

1994

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

LANDS ACQUISITION BILL 1994

EXPLANATORY MEMORANDUM

Circulated by Authority of Bill Wood MLA

Minister for the Environment, Land and Planning

GENERAL OUTLINE

Prior to Self-Government the Government could compulsorily acquire land under the Commonwealth *Lands Acquisition Act 1955*. This changed in 1988. Although the Commonwealth *Australian Capital Territory (Planning and Land Management) Act 1988* vested the Territory with the ability to compulsorily acquire Territory land, legislation had to be enacted for that purpose. Further, such compensation had to be on just terms, as required by the Commonwealth *Australian Capital Territory (Self-Government) Act 1988*.

The Lands Acquisition Bill gives effect to the requirements imposed by the Commonwealth. Whilst being closely modelled along the lines of the Commonwealth *Lands Acquisition Act 1989* it was developed in accordance with the principles of:

- . open procedures in the acquisition of property;
- . public accountability of decisions to acquire property;
- . compensation for persons whose interest in property is acquired which recognises their interests, concerns and rights of appeal; and
- . completing the acquisition of land expeditiously.

The Bill strikes a balance between the rights of private property owners on the one hand and the legitimate interests of the community which might require land for public purposes on the other.

Financial Statement

The Bill in protecting the interests of land owners should not markedly affect the price of property that is acquired.

The administrative procedures imposed by the legislation will need to be resourced as part of each agency's operating expenditure requirements.

PART I – PRELIMINARY

Clauses 1–4 set out the mechanical parts which specify the short title, with the commencement of the Bill and defines various terms that are used throughout the Principal Act, including 'public purpose', 'land', 'interest' and 'authorised person'.

PART II – TEMPORARY ENTRY ON, AND OCCUPATION OF, LAND

In the process of making a decision to acquire a particular land an acquiring authority may inspect the land to determine whether or not it is suitable for that purpose. Part II defines the powers of authorised persons to enter on and temporarily occupy land and the obligations in relation to the exercise of those powers.

Clause 5 – Powers additional to other powers

Clause 5 affirms that other powers are additional to powers conferred by other laws of the Territory.

Clause 6 – Notice to be given before powers exercised

Clause 6 requires at least 14 days' notice, in writing, to be given to each person who has an interest in the land (other than mortgage interests) of the intention to enter on, examine and/or temporarily occupy land.

The notice is to include a statement setting out the powers intended to be exercised, the reason for the intended exercise of the powers and the right of the owner to compensation for loss suffered, injury, damage or expenses reasonably incurred as a consequence of the exercise of those powers [subclause 6(2)].

Clause 7 – Power to enter on, and examine, land

Clause 7 provides that an authorised person may enter upon the land, and adjoining land, and do such things as are necessary for determining whether the land is suitable for a public purpose.

Clause 8 – Power to occupy land temporarily

Clause 8 gives an authorised person power, within strict limits, to enter on land, adjoining land in which an interest is held by an acquiring authority, to carry out works connected with the carrying out of a public purpose.

Clause 9 – Powers in relation to land temporarily occupied

Clause 9 identifies and limits the acts which may be performed on land which is temporarily occupied.

Clause 10 – Obligations in relation to exercise of powers

Clause 10 places an obligation on an authorised person exercising the power of temporary entry to minimise damage to the land, remain on the land only for as long as is reasonably necessary, remove all plant, buildings and goods brought onto or erected on the land and reinstate the land.

Clause 11 – Order to enforce exercise of powers

Clause 11 enables a court of summary jurisdiction to authorise a police officer, or such other person named in the order, to use such force as is reasonably necessary to enable the temporary entry and occupation of land [subclause 11(1)] to be effected.

Subclause 11(2) provides that a person who has, or intends to, hinder or obstruct, shall be given a copy of the application seeking the order [subclause 11(1)]. That person is entitled to be heard on the hearing of the application.

Clause 12 – Exercise of powers not an acquisition of an interest in land

Clause 12 affirms that the exercise of powers associated with the temporary entry and occupation of land does not constitute the acquisition of an interest in land.

PART III – ACQUISITION OF INTERESTS

Clause 13 – Modes of acquisition

Clause 13 establishes that land may be acquired under the Act either by agreement or compulsory process.

Clause 14 – Nature of interests that may be acquired

Clause 14 defines the 'interest' that may be acquired.

Clause 15 – Authorities with limited powers

Clause 15 affirms that this Bill cannot provide a power to any authority which that authority does not already have.

Clause 16 – Steps in acquisition by agreement

Clause 16 outlines the procedural steps to be followed for acquisition of an interest in land by agreement under the Bill.

Clause 17 – Steps in acquisition by compulsory process

Clause 17 outlines the principal procedural steps to be taken for acquisition of an interest in land by compulsory process under the Bill.

Clause 18 – Acquisitions to be in accordance with Act

Clause 18 stipulates that acquiring authorities must acquire an interest in land compulsorily or by agreement in accordance with the Act unless one of the following exceptions apply:

- the regulations provide that the Act does not apply in relation to specific circumstances and the acquisition is an acquisition in those circumstances;
- the acquisition is authorised by a law of the Territory which specifies that it has effect despite anything contained in this Act;
- the acquisition is effected by a law of the Territory; and
- the interest is acquired other than by compulsory process or agreement.

Subclause 18(3) specifies that the Act does not apply where land is being withdrawn from a lease in accordance with the provisions of the lease.

