

THE SCHEDULE.

Section 2.

ACTS REPEALED.

Year and Number of Act.	Short title of Act.
3 & 4 Geo. VI. No. 39	<i>Increase of Rent (War Restrictions) Act 1939</i>
No. 28 of 1948	<i>Landlord and Tenant (Temporary Provisions) Act 1948</i>
No. 58 of 1948	<i>Landlord and Tenant (Temporary Provisions) Act (No. 2) 1948</i>

PUBLIC AUTHORITIES' LAND ACQUISITION.

No. 22 of 1949.

AN ACT to make better Provision for the Acquisition of Land required by Public and Local Authorities.
[4 May, 1949.]

WHEREAS it is expedient to comprise in one general Act PREAMBLE. sundry provisions usually introduced into Acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature and to the compensation to be made for the same and that as well for the purpose of avoiding the necessity of repeating provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves:

And whereas the *Lands Clauses Act 1857* was enacted for these purposes:

And whereas it is expedient to provide for the use of public and local authorities a better method of taking land and of determining the compensation payable in respect thereof and to provide for the taking of estates and interests less than a fee simple absolute:

Be it therefore enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I.

PRELIMINARY.

1 This Act may be cited as the *Public Authorities' Land Acquisition Act 1949.* Short title.

Amendment
of Acts as
shown in the
first schedule.

2 The Acts mentioned in the first schedule are amended in the manner specified in the third column of that schedule.

Interpreta-
tion.

8 & 9 Vict.
c. 18, ss. 2,
3, 21 Vict.
No. 11, s. 2,
1 Geo. V. No.
11, s. 4, S.A.
Act No. 1724
of 1925, s. 7.

- 3** In this Act, unless the contrary intention appears—
- “acquire” means purchase or take;
 - “clerk” means clerk, secretary or other similar officer, as the case requires;
 - “compensation” means any compensation (whether for land taken by the council, or for the injurious affection of any land, or for any damage caused by the exercise of any power conferred on the council by Part IV., or otherwise) to which any person is entitled under this Act or any special Act from the council;
 - “convey” includes transfer and release;
 - “Court” means the Supreme Court;
 - “incumbrance” means any charge or incumbrance upon land, other than a mortgage;
 - “lease” includes an agreement for a lease;
 - “owner” includes, with respect to any land, any person who under the provisions of this Act or any other Act or instrument is enabled to sell or convey the land to the council;
 - “purchase” means purchase by agreement under this Act;
 - “special Act” means any Act which authorises the taking of land by any public or local authority and with which this Act or the *Lands Clauses Act 1857** is incorporated;
 - “take” means take by compulsory process under this Act;
 - “the council” includes every public and local authority to which this Act applies;
 - “works” or “undertaking” means the works or undertaking, of whatever nature, authorised by the special Act to be executed or carried out.

Application
of Act.

8 & 9 Vict.
c. 18, s. 1,
21 Vict. No.
11, s. 1,
S.A. Act, No.
1724, s. 5.

4—(1) This Act shall apply to every undertaking authorised by any special Act hereafter passed, and this Act shall be incorporated with the special Act; and all the provisions of this Act, save so far as they may be expressly varied or excepted by the special Act, shall apply to the undertaking thereby authorised, so far as they are applicable to that undertaking, and shall, together with the provisions of every other Act which may be incorporated with the special Act, form part of the special Act, and be construed together therewith as forming one Act.

(2) This Act shall apply to every undertaking authorised by any special Act passed before the commencement of this Act, and this Act shall be incorporated with the special Act in lieu of the *Lands Clauses Act 1857**; and all the provisions

* 21 Vict. No. 11. For this Act, as amended to 1936, see Reprint of Statutes, Vol. VI., p. 34.

of this Act, save so far as they correspond with the provisions of the *Lands Clauses Act 1857** which were expressly varied or excepted by the special Act, shall apply to the undertaking, and shall, together with the provisions of every other Act which may be incorporated with the special Act form part of the special Act, and be construed together therewith as forming one Act.

(3) No estate or interest in land which is the property of, or is vested in, His Majesty (whether such land has been reserved, dedicated, or acquired for any public purpose or not) shall be acquired under the provisions of this Act.

(4) This Act shall not apply to any land used for a purpose for which land may be taken under the provisions of the *Lands Resumption Act 1910†*.

PART II.

ACQUISITION OF LAND.

Division I.—Modes of Acquiring Land.

5 Any estate or interest in land which may be acquired for the purposes of any works or undertaking in accordance with the provisions of this Act may be acquired—

(a) by agreement with the owner; or

(b) by compulsory process.

Modes of acquisition.
Cf. No. 13 of 1906 (C'wealth).
s. 13.

Division II.—Preliminary Procedure.

6—(1) When the council requires, and has by resolution decided, to take any land (including any incorporeal hereditament requiring entry for its enjoyment) which by the special Act the council is authorised to take, it shall give notice to treat to all the persons interested in the estate or interest required to be taken, or, as the case requires, to the persons enabled by this Act or any other Act or instrument, to sell and convey the land, or such of those persons as, after diligent inquiry, are known to the council.

Notice to treat.
8 & 9 Vict. c. 18, s. 18,
9 & 10 Geo. V., c. 57,
s. 5 (2),
21 Vict. No. 11, s. 10,
S.A. No. 1724, ss. 21, 22, 25.

(2) A notice to treat—

- (a) shall state that the council requires to take the estate or interest to which the notice relates, and shall give particulars of the land;
- (b) shall state that the council is willing to treat for the purchase of the estate or interest and as to the compensation to be made for the damage (if any) sustained by reason of the execution of the works; and

*21 Vict. No. 11. For this Act, as amended to 1936, see Reprint of Statutes, Vol. VI., p. 34.

†1 Geo. V. No. 11. For this Act, as amended to 1936, see Reprint of Statutes, Vol. VI., p. 5. Further amended by 4 Geo. VI. No. 11, 8 Geo. VI. No. 12, and 9 & 10 Geo. VI. No. 59.

(c) shall demand from the persons to whom the notice is given particulars of their estates and interests in the land, and of all other estates and interests therein of which they have notice, and of the claims for compensation made by them in respect thereof, and, if they claim in respect of damage, the nature of the damage.

(3) If any person served with a notice to treat lodges with the council a notice, in writing, to be known as a notice of claim, stating the particulars required by paragraph (c) of subsection (2), the council may, at any time before the publication in the *Gazette* of the notice of acquisition under section twelve, withdraw any notice to treat which has been served on the claimant or on any other person interested in the land to which the notice of claim relates, but shall be liable to pay compensation to any such claimant or other person for any loss or expense occasioned by the notice to treat having been given to him and withdrawn, and the amount of such compensation shall, in default of agreement, be determined in the same manner as a disputed claim for compensation.

(4) No notice to treat shall be objectionable by reason of any variance between it and the resolution resulting from any error or any misnomer or misdescription of parties, estates, interests, parcels, or boundaries in either the notice or the resolution.

7 If for twenty-one days after the service of the notice to treat, any person served therewith fails—

- (a) to state the particulars of his claim in respect of the land to which the notice relates;
- (b) to treat with the council in respect thereof; or
- (c) to agree with the council as to the amount of the purchase money to be paid by the council for the interest in the land belonging to that person, or which he is by this Act or any other Act or instrument enabled to sell, or of the compensation for any damage which may be sustained by him by reason of the execution of the works,

the council may, subject to this Act, take by compulsory process the estate or interest specified in the notice to treat, or, if from any cause it does not so take the estate or interest within six months from the service of the notice to treat, the council shall be deemed to have withdrawn the notice and shall be liable to pay compensation as provided in section six.

Division III.—Purchase of Land by Agreement.

8 Subject to this Act and the special Act, the council may, if it thinks fit, agree with the owner of any land authorised by the special Act to be taken for the purposes of the special Act, and with all persons having any estate or interest in that land, for the absolute purchase, for a consideration in money or money's worth, of that land, or of such part thereof

On failure to treat or disagreement land may be taken.

8 & 9 Vict. c. 18, s. 21, 21 Vict. No. 11, s. 13.

Purchase of land by agreement.

8 & 9 Vict. c. 18, s. 6, 21 Vict. No. 21, s. 4, 1 Geo. V. No. 11, s. 21, S.A., No. 1724, s. 13.

as the council thinks proper, or with the owner of any estate and interest so authorized to be taken for the purchase thereof for a consideration in money or money's worth.

9—(1) Any person seised or possessed of, or entitled to, any land, particularly—

- (a) any corporation;
- (b) any tenant in tail or for life;
- (c) any married woman restrained from anticipation;
- (d) any guardian;
- (e) the committee of the estate of any lunatic or idiot;
- (f) the quasi-committee, under section one hundred and fifty-five of the *Supreme Court Civil Procedure Act 1932**, of the estate of any person;
- (g) any person having the custody or administration of the estate of a defective under the *Mental Deficiency Act 1920†*;
- (h) the administrator of any convict's property;
- (i) any trustee;
- (j) any executor or administrator;
- (k) any person for the time being entitled to the receipt of the rents and profits of any land—
 - (i) in possession; or
 - (ii) subject to any lease for life or for lives and years or for years or any less interest; or
- (l) the Public Trustee,

Persons under disability enabled to sell and convey.
8 & 9 Vict. c. 18, s. 7,
21 Vict. No. 11, s. 5, 1 Geo. V. No. 11, ss. 5, 6, S.A., No. 1724, ss. 14, 15.

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

(2) The power to sell and convey or release land under the authority of this section may be exercised—

- (a) by any person, other than a lessee for life or for lives and years or for years or for any less interest, not only on behalf of himself and his heirs, executors, administrators, and successors, but also on behalf of every person entitled in reversion, remainder, or expectancy after him, and in defeasance of the estate of every person so entitled;
- (b) in the case of a guardian, on behalf of his ward, and to the same extent as the ward could do if he were not under a disability;
- (c) in the case of the committee of the estate of any lunatic or idiot, on behalf of the lunatic or idiot, and to the same extent as the lunatic or idiot could do if he were not under a disability;

* 23 Geo. V. No. 58. For this Act, as amended to 1936, see Reprint of Statutes, Vol. II., p. 59.

† 11 Geo. V. No. 50. For this Act, as amended to 1936, see Reprint of Statutes, Vol. V., p. 434. Subsequently amended by 9 Geo. VI. No. 29.

