



Queensland

Acquisition of Land and Other Legislation Amendment Act 2009

Act No. 5 of 2009



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Acquisition of Land and Other Legislation Amendment Act 2009

Act No. 5 of 2009

An Act to amend the Acquisition of Land Act 1967 and the Land Act 1994 for particular purposes and to make consequential amendments to the Integrated Planning Act 1997 and the South Bank Corporation Act 1989

[Assented to 23 February 2009]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Acquisition of Land and Other Legislation Amendment Act 2009*.

Part 2 Amendment of Acquisition of Land Act 1967

2 Act amended in pt 2

This part amends the *Acquisition of Land Act 1967*.

3 Amendment of s 5 (Purposes for which land may be taken)

Section 5—

insert—

- ‘(4) The heading to a part of the schedule in which a purpose for taking land is set out indicates only the type of activity or other thing to which the purpose ordinarily relates and does not limit the matters to which the purpose may relate.’

4 Amendment of s 6 (Easements)

Section 6—

insert—

-
- ‘(3) The taking of an easement over land does not extinguish any interest in the land existing immediately before the easement is taken.’

5 Amendment of s 7 (Notice of intention to take land)

- (1) Section 7—

insert—

- ‘(2A) Despite subsection (2), if the land the subject of a notice of intention to resume is common property within the meaning of, and shown on a building units plan under, the *Building Units and Group Titles Act 1980*, the constructing authority need only serve the notice on—
- (a) the body corporate constituted under that Act by the proprietors of the lots in the building units plan; and
 - (b) each entity, other than the body corporate or a proprietor of a lot in the building units plan on which the common property is shown, who to the knowledge of the constructing authority has an interest in the common property.
- ‘(2B) Also despite subsection (2), if the land the subject of a notice of intention to resume is common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*, the constructing authority need only serve the notice on—
- (a) the body corporate under that Act for the community titles scheme; and
 - (b) each entity, other than the body corporate or an owner of a lot in the community titles scheme for the common property, who to the knowledge of the constructing authority has an interest in the common property.
- ‘(2C) Subsection (2D) applies if the constructing authority gives a body corporate mentioned in subsection (2A) or (2B) a notice of intention to resume or a notice amending a notice of intention to resume (each a *relevant notice*).

[s 5]

‘(2D) The body corporate must ensure a copy of the relevant notice accompanies the first notice of a general meeting of the body corporate given to each of its members after receiving the relevant notice.’.

(2) Section 7(3)(a), ‘specify’—

omit, insert—

‘state’.

(3) Section 7(3)—

insert—

‘(ea) if the land the subject of the notice is common property within the meaning of, and shown on a building units plan under, the *Building Units and Group Titles Act 1980*—

(i) state the proprietor of a lot in the building units plan may be entitled to compensation for damage suffered by the proprietor as a result of the taking of the common property and the effect of the taking on the proprietor’s lot; and

(ii) state the requirement imposed on the body corporate for the common property under subsection (2D); and

‘(eb) if the land the subject of the notice is common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*—

(i) state the owner of a lot in the scheme may be entitled to compensation for damage suffered by the owner as a result of the taking of the common property and the effect of the taking on the owner’s lot; and

(ii) state the requirement imposed on the body corporate for the common property under subsection (2D).’.

(4) Section 7(3)—

insert—

-
- ‘(g) include details of—
- (i) the period within which a claim for compensation under this Act must be served on the constructing authority; and
 - (ii) the claimant’s right to apply to the Land Court to serve a claim after the end of the period mentioned in subparagraph (i); and

Editor’s note—

For the matters mentioned in paragraph (g), see section 19(3) to (6).

- ‘(h) include information about how, under section 20(2A), a contract, licence, agreement or other arrangement entered into in relation to the land after the notice of intention to resume is served may be dealt with in assessing compensation to be paid under this Act.’.

- (5) Section 7, before subsection (4A)—

insert—

‘(4AA) The constructing authority may, by written notice given to each entity to whom the notice of intention to resume is served under subsection (2), (2A) or (2B), amend the notice of intention to resume.

‘(4AB) If the constructing authority amends the notice of intention to resume, the period within which an entity may serve on the constructing authority an objection to the taking of the land starts again from the day the notice of the amendment is given to the entity.

Note—

For the period within which an entity may serve an objection, see subsection (3)(d).’.

- (6) Section 7(4A), after ‘amends’—

insert—

‘the notice of intention to resume’.

[s 6]

6 Amendment of s 8 (Dealing with objections)

(1) Section 8(1), after ‘taking’—

insert—

‘(the *objector*)’.

(2) Section 8—

insert—

‘(3) If the constructing authority amends the notice of intention to resume, the objector can not again object to the taking of the land as provided for under the amended notice if the owner of the land (whether or not the owner is the objector) agrees to the amendment.’.

7 Amendment of s 11 (Amending of gazette resumption notice)

(1) Section 11—

insert—

‘(1A) Despite subsection (1), the relevant Minister for the gazette resumption notice, by gazette notice (also an *amending gazette notice*), also may amend the gazette resumption notice to make a change mentioned in subsection (1B).

