



ANNO DECIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1966

No. 6 of 1966

**An Act to amend the Compulsory Acquisition of
Land Act, 1925-1959.**

[Assented to 24th February, 1966.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles. 1. (1) This Act may be cited as the "Compulsory Acquisition of Land Act Amendment Act, 1965-1966".

(2) The Compulsory Acquisition of Land Act, 1925-1959, as amended by this Act, may be cited as the "Compulsory Acquisition of Land Act, 1925-1966".

(3) The Compulsory Acquisition of Land Act, 1925-1959, is hereinafter referred to as "the principal Act".

Incorporation. 2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act.

Amendment of principal Act, s. 3—Arrangement of Act. 3. Section 3 of the principal Act is amended by inserting therein after the item—

DIVISION III.—Leases.

the item—

DIVISION IV.—General.

4. Section 23 of the principal Act is amended—

Amendment of
principal Act,
s. 23—
Service of
notice to
treat.

(a) by inserting after the passage “notice to treat” in subsection (1) thereof the passage “(not being a notice to treat published in the *Gazette* under paragraph (b) of subsection (1) of section 23a of this Act)”; and

(b) by adding after paragraph (b) of subsection (2) thereof the passage :—

; or

(c) any person having any estate or interest in the land has not become known to the promoters after diligent inquiry.

5. The following sections are enacted and inserted in the principal Act after section 23 thereof :—

Enactment of
ss. 23a and 23b
of principal
Act—

23a. (1) Subject to this section, where any land is required by a Minister of the Crown or a prescribed authority for a purpose for which that Minister or authority has power to acquire land compulsorily, the Governor may, not less than twenty-eight days—

Acquisition
of land
required by
Ministers and
prescribed
authorities.

(a) after notice to treat has been given to the persons referred to in section 21 of this Act (being a notice to treat that has not been withdrawn); or

(b) in any case where, due inquiry and search having been made, no such person has become known to the Minister or authority—after the Minister or authority, as the case may be, has published in the *Gazette* a notice to treat addressed to such persons as may have an estate or interest in the land,

by proclamation, declare that the land is acquired for the purpose aforesaid.

(2) The notice to treat referred to in paragraph (b) of subsection (1) of this section shall not be published in the *Gazette* unless—

(a) application has been made by the Minister or authority, as the case may be, to a Judge in Chambers for an order under this subsection; and

(b) the Judge, upon being satisfied that due inquiry and search had been made, has made an order directing that the notice to treat be so published.

(3) The proclamation may be made whether or not proceedings for determination of compensation have been commenced under this Act or whether or not the notice to treat has been given before the commencement of the Compulsory Acquisition of Land Act Amendment Act, 1965-1966, and shall state the nature of the estate or interest in the land so acquired and shall state that a more particular description of the land may be inspected at a place which shall be specified in the proclamation.

(4) Upon the publication of the proclamation in the *Gazette*—

(a) the land referred to in the proclamation shall, by force of this Act, become vested for the purpose aforesaid in the Minister or the authority, as the case may be, as an estate in fee simple or a lesser estate or interest, in accordance with the proclamation, freed and discharged from all trusts, mortgages, encumbrances, charges, contracts, obligations, estates, restrictions, restrictive covenants, licences, rights-of-way or other easements or interests whatsoever; and

(b) the estate and interest of every other person in such land whether legal or equitable, shall become converted into a right to compensation under this Act, and such person shall thereafter be entitled to receive from the Minister or the authority, as the case may be, interest at the rate of five per centum per annum, on such amount of the compensation payable to him under this Act as is for the time being unpaid, until the full amount of such compensation has been paid.

(5) Forthwith after the publication of the proclamation in the *Gazette*, the Minister or the prescribed authority, as the case may be, shall cause—

(a) a copy of the proclamation; and

(b) a full description of the land referred to in the proclamation,

to be served, by post or otherwise, on the owners and occupiers of the land, or such of them as can with reasonable diligence be ascertained.

