

Queensland



# ACQUISITION OF LAND ACT 1967

**Reprinted as in force on 12 May 1999  
(includes commenced amendments up to 1999 Act No. 19)**

**Reprint No. 2B revised edition**

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# Information about this reprint

This Act is reprinted as at 12 May 1999. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

## **Dates shown on reprints**

**Reprints dated at last amendment** All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

**Replacement reprint date** If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.

Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.

# Queensland



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# ACQUISITION OF LAND ACT 1967

[as amended by all amendments that commenced on or before 12 May 1999]

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

## PART 1—PRELIMINARY

### Short title

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

### Commencement

(2) This Act shall come into force on a date to be fixed by the Governor in Council by proclamation published in the gazette.

### Definitions

2. In this Act—

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

“**chief executive (surveys)**” means the chief executive within the meaning of the *Surveyors Act 1977*.

“**constructing authority**” means—

- (a) the State; or
- (b) a local government<sup>1</sup> or other person authorised by an Act to take land for any purpose.

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<sup>1</sup> For all references to local authority in this Act, now see *Local Government Act 1993*, section 1208(1)(a).

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

## PART 2—TAKING OF LAND

### Purposes for which land may be taken

5.(1) Land may be taken under and subject to this Act—

- (a) where the constructing authority is the Crown, for any purpose set out in schedule 2; or
- (b) where the constructing authority is a local government—
  - (i) for any purpose set out in schedule 2 which the local government may lawfully carry out; or
  - (ii) for any purpose, including any function of local government, which the local government is authorised or required by a provision of an Act other than this Act to carry out; or
- (c) in the case of a constructing authority other than the Crown or a local government—
  - (i) for any purpose set out in schedule 2 which that constructing authority may lawfully carry out; or
  - (ii) for any purpose which that constructing authority is authorised or required, by a provision of an Act other than this Act, to carry out.

(2) The power to take, under and subject to this Act, land for a purpose (the “**primary purpose**”) includes power to take from time to time as required land either for the primary purpose or for any purpose incidental to the carrying out of the primary purpose.

(3) The Governor in Council, pursuant to any powers under the *Land Act 1962*, to resume land, at the request of a constructing authority other than the Crown, may take on its behalf any land comprised in a holding or any easement on a holding within the meaning of that Act required by such



constructing authority for a purpose for which it may take under and subject to this Act land or an easement on land granted in fee simple.

## **Easements**

**6.(1)** When for any purpose it is not necessary that the constructing authority should take the whole estate in any land, but it is sufficient for such purpose to take an easement, the constructing authority may take such easement only and for that purpose the provisions of this Act shall apply as if the easement were land.

**(2)** Upon application in that behalf, payment of the prescribed fees, and the production to the land registry of the gazette copy of the proclamation, or, in the case of Brisbane City Council, notification of resumption, whereby an easement is taken affecting land under the *Land Title Act 1994*,<sup>2</sup> the registrar of titles shall register such easement as prescribed by that Act, notwithstanding that such easement is not being annexed to or used and enjoyed together with any other land.

## **Notice of intention to take land**

**7.(1)** A constructing authority which proposes to take any land shall serve as prescribed by this section the notice (a “**notice of intention to resume**”) prescribed by this section.

**(2)** A notice of intention to resume shall be served upon any and every person who to the knowledge of the constructing authority—

- (a) will be entitled to claim compensation under this Act in respect of the taking of the land concerned; or
- (b) is a mortgagee of the land.

**(3)** A notice of intention to resume shall be in writing and shall—

- (a) specify the particular purpose for which the land to be taken is required;
- (b) state the description of the land to be taken which description—

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<sup>2</sup> For all references to *Real Property Act 1861* in this Act, now see *Land Title Act 1994*, section 207.

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- (i) if the land is described as a separate lot or parcel in a plan of survey registered in the land registry or deposited in the office of the chief executive (surveys)—shall be that description; or
- (ii) if the land is not described as mentioned in subparagraph (i)—may be made in any manner sufficient to substantially identify the land;
- (c) in the case of an easement—also state the rights and obligations to be conferred and imposed by the easement;
- (d) state that the person to whom the notice is directed may, on or before the date specified in the notice (being a date not less than 30 days after the date of the notice), serve upon the constructing authority at the address set out in the notice an objection in writing to the taking of the land;
- (e) in relation to the objection mentioned in paragraph (d)—set out—
  - (i) that the objection must state the grounds of the objection and the facts and circumstances relied on by the objector in support of those grounds;
  - (ii) that any matter pertaining to the amount or payment of compensation is not a ground of objection;
  - (iii) that an objector who states in the objection that the objector desires to be heard in support of the grounds of the objection may appear and be heard by the constructing authority or its delegate at the time and place specified in the notice;
- (f) state that the constructing authority is willing to negotiate to acquire by agreement or, failing agreement, to treat as to the compensation to be paid and all consequential matters.

**(4)** Where a notice of intention to resume relates to land under the *Land Title Act 1994*, the constructing authority shall file a copy of the notice with the land registry.

**(4A)** If the constructing authority amends or discontinues the resumption it shall forthwith file with the land registry a notice of the amendment or discontinuance.

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**(4B)** For the purpose of subsection (4A), notwithstanding that a constructing authority has not served notice under section 16, it shall be deemed to discontinue a resumption if the application prescribed by section 9(3) has not been made within the time prescribed by that subsection or, in the case of Brisbane City Council, if the notification of resumption has not been published in the gazette within 12 months after the date of the notice of intention to resume.

**(5)** The failure by the constructing authority to serve upon the owner a notice of intention to resume, where such failure is due to circumstances beyond the control of the constructing authority, or the failure of the constructing authority to serve upon any person other than the owner a notice of intention to resume, or the failure of the constructing authority to observe subsection (4), shall not prejudice any proclamation or, in the case of Brisbane City Council, notification of resumption made under this Act, with respect to any land, and any land included in any such proclamation or notification shall be taken in terms of the proclamation or notification concerned notwithstanding any such failure, and the failure by the constructing authority to serve upon any person entitled thereto any notice as prescribed by this Act shall not invalidate the continuance or discontinuance of any resumption.

**(6)** In subsection (5)—

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

### **Dealing with objections**

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

**(2)** The constructing authority shall consider the grounds of objection to the taking of any land and—

- (a) if the objector has been heard by the constructing authority—the matters put forward by the objector in support of such grounds;
- or

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- (b) if the objector has been heard by the delegate of the constructing authority—the report thereon of such delegate.

(2A) If upon such consideration, the constructing authority is of opinion that the resumption should be discontinued or that the notice of intention to resume should be amended, the constructing authority may discontinue the resumption or amend the notice of intention to resume.

(2B) However, a notice of intention to resume shall not be amended so as to include therein land additional to the land the subject thereof.

(3) Without the consent in writing of the owner Brisbane City Council shall not take any land for the purpose of park or recreation grounds unless such land is, under the town plan for the City of Brisbane in force for the time being under the *City of Brisbane Town Planning Act 1964*, included in a zone referred to in schedule 2 to that Act.

(4) An owner who, at the time when any land to which subsection (3) applies is taken by Brisbane City Council, has an unsatisfied claim for compensation for injurious affection as prescribed by the *City of Brisbane Town Planning Act 1964* shall in respect of the taking of the land be entitled to compensation as if the land were not so injuriously affected.

**Means by which land to be taken other than by Brisbane City Council or an approved local government**

9.(1) This section does not apply with respect to the taking of land by Brisbane City Council or an approved local government.

(2) In this section—

“**Minister**” means—

- (a) in the case of land to be taken for a purpose of the *State Development and Public Works Organisation Act 1938*, the Minister for the time being administering that Act; and
- (b) in the case of land to be taken for a purpose of the *Transport Infrastructure Act 1994*, the Minister for the time being administering that Act; and
- (c) where the Governor in Council (who is hereby thereunto

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authorised) by order in council has so declared in the case of land to be taken for a purpose of any other Act—the Minister for the time being administering the Act in question; and

- (d) in any other case—the Minister for the time being administering this Act.