- (d) in the case of the quasi-committee, under section one hundred and fifty-five of the *Supreme Court Civil Procedure Act 1932**, of the estate of any person, on behalf of that person, and to the same extent as that person could do if he were not under a disability;
- (e) in the case of a person having the custody or administration of the estate of a defective under the *Mental Deficiency Act 1920†*, on behalf of the defective, and to the same extent as the defective could do if he were not a defective;
- (f) in the case of the administrator of a convict's property, on behalf of the convict, and to the same extent as the convict could do if he were not a convict; and
- (g) in the case of trustees, executors, or administrators, on behalf of their *cestuis que trustent* (whether persons under a disability or not) to the same extent as the *cestuis que trustent* could do if they were not under a disability.

(3) The power conferred by this section on the quasi-committee, under section one hundred and fifty-five of the *Supreme Court Civil Procedure Act 1932**, of the estate of any person to sell and convey land on behalf of that person shall, in all cases, be exercised only with the approval of the Court or a judge.

Valuation and application of purchase-money in case of parties under disability.
8 & 9 Vict. c. 18, s. 9.
21 Vict. No. 11, s. 7.
1 Geo. V. No. 11, s. 7, S.A., No. 1724, s. 17.

10—(1) The purchase price to be paid for any land to be purchased from any person under a disability or incapacity and not having power to sell or convey the land except under the provisions of this or the special Act shall not be less than shall be determined by the valuation of two able practical valuers, one of whom shall be named by the council and the other by the other party; and if these two valuers cannot agree in the valuation then by a third such valuer named by a police magistrate upon the application of either party after notice to the other.

(2) Each of the two valuers if they agree, or if not, the valuer named by the police magistrate, shall with the valuation declare in writing subscribed by them or him its correctness.

(3) Where any land is purchased by the council from any person who was not entitled to sell or convey the land to the council except under this Act the purchase-money shall be paid and applied—

- (a) in such manner as may be directed by all parties who have an interest therein; or
- (b) as provided by sections thirty-one to thirty-five.

* 23 Geo. V. No. 58. For this Act, as amended to 1936, see Reprint of Statutes, Vol. II., p. 59.

† 11 Geo. V. No. 50. For this Act, as amended to 1936, see Reprint of Statutes, Vol. V., p. 434. Subsequently amended by 9 Geo. VI. No. 29.

11—(1) All purchase-money or compensation exceeding one hundred pounds, which may be payable by the council in respect of the acquiring or using of, or interfering with, any land under an agreement with any person who is not entitled to dispose absolutely for his own benefit of such land, or of the interest therein contracted to be sold by him, shall be paid as provided by section thirty-one or section thirty-four.

Moneys payable under contract to persons not absolutely entitled.
8 & 9 Vict. c. 18, s. 73,
21 Vict. No. 11, s. 42, S.A., No. 1724, s. 40.

(2) No such person shall retain to his own use any portion to which he is not beneficially entitled of the moneys so agreed to be paid for or in respect of the acquiring, using, or interfering with any such land; but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in the land, as well in possession as in remainder, reversion, or expectancy.

(3) It shall be in the discretion of the Court, or of the trustees or Public Trustee, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into Court, or to the trustees or Public Trustee, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the land taken, and of the damage occasioned to the land held therewith by reason of the acquisition of such land, and the execution of the works.

Division IV.—Taking by Compulsory Process.

12—(1) No land shall be taken by the council under this Act unless at a meeting held more than twenty-eight days after the service of the notice to treat the council has confirmed the resolution to take the land.

Notice of acquisition.

(2) Subject to section seven and, where it is applicable, to subsection (1) of this section, the council may, by notice of acquisition published in the *Gazette*, declare that the estate or interest required by it is being acquired for the purposes of the undertaking specified in the notice.

(3) A notice of acquisition under this section shall be in accordance with form I. in the second schedule.

(4) A notice of acquisition may be signed on behalf of the council by the clerk to the council, or by the council's solicitor.

(5) A copy of every notice of acquisition shall be lodged by the Council with the Clerk of each House of Parliament within the first fourteen sitting days after the publication of the notice in the *Gazette*.

1 Geo. V. No. 11, s. 13 (2).

(6) Where any copy of a notice of acquisition is so lodged with the Clerk of either House, the Clerk shall within the first seven sitting days of that House after it is received by him, lay it upon the table of the House.

(7) No notice of acquisition shall be objectionable by reason of any variance between it and the resolution on which it is based or any notice to treat based on that resolution, resulting from any error or any misnomer or misdescription of parties, estates, interests, parcels, or boundaries.

Vesting of
land taken
by compulsory
process.

Cf. 1 Geo. V.
No. 11, s. 14.

13—(1) Upon the registration in accordance with section seventeen of a notice of acquisition under section twelve, the land described in the notice shall, by force of this Act and without further authority—

- (a) vest in the council for the estate or interest described therein for the purposes of the undertaking specified in the notice, freed and discharged from all estates and interests inconsistent with the estate or interest so vested; and
- (b) every estate or interest of which the land is so freed and discharged shall be converted into a claim for compensation.

(2) Every such claim for compensation shall be a charge on the land until satisfaction as if the council had forthwith created such a charge by a duly registered instrument.

(3) No such charge shall continue for more than six months after its commencement, unless the claimant has within that time—

- (a) if the land is subject to the *Real Property Act 1862** lodged a caveat under section eighty-two of that Act; or
- (b) if the land is not subject to the *Real Property Act 1862**, registered the charge under the *Registration of Deeds Act 1935†* as if it were a judgment.

(4) Upon—

- (a) satisfaction of the claim;
- (b) withdrawal of the claim; or
- (c) where the claim has been disputed, a determination thereof that nothing is due to the claimant,

the claimant shall if any such charge is subsisting execute at the expense of the council a discharge under the *Real Property Act 1862** or a certificate of satisfaction under the *Registration of Deeds Act 1935†*, as the case requires.

(5) If the claimant fails to execute such an instrument when duly tendered to him, the council may execute a deed poll reciting the origin of the charge, the ground for its extinction and the claimant's failure to discharge it, and declaring its lawful extinction; and such a deed poll shall be dealt with in the same manner as the instrument which the claimant ought to have executed.

(6) Where a notice purporting to be a notice of acquisition under section twelve has been registered in accordance with section seventeen—

- (a) the title of the council shall not be impeachable on the ground of any failure to give notice to treat except where the council has wilfully refrained from any attempt to give such a notice; and
- (b) the title of any purchaser from the council shall not be impeachable by reason of any defect in the title of the council not apparent in the notice

* 25 Vict. No. 16. For this Act, as amended to 1936, see Reprint of Statutes, Vol. V., p. 1002. Subsequently amended by 11 & 12 Geo. VI. No. 84.

† 26 Geo. V. No. 24. For this Act, as amended to 1936, see Reprint of Statutes, Vol. VI., p. 97.

purporting to be a notice of acquisition, and no such purchaser shall be bound to make any inquiry going behind that notice:

Provided that nothing in this subsection shall be construed to detract in any way from the effect of a certificate of title or of registration under the *Real Property Act 1862**.

14 Forthwith after the publication in the *Gazette* of a notice of acquisition under section twelve the council shall cause a notice, in accordance with form II. in the second schedule, together with a copy of the notice of acquisition, to be served upon the owner of the estate or interest to which the notice of acquisition relates, if he has been served with notice to treat under section six, or has subsequently become known to the council.

Notice to owner.
1 Geo. V. No. 11, s. 15.

15—(1) At any time before the registration of a notice of acquisition under section twelve, if the council finds in it any error or any misnomer or misdescription of parties, estates, interests, parcels, or boundaries, the council may by notice published in the *Gazette* revoke the former notice and declare afresh the estate or interest acquired, and this notice shall be deemed the notice for the purposes of section twelve as if the former notice had never been.

Amendment of or release from notice of acquisition: Reconveyance before payment of compensation.
Cf. *ibid.*, s. 16.

(2) At any time within six months after the publication in the *Gazette* of a notice of acquisition under section twelve—

(a) if the notice has been registered the council may convey back to the former owner, wholly or in part, any estate or interest which it has acquired by the registration; and

(b) if the notice has not been registered the council may by deed poll release the land affected by the notice from all, or part of, its rights thereunder, and upon registration of the deed in like manner as the notice, the notice shall be incapable of giving effect to any right so released:

Provided that the council shall have no such right in respect of any estate or interest for which it has paid compensation.

(3) A notice under subsection (1) amending a notice of acquisition shall be in accordance with form III. in the second schedule.

(4) A deed poll under subsection (2) shall be in accordance with form IV. in the second schedule.

(5) No person shall be prejudiced in respect of any estate or interest in any land, by reason of his having, in consequence of a notice of acquisition which has been amended or from which the land has been released in pursuance of this section, done or omitted any act or thing, or failed to enforce or act upon any right, or comply with any obligation, in respect of such estate or interest.

* 25 Vict. No. 16. For this Act, as amended to 1936, see Reprint of Statutes, Vol. V., p. 1002. Subsequently amended by 11 & 12 Geo. VI. No. 84.

(6) Except as provided by section sixteen, no person shall have any right of action or claim against the council or any servant or agent of the council in respect of anything done in good faith under the notice of acquisition before the amendment thereof or before the land has been released therefrom.

(7) Nothing contained in the foregoing provisions of this section shall limit the power of the council to take, by any subsequent notice of acquisition the whole or any part of the land or of any estate or interest therein, described in any notice of acquisition so amended or from which the land has been released, or conveyed back to the former owner under subsection (2).

Compensation
for use of
section 15.
Cf. *ibid.*, s. 17.

16—(1) Where a notice of acquisition is amended under section fifteen any person whose estate or interest in land would have been taken had the amendment not been made shall be entitled to compensation for any inconvenience loss or expense occasioned him by the proceedings of the council in respect of the estate or interest excluded by the amendment.

(2) Where land is released from the rights of the council under section fifteen any person whose estate or interest in the land is thereby freed shall be entitled to compensation for any inconvenience, loss, or expense occasioned him by the proceedings of the council in respect of the estate or interest freed by the release.

