounts due under the mortgage and the first-mentioned person is debarred from disputing the correctness of any amounts so agreed.

Division 4—Claims for, and offers of, compensation

Claims for compensation

67. (1) A person who considers that he or she is entitled to be paid compensation in accordance with this Part may make a claim for compensation.

- (2) A claim:
 - (a) shall be in the form approved by the Minister for the purposes of this subsection;
 - (b) shall specify:
 - (i) the interest of the person that has been acquired by compulsory process;

- (ii) the amount of compensation the person claims in respect of the acquisition; and
 - (iii) if the claim is in respect of the acquisition of a mortgage interest under a mortgage—the amounts that, for the purposes of Division 3, are the amounts of:
 - (A) principal secured by the mortgage at the time of the acquisition of the interest; and
 - (B) any interest, costs and charges due under the mortgage at that time; and
 - (c) shall be given to the Minister.
- (3) A person who has made a claim may, by notice in writing given to the Minister, withdraw the claim.
- (4) Where a claim is withdrawn, this Act has effect as if the claim had never been made.
- (5) For the purposes of this Act, a claim shall be taken to be made when it is given to the Minister.

Effect of compensation claim in respect of acquisition of mortgage interest

68. (1) This section applies where:
- (a) a mortgage interest has been acquired from a mortgagee; and
 - (b) the mortgagee makes a claim for compensation in respect of the acquisition.
- (2) To the extent of the compensation payable to the mortgagee in respect of the acquisition, excluding amounts referred to in paragraph 65 (1) (b), the acquisition shall, on the making of the claim, be taken to have discharged the liability of the mortgagor under the mortgage as from the time of acquisition.
- (3) On payment or tender of the compensation to the mortgagee, the mortgagee shall, if so required by the mortgagor and at the expense of the mortgagor, execute a discharge of the mortgage debt to the extent to which the mortgage debt is taken, by subsection (2), to have been discharged.

Amounts paid in respect of mortgage liabilities extinguished by section 68

69. (1) Where an amount has been paid to or recovered by the mortgagee under a mortgage in respect of a liability that, upon the making of a claim by the mortgagee, is, by section 68, taken to have been discharged as from the time of acquisition of a mortgage interest under the mortgage:
- (a) the mortgagee is liable to repay that amount to the person who paid it; and
 - (b) the Commonwealth may deduct from the compensation payable to the mortgagee and pay to the person who paid that amount so much of that amount as has not been so repaid.

(2) A payment made by the Commonwealth under paragraph (1) (b) shall be deemed to have been made in discharge of the obligation of the mortgagee under paragraph (1) (a).

Minister either to accept claim and offer compensation or to reject claim

70. (1) If the Minister is satisfied that the interest in land specified in a claim was acquired by compulsory process from the claimant, the Minister shall, by written notice given to the claimant:

- (a) inform the claimant that the claim is accepted;
- (b) make an offer to the claimant of the amount of compensation to which the Minister considers the claimant is entitled in accordance with Division 2 or 3; and
- (c) explain to the claimant how the amount offered was arrived at.

(2) If the Minister does not consider that the interest in land specified in the claim was acquired by compulsory process from the claimant, the Minister shall, by written notice given to the claimant, inform the claimant that the claim is rejected and state the reasons for the rejection.

(3) If, within 42 days after the receipt of the claim, the Minister has not given the claimant a notice under subsection (1) or (2), the Minister shall, at the end of that period, be taken to have rejected the claim and to have given the claimant a notice under subsection (2).

(4) The claimant may, in writing and before the end of the period of 42 days referred to in subsection (3), agree to an extension of that period.

Rejection of claims—review by Administrative Appeals Tribunal

71. (1) Where:

- (a) a notice under subsection 70 (2) has been, or is to be taken to have been, given to a person who has made a claim for compensation; and
- (b) the claimant has not made an application to the Federal Court under section 72 in respect of the rejection of the claim;

the claimant may apply to the Administrative Appeals Tribunal for a review of the decision of the Minister to reject the claim.

(2) Subject to subsections (3) and (4), the *Administrative Appeals Tribunal Act 1975* applies to the application.

(3) Section 29 of the *Administrative Appeals Tribunal Act 1975* applies to the application as if the prescribed time for the lodging of the application with the Tribunal were the period of 3 months commencing on the day on which the notice under subsection 70 (2) was given, or is to be taken to have been given, to the person.

(4) On the application, the Tribunal may exercise all the powers and discretions conferred by this Act on the Minister in deciding whether to accept or reject the claim for compensation and shall make a decision:

- (a) affirming the rejection of the claim by the Minister; or

- (b) accepting the claim.

(5) If the decision of the Tribunal in relation to the application affirms the rejection by the Minister of the claim for compensation, the interest specified in the claim shall be taken, for the purposes of this Act, not to have been acquired from the claimant by compulsory process.

(6) If the decision of the Tribunal in relation to the application is to accept the claim for compensation rejected by the Minister:

- (a) the interest specified in the claim shall be taken, for the purposes of this Act, to have been acquired from the claimant by compulsory process; and
- (b) the Minister shall give a notice under subsection 70 (1) to the claimant.

Rejection of claims—declaration by Federal Court

72. (1) Where:

- (a) a notice under subsection 70 (2) has been, or is to be taken to have been, given to a person who has made a claim for compensation; and
- (b) the claimant has not made an application to the Administrative Appeals Tribunal under section 71 in respect of the rejection of the claim;

the claimant may bring an action in the Federal Court against the Commonwealth claiming a declaration that the interest specified in the claim was acquired from the claimant by compulsory process.

(2) The Court may:

- (a) declare that the interest specified in the claim, or some other interest, was acquired from the claimant by compulsory process; or
- (b) dismiss the action.

(3) If the Court declares that the interest specified in the claim was acquired from the claimant by compulsory process:

- (a) the decision of the Court is binding on the Commonwealth and on all persons who, immediately before the acquisition, held interests in the land; and
- (b) the Minister shall give a notice under subsection 70 (1) to the claimant.

(4) If the Court declares that an interest, other than the interest specified in the claim, was acquired from the claimant by compulsory process:

- (a) the decision of the Court is binding on the Commonwealth and on all persons who, immediately before the acquisition, held interests in the land;
- (b) the claim has effect as if the other interest had been specified in the claim as the interest acquired by compulsory process; and

- (c) the Minister shall give a notice under subsection 70 (1) to the claimant.

Combination of actions under section 72 and proceedings for determination of compensation

73. (1) Where a claimant for compensation has brought an action under section 72, the claimant, the Commonwealth or any other person appearing to the Federal Court to have a sufficient interest to justify the making of the application, may, unless the action has been dismissed, apply to the Court for an order under subsection (3) in respect of the action.

(2) An application may be made to the Court at any time after the commencement of the action, whether before or after the making of a declaration under subsection 72 (2).

(3) On an application, the Court may:

- (a) if a declaration has been made under subsection 72 (2)—order that the action be treated as if it included proceedings under section 82 for the determination of the amount of compensation payable to the claimant in respect of the acquisition of the interest to which the declaration relates; or
- (b) in any other case—order that, if the Court makes a declaration under subsection 72 (2), the action shall be treated as including proceedings under section 82 for the determination of the amount of compensation payable to the claimant in respect of the acquisition of the interest to which the declaration relates.