(3) If within the time stated in the notice of intention to resume no objection is made or if, after due consideration of all objections, the constructing authority is of opinion that the land in question is required for the purpose for which it is proposed to be taken, the constructing authority may apply to the Minister that the land be taken as prescribed by this section.

(3A) Such application shall be made within 12 months after the date of the notice of intention to resume and not thereafter.

(4) Such application shall contain or be accompanied by—

- (a) a copy of the relevant notice of intention to resume and of any further notice amending the same served under section 7;
- (b) where the land is not described in the notice of intention to resume as mentioned in section 7(3)(b)(i)—a copy of a plan of survey of the land certified as accurate by an authorised surveyor;
- (c) a list of the names and addresses last known to the constructing authority of all persons who to the knowledge of the constructing authority are entitled pursuant to section 18 to claim compensation;
- (d) a statement as to those of the persons mentioned in paragraph (c) who have not been served with the notice of intention to resume and, a further statement setting out in relation to every such person, the manner in which such service was attempted and the reasons for failure to effect it;
- (e) a statement whether or not any person objected in terms of the notice of intention to resume and, in the case of such an objection or objections, the name or names of the objector or objectors, a copy of every objection, and a report by the constructing authority thereon.

(5) The Minister may require any constructing authority to furnish, within a time specified by the Minister, such further particulars and

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information as the Minister deems fit with respect to an application under this section.

(6) The Governor in Council shall consider every application made to the Minister under this section, including all statements and documents or copies of documents accompanying the application and, if satisfied—

- (a) that the land in question or any part thereof may be lawfully taken for the purpose for which it is proposed to be taken and should be so taken; and
- (b) that the constructing authority has done and taken reasonable things and steps for the purpose of complying with the requirements of sections 7 and 8 and, where the notice of intention to resume has not been served upon the owner as defined in section 7(6), that such failure was due to circumstances beyond the control of the constructing authority;

the Governor in Council may, by proclamation published in the gazette, declare that the land in question or, as the case may be, such part, particulars whereof shall be contained in or annexed to the proclamation, is taken for the purpose therein mentioned as from the date of the publication in the gazette of the proclamation.

**Means by which land to be taken by Brisbane City Council or an approved local government**

**10.(1)** If within the time stated in the notice of intention to resume no objection is made or if, after due consideration of all objections, Brisbane City Council is of opinion that the land in question is required for the purpose for which it is proposed to be taken, Brisbane City Council may resolve accordingly and apply for the approval of the Governor in Council to the taking by it of the land.

**(1A)** Such application shall be made to the Minister and shall be in writing under the seal of Brisbane City Council and shall contain or be accompanied by a copy of the resolution and by the statements, documents and copies of documents prescribed by section 9(4).

**(1B)** The Minister may require Brisbane City Council to furnish, within a time specified by the Minister, such further particulars and information as the Minister deems fit with respect to the application.

(1C) If upon consideration of the application, including all statements, and documents or copies of documents accompanying the application, the Governor in Council is satisfied as prescribed by section 9(6), the Governor in Council by order in council may approve that Brisbane City Council take the land in question.

(2) Subject to the approval of the Governor in Council by order in council Brisbane City Council, by notification published in the gazette, shall declare that the land in question, particulars whereof shall be contained in or annexed to the notification, is taken by Brisbane City Council for the particular purpose mentioned in the notification as from the date of the publication in the gazette of the notification.

(2A) A notification referred to in subsection (2) is in this Act called a **“notification of resumption.”**

(3) Where the land in question is not described in the notice of intention to resume as mentioned in section 7(3)(b)(i), the particulars of the land in question which are contained in or annexed to the notification of resumption shall be in accordance with a plan of survey of such land certified as correct by an authorised surveyor.

(4) A notification of resumption may be published in the gazette within 12 months after the date of the notice of intention to resume but shall not be published thereafter.

(5) The Governor in Council by order in council may approve that a local government other than Brisbane City Council may take land as prescribed by this section or by section 15.

(6) During the continuance in force of such an order in council the local government named therein, in subsection (7) and in section 9(1) and in section 15(3) referred to as **“an approved local government”**, may take as prescribed by this section or, as the case requires, by section 15 any land which may be lawfully taken by it.

(7) For the purpose of giving effect to such an order in council the provisions, other than section 8(3) and (4), shall be read and construed with and subject to all necessary modifications including by reading and construing any reference therein to Brisbane City Council as a reference to the approved local government in question.

**Correction of errors etc. in proclamation or notification of resumption**

**11.(1)** Where it is found that the proclamation or notification of resumption, in this subsection called the “**first proclamation**” or, as the case requires, “**the first notification**”, incorrectly describes the land purporting to be taken thereby or that any other error in form or substance exists in relation to such taking, the Governor in Council, by a subsequent proclamation published in the gazette, or Brisbane City Council by a subsequent notification published in the gazette, may amend the first proclamation or, as the case may be, the first notification.

**(2)** If amended by a subsequent proclamation or notification made pursuant to this section, the first proclamation or, as the case may be, the first notification shall, on and from the date of the publication in the gazette of the subsequent proclamation or notification, be read as one with the subsequent proclamation or notification and shall have force and effect accordingly.

**(3)** The power to amend by a subsequent proclamation or notification includes power to so amend from time to time, including power by any subsequent proclamation or notification to amend the first proclamation or the first notification as theretofore amended by any other proclamation or notification.

**(4)** However—

- (a)** no person shall be prejudiced in respect of any mortgage, charge, claim, estate, or interest existing in respect of the land, by reason of the person having, in consequence of the first proclamation or the first notification or any subsequent proclamation or notification, done or omitted to do any act or thing, or failed to enforce or act upon any right, or to comply with any obligation in respect of such mortgage, charge, claim, estate or interest;
- (b)** no person shall have any right of action or claim against the constructing authority for anything bona fide done under the first proclamation or the first notification or any subsequent proclamation or notification;
- (c)** nothing in this section contained shall limit the power of the constructing authority to take at any subsequent time the whole or any part of the land mentioned or described in any proclamation



or, in the case of Brisbane City Council, notification of resumption so amended;

- (d) any amendment of the first proclamation or first notification shall not prejudice or affect the power of the constructing authority to take any land which has been excluded from the first proclamation or first notification by reason of the amendment;
- (e) if the constructing authority again takes land which has been excluded from the first proclamation or first notification by reason of the amendment, compensation shall not be payable in respect of the value of any works or improvements which have been made or effected on the land by the constructing authority subsequent to the date of publication in the gazette of the first proclamation or first notification.

### **Effect of proclamation or notification of resumption**

**12.(1)** Subject to subsection (4)—

- (a) land taken by proclamation—
  - (i) shall vest, according as the proclamation prescribes, in the Crown or in the constructing authority which requires the land on and from the date of the publication in the gazette of the proclamation; or
  - (ii) if it is taken by the Crown on behalf of a corporation representing the Crown in right of the State or constituted by any Act shall vest in the corporation requiring the land if the proclamation so prescribes and in such case, where the corporation is not a constructing authority, the provisions of section 41 shall apply as if the corporation were a constructing authority;
- (b) land taken by notification of resumption shall vest in Brisbane City Council on and from the date of the publication in the gazette of the notification of resumption.

**(2)** Where land taken consists of the whole estate in fee simple and vests in the Crown it shall be and remain Crown land until it is, according to the purpose for which it is taken, dealt with as prescribed by an Act other than this Act.

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**(2A)** Where land taken vests in a constructing authority (including the Crown where the land consists of an estate or interest less than the whole estate in fee simple) or, where the proclamation so prescribes, in a corporation it shall so vest and be held by the constructing authority or corporation for the estate or interest therein of which the land taken consists and, where the estate or interest is such that provision is made by the *Land Title Act 1994* for its registration, upon application by the constructing authority or corporation and production of a gazette copy of the proclamation or, in the case of Brisbane City Council, the notification of resumption and payment of the prescribed fees, the registrar of titles shall register the constructing authority or corporation accordingly.