PART IV – PRE-ACQUISITION PROCEDURES

This Part sets out the procedures for the making of pre-acquisition declarations which are a mandatory pre-requisite to acquisition, either by agreement or compulsory process, except where the interest in the land is currently available or on offer or the Executive has certified it to be a normal commercial transaction.

Division 1 – Pre-acquisition declarations

Clause 19 – Declaration that land is suitable for acquisition

Clause 19 provides for the Executive to issue a pre-acquisition declaration where an acquiring authority intends to acquire particular land, or an interest in land (not being a mortgage) for a public purpose. This is a pre-requisite to all acquisitions either by agreement or compulsory process (except in those cases referred to in clause 21, sub-clauses 32(2) and 32(5)). The clause:

- specifies the information to be contained in the pre-acquisition declaration i.e. identify the land, proposed interest, the public purpose, reasons why the land is considered suitable and identify the acquiring authority. This varies depending on whether the acquisition is a restriction on the use of the land;
- provides for the declaration to include (if required) a statement that the proposed use is a use connected with the implementation of a policy, details of which are set out in the decision; and

provides for the declaration to remain in force until one of the following events occurs:

- (i) the interest is acquired
- (ii) the declaration is revoked
- (iii) the declaration ceases to be in force because of clause 22 or subclauses 25(7) or 35(2).

A copy of the declaration is to be given to each person who is registered under the Real Property Act 1925 as an owner of an interest in the land, together with a statement setting out their principal rights.

Clause 20 – Publication of pre-acquisition declarations

Clause 20 requires publication in the Gazette and local newspaper of the declaration as soon as practicable after the making of the declaration. A copy is also to be given to the Registrar of Titles.

Clause 21 – Acquisitions where land required urgently etc.

The Executive may give a certificate that the interest may be acquired without a pre-acquisition declaration where:

- there is an urgent necessity to acquire the interest and any delay would not be in the public interest; or
- the making of the pre-acquisition declaration would result in the disclosure of information that would be prejudicial to the Territory.

Where such a certificate is given the interest may be acquired without the preparation of a pre-acquisition declaration [subclause 21(3)].

Subclause 21(4) requires that a copy of the certificate shall be:

- laid before the Legislative Assembly within 5 sitting days after issue; and
- served on each person affected by the certificate [as set out in subclause 21(7)].

The Executive may cause a copy of the certificate to be published in the Gazette and/or a daily newspaper.

The certificate ceases to be in force if the interest is acquired or the certificate revoked.

Clause 22 – Effect of section 21 certificate on pre-acquisition declaration

Clause 22 provides that when a pre-acquisition declaration is in force at the time, that a certificate is given under clause 21, the pre-acquisition declaration immediately ceases to have effect.

Division 2 – Reconsideration of pre-acquisition declaration

Clause 23 – Application for reconsideration of pre-acquisition declaration

Subclause 23(1) provides that a person whose interests are affected by a pre-acquisition declaration may request the Executive to review the declaration. The application shall be in writing and state reasons for the request [subclause 23(2)]. The request is to be made within 28 days of either service of the notice or after the requirements of subclause 19(6) and clause 20 are satisfied.

The Executive may agree, in writing, to an extension of the 28 day period, before the end of that period.

Clause 24 – Reconsideration of pre-acquisition declaration

Clause 24 provides that the Executive can either confirm, vary or revoke the original decision to acquire. The decision is to be made within 28 days and a statement of reasons is to be given with the decision [subclause 24(3)]. The Executive is not permitted to vary a declaration in such a way as to include an interest in land not previously affected.

Clause 25 – Consideration of certain instruments under subsection 24(1) by the Legislative Assembly

Clause 25 provides that an instrument under subsection 24(1) which confirms or varies a pre-acquisition declaration shall be laid before the Legislative Assembly within 3 sitting days of it being made otherwise the pre-acquisition declaration to which it relates ceases to have effect.

The Legislative Assembly may disallow the instrument, within 3 sitting days after the instrument was laid before the Assembly [subclauses 25(4) and (5)] and the pre-acquisition declaration to which it relates ceases to have effect [clause 25(7)]. If the Legislative Assembly dissolves or expires before the notice has been made and not disposed of, the instrument shall be deemed to have been laid before the Legislative Assembly on the first day when it next sits [subclause 25(6)].

Where a pre-acquisition declaration ceases to have effect, each person who was given a copy of the declaration shall be sent a notice stating that the declaration has ceased to have effect. A notice to that effect shall also be published in the Gazette [subclause 25(8)].

Division 3 – Miscellaneous

Clause 26 – Interpretation

Clause 26 defines the term 'authorising document'.

Clause 27 – Correction of mistakes in authorising documents

Clause 27 enables the Executive to vary a pre-acquisition declaration to correct a clerical error or obvious mistake.

Clause 28 – Consequences of variation of authorising documents

Clause 28 provides that any prior action will continue to apply to an authorising document after any variation. A copy of the document as varied is required to be given to all affected parties.

Clause 29 – Notification of confirmation or revocation of authorising document

Clause 29 requires the Minister to give written advice to all affected parties when the Executive confirms or revokes an authorising document.

Clause 30 – Registration of authorising documents

Clause 30 requires that a memorandum setting out particulars of an authorising document as given, varied or revoked is to be lodged with the Registrar of Titles, within 7 days of the authorising document being made, given, varied or revoked. The Registrar of Titles shall make such entries on the record as is appropriate [subclause 30(2)].