(3) Where there is a conveyance to the former owner under section fifteen he shall be entitled to compensation—

(a) for any inconvenience, loss, or expense occasioned him by the proceedings of the council in respect of the estate or interest so conveyed; and

(b) equivalent to any damages to which he would have been entitled if the council's entry on the land had been under a defective title.

(4) Compensation under this section if not agreed upon between the claimant and the council shall be determined as a disputed claim for compensation under this Act.

Registration
of notices.
Ibid., s. 21B.

17—(1) Where the land comprised in any notice of acquisition under section twelve is subject to the *Real Property Act 1862**, the council shall cause a memorial of the notice of acquisition and a plan of the land to be lodged with the Recorder of Titles.

* 25 Vict. No. 16. For this Act, as amended to 1936, see Reprint of Statutes, Vol. V., p. 1002. Subsequently amended by 11 & 12 Geo. VI. No. 84.

(2) Every such memorial shall have endorsed thereon a certificate in the following words, "Correct for the purposes of the *Public Authorities' Land Acquisition Act 1949*", which certificate shall be signed by the council's solicitor.

(3) The Recorder shall enter a memorial of the notice of acquisition on the folium of the register containing the title to the land, and shall endorse a copy thereof on the certificate of title or grant of the land.

(4) If the certificate of title or grant of the land is not produced for indorsement, the Recorder may call in the same as provided by section one hundred and thirty-six of the *Real Property Act 1862** as containing a mis-description and may correct the same, or may issue a new certificate of title as he thinks fit, but no duty shall be payable thereon under the *Stamp Duties Act 1931*‡.

(5) Where the land is not subject to the *Real Property Act 1862**, the council shall register the notice of acquisition in the Registry of Deeds by lodging a memorial thereof signed by the clerk to the council or by the council's solicitor and certified as provided by the *Registration of Deeds Act 1935*‡.

(6) A memorial under subsection (5) shall contain a copy of the notice of acquisition and of the plan, if any, referred to therein, and shall set forth the names and additions of the persons who were seised or possessed of any estate or interest in the land thereby affected (so far as the same are known to the council), and the name of the district or place where the land is situated.

(7) A notice of acquisition shall become incapable of registration six months after the publication thereof in the *Gazette*, and in such case the council shall be deemed on the last day of the six months to have duly released the land from all its rights under the notice.

(8) The council may, at any time between the service of the notice to treat and the registration of the notice of acquisition—

(a) if the land is subject to the *Real Property Act 1862**, lodge a caveat under section eighty-two of that Act; or

(b) if the land is not subject to the *Real Property Act 1862**, register the notice to treat under the *Registration of Deeds Act 1935*‡ as if it were a judgment.

* 25 Vict. No. 16. For this Act, as amended to 1936, see Reprint of Statutes, Vol. V., p. 1002. Subsequently amended by 11 & 12 Geo. VI. No. 84.

† 22 Geo. V. No. 19. For this Act, as amended to 1936, see Reprint of Statutes, Vol. VI., p. 914. Subsequently amended by 6 Geo. VI. No. 28, 7 Geo. VI. No. 52, and 7 & 8 Geo. VI. No. 97.

‡ 26 Geo. V. No. 24. For this Act, as amended to 1936, see Reprint of Statutes, Vol. VI., p. 97.

PART III.

COMPENSATION.

Division I.—Right to Compensation.

Right to compensation.

1 Geo. V. No. 11, s. 30, No. 13 of 1906 (C'wealth), s. 26.

18 Where any land is acquired under this Act for, or injuriously affected by, the execution of the undertaking, the owner of every estate or interest in the land shall, if he suffers deprivation or injury in respect of the whole or any part of his estate or interest, be entitled to compensation under this Act.

Basis of compensation.

8 & 9 Vict. c. 18, ss. 49, 63, 21 Vict. No. 11, s. 32, 1 Geo. V. No. 11, s. 35, S.A., No. 1724, s. 12.

19—(1) In determining the amount of any compensation payable by the council under this Act or the special Act in respect of any estate or interest acquired by the council, regard shall be had (subject to this Act and the special Act) to—

- (a) the value of the land;
- (b) the damage, if any, sustained by the owner by reason of the severance of the land acquired from other land of the owner;
- (c) the damage, if any, to other land of the owner injuriously affected by the execution of the works, or by the carrying on or use of the undertaking by the council;
- (d) disturbance and any other matter not directly based on the value of the land; and
- (e) all costs and expenses which the owner may have to incur, or has incurred, in the repair or construction of fences in consequence of his land having been acquired.

(2) Regard shall also be had to—

- (a) the betterment, if any, of other land of the owner beneficially affected by the execution of the works or by the carrying on or use of the undertaking by the council; and
- (b) any other benefit likely to accrue to him thereby,

and a deduction for any such benefit shall be made from the amount of the compensation which would otherwise be payable:

Provided that where the deduction would otherwise equal or exceed that amount no compensation shall be payable, but nothing shall for that reason be payable by the owner to the council.

(3) The value of the land shall be assessed without reference to any increase or decrease in value arising from the proposal to execute or carry out the work or undertaking.

(4) Regard may also be had to any valuation roll in force at the time and containing an entry as to the value of the land.

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

Compensation for entry on and occupation of land.

(2) Where the council, or any person authorised by the council, enters into the temporary occupation of any land, the compensation shall include—

1 Geo. V. No. 11, s. 37.

- (a) damage of a temporary as well as of a permanent character; and
- (b) the value of all clay, stone, gravel, earth, timber, wood, materials, or things taken for the purposes of the work or undertaking.

Division II.—Claims for Compensation.

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

Claim for compensation.

(2) A claim for compensation shall be in writing in accordance with—

Ibid., s. 38.

- (a) form V. in the second schedule, in the case of a claim for compensation in respect of the acquisition of any land; or
- (b) form VI. in the second schedule, in the case of a claim for compensation in respect of injurious affection to land caused by the undertaking; or
- (c) form VII. in the second schedule, in the case of a claim for compensation for damage suffered by reason of the exercise by the council of any of the powers conferred on it by Part IV.,

and shall be served upon the council.

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

22—(1) Except as allowed in subsection (2) of this section, a claim for compensation shall be made—

Time for making claim for compensation.
Ibid., s. 39.

- (a) where the claim is for an estate or interest acquired, within sixty days after the service of the notice under section fourteen;
- (b) where the claim is for damage suffered by reason of the exercise of any powers under Part IV., within sixty days after the completion of the acts in respect of which compensation is claimed; or
- (c) where the claim arises in any other way, within sixty days after the doing of the act giving rise to the claim.

(2) The council, if satisfied that any claim for compensation is made in good faith, may allow such further time for making it (whether the time for making it has expired or not) as the council thinks just, and it may be made accordingly.

Procedure on claim for compensation being received.

1 Geo. V. No. 11, s. 40, S.A. No. 1724, s. 26.

23—(1) Within sixty days after a claim for compensation has been made, the council shall—

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

(2) If the council does not, within sixty days after a claim for compensation has been made, notify the claimant that it admits the claim or make an offer to the claimant, the council shall be deemed to have notified the claimant that it disputes the claim for compensation.

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

When claim becomes a disputed claim for compensation.

1 Geo. V. No. 11, s. 41, S.A., No. 1724, s. 27.

24 If the council—

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

the claim for compensation shall be a disputed claim for compensation.

Division III.—Determination of Claims for Compensation.

Method of determining disputed claims.

1 Geo. V. No. 11, s. 42, S.A., No. 1724, s. 28.

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

- (a) by agreement between the council and the claimant;
- (b) with the consent in writing of the council and the claimant, by arbitration under the *Arbitration Act 1892**; and that Act shall apply to the arbitration as if the arbitration were pursuant to a submission under that Act;

* 56 Vict. No. 8. For this Act, as amended to 1936, see Reprint of Statutes, Vol. 1, p. 150.

- (c) by an action in the Court for compensation by the claimant against the council; or
- (d) by a proceeding in the Court on the application of the council.

26—(1) If within three months after a claim for compensation became a disputed claim for compensation—

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

Determina-
tion of com-
pensation on
application of
council.
1 Geo. V. No.
11, s. 44.

the council may apply to the Court for an order calling upon the owner to prosecute his claim within a time specified in the order.

(2) An order under subsection (1) shall be served on such persons and in such manner as the Court may direct.

(3) In default of compliance with an order under subsection (1) the Court may determine *ex parte* the amount of compensation which shall be payable and the persons to whom it shall be paid.

(4) Rules of Court may be made for the purposes of this section.

27 If after an arbitration under section twenty-five has commenced the council learns of other persons entitled to make a claim for compensation, it may revoke its consent to arbitration, subject to paying all costs previously incurred, and the arbitration shall cease.

Cessation of
arbitration
if more
claimants
discovered.
Cf. 56 Vict.
No. 8, s. 4.

28 If the council has notice that—

- (a) any unascertained person has any estate or interest in any land acquired or to be acquired by the council; or
- (b) some person on whom personal service of notices cannot reasonably be effected has any estate or interest in any land acquired or to be acquired by the council,

Public
Trustee to
represent
unascertained
or missing
claimants.

and that such person if ascertained or found, would have a claim independently of any party to whom notice to treat has been given under subsection (1) of section fifty-eight, the council shall give notice to treat to the Public Trustee on behalf of such person, and the Public Trustee may take any action in respect of such person's estate or interest which he might take if he were beneficial owner thereof, and shall have a charge for his costs and expenses upon any part of the compensation payable to such person under this Act.

Division IV.—Determination of Compensation Where No Claim Made.

Procedure to determine compensation where no claim made.

1 Geo. V. No. 11, s. 45, S.A., No. 1724, s. 33.

29 Where any estate or interest in land has been acquired under this Act, and no claim for compensation has been made within three months after the right to make the claim arose, and no application to the council for further time to make a claim has been granted or is pending, or if, such an application having been granted, no claim has been made within the time limited by the council in that behalf, the council may proceed as provided by section twenty-six, and the provisions of that section shall have effect as if the claim were a disputed claim for compensation.

Division V.—Payment of Compensation.

Interest on compensation.