Consequences of not seeking review of decision to reject claim

74. (1) This section applies where a claim for compensation has been rejected by the Minister and:

- (a) the claimant does not, within 3 months after notice under subsection 70 (2) has been, or is to be taken to have been, given to the claimant, or within such further time as the Minister allows, make an application to the Administrative Appeals Tribunal under section 71, or bring an action in the Federal Court under section 72, in respect of the rejection of the claim;
- (b) the claimant has brought such an action within that period and:
 - (i) the action has been dismissed, either at first instance or on appeal; and
 - (ii) a period of at least 30 days has elapsed since the dismissal of the action and no appeal or further appeal by the claimant (including an application for leave to appeal) is pending; or
- (c) the claimant has made such an application within that period and:
 - (i) the Tribunal has affirmed the rejection of the claim by the Minister; and

- (ii) a period of at least 30 days has elapsed since the Tribunal made its decision and no appeal to the Federal Court in respect of that decision is pending.

(2) The Commonwealth may pay compensation under this Part on the basis that the claimant was not, at the time of the acquisition to which the claim relates, entitled to the interest the subject of the claim and, where compensation is paid in respect of an interest that is inconsistent with the interest the subject of the claim, no compensation is payable in respect of that last-mentioned interest.

Claimant may accept or reject Minister's offer of compensation

75. Where a notice under subsection 70 (1) is given to a person who has made a claim for compensation, the person may, by written notice given to the Minister:

- (a) accept the offer of compensation; or
- (b) reject the offer of compensation and:
 - (i) inform the Minister of the amount of compensation to which the person considers he or she is entitled; and
 - (ii) explain to the Minister how that amount was arrived at.

Minister to reconsider offer of compensation and to make final offer

76. (1) On receipt of a notice under paragraph 75 (b), the Minister shall reconsider the question of the amount of compensation to which the claimant is entitled and shall, by written notice given to the claimant:

- (a) make a final offer to the claimant of the amount of compensation to which the Minister considers the claimant is entitled in accordance with Division 2 or 3; and
- (b) explain to the claimant how the amount of the final offer was arrived at.

(2) In reconsidering the amount of compensation to which the claimant is entitled, the Minister shall have regard to the information included in the notice in accordance with paragraph 75 (b).

(3) If, within 2 months after the receipt of the notice, the Minister has not given the claimant a notice under subsection (1), the following provisions have effect:

- (a) the notice given to the claimant under subsection 70 (1) shall be taken to be a notice given to the claimant under subsection (1) of this section on the last day of that period of 2 months;
- (b) the offer of compensation made in the notice under subsection 70 (1) shall be taken to be a final offer of compensation.

Claimant may accept or reject Minister's final offer of compensation

77. Where a person has received, or is to be taken to have received, a notice under subsection 76 (1) making a final offer of compensation, the person may, by notice in writing given to the Minister, accept or reject the final offer.

Division 5—Determination of compensation payable

Determination of compensation by pre-acquisition agreement

78. (1) The Minister and the owner of an interest in land, other than a mortgage interest, may agree on the amount of compensation to which the owner will be entitled if the interest is acquired by compulsory process within a time specified in the agreement.

(2) If the interest is acquired from the owner by compulsory process within the specified time and the agreement is still in force, the amount of compensation payable to the owner in respect of the acquisition is the amount specified in the agreement.

Determination of compensation by post-acquisition agreement

79. If:

- (a) a person has made a claim for compensation;
- (b) the Minister has made an offer (including a final offer) of an amount of compensation; and
- (c) the person has accepted the offer;

the amount of compensation payable to the person in respect of the acquisition to which the claim relates is the amount of compensation so offered by the Minister and accepted by the person.

Determination of compensation by arbitration or by expert

80. (1) The Minister and a person who has rejected an offer (including a final offer) of compensation under this Part, may, by writing, agree to submit the question of the amount of compensation to which the person is entitled to be settled by arbitration or to be determined by an expert.

(2) The amount of compensation payable to the person under this Part is, unless the agreement is revoked, the amount settled by arbitration or determined by the expert.

Determination of compensation by Administrative Appeals Tribunal

81. (1) A person who has rejected a final offer of compensation under this Part may apply to the Administrative Appeals Tribunal for a review of the decision of the Minister to make the offer.

(2) Subject to subsections (3) and (4), the *Administrative Appeals Tribunal Act 1975* applies to the application.

(3) Section 29 of the *Administrative Appeals Tribunal Act 1975* applies to the application as if the prescribed time for the lodging of the application with the Tribunal were the period of 3 months commencing on the day on which the notice making the final offer was given, or is to be taken to have been given, to the person.

(4) On the application, the Tribunal may exercise all the powers and discretions conferred by this Act on the Minister in making the final offer of compensation and shall make a decision:

- (a) affirming the final offer of compensation made by the Minister; or
- (b) varying the final offer of compensation made by the Minister.

(5) If the Tribunal affirms the final offer, the amount of compensation payable to the person under this Part is the amount of the final offer.

(6) If the Tribunal varies the final offer, the amount of compensation payable to the person under this Part is the amount of the final offer as varied by the Tribunal.

Determination of compensation by Federal Court

82. (1) Where a person has made a claim for compensation, the person or the Commonwealth may, subject to subsection (2), institute proceedings in the Federal Court for a determination of the amount of compensation to which the person is entitled.

(2) Proceedings shall not be instituted under subsection (1) by the Commonwealth until at least 3 months after the making of the claim.

(3) The amount of compensation payable to the person under this Part is the amount that the Court determines.

Persons not entitled to seek determination of compensation by more than one means

83. (1) A person who has, under Division 4, accepted an offer of compensation is not entitled, in respect of the same claim:

- (a) to accept another offer of compensation;
- (b) to enter into an agreement under section 80;
- (c) to make an application under section 81; or
- (d) to institute proceedings under section 82.

(2) Where, a person has:

- (a) entered into an agreement under section 78 or 80;
- (b) made an application under section 81; or
- (c) instituted proceedings under section 82;

then, unless the agreement is revoked, or the application or proceedings are withdrawn or terminated otherwise than by a decision on the merits, the person is not entitled, in respect of the same claim:

- (d) to accept an offer of compensation;
- (e) to enter into an agreement, or another agreement, under section 78 or 80;
- (f) to make an application, or another application, under section 81; or
- (g) to institute proceedings, or new proceedings, under section 82.

Separate rights of mortgagee and mortgagor to determination of compensation

84. The rights of a mortgagor claiming compensation are not affected by a determination of the compensation payable to a mortgagee, and the rights of a mortgagee claiming compensation are not affected by a determination of the compensation payable to the mortgagor or another mortgagee, unless the mortgagor or mortgagee, as the case may be, was a party to an agreement or proceedings by which the compensation was determined.

Division 6—Payment of compensation

Advance payment on account of compensation

85. (1) The Minister may, on behalf of the Commonwealth, make an advance on account of compensation that may become payable to a person under this Part.

(2) Where the Minister has accepted a claim for compensation and made an offer of compensation to the claimant, the Minister shall, on behalf of the Commonwealth, make an advance on account of compensation under this Part.

(3) An advance under subsection (2), when added to advances to the same person in respect of the same compensation under subsection (1), shall be not less than 90% of the amount of the Minister's offer of compensation.

(4) The mere receipt by a person of an advance on account of compensation does not constitute an acceptance of any offer made by the Minister.

Minister may pay rates etc.

86. (1) This section applies where:

- (a) an interest in land is acquired from a person (in this section called the "owner") by compulsory process; and
- (b) immediately before the acquisition, rates, taxes or other similar charges in respect of the land or interest were due and payable.

(2) To the extent to which those charges are or were payable by the owner as owner of the interest, the Minister may pay those charges.

