



Australian Capital Territory

Lands Acquisition Act 1994 No 42

Republication No 2

Republication date: 11 January 2002

Last amendment made by Act 2001 No 44

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Lands Acquisition Act 1994* as in force on 11 January 2002. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
12 September 2001



Australian Capital Territory

Lands Acquisition Act 1994

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Australian Capital Territory

Lands Acquisition Act 1994

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

Part 1 Preliminary

1 Short title

This Act may be cited as the *Lands Acquisition Act 1994*.

3 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

acquiring authority means—

- (a) the Executive; or
- (b) a Territory authority; or
- (c) a utility.

authorised person—see section 4.

authority does not include—

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

dispose includes grant or create.

interest, in relation to land, means—

- (a) any legal or equitable estate or interest in the land; or
- (b) a restriction on the use of the land, whether or not annexed to other land; or

- (c) any other right (including a right under an option and a right of redemption), charge, power or privilege over or in connection with the land or an interest in the land;

and includes the interest of the Territory, a State or another Territory in land.

land means Territory land.

mortgage means a security over an interest in land securing the payment or repayment of money.

mortgagee, in relation to a mortgage, means the person who is or was entitled to receive payment or repayment of the money secured by the mortgage.

mortgage interest means the interest in land of a mortgagee under a mortgage.

mortgagor, in relation to a mortgage, means the person who is or was the owner of the interest in land subject to the mortgage.

newspaper means a newspaper published and circulating in the ACT.

planning instrument means an instrument made under a Territory or Commonwealth law that relates to town planning or use of land.

pre-acquisition declaration means a declaration under section 19 (1).

public park means land that, under a Territory law, is dedicated or reserved, or is vested in trustees, as a public park or national park or otherwise for the purposes of public recreation.

public purpose means a purpose in respect of which the Legislative Assembly or the Commonwealth Parliament has power to make laws.

Territory authority means an authority that is incorporated under a Territory law, not being a body that is declared by the regulations to be an exempt authority.

trust account means the trust account referred to in section 104A.

utility—see the *Utilities Act 2000*, dictionary.

4 Meaning of *authorised person*

- (1) A person is an *authorised person* for a provision of this Act if—
 - (a) the Executive has, by writing, authorised the person to act under the provision; or
 - (b) the Executive has, by writing, authorised the holder or occupier of a particular office or position to act under the provision and the person holds or occupies, or is performing the duties of, the office or position.
- (2) For the compulsory acquisition of land by a utility under the *Utilities Act 2000*, section 104, an authorised person for the utility under that Act is also an *authorised person* for this Act.

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

8 Power to occupy land temporarily

- (1) Where an acquiring authority holds an interest in land (the *authority land*), an authorised person may, with such other persons as are reasonably necessary, enter upon other land (the *neighbouring land*) being land within a distance of 500m from the nearest boundary of the authority land, and may temporarily occupy the neighbouring land for so long as is reasonably necessary for the purposes of any works connected with the carrying out of a public purpose.
- (2) Subsection (1) does not apply to neighbouring land—
 - (a) that is a garden, orchard or plantation attached to, or belonging to, a house; or
 - (b) that is a park, planted walk or avenue or ground ornamentally planted; or
 - (c) that is less than 500m from a dwelling house of the occupier of the neighbouring land.

9 Powers in relation to land temporarily occupied

- (1) While land is temporarily occupied under section 8, an authorised person may, in connection with the carrying out of a public purpose—
 - (a) construct, build or place any plant, machinery, equipment or goods on the land; and
 - (b) take from, or deposit on, the land sand, clay, stone, earth, gravel, timber, wood or other materials or goods; and

- (c) make roads, cuttings or excavations on the land; and
 - (d) erect buildings (including workshops and sheds) of a temporary character on the land; and
 - (e) manufacture or work materials of any kind on the land.
- (2) The power to take sand, clay, stone, earth or gravel is not exercisable in respect of a quarry, brick pit or other like place worked or used for getting materials for the purpose of sale.
- (3) An authorised person shall not exercise powers under subsection (1) so as to—
- (a) close, divert or narrow, or break the surface of, a road; or
 - (b) alter the position of any water, sewerage or gas main or pipe; or
 - (c) alter the position of any electricity or telecommunications cable or wire;

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

10 Obligations in relation to exercise of powers

An authorised person exercising powers under this part shall—

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

- (d) leave the land, as nearly as practicable, in the condition in which it was immediately before it was occupied.

11 Order to enforce exercise of powers

- (1) Where—
 - (a) an authorised person is entitled to exercise powers under this part in relation to land; and
 - (b) another person (the *obstructing person*) has hindered or obstructed, is hindering or obstructing, or proposes to hinder or obstruct the authorised person in the exercise of any of those powers;

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

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

12 Exercise of powers not acquisition of interest in land

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

Part 3 Acquisition of interests

13 Modes of acquisition

An interest in land may be acquired under this Act—

- (a) by agreement under section 32; or
- (b) by compulsory process under section 33.

14 Nature of interests that may be acquired

- (1) The interests that may be acquired under this Act are—
 - (a) a legal or equitable estate or interest in land; and
 - (b) any other right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with, land or an interest in land.
- (2) Those interests include—
 - (a) an interest of the Territory, a State or another Territory in land; and
 - (b) an interest that did not previously exist in relation to particular land; and
 - (c) a restriction on the use of the land, whether or not annexed to particular land.

15 Authorities with limited powers

Nothing in this Act gives to an authority a power that the authority does not otherwise have.

16 Steps in acquisition by agreement

- (1) The principal steps in an acquisition under this Act by agreement are—

- (a) the making of a pre-acquisition declaration under part 4; and
 - (b) any reconsideration of the pre-acquisition declaration under part 4; and
 - (c) the authorisation of the acquisition under section 32; and
 - (d) the making of the agreement under part 5; and
 - (e) the taking of actions required by the agreement to complete the acquisition.
- (2) The making of a pre-acquisition declaration is not required if—
- (a) the interest to be acquired is owned by another acquiring authority; or
 - (b) a certificate has been given under section 21.

17 Steps in acquisition by compulsory process

- (1) The principal steps in an acquisition by compulsory process are—
- (a) the making of a pre-acquisition declaration under part 4; and
 - (b) any reconsideration of the pre-acquisition declaration under part 4; and
 - (c) the making of an acquisition declaration under part 5.
- (2) The making of a pre-acquisition declaration is not required if a certificate has been given under section 21.

18 Acquisitions to be in accordance with Act

- (1) Subject to subsections (2) and (3), an acquiring authority shall not acquire an interest in land otherwise than in accordance with this Act unless—
- (a) the regulations provide that this Act does not apply in relation to the acquisition, by the acquiring authority, of interests in land in specified circumstances and the acquisition is an acquisition in those circumstances; or

- (b) the acquisition is authorised by a Territory law (including a law passed or made after the commencement of this part) and that law, or another Territory law, expressly provides that the firstmentioned law has effect despite anything contained in this Act; or
 - (c) the acquisition is effected by a Territory law; or
 - (d) the acquisition is effected by an agreement made when there was no pre-acquisition declaration or certificate under section 21 in force relating to the acquisition.
- (2) Nothing in this Act prevents the benefit of a restriction on the use of land becoming vested in an authority by the operation of a law other than this Act.
- (3) This Act does not apply in respect of the withdrawal by the Executive from a lease of Territory land of all or part of the land comprised in the lease where the withdrawal is made in accordance with the provisions of the lease.

Part 4 Pre-acquisition procedures

Division 4.1 Pre-acquisition declarations

19 Declaration that land suitable for acquisition

- (1) The Executive may declare in writing that it is considering the acquisition by an acquiring authority of an interest in land (other than a mortgage interest) for a public purpose.
- (2) The declaration shall identify the acquiring authority, the land, the interest in the land and the public purpose.
- (3) Except where the interest is a restriction on the use of land, the Executive shall include in the declaration—
 - (a) a statement that the land appears to the Executive to be suitable for use, or for development for use, for a public purpose; and
 - (b) a statement setting out—
 - (i) particulars of the use to which the land will be put or for which it will be developed; and
 - (ii) the reasons why the land appears to be suitable for that use or for development for that use.
- (4) Where the interest is a restriction on the use of land, the Executive shall include in the declaration—
 - (a) a statement that it appears to the Executive to be appropriate for the acquiring authority to be given, for a public purpose, the benefit of the restriction on the use of the land; and
 - (b) a statement—
 - (i) explaining the nature of the restriction; and
 - (ii) setting out the reasons why it is appropriate for the acquiring authority to be given the benefit of the restriction.

- (5) The Executive may include in the declaration a statement that the proposed use of the land, or the proposed restriction on the use of the land, as the case may be, is connected with the implementation of a policy particulars of which are set out in the declaration.
- (6) The Executive shall give a copy of the declaration to each person who is registered under the *Land Titles Act 1925* as the owner of an interest in the land affected by the declaration together with—
- (a) a sketch showing the location of the land to which the declaration relates; and
 - (b) a statement setting out a summary of the principal rights conferred by this Act on persons whose interests in land are affected by a pre-acquisition declaration.
- (7) If documents referred to in subsection (6) are required to be given to 2 or more persons, the Executive shall, as far as practicable, ensure that the documents are given to the persons at or about the same time.
- (8) The declaration ceases to be in force if—
- (a) the interest is acquired under this Act; or
 - (b) the declaration is revoked; or
 - (c) the declaration ceases to have effect because of section 22, 25 or 35 (2).
- (9) For this Act, an interest in land shall be taken to be affected by the declaration only if—
- (a) the interest is the same as, includes or is included in, the interest in land specified in the declaration (the ***declaration interest***); or
 - (b) the interest is some other interest in land that, if the declaration interest were acquired by compulsory process, would be in whole or in part divested, extinguished or diminished because of section 33 (5) (b).