(6) For the purposes of this section, “prescribed authority” or “the authority” means—

(a) the South Australian Railways Commissioner; and

(b) The South Australian Harbors Board;

- (c) the Commissioner of Highways ; or
- (d) any other body corporate created or constituted by or under any Act, being a body having power to acquire land compulsorily, and declared by proclamation under this section to be a prescribed authority within the meaning of this section.

(7) The Governor may by proclamation declare any body corporate created or constituted by or under any Act, being a body having power to acquire land compulsorily, to be a prescribed authority within the meaning of this section, and may by proclamation revoke any such proclamation.

(8) The provisions of this section are in addition to and not in derogation of any other provisions of this Act or any other Act in relation to the acquisition of land by any Minister of the Crown or a prescribed authority.

(9) Unless the context or subject matter or some other provision of this Act requires a different construction, the word "promoters" in this Act includes any Minister of the Crown or any prescribed authority in whom or in which land is vested by proclamation under this section.

(10) When the land has become vested in a Minister or prescribed authority by virtue of subsection (4) of this section—

- (a) the Minister or the prescribed authority, as the case may be, shall, as soon as is reasonably practicable thereafter, furnish the Registrar-General of Deeds with a copy of the proclamation and a description of the land referred to in the proclamation ;
- (b) if the land is under the provisions of the Real Property Act, 1886-1963, and has become so vested either as an estate in fee simple or as a lesser estate, the Registrar-General shall on the application of the Minister or the prescribed authority, register the land, to the extent of the estate so vested, in the name of the Minister or the authority, as the case may be ;
- (c) if the land is not under the provisions of the Real Property Act, 1886-1963, and has become so vested as an estate in fee simple, the Registrar-General shall, on the application of the Minister or the prescribed authority, bring the

land under the provisions of that Act by issuing a certificate of title for the land in the name of the Minister or the prescribed authority, as the case may be ;

- (d) if the land is not under the provisions of the Real Property Act, 1886-1963, and has become so vested as a lesser estate than an estate in fee simple, the Registrar-General shall, on the application of the Minister or the prescribed authority, record the vesting by registering a memorial of the proclamation in the General Registry Office under the Registration of Deeds Act, 1935-1962 ; and
- (e) if required by the Registrar-General in any case where an application is made under this subsection, the Minister or the prescribed authority shall furnish the Registrar-General with a plan of the land certified by a licensed surveyor.

(11) Any person in possession of any deed, certificate or other instrument evidencing the title to such land shall, upon receiving notice from the Registrar-General, deliver up to him such instrument, to be wholly or partially cancelled, or for the purpose of recording the vesting in the General Registry Office as the case may require ; and any person refusing or neglecting so to deliver up any such instrument within fourteen days after receiving such notice shall be guilty of an offence and shall be liable on conviction, to a penalty not exceeding fifty pounds ; and the court convicting such person of the offence may order him forthwith to deliver up such instrument to the Registrar-General.

(12) If—

(a) the land is under the provisions of the Real Property Act, 1886-1963,

the Registrar-General shall retain every such instrument, and shall issue, free of charge, a certificate of title for the land, if any, included in such instrument but not acquired under the proclamation ; or

(b) the land is not under the provisions of the Real Property Act, 1886-1963,

the Registrar-General shall, after complying with the appropriate requirements of this section, return to the person from whom it was received or to any person entitled

to receive it on his behalf, any such instrument as is not required to be retained for giving effect to those requirements and as evidences the title to any land to which the instrument relates but which is not acquired under the proclamation.

(13) No person having in his possession any such instrument shall be entitled to receive compensation under this Act until such instrument is delivered to the Registrar-General.

(14) Upon the vesting of any land in a Minister or a prescribed authority under this section, the Minister or authority, as the case may be, shall be entitled to, and may, subject to section 23b but notwithstanding any other provision of this Act, enter upon and take possession of, use and occupy the land for the purpose for which the land has been acquired, but no proceedings shall be taken under this Act or any other Act to evict any *bona fide* occupier of the land unless the Minister or the authority, as the case may be, has given to the occupier reasonable notice (being not less than three months' notice) requiring him to give up possession of the land.

