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K Woodward
Deputy Chief Parliamentary Counsel
Dated 6 January 2022



TASMANIA

LAND ACQUISITION ACT 1993

No. 23 of 1993

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LAND ACQUISITION ACT 1993

No. 23 of 1993

An Act to make provision for the acquisition of land by the Crown, public and local authorities and promoters, to authorize the acquisition of land for undertakings of a public nature, to provide for matters incidental to, and consequential on, that acquisition, and to repeal the *Lands Clauses Act 1857*, the *Lands Resumption Act 1957* and the *Public Authorities' Land Acquisition Act 1949*

[Royal Assent 3 June 1993]

Be it 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 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Land Acquisition Act 1993*.

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Part 1 – Preliminary

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

(1) In this Act, unless the contrary intention appears

—

acquire means purchase or take;

acquiring authority or *authority* means the Crown, a public authority, a local authority or a promoter;

arbitrator means a Special Arbitrator or an arbitral tribunal under the *Commercial Arbitration Act 2011*, as the case requires;

authorized purpose, in relation to the acquisition of land, means a purpose for which the land may be acquired by an acquiring authority;

authorized securities means securities in which trustees are authorized to invest trust funds by section 5 of the *Trustee Act 1898*;

claimant means a person who claims an entitlement to compensation under this Act;

clerk, in relation to an acquiring authority, means —

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-
- (a) a general manager within the meaning of the *Local Government Act 1993*;
 - (b)
 - (c) the secretary or similar officer of a public authority; or
 - (d) a promoter; or
 - (e) the secretary or similar officer of a promoter;

Commission has the same meaning as in the *Tasmanian Planning Commission Act 1997*;

convey includes surrender, release, transfer, assign and otherwise assure;

Court means the Supreme Court of Tasmania;

the Crown includes the Governor and a Minister of the Crown when they are authorized as provided in section 4;

encumbrance means a charge or encumbrance on land, other than a mortgage;

estate, in relation to land, includes any estate, interest, easement, right, title, claim, demand, charge, lien or encumbrance in, over, to or in respect of that land;

former owner, in relation to land that has been acquired, means a person who –

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- (a) was an owner of that land when the first notice to treat was served; or
- (b) became an owner of that land subsequent to that service but before the notice of acquisition in respect of that land was gazetted;

Government Department means a Government department established under the *State Service Act 2000* or by any other enactment as a Government department within the meaning of that Act;

judge means a judge of the Supreme Court;

land includes messuages, tenements, hereditaments, buildings attached to the land and any estate in the land;

lease includes an agreement for a lease;

legal practitioner means an Australian legal practitioner;

local authority means the council exercising jurisdiction in the locality to which the context relates;

major infrastructure project has the same meaning as in the *Major Infrastructure Development Approvals Act 1999*;

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notice of acquisition means a notice of acquisition gazetted under section 18 or 70;

notice of withdrawal means a notice of withdrawal under section 12;

notice to treat means a notice to treat under section 11;

owner, in relation to land, means a person who, whether jointly or severally, is seised or possessed of, or entitled to, an estate in the land at any time on and from the day on which a notice to treat in respect of the land is first served on a person until (but not including) the day on which a notice of acquisition in respect of the land is gazetted, and includes a person who is enabled under this Act, any other Act or any instrument to sell or convey the land to an acquiring authority;

prescribed rate, in relation to interest on compensation payable by an acquiring authority, means the rate that, on any day, is advised by the Commonwealth as being the weighted average issue yield for the longest term stock in the most recent Treasury bond tender;

proclaimed day means the day fixed by proclamation under section 2;

promoter means a person, other than a public or local authority, empowered by a

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special Act to execute the works or undertaking authorized by that Act;

public authority means a body or authority, whether incorporated or not, established or constituted by or under an Act or under the Royal Prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises persons appointed by the Governor, a Minister of the Crown or another public authority, but does not include a Government Department or a local authority;

public purpose means a purpose related to the administration of the Government of this State;

purchase means purchase by agreement under this Act;

reconvey means convey land taken to its former owner under section 23(1);

regulations means regulations made and in force under this Act;

Rules of Court means the Rules of Court made under the *Supreme Court Civil Procedure Act 1932* and the *Civil Process Act 1985*;

Secretary means the Secretary of the Department;

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special Act means an Act authorizing the acquisition of land for the purpose of an acquiring authority other than the Crown;

Special Arbitrator means a Special Arbitrator appointed under section 6;

subject land means land acquired or being acquired under this Act;

take, in relation to land, means take by compulsory process under this Act.

- (2) In this Act, a reference to the “acquiring authority” or “authority” is a reference to the acquiring authority concerned with or affected by the matter to which the context relates.
- (3) In this Act, a reference to the relevant Supreme Court Rules is a reference to the *Supreme Court Rules 2000* made under the *Supreme Court Civil Procedure Act 1932*, as those rules are amended from time to time, and to any rules made in substitution for those rules.

4. Application of Act to acquisition of land by or on behalf of the Crown

- (1) Land is to be acquired as provided by this Act where the Crown, the Governor or a Minister of the Crown is authorized –
 - (a) by an Act to undertake, construct or provide a public work for which the land is required; or

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- (b) by this Act or any other Act to purchase, acquire or take the land for any purpose.
- (2) Except to the extent that the provisions of this Act are expressly varied or made inapplicable by an Act referred to in subsection (1), other than this Act, those provisions –
 - (a) apply to the work or purpose authorized by that Act as far as they are applicable to that work or purpose; and
 - (b) form part of that Act, together with any other Act that is to be incorporated with that Act; and
 - (c) are to be read as one Act with that Act and any other Act so incorporated.
- (3) The Governor may, by order, authorize a Minister of the Crown to acquire land for a public purpose or public work if there is no statutory authorization to acquire the land as mentioned in subsection (1).
- (4) An authorization under subsection (3) is an authorization to the Minister under this Act for the purposes of subsection (1).
- (5) An order made under subsection (3) is not a statutory rule within the meaning of the *Rules Publication Act 1953* and section 38A (2) (a) of the *Acts Interpretation Act 1931* does not apply in relation to it.
- (6) Except as provided in section 74, this Act does not affect the right of the Crown to resume land

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by virtue of a right reserved in the grant of the land, but land that may be so resumed may be acquired under this Act.

5. Application of Act to acquisition of land by an acquiring authority other than the Crown

- (1) Where an acquiring authority (other than the Crown) is authorized by a special Act to acquire any land required for the purposes of the authority, that land –
 - (a) if it is Crown land, is to be purchased as provided by the *Crown Lands Act 1976*; or
 - (b) if it is not Crown land, is to be acquired as provided by this Act.
- (2) Except to the extent that the provisions of this Act are expressly varied or made inapplicable by a special Act, those provisions –
 - (a) apply to the purpose authorized by that special Act as far as they are applicable to that purpose; and
 - (b) form part of the special Act, together with any other Act that is to be incorporated with that special Act; and
 - (c) are to be read as one Act with the special Act and any other Act so incorporated.

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5A. Certain land may not be acquired

Aboriginal land, within the meaning of the *Aboriginal Lands Act 1995*, may not be acquired under this Act.

6. Special Arbitrators

- (1) The Governor may appoint a person as a Special Arbitrator to act as an arbitrator under this Act.
- (2) A person appointed under subsection (1) is to be a person who, in the opinion of the Governor, has sufficient experience in the assessment of compensation in relation to the acquisition of land to act as an arbitrator.
- (3) Subject to this section, a Special Arbitrator holds and vacates office subject to such terms and conditions as are specified in the instrument of appointment.
- (4) A Special Arbitrator may resign office by notice in writing addressed to the Minister.
- (5) A Special Arbitrator holds office for such term, not exceeding 4 years, as may be specified in the instrument of appointment.
- (6)
- (7) A Special Arbitrator is to be paid such remuneration and allowances as the Governor determines.

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7. Minister to act for the Crown in relation to acquisition of land by the Crown

Where this Act authorizes or requires –

- (a) an agreement to be entered into; or
- (b) a notice or other document to be served or given; or
- (c) any other act or thing to be done, including the exercise of a discretion –

for the purposes of, or arising out of, the acquisition of land by the Crown, the Minister is, except as otherwise provided by this Act, to enter into the agreement, serve or give the notice or other document, or do that other act or thing on behalf of the Crown.

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s. 7A Part 1A – Acquisition of Land by Crown for Private Sector Infrastructure Project

**PART 1A – ACQUISITION OF LAND BY CROWN FOR
PRIVATE SECTOR INFRASTRUCTURE PROJECT**

7A. Interpretation: Part 1A

For the purposes of this Part –

development has the same meaning as in the
Land Use Planning and Approvals Act 1993;

infrastructure means any structure, facility or
work arising in connection with the
provision to the public or a section of the
public of services relating to –

- (a) water;
- (b) energy;
- (c) communications;
- (d) transport;
- (e) education;
- (f) health;
- (g) emergency response;
- (h) sewerage;
- (i) any other service which may be prescribed;

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permit has the same meaning as in the *Land Use Planning and Approvals Act 1993*;

planning authority has the same meaning as in the *Land Use Planning and Approvals Act 1993*;

proponent means the person who proposes to construct or operate infrastructure on land acquired pursuant to an order made under this Part, and does not include the Crown;

proposed infrastructure, in relation to an order made under section 7B(2), means the infrastructure which it is proposed to develop on land to which the order relates;

Register has the same meaning as in the *Land Titles Act 1980*;

Registry of Deeds has the same meaning as in the *Registration of Deeds Act 1935*;

sale, in relation to land, means the disposal of land by sale, lease, exchange for proper consideration or any other means;

special planning order has the same meaning as in the *Land Use Planning and Approvals Act 1993*;

use has the same meaning as in the *Land Use Planning and Approvals Act 1993*.

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s. 7AB Part 1A – Acquisition of Land by Crown for Private Sector Infrastructure Project

7AB. Application of Part 1A

This Part does not apply to the acquisition of land for a major infrastructure project.

7B. Order authorising acquisition of land for purposes of infrastructure to be constructed or operated by private sector

- (1) The Minister may recommend to the Governor the making of an order authorising the Minister to acquire land for the purposes of infrastructure to be constructed or operated by a person other than the Crown.
- (2) The Governor may make an order in accordance with a recommendation made under subsection (1).
- (3) An order under subsection (2) is to be published in the *Gazette*.
- (4) The Minister must cause an order under subsection (2) to be laid before each House of Parliament within the first 10 sitting days of the House after it is so published.
- (5) An order under subsection (2) is of no effect until it has been approved by both Houses of Parliament.
- (6) For the purposes of subsection (5), a House of Parliament is taken to have approved an order under subsection (2) if a copy of it has been laid on the table of that House and –

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- (a) it is approved by that House; or
 - (b) at the expiration of 15 sitting days after it was laid on the table of that House, no notice has been given of a motion to disallow it or, if such notice has been given, the notice has been withdrawn or negatived; or
 - (c) if any notice of a motion to disallow it is given during that period of 15 sitting days, the notice is, after the expiration of that period, withdrawn or negatived.
- (7) As soon as practicable after an order under subsection (2) has taken effect, the Minister must give written notice of the taking effect of the order to –
- (a) each planning authority with jurisdiction over the land to which the order relates; and
 - (b) each planning authority on which obligations are imposed by the order; and
 - (c) each instrumentality or agency of the Crown on which obligations are imposed by the order; and
 - (d) each owner of land which it is proposed to acquire pursuant to the order.

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s. 7C Part 1A – Acquisition of Land by Crown for Private Sector Infrastructure Project

7C. Conditions precedent to Ministerial recommendation

- (1) The Minister may not make a recommendation under section 7B(1) that an order be made which authorises the acquisition of land for the purposes of infrastructure to be constructed or operated by a person other than the Crown unless –
- (a) the Minister has received a report from the proponent which provides a comprehensive description of the proposed infrastructure and contains such information in relation to the proposed infrastructure as may be prescribed; and
 - (b) that report –
 - (i) is accompanied by the written consent of the owner of the land to the making of the proposed order; or
 - (ii) states that it has not been possible to obtain such consent and explains why this has not been possible; and
 - (c) the Minister has given the owner of the land at least 14 days' notice of the Minister's intention to make the recommendation; and

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- (d) the Minister is satisfied that it is in the public interest for the proposed order to be made.
- (2) In determining whether it is in the public interest for the proposed order to be made, the Minister must have regard to such matters as may be prescribed.

7D. Content of order

- (1) An order made by the Governor under section 7B(2) is to –
- (a) identify the proponent; and
 - (b) authorise the Minister to acquire specified land under this Act for the purposes of proposed infrastructure; and
 - (c) describe the proposed infrastructure, specifying –
 - (i) the nature of each use or development which is to occur in connection with the proposed infrastructure on the land which is to be acquired pursuant to the order; and
 - (ii) the parcel of land upon which each such use or development is to occur.
- (2) An order made by the Governor under section 7B(2) may –

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- (a) declare that compliance with section 52(1) of the *Land Use Planning and Approvals Act 1993* is not required; and
- (b) require an instrumentality or agency of the Crown or planning authority which is specified in the order to provide the proponent or any other person with such guidelines or other information as the order may specify by such date as the order may specify; and
- (c) require the proponent identified in the order to lodge with the Crown a financial assurance in the form of a bond (supported by a guarantee or other security) or specified pecuniary sum, in an amount specified in the order and by a specified date, to be forfeited on failure to comply with terms or conditions specified in the order; and
- (d) require the proponent identified in the order to pay to the Crown an amount specified in the order by a specified date, to cover costs and expenses which may be incurred by the Crown or any person in connection with the acquisition of land pursuant to the order; and
- (e) require compliance by the proponent or any other person with terms or conditions set out in the order; and

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- (f) authorise the sale by the Crown to the proponent of any specified land the acquisition of which is authorised by the order.

7E. Effect of order

- (1) An authorisation given to the Minister by an order under section 7B(2) is an authorisation for the purposes of section 4(1).
- (2) Land may not be acquired pursuant to an order under section 7B(2) until a permit in connection with the proposed infrastructure has been granted in respect of that land.
- (3) If an order under section 7B(2) declares that compliance with section 52(1) of the *Land Use Planning and Approvals Act 1993* is not required –
 - (a) section 52(1) of that Act and any provisions of the relevant planning scheme or special planning order which require the giving of notice to the owner of land in respect of which a permit is sought do not apply; and
 - (b) notice of the making of an application for a permit in connection with the development of the proposed infrastructure on the land to which the order relates is, at least 14 days before the making of the application, to be served by the applicant on the owner of

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the land in respect of which the permit is
required.

