

**NORTHERN TERRITORY OF AUSTRALIA**

**LANDS ACQUISITION ACT**

As in force at 1 October 1998

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 October 1998

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## LANDS ACQUISITION ACT

An Act to the acquisition of land by the Territory

### Part I Preliminary

#### 1 Short title

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

#### 2 Commencement

This Act shall come into operation on the date fixed by the Administrator by notice published in the *Gazette*.

#### 3 Repeals

The Acts of the State of South Australia specified in Schedule 1 cease to apply to the Territory as laws of the Territory.

#### 4 Definitions

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

***acquired land*** means land acquired under this Act.

***affected person***, in relation to a proposal, means a person who has been served with a notice of that proposal under section 32(1)(b).

***alternative provision area*** has the meaning given in section 43A(2) of the Native Title Act.

***approved form*** means a form approved by the Minister for the purposes of the provision in which the expression occurs.

***claimant*** means a person who:

- (a) has been served with an offer under section 50(1); or
- (b) has lodged a claim for compensation with the Minister under section 73(1).

**compensation** means the compensation to which a person is entitled under this Act.

**date of acquisition**, in relation to land, means:

- (a) in the case of land acquired or to be acquired by agreement under this Act – the date agreed between the parties; and
- (b) in any other case – the date on which a notice of acquisition of the land is published in the *Gazette*.

**interest**, in relation to land, means:

- (a) a legal or equitable estate or interest in the land; or
- (b) an easement, right, power or privilege in, under, over, affecting or in connection with land,

and includes native title rights and interests.

**land** includes an interest in land.

**mining interest** means any lease or other interest in land granted under a law of the Territory relating to minerals and includes an exploration licence.

**mortgage** means an interest in land to secure a debt.

**native title** and **native title rights and interests** have the meaning given in section 223 of the Native Title Act.

**Native Title Act** means the *Native Title Act 1993* of the Commonwealth.

**native title holder** has the meaning given in section 224 of the Native Title Act.

**notice of acquisition** means a notice referred to in section 43(1)(b).

**notice of dispute** means a notice referred to in section 68(2)(b).

**notice of proposal** means a notice referred to in section 33.

**onshore place** has the meaning given in section 253 of the Native Title Act.

**owner**, in relation to land, includes a native title holder in relation to the land.

***previous exclusive possession act*** has the meaning given in section 23B of the Native Title Act.

***proposal*** means a proposal for dealing with land made by the Minister.

***registered native title body corporate*** has the meaning given in section 253 of the Native Title Act.

***registered native title claimant*** has the meaning given in section 253 of the Native Title Act.

***registered native title rights and interests*** has the meaning given in section 30(3) of the Native Title Act.

***representative Aboriginal/Torres Strait Islander body*** has the meaning given in section 253 of the Native Title Act.

***Tribunal*** means the Lands and Mining Tribunal established by the *Lands and Mining Tribunal Act*.

- (2) For the avoidance of doubt, ***land*** as used in this Act shall be taken to include, and to have always included, water covering land.

## **5 Just terms**

This Act shall be read so as to provide for the acquisition of land on just terms.

## **5A Application in relation to native title**

This Act applies in relation to an acquisition of an interest in land that comprises native title rights and interests:

- (a) that is an act to which the consequences in section 24MD(6A) or (6B) of the Native Title Act apply; or
- (b) where:
- (i) the acquisition:
    - (A) is an act to which Subdivision P of Division 3 of Part 2 of the Native Title Act would have otherwise applied; and
    - (B) relates, to any extent, to an area of land that is an alternative provision area; and
  - (ii) there is a determination in force under section 43A(1)(b) of the Native Title Act in respect of the relevant provisions of this Act.

## Part III Temporary entry onto land

### 28A Certain land not to be acquired

- (1) The Minister may not compulsorily acquire any prescribed land or an interest in prescribed land except:
  - (a) for the purpose of the provision of essential services and facilities being power (including gas), water, sewerage, road or communication services or facilities to or across the prescribed land, or access to any of them; or
  - (b) where the prescribed land is held subject to the reservation that the Territory can acquire the part or interest for the purpose for which it is proposed to be acquired.
- (2) In subsection (1) **prescribed land** means land granted to, and held by, an incorporated association within the meaning of the *Associations Incorporation Act* or an Aboriginal association within the meaning of the *Aboriginal Councils and Associations Act 1976* of the Commonwealth as a community living area for Aboriginals, having been excised (by agreement or otherwise) for that purpose from a pastoral lease within the meaning of the *Pastoral Land Act* or a Crown lease of another kind.
- (3) In any dispute under this section, the Minister shall refer the matter in dispute to the Community Living Areas Tribunal continued in existence by section 93 of the *Pastoral Land Act* and the provisions of Part 8 of that Act, with the necessary changes, shall apply as if the matter in dispute were an application under that Part and the Minister and the association were parties to the application.
- (4) Nothing in subsection (1) empowers the Minister to compulsorily acquire the fee simple of any part of the prescribed land other than the interests referred to in that subsection.

### 29 Authorizations

- (1) The Minister may authorize any person to:
  - (a) enter onto and remain upon any land specified in the authorization; and
  - (b) perform any works specified in the authorization on or in relation to that land,for the purpose of formulating a proposal.
- (2) An authorization under subsection (1) shall be in writing.



**30 Entry and works**

- (1) Subject to this section, a person authorized under section 29 may:
- (a) enter and remain upon the land; and
  - (b) perform the works,  
specified in the authorization.
- (2) A person authorized under section 29 shall:
- (a) in performing a work authorized under subsection (1), do as little damage as possible to:
    - (i) the land; and
    - (ii) anything on or growing on the land;
  - (b) unless an agreement in that regard has been made with the owner of the land, remove from the land at the conclusion of the period during which he has remained on the land all plant, machinery or equipment brought upon the land; and
  - (c) leave the land, as nearly as possible, in the same condition as it was immediately before he entered onto the land.

**31 Interference**

A person shall not:

- (a) wilfully and without authority interfere with anything established or placed on or in land; or
- (b) wilfully obstruct a person acting,  
in accordance with an authorization under section 29.

Penalty: \$2,500 or imprisonment for 6 months.

## **Part IIIA Acquisition by agreement**

### **31A Agreement with owner, &c.**

The Minister may acquire land under this Act by agreement if the agreement is:

- (a) in the case of the acquisition of a native title right or interest – in accordance with an indigenous land use agreement entered on the Register of Indigenous Land Use Agreements maintained under the Native Title Act; or
- (b) in the case of any other interest in land – with the owner of the land.

## **Part IV Pre-acquisition procedures: acquisitions above highwater mark and acquisitions below highwater mark for non-government purposes**

### **Division 1A Application**

#### **31B Application above highwater mark, &c.**

- (1) Subject to subsection (2), this Part applies in relation to:
  - (a) the compulsory acquisition of land to the extent that the acquisition relates to an onshore place on the landward side of the mean highwater mark of the sea; and
  - (b) the compulsory acquisition of land to the extent that the acquisition relates to an onshore place on the seaward side of the mean highwater mark of the sea where the compulsory acquisition is an act to which the consequences of section 24MD(6B) of the Native Title Act apply.
- (2) Where, in relation to the compulsory acquisition of land:
  - (a) this Part would, but for this subsection, apply in relation to the compulsory acquisition of so much of the land as is on the landward side of the mean highwater mark of the sea; and
  - (b) Part IVA would, but for this subsection, apply in relation to the compulsory acquisition of so much of the land as is on the seaward side of the mean highwater mark of the sea,

the compulsory acquisition is to be taken to consist of 2 separate acts of compulsory acquisition as follows:

- (c) the compulsory acquisition of land on the landward side of the mean highwater mark of the sea;
- (d) the compulsory acquisition of land on the seaward side of the mean highwater mark of the sea.

## **Division 1 Proposal**

### **32 Notification of proposal**

- (1) The Minister may compulsorily acquire land in relation to which this Part applies if the Minister has:
  - (a) caused a search to be made of:
    - (i) the Register maintained by the Registrar-General under the *Real Property Act*; and
    - (ii) the Register of Native Title Claims and the National Native Title Register maintained under the Native Title Act;
  - (b) caused a notice of proposal to be served on each person ascertained as a result of that search or otherwise as having or claiming to have an interest in the land that will be divested, modified or affected by the acquisition of the land, including:
    - (i) the registered native title claimants (if any) in relation to any of the land; and
    - (ii) the registered native title bodies corporate (if any) in relation to any of the land;
  - (c) if native title rights and interests are proposed to be acquired – caused a copy of the notice to be served on the representative Aboriginal/ Torres Strait Islander body or bodies in relation to the land;
  - (d) if the land is registered on a register referred to in paragraph (a) – caused a copy of the notice to be lodged with the Registrar-General or the Native Title Registrar, as the case may be;
  - (e) caused a notice of proposed acquisition in the approved form to be published in a newspaper circulating in the area in which the land is situated; and

- (f) caused a notice of proposal in the approved form to be served on the other persons (who may be or include a person lodging an objection under section 34(1)) the Minister is satisfied have an interest in the land that will be divested, modified or affected by the acquisition and on the other persons the Minister thinks necessary.
- (2) A notice of proposal or notice of proposed acquisition under subsection (1) may relate to the acquisition of more than one area of land or more than one interest in the same area of land.
- (3) The serving of a notice of proposal under subsection (1)(b) or (f) does not constitute:
  - (a) an offer or binding agreement to acquire the land the subject of the notice; or
  - (b) a recognition by the Territory that the person on whom it is served has an interest in the land proposed to be acquired.