**(2B)** Where such application is in respect of the whole estate in fee simple—

- (a) in land not under the *Land Title Act 1994* it shall contain a request for the issue of a certificate of title for the land;
- (b) in land under the *Land Title Act 1994* it may contain a request for the issue of a certificate of title for the land;

and upon payment of the prescribed fees the registrar of titles shall issue to the constructing authority or corporation a certificate of title accordingly.

**(3)** Where the land taken is part of land subject to a building units plan registered under the *Building Units and Group Titles Act 1980* the registrar of titles shall, upon payment of the prescribed fees, do and execute all such acts, matters and things as the registrar of titles considers necessary to amend the building units plan, and may make all such recordings as the registrar of titles considers necessary in the appropriate register.

**(3A)** If land taken is scheme land for a community titles scheme under the *Body Corporate and Community Management Act 1997*, the registrar of titles must, on payment of the prescribed fee, take the necessary action—

- (a) to amend any plan of survey identifying scheme land; and
- (b) to record the taking of the land in the freehold land register; and
- (c) to adjust the community management statement for the scheme.

**(4)** Land granted by the Crown upon trust for a public purpose shall upon and by virtue of the taking thereof become Crown land and may, according to the purpose for which it was taken, be granted upon trust to, or set apart and placed under the control of, the constructing authority, including

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Brisbane City Council, as trustee, or may be dedicated to public use.

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

(5A) The amount of such compensation may be agreed upon between the constructing authority and the claimant subject, however, to the consent of any mortgagee of the land taken.

(5B) Failing such agreement every such claim may be enforced against the constructing authority concerned under, subject to and in accordance with this Act and that constructing authority shall be liable accordingly.

(6) Subject to section 11, publication in the gazette of the proclamation or, in the case of Brisbane City Council, notification of resumption shall be evidence, and in the absence of evidence in rebuttal, conclusive evidence that—

- (a) in the case of land taken pursuant to an agreement in writing within the purview of section 15—the provisions of that section have been complied with;
- (b) in any other case—the provisions of sections 7, 8 and 9 or, as the case may be, 7, 8 and 10 have been complied with.

(7) Forthwith after the publication in the gazette of the proclamation or notification of resumption taking any land or of a subsequent proclamation or notification amending the same, the constructing authority or, as the case may be, Brisbane City Council shall serve upon every person who to its knowledge is entitled pursuant to section 18 to claim compensation or is a mortgagee of the land a copy of the proclamation or notification.

(8) The omission to serve upon any person such a copy shall not prejudice or affect in any way the operation and effect of the proclamation or notification in question.

### **Owner may require small parcel of severed land to be taken**

**13.(1)** If a constructing authority proposes to take part of any land and the taking of such part will leave a parcel which, the constructing authority and the owner of the land required to be taken agree in writing, will by reason of its small size or shape be of no practical use or value to the owner of such land, the constructing authority shall take the whole of the land.

(2) If, by reason of the fact that a boundary of land proposed to be taken (the “**primary land**”) will sever the principal building erected on the land from which the primary land will be severed and of the circumstances of the case relevant thereto, it appears to the Governor in Council that it is desirable that the constructing authority should take additional land approved by the Governor in Council (the “**additional land**”) being the whole or part of the land from which the primary land will be severed the additional land may be taken as prescribed by this Act and the taking of the additional land shall be deemed to be for a purpose incidental to the carrying out of the purpose for which the primary land is to be taken.

(3) A constructing authority may sell or otherwise deal with additional land taken by it pursuant to subsection (1) or (2) in such manner as it thinks fit and the power hereby conferred shall not be subject to the provisions of any other Act which purport to restrict or regulate the exercise by the constructing authority of its power to sell or otherwise deal with land or to the provisions of section 41.

### **Dealing with title to land affected by resumption**

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

(2) A person thereunto required by a notice under subsection (1), who fails to deliver up to the land registry the instrument specified in the notice

within the time therein specified shall be guilty of an offence and liable to a penalty of 2 penalty units.

**(2A)** Notwithstanding that such person has not been proceeded against for such offence, unless such failure is due to circumstances beyond the person's control, the person shall not be entitled to receive compensation or to be paid any advance or, in the case of a mortgagee, to be made any payment under this Act until the instrument in question is delivered to the land registry.

**(3)** The costs and expenses in connection with the registration and issue of documents rendered necessary by the taking of the land shall be borne by the constructing authority.

**(4)** Such costs and expenses may be taxed by the proper officer of the Supreme Court under the rules of that court.

### **Taking by agreement**

**15.(1)** Where a constructing authority has lawfully agreed in writing to take as prescribed by this Act any land for a purpose for which it may take the same the constructing authority may take the land under and in accordance with this section.

**(1A)** Save as is otherwise expressly provided in this section the provisions of sections 7, 8, 9 and 10 (other than subsections (5) to (7) thereof) shall not apply with respect to a taking of land under this section.

**(1B)** Subsection (1) shall not be construed to limit the power of a constructing authority to acquire by purchase or otherwise any land otherwise than as prescribed by this Act.

**(1C)** An agreement which purports or is properly to be construed to pass any interest in land to a constructing authority or to prejudice the right of any person to use, enjoy or dispose of the person's land shall not be an agreement within the purview of subsection (1).

**(2)** In any such agreement the parties—

- (a) may agree upon the amount of compensation; or

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- (b) may agree that the amount of compensation be determined by the Land Court in which case the compensation shall, upon the reference of either party, be determined by the Land Court as at the date on which the land is taken.

(2A) If the amount of compensation is agreed upon it may be further agreed that the constructing authority will grant any easement, right of way, right of occupation or any other right, privilege or concession in, upon, over or under any land under its control in satisfaction or part satisfaction of such amount and such a grant shall satisfy the amount of the compensation to the extent so agreed upon.

(3) Subsection (3A) does not apply with respect to the taking of land by Brisbane City Council or an approved local government.

(3A) A constructing authority entitled to take land under this section may apply to the Minister that the land be taken as prescribed by this section.

(3B) Such an application may be made within 12 months after the date of the agreement and not thereafter and shall be accompanied by the agreement and, where the land to be taken is not described in the agreement as mentioned in section 7(3)(b)(i), by a copy of a plan of survey of the land to be taken certified as accurate by an authorised surveyor.

(3C) In subsection (3A)—

“**Minister**” has the meaning assigned to that term in and for the purposes of section 9.

(4) Where Brisbane City Council is entitled to take land under this section it may apply to the Minister for the approval of the Governor in Council to the taking by it of the land.

(4A) Such an application shall be in writing under the seal of Brisbane City Council and shall be accompanied by the agreement and, where the land to be taken is not described in the agreement as mentioned in section 7(3)(b)(i), by a copy of a plan of survey of the land to be taken certified as accurate by an authorised surveyor and by a copy of the resolution of Brisbane City Council to take the land.

(5) With respect to an application made to the Minister under subsection (3A) or (4) the Minister may require the constructing authority to furnish, within a time specified by the Minister, such further particulars and information as the Minister deems fit.

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(6) If upon consideration of such an application, including the agreement and the copy plan of survey accompanying the same and any further particulars and information required by the Governor in Council, the Governor in Council is satisfied that the land in question may be lawfully taken for the purpose for which it is proposed to be taken and should be so taken under this section the Governor in Council may—

- (a) in the case of an application under subsection (3A)—by proclamation published in the gazette declare that the land in question, particulars whereof shall be contained in or annexed to the proclamation, is taken for the purpose therein mentioned on and from the date of the publication in the gazette of the proclamation;
- (b) in the case of an application under subsection (4)—by order in council approve that Brisbane City Council take the land in question.

(7) Subject to such approval by the Governor in Council, Brisbane City Council, by notification published in the gazette, shall declare that the land in question, particulars whereof shall be contained in or annexed to the notification, is taken by Brisbane City Council for the purpose mentioned in the notification on and from the date of the publication in the gazette of the notification.

(7A) For the purposes of this Act such a notification shall be taken to be included in the expression ‘notification of resumption’.