1 Geo. V. No. 11, s. 46.

30—(1) Compensation shall bear interest at the rate of four per cent per annum from the date of the acquisition of the estate or interest, or the time when the right to compensation otherwise arose, until payment thereof is made to the claimant, or until the amount thereof has been paid into the Court, or as otherwise provided in sections thirty-four and thirty-five:

Provided that, where the compensation awarded in an arbitration under this Act, or in an action for compensation, or determined in a judicial proceeding, is not more than the amount offered by the council, in pursuance of paragraph (b) of subsection (1) of section twenty-three, in satisfaction of the claim for compensation, the compensation shall, unless the arbitrator or the Court otherwise directs, only bear interest to the date when the offer of the council is communicated to the claimant.

(2) When an offer has been made under section twenty-three the council shall make, on account of interest payable under this section in respect of the acquisition of any estate or interest, a monthly payment equal to one-third per cent of the amount offered:

Provided that—

- (a) the first of such payments shall be made on the day following the communication of the offer or one month after the date of the acquisition, whichever is the later, and shall include such a sum as would then be in arrear if the first of such payments had been due one month after the date of the acquisition;
- (b) if the total amount of interest ultimately found to be due has been exceeded an adjustment shall be made out of the compensation;
- (c) where the council is receiving any rents and profits of the land previously received by the claimant during any period in respect of which

monthly payments under this section are or may become payable to the claimant, the claimant shall be entitled to receive from the council those rents and profits, less any outgoings of the property (including the amount of any rates payable to the council had there been no acquisition); and the monthly payments of interest for the period covered by any such receipt shall be reduced by a proportionate amount or extinguished, as the case requires; and

- (d) if where the compensation is determined by an arbitrator or by the Court, and the arbitrator or the Court considers that the offer was unreasonably low or that the council acted unreasonably in neither admitting the claim or making an offer under section twenty-three, he or it may determine the minimum offer the council might reasonably have made and award the claimant a sum equal to the compounded interest upon what would have been payable had that minimum offer been made.

31 If the compensation payable to any person who is not able to sell and convey the land for or in respect of which the compensation is payable except under the provisions of this Act or of the special Act amounts to or exceeds the sum of one thousand pounds, the moneys shall be paid by the council into the Court, to the credit of the person entitled to the compensation.

Moneys amounting to £1000 payable to parties under disability to be paid into Court.
8 & 9 Vict. c. 18, s. 69 (part), 21 Vict. No. 11, s. 38 (1), S.A., No. 1724, s. 35.

32 All moneys paid into the Court in pursuance of section thirty-one shall remain in Court until they are applied to some one or more of the following purposes:—

Application of moneys paid into Court.
8 & 9 Vict. c. 18, s. 69 (part), 21 Vict. No. 11, s. 38 (2), S.A., No. 1724, s. 36.

- (a) in the purchase, redemption, or discharge of any tax, debt, or incumbrance affecting the land in respect of which such moneys have been paid into Court, or affecting other land settled therewith to the same or the like uses, trusts, or purposes; or
- (b) in the purchase of other land in this State, or of any securities in which trustees are authorised to invest trust funds by section five of the *Trustee Act 1898** to be conveyed, limited, and settled as nearly as may be upon the like uses, trusts, and purposes, and in the same manner, as the land in respect of which such moneys have been paid into Court; or
- (c) laid out, accumulated, or paid in such manner as the Court may consider will give to the persons interested therein the same benefit (or as nearly as may be) as they might have had from the estate or interest in respect of which such moneys have been paid into Court.

8 & 9 Vict. c. 18, s. 74, 21 Vict. No. 11, s. 43, S.A., No. 1724, s. 41.

* 62 Vict. No. 34. For this Act, as amended to 1936, see Reprint of Statutes, Vol. VI., p. 1099. Subsequently amended by 5 Geo. VI. No. 17.

Order for application and investment mean-while.

8 & 9 Vict. c. 18, s. 70, 21 Vict. No. 11, s. 39, S.A., No. 1724, s. 37.

33—(1) The moneys paid into Court in pursuance of this Act may be applied as provided by section thirty-two upon an order of a judge, made on the application of any person entitled to any part thereof.

(2) Until the moneys can be so applied they may, upon the like order, be invested by the proper officer of the Court in any securities in which trustees are authorised to invest trust funds by section five of the *Trustee Act 1898**, and the interest, dividends, and annual proceeds thereof shall be paid to the person who would for the time being have been entitled to the rents and profits of the estate or interest in respect of which the capital moneys arose.

Sums from £100 to £1000 to be paid into Court or to trustees.

8 & 9 Vict. c. 18, s. 71, 21 Vict. No. 11, s. 40, S.A., No. 1724, s. 38.

34—(1) If the compensation payable to any person who is not able to sell and convey the land except under the provisions of this Act or of the special Act exceeds the sum of one hundred pounds but does not exceed the sum of one thousand pounds, it shall be paid—

- (a) into the Court; or
- (b) in the case of land which is settled land within the meaning of the *Settled Land Act 1884†*, to the trustees of the settlement; or
- (c) to the Public Trustee, in trust for the persons entitled thereto.

(2) Any moneys paid to the Public Trustee in pursuance of paragraph (c) of subsection (1), may be applied by him in the manner provided by sections thirty-two and thirty-three, but it shall not be necessary to obtain any order of the Court for that purpose.

Payment of sums not exceeding £100.

8 & 9 Vict. c. 18, s. 72, 21 Geo. V, No. 11, s. 41, S.A., 1724, s. 39.

35 If the compensation payable to any person who is not able to sell and convey the land except under the provisions of this Act or of the special Act does not exceed one hundred pounds, it may be paid—

- (a) to the person who would for the time being have been entitled to the rents and profits of the land in respect of which it is payable for his own use and benefit; or
- (b) in the case of the infancy, lunacy, or other incapacity of the person so entitled, to the guardian, committee, or trustee, as the case may be, of the estate of such person; or
- (c) if the land is settled land within the meaning of the *Settled Land Act 1884†*, to the trustees of the settlement.

* 62 Vict. No. 34. For this Act, as amended to 1936, see Reprint of Statutes, Vol. VI., p. 1099. Subsequently amended by 5 Geo. VI, No. 17.

† 48 Vict. No. 10. For this Act, as amended to 1936, see Reprint of Statutes, Vol. V., p. 1134.

Division VI.—Costs under this Part.

36—(1) Subject to subsection (2), in all cases where moneys are paid into the Court under the provisions of this Act or the special Act, a judge may order the costs of the following matters, including therein all reasonable charges and expenses incidental thereto, to be paid by the council:—

Costs in cases where moneys paid into Court.
8 & 9 Vict. c. 18, s. 80,
21 Vict. No. 11, s. 49,
S.A., No. 1724, s. 48.

- (a) the costs of the taking of the land, or which are incurred in consequence thereof, other than such costs as are otherwise provided for by this Act;
- (b) the costs of the investment of the compensation in any securities in which the same are directed or permitted by this Act to be invested, and of the reinvestment thereof in the purchase of other land;
- (c) the costs of obtaining the proper orders for any of the purposes specified in paragraphs (a) and (b), and of the orders for the payment of the interest and dividends of the securities upon which such moneys are invested, and of the orders for the payment out of Court of the principal of such moneys, or of the securities in which the same are invested; and
- (d) the costs of all proceedings relating to the foregoing matters, except such as are occasioned by litigation between adverse claimants:

Provided that the costs of one application only for reinvestment in land shall be allowed, unless it appears to the judge that it is for the benefit of the persons interested in the moneys that the same should be invested in the purchase of land in different sums and at different times, in which case the judge may, if he thinks fit, order the costs of any such investments to be paid by the council.

(2) The provisions of this section shall not apply in any case where the compensation is paid into Court—

- (a) by reason of the wilful refusal of the person entitled to the compensation to accept the same, or to convey the land in respect of which the compensation is payable, or his interest therein, to the council;
- (b) by reason of the wilful neglect or failure of the person entitled to the compensation to make out a good title to the land, or his interest therein, to the satisfaction of the council; or
- (c) by reason of the fact that no application had been made for payment of the compensation.

PART IV.

POWERS OF THE COUNCIL IN RELATION TO LAND.

Payment of purchase money before entry.

8 & 9 Vict. c. 18, s. 84.
21 Vict. No. 11, s. 53,
S.A., No. 1724, s. 67.

37 Subject to the provisions of this Part the council shall not, except by consent of both the owner and the occupier thereof, enter upon any land which is required to be taken or permanently used for the purposes of and under the powers of this Act or the special Act and which has not been taken by it, until it has either—

- (a) paid to every person interested in the land; or
- (b) paid into the Court, or to the Public Trustee, or otherwise, as, according to the provisions of sections ten and eleven of this Act, the case may require,

the purchase-money or compensation under section twenty agreed or determined to be paid to such persons respectively for their respective interests therein: Provided that if, for twenty-one days after the due service of the notice to treat in respect of any land, no notice of claim is delivered to the council in respect of the land, the council may enter upon and take possession of and use the land, and shall not be liable to any penalty or forfeiture under this Act in respect of such entry, taking possession, or use.

Power of council to enter and examine land before payment.

8 & 9 Vict. c. 18, s. 84.
21 Vict. No. 11, s. 53.
1 Geo. V. No. 11, s. 23, S.A., No. 1724, s. 68.

38—(1) For the purpose only of—

- (a) surveying and taking levels of any land;
- (b) probing, boring, or sinking pits on or in any land, or otherwise examining the soil thereof;
- (c) doing anything necessary for ascertaining the suitability of any land for the purposes of the undertaking; or
- (d) setting out the line of the works,

the council, after giving not less than three or more than fourteen days' notice to the owner or occupier thereof, may at any time, whether or not it has resolved to take the land, enter upon the land without the consent of the owner or occupier, but in any such case the council shall pay compensation for any damage thereby occasioned to the owner or occupier.

(2) In any case where there is no person in occupation of the land and the owner thereof is absent from the island where the land is, or he is, or his whereabouts are, unknown to the council, it shall suffice for the council to give notice by posting it securely in a prominent place on the land.

(3) If the amount of any such compensation is not agreed upon between the owner or occupier and the council, the same shall be determined in the same manner as a disputed claim for compensation, or may be sued for in any court of competent jurisdiction like a claim for trespass.

39—(1) If the council, or any of its contractors, except as provided by section thirty-eight, wilfully enters upon and takes possession of any land contrary to the provisions of section thirty-seven, the council shall forfeit to the person in possession of the land the sum of ten pounds over and above the amount of any damage done to the land by reason of such entry and taking possession, and such penalty and damage respectively may be recovered summarily before a police magistrate.