### **33 Form of notice of proposal**

- (1) A notice of proposal is to be in the approved form and contain:
  - (a) a description of the land proposed to be acquired;
  - (b) details of the manner in which it is proposed that the land, if acquired, will be dealt with;
  - (c) an invitation to the person on whom the notice is served to negotiate with the Minister an amount of compensation for the acquisition (after all objections lodged in accordance with section 34 have been dealt with under this Part) of the person's interest by agreement under this Act and advising the person that in the absence of agreement the land will be compulsorily acquired; and
  - (d) a statement to the effect:
    - (i) that:
      - (A) in the case of a notice of proposal served under section 32(1)(b) – the person on whom the notice is served may, within 2 months after the date of the notice; or
      - (B) in the case of a notice of proposal served under section 32(1)(f) – a person who has or claims to have an interest in land the subject of the proposal

may, within 2 months after publication of the notice of proposed acquisition under section 32(1)(e),

lodge with the Minister in the approved form an objection to the acquisition so far as it affects the person's interest in the land; and

- (ii) that, if the person is a registered native title claimant or registered native title body corporate in relation to any of the land, the objection may include an objection to the acquisition so far as it affects their registered native title rights and interests.

- (2) The Minister must cause to be served on each person served with a notice of proposal a statement in the approved form summarising the rights of such persons under this Act.

### **34 Lodgement of objections**

- (1) A person who has or claims to have an interest in land the subject of a proposal may, within the objection period or such further period as the Minister in writing allows, lodge with the Minister an objection to the acquisition so far as it affects that interest.

- (1A) A person who claims to have native title rights and interests in land the subject of a proposal may only lodge an objection under subsection (1) if the person is a registered native title claimant in respect of those rights and interests.

- (2) For the purposes of subsection (1), the objection of a registered native title claimant or registered native title body corporate in relation to any of the land proposed to be acquired may include an objection to the acquisition so far as it affects their registered native title rights and interests.

- (3) An objection:

- (a) is to be in the approved form;
- (b) is to state the manner in which it is said that the acquisition would affect the interest that the person objecting has or claims to have in the land; and
- (c) is to be accompanied by the prescribed fee, unless payment of the fee has been waived by the Minister.

- (4) Subject to section 89A, compensation is payable to a person whose interest in land is acquired under this Part whether or not the person lodged an objection to the acquisition under section (1).

- (5) In subsection (1), **objection period**, in relation to a person claiming to have an interest in land the subject of a proposal, means:
- (a) if the person is served with a notice in pursuance of section 32(1)(b) – 2 months after the date of the notice; or
  - (b) in any other case – 2 months after publication of the notice referred to in section 32(1)(e).

### **35 Modification or abandonment of proposal**

- (1) The Minister may, at any time before the date of acquisition, modify or abandon a proposal.
- (2) The Minister must cause notice of any modification or abandonment of a proposal to be lodged with:
  - (a) each affected person;
  - (b) each person who has lodged an objection under section 34(1); and
  - (c) if a copy of the notice of proposal was lodged with the Registrar-General or the Native Title Registrar under section 32(1)(d) – the Registrar-General or the Native Title Registrar, as the case may be.
- (3) The abandonment of a proposal under this section does not prevent the Minister from entering into negotiations to acquire the land the subject of the proposal by agreement under this Act or otherwise or prevent the acquisition of that land by such agreement.

## **Division 2 Consideration of objections**

### **36 Invitation to consult**

Within one month after receiving an objection in accordance with section 34, the Minister must invite the person who lodged the objection to consult with the Minister in accordance with section 37.

### **37 Consultation and mediation**

- (1) The Minister must consult with a person who lodged an objection in accordance with section 34 about the acquisition.
- (2) Where under subsection (1) the Minister consults with any registered native title claimant or registered native title body corporate who objects to the acquisition, the consultation is to include consultation with the claimant or body about ways of

minimising the impact of the acquisition on registered native title rights and interests in relation to the land, including (if section 24MD(6B)(e) or 43A(4)(d) of the Native Title Act applies in relation to the acquisition and it is relevant to do so) about any access to that land or the way in which anything authorised by the acquisition might be done.

- (3) For the purposes of subsection (1), the Minister is to be taken to have consulted with a person if the Minister schedules and attends at least 2 meetings (the scheduled date of the second meeting being at least 14 days after the scheduled date of the first meeting) for the purpose of consulting the person about the acquisition.
- (4) Subject to section 38, at any time after the second scheduled meeting referred to in subsection (3), the Minister and the person objecting to the acquisition may agree to refer the matter to mediation and the matter is to be taken to have been referred accordingly.
- (5) For the purposes of subsection (4):
  - (a) the parties may agree on the appointment of a mediator; or
  - (b) if no agreement is reached – either party may apply to the Tribunal for the appointment of a mediator under section 36 of the *Lands and Mining Tribunal Act*.

### **38 Application to Tribunal**

At any time:

- (a) after:
  - (i) the second scheduled meeting referred to in section 37(3); or
  - (ii) the expiry of one month from the date on which a matter was referred to mediation under section 37(4); or
- (b) if the Minister and the person objecting have agreed in writing that neither party may take action under this section until after a longer period has expired – after that longer period,

either the Minister or the person objecting to the acquisition may apply to the Tribunal to have the objection to the acquisition heard.

### **Division 3 Right to negotiate, &c.**

#### **38A Agreements to surrender, &c., native title made before 30 September 1998**

Where, immediately before 30 September 1998, an agreement under section 21 of the Native Title Act is in force, that agreement has affect despite anything in this Act.

#### **39 Agreements and determinations under Subdivision P made before 30 September 1998**

Where, immediately before 30 September 1998:

- (a) an agreement under section 31(1)(b) of the Native Title Act; or
- (b) a determination under section 38(1) of the Native Title Act,

is in force in respect of a compulsory acquisition of native title rights and interests to which 24MD(6B) of that Act would otherwise apply then, subject to Subdivision P of Division 3 of Part 2 of that Act, the Minister may compulsorily acquire those native title rights and interests after having complied with the procedures in that Subdivision rather than the procedures in Division 1 and 2 of this Part.

#### **40 Compulsory acquisition where right to negotiate applies**

- (1) This section applies in relation to the following:
  - (a) a compulsory acquisition of native title rights and interests that relates to an alternative provision area and is done before a determination under section 43A(1)(b) of the Native Title Act in respect of the relevant provisions of this Act comes into force;
  - (b) a compulsory acquisition of native title rights and interests to which Subdivision P of Division 3 of Part 2 of the Native Title Act applies (other than an acquisition that relates to an alternative provision area) and is done at any time.
- (2) Subject to Subdivision P of Division 3 of Part 2 of the Native Title Act, the Minister may do an act to which this section applies under section 43(1)(b) of this Act after having complied with the procedures in that Subdivision rather than the procedures in Division 1 and 2 of this Part.



**41 Abandonment of proposal**

- (1) The Minister may, at any time before the date of acquisition, abandon a proposal in relation to which section 39 or 40 applies.
- (2) The Minister must cause notice of the abandonment of a proposal to be given to the persons to whom notice of the proposal was given under section 29 of the Native Title Act.
- (3) The abandonment of a proposal does not prevent the Minister from entering into negotiations to acquire the native title rights and interests the subject of the proposal by agreement under this Act or otherwise or prevent the acquisition of those rights and interests by such agreement.
- (4) The abandonment of a proposal in relation to which section 40(1)(a) applies does not prevent the Minister from compulsorily acquiring the native title rights and interests the subject of the proposal if in doing so the Minister complies with Divisions 1 and 2 of this Part.
- (5) The abandonment of a proposal in relation to which section 40(1)(b) applies does not prevent the Minister from compulsorily acquiring the native title rights and interests the subject of the proposal if in doing so the Minister complies with Subdivision P of Division 3 of Part 2 of the Native Title Act.

**Part IVA Pre-acquisition procedures: acquisitions below highwater mark for Government purposes**

**42 Application**

Subject to section 31B(2), this Part applies in relation to the compulsory acquisition of land to the extent that the acquisition relates to an onshore place on the seaward side of the mean highwater mark of the sea, other than a compulsory acquisition that is an act to which the consequences of section 24MD(6B) of the Native Title Act apply.