(3) Where the Minister makes a payment, the amount of the payment shall be deducted from the amount of compensation payable to the owner in respect of the acquisition.

Payment of compensation

87. (1) Where:

- (a) a person is entitled to be paid compensation in accordance with this Part in respect of an acquisition;
- (b) the amount of the compensation has been determined in accordance with Division 5;

- (c) the proof of title requirement in relation to the acquisition has been satisfied; and
- (d) the person has:
 - (i) produced or surrendered all deeds and documents relating to, or evidencing, the person's title to the interest that the Secretary to the Attorney-General's Department, or a person authorised under subsection 55E (4) of the *Judiciary Act 1903*, reasonably requires to be produced or surrendered; and
 - (ii) executed such documents as that Secretary or a person so authorised reasonably requires;

the Commonwealth shall pay to the person the amount of compensation so determined.

(2) For the purposes of subsection (1), the proof of title requirement in relation to the acquisition shall be taken to have been satisfied if:

- (a) the person has satisfied the Secretary to the Attorney-General's Department, or a person authorised under subsection 55E (4) of the *Judiciary Act 1903*, that the person had, immediately before the acquisition, title to the acquired interest;
- (b) the Federal Court has:
 - (i) made a declaration under section 72 that the interest was acquired from the person by compulsory process; or
 - (ii) made a determination under section 127 that the person held the interest immediately before the acquisition; or
- (c) because of a decision of the Administrative Appeals Tribunal on an application under section 71, the interest is to be taken, for the purposes of this Act, to have been acquired from the person by compulsory process.

Relationship between advances on account of, and payments of, compensation

88. (1) Where:

- (a) the Commonwealth is required to pay compensation to a person under this Part; and
- (b) the total amount paid as advances exceeds the amount of compensation;

the person is liable to pay to the Commonwealth the amount of the excess.

(2) An amount due to the Commonwealth under subsection (1) may be recovered as a debt due by action in a court of competent jurisdiction.

Repayment of advances where no entitlement to compensation

89. (1) Where:

- (a) an advance, or advances, have been paid to a person on account of compensation under this Part; and
- (b) compensation does not become payable to the person;

the person is liable to pay to the Commonwealth an amount equal to the total paid by way of advances.

(2) An amount due to the Commonwealth under subsection (1) may be recovered as a debt due by action in a court of competent jurisdiction.

Payment of compensation into Trust Fund

90. (1) This section applies where:

- (a) an interest in land has been acquired from a person by compulsory process;
- (b) the amount of compensation payable to the person in respect of the acquisition has been determined in accordance with Division 5; and
- (c) at the end of 3 months after the determination of the amount of compensation, the person has not, because of some default or delay on the part of the person, received payment of the compensation.

(2) The Minister may pay the compensation into the Trust Fund.

(3) The Minister may pay rates, taxes or similar amounts charged on the land and due at the time of the acquisition and shall deduct the amount of the payment from the compensation otherwise payable into the Trust Fund.

(4) On payment of the compensation into the Trust Fund, the compensation shall, for the purposes of sections 91 and 92, be taken to have been paid to the person.

(5) Where the person rectifies the default or delay referred to in subsection (1), the Minister shall pay to the person, out of the Trust Fund, an amount equal to the amount of compensation paid into the Trust Fund.

Interest payable on compensation—interests other than mortgage interests

91. (1) This section applies where the Commonwealth is liable to pay compensation to a claimant under this Part in respect of the acquisition of an interest, other than a mortgage interest.

(2) The claimant is entitled to payment by the Commonwealth of interest on the compensation at the rate specified in, or ascertained in accordance with, the regulations from the day of the acquisition until the day on which the compensation is paid or, where payment is delayed through a default or delay of the claimant, until the day on which the compensation would have been paid but for the default or delay.

(3) For the purposes of subsection (2), if:

- (a) the Minister made an offer of compensation to the claimant;
- (b) the claimant rejected the offer; and
- (c) the amount of compensation determined under this Part is less than the amount of the offer;

the payment of the compensation shall be taken to have been delayed through a delay of the claimant and the day on which the compensation would have been paid but for that delay shall be taken to be the day on which the claimant received notice of the offer.

(4) If, on the day following the end of the period of 3 months that commenced on the day of the acquisition or any succeeding period of 3 months, the interest payable to the claimant under subsection (2) in respect of the period has not been paid, this Part has effect as if, on that day, the amount of compensation payable were increased by the amount of the unpaid interest.

(5) Interest is not payable to the claimant on the whole or any part of the compensation otherwise than in accordance with this section.

Interest payable on compensation—mortgage interests

92. (1) This section applies where the Commonwealth is liable to pay compensation to a claimant under this Part in respect of the acquisition of a mortgage interest.

(2) The claimant is entitled to payment by the Commonwealth of interest on the amount representing principal included in the compensation at the lowest rate (whether for prompt payment or otherwise) provided for by the mortgage from the day of the acquisition until the day on which the compensation is paid or, where payment is delayed through a default or delay of the claimant, until the day on which the compensation would have been paid but for the default or delay.

(3) For the purposes of subsection (2), if:

- (a) the Minister made an offer of compensation to the claimant;
- (b) the claimant rejected the offer; and
- (c) the amount of compensation determined under this Part is less than the amount of the offer;

the payment of the compensation shall be taken to have been delayed through a delay of the claimant and the day on which the compensation would have been paid but for that delay shall be taken to be the day on which the claimant received notice of the offer.

(4) If, on the day following the end of the period of 3 months that commenced on the day of the acquisition or any succeeding period of 3 months, the interest payable to the claimant under subsection (2) in respect of the period has not been paid, this Part has effect as if, on that day, the amount of compensation payable were increased by the amount of the unpaid interest.

(5) If the principal under the mortgage was not repayable (with or without notice) on the day when interest ceases to be payable under subsection (2), the claimant is also entitled to be paid by the Commonwealth:

- (a) the costs of the claimant of re-investing the amount representing principal included in the compensation; and

- (b) if a loss of interest may reasonably be expected on the re-investment, having regard to the rate of interest secured by the mortgage and the rate of interest obtained on the re-investment—a reasonable allowance for loss of interest until the day on which the principal would have been repayable.

(6) Interest is not payable to the claimant on the whole or any part of the compensation payable otherwise than in accordance with this section.

Division 7—Courts to ensure just terms

Courts to ensure just terms

93. In any case where the Federal Court, or the High Court exercising jurisdiction under section 75 of the Constitution, is of the opinion that the application of any of the provisions of this Act would result in an acquisition having been made otherwise than on just terms, the Federal Court, or the High Court, may determine such compensation or make such order (whether against the Commonwealth or against another person) as, in its opinion, is necessary to ensure that the acquisition is on just terms.

**PART VIII—COMPENSATION FOR EXERCISE OF POWERS
UNDER PART III AND FAILURE TO ACQUIRE**

Division 1—Entitlement to compensation

Interpretation

94. For the purposes of this Part, a reference to a loss suffered by a person includes a reference to injury or damage suffered, and expenses reasonably incurred, by the person.

Entitlement to compensation—exercise of powers under Part III

95. Where:

- (a) person who owns an interest in land suffers loss because of the exercise, in relation to the land, of powers conferred by Part III; and
 - (b) within 3 years after suffering the loss the person makes a claim for compensation in accordance with section 97 in respect of the loss;
- the Commonwealth is liable to pay to that person as compensation such amount as will justly compensate him or her for the loss.