- (4) A notice for the purpose of subsection (3)(b) is to contain such information as may be prescribed.
- (5) If an order under section 7B(2) declares that compliance with section 52(1) of the *Land Use Planning and Approvals Act 1993* is not required, a planning authority which receives an application for a permit in connection with the proposed infrastructure must not accept that application unless it is satisfied that the requirements of subsections (3) and (4) have been met.
- (5A) If an order under section 7B(2) declares that compliance with section 52(1) of the *Land Use Planning and Approvals Act 1993* is not required, a request by the proponent for the amendment of a permit granted in connection with the proposed infrastructure may be made under section 56(1) of the *Land Use Planning and Approvals Act 1993* without the consent of the owner of the land to which the permit relates.
- (6) If an order under section 7B(2) requires any instrumentality or agency of the Crown or planning authority which is specified in the order to provide the proponent or another person by a specified date with such guidelines or other information as the order may specify, the instrumentality, agency or authority to which the

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requirement is directed must comply with the requirement.

- (7) If an order under section 7B(2) requires the proponent identified in the order to pay to the Crown a financial assurance in the form of a bond (supported by a guarantee or other security) or specified pecuniary sum to be forfeited on failure to comply with terms or conditions specified in the order, the bond or sum is forfeited to the Crown on –
- (a) failure to comply with any of those terms or conditions; or
 - (b) failure to apply to a planning authority for a permit for each use or development specified in the order within a period of 12 months from the date of the order or such further period, expiring not more than 24 months from the date of the order, as the Minister may allow; or
 - (c) the lapse under section 53(5) of the *Land Use Planning and Approvals Act 1993* of any permit which is granted for a use or development specified in the order.
- (8) If an order under section 7B(2) requires the proponent identified in the order to pay to the Crown an amount specified in the order by a specified date to cover costs and expenses which may be incurred by the Crown or any person in connection with the acquisition of land pursuant to the order, the amount is a debt due to the

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Crown from the proponent identified in the order and may be recovered by the Crown from the proponent in any court of competent jurisdiction.

7F. Sale of land acquired pursuant to order

- (1) Land acquired by the Crown pursuant to an order under section 7B(2) may not be sold unless –
 - (a) the sale of that land has been authorised under section 7D(2)(f) or notice of the proposed sale has been published and approved by each House of Parliament in accordance with section 64 of the *Crown Lands Act 1976*; and
 - (b) a permit has been granted in connection with the development of the proposed infrastructure in respect of the land and –
 - (i) the period specified under section 61 of the *Land Use Planning and Approvals Act 1993* for appealing the decision of the planning authority to grant the permit has expired and no appeal has been lodged; or
 - (ii) where such an appeal has been lodged, the appeal has been determined.
- (2) Section 73(3)(a) does not apply to the sale of land acquired pursuant to an order made under section 7B(2) provided that development in

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connection with the proposed infrastructure
occurs on the land.

7G. Use and development of land acquired pursuant to order

- (1) Unless written approval is given by the Minister, land which is acquired pursuant to an order under section 7B(2) may only be used or developed in connection with the proposed infrastructure.
- (2) Unless written approval is given by the Minister, a planning authority may not grant a permit for a use or development on land which is acquired pursuant to an order under section 7B(2) unless that use or development is in connection with the proposed infrastructure.
- (3) Approval given by the Minister for the purposes of subsection (1) or (2) is to be laid before each House of Parliament within the first 10 sitting days of the House after the approval is given.
- (4) Subsections (1) and (2) apply whether or not –
 - (a) the Crown is the owner of the land; or
 - (b) the order under section 7B(2) has been revoked.
- (5) Subsections (1) and (2) cease to apply to land 10 years after the making of the order under section 7B(2) which authorised the acquisition of the land.

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- (6) If the Crown sells land acquired pursuant to section 7B(2) and the use or development of the land is restricted under this section, the Crown must –
 - (a) if the land is under the *Land Titles Act 1980*, give notice of the restriction to the Recorder of Titles; and
 - (b) if the land is not under the *Land Titles Act 1980*, lodge a notice of the restriction in the Registry of Deeds.
- (7) A notice for the purposes of subsection (6) is to state when the restriction is to cease.
- (8) The Recorder of Titles must register a notice under subsection (6)(a) by making an appropriate entry in the Register.

7H. Injurious affection

- (1) If land to which an order under section 7B(2) relates is injuriously affected by the making of the order, the owner of the land or its purchaser, in the case of land being purchased under a Crown lands contract, is entitled to compensation from the proponent identified in the order for the injurious affection to that land and to other land belonging to that person.
- (2) A claim by an owner of land for compensation under subsection (1) is to be made within a period of 12 months of the grant of the permit.

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- (3) If not agreed on, a claim for compensation under subsection (1) is to be determined in the same manner as a disputed claim for compensation under this Act as if the proponent identified in the order under section 7B(2) were an acquiring authority within the meaning of this Act.
 - (4) Compensation is not payable under this section in respect of injurious affection for which compensation is otherwise payable under this Act.

7I. Amendment of order

- (1) The Minister may recommend to the Governor the making of an order which amends an order made under section 7B(2).
- (2) Before making a recommendation to the Governor under subsection (1), the Minister must determine whether the proposed amending order will alter the order made by the Governor under section 7B(2) to such an extent or to such effect that the amending order should be submitted to Parliament for its approval.
- (3) The Governor may make an order in accordance with a recommendation made under subsection (1).
- (4) An order under subsection (3) is to be published in the *Gazette*.
- (5) An order under subsection (3) is to state that the Minister has determined –

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- (a) that the order will not alter the order made by the Governor under section 7B(2) to such an extent or to such effect that the amending order should be submitted to Parliament for its approval; or
 - (b) that the order will alter the order made by the Governor under section 7B(2) to such an extent or to such effect that the amending order should be submitted to Parliament for its approval.
- (6) The Minister must cause an order under subsection (3) to be laid before each House of Parliament within the first 10 sitting days of the House after it is published in the *Gazette*.
- (7) An order which includes a statement under subsection (5)(b) is of no effect until it has been approved by both Houses of Parliament.
- (8) For the purpose of subsection (7), a House of Parliament is taken to have approved an order under subsection (3) if a copy of it has been laid on the table of that House and –
- (a) it is approved by that House; or
 - (b) at the expiration of 15 sitting days after it was laid on the table of that House, no notice has been given of a motion to disallow it or, if such notice has been given, the notice has been withdrawn or negatived; or

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- (c) if any notice of a motion to disallow it is given during that period of 15 sitting days, the notice is, after the expiration of that period, withdrawn or negated.

7J. Revocation of order

- (1) The Minister may recommend to the Governor the making of an order which revokes an order made under section 7B(2) on the ground that –
 - (a) there has been a breach or failure to comply with a requirement, term or condition of the order; or
 - (b) there has been a failure to apply to a planning authority for a permit for each use or development specified in the order within a period of 12 months from the date of the order or such further period as the Minister may have allowed in accordance with section 7E(7)(b); or
 - (c) a permit granted for a use or development specified in the order has lapsed pursuant to section 53(5) of the *Land Use Planning and Approvals Act 1993*.
- (2) The Governor may make an order in accordance with a recommendation made under subsection (1).
- (3) An order under subsection (2) is to be published in the *Gazette*.

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- (4) The Minister must cause an order under subsection (2) to be laid before each House of Parliament within the first 10 sitting days of the House after it is so published.
- (5) No action may be brought against the Crown or any servant or agent of the Crown for loss sustained by reason of the making of an order under subsection (2).
- (6) If an order is made under subsection (2) –
 - (a) any permit granted since the making of the order under section 7B(2) for a use or development specified in that order ceases to have effect; and
 - (b) section 73(3)(a) applies to any land acquired by the Crown pursuant to the order under section 7B(2).

PART 2 – ACQUISITION OF LAND

Division 1 – Methods of acquisition

8. Methods of acquisition

Land may be acquired under this Act –

- (a) by agreement in accordance with Division 2; or
- (b) by compulsory process in accordance with Division 3.

Division 2 – Purchase by agreement

9. Power to purchase by agreement

- (1) An acquiring authority may agree with an owner of land for the purchase of that land.
- (2) An owner of land being purchased by an acquiring authority under this section may convey the land without being required to obtain the approval or permission of any local authority or planning authority.
- (3) The consideration for a purchase under this section is to be the payment of money or any other consideration agreed on between the owner of the land and the acquiring authority.

10. Purchase of surplus land

An acquiring authority may enter into an agreement under section 9 for the purchase of

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land notwithstanding that the land that is the subject of the agreement contains an area in excess of that required for the authorized purpose for which the land is being purchased.

Division 3 – Taking by compulsory process

11. Notice to treat

- (1) An acquiring authority must –
 - (a) take all reasonable steps to ascertain all owners of any land the authority proposes to take and the addresses of those owners; and
 - (b) cause a notice to treat to be served on every owner so ascertained whose address has also been ascertained.
- (2) A notice to treat is to –
 - (a) be in a form approved by the Secretary; and
 - (b) identify the land to be taken; and
 - (c) contain particulars of the authorized purpose for which that land is being taken; and
 - (d) contain such other particulars as may be prescribed; and
 - (e) specify that the acquiring authority is willing to negotiate for the purchase of the land but, if agreement for the

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purchase of the land is not reached within 30 days after the service of the notice, the authority may take the land compulsorily; and

- (f) specify that the owner of the land is entitled to compensation determined in accordance with this Act if the land is taken compulsorily; and
 - (g) specify that the owner is required by this Act to supply the authority with particulars of –
 - (i) the owner's estate in the land; and
 - (ii) all other estates in the land of which the owner has notice; and
 - (h) specify that the owner is prohibited by this Act from carrying out works on, or doing any other act or thing in, or in relation to, the land that will materially vary the nature or value of the land unless the authority has consented to those works or that act or thing.
- (3) Land is to be identified in a notice to treat by a plan of survey or by any other means that will enable the owner receiving the notice to know the approximate location and extent of the land.
- (4) An owner who has been served with a notice to treat –

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- (a) must supply the acquiring authority with particulars of the owner's estate in the subject land; and
 - (b) must supply the authority with particulars of all other estates in the subject land of which the owner has notice; and
 - (c) must not, without the consent of the authority, carry out works on, or do any other act or thing in, or in relation to, the subject land that will materially vary its nature or value.
- (5) The relationship between an owner on whom a notice to treat has been served and the acquiring authority is, except where otherwise provided in this Act, the same as it would have been if, when the notice was served, the owner had agreed to sell to the authority the estate to which the notice related for an amount to be determined under Part 4.
- (6) An acquiring authority or an owner on whom a notice to treat has been served does not have any right to enforce performance of the notional contract of sale created by subsection (5) otherwise than as provided by this Act.
- (7) Where a notice to treat is served on an owner as provided in this section, any other owner of the land to which the notice relates who is unknown, or whose address is unknown, to the acquiring authority is taken to have been served with a notice to treat in respect of that land.

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12. Notice of withdrawal

- (1) An acquiring authority may withdraw a notice to treat by serving a notice of withdrawal if –
 - (a) a notice of acquisition in respect of the land, or a part of the land, identified in the notice to treat has not been gazetted; and
 - (b) an agreement under section 9 or 16 for the acquisition of the land, or a part of the land, has not been made.
- (2) A notice of withdrawal is to be –
 - (a) in a form approved by the Secretary; and
 - (b) served on every owner of the land, or a part of the land, to which the notice relates who is, and whose address is, known to the acquiring authority immediately before the day on which the authority withdraws the notice to treat.
- (3) Withdrawal of a notice to treat does not prevent the service of another notice to treat in respect of the same land or a part of the land.
- (4) Where a notice of withdrawal is served on an owner as provided in this section, any other owner of the land, or a part of the land, to which the notice relates who is unknown, or whose address is unknown, to the acquiring authority is taken to have been served with a notice of withdrawal in respect of that land or part of the land, as the case may be.

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13. Registration of notice to treat and notice of withdrawal

- (1) If all or any of the land, or a part of the land, to which a notice to treat, or notice of withdrawal, relates is subject to the *Land Titles Act 1980*, the acquiring authority must lodge with the Recorder of Titles in accordance with section 129 of that Act the documents required by that section.
- (2) If all or any of the land, or a part of the land, to which a notice to treat or a notice of withdrawal relates is not subject to the *Land Titles Act 1980*, the acquiring authority must register the notice or the part of the notice relating to the part of the land that is not subject to that Act—
 - (a) as soon as practicable after the notice, or the first such notice, is served; and
 - (b) as provided by Division III of Part II of the *Registration of Deeds Act 1935*.
- (3) A notice required to be registered under subsection (2) is an instrument for the purposes of the *Registration of Deeds Act 1935*.

14. Lapse of notice to treat

A notice to treat lapses if –

- (a) the owner on whom the notice was served does not make an agreement under section 9(1); and
- (b) the acquiring authority does not cause a notice of acquisition in respect of the

land, or a part of the land, referred to in that notice to treat to be published in accordance with section 18(2).

15. Taking of land where no agreement for purchase

An acquiring authority may, subject to this Act, take an estate in subject land where the owner of that estate does not agree to sell it to the authority within 30 days after being served with a notice to treat.

16. Consent to taking of land

- (1) The following persons may agree to the taking of land by notice of acquisition:
 - (a) if the land is subject to the *Land Titles Act 1980*, a person who has power to sell and convey the fee simple estate in that land;
 - (b) if the land is not subject to the *Land Titles Act 1980* –
 - (i) in the case of land that is not subject to a mortgage, a person who has power to sell and convey the fee simple estate in that land; or
 - (ii) in the case of land that is subject to a mortgage and in the possession of the mortgagor, a person who would but for that mortgage have power to sell and

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convey the fee simple estate in that land; or

(iii) in the case of land that is subject to a mortgage and in the possession of the mortgagee, the person who has power to sell and convey the fee simple estate in that land.

(2) Where an agreement is made under subsection (1), an acquiring authority may take the land, or a part of the land, by causing a notice of acquisition to be published in the *Gazette* notwithstanding that a notice to treat has not been served under section 11 or 66.

(3) An agreement made under subsection (1) binds all owners of the subject land.

