

# Public Works and Procurement Act 1912 No 45

[1912-45]



New South Wales

## Status Information

### Currency of version

Current version for 16 June 2022 to date (accessed 1 November 2023 at 19:33)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Public Works Act 1912
- **Does not include amendments by**  
[Public Works and Procurement Amendment \(Enforcement\) Act 2018](#), Sch 1[5] (not commenced)

### Responsible Minister

- Minister for Domestic Manufacturing and Government Procurement
- Minister for Planning and Public Spaces
- Minister for Regional New South Wales

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 30 May 2023

# Public Works and Procurement Act 1912 No 45



New South Wales

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# Public Works and Procurement Act 1912 No 45



New South Wales

An Act to consolidate the Acts relating to Public Works; and to make provision in relation to the procurement of goods and services for New South Wales government agencies.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Public Works and Procurement Act 1912*.

### 2 Repeals and savings

- (1) The Acts mentioned in the First Schedule to this Act are, to the extent therein expressed, hereby repealed.
- (2) All persons appointed under the Acts hereby repealed and holding office at the time of the passing of this Act shall be deemed to have been appointed hereunder.
- (3) All regulations made under the authority of any Act hereby repealed and being in force at the time of the passing of this Act shall be deemed to have been made under the authority of this Act; and any references in any such regulation to any enactments hereby repealed shall be construed as references to the corresponding enactments contained in this Act.

### 3 Definitions

In this Act, unless the context or subject-matter otherwise indicates or requires—

**Authorised work** means any work the carrying out of which has been authorised in manner herein provided, and includes any work so authorised under any Act hereby repealed.

**Committee** means the Parliamentary Standing Committee on Public Works as constituted under the provisions of this Act, or of any Act hereby repealed.

**Constructing Authority** means the Minister empowered to carry out any authorised work.

**Council** means the council of an area under the *Local Government Act 1993*.



**Court** means the Supreme Court of New South Wales.

**Government debentures** includes any Government stock issued by the Government of New South Wales pursuant to any statutory power.

**Prescribed** means prescribed by this Act, or by regulations made pursuant hereto.

#### **4 Incorporation of Constructing Authority**

For the purpose of facilitating the acquisition and disposal of land under this Act the Constructing Authority, when a Minister, is hereby declared to be a corporation sole under the name of “the Minister”, and by that name shall have perpetual succession and an official seal, sue and be sued, and take all legal proceedings, with power to purchase, take and hold lands to the Minister and the Minister’s successors for the purposes of this Act, and also to dispose of any superfluous lands in accordance with the provisions of this Act, and to give effectual discharges in respect thereof to any purchaser.

#### **4A (Repealed)**

#### **5 Regulations**

The Governor on the recommendation of the Committee may frame regulations for giving effect to this Act.

**Editorial note—**

See [Interpretation Act 1987](#), sec 39.

#### **5A Savings and transitional provisions**

The Ninth Schedule has effect.

#### **5B Delegation by Minister or Constructing Authority**

- (1) The Minister may delegate any of the Minister’s functions under this Act, other than this power of delegation, to—
  - (a) a government agency, or a government agency employee, or
  - (b) a person, or a class of persons, authorised for the purposes of this subsection by the regulations.
- (2) The Constructing Authority may delegate any of the Constructing Authority’s functions under this Act, other than this power of delegation, to—
  - (a) a government agency, or a government agency employee, or
  - (b) a person, or a class of persons, authorised for the purposes of this subsection by the regulations.
- (3) In this section—

**government agency** has the same meaning as in Part 11.

**government agency employee** has the same meaning as in Part 11.

## **Part 2 The Parliamentary Standing Committee on Public Works**

### **Division 1 Constitution of and general provisions relating to the Committee**

#### **6 Definitions**

In this Division, unless the context or subject-matter otherwise indicates or requires—

**Clerk** means Clerk of Assembly, or any officer acting in his or her place.

**Member** means member of the Legislative Assembly.

**Speaker** means Speaker of the Legislative Assembly.

#### **7 Constitution etc of Parliamentary Committee on Public Works**

- (1) In every Parliament, a committee of members of the Legislative Council and Legislative Assembly, to be called the “Parliamentary Standing Committee on Public Works”, shall be elected in manner hereinafter provided. Three of the persons so to be elected shall be members of the Legislative Council, and four shall be members of the Legislative Assembly.
- (2) Such seven persons shall hold office as a joint committee (subject to the provisions of section eleven hereof) for the duration of the Parliament for the time being, but shall cease to hold office as soon as such Parliament expires by dissolution or effluxion of time, and shall have and may exercise such powers and authorities, perform such duties, and be liable to such obligations, as are by this Act vested in or imposed upon such committee.

#### **8 Names of members to be notified**

The names of the persons from time to time elected to be members of such Committee shall be notified in the Gazette with all convenient despatch.

#### **9 Election of members of Parliamentary Standing Committee on Public Works**

- (1) Upon a resolution being passed by the Assembly that the Parliamentary Standing Committee on Public Works be appointed, of the passage of which the Legislative Council shall be informed by Message asking its concurrence, the Speaker shall fix a date, being within a period of fourteen days from the passing of the resolution, up to and including which the Speaker shall receive nominations of members of the Legislative Assembly for election and appointment as members of the Committee.

- (2) Every such nomination shall be made and signed by at least five members, on a form provided by the Speaker for that purpose, and shall be delivered to the Clerk together with the written consent to the nomination of the member nominated.
- (3) Where members to the number hereinbefore required, and no more or less, are nominated, the Speaker shall declare such members to be elected as members of the Committee.
- (4) Where members to a less number than that so required are nominated, the Speaker shall declare such members to be elected as members of the Committee, and shall at the same time declare such other members as the Speaker thinks fit, being sufficient to make up such required number, to be elected as members of the Committee.
- (5) Where members to a greater number than that so required are nominated, the Speaker shall appoint a day, being not later than the seventh day from the last day during which nominations may be received, upon which a ballot shall take place for the election of members of the Committee.
- (6) Upon the day so appointed, the Clerk, for the purpose of such ballot, shall furnish every member with a ballot-paper in the form of the Second Schedule to this Act containing the names of the members nominated in alphabetical order of surnames.
- (7) Every member shall vote by striking out the names of the members whom the member does not wish to be elected, and the member shall be deemed to have voted for the members whose names are not struck out on the member's ballot-paper. No ballot-paper shall be deemed to be valid if the member has voted for more or less members than the number to be elected.
- (8) Every member after the member has voted as aforesaid shall deliver the member's ballot-paper to the Clerk, giving the Clerk time to note as hereinafter mentioned every paper previously presented.
- (9) The Clerk, on the presentation of every ballot-paper, shall place his or her initials against the name of the member presenting the ballot-paper on a list containing the name of all the members of the Legislative Assembly, and the list of members so initialled shall be kept on record with the other proceedings of the ballot.
- (10) The votes shall be counted by the Clerk, and the result of the ballot shall be delivered to the Speaker, together with the records of the proceedings of the ballot.
- (11) The members, to such required number as aforesaid, who receive the greatest number of votes at the ballot shall be declared by the Speaker to be elected as members of the Committee. Where two or more members receive the same number of votes, the Speaker shall declare which of the said members receiving the same number of votes shall be elected.

## **10 Election of members of Legislative Council as members of Committee**

The provisions of section nine other than the provisions for passing a resolution that the committee be appointed shall, *mutatis mutandis*, be observed in the election of members of the Legislative Council to serve on the Committee, and in carrying out such provisions the President of the Legislative Council and the Clerk of Parliaments, or officer acting in his or her place, shall respectively be charged with the duties and powers in the said section imposed and conferred on the Speaker and Clerk respectively.

The date to be fixed by the President for the election shall be within a period of fourteen days from the date of the concurrence of the Legislative Council with the resolution of the Assembly.

## **11 Vacation of office**

- (1) Any member of the Committee may resign his or her seat on such Committee by writing under his or her hand addressed to the Governor.
- (2) The seat of any such member shall also be deemed to have become vacant—
  - (a) for any reason which would vacate his or her seat as a member of the Assembly or Council (as the case may be).
  - (b) (Repealed)

## **12 Vacancies**

Where a vacancy occurs in the Committee, the same shall be filled by nomination and election as aforesaid within thirty-five days from the occurrence of the vacancy if Parliament is then in session, or within thirty-five days after the next meeting of Parliament should such vacancy occur during any recess or adjournment.

Provided that the respective proportions in respect to the representation on the Committee of members of the Legislative Council and members of the Assembly hereinbefore prescribed shall be observed in the filling up of all such vacancies.

## **13 Quorum**

Any three members of the Committee shall form a quorum competent to exercise all powers and authorities and to incur all obligations conferred or imposed by this Act upon the Committee.

Provided that no quorum shall consist exclusively of members of the Legislative Council or of the Legislative Assembly.

## **14 Chair or Deputy Chair**

There shall be a Chair and Deputy Chair of the Committee who shall be elected by the members of the Committee at their first meeting, or as soon after such meeting as may

be practicable. The Chair or, in case of the Chair's absence or other disability, the Deputy Chair shall preside at all meetings of the Committee.

Provided that at any meeting of the Committee at which a quorum is present, the members in attendance, may, in the absence of the Chair and Deputy Chair, appoint one of their number then present to be temporary Chair, and such temporary Chair shall have, during the absence of the Chair and Deputy Chair, all the powers given by this Act to the Chair or Deputy Chair of the Committee.

## **15 Division—casting vote**

- (1) All questions which arise in any Committee shall be decided by a majority of votes of the members present, and when the votes are equal the Chair shall have a second or casting vote.
- (2) In all cases of divisions the names of the persons voting shall be stated on the minutes and in the report.

## **16 Declaration of members of Committee**

Every member of the Committee, before entering on the duties of his or her office or sitting at any meeting of such Committee, shall make and subscribe a declaration in the form of the Third Schedule hereto.

## **17 Power to sit during recess, and in open court**

The Committee may sit and transact business during any adjournment or recess as well as during the session, and may sit at such times and in such places, and conduct their proceedings in such manner as may seem most convenient for the proper and speedy dispatch of business, and such Committee shall sit in open court.

## **18 Reports**

The Committee shall, before the commencement of each session of Parliament, make a report to the Governor of their proceedings under this Act; and such report shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament is then sitting, and if not, then within fourteen days after the commencement of the next session.

## **19 Minutes**

The Committee shall keep full minutes of their proceedings in such manner as the Governor may direct.

## **20 Evidence taken before previous Committees**

Where any public work is referred to any Committee, and such Committee lapses or ceases to have legal existence, before it reports on such public work, the evidence taken before such Committee and before any sectional committee shall, nevertheless, be

considered by any subsequent committee to whom the same public work may be referred for report pursuant to this Act as if such evidence had been given before and for the information and guidance of such subsequent committee.