**Entitlement to compensation—pre-acquisition declaration or section 24
certificate made but acquisition not proceeded with**

96. (1) Where:

- (a) a pre-acquisition declaration is revoked or ceases to have effect because of subsection 44 (2) or 46 (3);
- (b) a person who, when the declaration was in force, was an owner of an interest affected by the declaration, suffers loss as a direct,

natural and reasonable consequence of the making of the declaration;
and

- (c) within 3 years after the declaration is revoked or ceases to have effect, the person claims compensation in accordance with section 97;

the Commonwealth is liable to pay to the person as compensation such amount as will justly compensate him or her for the loss.

(2) Where:

- (a) a certificate under section 24 is revoked or ceases to have effect because of subsection 46 (3);
- (b) a person who, when the certificate was in force, was a person affected by the certificate, suffers loss as a direct, natural and reasonable consequence of the giving of the certificate; and
- (c) within 3 years after the certificate is revoked or ceases to have effect, the person claims compensation in accordance with section 97;

the Commonwealth is liable to pay to the person as compensation such amount as will justly compensate him or her for the loss.

Division 2—Claims for, and offers of, compensation

Claims for compensation

97. (1) A person who considers that he or she is entitled to be paid compensation in accordance with this Part may make a claim for compensation.

(2) A claim for compensation:

- (a) shall be in the form approved by the Minister for the purposes of this subsection;
- (b) shall include particulars of the loss in respect of which compensation is claimed;
- (c) shall specify the interest of the person in the land in respect of which the claim is made; and
- (d) shall be given to the Minister.

(3) A person who has made a claim for compensation may, by notice in writing given to the Minister, withdraw the claim.

(4) Where a claim for compensation is withdrawn, this Act has effect as if the claim had never been made.

(5) For the purposes of this Act, a claim for compensation shall be taken to be made when it is given to the Minister.

Minister either to accept claim and offer compensation or to reject claim

98. (1) If the Minister is satisfied that compensation in accordance with this Part is payable to a claimant for compensation in respect of the loss to which the claim relates, the Minister shall, by written notice given to the claimant:

- (a) inform the claimant that the claim is accepted;
- (b) make an offer to the claimant of the amount of compensation to which the Minister considers the claimant is entitled in accordance with Division 1; and
- (c) explain to the claimant how the amount offered was arrived at.

(2) If the Minister does not consider that compensation in accordance with this Part is payable to a person who has made a claim in respect of the loss suffered particulars of which were included in the claim, the Minister shall, by written notice given to the claimant, inform the claimant that the claim is rejected and state the reasons for the rejection.

(3) If, within 42 days after the receipt of the claim, the Minister has not given the claimant a notice under subsection (1) or (2), the Minister shall, at the end of that period, be taken to have rejected the claim and to have given the claimant a notice under subsection (2).

(4) The claimant may, in writing and before the end of the period referred to in subsection (3), agree to an extension of that period.

Rejection of claims—review by Administrative Appeals Tribunal

99. (1) Where:

- (a) a notice under subsection 98 (2) has been, or is to be taken to have been, given to a person who has made a claim for compensation; and
- (b) the claimant has not made an application to the Federal Court under section 100 in respect of the rejection of the claim;

the claimant may apply to the Administrative Appeals Tribunal for a review of the decision of the Minister to reject the claim.

(2) Subject to subsections (3) and (4), the *Administrative Appeals Tribunal Act 1975* applies to the application.

(3) Section 29 of the *Administrative Appeals Tribunal Act 1975* applies to the application as if the prescribed time for the lodging of the application with the Tribunal were the period of 3 months commencing on the day on which the notice under subsection 98 (2) was given, or is to be taken to have been given, to the person.

(4) On the application, the Tribunal may exercise all the powers and discretions conferred by this Act on the Minister in deciding whether to accept or reject the claim for compensation and shall make a decision:

- (a) affirming the rejection of the claim by the Minister; or
- (b) accepting the claim.

(5) If the decision of the Tribunal in relation to the application affirms the rejection by the Minister of the claim for compensation, the claimant shall be taken, for the purposes of this Act, not to be entitled to compensation in respect of the loss to which the claim relates.

(6) If the decision of the Tribunal in relation to the application is to accept the claim for compensation rejected by the Minister:

- (a) the claimant shall be taken, for the purposes of this Act, to be entitled to compensation in respect of the loss to which the claim relates; and
- (b) the Minister shall give a notice under subsection 98 (1) to the claimant.

Rejection of claims—declaration by Federal Court

100. (1) Where:

- (a) a notice under subsection 98 (2) has been, or is to be taken to have been, given to a person who has made a claim for compensation; and
- (b) the claimant has not made an application to the Administrative Appeals Tribunal under section 99 in respect of the rejection of the claim;

the claimant may bring an action in the Federal Court against the Commonwealth claiming a declaration that the claimant is entitled to compensation in respect of the loss to which the claim relates.

(2) The Court may:

- (a) declare that the claimant is entitled to compensation in respect of the loss to which the claim relates;
- (b) declare that the claimant is entitled to compensation in respect of some other loss suffered by the claimant; or
- (c) dismiss the action.

(3) If the Court makes a declaration under paragraph (2) (a):

- (a) the decision of the Court is binding on the Commonwealth and on all persons who hold, or have held, interests in the land to which the claim relates; and
- (b) the Minister shall give a notice under subsection 98 (1) to the claimant.

(4) If the Court makes a declaration under paragraph (2) (b):

- (a) the decision of the Court is binding on the Commonwealth and on all persons who hold, or have held, interests in the land to which the claim relates;
- (b) the claim has effect as if it had given particulars of the loss suffered in relation to which the Court declared that the claimant was entitled to compensation; and
- (c) the Minister shall give a notice under subsection 98 (1) to the claimant.

Combination of actions under section 100 and proceedings for determination of compensation

101. (1) Where a claimant for compensation has brought an action under section 100, the claimant, the Commonwealth or any other person appearing to the Federal Court to have a sufficient interest to justify the making of the application may apply to the Court for an order under subsection (3) in respect of the action.

(2) An application may be made to the Court, whether before or after the making of a declaration under subsection 100 (2).

(3) On an application, the Court may:

- (a) if a declaration has been made under subsection 100 (2)—order that the action be treated as if it included proceedings under section 108 for the determination of the amount of compensation payable to the claimant in respect of the loss suffered to which the declaration relates; or
- (b) in any other case—order that, if the Court makes a declaration under subsection 100 (2), the action shall be treated as including proceedings under section 108 for the determination of the amount of compensation payable to the claimant in respect of the loss suffered to which the declaration relates.

Claimant may accept or reject Minister's offer of compensation

102. Where a notice under subsection 98 (1) is given to a person who has made a claim for compensation the person may, by written notice given to the Minister:

- (a) accept the offer of compensation; or
- (b) reject the offer of compensation and:
 - (i) inform the Minister of the amount of compensation to which the person considers he or she is entitled; and
 - (ii) explain to the Minister how that amount was arrived at.

Minister to reconsider offer of compensation and to make final offer

103. (1) On receipt of a notice under paragraph 102 (b), the Minister shall reconsider the question of the amount of compensation to which the claimant is entitled and shall, by written notice given to the claimant:

- (a) make a final offer to the claimant of the amount of compensation to which the Minister considers the claimant is entitled in accordance with Division 1; and
- (b) explain to the claimant how the amount of the final offer was arrived at.

(2) In reconsidering the amount of compensation to which the claimant is entitled, the Minister shall have regard to the information included in the notice in accordance with paragraph 102 (b).