Penalty on council entering contrary to this Part.
8 & 9 Vict. c. 18, s. 90.
21 Vict. No. 11, s. 55.
S.A., No. 1724, s. 76.

(2) If the council or its contractors shall, after conviction in such penalty, continue in unlawful possession of the land, the council shall be liable to forfeit the sum of twenty-five pounds for every day it or its contractors unlawfully remain in possession, and such penalty shall be recoverable by the person in possession of the land, with costs, by action in any court of competent jurisdiction.

(3) The decision of the police magistrate under subsection (1) of this section shall not be conclusive as to the right of entry on any land by the council.

8 & 9 Vict. c. 18, s. 90.
21 Vict. No. 11, s. 55.
S.A., No. 1724, s. 76 (3).

(4) Nothing contained in the foregoing provisions of this section shall subject the council to the payment of any penalties if it has, in good faith, and without collusion paid the purchase-money or compensation agreed or determined to be paid in respect of the land in question—

8 & 9 Vict. c. 18, s. 89.
21 Vict. No. 11, s. 54.

- (a) to any person whom the council reasonably believed to be entitled thereto; or
- (b) into Court, or to the Public Trustee, or otherwise, in accordance with the provisions of sections ten and eleven, for the benefit of the person whom the council reasonably believed to be the person interested in the land,

although such person may not have been legally entitled thereto.

40—(1) In any case where, according to the provisions of this Act or the special Act, the council is authorised to enter upon and take possession of or occupy any land required for the purposes of or in connection with the carrying out of the undertaking, if the owner or occupier of the land or any other person refuses to give up possession thereof, or hinders the council from entering upon or taking possession of or occupying or using the same, a judge may, on the application of the council, order the issue of a writ of possession or a writ of possession and *feri facias*, as the case requires.

Proceedings in case of refusal to deliver possession of land.
8 & 9 Vict. c. 18, s. 91.
21 Vict. No. 11, s. 56, 1.
Geo. V. No. 11, s. 63, S.A., No. 1724, s. 77.

(2) The costs of any application for a writ of possession or a writ of possession and *feri facias* under subsection (1) and of the execution of any such writ shall be paid by the person failing to give up possession of the land to which the writ relates or hindering the council from entering upon, or taking possession of, or occupying, or using such land.

(3) Such costs shall be deducted and retained by the council from the compensation, if any, then payable by it to the person so refusing to give up possession or hindering the council, as the case may be.

PART V.

TAXES, MORTGAGES, INCUMBRANCES, AND LEASES.

Division I.—Taxes, &c.

Power of council to deduct from purchase-money amounts due as taxes, &c.
Cf. 8 & 9 Vict. c. 18, s. 133, S.A., No. 1724, s. 84.

41—(1) If on the payment of the purchase-money payable in respect of any land purchased by the council by agreement, any taxes, rates, or charges due and payable to His Majesty (whether in right of the Commonwealth or of this State) or to any local authority or other statutory body empowered to levy rates and charges upon the land, are outstanding, the council may deduct the amount thereof from the purchase-money payable by the council and the tender by the council of the balance of the purchase-money shall, for all purposes, be a sufficient tender of the purchase-money agreed to be paid by the council to the owner of the land.

(2) Where the council deducts any amount from the purchase-money in pursuance of subsection (1), it shall within seven days after deducting the same, pay and discharge the taxes, rates, or charges in respect of which the same was so deducted.

(3) In default of compliance by the council with the provisions of subsection (2), the person who, but for this section, would have been entitled to receive payment of the amount deducted by the council from the purchase-money shall—

- (a) be entitled, by action in any court of competent jurisdiction, to recover that amount from the council and shall be entitled to recover against the council compensation for any damage sustained by him by reason of such default; and
- (b) shall be deemed in equity to have a charge on any land belonging to the council for the amount so deducted.

42—(1) If when payment becomes due of any compensation in respect of land taken by the council under this Act, any taxes, rates, or charges due and payable to His Majesty (whether in right of the Commonwealth or of this State) or to any local authority or other statutory body empowered to levy rates and charges on the land are outstanding, the council may pay and discharge such taxes, rates, or charges.

Deduction of unpaid taxes, &c., from compensation.

(2) The payment by the council of any such taxes, rates, or charges shall, to the extent of such payment, discharge the liability of the council to pay compensation under this Act to the person entitled to such compensation.

Division II.—Mortgages.

43—(1) If any land is purchased or taken subject to a mortgage, the council may pay off the mortgage.

Power to redeem mortgages.

(2) For the purposes of subsection (1) the council shall give notice to the mortgagee that it intends, at or before the expiration of six months from the date of the notice, to pay off the mortgage and to pay to the mortgagee the amount to which he is entitled under this section.

8 & 9 Vict. c. 18, ss. 108, 109, 114.
21 Vict. No. 11, ss. 60, 61, 66, 1 Geo. V. No. 11, ss. 53, 56, S.A., No. 1724, ss. 55, 56.

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

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

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

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

(6) After the deposit has been made, the council shall execute a deed poll containing a description of the land in respect of which, and describing the circumstances under which, the deposit was made, and the names of the parties concerned, and may cause the deed poll to be registered.

(7) Upon the registration of the deed poll the land mentioned therein shall be freed and discharged from the mortgage, and the interest of the mortgagee in the land shall vest in the council.

(8) Where the deed poll is to be registered under the *Real Property Act 1862** and the council is unable to produce the certificate of title or grant of the land for indorsement, the Recorder may call in the same as provided by section one hundred and thirty-six of that Act as containing a misdescription and may correct the same.

Sum to be paid where value of mortgage exceeds value of land.

8 & 9 Vict. c. 18, ss. 110, 111, 21 Vict. No. 11, ss. 62, 63, S.A., No. 1724, s. 57.

44—(1) If any land purchased or taken subject to a mortgage is of less value than the principal, interest, and costs secured thereon, the value of the land or the compensation to be paid by the council in respect thereof may be settled by agreement between the mortgagee and the person entitled to the right of redemption of the land on the one part, and the council on the other part, or if such parties fail to agree with respect to the amount of such value or compensation, the same shall be determined in the same manner as disputed claims for compensation.

(2) The amount of the value or compensation so agreed upon or determined shall be paid by the council to the mortgagee in satisfaction of his mortgage debt, so far as the same will extend.

(3) Upon payment or tender of the amount of the value or compensation so agreed upon or determined the mortgagee shall convey his interest in the land to the council.

(4) If upon such payment or tender the mortgagee fails to convey his interest in the mortgaged land to the council, or fails to adduce a good title to the council's satisfaction, the council may pay the amount so agreed upon or determined into the Court, and the moneys so paid into Court 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 the mortgaged land from all moneys due thereon and upon the payment of the moneys into Court the council may, if it thinks fit, execute a deed poll.

(5) The provisions of section forty-three so far as the same are applicable shall apply to and in respect of any deed poll executed in accordance with this section.

(6) Upon the registration of a deed poll executed in accordance with this section all the estate and interest of the mortgagee in the land, or of any person in trust for him, or for whom he may be a trustee, shall vest absolutely in the council, and in case the mortgagee himself was entitled to immediate possession of the land, the council shall be

* 25 Vict. No. 16. For this Act, as amended to 1936, see Reprint of Statutes, Vol V., p. 1002. Subsequently amended by 11 & 12 Geo. VI. No. 84.

entitled to immediate possession thereof; but 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 the land shall remain in force in respect of so much of the mortgage debt as has not been satisfied by the moneys paid under this section.

45—(1) If—

- (a) part only of any land is purchased or taken subject to a mortgage for the purposes of the special Act;
- (b) the part so acquired is of less value than the principal, interest, and costs secured on the land; and
- (c) the mortgagee does not consider the remaining part of the land a sufficient security for the moneys charged thereon, or is not willing to release the part so required,

Sum to be paid where part only of mortgaged land is acquired.

8 & 9 Vict. c. 18, ss. 112, 113, 21 Vict. No. 11, ss. 64, 65, S.A., No. 1724, s. 58.

the value of the part so acquired, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, may be settled by agreement between the mortgagee and the person entitled to the right of redemption of the land on the one part, and the council on the other part, or if such parties fail to agree with respect to the amount of such value or compensation, the same shall be determined in the same manner as disputed claims for compensation.

(2) The amount of such value or compensation so agreed upon or determined shall be paid by the council to the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion acquired of the mortgaged land from all moneys due thereon.

(3) Upon payment or tender of such amount the mortgagee shall convey to the council all his interest in the mortgaged land in respect of which such payment or tender is made.

(4) A memorandum of the amount paid by the council to the mortgagee in pursuance of this section shall be indorsed on the instrument creating the 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 council at its expense to the person entitled to the right of redemption of the land comprised in the mortgage.

(5) If upon such payment or tender the mortgagee fails to convey to the council his interest in the land in respect of which such payment or tender has been made, or fails to adduce a good title thereto to the council's satisfaction the council may pay the amount so agreed upon or determined into Court, and the moneys so paid into Court 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 from all moneys due under the mortgage of the portion of the mortgaged land acquired by the council.

(6) Upon payment of such moneys into Court in accordance with subsection (5), the council may, if it thinks fit, execute a deed poll, in respect of the portion of the land in respect of which moneys have been paid into Court, and the provisions of section forty-three shall, *mutatis mutandis*, apply to and in respect of moneys paid into Court, and deeds poll executed, under this section.

(7) Upon the registration of the deed poll, all the estate and interest of the mortgagee in such portion of the mortgaged land, or of any person in trust for him, or for whom he may be a trustee, shall vest absolutely in the council, and in case the mortgagee himself was entitled to immediate possession of such portion, the council shall be entitled to immediate possession thereof.

(8) Notwithstanding anything done under the provisions of this section, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage moneys, or of the residue thereof (as the case may be), and the interest thereof, upon and out of the residue of the land, or the portion thereof not acquired by the council under 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.

46 Where any land is taken under this Act, the compensation payable to a mortgagee whose interest is taken therewith shall be estimated in accordance with the following principles:—

- (a) The mortgage shall be taken to be discharged as from the date of the acquisition of the land, to the extent to which the compensation payable in respect of the land is sufficient to satisfy the mortgage;
- (b) The mortgagee shall also be entitled, if the principal was not repayable (with or without notice) at the date of the acquisition of the land, to the costs of reinvesting any principal paid off, and, should a loss of interest reasonably be expected, regard being had to the rate of interest secured by the mortgage and the rate of interest likely to be obtained on the reinvestment, to compensation for loss of interest.