20 Publication of pre-acquisition declarations

- (1) As soon as practicable after making a pre-acquisition declaration, the Executive must—
 - (a) publish a copy of the declaration in a daily newspaper; and
 - (b) give a copy of the declaration to the registrar-general.
- (2) A pre-acquisition declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

21 Acquisitions where land required urgently etc

- (1) Where, in relation to the proposed acquisition of an interest in land by an acquiring authority, the Executive is satisfied that—
 - (a) there is an urgent necessity for the acquisition and it would be contrary to the public interest for the acquisition to be delayed by the need for the making, and the possible reconsideration, of a pre-acquisition declaration; or
 - (b) to require the making of a pre-acquisition declaration in respect of the proposed acquisition would result in a disclosure of information that would be prejudicial to the Territory;the Executive may certify in writing that it is so satisfied.
- (2) The certificate may include such information relating to the proposed acquisition as the Executive considers appropriate.
- (3) If the Executive gives a certificate, the interest may be acquired by the acquiring authority without the preparation of a pre-acquisition declaration.
- (4) The Executive shall—
 - (a) cause a copy of the certificate to be laid before the Legislative Assembly within 5 sitting days of the Assembly after the giving of the certificate; and

- (b) as soon as practicable, cause a copy of the certificate to be served on each person whom the Executive believes, after diligent inquiry, to be a person affected by the certificate.
- (5) A certificate is a notifiable instrument.
- Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (6) The Executive may also publish a copy of the certificate in a daily newspaper.
- (7) The certificate ceases to be in force if—
- (a) the interest is acquired under this Act; or
 - (b) the certificate is revoked.
- (8) For this Act, a person shall be taken to be affected by the certificate only if—
- (a) the person is registered under the *Land Titles Act 1925* as the owner of an interest in land to which the certificate relates (the ***certificate interest***); or
 - (b) the person is an owner of some other interest in land that, if the certificate interest were acquired by compulsory process, would be in whole or in part divested, extinguished or diminished because of section 33 (5) (b).

22 Effect of s 21 certificate on pre-acquisition declaration

Where, after a pre-acquisition declaration has been made, the Executive gives a certificate under section 21 in relation to the same interest in land, the pre-acquisition declaration immediately ceases to have effect.

Division 4.2 Reconsideration of pre-acquisition declaration

23 Application for reconsideration of pre-acquisition of declaration

- (1) A person affected by a pre-acquisition declaration may apply to the Executive for a reconsideration of the declaration.
- (2) An application—
 - (a) shall be in writing; and
 - (b) shall set out the reasons for the application.
- (3) Subject to subsection (4), an application shall be made—
 - (a) if section 19 (6) required that a copy of the declaration be given to the person—within 28 days after the day on which the copy was given to the person; or
 - (b) in any other case—within 28 days after the first day on which the Executive has complied with the requirements of sections 19 (6) and 20 in relation to the declaration.
- (4) The Executive may, by writing and before the end of the period within which the person would otherwise be required to make an application, agree to an extension of that period.

24 Reconsideration of pre-acquisition declaration

- (1) Where the Executive receives an application for reconsideration of a pre-acquisition declaration, it shall, within 28 days after receiving the application—
 - (a) reconsider the application having regard to the reasons specified in the application and any other relevant matters; and
 - (b) by instrument in writing—
 - (i) confirm the declaration; or

- (ii) revoke the declaration; or
 - (iii) vary the declaration.
- (2) The Executive shall not vary the declaration in such a way that an interest in land that was not previously an interest affected (within the meaning of section 19 (9)) by the declaration becomes an interest so affected.
- (3) The Executive's decision shall include a statement of the reasons for the decision to confirm, revoke or vary the declaration.
- (4) The person who made the application may, by writing and before the end of the period of 28 days referred to in subsection (1), agree to an extension of that period.

25 Notification of confirmation of pre-acquisition declaration etc

- (1) An instrument under section 24 (1) that confirms or varies a pre-acquisition declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The *Legislation Act 2001*, chapter 7 (Presentation, amendment and disallowance of subordinate laws and disallowable instruments) applies to the instrument as if each reference in that chapter to 6 sitting days were a reference to 3 sitting days.
- (3) If the instrument is taken to be repealed under the *Legislation Act 2001*, chapter 7, the Executive must give written notice to everyone to whom a copy of the declaration was given under this part.
- (4) A notice under subsection (3) is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

Division 4.3 Miscellaneous

26 Meaning of *authorising document* in div 4.3

In this division:

authorising document means a pre-acquisition declaration or a certificate under section 21.

27 Correction of mistakes in authorising documents

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

28 Consequences of variation of authorising documents

Where, under section 27 or division 4.2, the Executive varies an authorising document, the following provisions have effect:

- (a) anything done in relation to the document before its variation shall be deemed to have been done in relation to the document as varied;
- (b) the Executive shall cause a copy of the document, clearly showing the variation, to be given to—
 - (i) each person to whom a copy of the original document was given in accordance with a requirement of this part; and
 - (ii) any other person whom the Executive has reason to believe to be a person affected by the document as varied.

29 Notification of confirmation or revocation of authorising documents

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

30 Registration of authorising documents

- (1) As soon as practicable, and, in any event, within 7 working days, after an authorising document is made or given, or is varied or revoked, the chief executive shall cause to be lodged with the registrar-general a memorandum setting out particulars of the document, or of the variation or revocation, as the case may be.
- (2) The registrar-general shall make such entries in the records kept by him or her as he or she thinks appropriate.
- (3) In this section:

working day means a day other than a Saturday, a Sunday or a public holiday.

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

- (1) Where a copy of an authorising document has been given to a person (the *owner*) in accordance with this part, the owner shall not, at a time when the document is in force, enter into any agreement with another person in respect of the owner's interest in the land to which the document relates without first disclosing to the other person the existence of the document.
- (2) If the owner enters into an agreement with another person without making a disclosure as required by subsection (1)—
 - (a) the other person is entitled, by notice in writing given to the owner, to rescind or terminate the agreement; and
 - (b) if the other person has suffered loss or damage because of the failure to make the disclosure—the owner is liable to pay the amount of the loss or damage to the other person.
- (3) The rights conferred by subsection (2) are in addition to, and not in derogation of, any other right or remedy under Territory law.

Part 5 Acquisition procedures

32 Acquisition by agreement

- (1) The Executive may authorise the acquisition under this Act by agreement of an interest in land other than land in a public park, by an acquiring authority for a public purpose.
- (2) The acquiring authority may then enter into an agreement for the acquisition of the interest if—
 - (a) a pre-acquisition declaration in relation to the acquisition has become absolute and is in force; or
 - (b) the Executive has given a certificate under section 21 in respect of the acquisition; or
 - (c) the interest is owned by the Territory or a Territory authority.
- (3) The Executive shall cause to be laid before the Legislative Assembly, within 15 sitting days of the Assembly after the agreement is entered into, a statement describing—
 - (a) the interest; and
 - (b) the situation of the land; and
 - (c) the price at which the interest is being, or has been, acquired; and
 - (d) the public purpose for which the interest is being, or has been, acquired.
- (4) Failure to comply with subsection (3) in relation to an acquisition does not invalidate the acquisition.

33 Acquisition by compulsory process

- (1) If, in relation to the acquisition of an interest in land by an acquiring authority—

- (a) a pre-acquisition declaration has become absolute and is in force; or
 - (b) a certificate has been given under section 21;
- the Executive may declare, in writing, that the interest is acquired by the acquiring authority by compulsory process.
- (2) The declaration shall—
 - (a) identify the land concerned; and
 - (b) specify the public purpose for which the interest is being acquired.
 - (3) The declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.
 - (4) The Executive must also publish a copy of the declaration in a daily newspaper.
 - (5) On the notification of the declaration under the *Legislation Act 2001*, the interest is, by force of this section—
 - (a) vested in the acquiring authority; and
 - (b) freed and discharged from all other interests and from all trusts, restrictions, dedications, reservations, obligations, mortgages, encumbrances, contracts, licences, charges and rates.
 - (6) Where, because of subsection (5) (b), another interest in the land is, in whole or in part, divested, extinguished or diminished, that other interest shall, to that extent, be taken, for this Act, to have been acquired by compulsory process.
 - (7) For this Act, a person shall be taken to be affected by the declaration if—
 - (a) the person is an owner of the interest identified in the declaration; or

- (b) the person is an owner of some other interest in the land that, because of subsection (5) (b), is divested, extinguished or diminished.

34 When pre-acquisition declaration becomes absolute

- (1) Where—
 - (a) a pre-acquisition declaration is in force; and
 - (b) the requirements of sections 19 (6), 20, 28, 29 and 30 (1) have been complied with in relation to the declaration; and
 - (c) the requirements of the *Legislation Act 2001* (as affected by section 25 (2) of this Act) have been complied with in relation to the declaration;

the declaration becomes absolute in accordance with this section.

- (2) If no application for reconsideration has been made, the declaration becomes absolute at the end of 28 days after the last day on which such an application could have been made.
- (3) If, because of 1 or more applications for reconsideration, the declaration has been confirmed or varied by an instrument under section 24 (1) (Reconsideration of pre-acquisition declaration), then, unless the instrument is disallowed by the Legislative Assembly, the declaration (as confirmed or varied) becomes absolute on the day after the last day when the instrument could have been disallowed by the Legislative Assembly.

35 Notice requiring acquisition

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

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

- (2) If the interest is not acquired by an acquiring authority within 3 months after the giving of the notice, the declaration ceases to have effect at the end of that period.
- (3) The person may, in writing and before the end of the period referred to in subsection (2), agree to an extension of that period.

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

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

37 Entry into possession by acquiring authority

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

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

- (2) If the Executive is satisfied that it is essential that the acquiring authority enter into possession of the land or part of the land urgently, the Executive may give to the occupier written notice—
 - (a) stating its reasons for being so satisfied; and
 - (b) fixing the date on which the person is to vacate the land or part of the land, as the case may be.

