



# Acquisition of Land Act 1967

Current as at 20 August 2020

© State of Queensland 2020



This work is licensed under a Creative Commons Attribution 4.0 International License.



## Queensland

# Acquisition of Land Act 1967

## Contents

---

		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title .....	5
2	Definitions .....	5
3	Meaning of multi-parcel purpose .....	5
4	Relationship with other Acts .....	6
4A	Taking non-native title right or interest .....	6
4B	Taking non-native title right or interest that is a resource interest	8
<b>Part 2</b>	<b>Taking of land</b>	
<b>Division 1</b>	<b>General</b>	
5	Purposes for which land may be taken .....	9
6	Easements .....	10
<b>Division 2</b>	<b>Taking other than by agreement</b>	
7	Notice of intention to take land .....	10
8	Dealing with objections .....	15
9	Ways in which land is to be taken .....	16
11	Amending of gazette resumption notice .....	18
12	Effect of gazette resumption notice .....	20
12A	Constructing authority must lodge new plan of survey for particular land 23	
12B	Particular land may be dedicated as road .....	24
13	Provision for taking particular additional land .....	24
14	Dealing with title to land affected by resumption .....	25
<b>Division 3</b>	<b>Taking by agreement</b>	
<b>Subdivision 1</b>	<b>Resumption agreements</b>	
15	Meaning of resumption agreement .....	26
<b>Subdivision 2</b>	<b>Process for taking</b>	
15A	Application of sdiv 2 .....	27

Contents

---

15B	Limit on taking under sdiv 2 . . . . .	28
15C	Taking by Governor in Council . . . . .	28
15D	Taking by constructing authority . . . . .	29
<b>Subdivision 3</b>	<b>Miscellaneous</b>	
15E	When taking is effective . . . . .	29
15F	Non-application of sections 7 to 9 . . . . .	30
15G	When constructing authority is taken to have discontinued resumption 30	
15H	No limit on other acquisition of land . . . . .	30
<b>Part 3</b>	<b>Discontinuance of taking of land</b>	
16	Discontinuance of resumption before publication of gazette resumption notice . . . . .	30
17	Revocation before determination of compensation . . . . .	31
<b>Part 4</b>	<b>Compensation</b>	
18	By whom compensation may be claimed . . . . .	33
19	Claim for compensation . . . . .	36
20	Assessment of compensation . . . . .	37
21	Grant of easement etc. or transfer of land in satisfaction of compensation 40	
22	Crown grant in satisfaction of compensation . . . . .	40
23	Advance against compensation . . . . .	41
24	Reference of claim for compensation to Land Court . . . . .	42
25	Reference to Land Court by constructing authority . . . . .	43
26	Jurisdiction relating to compensation . . . . .	44
26A	Jurisdiction about recovery of advance against compensation . .	45
27	Costs . . . . .	46
28	Interest . . . . .	47
29	Where right to compensation is questioned . . . . .	47
30	Limited interests . . . . .	48
31	Powers of Supreme Court in respect of building units . . . . .	50
31A	Powers of District Court for community titles scheme . . . . .	50
32	Mortgages . . . . .	50
33	Rent-charge or annuity . . . . .	51
34	Where part only of land subject to rent is taken . . . . .	51
35	Taxes, rates and charges . . . . .	52
<b>Part 5</b>	<b>General</b>	
36	Powers of entry etc. . . . .	52

36A	Minister may act for Crown as constructing authority . . . . .	53
36B	Delegation by Minister . . . . .	54
37	Temporary occupation of land . . . . .	54
38	Refusal to give up land . . . . .	56
39	Service of documents . . . . .	56
40	Offences . . . . .	56
41	Disposal of land . . . . .	57
42	Regulation-making power . . . . .	57
43	Publication of notices . . . . .	58
<b>Part 6</b>	<b>Transitional and other provisions</b>	
<b>Division 1</b>	<b>Provision for Acquisition of Land Amendment Act 1999</b>	
44	Validating and transitional provisions for the Acquisition of Land Amendment Act 1999 . . . . .	58
<b>Division 2</b>	<b>Provision for Transport and Other Legislation Amendment Act 2005</b>	
45	Transitional provision for taking of land by Brisbane City Council and other local governments . . . . .	59
<b>Division 3</b>	<b>Provisions for Acquisition of Land and Other Legislation Amendment Act 2009</b>	
46	Making claims for compensation . . . . .	60
47	Recovery of advance against compensation . . . . .	60
<b>Division 4</b>	<b>Provisions for Land, Water and Other Legislation Amendment Act 2013</b>	
48	Definitions for div 4 . . . . .	60
49	Applications under previous section 9(2) . . . . .	61
50	Agreements for taking under previous section 15(1) . . . . .	61
51	Delegations by Minister . . . . .	61
<b>Division 5</b>	<b>Validation provisions for Environmental Protection and Other Legislation Amendment Act 2020</b>	
52	Validation provision relating to purposes for which land may be taken 62	
53	Validation of taking of particular land . . . . .	62
54	Validation of particular notices of intention to resume and resumption agreements . . . . .	62
<b>Schedule 1</b>	<b>Purposes for taking land</b> . . . . .	64
<b>Schedule 2</b>	<b>Dictionary</b> . . . . .	71



---

# Acquisition of Land Act 1967

**An Act to consolidate and amend the law relating to the acquisition of land for public works and other public purposes, and for other purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Acquisition of Land Act 1967*.

### 2 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

### 3 Meaning of *multi-parcel purpose*

- (1) Land is taken under this Act for a *multi-parcel purpose* if, to carry out the particular purpose for which the land is taken, it is necessary to take, under this Act, more than 1 parcel of land.

*Examples of multi-parcel purposes—*

roads and railways for which it is necessary to take, under this Act, more than 1 parcel of land

- (2) For subsection (1), it does not matter whether—
- (a) the parcels of land are owned by the same person or different persons; or
  - (b) the same person or different persons are entitled to claim compensation under this Act for the taking of the parcels of land.

(3) In this section—

*parcel*, of land, means—

- (a) a separate lot or parcel in a plan of survey registered, or deposited for registration, in the land registry or given to the chief executive (surveys); or
- (b) an easement; or
- (c) other land that is described in a way that is sufficient to substantially identify the land.

#### **4 Relationship with other Acts**

(1) This section applies if another Act provides for land to be taken under this Act, even though this Act would not otherwise apply to the land.

*Example—*

The *Native Title (Queensland) Act 1993* provides for native title rights and interests relating to land, for example, unallocated State land under the *Land Act 1994*, to be acquired under this Act even though this Act would not otherwise apply to unallocated State land.

- (2) Despite the other Act, sections 9(7) and 15D do not apply to the taking of land if the land includes Aboriginal or Torres Strait interests.
- (3) For subsection (2), land includes Aboriginal or Torres Strait Islander interests if—
  - (a) native title rights and interests exist for the land; or
  - (b) the land is Aboriginal land or transferable land under the *Aboriginal Land Act 1991*; or
  - (c) the land is Torres Strait Islander land or transferable land under the *Torres Strait Islander Land Act 1991*.

#### **4A Taking non-native title right or interest**

(1) This section applies to the taking of a non-native title right or interest if—

- (a) the taking happens under a compulsory acquisition Act; and
  - (b) the taking under the compulsory acquisition Act—
    - (i) is authorised under the *Native Title (Queensland) Act 1993*, section 144(1)(b); or
    - (ii) is authorised under the compulsory acquisition Act but happens at the same time as the taking under that Act of native title rights and interests as authorised under the *Native Title (Queensland) Act 1993*, section 144(1)(a).
- (2) The compulsory acquisition Act, including to the extent appropriate this Act, must be applied to the taking of the non-native title right or interest to the greatest practicable extent as if the right or interest were land to which the compulsory acquisition Act otherwise applies.
- (3) However, when the taking has effect, despite any compulsory acquisition Act, including any other provision of this Act, the right or interest is completely extinguished to the extent it relates to land stated in the gazette resumption notice for the taking.
- (4) Without limiting subsection (1), taking that happens under a compulsory acquisition Act includes taking under a compulsory acquisition Act other than this Act if either of the following applies—
- (a) the compulsory acquisition Act authorises a constructing authority to take land under this Act;
  - (b) the compulsory acquisition Act authorises a constructing authority to take land under that Act but requires provisions of this Act to be applied to any aspect of the taking.
- (5) In this section—
- gazette resumption notice***, for the taking of a right or interest, includes any instrument giving effect to the taking.

#### **4B Taking non-native title right or interest that is a resource interest**

- (1) This section applies to the taking of a non-native title right or interest if—
  - (a) it is a taking to which section 4A applies; and
  - (b) the right or interest is a resource interest.
- (2) The entity taking the resource interest must give the relevant chief executive for the resource interest a written notice that—
  - (a) states the details of the extinguishment of the resource interest; and
  - (b) asks for the extinguishment to be recorded in the appropriate register kept by the chief executive; and
  - (c) is accompanied by a certified copy of the gazette resumption notice mentioned in section 4A(3).
- (3) Compensation to be paid under the compulsory acquisition Act in relation to the taking of the resource interest is limited in the way provided for in the resource compensation provision for the resource interest.

*Example—*

If the resource interest is a mining tenement interest under the *Mineral Resources Act 1989*, on an application of section 10AAD of that Act, allowance can not be made for the value of minerals known or supposed to be on or below the surface of, or mined from, the land the subject of the mining tenement interest.

- (4) In this section—

***relevant chief executive***, for a resource interest, means the chief executive of the department administering the resource interest compensation provision for the resource interest.

---

## Part 2                      Taking of land

### Division 1                  General

#### 5                      Purposes for which land may be taken

- (1) Land may be taken under and subject to this Act—
  - (a) where the constructing authority is the Crown, for any purpose set out in schedule 1; or
  - (b) where the constructing authority is a local government—
    - (i) for any purpose set out in schedule 1 which the local government may lawfully carry out; or
    - (ii) for any purpose, including any function of local government, which the local government is authorised or required by a provision of an Act other than this Act to carry out; or
  - (c) in the case of a constructing authority other than the Crown or a local government—
    - (i) for any purpose set out in schedule 1 which that constructing authority may lawfully carry out; or
    - (ii) for any purpose which that constructing authority is authorised or required, by a provision of an Act other than this Act, to carry out.
- (2) The power to take, under and subject to this Act, land for a purpose (the *primary purpose*) includes power to take from time to time as required land either for the primary purpose or for any purpose incidental to the carrying out of the primary purpose.
- (3) A part heading in schedule 1—
  - (a) is not, for this section, a purpose set out in schedule 1; and

- (b) indicates only the type of activity or other thing to which a purpose mentioned in the part ordinarily relates; and
- (c) does not limit the matters to which a purpose mentioned in the part may relate.