(3) If, within 2 months after the receipt of the notice, the Minister has not given the claimant a notice under subsection (1), the following provisions have effect:

- (a) the notice given to the claimant under subsection 98 (1) shall be taken to be a notice given to the claimant under subsection (1) of this section on the last day of that period of 2 months;
- (b) the offer of compensation made in the notice under subsection 98 (1) shall be taken to be a final offer of compensation.

Claimant may accept or reject Minister's final offer of compensation

104. Where a person has received, or is to be taken to have received, a notice under subsection 103 (1) making a final offer of compensation, the person may, by notice in writing given to the Minister, accept or reject the final offer.

Division 3—Determination of compensation payable

Determination of compensation by agreement

105. If:

- (a) a person has made a claim for compensation;
- (b) the Minister has made an offer (including a final offer) of an amount of compensation; and
- (c) the person has accepted the offer;

the amount of compensation payable to the person in respect of the loss to which the claim relates is the amount of compensation so accepted by the person.

Determination of compensation by arbitration or by expert

106. (1) The Minister and a person who has rejected an offer (including a final offer) of compensation under this Part may, by writing, agree to submit the question of the amount of compensation to which the person is entitled to be settled by arbitration or to be determined by an expert.

(2) The amount of compensation payable to the person under this Part is, unless the agreement is revoked, the amount settled by arbitration or determined by the expert.

Determination of compensation by Administrative Appeals Tribunal

107. (1) A person who has rejected a final offer of compensation under this Part may apply to the Administrative Appeals Tribunal for a review of the decision of the Minister to make the offer.

(2) Subject to subsections (3) and (4), the *Administrative Appeals Tribunal Act 1975* applies to the application.

(3) Section 29 of the *Administrative Appeals Tribunal Act 1975* applies to the application as if the prescribed time for the lodging of the application with the Tribunal were the period of 3 months commencing on the day on

which the notice making the final offer was given, or is to be taken to have been given, to the person.

(4) On the application, the Tribunal may exercise all the powers and discretions conferred by this Act on the Minister in making the final offer of compensation and shall make a decision:

- (a) affirming the final offer of compensation made by the Minister; or
- (b) varying the final offer of compensation made by the Minister.

(5) If the Tribunal affirms the final offer, the amount of compensation payable to the person under this Part is the amount of the final offer of compensation.

(6) If the Tribunal varies the final offer, the amount of compensation payable to the person under this Part is the amount of the final offer as varied by the Tribunal.

Determination of compensation by Federal Court

108. (1) Where a person has made a claim for compensation, the person or the Commonwealth may, subject to subsection (2), institute proceedings in the Federal Court for a determination of the amount of compensation to which the person is entitled.

(2) Proceedings shall not be instituted under subsection (1) by the Commonwealth until at least 3 months after the making of the claim.

(3) The amount of compensation payable to the person under this Part is the amount that the Court determines.

Persons not entitled to seek determination of compensation by more than one means

109. (1) A person who has, under Division 2, accepted an offer of compensation is not entitled, in respect of the same claim:

- (a) to accept another offer of compensation;
- (b) to enter into an agreement under section 106;
- (c) to make an application under section 107; or
- (d) to institute proceedings under section 108.

(2) Where a person has:

- (a) entered into an agreement under section 106;
- (b) made an application under section 107; or
- (c) instituted proceedings under section 108;

then, unless the agreement is revoked, or the application or proceedings are withdrawn or terminated otherwise than by a decision on the merits, the person is not entitled, in respect of the same claim:

- (d) to accept an offer of compensation;
- (e) to enter into an agreement, or another agreement, under section 106;

- (f) to make an application, or another application, under section 107;
or
- (g) to institute proceedings, or new proceedings, under section 108.

Division 4—Payment of compensation

Advance payment on account of compensation

110. (1) The Minister may, on behalf of the Commonwealth, make an advance on account of compensation that may become payable to a person under this Part.

(2) Where the Minister has accepted a claim for compensation and made an offer of compensation to the claimant, the Minister shall, on behalf of the Commonwealth, make an advance on account of compensation that may become payable to the claimant under this Part.

(3) An advance under subsection (2), when added to advances to the same person in respect of the same compensation under subsection (1), shall be 90% of the amount of the Minister's offer of compensation.

(4) The receipt by a person of an advance on account of compensation does not constitute an acceptance of any offer made by the Minister.

Payment of compensation

111. Where:

- (a) a person is entitled to be paid compensation in accordance with this Part; and
- (b) the amount of the compensation has been determined in accordance with Division 3;

the Commonwealth shall pay to the person the amount of compensation so determined.

Relationship between advances on account of, and payments of, compensation

112. (1) Where:

- (a) the Commonwealth is required to pay compensation to a person under this Part; and
- (b) the total amount paid as advances exceeds the amount of the compensation;

the person is liable to pay to the Commonwealth the amount of the excess.

(2) An amount due to the Commonwealth under subsection (1) may be recovered as a debt due by action in a court of competent jurisdiction.

Repayment of advances where no entitlement to compensation

113. (1) Where:

- (a) an advance, or advances, have been paid to a person on account of compensation under this Part; and

(b) compensation does not become payable to the person; the person is liable to pay to the Commonwealth an amount equal to the total paid by way of advances.

(2) An amount due to the Commonwealth under subsection (1) may be recovered as a debt due by action in a court of competent jurisdiction.

Payment of compensation into Trust Fund

114. (1) This section applies where:

- (a) compensation under this Part is payable to a person in respect of loss suffered by the person;
- (b) the amount of compensation payable to the person has been determined in accordance with Division 3; and
- (c) at the end of 3 months after the determination of the amount of compensation, the person has not, because of some default or delay on the part of the person, received payment of the compensation.

(2) The Minister may pay the compensation into the Trust Fund.

(3) On payment of the compensation into the Trust Fund, the compensation shall, for the purposes of section 115, be taken to have been paid to the person.

(4) Where the person rectifies the default or delay referred to in subsection (1) the Minister shall pay to the person, out of the Trust Fund, an amount equal to the amount of compensation paid into the Trust Fund.

Interest payable on compensation

115. (1) This section applies where the Commonwealth is liable to pay compensation to a claimant under this Part.

(2) The claimant is entitled to payment by the Commonwealth of interest on the compensation at the rate specified in, or ascertained in accordance with, the regulations from the day on which the person made a claim for the compensation until the day on which the compensation is paid or, where payment is delayed through a default or delay of the claimant, until the day on which the compensation would have been paid but for the default or delay.

(3) For the purposes of subsection (2), if:

- (a) the Minister made an offer of compensation to the claimant;
- (b) the claimant rejected the offer; and
- (c) the amount of compensation determined under this Part is less than the amount of the offer;

the payment of the compensation shall be taken to have been delayed through a delay of the claimant and the day on which the compensation would have been paid but for that delay shall be taken to be the day on which the claimant received notice of the offer.

(4) If, on the day following the end of the period of 3 months that commenced on the day on which the claim was made or any succeeding period of 3 months, the interest payable to the claimant under subsection (2) in respect of the period has not been paid, this Part has effect as if, on that day, the amount of compensation payable were increased by the amount of the unpaid interest.

(5) Interest is not payable to the claimant on the whole or any part of the compensation otherwise than in accordance with this section.

PART IX—PERSONS WITH LIMITED POWERS TO DEAL WITH INTERESTS IN LAND

Federal Court may approve certain acts

116. (1) Where:

- (a) an acquiring authority wishes to acquire an interest in land from a person by agreement; and
- (b) but for this subsection, the person would not have the capacity or power to enter into or carry out such an agreement;

the person may, with the approval of the Federal Court, enter into and carry out such an agreement.