- (3) The person to whom the notice is given ceases to be entitled to remain in occupation of the land, or the part of the land, as the case may be, on the day fixed by the notice.
- (4) The terms and conditions (including any amount payable in respect of occupation on and after the date of acquisition) on which the person remains in occupation of the land are the terms and conditions agreed upon by the Executive and the person or, if they cannot agree, the terms and conditions as determined by the Executive and set out in a notice given to the occupier.
- (5) A notice under subsection (2) or (4) shall set out the reasons for the Executive's decision.
- (6) Application may be made to the administrative appeals tribunal for review of a decision of the Executive under subsection (4).
- (7) Where a right conferred by subsection (1) expires, nothing in this section precludes the making of an agreement between the occupier and the acquiring authority regarding the further occupation of the land by the occupier.

38 Notification of compulsory acquisition declarations

The Executive shall, within 14 days after notification under the *Legislation Act 2001* of a declaration under section 33, cause to be given to each person whom the Executive believes, after diligent inquiry, to be a person affected (within the meaning of section 33 (7)) by the declaration the following documents:

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

- (c) a compensation claim form approved under section 118 (Approved forms) for section 56 (Claims for compensation).

39 Effect of acquisition of mortgage interest on rights of mortgagee

Where a mortgage interest is acquired by compulsory process, the mortgagee retains, in respect of so much of the mortgage debt as is not discharged by section 57, any rights and remedies that the mortgagee may have—

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

40 Correction of compulsory acquisition declarations

- (1) The Executive may, in writing, vary a declaration under section 33 (1) for the purpose of correcting a clerical error, or an obvious mistake, in the declaration.
- (2) A variation is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

- (3) Where the Executive varies a declaration, the following provisions have effect:
 - (a) if the declaration has been notified under the *Legislation Act 2001*—this part has effect as if the declaration had been notified as varied;
 - (b) the Executive shall cause a copy of the declaration, clearly showing the variation, to be given to—
 - (i) each person to whom a copy of the original declaration was given in accordance with section 38; and
 - (ii) any other person whom the Executive has reason to believe to be a person affected (within the meaning of section 33 (7)) by the declaration as varied.

41 Registration of compulsory acquisition declarations

- (1) As soon as practicable, and, in any event, within 28 days, after the notification under the *Legislation Act 2001* of a declaration under section 33 (1) (Acquisition by compulsory process) or a variation under section 40 (1) (Correction of compulsory acquisition declarations), the chief executive shall cause to be lodged with the registrar-general a memorandum setting out particulars of the declaration, or of the variation, as the case may be.
- (2) The registrar-general may—
 - (a) deal with and give effect to the declaration as if it were a grant, conveyance, or transfer of the acquired interest to the acquiring authority duly executed under the law in force in the ACT; and
 - (b) make such entries in the records kept by the registrar-general as are necessary having regard to the effect of section 33 (5).

Part 6 Compensation for compulsory acquisition of interests in land

Division 6.1 Entitlement to compensation

42 Entitlement to compensation

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

43 Mortgagees may waive rights in respect of mortgage interests

- (1) The mortgagee under a mortgage may, by written notice given to the Executive, waive the mortgagee's right to any compensation under this Act in respect of the acquisition of a mortgage interest.
- (2) The Executive may, by written notice given to a mortgagee from whom a mortgage interest has, or may have been, acquired by compulsory process, require the mortgagee, at his or her option—
 - (a) to make a claim under division 6.4; or
 - (b) to waive the right to compensation.
- (3) If a mortgagee does not, within 30 days after a notice is given to the mortgagee or such further period as the Executive, by writing, allows, make a claim for compensation, the mortgagee shall be deemed to have waived the right to compensation in respect of the acquisition of the mortgage interest.
- (4) A mortgagee who waives the right to compensation in respect of the acquisition of a mortgage interest—
 - (a) is debarred from recovering any compensation from the Executive, the Territory or the Commonwealth in respect of the acquisition; but

- (b) retains, in respect of the mortgage debt, any rights and remedies that the mortgagee may have—
 - (i) against the mortgagor; or
 - (ii) in respect of any interest in land that is still subject to the mortgage.

Division 6.2 Amount of compensation—interests other than mortgage interests

44 Division 6.2 does not apply in relation to acquisition of mortgage interests

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

45 Amount of compensation—general principles

- (1) The amount of compensation to which a person is entitled under this part in respect of the acquisition of an interest in land is such amount as, having regard to all relevant matters, will justly compensate the person for the acquisition.
- (2) In assessing the amount of compensation to which the person is entitled, regard shall be had to all relevant matters, including—
 - (a) except in a case to which paragraph (b) applies—
 - (i) the market value of the interest on the day of the acquisition; and
 - (ii) the value, on the day of the acquisition, of any financial advantage, additional to market value, to the person incidental to the person's ownership of the interest; and
 - (iii) any reduction in the market value of any other interest in land held by the person that is caused by the severance by

the acquisition of the acquired interest from the other interest; and

- (iv) where the acquisition has the effect of severing the acquired interest from another interest—any increase or decrease in the market value of the interest still held by the person resulting from the nature of, or the carrying out of, the purpose for which the acquired interest was acquired; and

(b) if—

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

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

- (c) any loss, injury or damage suffered, or expense reasonably incurred, by the person that was, having regard to all relevant considerations, including any circumstances peculiar to the person, suffered or incurred by the person as a direct, natural and reasonable consequence of—
 - (i) the acquisition of the interest; or
 - (ii) the making or giving of the pre-acquisition declaration or certificate under section 21 in relation to the acquisition of the interest;

other than any such loss, injury, damage or expense in respect of which compensation is payable under part 7; and

- (d) subject to section 50, if the interest is limited as to time or may be terminated by another person—the likelihood of the continuation or renewal of the interest and the likely terms and conditions on which any continuation or renewal would be granted; and

- (e) any legal or other professional costs reasonably incurred by the person in relation to the acquisition, including the costs of—
 - (i) obtaining advice in relation to the acquisition, the entitlement of the person to compensation or the amount of compensation; and
 - (ii) executing, producing or surrendering such documents, and making out and providing such abstracts and attested copies, as the chief executive or a person authorised under the *Government Solicitor Act 1989*, section 5 (4) requires.

46 Meaning of *market value* in div 6.2

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

47 Special provision where market value determined on basis of potential of land

Where the market value of an interest in land acquired by compulsory process is assessed upon the basis that the land had potential to be used for a purpose other than the purpose for which it was used at the time of acquisition, compensation shall not be allowed in respect of any loss or damage that would necessarily have been suffered, or expense that would necessarily have been incurred, in realising that potential.

48 No general market for interest acquired

- (1) This section applies where—
 - (a) an interest in land (the *old land*) is acquired from a person by compulsory process; and

-
- (b) immediately before the acquisition, the person was using the old land, or intended to use the old land, for a purpose other than the carrying on of a business; and
- (c) but for the acquisition, the land would have been, or would have continued to be, used for that purpose; and
- (d) at the time of the acquisition, there was no general demand or market for land used for that purpose; and
- (e) the person has acquired, or intends to acquire, another interest in other land (the *new land*) in substitution for the acquired interest and intends to use the new land for the same purpose.
- (2) The market value of the acquired interest on the day of acquisition shall be taken to be the greater of—
- (a) the amount that, apart from this section, would be the market value (if any) of that interest on that day; and
- (b) the net acquisition cost, in relation to the interest in the new land.
- (3) The net acquisition cost, in relation to the interest in the new land, is the amount calculated in accordance with the formula:

$$CA + E - FI$$

where:

CA means the amount of the cost, or the likely cost, to the person of the acquisition of the interest in the new land.

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

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

49 Interest affected by planning restriction

- (1) This section applies where—
 - (a) an interest in land is acquired from a person by compulsory process; and
 - (b) immediately before the acquisition, a planning instrument was in force having the effect of limiting or restricting the permissible use of the land to use for a purpose of a public nature; and
 - (c) the planning instrument was made to meet the needs of an acquiring authority; and
 - (d) the planning instrument was not in force in relation to the land at the time the person acquired the interest.
- (2) In determining the amount of compensation to which the person is entitled in respect of the acquisition of the interest—
 - (a) the limitation or restriction on the use of the land imposed by the planning instrument shall be disregarded; and
 - (b) it shall be assumed that the land was subject only to such limitations and restrictions as would have been likely if there had been no proposal to limit or restrict the use of the land to use for the purpose permitted by the planning instrument; and
 - (c) the amount of any compensation paid or payable to the person in consequence of the planning instrument shall be deducted from the compensation to which the person would otherwise be entitled.

50 Matters to be disregarded in assessing compensation

- (1) In assessing compensation, there shall be disregarded—
 - (a) any special suitability or adaptability of the relevant land for a purpose for which it could only be used pursuant to a power conferred by or under law, or for which it could only be used by a government or public authority; and

- (b) any increase in the value of the land caused by its use in a manner, or for a purpose, contrary to law; and
- (c) any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the purpose for which the interest was acquired; and
- (d) any increase in the value of the land caused by the carrying out, after a copy of the pre-acquisition declaration or certificate under section 21 in relation to the acquisition of the interest was given to the person, of any improvements to the land, unless the improvements were carried out with the written approval of the Minister; and
- (e) in the case of an acquisition of land the subject of a rural lease that was granted for a term less than 21 years—the possibility of a further lease being granted in respect of the land under the *Land (Planning and Environment) Act 1991* (the **Land Act**), section 171A.

(2) In this section:

rural lease means a lease of Territory land granted, or taken to be granted, under the Land Act for rural purposes or purposes including rural purposes.

51 Acquisition of dwelling

- (1) This section applies where—
 - (a) an interest in land is acquired from a person by compulsory process; and
 - (b) the interest entitled the person to occupy a dwelling on the land; and
 - (c) immediately before the acquisition the person was occupying the dwelling as his or her principal place of residence; and

- (d) because of the acquisition, the person has ceased to be entitled to occupy the dwelling as his or her principal place of residence.
- (2) The amount of compensation to which the person is entitled in respect of the acquisition is the sum of \$15 000 (or that amount as indexed by section 105) and the greater of the following amounts:
 - (a) the amount of compensation to which the person would, apart from this section, be entitled;
 - (b) the aggregate of the costs to the person of acquiring a reasonably equivalent interest in land that entitles the person to occupation of a reasonably equivalent dwelling.