**42A Notification of proposal**

- (1) The Minister may compulsorily acquire land in relation to which this Part applies if the Minister has:
  - (a) caused a search to be made of:
    - (i) the Register maintained by the Registrar-General under the *Real Property Act*; and

- (ii) the Register of Native Title Claims and the National Native Title Register maintained under the Native Title Act;
  - (b) caused a notice of proposal to be served on each person ascertained as a result of that search or otherwise as having or claiming to have an interest in the land that will be divested, modified or affected by the acquisition of the land, including:
    - (i) the registered native title claimants (if any) in relation to any of the land; and
    - (ii) the registered native title bodies corporate (if any) in relation to any of the land;
  - (c) if native title rights and interests are proposed to be acquired – caused a copy of the notice of proposal to be served on the representative Aboriginal/Torres Strait Islander body or bodies in relation to the land;
  - (d) if the land is registered on a register referred to in paragraph (a) – caused a copy of the notice to be lodged with the Registrar-General or the Native Title Registrar, as the case may be;
  - (e) caused a notice of proposed acquisition in the approved form to be published in a newspaper circulating in the area in which the land is situated; and
  - (f) caused a notice of proposal in the approved form to be served on the other persons (who may be or include a person lodging comments under section 42C(1)) the Minister is satisfied have an interest in the land that will be divested, modified or affected by the acquisition and on the other persons the Minister thinks necessary.
- (2) A notice of proposal or notice of proposed acquisition under subsection (1) may relate to the acquisition of more than one area of land or more than one interest in the same area of land.
- (3) The serving of a notice of proposal under subsection (1)(b) or (f) does not constitute:
- (a) an offer or binding agreement to acquire the land the subject of the notice; or
  - (b) a recognition by the Territory that the person on whom it is served has an interest in the land proposed to be acquired.

**42B Form of notice of proposal**

- (1) A notice of proposal is to be in the approved form and contain:
- (a) a description of the land proposed to be acquired;
  - (b) details of the manner in which it is proposed that the land, if acquired, will be dealt with;
  - (c) an invitation to the person on whom the notice is served to negotiate with the Minister an amount of compensation for the acquisition of the person's interest by agreement under this Act and advising the person that in the absence of agreement the land will be compulsorily acquired;
  - (d) a statement to the effect that:
    - (i) in the case of a notice of proposal served under section 42A(1)(b) – the person on whom the notice is served may, within 2 months after the date of the notice; or
    - (ii) in the case of a notice of proposal served under section 42A(1)(f) – a person who has or claims to have an interest in land the subject of the proposal may, within 2 months after publication of the notice of proposed acquisition under section 42A(1)(e), lodge in writing with the Minister comments on the acquisition; and
  - (e) where the proposal is for the acquisition of native title rights and interests – a statement to the effect that, if there are no registered native title claimants or registered native title bodies corporate in relation to the land the subject of the proposal, the representative body or bodies in relation to that land may, within 2 months after publication of a notice of proposed acquisition under section 42A(1)(e), lodge in writing with the Minister comments on the acquisition.
- (2) The Minister must cause to be served on each person served with a notice of proposal under section 42A(1)(b) or (f) a statement in the approved form summarising the rights of such persons under this Act.

#### **42C Comments on acquisition**

(1) A person who has or claims to have an interest in land the subject of a proposal may, within the objection period or such further period as the Minister in writing allows, lodge in writing with the Minister comments on the acquisition.

(2) Where:

(a) the proposal is for the acquisition of native title rights and interests; and

(b) there are no registered native title claimants or registered native title bodies corporate in relation to any of the land the subject of the proposal,

the representative Aboriginal/Torres Strait Islander body or bodies in relation to that land may, within the objection period or such further period as the Minister in writing allows, lodge in writing with the Minister comments on the acquisition.

(3) Subject to section 89A, compensation is payable to a person whose interest in land is acquired under this Part whether or not comments on the acquisition were lodged under subsection (1) or (2).

(4) In this section, ***objection period***, in relation to a person who is entitled to lodge comments under subsection (1) or (2), means:

(a) if the person is served with a notice in pursuance of section 42A(1)(b) – 2 months after the date of the notice; or

(b) in any other case – 2 months after publication of the notice referred to in section 42A(1)(e).

#### **42D Minister to have regard to comments**

The Minister must not compulsorily acquire land in relation to which this Part applies unless the Minister has taken into account the comments (if any) lodged in accordance with section 42C.

## **Part V            Acquisition of land**

### **Division 1        Acquisition**

#### **43            Acquisition generally**

- (1) Subject to this Act, the Minister may acquire land under this Act for any purpose whatsoever:
  - (a) by causing an instrument of transfer or other document evincing title to the land in the Territory to be registered under the *Real Property Act* by the Registrar-General; or
  - (b) by compulsory acquisition by causing a notice declaring the land to be acquired to be published in the *Gazette*.
- (2) Where an application has been made under section 38 to have an objection to the acquisition heard by the Tribunal, subject to sections 44 and 45, the Minister must not acquire land the subject of the proposal until he or she has received and considered the recommendation of the Tribunal.

#### **44            Acquisition without objection or recommendation**

- (1) Despite sections 34, 36 and 37, if subsection (2) or (3) applies, the Minister may compulsorily acquire land under section 43(1)(b):
  - (a) before the period for lodging an objection to the acquisition under section 34 has expired;
  - (b) where an objection to the acquisition has been lodged in accordance with section 34 – without considering the objection or consulting with the person who lodged the objection; or
  - (c) where an application to have an objection to the acquisition heard by the Tribunal has been made – without the Tribunal hearing the objection or making a recommendation about the objection and without the Minister receiving or considering the recommendation of the Tribunal.
- (2) The Minister may acquire an interest in land in accordance with subsection (1) if:
  - (a) native title in the land has been extinguished, whether by the doing of a previous exclusive possession act or otherwise; and
  - (b) the interest to be acquired is an interest referred to in section 47.

- (3) The Minister may acquire land in accordance with subsection (1):
- (a) if:
    - (i) native title in the land has been extinguished, whether by the doing of a previous exclusive possession act or otherwise; or
    - (ii) the acquisition is an act to which section 26(1)(c)(iii)(A) or (B) of the Native Title Act applies, other than an act to which section 24MD(6B)(a) of that Act applies; and
  - (b) the Minister certifies that, having regard to:
    - (i) the urgency of the case; or
    - (ii) any other exceptional circumstances,it is not practicable to delay the acquisition until after the Tribunal has made a recommendation.
- (4) On being served with a copy of a certificate under subsection (3), the Tribunal must terminate any proceedings before the Tribunal relating to the acquisition to which the certificate applies.
- (5) Where the Minister acquires land under this Division (other than by agreement) in the circumstances described in subsection (1), the Minister must table in the Legislative Assembly, within 3 sitting days of the Assembly after the publication of the notice of acquisition in the *Gazette*, a statement of the reasons for the acquisition.

**45            Compliance with recommendations of Tribunal in certain circumstances**

- (1) Where the Tribunal makes a recommendation in relation to a proposal to acquire an interest in land other than native title rights and interests, the Minister must not compulsorily acquire the interest unless the Minister has taken the Tribunal's recommendation into account.
- (2) Where, in relation to a proposal to acquire native title rights and interests:
- (a) the Tribunal recommends that those rights and interests must not be compulsorily acquired; or
  - (b) the Tribunal recommends that those rights and interests may be compulsorily acquired, whether or not subject to specified conditions being complied with, and the Minister wishes to compulsorily acquire those rights and interests,

the Minister must comply with the recommendation unless:

- (c) the Minister has consulted with the Minister responsible for indigenous affairs (being the Minister to whom responsibility for Aboriginal development is allotted under an Administrative Arrangements Order);
- (d) the Minister has taken that consultation into account; and
- (e) it is in the interests of the Territory not to comply with the recommendation.

(2A) Where:

- (a) the Minister has complied with subsection (2)(c) and (d); and
- (b) subsection (2)(e) applies,

the Minister may:

- (c) reject the recommendation; or
- (d) accept the recommendation and:
  - (i) reject any of the conditions in the recommendation, with or without imposing his or her own conditions;
  - (ii) vary any of the conditions in the recommendation;
  - (iii) substitute his or her own conditions for any of the conditions in the recommendation; or
  - (iv) add his or her own conditions to the recommendation,

and compulsorily acquire the rights and interests accordingly.

(3) In subsection (1), ***in the interests of the Territory*** includes:

- (a) for the social or economic benefit of the Territory (including of Aboriginal peoples and Torres Strait Islanders); and
- (b) in the interests of the relevant region or locality in the Territory.

#### **45A        Judicial review**

- (1) A person aggrieved by a decision of the Minister to acquire land under this Division (other than a decision to acquire land under section 44) may apply to the Supreme Court for judicial review of the decision.