## 6 Easements

- (1) When for any purpose it is not necessary that the constructing authority should take the whole estate in any land, but it is sufficient for such purpose to take an easement, the constructing authority may take such easement only and for that purpose the provisions of this Act shall apply as if the easement were land.
- (2) Upon application in that behalf, payment of the prescribed fees, and the production to the land registry of the gazette copy of the gazette resumption notice, whereby an easement is taken affecting land under the *Land Title Act 1994*, the registrar of titles shall register such easement as prescribed by that Act, notwithstanding that such easement is not being annexed to or used and enjoyed together with any other land.
- (3) The taking of an easement over land does not extinguish any interest in the land existing immediately before the easement is taken.

## Division 2 Taking other than by agreement

### 7 Notice of intention to take land

- (1) A constructing authority which proposes to take any land shall serve as prescribed by this section the notice (a *notice of intention to resume*) prescribed by this section.
- (2) A notice of intention to resume shall be served upon any and every person who to the knowledge of the constructing authority—
  - (a) will be entitled to claim compensation under this Act in respect of the taking of the land concerned; or

- (b) is a mortgagee of the land.
- (2A) Despite subsection (2), if the land the subject of a notice of intention to resume is common property within the meaning of, and shown on a building units plan under, the *Building Units and Group Titles Act 1980*, the constructing authority need only serve the notice on—
  - (a) the body corporate constituted under that Act by the proprietors of the lots in the building units plan; and
  - (b) each entity, other than the body corporate or a proprietor of a lot in the building units plan on which the common property is shown, who to the knowledge of the constructing authority has an interest in the common property.
- (2B) Also despite subsection (2), if the land the subject of a notice of intention to resume is common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*, the constructing authority need only serve the notice on—
  - (a) the body corporate under that Act for the community titles scheme; and
  - (b) each entity, other than the body corporate or an owner of a lot in the community titles scheme for the common property, who to the knowledge of the constructing authority has an interest in the common property.
- (2C) Subsection (2D) applies if the constructing authority gives a body corporate mentioned in subsection (2A) or (2B) a notice of intention to resume or a notice amending a notice of intention to resume (each a **relevant notice**).
- (2D) The body corporate must ensure a copy of the relevant notice accompanies the first notice of a general meeting of the body corporate given to each of its members after receiving the relevant notice.
- (3) A notice of intention to resume shall be in writing and shall—
  - (a) state the particular purpose for which the land to be taken is required; and

- (b) state the description of the land to be taken which description—
  - (i) if the land is described as a separate lot or parcel in a plan of survey registered in the land registry or deposited in the office of the chief executive (surveys)—shall be that description; or
  - (ii) if the land is not described as mentioned in subparagraph (i)—may be made in any manner sufficient to substantially identify the land; and
- (c) in the case of an easement—also state the rights and obligations to be conferred and imposed by the easement; and
- (d) state that the person to whom the notice is directed may, on or before the date specified in the notice (being a date not less than 30 days after the date of the notice), serve upon the constructing authority at the address set out in the notice an objection in writing to the taking of the land; and
- (e) in relation to the objection mentioned in paragraph (d)—set out—
  - (i) that the objection must state the grounds of the objection and the facts and circumstances relied on by the objector in support of those grounds; and
  - (ii) that any matter pertaining to the amount or payment of compensation is not a ground of objection; and
  - (iii) that an objector who states in the objection that the objector desires to be heard in support of the grounds of the objection may appear and be heard by the constructing authority or its delegate at the time and place specified in the notice; and
- (ea) if the land the subject of the notice is common property within the meaning of, and shown on a building units plan under, the *Building Units and Group Titles Act 1980*—

- (i) state the proprietor of a lot in the building units plan may be entitled to compensation for damage suffered by the proprietor as a result of the taking of the common property and the effect of the taking on the proprietor's lot; and
  - (ii) state the requirement imposed on the body corporate for the common property under subsection (2D); and
- (eb) if the land the subject of the notice is common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*—
- (i) state the owner of a lot in the scheme may be entitled to compensation for damage suffered by the owner as a result of the taking of the common property and the effect of the taking on the owner's lot; and
  - (ii) state the requirement imposed on the body corporate for the common property under subsection (2D); and
- (f) state that the constructing authority is willing to negotiate to acquire by agreement or, failing agreement, to treat as to the compensation to be paid and all consequential matters; and
- (g) include details of—
- (i) the period within which a claim for compensation under this Act must be served on the constructing authority; and
  - (ii) the claimant's right to apply to the Land Court to serve a claim after the end of the period mentioned in subparagraph (i); and

*Note*—

For the matters mentioned in paragraph (g), see section 19(3) to (6).

- (h) include information about how, under section 20(2A), a contract, licence, agreement or other arrangement

entered into in relation to the land after the notice of intention to resume is served may be dealt with in assessing compensation to be paid under this Act.

*Note—*

See also—

- (a) the *Geothermal Energy Act 2010*, section 350A(8) for additional requirements if geothermal interests under that Act are to be wholly or partially extinguished; and
- (b) the *Greenhouse Gas Storage Act 2009*, section 369A(8) for additional requirements if GHG interests under that Act are to be wholly or partially extinguished; and
- (c) the *Mineral Resources Act 1989*, section 10AAA(8) for additional requirements if mining tenement interests under that Act are to be wholly or partially extinguished; and
- (d) the *Petroleum Act 1923*, section 124A(8) for additional requirements if 1923 Act petroleum interests under that Act are to be wholly or partially extinguished; and
- (e) the *Petroleum and Gas (Production and Safety) Act 2004*, section 30AA(8) for additional requirements if petroleum interests under that Act are to be partially or wholly extinguished.

- (4) Where a notice of intention to resume relates to land under the *Land Title Act 1994*, the constructing authority shall file a copy of the notice with the land registry.
- (4AA) The constructing authority may, by written notice given to each entity to whom the notice of intention to resume is served under subsection (2), (2A) or (2B), amend the notice of intention to resume.
- (4AB) If the constructing authority amends the notice of intention to resume, the period within which an entity may serve on the constructing authority an objection to the taking of the land starts again from the day the notice of the amendment is given to the entity.

*Note—*

For the period within which an entity may serve an objection, see subsection (3)(d).

- (4A) If the constructing authority amends the notice of intention to resume or discontinues the resumption it shall forthwith file

---

with the land registry a notice of the amendment or discontinuance.

- (4B) For the purpose of subsection (4A), notwithstanding that a constructing authority has not served notice under section 16, it shall be deemed to discontinue a resumption if the application prescribed by section 9(3) has not been made within the time prescribed by section 9(4).
- (5) The failure by the constructing authority to serve upon the owner a notice of intention to resume, where such failure is due to circumstances beyond the control of the constructing authority, or the failure of the constructing authority to serve upon any person other than the owner a notice of intention to resume, or the failure of the constructing authority to observe subsection (4), shall not prejudice any gazette resumption notice made under this Act, with respect to any land, and any land included in the notice shall be taken in terms of the notice notwithstanding any such failure, and the failure by the constructing authority to serve upon any person entitled thereto any notice as prescribed by this Act shall not invalidate the continuance or discontinuance of any resumption.
- (6) In subsection (5)—

*owner* means, in the case of land under the *Land Title Act 1994*, the person registered as the proprietor in fee simple at the date of the notice of intention to resume.

## 8 Dealing with objections

- (1) A person entitled to be served with a notice of intention to resume land who has objected as prescribed to the taking (the *objector*) shall not be entitled to be heard in support of the grounds of the objection unless the person stated in the objection that the person desired to be so heard and appears, in person or by counsel, solicitor or agent, at the time and place specified in the notice.
- (2) The constructing authority shall consider the grounds of objection to the taking of any land and—

- (a) if the objector has been heard by the constructing authority—the matters put forward by the objector in support of such grounds; or
  - (b) if the objector has been heard by the delegate of the constructing authority—the report thereon of such delegate.
- (2A) If upon such consideration, the constructing authority is of opinion that the resumption should be discontinued or that the notice of intention to resume should be amended, the constructing authority may discontinue the resumption or amend the notice of intention to resume.
- (2B) However, a notice of intention to resume shall not be amended so as to include therein land additional to the land the subject thereof.
- (3) If the constructing authority amends the notice of intention to resume, the objector can not again object to the taking of the land as provided for under the amended notice if the owner of the land (whether or not the owner is the objector) agrees to the amendment.

## **9 Ways in which land is to be taken**

- (1) If within the time stated in the notice of intention to resume no objection is made or if, after due consideration of all objections, the constructing authority is of opinion that the land in question is required for the purpose for which it is proposed to be taken, the constructing authority may apply to the relevant Minister that the land be taken as prescribed by this section.
- (2) Such application shall be made within 12 months after the date of the notice of intention to resume and not thereafter.
- (3) Such application shall contain or be accompanied by each of the following—
  - (a) a copy of the relevant notice of intention to resume and of any further notice amending the same served under section 7;

- (b) where the land is not described in the notice of intention to resume as mentioned in section 7(3)(b)(i)—a copy of a plan of survey of the land certified as accurate by a cadastral surveyor or a plan sufficient to substantially identify the land;
  - (c) a list of the names and addresses last known to the constructing authority of all persons who to the knowledge of the constructing authority are entitled pursuant to section 18 to claim compensation;
  - (d) a statement as to those of the persons mentioned in paragraph (c) who have not been served with the notice of intention to resume and, a further statement setting out in relation to every such person, the manner in which such service was attempted and the reasons for failure to effect it;
  - (e) a statement whether or not any person objected in terms of the notice of intention to resume and, in the case of such an objection or objections, the name or names of the objector or objectors, a copy of every objection, and a report by the constructing authority thereon.
- (4) The relevant Minister may require any constructing authority to furnish, within a time specified by the relevant Minister, such further particulars and information as the relevant Minister deems fit with respect to an application under this section.
- (5) The relevant Minister must consider every application made under this section, including all statements and documents, or copies of documents, accompanying the application to ensure that—
- (a) the land to be taken may be taken and should be taken for the purpose for which it is proposed to be taken; and
  - (b) the constructing authority has taken reasonable steps to comply with sections 7 and 8; and
  - (c) if the notice of intention to resume has not been served on the owner as defined in section 7(6), that the failure

to do so was due to circumstances beyond the control of the constructing authority.

- (6) The Governor in Council may, by gazette notice, declare that the land particularised in the notice is taken for the purpose mentioned in the notice.
- (7) Without limiting subsection (6), the relevant Minister may, by gazette notice, declare that the land particularised in the notice is taken for the purpose mentioned in the notice if—
  - (a) the objection period for the notice of intention to resume the land has ended and no objections were received in response to the notice; and
  - (b) if the land is being taken for a multi-parcel purpose—every other parcel of land required to be taken to carry out the multi-parcel purpose—
    - (i) has been taken under this Act; or
    - (ii) is the subject of a resumption agreement entered into by the constructing authority; or
    - (iii) is the subject of a notice of intention to resume for which the objection period has ended and no objections were received.
- (8) The taking is effective on the day of publication of the notice.