52 Interest subject to mortgage

- (1) This section applies where—
 - (a) an interest in land is acquired from a person (the *owner*) by compulsory process; and
 - (b) immediately before the acquisition, the interest was subject to 1 or more mortgages.
- (2) As a general rule, the compensation to which the owner is entitled in respect of the acquisition shall be determined as if the interest had not been subject to any mortgage.
- (3) If compensation is payable under this part to a mortgagee, the compensation payable to the owner is reduced by so much of the compensation payable to the mortgagee as represents the amount calculated according to section 54 (1) (a).
- (4) If a mortgagee waives the right to compensation in respect of the acquisition of a mortgage interest, the compensation to which the owner would otherwise be entitled is increased by such amount as the owner should justly receive as compensation in respect of interest upon the mortgage debt accruing from the time of the acquisition, or in respect of any other liability to the mortgagee.

Division 6.3 Amount of compensation— mortgage interests

53 Interpretation for div 6.3

- (1) For this division, money shall be taken to have been due to a mortgagee under, or to have been secured by, a mortgage at the time of acquisition of a mortgage interest only to the extent that, at that time—
 - (a) the right of the mortgagee to recover the money secured by the mortgage was not barred by a law relating to the limitation of actions; or
 - (b) the mortgagee was entitled to recover money secured by the mortgage by exercising a power of sale of, or other remedy in relation to, the interest in land subject to the mortgage.
- (2) For this division, the interest due to the mortgagee under a mortgage at a particular time is the interest that would be payable to the mortgagee if the mortgage were discharged at that time, other than so much (if any) of that interest as represents—
 - (a) costs of reinvesting the principal under the mortgage; or
 - (b) a loss, or possible loss, of interest on the reinvestment of the principal under the mortgage.

54 Amount of compensation

- (1) The amount of compensation to which a mortgagee is entitled under this part in respect of the acquisition of a mortgage interest under a mortgage (the *relevant mortgage*) is an amount equal to the sum of—
 - (a) so much of the sum of—
 - (i) the amount of the principal secured by the relevant mortgage at the time of acquisition of the mortgage interest; and

(ii) the amount of any interest, costs or charges due to the mortgagee under the relevant mortgage at that time;

as does not exceed the amount of compensation payable under this Act to the mortgagor in respect of the acquisition of the interest in land that was subject to the relevant mortgage; and

(b) any legal or other professional costs reasonably incurred by the mortgagee in relation to the acquisition of the mortgage interest, including costs of—

(i) obtaining advice in relation to the acquisition, the entitlement of the mortgagee to compensation or the amount of compensation; and

(ii) executing, producing or surrendering such documents, and making out and providing such abstracts and attested copies, as the chief executive or a person authorised under the *Government Solicitor Act 1989*, section 5 (4) requires.

(2) For subsection (1), if—

(a) the relevant mortgage was the only mortgage over the interest in land immediately before the acquisition; or

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

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

(3) For subsection (1), if—

(a) there were 2 or more mortgages over the interest in land immediately before the acquisition; and

- (b) the relevant mortgage did not have, at that time, priority over the other mortgage or mortgages;

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

55 Particulars of mortgages may be required

- (1) The Executive may, by written notice require a person from whom an interest in land, other than a mortgage interest, has been acquired by compulsory process, to provide the Executive with the following particulars:
- (a) whether the interest was, immediately before the acquisition, subject to any mortgages;
 - (b) in relation to each mortgage (if any) to which the interest was, immediately before its acquisition, subject—
 - (i) the name and address of the mortgagee; and
 - (ii) the amount of principal secured by the mortgage at the time of the acquisition of the interest; and
 - (iii) the amount of interest, costs and charges due under the mortgage at that time.
- (2) If the person fails to provide the Executive with the particulars within 30 days after the giving of the notice, or such further period as the Executive by writing, allows, the Executive may agree with any person claiming to be a mortgagee of the interest in land as to the amounts due under the mortgage and the firstmentioned person is debarred from disputing the correctness of any amounts so agreed.

Division 6.4 **Claims for, and offers of, compensation**

56 **Claims for compensation**

- (1) A person who considers that he or she is entitled to be paid compensation in accordance with this part may make a claim for compensation.
 - (2) A claim—
 - (a) shall specify—
 - (i) the interest of the person that has been acquired by compulsory process; and
 - (ii) the amount of compensation the person claims in respect of the acquisition; and
 - (iii) if the claim is in respect of the acquisition of a mortgage interest under a mortgage—the amounts that, for division 6.3, are the amounts of—
 - (A) principal secured by the mortgage at the time of the acquisition of the interest; and
 - (B) any interest, costs and charges due under the mortgage at that time; and
 - (b) shall be given to the Executive.
- Note* If a form is approved under s 118 (Approved forms) for a claim, the form must be used.
- (3) A person who has made a claim may, by notice in writing given to the Executive, withdraw the claim.
 - (4) Where a claim is withdrawn, this Act has effect as if the claim had never been made.
 - (5) For this Act, a claim shall be taken to be made when it is given to the Executive.

57 Effect of compensation claim in respect of acquisition of mortgage interest

- (1) This section applies where—
 - (a) a mortgage interest has been acquired from a mortgagee; and
 - (b) the mortgagee makes a claim for compensation in respect of the acquisition.
- (2) To the extent of the compensation payable to the mortgagee in respect of the acquisition, excluding amounts referred to in section 54 (1) (b), the acquisition shall, on the making of the claim, be taken to have discharged the liability of the mortgagor under the mortgage as from the time of acquisition.
- (3) On payment or tender of the compensation to the mortgagee, the mortgagee shall, if so required by the mortgagor and at the expense of the mortgagor, execute a discharge of the mortgage debt to the extent to which the mortgage debt is taken, by subsection (2), to have been discharged.

58 Amounts paid in respect of mortgage liabilities extinguished by s 57

- (1) Where an amount has been paid to or recovered by the mortgagee under a mortgage in respect of a liability that, upon the making of a claim by the mortgagee, is, by section 57, taken to have been discharged as from the time of acquisition of a mortgage interest under the mortgage—
 - (a) the mortgagee is liable to repay that amount to the person who paid it; and
 - (b) the Executive may deduct from the compensation payable to the mortgagee and pay to the person who paid that amount so much of that amount as has not been so repaid.
- (2) A payment made by the Executive under subsection (1) (b) shall be deemed to have been made in discharge of the obligation of the mortgagee under subsection (1) (a).

59 Executive either to accept claim and offer compensation or to reject claim

- (1) If the Executive is satisfied that the interest in land specified in a claim was acquired by compulsory process from the claimant, the Executive shall, by written notice given to the claimant—
 - (a) inform the claimant that the claim is accepted;
 - (b) make an offer to the claimant of the amount of compensation to which the Executive considers the claimant is entitled in accordance with division 6.2 or 6.3; and
 - (c) explain to the claimant how the amount offered was arrived at.
- (2) If the Executive does not consider that the interest in land specified in the claim was acquired by compulsory process from the claimant, the Executive shall, by written notice given to the claimant, inform the claimant that the claim is rejected and state the reasons for the rejection.
- (3) If, within 42 days after the receipt of the claim, the Executive has not given the claimant a notice under subsection (1) or (2), the Executive shall, at the end of that period, be taken to have rejected the claim and to have given the claimant a notice under subsection (2).
- (4) The claimant may, in writing and before the end of the period of 42 days referred to in subsection (3), agree to an extension of that period.

60 Rejection of claims—review by administrative appeals tribunal

- (1) Where a notice under section 59 (2) has been, or is to be taken to have been, given to a person who has made a claim for compensation, the claimant may apply to the administrative appeals tribunal for a review of the decision of the Executive to reject the claim.

- (2) Subject to subsections (3) and (4), the *Administrative Appeals Tribunal Act 1989* applies to the application.
- (3) The *Administrative Appeals Tribunal Act 1989*, section 27 applies to the application as if the prescribed time for the lodging of the application with the tribunal were the period of 3 months commencing on the day on which the notice under section 59 (2) was given, or is to be taken to have been given, to the person.
- (4) On the application, the tribunal may exercise all the powers and discretions conferred by this Act on the Executive in deciding whether to accept or reject the claim for compensation and shall make a decision—
 - (a) affirming the rejection of the claim by the Executive; or
 - (b) accepting the claim.
- (5) If the decision of the tribunal in relation to the application affirms the rejection by the Executive of the claim for compensation, the interest specified in the claim shall be taken, for this Act, not to have been acquired from the claimant by compulsory process.
- (6) If the decision of the tribunal in relation to the application is to accept the claim for compensation rejected by the Executive—
 - (a) the interest specified in the claim shall be taken, for this Act, to have been acquired from the claimant by compulsory process; and
 - (b) the Executive shall give a notice under section 59 (1) to the claimant.

61 Consequences of not seeking review of decision to reject claim

- (1) This section applies where a claim for compensation has been rejected by the Executive and—
 - (a) the claimant does not, within 3 months after notice under section 59 (2) has been, or is to be taken to have been, given to

the claimant, or within such further time as the Executive allows, make an application to the administrative appeals tribunal under section 60 in respect of the rejection of the claim; or

- (b) the claimant has made such an application within that period and—
 - (i) the tribunal has affirmed the rejection of the claim by the Executive; and
 - (ii) a period of at least 30 days has elapsed since the tribunal made its decision and no appeal to the Supreme Court in respect of that decision is pending.
- (2) The Executive may pay compensation under this part on the basis that the claimant was not, at the time of the acquisition to which the claim relates, entitled to the interest the subject of the claim and, where compensation is paid in respect of an interest that is inconsistent with the interest the subject of the claim, no compensation is payable in respect of that lastmentioned interest.

