

PROPERTY FOR PUBLIC PURPOSES ACQUISITION.

No. 13 of 1901.

An Act to provide for the Acquisition of Property for Public Purposes, for dealing with Property so acquired, and for other purposes connected therewith.

[Assented to 12th December, 1901.]

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

PART I.—PRELIMINARY.

1. This Act may be cited as the *Property for Public Purposes Acquisition Act* 1901, and is divided into Parts and Divisions, as follows:—

Part I.—Preliminary, ss. 1, 2.

Part II.—Mode of Acquisition of Land.

Division 1.—Acquisition by Purchase, ss. 3–5.

Division 2.—Compulsory Acquisition, ss. 6–12.

Part III.—Compensation.

Division 1.—Claim for Compensation, ss. 13, 14.

Division 2.—Determination of Amount of Compensation, ss. 15–19.

Division 3.—Payment of Compensation, ss. 20–29.

Part IV.—Mortgages, Charges, and Leases—

Division 1.—Mortgages, ss. 30–36.

Division 2.—Charges, ss. 37–40.

Division 3.—Leases, ss. 41–44.

Part V.—Acquisition of Property from a State, ss. 45–48.

Part VI.—Miscellaneous, ss. 49–63.

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

“Compensation” includes compensation for or in respect of any land acquired under this Act, or for any estate or interest therein, and also for any damages caused by such acquisition, or for any work or other matter done under the authority of this Act;

“Convey” means convey, transfer, or release;

Short title and divisions.

Definition
See No. 26, 1900
(N.S.W.) s. 94.
No. 1109 (Vict.)
s. 3.

“Crown land” means land the property of the Crown, whether dedicated to any public purpose or not, which has not been granted or contracted to be granted for an estate in fee simple ;

“Lease” includes an agreement for a lease ;

“Owner” includes, with respect to land, any person who under this Act is enabled to sell or convey land ;

“Public purpose” means any purpose in respect of which the Parliament has power to make laws.

“The Minister” means the Minister for Home Affairs.

PART II.—MODE OF ACQUISITION OF LAND.

Division 1.—Acquisition by Purchase.

3. The Governor-General may agree with the owners of any land which is required for any public purpose, and with any State where such land is Crown land of the State, for the absolute purchase by the Commonwealth for a consideration in money or its equivalent of such land, or for the exchange of such land for any land of the Commonwealth.

Power to purchase.
8 & 9 Vict. c. 18
s. 6.

No. 26, 1900
(N.S.W.) s. 44.
No. 1109 (Vict.)
s. 5.

4.—(1.) All parties seised or possessed of or entitled to any such land or any estate or interest therein, and particularly any of the following parties so seised, possessed, or entitled, that is to say—

Parties under disability entitled to sell.
8 Vict. c. 18 s. 7.

No. 26, 1900
(N.S.W.) ss. 45,
46.

No. 1109 (Vict.)
s. 6.

- (a) all corporations ;
- (b) all tenants in tail or for life ;
- (c) all married women seised in their own right or entitled to dower ;
- (d) all guardians ;
- (e) all committees of lunatics and idiots ;
- (f) all trustees or feoffees in trust for charitable or other purposes ;
- (g) all executors and administrators ;
- (h) all parties for the time being entitled to the receipt of the rents and profits of any such land in possession or subject to any estate in dower, or to any lease for life, or for lives and years or for years, or any less interest,

may sell and convey the same to the Commonwealth for the purposes of this Act, and enter into all necessary agreements for that purpose.

(2.) The power so to sell and convey may be exercised by all such parties, other than married women entitled to dower or lessees for life or for lives and years or for years or for any less interest, not only on behalf of themselves and their heirs, executors, administrators, and successors, but also on behalf of every person entitled in reversion remainder or expectancy after them, or in defeasance of the estates of such parties ; and as to such married women whether they be of full age or not as if they were sole and of full age, and as to such guardians on behalf of their wards, and as to such committees on behalf of such lunatics or idiots, and that to the same extent as such married women, wards, lunatics, or idiots could have exercised the same powers under this Act if they had been under no

disability, and as to such trustees, executors, or administrators on behalf of their cestuique trusts, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such cestuique trusts could have exercised the same powers under this Act if they had been under no disability.

(3.) The power hereinafter given to release land from any rent-charge or encumbrance, and to agree for the apportionment of any such rent-charge or encumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey land.

Governor of State may grant Crown land to Commonwealth.

5. In the case of any Crown land of any State purchased under this Act, the Governor of the State may grant such land in the name of the King to the Commonwealth.

Division 2.—Compulsory Acquisition.

Governor-General may issue notification.

See No. 26, 1900 (N.S.W.) s. 34.

6.—(1.) The Governor-General may direct that any land required for any public purpose may be acquired under this Act from any State or person.

(2.) The Governor-General may thereupon, by notification published in the *Gazette* and in a newspaper published or circulated in the State or part of the Commonwealth wherein the land is situated, declare that the land has been acquired under this Act for the public purpose therein expressed.

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

Effect of notification on land therein mentioned.

Ib. (N.S.W.) s. 37.

7. Upon the publication of such notification in the *Gazette*, the land described in such notification shall by force of this Act be vested in the Commonwealth, freed and discharged from all trusts, obligations, estates, interests, contracts, charges, rates, rights-of-way, or other easements whatsoever, and to the intent that the legal estate therein, together with all powers incident thereto, or conferred by this Act, shall be vested in the Commonwealth.

Effect of notification upon Crown land.

Ib. (N.S.W.) s. 38.