## **Division 2 Powers of the Committee**

### **21 Powers of Committee**

For the purposes of this Act the Committee shall have the following powers, that is to say—

- (a) they may, by themselves or by any person appointed by them to prosecute an inquiry, enter and inspect any land, building, place, or material, the entry or inspection of which appears to them requisite, upon the prescribed notice being given to the owners or occupiers of such land, building, place, or material,
- (b) they may require, by summons under the hand of the Chair or Deputy Chair, the attendance of all such persons as they may think fit to call before them and examine, and may require answers or returns to such inquiries as they think fit to make,
- (c) they may, in the prescribed manner, require and compel the production of all books, maps, plans, papers, and documents relating to the matters before them,
- (d) they may, by their Chair or Deputy Chair, examine witnesses on oath; or where a witness, if examined before a superior court of record, would be permitted to make a solemn declaration, or to give evidence in any other way than upon oath, then by such declaration or otherwise as the case may be.

### **22 Powers of Committee in respect of witnesses**

(1) If any person—

- (a) whose expenses have been paid or tendered to the person neglects to appear, or
- (b) wilfully insults the Committee or any member thereof, or
- (c) misbehaves before the Committee, or
- (d) interrupts the proceedings of the Committee, or
- (e) being summoned or examined as a witness in any inquiry or matter pending before the Committee, refuses to be sworn, or to produce any document mentioned in the summons served upon the person, or to make a solemn declaration as aforesaid, or prevaricates in the person's evidence, or refuses to answer any lawful question,

the Chair or Deputy Chair may commit any such offender to gaol for any time not exceeding one month, or may impose upon the person a fine not exceeding one

hundred dollars and in default of immediate payment thereof may commit such offender to gaol for any time not exceeding one month unless the fine is sooner paid.

In any such case of committal the Chair or Deputy Chair shall issue a warrant in the Form A contained in the Fourth Schedule hereto, and such warrant shall be good and valid without any other warrant order or process whatsoever, and the sheriff, the sheriff's deputy, and all officers of the police force and gaolers to whom the same is addressed shall obey it.

- (2) Where any person who has been duly served with a summons to attend as a witness before the Committee, and whose expenses have been paid or tendered to the person fails to appear in obedience to the person's summons, the Chair or Deputy Chair, upon proof of such person having been duly served with such summons, and that such person's non-appearance was without just cause or reasonable excuse, may issue a warrant in the form or to the effect of Form B of the Fourth Schedule hereto to bring such person before the Committee to give evidence.
- (3) Every person required by the Committee to attend as a witness shall be allowed such expenses as would be allowed to a witness attending on subpoena before a superior court of record, and, in case of dispute as to the amount to be allowed, the same shall be referred to the Prothonotary of the Supreme Court who, on request under the hand of the Chair of the Committee, shall ascertain and certify the proper amount of such expenses.

### **23 Assessors**

- (1) The Committee may, in the exercise of any power by this Act conferred on them, call in the aid of one or more assessors, who shall be persons of engineering or other technical knowledge, or possessing special local knowledge or experience.
- (2) There shall be paid to such assessors such remuneration as the Committee may recommend and the Governor may approve and as Parliament may provide.

### **24 Functions of Committee**

The Committee shall, subject to the provisions contained in section thirty-four, consider and report upon all public works to be executed after the passing of this Act (and whether such works are continuations, completions, repairs, reconstructions, extensions, or new works), in all cases where the estimated cost of completing such works exceeds \$1,000,000.

In considering and reporting on any such work as aforesaid, the Committee shall have regard to the stated purpose thereof, and to the necessity or advisability of carrying it out; and, where such work purports to be of a reproductive or revenue producing character, the Committee shall have regard to the amount of revenue which such work may reasonably be expected to produce, and to the present and prospective public value of such work; and generally the Committee shall, in all cases, take such measures and

procure such information as may enable them to inform or satisfy the Legislative Assembly as to the expediency of carrying out the work in question.

## **Division 3 Sectional committee**

### **25 Constitution etc of sectional committees**

- (1) The Committee may at any meeting constitute sectional committees of itself for all purposes of this Act by appointing three or more of its members to be a sectional committee.
- (2) Every sectional committee shall have, and may exercise, for the purpose of carrying out any business or inquiry delegated to them by the Committee either at or after the time of their appointment, all the powers by this Act conferred on the Committee, and shall sit in open court.
- (3) Every sectional committee shall appoint a Chair or temporary Chair, who shall be the person to exercise the powers conferred by this Act on, or in the name of, the Chair or Deputy Chair of the Committee.

### **26 Further powers of sectional committee**

The powers and provisions respectively conferred by and contained in the fifteenth, seventeenth, twenty-first, twenty-second, and twenty-third sections of this Act shall be exercisable by and applicable to every sectional committee appointed as aforesaid.

### **27 Reports of sectional committees**

Every such sectional committee shall make its report as soon as practicable to the Committee, of and in respect to all matters delegated to it by such Committee; and such report with any evidence taken by such sectional committee shall be dealt with by the Committee in all respects, so far as possible, as reports of select committees are dealt with by the Legislative Assembly.

### **28 Limit of number of sectional committees etc**

Not more than two sectional committees shall be appointed or shall sit at the same time; but the Committee may sit at any time notwithstanding that any such sectional committee or committees may be sitting at the same time.

## **Division 4 Committee's remuneration**

### **29 Fees to be paid to members of Committee**

The members of every Committee shall each receive, by way of remuneration for their services as such members, a fee for each attendance at a summoned meeting of such Committee at which a quorum was present, according to the following scale—



- (a) the Chair, or member presiding at any meeting in the Chair's absence, six dollars thirty cents for each sitting,
- (b) every other member, four dollars twenty cents for each sitting.

### **30 Fees to be a charge on consolidated revenue**

The fees made payable under this Division of this Act shall be charged on the consolidated revenue fund, and the certificate of the Chair or Deputy Chair of the Committee shall be a sufficient warrant and authority, and discharge to the Treasurer for the payment of such fees from such fund.

### **31 Travelling expenses**

- (1) In addition to the sum payable to every member of the Committee as a sitting fee, the member shall be paid a further sum of three dollars per diem on account of expenses incurred by the member in, and in the course of travelling, whether by land or water, whenever such expenses and charges have been incurred bona fide in the performance of the member's duties as a member of such Committee, whilst outside the boundaries of the county of Cumberland.
- (2) Such expenses and charges shall be chargeable in the same manner, and be paid by the same person, and on the like certificate, and in other respects in like manner as in the case of fees for sittings.
- (3) In all cases in which a sectional committee of the Committee is engaged in the inspection of any public works outside the county of Cumberland, each day or part of a day occupied in such inspection shall be deemed to constitute one attendance of such committee, and to entitle each member thereof to a fee of four dollars twenty cents.

### **32 (Repealed)**

### **33 Office of profit**

Nothing in this Division of this Act shall be taken to constitute the office of any member of the said Committee an office of profit, so as to render such member incapable of sitting or voting as a member of the Legislature, or to make void the election of such member.

## **Part 3 Public works, how authorised and how contracts made**

### **34 Conditions precedent to commencing public works**

- (1) No public work of any kind, the estimated cost of completing which exceeds \$1,000,000, and whether such work is a continuation, completion, repair, reconstruction, extension, or a new work, shall be commenced, unless sanctioned as hereinafter provided—

- (a) Every such proposed work shall, in the first place, be submitted and explained in the Legislative Assembly by some member of the Executive Council having a seat in such Assembly (hereafter termed “the Minister”).

The explanation shall comprise an estimate of the cost of such work when completed, together with such plans and specifications or other descriptions as the Minister deems proper, and an estimate of the probable revenue to be derived therefrom. Such estimate, plans, specifications, or descriptions shall be prepared and be authenticated or verified in the prescribed manner.

- (b) Upon motion, in the usual manner, made by the Minister or by any member of the Assembly such proposed work shall be referred to the Committee for their report thereon.
- (c) The Committee shall, with all convenient dispatch, deal with the matter so referred to them, and, for that purpose may exercise all powers by this Act conferred on such Committee.
- (d) The Committee shall, as soon as conveniently practicable, regard being had to the nature and importance of the proposed work, report to the Legislative Assembly the result of their inquiries.
- (e) After the receipt of such report the said Assembly shall, by resolution, declare, either that it is expedient to carry out the proposed work or that it is not expedient to carry out the same.

Provided that the said Assembly, instead of declaring affirmatively or negatively as aforesaid, may resolve that the report of the Committee shall, for reasons or purposes to be stated in the resolution, be remitted for their further consideration and report to the said Committee; in which case such Committee shall consider the matter of such new reference, and report thereon accordingly.

(1A) (Repealed)

- (2) Provided that the Governor may, with respect to any public work the estimated cost of which does not exceed \$1,000,000, direct that the same shall be carried out under this Act, in which case all the powers and provisions of this Act relating to authorised works shall be applicable to such work, and the same shall for all purposes of this Act be deemed to be an “authorised work”, and the Minister on whom the carrying out of such work devolves shall for the like purposes be deemed a “Constructing Authority”.
- (3) Where the council of an area within the meaning of the [Local Government Act 1993](#) has made an application under section 57 of that Act for the construction, by the Minister, of a work of water supply or sewerage or any work incidental to water supply or sewerage, for the council’s area or part thereof, or for two or more areas as defined in the said Act or parts thereof, the Governor, notwithstanding that the estimated cost

of the work exceeds the sum of \$1,000,000, may direct that the work shall be carried out under this Act, in which case all the powers and provisions of this Act relating to authorised work shall be applicable to such work, and the same shall for the purposes of this Act be deemed to be an authorised work.

(4) Where the Minister is of opinion that a work of water supply, sewerage or drainage should be constructed, the Governor, notwithstanding that the estimated cost of the work exceeds the sum of \$1,000,000, may direct that such work shall be carried out under this Act, in which case all the powers and provisions of this Act relating to authorised works shall be applicable to such work, and the same shall for the purposes of this Act be deemed to be an authorised work.

(5) For the purposes of this section, an extension or improvement of a work of water supply, sewerage or drainage shall be deemed to be an authorised work.

(6) Where the Minister is of opinion that a work being—

(a) a public school, a teachers' college, a technical college or a detention centre within the meaning of the [Children \(Detention Centres\) Act 1987](#),

(b) a hospital, or a mental hospital, or an institution for the treatment of the physically or mentally ill,

(c) public offices or a public building,

should be constructed, the Governor, notwithstanding that the estimated cost of the work exceeds the sum of \$1,000,000, may direct that such work shall be carried out under this Act, in which case all the powers and provisions of this Act relating to authorised works shall be applicable to such work, and the same shall for all purposes of this Act be deemed to be an "authorised work" and the Minister on whom the carrying out of such work devolves shall for the like purposes be deemed a "Constructing Authority".

For the purposes of this subsection any such work shall include its continuation, completion, repair, reconstruction or extension.

### **35 Notification of resolution**

Every resolution of the Legislative Assembly declaring that it is expedient or not expedient to carry out any such proposed work shall be notified in the Gazette.