62 Claimant may accept or reject Executive's offer of compensation

Where a notice under section 59 (1) is given to a person who has made a claim for compensation, the person may, by written notice given to the Executive—

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

63 Executive to reconsider offer of compensation and to make final offer

- (1) On receipt of a notice under section 62 (b), the Executive shall reconsider the question of the amount of compensation to which the claimant is entitled and shall, by written notice given to the claimant—
 - (a) make a final offer to the claimant of the amount of compensation to which the Executive considers the claimant is entitled in accordance with division 6.2 or 6.3; and
 - (b) explain to the claimant how the amount of the final offer was arrived at.
- (2) In reconsidering the amount of compensation to which the claimant is entitled, the Executive shall have regard to the information included in the notice in accordance with section 62 (b).
- (3) If, within 2 months after the receipt of the notice, the Executive has not given the claimant a notice under subsection (1), the following provisions have effect:
 - (a) the notice given to the claimant under section 59 (1) shall be taken to be a notice given to the claimant under subsection (1) of this section on the last day of that period of 2 months;
 - (b) the offer of compensation made in the notice under section 59 (1) shall be taken to be a final offer of compensation.

64 Claimant may accept or reject Executive's final offer of compensation

Where a person has received, or is to be taken to have received, a notice under section 63 (1) making a final offer of compensation, the person may, by notice in writing given to the Executive, accept or reject the final offer.

Division 6.5 Determination of compensation payable

65 Determination of compensation by pre-acquisition agreement

- (1) The Executive and the owner of an interest in land, other than a mortgage interest, may agree on the amount of compensation to which the owner will be entitled if the interest is acquired by compulsory process within a time specified in the agreement.
- (2) If the interest is acquired from the owner by compulsory process within the specified time and the agreement is still in force, the amount of compensation payable to the owner in respect of the acquisition is the amount specified in the agreement.

66 Determination of compensation by post-acquisition agreement

If—

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

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

67 Determination of compensation by administrative appeals tribunal

- (1) A person who has rejected a final offer of compensation under this part may apply to the administrative appeals tribunal for a review of the decision of the Executive to make the offer.
- (2) Subject to subsections (3) and (4), the *Administrative Appeals Tribunal Act 1989* applies to the application.

- (3) The *Administrative Appeals Tribunal Act 1989*, section 27 applies to the application as if the prescribed time for the lodging of the application with the tribunal were the period of 3 months commencing on the day on which the notice making the final offer was given, or is to be taken to have been given, to the person.
- (4) On the application, the tribunal may exercise all the powers and discretions conferred by this Act on the Executive in making the final offer of compensation and shall make a decision—
 - (a) affirming the final offer of compensation made by the Executive; or
 - (b) varying the final offer of compensation made by the Executive.
- (5) If the tribunal affirms the final offer, the amount of compensation payable to the person under this part is the amount of the final offer.
- (6) If the tribunal varies the final offer, the amount of compensation payable to the person under this part is the amount of the final offer as varied by the tribunal.

68 Persons not entitled to seek determination of compensation by more than 1 means

- (1) A person who has, under division 6.4, accepted an offer of compensation is not entitled, in respect of the same claim—
 - (a) to accept another offer of compensation; or
 - (b) to make an application under section 67.
- (2) Where, a person has—
 - (a) entered into an agreement under section 65; or
 - (b) made an application under section 67;

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

- (c) to accept an offer of compensation; or
- (d) to enter into an agreement, or another agreement, under section 65; or
- (e) to make an application, or another application, under section 67.

69 Separate rights of mortgagee and mortgagor to determination of compensation

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

Division 6.6 Payment of compensation

70 Advance payment on account of compensation

- (1) The Executive may make an advance on account of compensation that may become payable to a person under this part.
- (2) Where the Executive has accepted a claim for compensation and made an offer of compensation to the claimant, the Executive shall make an advance on account of compensation under this part.
- (3) An advance under subsection (2), when added to advances to the same person in respect of the same compensation under subsection (1), shall be not less than 90% of the amount of the Executive's offer of compensation.
- (4) The mere receipt by a person of an advance on account of compensation does not constitute an acceptance of any offer made by the Executive.

71 Executive may pay rates etc

- (1) This section applies where—
 - (a) an interest in land is acquired from a person (the *owner*) by compulsory process; and
 - (b) immediately before the acquisition, rates, taxes or other similar charges in respect of the land or interest were due and payable.
- (2) To the extent to which those charges are or were payable by the owner as owner of the interest, the Executive may pay those charges.
- (3) Where the Executive makes a payment, the amount of the payment shall be deducted from the amount of compensation payable to the owner in respect of the acquisition.

72 Payment of compensation

- (1) Where—
 - (a) a person is entitled to be paid compensation in accordance with this part in respect of an acquisition; and
 - (b) the amount of the compensation has been determined in accordance with division 6.5; and
 - (c) the proof of title requirement in relation to the acquisition has been satisfied; and
 - (d) the person has—
 - (i) produced or surrendered all deeds and documents relating to, or evidencing, the person's title to the interest that the chief executive, or a person authorised under the *Government Solicitor Act 1989*, section 5 (4), reasonably requires to be produced or surrendered; and
 - (ii) executed such documents as the chief executive or a person so authorised reasonably requires;

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

- (2) For subsection (1), the proof of title requirement in relation to the acquisition shall be taken to have been satisfied if—
- (a) the person has satisfied the chief executive, or a person authorised under the *Government Solicitor Act 1989*, section 5 (4), that the person had, immediately before the acquisition, title to the acquired interest; or
 - (b) because of a decision of the administrative appeals tribunal on an application under section 60, the interest is to be taken, for this Act, to have been acquired from the person by compulsory process.

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

- (1) Where—
- (a) the Executive is required to pay compensation to a person under this part; and
 - (b) the total amount paid as advances exceeds the amount of compensation;

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

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

74 Repayment of advances where no entitlement to compensation

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

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

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

75 Payment of compensation into trust account

- (1) This section applies where—
- (a) an interest in land has been acquired from a person by compulsory process; and
 - (b) the amount of compensation payable to the person in respect of the acquisition has been determined in accordance with division 6.5; and
 - (c) at the end of 3 months after the determination of the amount of compensation, the person has not, because of some default or delay on the part of the person, received payment of the compensation.
- (2) The Executive may pay the compensation into the trust account.
- (3) The Executive may pay rates, taxes or similar amounts charged on the land and due at the time of the acquisition and shall deduct the amount of the payment from the compensation otherwise payable into the trust account.
- (4) On payment of the compensation into the trust account, the compensation shall, for sections 76 and 77, be taken to have been paid to the person.
- (5) Where the person rectifies the default or delay referred to in subsection (1), the Executive shall pay to the person, out of the trust account, an amount equal to the amount of compensation paid into the trust account.

76 Interest payable on compensation—interests other than mortgage interests

- (1) This section applies where the Executive is liable to pay compensation to a claimant under this part in respect of the acquisition of an interest, other than a mortgage interest.
- (2) The claimant is entitled to payment by the Executive of interest on the compensation at the rate specified in, or ascertained in accordance with, the regulations from the day of the acquisition until the day on which the compensation is paid, or where payment is delayed through a default or delay of the claimant, until the day on which the compensation would have been paid but for the default or delay.
- (3) For subsection (2), if—
 - (a) the Executive made an offer of compensation to the claimant; and
 - (b) the claimant rejected the offer; and
 - (c) the amount of compensation determined under this part is less than the amount of the offer;the payment of the compensation shall be taken to have been delayed through a delay of the claimant and the day on which the compensation would have been paid but for that delay shall be taken to be the day on which the claimant received notice of the offer.
- (4) If, on the day following the end of the period of 3 months that commenced on the day of the acquisition or any succeeding period of 3 months, the interest payable to the claimant under subsection (2) in respect of the period has not been paid, this part has effect as if, on that day, the amount of compensation payable were increased by the amount of the unpaid interest.
- (5) Interest is not payable to the claimant on the whole or any part of the compensation otherwise than in accordance with this section.

77 Interest payable on compensation—mortgage interests

- (1) This section applies where the Executive is liable to pay compensation to a claimant under this part in respect of the acquisition of a mortgage interest.
- (2) The claimant is entitled to payment by the Executive of interest on the amount representing principal included in the compensation at the lowest rate (whether for prompt payment or otherwise) provided for by the mortgage from the day of the acquisition until the day on which the compensation is paid or, where payment is delayed through a default or delay of the claimant, until the day on which the compensation would have been paid but for the default or delay.
- (3) For subsection (2) if—
 - (a) the Executive made an offer of compensation to the claimant; and
 - (b) the claimant rejected the offer; and
 - (c) the amount of compensation determined under this part is less than the amount of the offer;

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

- (4) If, on the day following the end of the period of 3 months that commenced on the day of the acquisition or any succeeding period of 3 months, the interest payable to the claimant under subsection (2) in respect of the period has not been paid, this part has effect as if, on that day, the amount of compensation payable were increased by the amount of the unpaid interest.
- (5) If the principal under the mortgage was not repayable (with or without notice) on the day when interest ceases to be payable under subsection (2), the claimant is also entitled to be paid by the Executive—

- (a) the costs of the claimant of reinvesting the amount representing principal included in the compensation; and
 - (b) if a loss of interest may reasonably be expected on the reinvestment, having regard to the rate of interest secured by the mortgage and the rate of interest obtained on the reinvestment—a reasonable allowance for loss of interest until the day on which the principal would have been repayable.
- (6) Interest is not payable to the claimant on the whole or any part of the compensation payable otherwise than in accordance with this section.

Division 6.7 Courts to ensure just terms

78 Courts to ensure just terms

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

Part 7 **Compensation for exercise of powers under part 2 and failure to acquire**

Division 7.1 **Entitlement to compensation**

79 **Meaning of *loss* suffered in pt 7**

For this part, a reference to a *loss* suffered by a person includes a reference to injury or damage suffered, and expenses reasonably incurred, by the person.