- (2) On receipt of an application under subsection (1), the Supreme Court may review the Minister's decision on questions of law only.
- (2A) For the purposes of subsection (2), where the decision being reviewed complies with a recommendation of the Tribunal, the decision is to be taken to include the decision of the Tribunal to make the recommendation.
- (3) In this section ***person aggrieved*** means a person:
  - (a) who, immediately before the date of acquisition, had an interest in the acquired land that was divested, modified or affected by the acquisition, including a registered native title claimant or registered native title body corporate whose registered native title rights and interests were affected by the acquisition; and
  - (b) who lodged an objection to the acquisition under section 34.

#### **46            Effect of notice of acquisition**

- (1) Subject to this section, upon publication in the *Gazette* of a notice of acquisition:
  - (a) the land described in the notice vests in the Territory freed and discharged from all interests, trusts, restrictions, dedications, reservations, obligations, encumbrances, contracts, licences, charges and rates of any kind; and
  - (b) any interest that a person had in the acquired land is divested, modified or affected to the extent necessary to give effect to this subsection.
- (1A) Where a notice of acquisition describes land that is to be excised from any parcel of land as an Aboriginal community living area as the result of an application under Part 8 of the *Pastoral Land Act* or Part IV of the *Crown Land Act* as in force before the commencement of the *Pastoral Land Act 1992*, an estate in fee simple in the land described in the notice of acquisition is, on publication in the *Gazette* of the notice and by virtue of this subsection, granted to the association formed or approved pursuant to either of those Parts of those Acts to take the land.
- (1B) Land granted by subsection (1A):
  - (a) is granted subject to:
    - (i) the provisions of sections 20, 21 and 22 of the *Crown Lands Act*; and



(ii) any mining tenement, exploration licence, exploration retention licence, reserve, occupation or other right under the *Mining Act*; and

(b) is granted as prescribed property within the meaning of the *Associations Incorporation Act*,

but is otherwise granted freed and discharged from all other interests, trusts, restrictions, dedications, reservations, obligations, encumbrances, contracts, licences, charges or rates of any kind, and for this purpose any interest that a person had in the granted land is divested or modified to the extent necessary to give effect to this subsection.

(2) A mining interest is not acquired under this section unless the notice of acquisition indicates, whether by specific or general reference, that the mining interest has been acquired.

#### **47            New interests**

An interest in land acquired under this Division may be an interest which did not previously exist as such.

#### **48            Land acquired is Crown land**

(1) The Minister may, at any time while no person (other than the Crown) has an estate or interest in the land, by notice published in the *Gazette*, declare that any land acquired under this Act is no longer required for the purpose for which it was acquired.

(2) Land referred to in a notice under subsection (1) may be dealt with as unalienated Crown land under a law in force in the Territory.

### **Division 2            Action after acquisition**

#### **49            Service of notice of acquisition**

(1) Within one month after the date of acquisition of land compulsorily acquired under section 43(1)(b), the Minister:

(a) must cause a search to be made of:

(i) the Register maintained by the Registrar-General under the *Real Property Act*; and

(ii) if native title rights and interests have been acquired – the Register of Native Title Claims and the National Native Title Register maintained under the Native Title Act;

- (b) may make other inquiries to ascertain who, in the Minister's opinion, had an interest in the acquired land at the date of the acquisition; and
  - (c) must cause a copy of the notice of acquisition:
    - (i) to be served on the persons specified in subsection (1A);
    - (ii) to be published in a newspaper circulating in the area in which the acquired land is situated;
    - (iii) if the acquired land is under the provisions of the *Real Property Act* – to be lodged with the Registrar-General; and
    - (iv) if the acquired land has not been brought under that Act – to be lodged with the proper officer controlling any official register or record of that land.
- (1A) For the purposes of subsection (1)(c)(i), the following persons are to be served with a copy of the notice of acquisition:
- (a) each person whose interest in the land was or may have been, in the opinion of the Minister, divested, modified or affected by the acquisition of the land, including:
    - (i) the registered native title claimants (if any) in relation to any of the land; and
    - (ii) the registered native title body or bodies corporate (if any) in relation to any of the land;
  - (b) the representative Aboriginal/Torres Strait Islander body or bodies (if any) in relation to the land acquired.
- (1AA) For the purposes of subsection (1)(c)(iv), where the acquired land is a native title right or interest:
- (a) the proper officer is the Native Title Registrar under the Native Title Act; and
  - (b) the register is the Register of Native Title Claims, the National Native Title Register or the Register of Indigenous Land Use Agreements maintained under that Act, as the case requires.
- (2) Upon lodgement of a copy of the notice of acquisition with the Registrar-General or proper officer under subsection (1)(c)(iii) or (iv), the Registrar-General or that proper officer shall deal with the notice as though it were an instrument of transfer or conveyance of the interest specified in the notice from the owner of

that interest to the Territory.

- (3) The Minister must cause to be served on each person served under subsection (1)(c)(i) a statement in the approved form summarising the rights of persons whose land has been acquired under this Act.
- (4) A notice under subsection (1) does not constitute a recognition by the Territory that the person on whom it is served has an interest in the land to which it relates.

## **50            Offers**

- (1) If the Minister is of the opinion that a person specified in section 49(1A)(a) who has been served with a notice under section 49(1)(c)(i) has a claim for compensation under this Act, the Minister must cause to be served on that person, unless the person is a registered native title claimant:
  - (a) an offer of compensation that the Minister considers appropriate for the acquisition of that person's interest in the acquired land; or
  - (b) an offer of the transfer of land and, if the transfer is instead of part only of that compensation, compensation.
- (1A) The Minister must cause to be served on a registered native title claimant specified in section 49(1A)(a)(i) who has been served with a notice under section 49(1)(c)(i) a notice to the effect that, at any time within 3 years after the date of acquisition, the claimant may lodge a claim for compensation for the acquisition of the claimant's native title rights and interests in relation to the acquired land.
- (1B) Nothing in subsection (1) or (1A) is to be taken to affect the power of the Minister under section 89A to enter into an agreement with a registered native title claimant about compensation payable to the claimant if the native title claimed by the claimant is determined to exist.
- (2) An offer of the transfer of land made under subsection (1)(b):
  - (a) is, subject to this section, an offer of:
    - (i) possession of; and
    - (ii) title to,  
  
land and improvements, if any, specified in the offer which is, in the opinion of the Minister, substantially equivalent to the land and improvements, if any, acquired under Division 1;

- (b) may contain an offer to construct a building or other improvements which, in the opinion of the Minister would, when completed, be substantially equivalent to the building or improvements, as the case may be, on the acquired land; and
- (c) shall specify:
  - (i) the nature of the title to that land which will be conveyed or transferred to that person; and
  - (ii) the terms and conditions under which that title will be conveyed or transferred and possession will be given to the person to whom the offer is made.
- (3) An offer of the transfer of land referred to in subsection (2) shall be accompanied by:
  - (a) a statement or plan showing the location of the buildings or improvements on the land; and
  - (b) if the offer is an offer referred to in subsection (2)(b) – a copy of the plans and specifications of the buildings or improvements proposed to be constructed.
- (4) An offer may be modified or withdrawn by the Minister at any time before it is accepted in writing.

**50A        Compensation, other than money, in respect of native title**

Without limiting the generality of section 50, where an interest in land in respect of which compensation is otherwise payable under this Act comprises native title rights or interests and the purpose of the acquisition is to confer rights or interests in relation to the land on a person or persons other than the Territory, the person or persons who may be entitled to compensation may request that the compensation should be in a form other than money, and the Minister:

- (a) must consider the request; and
- (b) must negotiate in good faith in relation to the request.

**51        Reference to Tribunal**

If the Minister has not served an offer under section 50 on any person in relation to his interest in acquired land:

- (a) he may pay the amount of compensation which he considers appropriate for the acquisition of that interest into the Tribunal; and

- (b) he shall, at the expiration of one month from the date of acquisition, refer the matter to the Tribunal to be dealt with under Division 3 of Part VIII.

## **52            Claims**

- (1) A person who, immediately before the date of acquisition, had an interest in acquired land (including a registered native title claimant whose registered native title rights and interests are affected by the acquisition) may, at any time within 3 years after the date of acquisition, lodge with the Minister a claim for compensation in the approved form.
- (2) Where a person lodges a claim for compensation under subsection (1), the Minister must:
- (a) if:
- (i) the person is not a registered native title claimant – within one month after lodgement of the claim; or
- (ii) the person is a registered native title claimant – within one month after being notified by the claimant that the native title claimed by the claimant is determined to exist; and
- (b) if the Minister is of the opinion that the person has a claim for compensation,
- cause to be served on the person an offer in accordance with section 50(1) in respect of the interest that the person had in the acquired land.
- (3) If no claim is lodged within the 3 years referred to in subsection (1), claims for compensation and interest are, by virtue of this subsection, statute barred.