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

Clause 31 is intended to provide protection to a person who enters into an agreement in respect of a person's interest in the land in circumstances where an authorising document has been issued regarding that property and the owner of the property has not disclosed to the purchaser or lessee the existence of the document.

Subclause 31(2) provides, that where this occurs, it is an implied condition of the contract or lease that:

- the purchaser or lessee is entitled to rescind the contract or terminate the lease by written notice; and
- the owner is liable to pay to the purchaser or lessee loss or damage suffered because the existence of the authorising document was not disclosed.

Subclause 31(3) provides that the rights conferred by subclause 31(2) are in addition to, and not in derogation of, any other right or remedy under any other law of the Territory.

PART V – ACQUISITION PROCEDURES

This Part sets out the procedures to be followed in proceeding to acquire interests in land following compliance with the pre-acquisition procedures, including notice requiring acquisition, entry into possession by the acquiring authority and notification of the acquisition.

Clause 32 – Acquisition by agreement

The Executive may authorise the acquisition of land by agreement, other than in respect of a public park.

Clause 32:

- details the general prerequisites to acquisition by agreement [subclause 32(2)];
- requires that a statement be laid before the Legislative Assembly within 15 sitting days after an agreement is entered into setting out details of the interest being acquired (failure to do so does not invalidate the acquisition) [subclauses 32(3) and (4)];
- identifies those situations in which it is not necessary for a pre-acquisition declaration to be made before the acquisition can proceed; and
- sub-clauses 32(5) and (6) specify those situations which are standard commercial transactions.

Clause 33 – Acquisition by compulsory process

Clause 33 provides that the Executive can make a written declaration that an interest is acquired by compulsory process subject to certain prerequisites. The declaration which must identify the land and specify the public purpose [subclause 33(2)] is required to be published in the Gazette and in a newspaper published and circulating in the Territory [subclause 33(3)].

On publication in the Gazette the land is vested in the acquiring authority freed of all encumbrances etc which are deemed also to be compulsorily acquired [subclause 33(4)].

Subclause 33(5) provides that where because of paragraph 33(4)(b) another interest is in whole, or part, extinguished or diminished, that interest is taken to have been acquired by compulsory process.

Subclause 33(6) explains in what circumstances a person shall be taken to be affected by a declaration.

Clause 34 – When pre-acquisition declaration becomes absolute

Clause 34 sets out when an acquisition can proceed after the issue of a pre-acquisition declaration, that is, when the pre-acquisition declaration becomes absolute.

Clause 35 – Notice requiring acquisition

Clause 35 enables an owner, in respect of whose land a pre-acquisition notice is in force, to require the Minister, by notice in writing, to proceed with acquisition of the interest in land. Notice requiring acquisition may be served at any time later than 28 days after a pre-acquisition declaration becomes absolute and, if the acquisition is not completed in 3 months, the declaration ceases to have effect. The owner can extend the 3 month period.

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

Clause 36 provides that failure to comply with requirements of this Part that relate to acquisition does not affect the validity of acquisition by compulsory process.

Clause 37 – Entry into possession by acquiring authority

Clause 37 provides that a person who was the lawful occupant of the land, at the time it was compulsorily acquired, is entitled to remain in occupation for a period of at least six months subject to terms and conditions as are agreed with the Executive, or failing that, determined by the Executive [subclause 37(4)]. A decision by the Executive under 37(4) is reviewable by the Administrative Appeals Tribunal [subclause 37(6)].

The occupancy is subject to the right of the Executive to vary or terminate the right of occupancy in circumstances where the Executive is satisfied that whole or part of the land is urgently required [subclause 37(2)].

A further occupancy agreement can be entered into between the occupier and the acquiring authority [subclause 37(7)].

Clause 38 – Notification of compulsory acquisition declarations

Clause 38 requires that the Executive shall, within 14 days of a notice of compulsory acquisition appearing in the Gazette, serve each person with an interest in the land:

- . a copy of the declaration;
- . a notice stating that the person appears to be entitled to compensation and such other information on the operation of the Act; and
- . a compensation claim form.

Clause 39 – Effect of acquisition of mortgage interest on rights of mortgagee

Clause 39 affirms that the mortgagee retains rights and remedies against the mortgagor where a mortgage interest has been compulsorily acquired.

Clause 40 – Correction of compulsory acquisition declarations

Clause 40 enables the Executive to vary a notice of acquisition for the purpose of correcting a clerical error or an obvious mistake [subclause 40(1)].

Subclause 40(2) provides that a variation to a notice of acquisition has the effect of:

assuming the declaration as varied was that published in the Gazette or daily newspaper; and

requiring a copy of the declaration clearly showing the variation to be given to each person who received the original declaration and any others who may be affected by the varied declaration.

Clause 41 – Registration of compulsory acquisition declarations

Clause 41 requires that a memorandum setting out particulars of a declaration of compulsory acquisitions or variation thereto be lodged with the Registrar of Titles within 28 days after publication in the Gazette of the land that has been acquired [subclause 41(1)].

Subclause 41(2) empowers the Registrar of Titles to endorse or register the acquisition.

PART VI – COMPENSATION FOR COMPULSORY ACQUISITION OF INTERESTS IN LAND

This Part sets out the procedures for determining, and payment of, compensation to any former owner of an interest in land acquired by the Commonwealth by compulsory process including, the general entitlement to compensation, compensation principles, "market value", matters to be disregarded in assessing compensation, offers, review of offers and payment of compensation.