### **36 Under what circumstances negatived proposals may be re-submitted**

If any such resolution declares that it is not expedient to carry out any proposed work, no proposal for a public work in substance identical with the work referred to in such resolution shall be submitted to the Legislative Assembly until after the expiration of one year from the notification of such resolution as aforesaid, unless the Governor, by writing under the Governor's hand addressed to the Committee, declares that, in the Governor's

opinion and in view of the public interest, it is desirable that any such proposal should be re-submitted to the said Assembly.

### **37 Resolution when to be sufficient authority for execution of works etc**

- (1) Every resolution of the Legislative Assembly declaring that it is expedient to carry out the work specified or mentioned in such resolution shall be deemed to impose a statutory duty on the Minister to introduce a Bill into the said Assembly to sanction the carrying out of such work, upon the passing whereof by the Legislature and in such form as the Legislature may think fit, the authorisation of such work shall become absolute, and the Constructing Authority shall thereupon carry out such work, enter into such contracts, and take all such necessary steps for the proper execution thereof as such Authority may think proper.

Provided that no such contracts shall exceed in the aggregate by more than ten per centum the estimate for the same submitted as hereinbefore provided.

- (2) Where the Governor has—

- (a) pursuant to subsection two or six of section thirty-four of this Act directed that a work shall be carried out under this Act, the Constructing Authority, or
- (b) pursuant to subsection three or four of section thirty-four of this Act directed that a work shall be carried out under this Act, the Minister,

shall enter into such contracts and take all such necessary steps for the proper execution thereof as such Constructing Authority or Minister, as the case may require, may think proper.

### **38 Contracts how made**

- (1) All contracts referred to in subsections one and two of section thirty-seven of this Act may be made as follows, that is to say—
- (a) with respect to any contract which, if made between private persons, would be by law required to be in writing and under seal, the Constructing Authority or the Minister, as the case may require, may make such contract in writing and under seal, and in the same manner may vary or discharge the same,
  - (b) with respect to any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, the Constructing Authority or the Minister, as the case may require, may make such contract in writing, and in the same manner may vary or discharge the same,
  - (c) with respect to any contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, the Constructing Authority or the Minister, as the case may require, may make such contract by parol only without writing, and in the same manner may vary or

discharge the same.

- (2) All such contracts so made shall be effectual in law and shall be binding upon the Constructing Authority, or the Minister, on behalf of the Crown, and all other parties thereto, their heirs, executors, or administrators, as the case may be; and on any default in the execution of any such contract either by the said Authority or the Minister, or any other party thereto, such actions or suits may be brought either by or against the said Authority, or the Minister, as might be brought had the same contracts been made between private parties.

## **Part 4 Preliminary conditions relating to the acquisition of land**

### **39 Acquisition of land for authorised works**

The Minister may, for the purposes of an authorised work, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).

### **40 Acquisition of land for public purposes other than authorised works**

- (1) This section applies to the acquisition of land for the purposes of any work other than an authorised work.
- (2) The Minister may acquire land (including an interest in land) by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) for the purposes of—
  - (a) a public work or undertaking specified in section 41 if money has been appropriated from the Consolidated Fund (or is otherwise lawfully available) for or towards the carrying out of the work or undertaking, or
  - (b) a school site or a site for public offices or public buildings.
- (3) The Minister is, in relation to the acquisition of land under this section, taken to be the Constructing Authority.

### **41 Public works etc specified**

The following shall for the purposes of the last preceding section be deemed to be public works and undertakings, that is to say—

- (a) works for and in connection with the supply of water to or for the sewerage of any city, town, or district,
  - (aa) works of drainage, including pipes, drains, ditches or channels,
  - (ab) works for the prevention of floods or the control of flood waters,
- (b) buildings for the occupation of either or both of the Houses of the Legislature or for

public offices,

- (c) hospitals, lunatic asylums, court-houses, gaols, watch-houses, lock-ups, police barracks or quarters,
- (d) light-houses, observatories, pilot stations, quarantine stations or grounds,
- (e) public schools or any other schools authorised to be established wholly or in part at the public cost by any Act in force for the time being,
- (f) public libraries, mechanics' institutes, or schools of art,
- (g) public wharves, ferries, piers, jetties, and bridges,
- (h) public parks, or grounds for public recreation, or places for bathing, and for the reclamation of land for or in connection therewith,
- (i) public cemeteries,
- (j) public wells or works for the conservation of water,
- (k) the protection and preservation of any cave or place of scientific interest,
- (l) the establishment of public abattoirs,
- (m) breakwaters, leading marks or beacons for the purposes of navigation, docks, slips, the protection of river banks, the excavation of new channels, landing-places for silt, and any other works for the improvement of harbours or rivers,
- (n) quarries, or works for procuring stone, gravel, earth, or any other material required for the construction of or any purpose connected with any such public work or undertaking as aforesaid.

For the purposes of this section any such named work or undertaking shall be taken to include any extension of, or approach to, or subsidiary work in connection with any such named work or undertaking.

## **Part 5**

### **42-49 (Repealed)**

## **Part 6 Provisions applicable to every case where land is taken or acquired under this Act**

### **Division 1 Interpretation**

#### **50 Definition**

In this Part of this Act, unless the context or subject-matter otherwise indicates or

requires—

**Public work** means any work to which this Act applies, and includes authorised work.

## **Divisions 2-5**

### **50A-79 (Repealed)**

## **Division 6 Powers and duties of Constructing Authority**

### **80 Powers of Constructing Authority**

For the carrying out of any public work the Constructing Authority and all persons acting under the Constructing Authority—

- (a) may enter into and upon the lands and grounds of any person whomsoever, and survey and take levels of the same, and ascertain and stake or set out, take and appropriate, for the purposes herein mentioned, such parts thereof as may be necessary and proper for the laying out, making and using any public work, and all other works, matters, and conveniences connected therewith,
- (b) may in or upon such lands, or any lands adjoining or contiguous thereto, bore, dig, cut, trench, embank and sough, remove or lay, take, carry away and use any earth, stone, timber, gravel, or sand, or any other materials or things dug, raised, or obtained therein, in constructing such public work and other works, out of any lands contiguous or adjoining thereto, and which may be proper or necessary for making, maintaining, altering, repairing, or using any such public work, or which may hinder, prevent, or obstruct the constructing, reconstructing, making, maintaining, altering, repairing, adding to, extending, or using the same respectively,
- (c) may make or construct in, upon, across, under, or over any lands, streets, roads, rivers, streams, or other waters, within the lands described in the plans or mentioned in the books of reference of any public work, or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, fences, as are considered necessary,
- (d) may alter the course of any rivers (not navigable), streams or watercourses for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, or for any other necessary purpose; and also may divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, streets, roads, or ways, or raise or sink the level of any such rivers or streams, streets, roads or ways, in order the more conveniently to carry the same over, or under, or by the side of, any such public work, as may be thought proper,
- (e) may make drains or conduits into, through, or under any lands adjoining any public work, for the purpose of conveying water from or to the same,

- (f) may in or upon any such public work or any lands adjoining or near thereto, erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharves, engines, machinery, apparatus, and other works and conveniences as shall be thought requisite,
- (g) may alter, or repair, or discontinue the before-mentioned works or any of them and substitute others in their stead,
- (h) where any public work is constructed in or passes through any wood-lands or forest, may fell or remove any trees standing thereon, within the distance of 46 metres from either or every side of such work,
- (i) and generally may do all other acts necessary for constructing, reconstructing, making, maintaining, altering, repairing, adding to, extending, and using such public work.

## **81 (Repealed)**

## **82 Power to take temporary possession of land**

- (1) The Constructing Authority and all persons authorised by the Constructing Authority may enter, from time to time, upon any lands—
  - (a) being within a distance of not more than 200 metres from the nearest boundary of the public work, as delineated on the plans thereof, and
  - (b) not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted, and
  - (c) not being nearer to the dwelling-house of the owner of any such lands than a distance of 500 metres,

and may occupy the said lands, as long as may be necessary for the construction, reconstruction, repair, alteration, addition, to, or extension of the public works or the works connected therewith, and may use the same for any of the following purposes (that is to say)—

- (d) for the purpose of taking earth or soil by side cuttings therefrom,
  - (e) for the purpose of depositing soil thereon,
  - (f) for the purpose of obtaining materials therefrom for the construction, reconstruction, repair, alteration, addition to or extension of the public work or such other works as aforesaid,
  - (g) for the purpose of forming roads thereon to, or from, or by the side of the public work.
- (2) In exercise of the powers aforesaid the Constructing Authority and all such persons



may deposit, and also manufacture and work upon such lands materials of every kind used in constructing the public work, and also may take from any such lands any timber, and also dig and take from or out thereof any clay, stone, gravel, sand, or other things found therein, useful or proper for constructing the said work or any such roads as aforesaid, and for the purposes aforesaid may erect thereon workshops, sheds, and other buildings of a temporary nature.

- (3) Nothing in this Act contained shall exempt the Constructing Authority from any action for nuisance or other injury, if any, done in the exercise of the powers hereinbefore given, to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid.
- (4) Provided that no stone or slate quarry, brickfield, or other like place which, at the time of the passing of this Act is commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same, shall be taken or used by the Constructing Authority, either wholly or in part, for any of the purposes lastly hereinbefore mentioned.

### **83 Authority to separate the lands before using them**

If any such lands are used for any of the purposes aforesaid, the Constructing Authority shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto with such gates as may be necessary for the convenient occupation of such lands; and, in case of any difference between the owners or occupiers of such lands and the Constructing Authority as to the necessity for such fences and gates, then with such fences and gates as the Governor deems necessary for the purposes aforesaid.

### **84 Compensation to be made for temporary occupation**

In any of the cases aforesaid, where the Constructing Authority takes temporary possession of lands by virtue of the powers herein granted, the Constructing Authority shall—

- (a) within one month after the Constructing Authority's entry upon such lands, upon being required to do so, pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which the occupier may sustain by reason of the Constructing Authority so taking possession of the occupier's lands,
- (b) during such occupation of the said lands, pay half-yearly or quarterly to such occupier or the owner of the lands, as the case may require, a rent, to be agreed upon by the parties, or, if they cannot agree, to be fixed by the Local Court,
- (c) within six months after the Constructing Authority has ceased to occupy the said lands, pay to such owner and occupier or pay into Court as prescribed by rules of Court, for the benefit of all parties interested, as the case may require, compensation

for all permanent or other loss, damage or injury that may have been sustained by them, by reason of the exercise as regards the said lands of the powers herein granted, including the full value of all such clay, stone, gravel, sand, and other things taken from such land.

#### **85 Claims for compensation**

- (1) A person who wishes to claim compensation under this Division must lodge a claim for compensation with the Constructing Authority.
- (2) The Constructing Authority may accept the claim for compensation (in whole or in part) or reject the claim.
- (3) A claim for compensation is taken to have been rejected if the Constructing Authority has not dealt with the claim within 60 days after receiving the claim or within 60 days after completion of the public work concerned (whichever is the later). However, the Constructing Authority is not precluded from accepting the claim after that time.