(7B) Such a notification may be so published within 12 months after the date of the agreement to take the land in question and not thereafter.

(8) Section 12 applies with respect to a taking of land under this section as it does to a taking of land under section 9 or 10.

(9) Upon failure by a constructing authority to make the application under subsection (3) or, in the case of Brisbane City Council, to publish a notification of resumption under subsection (7) within the time prescribed therefor by this section the constructing authority shall be deemed to discontinue the resumption in question and the provisions of section 16 shall apply with respect thereto as if the person from whom the land was to be taken had been served with a notice of intention to resume.

## **PART 3—DISCONTINUANCE OF TAKING OF LAND**

### **Discontinuance of resumption before proclamation or notification of resumption**

**16.(1)** A constructing authority may at any time before the publication in the gazette of the proclamation or, in the case of Brisbane City Council, the notification of resumption, serve upon every person who has been served with a notice of intention to resume a further notice stating that the constructing authority is discontinuing the resumption of the land concerned.

**(1A)** Service of the further notice shall discontinue the resumption concerned and no person shall have any claim for compensation or other right or remedy whatsoever against the constructing authority for any loss or damage alleged to have been occasioned (directly or indirectly) by the service of the notice of intention to resume or the discontinuance of the resumption except a claim for compensation for costs and expenses incurred by the person who was served with the notice and any actual damage done to the land concerned by the constructing authority.

**(1B)** The constructing authority and the claimant may agree upon the amount of the compensation to be paid under subsection (1A) or, upon the reference of either of them, such amount may be determined by the Land Court.

**(1C)** However, the constructing authority may have such costs and expenses taxed by the proper officer of the Supreme Court under the rules of that court and that no person shall be entitled to compensation in excess of the value of his or her estate or interest in the land.

**(2)** For the purposes of this section, notwithstanding that notice under this section has not been served, the constructing authority shall be deemed to discontinue a resumption if the application prescribed by section 9(3) has not been made within the time prescribed by that subsection or, in the case of Brisbane City Council, if the notification of resumption has not been published in the gazette within 12 months after the date of the notice of intention to resume.



**Revocation before determination of compensation**

**17.(1)** If, at any time after the publication in the gazette of the proclamation taking any land (the “**first proclamation**”) or, in the case of Brisbane City Council, the publication in the gazette of the notification of resumption taking any land (the “**first notification**”) and before the amount of compensation to be paid in respect of the taking thereof is determined by the Land Court or the payment of compensation in respect of the taking is sooner made, it is found that the land or any part thereof is not required for the purpose for which it was taken, the Governor in Council, by a subsequent proclamation published in the gazette, or Brisbane City Council by a subsequent notification published in the gazette, may revoke the first proclamation or, as the case may be, the first notification and, if the first proclamation or first notification has been amended, any amending proclamation or notification, or both the first proclamation or first notification and any such amending proclamation or notification, either wholly or so far as the Governor in Council or Brisbane City Council thinks necessary.

**(1A)** However, a proclamation or notification under subsection (1) shall not be made or published in the gazette unless the person entitled as owner to compensation in respect of the taking of the land has previously agreed in writing to the revesting as provided by this section of the land or part to which that proclamation or notification relates.

**(2)** Upon the revocation wholly or otherwise by a subsequent proclamation or notification under subsection (1) of any former proclamation or notification—

- (a) the former proclamation or notification shall to the extent to which so revoked be deemed to be absolutely void as from the making thereof as if it had not been made; and
- (b) without prejudice to the provisions of paragraph (a), the land or part thereof, as the case may be, to which the subsequent proclamation or notification relates shall revert in the person in whom the same vested immediately prior to the day when it was taken by the constructing authority under and pursuant to the proclamation or, in the case of Brisbane City Council, the notification of resumption taking the land and, subject as hereinafter in this subparagraph provided, shall so revert for the person’s then estate or interest therein; and

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- (c) the constructing authority shall cause a gazette copy of the subsequent proclamation or notification to be lodged with the land registry, and the registrar of titles must as soon as may be thereafter, at the cost and expense of the constructing authority, do and execute all such acts, matters, and things as the registrar of titles shall consider necessary to give effect to this subsection.

**(2A)** Subject to subsection (2)(a), for subsection (2)(b) the land or part shall so revert subject to all trusts, obligations, mortgages, encumbrances, charges, rates, contracts, claims, estates and interests of what kind soever subsisting therein or thereover immediately prior to the taking thereof, but so that no person shall be prejudiced by reason of the person having, in consequence of the proclamation or notification of resumption taking the land in question and in the meantime, done or omitted to do any act or thing or failed to exercise any right in respect of any such trust, obligation, mortgage, encumbrance, charge, rate, contract, claim, estate, or interest and, without limiting the generality of the foregoing, so that the time allowed under any such trust, obligation, mortgage, encumbrance, charge, rate, contract, claim, estate, or interest for the doing of any act or the exercising of any right shall be deemed not to be shortened by the period commencing on and including the date on which the land was taken and ending with and including the day immediately preceding the date on which the land or part was reverted.

**(3)** Without limiting the generality of the provisions of subsection (2)(c), the registrar of titles may make such endorsements upon the deed of grant or certificate of title for any lot or parcel of such reverted land or part, or issued such new certificates of title therefor with such endorsements thereon (if any) as the registrar of titles may deem requisite in the circumstances.

**(4)** Any person entitled to claim compensation under this Act in respect of the taking of any land may, upon the reversion of such land or part thereof pursuant to this section, claim from the constructing authority compensation for the loss or damage and (if any) costs or expenses incurred by the person in consequence of the taking of the land and prior to its reversion.

**(5)** The constructing authority and the claimant may agree upon the amount of the compensation to be paid under subsection (4), or they may agree that such amount be determined by the Land Court, in which case such amount shall, upon the reference of either of them, be determined by

the Land Court as if the land had been taken and not revested and the claim were limited to the compensation payable under that subsection.

## **PART 4—COMPENSATION**

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

**18.(1)** Subject to subsections (2), (3), (4A) and (5) compensation whereto a right is had under section 12 may be claimed from the constructing authority under, subject to and in accordance with the provisions of this part.

**(2)** In the case of the inability or incapacity of any person entitled to claim, the claim may be made by the person's guardian, trustee or committee or, if there is no guardian, trustee or committee, the Public Trustee of Queensland.

**(3)** Compensation shall not be claimable by or payable to a person who is lessee, tenant or licensee of any land taken if the constructing authority upon written application allows the person's estate or interest to continue uninterrupted.

**(4)** Subsection (4A) applies to land under the *Land Title Act 1994*.

**(4A)** Where, in respect of an estate or interest in the land taken which is not duly registered or notified in the land registry, a claimant makes a claim for compensation subsequent to the payment to another claimant of compensation in respect of a greater estate or interest in the land taken which included the unregistered or unnotified estate or interest pursuant to a claim made by such other claimant in or in connection with which the first mentioned claimant did not disclose in writing such unregistered or unnotified estate or interest, the claimant first mentioned in this subsection shall not be entitled to any compensation whatever from the constructing authority.

**(5)** The claim for compensation of a trustee or trustees of any land in respect of the taking thereof shall be limited to the amount of actual damage caused to the trust by reason of the taking, and no such trustee shall have any other right, remedy, or claim whatsoever in respect of such taking

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against the Crown or any other person whomsoever and this Act and every other relevant Act or law or rule, practice, or process of law, or judgment of any court of competent jurisdiction, shall be read, construed and applied subject to this subsection.

(6) For the purposes of a claim for compensation in respect of common property under and within the meaning of the *Building Units and Group Titles Act 1980*, the body corporate constituted under that Act by the proprietors within the meaning thereof of the units comprised in the building units plan concerned shall be deemed to be the owner of such common property.

(7) Except by unanimous resolution of all proprietors such body corporate shall not agree upon the amount of compensation.

(8) Unless otherwise agreed by unanimous resolution of all proprietors, the amount of compensation shall be distributed among the proprietors in shares proportional to the unit entitlements of their respective units.