8. Where any land so acquired is, at the date of such publication, Crown land of any State, or is, by virtue of any law of a State, vested in any person on behalf of the Crown or for any public purpose, the effect of such publication shall be to withdraw the land (to the extent taken) from any lease or licence, or promise thereof, and to cancel, to the like extent, any dedication or reservation of the land made under the authority of any State Act, or to divest the estate of such person, and to vest the said land to the extent aforesaid in the Commonwealth.

Compensation for private lands taken under this Act.

Ib. (N.S.W.) s. 94.

9.—(1.) Where any land so acquired is not Crown land, or where any estate or interest in such land has been granted or contracted to be granted by the Crown to any person, the owner of such land, estate, or interest shall be entitled to receive such sum of money by way of compensation as is agreed upon or otherwise ascertained under the provisions hereinafter contained.

(2.) Where any land so acquired is Crown land of any State, the State shall, subject to the Constitution, be entitled to receive such compensation as is agreed upon or otherwise ascertained under the provisions hereinafter contained.

10.—(1.) For the purpose of constructing any underground work, land under the surface may be acquired under this Act without acquiring the surface.

Acquisition of underground land.

See No. 26, 1900 (N.S.W.) s. 117.

(2.) In such case no compensation shall be allowed or awarded unless—

- (a) the surface of the overlying soil is disturbed ; or
- (b) the support to such surface is destroyed or injuriously affected by the construction of the work ; or
- (c) any mine, underground working, spring, reservoir, dam, or well in or adjacent to such land is thereby injuriously affected.

11.—(1.) Upon the publication of such notice as aforesaid, the estate and interest of every person entitled to any land so acquired, and whether to the legal or the equitable estate therein, and the title of the State to any Crown land of a State so acquired shall be taken to have been converted into a claim for compensation in pursuance of the provisions hereinafter contained.

Conversion of estate of proprietor or title of State into a claim.

See 1b. (N.S.W.) s. 94.

(2.) Every person or State shall, upon asserting a claim as hereinafter provided and making out a title in respect of any land so acquired, be entitled to compensation in manner hereinafter provided.

12.—(1.) Where land has been acquired under this Act by notification in the *Gazette*, except where—

Notification to be void in certain cases.

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

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

(2.) Every person or State claiming compensation under this section shall within one hundred and twenty days from the passing of such resolution, or within such further time as a Justice of the High Court upon the application and at the cost of the claimant may

either before or after the expiration of such one hundred and twenty days appoint in that behalf, serve upon the Minister and upon the Attorney-General a notice in writing similar to the notice mentioned in section thirteen, and the like proceedings shall thereupon be taken as in the case of compensation claimed under Part III. of this Act.

PART III.—COMPENSATION.

Division 1.—Claim for Compensation.

Notice to owners.

Cf. 8 & 9 Vict. c. 18, s. 19.

No. 1109 (Vict.) s. 10.

13.—(1.) Immediately after the publication in the *Gazette* of a notification that any land has been acquired under this Act, the Minister shall cause a copy of the notification, together with a plan of the land, to be served upon the owners of the land resident within the Commonwealth, or such of them as can with reasonable diligence be ascertained, either personally or by registered letter posted to their last-known place of abode.

(2.) If any owner is absent from the Commonwealth, or cannot, after diligent inquiry, be found, or if service by registered letter cannot be effected, a copy of the notification, together with a plan of the land, shall be left with the occupier of the land, or, if there is no occupier, shall be affixed upon some conspicuous part of the land.

Notice of claim for compensation.

See No. 26, 1900 (N.S.W.) s. 95.

(3.) Every person or State claiming compensation in respect of any land so acquired, or work or other matter done under the authority of this Act, shall within one hundred and twenty days from the publication of such notification, or within such further time as a Justice of the High Court upon the application and at the cost of the claimant may either before or after the expiration of such one hundred and twenty days appoint in that behalf, serve a notice in writing upon the Minister, and a like notice upon the Attorney-General, which notice shall set forth the nature of the estate, interest, or title of the claimant in such land, together with an abstract of title, and if the claimant claims in respect of damage the nature of the damage which the claimant has sustained or will sustain by reason of such acquisition or work or matter, together with full particulars of such damage, and such notice shall be in such form as may be prescribed.

Claim and report thereon.

Ib. (N.S.W.) s. 96.

14. Within sixty days after the receipt of every such notice of claim by the Attorney-General he shall forward the same, together with his report thereon, to the Minister, who shall thereupon—

- (1) If no *primâ facie* case for compensation has been disclosed notify the claimant that his right to any compensation is disputed.
- (2) If a *primâ facie* case for compensation has been disclosed, cause a valuation of the land or of the estate or interest of the claimant therein, and, if the claimant claims in respect of damage, of the amount of such damage, to be made in accordance with the provisions of this Act, and shall inform the claimant as soon as practicable of the amount of such valuation by notice in such form as may be prescribed.

Division. 2.—Determination of Amount of Compensation.

15. If within ninety days after the Minister has notified the claimant that his right to any compensation is disputed, or if, within ninety days after the service of notice of claim, the claimant and the Minister do not agree as to the amount of compensation, the claimant may institute proceedings in the High Court in the form of an action for compensation against the Commonwealth :

Compensation
by action in
High Court.
See No. 26, 1900
(N.S.W.) s. 97.

Provided that with the consent in writing of the Attorney-General and the claimant any such action may be so instituted at any time (to be mentioned in such consent) before the expiration of ninety days from service of the notice of the claim for compensation, but not within fourteen days from service of the notice of valuation on such claimant.

16. Every such action shall be tried by a Justice sitting without a jury and such Justice in determining the amount of compensation shall not be bound in any way by the amount of the valuation notified to the claimant.