47—(1) When part only of any land subject to a mortgage is taken, a mortgagee, part of whose interest is taken therewith, shall, upon payment or tender to him of his share of the compensation payable in respect of that land, execute a discharge of the mortgage debt to the extent to which the amount paid or tendered is sufficient to satisfy it.

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

Compensation to a mortgagee, how estimated.

8 & 9 Vict. c. 18, s. 114.
21 Vict. No. 11, s. 66, 1.
Geo. V. No. 11, s. 56, S.A., No. 1724, s. 59.

Partial discharge of mortgage debt.

8 & 9 Vict. c. 18, s. 112.
21 Vict. No. 11, s. 64, 1.
Geo. V. No. 11, s. 57, S.A., No. 1724, s. 58.

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

Rights of mortgagee not affected in certain cases.
1 Geo. V. No. 11, s. 58.

Division III.—Incumbrances.

49—(1) If a part only of any land subject to any incumbrance issuing out of, or charged upon, the whole of the land is required by the council for the purposes of the special Act, the incumbrance shall be apportioned between the land so required and the remainder of the land, in such manner as may be agreed upon between the person entitled to the incumbrance and the owner of the land subject to the incumbrance, on the one part, and the council, on the other part; or, in default of such agreement, by the Court on the application of the council.

Release of part of land from incumbrance.
8 & 9 Vict. c. 18, s. 116.
21 Vict. No. 11, s. 68.
1 Geo. V. No. 11, s. 59, S.A., No. 1724, s. 60.

(2) If that part of the land which is not required for the purposes of the special Act is a sufficient security for the incumbrance, the person entitled to the incumbrance, with the consent of the owner of such part, may release from the incumbrance the land required for the purposes of the special Act, on condition or in consideration of such part remaining exclusively subject to the incumbrance.

(3) Where—

(a) for the purpose of giving effect to any agreement or order under subsection (1) for the apportionment of any incumbrance, any deed or instrument is executed or made; or

(b) a release under subsection (2) is executed or made,

the appropriate deed, instrument or other document shall be executed, made, and registered at the council's expense.

(4) In the case of land which is not subject to the *Real Property Act 1862**, any release made under subsection (2) may be by memorandum indorsed on the deed (if any) creating the incumbrance, and a memorial thereof shall be registered with the Registrar of Deeds.

50—(1) Where any land is acquired subject to an incumbrance, and any difference arises between the council and the person entitled to the incumbrance respecting the consideration to be paid for the release of the land therefrom the same shall be determined in the same manner as disputed claims for compensation.

Payment into Court in case of refusal to release.
8 & 9 Vict. c. 18, ss. 115, 117, 21 Vict. No. 11, ss. 67, 69, S.A., No. 1724, s. 61.

(2) Upon payment or tender of the consideration so agreed upon or determined to the person entitled to the incumbrance, he shall execute to the council a release of the charge.

* 25 Vict. No. 16. For this Act, as amended to 1936, see Reprint of Statutes, Vol. V., p. 1002. Subsequently amended by 11 & 12 Geo. VI. No. 84

(3) If he fails so to do, or if he fails to adduce good title to the incumbrance to the satisfaction of the council it may pay the amount of such consideration into Court, and may, if it thinks fit, execute a deed poll in respect of the land in respect of which moneys have been paid into court, and the provisions of section forty-three shall, *mutatis mutandis*, apply to and in respect of moneys paid into Court, and deeds poll executed under this section.

(4) Upon the registration of the deed poll the incumbrance or the portion thereof in respect of which such consideration has been so paid shall cease and be extinguished.

51—(1) Where under section fifty any land is released from an incumbrance or portion thereof to which it was subject jointly with other land, that other land shall alone be subject to the whole of the incumbrance or to the remainder thereof, as the case may be.

(2) The person entitled to the incumbrance shall have all the same rights and remedies over that other land for the whole or for the remainder of the incumbrance, as the case may be, as he had previously over the whole of the land subject to the incumbrance.

(3) Where any incumbrance or portion of an incumbrance is released under section fifty and the deed or instrument creating or transferring that incumbrance is tendered to the council it shall affix its common seal to a memorandum of the release indorsed on that deed or instrument, declaring what part of the land originally subject to the incumbrance has been acquired by virtue of the special Act and, if the land has been released from part of the incumbrance, what proportion of the incumbrance has been released and how much thereof continues payable, or if the land so acquired has been released from the whole of the incumbrance, then that the remaining land is thenceforward to remain exclusively charged therewith.

(4) Such memorandum shall be made and executed at the expense of the council, and shall be evidence of the facts therein stated, but not so as to exclude other evidence of the same facts.

Division IV.—Leases.

52—(1) If a part of any land comprised in a lease is acquired under this Act, the rent payable in respect of the land comprised in the lease shall be apportioned between the part so acquired and the remainder of such land.

(2) The apportionment shall be settled by agreement between the lessor, the lessee, and the council, or, in default of agreement, by the Court on the application of the council.

(3) After the apportionment has been settled—

(a) the lessee shall, as to all future accruing rent, be liable only to rent apportioned in respect of the part not acquired;

Charge to continue on lands not acquired.

8 & 9 Vict. c. 18, s. 118,
21 Vict. No. 11, s. 70,
1 Geo. V. No. 11, s. 60,
S.A., No. 1724, s. 62.

Apportionment of rent where part of leased land acquired.

8 & 9 Vict. c. 18, s. 119,
21 Vict. No. 11, s. 71,
1 Geo. V. No. 11, s. 61,
S.A., No. 1724, s. 63.

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

53 When any leasehold interest is acquired under this Act the lessee shall be entitled to compensation for the value of his unexpired term or interest and for any just allowance that ought to be made to him by an incoming tenant, and, if part only of his land be acquired, compensation for the damage done to him by severing the land held by him or otherwise injuriously affecting it.

Compensation to lessees.
Cf. 8 & 9 Vict., c. 18, s. 121, 21 Vict. No. 11, s. 73.

PART VI.

MISCELLANEOUS.

54—(1) If at any time after the council has entered upon any land which, under the provisions of this Act or the special Act it is authorised to take, and which is permanently required for the purposes of the special Act, any person appears to be entitled to any estate or interest in the land which the council has, through mistake or inadvertance, failed or omitted to acquire, then, whether the period allowed for the taking of land has expired or not, the council may remain in the undisturbed possession of the land:

Interests overlooked to be purchased or taken.
8 & 9 Vict. c. 18, ss. 124, 125, 21 Vict. No. 11, ss. 75, 76, S.A., No. 1724, s. 78.

Provided that—

- (a) if the estate or interest is not disputed by it, within three months after service upon it of notice of claim in respect of such estate or interest; or
- (b) if the estate or interest is disputed by it, within three months after the right thereto is finally established by law in favour of the person claiming the same—

the council shall purchase, or subject to this Act take, the same, as the case requires, and shall also pay to such person, or to any other person who establishes a right thereto, full compensation for the mesne profits or interest which would have accrued to such persons respectively in respect of such estate or interest during the interval between the entry of the council on the land and the time of the payment of such compensation by the council, so far as such mesne profits or interest are recoverable at law or in equity:

Provided further that if within such time the council is unable so to acquire, such estate or interest shall prevail over that of the council, but not so that any unregistered estate or interest will prevail over any registered estate or interest over which it would not otherwise prevail.

(2) Any compensation payable in pursuance of this section shall be agreed, or determined, and paid, in like manner as, according to the provisions of this Act, the same respectively would have been agreed, determined, or paid, in case the council had acquired the estate or interest before entering upon the land, or as near thereto as circumstances will admit.

(3) Any compensation payable in pursuance of this section shall be assessed as if notice to treat had been given by the council in respect of the estate or interest at the time the land was entered upon by it, and as if no improvements or works had been made or constructed in or on the land by the council.

(4) When compensation is payable in pursuance of this section in respect of any estate or interest in respect of which the council has already made payment by way of consideration for the purchase thereof or compensation for the taking thereof to any person not entitled to receive the same, the council may recover from that person the amount which he was not entitled so to receive.

Owner not required to sell part of building, &c.
8 & 9 Vict. c. 18, s. 92.
21 Vict. No. 11, s. 57, S.A., No. 1724, s. 51.

55 No person shall at any time be required to sell or convey to the council a part only of any house or other building, or manufactory, if that person is willing and able to sell and convey the whole thereof; and the council shall not take any part thereof alone, if that person requires him to take the whole thereof.

Owner of intersected land may insist on sale.
8 & 9 Vict. c. 18, ss. 93, 94, 21 Vict. No. 11, ss. 58, 59, S.A., No. 1724, ss. 52, 53.

56—(1) If—

- (a) any land, not being situated within a town or built upon, is so cut through and divided by the works as to leave, either on both sides or on one side thereof, a piece of land of less extent than one-half of an acre; and
- (b) the owner of the piece of land requires the council to purchase the same along with the other land required for the purposes of the special Act,

the council shall purchase that piece of land, unless the owner has other land adjoining that piece of land into which such piece of land can be thrown so as to be conveniently occupied therewith.

(2) If the owner and the council cannot agree upon the purchase price of the piece of land so left it shall be determined by a police magistrate.

(3) If the owner has any other land adjoining the piece of land so left, the council shall, if so required by the owner, at the council's expense, throw the piece of land so left into the adjoining land by removing the fences and levelling the sites thereof and by soiling the same in a sufficient and workmanlike manner.

(4) If any such land is so cut through and divided as to leave on either side of the works a piece of land of less extent than half an acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the council is, under the provisions of this or the special Act, compellable to make; and if the owner of the piece of land has not other land adjoining that piece of land, and requires the council to make such communication, the council may purchase or may, subject to this Act, take such piece of land.

(5) Any dispute as to the value of any piece of land which the council may acquire in pursuance of this section, or as to what would be the expense of making any communication referred to in that subsection, shall be ascertained in the manner provided for the determination of cases of disputed compensation.

57 The amount of any compensation payable under this Act by agreement with any person under a disability or incapacity and not having power to sell or convey the land concerned except under the provisions of this Act or the special Act shall not be less than an amount determined by valuers or a valuer in accordance with the provisions of section ten.