#### **86 Crossing of roads**

If the public work crosses any public highway or carriage road, then such work shall not be carried across, over or under such road, unless the proposed place and mode of such crossing and the immediate approaches thereto, and all other necessary works connected therewith, and the provisions to be adopted for the protection of the public using the same have been previously notified, and have been approved of by the Governor.

#### **87 Before roads interfered with, others to be substituted**

If, in the exercise of the powers hereby granted, it is found necessary to cross, cut through, raise, sink, or use any part of any road, whether carriage road, horse road, tram road or railway, either public or private, so as to render it impassable for, or dangerous, or extraordinarily inconvenient to passengers or carriages or to the persons entitled to the use thereof, the Constructing Authority shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at the public expense maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with or as nearly so as may be.

#### **88 Remedy for damage from interruption of road**

If any party entitled to a right of way over any road so interfered with by the Constructing Authority suffers any special damage because the Constructing Authority fails to cause another sufficient road to be made before it interferes with the existing road, such party may recover the amount of such special damage from the Constructing Authority in the Supreme Court.

#### **89 Restoration of roads interfered with**

- (1) If the road so interfered with can be restored compatibly with the formation and use of

the public work, the same shall, with all reasonable expedition, be restored to as good a condition as it was in at the time when it was first interfered with by the Constructing Authority or as near thereto as may be.

- (2) If such a road cannot be restored compatibly with the formation and use of the public work, the Constructing Authority shall cause the new or substituted road or some other sufficient substituted road to be, with all reasonable expedition, put into a permanently substantial condition, equally convenient as the former road or as near thereto as circumstances will allow.

## **90 Approaches and fences**

If the public work crosses any highway (other than a public carriage-way) on the level, the Constructing Authority shall make and at all times maintain convenient ascents and descents and other convenient approaches with hand-rails or other fences; and shall, if such highway is a bridle-way, erect and at all times maintain good and sufficient gates, and if the same is a footway, good and sufficient gates or stiles on each side of the said work where the highway communicates therewith.

## **91 Accommodation works**

The Constructing Authority shall make, and at all times maintain, the following works (hereinafter called **accommodation works**), for the accommodation of the owners and occupiers of lands adjoining any public work, that is to say—

- (a) such and so many convenient gates, bridges, arches, culverts, and passages over, under or by the sides of or leading to or from the public work as are necessary for the purpose of making good any interruptions caused by the public work to the use of the land through, in, or upon which such public work is made or constructed; and such work shall be made forthwith after such public work or part of it passing over such lands has been laid out or formed or during the formation thereof,
- (b) sufficient posts, rails, hedges, ditches, mounds, or other fences for separating the land, taken for or for the use of the public work, from the adjoining lands not taken and protecting such lands from trespass, or the cattle of the owners of occupiers thereof from straying thereout, in consequence of such public work; together with all necessary gates made to open towards such adjoining lands and not towards the public work. All necessary stiles, and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owners thereof so require, and such other works as soon as conveniently may be,
- (c) all necessary arches, tunnels, culverts, drains, or other passages either over or under, or by the sides of the public work, of such dimensions as will be sufficient, at all times, to convey the water as clearly from the lands lying near or affected by such public work as before the making of the public work or as nearly so as may be; and such works shall be made from time to time as the public work proceeds.

Provided that the Constructing Authority shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the public work; nor to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive and have been paid compensation instead of the making them.

#### **91A Fences—transferred railway provisions**

- (1) **Bungendore to Captain's Flat Railway Act 1930** Notwithstanding the provisions of section 91, the Constructing Authority shall not be compelled, nor shall it be the duty of the said Authority, to make or maintain any fence along the line of railway described in the Schedule to the *Bungendore to Captain's Flat Railway Act 1930* (as in force immediately before its repeal) for the accommodation of any person or for any purpose whatsoever; but the said Authority may, in its discretion, make and maintain such fences in connection with the said line of railway as it may think fit.
- (2) **Coonabarabran to Burren Junction Railway Act 1913** Notwithstanding the provisions of section 91, the Constructing Authority shall not be compelled, nor shall it be the duty of the said authority to make or maintain any fence along the line of railway described in the Schedule to the *Coonabarabran to Burren Junction Railway Act 1913* (as in force immediately before its repeal) for the accommodation of any person or for any purpose whatsoever; but the said Authority may, in his discretion, make and maintain such fences in connection with the said line of railway as he may think fit.
- (2A) **Government Railways (Fencing) Act 1902** Notwithstanding the provisions of section 91, the Constructing Authority shall not in respect of any of the lines of railway mentioned in the Second Schedule to the *Government Railways (Fencing) Act 1902* (as in force immediately before its repeal) be required or compelled, nor shall it be the duty of the said Authority, to make or maintain any fence along the said lines of railway for the accommodation of any person or for any purpose whatsoever; but the said Authority may, in its discretion, make and maintain such fences in connection with the said lines of railway as it may think fit.

**Note—**

The railway lines concerned are Nyngan to Cobar, Narrabri to Moree, Jerilderie to Berrigan, Parkes to Condobolin, Nevertire to Warren, Berrigan to Finley, Tamworth to Manilla, Moree to Inverell, Dubbo to Coonamble, Goulburn to Crookwell, The Rock to Green's Gunyah, Koorawatha to Grenfell, Byrock to Brewarrina, Gundagai to Tumut, Narrabri to Walgett, Culcairn to Germanton, Temora to Wyalong and Manilla to Barraba.

- (3) **Newcastle Islands Development Scheme Railway Act 1966** Notwithstanding the provisions of section 91, the Commissioner for Railways as constructing authority shall not be compelled nor shall it be the duty of the Commissioner for Railways as constructing authority to make or maintain, for the accommodation of any person or for any purpose whatsoever, any fence along that portion of the work described in the Schedule to the *Newcastle Islands Development Scheme Railway Act 1966* (as in force

immediately before its repeal) extending from the northern bank of the South Channel of the Hunter River to the point adjacent to wharves to be constructed at Rotten Row; but the Commissioner for Railways may, in the Commissioner's discretion, make and maintain such fences in connection with that portion of the said work as the Commissioner may think fit.

- (4) **Sandy Hollow, via Gulgong, to Maryvale Railway Act 1927** Notwithstanding the provisions of section 91, the Constructing Authority shall not be compelled, nor shall it be the duty of the said Authority, to make or maintain any fence along the line of railway described in the Schedule to the *Sandy Hollow, via Gulgong, to Maryvale Railway Act 1927* (as in force immediately before its repeal) for the accommodation of any person or for any purpose whatsoever; but the said Authority may, in its discretion, make and maintain such fences in connection with the said line of railway as it may think fit.
- (5) **Whittingham to Mount Thorley Railway Act 1975** Notwithstanding the exclusion by subsection (3) of the *Whittingham to Mount Thorley Railway Act 1975* (as in force immediately before its repeal) of the provisions of section 91(b) to and in respect of the scheduled work (within the meaning of that Act as in force immediately before its repeal), the Commission may in its discretion make and maintain such fences in connection with that scheduled work as it thinks fit.
- (6) **Wyalong towards Condobolin Railway Act 1923** Notwithstanding the provisions of section 91, the Constructing Authority shall not be compelled, nor shall it be the duty of the said Authority to make or maintain any fence along the line of railway described in the Schedule to the *Wyalong towards Condobolin Railway Act 1923* (as in force immediately before its repeal) for the accommodation of any person or for any purpose whatsoever; but the said Authority may, in its discretion, make and maintain such fences in connection with the said line of railway as it may think fit.
- (7) Subsections (1)–(6), respectively, re-enact (with minor modifications) the following provisions and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies—
  - (a) section 6 of the *Bungendore to Captain's Flat Railway Act 1930*,
  - (b) section 6 of the *Coonabarabran to Burren Junction Railway Act 1913*,
  - (b1) section 4 of the *Government Railways (Fencing) Act 1902*,
  - (c) section 8 of the *Newcastle Islands Development Scheme Railway Act 1966*,
  - (d) section 6 of the *Sandy Hollow, via Gulgong, to Maryvale Railway Act 1927*,
  - (e) section 5(4) of the *Whittingham to Mount Thorley Railway Act 1975*,
  - (f) section 6 of the *Wyalong towards Condobolin Railway Act 1923*.

**92 Differences as to accommodation works to be settled by Governor**

If any difference arises respecting the kind or number of any accommodation works or the dimensions or sufficiency thereof or respecting the maintaining thereof, the same shall be determined by the Governor, who shall also appoint the time within which such works shall be commenced and executed.

**93 Power to owners of lands to make additional accommodation works**

If any owner or occupier of lands affected by such public work considers the accommodation works made by the Constructing Authority or directed by the Governor to be made by the Constructing Authority insufficient for the commodious use of his or her lands, such owner or occupier, at any time, at his or her own expense, may make such further works for that purpose as he or she thinks necessary, and as are agreed to by the Constructing Authority.

**94 Such works to be constructed under the superintendence of the Constructing Authority's engineer**

If the Constructing Authority so desires, all such last-mentioned accommodation works shall be constructed under the superintendence of the engineer or other officer superintending the making or construction of any public work, and according to plans and specifications to be submitted to and approved by the Constructing Authority.

Provided that the Constructing Authority shall not be entitled to require either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by the Constructing Authority, or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by the Constructing Authority.

**95 Owners to be allowed to cross until accommodation works are made**

Until the Constructing Authority has made the bridges or other proper communications which, under the provisions herein contained, it is required to make between lands intersected by the public work, and no longer, the owners and occupiers of such lands and any other person whose right-of-way is affected by the want of such communication, and their respective servants may, at all times, freely pass and repass with carriages, horses, and other animals directly (but not otherwise) across the part of the public work constructed or made through, in, or upon their respective lands, solely for the purpose of occupying the same lands or for the exercise of such right-of-way, and so as not to obstruct the passage along such public work or to damage the same.

Provided that if the owner or occupier of any such lands has, in his or her arrangements with the Constructing Authority, received or agreed to receive compensation for or on account of any such communications instead of the same being formed, such owner or occupier or those claiming under the owner or occupier shall not be entitled so to cross the public work.

## **96 As to damages**

In the exercise of the powers granted by this Act, the Constructing Authority and all other persons shall do as little damage as possible; and, if required, full satisfaction shall be made in manner herein provided, to all persons interested in any lands or hereditaments which are used, injured, or prejudicially affected, for all damages sustained by them by reason of the exercise of such powers.

## **97 Houses not to be damaged without notice**

- (1) Nothing in this Act contained shall empower the Constructing Authority or any person, in the exercise of the powers granted by this Act to injure, or damage any messuage, dwelling-house, or other permanent building, or the immediate appurtenances thereof, without the consent in writing of the owner and occupier thereof respectively, until after the expiration of three months from the time the Constructing Authority has given notice to such owner that the same is required under this Act.
- (2) This section does not apply to anything done after land has been acquired by the Constructing Authority.