(2) Where:

- (a) an interest in land has been acquired from a person by compulsory process; and
- (b) but for this subsection, the person would not have the capacity or power to do something in connection with compensation in respect of the acquisition;

the person may, with the approval of the Court, do the thing.

(3) Where, under subsection (1) or (2), the Court gives its approval to a person entering into an agreement, or doing something in connection with compensation, amounts payable under the agreement, or by way of compensation, shall be:

- (a) paid to a trustee appointed by the Court, subject to such trusts as the Court directs; or
- (b) otherwise applied in accordance with the directions of the Court.

(4) This section has effect despite any law, deed, will, memorandum or articles of association or other instrument.

PART X—DEALINGS IN LAND VESTED IN ACQUIRING AUTHORITIES

Disposals to be in accordance with Part

117. (1) An acquiring authority shall not dispose of an interest in land otherwise than in accordance with this Part unless:

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- (a) because of subsection 5 (2) or (3), this Act does not apply in relation to the disposal;
- (b) the regulations provide that this Act does not apply in relation to the disposal, by the acquiring authority, of interests in land in specified circumstances and the disposal is a disposal in those circumstances;
- (c) the disposal is authorised by a law of the Commonwealth (including a law passed or made after the commencement of this Act) and that law, or another law of the Commonwealth, expressly provides that the first-mentioned law has effect despite anything contained in this Act;
- (d) the disposal is effected by a law of the Commonwealth; or
- (e) the disposal results from the exercise by the acquiring authority of powers conferred by a mortgage, charge or other similar security over the interest.

(2) In spite of paragraph 48 (1) (b) of the *Acts Interpretation Act 1901*, regulations made for the purpose of paragraph (1) (b) of this section may provide that the regulations shall take effect on a date to be fixed by the Minister by notice published in the *Gazette*.

(3) The Minister shall not fix a date for the purpose of subsection (2) that is earlier than:

- (a) the last day on which a notice could be given under subsection 48 (4) of the *Acts Interpretation Act 1901* in relation to the regulations; or
- (b) if such a notice is given, the latest day on which the regulations could be disallowed by a House of the Parliament in which such a notice has been given.

Vesting of interests in Commonwealth authorities

118. In spite of anything else in this Part or Part IV, the Minister may, if he or she thinks it appropriate to do so, direct that an interest in land vested in the Commonwealth be transferred to a particular Commonwealth authority.

Disposal of interests in land

119. (1) An interest in land vested in an acquiring authority may be disposed of under the written authority of the Minister.

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

Disposal may be made subject to reservation of interest

120. The disposal of an interest in land by an acquiring authority may be made subject to the reservation to the acquiring authority of a specified interest in the land, including, for example:

- (a) an easement in gross over the land; or
- (b) a restriction on the use of the land, the benefit of which is not annexed to other land.

Interest in land to be offered first to former owner

121. (1) Where:

- (a) an acquiring authority acquired an interest in land by the vesting of the interest in the acquiring authority by paragraph 41 (4) (a) of this Act or paragraph 10 (4) (a) of the *Lands Acquisition Act 1955*;
- (b) the acquiring authority has not made substantial improvements to the land;
- (c) the Minister proposes to authorise the disposal of the interest; and
- (d) if authorised, the disposal would be likely to occur before the end of 7 years after the acquisition of the interest by the acquiring authority;

the Minister shall, in authorising the disposal, have regard to the general principle that the interest should, if practicable, be first offered for sale to the former owner at the market value of the interest at the time the offer is made.

(2) An offer shall be made by the Minister by written notice given to the former owner and shall specify the amount that, in the opinion of the Minister, represents the market value of the interest at the time of the offer.

(3) The acquiring authority shall not dispose of the interest to a person other than the former owner within 28 days after the day on which the offer is made.

(4) If, within that period of 28 days, the former owner gives to the Minister notice that he or she wishes to purchase the interest from the acquiring authority, the authority shall not dispose of the interest to a person other than the former owner within 2 months after the notice is given.

(5) The former owner may apply to the Administrative Appeals Tribunal for review of the Minister's decision as to the amount specified in the offer as the market value of the interest.

(6) The *Administrative Appeals Tribunal Act 1975* applies to the former owner's application.

(7) If the former owner makes an application to the Administrative Appeals Tribunal, the acquiring authority shall not dispose of the interest to a person other than the former owner:

- (a) until the end of 14 days after the decision of the Tribunal on the application comes into operation; or
- (b) if, within that period of 14 days, the owner gives the Minister written notice of his or her wish to purchase the interest from the Commonwealth at the market value determined by the Tribunal,

until the end of 2 months after the decision of the Tribunal comes into operation.

(8) The Minister may, by notice in writing given to the former owner, extend the period of 2 months referred to in paragraph (7) (b).

(9) The validity of the disposal of an interest in land is not affected by a failure to comply with this section.

(10) In this section:

“former owner”, in relation to an interest in land, means:

- (a) if the interest was acquired by the acquiring authority from only one person and that person is still alive or, in the case of a corporation, is still in existence—that person; and
- (b) in any other case—such persons (if any) as the Minister, having regard to the interests that existed in the land immediately before the acquisition, considers to be fairly entitled to the benefit of subsection (1);

“market value” has the same meaning as in section 56.

Dedication for public purpose

122. (1) The Governor-General may, by Proclamation:

- (a) set apart for, or dedicate to, a public purpose land vested in the Commonwealth, or in an officer or person on behalf of the Commonwealth; or
- (b) revoke or vary the setting apart for, or dedication to, a public purpose of land vested in the Commonwealth, whether set apart or dedicated under this section or otherwise.

(2) Land set apart for, or dedicated to, a public purpose under subsection (1) may be vested in trustees upon trust to carry out the purpose for which it is set apart or dedicated.

(3) If the setting apart, or dedication, of land is revoked or varied, any grant, conveyance or transfer of the land to trustees shall be deemed to be revoked, or varied in the like manner, as the case requires, and the trustees shall, when required by the Attorney-General to do so, deliver to the Attorney-General, or to a person specified by the Attorney-General, all documents of title relating to the land for cancellation or amendment accordingly.

(4) The powers conferred by this section are in addition to, and not in derogation of, the powers conferred by any other law of the Commonwealth or of a Territory.

Expungement of easements

123. (1) Where:

- (a) an acquiring authority owns an interest in land, being an easement; and

- (b) the Minister is satisfied that it is appropriate to extinguish the easement;

the Minister may, by notice published in the *Gazette*, extinguish the easement.

- (2) A notice shall identify the easement and the acquiring authority.

(3) As soon as practicable, and, in any event, within 28 days, after an easement is extinguished under subsection (1), the Secretary to the Attorney-General's Department or a person authorised under subsection 55E (4) of the *Judiciary Act 1903* shall cause to be lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated a copy of the notice extinguishing the easement.

(4) The officer with whom the copy of the notice is lodged may make such entries in the records kept by the officer as are necessary having regard to the effect of subsection (1).

Mining etc. on certain land

124. (1) The regulations may make provision for or in relation to prohibiting or regulating all or any of the following matters:

- (a) the exploration for minerals on relevant land;
- (b) the mining for, or recovery of, minerals on or from relevant land;
- (c) the carrying on of operations, and the execution of works, for a purpose referred to in paragraph (a) or (b).