Valuation
in case of
parties under
disability.
8 & 9 Vict.,
c. 18, s. 9,
21 Vict. No.
11, s. 7, S.A.,
No. 1724, s.
17.

58—(1) All notices required by this Act or the special Act to be served by the council on any person interested in or entitled to sell and convey any land shall either be served personally on that person or be left at his usual or last-known place of abode, if the same can, after diligent enquiry, be found.

Service of
notices.
8 & 9 Vict.
c. 18, ss. 19,
20, 134, 21
Vict. No. 11,
ss. 11, 12, 84,
1 Geo. V. No.
11, ss. 15, 67
S.A., No. 1724
ss. 23, 93.

(2) If any such person is absent from the State, or cannot be found after diligent enquiry, the notice 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 and shall be published in a newspaper circulating generally in the locality in which the land is situated.

(3) If the person to be served with any notice referred to in subsection (1) is a corporation, the notice shall be left at the principal office of the corporation, or, if no such office can, after diligent enquiry, be found, shall be served upon the agent (if any) of the corporation in this State or upon the Registrar of Companies, and shall also be left with the occupier of the land, or, if there is no occupier, shall be affixed to some conspicuous part of the land and published in a newspaper circulating generally in the locality in which the land is situated.

(4) Any notice required by this Act or the special Act to be served on the council may be so served by being left at, or transmitted by post to, the office of the council (or the principal office where there are more such offices than one), or may be served upon, or transmitted by post to, the clerk to the council or the solicitor to the council.

Application
of the *Settled
Land Act*
1884.

59—(1) When any land is purchased by the council from a person who, but for this Act, would have no power to sell and convey or release the same except under the provisions of the *Settled Land Act 1884** that Act shall apply to the purchase thereof in respect of notice to the trustees of the settlement, and the payment, receipt, and application of the purchase-money.

(2) When any land is taken under this Act from any such person he shall give any notice required by section forty-two of the *Settled Land Act 1884** as if he intended to make a sale of the land and that Act shall apply to the acquisition in respect of the payment, receipt, and application of the compensation.

Sale of
superfluous
land.

8 & 9 Vict.
c. 18, s. 127,
21 Vict. No.
11, s. 78, S.A.,
No. 1724, s.
79.

Cf. 1 Geo. V.
No. 11, s. 66.

60 Within the period prescribed by the special Act, or, if no period is so prescribed, within ten years after land ceases to be required for the purposes of the special Act, the council shall absolutely sell and dispose of all land acquired by it under the provisions of this Act or the special Act, which is not required for any of the purposes of the special Act, and shall apply the purchase-money arising therefrom to the purposes of the special Act.

Land to be
offered to
original
owner or to
adjoining
owners.

8 & 9 Vict.
c. 18, s. 128,
21 Vict. No.
11, s. 79, S.A.,
No. 1724, s.
80.

61—(1) Before the council disposes of any land in pursuance of section sixty, it shall, unless such land is situated within a town, or is land built upon or used for building purposes, first offer to sell that land—

(a) if it was severed from other land, to the person from whose land it was originally severed or his successors in title; or

(b) if it was not severed from other land, to the person from whom it was originally taken by the council.

(2) If such person refuses to purchase the land, or if he or his agent cannot, after diligent inquiry, be found, the like offer shall be made to the person, or to the several persons, whose lands immediately adjoin the land so proposed to be sold, if such persons are capable of entering into a contract for the purchase thereof.

(3) Where more than one person is entitled to a right of pre-emption under this section, such offer shall be made to those persons in succession, one after another, in such order as the council may think fit.

Right of
pre-emption
to be claimed
within six
weeks.

8 & 9 Vict.
c. 18, ss. 129,
130, 21 Vict.
No. 11, ss. 80,
81, S.A., No.
1724, ss. 80,
81.

62—(1) If any person is desirous of purchasing any land to which the provisions of section sixty relate, he shall within six weeks after the offer of sale, signify his desire in that behalf to the council.

(2) If any such person declines such offer, or if for six weeks he neglects to signify his desire to purchase the land, the right of pre-emption of that person shall cease.

* 48 Vict. No. 10. For this Act, as amended to 1936, see Reprint of Statutes, Vol. V., p. 1134.

(3) For the purposes of this section, a statutory declaration by the clerk to the council, stating that an offer was made and was refused or not accepted within six weeks from the time of making the offer, or that the person or all the persons entitled to the right of pre-emption were out of the State or could not, after diligent inquiry, be found, or were not capable of entering into a contract for the purchase of the land, shall be sufficient evidence of the facts therein stated.

(4) If any person entitled to such pre-emption is desirous of purchasing any such land, and that person and the council do not agree as to the price thereof, the price shall be determined in the manner prescribed for determining disputed claims for compensation as if the council were the claimant.

(5) Any person by whom the right of pre-emption conferred by section sixty-one is or would for the time being be exercisable in respect of any land if the council were offering it for sale shall have power at any time to release that right so as to discharge in perpetuity the land or any part thereof to which the release relates, from all such right of pre-emption.

63 Upon payment or tender to the council of the purchase-money agreed upon or determined as provided by section sixty-two, the council shall convey the land to the purchaser thereof.

Land to be conveyed to purchasers.
8 & 9 Vict. c. 18, s. 131,
21 Vict. No. 11, s. 82, S.A.,
No. 1724, s. 82.

64 All persons claiming any compensation under this Act, shall, when required, at the council's expense, produce all deeds and documents relating to or evidencing their title to the land in respect of which such compensation is payable, and shall when required at their own expense give particulars of any damage claimed by them.

Claimants to produce title.
1 Geo. V. No. 11, s. 64.

65 Where by this Act the time for doing any act or thing is limited, the Court may extend the time, either before or after the expiration thereof, upon such terms, if any, as the Court may think fit to impose.

Power to extend time.
4 & 5 Geo. V., c. 59, s. 109.

66 If any party agrees that any time limited by this Act for doing any act or thing be extended, that time shall be extended as agreed.

Agreements to extend time.

THE FIRST SCHEDULE.

(Section 2.)

Regnal Year and Number of Act.	Short Title.	Extent of Repeal or Amendment.
29 Vict. No. 7	<i>The Cemeteries Act</i> 1865	<p>In section 6—</p> <p>(a) by omitting the words "<i>Lands Clauses Act 1857</i>", wherever occurring, and substituting therefor the words "<i>Public Authorities' Land Acquisition Act 1949</i>"; and</p> <p>(b) by omitting the words "the promoters of the undertaking" and substituting therefor the words "a local authority for the purposes of that Act."</p>
6 Edw. VII. No. 31	<i>The Local Government Act 1906</i>	<p>1. In section 139—</p> <p>(a) by omitting the words "<i>Lands Clauses Act 1857</i>", wherever occurring, and substituting therefor the words "<i>Public Authorities' Land Acquisition Act 1949</i>";</p> <p>(b) by omitting in subsection (2) the words "and excepting sections eight and nine thereof"; and</p> <p>(c) by omitting in subsection (2) the words "the council shall be deemed to be 'the promoters of the undertaking', and".</p> <p>2. By repealing section 140 and substituting the following section therefor—</p> <p>"140. If any person wilfully pulls up, removes or destroys any stakes or other marks used by the council for the purposes of section thirty-eight of the <i>Public Authorities' Land Acquisition Act 1949</i>, he shall incur a penalty of fifty pounds."</p> <p>3. In section 141—</p> <p>(a) by omitting the words "<i>Lands Clauses Act 1857</i>", wherever occurring and substituting therefor the words "<i>Public Authorities' Land Acquisition Act 1949</i>";</p> <p>(b) by omitting in subsection (1) the words "any such purpose" and substituting the words "any of such purposes"; and</p> <p>(c) by omitting in subsection (2) the words "seventy-eight" and substituting therefor the word "sixty".</p>
12 Geo. V. No. 60	<i>The Marine Act</i> 1921	<p>In section 64 by omitting clause II. and substituting therefor the following clause—</p> <p>"II. To purchase or take any land or any estate or interest therein in accordance with the provisions of the <i>Public Authorities' Land Acquisition Act 1949</i>."</p>

Regnal Year and Number of Act.	Short Title.	Extent of Repeal or Amendment.
26 Geo. V. No. 82	<i>The Roads and Jetties Act 1935</i>	<p>1. In section 27—</p> <p>(a) by omitting in subsection (1) the words "<i>Lands Clauses Act 1857</i>" and substituting therefor the words "<i>Public Authorities' Land Acquisition Act 1949</i>";</p> <p>(b) by omitting in subsection (2) the words ", except sections eight and nine thereof," and the words "the council shall be deemed to be the promoters of the undertaking"; and</p> <p>(c) by omitting subsections (3) and (4).</p> <p>2. In section 30 by omitting the words "seventy-eight" and substituting therefor the word "sixty".</p>
4 & 5 Geo. VI. No. 91	<i>The Launceston Corporation Act 1941</i>	<p>1. In section 314 by omitting the words "<i>Lands Clauses Act 1857</i>, save as hereby modified and except sections eight and nine thereof," and substituting therefor the words "<i>Public Authorities' Land Acquisition Act 1949</i>".</p> <p>2. By repealing section 315 and substituting therefor the following section—</p> <p>"315. Where land is taken by the council for the purpose of constructing, altering, widening, diverting, or improving any street and the compensation payable to any person in respect thereof is determined as in cases of disputed compensation to be an amount that the council thinks not desirable to pay, the council may, notwithstanding that the time limited in subsection (2) of section fifteen of the <i>Public Authorities' Land Acquisition Act 1949</i> has expired, take action in accordance with, and subject to, the terms of that section."</p> <p>3. In section 317 by inserting before the word "except" the words "or of the <i>Public Authorities' Land Acquisition Act 1949</i>".</p>
7 & 8 Geo. VI. No. 99	<i>The Town and Country Planning Act 1944</i>	<p>By repealing section 22 and substituting therefor the following section—</p> <p>"22. Where any land is required by any local authority for the purposes of this Act, it may be purchased or taken in the manner prescribed by the <i>Public Authorities' Land Acquisition Act 1949</i>".</p>