## **53            Title documents**

- (1) The Minister may, at any time, require any person to deliver up, in accordance with his directions, any instrument or other thing which is:
- (a) in that person's possession or control; and
- (b) evidence of an interest in acquired land.
- (2) A requirement under subsection (1) shall be:
- (a) signed by the Minister; and

- (b) served on the person to whom it is addressed.
- (3) A person served with a notice under subsection (1) shall not, without reasonable excuse, fail to deliver up, within the time specified in the notice, an instrument or other thing which he is required by that notice to deliver up.

Penalty:        \$1,000.

## **Part VI            Entry into possession**

### **54            Entry into possession**

- (1) Subject to this Part, neither the Territory nor any person for whom the land is required is to enter into possession of acquired land before the expiration of 3 months from the date of acquisition.
- (2) Subsection (1) does not apply if:
  - (a) the Minister certifies that, having regard to:
    - (i) the urgency of the case; or
    - (ii) any other exceptional circumstances,it is not practicable to delay entry into possession of the acquired land for the 3 months referred to in subsection (1);
  - (b) the Minister and the occupant of the land enter into an agreement in relation to the entry by the Territory or other person into possession of the land; or
  - (c) the acquired land is not occupied at the date of acquisition.
- (3) The period of 3 months referred to in subsection (1) may be extended by agreement between the Minister and the occupant of the acquired land.

### **55            Warrants**

- (1) A Magistrate may, on the application of the Minister, issue a warrant under this section.
- (2) A warrant issued under this section shall be addressed to a member of the Police Force.
- (3) A warrant issued under this section authorizes the person to whom it is addressed to:
  - (a) enter onto the acquired land specified in the warrant;

- (b) deliver possession of the acquired land to the Territory; and
- (c) use such force as is reasonably necessary to execute the warrant.

**56 Protection of persons executing warrants**

A person who executes a warrant issued under section 55(1) does not incur any civil liability if he acts reasonably and without actual knowledge of any defect in the warrant or of any lack of jurisdiction in the person who issued the warrant.

**Part VII Compensation**

**59 Compensation for acquired land**

- (1) Subject to section 63, the interest of any person in land acquired under Division 1 of Part V is, at the date of acquisition, converted into a claim for compensation against the Territory.
- (2) Subject to section 89A, compensation is not payable to a registered native title claimant unless and until the native title claimed by the claimant is determined to exist.

**60 Compensation for abandoned proposals**

Any affected person who:

- (a) sustained any loss; or
- (b) incurred any cost,

as a natural and reasonable consequence of the service of a notice of proposal on him may:

- (c) if the proposal is abandoned under section 35; or
- (d) if the land is not acquired within the time prescribed by this Act,

recover the amount of that loss or cost from the Territory.

**61 Damages**

A person who:

- (a) sustained any loss; or
- (b) incurred any cost,

by reason of any action taken under Part III may recover that loss or cost from the Territory.

## **62 Prepayments**

- (1) Upon the service on a person of an offer under section 50, there shall be payable to that person out of moneys appropriated for the purpose an amount of money equal to 90% of the amount of compensation offered.
- (2) If the amount of money paid under subsection (1) exceeds the amount of compensation determined under this Act for the acquisition of the interest of the person to whom the money was paid, that person shall be liable to pay to the Territory as a debt due, an amount of money equal to the difference between the amount paid to him under subsection (1) and the amount of compensation determined under this Act in respect of his interest.
- (3) This section does not apply in relation to a registered native title claimant.

## **63 Offers of transfer of land**

- (1) Where an offer of the transfer of land with compensation is made under section 50(1)(b), the compensation payable under this Act in respect of the acquired land to the person who accepts the offer is the compensation so offered.
- (2) Where an offer of the transfer of land without compensation is made under section 50(1)(b), no compensation is payable under this Act in respect of the acquired land to the person who accepts the offer.

## **64 Interest**

- (1) Subject to this section, compensation bears interest from:
  - (a) the date of acquisition; or
  - (b) such other date as is specified by the Tribunal,to the date on which payment is made to the claimant.
- (2) Interest is not payable on compensation in respect of a debt which was, immediately prior to the date of acquisition, secured by a mortgage over the acquired land.
- (3) Interest is not payable in respect of so much of the compensation payable to a claimant as is paid under section 62(1) from the date of that payment.



- (4) Subject to subsection (5) interest is not payable in respect of compensation paid into the Tribunal from the date of payment into the Tribunal.
- (5) Interest paid to the Tribunal on an investment made under section 94 shall be paid to the claimant in respect of whose claim the amount of compensation was paid into the Tribunal by the Minister.

**65 Rates of interest**

The rate of interest payable under section 64(1) is the rate from time to time fixed by the Minister after consultation with the Treasurer.

**66 Assessment of compensation**

- (1) Subject to this section, in assessing compensation under this Act, the Tribunal must have regard to, but is not bound by, the rules set out in Schedule 2.
- (2) The Chairperson of the Tribunal may, for the purpose of the assessment of compensation for land comprising or involving native title rights and interests, make rules modifying the rules set out in Schedule 2.
- (3) Where a claim is made for compensation in respect of the acquisition of native title rights and interests, the Tribunal must have regard to, but is not bound by, the rules set out in Schedule 2 as modified under subsection (2).

**67 Recovery of compensation**

Compensation or damages determined to be payable under this Act by the Territory is a debt due by the Territory to the claimant and may be enforced accordingly.

**67A Compensation payable without objection**

Subject to section 89A, compensation is payable to a person whose interest in land is acquired under this Part whether or not the person lodged an objection to the acquisition under section 34(1).

## **Part VIII      Assessment of compensation or damages**

### **Division 1      Acquired land**

#### **68      Notices**

- (1) A claimant served with a copy of a notice of acquisition under section 49(1)(c)(i) and an offer under section 50(1) shall, within 60 days of the date of service of that notice and offer or offer:
- (a) serve a notice of acceptance of the offer; or
  - (b) serve a notice of dispute,  
on the Minister.
- (2) A notice of acceptance or dispute under subsection (1) shall:
- (a) be in writing; and
  - (b) if it is a notice of dispute:
    - (i) be in the approved form; and
    - (ii) specify the amount of compensation or additional compensation claimed.

#### **69      Reference to Tribunal**

If a claimant does not comply with section 68(1) within the time prescribed by that subsection, the Minister may refer the matter to the Tribunal.

#### **70      Counter offers**

If the Minister is served with a notice of dispute under section 68(1)(b), he shall, within one month of being served with that notice:

- (a) agree that the amount of compensation claimed in the notice of dispute is the appropriate amount of compensation;
- (b) make a further offer under section 50(1); or
- (c) refer the matter to the Tribunal.

**71      Reference to Tribunal**

A claimant served with an offer under section 70(b) shall, within one month of being served with that offer:

- (a) in writing agree that the amount of compensation offered is the appropriate amount of compensation; or
- (b) refer the matter to the Tribunal.

**72      Documents to be transmitted to Tribunal**

A person who refers a matter to the Tribunal under this Division shall transmit to the Tribunal a copy of:

- (a) the notice of acquisition;
- (b) any offer under section 50(1) (including any further offer referred to in section 60(b)); and
- (c) any notice of dispute.

**Division 2      Abandoned proposals and damages**

**73      Claims**

(1) A person who has a claim for compensation under section 60 or 61 may, within one month of:

- (a) the date of service of a notice under section 35 of the abandonment of the proposal; or
- (b) the date on which the person authorized under Part III to enter and remain on the land left the land,

as the case may be, lodge with the Minister a claim for compensation.

(2) A claim under subsection (1) shall:

- (a) be in the approved form; and
- (b) specify the amount of compensation claimed.

**74 Offers**

If the Minister is served with a claim under section 73, he shall, within one month of being served with that claim:

- (a) in writing agree that the amount of compensation or damages claimed is the appropriate amount of compensation or damages;
- (b) by notice in writing make an offer to the claimant of the amount of compensation or damages which he considers to be the appropriate amount of compensation or damages; or
- (c) refer the matter to the Tribunal.

**75 Reference to Tribunal**

A person served with a notice of offer under section 74(b) shall, within one month of being served with the notice:

- (a) agree that the amount of compensation offered is the appropriate amount of compensation; or
- (b) refer the matter to the Tribunal.

**76 Documents to be transmitted to Tribunal**

A person who refers a matter to the Tribunal under this Division shall transmit to the Tribunal a copy of:

- (a) the claim; and
- (b) any notice of offer under section 74.

**Division 3 Proceedings before Tribunal**

**80 Payment into Tribunal**

The Minister may, at any time, pay the amount of compensation or damages which he considers to be the appropriate amount of compensation or damages to which a claimant is entitled under this Act into the Tribunal.

**81 Determinations**

The Tribunal shall hear and determine, in relation to each matter referred to it under this Part:

- (a) whether the claimant is entitled to compensation under this Act; and

- (b) the amount of compensation to which the claimant is entitled, and may recommend that the Minister grant the claimant a loan under rule 11 of Schedule 2.