(9) For a claim for compensation for common property for a community titles scheme, the body corporate for the scheme is taken to be the owner of the common property.

(10) However—

- (a) the body corporate may agree on the amount of compensation only by resolution without dissent; and
- (b) unless the body corporate agrees by resolution without dissent to a different distribution of the compensation, it must be distributed among the owners of lots in shares proportionate to the respective interest schedule lot entitlements of their lots.

(11) In subsections (9) and (10), the following words have the meanings given by the *Body Corporate and Community Management Act 1997*—

- body corporate
- common property
- community titles scheme
- interest schedule lot entitlement
- lot

- owner
- resolution without dissent.

### **Claim for compensation**

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

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

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

### **Assessment of compensation**

**20.(1)** In assessing the compensation to be paid, regard shall in every case be had not only to the value of land taken but also to the damage (if any) caused by either or both of the following, namely—

- (a) the severing of the land taken from other land of the claimant;
- (b) the exercise of any statutory powers by the constructing authority

otherwise injuriously affecting such other land.

(2) Compensation shall be assessed according to the value of the estate or interest of the claimant in the land taken on the date when it was taken.

(3) In assessing the compensation to be paid, there shall be taken into consideration, by way of set-off or abatement, any enhancement of the value of the interest of the claimant in any land adjoining the land taken or severed therefrom by the carrying out of the works or purpose for which the land is taken.

(4) But in no case shall subsection (3) operate so as to require any payment to be made by the claimant in consideration of such enhancement of value.

### **Grant of easement etc. in satisfaction of compensation**

21.(1) The constructing authority and the claimant may agree that the constructing authority will grant the claimant, in satisfaction wholly or partly of the claimant's claim for compensation, any easement, right of way, lease or other right of occupation, or any other right, privilege or concession in, upon, over or under the land taken or any other land the property of the constructing authority.

(2) In such case the parties may agree that the extent to which the grant shall satisfy the claim for compensation shall be determined by the Land Court, and the jurisdiction of the Land Court to determine the compensation shall include jurisdiction to determine the extent of such satisfaction.

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

22.(1) Where the Crown is the constructing authority, and the claimant agrees, the Governor in Council may grant in fee simple or demise for any lesser estate or interest to the claimant, in satisfaction wholly or partly of the claim for compensation, any Crown land.

(2) The Minister for that purpose may close a road that traverses or adjoins land owned by the claimant, and the Governor in Council may grant the land in the road to the claimant.

**Advance against compensation**

**23.(1)** A claimant for compensation as the owner of the land taken may at any time after the date on which the claimant delivered to the constructing authority his or her claim for compensation in accordance with the requirements of section 19, apply to the constructing authority to make to the claimant an advance not exceeding the amount prescribed by subsection (3) in respect of the compensation claimable by the claimant.

(2) Subject to being satisfied that the applicant is entitled to claim compensation as owner of the land taken and to subsection (3) the constructing authority shall make to the applicant the advance applied for by the applicant in respect of the compensation claimed by the applicant.

(3) The amount of an advance under this section shall not exceed—

- (a) where the constructing authority has made to the claimant an offer in writing of an amount of compensation in settlement of the claimant's claim—that amount; or
- (b) where the constructing authority has not made the offer mentioned in paragraph (a)—an amount equal to its estimate of the amount of compensation payable to the claimant.

(4) Subject to subsections (5) and (6), any amount payable to a claimant under this section which is not paid within 90 days after the claimant applied for the payment shall be recoverable by the claimant as a debt due and unpaid to the claimant by the constructing authority.

(5) Before paying the advance the constructing authority may require the claimant to satisfy it regarding taxes, rates and other moneys which, if unpaid, would be a charge upon the land, and may reduce the advance by any sum which, in respect of any thereof, is unpaid or, as respects any period of time prior to the date when the land was taken, will become payable.

(6) Where the land concerned is subject to a mortgage at the date when it is taken the constructing authority may reduce the advance by the sum due to the mortgagee.

(7) The constructing authority may pay to the Crown or to the local government concerned or to the mortgagee any sum by which the advance has been reduced under subsection (5) or (6).

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

**24.(1)** Subject to this section either the constructing authority or the claimant may refer to the Land Court for hearing and determination the matter of the amount of the compensation.

**(2)** If the amount of the compensation has not been sooner agreed upon, the claimant may so refer that matter at any time after the date upon which the claimant delivered to the constructing authority a claim for compensation in accordance with the requirements of section 19.

**(2A)** The claimant shall make the reference by filing in the office of the registrar of the Land Court copies of the claim delivered by the claimant to the constructing authority and of the notice of intention to resume and a gazette copy of the proclamation or, as the case may be, notification of resumption taking the land.

**(3)** The claimant shall not amend the claim filed by the claimant in the office of the registrar of the Land Court except upon leave granted by that court (which leave the court may grant upon such terms as it deems just, including terms with respect to the payment of costs).

**(4)** Upon the application of the constructing authority, the Land Court may order the claimant to file in the office of the registrar of the Land Court such further or other particulars with respect to the claim for compensation as, having regard to the provisions of section 19, the court deems fit.

**(4A)** A claimant who fails to comply with such an order within the time specified therein shall be deemed not to have referred to the Land Court the claim in question.

**(5)** If the amount of the compensation has not been sooner agreed upon and—

- (a) if the claimant has not sooner delivered to it a claim for compensation substantially in accordance with the requirements of section 19, the constructing authority may so refer the matter at any time after the expiration of the period of 3 months next following the date of the gazette containing the proclamation or, in the case of Brisbane City Council, the notification of resumption taking the land; or
- (b) if the claimant has delivered to the constructing authority a claim for compensation, the constructing authority may so refer that



matter at any time after the expiration of the period of 3 months next following the date of the gazette containing the proclamation or, in the case of Brisbane City Council, the notification of resumption taking the land, unless the reference has been sooner made by the claimant.

(6) The constructing authority shall make the reference in the manner prescribed by subsection (2A) save that if the claimant has not delivered to the constructing authority a claim for compensation substantially in accordance with section 19, then in the stead of a copy of the claim the constructing authority shall file a document containing or accompanied by all of the particulars required to be contained in or to accompany the claim so far as those particulars are known to it but, in relation to paragraphs (d) and (e), stating amounts which it is willing to pay.

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

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

(2) A claimant may appear on the reference by filing in the office of the registrar of the Land Court, on or before the date fixed by the order, a claim for compensation in accordance with the requirements of section 19, and thereupon section 24(3) and (4) shall apply and the matter of the amount of compensation shall be heard and determined as if the reference had been made in the first instance by the claimant.

(2A) However, an order as provided for by section 24(4) may be made in respect of such appearance and, if the claimant fails to comply with such order within the time therein specified, the claimant shall be deemed to have failed to enter an appearance on the reference.

(3) A claimant who fails to enter an appearance on a reference made by the constructing authority shall not be entitled to appear or to be heard by the Land Court upon the hearing of the reference save by leave of such court (which leave the court may grant upon such terms as it deems just, including terms with respect to the payment of costs).

(4) In the case of a reference made by the constructing authority, the Land Court may hear and determine the matter of the amount of compensation in

the absence of the claimant where the claimant fails to enter an appearance on or before the date fixed by order of the court or where, having so entered an appearance or having leave to appear, the claimant fails to appear at the hearing.

(5) Where the reference has been made by the claimant in the first instance, the Land Court may hear and determine the matter of compensation in the absence of the claimant if the claimant fails to appear at the hearing.

### **Jurisdiction relating to compensation**

**26.(1)** Subject to this section the Land Court shall have jurisdiction to hear and determine all matters relating to compensation under this Act.

(2) The Crown or any party aggrieved by a decision of the Land Court constituted by a single member may appeal to the Land Appeal Court in the manner provided in the *Land Act 1962*.<sup>3</sup>

(2A) The Crown or any party aggrieved by a decision of the Land Appeal Court upon any of the grounds specified in section 45(1) of the *Land Act 1962*,<sup>4</sup> may appeal in the manner provided in that Act.