## 11 Amending of gazette resumption notice

- (1) Section 24AA of the *Acts Interpretation Act 1954* applies to the amendment of a gazette resumption notice.

*Notes—*

- 1 *Acts Interpretation Act 1954*, section 24AA (Power to make instrument or decision includes power to amend or repeal)
  - 2 See section 17 for the power to revoke a gazette resumption notice.
- (2) However, to the extent the power to amend the gazette resumption notice is exercised to correctly describe the land taken by the notice or to correct another error, the power is not subject to sections 7 to 9 or division 3.

- 
- (3) Also, a gazetting authority may, by gazette notice, amend a gazette resumption notice made by the Governor in Council to change the description or area of land taken under the gazette resumption notice, but only if—
- (a) the description or area was described in the gazette resumption notice other than in a plan of survey registered in the land registry; and
  - (b) the description or area is described in the amending gazette notice in a plan of survey that—
    - (i) complies with the *Survey and Mapping Infrastructure Act 2003*; and
    - (ii) is certified as accurate by a cadastral surveyor within the meaning of the *Surveyors Act 2003*; and
  - (c) the change is made solely to accurately state the description or area of land taken.
- (4) However—
- (a) no person shall be prejudiced in respect of any mortgage, charge, claim, estate, or interest existing in respect of the land, by reason of the person having, in consequence of the gazette resumption notice or amendment of the gazette notice, done or omitted to do any act or thing, or failed to enforce or act upon any right, or to comply with any obligation in respect of such mortgage, charge, claim, estate or interest; and
  - (b) no person shall have any right of action or claim against the constructing authority for anything bona fide done under the gazette resumption notice or an amended gazette notice; and
  - (c) nothing in this section contained shall limit the power of the constructing authority to take at any subsequent time the whole or any part of the land mentioned or described in any gazette resumption notice so amended; and
  - (d) any amendment of the gazette resumption notice shall not prejudice or affect the power of the constructing authority to take any land which has been excluded from

the gazette resumption notice by reason of the amendment; and

- (e) if the constructing authority again takes land which has been excluded from the gazette resumption notice by reason of the amendment, compensation shall not be payable in respect of the value of any works or improvements which have been made or effected on the land by the constructing authority subsequent to the date of publication in the gazette of the gazette resumption notice.

## 12 Effect of gazette resumption notice

- (1) Subject to subsection (4), land taken by a gazette resumption notice—
  - (a) shall vest, according as the notice prescribes, in the Crown or in the constructing authority which requires the land on and from the date of the publication in the gazette of the notice; or
  - (b) if it is taken by the Crown on behalf of a corporation representing the Crown in right of the State or constituted by any Act shall vest in the corporation requiring the land if the notice so prescribes and in such case, where the corporation is not a constructing authority, the provisions of section 41 shall apply as if the corporation were a constructing authority.
- (2A) Where land taken vests in a constructing authority or, if the gazette resumption notice so prescribes, in a corporation it shall so vest and be held by the constructing authority or corporation for the estate or interest therein of which the land taken consists and, where the estate or interest is such that provision is made by the *Land Title Act 1994* for its registration, upon application by the constructing authority or corporation and production of a gazette copy of the gazette resumption notice and payment of the prescribed fees, the registrar of titles shall register the constructing authority or corporation accordingly.

- (3) Where the land taken is part of land subject to a building units plan registered under the *Building Units and Group Titles Act 1980* the registrar of titles shall, upon payment of the prescribed fees, do and execute all such acts, matters and things as the registrar of titles considers necessary to amend the building units plan, and may make all such recordings as the registrar of titles considers necessary in the appropriate register.
- (3A) If land taken is scheme land for a community titles scheme under the *Body Corporate and Community Management Act 1997*, the registrar of titles must, on payment of the prescribed fee, take the necessary action—
- (a) to register a plan of survey identifying the remaining scheme land; and
  - (b) to record the taking of the land in the freehold land register; and
  - (c) to record a new community management statement for the scheme.
- (4) Land granted by the Crown upon trust for a public purpose, or land comprised in a lease held under the *Land Act 1994*, shall upon and by virtue of the taking thereof become unallocated State land.
- (4A) Land mentioned in subsection (4) may, having regard to the purpose for which it was taken—
- (a) be dedicated, under the *Land Act 1994*, as a reserve under the trusteeship of the constructing authority; or
  - (b) be dedicated, under the *Land Act 1994* or this Act, as a road; or
  - (c) be granted or leased, under the *Land Act 1994*, to the constructing authority; or
  - (d) be dealt with under another Act.
- (4B) The constructing authority that takes the land mentioned in subsection (4) may also deal with the land for the purpose for which it is taken on and from the day it is taken, even though

the land is yet to be dedicated, granted, leased or otherwise dealt with under subsection (4A).

- (5) On and from the date of the publication of the gazette resumption notice the land thereby taken shall be vested or become unallocated State land as provided by the foregoing provisions of this section absolutely freed and discharged from all trusts, obligations, mortgages, charges, rates, contracts, claims, estates, or interest of what kind soever, or if an easement only is taken, such easement shall be vested in the constructing authority or, where the gazette resumption notice prescribes, in the corporation requiring the easement, and the estate and interest of every person entitled to the whole or any part of the land shall thereby be converted into a right to claim compensation under this Act and every person whose estate and interest in the land is injuriously affected by the easement shall have a right to claim compensation under this Act.

*Note—*

See, however—

- (a) the *Geothermal Energy Act 2010*, sections 350A and 350B in relation to geothermal interests under that Act; and
  - (b) the *Greenhouse Gas Storage Act 2009*, sections 369A and 369B in relation to GHG interests under that Act; and
  - (c) the *Mineral Resources Act 1989*, sections 10AAA and 10AAB in relation to mining tenement interests under that Act; and
  - (d) the *Petroleum Act 1923*, sections 124A and 124B in relation to 1923 Act petroleum interests under that Act; and
  - (e) the *Petroleum and Gas (Production and Safety) Act 2004*, sections 30AA and 30AB in relation to petroleum interests under that Act.
- (5A) The amount of such compensation may be agreed upon between the constructing authority and the claimant subject, however, to the consent of any mortgagee of the land taken.
- (5B) Failing such agreement every such claim may be enforced against the constructing authority concerned under, subject to and in accordance with this Act and that constructing authority shall be liable accordingly.

- 
- (5C) Despite subsection (5), a person does not obtain a right to claim compensation under this Act in relation to an interest in land that is an interest under a services contract for the land.
- (6) Subject to section 11, publication of a gazette resumption notice is evidence that the following provisions have been complied with—
- (a) for land taken under division 3 in accordance with a resumption agreement—that division;
  - (b) otherwise—sections 7, 8 and 9.
- (7) Forthwith after the publication of the gazette resumption notice taking any land or of a gazette notice amending the same, the constructing authority shall serve upon every person who to its knowledge is entitled pursuant to section 18 to claim compensation or is a mortgagee of the land a copy of the notice.
- (8) The omission to serve upon any person such a copy shall not prejudice or affect in any way the operation and effect of the notice in question.
- (9) In this section—

*services contract*, for land, means a contract merely for the provision of services on, to, or in relation to, the land, but does not include a contract for the provision of services under which a person has a right to reside on any part of the land.

*Example of a services contract—*

a contract for the provision of a cleaning or maintenance service on premises

## **12A Constructing authority must lodge new plan of survey for particular land**

- (1) This section applies if—
- (a) land taken under this Act is part of—
    - (i) land subject to a building units plan registered under the *Building Units and Group Titles Act 1980*; or

- (ii) scheme land for a community titles scheme under the *Body Corporate and Community Management Act 1997*; and
  - (b) the taking of the land affects the integrity of a boundary of a lot or common property shown on a plan registered under the *Building Units and Group Titles Act 1980*, *Land Title Act 1994* or another Act for the land.
- (2) The constructing authority for the acquisition must lodge with the registrar of titles a plan of survey showing a new boundary for the lot or common property.

## **12B Particular land may be dedicated as road**

- (1) This section applies if land is taken under this Act for the purpose of roads.
- (2) The land may be dedicated as a road by recording a dedication notice for the land in the appropriate register under the *Land Act 1994* or the *Land Title Act 1994*.
- (3) If the registrar of titles receives a dedication notice for the land, the registrar must register the notice.
- (4) The registration of the dedication notice, without anything further, opens the road for the *Land Act 1994*.
- (5) In this section—  
*dedication notice*, for land, see the *Land Act 1994*, schedule 6.

## **13 Provision for taking particular additional land**

- (1) If—
  - (a) a constructing authority proposes to take, or has taken, part of any land; and
  - (b) the taking of the part (the *primary part*) will leave, or has left, a parcel of land (the *additional land*) that the constructing authority and the owner of the land

required to be taken or that was taken agree in writing is of no practical use or value to the owner;

the constructing authority also must take the additional land.

- (1A) The taking of the additional land mentioned in subsection (1) is taken to be for a purpose incidental to the carrying out of the purpose for which the primary part is to be, or was, taken.
- (2) If, by reason of the fact that a boundary of land proposed to be taken (the *primary land*) will sever the principal building erected on the land from which the primary land will be severed and of the circumstances of the case relevant thereto, it appears to the Governor in Council that it is desirable that the constructing authority should take additional land approved by the Governor in Council (also the *additional land*) being the whole or part of the land from which the primary land will be severed the additional land may be taken as prescribed by this Act and the taking of the additional land shall be deemed to be for a purpose incidental to the carrying out of the purpose for which the primary land is taken.
- (2A) The constructing authority may take the additional land mentioned in subsection (2) when the constructing authority takes the primary land or after the primary land has been taken.
- (3) A constructing authority may sell or otherwise deal with additional land taken by it under this section in such manner as it thinks fit and the power hereby conferred shall not be subject to the provisions of any other Act which purport to restrict or regulate the exercise by the constructing authority of its power to sell or otherwise deal with land or to the provisions of section 41.

## 14 Dealing with title to land affected by resumption

- (1) The registrar of titles may, by notice in writing, require a person who has in his or her possession, custody or control any instrument evidencing the title to the land taken by the constructing authority named in such notice, to deliver up to

the land registry, within the time specified in such notice, the instrument in question.

- (2) A person thereunto required by a notice under subsection (1), who fails to deliver up to the land registry the instrument specified in the notice within the time therein specified shall be guilty of an offence and liable to a penalty of 2 penalty units.
- (2A) Notwithstanding that such person has not been proceeded against for such offence, unless such failure is due to circumstances beyond the person's control, the person shall not be entitled to receive compensation or to be paid any advance or, in the case of a mortgagee, to be made any payment under this Act until the instrument in question is delivered to the land registry.
- (3) The costs and expenses in connection with the recording or registration of documents rendered necessary by the taking of the land shall be borne by the constructing authority.
- (4) Such costs and expenses may be taxed by the proper officer of the Supreme Court under the rules of that court.