Division 1 – Entitlement to compensation**Clause 42 – Entitlement to compensation**

Clause 42 provides that a person whose interest in land is compulsorily acquired is entitled to compensation in accordance with the provisions in this Part.

Clause 43 – Mortgagees may waive rights in respect of mortgage interests

Clause 43 provides that a mortgagee can elect to waive the right to compensation.

Under subclause 43(2) the Executive may serve notice in writing to a mortgagee requiring the mortgagee to either make a claim for compensation or to waive the right to compensation.

Subclause 43(3) provides that a mortgagee will be deemed to have waived the right if a claim is not made within 30 days (or further period allowed by the Executive) after notice under subclause 43(2) has been given.

Subclause 43(4) establishes that a mortgagee is debarred from recovering compensation from the Executive, Territory or Commonwealth once his or her rights to compensation have been waived and affirms that the mortgagee will, in such a situation, retain the rights under the mortgage.

Division 2 – Amount of compensation – interests other than mortgage interests

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

Clause 44 makes clear that the provisions of this Division do not apply to the acquisition of mortgage interests.

Clause 45 – Amount of compensation – general principles

Clause 45 sets out the general principles to compensation entitlements (i.e. just compensation) having regard to all relevant compensation considerations.

The relevant considerations to be taken into account are identified as follows:

- . the market value of the land on the day of acquisition;
- . the value of any financial advantage to the owner additional to market value, incidental to the person's ownership or occupation of the land;
- . the diminution of a person's interest in the land;
- . the reduction in the market value of retained land caused by its severance from the acquired land;
- . the loss or damage suffered, or costs reasonably incurred, as a direct, natural and reasonable consequence of the giving of a relevant authorising document and the acquisition of the land;
- . any legal or other professional costs reasonably incurred in relation to the acquisition, including the cost of:
 - (i) obtaining advice in relation to the acquisition, entitlement to compensation or amount of compensation;

- (ii) producing documents, etc required by the Commonwealth.

Subclause 45(2)(d) provides that, where an interest in land acquired is due to expire or liable to be determined, the reasonable prospect of the continuation or renewal of the interest shall be taken into account in determining compensation.

Clause 46 – Meaning of "market value"

Clause 46 defines the term "market value".

Clause 47 – Special provision where market value determined upon basis of potential of land

Clause 47 provides that where land is valued for compensation purposes on the basis of its potential for a use more profitable than the purpose for which it was used at the time of acquisition, compensation cannot be allowed for any loss or damage that would have been sustained by the owner in realising that potential.

Clause 48 – No general market for interest acquired

Clause 48 provides the method for determining compensation in cases where the property acquired was used, or intended to be used, for a purpose for which there is no general demand or market (eg. schools, churches). Provided the property would have continued to be used for that purpose and there is a genuine intention to re-establish elsewhere, the market value of the property acquired is to be determined on the basis of the cost of equivalent reinstatement less the amount by which the former owner's financial position is improved by reason of the re-establishment. The provision does not apply where the land acquired was used for business purposes [subclause 48(2)].

Clause 49 – Interest affected by planning restriction

Clause 49 covers the determination of compensation in a case where the land is acquired by compulsory process and, immediately before the acquisition, a planning instrument is imposed which limits the use of the land to a public purpose.

Where this occurs, the limitation imposed is to be disregarded in the assessment of compensation. However, where the former owner has received, or is entitled to receive, compensation under other legislation in consequence of the zoning or restriction, such amount is to be deducted from the amount assessed under this clause [subclause 49(2)].

Clause 50 – Matters to be disregarded in assessing compensation

Clause 50 identifies factors to be disregarded in assessing compensation. These are:

- special suitability or adaptability of the land for a public purpose for which it could only be used by a government or a public authority;

- any increase in value of the land resulting from its use in a manner or for a purpose contrary to law;
- any increase or decrease in value arising from the carrying out, or the proposal to carry out, the purpose for which the interest was acquired;
- any increase in value resulting from improvements to the land carried out after the receipt of a copy of the relevant authorising document and without the written approval of the Minister.

Clause 51 – Acquisition of a dwelling

Clause 51 provides for the payment of a householder's solatium for the situation where the land compulsorily acquired contains a dwelling which was a person's principal place of residence and the person is no longer entitled to occupy the dwelling. An additional amount of \$15,000 is payable by way of a solatium.

Where the compensation otherwise payable to the person (excluding the solatium payment) is insufficient to enable the purchase or lease (as appropriate) of a reasonably equivalent dwelling, the person is entitled to receive sufficient compensation to enable the reasonable equivalent to be purchased (or leased) [subclause 51(2)].

Clause 52 – Interest subject to mortgage

Clause 52 provides for the right to deduct compensation paid or payable to the mortgagee(s) from the amount which the owner would otherwise be entitled where the land is acquired by compulsory process and is subject to mortgages [subclause 52(1)].

In the event that a mortgagee waives the right to make a claim for compensation, the owner is entitled to the full amount of the compensation [i.e. inclusive of the mortgage debt(s)] including interest accruing from the time of the acquisition.

As a general rule, compensation to which the owner is entitled is determined as if the interest had not been subject to a mortgage [subclause 52(2)].

Division 3 – Amount of compensation – mortgage interests

Clause 53 – Interpretation

Clause 53 defines what is meant by the term "money due to a mortgage under" and "interest due to a mortgage under" for the purpose of this part of the Act.

Clause 54 – Amount of compensation

Clause 54 specifies the method by which compensation payable to a mortgagee is determined.