80 **Entitlement to compensation—exercise of powers under pt 2**

Where—

- (a) a person who owns an interest in land suffers loss because of the exercise, in relation to the land, of powers conferred by part 2; and
- (b) within 3 years after suffering the loss the person makes a claim for compensation in accordance with section 82 in respect of the loss;

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

81 **Entitlement to compensation—pre-acquisition declaration made but acquisition not proceeded with**

Where—

- (a) a pre-acquisition declaration is revoked or ceases to have effect because of section 35 (2); and
- (b) a person who, when the declaration was in force, was an owner of an interest affected by the declaration, suffers loss as a

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

- (c) within 3 years after the declaration is revoked or ceases to have effect, the person claims compensation in accordance with section 82;

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

Division 7.2 Claims for, and offers of, compensation

82 Claims for compensation

- (1) A person who considers that he or she is entitled to be paid compensation in accordance with this part may make a claim for compensation.
- (2) A claim for compensation—
 - (a) shall include particulars of the loss in respect of which compensation is claimed;
 - (b) shall specify the interest of the person in the land in respect of which the claim is made; and
 - (c) shall be given to the Executive.

Note If a form is approved under s 118 (Approved forms) for a claim, the form must be used.

- (3) A person who has made a claim for compensation may, by notice in writing given to the Executive, withdraw the claim.
- (4) Where a claim for compensation is withdrawn, this Act has effect as if the claim had never been made.
- (5) For this Act, a claim for compensation shall be taken to be made when it is given to the Executive.

83 Executive either to accept claim and offer compensation or to reject claim

- (1) If the Executive is satisfied that compensation in accordance with this part is payable to a claimant for compensation in respect of the loss to which the claim relates, the Executive shall, by written notice given to the claimant—
 - (a) inform the claimant that the claim is accepted; and
 - (b) make an offer to the claimant of the amount of compensation to which the Executive considers the claimant is entitled in accordance with division 7.1; and
 - (c) explain to the claimant how the amount offered was arrived at.
- (2) If the Executive does not consider that compensation in accordance with this part is payable to a person who has made a claim in respect of the loss suffered particulars of which were included in the claim, the Executive shall, by written notice given to the claimant, inform the claimant that the claim is rejected and state the reasons for the rejection.
- (3) If, within 42 days after the receipt of the claim, the Executive has not given the claimant a notice under subsection (1) or (2), the Executive shall, at the end of that period, be taken to have rejected the claim and to have given the claimant a notice under subsection (2).
- (4) The claimant may, in writing and before the end of the period referred to in subsection (3), agree to an extension of that period.

84 Rejection of claims—review by administrative appeals tribunal

- (1) Where a notice under section 83 (2) has been, or is to be taken to have been, given to a person who has made a claim for compensation, the claimant may apply to the administrative appeals tribunal for a review of the decision of the Executive to reject the claim.

- (2) Subject to subsections (3) and (4), the *Administrative Appeals Tribunal Act 1989* applies to the application.
- (3) The *Administrative Appeals Tribunal Act 1989*, section 27 applies to the application as if the prescribed time for the lodging of the application with the tribunal were the period of 3 months commencing on the day on which the notice under section 83 (2) was given, or is to be taken to have been given, to the person.
- (4) On the application, the tribunal may exercise all the powers and discretions conferred by this Act on the Executive in deciding whether to accept or reject the claim for compensation and shall make a decision—
 - (a) affirming the rejection of the claim by the Executive; or
 - (b) accepting the claim.
- (5) If the decision of the tribunal in relation to the application affirms the rejection by the Executive of the claim for compensation, the claimant shall be taken, for this Act, not to be entitled to compensation in respect of the loss to which the claim relates.
- (6) If the decision of the tribunal in relation to the application is to accept the claim for compensation rejected by the Executive—
 - (a) the claimant shall be taken, for this Act, to be entitled to compensation in respect of the loss to which the claim relates; and
 - (b) the Executive shall give a notice under section 83 (1) to the claimant.

85 Claimant may accept or reject Executive's offer of compensation

Where a notice under section 83 (1) is given to a person who has made a claim for compensation, the person may, by written notice given to the Executive—

- (a) accept the offer of compensation; or

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

86 Executive to reconsider offer of compensation and to make final offer

- (1) On receipt of a notice under section 85 (b), the Executive shall reconsider the question of the amount of compensation to which the claimant is entitled and shall, by written notice given to the claimant—
 - (a) make a final offer to the claimant of the amount of compensation to which the Executive considers the claimant is entitled in accordance with division 7.1; and
 - (b) explain to the claimant how the amount of the final offer was arrived at.
- (2) In reconsidering the amount of compensation to which the claimant is entitled, the Executive shall have regard to the information included in the notice in accordance with section 85 (b).
- (3) If, within 2 months after the receipt of the notice, the Executive has not given the claimant a notice under subsection (1), the following provisions have effect:
 - (a) the notice given to the claimant under section 83 (1) shall be taken to be a notice given to the claimant under subsection (1) of this section on the last day of that period of 2 months;
 - (b) the offer of compensation made in the notice under section 83 (1) shall be taken to be a final offer of compensation.

87 Claimant may accept or reject Executive's final offer of compensation

Where a person has received, or is to be taken to have received, a notice under section 86 (1) making a final offer of compensation, the person may, by notice in writing given to the Executive, accept or reject the final offer.

Division 7.3 Determination of compensation payable

88 Determination of compensation by agreement

If—

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

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

89 Determination of compensation by administrative appeals tribunal

- (1) A person who has rejected a final offer of compensation under this part may apply to the administrative appeals tribunal for a review of the decision of the Executive to make the offer.
- (2) Subject to subsections (3) and (4), the *Administrative Appeals Tribunal Act 1989* applies to the application.
- (3) The *Administrative Appeals Tribunal Act 1989*, section 27 applies to the application as if the prescribed time for the lodging of the application with the tribunal were the period of 3 months commencing on the day on which the notice making the final offer was given, or is to be taken to have been given, to the person.

- (4) On the application, the tribunal may exercise all the powers and discretions conferred by this Act on the Executive in making the final offer of compensation and shall make a decision—
 - (a) affirming the final offer of compensation made by the Executive; or
 - (b) varying the final offer of compensation made by the Executive.
- (5) If the tribunal affirms the final offer, the amount of compensation payable to the person under this part is the amount of the final offer of compensation.
- (6) If the tribunal varies the final offer, the amount of compensation payable to the person under this part is the amount of the final offer as varied by the tribunal.

90 Persons not entitled to seek determination of compensation by more than 1 means

- (1) A person who has, under division 7.2, accepted an offer of compensation is not entitled, in respect of the same claim—
 - (a) to accept another offer of compensation; or
 - (b) to make an application under section 89.
- (2) Where a person has made an application under section 89, that has not been withdrawn, or terminated otherwise than by a decision on the merits, he or she is not entitled, in respect of the same claim—
 - (a) to accept an offer of compensation; or
 - (b) to make another application under section 89.

Division 7.4 Payment of compensation

91 Advance payment on account of compensation

- (1) The Executive may make an advance on account of compensation that may become payable to a person under this part.

- (2) Where the Executive has accepted a claim for compensation and made an offer of compensation to the claimant, the Executive shall make an advance on account of compensation that may become payable to the claimant under this part.
- (3) An advance under subsection (2), when added to advances to the same person in respect of the same compensation under subsection (1), shall be 90% of the amount of the Executive's offer of compensation.
- (4) The receipt by a person of an advance on account of compensation does not constitute an acceptance of any offer made by the Executive.

92 Payment of compensation

Where—

- (a) a person is entitled to be paid compensation in accordance with this part; and
- (b) the amount of the compensation has been determined in accordance with division 7.3;

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

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

- (1) Where—
 - (a) the Executive is required to pay compensation to a person under this part; and
 - (b) the total amount paid as advances exceeds the amount of the compensation;

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

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

94 Repayment of advances where no entitlement to compensation

- (1) Where—
- (a) an advance, or advances, have been paid to a person on account of compensation under this part; and
 - (b) compensation does not become payable to the person;
- the person is liable to pay to the Executive an amount equal to the total paid by way of advances.
- (2) An amount due to the Executive under subsection (1) may be recovered as a debt due by action in a court of competent jurisdiction.

95 Payment of compensation into trust account

- (1) This section applies where—
- (a) compensation under this part is payable to a person in respect of loss suffered by the person; and
 - (b) the amount of compensation payable to the person has been determined in accordance with division 7.3; and
 - (c) at the end of 3 months after the determination of the amount of compensation, the person has not, because of some default or delay on the part of the person, received payment of the compensation.
- (2) The Executive may pay the compensation into the trust account.
- (3) On payment of the compensation into the trust account, the compensation shall, for section 96, be taken to have been paid to the person.

- (4) Where the person rectifies the default or delay referred to in subsection (1), the Executive shall pay to the person, out of the trust account, an amount equal to the amount of compensation paid into the trust account.