## **Division 7 Superfluous lands**

### **98 Sale or lease of lands not wanted for any work**

- (1) The Constructing Authority may, with the approval of the Governor, sell or lease, in such manner, upon such terms and conditions and subject to such easements, covenants, provisions, exceptions and reservations as the Constructing Authority may deem expedient, any lands acquired under the provisions of this Act either before or after the commencement of the [Public Works \(Amendment\) Act 1961](#) and which are not required for the purposes of any work for which they were acquired.
- (2) All moneys received by the Constructing Authority pursuant to any sale or lease made under subsection one of this section shall be applied in such manner as the Governor directs.

### **99 Lands to be conveyed to the purchasers**

- (1) Upon payment or tender to the Constructing Authority of the purchase money in respect of any sale under subsection one of the last preceding section, the Constructing Authority shall convey the lands, for and on behalf of the Crown to the purchasers thereof, by deed duly registered.
- (2) A deed so executed and registered shall be effectual to vest the lands comprised therein in the said purchaser for the estate so purchased by the purchaser.

## **100 Receipts**

A receipt under the hand and seal of the Constructing Authority shall be a sufficient

discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

## **Part 7**

### **101-131 (Repealed)**

## **Part 8 Provisions applicable in every case where land is taken or acquired for authorised works**

### **Division 1 Exercise of powers by Constructing Authority**

#### **132 Powers of purchasing lands**

The powers of acquiring lands for authorised works by this Act conferred upon the Constructing Authority may be exercised from time to time, and whether the particular work for which lands may have been acquired has actually been constructed or not.

#### **133 Powers of sale and purchase of lands**

The Constructing Authority may sell and convey any lands so acquired, or any part thereof, in such manner and for such considerations and to such persons as the Constructing Authority may think fit, and may purchase other lands for the like purposes, and afterwards sell and convey the same, and so from time to time.

## **Divisions 2, 3**

### **134-140 (Repealed)**

### **Division 4 Lands containing minerals**

#### **140A Act subject to Mining Act 1973 and [Coal Mining Act 1973](#)**

This Act is subject to the *Mining Act 1973* and the [Coal Mining Act 1973](#).

#### **141 Constructing Authority entitled to minerals**

- (1) In this section **minerals** means mines or deposits of minerals within land taken under this Act after the commencement of the [Public Works and Local Government \(Amendment\) Act 1967](#), including land so taken after that commencement pursuant to the authority conferred by any other Act, whether passed before or after that commencement.
- (2) Subject to this section, the Constructing Authority shall be entitled to all minerals other than—
  - (a) minerals that are expressly excepted in the notification of the taking, or
  - (b) minerals that were vested in the Crown immediately before the taking, not being



minerals so vested that—

- (i) are expressly appropriated as such in the notification of the taking, or
- (ii) necessarily must be dug or carried away or used in the construction of the works,

but any exception referred to in paragraph (a) of this subsection shall be deemed not to include minerals that necessarily must be dug or carried away or used in the construction of the works.

(3) Subject to subsection (3A), the Governor may, by notification published in the Gazette—

- (a) before payment of compensation for the taking of minerals within the land described in the notification, and
- (b) before any disposition of those minerals, being a disposition made by the Constructing Authority or other person in whom, by or under this or any other Act, they are vested in consequence of the taking,

declare that minerals taken and within the land so described are divested from the Constructing Authority or, where some other person is specified, that person, and vested in a specified person for a specified estate, subject to all trusts, obligations, estates, interests, contracts, charges, rates and rights-of-way or other easements from which they were freed and discharged upon the taking, other than such of them as may be expressly excepted in the notification, and thereupon those minerals shall be divested and shall vest accordingly.

For the purposes of this subsection and of any notification published thereunder **minerals** shall not include any minerals that, immediately before the taking, were vested in the Crown or any minerals that necessarily must be dug or carried away or used in the construction of the works.

(3A) Where a resumption application relating to land taken under this Act (whether or not pursuant to the authority conferred by any other Act passed before or after the commencement of this subsection) has been lodged under section 31A(2) of the [Real Property Act 1900](#) with the Registrar-General—

- (a) a notification under subsection (3) published in the Gazette after the commencement of this subsection may not divest from the Constructing Authority, or other person in whom they are vested, the minerals taken and within that land, and
- (b) any transfer of those minerals after that land has been brought under the provisions of the [Real Property Act 1900](#) shall, for the purposes of subsection (5), be deemed, upon its registration under that Act, to vest those minerals under this

section in the transferee.

- (4) Upon publication of a notification under subsection (3), the Constructing Authority or other person from whom they are declared by the notification to be divested shall, in respect of minerals vested under that subsection by the notification—
- (a) where the minerals so vested are under the provisions of the [Real Property Act 1900](#), make a request under section 46C of that Act in relation to those minerals and furnish such of the evidence required in connection therewith as may be in his or her possession or under his or her control, or
  - (b) where the minerals so vested are not under the provisions of the [Real Property Act 1900](#), forward a copy of the notification of the vesting to the Registrar-General who shall, upon receipt thereof, cause a memorandum of the vesting of those minerals to be prepared and registered in the General Register of Deeds kept under the [Registration of Deeds Act 1897](#) and, for the purposes of that Act, that memorandum shall be deemed to be a registration copy of an instrument duly registered under that Act.
- (4A) A request made by the Constructing Authority or another person in compliance with subsection (4)(a) shall be deemed to have been made by the person entitled so to do under section 46C of the [Real Property Act 1900](#).
- (5) Where, pursuant to a vesting under this section, a person has become entitled to an estate or interest in minerals equivalent to an estate or interest in those minerals converted by section forty-five of this Act into a claim for compensation the person shall, notwithstanding anything contained in this Act, be deemed never to have been entitled to compensation pursuant to that claim.
- (6) For the purposes of this section, where land described in a notification published under subsection three of this section is land that by any Act is declared upon the taking thereof to be vested in the Crown as Crown land within the meaning of the [Crown Land Management Act 2016](#) or land subject to a declaration under section 25A of the [Crown Lands Consolidation Act 1913](#), the minerals taken and within that land (other than minerals that, immediately before the taking, were vested in the Crown and minerals that necessarily must be dug or carried away or used in the construction of the works) shall be deemed never to have been so vested or reserved and sections forty-three and forty-four and subsection one of section forty-five of this Act shall, in the case of minerals so deemed never to have vested, be deemed to have applied to and in respect of those minerals, upon the taking thereof.
- (7) The costs and expenses of making any request or effecting any registration under subsection four of this section shall be borne by the Constructing Authority or the other person referred to in that subsection and no stamp duty shall be chargeable in respect of any such request or any instrument whereby minerals are vested under this section.

- (8) Without limiting the discretion conferred upon the Registrar-General by section 46C of the [Real Property Act 1900](#), the Registrar-General shall not, when creating a folio of the Registrar kept under that Act or making recordings in that Register in respect of minerals pursuant to a request made under subsection (4)(a), be required to make any recordings in that Register, other than—
- (a) such recordings as may, in the Registrar-General's opinion, be necessary with respect to the vesting of the minerals in the person and for the estate specified, in the notification of the vesting of those minerals, as the person in whom, and the estate for which, they were thereby vested, and
  - (b) any recordings relating to the land described in the notification, being recordings that appeared in that Register immediately before the taking of that land, other than recordings relating only to estates or interests excepted in the notification.
- (9) Nothing in this section shall be construed as affecting the provisions of sections one hundred and forty-two to one hundred and forty-nine, both inclusive, of this Act.
- (10) In this section, a reference to a notification of the taking of land includes a reference to an acquisition notice under the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).

#### **142 Working of mines on or near authorised work**

- (1) If the owner, lessee, or occupier of any mines or minerals lying under any authorised work or any work connected therewith, or within 40 metres from the boundary thereof, is desirous of working the same, such owner, lessee, or occupier shall give to the Constructing Authority notice in writing of his or her intention so to do, thirty days before the commencement of working.
- (2) Upon the receipt of such notice, the Constructing Authority may cause such mines to be inspected by any person appointed by the Constructing Authority for the purpose.
- (3) If it appears to the Constructing Authority that the working of such mines or minerals is likely to damage the authorised work, and if the Constructing Authority is willing to make compensation for such mines or any part thereof to the owner, lessee, or occupier, then such owner, lessee, or occupier shall not work or get such minerals.
- (4) If the Constructing Authority and such owner, lessee, or occupier do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation as provided in the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).

#### **143 If Constructing Authority unwilling to purchase, owner may work the mines**

- (1) If before the expiration of such thirty days the Constructing Authority does not state the Constructing Authority's willingness to treat with the owner, lessee, or occupier for

the payment of such compensation, such owner, lessee, or occupier may work the said mines or any part thereof for which the Constructing Authority has not agreed to give compensation.

Provided that such work shall be done in a manner proper and necessary for the beneficial working of the mine, and according to the usual manner of working such mines in the district where the same are situate.

- (2) If any damage or obstruction is occasioned to the authorised work by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good by the owner, lessee, or occupier of such mines or minerals and at his or her own expense.
- (3) If such repair or removal is not forthwith carried out by such owner, lessee, or occupier, or, if the Constructing Authority thinks fit, without waiting for the same to be so carried out, the Constructing Authority may carry out the same and recover from such owner, lessee, or occupier the expense occasioned thereby by proceedings in the Court.

#### **144 Mining communications**

- (1) If the working of any such mines under the authorised work or within the abovementioned distance therefrom is prevented as aforesaid, by reason of apprehended injury to such authorised work, the respective owners, lessees, and occupiers of such mines and whose mines extend so as to lie on both sides of the authorised work may cut and make so many airways, headways, gateways, or water-levels through the mines, measures, or strata, the working whereof is so prevented, as may be requisite to enable them to ventilate, drain, and work their said mines.
- (2) No such airway, headway, gateway, or water-level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions are prescribed, not greater than 2.5 metres wide and 2.5 metres high, or of such a nature as to injure or to impede the passage on, to, through or over the same.

#### **145 Constructing Authority to make compensation for injury done to mines**

- (1) The Constructing Authority shall from time to time pay the owner, lessee, or occupier of any such mines, lying on both sides of the authorised work—
  - (a) all such additional expenses and losses as such owner, lessee, or occupier incurs by reason of the severance of the lands lying over such mines by the authorised work, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions, as not to prejudice or injure the railway, and
  - (b) for any minerals not taken or purchased by the Constructing Authority which cannot be obtained by reason of making or constructing and maintaining the

authorised work.

- (2) If any dispute or question arises between the Constructing Authority and such owner, lessee, or occupier as aforesaid, touching the amount of such losses or expenses, the same shall be settled by arbitration as hereinbefore mentioned.

**146 Constructing Authority to make compensation for any airway or other work made necessary by the railway**

If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented as aforesaid, by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the Constructing Authority shall make full compensation to such owner or occupier for the loss or damage so sustained by the owner or occupier, if the owner or occupier is not also the owner, lessee, or occupier of any mine under such lands in connection with which such airway or other work has been made.