## **Division 3            Taking by agreement**

### **Subdivision 1        Resumption agreements**

#### **15        Meaning of *resumption agreement***

- (1) A *resumption agreement* is an agreement, complying with subsection (3), for a constructing authority to take land under this Act entered into by the authority and 1 or more of the affected persons for the land.
- (2) An *affected person*, for land the subject of a resumption agreement, is each person who, to the constructing authority's knowledge—
  - (a) will be entitled to claim compensation under this Act in respect of the taking of the land; or

- (b) is a mortgagee of the land.
- (3) A resumption agreement must—
  - (a) be written; and
  - (b) be signed by each affected person who is a party to the agreement; and
  - (c) state—
    - (i) the particular purpose for which the land to be taken is to be taken; and
    - (ii) a description of the land in the way mentioned in section 7(3)(b); and
    - (iii) if the land is an easement—the rights and obligations to be conferred and imposed by the easement.
- (4) A resumption agreement may, in relation to the compensation for the taking of the land to be taken, for each affected person provide—
  - (a) for the compensation to the person; or
  - (b) that the amount of the compensation is to be fixed under part 4.
- (5) For subsection (4)(a), the compensation may include the benefit of an easement or another interest in land granted by the constructing authority over any land under the authority's control.

## **Subdivision 2      Process for taking**

### **15A      Application of sdiv 2**

This subdivision applies if a constructing authority has entered into a resumption agreement for particular land.

## **15B Limit on taking under sdiv 2**

The land may be taken under this subdivision only if, for every affected person for the land—

- (a) the person—
  - (i) is a party to the resumption agreement; or
  - (ii) is a party to another resumption agreement for a particular interest in the land; or
  - (iii) has given written consent to the land being taken in accordance with the resumption agreement; or
- (b) the person's interest in the land—
  - (i) has been taken under this Act; or
  - (ii) is taken under section 9 immediately before, or when, the land is taken under this subdivision.

## **15C Taking by Governor in Council**

- (1) The constructing authority may apply to the relevant Minister for the land to be taken under this section.
- (2) The application must be—
  - (a) made within 1 year after the date of the resumption agreement; and
  - (b) accompanied by—
    - (i) a copy of the resumption agreement; and
    - (ii) if the land is not identified in the resumption agreement in the way mentioned in section 7(3)(b)(i)—a copy of a plan of survey of the land certified by a cadastral surveyor as being accurate or a plan that is sufficient to substantially identify the land.
- (3) The relevant Minister may, by written notice, require the constructing authority to give the relevant Minister stated information relating to the application within a stated reasonable period.

- 
- (4) The relevant Minister must consider the application and any information given under subsection (3) to ensure the land—
    - (a) may be taken; and
    - (b) should be taken for the purpose for which it is proposed to be taken.
  - (5) The Governor in Council may, by gazette notice, declare that the land is taken for the purpose stated in the notice.

### **15D Taking by constructing authority**

- (1) The constructing authority may, by gazette notice, declare that the land is taken for the purpose stated in the notice, without making any application under section 15C.
- (2) However, the constructing authority may take the land for a multi-parcel purpose only if every other parcel of land required to be taken to carry out the multi-parcel purpose—
  - (a) has been taken under this Act; or
  - (b) is the subject of a resumption agreement entered into by the constructing authority; or
  - (c) is the subject of a notice of intention to resume for which the objection period has ended and no objections have been received.
- (3) Also, the constructing authority may act under subsection (1) to take the land only if the authority is satisfied the land—
  - (a) may be taken; and
  - (b) should be taken for the purpose for which it is proposed to be taken.

## **Subdivision 3 Miscellaneous**

### **15E When taking is effective**

A taking under this division is effective on the day the gazette resumption notice is published.

**15F Non-application of sections 7 to 9**

Sections 7 to 9 do not apply to the taking of land under this division.

**15G When constructing authority is taken to have discontinued resumption**

If a constructing authority has not made an application under section 15C or taken land under section 15D within 1 year after the date of a resumption agreement to which the authority is a party—

- (a) the authority is taken to have discontinued the resumption of the land the subject of the agreement; and
- (b) section 16 applies as if the authority had served each of the affected persons for the land with a notice of intention to resume.

**15H No limit on other acquisition of land**

This division does not limit the power of a constructing authority to acquire land in another way, including, for example, by purchasing it.

**Part 3 Discontinuance of taking of land**

**16 Discontinuance of resumption before publication of gazette resumption notice**

- (1) A constructing authority may at any time before the publication of the gazette resumption notice, serve upon every person who has been served with a notice of intention to resume a further notice stating that the constructing authority is discontinuing the resumption of the land concerned.
- (1A) Service of the further notice shall discontinue the resumption concerned and no person shall have any claim for

---

compensation or other right or remedy whatsoever against the constructing authority for any loss or damage alleged to have been occasioned (directly or indirectly) by the service of the notice of intention to resume or the discontinuance of the resumption except a claim for compensation for costs and expenses incurred by the person who was served with the notice and any actual damage done to the land concerned by the constructing authority.

- (1B) The constructing authority and the claimant may agree upon the amount of the compensation to be paid under subsection (1A) or, upon the reference of either of them, such amount may be determined by the Land Court.
- (1C) However, the constructing authority may have such costs and expenses taxed by the proper officer of the Supreme Court under the rules of that court and that no person shall be entitled to compensation in excess of the value of his or her estate or interest in the land.
- (2) For the purposes of this section, notwithstanding that notice under this section has not been served, the constructing authority shall be deemed to discontinue a resumption if the application prescribed by section 9(3) has not been made within the time prescribed by section 9(4).

## 17 Revocation before determination of compensation

- (1) If, at any time after the publication of the gazette resumption notice and before the amount of compensation to be paid in respect of the taking thereof is determined by the Land Court or the payment of compensation in respect of the taking is sooner made, it is found that the land or any part thereof is not required for the purpose for which it was taken, the Governor in Council or a gazetting authority, by gazette notice (the *revoking gazette notice*), may revoke the gazette resumption notice, in whole or in part.
- (1A) However, the revoking gazette notice shall not be made or published in the gazette unless the person entitled as owner to compensation in respect of the taking of the land has

previously agreed in writing to the revesting as provided by this section of the land or part to which that notice relates.

- (2) Upon the revocation wholly or otherwise by a revoking gazette notice of any gazette resumption notice—
- (a) the gazette resumption notice shall to the extent to which so revoked be deemed to be absolutely void as from the making thereof as if it had not been made; and
  - (b) without prejudice to the provisions of paragraph (a), the land or part thereof, as the case may be, to which the revoking gazette notice relates shall revert in the person in whom the same vested immediately prior to the day when it was taken by the constructing authority under the gazette resumption notice taking the land and, subject as hereinafter in this section provided, shall so revert for the person's then estate or interest therein; and
  - (c) the constructing authority shall cause a gazette copy of the revoking gazette notice to be lodged with the land registry, and the registrar of titles must as soon as may be thereafter, at the cost and expense of the constructing authority, do and execute all such acts, matters, and things as the registrar of titles shall consider necessary to give effect to this subsection.
- (2A) Subject to subsection (2)(a), for subsection (2)(b) the land or part shall so revert subject to all trusts, obligations, mortgages, encumbrances, charges, rates, contracts, claims, estates and interests of what kind soever subsisting therein or thereover immediately prior to the taking thereof, but so that no person shall be prejudiced by reason of the person having, in consequence of the gazette resumption notice taking the land in question and in the meantime, done or omitted to do any act or thing or failed to exercise any right in respect of any such trust, obligation, mortgage, encumbrance, charge, rate, contract, claim, estate, or interest and, without limiting the generality of the foregoing, so that the time allowed under any such trust, obligation, mortgage, encumbrance, charge, rate, contract, claim, estate, or interest for the doing of any act or the exercising of any right shall be deemed not to be

---

shortened by the period commencing on and including the date on which the land was taken and ending with and including the day immediately preceding the date on which the land or part was revested.

- (4) Any person entitled to claim compensation under this Act in respect of the taking of any land may, upon the revesting of such land or part thereof pursuant to this section, claim from the constructing authority compensation for the loss or damage and (if any) costs or expenses incurred by the person in consequence of the taking of the land and prior to its revesting.
- (5) The constructing authority and the claimant may agree upon the amount of the compensation to be paid under subsection (4), or they may agree that such amount be determined by the Land Court, in which case such amount shall, upon the reference of either of them, be determined by the Land Court as if the land had been taken and not revested and the claim were limited to the compensation payable under that subsection.

## **Part 4 Compensation**

### **18 By whom compensation may be claimed**

- (1) Subject to subsections (2), (3), (4A) and (5) compensation whereto a right is had under section 12 may be claimed from the constructing authority under, subject to and in accordance with the provisions of this part.
- (2) In the case of the inability or incapacity of any person entitled to claim, the claim may be made by the person's guardian, trustee or committee or, if there is no guardian, trustee or committee, the Public Trustee of Queensland.
- (3) Compensation shall not be claimable by or payable to a person who is lessee, tenant or licensee of any land taken if the constructing authority upon written application allows the person's estate or interest to continue uninterrupted.

- (3A) If a person's investment property is taken under this Act, compensation for costs mentioned in the definition *costs attributable to disturbance*, paragraphs (a) and (b), under section 20(5) is claimable by, and payable to, the person for the purchase of land by the person to replace the investment property.
- (4) Subsection (4A) applies to land under the *Land Title Act 1994*.
- (4A) Where, in respect of an estate or interest in the land taken which is not duly registered or notified in the land registry, a claimant makes a claim for compensation subsequent to the payment to another claimant of compensation in respect of a greater estate or interest in the land taken which included the unregistered or unnotified estate or interest pursuant to a claim made by such other claimant in or in connection with which the first mentioned claimant did not disclose in writing such unregistered or unnotified estate or interest, the claimant first mentioned in this subsection shall not be entitled to any compensation whatever from the constructing authority.
- (5) The claim for compensation of a trustee or trustees of any land in respect of the taking thereof shall be limited to the amount of actual damage caused to the trust by reason of the taking, and no such trustee shall have any other right, remedy, or claim whatsoever in respect of such taking against the Crown or any other person whomsoever and this Act and every other relevant Act or law or rule, practice, or process of law, or judgment of any court of competent jurisdiction, shall be read, construed and applied subject to this subsection.
- (6) For the purposes of a claim for compensation in respect of common property under and within the meaning of the *Building Units and Group Titles Act 1980*, the body corporate constituted under that Act by the proprietors within the meaning thereof of the units comprised in the building units plan concerned shall be deemed to be the owner of such common property.
- (7) Except by unanimous resolution of all proprietors such body corporate shall not agree upon the amount of compensation.