**82 Instrument of determinations**

- (1) The Tribunal shall, within one month after hearing a matter referred to it under this Part, issue an instrument of determination in respect of each matter heard.
- (2) The Tribunal may direct that any compensation in respect of acquired land be applied in such manner, and subject to such terms and conditions, as the Tribunal thinks fit.
- (3) The Tribunal shall give written reasons for each determination it makes under subsection (1) or (2).

**83 Service of determinations**

The Tribunal shall cause to be served on:

- (a) the Minister; and
- (b) each claimant who referred a matter to it under this Part,

a copy of the instrument of determination, and the reasons for that determination, in relation to that matter.

**Part IX Appeals**

**84 Appeals**

- (1) A person aggrieved by a determination of the Tribunal under section 81 may appeal to the Supreme Court.
- (2) An appeal under this Part is an appeal in the strict sense.

**85 Notice of appeal**

An appeal may be instituted by lodging a notice of appeal in the Supreme Court:

- (a) within the time; and
- (b) in the form; and
- (c) accompanied by the fee,
- prescribed by the Rules of Court.

**86 Powers of Supreme Court**

- (1) At the hearing of an appeal, the Supreme Court may consider the evidence that was presented to the Tribunal and any question of law and may:
  - (a) confirm the determination of the Tribunal;
  - (b) vary that determination;
  - (c) substitute its own determination for that determination; or
  - (d) dismiss the appeal.
- (3) A determination under this section has effect as if it were a determination of the Tribunal.

**88 Rules of Court**

- (1) The Chief Judge may make Rules of Court under the *Supreme Court Act* prescribing the practice and procedure applicable to the hearing of appeals under this Part.
- (2) Subject to the Rules of Court, a Judge may give such directions as to the practice and procedure applicable to the hearing of an appeal or reference referred to in subsection (1) as he thinks fit.

**Part X Miscellaneous****89 Acquisition by agreement under this Act**

The provisions of this Act apply in relation to an acquisition of land by agreement under this Act except to the extent:

- (a) otherwise provided in those provisions or by the agreement; or
- (b) of any inconsistency with the agreement.

**89A Other acquisitions**

- (1) Nothing in this Act prevents:
  - (a) the acquisition by the Territory of land by agreement; or
  - (b) the payment and acceptance under any agreement of valuable consideration in satisfaction for compensation,otherwise than under this Act where the agreement expressly provides that this Act (other than this section) does not or is not to apply.

- (2) Nothing in this Act prevents the acquisition of land by the Territory under another law of the Territory.

## **90 Service**

- (1) A notice or other document that is required to be or may be served on or lodged with a person under this Act may be served on or lodged with that person:

- (a) personally;
- (b) by post; or
- (c) if that person is the Minister, by serving the notice or other document on, or lodging it with, the Solicitor for the Northern Territory.

- (2) The Solicitor for the Northern Territory is authorized to accept service of any document served on or lodged with him under subsection (1)(c).

- (3) If:

- (a) the whereabouts of a person who is required to be or may be served with a notice or other document is not known; or
- (b) the identity of an affected person or claimant cannot be ascertained,

the notice or other document may be served on that person or claimant:

- (c) by publication of a copy of that notice or other document in a newspaper published and circulating in the Territory;
- (d) by affixing a copy of that notice or other document in a prominent place on the land to which it relates; or
- (e) where it relates to a native title right or interest – as provided in the Native Title Act.

## **91 Registrar-General**

The Registrar-General shall, when served with a notice under section 32(1)(d) or 35(2)(c), enter particulars of the notice on the register maintained by him under the *Real Property Act*.

**93 Execution of documents**

All documents relating to:

- (a) the acquisition of land; or
- (b) land vested in the Territory,

under this Act may be executed for and on behalf of the Territory by the Minister.

**94 Investment**

The Chairperson of the Tribunal may authorize the investment of money paid into the Tribunal under this Act in such manner as trust funds may be invested under the *Trustee Act*.

**94A Delegation**

- (1) The Minister may, by instrument, delegate to a specified person or to a person for the time being holding, acting in or performing the duties of a specified office, designation or position any of his or her functions or powers under this Act, other than this power of delegation.
- (2) A function performed or a power exercised in pursuance of a delegation under subsection (1) is to be taken to have been performed or exercised by the Minister.
- (3) A delegation under subsection (1) does not prevent the Minister performing a function or exercising a power.

**95 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act (except matters in respect of which Rules of Court may be made).
- (2) Without limiting the generality of subsection (1), the Regulations may include provisions:
  - (c) providing for:
    - (i) the payment of compensation (including payment by a person other than the Territory) in respect of an acquisition of land the purpose of which is to confer a right or interest in relation to the land on a person other than the Territory; and



- (ii) the recovery from the person on whom the right or interest is to be conferred of other costs and expenses reasonably incurred by the Territory in the course of making the acquisition.

**Schedule 1 Repealed Statutes**

section 3

*Land Clauses Consolidation Act 1847*

*Land Clauses Consolidation Act 1855-6*

*Land Clauses Consolidation Act 1881*

## **Schedule 2 Rules for the assessment of compensation**

section 66

### **1 Value to the owner**

Subject to this Schedule, the compensation payable to a claimant in respect of the acquisition of land under this Act is the amount that fairly compensates the claimant for the loss he has suffered, or will suffer, by reason of the acquisition of the land.

### **2 Market value, special value, severance, disturbance**

Subject to this Schedule, in assessing the compensation payable to a claimant in respect of acquired land the Tribunal may take into account:

- (a) the consideration that would have been paid for the land if it had been sold on the open market on the date of acquisition by a willing but not anxious seller to a willing but not anxious buyer;
- (b) the value of any additional advantage to the claimant incidental to his ownership, or occupation of, the acquired land;
- (c) the amount of any reduction in the value of other land of the claimant caused by its severance from the acquired land by the acquisition; and
- (d) any loss sustained, or cost incurred, by the claimant as a natural and reasonable consequence of:
  - (i) the acquisition of the land; or
  - (ii) the service on the claimant of the notice of proposal,for which provision is not otherwise made under this Act.

### **3 Market value for use other than existing use**

If the amount referred to in rule 2(a) is determined upon the basis of a use for a purpose which is not the purpose for which the land was used on the date of acquisition, no amount shall be allowed under rule 2(d) in respect of any:

- (a) loss that would have been sustained; or
- (b) costs that would have been incurred,

in adapting the land for use for that other purpose.

**4 Circumstance peculiar to the claimant**

For the purposes of rule 2(d), in determining whether a particular loss sustained, or cost incurred, by a claimant is a natural and reasonable consequence of:

- (a) the acquisition of the land; or
- (b) the service on the claimant of the notice of proposal,

the Tribunal shall take into account any circumstances peculiar to the claimant.

**6 Determinable interests**

If, at the date of acquisition, the interest of the claimant in the land was:

- (a) due to expire; or
- (b) liable to be determined,

the Tribunal shall take into account any reasonable prospect of renewal or continuation of the interest, and the likely terms and conditions of that renewal.

**7 Cost of acquiring other land**

(1) If:

- (a) the acquired land:
  - (i) was, immediately before the date of acquisition, used for a purpose for which there is no general demand or market for land; and
  - (ii) but for the acquisition, would have continued to have been used for that purpose; and
- (b) the claimant has acquired, or genuinely intends to acquire, other land suitable for that purpose,

the Tribunal shall take into account, in place of the amount referred to in rule 2(a), an amount ascertained by adding:

- (c) the cost of acquiring the other land; and
- (d) the cost and losses incurred or likely to be incurred by the claimant as a result of, or incidental to, relocation,

in each case calculated at the date when, in all the circumstances, it was or would be reasonably practical for the claimant to incur the cost or losses.

- (2) In assessing the amount of compensation under subrule (1) the Tribunal shall have regard to the amount, if any, by which the claimant has improved, or is likely to improve, his financial position by the relocation.

## **8 Matters not to be taken into account**

The Tribunal shall not take into account:

- (a) any special suitability or adaptability of the acquired land for a purpose for which it could only be used:
- (i) in pursuance of a power conferred by law; or
  - (ii) by the Commonwealth or the Territory, a statutory corporation to which the *Financial Management Act* applies, or a municipal council or community government council within the meaning of the *Local Government Act*;
- (b) any increase in value of the acquired land resulting from its use or development contrary to law;
- (c) any increase or decrease in the amount referred to in rule 2(a) arising from:
- (i) the carrying out; or
  - (ii) the proposal to carry out,  
the proposal; or
- (d) any increase in the value of the land caused by construction, after the notice of proposal was served on the claimant, of any improvements on the land without the approval of the Minister.