Justice to
determine
compensation.
Ib. (N.S.W.)
s. 117.

17.—(1.) Unless the Justice otherwise orders, if the judgment in any such action is for a sum equal to or less than the amount of the valuation notified to the claimant, the claimant shall pay the costs of the action, but if for a greater sum or if for any sum where the right to any compensation is disputed the Commonwealth shall pay such costs.

Costs.
Ib. (N.S.W.) s. 99.

(2.) If the judgment or award is for a sum one-third less than the amount of the valuation, the claimant shall pay the costs of the action.

(3.) The Justice before whom the action is tried shall in no case have power to direct a reference to arbitration, except by consent of the parties.

No arbitration.

(4.) Either party to the action may move for a new trial or to set aside the finding in accordance with the practice of the High Court.

Appeal.

18.—(1.) Where the valuation of the land, or of the estate or interest of the claimant therein, together with the valuation of the damage, if any, in respect of which a claim is made, does not exceed one thousand pounds, the compensation shall, if the claimant so desires, be settled by arbitration.

Arbitration in
certain cases.

(2.) Unless the claimant and the Minister concur in the appointment of a single arbitrator, who shall be either a District or County Court Judge, or a Police, Stipendiary or Special Magistrate, the reference shall be made to two arbitrators, one to be appointed by the claimant and one by the Minister.

(3.) For the purpose of carrying this section into effect, the laws relating to arbitration in force in the State in which the land is situated shall be applied as nearly as practicable.

(4.) The costs of and incident to the arbitration as settled by the arbitrators shall be borne by the Minister, unless the sum awarded by the arbitrators is the same or a less sum than was offered by the Minister, in which case each party shall bear his own costs incidental

to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions; but if the sum awarded is one-third less than the amount claimed, the whole costs of and incidental to the arbitration and award shall be borne by the claimant.

Compensation,
how estimated.
No. 26, 1900
(N.S.W.) s. 117.
No. 1109 (Vict.)
s. 35.

19.—(1.) In estimating the compensation to be paid, regard shall in every case be had, by the valuers or the Justice, not only to the value of the land taken, but also to the damage (if any) caused—

- (a) by the severing of the land taken from other land of the claimant; or
- (b) by the exercise of any statutory powers by the Minister otherwise injuriously affecting such other land;

and they shall assess the same according to what they find to have been the value of the land, estate, or interest of the claimant on the first day of January last preceding the date of acquisition, but without reference to any alteration in such value arising from the proposal to carry out the public purpose for which the land is taken.

Provided that where land is taken for the purpose of any work or undertaking the construction or carrying out whereof has been specially authorized by an Act, the land, estate, or interest of the claimant shall not be assessed at a value exceeding the value thereof on the first day of January last preceding the first day of the session of Parliament in which the Act was passed.

Provided also that the valuers or the Justice in estimating such compensation shall take into consideration by way of set-off or abatement any enhancement in the value of the interest of the claimant in any land adjoining the land taken, or severed therefrom, by the carrying out of the public purpose for which the land is taken. But in no case shall this proviso operate so as to require any payment to be made by the claimant in consideration of such enhancement of value.

(2.) In ascertaining, for the purposes of this section, what land adjoins or is severed from the land taken, no account shall be taken of the intersection of any such land by any roads.

Division 3.—Payment of Compensation.

Payment of
compensation.
No. 26, 1900
(N.S.W.) s. 119.
No. 1109 (Vict.)
s. 37.

20.—(1.) In all cases where compensation is awarded or costs are adjudged to be paid by the Commonwealth, the amount thereof shall be paid to the party entitled thereto, or to his agent duly authorized in that behalf, within one month after such amount has been determined.

Provided that the party claiming payment shall first be bound to make out, to the satisfaction of the Attorney-General, a title to the land or interest in land in respect of which he claims.

(2.) Such compensation shall bear interest at the rate of three per cent. per annum from the date of the acquisition of the land until payment of the same is made by the Commonwealth to the

claimant or until the same is deposited in the Treasury as hereinafter mentioned.

21. The purchase money or compensation payable for or in respect of any land acquired under this Act, or for any estate or interest therein, may be paid to the person who under this Act is empowered to sell and convey the same, or to the agent of such person duly authorized in that behalf.

Purchase money or compensation may be paid to person empowered to convey.
No. 1109 (Vict.) s. 38.

22. Such purchase money or compensation, when paid to any tenant in tail or for life, guardian, committee of a lunatic or idiot, executor, or administrator, or person having partial or qualified interest only, and not entitled to sell or convey except under the provisions of this Act, shall be applied by such person in some one or more of the following manners :—

Application of purchase money or compensation.
Ib. s. 39.
See No. 26, 1900 (N.S.W.) s. 47.

- (a) in the discharge of any debt or encumbrance affecting the land in respect of which such money has been paid, or affecting other land settled therewith to the same or the like uses, trusts, and purposes ; or
- (b) in the purchase of other land, or of Government debentures or stock of the Commonwealth or of a State, to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner as the land in respect of which such money has been paid stood settled ; or
- (c) if such money has been paid in respect of any buildings taken under the authority of this Act, or injuriously affected by the carrying out of the public purpose—in removing or replacing such buildings or substituting others in their stead ; or
- (d) in such manner as the High Court or a Justice thereof directs ; or
- (e) in payment to any party becoming absolutely entitled to such money.

23. If the owner of any land purchased or taken under the authority of this Act, or of any interest therein,—

Purchase money or compensation may in certain cases be paid to the Treasurer.
8 Vict. c. 18 s. 76.
No. 26, 1900 (N.S.W.) s. 54.
No. 1109 (Vict.) s. 40.