96 Interest payable on compensation

- (1) This section applies where the Executive is liable to pay compensation to a claimant under this part.
- (2) The claimant is entitled to payment by the Executive of interest on the compensation at the rate specified in, or ascertained in accordance with, the regulations from the day on which the person made a claim for the compensation until the day on which the compensation is paid or, where payment is delayed through a default or delay of the claimant, until the day on which the compensation would have been paid but for the default or delay.
- (3) For subsection (2), if—
- (a) the Executive made an offer of compensation to the claimant; and
 - (b) the claimant rejected the offer; and
 - (c) the amount of compensation determined under this part is less than the amount of the offer;

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

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

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

Part 7A Compensation for acquisition by utilities

96A Application of pt 6 and pt 7 to compensation for acquisition by utilities

Parts 6 and 7 apply to the acquisition of land (including an interest in land) by a utility under the *Utilities Act 2000*, part 7 (Network operations) as if—

- (a) a reference to the Executive were a reference to a utility; and
- (b) a reference in section 43 (4) (a) to the Territory or the Commonwealth were omitted; and
- (c) in section 45 (2) (e) (ii) ‘or a person authorised under the *Government Solicitor Act 1989*, section 5 (4)’ were omitted and ‘, a person authorised under the *Government Solicitor Act 1989*, section 5 (4) or a utility’ were substituted; and
- (d) in section 54 (1) (b) (ii) ‘or a person authorised under the *Government Solicitor Act 1989*, section 5 (4)’ were omitted and ‘, a person authorised under the *Government Solicitor Act 1989*, section 5 (4) or a utility’ were substituted; and
- (e) in section 72 (1) (d) (i) ‘or a person authorised under of the *Government Solicitor Act 1989*, section 5 (4)’ were omitted and ‘, a person authorised under the *Government Solicitor Act 1989*, section 5 (4) or a utility,’ were substituted; and
- (f) in section 72 (1) (d) (ii) ‘or a person so authorised’ were omitted and ‘, a person so authorised or a utility’ were substituted; and
- (g) section 75 (Payment of compensation into trust account) were omitted; and

- (h) section 95 (Payment of compensation into trust account) were omitted; and
- (i) a reference in section 109 (Award of costs in administrative appeals tribunal proceedings) to the Executive were a reference to a utility; and
- (j) a reference in section 112 (Payments to be a good discharge) to the Executive were a reference to a utility.

Part 8

Persons with limited powers to deal with interests in land

97 Supreme Court may approve certain acts

(1) Where—

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

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

(2) Where—

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

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

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

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

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

Part 9 Dealings in land vested in acquiring authorities

97A Meaning of *acquiring authority* in pt 9

In this part:

acquiring authority does not include a utility.

98 Disposals to be in accordance with pt 9

An acquiring authority shall not dispose of an interest in land otherwise than in accordance with this part unless—

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

99 Vesting of interests in Territory authorities

Notwithstanding the provisions of this part or part 3, the Executive may, if it thinks it appropriate to do so, direct that an interest in land vested in the Commonwealth be transferred to a particular Territory authority.

100 Disposal of interests in land

- (1) An interest in land vested in an acquiring authority may be disposed of under the written authority of the Executive.
- (2) A person dealing with an acquiring authority is not concerned to inquire whether this part has been complied with, and the vesting in a person of an interest in land is not affected by any contravention of this part.

101 Disposal may be made subject to reservation of interest

The disposal of an interest in land by an acquiring authority may be made subject to the reservation to the acquiring authority of a specified interest in the land, including—

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

102 Interest in land to be offered first to former owner

- (1) Where—
 - (a) an acquiring authority acquired an interest in land by the vesting of the interest in the acquiring authority by section 33 (5) (a); and
 - (b) the acquiring authority has not made substantial improvements to the land; and
 - (c) the Executive proposes to authorise the disposal of the interest; and
 - (d) if authorised, the disposal would be likely to occur before the end of 7 years after the acquisition of the interest by the acquiring authority;

the Executive shall, in authorising the disposal, require the acquiring authority to first offer the interest for sale to the former owner at the market value of the interest at the time the offer is made.

- (2) An offer shall be made by the Executive by written notice given to the former owner and shall specify the amount that, in the opinion of the Executive, represents the market value of the interest at the time of the offer.
- (3) The acquiring authority shall not dispose of the interest to a person other than the former owner within 28 days after the day on which the offer is made.
- (4) If, within that period of 28 days, the former owner gives to the Executive notice that he or she wishes to purchase the interest from the acquiring authority, the authority shall not dispose of the interest to a person other than the former owner within 2 months after the notice is given.
- (5) The former owner may apply to the administrative appeals tribunal for review of the Executive's decision as to the amount specified in the offer as the market value of the interest.
- (6) The *Administrative Appeals Tribunal Act 1989* applies to the former owner's application.
- (7) If the former owner makes an application to the administrative appeals tribunal, the acquiring authority shall not dispose of the interest to a person other than the former owner—
 - (a) until the end of 14 days after the decision of the tribunal on the application comes into operation; or
 - (b) if, within that period of 14 days, the owner gives the Executive written notice of his or her wish to purchase the interest from the Commonwealth at the market value determined by the tribunal—until the end of 2 months after the decision of the tribunal comes into operation.
- (8) The Executive may, by notice in writing given to the former owner, extend the period of 2 months referred to in subsection (7) (b).
- (9) The validity of the disposal of an interest in land is not affected by a failure to comply with this section.

(10) In this section:

former owner, in relation to an interest in land, means—

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

market value—see section 46.

103 Extinguishment of easements

(1) Where—

- (a) an acquiring authority owns an interest in land, being an easement; and
- (b) the Executive is satisfied that it is appropriate to extinguish the easement;

the Executive may, in writing (by an **extinguishment notice**), extinguish the easement.

(2) An extinguishment notice is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

- (3) An extinguishment notice shall identify the easement and the acquiring authority.
- (4) As soon as practicable, and, in any event, within 28 days, after an easement is extinguished under subsection (1), the Minister shall cause to be lodged with the registrar-general a copy of the extinguishment notice.
- (5) The registrar-general shall make such entries in the records kept by him or her as are necessary having regard to the effect of subsection (1).

104 Mining etc on certain land

- (1) The regulations may make provision for or in relation to prohibiting or regulating all or any of the following matters:
 - (a) the exploration for minerals on relevant land;
 - (b) the mining for, or recovery of, minerals on or from relevant land;
 - (c) the carrying on of operations, and the execution of works, for a purpose referred to in paragraph (a) or (b).
- (2) Regulations made for subsection (1) may include, but are not limited to, provisions for or in relation to—
 - (a) vesting Territory courts with jurisdiction in matters arising under the regulations; and
 - (b) if minerals are owned by the Commonwealth—the payment of royalties in respect of minerals mined or recovered in accordance with such a lease, licence, permit or authority; and
 - (c) the payment to the Territory of amounts representing the whole or part of amounts received by the Executive under the regulations.

Note A fee may be determined under section 117 (Determination of fees) for the grant, under the regulations, of a lease, licence, permit or other authority.

- (3) Regulations made for subsection (1) have no effect to the extent that they are inconsistent with rights of the kind referred to in the *Atomic Energy Act 1953* (Cwth), section 35 (4) or an authority under section 41 (1) of that Act.
- (4) In this section:

mineral means a naturally occurring substance or mixture of substances.

relevant land means land in the ACT that is vested in a Territory authority after having been acquired by the authority under this Act.

Part 10 Miscellaneous

104A Trust account

A trust account called the lands acquisition trust account shall be maintained under the *Financial Management Act 1996*, section 51

105 Indexation of s 51 (2) amount

(1) In this section:

index number, in relation to an index year, means the all groups consumer price index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that index year.

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

(2) Where the factor ascertained in accordance with subsection (4) in relation to a financial year is greater than 1, section 51 has effect as if, for the amount of \$15 000 specified in section 51 (2), there were substituted, on the first day of that financial year, an amount calculated by multiplying the existing amount by that factor.

(3) For subsection (2), the existing amount is—

(a) if, because of the operation of subsection (2), section 51 already has effect as if an amount were substituted for the amount of \$15 000 specified in section 51 (2)—the substituted amount; and

(b) in any other case—\$15 000.

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

- (5) Where a factor ascertained under subsection (4) would, if calculated to 4 decimal places, end with a number greater than 4, the factor ascertained shall be taken to be the factor calculated to 3 decimal places and increased by .001.
- (6) Subject to subsection (7), if at any time, whether before or after the commencement of this Act, the Australian Statistician has published or publishes an index number in respect of an index year in substitution for an index number previously published in respect of the same index year, the publication of the later index number shall be disregarded for this section.
- (7) If at any time, whether before or after the commencement of this Act, the Australian Statistician has changed or changes the reference base for the consumer price index, then, for the purposes of the application of this section after the change, regard shall be had only to the index number published in terms of the new reference base.

106 General power of Supreme Court to adjust rights

- (1) The Supreme Court may, on the application of the Executive or of any interested person—
 - (a) determine the person or persons who, at any relevant time, held an interest or interests in particular land in relation to which a claim for compensation has been or may be made under this Act; and
 - (b) determine the nature of such an interest or interests; and
 - (c) make such orders as are appropriate for declaring or adjusting rights or liabilities of persons in connection with the land or interests in the land, or arising out of transactions in relation to, or mortgages over, the land or interests in the land.
- (2) A determination or order under subsection (1) is binding on the applicant, the Executive, the Commonwealth and all other persons who had interests in the land and to whom notice of the application has, before the commencement of the hearing, been given by the

applicant, whether or not those other persons were represented on the hearing of the application.

107 Supreme Court may order stay of proceedings under mortgage

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

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

- (2) In this section:

proceedings means any action to enforce the rights of the mortgagee under the mortgage, whether or not the proceedings are in a court, including action with a view to taking possession of or selling an interest in land or foreclosing.

108 Jurisdiction of Supreme Court

Jurisdiction is conferred on the Supreme Court to hear and determine applications and proceedings under sections 97, 106, 107 and 111 and that jurisdiction is exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under the Commonwealth Constitution, section 75.

109 Award of costs in administrative appeals tribunal proceedings

- (1) The administrative appeals tribunal may recommend to the Attorney-General that the Executive should pay the whole or a part of the costs, in relation to proceedings on an application made to the tribunal under a provision of this Act, of the person who made the application or of any other person made a party to the proceedings under the *Administrative Appeals Tribunal Act 1989*, section 29 (2).
- (2) The Attorney-General may, pursuant to a recommendation of the tribunal under subsection (1), authorise the payment to a person of the whole or a part of the person's costs in relation to proceedings before the tribunal.

110 Orders to obtain possession

- (1) This section applies where—
 - (a) an acquiring authority holds an interest in land; and
 - (b) the interest entitles the acquiring authority to possession of the land; and
 - (c) another person (the *unauthorised person*) is in possession of the land, otherwise than under a subsisting lease or agreement, or a right of occupancy under section 37.
- (2) If the unauthorised person—
 - (a) refuses or fails, when so required by the Executive by notice in writing, to give up possession of the land to the acquiring authority; or
 - (b) hinders or obstructs an authorised person attempting to take possession of the land for the acquiring authority;

a court of summary jurisdiction may, on the application of the Executive, make an order authorising a police officer or other person named in the order, with such assistance and force as are

reasonably necessary, to enter on the land and deliver up possession of the land to the acquiring authority.