- 
- (8) Unless otherwise agreed by unanimous resolution of all proprietors, the amount of compensation shall be distributed among the proprietors in shares proportional to the unit entitlements of their respective units.
- (9) For a claim for compensation for common property for a community titles scheme, the body corporate for the scheme is taken to be the owner of the common property.
- (10) However—
- (a) the body corporate may agree on the amount of compensation only by resolution without dissent; and
  - (b) unless the body corporate agrees by resolution without dissent to a different distribution of the compensation, it must be distributed among the owners of lots in shares proportionate to the respective interest schedule lot entitlements of their lots.
- (11) In subsections (9) and (10), the following words have the meanings given by the *Body Corporate and Community Management Act 1997*—
- body corporate
  - common property
  - community titles scheme
  - interest schedule lot entitlement
  - lot
  - owner
  - resolution without dissent.
- (12) Subsection (13) applies to the proprietor of a lot in a building units plan under the *Building Units and Group Titles Act 1980*, or the owner of a lot in a community titles scheme under the *Body Corporate and Community Management Act 1997*, in relation to which a claim for compensation for common property mentioned in subsection (6) or (9) is made.
- (13) The making of the claim for compensation for the common property does not stop the proprietor or owner making a claim

for compensation for damage suffered by the proprietor or owner as a result of the taking of the common property and the effect of the taking on the proprietor's or owner's lot.

(14) In subsection (3A)—

*investment property*, of a person, means any land held by the person for investment purposes.

## 19 Claim for compensation

(1) A claim for compensation shall be in writing, shall be served upon the constructing authority, shall state in full the name and address of the claimant, shall be signed by the claimant, and shall contain or be accompanied by each of the following—

- (a) a description of the land taken and a statement of the area thereof;
- (b) a statement of the nature and particulars of the claimant's estate or interest in the land taken;
- (c) a statement (which, in the case of the owner, shall be verified by statutory declaration) as to whether or not the claimant's estate or interest in the land taken is subject to any trust, obligation, mortgage, lease, agreement to lease, charge, rate, contract, claim or other estate or interest whatsoever and, if so, the nature and particulars of those of the aforesaid to which the estate or interest is subject;
- (d) an itemised statement of the claim, showing the nature and particulars of each item and the amount claimed in respect thereof;
- (e) the total amount of compensation claimed.

(2) Where the estate or interest of the claimant is not registered or notified in the land registry, the claim shall be accompanied by proof of title to the estate or interest claimed, which proof shall include copies of or abstracts from all documents (if any) necessary to establish in law the estate or interest.

- (3) A claim for compensation may be served on the constructing authority only within 3 years after the day the land was taken.
- (4) Despite subsection (3), the constructing authority may accept, and deal with, a claim for compensation served by the claimant more than 3 years after the day the land was taken if the constructing authority is satisfied it is reasonable in all the circumstances to do so.
- (5) If the constructing authority does not accept a claim served by the claimant more than 3 years after the day the land was taken, the claimant may apply to the Land Court to decide whether it is reasonable in all the circumstances for the constructing authority to accept the claim.
- (6) If the Land Court decides it is reasonable in all the circumstances for the constructing authority to accept the claim, the constructing authority must accept, and deal with, the claim under this Act.
- (7) If the constructing authority accepts and deals with a claim for compensation served by the claimant more than 3 years after the day the land was taken, the Land Court must take into account the late service of the claim in deciding any amount of interest payable under section 28 in relation to the claim.

## **20 Assessment of compensation**

- (1) In assessing the compensation to be paid, regard shall in every case be had not only to the value of land taken but also—
  - (a) to the damage, if any, caused by any of the following—
    - (i) the severing of the land taken from other land of the claimant;
    - (ii) the exercise of any statutory powers by the constructing authority otherwise injuriously affecting the claimant's other land mentioned in subparagraph (i); and
  - (b) to the claimant's costs attributable to disturbance.

*Note—*

See, however—

- (a) the *Geothermal Energy Act 2010*, section 350D in relation to geothermal interests under that Act; and
  - (b) the *Greenhouse Gas Storage Act 2009*, section 369D in relation to GHG interests under that Act; and
  - (c) the *Mineral Resources Act 1989*, section 10AAD in relation to mining tenement interests under that Act; and
  - (d) the *Petroleum Act 1923*, section 124C in relation to 1923 Act petroleum interests under that Act; and
  - (e) the *Petroleum and Gas (Production and Safety) Act 2004*, section 30AD in relation to petroleum interests under that Act.
- (2) Compensation shall be assessed according to the value of the estate or interest of the claimant in the land taken on the date when it was taken.
- (2A) However, in assessing the compensation, a contract, licence, agreement or other arrangement (a *relevant instrument*) entered into in relation to the land after the notice of intention to resume was served on the claimant must not be taken into consideration if the relevant instrument was entered into for the sole or dominant purpose of enabling the claimant or another person to obtain compensation for an interest in the land created under the instrument.
- (3) In assessing the compensation to be paid, there shall be taken into consideration, by way of set-off or abatement, any enhancement of the value of the interest of the claimant in any land adjoining the land taken or severed therefrom by the carrying out of the works or purpose for which the land is taken.
- (4) But in no case shall subsection (3) operate so as to require any payment to be made by the claimant in consideration of such enhancement of value.
- (5) In this section—  
*costs attributable to disturbance*, in relation to the taking of land, means all or any of the following—

- (a) legal costs and valuation or other professional fees reasonably incurred by the claimant in relation to the preparation and filing of the claimant's claim for compensation;
- (b) the following costs relating to the purchase of land by a claimant to replace the land taken—
  - (i) stamp duty reasonably incurred or that might reasonably be incurred by the claimant, but not more than the amount of stamp duty that would be incurred for the purchase of land of equivalent value to the land taken;
  - (ii) financial costs reasonably incurred or that might reasonably be incurred by the claimant in relation to the discharge of a mortgage and the execution of a new mortgage, but not more than the amount that would be incurred if the new mortgage secured the repayment of the balance owing in relation to the discharged mortgage;
  - (iii) legal costs reasonably incurred by the claimant;
  - (iv) other financial costs, other than any taxation liability, reasonably incurred by the claimant;
- (c) removal and storage costs reasonably incurred by the claimant in relocating from the land taken;
- (d) costs reasonably incurred by the claimant to connect to any services or utilities on relocating from the land taken;
- (e) other financial costs that are reasonably incurred or that might reasonably be incurred by the claimant, relating to the use of the land taken, as a direct and natural consequence of the taking of the land;
- (f) an amount reasonably attributed to the loss of profits resulting from interruption to the claimant's business that is a direct and natural consequence of the taking of the land;

- (g) other economic losses and costs reasonably incurred by the claimant that are a direct and natural consequence of the taking of the land.

*Example of costs for paragraph (g)—*

cost of school uniforms for children enrolled in a new school because of relocation from the land taken

## **21 Grant of easement etc. or transfer of land in satisfaction of compensation**

- (1) The constructing authority and the claimant may agree that the constructing authority will grant the claimant, in satisfaction wholly or partly of the claimant's claim for compensation, any easement, right of way, lease or other right of occupation, or any other right, privilege or concession in, upon, over or under the land taken or any other land the property of the constructing authority.
- (1A) Also, the constructing authority and the claimant may agree that the constructing authority will transfer land held in fee simple by the constructing authority to the claimant in satisfaction wholly or partly of the claimant's claim for compensation.
- (2) In such cases the parties may agree that the extent to which the grant or transfer shall satisfy the claim for compensation shall be determined by the Land Court, and the jurisdiction of the Land Court to determine the compensation shall include jurisdiction to determine the extent of such satisfaction.

## **22 Crown grant in satisfaction of compensation**

- (1) Where the Crown is the constructing authority, and the claimant agrees, the Governor in Council may grant in fee simple or demise for any lesser estate or interest to the claimant, in satisfaction wholly or partly of the claim for compensation, any unallocated State land.
- (2) For the purposes of subsection (1), the relevant Minister, other than the State Development Minister, may close a road that traverses or adjoins land owned by the claimant, and the

---

Governor in Council may grant the land in the road to the claimant.

## **23 Advance against compensation**

- (1) A claimant for compensation may at any time after the date on which the claimant delivered to the constructing authority his or her claim for compensation in accordance with the requirements of section 19, apply to the constructing authority to make to the claimant an advance not exceeding the amount prescribed by subsection (3) in respect of the compensation claimable by the claimant.
- (2) Subject to being satisfied that the applicant is entitled to claim compensation and to subsection (3) the constructing authority shall make to the applicant the advance applied for by the applicant in respect of the compensation claimed by the applicant.
- (3) The amount of an advance under this section shall not exceed—
  - (a) where the constructing authority has made to the claimant an offer in writing of an amount of compensation in settlement of the claimant's claim—that amount; or
  - (b) where the constructing authority has not made the offer mentioned in paragraph (a)—an amount equal to its estimate of the amount of compensation payable to the claimant.
- (4) Subject to subsections (5) and (6), any amount payable to a claimant under this section which is not paid within 90 days after the claimant applied for the payment shall be recoverable by the claimant as a debt due and unpaid to the claimant by the constructing authority.
- (5) Before paying the advance the constructing authority may require the claimant to satisfy it regarding taxes, rates and other moneys which, if unpaid, would be a charge upon the land, and may reduce the advance by any sum which, in respect of any thereof, is unpaid or, as respects any period of

time prior to the date when the land was taken, will become payable.

- (6) Where the land concerned is subject to a mortgage at the date when it is taken the constructing authority may reduce the advance by the sum due to the mortgagee.
- (7) The constructing authority may pay to the Crown or to the local government concerned or to the mortgagee any sum by which the advance has been reduced under subsection (5) or (6).

## **24 Reference of claim for compensation to Land Court**

- (1) Subject to this section either the constructing authority or the claimant may refer to the Land Court for hearing and determination the matter of the amount of the compensation.
- (2) If the amount of the compensation has not been sooner agreed upon, the claimant may so refer that matter at any time after the date upon which the claimant delivered to the constructing authority a claim for compensation in accordance with the requirements of section 19.
- (2A) The claimant shall make the reference by filing in the office of the registrar of the Land Court copies of the claim delivered by the claimant to the constructing authority and of the notice of intention to resume and a gazette copy of the gazette resumption notice taking the land.
- (3) The claimant shall not amend the claim filed by the claimant in the office of the registrar of the Land Court except upon leave granted by that court (which leave the court may grant upon such terms as it deems just, including terms with respect to the payment of costs).
- (4) Upon the application of the constructing authority, the Land Court may order the claimant to file in the office of the registrar of the Land Court such further or other particulars with respect to the claim for compensation as, having regard to the provisions of section 19, the court deems fit.