- (a) refuses or neglects to accept the purchase money or compensation agreed or awarded to be paid in respect thereof ; or
- (b) refuses, neglects or fails to make out a title to such land or to the interest therein claimed by him, to the satisfaction of the Attorney-General ; or
- (c) refuses or neglects to convey such land as directed by the Attorney-General ; or
- (d) is absent from the Commonwealth, or cannot after diligent inquiry be found,

the Attorney-General may, if he thinks fit, deposit the purchase money or compensation payable in respect of such land or any interest therein in the hands of the Treasurer, to be deposited to his account to the credit of the parties interested in such land (describing them so far as he can).

Treasurer to pay out money and invest same.

8 Vict. c. 18 s. 70.
No. 1109 (Vict.) s. 41.

See No. 26, 1900 (N.S.W.) s. 55.

24.—(1.) The Treasurer shall, unless and until an order of the High Court or of a Justice thereof has been made under the next succeeding section relative to such money, pay out any money so deposited to such person as the Attorney-General directs.

(2.) Until such order or payment, the Treasurer may, if he thinks fit, invest such money in the purchase of Government debentures or stock of the Commonwealth or of a State; and the interest upon such debentures or stock shall be accumulated for the benefit of the parties ultimately entitled to the money invested therein.

(3.) If such money has not been so invested, the parties entitled shall receive whatever interest may have accrued thereon.

Court or Justice may dispose of money paid or deposited.

8 Vict. c. 18 s. 78.
No. 1109 (Vict.) s. 42.

25. Upon the application, in such manner as may be prescribed by rules of Court, of any party making claim to any money paid or deposited under this Act, or to any land in respect whereof the same has been so paid or deposited, or to any interest in such land, the High Court or a Justice thereof may in a summary way—

- (a) order such money or any part thereof to be applied in any one or more of the manners hereinbefore specified; and
- (b) order distribution thereof or payment of the dividends or interest thereof according to the respective estates, titles, or interests of the parties making claim to such land;

and may make such other order in the premises as seems fit, so that in every case such money shall be applied or paid in such manner as the Court or Justice may consider will give to the parties interested therein the same benefit as they would have had from the land, estate, or interest in respect of which such money has been paid or deposited or as near thereto as may be.

Costs.

8 Vict. c. 18 s. 80.
No. 1109 (Vict.) s. 43.

26. The costs of and incident to any such application or in respect of any such investment shall be in the discretion of the Court or Justice.

Party in possession to be deemed the owner.

8 Vict. c. 18 s. 79.
No. 26, 1900 (N.S.W.) s. 56.

27. If any question arises respecting the title to the land in respect whereof such money was so paid or deposited, the parties in possession of such land, as being the owners thereof, or in receipt of the rents of such land, as being entitled thereto at the time of such land being purchased or taken, upon making out a *prima facie* title shall be deemed to have been entitled to such land, until the contrary is shown to the satisfaction of the Court or Justice; and unless, upon such inquiry as the Court or Justice thinks fit to direct, the contrary is so shown, the parties so in possession and all parties claiming under them or consistently with their possession shall thereupon be deemed entitled to the money so deposited and to the dividends or interest of the securities purchased therewith, and the same shall be paid and applied accordingly.

Claimants to produce title.

No. 1109 (Vict.) s. 44.

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

29. All payments and deposits made by the Attorney-General by virtue of this Act shall be good and valid discharges to the Attorney-General, who shall not be bound to see to the application of any money so paid or deposited, or to see to the performance of any trusts.

Payments to be a good discharge
No. 26, 1900
(N.S.W.) s. 52.
No. 1109 (Vict.)
s. 45.

PART IV.—MORTGAGES, CHARGES, AND LEASES.

Division 1.—Mortgages.

30.—(1.) The Commonwealth may purchase or redeem the interest of the mortgagee of any land required for the purposes of this Act; and that whether the Commonwealth has previously purchased or acquired the equity of redemption of such land or not; and whether the mortgagee is entitled thereto in his own right or in trust for any other party, and whether he is in possession of such land by virtue of such mortgage or not; and whether such mortgage affects such land solely or jointly with any other land not required for the purposes of this Act.

Power to redeem mortgages.
8 Vict. c. 18
s. 108.
No. 26, 1900
(N.S.W.) s. 52.
No. 1109 (Vict.)
s. 51.

(2.) In order thereto, the Attorney-General may pay or tender to such mortgagee the principal and interest secured by such mortgage, together with his costs and charges, if any, and also six months' additional interest; and thereupon such mortgagee shall immediately convey his interest in the land comprised in such mortgage to the Commonwealth or as the Attorney-General directs.

Procedure.

(3.) The Attorney-General may give notice in writing to such mortgagee that he will pay off the principal and interest on such mortgage at the end of six months, computed from the day of giving such notice; and if he has given any such notice, or if the party entitled to the equity of redemption of any such land has given six months' notice of his intention to redeem the same, then, at the expiration of either of such notices, or at any intermediate period, upon tender by the Attorney-General to the mortgagee of the principal money due on such mortgage and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey his interest in the land comprised in such mortgage to the Commonwealth, or as the Attorney-General directs.

Notice.