Clause 55 – Particulars of mortgages may be required

Clause 55 requires a person from whom an interest in land (other than a mortgage interest) is being compulsorily acquired to provide the Minister with particulars of any existing mortgages on the interest.

Subclause 55(2) enables the Executive to determine the amount of compensation to be paid to a person claiming to be a mortgagor if they fail to comply with subclause 55(1). If this occurs the mortgagor cannot dispute the correctness of any amounts agreed to.

Division 4 – Claims for, and offers of, compensation**Clause 56 – Claims for compensation**

Clause 56 requires that any claim for compensation be submitted in accordance with the approved form and provide specific details of the claim. A claim may be withdrawn by the claimant [subclause 56(3)] and is taken to have been made when it is given to the Executive.

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

Clause 57 provides that where a mortgagee makes a claim for compensation with respect to the mortgage interest, the acquisition is deemed to have had the effect of discharging the liability of the mortgagor.

Subclause 57(3) requires a mortgagee to execute a discharge of the mortgage debt if so required by the mortgagor.

Clause 58 – Amounts paid in respect of mortgage liabilities extinguished by clause 57

Clause 58 requires a mortgagee to repay to the mortgagor any monies received after the date that the mortgagee debt liability has been deemed to be discharged under clause 57 (i.e. after the time of acquisition). The Executive may deduct from the compensation payable to the mortgagee, and pay to the person, that amount which the mortgagee has not repaid.

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

Clause 59 requires the Executive to consider a claim for compensation and, by notice in writing to the claimant, either accept the claim, make an offer detailing the basis on which the amount was calculated, or reject the claim giving reasons.

Subclause 59(2) provides for a claim to be deemed rejected if the Executive has not given a notice under either subclauses (1) or (2) to the claimant after 42 days (or otherwise agreed time) of receipt of the claim.

Clause 60 – Rejection of claims – review by Administrative Appeals Tribunal

Clause 60 provides for the right of any person who has had a claim for compensation rejected to apply to the AAT for a review of the decision. The application must be lodged within 3 months of the notice of rejection [subclause 60(3)].

Subclause 60(4) enables the AAT to affirm the rejection decision or accept the claim. Subclause 60(5) provides that if the AAT affirms the rejection of the claim the interest is taken to have not been acquired by compulsory process. If the AAT accepts the claim the interest specified in the claim is deemed to have been compulsorily acquired and the Executive is required to give the standard notice that the claim is accepted under clause 59(1) [subclause 60(6)].

Clause 61 – Consequences of not seeking review of decision to reject claim

Clause 61 provides that, where a claim for compensation has been lodged but rejected by the Executive and the claimant has not lodged an appeal with the AAT, or has, and the appeal has been disallowed by the Tribunal (subject to there being no further appeals pending), the Executive may proceed to pay compensation to any other persons who have an interest in the land on the basis that no compensation is payable to the person whose claim was rejected.

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

Clause 62 enables a claimant to either accept or refuse to accept an offer of compensation made by the Executive. The notice refusing the offer may set out a counter-offer and explain how that was arrived at.

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

Clause 63 provides that having the offer rejected and receiving a counter offer [paragraph 85(b)] the Executive is required to reconsider the quantum of compensation having regard to the detailed counter offer made by the claimant and to make a final offer detailing the basis on which the revised offer has been assessed.

Subclause 63(3) provides that if, after 2 months the Minister fails to make a final offer, the original offer is deemed to be the final offer [subclause 59(1)].

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

Clause 64 provides for the claimant to either accept or reject the "final offer" in writing to the Executive.

Division 5 – Determination of compensation payable**Clause 65 – Determination of compensation by pre-acquisition agreement**

Clause 65 provides that an agreement may be entered into between the Executive and the owner on the amount of compensation payable if the property is compulsorily acquired within a specified time. If the property is compulsorily acquired within the specified time, the amount of compensation is that previously determined [subclause 65(2)].

Clause 66 – Determination of compensation by post-acquisition agreement

Clause 66 provides that where an offer of compensation has been accepted by the claimant, the amount of compensation payable is the amount which was accepted by the claimant.

Clause 67 – Determination of compensation by Administrative Appeals Tribunal

Clause 67 provides that a person can apply to the AAT for a review of the decision to make the offer where the claimant has rejected the Executive's final offer of compensation.

Subclause 67(3) specifies that an application to the AAT must be lodged within 3 months of the final offer of compensation.

Subclause 67(4) to (6) provide that the AAT can confirm or vary the final offer and the decision of the AAT becomes the amount of compensation payable to the claimant.

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

Clause 68 provides that a person cannot seek determination of compensation by more than 1 means. Where an offer has been accepted the claimant cannot accept another offer or apply to the AAT for a review of the decision [subclause 68(1)].

Moreover, where the claimant has applied for a review of a decision unless the application is terminated or withdrawn then the claimant is not entitled to accept an offer of compensation or make another application for review.

Clause 69 – Separate rights of mortgagee and mortgagor to determination of compensation

Clause 69 provides that the rights of the mortgagee and mortgagor are protected where compensation is determined for either the mortgagee or mortgagor.

Division 6 – Payment of compensation**Clause 70 – Advance payment on account of compensation**

Clause 70 provides that where the Executive has accepted a claim, and made an offer of compensation, the Executive shall make an advance payment of the compensation. It also gives the Executive the discretion to make an advance against compensation in other circumstances where compensation may become payable. The amount of the advance shall not be less than 90% of the offer [subclause 70(3)]. The clause also provides that receipt of the advance by the claimant does not constitute an acceptance of the offer.