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

111 Injunctions

- (1) Where a person has used, or is proposing to use, land in a manner inconsistent with a restriction on the use of the land acquired by an acquiring authority under this Act, the Supreme Court may, on the application of that authority, grant an injunction restraining the person from using the land in that manner.
- (2) Where an application is made to the court for an injunction under this section, the court may, if in the court's opinion it is desirable to do so, grant an interim injunction restraining a person from engaging in conduct of the kind to which the application relates pending the determination of the application.
- (3) The court may discharge or vary an injunction granted under this section.
- (4) The power of the court to grant an injunction restraining a person from using land in a particular manner may be exercised—
- (a) if the court is satisfied that the person has used the land in that manner—whether or not it appears to the court that the person intends again to use the land, or to continue to use the land, in that manner; or
- (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will use the land in that manner—whether or not the person has previously used the land in that manner and whether or not there is an imminent danger of substantial damage to any person if the firstmentioned person uses the land in that manner.

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

112 Payments to be good discharge

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

113 Execution of documents for and on behalf of Executive

All instruments, receipts and documents relating to—

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

may be executed by the Minister for and on behalf of the Executive.

114 How documents to be given

- (1) A document required or permitted by this Act to be given to the Executive shall be given to the Executive by sending it by prepaid post to the Executive at an address prescribed for this subsection.
- (2) A document required or permitted by this Act to be given to a person by or under the authority of the Executive may be given to the person—
 - (a) if the person is a natural person—
 - (i) by delivering it to the person personally; or
 - (ii) by leaving it at, or by sending it by prepaid post to, the address of the place of residence or business of the person last known to the Executive;

- (b) if the person is a body corporate—by leaving it at, or sending it by prepaid post to, the head office, a registered office or a principal office of the body corporate; or
- (c) in any case where the Executive, after diligent inquiry, is unable to comply with the requirements of whichever of paragraphs (a) and (b) is applicable—by affixing the notice or other document in a prominent position on the land to which the notice relates.

115 Notice of signatures

- (1) Notice shall be taken of the signature, on an instrument relating to land or an interest in land, of the Minister or of a delegate of the Minister, if the signature purports to be witnessed by an officer of the Department of the Environment, Land and Planning.
- (2) The registrar-general may register such an instrument so signed and attested without further proof of the signature of the Minister, delegate or witness.

116 Delegation

- (1) Subject to subsection (2), the Executive or the Minister may, in writing, delegate all or any of its, his or her powers and functions under this Act to—
 - (a) a member of the public service; or
 - (b) a person who has executive authority in relation to the affairs of a Territory authority.
- (2) The Executive may not delegate the following powers:
 - (a) the power to authorise a person, or the holder or occupier of an office or position, to act under section 7, 8 or 11;
 - (b) the power to give a certificate under section 21 (1);
 - (c) the power to make a declaration under section 33 (1);
 - (d) the power to give a notice under section 37 (2);

- (e) the power under section 59 or 83 to reject a claim for compensation;
 - (f) the power to give a notice referred to in section 110 (2) (a).
- (3) A delegate under this section is, in the exercise of a power so delegated, subject to the directions of the Executive or the Attorney-General, as the case requires.

117 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

118 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

119 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

3 Legislation history

Lands Acquisition Act 1994 No 42

notified 7 September 1994 (Gaz 1994 No S177)

s 1, s 2 commenced 7 September 1994 (s 2 (1))

remainder commenced 1 February 1995 (s 2 (2) and Gaz 1995 No S27)

as amended by

Land Titles (Consequential Amendments) Act 1995 No 54 sch

notified 20 December 1995 (Gaz 1995 No S313)

commenced 20 June 1996 (s 2)

Financial Management and Audit (Consequential and Transitional Provisions) Act 1996 No 26 sch pt 13

notified 1 July 1996 (Gaz 1996 No S130)

commenced 1 July 1996 (s 2)

Land (Planning and Environment) (Amendment) Act (No 3) 1996 No 85 pt 3 div 7

notified 24 December 1996 (Gaz 1996 No S345)

pt 1 (s 1, s 2) commenced 24 December 1996

remainder commenced 24 June 1997 (s 2 (3))

Lands Acquisition Amendment Act 1999 No 74

notified 15 December 1999 (Gaz 1999 No 50)

commenced 15 December 1999 (s 2)

Utilities (Consequential Provisions) Act 2000 No 66 sch 1 pt 8

notified 20 December 2000 (Gaz 2000 No S68)

s 1, s 2 commenced 20 December 2000 (IA s 10B)

remainder commenced 1 January 2001 (s 2 (1) and Gaz 2000 No S69)

Legislation (Consequential Amendments) Act 2001 No 44 pt 210

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 210 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

4 Amendment history

Commencement

s 2 om 2001 No 44 amdt 1.2486

Definitions for Act

- s 3 def **acquiring authority** am 2000 No 66 sch 1 pt 8
def **compensation claim form** om 2001 No 44 amdt 1.2487
def **trust account** ins 1996 No 26 sch pt 13
def **trust fund** om 1996 No 26 sch pt 13
def **utility** ins 2000 No 66 sch 1 pt 8

Meaning of authorised person

- s 4 am 2000 No 66 sch 1 pt 8

Powers in relation to land temporarily occupied

- s 9 am 2000 No 66 sch 1 pt 8

Acquisitions to be in accordance with Act

- s 18 am 1996 No. 85

Pre-acquisition declarations

- div 4.1 hdg (prev pt 4 div 1 hdg) renum R2 LA

Declaration that land suitable for acquisition

- s 19 am 1995 No 54

Publication of pre-acquisition declarations

- s20 sub 2001 No 44 amdt 1.2488

Acquisitions where land required urgently etc

- s 21 am 1995 No. 54 sch; 2001 No 44 amdt 1.2489; R2 LA (see 2001 No 44 amdt 1.2490)

Reconsideration of pre-acquisition declaration

- div 4.2 hdg (prev pt 4 div 2 hdg) renum R2 LA

Notification of confirmation of pre-acquisition declaration etc

- s 25 sub 2001 No 44 amdt 1.2491

Miscellaneous

- div 4.3 hdg (prev pt 4 div 3 hdg) renum R2 LA

Acquisition by compulsory process

- s 33 am 2001 No 44 amdt 1.2492, amdt 12493; R2 LA (see 2001 No 44 amdt 1.2494)

When pre-acquisition declaration becomes absolute

- s 34 am 2001 No 44 amdt 1.2495, amdt 1.2496

Notification of compulsory acquisition declarations

- s 38 am 2001 No 44 amdt 1.2497, amdt 1.2498

Correction of compulsory acquisition declarations

- s 40 am 2001 No 44 amdt 1.2499-1.2501; R2 LA (see 2001 No 44 amdt1.2502)

Registration of compulsory acquisition declarations

- s 41 am 2001 No 44 amdt 1.2503

Entitlement to compensation

div 6.1 hdg (prev pt 6 div 1 hdg) renum R2 LA

Amount of compensation—interests other than mortgage interests

div 6.2 hdg (prev pt 6 div 2 hdg) renum R2 LA

Amount of compensation—general principles

s 45 am 1999 No 74 s 4

Matters to be disregarded in assessing compensation

s 50 am 1999 No 74 s 5

Amount of compensation—mortgage interests

div 6.3 hdg (prev pt 6 div 3 hdg) renum R2 LA

Claims for, and offers of, compensation

div 6.4 hdg (prev pt 5 div 4 hdg) renum R2 LA

Claims for compensation

s 56 am 2001 No 44 amdt 1.2504-1.2506

Determination of compensation payable

div 6.5 hdg (prev pt 6 div 5 hdg) renum R2 LA

Payment of compensation

div 6.6 hdg (prev pt 6 div 6 hdg) renum R2 LA

Payment of compensation into trust account

s 75 am 1996 No 26

Courts to ensure just terms

div 6.7 hdg (prev pt 6 div 7 hdg) renum R2 LA

Entitlement to compensation

div 7.1 hdg (prev pt 7 div 1 hdg) renum R2 LA

Claims for, and offers of, compensation

div 7.2 hdg (prev pt 7 div 2 hdg) renum R2 LA

Claims for compensation

s 82 am 2001 No 44 amdt 1.2507-1.2509

Determination of compensation payable

div 7.3 hdg (prev pt 7 div 3 hdg) renum R2 LA

Payment of compensation

div 7.4 hdg (prev pt 7 div 4 hdg) renum R2 LA

Payment of compensation into trust account

s 95 am 1996 No 26

Compensation for acquisition by utilities

pt 7A hdg ins 2000 No 66 sch 1 pt 8

Application of pt 6 and pt 7 to compensation for acquisition by utilities

s 96A ins 2000 No 66 sch 1 pt 8

Modification of operation of pt 7A

s 96B ins 2000 No 66 sch 1 pt 8
exp 1 January 2002 (s 96B (1))

Meaning of *acquiring authority* in pt 9

s 97A ins 2000 No 66 sch 1 pt 8

Extinguishment of easements

s 103 hdg sub 2001 No 44 amdt 1.2510
s 103 am 2001 No 44 amdt 1.2511-amdt 1.2514; R2 LA
(see 2001 No 44 amdt 1.2515)

Mining etc on certain land

s 104 am 2001 No 44 amdt 1.2516-amdt 1.2518

Trust account

s 104A ins 1996 No 26 sch pt 13

Determination of fees

s 117 sub 2001 No 44 amdt 1.2519

Approved forms

s 118 ins 2001 No 44 amdt 1.2519

Regulation-making power

s 119 ins 2001 No 44 amdt 1.2519

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Republication No	Amendments to	Republication date
1	Act 1996 No 85	31 December 1997

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