31. If, in either of the cases aforesaid, upon such tender, any mortgagee fails to convey his interest in such mortgage as directed by the Attorney-General, or fails to adduce a good title thereto to the satisfaction of the Attorney-General, then the Attorney-General may pay into the hands of the Treasurer, to be dealt with by him in the manner provided by this Act in the cases of moneys required to be paid to the Treasurer, the principal and interest, together with the costs, if any, due on such mortgage; and if such payment is made before the expiration of six months' notice as aforesaid, such further interest as would at the time become due; and the Attorney-General may also, if he thinks fit, execute a deed poll, containing a description of the land in respect whereof such deposit was made, and describing the circumstances under which and the names of the

Deposit of mortgage money on refusal to accept.
8 Vict. c. 18
s. 109.
No. 26, 1900
(N.S.W.) s. 60.
No. 1109 (Vict.)
s. 52.

parties to whose credit deposit was made, and such deed poll shall be duly registered by the Attorney-General. And thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee and of all persons in trust for him or for whom he may be a trustee in such land shall vest in the Commonwealth.

Sum to be paid when mortgage exceeds the value of the lands.

8 Vict. c. 18 s. 110.

No. 26, 1900 (N.S.W.) s. 61.

No. 1109 (Vict.) s. 53.

Procedure when parties fail to agree.

Payment and release of mortgage.

32.—(1.) If any such mortgaged land is of less value than the principal, interest, and costs secured thereon, the value of such land or the compensation to be made by the Commonwealth in respect thereof shall be settled by agreement between the mortgagee of such land and the party entitled to the equity of redemption thereof on the one part, and the Commonwealth on the other part.

(2.) If the parties aforesaid fail to agree as to the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation.

(3.) The amount of such value or compensation, being so agreed upon or determined, shall be paid by the Commonwealth to the mortgagee, in satisfaction of his mortgage debt, so far as the same will extend; and upon tender thereof the mortgagee shall convey all his interest in such mortgaged land to the Commonwealth, or as the Attorney-General directs.

Deposit of money when refused on tender.

8 Vict. c. 18 s. 111.

No. 26, 1900 (N.S.W.) s. 62.

No. 1109 (Vict.) s. 54.

33. If, upon such tender, such mortgagee fails so to convey his interest in such mortgage or to adduce a good title thereto to the satisfaction of the Attorney-General, the Attorney-General may pay the amount of such value or compensation into the hands of the Treasurer, to be dealt with by him in the manner provided by this Act in like case of moneys required to be paid to the Treasurer.

Such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged land from all money due thereon; and the Attorney-General may, if he thinks fit, execute a deed poll in manner hereinbefore provided. And thereupon such land, as to all such estate and interest as were then vested in the mortgagee or any person in trust for him, shall become absolutely vested in the Commonwealth:

Provided that all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such land, shall remain in force, in respect of so much of the mortgage debt as has not been satisfied by such payment or deposit.

34. (1.) If—

- (a) a part only of any such mortgaged land is taken by virtue of this Act; and
- (b) the part so taken is of less value than the principal money, interest, and costs, secured on such land; and
- (c) the mortgagee does not consider the remaining part of such land a sufficient security for the money charged thereon, or is not willing to release the part so taken,

then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled

Sum to be paid where part only of mortgaged land taken.

8 Vict. c. 18 s. 112.

No. 26, 1900 (N.S.W.) s. 63.

No. 1109 (Vict.) s. 55.

by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the Commonwealth on the other part.

(2.) If the parties aforesaid fail to agree as to the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation.

(3.) The amount of such value or compensation, being so agreed upon or determined, shall be paid by the Commonwealth to such mortgagee, in satisfaction of his mortgage debt, so far as the same extends; and upon tender thereof such mortgagee shall convey to the Commonwealth, or as the Attorney-General directs, all his interest in the mortgaged land so taken, and a memorandum of what has been so paid shall be indorsed on the deed creating such mortgage, and shall be signed by the mortgagee, and a copy of such memorandum shall at the same time (if required) be furnished by the Attorney-General at the expense of the Commonwealth, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Procedure on failure of parties to agree.

Payment and release of mortgage.

35. If, upon such tender, such mortgagee fails so to convey his interest in the land in respect of which such compensation has been so paid or tendered, or if he fails to adduce a good title thereto to the satisfaction of the Attorney-General, the Attorney-General may pay the amount of such value or compensation into the hands of the Treasurer, to be dealt with by him in the manner provided by this Act in the case of moneys required to be paid to the Treasurer.

Deposit of money when refused on tender.
8 Vict. c. 18 s. 113.
No. 26, 1900 (N.S.W.) s. 64.
No. 1109 (Vict.) s. 58.

Such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same extends, and shall be a full discharge of the portion of the mortgaged land so taken from all money due thereon; and the Attorney-General may, if he thinks fit, execute a deed poll in the manner hereinbefore provided. And thereupon such land, as to all such estate and interest as were then vested in the mortgagee or any person in trust for him, shall become absolutely vested in the Commonwealth.

Provided that every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money or the residue thereof (as the case may be) and the interest thereof respectively, upon and out of the residue of such mortgaged land or the portion thereof not taken for the purposes of this Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof, upon or out of the whole of the land originally comprised in such mortgage.

36.—(1.) If in any such mortgage deed a time has been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee has been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the Commonwealth shall pay to such mortgagee, in addition to the sum which has been so paid off, all such costs and expenses as are incurred by such mortgagee in respect of, or which are incidental to, the re-investment of the sum so paid off, such costs, in the case of difference, to be taxed and

Compensation where mortgage prematurely paid off.
8 Vict. c. 18 s. 114.

payment thereof enforced in the manner herein provided with respect to the costs of conveyances.

(2.) If the rate of interest secured by such mortgage is higher than, at the time of the same being so paid off, can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the Commonwealth, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation.

Division 2.—Charges.