23b. (1) If—

- (a) any land is acquired by virtue of a proclamation made under section 23a of this Act; and
- (b) the promoters have, not later than four weeks after the date of publication of the proclamation in the *Gazette*, received from every person who appears to the promoters to have a right to compensation in respect of the acquisition notice of his claim for compensation,

Provision for
payment on
account of
compensation.

the promoters shall give notice to each such person stating the names and addresses of claimants from whom the notices of claim have been received and requiring him, within such time, not less than four weeks after such notice is given, as shall be specified in the notice, or within such further time as the promoters may in writing allow, to prove—

- (i) his title to the land so acquired;
- (ii) that no person other than the claimant or claimants from whom the notice or notices of claim have been received, has any estate or interest in the land so acquired; and

(iii) that all rates, taxes, charges, mortgages and encumbrances relating to the land so acquired have been paid or discharged or will be paid or discharged out of moneys to be paid by the promoters under this section.

(2) If the claimant or (if more than one) all the claimants to whom the notice is given by the promoters in accordance with subsection (1) of this section complies or comply with the notice within the time specified therein, the promoters shall, before entering upon or taking possession of the land, pay to the claimant or claimants, on account of the compensation which he is or they are entitled to receive under this Act in respect of the acquisition, the amount of the promoters' valuation of his estate or interest or their respective estates or interests in the land so acquired.

(3) For the purposes of section 46 of this Act, any payment made under subsection (2) of this section to a claimant shall be deemed to be an unconditional offer in writing referred to in that section made to the claimant by the promoters.

(4) Except as provided in subsections (3) and (5) of this section, any payment made under this section shall not affect the respective rights of the claimant and the promoters, and shall not for any purpose be referred to, in any pending or subsequent proceedings for the determination of any claim under this Act for compensation before a court or an arbitrator in respect of the acquisition of the land.

(5) The amount paid to a claimant under subsection (2) of this section shall, where appropriate, be deducted from the total amount of compensation payable to the claimant by reason of such acquisition, but, if the amount paid under this section exceeds the total amount of compensation to which the claimant is entitled, the amount of the excess may be recovered by the promoters from the claimant as a debt in any court of competent jurisdiction.

(6) Where any sum has been paid to a claimant by the promoters on account of compensation to which such person is entitled under this Act, no interest shall be payable on that sum to the claimant by the promoters after the date of payment of that sum.

Amendment of
principal Act,
s. 33—
Procedure to
determine
compensation
where no
claim made.

6. Subsection (1) of section 33 of the principal Act is amended by striking out therefrom the word "six" and inserting in lieu thereof the word "two".

7. Section 43 of the principal Act is amended by striking out from subsection (1) thereof the word "Upon" being the first word therein and inserting in lieu thereof the passage "Except where the land has been acquired by virtue of a proclamation under section 23a of this Act, upon".

Amendment of principal Act, s. 43—
Provision for conveyance of land where money paid into court on account of disability of owner.

8. Section 44 of the principal Act is amended by striking out from subsection (6) thereof the word "Upon" being the first word therein and inserting in lieu thereof the passage "Except where the land has been acquired by virtue of a proclamation under section 23a of this Act, upon".

Amendment of principal Act, s. 44—
Provision for case where owner refuses to convey or makes no claim.

9. Section 56 of the principal Act is amended—

(a) by striking out from subsection (2) thereof the word "Upon" being the first word therein and inserting in lieu thereof the passage "Except where the land has been acquired by virtue of a proclamation under section 23a of this Act, upon"; and

Amendment of principal Act, s. 56—
Procedure by promoters to redeem mortgage.

(b) by striking out from subsection (4) thereof the word "Upon" being the first word therein and inserting in lieu thereof the passage "Except where the land has been acquired by virtue of a proclamation under section 23a of this Act, upon".

10. Section 57 of the principal Act is amended—

(a) by striking out from subsection (3) thereof the word "Upon" being the first word therein and inserting in lieu thereof the passage "Except where the land has been acquired by virtue of a proclamation under section 23a of this Act, upon"; and

Amendment of principal Act, s. 57—
Provision for case when mortgage exceeds the value of the land.