(3) The decision (whether of the Land Court constituted by a single member or, as the case may be, the Land Appeal Court) shall be in writing and the registrar of the Land Court shall transmit the decision to the registrar of the Supreme Court, who shall cause the same to be filed in the registry of the latter court.

(4) The decision—

- (a) shall be final as regards the amount of compensation awarded; and
- (b) unless the amount shall have been paid into the Supreme Court pursuant to section 29, shall be final for all purposes and have the effect of a judgment of the Supreme Court and may be enforced accordingly.

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<sup>3</sup> The effect of this provision has been continued by the *Land Act 1994*, section 521.

<sup>4</sup> The effect of this provision has been continued by the *Land Act 1994*, section 521.

(5) Where, pursuant to section 29, the amount of compensation awarded is paid into the Supreme Court the decision shall not be final as regards the right or title of the claimant or any other person whomsoever to be paid that amount or any part thereof.

### **Costs**

**27.(1)** Subject to this section, the costs of and incidental to the hearing and determination by the Land Court of a claim for compensation under this Act shall be in the discretion of that court.

(2) If the amount of compensation as determined is the amount finally claimed by the claimant in the proceedings or is nearer to that amount than to the amount of the valuation finally put in evidence by the constructing authority, costs (if any) shall be awarded to the claimant, otherwise costs (if any) shall be awarded to the constructing authority.

(3) Subsection (2) does not apply to any appeal in respect of the decision of the Land Court or to costs awarded pursuant to section 24(3) or section 25(3).

### **Interest**

**28.(1)** Subject to subsection (2), in respect of the period or any part of the period commenced on and including the date on and from which any land is taken and ending on and including the day immediately preceding the date on which payment of compensation is made the Land Court or, upon appeal, the Land Appeal Court may order that interest be paid upon the amount of compensation determined by it.

(1A) Such interest shall be at such rate per centum per annum as the Land Court or, upon appeal, the Land Appeal Court, deeming reasonable, fixes by the order.

(1B) Interest so ordered to be paid shall be payable as if it were part of the compensation in question and shall be added to the amount thereof and be payable by the constructing authority accordingly.

(2) Interest shall not be payable in respect of any amount of compensation advanced under section 23.

**Where right to compensation is questioned**

**29.(1)** Where the title by reason whereof compensation is claimed under this Act comes in question—

- (a) in the Land Court or, upon appeal, the Land Appeal Court during the hearing and determination of the claim for compensation; or
- (b) during negotiations between the constructing authority and the claimant;

nevertheless the said court shall have power to determine or, as the case may be, the constructing authority and the claimant may agree upon the amount of the compensation to be paid.

**(1A)** In such case the constructing authority shall pay the amount of compensation determined or agreed upon into the Supreme Court.

**(2)** Where subsequent to the date when compensation has been determined or agreed upon, but before the constructing authority has paid the compensation to the claimant, the title by reason whereof the compensation was claimed under this Act comes in question to the knowledge of the constructing authority, it shall pay the amount of the compensation into the Supreme Court.

**(3)** A constructing authority may pay into the Supreme Court the amount of any compensation under this Act where—

- (a) the person to whom the amount is payable fails or refuses to accept payment thereof; or
- (b) the constructing authority is unable for any reason whatsoever to make to the claimant payment of the amount or to obtain from the claimant a good and sufficient discharge for such payment.

**(4)** The payment pursuant to a provision of this section of any amount of compensation into the Supreme Court shall discharge in full the liability of the constructing authority to pay that amount pursuant to the determination or agreement by virtue whereof it became payable.

**(5)** Upon application in that behalf the Supreme Court or a judge thereof may order that any money paid into that court pursuant to a provision of this section or part thereof shall be paid to or applied for the benefit of such person as the said court or judge finds to be entitled thereto.

(6) The said court or judge may subject such order to such terms and conditions as the court or judge deems just and may, at the court's or judge's discretion, order any party to the application to pay to any other party thereto such costs as the court or judge deems just.

### **Limited interests**

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

- (a) the constructing authority shall pay the amount of the compensation into the Supreme Court; and
- (b) the Supreme Court or a judge may upon application in that behalf order that the amount on any part thereof shall be applied to any 1 or more of the following purposes, that is to say—
  - (i) the discharge of any debt or encumbrance affecting the land, or affecting any land settled therewith, or to the same or like uses, trusts, or purposes;
  - (ii) the purchase of other land to be conveyed, limited, and settled upon or for the like uses, trusts, or purposes;
  - (iii) removing or replacing any buildings on the land, or substituting others in their stead;
  - (iv) the purchase of such securities as the Supreme Court or judge may direct, to be settled in the same manner as the land;
  - (v) in payment to any parties becoming absolutely entitled thereto, or, in case of their disability or incapacity, to their respective guardians, trustees, or committees (or if there is no guardian, trustee or committee, to the Public Trustee of Queensland), as the case may be.

(2) The costs of and incidental to any application under this section shall be in the discretion of the Supreme Court or Judge.

(3) Nothing in this section shall be deemed to prevent any person who has a partial or other qualified interest in land to which interest the person is

solely entitled, and which the person may absolutely sell or dispose of, from receiving any compensation awarded to the person in respect of such interest, or which has been agreed to be paid to the person.

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

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

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

**31A.(1)** This section applies if—

- (a) the whole of the scheme land for a community titles scheme under the *Body Corporate and Community Management Act 1997* is taken under this Act; and
- (b) the scheme land includes at least 1 lot that is, under the *Land Title Act 1994*—
  - (i) a lot on a building format plan of subdivision; or
  - (ii) a lot on a volumetric format plan of subdivision, and wholly contained within a building.

**(2)** The District Court may exercise, in relation to any building forming part of the scheme land, the jurisdiction it would have under the *Body Corporate and Community Management Act 1997* on the destruction of the building.

### **Mortgages**

**32.(1)** Where the land taken is subject to a mortgage at the date when it is taken, upon application by the mortgagee—

- (a) the Land Court or, upon appeal, the Land Appeal Court shall order that payment be made to the mortgagee of; or

- (b) if the compensation is agreed upon, the constructing authority shall pay to the mortgagee;

so much of the amount of the compensation as does not exceed the sum due to the mortgagee.

(2) Payment shall not be made to a mortgagee under this section—

- (a) in priority to any other claimant, save the mortgagor, unless the mortgagee would, if the land had been sold on the date when it was taken, have been entitled to such priority; or
- (b) in priority to any taxes, rates or other moneys charged upon the land taken in favour of the Crown or any local government.

(3) For the purposes of this section the sum due to the mortgagee includes interest payable under the mortgage up to the date of payment or the last day of any period in respect whereof interest upon the amount of compensation has been ordered to be paid pursuant to section 28, whichever is the earlier.

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

**33.(1)** If the land in respect of which compensation is determined or has been agreed to be paid is subject to a rent-charge or annuity, the Land Court or, upon appeal, the Land Appeal Court shall, upon application by the person entitled to such rent-charge or annuity, determine what part of such compensation shall be paid to the person so entitled in redemption thereof.

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

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

**34.** If the land in respect of which compensation is determined or has been agreed to be paid is part of land in respect of which any rent is payable, the Land Court or, upon appeal, the Land Appeal Court shall, upon

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

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

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

## **PART 5—GENERAL**

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

**36.(1)** For the purposes of this Act any member, officer, employee, contractor or agent of the constructing authority or any person authorised by it in that behalf may—

- (a) enter upon any land, for the purpose of making any inspection, valuation, survey or taking levels;
- (b) affix or set up thereon trigonometrical stations, survey pegs, marks, or poles, and from time to time alter, remove, inspect, reinstate and repair the same;
- (c) dig and bore into the land so as to ascertain the nature of the soil, and set out the lines of any works thereon;
- (d) do all things necessary for the purposes aforesaid.

**(2)** The power to enter upon any land includes power to—

- (a) re-enter from time to time;



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- (b) remain upon that land for such time as is necessary to achieve the purpose of the entry;
- (c) take such assistants, vehicles, materials, equipment or things as are necessary to achieve the purpose of the entry.