Clause 71 – Executive may pay rates etc.

Clause 71 provides for the deduction from the compensation payable, of rates, taxes and similar charges outstanding at the date of acquisition of a property which have subsequently been paid by the Executive.

Clause 72 – Payment of compensation

Clause 72 requires the Executive to pay the amount of compensation determined once certain actions have been fulfilled including proof of title being satisfied and all deeds and documents being surrendered and appropriately executed by the claimant.

Subclause 72(2) sets out how proof of title will be established for the purpose of entitlement to compensation.

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

Clause 73 specifies that, where the compensation payable by the Executive exceeds the sum advanced under clause 70, the excess paid by way of advance is recoverable from the claimant.

Clause 74 – Repayment of advances where no entitlement to compensation

Clause 74 provides that the Executive can recover from the claimant any advances paid, in the event that the claimant is not entitled to compensation.

Clause 75 – Payment of compensation into Trust Fund

Clause 75 provides that where compensation is payable and the amount has been determined but, after 3 months has elapsed, the amount remains unpaid due to default or delay on the part of the claimant, the Executive may pay the compensation into the Trust Fund.

Subclause 75(4) provides that an amount paid into the Trust Fund shall, for the purposes of clause 76, be taken to have been paid to the claimant.

Subclause 75(5) provides that where the claimant rectifies the default the Executive shall pay the compensation monies out of the Trust Fund.

Clause 76 – Interest payable on compensation – Interests other than mortgage Interests

Clause 76 provides that a person is entitled to receive interest on the compensation payable, calculated from the date on which the person made a claim for the compensation when the compensation is paid. The rate of interest is prescribed by way of regulation. Interest is based on the amount of compensation which remains unpaid; advances made pursuant to clause 70 would be deducted from the amount outstanding for the purpose of calculating the interest.

Subclause 76(4) provides that interest would be compounded at 3 monthly rests. Subclause 76(3) provides that where the final offer of compensation made by the Executive is refused by the claimant, then interest on compensation ceases to be payable from the date on which the offer was served on the claimant.

Clause 77 – Interest payable on compensation – mortgage Interests

Clause 77 provides similar provisions to that of clause 76 but there is an additional provision. The Executive shall pay the cost to the mortgagee of re-investing the money and making an allowance to cover any drop in the rate of interest or re-investment where the mortgage was not repayable at the date on which compensation was paid (i.e. when interest stopped accruing).

Division 7 – Courts to ensure just terms

Clause 78 – Courts to ensure just terms

Clause 78 provides that, in the event that it is of the opinion that the application of any provision of this Bill would not result in an acquisition on just terms, the Supreme Court or High Court may make a compensation determination or other order to ensure that an acquisition is on just terms.

PART VII – COMPENSATION FOR EXERCISE OF POWERS UNDER PART II AND FAILURE TO ACQUIRE

This Part sets out the procedures for determination and payment of compensation to any persons affected by the temporary entry on and occupation of property, or the failure to proceed with acquisition after the making of a pre-acquisition declaration. As with Part VI, it deals with offers for compensation, advance payment of offers, interest payable and appeal rights in respect of decisions.

Division 1 – Entitlement to compensation**Clause 79 – Interpretation**

Clause 79 defines the meaning of loss.

Clause 80 – Entitlement to compensation – exercise of powers under Part II

Clause 80 specifies that a person is entitled to just compensation for loss, injury or damage suffered, resulting from temporary entry on, and occupation of, land under Part II. The claim must be made within 3 years of suffering such loss, injury or damage and in accordance with section 82.

Clause 81 – Entitlement to compensation – pre-acquisition declaration made but acquisition not proceeded with

Clause 81 provides that a person is entitled to just compensation for loss, injury or damage suffered (including reasonable expenses incurred) resulting from the failure to proceed with acquisition after the issue of a pre-acquisition declaration. The claim must be made within 3 years after the declaration ceases to be in force and in accordance with section 82.

Division 2 – Claims for, and offers of, compensation**Clause 82 – Claims for Compensation**

Clause 82 provides that a compensation claim in accordance with this Part can be made, and shall be in accordance with the approved form covering the specified information.

Subclause 82(3) provides that a claim may be withdrawn by notice in writing and shall then be taken to have not been made [subclause 82(4)].

Subclause 82(5) provides that claims for compensation are deemed to be made when given to the Executive.

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

Clause 83 provides that where the Executive is satisfied that compensation is payable in respect of a claim, a written notice is to be served on the claimant which advises that the claim is accepted and makes an offer of compensation and explains the basis of the offer.

Subclause 83(2) requires the Executive to provide written notification to be provided to the claimant where a claim is rejected. The notice is to also set out the reasons for the rejection.

Subclauses 83(3) and (4) provide that where a notice has not been given within 42 days, or such longer period as the claimant agrees, the Executive is taken to have refused to accept the claim.

Clause 84 – Rejection of claims – review by Administrative Appeals Tribunal

Clause 84 provides for the right of any person who has had a claim for compensation rejected [i.e. under subclause 83(2)] to apply to the AAT for a review of the decision. The application must be lodged within 3 months of notice of rejection.

Subclause 84(4) sets out that the AAT can affirm the rejection decision or accept the claim. If the AAT accepts the claim then the claimant shall be taken to be entitled to compensation and the Executive is required to issue a notice to that effect under subclause 83(1) [subclause 84(6)]. If the AAT affirms the rejection by the Executive then the claimant shall not be entitled to compensation [subclause 84(5)].