**147 Power to Constructing Authority to enter and inspect the working of mines**

For better ascertaining whether any such mines are being worked or have been worked so as to damage the authorised work, the Constructing Authority, after giving twenty-four hours' notice in writing, may enter upon any lands, through, in, on or near which the authorised work is constructed, and wherein any such mines are being worked or are supposed so to be, and may enter into and return from any such mines or the works connected therewith. For that purpose the Constructing Authority may make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and may use all necessary means for discovering the distance from authorised work to the parts of such mines which are being worked or about so to be.

**148 Penalty**

If any such owner, lessee, or occupier of any such mine refuses to allow any person, appointed by the Constructing Authority for that purpose, to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the Constructing Authority a sum not exceeding 0.5 penalty unit.

**149 Mines worked contrary to this Act**

- (1) If it appears that any such mines have been worked contrary to the provisions of this Act, or any Act hereby repealed, the Constructing Authority may give notice to the owner, lessee, or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the authorised work and preventing injury thereto.
- (2) If, after such notice, any such owner, lessee, or occupier does not forthwith proceed to construct the works necessary for making safe such authorised work, the Constructing

Authority may construct such works and recover the expense thereof from such owner, lessee, or occupier by proceedings in the Court.

## **Division 5 Gates**

### **150 Penalty on persons omitting to fasten gates**

- (1) If any person omits to shut and fasten any gate set up at either side of any authorised work for the accommodation of the owners or occupiers of the adjoining lands as soon as the person and the carriages or cattle or other animals under the person's care have passed through the same, the person shall be liable for every such offence to a penalty not exceeding 0.5 penalty unit.
- (2) Every such penalty may be recovered in a summary way before the Local Court at the suit of any person authorised by the Constructing Authority.

## **Part 9 National works**

### **151 Declaration of national works**

- (1) The Governor may, by proclamation, declare any road, bridge, ferry, wharf, public reserve or public work of any kind in any area to be a national work.
- (2) A national work is, for the purposes of this Act, taken to be an authorised work and the Minister is taken to be the Constructing Authority.
- (3) A work may be a national work whether or not it is a new work or an existing work.

### **152 Functions of Minister**

- (1) The Minister is to maintain, manage and administer national works.
- (2) The Minister has, and may exercise and enjoy, the powers and immunities of a council under the [Local Government Act 1993](#) for the purpose of the construction, control, protection, maintenance and management of national works.

### **153 National works may be handed over to councils**

- (1) The Minister, with the agreement of a council, may, by notice published in the Gazette, declare that a national work is handed over, either temporarily or permanently, to a council.
- (2) A work which is handed over to a council is to be maintained, managed and administered by the council and ceases to be a national work while it is so maintained, managed and administered.

### **154 National works etc may be handed over to Transport for NSW**

- (1) The Minister, with the agreement of Transport for NSW, may, by notice published in

the Gazette, declare that—

- (a) a road, bridge, ferry or tunnel that is a national work, or
- (b) any other road, bridge, ferry or tunnel that is maintained, managed and administered by the Minister,

is handed over, either temporarily or permanently, to Transport for NSW.

- (2) A road, bridge, ferry or tunnel which is handed over to Transport for NSW is to be maintained, managed and administered by Transport for NSW and (in the case of a national work) ceases to be a national work while it is so maintained, managed and administered.
- (3) Transport for NSW has, and may exercise and enjoy, the powers and immunities of a council under the [Local Government Act 1993](#) for the purpose of the control, protection, maintenance, and management of any road, bridge, ferry or tunnel maintained, managed and administered by it.
- (4) Transport for NSW, with the agreement of a council, may, by notice published in the Gazette, declare that a road, bridge, ferry or tunnel—
  - (a) that is maintained, managed and administered by Transport for NSW pursuant to this section, and
  - (b) that was, immediately before it was handed over to Transport for NSW, a national work,is handed over, either temporarily or permanently, to a council.
- (5) A work which is handed over to a council is to be maintained, managed and administered by the council.

### **155 Resolution of disputes**

- (1) Any dispute arising under section 153 or 154 between the Minister and a public authority may be resolved by agreement between the Minister and the Minister administering the Act under which the public authority is constituted.
- (2) Any dispute arising under section 154 between Transport for NSW and a council may be resolved by agreement between the Ministers administering the Acts under which those public authorities are constituted.
- (3) If agreement cannot be reached, the dispute is to be resolved by the Premier.
- (4) A public authority must comply with any direction arising out of the resolution of the dispute under this section.

### **156 Closure of national works**

The Minister may temporarily or permanently close a national work to the public and may dismantle any structure and dispose of its materials.

### **157 Appointment of councils as agents**

- (1) The Minister may appoint a council as the Minister's agent for the care, control and management of a national work.
- (2) The council may act as the Minister's agent even if the national work concerned is partly outside the council's area.
- (3) A council acting as the Minister's agent may take legal proceedings in its own name to recover penalties for offences relating to a national work.

### **158 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to—
  - (a) the construction, control, management, maintenance and protection of national works, and
  - (b) the regulation, restriction or suspension of the use by the public of national works, and
  - (c) the collection of fees and charges for the use of any national work other than a road or bridge.
- (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

### **159 Proceedings for offences**

Proceedings for an offence against a regulation made under this Part are to be dealt with summarily before the Local Court.

## **Part 10 Other matters relating to councils etc**

### **160 Minister to have certain functions**

The Minister has, and may exercise and enjoy, the powers and immunities of a council under the [Local Government Act 1993](#), for the following purposes—

- (a) the construction, control, protection, maintenance and management of roads, bridges, ferries, wharves or public works of any kind in the Western Division,
- (b) the construction, and protection during construction, of any works carried out by the Minister for a council.



## **161 Minister may construct works etc on behalf of councils**

The Minister may, at the request of the Minister for Local Government, erect, construct or carry out for a council, any works necessary or convenient in connection with any works or undertakings that the council might lawfully erect, construct or carry out.

# **Part 11 Procurement of goods and services**

## **Division 1 Preliminary**

### **162 Definitions**

In this Part—

**affected applicant**, in relation to an alleged contravention or proposed contravention of an enforceable procurement provision, means—

- (a) a person (or a partnership or other group of persons)—
  - (i) that supplies, or could supply, goods or services, and
  - (ii) whose interests are affected by the alleged contravention or proposed contravention, or
- (b) any other person, group of persons or body of a kind prescribed by the regulations.

**Board** means the New South Wales Procurement Board established under section 164.

**Board direction or policy** means a direction or policy issued by the Board under section 175.

**enforceable procurement provision** means a provision of a Board direction or policy (or a provision of a document referred to in a Board direction or policy) that is expressed to be an enforceable procurement provision by the direction or policy.

**goods and services** means goods and services of any kind.

**government agency** means any of the following—

- (a) a government sector agency (within the meaning of the [Government Sector Employment Act 2013](#)),
- (b) a NSW Government agency,
- (c) any other public authority that is constituted by or under an Act or that exercises public functions (other than a State owned corporation),
- (d) any State owned corporation prescribed by the regulations.

**government agency employee** means a person employed in or by a government

agency.

**government agency head** means the person who is the chief executive officer, or who exercises the functions of chief executive officer, of a government agency.

**international procurement agreement** means an international agreement that applies to procurements by Australian Governments and covers procurements by New South Wales.

**procurement** of goods and services means the process of acquiring goods and services by—

- (a) identifying the need to purchase goods and services, and
- (b) selecting suppliers for goods and services, and
- (c) contracting and placing orders for goods and services,

and includes the disposal of goods that are unserviceable or no longer required.

**procurement list** means a list of suitable suppliers (including suppliers selected using a prequalification scheme) intended to be used more than once for procurements by or for one or more government agencies, but does not include a procurement panel.

**procurement panel** means a panel of suppliers for procurements by or for one or more government agencies who, following successful tenders, have entered into contracts for inclusion on the panel.

**public interest certificate**—see section 176G.

### **163 Application of Part**

- (1) This Part applies to the procurement of goods and services by or for a government agency, which includes—
  - (a) the procurement of goods and services required by a government agency to exercise its statutory functions, and
  - (b) the procurement of goods and services by a government agency pursuant to the agency's specific statutory powers of procurement.
- (2) This Part does not apply to the procurement of goods and services by or for—
  - (a) a local council or other local authority, or
  - (b) the Parliament of New South Wales.

## **Division 2 NSW Procurement Board**

#### **164 Establishment of NSW Procurement Board**

- (1) There is established by this section the New South Wales Procurement Board.
- (2) The Board is a NSW Government agency.
- (3) The Board has the functions conferred or imposed on it by or under this or any other Act.

#### **165 Membership of Board**

- (1) The Board is to consist of the following members—
  - (a) the Secretary of the Treasury,
  - (b) the heads of at least 6 other Departments (within the meaning of the [Government Sector Employment Act 2013](#)), being the Departments determined by the Minister from time to time.
- (2) The Secretary of the Treasury is to be the Chairperson of the Board.
- (3) The Fifth Schedule contains ancillary provisions relating to the members and procedure of the Board.

#### **166 Ministerial control**

- (1) The Board is subject to the direction and control of the Minister in the exercise of its functions.
- (2) Without limiting subsection (1), the Minister may direct the Board to comply with a specified Government-wide procurement policy.
- (3) A copy of any direction given by the Minister to the Board under this section is to be included in its annual report for the year in which the direction was given.

#### **167 Subcommittees of Board**

- (1) The Board may establish subcommittees to assist the Board in connection with the exercise of any of its functions.
- (2) The subcommittees may have members who are not members of the Board.
- (3) The procedure for calling meetings of a subcommittee and for the conduct of those meetings is to be as determined by the Board or (subject to any determination of the Board) by the subcommittee.

#### **168 Advisory groups**

The Board may establish advisory groups (comprising members from the public and private sectors) to advise the Board on such matters relating to the procurement of goods

and services as are referred by the Board to those advisory groups.

#### **169 Delegation of Board's functions**

- (1) The Board may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) A delegate may subdelegate to an authorised person any function delegated by the Board if the delegate is authorised in writing to do so by the Board.
- (3) In this section, **authorised person** means any of the following—
  - (a) a member of the Board or a subcommittee of the Board,
  - (b) a Public Service employee,
  - (c) a statutory body,
  - (d) a statutory officer,
  - (e) any other person or body, or person or body of a class, prescribed by the regulations.

#### **170 Annual report of Board**

- (1) The Board must, on or before 31 October in each year, prepare and present to the Minister a report of its work and activities for the year ending on the preceding 30 June.
- (2) The Minister must lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.
- (3) The report may be included in any annual report of the Department for which the Minister is responsible.

### **Division 3 Objectives and functions of Board**

#### **171 Objectives of Board**

The objectives of the Board are as follows—

- (a) to develop and implement a Government-wide strategic approach to procurement,
- (b) to ensure best value for money in the procurement of goods and services by and for government agencies,
- (b1) to ensure that goods and services procured by and for government agencies are not the product of modern slavery within the meaning of the [Modern Slavery Act 2018](#),
- (c) to improve competition and facilitate access to Government procurement business by

the private sector, especially by small and medium enterprises and regional enterprises,

- (d) to reduce administrative costs for government agencies associated with procurement,
- (e) to simplify procurement processes while ensuring probity and fairness.