(4) The provisions of a contract which –

(a) relates to the acquisition of subject land; and

(b) contains an agreement made under subsection (1) –

are valid and effective notwithstanding section 19 and Part 3.

17. Payment into trust fund by promoter

If a notice to treat has been served on an owner of subject land by an acquiring authority that is a promoter and that authority is proposing to take that land, or a part of the land, the acquiring

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authority must, before gazetting a notice of acquisition in respect of that land or part, as the case may be –

- (a) obtain from the Valuer-General an estimate of the amount of compensation that is likely to be payable in respect of that land or part; and
- (b) deposit that amount with the Treasurer to be kept in an account in the Public Account.

18. Notice of acquisition

- (1) An acquiring authority may cause a notice of acquisition to be published in the *Gazette* if –
 - (a) a notice to treat in relation to the land, or the part of the land to be acquired, has been served on an owner of subject land; and
 - (b) the documents referred to in section 13(1) have been lodged with the Recorder of Titles under that section or the notice to treat, or the relevant part of that notice, has been registered under section 13(2); and
 - (c) the notice to treat has not been withdrawn under section 12; and
 - (d) no agreement has been made in respect of that land, or a part of the land, under section 9.

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- (1A) If a notice to treat has been served on an owner of subject land, a notice of acquisition may relate to all of the land, or a part of the land, that is within the boundaries of the subject land shown in the notice to treat.
- (2) Except as provided in subsection (2A), a notice of acquisition is to be gazetted after the expiration of 30 days and before the expiration of 6 months—
- (a) after the day on which the notice to treat was served; or
 - (b) where more than one notice to treat was served, after the day on which the first notice to treat was served.
- (2A) If a notice of acquisition relates to a major infrastructure project, the notice is to be gazetted after the expiration of 30 days and before the expiration of 18 months –
- (a) after the day on which the notice to treat was served; or
 - (b) where more than one notice to treat was served, after the day on which the first notice to treat was served.
- (3) A notice of acquisition –
- (a) is to be in a form approved by the Secretary; and

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- (b) is to specify the authorized purpose for which the land to which the notice relates is being taken; and
 - (c) where the acquiring authority is not the Crown, is to be signed on behalf of the authority by the clerk or the authority's legal practitioner.
- (4) An acquiring authority must cause a copy of a notice of acquisition to be laid on the table of each House of Parliament within the first 21 sitting days of the House after the notice is gazetted.
 - (5) Subsection (4) does not apply to a notice of acquisition of land to which section 16 applies.
 - (6) Where a notice to treat has been served on an owner or the Public Trustee pursuant to section 11 or 66, the failure by the acquiring authority to serve a notice to treat on another owner, or any owner, of the subject land does not invalidate a notice of acquisition.

19. Effect of notice of acquisition

- (1) On the gazettal of a notice of acquisition, the land –
 - (a) where the acquiring authority is the Crown, reverts in the Crown absolutely, freed and discharged from all estates, statutory reservations and dedications, except those that are specified in, or created by, the notice; or

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- (b) where the acquiring authority is not the Crown, vests in the authority for the authorized purpose, freed and discharged from all estates, statutory reservations and dedications, except those that are specified in, or created by, the notice or are reserved to, or held by, the Crown –

and the estate of every owner of the land which is not so excepted is converted into a claim for compensation under this Act.

- (2) The acquiring authority is entitled to possession of subject land on the gazettal of a notice of acquisition.
- (3) Subsections (1)(b) and (2) do not apply in relation to an acquiring authority which –
 - (a) is a promoter; and
 - (b) has not deposited money with the Treasurer in accordance with section 17.
- (4) If an acquiring authority which is a promoter causes a notice of acquisition to be published in the *Gazette* before it has deposited money with the Treasurer under section 17 –
 - (a) the land specified in the notice vests in the authority for the authorized purposes, freed and discharged from all estates, statutory reservations and dedications, except those that are specified in, or created by, the notice or are reserved to, or held by, the Crown when the money is so deposited; and

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- (b) the authority is entitled to possession of that land when the money is so deposited.

20. Registration of notices of acquisition

Within the period of 30 days after a notice of acquisition is gazetted, an acquiring authority must lodge with the Recorder of Titles for registration the documents required by section 126 of the *Land Titles Act 1980*.

21. Notice to former owner after acquisition

- (1) An acquiring authority must, within the period of 30 days after a notice of acquisition is gazetted, serve on every former owner of the land taken –
 - (a) a notice in a form approved by the Secretary; and
 - (b) a copy of the notice of acquisition; and
 - (c) if part only of the former owner's land was taken, a plan of that part of the land; and
 - (d) if the whole of the former owner's land was taken and a plan of the land taken is available, that plan.
- (2) A notice referred to in subsection (1)(a) is to inform the person on whom it is served that the person, within 6 months after the notice is so served, is entitled to lodge a claim for compensation under this Act.

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- (3) This section does not apply where a notice of acquisition is gazetted pursuant to an agreement referred to in section 16.

22. Amendment or revocation of notice of acquisition

- (1) An acquiring authority may, within the period of 6 months after a notice of acquisition is gazetted, amend or revoke that notice if compensation has not been paid in respect of land to which the notice of acquisition relates.
- (2) A notice of acquisition is to be amended or revoked by publishing in the *Gazette* a notice in a form approved by the Secretary.
- (3) Where an acquiring authority amends or revokes a notice of acquisition, the authority must –
- (a) by notice in writing, inform each former owner of the land specified in the notice of acquisition of the reason for the amendment or revocation and what effect, if any, the amendment or revocation has on his or her claim for compensation; and
 - (b) comply with section 20 as if the notice under subsection (2) were a notice of acquisition; and
 - (c) cause a copy of the notice under that subsection to be laid on the table of each House of Parliament within the first 21 sitting days of the House after it is gazetted.

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- (4) Subsection (3)(c) does not apply to a notice under subsection (2) which amends or revokes a notice of acquisition gazetted pursuant to an agreement referred to in section 16.
- (5) Where an acquiring authority amends a notice of acquisition, the amendments are taken to have taken effect on the day on which the notice of acquisition was gazetted.
- (6) Where an acquiring authority amends a notice of acquisition –
- (a) an estate in land which was extinguished by the notice of acquisition but which is not extinguished by the notice of acquisition as amended is of full force and effect; and
 - (b) an estate in land, or allodial ownership of land, which was given by the notice of acquisition to an acquiring authority but which would not have been so given by a notice of acquisition in the form of the notice of acquisition as amended is extinguished; and
 - (c) all is to be as if the notice of acquisition had not been gazetted and the notice of acquisition as amended had been gazetted in its stead.
- (7) On the gazettal of a notice which revokes a notice of acquisition –
- (a) an estate in land to which that notice relates which existed immediately before

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the notice of acquisition was gazetted is of full force and effect; and

- (b) an estate in land, or allodial ownership of land, which was given by the notice of acquisition to an acquiring authority is extinguished; and
- (c) all is to be as if the notice of acquisition had not been gazetted.

23. Reconveyances in relation to notices of acquisition

- (1) Subject to subsection (2), at any time within the period of 6 months after a notice of acquisition is gazetted, the acquiring authority may reconvey to the former owner, wholly or partly, any land that it has acquired by the gazettal.
- (2) An acquiring authority is not entitled to reconvey any land for which it has paid compensation.
- (3) Nothing in this section limits the power of an acquiring authority to acquire the whole or any part of the land specified in a notice of acquisition where the land has been reconveyed under subsection (1).

PART 3 – COMPENSATION ENTITLEMENT

Division 1 – Right to compensation

24. Right to compensation

- (1) An owner of subject land whose estate in the land is taken, either wholly or in part, under this Act is entitled to compensation under this Act.
- (2) An owner of land in relation to which a notice to treat has been served is entitled to compensation under this Act if –
 - (a) the notice has been withdrawn or has lapsed; and
 - (b) as a consequence of the service and the withdrawal or lapsing of the notice, the owner has suffered any loss, expense or damage (whether by a person entering into possession of, and using, the land under Part 6 or otherwise).
- (3) A former owner of subject land is entitled to compensation under this Act if –
 - (a) the notice of acquisition was amended or revoked in accordance with section 22; and
 - (b) the former owner has suffered any loss, expense or damage by reason of the proceedings for the acquisition of land and that amendment or revocation.

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- (4) A former owner of subject land is entitled to compensation if –
- (a) the subject land is reconveyed to that former owner under section 23; and
 - (b) the former owner has suffered any loss, expense or damage in relation to the proceedings for acquisition and reconveyance.
- (5) An owner or occupier of land is entitled to compensation where –
- (a) an acquiring authority has exercised any of its powers under Part 6 in relation to that land; and
 - (b) the owner or occupier has suffered any damage, loss or expense by reason of –
 - (i) the exercise of those powers; or
 - (ii) action lawfully taken by a person pursuant to authorisation given under section 54, 54A, 55 or 56.

25. Mortgagee may waive right to compensation

- (1) A mortgagee under a mortgage over land taken may waive the mortgagee's right to compensation by notice in writing provided to the acquiring authority.
- (2) A mortgagee under a mortgage over land taken who waives the right to compensation –

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- (a) cannot recover any compensation under this Act; and
- (b) retains, in respect of the mortgage debt, any rights and remedies that the mortgagee may have –
 - (i) against the mortgagor; or
 - (ii) in respect of any estate in land that is still subject to the mortgage.

Division 2 – Amount of compensation generally

26. Application of Division 2

This Division does not apply in relation to compensation payable under this Act to a mortgagee under a mortgage over land taken.

27. Basis of compensation

- (1) In determining compensation under this Act, regard is to be had to the following matters:
 - (a) the market value of the estate of the claimant in the subject land;
 - (b) any special value the estate in the subject land may have to the claimant which is –
 - (i) a financial advantage incidental to the claimant's ownership of that estate, which financial advantage is not to be taken to

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include the lessening of a tax liability; and

- (ii) in addition to its market value;
 - (c) the damage caused by severance of the subject land from other land belonging to the claimant;
 - (d) the betterment of other land belonging to the claimant which is caused by the carrying out of, or the proposal to carry out, the authorized purpose;
 - (e) whether other land belonging to the claimant is injuriously affected by the carrying out of, or the proposal to carry out, the authorized purpose;
 - (f) any disturbance relating to any loss or damage suffered, or cost reasonably incurred, by the claimant as a consequence of the taking of the subject land or the operation of a business, or other undertaking, on the subject land;
 - (fa) whether, under any other Act, the claimant or a former owner of the subject land has been paid or awarded any compensation or compensatory costs in connection with the authorised purposes for which it is being acquired.
 - (g)
- (1A) In determining compensation under this Act in relation to the subject land, regard is not to be

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had to any infrastructure or structure, situated on or in the subject land, that has been, under an Act, lawfully installed by or on behalf of the Crown, a public authority, a local authority or a promoter.

- (2) Subject to subsection (3), the betterment of other land referred to in subsection (1)(d) is to be set off against the amount of compensation determined under subsection (1)(a), (b), (c), (e), (f) and (g).
- (3) Where an amount that is set off in respect of the betterment of other land equals or exceeds the amount of compensation that would otherwise be payable by an acquiring authority, no compensation is payable by the authority, nor is anything payable by the claimant to the authority in respect of that betterment.
- (4) Subsection (1) does not apply in respect of the determination of compensation where the claimant was, on the day on which the notice to treat or the first notice to treat in relation to the land was served, a tenant at will of the subject land who ordinarily used the land as a principal residence.

28. No compensation for disturbance in certain cases

No compensation is payable under section 27(1)(f) where the subject land was not being used for its highest and best use on the day on which the notice to treat, or the first notice to treat, in relation to the land was served.

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29. Provisions applicable where land is zoned or reserved for public purpose

- (1) Where subject land is, by or under any Act, zoned or reserved for a public purpose on the day on which a notice of acquisition in relation to the land is gazetted, and compensation under this Act or any other Act has not previously been paid in respect of that zoning or reservation –
 - (a) any limitation on the use of the land imposed by, or as a consequence of, the zoning or reservation is to be disregarded in making an assessment of compensation under this Act; and
 - (b) it is to be assumed that the land was, on that day, zoned or reserved in such manner as would have been likely if there had been no proposal or requirement for public use.
- (2) An acquiring authority must apply to the Commission for a determination as to the zoning which would most likely apply if the subject land was not otherwise zoned or reserved for a public purpose where–
 - (a) the appropriate zoning of the land under subsection (1)(b) cannot be readily determined or assumed; or
 - (b) there is disagreement on such appropriate zoning.

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- (3) The Commission may make a determination with respect to an application under subsection (2).
 - (4) A determination under subsection (3) –
 - (a) is to be provided in a certificate signed by the Commission; and
 - (b) is final.

30. Compensation for principal residence

- (1) This section applies in relation to a claimant who –
 - (a) had an estate in fee simple in subject land; and
 - (b) ordinarily used that land for a principal residence; and
 - (c) has obtained, or intends to obtain, some other place for a principal residence.
- (2) Where the highest and best use of subject land was as a principal residence, compensation is to be determined, at the request of the claimant and with the consent of the Valuer-General, on the basis of the reasonable cost of rehousing the claimant as an owner in fee simple, at no cost to the claimant, in a suitable residence of at least equivalent standard and location in this State to that which the claimant has had taken.
- (3) Notwithstanding that compensation is determined in accordance with subsection (2),

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additional compensation may be awarded in respect of any hardship that the claimant may suffer because the claimant cannot establish himself or herself in a suitable residence solely by reason of age, infirmity or want of means.

- (4) For the purposes of subsections (1) and (2) –
 - (a) a person who is a mortgagee under a mortgage in respect of land that is not subject to the *Land Titles Act 1980* and who is not in possession of the land, is taken not to have an estate in fee simple in the land; and
 - (b) a person who is a mortgagor under a mortgage in respect of such land and who is in possession of the land is taken to have an estate in fee simple in the land.

31. Compensation where no general market for interest taken

- (1) Compensation may be determined by disregarding the market value of subject land and by having regard to an amount ascertained as provided in subsection (2) if –
 - (a) that land was used for a particular purpose, other than the purpose of a principal residence, on the day on which the notice to treat, or the first notice to treat, in respect of that land was served; and

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- (b) the claimant has obtained other land in this State to be used for that particular purpose; and
- (c) the claimant has obtained the approval of the Valuer-General to the obtaining of that other land; and
- (d) like land being used for that particular purpose and with similar amenities is not available on the open market.
- (2) The amount referred to in subsection (1) is ascertained in accordance with the following formula:

$$A = C + E + RE - I$$

Where –

A is the amount of compensation to be determined; and

C is the reasonable cost of acquiring the other land referred to in that subsection; and

E is the expenses incurred in acquiring that other land; and

RE is the expenses incurred, or likely to be incurred, by the claimant which are incidental to relocation, including the expenses incurred in establishing similar amenities to those which the subject land had; and

I is the amount by which the immediate financial position of the claimant has

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improved, or is likely to improve, due to the relocation.