## **9 Intangible disadvantages**

- (1) If the claimant, during the period commencing on the date on which the notice of proposal was served and ending on the date of acquisition:
- (a) occupied the acquired land as his principal place of residence; and
  - (b) held an estate in fee simple, a life estate or a leasehold interest in the acquired land,

the amount of compensation otherwise payable under this Schedule may be increased by the amount which the Tribunal considers will reasonably compensate the claimant for intangible disadvantages resulting from the acquisition.

- (2) In assessing the amount payable under subrule (1), the Tribunal shall have regard to:
- (a) the interest of the claimant in the land;
  - (b) the length of time during which the claimant resided on the land;
  - (c) the inconvenience likely to be caused to the claimant by reason of his removal from the acquired land;
  - (d) the period after the acquisition of the land during which the claimant has been, or will be, allowed to remain in possession of the land;
  - (e) the period during which the claimant would have been likely to continue to reside on the land; and
  - (f) any other matter which is, in the Tribunal's opinion, relevant to the circumstances of the claimant.

## **10 Mortgage debts**

The amount of compensation payable to a mortgagee in respect of a debt secured by a mortgage over acquired land shall not exceed the amount of compensation that would be payable for the acquisition of all interests in the land if there had been no mortgage secured over that land.

## **11 Loans**

- (1) If the amount of compensation assessed in accordance with this Schedule is insufficient to enable a claimant who occupied the acquired land as his principal place of residence continuously between the date of service of the notice of intention and the date of acquisition and:
- (a) who held an interest in fee simple or a native title right or interest in the acquired land;
  - (b) in whom an equity of redemption in respect of that land was vested; or

- (c) who held a lease of that land granted under an Act:
  - (i) in perpetuity;
  - (ii) for a term of not less than 99 years;
  - (iii) with a right of purchase; or
  - (iv) which contained terms and conditions prohibiting the claimant from erecting or using any building on the land other than a dwelling-house,

to purchase land to be used as a principal place of residence providing accommodation reasonably comparable with the accommodation on the acquired land, the Minister may offer to grant a loan to the claimant of an amount which, when added to the amount of compensation otherwise payable in respect of the acquired land, would be sufficient to enable the claimant to purchase land on which there is accommodation reasonably comparable with the accommodation on the acquired land.

- (2) The Minister shall, when making an offer under subrule (1), specify the maximum amount of the loan he is prepared to grant.
- (3) Repayment of a loan granted in accordance with this rule shall be secured by a mortgage to the Territory of the land purchased to provide the comparable accommodation.
- (4) A mortgage under subrule (3):
  - (a) shall provide for the amount secured to be repayable forthwith if:
    - (i) the land the subject of the mortgage is sold;
    - (ii) the claimant and his spouse or de facto partner cease to use the land as a principal place of residence; or
    - (iii) if both the claimant and his spouse or de facto partner have died; and
  - (b) shall contain such other terms and conditions as the Minister thinks fit to secure the repayment of the loan.

## **12 Interpretation**

- (1) In rules 9 and 11, a reference to a claimant includes a reference to a claimant's spouse and his de facto partner if any.

(2) In this Schedule, ***de facto partner*** means:

- (a) in relation to a man – a woman who is living with him as his wife on a bona fide domestic basis although not married to him; and
- (b) in relation to a woman – a man who is living with her as her husband on a bona fide domestic basis although not married to her.



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**ENDNOTES**
**1 KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2 LIST OF LEGISLATION*****Lands Acquisition Act 1978 (Act No. 11, 1979)***

Assent date 26 January 1979  
Commenced 1 August 1979 (*Gaz G29*, 20 July 1979, p 1)

***Lands Acquisition Act 1979 (Act No. 53, 1979)***

Assent date 14 May 1979  
Commenced 3 August 1979 (*Gaz G31*, 3 August 1979, p 4)

***Statute Law Revision Act 1979 (Act No. 98, 1979)***

Assent date 10 August 1979  
Commenced 26 October 1979 (*Gaz G43*, 26 August 1979, p 1)

***Remuneration (Statutory Bodies) Act 1979 (Act No. 9, 1980)***

Assent date 14 January 1980  
Commenced 8 February 1980 (*Gaz G6*, 8 February 1980, p 6)

***Statute Law Revision Act 1980 (Act No. 6, 1981)***

Assent date 9 January 1981  
Commenced 9 January 1981

***Lands Acquisition Amendment Act 1982 (Act No. 45, 1982)***

Assent date 29 June 1982  
Commenced 29 June 1982

***Lands Acquisition Amendment Act 1985 (Act No. 68, 1985)***

Assent date 24 December 1985  
Commenced 24 December 1985

***Companies and Securities (Consequential Amendments) Act 1986 (Act No. 18, 1986)***

Assent date 30 June 1986  
Commenced 1 July 1986 (s 2)

**Law Officers Amendment Act (No. 2) 1986 (Act No. 48, 1986)**

Assent date 10 December 1986  
 Commenced 19 December 1986 (*Gaz S87, 17 December 1986*)

**Statute Law Revision Act 1989 (Act No. 60, 1989)**

Assent date 2 October 1989  
 Commenced 2 October 1989

**Miscellaneous Acts Amendment (Aboriginal Community Living Areas) Act 1989 (Act No. 78, 1989)**

Assent date 22 December 1989  
 Commenced 1 March 1990 (*Gaz S12, 28 February 1990*)

**Statute Law Revision Act 1990 (Act No. 33, 1990)**

Assent date 11 June 1990  
 Commenced 11 June 1990

**Corporations (Consequential Amendments) Act 1990 (Act No. 59, 1990)**

Assent date 14 December 1990  
 Commenced 1 January 1991 (s 2, s 2 *Corporations (NT) Act 1990* (Act No. 56, 1990) and *Gaz S76, 21 December 1990*)

**De Facto Relationships (Miscellaneous Amendments) Act 1991 (Act No. 82, 1991)**

Assent date 24 December 1991  
 Commenced 1 January 1992 (s 2)

**Pastoral Land (Consequential Amendments) Act 1992 (Act No. 39, 1992)**

Assent date 25 June 1992  
 Commenced 26 June 1992 (s 2, s 2 *Pastoral Land Act 1992* (Act No. 17, 1992) and *Gaz S33, 26 June 1992*)

**Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)**

Assent date 30 June 1993  
 Commenced 1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and *Gaz S53, 29 June 1993*)

**Lands Acquisition Amendment Act 1993 (Act No. 67, 1993)**

Assent date 9 November 1993  
 Commenced 1 December 1993 (s 2, s 2 *Pastoral Land Amendment Act (No. 2) 1993* (Act No. 68, 1993) and *Gaz S95, 1 December 1993*)

**Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)**

Assent date 31 December 1993  
 Commenced 1 June 1994 (s 2, s 2 *Local Government Act 1993* (Act No. 83, 1993) and *Gaz S35, 20 May 1994*)

**Planning (Consequential Amendments) Act 1993 (Act No. 86, 1993)**

Assent date 31 December 1993  
 Commenced 18 April 1994 (s 2, s 2 *Planning Act 1993* (Act No. 85, 1993) and *Gaz S28, 18 April 1994*)

**Lands Acquisition Amendment Act 1994 (Act No. 25, 1994)**

Assent date 18 May 1994  
 Commenced 29 June 1994 (*Gaz G26, 19 June 1994, p 3*)

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**Lands Acquisition Amendment Act (No. 2) 1994 (Act No. 75, 1994)**

Assent date 30 December 1994  
 Commenced 15 March 1995 (*Gaz G11*, 15 March 1995, p 3)

**Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)**

Assent date 21 March 1995  
 Commenced 1 April 1995 (s 2, s 2 *Financial Management 1995* (Act No. 4, 1995) and *Gaz S13*, 31 March 1995)

**Statute Law Revision Act 1995 (Act No. 14, 1995)**

Assent date 23 June 1995  
 Commenced 23 June 1995

**Lands Acquisition Amendment Act 1995 (Act No. 21, 1995)**

Assent date 26 June 1995  
 Commenced 26 June 1995

**Lands Acquisition Amendment Act (No. 2) 1995 (Act No. 56, 1995)**

Assent date 28 December 1995  
 Commenced 7 February 1996 (*Gaz G6*, 7 February 1996, p 3)

**Trustee (Consequential Amendments) Act 1996 (Act No. 8, 1996)**

Assent date 20 March 1996  
 Commenced 20 March 1996 (s 2, s 2 *Trustee Amendment Act (No. 2) 1995* (Act No. 60, 1995) and *Gaz G7*, 14 February 1996, p 2)

**Lands Acquisition Amendment Act 1998 (Act No. 31, 1998)**

Assent date 1 May 1998  
 Commenced 1 May 1998

**Lands Acquisition Amendment Act (No. 2) 1998 (Act No. 50, 1998)**

Assent date 28 August 1998  
 Commenced 1 October 1998 (*Gaz S37*, 1 October 1998)