- (4A) A claimant who fails to comply with such an order within the time specified therein shall be deemed not to have referred to the Land Court the claim in question.
- (5) If the amount of the compensation has not been sooner agreed upon and—
- (a) if the claimant has not sooner delivered to it a claim for compensation substantially in accordance with the requirements of section 19, the constructing authority may so refer the matter at any time after the expiration of the period of 3 months next following the date of the gazette containing the gazette resumption notice taking the land; or
  - (b) if the claimant has delivered to the constructing authority a claim for compensation, the constructing authority may so refer that matter at any time after the expiration of the period of 3 months next following the date of the gazette containing the gazette resumption notice taking the land, unless the reference has been sooner made by the claimant.
- (6) The constructing authority shall make the reference in the manner prescribed by subsection (2A) save that if the claimant has not delivered to the constructing authority a claim for compensation substantially in accordance with section 19, then in the stead of a copy of the claim the constructing authority shall file a document containing or accompanied by all of the particulars required to be contained in or to accompany the claim so far as those particulars are known to it but, in relation to paragraphs (d) and (e), stating amounts which it is willing to pay.

## **25 Reference to Land Court by constructing authority**

- (1) Where the constructing authority makes a reference mentioned in section 24, the Land Court upon application in that behalf made by the constructing authority, shall order that the claimant may enter an appearance on the reference on or before the date fixed by the order.

- (2) A claimant may appear on the reference by filing in the office of the registrar of the Land Court, on or before the date fixed by the order, a claim for compensation in accordance with the requirements of section 19, and thereupon section 24(3) and (4) shall apply and the matter of the amount of compensation shall be heard and determined as if the reference had been made in the first instance by the claimant.
- (2A) However, an order as provided for by section 24(4) may be made in respect of such appearance and, if the claimant fails to comply with such order within the time therein specified, the claimant shall be deemed to have failed to enter an appearance on the reference.
- (3) A claimant who fails to enter an appearance on a reference made by the constructing authority shall not be entitled to appear or to be heard by the Land Court upon the hearing of the reference save by leave of such court (which leave the court may grant upon such terms as it deems just, including terms with respect to the payment of costs).
- (4) In the case of a reference made by the constructing authority, the Land Court may hear and determine the matter of the amount of compensation in the absence of the claimant where the claimant fails to enter an appearance on or before the date fixed by order of the court or where, having so entered an appearance or having leave to appear, the claimant fails to appear at the hearing.
- (5) Where the reference has been made by the claimant in the first instance, the Land Court may hear and determine the matter of compensation in the absence of the claimant if the claimant fails to appear at the hearing.

## **26 Jurisdiction relating to compensation**

- (1) The Land Court has jurisdiction to hear and determine all matters relating to compensation under this Act.
- (3) The decision (whether of the Land Court constituted by a single member or, as the case may be, the Land Appeal Court) shall be in writing and the registrar of the Land Court shall

---

transmit the decision to the registrar of the Supreme Court, who shall cause the same to be filed in the registry of the latter court.

- (4) The decision—
  - (a) shall be final as regards the amount of compensation awarded; and
  - (b) unless the amount shall have been paid into the Supreme Court pursuant to section 29, shall be final for all purposes and have the effect of a judgment of the Supreme Court and may be enforced accordingly.
- (5) Where, pursuant to section 29, the amount of compensation awarded is paid into the Supreme Court the decision shall not be final as regards the right or title of the claimant or any other person whomsoever to be paid that amount or any part thereof.

## **26A Jurisdiction about recovery of advance against compensation**

- (1) This section applies if, in relation to land taken—
  - (a) a constructing authority advances an amount to a claimant under section 23; and
  - (b) the Land Court later decides an amount of compensation payable to the claimant that is less than the amount mentioned in paragraph (a).
- (2) The amount (the *outstanding amount*) that is the difference between the following amounts is an amount owing to the constructing authority by the claimant—
  - (a) the amount mentioned in subsection (1)(a);
  - (b) the total of the amount of compensation decided by the Land Court and any interest payable on that amount to the claimant.
- (3) The Land Court has jurisdiction to make an order that the outstanding amount be paid by the claimant to the constructing authority.

- (4) The Land Court may make an order under subsection (3) at any time after it decides the amount of compensation.
- (5) The Land Court may order the claimant to pay interest on the outstanding amount for all or any part of the period—
  - (a) starting on the day the amount mentioned in subsection (1)(a) was advanced to the claimant; and
  - (b) ending at the beginning of the day the claimant pays the outstanding amount to the constructing authority.
- (6) Interest mentioned in subsection (5) is payable by the claimant—
  - (a) at the rate stated in the order that the Land Court considers appropriate; and
  - (b) when the outstanding amount is payable.
- (7) An order under subsection (3) may be enforced as if it were an order made by the Supreme Court.

## **27 Costs**

- (1) Subject to this section, the costs of and incidental to the hearing and determination by the Land Court of a claim for compensation under this Act shall be in the discretion of that court.
- (2) If the amount of compensation as determined is the amount finally claimed by the claimant in the proceedings or is nearer to that amount than to the amount of the valuation finally put in evidence by the constructing authority, costs (if any) shall be awarded to the claimant, otherwise costs (if any) shall be awarded to the constructing authority.
- (3) Subsection (2) does not apply to any appeal in respect of the decision of the Land Court or to costs awarded pursuant to section 24(3) or section 25(3).

---

## **28 Interest**

- (1) Subject to subsection (2), in respect of the period or any part of the period commenced on and including the date on and from which any land is taken and ending on and including the day immediately preceding the date on which payment of compensation is made the Land Court or, upon appeal, the Land Appeal Court may order that interest be paid upon the amount of compensation determined by it.
- (1A) Such interest shall be at such rate per centum per annum as the Land Court or, upon appeal, the Land Appeal Court, deeming reasonable, fixes by the order.
- (1B) Interest so ordered to be paid shall be payable as if it were part of the compensation in question and shall be added to the amount thereof and be payable by the constructing authority accordingly.
- (2) Interest shall not be payable in respect of any amount of compensation advanced under section 23.

## **29 Where right to compensation is questioned**

- (1) Where the title by reason whereof compensation is claimed under this Act comes in question—
  - (a) in the Land Court or, upon appeal, the Land Appeal Court during the hearing and determination of the claim for compensation; or
  - (b) during negotiations between the constructing authority and the claimant;nevertheless the said court shall have power to determine or, as the case may be, the constructing authority and the claimant may agree upon the amount of the compensation to be paid.
- (1A) In such case the constructing authority shall pay the amount of compensation determined or agreed upon into the Supreme Court.

- (2) Where subsequent to the date when compensation has been determined or agreed upon, but before the constructing authority has paid the compensation to the claimant, the title by reason whereof the compensation was claimed under this Act comes in question to the knowledge of the constructing authority, it shall pay the amount of the compensation into the Supreme Court.
- (3) A constructing authority may pay into the Supreme Court the amount of any compensation under this Act where—
  - (a) the person to whom the amount is payable fails or refuses to accept payment thereof; or
  - (b) the constructing authority is unable for any reason whatsoever to make to the claimant payment of the amount or to obtain from the claimant a good and sufficient discharge for such payment.
- (4) The payment pursuant to a provision of this section of any amount of compensation into the Supreme Court shall discharge in full the liability of the constructing authority to pay that amount pursuant to the determination or agreement by virtue whereof it became payable.
- (5) Upon application in that behalf the Supreme Court or a judge thereof may order that any money paid into that court pursuant to a provision of this section or part thereof shall be paid to or applied for the benefit of such person as the said court or judge finds to be entitled thereto.
- (6) The said court or judge may subject such order to such terms and conditions as the court or judge deems just and may, at the court's or judge's discretion, order any party to the application to pay to any other party thereto such costs as the court or judge deems just.

### **30 Limited interests**

- (1) Where compensation is determined or agreed to be paid to any claimant in respect of a partial or qualified interest held by the claimant in the land taken and such person is not entitled to sell or dispose of such interest—

- (a) the constructing authority shall pay the amount of the compensation into the Supreme Court; and
- (b) the Supreme Court or a judge may upon application in that behalf order that the amount on any part thereof shall be applied to any 1 or more of the following purposes, that is to say—
  - (i) the discharge of any debt or encumbrance affecting the land, or affecting any land settled therewith, or to the same or like uses, trusts, or purposes;
  - (ii) the purchase of other land to be conveyed, limited, and settled upon or for the like uses, trusts, or purposes;
  - (iii) removing or replacing any buildings on the land, or substituting others in their stead;
  - (iv) the purchase of such securities as the Supreme Court or judge may direct, to be settled in the same manner as the land;
  - (v) in payment to any parties becoming absolutely entitled thereto, or, in case of their disability or incapacity, to their respective guardians, trustees, or committees (or if there is no guardian, trustee or committee, to the Public Trustee of Queensland), as the case may be.
- (2) The costs of and incidental to any application under this section shall be in the discretion of the Supreme Court or judge.
- (3) Nothing in this section shall be deemed to prevent any person who has a partial or other qualified interest in land to which interest the person is solely entitled, and which the person may absolutely sell or dispose of, from receiving any compensation awarded to the person in respect of such interest, or which has been agreed to be paid to the person.

### **31 Powers of Supreme Court in respect of building units**

Where the whole of the land comprised in a building units plan registered under the *Building Units and Group Titles Act 1980*, is taken under this Act, the Supreme Court of Queensland shall have and may exercise in relation to the building shown in such building units plan such jurisdiction under that Act as it would have were such building destroyed for the purpose of that Act on and by such taking.

### **31A Powers of District Court for community titles scheme**

- (1) This section applies if—
  - (a) the whole of the scheme land for a community titles scheme under the *Body Corporate and Community Management Act 1997* is taken under this Act; and
  - (b) the scheme land includes at least 1 lot that is, under the *Land Title Act 1994*—
    - (i) a lot on a building format plan of subdivision; or
    - (ii) a lot on a volumetric format plan of subdivision, and wholly contained within a building.
- (2) The District Court may exercise, in relation to any building forming part of the scheme land, the jurisdiction it would have under the *Body Corporate and Community Management Act 1997* on the destruction of the building.

### **32 Mortgages**

- (1) Where the land taken is subject to a mortgage at the date when it is taken, upon application by the mortgagee—
  - (a) the Land Court or, upon appeal, the Land Appeal Court shall order that payment be made to the mortgagee of; or
  - (b) if the compensation is agreed upon, the constructing authority shall pay to the mortgagee;so much of the amount of the compensation as does not exceed the sum due to the mortgagee.

- 
- (2) Payment shall not be made to a mortgagee under this section—
- (a) in priority to any other claimant, save the mortgagor, unless the mortgagee would, if the land had been sold on the date when it was taken, have been entitled to such priority; or
  - (b) in priority to any taxes, rates or other moneys charged upon the land taken in favour of the Crown or any local government.
- (3) For the purposes of this section the sum due to the mortgagee includes interest payable under the mortgage up to the date of payment or the last day of any period in respect whereof interest upon the amount of compensation has been ordered to be paid pursuant to section 28, whichever is the earlier.