- (3) The costs and expenses referred to in subsection (2) are to be ascertained as at the day on which, in the circumstances, it was or would be reasonably practicable for the claimant to incur the costs or expenses.

32. Compensation for tenant at will

A claimant who –

- (a) was a tenant at will of any subject land; and
- (b) ordinarily used that land as a principal residence; and
- (c) is required to give up possession of that land in order to enable the authorized purpose to be carried out –

is entitled to compensation for the costs reasonably incurred in removing to, and taking up occupation as a tenant in, alternative accommodation in this State.

33. Matters to be disregarded in determining compensation

- (1) Each of the following matters is to be disregarded in the determination of compensation in respect of subject land:

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- (a) any increase in the value of the subject land resulting from its use in a manner, or for a purpose, contrary to law;
- (b) any increase or decrease in the value of the subject land arising from the carrying out, or the proposal to carry out, the authorised purpose for which the land was taken;
- (c) any special value the subject land may have to the acquiring authority which –
 - (i) is caused by the particular need the authority has for that land; and
 - (ii) is in addition to its market value;
- (d) any expectation by a claimant who was a lessee of the subject land that the claimant's lease would be renewed, other than an expectation which is based on an option of renewal in the lease contract;
- (e) in relation to land which has been acquired or is being acquired for the purposes of a major infrastructure project, any increase or decrease in the value of the subject land arising, either directly or indirectly, from –
 - (i) the order under section 7(2) of the *Major Infrastructure Development Approvals Act 1999* by which the major infrastructure

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- project was declared or anything done pursuant to that order; or
- (ii) the amendment, in relation to the major infrastructure project, of a planning scheme or special planning order pursuant to section 11A of the *Major Infrastructure Development Approvals Act 1999* or under any other Act; or
 - (iii) the grant of a permit for a use or development which is comprised in the major infrastructure project, whether the permit relates to the subject land or to other land; or
 - (iv) any use or development of the subject land or of other land which is proposed or which has occurred in connection with the major infrastructure project.
- (2) For the purposes of subsection (1), “**development**”, “**permit**” and “**use**” have the same meanings as in the *Land Use Planning and Approvals Act 1993*.

Division 3 – Amount of compensation for mortgagee

34. Amount of compensation for mortgagee

- (1) Where all of land which is subject to a mortgage is taken, the amount of compensation to which the mortgagee is entitled under this Act is –
- (a) the principal secured by the mortgage; and
 - (b) the interest due on the mortgage at the day on which the acquiring authority admits the mortgagee's claim for compensation and 30 days' additional interest at the interest rate of the mortgage at that day; and
 - (c) the costs and charges, if any, due to the mortgagee under the mortgage; and
 - (d) the mortgagee's costs relating to producing or surrendering, and to executing, any deeds and documents that are required to be produced, surrendered or executed under section 45; and
 - (e) a sum sufficient to meet the costs of reinvestment of the principal, if the mortgage is paid off prematurely; and
 - (f) if –
 - (i) the mortgage is paid off prematurely; and

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- (ii) the principal is or is to be reinvested; and
- (iii) the rate of interest secured by the mortgage is higher than the rate of interest that can be obtained or can reasonably be expected to be obtained on reinvestment in a comparable form of security, 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.

- (2) Where a part of land which is subject to a mortgage is taken, the mortgagee may elect to have all or part of any compensation to which the mortgagor is entitled under this Act paid to the mortgagee as a payment towards the principal secured by the mortgage and the interest due on the mortgage at the day on which the acquiring authority admits the mortgagee's entitlement to make the election.
- (3) An election under subsection (2) is to be –
 - (a) in writing; and
 - (b) served on the acquiring authority within 6 months after the service on the mortgagee of a notice under section 21 or 22(3).

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- (4) Where a mortgagee makes an election under subsection (2), the acquiring authority must pay to the mortgagee –
- (a) as specified in the election, all or part of the compensation to which the mortgagor is entitled under this Act; and
 - (b) the costs and charges, if any, due to the mortgagee under the mortgage; and
 - (c) the mortgagee's costs relating to producing or surrendering, and to executing, any deeds and documents that are required to be produced, surrendered or executed under section 45; and
 - (d) if the mortgage is fully paid off, 30 days' additional interest at the interest rate of the mortgage at the day referred to in subsection (2); and
 - (e) if the mortgage is paid off prematurely, a sum sufficient to meet the costs of reinvestment of the principal; and
 - (f) if –
 - (i) the mortgage is paid off prematurely; and
 - (ii) the principal is or is to be reinvested; and
 - (iii) the rate of interest secured by the mortgage is higher than the rate of interest that can be obtained or

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can reasonably be expected to be obtained on reinvestment in a comparable form of security, 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.

Division 4 – Day on which compensation to be determined

35. Day on which compensation to be determined

Compensation in respect of the loss of an estate in land taken is to be determined –

- (a) as at the day on which the notice to treat in relation to the land was served; or
- (b) where more than one such notice to treat was served, as at the day on which the first notice to treat was served; or
- (c) where the land is land referred to in section 70, as at the day on which the acquiring authority first entered on the land; or
- (d) where the land is land referred to in section 54A, as at the day on which a person enters on to the land pursuant to an authorisation under section 54A(2) or the day on which a notice to treat in relation to the land is served on the

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owner of the land under section 11,
whichever is the earlier.

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Part 4 – Claims for, and Determination of, Compensation

**PART 4 – CLAIMS FOR, AND DETERMINATION OF,
COMPENSATION**

Division 1 – Claims for compensation

36. Claims for compensation

- (1) A person who claims to be entitled to compensation under this Act may make a claim for compensation in accordance with subsection (2).
- (2) A claim for compensation is to –
 - (a) be in a form approved by the Secretary; and
 - (b) include particulars of the claimant's estate in the land taken, if any; and
 - (c) include particulars of the claimant's entitlement to compensation; and
 - (d) be served on the acquiring authority.
- (3) Where a mortgage is converted, wholly or in part, into a claim for compensation under this Act, the mortgagee –
 - (a) may join with the mortgagor in making a claim for compensation; or
 - (b) may make an independent claim for compensation; or
 - (c) may waive the right to compensation as provided in section 25.

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37. Time for making claim for compensation

A claim for compensation is to be served on the acquiring authority –

- (a) if the claim is for land taken by the acquiring authority, within the period of 6 months after the service of a notice under section 21 or 22(3); or
- (b) if the claim is for any loss or expense suffered by reason of the service of a notice to treat followed by the withdrawal or lapsing of that notice, within the period of 6 months after that notice has been withdrawn or has lapsed; or
- (c) if the claim is for any loss, expense or damage suffered by reason of the gazettal of a notice of acquisition followed by the amendment or revocation of that notice, within the period of 6 months after the service of the notice referred to in section 22(3); or
- (d) if the claim is for damage or loss suffered by reason of the exercise of any power under Part 6, within the period of 6 months after the completion of the acts, matters and things in respect of which compensation is claimed.

38. Effect of failure to make claim for compensation

- (1) Where –

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- (a) land has been taken by an acquiring authority; and
- (b) within the period specified in section 37 or determined under section 78 a claim for compensation pursuant to section 24(1) has not been served on the acquiring authority by –
 - (i) an owner known to the authority; or
 - (ii) the Public Trustee as owner or on behalf of an owner –

the authority must apply to the Court for a determination of the compensation payable to the owner or Public Trustee.

- (2) An application under subsection (1) is to be made –
 - (a) in the prescribed form; and
 - (b) within 30 days after the expiration of the period referred to in that subsection.
- (3) Where a person who is entitled to make a claim for compensation pursuant to section 24(2), (3), (4) or (5) fails to serve that claim on the acquiring authority within the period specified in section 37 or determined under section 78, compensation is not payable to that person.

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39. Procedure on receipt of claim for compensation in respect of entitlement to claim

- (1) Within the period of 60 days or, in the case of a major infrastructure project, the period of 6 months after a claim for compensation has been served on an acquiring authority, the authority must notify the claimant, by notice in writing, that it—
 - (a) admits the claimant’s entitlement to compensation; or
 - (b) rejects the claimant’s entitlement to compensation; or
 - (c) requires the claimant to produce such deeds, documents and particulars relating to, or evidencing, the claimant’s entitlement to compensation as the authority reasonably requires within the period of 30 days after the receipt of the notification.
- (2) Where a claimant produces the deeds, documents and particulars required by the acquiring authority within the period specified in subsection (1)(c) or determined under section 78, the authority must, within 30 days after receiving those deeds, documents and particulars, notify the claimant, by notice in writing, that it –
 - (a) admits the claimant’s entitlement to compensation; or
 - (b) rejects the claimant’s entitlement to compensation.

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- (3) Where a claimant fails to produce the deeds, documents and particulars required by the acquiring authority within the period specified in subsection (1)(c) or determined under section 78 –
- (a) the claimant's entitlement to compensation is to be taken to have been rejected; and
 - (b) the acquiring authority must, within 30 days after the expiration of that period, notify the claimant, by notice in writing, that it rejects the claimant's entitlement to compensation.
- (4) Where –
- (a) an acquiring authority has admitted a claimant's entitlement to compensation; and
 - (b) that compensation has not been paid to the claimant –
- the authority may, by notice in writing served on the claimant, withdraw its admittance of, and reject, the claimant's entitlement to compensation.
- (5) An acquiring authority is taken to have rejected the entitlement to compensation of a claimant if the acquiring authority has failed to notify the claimant in accordance with subsection (1), (2) or (3).

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- (6) A claimant may apply to the Court for a determination of the claimant's entitlement to compensation if that entitlement has been rejected by an acquiring authority.
- (7) An application under subsection (6) is to be made –
 - (a) within 60 days after the claimant has received notice that the entitlement to compensation has been rejected; or
 - (b) where the claimant does not receive a notice referred to in subsection (1), (2) or (3), within 60 days after the expiration of the period which is specified in that subsection as the period during which the acquiring authority is required to provide that notice.

40. Procedure on receipt of claim for compensation in respect of amount claimed

- (1) Where an acquiring authority notifies a claimant in respect of the claimant's entitlement to compensation under section 39(1), it must notify the claimant, in the notice referred to in that section, that it –
 - (a) admits the amount of compensation claimed; or
 - (b) rejects the amount of compensation claimed; or

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- (c) is delaying its determination in relation to the amount of compensation claimed until the claimant has produced the deeds, documents and particulars specified in the notice.
- (2) Where an acquiring authority has delayed its determination under subsection (1)(c) and notifies a claimant under section 39(2)(a) that it admits the claimant's entitlement to compensation, the authority must notify the claimant, in the notice referred to in that section, that it –
 - (a) admits the amount of compensation claimed; or
 - (b) rejects the amount of compensation claimed.
- (3) Where an acquiring authority admits the amount of compensation claimed, the notice containing that admission is to contain a statement that the compensation will be paid to the claimant after –
 - (a) the claimant's entitlement to compensation has been admitted by the authority or finally determined under this Part; and
 - (b) the claimant has complied with section 45(c) and (d).
- (4) If an acquiring authority rejects the amount of compensation claimed, it must offer the claimant, in the notice which notifies the claimant of that rejection, such amount as it

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considers reasonable in satisfaction of the claim for compensation.

- (5) A notice referred to in subsection (4) is to notify the claimant that, if the claimant accepts the offer, the compensation will be paid after –
- (a) the claimant's entitlement to compensation has been admitted by the acquiring authority or finally determined under this Part; and
 - (b) the claimant has complied with section 45(c) and (d).
- (6) Where an acquiring authority has offered the claimant an amount in satisfaction of the claim for compensation under subsection (4), the claimant must notify the authority within the period of 30 days after having received that offer, or a period determined under section 78, of the claimant's acceptance or rejection of that offer.
- (7) Where a claimant fails to notify the acquiring authority of the claimant's acceptance or rejection of an offer made under subsection (4) within the period specified in subsection (6), the claimant is to be taken to have rejected that offer.
- (8) An acquiring authority must obtain the approval of the Valuer-General before–
- (a) notifying a claimant that it admits or rejects the amount of compensation claimed; or

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(b) offering the claimant an amount of compensation in satisfaction of a claim.

(9) If the Minister is satisfied that special circumstances in relation to a particular claim for compensation exist, the Minister may, by notice in writing provided to the acquiring authority, exempt the authority from the operation of subsection (8) in respect of that claim.

Division 2 – Disputed claims for compensation

41. Disputed claim for compensation

A claim for compensation becomes a disputed claim for compensation where the amount of compensation claimed by a claimant is rejected by the acquiring authority and –

- (a) the authority does not offer another amount of compensation in satisfaction of the claim; or
- (b) the claimant rejects the amount of compensation offered by the authority under section 40(4).

42. Methods of determining disputed claims

- (1) Subject to this Act, a disputed claim for compensation is to be determined –
 - (a) by agreement between the acquiring authority and the claimant; or

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- (b) with the written consent of the acquiring authority and the claimant, by arbitration under the *Commercial Arbitration Act 2011*; or
 - (c) with the written consent of the acquiring authority and the claimant, by a Special Arbitrator; or
 - (d) on the application of the acquiring authority or the claimant, by the Court.
- (2) A disputed claim for compensation is not to be determined by arbitration or the Court unless the claimant's entitlement to compensation has been admitted by the acquiring authority or determined by the Court.
- (3) Notwithstanding subsection (2), the Court may, on its own motion or on the application of either an acquiring authority or a claimant, hear and determine an application under subsection (1)(d) and an application under section 39(6) in the same proceedings.

43. Cessation of arbitration if more claimants discovered

- (1) Where, after the commencement of an arbitration pursuant to section 42(1)(b) or (c), the acquiring authority learns of other persons who are entitled to make a claim for compensation, the authority may, in respect of the subject land, revoke its consent to the arbitration by serving notice, in writing, of the revocation on the claimant and the arbitrator.