## **172 Functions of Board**

- (1) The Board has the following functions—
  - (a) to oversee the procurement of goods and services by and for government agencies,
  - (b) to develop and implement procurement policies,
  - (c) to issue directions or policies under section 175 that apply to government agencies,
  - (d) to monitor compliance by government agencies with the requirements of this Part (including Board directions or policies),
  - (e) to investigate and deal with complaints about the procurement activities of government agencies,
  - (f) to develop appropriate procurement and business intelligence systems for use by government agencies,
  - (g) to collect, analyse and publish data and statistics in relation to the procurement of goods and services by and for government agencies,
  - (h) such other functions as are conferred or imposed on the Board by or under this or any other Act.
- (2) The Board has power to do all things necessary or convenient to be done for, or in connection with, the exercise of its functions.
- (3) The Board is to exercise its functions in accordance with any applicable Government-wide procurement policies.

## **173 Competitive neutrality in tendering**

- (1) The Board has the function of ensuring compliance by public authorities of the State with competitive neutrality principles referred to in the Competition Principles Agreement made on 11 April 1995 by the Commonwealth, the Territories and the States, as in force for the time being.
- (2) The regulations may make further provision for and with respect to the Board's function under this section.

- (3) A person who contravenes a provision of the regulations made under this section that is specified for the purposes of this section is guilty of an offence.

Maximum penalty—100 penalty units or imprisonment for 6 months, or both.

## **Division 4 Procurement arrangements**

### **174 Procurement of goods and services by government agencies**

- (1) The Board may establish a scheme under which a government agency accredited by the Board may procure goods and services for that agency or for other government agencies, subject to any terms and conditions of its accreditation.
- (2) The Board may also authorise a government agency to carry out specified procurement of goods and services without Board accreditation.

### **175 Board may issue directions or policies for government agencies**

- (1) The Board may issue—
- (a) directions to government agencies regarding the procurement of goods and services by and for government agencies, and
  - (b) policies that apply to the procurement of goods and services by and for government agencies.
- (2) A direction or policy may apply to government agencies generally or to a particular government agency.
- (2A) A direction or policy may apply, adopt or incorporate (whether with or without modifications) any publicly accessible document as in force or effect at a particular time or as in force or effect from time to time.
- (2B) All or some of the provisions of a direction or policy (or the provisions of a document referred to in the direction or policy) relating to an international procurement agreement may be expressed to be enforceable procurement provisions.
- (3) Without limiting the generality of subsection (1), the Board may issue directions or policies regarding—
- (a) the methods to be used for procuring goods and services, and
  - (a1) without limiting paragraph (a), reasonable steps that are to be taken to ensure that goods and services procured by and for government agencies are not the product of modern slavery within the meaning of the [Modern Slavery Act 2018](#), and
  - (b) contracts for the procurement of specified goods and services, and

- (c) the kinds of contracts for the procurement of goods and services for which tenders are required, and
  - (d) the limits on duration of contracts, and
  - (e) any matters relating to procurement procedures arising from a complaint about the procurement activities of a government agency.
- (4) The Board must regularly consult with the Anti-slavery Commissioner about the form and content of directions that should be issued during the year under subsection (3) (a1) and take into account any recommendations of the Commissioner.

### **176 Obligations of government agencies**

- (1) A government agency is to exercise its functions in relation to the procurement of goods and services in accordance with—
- (a) any policies and directions of the Board that apply to the agency, and
  - (b) the terms of its accreditation (if any) by the Board, and
  - (c) the principles of probity and fairness.
- (1A) A government agency must take reasonable steps to ensure that goods and services procured by and for the agency are not the product of modern slavery within the meaning of the [Modern Slavery Act 2018](#).
- (2) A government agency is also to ensure it obtains value for money in the exercise of its functions in relation to the procurement of goods and services.
- (3) A government agency is, at the request of the Board, to provide information to the Board about its activities in relation to the procurement of goods and services.

## **Division 5 Complaints concerning enforceable procurement provisions**

### **176A Affected applicant may make complaint**

- (1) A person (the **complainant**) may make a written complaint about the conduct of a government agency that it is alleged is a contravention or proposed contravention of an enforceable procurement provision if the person is an affected applicant in relation to the alleged or proposed contravention.
- (2) The complaint must be made to the government agency head of the agency concerned.
- (3) The complainant may withdraw a complaint by a further written notice given to the government agency head.

### **176B Investigation of complaint**

- (1) A government agency head to whom a complaint is made under this Division must—
  - (a) investigate the conduct that is the subject of the complaint, and
  - (b) attempt to resolve the complaint by taking steps that, in the circumstances, are reasonable and prompt, and
  - (c) prepare a written report of the investigation.
- (2) The government agency head may discontinue the investigation if—
  - (a) the complainant withdraws the complaint, or
  - (b) the complainant informs the government agency head that the complainant considers the complaint to be resolved, or
  - (c) proceedings are commenced in the Supreme Court under Division 6 in relation to the conduct that is the subject of the complaint, or
  - (d) the government agency head considers it is reasonable to do so in the circumstances.
- (3) The government agency head must discontinue the investigation if—
  - (a) the Supreme Court makes either of the following findings in proceedings commenced under Division 6 in relation to the conduct the subject of the complaint—
    - (i) that the conduct was a contravention of an enforceable procurement provision,
    - (ii) that the conduct was not a contravention of an enforceable procurement provision, or
  - (b) the continuation of the investigation would be likely to result in prejudice to the proper administration of justice.

### **176C Suspension of procurement**

- (1) A government agency head to whom a complaint is made under this Division must suspend all processes involved in the procurement that the government agency head considers would adversely affect the complainant's participation in the procurement if the processes were continued.
- (2) However, subsection (1) does not apply if—
  - (a) a public interest certificate has already been issued in respect of the procurement, or



- (b) a contract for the procurement has already been entered into.
- (3) The government agency head must ensure that suspended processes remain suspended until the time when the earliest of the following occurs—
  - (a) the complainant withdraws the complaint,
  - (b) the complainant informs the government agency head that the complainant considers the complaint to be resolved,
  - (c) a public interest certificate is issued in respect of the procurement after the complaint is made,
  - (d) proceedings are commenced in the Supreme Court under Division 6 in relation to the conduct that is the subject of the complaint.

**Note—**

The Supreme Court may grant an interim injunction under section 176D to prevent the continuation of conduct that may be a contravention of an enforceable procurement provision pending a final determination on the issue.

- (4) When a complaint relates to a refusal or failure to include a supplier on a procurement list or procurement panel—
  - (a) if the process for compiling the list or establishing the panel has not yet ended—the suspension of processes involved in the procurement must include the process of compiling the list or establishing the panel, and
  - (b) if the process for compiling the list or establishing the panel has ended—the suspension of processes involved in the procurement does not prevent the use of other suppliers on the list or panel for procurements.
- (5) For procurement lists that have already been compiled and to which new suppliers may be added, subsection (4) does not prevent—
  - (a) the addition of new suppliers to the list, or
  - (b) the use of suppliers who are already included on the list.

## **Division 6 Injunctions and compensation for contraventions of enforceable procurement provisions**

### **176D Supreme Court may grant injunctions**

- (1) If a government agency has contravened, is contravening or is proposing to contravene an enforceable procurement provision, the Supreme Court may, on the application of an affected applicant, grant an injunction restraining the agency from doing so or requiring the agency to do any act or thing necessary to avoid or remedy

the contravention or proposed contravention.

- (2) The Supreme Court may not grant an injunction under this section if the Court is satisfied that a contract has already been entered into for the procurement concerned.
- (3) The Supreme Court may grant an interim injunction pending determination of an application under this section if the Court thinks it is desirable to do so.
- (4) However, the Supreme Court may not grant an interim injunction if a public interest certificate has been issued in respect of the procurement concerned unless the Court is satisfied that it would be in the public interest to do so.
- (5) In determining whether to grant an injunction under this section, the Supreme Court must consider whether—
  - (a) the grant of the injunction would result in a significant delay to the procurement concerned, and
  - (b) the making of an order under section 176F for the contravention or proposed contravention would be a more appropriate remedy in the circumstances.
- (6) The power of the Supreme Court to grant an injunction under this section restraining a government agency from engaging in conduct may be exercised—
  - (a) whether or not it appears to the Court that the agency intends to engage again, or to continue to engage, in conduct of that kind, and
  - (b) whether or not the agency has previously engaged in conduct of that kind, and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the agency engages in conduct of that kind.
- (7) If the government agency is not a corporation, an injunction under this section may be addressed to the government agency head for the agency.
- (8) The Supreme Court may discharge or vary an injunction granted under this section.

#### **176E Preconditions for granting injunctions**

- (1) This section provides for certain procedural preconditions before an injunction may be granted under section 176D.
- (2) An injunction is not to be granted unless the Supreme Court is satisfied that the application for the injunction was made—
  - (a) for a contravention that is alleged to have occurred—within 10 days or any other period prescribed by the regulations after the later of the following days—
    - (i) the day on which the alleged contravention occurred,

- (ii) the day on which the applicant became aware, or ought reasonably to have become aware, of the alleged contravention, or
  - (b) for a contravention that it is alleged is occurring—within 10 days or any other period prescribed by the regulations after the day on which the applicant became aware, or ought reasonably to have become aware, of the alleged contravention, or
  - (c) for an alleged proposed contravention—within 10 days or any other period prescribed by the regulations after the day on which the applicant became aware, or ought reasonably to have become aware, of the alleged proposed contravention, or
  - (d) within any longer period as may be allowed by the Court.
- (3) The Supreme Court must not allow a longer period under subsection (2)(d) unless the Court is satisfied that—
- (a) the applicant's failure to make the application within the applicable period referred to in subsection (2)(a), (b) or (c) is attributable to the applicant's reasonable attempt to resolve the complaint as referred to in subsection (4)(b), or
  - (b) there are special circumstances that warrant allowing a longer period.
- (4) Also, an injunction is not to be granted unless the Supreme Court is satisfied that—
- (a) the applicant has made a complaint under Division 5 concerning the conduct of a government agency for which the injunction is sought, and
  - (b) if the Court considers that it would have been reasonable for the applicant for the injunction to have attempted to resolve the complaint—the applicant has made a reasonable attempt to resolve the complaint before applying for the injunction.

#### **176F Compensation for contravention**

- (1) If a government agency has contravened, is contravening or is proposing to contravene an enforceable procurement provision, the Supreme Court may, on the application of an affected applicant, make an order for the payment of compensation to the applicant in respect of the contravention or proposed contravention.
- (2) The amount of compensation ordered must not exceed the sum of—
  - (a) the reasonable procurement process expenditure incurred by the applicant, and
  - (b) the reasonable expenditure incurred by the applicant in connection with making a complaint under Division 5 about the contravention or proposed contravention, and
  - (c) the reasonable expenditure incurred by the applicant in connection with making a

reasonable attempt to resolve the complaint.