Regnal Year and Number of Act.	Short Title.	Extent of Repeal or Amendment.
11 Geo. VI. No. 78	<i>The Hobart Corporation Act 1947</i>	<p>1. In section 187—</p> <p>(a) by omitting from paragraph III. of subsection (2) the words “, as if such notice were a notification under section three hundred and forty-five”; and</p> <p>(b) by inserting after subsection (2) the following subsection:— “(2A) Every notice served under this section shall be deemed to be a notice to treat under section six of the <i>Public Authorities' Land Acquisition Act 1949</i>.”</p> <p>2. In section 188—</p> <p>(a) by omitting from subsection (1) the words “notification of acquisition under section three hundred and forty-five” and substituting therefor the words “notice of acquisition duly registered under section thirteen of the <i>Public Authorities' Land Acquisition Act 1949</i>”; and</p> <p>(b) by omitting in paragraph I. of subsection (2) the words “paragraph I. of subsection (2) of section three hundred and forty-five” and substituting therefor the words “section thirteen of the <i>Public Authorities' Land Acquisition Act 1949</i>”; and</p> <p>(c) by inserting in paragraph I. of subsection (2) after the word “not” the words “, except as provided in subsection (1) of this section,”;</p> <p>(d) by omitting paragraph II. of subsection (2); and</p> <p>(e) by omitting in paragraph III. of subsection (4) the words “the reference and award” and substituting therefor the words “arbitration or judicial proceedings”.</p> <p>3. In section 196 by omitting subsections (1), (2), and (3) and substituting therefor the following subsections:— “(1) Where a consent or re-alignment notice has been filed or registered under section one hundred and ninety and—</p> <p>I. Payment of compensation has been made; or</p> <p>II. If it has been agreed or determined that no compensation is payable, sixty days have elapsed since a notice in writing has been given to the owner by the council stating that it requires the land between the old alignment and the new alignment— the council may by deed poll declare that such events have occurred and</p>

Regnal Year and Number of Act.	Short Title.	Extent of Repeal or Amendment.
11 Geo. VI. No. 78	<i>The Hobart Corporation Act 1944</i> — contd.	<p>may file or register the deed poll as nearly as possible in accordance with the provision of section one hundred and ninety.</p> <p>(2) Upon the filing or registration of the deed poll the land between the old alignment and the new alignment shall become part of the street to which the aforesaid consent or notice relates freed and discharged from all estates and interests inconsistent with its being part of the street: Provided that the public shall have no rights over such part of the street until the council has made it usable by the public.</p> <p>(3) Where portion of an allotment has become part of a street under this section the council may, until such portion has been made usable by the public, grant to the owner of the allotment a licence to occupy and use such portion on such terms and conditions as the council may think fit.”</p> <p>4. In section 197 by omitting in subsection (7) the words “ten of the <i>Lands Clauses Act 1857</i>”, and substituting therefor the words “six of the <i>Public Authorities' Land Acquisition Act 1949</i>”.</p> <p>5. By repealing section 344 and substituting therefor the following section—</p> <p>“344.—(1) Subject to the provisions of this Part all the provisions of the <i>Public Authorities' Land Acquisition Act 1949</i> shall be applicable to the acquisition of land under this Act.</p> <p>(2) Where any land is taken by the council for the purpose of constructing, altering, widening, diverting, or improving any street and the compensation payable to any person in respect thereof is determined as in cases of disputed compensation to be an amount that the council thinks not desirable to pay, the council may, notwithstanding that the time limited in subsection (2) of section fifteen of the <i>Public Authorities' Land Acquisition Act 1949</i> has expired, take action in accordance with, and subject to, the terms of that section.”</p> <p>6. By repealing section 345.</p> <p>7. In section 346 by inserting before the word “except” the words “or of the <i>Public Authorities' Land Acquisition Act 1949</i>”.</p>

THE SECOND SCHEDULE.

FORM I.
(Section 12.)

The Public Authorities' Land Acquisition Act 1949.

NOTICE OF ACQUISITION OF LAND.

The..... (name of council) having on the..... day of....., 19....., resolved to take certain land for the purpose of..... (statement of purpose) a purpose for which land may be taken under the..... (title of special Act) and having on [or by *where notices have been served on different days*] the..... day of....., 19....., duly served notice to treat as required by the *Public Authorities' Land Acquisition Act 1949* and having on the..... day of....., 19....., being then entitled to take that land, confirmed that resolution, hereby declares that it is acquiring the [or a]..... the estate or interest being acquired in [or on or over] the land hereunder described.

Dated this..... day of....., 19....., at..... in the.....

For and on behalf of the..... (Name of council.)

..... (Signature of person signing notice and capacity in which he signs.)

[Description of land referred to.]

FORM II.
(Section 14.)

The Public Authorities' Land Acquisition Act 1949.

Land at.....

NOTICE THAT LAND IS BEING TAKEN BY
COMPULSORY PROCESS.

..... (Address of Council.)

To....., 19.....
of.....

And to every person whom it may concern.

Notice is hereby given in accordance with section 14 of the *Public Authorities' Land Acquisition Act 1949*, that the estate [or interest] in land described in the copy of a notification served herewith of which you are the*..... is being taken by..... (name of the council) under the *Public Authorities' Land Acquisition Act 1949*.

The notification of the acquisition of an estate [or interest] in land prescribed by that Act was published in the "*Tasmanian Government Gazette*" on the..... day of....., 19....., and a copy of such notification, together with a plan of the land thereby affected, is herewith served upon you as *..... of the land.

You are hereby notified that if you claim compensation in respect of the land so acquired you should, within 60 days (or such further time as the council may allow) from the date of the service of this notice, serve upon the council a notice, in writing, in accordance with the prescribed form, a copy of which is forwarded herewith.

..... (Signature of person signing notice on behalf of the council, and capacity in which he signs.)

* "Th owner" or "one of the owners," or "tenant" or "on of the tenants," or as the case requires.

FORM III.

(Section 15.)

The Public Authorities' Land Acquisition Act 1949.

NOTICE OF AMENDED ACQUISITION OF LAND.

The (name of council) having
 (following the notice of acquisition as far as the next succeeding words)
 confirmed that resolution, and having by notice of acquisition published
 in the Gazette on the day of, 19.....,
 declared that land to be acquired, which notice has been found to be
 defective, hereby revokes that notice of acquisition and now hereby
 declares..... (continuing in accordance with form I.).

FORM IV.

(Section 15.)

The Public Authorities' Land Acquisition Act 1949.

TO ALL TO WHOM THESE PRESENTS COME, GREETING:

WHEREAS the..... (name of council) is entitled by
 virtue of a notice of acquisition under the Public Authorities' Land
 Acquisition Act 1949 duly published in the Tasmanian Government
 Gazette on the..... day of, 19.....,
 to the [or a]..... (the estate or interest therein mentioned)
 in [or on or over] the land described in the schedule hereto. AND
 WHEREAS it is not expedient to register that notice. NOW KNOW YE
 that the said..... (name of council) doth hereby release
 the said land [or the portion of the said land coloured.....
 in the plan drawn hereon] from all the rights of the said.....
 (council) under that notice [or from any right of the said.....
 (council) under that notice to..... (the estate or
 interest, the right to which is released)].

IN WITNESS whereof, &c.

FORM V.

The Public Authorities' Land Acquisition Act 1949.

(Section 21.)

CLAIM FOR COMPENSATION IN RESPECT OF LAND ACQUIRED AT.....

To..... (Name of council.)

Pursuant to the Public Authorities' Land Acquisition Act, 1949, I/we hereby give you notice that I/we claim compensation in respect of the land mentioned and described in the notice served upon me/us and dated the.....day of....., 19....., being a notice under section 14 of the said Act notifying the acquisition of a certain estate [or interest] in the said land, which said estate [or interest] has been acquired by you under the said Act. The particulars of my/our claim are hereunder stated.

Particulars.

Table with 5 columns: Name, address, and addition or occupation of claimant; Nature of the estate, interest, or title of the claimant in such land; Particulars of Title, viz.: Names of registered proprietors of land, registration numbers of documents of title, and system under which title is registered; Full particulars of claim, specifying separately the amount claimed as the value of interest of the claimant in the land and the damage suffered by reason of severance and injurious affection, and giving particulars with rough sketch plan* of any lands in respect of which a claim is made for damage by reason of severance or injurious affection; Names of persons having the custody of documents of title, and where the same may be inspected; Names of occupiers, distinguishing whether tenants at will, or under lease, rent reserved, terms, &c.

Dated the.....day of....., 19.....

(Signature).....

* The plan referred to should be attached to this claim.

(Address).....

FORM VI.
(Section 21.)

The Public Authorities' Land Acquisition Act 1949.

In re land at.....

CLAIM FOR COMPENSATION FOR LAND INJURIOUSLY
AFFECTED BY STATUTORY UNDERTAKING.

To..... (name of council).

Pursuant to the Public Authorities' Land Acquisition Act 1949,
I hereby give you notice that I claim compensation for injurious
we affection of my land caused by your undertaking at.....;
our particulars whereof are hereunder stated.

Name, address, and addition or occupation of claimant.	Short description of land in respect of which the claim is made.*	Capacity in which the claim is made (such as owner or lessee of the land.)	Amount of compensation claimed.	Particulars of the damage claimed for, giving the heads of damage and the amount claimed in respect of each head.

Dated the..... day of....., 19.....,

(Signature).....

(Address).....

* A rough sketch plan of the land in respect of which the compensation is claimed should be attached to this claim.

FORM VII.

(Section 21.)

The Public Authorities' Land Acquisition Act 1949.

In re land at.....

CLAIM FOR COMPENSATION FOR DAMAGE CAUSED BY THE EXERCISE OF POWERS UNDER PART IV. OF THE ACT.

To..... (name of council.)

Pursuant to the Public Authorities' Land Acquisition Act 1949, I hereby give you notice that I claim compensation for damage suffered by me/us by reason of the exercise by the council of powers under Part IV. of the above Act on the land hereunder specified. The prescribed particulars are hereunder stated.

Name, address, and addition or occupation of claimant.	Short description of land in respect of which the claim is made.*	Capacity in which the claim is made (such as owner or lessee of the land).	Amount of compensation claimed.	Particulars of the damage claimed for, giving the heads of damage and the amount claimed in respect of each head.

Dated the..... day of....., 19.....

(Signature).....

(Address).....

* A rough sketch plan of the land in respect of which the compensation is claimed should be attached to this claim.