Release of land from rent-charges.
8 Vict. c. 18
s. 115.
No. 26, 1900
(N.S.W.) s. 65.
No. 1109 (Vict.)
s. 57.

37. If any difference arises between the Commonwealth and the party entitled to any rent-service, rent-charge, chief or other rent, or other payment or encumbrance not hereinbefore provided for, upon any land taken for the purposes of this Act, respecting the consideration to be paid for the release of such land therefrom, or from the portion thereof affecting the land taken for the purposes of this Act, the same shall be determined as in other cases of disputed compensation.

Release of part of land from rent-charge.
8 Vic. c. 18,
s. 116.
No. 26, 1900
(N.S.W.) s. 66.

38. If part only of the land charged with any such rent-service, rent-charge, chief-rent, or other rent-payment or encumbrance, is taken for the purposes of this Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the land on one part, and the Commonwealth on the other part; and, if such apportionment is not so settled by agreement, the same shall be settled by the High Court or a Justice thereof. But if the remaining part of the land so jointly subject is a sufficient security for such charge, then, with consent of the owner of the land so jointly subject, the party entitled to such charge may release therefrom the land taken, on condition or in consideration of such other land remaining exclusively subject to the whole thereof.

Execution of release.
8 Vict. c. 18
s. 117.
No. 26, 1900
(N.S.W.) s. 67.
Failure to release or make a good title.

39.—(1.) Upon tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the Commonwealth a release of such charge.

(2.) If he fails so to do, or if he fails to adduce a good title to such charge to the satisfaction of the Attorney-General, the Attorney-General may pay the amount of such compensation into the hands of the Treasurer to be dealt with by him in the manner hereinbefore provided in the case of moneys required to be paid to the Treasurer; and the Attorney-General may also if he thinks fit execute a deed poll, in the manner hereinbefore provided for. And thereupon the rent-service, rent-charge, chief or other rent, payment or encumbrance, or the portion thereof in respect whereof such compensation has been paid, shall cease and be extinguished.

40.—(1.) If any such land or portion thereof is so released from any such charge or encumbrance to which it was subject jointly with other land, such last-mentioned land shall alone be charged with the whole of such charge or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned land, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the land subject to such charge.

Charge to continue on land not taken.
8 Vict. c. 18 s. 118.
No. 26, 1900 (N.S.W.) s. 68.

(2.) If, upon any such charge or portion of charge being so released, the deed or instrument creating or transferring such charge is tendered to the Attorney-General for the purpose, he shall sign a memorandum of such release, indorsed on such deed or instrument, declaring what part of the land originally subject to such charge was taken by virtue of this Act, and if the land is released from part of such charge, what proportion of such charge was released, and how much thereof continues payable; or if the land so taken has been released from the whole of such charge, then that the remaining land is thenceforward to remain exclusively charged therewith. Such memorandum shall be made and executed at the expense of the Commonwealth, and shall be *prima facie* evidence of the facts therein stated.

Minister to execute memorandum of release.

Division 3.—Leases.

41.—(1.) If any land is comprised in a lease for a term of years unexpired, and part only of such land is taken for the purposes of this Act, the rent payable in respect of the land comprised in such lease shall be apportioned between the land so taken and the residue of such land.

Where part only of land under lease is taken the rent to be apportioned.

(2.) Such apportionment may be settled by agreement between the lessor and lessee of such land on the one part, and the Commonwealth on the other part; and, if such apportionment is not so settled by agreement between the parties, it shall be settled by the High Court or a Justice thereof.

8 Vict. c. 18 s. 119.
No. 26, 1900 (N.S.W.) s. 69.
No. 1109 (Vict.) s. 58.
Apportionment how made.

(3.) After such apportionment, the lessee of such land shall, as to all future accruing rent, be liable only to so much of the rent as has been so apportioned in respect of the land not taken; and, as to the land not so taken, and as against the lessee, the lessor shall have the same rights and remedies for the recovery of such portion of rent as, previously to such apportionment, he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force, with regard to that part of the land not taken, in the same manner as they would have done in case such part only of the land had been included in the lease.

Liability of lessee after apportionment.

42. Every such lessee as last aforesaid shall be entitled to receive from the Commonwealth compensation for the damage done to him in his tenancy, by reason of the severance of the land taken from that not taken, or otherwise by reason of the carrying out of the public purpose for which the land is taken.

Tenants to be compensated.
8 Vict. c. 18 s. 120.
No. 26, 1900 (N.S.W.) s. 70.
No. 1109 (Vict.) s. 59.

Compensation to tenants from year to year.
8 Vict. c. 18 s. 121.
No. 26, 1900 (N.S.W.) s. 71.
No. 1109 (Vict.) s. 60.

43.—(1.) If any land is in the possession of any person having no greater interest therein than as tenant for a year, or from year to year, and if such person is required to give up possession of any land so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation—

- (a) if the whole of such land is taken, for the value of his unexpired term or interest in such land, and for any just allowance which ought to be made to him by any incoming tenant, and for any loss or injury he may sustain; or
- (b) if a part only of such land is taken, for the damage done to him in his tenancy, by severing the land held by him or otherwise injuriously affecting the same.

Compensation, how determined.

(2.) The amount of such compensation shall, in case the parties differ about the same, be determined by the High Court or a Justice thereof.

Where greater interest claimed than at will lease to be produced.
8 Vict. c. 18 s. 122.
No. 26, 1900 (N.S.W.) s. 72.
No. 1109 (Vict.) s. 61.