(2) Regulations made for the purposes of subsection (1) may include, but are not limited to, provisions for or in relation to:

- (a) the making of arrangements between the Minister and the Government or Administration of a State or Territory for or in relation to the performance of functions, or the exercise of powers, under the regulations by an officer of the State or Territory;
- (b) vesting courts of the States and Territories with jurisdiction in matters arising under the regulations;
- (c) the payment of fees in respect of the grant, under the regulations, of a lease, licence, permit or other authority;
- (d) if minerals are owned by the Commonwealth— the payment of royalties in respect of minerals mined or recovered in accordance with such a lease, licence, permit or authority; and
- (e) the payment to the States and Territories of amounts representing the whole or part of amounts received by the Commonwealth under the regulations.

(3) Without limiting the conditions to which a lease, licence, permit or other authority authorising the exploration for, or mining or recovery of, minerals may be subject under the regulations, where the minerals are owned by a State or Territory, the regulations may provide that a lease, licence, permit or authority may be granted to a person subject to the condition that the person shall pay to the State or Territory amounts by way of royalties in respect of minerals mined or recovered.

(4) Regulations made for the purposes of subsection (1) may provide that the regulations are not intended to affect the operation of a law of a State or Territory to the extent that that law is capable of operating concurrently with the regulations.

(5) Where, under regulations made for the purposes of subsection (1), the Commonwealth is liable to pay an amount to a State or Territory, an amount equal to that amount shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

(6) Regulations made for the purposes of subsection (1) have no effect to the extent that they are inconsistent with rights of the kind referred to in subsection 35 (4) of the *Atomic Energy Act 1953* or an authority under subsection 41 (1) of that Act.

(7) In this section:

“conservation zone” means a conservation zone declared under section 8A of the *National Parks and Wildlife Conservation Act 1975*;

“Gimbat” or “Goodparla” means, in each case, the area described by that name (being an area of land that is or was subject to a pastoral lease) on the map referred to in the definition of “Alligator Rivers Region” in section 3 of the *Environment Protection (Alligator Rivers Region) Act 1978*;

“mineral” means a naturally occurring substance or mixture of substances;

“Northern Territory pastoral lease area” means the area delineated by the outer boundaries of the aggregate area comprising Gimbat and Goodparla;

“relevant land” means:

(a) land in a State vested in an acquiring authority; or

(b) land in a Territory, being land:

(i) vested in an acquiring authority; or

(ii) that:

(A) is in a conservation zone within the Northern Territory pastoral lease area; and

(B) by a grant under section 12 of the *Aboriginal Land Rights (Northern Territory) Act 1976* is vested in an Aboriginal Land Trust, whether the vesting occurred or occurs before or after the commencement of this section.

(8) If, on the day on which this Act commences, there are no regulations in effect for the purposes of subsection (1) of this section, section 51 and subsections 53 (2) and (2A) of the *Lands Acquisition Act 1955* continue to apply as if that Act had not been repealed until such time as the first such regulations take effect.

(9) Nothing in this section shall be read as authorising the making of regulations extending to land vested in an Aboriginal Land Trust, other than

land referred to in subparagraph (b) (ii) of the definition of “relevant land” in subsection (7).

PART XI—INTERESTS IN OVERSEAS LAND

Minister to approve acquisition, disposal etc. of interests in overseas land

125. (1) An acquiring authority shall not acquire an interest in overseas land otherwise than in accordance with this section unless:

- (a) the regulations provide that this Act does not apply in relation to the acquisition, by the acquiring authority, of interests in land in specified circumstances and the acquisition is an acquisition in those circumstances;
- (b) the acquisition consists of the taking of a mortgage, charge or other similar security over the interest; or
- (c) the interest is acquired otherwise than by agreement.

(2) An acquiring authority shall not dispose of an interest in overseas land otherwise than in accordance with this section unless:

- (a) the regulations provide that this Act does not apply in relation to the disposal, by the acquiring authority, of interests in land in specified circumstances and the disposal is a disposal in those circumstances; or
- (b) the disposal results from the exercise by the acquiring authority of powers conferred by a mortgage, charge or other similar security over the interest.

(3) An interest in overseas land may be acquired or disposed of by an acquiring authority under the written authority of the Minister.

(4) A law of the Commonwealth (including a law passed or made after the commencement of this Act) does not authorise an acquiring authority to:

- (a) acquire an interest in overseas land otherwise than in accordance with this section; or
- (b) dispose of an interest in overseas land otherwise than in accordance with this section;

unless the law, or another law of the Commonwealth, expressly provides that the first-mentioned law has effect despite this Act.

(5) Where an interest in overseas land is acquired by an acquiring authority by agreement, the Minister shall cause to be laid before each House of the Parliament, within 15 sitting days of that House after the acquisition takes effect, a statement setting out particulars of the interest and, unless the Minister otherwise determines, of the consideration for the acquisition.

PART XII—MISCELLANEOUS

Indexation of subsection 61 (2) amount

126. (1) In this section:

“index number”, in relation to an index year, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that index year;

“index year” means a period of 12 months commencing on 1 April.

(2) Where the factor ascertained in accordance with subsection (4) in relation to a financial year is greater than one, section 61 has effect as if, for the amount of \$10,000 specified in subsection 61 (2), there were substituted, on the first day of that financial year, an amount calculated by multiplying the existing amount by that factor.

(3) For the purpose of subsection (2), the existing amount is:

- (a) if, because of the operation of subsection (2), section 61 already has effect as if an amount were substituted for the amount of \$10,000 specified in subsection 61 (2)—the substituted amount; and
- (b) in any other case—\$10,000.

(4) The factor to be ascertained for the purpose of subsection (2) in relation to a financial year is the number (calculated to 3 decimal places) ascertained by dividing the index number for the index year that ended on the 31 March preceding the commencement of that financial year by the index number for the previous index year.

(5) Where a factor ascertained under subsection (4) would, if calculated to 4 decimal places, end with a number greater than 4, the factor ascertained shall be taken to be the factor calculated to 3 decimal places and increased by .001.

(6) Subject to subsection (7), if at any time, whether before or after the commencement of this Act, the Australian Statistician has published or publishes an index number in respect of an index year in substitution for an index number previously published in respect of the same index year, the publication of the later index number shall be disregarded for the purposes of this section.

(7) If at any time, whether before or after the commencement of this Act, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this section after the change, regard shall be had only to the index number published in terms of the new reference base.

General power of Federal Court to adjust rights

127. (1) The Federal Court may, on the application of the Commonwealth or of any interested person:

- (a) determine the person or persons who, at any relevant time, held an interest or interests in particular land in relation to which a claim for compensation has been or may be made under this Act;
- (b) determine the nature of such an interest or interests; and
- (c) make such orders as are appropriate for declaring or adjusting rights or liabilities of persons in connection with the land or interests in the land, or arising out of transactions in relation to, or mortgages over, the land or interests in the land.

(2) A determination or order under subsection (1) is binding on the applicant, on the Commonwealth and on all other persons who had interests in the land and to whom notice of the application has, before the commencement of the hearing, been given by the applicant, whether or not those other persons were represented on the hearing of the application.

Federal Court may order stay of proceedings under mortgage

128. (1) Where:

- (a) an interest in land acquired by compulsory process was, immediately before the acquisition, subject to a mortgage; and
- (b) proceedings by the mortgagee were pending at that time, or are commenced or proposed to be commenced after that time and before compensation has been paid in full to the mortgagor in respect of the acquisition;

the Federal Court may, upon the application of the mortgagor and subject to such conditions as it thinks fit, order a stay of those proceedings or enjoin the mortgagee against commencing or continuing those proceedings and make such other orders as it thinks necessary.

(2) In this section, “proceedings” means any action to enforce the rights of the mortgagee under the mortgage, whether or not the proceedings are in a court, including action with a view to taking possession of or selling an interest in land or foreclosing.