**Lands Acquisition Amendment Regulations (SL No. 42, 1998)**

Date Notified 1 October 1998  
 Commenced 1 October 1998

**3 SAVINGS AND TRANSITIONAL PROVISIONS**

ss 50 and 51 *Lands Acquisition Amendment Act (No. 2) 1998* (Act No. 50 of 1998)

**4 LIST OF AMENDMENTS**

It amd No. 45, 1982, s 3  
 s 4 amd No. 53, 1979, s 4; No. 6, 1981, s 4; No. 45, 1982, s 4; No. 60, 1989, s 6; No. 86, 1993, s 3; No. 25, 1994, s 4; No. 56, 1995, s 4; No. 50, 1998, s 4; SL No. 42, 1998, r 4  
 s 5A ins No. 31, 1998, s 2  
 sub No. 50, 1998, s 5; SL No. 42, 1998, r 5  
 pt II hdg rep No. 50, 1998, s 6  
 s 6 rep No. 50, 1998, s 6  
 s 7 amd No. 75, 1994, s 4  
 sub No. 56, 1995, s 5  
 rep No. 50, 1998, s 6

## ENDNOTES

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s 8	amd No. 75, 1994, s 5 sub No. 56, 1995, s 6 rep No. 50, 1998, s 6
s 9	sub No. 56, 1995, s 6 rep No. 50, 1998, s 6
s 10	amd No. 56, 1995, s 7 rep No. 50, 1998, s 6
s 11	amd No. 75, 1994, s 6 rep No. 50, 1998, s 6
s 12	rep No. 50, 1998, s 6
s 13	amd No. 6, 1981, s 4; No. 18, 1986 s 3; No. 59, 1990, s 4 rep No. 50, 1998, s 6
s 14	rep No. 50, 1998, s 6
s 15	amd No. 75, 1994, s 7 rep No. 50, 1998, s 6
s 16	rep No. 9, 1980, s 6
s 17	amd No. 28, 1993, s 3 rep No. 50, 1998, s 6
s 18	rep No. 50, 1998, s 6
s 18A	ins No. 68, 1985, s 2 rep No. 50, 1998, s 6
s 19	sub No. 75, 1994, s 8 rep No. 50, 1998, s 6
ss 20 – 28	rep No. 50, 1998, s 6
s 28A	ins No. 78, 1989, s 9 amd No. 39, 1992, s 3; No. 67, 1993, s 3; amd No. 50, 1998, s 7
s 31	ins SL No. 42, 1998, r 6
pt IIIA hdg	ins No. 53, 1979, s 5
s 31A	rep No. 56, 1995, s 8 ins SL No. 42, 1998, r 6
pt IV hdg	sub No. 50, 1998, s 8; SL No. 42, 1998, r 7
pt IV	
div 1A hdg	ins SL No. 42, 1998, r 8
s 31B	ins SL No. 42, 1998, r 8
pt IV	
div 1 hdg	sub No. 50, 1998, s 8
s 32	amd No. 45, 1982, s 5; No. 56, 1995, s 9 sub No. 50, 1998, s 8 amd SL No. 42, 1998, r 9
s 33	amd No. 56, 1995, s 10 sub No. 50, 1998, s 8 amd SL No. 42, 1998, 10
s 34	amd No. 45, 1982, s 6; No. 56, 1995, s 11 sub No. 50, 1998, s 8 amd SL No. 42, 1998, r 11
s 35	amd No. 56, 1995, s 12 sub No. 50, 1998, s 8 amd SL No. 42, 1998, r 12
pt IV	
div 2 hdg	sub No. 50, 1998, s 8
ss 36 – 37	sub No. 50, 1998, s 8
s 38	amd No. 45, 1982, s 7 sub No. 50, 1998, s 8; SL No. 42, 1998, r 38
pt IV	
div 3 hdg	ins SL No. 42, 1998, r 14
s 38A	ins SL No. 42, 1998, r 14

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- s 39 rep No. 50, 1998, s 8  
ins SL No. 42, 1998, r 14
- s 40 amd No. 53, 1979, s 6; No. 45, 1982, s 8  
rep No. 50, 1998, s 8  
ins SL No. 42, 1998, r 14
- s 41 amd No. 45, 1982, s 9  
rep No. 50, 1998, s 8  
ins SL No. 42, 1998, r 14
- pt IVA hdg ins SL No. 42, 1998, r 15
- s 42 rep No. 50, 1998, s 8  
ins SL No. 42, 1998, r 15
- ss 42A – 42D ins SL No. 42, 1998, r 15
- pt V
- div 1 hdg sub No. 50, 1998, s 9
- s 43 amd No. 45, 1982, s 10  
sub No. 50, 1998, s 10
- s 44 amd No. 53, 1979, s 7; No. 56, 1995, s 13  
sub No. 50, 1998, s 10  
amd SL No. 42, 1998, r 16
- s 45 amd No. 45, 1982, s 11  
sub No. 50, 1998, s 10  
amd SL No. 42, 1998, r 17
- s 45A ins No. 50, 1998, s 10  
amd SL No. 42, 1998, r 18
- s 46 ins No. 78, 1989, s 9  
amd No. 33, 1990, s 5; No. 39, 1992, s 3; No. 67, 1993, s 4; No. 21, 1995,  
s 2; No. 50, 1998, s 11
- s 48 amd No. 45, 1982, s 12
- pt V
- div 1A hdg ins No. 53, 1979, s 8  
rep No. 56, 1995, s 14
- ss 48A – 48C ins No. 53, 1979, s 8  
rep No. 56, 1995, s 14
- s 49 amd No. 53, 1979, s 9; No. 25, 1994, s 5; No. 56, 1995, s 15; No. 50, 1998,  
s 12; SL No. 42, 1998, r 19
- s 50 amd No. 53, 1979, s 10; No. 56, 1995, s 16; No. 50, 1998, s 13; SL No. 42,  
1998, r 20
- s 50A ins No. 25, 1994, s 6
- s 51 amd No. 56, 1995, s 17; No. 50, 1998, s 14
- s 52 amd No. 56, 1995, s 18; No. 50, 1998, s 15; SL No. 42, 1998, r 21
- s 53 amd No. 50, 1998, s 16
- s 54 amd No. 50, 1998, s 17
- ss 57 – 58 rep No. 50, 1998, s 18
- s 59 amd No. 53, 1979, s 11; No. 50, 1998, s 19
- s 62 amd No. 50, 1998, s 20;
- s 63 amd No. 50, 1998, s 21; SL No. 42, 1998, r 22
- s 65 sub No. 50, 1998, s 22
- s 66 amd No. 75, 1994, s 9  
sub No. 50, 1998, s 22
- s 67A ins No. 50, 1998, s 23
- s 68 amd No. 53, 1979, s 12; No. 56, 1995, s 19; No. 50, 1998, s 24; SL No. 42,  
1998, r 23
- s 70 amd No. 50, 1998, s 25
- s 71 amd No. 50, 1998, s 26
- s 72 amd No. 50, 1998, s 27
- s 73 amd No. 53, 1979, s 13; No. 50, 1998, s 28
- s 74 amd No. 50, 1998, s 29
- s 75 amd No. 50, 1998, s 30

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s 76	amd No. 50, 1998, s 31
pt VIII	
div 3 hdg	sub No. 50, 1998, s 32
ss 77 – 79	rep No. 50, 1998, s 33
s 80	amd No. 50, 1998, s 34
s 82	amd No. 50, 1998, s 35
s 84	sub No. 50, 1998, s 36
s 85	amd No. 50, 1998, s 37
s 86	amd No. 50, 1998, s 38
s 87	rep No. 50, 1998, s 39
s 88	amd No. 33, 1990, s 9; No. 50, 1998, s 40
pt IXA hdg	ins No. 25, 1994, s 7
	rep No. 50, 1998, s 41
ss 88A – 88C	ins No. 25, 1994, s 7
	rep No. 50, 1998, s 41
s 88D	ins No. 25, 1994, s 7
	amd No. 75, 1994, s 10
	rep No. 50, 1998, s 41
s 88E	ins No. 25, 1994, s 7
	amd No. 14, 1995, s 12
	rep No. 50, 1998, s 41
s 89	sub No. 50, 1998, s 42
s 89A	ins No. 50, 1998, s 42
	amd SL No. 42, 1998, r 24
s 90	amd No. 48, 1986, s 9; No. 50, 1998, s 43
s 91	amd No. 50, 1998, s 44; SL No. 42, 1998, r 25
s 92	rep No. 50, 1998, s 45
s 94	amd No. 8, 1996, s 3; No. 50, 1998, s 46
s 94A	ins No. 50, 1998, s 47
s 95	amd No. 75, 1994, s 11; No. 50, 1998, s 48
sch 2	amd No. 53, 1979, s 14; No. 98, 1979, s 12; No. 82, 1991, s 11; No. 84, 1993, s 6; No. 86, 1993, s 3; No. 5, 1995, s 19; No. 56, 1995, s 20; No. 50, 1998, s 49; SL No. 42, 1998, r 26