### **33 Rent-charge or annuity**

- (1) If the land in respect of which compensation is determined or has been agreed to be paid is subject to a rent-charge or annuity, the Land Court or, upon appeal, the Land Appeal Court shall, upon application by the person entitled to such rent-charge or annuity, determine what part of such compensation shall be paid to the person so entitled in redemption thereof.
- (2) If the land is part of land subject to a rent-charge or annuity, the Land Court or, upon appeal, the Land Appeal Court upon the like application shall determine what part of such rent-charge or annuity shall be redeemed, and what part of such compensation shall be paid in the redemption thereof, so that the remaining part of the land subject to the rent-charge or annuity shall be as good security as theretofore for the part thereof remaining unredeemed.

### **34 Where part only of land subject to rent is taken**

If the land in respect of which compensation is determined or has been agreed to be paid is part of land in respect of which

any rent is payable, the Land Court or, upon appeal, the Land Appeal Court shall, upon application by the person liable to pay rent, determine what part of such rent shall cease to be payable, so that the rent ceasing to be payable shall bear the same proportion to the whole rent as the value of the land in respect of which compensation is determined or agreed to be paid bears to the value of the whole of the land.

### **35 Taxes, rates and charges**

Any amount due and unpaid as at the date of the taking of the land of any taxes, rates or other moneys charged upon the land taken in favour of the Crown or any local government shall be a charge upon the compensation payable under this Act to a claimant who is legally liable for payment thereof, and the constructing authority may deduct from such compensation and pay to the Crown or local government concerned any such amount.

## **Part 5 General**

### **36 Powers of entry etc.**

- (1) For the purposes of this Act any member, officer, employee, contractor or agent of the constructing authority or any person authorised by it in that behalf may exercise any of the following powers—
  - (a) enter upon any land, for the purpose of making any inspection, valuation, survey or taking levels;
  - (b) affix or set up thereon trigonometrical stations, survey pegs, marks, or poles, and from time to time alter, remove, inspect, reinstate and repair the same;
  - (c) dig and bore into the land so as to ascertain the nature of the soil, and set out the lines of any works thereon;
  - (d) do all things necessary for the purposes aforesaid.
- (2) The power to enter upon any land includes power to—

- (a) re-enter from time to time; and
  - (b) remain upon that land for such time as is necessary to achieve the purpose of the entry; and
  - (c) take such assistants, vehicles, materials, equipment or things as are necessary to achieve the purpose of the entry.
- (3) When practicable, not less than 7 days notice in writing shall be given to the occupier or, if there is no occupier, the owner of the land of the intention to enter thereon, and the authority under which the person entering claims to enter or has entered shall, if required by such owner or occupier, be produced and shown.
- (4) Every person who—
- (a) without due authority, destroys, mutilates, defaces, takes away, or alters the position of any trigonometrical station, survey peg, mark, or pole fixed or set up by any person under the authority of this section; or
  - (b) wilfully obstructs or attempts to obstruct any person acting under the authority of this section;
- shall be guilty of an offence against this Act and liable to a penalty not exceeding 4 penalty units.
- (5) The constructing authority shall be liable for compensation for the actual damage (if any), done to the land by reason of the exercise of any power conferred by this section.
- (6) Subsection (5) applies subject to section 37(4).
- (7) Compensation pursuant to subsection (5) may be claimed and agreed upon or determined as prescribed by section 37(3) and (5).

### **36A Minister may act for Crown as constructing authority**

The Minister is authorised and required to exercise such powers, perform such functions and take such steps as are permitted or required by this Act for the purpose of taking land on behalf of the Crown as a constructing authority.

### **36B Delegation by Minister**

- (1) The Minister may delegate the Minister's functions under this Act to an appropriately qualified officer or employee of the department.
- (2) However, the Minister can not delegate the Minister's functions under section 9 in relation to an application for the taking of land if an objection was received in response to a notice of intention to resume for the land.
- (3) A delegation of a function may permit the subdelegation of the function to an appropriately qualified officer or employee of the department.
- (4) In this section—

*appropriately qualified*, for a function, means having the qualifications, experience or standing to perform the function.

*Example of standing for an officer of a department—*

the officer's classification or level in the department

*department*, for a delegation of the Minister's functions, means the department administered by the Minister.

*functions* includes powers.

*Minister* includes a relevant Minister, other than the State Development Minister.

### **37 Temporary occupation of land**

- (1) The constructing authority may temporarily occupy and use any land for the purpose of constructing, maintaining or repairing any works, and may exercise any of the following powers—
  - (a) take therefrom stone, gravel, earth, and other material;
  - (b) deposit thereon any material;
  - (c) form and use temporary roads thereon;
  - (d) manufacture bricks or other materials thereon;

- (e) erect workshops, sheds, and other buildings of a temporary nature thereon.
- (2) The constructing authority or the person having the charge of the works shall, before occupying or using any land as herein provided, and except in the case of accident requiring immediate repair, give to the occupier or, if there is no occupier, the owner thereof not less than 7 days notice in writing, and shall state in such notice the use proposed to be made of the land and an approximate period during which such use is expected to continue.
- (3) The owner of the land or any other person having any estate or interest in the land may, at any time during such occupation or within 3 months thereafter, give notice in writing to the constructing authority that the owner claims compensation, and, subject to giving such notice, if the land is not taken the owner and all such other persons may recover under this Act compensation for all damage done, but not in the case of the owner or any such other person exceeding the compensation which would have been payable to him or her had the land been taken.
- (4) No compensation shall be payable for any act or thing done under this section, the right or authority to exercise which is reserved by any Act, or by any regulation, Crown grant, or other instrument, except to the extent therein mentioned, notwithstanding that the terms and conditions imposed by such Act, regulation, grant, or instrument have not been performed.
- (5) The constructing authority and the claimant may agree upon the amount of compensation to be paid under this section or they may agree that such amount be determined by the Land Court, in which case such amount shall, upon the reference of either of them, be determined by the Land Court as if the land had been taken and the claim were limited to the compensation recoverable under this section.

### **38 Refusal to give up land**

- (1) If the owner or occupier of any land taken or occupied under this Act, or any other person, refuses to give up possession thereof, or obstructs the constructing authority or any person appointed in writing by it, the constructing authority may issue its warrant to the sheriff to deliver possession of the same to the person appointed in the warrant to receive possession, and on receipt of the warrant the sheriff shall deliver possession of such land accordingly.
- (2) The costs of the issue and execution of the warrant, to be settled by the sheriff, shall be paid by the person in default, and may be deducted from any compensation payable to the person, or the same or any balance may be levied by distress and sale of the goods and chattels of such person.

### **39 Service of documents**

- (1) Any notice or other document required by this Act to be served on any person may be served on such person personally or by post.
  - (1A) If such person is absent from the State the document may be served on the person's agent in like manner.
  - (1B) If such person is not known or has no known agent in the State, the document shall be served by the publication of the same, or a true abstract thereof, in the gazette and in some newspaper circulating generally in the locality where the land affected is situated.
- (2) A document may be served on the constructing authority by being sent by post to the constructing authority at its office or to the office of such person as the constructing authority authorises by public notice to receive documents on its behalf.

### **40 Offences**

All offences against this Act or the regulations may be prosecuted in a summary way under the *Justices Act 1886*.

---

## 41 Disposal of land

(1) Notwithstanding any provision of any other Act, where land has been taken either pursuant to an agreement under part 2, division 3 or by compulsory process under this Act and, within 7 years after the date of taking, the constructing authority no longer requires the land, then the constructing authority shall offer the land for sale to the former owner at a price determined by the valuer-general under the *Land Valuation Act 2010*.

(1A) Unless sooner accepted by the former owner the offer shall lapse at the expiration of 28 days after it is made.

(2) In this section—

**Minister** includes a relevant Minister, other than the State Development Minister.

**the former owner** in relation to land means—

(a) where only 1 person had an interest in the land at the date of acquisition and that person is still alive or, in the case of a corporation, in existence—that person; or

(b) in any other case—such person or persons (if any) as the Minister, in the Minister's absolute discretion, having regard to the interest that existed in the land at the date of acquisition, considers to be fairly entitled to the benefit of this section.

(3) A person contracting or otherwise dealing with the constructing authority is not concerned to inquire whether the requirements of this section have been complied with, and the title of such a person to land acquired from the constructing authority is not affected by any failure to comply with those requirements.

## 42 Regulation-making power

(1) The Governor in Council may from time to time make regulations not inconsistent with this Act providing for all or any purposes, whether general or to meet particular cases, that

[s 43]

---

may be necessary or convenient for the administration of this Act or for carrying out the objects and purposes of this Act.

- (2) A regulation may be made prescribing a penalty, but not exceeding in any case 1 penalty unit, for any contravention of or failure to comply with that or any other regulation.
- (3) A regulation may be made about fees payable under this Act.

### **43 Publication of notices**

Every notice given under this Act takes effect from the day of its publication.

## **Part 6 Transitional and other provisions**

### **Division 1 Provision for Acquisition of Land Amendment Act 1999**

#### **44 Validating and transitional provisions for the Acquisition of Land Amendment Act 1999**

- (1) This section applies if—
  - (a) for the taking of land, a constructing authority made an application for the taking of the land under section 9(4) or section 15(3A) before the commencement of this section; and
  - (b) the application was not accompanied by a copy of a plan of survey mentioned in section 9(4)(b) or section 15(3B) but was accompanied by a plan sufficient to substantially identify the land; and
  - (c) the land was taken.
- (2) The constructing authority is taken to have complied with section 9(4)(b) or section 15(3B).

- 
- (3) The taking of the land is and always was valid whether or not the action required of the Governor in Council to consider the application under section 9(6) or section 15 was followed.
  - (4) In this Act a reference to a gazette resumption notice includes, if the context permits, a reference to—
    - (a) for a constructing authority—a proclamation published in the gazette under section 9(6) or 15(6)(a); or
    - (b) for Brisbane City Council or an approved local government—a notification published in the gazette under section 10(2) or 15(6)(b).
  - (5) A reference to a section in subsections (2), (3) and (4) is a reference to the section as it was before the commencement of the *Acquisition of Land Amendment Act 1999*.

## **Division 2                      Provision for Transport and Other Legislation Amendment Act 2005**

### **45            Transitional provision for taking of land by Brisbane City Council and other local governments**

- (1) This section applies if, before the commencement, Brisbane City Council or another local government had—
  - (a) under section 7, served a notice of intention to resume for land on a person; but
  - (b) a notification of resumption for the land had not been published in the gazette.
- (2) After the commencement—
  - (a) Brisbane City Council or the other local government may continue to take the land as if the *Transport and Other Legislation Amendment Act 2005*, part 2 had not been enacted; and
  - (b) this Act applies to the taking of the land as if the *Transport and Other Legislation Amendment Act 2005*, part 2 had not been enacted.