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- (2) An acquiring authority which revokes its consent under subsection (1) must pay all the costs incurred in the arbitration.
- (3) An arbitration ceases on the day on which the notice referred to in subsection (1) is served on the arbitrator.

44. Effect of failure to determine or proceed to determine disputed claim

Where, within the period of 90 days or, in the case of a major infrastructure project, the period of 6 months after a claim for compensation against an acquiring authority becomes a disputed claim for compensation–

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

the authority must, within 30 days after the expiration of that period, apply to the Court for the determination of the disputed claim for compensation.

PART 5 – PAYMENT OF COMPENSATION

45. Payment of compensation to claimant

Where –

- (a) a claimant’s entitlement to compensation has been admitted, and not subsequently rejected, by an acquiring authority or has been finally determined under Part 4; and
- (b) the amount of compensation has been agreed or finally determined under Part 4; and
- (c) the claimant has produced or surrendered all deeds and documents relating to, or evidencing, the claimant’s title to the claimant’s estate in the subject land that the authority reasonably requires to be produced or surrendered; and
- (d) the claimant has executed the documents the authority reasonably requires to be executed –

the authority must pay to the claimant the agreed or determined amount of compensation, as the case may require, and any interest payable on that amount within the period of 60 days after the amount of compensation has been so agreed or determined, or the claimant’s entitlement to compensation has been so admitted or determined, whichever occurs later.

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Part 5 – Payment of Compensation

46. Payment of compensation by promoter, &c.

- (1) For the purposes of making a payment under section 45 or 50, an acquiring authority who is a promoter may use money deposited with the Treasurer in anticipation of the payment of compensation by the authority and kept in an account kept in the Public Account in accordance with section 17.
- (2) If an acquiring authority who is a promoter fails to pay to a claimant the compensation and interest payable under this Act within the period specified in section 45, the claimant may request the Treasurer, in writing, to pay that compensation and interest.
- (3) Within 30 days after receiving a request referred to in subsection (2), the Treasurer must pay any compensation and interest payable to the claimant which remains unpaid.
- (4) For the purposes of complying with subsection (3), the Treasurer –
 - (a) may use money kept in an account kept in the Public Account in accordance with section 17 in anticipation of the payment to a claimant of compensation and interest on that compensation; and
 - (b) if the money kept in that account is insufficient to meet that payment, must make that payment out of money provided by Parliament for the purpose.

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- (5) After all compensation in respect of which an acquiring authority had deposited money with the Treasurer to be kept in an account kept in the Public Account in accordance with section 17 and all interest relating to that compensation has been paid, the Treasurer must–
- (a) pay any money remaining in that account to the authority; and
 - (b) close that account.
- (6) If the Treasurer has made a payment of compensation, interest or compensation and interest to a claimant under this section out of money provided by Parliament for the purpose, the Treasurer may recover the amount of that payment from the acquiring authority that failed to comply with section 45 in a court of competent jurisdiction as a debt due to the Crown.

47. Interest on compensation

- (1) Except as provided in subsection (2) compensation bears interest on and from the day on which –
- (a) the notice of acquisition was gazetted; or
 - (b) the notice to treat was withdrawn or lapsed; or
 - (c) the acquiring authority or the person authorized by the acquiring authority

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enters into possession of the subject land

–

whichever occurs first, to and including the day on which the compensation is paid to the claimant.

- (2) Compensation in respect of loss, damage or expense incurred as a consequence of –
 - (a) the amendment or revocation of a notice of acquisition; or
 - (b) the exercise by an acquiring authority of any power under Part 6 –

bears interest on and from the day on which that loss, damage or expense occurred or was incurred.

- (3) The interest payable under subsection (1) or (2) is calculated on a daily basis at the prescribed rate applicable to that day.
- (4) If the amount of compensation determined under this Act by arbitration or the Court is not more than the amount offered by the acquiring authority under section 40(4), interest runs only up to and including the thirtieth day after the day on which that offer was communicated to the claimant, unless the arbitrator or the Court determines otherwise.
- (5) A certificate by the Treasurer that, on a day specified in the certificate, a rate of interest so specified was the prescribed rate on that day –

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- (a) is admissible in evidence in an arbitration, or in any proceeding before the Court, with respect to a claim for compensation; and
- (b) is evidence of that fact.

48. Acquiring authority to pay certain costs

- (1) An acquiring authority must pay the costs reasonably incurred by a claimant where those costs are not incurred as the result of the commencement of proceedings or arbitration pursuant to section 42(1) if those costs were incurred by the claimant as a consequence of –
 - (a) the taking of subject land; or
 - (b) the service and withdrawal or lapsing of a notice to treat; or
 - (c) the amendment or revocation of a notice of acquisition; or
 - (d) the reconveyance of land taken to its former owner; or
 - (e) the exercise by the authority of any power under Part 6.
- (2) For the purposes of subsection (1), the fees of the claimant's legal practitioner payable by the acquiring authority are to be determined in accordance with the provisions of –
 - (a) the relevant Supreme Court Rules; and

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(b) any regulations made under the *Supreme Court Civil Procedure Act 1932* –

in relation to the fees of legal practitioners.

- (3) In the absence of agreement between an acquiring authority and a claimant as to the amount of the costs reasonably incurred, the amount of those costs may be referred, in writing, by either the owner or the authority to the taxing officer of the Court.
- (4) The taxing officer of the Court shall determine the amount of costs referred to the taxing officer under subsection (3) in accordance with the provisions for the taxation of costs contained in the relevant Supreme Court Rules.
- (5) The claimant or the acquiring authority may apply under –
- (a) the relevant Supreme Court Rules; and
 - (b) any regulations made under the *Supreme Court Civil Procedure Act 1932* –

in relation to the review of the taxation of costs of legal practitioners for an order to review the taxation of costs, and those rules and regulations apply in relation to the making of such an order.

49. Payments to be good discharge

- (1) Full payment of compensation made by an acquiring authority to a claimant in accordance with this Act is a good and valid discharge of the liability of the authority to that claimant in

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respect of the claimant's entitlement to, and claim for, compensation under this Act.

- (2) It is not necessary for an acquiring authority to see to the application of any compensation paid to a claimant in accordance with this Act or to the performance of any trusts.

50. Advance payment of compensation where entitlement is established

Where –

- (a) a claimant's entitlement to compensation has been admitted, and not subsequently rejected, by an acquiring authority or has been finally determined under Part 4; and
- (b) the claimant has –
- (i) produced or surrendered all deeds and documents relating to, or evidencing, the claimant's title to the claimant's estate in the subject land that the authority reasonably requires to be produced or surrendered; and
 - (ii) executed the documents the authority reasonably requires to be executed –

the authority may pay to the claimant not more than 90% of the amount of compensation assessed by the acquiring authority pending the

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final determination of the amount of compensation to be paid to the claimant.

51. Power of acquiring authorities to deduct certain charges from purchase or compensation money

- (1) Where a person whose land has been acquired owes or owed any prescribed charge in respect of that land immediately before the acquisition, the acquiring authority may deduct the amount of the prescribed charge from the purchase-money or compensation and pay that amount to the person to whom it is due.
- (2) Where, under subsection (1), an acquiring authority pays any prescribed charge to the person to whom it is due –
 - (a) the tender by the authority of the balance of the purchase-money is, for all purposes, a sufficient tender of the purchase-money agreed to be paid by the authority to that person; or
 - (b) the liability of the authority to pay compensation is discharged to the extent of that payment.
- (3) In this section, ***prescribed charge*** means any tax, rate or charge payable to the Crown (whether in right of the Commonwealth or of this State) or any rate or charge payable to a local authority or other statutory body authorized to levy such rate or charge on land.

52. Deposit of compensation in trust account

- (1) An acquiring authority may, before an amount of compensation payable under this Act is agreed or finally determined –
 - (a) open in an authorised deposit-taking institution a trust account in the name of the authority for a person the authority believes may be entitled to compensation under this Act; and
 - (b) deposit in that account the amount of compensation that the authority estimates is payable to the person.
- (2) Where an acquiring authority has opened a trust account pursuant to subsection (1), the authority must not withdraw any part of the amount deposited in the account or any interest accrued on that amount or close that account unless –
 - (a) the authority has rejected the person's entitlement to compensation and the person has not made an application under section 39(6); or
 - (b) the person's entitlement to compensation has been admitted and not subsequently rejected or has been finally determined under Part 4 and the amount of compensation has been agreed or finally determined under that Part; or
 - (c) the acquiring authority proposes to pay a sum of money in satisfaction of a claim

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- for compensation into the Court under section 53; or
- (d) the acquiring authority proposes to pay a sum of money to the person under section 50; or
 - (e) the acquiring authority proposes to pay a prescribed charge under section 51; or
 - (f) where the person is entitled to compensation under section 24(2), (3), (4) or (5), a claim for compensation has not been made within the period specified in section 37 or determined under section 78.
- (3) Where a trust account is closed, the acquiring authority may use for its own purposes –
- (a) if the account was closed under subsection (2)(a), (b), (c) or (d), any amount of the proceeds of that account which exceeds the amount paid to the claimant or the Court; or
 - (b) if the account was closed under subsection (2)(f), the proceeds of that account.
- (4) Where an amount is withdrawn from a trust account under subsection (2)(e), the acquiring authority must use that amount to pay the prescribed charge referred to in that subsection.

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53. Payment into Court

- (1) Where proceedings before the Court have been commenced pursuant to this Act, an acquiring authority may pay into the Court a sum of money in satisfaction of a claim for compensation under this Act.
- (2) Any payment made by an acquiring authority to the claimant or on behalf of the claimant is taken to have been paid into the Court under subsection (1) on the day on which the proceedings commenced.

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Part 6 – Powers in Relation to Land

PART 6 – POWERS IN RELATION TO LAND

54. Powers of entry and examination

- (1) An acquiring authority may authorize a person, in writing, to enter on land to ascertain whether that or other land is suitable for an authorized purpose or to obtain information in relation to land.
- (2) A person authorized to enter on land to ascertain whether that land is suitable for an authorized purpose or to obtain information in relation to that land may –
 - (a) enter and remain on that land with such assistants, vehicles, machinery and equipment as the person thinks fit; and
 - (b) make surveys, take levels, sink pits, examine the soil, take samples and do any other thing in relation to the land; and
 - (c) remove from the land any samples taken under paragraph (b).
- (3) A person authorized to enter on land to ascertain whether other land is suitable for an authorized purpose or to obtain information in relation to other land may enter and remain on the first-mentioned land with such assistants, vehicles, machinery and equipment as the person thinks fit.

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- (3A) A person authorized to enter on land to ascertain whether other land is suitable for an authorized purpose or to obtain information in relation to other land, and any person assisting such a person on the land, must ensure that all reasonable steps are taken to ensure that –
- (a) activities on the land taken by the person are in accordance with contemporary best practice in relation to reducing the spread of pests and disease; and
 - (b) so far as is reasonably practicable, activities on the land taken by the person do not conflict with the interests of the owner or occupier of the land; and
 - (c) any damage to the land caused by the person is remediated.
- (4) An authorization under subsection (1) is valid for the period of 6 months commencing on the day on which the authorization was given.
- (5) A person who is authorized to enter on land under subsection (1) must, more than 4 days before the day on which the person enters on that land, notify the prescribed persons of –
- (a) the person’s intention to enter on that land; and
 - (b) the purpose of the entry; and
 - (c) the nature of the work the person proposes to carry out or the use to which the person proposes to put that land; and

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Part 6 – Powers in Relation to Land

(d) the probable duration of the entry.

Penalty: Fine not exceeding 10 penalty units.

(6) In subsection (5), *prescribed persons* means –

(a) the occupier, if any, of the land that a person is authorized to enter under subsection (1); and

(b) the owner in fee simple of that land; and

(c) if that land is not subject to the *Land Titles Act 1980* but is subject to a mortgage, the mortgagor.

54A. Powers of entry to carry out works in relation to major infrastructure projects

(1) In this section –

authorisation means an authorisation given under subsection (2);

notified corridor has the same meaning as in the *Major Infrastructure Development Approvals Act 1999*;

permit has the same meaning as in the *Land Use Planning and Approvals Act 1993*;

prescribed person means –

(a) the occupier, if any, of the land on to which a person is authorised to enter; or

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- (b) the owner in fee simple of that land; or
 - (c) if that land is not subject to the *Land Titles Act 1980* but is subject to a mortgage, the mortgagor.
- (2) Subject to subsection (4), the Minister may authorise in writing a person to enter on to land within a notified corridor for the purposes of the implementation of a major infrastructure project.
- (3) If an order under section 14B of the *Major Infrastructure Development Approvals Act 1999* amends a corridor described in a permit by adding land to the corridor, that land is taken to be within a notified corridor for the purposes of subsection (2).
- (4) The Minister may not authorise entry under subsection (2) unless the Minister is satisfied that the works that are proposed to be carried out on the land are authorised by a permit and –
 - (a) the period specified under section 61 of the *Land Use Planning and Approvals Act 1993* for appealing the decision of the planning authority to grant the permit has expired and no appeal has been lodged; or
 - (b) where such an appeal has been lodged, the appeal has been determined.

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- (5) The Minister may impose conditions or restrictions on any authorisation given under subsection (2).
- (6) The Minister must give notice in writing to any prescribed person of an authorisation given under subsection (2).
- (7) The Minister may revoke an authorisation given under subsection (2).
- (8) If notice under subsection (6) is given to a prescribed person by post, the notice is taken to have been received by the prescribed person 5 days after the day on which it was posted.
- (9) After 7 days from the day on which the notice is taken under subsection (8) to have been received by a prescribed person, a person authorised to enter on to the land referred to in the notice may enter and remain on the land and use that land as permitted under a permit referred to in subsection (4).
- (10) The proponent of the major infrastructure project for which entry is authorised under subsection (2) must provide the acquiring authority with a plan indicating the land to be acquired for the use or development comprised in the major infrastructure project in respect of which the authorisation is given not later than 5 months, or such extended period as the Minister may approve under subsection (10A), after the date of the authorisation referred to in subsection (2).