44. If any party having a greater interest than as tenant at will claims compensation in respect of any unexpired term or interest under any lease or grant of any such land, the Attorney-General may require such party to produce the lease or grant in respect of which such claim is made, or the best evidence thereof in his power; and if, after demand made in writing by the Attorney-General, such lease or grant or such best evidence thereof is not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

PART V.—ACQUISITION OF PROPERTY FROM A STATE.

Compensation to State in respect of Crown land.

45.—(1.) Where any Crown land of a State is acquired under this Act, the State shall, subject to the Constitution, be entitled to compensation for the value thereof.

(2.) The value of the title or interest of the State to and in such land shall be estimated as if the State were the proprietor of an estate in fee simple in such land, subject to any estate or interest which any person may at the time of such acquisition have in such land.

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

Mode of payment of State.

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

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

47. Where any land of a State has, either before or after the commencement of this Act, become vested in the Commonwealth or been acquired by the Commonwealth under section eighty-five of the Constitution, such land shall for all purposes whatever be deemed to be vested in the Commonwealth in the same way and to the same extent as if it had been acquired under this Act, and the provisions of this Act, so far as they are applicable, and subject to the Constitution, shall apply to such land: Provided that the provisions of this Act relating to claims for compensation, the determination of the amount of compensation, the payment of compensation, and the mode of such payment, shall not apply to land so vested in the Commonwealth before the commencement of this Act.

Application of Act to land acquired under sec. 85 of the Constitution.

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

Minister of a State may act for State.

PART VI.—MISCELLANEOUS.

49.—(1.) The Minister, and all persons authorized by him, may enter upon the land of any person and the Crown land of any State, and may make surveys, take levels, sink pits, examine the soil, and do anything necessary for ascertaining whether the land is suitable for any public purpose.

Power of entry.

(2.) The Commonwealth shall pay compensation to the occupier of the land for any damage done in carrying out the powers conferred by this section.

50.—(1.) For the purposes of this Act the Commonwealth shall be deemed to be a corporation sole by the name of "The Commonwealth of Australia," with power to purchase take and hold land, and all legal proceedings by or against the Commonwealth in respect of any matter under this Act may be instituted by or against the Commonwealth in that name.

Incorporation of the Commonwealth.

(2.) All acts, matters, and things which may be done or suffered by the Commonwealth under this Act in connexion with the making and execution of agreements and the payment of purchase money, compensation, and costs, may be done or suffered by the Attorney-General on behalf of the Commonwealth.

51.—(1.) In case any land purchased or taken under this Act is not required for the public purpose for which it was purchased or taken, the Commonwealth may dispose of such land in such manner as the Governor-General shall think fit.

Commonwealth may dispose of superfluous land. No. 26, 1900 (N.S.W.) s. 91.

(2.) A receipt under the hand of the Attorney-General shall be a sufficient discharge to the purchaser or lessee of such land for the purchase money or rent in such receipt expressed to be received.

(3.) Any land sold leased or disposed of under this section may be conveyed or leased by conveyance or lease in the name of the Commonwealth and executed by the Attorney-General.

(4.) When any land has been disposed of under this section, the Minister shall within thirty days if the Parliament be then sitting, and if not within thirty days after the next meeting of the Parliament, cause to be laid before both Houses of the Parliament a return showing the land so disposed of and the manner in which it has been disposed of.

Warrant to take possession of land.

52.—(1.) If the occupier of any land refuses to permit the Minister or any person authorized by him to enter upon such land, or if any person in possession of any land acquired by the Commonwealth under this Act refuses to give up possession of the same or hinders the Minister or any person authorized by him from taking possession of the same, a Justice of the High Court may grant a warrant authorizing the Marshal to enforce the entry on the land or to deliver the possession of the land as the case may be.

(2.) Such warrant may be granted on the *ex parte* application of the Attorney-General.

Execution of warrant.

(3.) Upon the receipt of such warrant the Marshal shall execute the same accordingly, and the costs accruing, by reason of the issuing and execution of such warrant, to be settled by the Marshal, shall be paid by the person refusing to permit the entry or to give up possession, as the case may be; and the amount of such costs shall be deducted and retained by the Attorney-General from the compensation, if any, then payable to such party, or if no compensation is payable to such party, or if the same is less than the amount of such costs, then such costs or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application for that purpose to any Justice of the Peace having jurisdiction in the State or part of the State or part of the Commonwealth in which such land is situated, he shall issue his warrant accordingly.

Costs.

Temporary Occupation.

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

- (a) being within a distance of not more than two hundred yards from the nearest boundary of the land so purchased or taken; and
- (b) not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted; and
- (c) not being nearer to the dwelling-house of the owner of any such land than a distance of five hundred yards,

and may occupy the said land, as long as may be necessary for the purposes of any works connected with the carrying out of such public purpose, and may use the same for any of the following purposes (that is to say)—

- (d) for the purpose of taking earth by side cuttings therefrom;
- (e) for the purpose of depositing earth thereon;

Power to take temporary possession of land.
No. 26, 1900
(N.S.W.) s. 75.
No. 1109 (Vict.)
s. 63.

- (f) for the purpose of obtaining materials therefrom for the construction or repair of such works ;
- (g) for the purpose of forming roads thereon to, or from, or by the side of such works.

(2.) In exercise of the powers aforesaid the Minister and all such persons may deposit, and also manufacture and work upon such land, materials of every kind used in constructing such works, and also may take from any such land any timber, and also dig and take therefrom any clay, stone, gravel, sand, or other things found therein, useful or proper for constructing such works or any such roads as aforesaid, and for the purposes aforesaid may erect thereon workshops, sheds, and other buildings of a temporary nature.

Further powers.