(3) In this section—

*commencement* means the commencement of this section.

*notification of resumption* means a notice published in the gazette under section 10(2) as in force before the commencement.

### **Division 3                    Provisions for Acquisition of Land and Other Legislation Amendment Act 2009**

#### **46            Making claims for compensation**

Section 19(3) to (6) does not apply in relation to a claim for compensation for land taken by a constructing authority before the commencement of this section.

#### **47            Recovery of advance against compensation**

Section 26A does not apply in relation to land taken by a constructing authority before the commencement of this section if, before the commencement, a proceeding for the recovery of an amount of an advance made under section 23 for the land has started.

### **Division 4                    Provisions for Land, Water and Other Legislation Amendment Act 2013**

#### **48            Definitions for div 4**

In this division—

*commencement* means the commencement of the provision in which the word appears.

*previous*, for a provision of this Act, means the provision as in force immediately before the commencement.

---

#### **49 Applications under previous section 9(2)**

- (1) This section applies if—
  - (a) before the commencement, a constructing authority applied to the Minister for land to be taken under previous section 9(2); and
  - (b) on the commencement, the land the subject of the application had not been taken under this Act.
- (2) Section 9, as in force immediately after the commencement, applies to the application.
- (3) In this section—

*Minister* see previous section 9(1).

#### **50 Agreements for taking under previous section 15(1)**

- (1) This section applies if—
  - (a) before the commencement, a constructing authority had entered an agreement to take land under previous section 15(1); and
  - (b) on the commencement, the land the subject of the agreement had not been taken under this Act.
- (2) Part 2, division 3 applies to the agreement.

#### **51 Delegations by Minister**

- (1) This section applies to a delegation of a Minister made under a previous delegation provision and in effect immediately before the commencement.
- (2) The delegation has effect from the commencement as it were a delegation under section 36B.
- (3) In this section—

*previous delegation provision* means section 11(5) or 36B as in force immediately before the commencement.

## **Division 5**                      **Validation provisions for Environmental Protection and Other Legislation Amendment Act 2020**

### **52**            **Validation provision relating to purposes for which land may be taken**

Schedule 1, part 2, as amended by the *Environmental Protection and Other Legislation Amendment Act 2020*, applies, and is taken to have applied, from the commencement of the *Building and Other Legislation Amendment Act 2009*, part 12.

*Note—*

The *Building and Other Legislation Amendment Act 2009*, part 12 commenced on 19 November 2009.

### **53**            **Validation of taking of particular land**

- (1) This section applies if, before the commencement, land was taken under this Act for a purpose that included the conservation of koalas on land in a ‘Regional Landscape and Rural Protection Area’.
- (2) The taking of the land is, and is taken to have always been, as valid as it would have been if the land had been taken under this Act for a purpose that included the conservation of koalas on land in a ‘Regional Landscape and Rural Production Area’.
- (3) Anything done, or omitted to be done, in relation to the taking of the land is, and is taken to have always been, as valid as it would have been if the land had been taken under this Act for a purpose that included the conservation of koalas on land in a ‘Regional Landscape and Rural Production Area’.

### **54**            **Validation of particular notices of intention to resume and resumption agreements**

- (1) This section applies if, before the commencement—
  - (a) a constructing authority—

- (i) served on a person a notice of intention to resume for land that stated a purpose for which the land was to be taken included the conservation of koalas on land in a 'Regional Landscape and Rural Protection Area'; or
    - (ii) entered into a resumption agreement for land that stated a purpose for which the land was to be taken included the conservation of koalas on land in a 'Regional Landscape and Rural Protection Area'; and
  - (b) a gazette resumption notice for the land was not published.
- (2) After the commencement, the constructing authority may continue to take the land as if the notice of intention to resume or resumption agreement stated, and had always stated, a purpose for which the land was to be taken included the conservation of koalas on land in a 'Regional Landscape and Rural Production Area'.
- (3) Anything done, or omitted to be done, in relation to the notice of intention to resume or resumption agreement is, and is taken to have always been, as valid as it would have been if the notice of intention to resume or resumption agreement had stated a purpose for which the land was to be taken included the conservation of koalas on land in a 'Regional Landscape and Rural Production Area'.

## **Schedule 1      Purposes for taking land**

section 5

### **Part 1                      Purposes relating to    transportation**

- aviation and related purposes
- beacons
- bridges
- docks
- dockyards
- ferries
- harbours and harbour works
- jetties
- landing places
- lighthouses
- locks
- parking of vehicles
- railways and related purposes
- roads
- tramways
- weighbridges
- wharves



- TAFE Queensland established under the *TAFE Queensland Act 2013*
- universities or other higher education institutions
- other educational establishments

## **Part 4**                      **Purposes relating to health services**

- ambulance services
- health facilities, including health centres, community health centres and health clinics
- hospitals and services related to the operation of hospitals
- community residential facilities, including boarding houses, refuges, aged care facilities and facilities for people with a disability, social disadvantage or mental illness

## **Part 5**                      **Purposes relating to natural resources**

- gravel and sand pits
- quarries

## **Part 6**                      **Purposes relating to recreation**

- beaches
- botanical or other gardens
- gymnasiums
- markets
- parks

- public meetings
- public music
- racecourses
- recreation grounds
- showgrounds
- swimming pools

## **Part 7**                      **Purposes relating to water**

- aqueducts
- bore drains
- bores
- canals
- dams, weirs or other works for the conservation or reticulation of water
- drainage
- flood gates or flood warnings
- flood prevention or flood mitigation
- fords
- pumps
- quays
- reservoirs
- wells

## **Part 8**                      **Purposes relating to primary production**

- experimental farms

- forestry (including afforestation, silviculture, protection of forests and forest products, harvesting, transporting, milling, preparing, treating or marketing forest products, access to or for the purposes of forests, acquisition of forests and forest products and related purposes)

## **Part 9**                      **Purposes relating to law enforcement**

- corrective service facilities under the *Corrective Services Act 2006*
- detention centres and other places for the purposes of the *Youth Justice Act 1992*
- police
- watch houses

## **Part 10**                      **Purposes relating to urban planning**

- civic centres or squares
- setting apart, subdividing, resubdividing, reclaiming, alienating, taking up, occupying or leasing any unallocated State land, or dealing with unallocated State land in any way in which it may be dealt with under the *Land Act 1994* (whether in carrying out the purposes for which the land is taken, the land is dealt with separately or in conjunction with any adjacent or other unallocated State land)

## **Part 11**                      **Purposes relating to sanitation**

- septic tanks
- sewage farms and disposal works and depots

- sewerage
- sewers
- waste management facilities, including refuse tips and refuse transfer stations

## **Part 12**                      **Purposes relating to works, construction and facilities**

- buildings
- caravan parks
- cemeteries or crematories
- departmental and official purposes
- electrical works
- fire stations
- pounds
- works for the conservation of hydraulic or other power
- works for any public works, or other work or purpose of a similar nature
- works for the construction or erection of any public or other works that the constructing authority is authorised under any Act or resolution of Parliament to construct or erect, or for the purposes of any Act

## **Part 13**                      **Purposes relating to non-profit or not-for-profit organisations**

- non-profit or not-for-profit organisations, including a charity, charitable institution, public benevolent institution, charitable fund and income tax exempt fund

## **Part 14**                      **Other purposes**

- any purpose declared under a regulation to be a purpose for which land may be taken under this Act

---

## Schedule 2      Dictionary

### section 2

***affected person***, for land the subject of a resumption agreement, see section 15(2).

***cadastral surveyor*** means a person registered as a cadastral surveyor under the *Surveyors Act 2003*.

***chief executive*** means the chief executive of the department.

***chief executive (surveys)*** means the chief executive of the department in which the *Surveyors Act 2003* is administered.

***compulsory acquisition Act*** see the *Native Title (Queensland) Act 1993*, section 144(4).

***constructing authority*** means—

- (a) the State; or
- (b) a local government; or
- (c) a person authorised by an Act to take land for any purpose.

***gazette resumption notice*** means a gazette notice mentioned in section 9(6) or (7), 15C(5) or 15D(1).

***gazetting authority***, for a gazette resumption notice, means—

- (a) if the gazette resumption notice was made by the Governor in Council—the relevant Minister to whom the application was made under section 9(1) or 15C(1) for the land, the subject of the gazette resumption notice, to be taken; or
- (b) if the gazette resumption notice was made by a relevant Minister under section 9(7)—the relevant Minister; or
- (c) if the gazette resumption notice was made by a constructing authority under section 15D(1)—the constructing authority.

**land** means land, or any estate or interest in land, that is held in fee simple, including fee simple in trust under the *Land Act 1994*, but does not include a freeholding lease under that Act.

**multi-parcel purpose** see section 3(1).

**non-native title right or interest** means any right or interest included in non-native title rights and interests.

**non-native title rights and interests** has the same meaning as it has in the *Native Title (Queensland) Act 1993*.

**notice of intention to resume** see section 7(1).

**objection period**, for a notice of intention to resume, means the period—

- (a) starting when the notice is served on the person to whom it is directed; and
- (b) ending on the day specified in the notice as the day by which an objection to the taking of the land may be made.

**relevant Minister** means—

- (a) for land to be taken for a purpose of the *State Development and Public Works Organisation Act 1971*, the State Development Minister; and
- (b) for land to be taken for a purpose of the *Transport Infrastructure Act 1994*, the Minister administering that Act; and
- (ba) for land to be taken for a purpose of the *Cross River Rail Delivery Authority Act 2016*, the Minister administering that Act; and
- (c) if the Governor in Council has, by gazette notice, declared land to be taken for a purpose of another Act—the Minister administering the other Act; and
- (d) otherwise—the Minister administering this Act.

**resource interest** means—

- (a) a geothermal interest under the *Geothermal Energy Act 2010*; or

- 
- (b) a GHG interest under the *Greenhouse Gas Storage Act 2009*; or
  - (c) a mining tenement interest under the *Mineral Resources Act 1989*; or
  - (d) a 1923 Act petroleum interest under the *Petroleum Act 1923*; or
  - (e) a petroleum interest under the *Petroleum and Gas (Production and Safety) Act 2004*.

**resource interest compensation provision**, for a resource interest, means—

- (a) for a geothermal interest under the *Geothermal Energy Act 2010*—section 350D of that Act; or
- (b) for a GHG interest under the *Greenhouse Gas Storage Act 2009*—section 369D of that Act; or
- (c) for a mining tenement interest under the *Mineral Resources Act 1989*—section 10AAD of that Act; or
- (d) for a 1923 Act petroleum interest under the *Petroleum Act 1923*—section 124C of that Act; or
- (e) for a petroleum interest under the *Petroleum and Gas (Production and Safety) Act 2004*—section 30AD of that Act.

**resumption agreement** see section 15(1).

**State Development Minister** means the Minister administering the *State Development and Public Works Organisation Act 1971*.