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

Clause 85 provides that a claimant may either accept or refuse to accept an offer of compensation made by the Executive (clause 83). The notice refusing the offer may set out a counter-offer and explain how it was arrived at.

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

Clause 86 provides that having the offer rejected and receiving a counter offer [paragraph 85(b)] the Executive is required to reconsider the quantum of compensation having regard to the detailed counter offer made by the claimant and to make a final offer detailing the basis on which the revised offer has been assessed.

If, after 2 months, the Executive fails to make a final offer, the original offer is deemed to be the final offer [subclause 86(3)].

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

Clause 87 provides that the claimant, in writing to the Executive, can either accept or reject the "final offer".

Division 3 – Determination of compensation payable

Clause 88 – Determination of compensation by agreement

Clause 88 provides that where an offer of compensation has been accepted by the claimant, the amount of compensation payable is the amount which was accepted by the claimant.

Clause 89 – Determination of compensation by Administrative Appeals Tribunal

Clause 89 provides that where a final offer has been rejected, the claimant may apply to the AAT for a review of the decision of the Executive to make a final offer.

Subclause 89(3) stipulates that an application to the AAT must be lodged within 3 months of the final offer of compensation.

Subclauses 89(4) to (6) enable the AAT to affirm or vary the final offer and the amount determined by the AAT becomes the amount of compensation payable to the claimant.

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

Clause 90 provides that a person cannot seek determination of compensation by more than 1 means. Where an offer has been accepted the claimant cannot accept another offer or apply to the AAT.

Moreover, where the claimant has applied for review of a decision (clause 89) unless the application is terminated or withdrawn then the claimant is not entitled to accept an offer of compensation or make another application for review.

Division 4 – Payment of compensation

Clause 91 – Advance payment on account of compensation

Clause 91 provides that where the Executive has accepted a claim, and made an offer of compensation, the Executive shall make an advance payment of the compensation. It also gives the Executive the discretion to make an advance against compensation in other circumstances where compensation may become payable. The amount of the advance shall not be less than 90% of the offer [subclause 91(3)]. The clause also provides that receipt of the advance by the claimant does not constitute an acceptance of the offer.

Clause 92 – Payment of compensation

Clause 92 imposes a duty on the Executive to pay compensation where the amount has been determined and the person is entitled to it.

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

Clause 93 specifies that, where the compensation payable by the Executive exceeds the sum advanced under clause 90, the excess paid by way of advance is recoverable from the claimant.

Clause 94 – Repayment of advances where no entitlement to compensation

Clause 94 provides that the Executive can recover from the claimant any advances paid on account of compensation in the event that it becomes established that the claimant is not entitled to compensation.

Clause 95 – Payment of compensation into Trust Fund

Clause 95 provides that where compensation is payable and the amount has been determined but, after 3 months has elapsed, the amount remains unpaid due to default or delay on the part of the claimant, the Executive may pay the compensation into the Trust Fund.

Subclause 95(3) provides that an amount be paid into the Trust Fund shall, for the purposes of clause 96, be taken to have been paid to the claimant.

Subclause 95(4) provides that where the default or delay has been rectified the Executive shall pay the compensation monies out of the Trust Fund to the claimant.

Clause 96 – Interest payable on compensation

Clause 96 provides that a person is entitled to receive interest on the compensation payable, calculated from the date on which the person made a claim for the compensation when the compensation is paid. The rate of interest is prescribed by way of regulation. Interest is based on the amount of compensation which remains unpaid; advances made pursuant to clause 91 would be deducted from the amount outstanding for the purpose of calculating the interest.

Subclause 96(4) provides that interest would be compounded at 3 monthly rests. Subclause 96(3) provides that where the final offer of compensation made by the Executive is refused by the claimant, then interest on compensation ceases to be payable from the date on which the offer was served on the claimant.

Part VIII – PERSONS WITH LIMITED POWERS TO DEAL WITH INTERESTS IN LAND

Clause 97 – Supreme Court may approve certain acts

Clause 97 deals with the position of owners of land who are under a legal disability and who are affected by the operation of the Bill.

Subclause 97(1) provides that where an acquiring authority is unable to acquire land by agreement because the owner does not have the capacity or power to enter into or carry out such an agreement, the owner may with the approval of the Supreme Court, enter into and carry out such an agreement.

Subclause 97(2) addresses the situation where land is acquired by compulsory process, but for this section the owner does not have the capacity or power to do an act or thing. The Supreme Court may give approval to do such things.

Subclause 97(3) provides that having entered into an agreement or doing something in connection with compensation, the amounts or compensation payable shall be either paid to a trustee or otherwise dealt with directly by the Court.

Subclause 97(4) provides that the provisions of the clause have effect notwithstanding any law, deed, will, memorandum or articles of associations or other instrument.

PART IX – DEALINGS IN LAND VESTED IN ACQUIRING AUTHORITIES

Clause 98 – Disposals to be in accordance with Part

Clause 98 specifies that an acquiring authority must dispose of interests in land in accordance with this Part unless one of the following exceptions apply:

- (a) the disposal is performed by an authority which is fully or partially exempt by regulations;
- (b) disposal powers are provided in other legislation with the specific proviso that the Lands Acquisition Act shall not apply;
- (c) the disposal is effected by a law of the Territory; or
- (d) the disposal results from the acquiring authority having a power conferred by a mortgage or other similar security over the land.