(b) by striking out from subsection (5) thereof the word "Upon" being the first word therein and inserting in lieu thereof the passage "Except where the land has been acquired by virtue of a proclamation under section 23a of this Act, upon".

11. Section 58 of the principal Act is amended—

(a) by striking out from subsection (3) thereof the word "Upon" being the first word therein and inserting in lieu thereof the passage "Except where the land has been acquired by virtue of a proclamation under section 23a of this Act, upon"; and

Amendment of principal Act, s. 58—
Provision for case where part only of mortgaged land taken.

(b) by striking out from subsection (5) thereof the word "Upon" being the first word therein and inserting in lieu thereof the passage "Except where the land has been acquired by virtue of a proclamation under section 23a of this Act, upon".

Amendment of principal Act, s. 59—

Compensation to be made in certain cases if mortgage paid off before the stipulated time.

12. Section 59 of the principal Act is amended by striking out from subsection (3) thereof the word "Until" being the first word therein and inserting in lieu thereof the passage "Except where the land has been acquired by virtue of a proclamation under section 23a of this Act, until".

Amendment of principal Act, s. 61—

Deposit in case of refusal to release.

13. Section 61 of the principal Act is amended by striking out from subsection (2) thereof the word "Upon" being the first word therein and inserting in lieu thereof the passage "Except where the land has been acquired by virtue of a proclamation under section 23a of this Act, upon".

Enactment of Division IV of Part V of principal Act.

14. The following Division is enacted and inserted in Part V of the principal Act after section 63 thereof:—

DIVISION IV.—GENERAL.

This Part not to limit application of s. 23a.

63a. The provisions of this Part shall not be construed as limiting the application or operation of section 23a of this Act.

Amendment of principal Act, s. 64—

Form of conveyance.

15. Section 64 of the principal Act is amended by striking out from subsection (2) thereof the word "All" being the first word therein and inserting in lieu thereof the passage "Except where the land has been acquired by virtue of a proclamation under section 23a of this Act, all".

Amendment of principal Act, s. 67—

Payment of price to be made previous to entry.

16. Section 67 of the principal Act is amended by inserting therein after the passage "respective interests therein" the passage "or unless the land has been acquired pursuant to a proclamation under section 23a of this Act".

Amendment of principal Act, s. 69—

If promoters desire to enter before payment, compensation to be paid into court.

17. Section 69 of the principal Act is amended by inserting after the passage "special Act" in subsection (1) thereof the passage "(not being land which has been acquired by virtue of a proclamation under section 23a of this Act)".

18. Section 72 of the principal Act is amended—

(a) by striking out therefrom the word “When” being the first word therein and inserting in lieu thereof the passage “Subject to subsection (2) of this section, when”; and

(b) by adding at the end thereof the following subsection (the preceding portion of the section being redesignated as subsection (1) thereof):—

(2) Subsection (1) of this section shall not be construed as limiting or prejudicing the right of the promoters to enter upon, take possession of, use or occupy land that has been acquired by virtue of a proclamation under section 23a of this Act.

Amendment of principal Act, s. 72—

Power to occupy and use land temporarily.

19. Subsection (1) of section 73 of the principal Act is amended by striking out therefrom the passage “section 72” and inserting in lieu thereof the passage “subsection (1) of section 72 of this Act”.

Amendment of principal Act, s. 73—

Power to take materials and make roads on land so occupied.

20. Subsection (1) of section 74 of the principal Act is amended by striking out therefrom the passage “section 72” and inserting in lieu thereof the passage “subsection (1) of section 72 of this Act”.

Amendment of principal Act, s. 74—

Rent for temporary occupation and compensation for damages.

21. Section 75 of the principal Act is amended by striking out therefrom the passage “section 72” and inserting in lieu thereof the passage “subsection (1) of section 72 of this Act”.

Amendment of principal Act, s. 75—

Fencing of land temporarily occupied.

22. Subsection (1) of section 76 of the principal Act is amended by inserting therein after the passage “of any land” the passage “(other than land that has been acquired by virtue of a proclamation under section 23a of this Act)”.

Amendment of principal Act, s. 76—

Penalty on promoters entering upon land without consent before payment.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

EDRIC BASTYAN, Governor.