Power of Federal Court to extend time limits

129. (1) Subject to this section, the Federal Court may, on an application, extend a period of time fixed by this Act for the doing of any thing on such terms and conditions as it thinks fit.

(2) Subsection (1) does not apply to a period of time within which an application may be made to the Administrative Appeals Tribunal.

(3) The Court may not extend the period of time fixed by subsection 26 (3) except on an application made before the expiration of that period.

Jurisdiction of Federal Court

130. Jurisdiction is conferred on the Federal Court to hear and determine applications and proceedings under sections 72, 73, 82, 100, 101, 108, 116, 127, 128, 129 and 133 and that jurisdiction is exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under section 75 of the Constitution.

Award of costs in Administrative Appeals Tribunal proceedings

131. (1) The Administrative Appeals Tribunal may recommend to the Attorney-General that the Commonwealth should pay the whole or a part of the costs, in relation to proceedings on an application made to the Tribunal under a provision of this Act, of the person who made the application or of any other person made a party to the proceedings under subsection 30 (1A) of the *Administrative Appeals Tribunal Act 1975*.

(2) The Tribunal shall not make a recommendation under subsection (1) in relation to the costs of a person who applied for review of a pre-acquisition declaration if the application has been dismissed under section 32.

(3) The Attorney-General may, pursuant to a recommendation of the Tribunal under subsection (1), authorise the payment to a person of the whole or a part of the person's costs in relation to proceedings before the Tribunal.

Orders to obtain possession

132. (1) This section applies where:

- (a)** an acquiring authority holds an interest in land;
- (b)** the interest entitles the acquiring authority to possession of the land; and
- (c)** another person (in this section called the "unauthorised person") is in possession of the land, otherwise than under a subsisting lease or agreement, or a right of occupancy under section 47.

(2) If the unauthorised person:

- (a)** refuses or fails, when so required by the Minister by notice in writing, to give up possession of the land to the acquiring authority; or
- (b)** hinders or obstructs an authorised person attempting to take possession of the land for the acquiring authority;

a court of summary jurisdiction may, on the application of the Minister, make an order authorising a member of the Australian Federal Police or other person named in the order, with such assistance and force as are reasonably necessary, to enter on the land and deliver up possession of the land to the acquiring authority.

(3) A copy of the application under subsection (2) shall be given to the unauthorised person and that person is entitled to appear and be heard on the hearing of the application.

Injunctions

133. (1) Where a person has used, or is proposing to use, land in a manner inconsistent with a restriction on the use of the land acquired by an acquiring authority under this Act, the Federal Court may, on the application of that authority, grant an injunction restraining the person from using the land in that manner.

(2) Where an application is made to the Court for an injunction under this section, the Court may, if in the Court's opinion it is desirable to do so, grant an interim injunction restraining a person from engaging in conduct of the kind to which the application relates pending the determination of the application.

(3) The Court may discharge or vary an injunction granted under this section.

(4) The power of the Court to grant an injunction restraining a person from using land in a particular manner may be exercised:

- (a) if the Court is satisfied that the person has used the land in that manner—whether or not it appears to the Court that the person intends again to use the land, or to continue to use the land, in that manner; or
- (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will use the land in that manner—whether or not the person has previously used the land in that manner and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person uses the land in that manner.

(5) The powers conferred on the Court by this section are in addition to, and not in derogation of, any other powers of the Court, whether conferred by this Act or otherwise.

Effect of conveyance of Crown land

134. (1) Where an agreement is entered into by an acquiring authority with a State, the Northern Territory or the Administration of an external Territory for the acquisition of an interest in Crown land, an instrument or assurance executed by the Governor of that State or the Administrator of that Territory for the purpose of carrying out the agreement is, by force of this section, and notwithstanding anything in the law of the State or Territory, valid and effectual to vest the interest in the acquiring authority according to the tenor of the instrument or assurance.

(2) Where Crown land is land that, under the law of a State or the Northern Territory, has been granted, dedicated or reserved for a public purpose of the State or of the Northern Territory, an instrument or assurance

referred to in subsection (1) operates, by force of this section, to vest the interest in the acquiring authority freed from any trusts, restrictions or obligations arising out of that grant, dedication or reservation.

Payments to be a good discharge

135. All payments made by or on behalf of the Commonwealth under this Act are good and valid discharges to the Commonwealth and the Commonwealth is not bound to see to the application of any money paid or to the performance of any trust.

Execution of documents for and on behalf of Commonwealth

136. All instruments, receipts and documents relating to:

- (a) the acquisition of an interest in land; or
- (b) land vested, or that has been vested, in the Commonwealth;

may be executed by the Attorney-General for and on behalf of the Commonwealth.

How documents are to be given

137. (1) Subject to subsection (2), a document required or permitted by this Act to be given to the Minister shall be given to the Minister by sending it by pre-paid post to the Minister at an address prescribed for the purposes of this subsection.

(2) Where a document required or permitted by this Act to be given to the Minister relates to land in an external Territory, the document may be given to the Minister by delivering it to an officer employed in:

- (a) the office of the Administrator of the Territory; or
- (b) if there is no Administrator in respect of the Territory—such office as is prescribed.

(3) A document required or permitted by this Act to be given to a person by or under the authority of the Minister may be given to the person:

- (a) if the person is a natural person:
 - (i) by delivering it to the person personally; or
 - (ii) by leaving it at, or by sending it by pre-paid post to, the address of the place of residence or business of the person last known to the Minister;
- (b) if the person is a body corporate—by leaving it at, or sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate; or
- (c) in any case where the Minister, after diligent inquiry, is unable to comply with the requirements of whichever of paragraphs (a) and (b) is applicable—by affixing the notice or other document in a prominent position on the land to which the notice relates.

Notice of signatures

138. (1) Notice shall be taken of the signature, on an instrument relating to land or an interest in land, of the Attorney-General or of a delegate of the Attorney-General, if the signature purports to be witnessed by an officer of the Attorney-General's Department.

(2) The Registrar-General, Registrar of Titles or other appropriate officer of the State or Territory in which the land referred to in the instrument is situated may register such an instrument so signed and attested without further proof of the signature of the Attorney-General, delegate or witness, and notwithstanding that the signature is not attested in accordance with the law of the State or Territory.

Delegation

139. (1) Subject to subsection (2), the Minister or the Attorney-General may, in writing, delegate all or any of his or her powers and functions under this Act to:

- (a) a member of the Australian Public Service; or
- (b) a person who has executive authority in relation to the affairs of a Commonwealth authority.

(2) The Minister may not delegate the following powers:

- (a) the power to authorise a person, or the holder or occupier of an office or position, to act under section 10, 11 or 14;
- (b) the power to include in a pre-acquisition declaration a statement under subsection 22 (6);
- (c) the power to give a certificate under subsection 24 (1);
- (d) the power under section 33 to deal with a recommendation of the Administrative Appeals Tribunal;
- (e) the power to make a declaration under subsection 41 (1);
- (f) the power to give a notice under subsection 47 (2);
- (g) the power under section 70 or 98 to reject a claim for compensation;
- (h) the power to give a notice referred to in paragraph 132 (2) (a).

(3) A delegate under this section is, in the exercise of a power so delegated, subject to the directions of the Minister or the Attorney-General, as the case requires.

Regulations

140. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, may make regulations prescribing penalties not exceeding \$1,000 for offences against the regulations.

Lands Acquisition No. 15, 1989

*[Minister's second reading speech made in—
House of Representatives on 25 May 1988
Senate on 3 November 1988]*