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- (10A) Subject to this section, the Minister may grant approval in writing extending the period within which a plan must be provided pursuant to subsection (10).
- (10B) The Minister may grant approval under subsection (10A) on more than one occasion, but must not approve an extension of the period referred to in subsection (10A) by more than 12 months in total.
- (10C) The Minister may only approve an extension of the period referred to in subsection (10A) if the Minister is satisfied that the extension is reasonably necessary and after consultation with any affected landowners and the Executive Director of the Tasmanian Farmers and Graziers Association.
- (10D) As soon as practicable after granting an approval under subsection (10A), the Minister must cause a copy of the approval to be served on any person who is a prescribed person in respect of the authorisation to which the approval relates.
- (11) The plan referred to in subsection (10) is to contain such detail as the acquiring authority may require to undertake the acquisition of the land to be acquired and is to include all land on which works have been constructed pursuant to the authorisation referred to in subsection (2).
- (12) As soon as practicable after receiving the plan referred to in subsection (10), the acquiring authority must cause a notice to treat to be

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served in accordance with section 11 on the owner of the land to be acquired.

- (13) If a notice to treat is served in respect of land to which an authorisation under subsection (2) relates, the authorisation ceases, except for the purposes of carrying out any necessary rehabilitation works, to apply to any land not identified in the notice to treat as being land proposed to be taken.

55. Immediate entry

- (1) In this section –

authorization means an authorization given under subsection (2);

prescribed persons means –

- (a) the occupier, if any, of the land that a person is authorized to enter; and
- (b) the owner in fee simple of that land; and
- (c) if that land is not subject to the *Land Titles Act 1980* but is subject to a mortgage, the mortgagor;

required land means land –

- (a) in respect of which an acquiring authority has served a notice to treat; and

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- (b) which the authority has not yet acquired.
- (2) An acquiring authority may authorize, in writing, a person to enter on required land where the authority determines that it or, in the case of a major infrastructure project, the proponent of that project urgently needs possession of the land in relation to the authorized purpose for which the required land is proposed to be acquired or any purpose incidental to the authorized purpose.
- (3) An acquiring authority, other than the Crown, must not give an authorization unless it has first obtained the consent to the giving of the authorization of –
 - (a) in the case of a public authority established or constituted by or under an Act, the Minister administering that Act; or
 - (b) in the case of a public authority established or constituted by or under the Royal Prerogative, the Minister administering that authority; or
 - (c) in the case of a local authority –
 - (i) created or continued under the *Local Government Act 1993*, the Minister administering that Act; or
 - (ii) the incorporation of which is created or continued under any

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other Act, the Minister
administering that other Act; or

(d) in the case of a promoter authorized to
acquire land by a special Act, the
Minister administering that Act.

- (4) An acquiring authority must notify the prescribed persons of the giving of that authorization.
- (5) After the expiration of a period of 24 hours commencing on the receipt of a notice referred to in subsection (4) by the occupier, if any, or the first of the other prescribed persons to be so notified, a person so authorized to enter on that land may enter and remain on the land and use the land in relation to the authorized purpose for which the land is proposed to be acquired or any purpose incidental to the authorized purpose.
- (6) A person authorized under subsection (2) must not enter on land before the expiration of the period specified in subsection (5).

Penalty: Fine not exceeding 10 penalty units.

56. Power to occupy adjacent land

- (1) In this section –

adjacent land means land which is within a
distance of 200 metres from the nearest
boundary of required land or land
acquired under this Act, but does not
include –

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- (a) any garden, orchard or plantation attached or belonging to a house or any park, planted walk, avenue or ground ornamentally planted; or
- (b) land that is less than 200 metres from an occupied dwelling-house situated on land other than the required land or land so acquired;

prescribed persons means –

- (a) the occupier, if any, of adjacent land that a person is authorized to enter under subsection (2)(a) or (b); and
- (b) the owner in fee simple of that adjacent land; and
- (c) if that adjacent land is not subject to the *Land Titles Act 1980* but is subject to a mortgage, the mortgagor;

required land means –

- (a) land –
 - (i) in respect of which an acquiring authority has served a notice to treat; and
 - (ii) which the authority has not yet acquired; or

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- (b) land in respect of which an authorisation has been given under section 54A(2).
- (2) An acquiring authority may authorize, in writing, a person to enter on adjacent land where –
- (a) the authority determines that it or, in the case of a major infrastructure project, the proponent of that project urgently needs possession of required land in relation to the authorized purpose for which the required land is proposed to be acquired or any purpose incidental to the authorized purpose; or
 - (b) the authority has acquired land.
- (3) An acquiring authority, other than the Crown, must not give an authorization under subsection (2)(a) unless it has first obtained the consent to the giving of the authorization of –
- (a) in the case of a public authority established or constituted by or under an Act, the Minister administering that Act; or
 - (b) in the case of a public authority established or constituted by or under the Royal Prerogative, the Minister administering that authority; or
 - (c) in the case of a local authority –
 - (i) created or continued under the *Local Government Act 1993*, the

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Minister administering that Act;
or

- (ii) the incorporation of which is created or continued under any other Act, the Minister administering that other Act; or
 - (d) in the case of a promoter authorized to acquire land by a special Act, the Minister administering that Act.
- (4) An acquiring authority must notify the prescribed persons of –
- (a) the giving of the authorization under subsection (2)(a); and
 - (b) the period, as estimated by the acquiring authority, during which the person so authorized will occupy the adjacent land.
- (5) After the expiration of a period of 24 hours commencing on the receipt of a notice referred to in subsection (4) by the occupier, if any, or the first of the other prescribed persons to be so notified, a person so authorized to enter on that land may enter and remain on the land and use the land in relation to the authorized purpose for which required land is proposed to be acquired or any purpose incidental to the authorized purpose.
- (6) A person authorized under subsection (2)(a) must not enter on land before the expiration of the period specified in subsection (5).

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Penalty: Fine not exceeding 10 penalty units.

- (7) An acquiring authority must notify the prescribed persons of –
- (a) the giving of the authorization under subsection (2)(b); and
 - (b) the period, as estimated by the acquiring authority, during which the person so authorized will occupy the adjacent land.
- (8) After the expiration of a period of 4 days commencing on the receipt of a notice referred to in subsection (7) by the last of the prescribed persons to be so notified, a person so authorized to enter on that land may enter and remain on the land and use the land in relation to the authorized purpose for which the other land has been acquired or any purpose incidental to the authorized purpose.
- (9) A person authorized under subsection (2)(b) must not enter on land before the expiration of the period specified in subsection (8).

Penalty: Fine not exceeding 10 penalty units.

- (10) A person authorized to enter on adjacent land under subsection (2)(a) or (b) may –
- (a) enter on the adjacent land; and
 - (b) occupy the adjacent land for as long as is necessary for the purposes of any works connected with the carrying out of the authorized purpose for which the

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- acquiring authority is acquiring required land or has acquired land; and
- (c) in connection with the carrying out of such an authorized purpose –
- (i) construct or place any plant, machinery, equipment or goods on the adjacent land; and
 - (ii) take from, or deposit on, the adjacent land sand, clay, stone, earth, gravel, timber, wood or other materials or goods; and
 - (iii) make roads, cuttings or excavations on or in the adjacent land; and
 - (iv) erect workshops, sheds and other buildings of a temporary character on the adjacent land; and
 - (v) manufacture and work materials of any kind required for carrying out that purpose on the adjacent land; and
- (d) demolish, destroy or remove any plant, machinery, equipment, goods or buildings constructed, placed or erected on the adjacent land under paragraph (c).
- (11) A person authorized to enter on adjacent land under subsection (2)(a) or (b) must not exercise the power specified in subsection (10)(c)(ii) in

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respect of any stone or slate quarry, brickfield or other place commonly worked or used for getting materials for the purpose of sale or disposal.

Penalty: Fine not exceeding 50 penalty units.

- (12) On the gazettal of a notice of acquisition in relation to required land or, if such a notice of acquisition is gazetted and the acquiring authority is a promoter who has not complied with section 17, on the deposit of the amount of money specified by the Valuer-General under that section with the Treasurer, an authorization which was given under subsection (2)(a) and was still in effect immediately before that gazettal or that deposit continues in force and is to be treated as if –
- (a) it had been given under subsection (2)(b); and
 - (b) the acquiring authority had given notice under subsection (7); and
 - (c) the acquiring authority had entered, remained on or used the land in accordance with subsection (8).

57. Rent for occupation

- (1) Where, pursuant to section 54, 54A or 56, land is entered on and occupied on behalf of an acquiring authority, the authority must pay to the owner or occupier of the land, as the case requires, a rent for the occupation of the land.

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- (2) The amount of rent payable and the times of its payment are as agreed between the acquiring authority and the owner or occupier of the land.
- (3) If an acquiring authority and an owner or occupier of land cannot agree on the amount of rent payable or the times of its payment, the authority must apply to the Court for a determination of the matter.
- (4) Nothing in this section takes away the right of a person to compensation for damage sustained by reason of the exercise of any power under this Part by an acquiring authority or a person authorized pursuant to section 54, 54A or 56.

58. Fencing of adjoining land

- (1) Where—
 - (a) an acquiring authority or a person authorized by an acquiring authority enters on, or into possession of, any land taken or being taken under this Act; and
 - (b) the owner or former owner of that land owns other land adjoining that land; and
 - (c) it is necessary for the protection of that owner's or former owner's property that that land should be fenced where it is contiguous with that other land—

the authority or, in the case of a major infrastructure project, the proponent of that

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project must erect a fence that provides that protection.

- (2) If an acquiring authority or, in the case of a major infrastructure project, the proponent of that project and an owner of land cannot agree in relation to—
- (a) the necessity for a fence; or
 - (b) the type or length of fence necessary—

the acquiring authority or the proponent, as the case may be, must apply to the Court for a determination of the matter.

**PART 7 – PROCEEDINGS BEFORE THE COURT OR
ARBITRATOR**

***Division 1 – Procedure and powers of the Court, arbitrator
and Special Arbitrator***

59. Procedure and powers of the Court

- (1) Except where expressly provided in this Act, the provisions of the *Supreme Court Civil Procedure Act 1932* and the relevant Supreme Court Rules apply to proceedings brought before the Court under this Act.
- (2) In proceedings brought before the Court under this Act, the Court may hear and determine the matter to which the proceedings relate.
- (3) In proceedings brought before the Court on the application of an acquiring authority under section 65(3), the Court may order that any purchase-money or compensation is to be applied in any one or more of the following ways:
 - (a) in the discharge of a debt or encumbrance affecting the subject land or affecting other land settled with it on or for the same or like uses, trusts and purposes;
 - (b) in the purchase of other land or authorized securities to be conveyed or settled on or towards the like uses, trusts and purposes as the subject land;

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- (c) in removing or replacing any buildings or substituting others in their stead as the Court directs;
 - (d) in payment to a person absolutely entitled to the purchase-money or compensation or to such other person, and on such conditions, as the Court directs;
 - (e) in such other manner as the Court directs.
- (4) Subject to section 62, a determination made under this section is final and binding on all persons to whom it relates.

60. Costs

- (1) The costs of, and incidental to, any arbitration or proceedings before the Court under this Act are in the discretion of the arbitrator or the Court.
- (2) In exercising a discretion to award costs under subsection (1), the Court or arbitrator must take into consideration –
 - (a) where the subject matter of the proceedings or arbitration relates to the amount of compensation payable, the amount of compensation awarded as compared with the amount (if any) offered by the acquiring authority; and
 - (b) the extent to which the proceedings or arbitration has arisen from, or been affected by –

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- (i) unreasonable conduct on the part of the claimant or the acquiring authority; or
 - (ii) the failure of the claimant to give adequate particulars of the claim or supply supporting material when required to do so; or
 - (iii) an excessive claim by the claimant; or
 - (iv) an unduly depressed offer by the acquiring authority.
- (3) In relation to the costs referred to in subsection (1), a legal practitioner is entitled to charge, and is allowed, the fees set forth in the scales of fees in the relevant Supreme Court Rules, and the costs are taxable by the taxing officer of the Supreme Court in accordance with the provisions for the taxation of costs contained in those Rules.
- (4) In awarding costs under this section, the Court or an arbitrator may, either of its, his or her own motion or on the application of any party, order that the costs be taxed on any of the scales of fees set forth in the relevant Supreme Court Rules.
- (5) A party who is dissatisfied with a certificate or allocatur of the taxing officer may, within 14 days after the date of the certificate or allocatur or such other time as may be allowed by the taxing officer at the time of signing the certificate or allocatur, apply to the Court for an

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order to review the taxation of any of the costs to which the certificate or allocatur relates.

61. Procedure relating to review of costs

Where an application is made to the Court under section 48 or 60 for an order to review the taxation of costs, the review of the taxation of costs is to occur in accordance with the relevant Supreme Court Rules.

Division 2 – Appeals

62. Appeals

- (1) A party to an arbitration by a Special Arbitrator may, within 30 days after the determination is made, appeal on a question of law arising out of the arbitration to the Court.
- (2) A party to proceedings determined under section 59 may, within 30 days after the determination is made, appeal on a question of law arising out of the proceedings to the Full Court of the Supreme Court.
- (3) An appeal under this section –
 - (a) is to be made in accordance with the *Supreme Court Civil Procedure Act 1932* and the Rules of Court; and
 - (b) is to be dealt with by way of rehearing.

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- (4) The decision of the Full Court of the Supreme Court or a judge sitting in chambers with respect to an appeal under this section is final.

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Part 8 – Persons Under Disability and Limited Owners

**PART 8 – PERSONS UNDER DISABILITY AND
LIMITED OWNERS**

63. Power of persons under disability to sell

- (1) Notwithstanding anything to the contrary in any law, agreement or document, a person who has possession of, or is entitled to, land may sell the land to an acquiring authority.
- (2) Without limiting its generality, the expression *person* in subsection (1) includes –
 - (a) a tenant for life; and
 - (b) a guardian; and
 - (c) an administrator appointed under the *Guardianship and Administration Act 1995*; and
 - (d) the administrator of a convict's property; and
 - (e) a trustee; and
 - (f) an executor or administrator; and
 - (g) a person who is for the time being entitled to the receipt of the rents and profits of land –
 - (i) in possession; or
 - (ii) subject to a lease for life, for lives and years, for years or for a less interest.

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64. Extent of power of persons under disability to sell

- (1) The power to sell land pursuant to section 65 may be exercised –
 - (a) by a person, not only on behalf of the person and on behalf of the person's personal representatives, successors in title, or persons beneficially entitled under the person's will or on the person's intestacy, but also on behalf of every person who is entitled in reversion, remainder or expectancy after the person and in defeasance of the estate of every person who is so entitled; and
 - (b) by a guardian on behalf of a ward to the same extent as the ward could exercise that power if the ward were not under a disability; and
 - (c) by the administrator of a convict's property on behalf of the convict to the same extent as the convict could exercise that power if he or she were not a convict; and
 - (d) by trustees, executors or administrators on behalf of their beneficiaries (whether persons under a disability or not) to the same extent as the beneficiaries could exercise that power if they were not under a disability.
- (2) Subsection (1)(a) does not apply to a lessee for life, for lives and years, for years or for a less interest.