Clause 99 – Vesting of Interests in Territory Authorities

Clause 99 enables the Executive to transfer title in land from the Territory to a Territory authority.

Clause 100 – Disposal of Interests in land

Clause 100 provides that the disposal of an interest in land by an acquiring authority may be authorised by the Executive. Failure to obtain the Executive's authorisation does not affect the validity of the disposal.

Clause 101 – Disposal may be made subject to reservation of interest

Clause 101 enables an acquiring authority to dispose of land subject to the reservation of a specified interest including an easement in gross over land to be disposed of or to place some restrictions on the future use of land.

Clause 102 – Interest in land to be offered first to former owner

Clause 102 provides that, where land that has been compulsorily acquired is to be disposed of within 7 years of being acquired, the Executive shall require the acquiring authority to first offer the interest for sale to the former owner at market value. This

provision does not apply where substantial improvements have been made to the land since compulsory acquisition.

The former owner shall be advised of the offer by written notice. The acquiring authority is not to dispose of the interest to any other person until 28 days after the day on which the offer is made [subclause 102(3)]. If the former owner indicates they wish to purchase the property, then the interest is not to be disposed of within 2 months of the notice being given [subclause 102(4)].

Subclause 102(5) enables the former owner to appeal the market value to the AAT. Subclause 102(6) sets out when the acquiring authority may dispose of the interest to a person other than the former owner where a matter is appealed to the AAT.

Subclause 102(9) provides that failure to comply with this clause shall not affect the validity of the disposal.

Subclause 102(10) defines "former owner" and "market value".

Clause 103 – Expungement of easements

Clause 103 enables the Executive, by notice in the Gazette, to extinguish an easement held by an acquiring authority. A copy of the Gazette notice is to be lodged with the Registrar of Titles, no later than 28 days after the notice appears in the Gazette [subclause 103(3)]. The Registrar-General shall make such entries on the record as are appropriate.

Clause 104 – Mining etc. on certain land

Clause 104 provides that regulations may be made prohibiting or regulating a number of matters relating to the mining or recovery of minerals.

PART X – MISCELLANEOUS

Clause 105 – Indexation of Subsection 51(2) amount

Clause 105 sets out the formula to be used for indexing the amount to be paid as solatium [subsection 51(2)]. The clause also sets out what the base amount shall be.

Clause 106 – General power of Supreme Court to adjust rights

Clause 106 specifies that the Supreme Court, on the application of the Executive or any other interested person, may determine the person or persons who hold an interest or interests, and may adjust rights or liabilities in connection with land compulsorily acquired or transactions related to or affected by the acquisition. The determination is binding on the Executive, the Commonwealth and any other person [subclause 106(2)].

Clause 107 – Supreme Court may order stay of proceedings under mortgage

Clause 107 provides that the Supreme Court may, on application by the mortgagor, order a stay of proceedings by the mortgagee to determine the nature of such interests, and including action with a view to taking possession of or selling the land, or foreclosing, as part of the proceedings which may be stayed.

Clause 108 – Jurisdiction of Supreme Court

Clause 108 confers exclusive jurisdiction (other than that of the High Court) on the Supreme Court to hear and determine applications and proceedings (under sections 97, 106, 107 and 111).

Clause 109 – Award of costs in Administrative Appeals Tribunal Proceedings

Clause 109 provides that the AAT may recommend to the Attorney-General that the Executive pay the whole or part of costs of proceedings before the Tribunal. The Attorney-General may authorise the payment where it has been recommended by the AAT [subclause 109(2)].

Clause 110 – Orders to obtain possession

Clause 110 provides that where an acquiring authority holds an interest in land and is entitled to possession of the land, which at that time is occupied by an unauthorised person, the Executive can apply to a court to make an order to authorise an officer to enter the land and deliver up possession of the land.

A copy of the application is to be given to the unauthorised person and that person is entitled to be heard [subclause 110(3)].

Clause 111 – Injunctions

Clause 111 provides that the Supreme Court may, in addition to any other powers of the Court, grant an injunction restraining a person from using land inconsistent with a restriction placed on the land by the acquiring authority. An interim injunction may also be granted [subclause 111(2)] and an injunction may be discharged or vested [subclause 111(3)].

The Court can grant an injunction if the Court is satisfied that the person has used the land in that manner, notwithstanding that the person intends to use, or continue to use, the land in that manner or if it appears that an injunction is necessary to prevent the person using the land in that manner [subclause 111(4)].

Clause 112 – Payments to be a good discharge

Clause 112 provides that all payments made by the Executive are good discharges and the Executive is not bound to see to the application of any money paid.

Clause 113 – Execution of documents for and on behalf of the Executive

Clause 113 provides that all instruments, receipts and documents relating to the acquisition of land, or land vested, or that has been vested, in the Commonwealth, to be executed by the Minister on behalf of the Executive.

Clause 114 – How documents are to be given

Clause 114 sets out how documents are to be given to the Executive by a person or by the Executive to a person. In the latter case the requirements differ according to whether the person is a body corporate, a natural person or where the address cannot be obtained by diligent inquiry.

Clause 115 – Notice of signatures

Clause 115 specifies that notice shall be taken of the signature on an instrument if it is witnessed by an officer of the Department of the Environment, Land and Planning. No further proof is required by the Registrar of Titles [subclause 115(2)].

Clause 116 – Delegation

Clause 116 sets out what powers and functions under the Act can and cannot be delegated.

Clause 117 – Regulations

Clause 117 specifies the regulation making powers under the Act.