(3) Despite subsection (2)—

(a) an amount of compensation cannot include—

(i) expenditure in connection with making or attempting to resolve a complaint if it is incurred after the affected applicant ought reasonably to have known that litigation was likely, or

(ii) costs already awarded by a court or tribunal to the affected applicant in respect of proceedings before the court or tribunal, and

(b) costs cannot be awarded by a court or tribunal to the affected applicant in respect of proceedings before the court or tribunal after an amount of compensation is ordered if the amount already includes those costs.

(4) If the government agency is not a corporation, the order may be made against the State rather than the agency.

(5) In this section—

**procurement process expenditure**, in relation to a procurement, means—

(a) the expenditure in preparing a tender or expression of interest for the procurement, and

(b) the expenditure in applying for inclusion in a procurement list used for the procurement, and

(c) the expenditure in tendering for inclusion in a procurement panel used for the procurement.

#### **176G Public interest certificates**

A government agency head may issue a written certificate (a **public interest certificate**) stating that it is not in the public interest for a specified procurement to be suspended while—

(a) a complaint made under Division 5 is being investigated, or

(b) an application for an injunction made under section 176D is being considered.

#### **176H Rules of court**

(1) Rules of court may be made under the [Supreme Court Act 1970](#) or the [Civil Procedure Act 2005](#), not inconsistent with this Act or the regulations, regulating practice and procedure in respect of proceedings in the Supreme Court under this Division.

(2) Subsection (1) does not limit the rule-making powers conferred by the [Supreme Court](#)

*Act 1970* or the *Civil Procedure Act 2005*.

#### **176I Division does not limit remedial powers of Supreme Court**

This Division does not limit any power that the Supreme Court has apart from this Division to provide remedies for contraventions or proposed contraventions of enforceable procurement provisions.

### **Division 7 General**

#### **176J Contravention of enforceable procurement provision does not affect validity of contract**

A contravention of an enforceable procurement provision does not affect the validity of any contract.

#### **177 Delegation of functions by government agencies**

A government agency or government agency head may delegate to a member of staff of the agency any function conferred or imposed on the agency or agency head pursuant to—

- (a) the terms and conditions of the agency's accreditation by the Board, or
- (b) any Board direction or policy, or
- (c) any provision of Division 5 or regulations made for the purposes of section 178(1A)(a).

#### **178 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to—
  - (a) the procurement of goods and services by and for government agencies (including but not limited to exemptions from any of the requirements of this Part), and
  - (b) any other matter that by this Part is required or permitted to be prescribed.
- (1A) Without limiting subsection (1), the regulations may make provision for or with respect to the following—
  - (a) complaints concerning the conduct of government agencies in connection with enforceable procurement provisions that apply to them, including by providing for—
    - (i) the persons, groups of persons or bodies who have standing to make complaints, and
    - (ii) the kinds of complaints that may be made, and

- (iii) the manner, form and time periods for making complaints, and
  - (iv) the resolution of complaints (including the suspension of procurements pending their resolution),
  - (b) preconditions for the making or granting of applications under Division 6 that are additional to those specified in the Division.
- (1B) A regulation made for the purposes of subsection (1A)(a) may provide for complaints to be dealt with in a way that is different from Division 5 (whether generally or in relation to particular kinds of complaints).
- (2) The regulations may authorise the Board to enter into arrangements with public bodies other than government agencies in relation to the procurement of goods and services by and for those bodies.

First Schedule

(Section 2)

Reference to Act	Title or short title	Extent of repeal
No 26, 1900	<i>Public Works Act 1900</i>	The whole
No 58, 1901	<i>Public Works Committee Election Act 1901</i>	The whole
No 5, 1904	<i>Public Works Committee Act 1904</i>	The whole
No 1, 1908	<i>Public Works (Interest) Act 1908</i>	The whole
No 4, 1911	<i>Public Works (Leasing) Act 1911</i>	The whole

Second Schedule

(Section 9(6))

Form of Ballot-Paper

*Election of Members of Parliamentary Standing Committee on Public Works*

*Names of members nominated*

(In alphabetical order of surnames)

Andrews, Charles.

Briggs, Henry.

Carey, George.

*Directions*

- (1) Each member shall vote by striking out the names of the members whom the member does not wish to be elected.
- (2) The member must leave uncanceled as many names as there are members to be elected, and no more or

less.

- (3) After voting, the member must deliver the member's paper to the Clerk, giving the Clerk time to note every paper previously presented.

## Third Schedule

(Section 16)

I, A.B., do solemnly and sincerely promise and declare that, according to the best of my skill and ability, I will faithfully, impartially, and truly execute the office and perform the duties of a member of the Parliamentary Standing Committee on Public Works.

(Signed) A.B.

## Fourth Schedule

(A)

(Section 22(1))

To the Sheriff of New South Wales, the Sheriff's deputy and all officers of the Police Force of the                      said State, and to the keeper of the gaol at

THESE are to command you, the said Sheriff and all officers as aforesaid, to apprehend A.B. (the offender), and to convey the offender to the said gaol, and to deliver the offender to the said keeper thereof, together with this warrant; and you, the said keeper, are hereby required to receive the offender into your custody in the said gaol, and the offender there safely to keep for the term of                      [or unless the sum of                      shall be sooner paid], I, the undersigned                      of the                      (or                      ), having now here adjudged the said A.B. [to pay a fine of                      , and in default of immediate payment thereof] to be imprisoned for the said term, for that the offender, the said A.B.,

[Here state the offence to the following effect, as the case may require].

That A.B. having been duly summoned as a witness, and having had his or her expenses paid or tendered, neglected to appear before the Parliamentary Standing Committee on Public Works, (or) that A.B., wilfully insulted the said committee, (or) C.D., one of the members of the said committee, (or) that A.B. interrupted the proceedings of the said committee, (or) that A.B., misbehaved before the said committee, (or) that A.B. having been summoned or being examined as a witness in a certain inquiry or matter pending before the said committee, refused to be sworn or to produce a certain document mentioned in the summons served on the offender, viz.,                      , (or) that A.B. having been so summoned, refused to be sworn or to make a solemn declaration pursuant to the [Public Works Act 1912](#) (or) that A.B. was guilty of prevarication in his or her evidence, or refused to answer a certain lawful question.

Given under my hand this                      day of                      .

C.D., Chair (or Deputy Chair) of the Parliamentary Standing Committee on Public Works.

(B)

(Section 22(2))

Form of warrant

In the matter of the [Public Works Act 1912](#) and

To the Sheriff of New South Wales, the Sheriff's deputy and assistants, and to all officers of the Police Force of the said State.

WHEREAS, pursuant to the provisions of section twenty-two of the said Act, it has this day been proved to me that

, of , has been duly summoned to attend and give evidence before the Parliamentary Standing Committee on Public Works pursuant to the [Public Works Act 1912](#), but has failed to appear. This is to require you forthwith to apprehend the said , and to detain the said in custody and bring the said before the said committee to give evidence. Given under my hand and seal at aforesaid, this day of in the year of our Lord one thousand nine hundred and

A.B., Chair (or Deputy Chair) of the said Committee.

## **Fifth Schedule Members and procedure of NSW Procurement Board**

(Section 165)

### **1 Deputy Chairperson**

- (1) The Minister may appoint a member of the Board to act as Deputy Chairperson during the illness or absence of the Chairperson, and may revoke any such appointment.
- (2) In the absence of the Chairperson, the Deputy Chairperson may, if available, act in the place of the Chairperson.
- (3) While acting in the place of the Chairperson, the Deputy Chairperson has all the functions of the Chairperson.

### **2 Deputies of members**

- (1) The Minister may, from time to time, appoint a person, or the holder of a specified office, to be the deputy of a member of the Board, and may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.

### **3 Disclosure of pecuniary interests**

- (1) If—
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a member at a meeting of the Board that the member—



- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Board and the records must be available at all reasonable hours for inspection by any person on payment of the fee determined by the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines—
  - (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—
  - (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) For the purposes of this clause, a member is taken to have a pecuniary interest in a matter if the government agency to which the member belongs has such an interest.
- (8) This clause applies to a member of a subcommittee of the Board and the subcommittee in the same way as it applies to a member of the Board and the Board.

#### **4 Personal liability**

A matter or thing done or omitted to be done by the Board, a member of the Board, or a person acting under the direction of the Board does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

#### **5 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at

those meetings is, subject to this Schedule, as determined by the Board.

## **6 Quorum**

The quorum for a meeting of the Board is a majority of its members for the time being.

## **7 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson, or in the absence of both the Chairperson and the Deputy Chairperson, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **8 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

## **9 Transaction of business outside meetings or by telephone**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of—
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **10 First meeting**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

## **11 Authentication of documents**

Any document requiring authentication by the Board may be sufficiently authenticated if it is signed by the Chairperson or by any government agency employee authorised to do so by the Chairperson.

## **Sixth Schedule-Eighth Schedule (Repealed)**

## **Ninth Schedule Savings, transitional and other provisions**

(Section 5A)

### **Public Works (Interest) Amendment Act 1986**

#### **1 Previous interest rate under section 126A**

The interest payable under section 126A(1) in respect of any period before the commencement of the [Public Works \(Interest\) Amendment Act 1986](#) is payable at the rate at which it would have been payable had that Act not been enacted.

#### **2 Interest rate pending Treasurer's notification**

Until a notification is published under section 126A(5) on or after the commencement of the [Public Works \(Interest\) Amendment Act 1986](#), the interest rate payable under section 126A(1) on and from that commencement is—

- (a) where the total amount of compensation is less than \$50,000—12 per cent per annum, or
- (b) where the total amount of compensation is \$50,000 or more—12.5 per cent per annum.

### **Effect of repeal of certain Acts**

#### **3 Repeal of Acts does not affect operation of savings and transitional provisions**

- (1) Despite the repeal of the Acts listed in Column 1 of the Table to this subclause, the provisions listed in Column 2 continue to have effect and are taken to have been transferred to this Act.

#### **Table**

**Column 1****Column 2**

*Broken Hill Water and Sewerage  
(Radium Hill) Amendment Act 1954*

Sections 3–8 and Schedule

*Warwick Farm Railway (Amendment)  
Act 1924*

Sections 2 and 3 and the Schedule

- (2) The provisions listed in Column 2 of the Table to subclause (1) are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

**Transferred provisions—Railways****4 Maintenance of roads and bridges**

The provisions listed in the following Table are taken to have been transferred to this Act and to be transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

**Table****Column 1****Column 2**

*Great Northern Railway Deviation (Singleton to Nundah) Act 1951*

Section 6

*Newcastle Islands Development Scheme Railway Act 1966*

Section 7

*Port Kembla Inner Harbour (Further Construction) Act 1961*

Section 8

*Railway Construction (East Hills to Campbelltown) Act 1983*

Section 10

*Sutherland to Cronulla Railway Act 1936*

Section 6

*Whittingham to Mount Thorley Railway Act 1975*

Section 10