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- (3) Subject to subsection (4), the powers conferred by section 63 on an administrator referred to in section 63(2)(c) –
- (a) are not to be exercised without the authority of the Tasmanian Civil and Administrative Tribunal given under section 56 of the *Guardianship and Administration Act 1995*; and
 - (b) are to be exercised subject to any conditions or restrictions made by the Tribunal under that section.
- (4) The *Public Trustee Act 1930* has effect for the purposes of the *Guardianship and Administration Act 1995* as if the powers conferred by section 63 on an administrator referred to in subsection (2)(c) of that section were included in the powers specified in section 32(1)(a) of the *Public Trustee Act 1930*.

65. Application of purchase-money or compensation where parties only entitled to sell because of this Part

- (1) Where land is acquired from a person who, except for this Part, would not be entitled to sell the land, the purchase-money or compensation for the land is to be, with the consent of all interested parties, paid to a trustee subject to the trusts declared in the deed of trust.
- (2) Where a person–

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- (a) is an infant or a person in respect of whose estate an administrator has been appointed under the *Guardianship and Administration Act 1995*; and
- (b) is interested in, or entitled to receive, any purchase-money or compensation under this Act—

the person's consent to any application or disposition of the purchase-money or compensation may be given by the person's guardian or that administrator on the person's behalf or the purchase-money or compensation may be paid to that guardian or administrator.

- (3) Where all the interested parties referred to in subsection (1) do not consent to the payment of purchase-money or compensation to a trustee, the acquiring authority must apply to the Court for a determination in relation to the application of the purchase-money or compensation.

PART 9 – MISCELLANEOUS

66. Public Trustee to represent unascertained owner

- (1AA) A reference to an address of a person includes an electronic address that has been indicated by the person, in electronic or other correspondence to the acquiring authority or the Public Trustee, to be the electronic address to which a notice or other document may be served or given electronically, whether or not the person has consented to the serving on the person, at that address, of any notices, or such notices, under this Act.
- (1) If an acquiring authority is unable to ascertain the existence or address, or the existence and address, of an owner of subject land, the authority must –
- (a) serve on the Public Trustee any notice in respect of that land that it is required to serve on an owner; and
 - (b) where the notice served on the Public Trustee is a notice to treat –
 - (i) publish a copy of the notice in a daily newspaper circulating generally in the city or other municipality in which that land is situated; and
 - (ii) affix a copy of the notice in a prominent place on that land.

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- (2) On being served with a notice under subsection (1), the Public Trustee must take all reasonable steps to discover the existence or address, or the existence and address, of any owner of the subject land.
- (3) If a notice has been served on the Public Trustee under subsection (1), the Public Trustee, until such time as the Public Trustee has discovered the existence or address, or the existence and address, of an owner of the subject land –
 - (a) is to be treated as the owner to which the notice relates; and
 - (b) may take any action in respect of the subject land which the owner, if known and available, might have taken.
- (4) If the Public Trustee discovers the existence or address, or the existence and address, of an owner of subject land, the Public Trustee must –
 - (a) notify the acquiring authority; and
 - (b) provide the owner with a copy of the notice to treat and the other notices and particulars the Public Trustee considers appropriate; and
 - (c) unless authorized by that owner to continue to act for the owner, cease acting on behalf of that owner.
- (5) A notice served on the Public Trustee under subsection (1) is taken to have been served on an owner referred to in that subsection.

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- (6) A notice referred to in subsection (4) may be provided to an owner electronically.

67. Apportionment of charges and encumbrances where only part of land taken

- (1) Where a part only of land that is subject to an encumbrance is taken, the apportionment of the encumbrance is as agreed on between the party entitled to the encumbrance, the owner of the land and the acquiring authority.
- (2) Where an apportionment of an encumbrance cannot be agreed on as provided in subsection (1), the acquiring authority must apply to the Court for a determination of the apportionment.

68. Apportionment of rent where part of leased land taken

- (1) If a part of any land comprised in a lease is taken, the rent payable in respect of the land comprised in the lease is apportioned between the part taken and the part not taken.
- (2) For the purposes of subsection (1), the apportionment is as agreed between the lessor, the lessee and the acquiring authority.
- (3) Where an apportionment of rent cannot be agreed on as provided in subsection (2), the acquiring authority must apply to the Court for a determination of the apportionment.
- (4) After the settlement of an apportionment—

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- (a) as to all future accruing rent, the lessee is liable only to the rent apportioned in respect of the part of the land not taken; and
- (b) the lessor has, as against the part of the land not taken, and as against the lessee, the same rights and remedies for the rent so apportioned as he or she had, before the apportionment, for the whole rent; and
- (c) all covenants, conditions and agreements in the lease (except as to the amount of rent) remain in force in relation to the part of the land not taken.

69. Offences

- (1) A person must not obstruct, hinder, delay, threaten or assault a person who is –
 - (a) authorized to enter on land pursuant to section 54, 54A, 55 or 56; and
 - (b) acting in accordance with that section.Penalty: Fine not exceeding 10 penalty units.
- (2) A person must not incite another person to obstruct, hinder, delay, threaten or assault a person who is –
 - (a) authorized to enter on land pursuant to section 54, 54A, 55 or 56; and
 - (b) acting in accordance with that section.

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Penalty: Fine not exceeding 10 penalty units.

- (3) A person must not –
- (a) refuse to give up possession of land acquired under this Act; or
 - (b) hinder the taking of possession of land acquired under this Act by an acquiring authority or any person authorized by the authority; or
 - (c) refuse to permit an acquiring authority or a person authorized by the authority to enter on land in accordance with this Act.

Penalty: Fine not exceeding 5 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

- (4) A police officer may arrest, without warrant, a person who the police officer reasonably believes to have contravened subsection (1).

70. Overlooked estates

- (1) In this section, *prescribed land* means land which –
- (a) an acquiring authority believed it had taken; and
 - (b) the authority has failed to take, through mistake or inadvertance; and

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- (c) the authority requires permanently for an authorized purpose; and
 - (d) the authority could acquire under this Act or could have acquired under a corresponding previous enactment at the time at which it entered into possession of the land.
- (2) Subject to subsection (8), an acquiring authority may remain in undisturbed possession of prescribed land.
- (3) If a person notifies an acquiring authority, in writing, that the person claims an estate in land which the person believes to be prescribed land, the authority must, within a period of 30 days after receiving that notification, notify the person by notice in writing that it –
- (a) admits that the land is prescribed land; or
 - (b) rejects that the land is prescribed land.
- (4) If an acquiring authority notifies a person that it rejects that land is prescribed land, or fails to provide the person with a notice referred to in subsection (2) within the period specified in that subsection, the person may apply to the Court for a determination as to whether the land is prescribed land within –
- (a) 30 days after receiving the notice or the expiration of that period, as the case may be; or
 - (b) a period determined under section 78.

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- (5) If a person who may apply to the Court under subsection (4) for a determination as to whether land is prescribed land does not make that application in accordance with that subsection, the person is taken not to have an estate in the land.
- (6) If an acquiring authority admits, or it is determined by the Court, that land is prescribed land –
- (a) the person claiming an estate in the prescribed land is taken to have been served with a notice to treat on the day on which the acquiring authority first entered into possession of the land; and
 - (b) the acquiring authority must, within a period of 60 days after the day on which that admission or determination is made –
 - (i) take all reasonable steps to ascertain all owners of the land and their addresses; and
 - (ii) cause a notice of acquisition in a form approved by the Secretary to be published in the *Gazette*.
- (7) Section 18(1) and (2) does not apply in relation to a notice of acquisition gazetted under subsection (6).
- (8) If an acquiring authority fails to gazette a notice of acquisition in relation to land in accordance with subsection (6), the estates of the owners of

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that land prevail over any estate the authority may have in the land.

- (9) After the expiration of a period of 12 years commencing on the day on which an acquiring authority first entered into possession of prescribed land –
- (a) a person is not entitled to notify the authority under subsection (3) that the person claims an estate in the land; and
 - (b) a person is not entitled to compensation under this Act in relation to the land unless that or another person has so notified the authority that that person claims an estate in the land before the expiration of that period.
- (10) Prescribed land vests in an acquiring authority on the expiration of the period of 12 years specified in subsection (9) unless a person has notified the authority under subsection (3) that the person claims an estate in the land.

71. Writs to enforce entry and possession of land

- (1) An acquiring authority may apply to the Court for the issue of a writ where –
- (a) a person who is in possession of land taken under this Act refuses to give up possession of the land or hinders the acquiring authority or any person authorized by the authority from taking possession of the land; or

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- (b) a person who is in occupation of land refuses to permit the acquiring authority or a person authorized by the authority to enter on the land.
- (2) On the receipt of an application under subsection (1), the Court may issue a writ authorizing the Sheriff to deliver possession of land to, or to enforce the entry upon land for, an acquiring authority or a person authorized by an acquiring authority.

72. Removal of goods, &c., from acquired land

If an owner from whom an acquiring authority has taken land refuses to remove from that land any goods or animals owned by, or in the custody of, the owner, the authority may apply to the Court for an order requiring the owner to remove those goods or animals from the land.

73. Disposal of land taken

- (1) In this section, *relevant period* means the period of 7 years commencing on the day on which –
 - (a) the notice of acquisition relating to the land proposed to be sold was published in the *Gazette* as provided in section 18 or 70; or
 - (b) the notification of acquisition relating to that land was registered as provided in section 18 of the *Lands Resumption Act 1957* or the notice of acquisition relating

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to it was registered as provided in section 17 of the *Public Authorities' Land Acquisition Act 1949*.

- (2) Subject to this section, if land that has been taken by an acquiring authority, other than the Crown, under this Act or a corresponding previous enactment is no longer required by the authority for any purpose, the authority –
- (a) may sell the land, if authorized to do so by its special Act –
 - (i) within the period prescribed by that Act; or
 - (ii) where no period is so prescribed, within the relevant period; or
 - (b) if not so authorized to sell the land, may sell it, subject to any requirements imposed by any other Act.
- (3) Where –
- (a) the Minister proposes to sell land in pursuance of subsection (2) before the relevant period has elapsed; or
 - (b) an acquiring authority proposes to sell land in accordance with subsection (2)(a); or
 - (c) an acquiring authority proposes to sell land in pursuance of subsection (2)(b) before the relevant period has elapsed –

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the Minister or authority shall first offer, by notice in writing, to sell the land –

- (d) where the land was severed from other land by its acquisition under this Act, to the present owner of the fee simple of that other land; or
 - (e) where the land was not so severed and if it is practicable to do so, to the person from whom the fee simple estate in the land was acquired under this Act or to that person's personal representatives or another person entitled to that person's estate under the law of succession.
- (4) For the purposes of subsection (3) –
- (a) a person who is a mortgagee under a mortgage in respect of land that is not subject to the *Land Titles Act 1980* and who is not in possession of the land, is taken not to have an estate in fee simple in the land; and
 - (b) a person who is a mortgagor under a mortgage in respect of such land and who is in possession of the land is taken to have an estate in fee simple in the land.
- (5) A person who receives a notice referred to in subsection (3) offering land for sale may, within the period of 60 days after the service of the notice or the period determined under section 78, accept that offer in writing.

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- (6) A person who accepts an offer in accordance with subsection (5) may make that acceptance subject to agreement on the price or other consideration.
- (7) If the acquiring authority and a person who has accepted an offer subject to agreement on the price or other consideration cannot agree on that price or other consideration within a period of 30 days after so accepting the offer, the person may, in writing delivered to the Minister or authority –
- (a) reject the offer; or
 - (b) elect to have the price or other consideration determined in the manner specified in this Act for determining disputed claims for compensation.
- (8) If a person –
- (a) rejects an offer under subsection (7)(a); or
 - (b) fails to make an election under subsection (7)(b) within the period specified in that subsection; or
 - (c) fails to accept an offer within the period specified in subsection (5) –
- the acquiring authority may dispose of the land to which the offer relates to any other person.
- (9) If the acquiring authority were offering to sell land, a person who is or would be able, for the time being, to exercise a right of pre-emption

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conferred by subsection (3) in respect of land has power at any time to waive that right of pre-emption in respect of all, or part of, the land.

- (10) A grant or sale of land by the Crown under the *Crown Lands Act 1976* is not to be impeached on the ground that a condition precedent to the grant or sale contained in this section has not been performed.
- (11) A person who is deprived of an estate by virtue of subsection (10) is entitled to compensation from the Crown and the amount of compensation is the amount agreed between the Crown and the person.
- (12) If the amount of compensation cannot be agreed on under subsection (11), compensation is to be determined in the same manner as a disputed claim for compensation.

74. Resumption procedure

- (1) If the Crown has power to resume land by virtue of a right reserved in the grant of the land, the Crown may give notice of resumption to the owner of the land.
- (2) A notice of resumption is to –
 - (a) specify the day on which re-entry will be made on behalf of the Crown; and
 - (b) have on it, or annexed to it, a plan of the land to be resumed.
- (3) A notice of resumption is to be served –

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- (a) on every owner of the land being resumed known to the Crown; or
 - (b) if the Crown does not know of any owner, or of an owner's address, on the Public Trustee.
- (4) The provisions of section 20 apply in respect of a notice of resumption as if it were a notice of acquisition.
- (5) Where a notice of resumption has been given under this section –
- (a) section 71 applies to the land as if it were land acquired under this Act and the Crown was an acquiring authority; and
 - (b) section 72 applies to the removal from the land of goods or animals owned by, or in the custody of, the person to whom the notice is given in the same manner as that section applies to the removal of goods or animals from land acquired under this Act.

75. Land acquired by Crown becomes Crown land reserve

- (1) On the acquisition of land by the Crown, the land acquired becomes land reserved to the Crown as a public reserve under section 8 of the *Crown Lands Act 1976* for the purpose for which the land was acquired.

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- (2) Subsection (1) does not apply to land acquired for the purposes of the *Forest Management Act 2013* or to land acquired under the *Nature Conservation Act 2002*.

76. Purchase of personal property

An acquiring authority may purchase the personal property of an owner of subject land if the personal property is situated on the subject land.