(3) When practicable, not less than 7 days notice in writing shall be given to the occupier or, if there is no occupier, the owner of the land of the intention to enter thereon, and the authority under which the person entering claims to enter or has entered shall, if required by such owner or occupier, be produced and shown.

(4) Every person who—

- (a) without due authority, destroys, mutilates, defaces, takes away, or alters the position of any trigonometrical station, survey peg, mark, or pole fixed or set up by any person under the authority of this section; or
- (b) wilfully obstructs or attempts to obstruct any person acting under the authority of this section;

shall be guilty of an offence against this Act and liable to a penalty not exceeding 4 penalty units.

(5) The constructing authority shall be liable for compensation for the actual damage (if any), done to the land by reason of the exercise of any power conferred by this section.

(6) Subsection (5) applies subject to section 37(4).

(7) Compensation pursuant to subsection (5) may be claimed and agreed upon or determined as prescribed by section 37(3) and (5).

**Minister may act for Crown as constructing authority**

**36A.** The Minister is authorised and required to exercise such powers, perform such functions and take such steps as are permitted or required by this Act for the purpose of taking land on behalf of the Crown as a constructing authority.

**Minister may delegate certain authorities and functions**

**36B.(1)** The Minister may either generally or otherwise as provided by the instrument of delegation, by writing under the Minister's hand, delegate to any officer of the Department of Lands all or any of the Minister's powers, authorities and functions conferred on the Minister by section 36A.

(2) A power, authority or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) Where in the exercise or performance of a power, authority or function so delegated the Minister is required or permitted by or under this Act to form an opinion, belief or state of mind in relation to any matter the delegate shall, or as the case may be, may, in the exercise or performance by the delegate of that power, authority or function, form the delegate's opinion, belief or state of mind.

(4) A delegation under this section is revocable at will and does not prevent the exercise of a power or authority or the performance of a function by the Minister or the making of a further delegation.

**Temporary occupation of land**

**37.(1)** The constructing authority may temporarily occupy and use any land for the purpose of constructing, maintaining or repairing any works, and may—

- (a) take therefrom stone, gravel, earth, and other material;
- (b) deposit thereon any material;
- (c) form and use temporary roads thereon;
- (d) manufacture bricks or other materials thereon;
- (e) erect workshops, sheds, and other buildings of a temporary nature thereon.

(2) The constructing authority or the person having the charge of the works shall, before occupying or using any land as herein provided, and except in the case of accident requiring immediate repair, give to the occupier or, if there is no occupier, the owner thereof not less than 7 days notice in writing, and shall state in such notice the use proposed to be made

of the land and an approximate period during which such use is expected to continue.

(3) The owner of the land or any other person having any estate or interest in the land may, at any time during such occupation or within 3 months thereafter, give notice in writing to the constructing authority that the owner claims compensation, and, subject to giving such notice, if the land is not taken the owner and all such other persons may recover under this Act compensation for all damage done, but not in the case of the owner or any such other person exceeding the compensation which would have been payable to him or her had the land been taken.

(4) No compensation shall be payable for any act or thing done under this section, the right or authority to exercise which is reserved by any Act, or by any regulation, Crown grant, or other instrument, except to the extent therein mentioned, notwithstanding that the terms and conditions imposed by such Act, regulation, grant, or instrument have not been performed.

(5) The constructing authority and the claimant may agree upon the amount of compensation to be paid under this section or they may agree that such amount be determined by the Land Court, in which case such amount shall, upon the reference of either of them, be determined by the Land Court as if the land had been taken and the claim were limited to the compensation recoverable under this section.

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

**38.(1)** If the owner or occupier of any land taken or occupied under this Act, or any other person, refuses to give up possession thereof, or obstructs the constructing authority or any person appointed in writing by it, the constructing authority may issue its warrant to the sheriff to deliver possession of the same to the person appointed in the warrant to receive possession, and on receipt of the warrant the sheriff shall deliver possession of such land accordingly.

(2) The costs of the issue and execution of the warrant, to be settled by the sheriff, shall be paid by the person in default, and may be deducted from any compensation payable to the person, or the same or any balance may be levied by distress and sale of the goods and chattels of such person.

### **Service of documents**

**39.(1)** Any notice or other document required by this Act to be served on any person may be served on such person personally or by post.

**(1A)** If such person is absent from the State the document may be served on the person's agent in like manner.

**(1B)** If such person is not known or has no known agent in the State, the document shall be served by the publication of the same, or a true abstract thereof, in the gazette and in some newspaper circulating generally in the locality where the land affected is situated.

**(2)** A document may be served on the constructing authority by being sent by post to the constructing authority at its office or to the office of such person as the constructing authority authorises by public notice to receive documents on its behalf.

### **Offences**

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

### **Disposal of land**

**41.(1)** Notwithstanding any provision of any other Act, where land has been taken either pursuant to an agreement under section 15 or by compulsory process under this Act and, within 7 years after the date of taking, the constructing authority no longer requires the land, then the constructing authority shall offer the land for sale to the former owner at a price determined by the chief executive of the department in which the *Valuation of Land Act 1944* is administered.

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

**(2)** In this section—

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

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

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

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

### **Regulations**

**42.(1)** The Governor in Council may from time to time make regulations not inconsistent with this Act providing for all or any purposes, whether general or to meet particular cases, that may be necessary or convenient for the administration of this Act or for carrying out the objects and purposes of this Act.

(2) A regulation may be made prescribing a penalty, but not exceeding in any case 1 penalty unit, for any contravention of or failure to comply with that or any other regulation.

(3) A regulation may be made about fees payable under this Act.

### **Publication of proclamations, orders in council, notifications of resumption, notifications under s 17, and regulations**

**43.(1)** Every proclamation, every order in council, every notification of resumption, every notification under section 17, and every regulation made pursuant to this Act shall—

- (a) be published in the gazette; and
- (b) upon its publication in the gazette, be judicially noticed and such publication shall be conclusive evidence of the matters contained therein; and
- (c) take effect from the date of such publication unless, in the case of any regulation, a later date is specified in that or any other regulation for its commencement when in such event it shall take effect from that later date; and

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- (d) in the case of any regulation, be laid before the Legislative Assembly within 14 sitting days after such publication, if the Legislative Assembly is in session, and if not, then within 14 sitting days after the commencement of the next session.

(2) If the Legislative Assembly passes a resolution of which notice has been given at any time within 14 sitting days after any such regulation has been laid before it disallowing the same or part thereof, that regulation or part shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further regulation.

**SCHEDULE 2**

## section 5

Purposes for which land may be taken under and subject to this Act—

- (a) abattoirs, ambulances, appliances for the destruction of pests or vermin, aqueducts, aviation and purposes associated therewith, baths and washhouses, beacons, bores, bore drains, botanical or other gardens, bridges, buildings, canals, caravan parks, cemeteries or crematories, charitable institutions, civic centres or squares, colleges, dams or weirs or other works for the conservation or reticulation of water, departmental and official purposes, docks, dockyards, drainage, educational establishments, electrical works, experimental farms, ferries, fire stations, flood gates and flood warnings, flood prevention or flood mitigation, fords, forestry (including afforestation, silviculture, protection of forests and forest products, harvesting, transport, milling, preparing, treating or marketing of forest products, access to or for the purposes of forests, acquisition of forests and forest products and kindred purposes), gas works, gravel and sand pits, gymnasiums, harbours and harbour works, health, hospitals, and hostels (including for mentally sick, inebriate or indigent persons), industrial schools, infirmaries, jetties, kindergartens, landing places, libraries, lighthouses, locks, lockups, markets, museums, offices, orphanages, parks, parking of vehicles, police, pounds, prisons (including community corrections centres under the *Corrective Services Act 1988*), protected areas within the meaning of division 2 of part 4 of the *Nature Conservation Act 1992*, public meetings, public music, pumps, quays, quarries, racecourses, railway and purposes associated therewith, recreation grounds, reformatories, reservoirs, roads, rubbish depots, schools, septic tanks, sewage farms and disposal works and depots, sewers, sewerage, shipbuilding, showgrounds, slaughter houses, soil conservation, swimming pools, tramways, universities, weighing machines, wells, wharves, works for the protection of the seashore and land abutting thereon, works for the conservation of hydraulic or other power or for any public works

## SCHEDULE 2 (continued)

or other work, or purpose of a like character and also for the construction or erection of any public or other works which the constructing authority is authorised by any Act or resolution of Parliament to construct or erect or for the purposes of any Act;

- (b) setting apart, subdividing, resubdividing, reclaiming, alienating, taking up, occupying, leasing, using as town or suburban lands or dealing with in any manner in which Crown land may be dealt with under the *Land Act 1962* (whether in carrying out the purposes for which land is taken in any of the cases in this paragraph (b), the land is dealt with separately or in conjunction with any adjacent or other Crown land);
- (c) any purpose declared by the Governor in Council by order in council to be a purpose for which land may be taken under and subject to this Act.