(3.) Nothing in this Act contained shall exempt the Commonwealth, or any person sued on behalf of the Commonwealth, from an action for nuisance or other injury, if any, done in the exercise of the powers hereinbefore given to the land or habitation of any party other than the party whose land is so taken or used for any of the purposes aforesaid.

Action for nuisance.

(4.) Provided that no stone or slate quarry, brick-field, or other like place which, at the commencement of this Act, is commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same, shall be taken or used by the Minister for any of purposes lastly hereinbefore mentioned.

Proviso.

54. If any such land is used for any of the purposes aforesaid, the Minister shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the land adjoining thereto, with such gates as may be necessary for the convenient occupation of such land ; and in case of any difference between the owners or occupiers of such land and the Minister as to the necessity for such fences and gates then with such fences and gates as the Governor-General deems necessary for the purposes aforesaid.

Minister to separate the lands before using them.
No. 26, 1900 (N.S.W.) s. 76.
No. 1109 (Vict.) s. 64.

55. In any of the cases aforesaid where the Minister takes temporary possession of land by virtue of the powers herein granted, the Attorney-General shall—

Compensation for temporary occupation.

No. 26, 1900 (N.S.W.) s. 77.
No. 1109 (Vict.) s. 65.

- (a) within one month after the Minister's entry upon such land, upon being required to do so, pay to the occupier of the said land the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of the Minister so taking possession of his land ;
- (b) during such occupation of the said land pay half-yearly or quarterly to such occupier or the owner of the land, as the case may require, a rent to be agreed upon by the Attorney-General and the occupier, or if they cannot agree, to be fixed by the High Court or a Justice thereof ;

(c) within six months after the Minister has ceased to occupy the said land pay to such owner and occupier or deposit with the Treasurer in manner aforesaid for the benefit of all parties interested as the case may require compensation for all permanent or other loss, damage, or injury that may have been sustained by them by reason of the exercise as regards the said land of the powers herein granted, including the full value of all such clay, stone, gravel, sand and other things taken from such land.

Compensation, how ascertained. No. 26, 1900 (N.S.W.) s. 78. No. 1109 (Vict.) s. 66.

56. The amount and application of the compensation payable by the Attorney-General in any of the cases aforesaid shall be determined in the manner provided by this Act for determining the amount and application of the compensation to be paid for land taken under the provisions hereof.

Costs.

Costs to be borne by Minister. 8 Vict. c. 18 s. 82. No. 26, 1900 (N.S.W.) s. 128. No. 1109 (Vict.) s. 47.

57. In the case of any land purchased or taken under this Act, the Commonwealth shall bear all costs, charges, and expenses—

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

Taxation of costs of conveyance. 8 Vict. No. 18 s. 53. No. 26, 1900 (N.S.W.) s. 129. No. 1109 (Vict.) s. 48. Payment.

58.—(1.) If the Commonwealth and the party entitled to any such costs do not agree as to the amount thereof, such costs shall be taxed by the Registrar or other proper officer of the High Court upon the application of either party.

(2.) The Commonwealth shall pay to the party entitled thereto the amount the said Registrar or other officer certifies to be due to such party in respect of such costs. In default of such payment any Justice of the High Court may make an order for payment of the said amount of such costs, which may then be recovered in the same way as any other costs payable under any order of the High Court or a Justice thereof.

(3.) The expense of taxing such costs shall be borne by the Commonwealth unless upon such taxation one-sixth part of the amount of such costs is disallowed. In the latter case the costs of such taxation shall be borne by the party whose costs are so taxed; and the amount of such costs of taxation shall be ascertained by the said Registrar or other officer, and deducted by him in his certificate of taxation.

Costs of taxation.

Jurisdiction of the Supreme Courts until the establishment of the High Court.

59. Until the establishment of the High Court, all proceedings authorized by this Act to be taken in the High Court may be taken in the Supreme Court of a State, and all powers vested by this Act in the High Court or a Justice thereof shall be deemed to be vested in the Supreme Courts of the several States and the Judges thereof, and references in this Act to the High Court or a Justice or officer thereof shall be deemed to be references to such Supreme Courts and the Judges and officers thereof.

60.—(1.) Where before the commencement of this Act any land has been acquired by or in the name of the Commonwealth from any State or person, such land shall for all purposes whatever be deemed to be vested in the Commonwealth in the same way and to the same extent as if it had been acquired under this Act.

Land acquired before the commencement of this Act.

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

61.—(1.) Whenever land is acquired under this Act by notification in the *Gazette*, a copy of such notification, certified under the hand of the Attorney-General, shall be lodged with the Registrar-General or Registrar of Titles or other proper officer of the State or part of the Commonwealth in which such land is situated.

Registration of notification.
No. 26, 1900
(N.S.W.) s. 40.

(2.) Such Registrar-General or Registrar of Titles or other officer shall, upon production of such copy of the notification, register the same in the register and in the manner, as nearly as may be, in which dealings with such land are registered, and shall deal with and give effect to such notification as if the same were a grant or conveyance or memorandum of transfer duly executed under the laws of the State.

62. The Governor-General may, by proclamation published in the *Gazette*, set apart or dedicate to any public purpose any land which is vested in the Commonwealth, or in any officer or person on behalf of the Commonwealth; and may in the same manner revoke and cancel or alter any such proclamation.

Power to set apart and dedicate land

63.—(1.) The Governor-General may make regulations for carrying this Act into effect.

Regulations.

(2.) All such regulations shall be notified in the *Gazette*, and shall thereupon have the force of law.

(3.) All such regulations shall be laid before both Houses of the Parliament within thirty days after the making thereof, if the Parliament be then sitting, and if not then within thirty days after the next meeting of the Parliament.