77. Limitation on proceedings

- (1) A person is not entitled to make a claim or otherwise institute any proceedings for compensation for the taking of land after the expiration of 12 years commencing on the day the notice of acquisition of the land is gazetted.
- (2) Subsection (1) does not apply in respect of land in the process of being taken –
- (a) immediately before the proclaimed day; and
 - (b) under the provisions of the *Lands Clauses Act 1857*, the *Public Authorities' Land Acquisition Act 1949* or the *Lands Resumption Act 1957*.

78. Extension of time or period

- (1) A time or period prescribed in this Act as the time or period within which any act or thing is to

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be done, or any proceedings are to be taken, may, before or within 14 days after the expiration of the time or period so prescribed and on the application of an owner of subject land, a claimant or a former owner of land acquired under this Act, be extended –

- (a) by the agreement of the acquiring authority; or
 - (b) in default of agreement, by order of the Court made on the application of the acquiring authority or the claimant.
- (1A) An acquiring authority may, by notice in writing to an owner of subject land, a claimant, or a former owner of land, (the *relevant person*), extend a time or period referred to in subsection (1), without an agreement between the acquiring authority and the relevant person, if the acquiring authority has been –
- (a) unable to contact the relevant person; or
 - (b) unable to obtain the agreement of the relevant person to an extension of the time or period.
- (2) An application referred to in subsection (1)(b) is to be made within 14 days after the day on which the acquiring authority and claimant have determined that they cannot agree in relation to an extension of time.
- (3) Where an agreement or order is made for the extension of time or a period within which any act or thing is to be done or any proceedings are

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to be taken, the act or thing may be done, or the proceedings may be taken, within that extended time or period specified in the agreement or order.

- (4) This section does not apply in relation to the period specified in section 77(1).

79. Delegation of powers by Minister, Secretary and acquiring authorities other than the Crown

- (1) The Minister may, in writing, delegate any of the Minister's functions or powers under this Act, other than this power of delegation.
- (2) The Secretary may, in writing, delegate any of his or her functions or powers under this Act, other than this power of delegation.
- (3) Notwithstanding anything to the contrary in the Act by which it is established or under which it conducts its operations, an acquiring authority other than the Crown may, if the Minister approves, in writing, delegate to the Secretary or to a person employed in the Department any of its functions or powers under this Act, other than this power of delegation.

80. Signing of notices and other documents

- (1) Where an acquiring authority may or is required to provide to, or serve on, any person a notice or other document under this Act, that notice or document is to be signed by the clerk of the authority or by the Minister, as the case requires.

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- (2) If a notice or other document under this Act is served on a person electronically under section 81, the signature of a person (including the clerk of the authority or the Minister) on a notice or other document under this Act may be, but is not required to be, an electronic signature.
- (3) If a form approved for the purposes of this Act by the Secretary provides for the signature of a person, the signature of the person may be an electronic signature.

81. Service of notices and other documents

- (1) A notice or other document is effectively served under this Act if –
 - (a) in the case of a natural person, it is –
 - (i) given to the person; or
 - (ii) left at, or sent by post to, the person's postal or residential address or place or address of business or employment last known to the person required by this Act to serve the notice or other document; or
 - (ia) sent electronically to, and received at, an electronic address that has been indicated by the person, in electronic or other correspondence to the person sending or giving the notice or other document, to be the

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electronic address to which a notice, or other document, may be served, or given, electronically, whether or not the person has consented to the sending or giving of any notices, or such notices, under this Act, to that address; or

(iii) sent by way of facsimile to the person's facsimile number; and

(b) in the case of any other person, it is –

(i) left at, or sent by post to, the person's principal or registered office or principal place of business; or

(ia) sent electronically to, and received at, an electronic address that has been indicated by the person, in electronic or other correspondence to the person sending or giving the notice or other document, to be the electronic address to which a notice, or other document, may be served, or given, electronically, whether or not the person has consented to the sending or giving of any notices, or such notices, under this Act, to that address; or

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- (ii) sent by way of facsimile to the person's facsimile number.
- (2) A notice or other document required or permitted by this Act to be served on or given to –
 - (a) the Crown or the Minister, may be served or given by –
 - (i) leaving it at, or sending it by post to, the office of the Secretary; or
 - (ia) subject to subsection (4), sending it to an electronic address that is indicated, on correspondence from the Secretary to the person serving or giving the notice or other document, to be the address of the Secretary to which a notice, or other document, under this Act to the Crown or the Minister, may be served, or given, electronically; or
 - (ii) sending it by way of facsimile to the Secretary at that office; or
 - (b) an acquiring authority other than the Crown, may be served or given to the authority by –
 - (i) leaving it at, or by sending it by post to, the office of the authority or its principal office if there are more offices than one; or

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- (ii) serving it on or giving it to, or sending it by post to, the clerk or the authority's legal practitioner; or
 - (ia) subject to subsection (4), sending it to an electronic address that has been indicated, in correspondence sent by the acquiring authority to the person serving or giving the notice or other document, to be the address of the acquiring authority to which a notice, or other document, under this Act, to the acquiring authority is to be served, or given, electronically; or
 - (iii) sending it by way of facsimile to that office, the clerk or the authority's legal practitioner.
- (3) A notice or other document served under this Act by sending it by post is served at the time when the letter is deposited in a post box or at a post office for delivery by post.
- (4) Subsection (2)(a)(ia) and subsection (2)(b)(ia) do not apply in relation to a notice under section 7G(6) or section 25(1)
- (5) A notice or other document served, given or provided under this Act by sending it electronically to an electronic address is served, given or provided, respectively, at the time at

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which it reaches the electronic address and is capable of being read at that address.

82. Rules of Court

- (1) Rules may be made under the *Supreme Court Civil Procedure Act 1932* for the purpose of regulating –
 - (a) the manner of making an application to the Court under this Act; and
 - (b) proceedings brought in or before the Court under this Act.
- (2) Rules made pursuant to subsection (1) may prescribe all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (3) Rules are not to be made pursuant to subsection (1) if those rules are inconsistent with any regulations made under this Act.

83. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may prescribe procedures and give to the Court discretion in relation to the adoption of procedures.
- (3) The regulations may –

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- (a) prescribe the manner of nomination or selection of a Special Arbitrator for the purposes of any particular arbitration; and
 - (b) prescribe the matters in respect of which a Special Arbitrator may or must not arbitrate; and
 - (c) regulate the proceedings before a Special Arbitrator either specifically or by reference to the *Commercial Arbitration Act 2011*, and any regulations made under that Act, as in force from time to time; and
 - (d) provide for the recovery of any costs awarded by a Special Arbitrator.
- (4) The regulations may contain provisions of a savings or transitional nature and such provisions may take effect on the proclaimed day or on a later day.
- (5) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (6) The regulations may –
- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 25

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penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.

84. Repeals

The Acts specified in Schedule 1 are repealed.

85.

86. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Environment and Land Management; and
- (b) the Department responsible to that Minister in relation to the administration of this Act is the Department of Environment and Land Management.

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SCHEDULE 1 – ACTS REPEALED

Section 84

Lands Clauses Act 1857 (21 Vict. No. 11)

Lands Resumption Act 1957 (No. 88 of 1957)

Public Authorities' Land Acquisition Act 1949 (No. 22 of 1949)

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SCHEDULE 2 –

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NOTES

The foregoing text of the *Land Acquisition Act 1993* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 January 2022 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Land Acquisition Act 1993</i>	No. 23 of 1993	1.1.1994
<i>Statute Law Revision Act 1994</i>	No. 68 of 1994	25.11.1994
<i>Local Government (Consequential Amendments) Act 1995</i>	No. 30 of 1995	1.9.1995
<i>Aboriginal Lands Act 1995</i>	No. 98 of 1995	6.12.1995
<i>Guardianship and Administration (Miscellaneous Amendments) Act 1996</i>	No. 33 of 1996	1.9.1997
<i>Major Infrastructure Development Approvals Act 1999</i>	No. 108 of 1999	22.12.1999
<i>Financial Sector Reform (Tasmania) (Miscellaneous Amendments) Act 1999</i>	No. 74 of 1999	1.1.2000
<i>Major Infrastructure Development Approvals Amendment Act 2001</i>	No. 19 of 2001	12.4.2001
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Regional Forest Agreement (Land Classification) Consequential Amendments Act 2000</i>	No. 55 of 2000	31.12.2001 (s. 4 and Sched. 2)
<i>Land Acquisition Amendment (Major Infrastructure Project) Act 2002</i>	No. 5 of 2002	30.5.2002
<i>Gas Pipelines Planning and Safety (Miscellaneous Amendments) Act 2002</i>	No. 57 of 2002	5.12.2002
<i>National Parks and Wildlife Separation (Consequential Amendments) Act 2002</i>	No. 64 of 2002	31.12.2002
<i>Statutory Officers (Age for Retirement) Act 2005</i>	No. 17 of 2005	10.6.2005
<i>Supreme Court Amendment Act 2007</i>	No. 55 of 2007	1.3.2008
<i>Legal Profession (Miscellaneous and</i>	No. 66 of 2007	31.12.2008

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Act	Number and year	Date of commencement
<i>Consequential Amendments) Act 2007</i>		
<i>Commercial Arbitration (Consequential Amendments) Act 2011</i>	No. 9 of 2011	1.10.2012
<i>Forest Management (Consequential Amendments) Act 2013</i>	No. 50 of 2013	11.12.2013
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>Land Acquisition Amendment Act 2019</i>	No. 31 of 2019	1.1.2020
<i>Tasmanian Civil and Administrative Tribunal (Consequential Amendments) Act 2021</i>	No. 18 of 2021	5.11.2021
<i>Land (Miscellaneous Amendments) Act 2021</i>	No. 23 of 2021	1.1.2022

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 68 of 1994, s. 3 and Sched. 1, No. 30 of 1995, s. 3 and Sched. 1, No. 86 of 2000, Sched. 1, No. 19 of 2001, s. 11, No. 55 of 2007, Sched. 1, No. 66 of 2007, Sched. 1, No. 9 of 2011, Sched. 1 and No. 31 of 2019, s. 4
Section 5A	Inserted by No. 98 of 1995, s. 42 and Sched. 5
Section 6	Amended by No. 17 of 2005, Sched. 1
Section 7A	Inserted by No. 108 of 1999, s. 25
Section 7AB	Inserted by No. 19 of 2001, s. 11
Section 7B	Inserted by No. 108 of 1999, s. 25
Section 7C	Inserted by No. 108 of 1999, s. 25
Section 7D	Inserted by No. 108 of 1999, s. 25
Section 7E	Amended by No. 31 of 2019, s. 5 Inserted by No. 108 of 1999, s. 25 Amended by No. 19 of 2001, s. 11
Section 7F	Inserted by No. 108 of 1999, s. 25
Section 7G	Inserted by No. 108 of 1999, s. 25
Section 7H	Inserted by No. 108 of 1999, s. 25
Section 7I	Inserted by No. 108 of 1999, s. 25
Section 7J	Inserted by No. 108 of 1999, s. 25
Section 12	Amended by No. 31 of 2019, s. 6
Section 13	Amended by No. 31 of 2019, s. 7
Section 14	Amended by No. 31 of 2019, s. 8
Section 16	Amended by No. 31 of 2019, s. 9
Section 17	Amended by No. 4 of 2017, Sched. 1 and No. 31 of 2019, s. 10

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Provision affected	How affected
Section 18	Amended by No. 19 of 2001, s. 11, No. 66 of 2007, Sched. 1 and No. 31 of 2019, s. 11
Section 21	Amended by No. 23 of 2021, s. 15
Section 24	Amended by No. 19 of 2001, s. 11
Section 27	Amended by No. 57 of 2002, s. 8 and No. 31 of 2019, s. 12
Section 29	Amended by No. 31 of 2019, s. 13
Section 33	Substituted by No. 19 of 2001, s. 11
Section 34	Amended by No. 23 of 2021, s. 16
Section 35	Amended by No. 19 of 2001, s. 11
Section 37	Amended by No. 31 of 2019, s. 14
Section 38	Amended by No. 31 of 2019, s. 15
Section 39	Amended by No. 19 of 2001, s. 11
Section 40	Amended by No. 31 of 2019, s. 16
Section 42	Amended by No. 9 of 2011, Sched. 1
Section 44	Amended by No. 19 of 2001, s. 11
Section 46	Amended by No. 4 of 2017, Sched. 1
Section 48	Amended by No. 66 of 2007, Sched. 1 and No. 31 of 2019, s. 17
Section 52	Amended by No. 74 of 1999, Sched. 2
Section 54	Amended by No. 19 of 2001, s. 11 and No. 31 of 2019, s. 18
Section 54A	Inserted by No. 19 of 2001, s. 11 Amended by No. 5 of 2002, s. 4
Section 55	Amended by No. 30 of 1995, s. 3 and Sched. 1 and No. 19 of 2001, s. 11
Section 56	Amended by No. 30 of 1995, s. 3 and Sched. 1 and No. 19 of 2001, s. 11
Section 57	Amended by No. 19 of 2001, s. 11
Section 58	Amended by No. 19 of 2001, s. 11
Section 59	Amended by No. 68 of 1994, s. 3 and Sched. 1 and No. 31 of 2019, s. 19
Section 60	Amended by No. 66 of 2007, Sched. 1 and No. 31 of 2019, s. 20
Section 61	Amended by No. 55 of 2007, Sched. 1 Substituted by No. 31 of 2019, s. 21
Section 63	Amended by No. 33 of 1996, Sched. 1
Section 64	Amended by No. 33 of 1996, Sched. 1 and No. 18 of 2021, s. 222
Section 65	Amended by No. 33 of 1996, Sched. 1
Section 66	Amended by No. 23 of 2021, s. 17
Section 68	Amended by No. 31 of 2019, s. 22
Section 69	Amended by No. 19 of 2001, s. 11
Section 75	Amended by No. 55 of 2000, Sched. 2, No. 64 of 2002, Sched. 1 and No. 50 of 2013, Sched. 1
Section 78	Amended by No. 31 of 2019, s. 23
Section 80	Amended by No. 23 of 2021, s. 18
Section 81	Amended by No. 66 of 2007, Sched. 1 and No. 23 of 2021, s. 19

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Provision affected	How affected
Section 83	Amended by No. 9 of 2011, Sched. 1
Section 85	Repealed by No. 31 of 2019, s. 24
Schedule 2	Repealed by No. 31 of 2019, s. 25