**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 12 May 1999. Future amendments of the Acquisition of Land Act 1967 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

**3 Key****Key to abbreviations in list of legislation and annotations**

AIA	=	Acts Interpretation Act 1954	prev	=	previous
AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	(retro)	=	retrospectively
notfd	=	notified	rv	=	revised edition
o in c	=	order in council	s	=	section
om	=	omitted	sch	=	schedule
orig	=	original	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SIR	=	Statutory Instruments Regulation 1992
prec	=	preceding	SL	=	subordinate legislation
pres	=	present	sub	=	substituted
prev	=	previous	unnum	=	unnumbered

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	2
Renumbered provisions	1

## 6 List of legislation

### **Acquisition of Land Act 1967 No. 48**

date of assent 22 December 1967

commenced 25 March 1968 (proc pubd gaz 23 March 1968 p 1206)

amending legislation—

### **Acquisition of Land Act Amendment Act 1969 No. 33**

date of assent 19 December 1969

commenced on date of assent

### **City of Brisbane Town Planning Act and Another Act Amendment Act 1977 No. 22 pt 3**

date of assent 21 April 1977

commenced 2 December 1978 (proc pubd gaz 2 December 1978 p 1581)

### **Real Property Acts and Other Acts Amendment Act 1986 No. 26 s 4 sch**

date of assent 8 April 1986

commenced on date of assent

### **Corrective Services (Consequential Amendments) Act 1988 No. 88 s 3 sch 1**

date of assent 1 December 1988

commenced 15 December 1988 (see s 2(2) and o in c pubd gaz 10 December 1988 p 1675)

### **Water Resources Act 1989 No. 112 s 1.3 sch 1**

date of assent 31 October 1989

commenced 1 February 1990 (proc pubd gaz 25 November 1989 p 2248)

### **Local Government (Planning and Environment) Act 1990 No. 61 s 8.8 schs 1–2**

date of assent 18 September 1990

commenced 15 April 1991 (proc pubd gaz 6 April 1991 p 2009)

**Nature Conservation Act 1992 No. 20 ss 1–2, 159 sch 2 (this Act is amended, see amending legislation below)**

date of assent 22 May 1992

commenced 19 December 1994 (1994 SL No. 472)

amending legislation—

**Nature Conservation Amendment Act 1994 No. 42 ss 1–2 sch (amends 1992 No. 20 above)**

date of assent 14 September 1994

commenced on date of assent

**Lands Legislation Amendment Act 1992 No. 64 ss 1–3 sch 1**

date of assent 7 December 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 26 March 1993 (1993 SL No. 88)

**Land Act 1994 No. 81 ss 1–2, 527 sch 1**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1995 (1995 SL No. 185)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3**

date of assent 22 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 13 July 1997 (1997 SL No. 210)

**Natural Resources and Other Legislation Amendment Act 1997 No. 78 pts 1–2**

date of assent 5 December 1997

commenced on date of assent

**Valuation of Land and Other Legislation Amendment Act 1998 No. 48 pt 1 s 17 sch**

date of assent 27 November 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 1998 (1998 SL No. 364)

**Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch**

date of assent 30 April 1999

commenced on date of assent

**7 List of annotations****Definitions****prov hdg** sub 1992 No. 64 s 3 sch 1**s 2** sub 1992 No. 64 s 3 sch 1def “**chief executive**” ins 1992 No. 64 s 3 sch 1def “**chief executive (surveys)**” ins 1992 No. 64 s 3 sch 1

def “**constructing authority**” ins 1992 No. 64 s 3 sch 1  
 amd 1998 No. 48 s 17 sch  
 def “**land**” ins 1992 No. 64 s 3 sch 1  
 amd 1994 No. 81 s 526 sch 5

**Repeals**

s 3 om 1992 No. 64 s 3 sch 1

**Meaning of terms**

s 4 om 1992 No. 64 s 3 sch 1

**Purposes for which land may be taken**

s 5 amd 1994 No. 81 s 527 sch 5; 1998 No. 48 s 17 sch

**Easements**

s 6 amd 1992 No. 64 s 3 sch 1; 1998 No. 48 s 17 sch

**Notice of intention to take land**

s 7 amd 1992 No. 64 s 3 sch 1; 1998 No. 48 s 17 sch

**Dealing with objections**

s 8 amd 1977 No. 22 s 28

**Means by which land to be taken other than by Brisbane City Council or an approved local government**

prov hdg amd 1998 No. 48 s 17 sch

s 9 amd 1969 No. 33 s 2; 1998 No. 48 s 17 sch

**Means by which land to be taken by Brisbane City Council or an approved local government**

prov hdg amd 1998 No. 48 s 17 sch

s 10 amd 1969 No. 33 s 3; 1998 No. 48 s 17 sch

**Effect of proclamation or notification of resumption**

s 12 amd 1969 No. 33 s 4; 1986 No. 26 s 4 sch; 1997 No. 28 s 295 sch 3; 1998 No. 48 s 17 sch

**Owner may require small parcel of severed land to be taken**

s 13 amd 1969 No. 33 s 5

**Dealing with title to land affected by resumption**

s 14 amd 1992 No. 64 s 3 sch 1; 1995 No. 58 s 4 sch 1

**Taking by agreement**

s 15 sub 1969 No. 33 s 6

amd 1998 No. 48 s 17 sch

**Revocation before determination of compensation**

s 17 amd 1992 No. 64 s 3 sch 1; 1998 No. 48 s 17 sch

**By whom compensation may be claimed**

s 18 amd 1992 No. 64 s 3 sch 1; 1997 No. 28 s 295 sch 3; 1998 No. 48 s 17 sch

**Claim for compensation**

s 19 amd 1992 No. 64 s 3 sch 1

**Crown grant in satisfaction of compensation**

s 22            amd 1994 No. 81 s 527 sch 5

**Advance against compensation**

s 23            amd 1998 No. 48 s 17 sch

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

s 31            amd 1998 No. 48 s 17 sch

**Powers of District Court for community titles scheme**

s 31A          ins 1997 No. 28 s 295 sch 3  
                  amd 1999 No. 19 s 3 sch

**Mortgages**

s 32            amd 1998 No. 48 s 17 sch

**Taxes, rates and charges**

s 35            amd 1998 No. 48 s 17 sch

**Powers of entry etc.**

s 36            amd 1995 No. 58 s 4 sch 1

**Minister may act for Crown as constructing authority**

s 36A          ins 1969 No. 33 s 7

**Minister may delegate certain authorities and functions**

s 36B          ins 1969 No. 33 s 7

**Disposal of land**

s 41            amd 1969 No. 33 s 8; 1998 No. 48 s 17 sch

**Regulations**

s 42            amd 1995 No. 58 s 4 sch 1; 1997 No. 78 s 4

**SCHEDULE 1**

                  amd 1989 No. 112 s 1.3 sch 1; 1990 No. 61 s 8.8(1) sch 1  
                  om R1 (see RA s 40)

**SCHEDULE 2**

                  amd 1988 No. 88 s 3 sch 1; 1992 No. 20 s 159 sch 2 (amd 1994 No. 42 s 2  
                  sch)