‘(1B) An amending gazette notice may change the description or area of land taken under the gazette resumption notice only if—

(a) the description or area was described in the gazette resumption notice other than in a plan of survey registered in the land registry; and

(b) the description or area is described in the amending gazette notice in a plan of survey that—

(i) complies with the *Survey and Mapping Infrastructure Act 2003*; and

(ii) is certified as accurate by a cadastral surveyor within the meaning of the *Surveyors Act 2003*; and

(c) the change is made solely to accurately state the description or area of land taken.’.

(2) Section 11—

insert—

‘(5) The relevant Minister for the gazette resumption notice may delegate the Minister’s power under subsection (1A) to an appropriately qualified officer of the department administered by the Minister.

‘(6) In this section—

appropriately qualified, for an officer to whom the power may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

Example of standing for officer of a department—

the officer’s classification or level in the department

relevant Minister, for a gazette resumption notice, means the Minister to whom the application, that the land the subject of the notice be taken, was made under section 9.’.

8 Amendment of s 12 (Effect of gazette resumption notice)

(1) Section 12(2)—

omit.

(2) Section 12(2A), from ‘(including’ to ‘simple)’—

omit.

(3) Section 12(4), ‘public purpose’—

omit, insert—

‘public purpose, or land comprised in a lease held under the *Land Act 1994*,’.

(4) Section 12(4), from ‘and may,’ to ‘another Act’—

omit.

(5) Section 12—

insert—

[s 9]

- ‘(4A) Land mentioned in subsection (4) may, having regard to the purpose for which it was taken—
- (a) be dedicated, under the *Land Act 1994*, as a reserve under the trusteeship of the constructing authority; or
 - (b) be dedicated, under the *Land Act 1994* or this Act, as a road; or
 - (c) be granted or leased, under the *Land Act 1994*, to the constructing authority; or
 - (d) be dealt with under another Act.
- ‘(4B) The constructing authority that takes the land mentioned in subsection (4) may also deal with the land for the purpose for which it is taken on and from the day it is taken, even though the land is yet to be dedicated, granted, leased or otherwise dealt with under subsection (4A).’.
- (6) Section 12—
insert—
- ‘(5C) Despite subsection (5), a person does not obtain a right to claim compensation under this Act in relation to an interest in land that is an interest under a services contract for the land.’.
- (7) Section 12—
insert—
- ‘(9) In this section—
- services contract***, for land, means a contract merely for the provision of services on, to, or in relation to, the land, but does not include a contract for the provision of services under which a person has a right to reside on any part of the land.
- Example of a services contract—*
- a contract for the provision of a cleaning or maintenance service on premises’.

9 Amendment of s 12B (Particular land may be dedicated as road)

- (1) Section 12B(1)—

omit, insert—

- ‘(1) This section applies if land is taken under this Act for the purpose of roads.’.
- (2) Section 12B(2), ‘freehold land register’—

omit, insert—

‘appropriate register under the *Land Act 1994* or the *Land Title Act 1994*’.

10 Amendment of s 13 (Owner may require small parcel of severed land to be taken)

- (1) Section 13, heading—

omit, insert—

‘13 Provision for taking particular additional land’.

- (2) Section 13(1)—

omit, insert—

- ‘(1) If—
- (a) a constructing authority proposes to take, or has taken, part of any land; and
- (b) the taking of the part (the *primary part*) will leave, or has left, a parcel of land (the *additional land*) that the constructing authority and the owner of the land required to be taken or that was taken agree in writing is of no practical use or value to the owner;

the constructing authority also must take the additional land.

- ‘(1A) The taking of the additional land mentioned in subsection (1) is taken to be for a purpose incidental to the carrying out of the purpose for which the primary part is to be, or was, taken.’.

- (3) Section 13(2), ‘(the *additional land*)’—

omit, insert—

‘(also the *additional land*)’.

[s 11]

- (4) Section 13(2), ‘is to be taken.’—
omit, insert—
‘is taken.’.
- (5) Section 13—
insert—
- ‘(2A) The constructing authority may take the additional land mentioned in subsection (2) when the constructing authority takes the primary land or after the primary land has been taken.’.
- (6) Section 13(3), ‘pursuant to subsection (1) or (2)’—
omit, insert—
‘under this section’.

11 Amendment of s 17 (Revocation before determination of compensation)

Section 17(2)(b), ‘subparagraph’—
omit, insert—
‘section’.

12 Amendment of s 18 (By whom compensation may be claimed)

- (1) Section 18—
insert—
- ‘(3A) If a person’s investment property is taken under this Act, compensation for costs mentioned in the definition *costs attributable to disturbance*, paragraphs (a) and (b), under section 20(5) is claimable by, and payable to, the person for the purchase of land by the person to replace the investment property.’.
- (2) Section 18—
insert—

- ‘(12) Subsection (13) applies to the proprietor of a lot in a building units plan under the *Building Units and Group Titles Act 1980*, or the owner of a lot in a community titles scheme under the *Body Corporate and Community Management Act 1997*, in relation to which a claim for compensation for common property mentioned in subsection (6) or (9) is made.
- ‘(13) The making of the claim for compensation for the common property does not stop the proprietor or owner making a claim for compensation for damage suffered by the proprietor or owner as a result of the taking of the common property and the effect of the taking on the proprietor’s or owner’s lot.
- ‘(14) In subsection (3A)—
investment property, of a person, means any land held by the person for investment purposes.’.

13 Amendment of s 19 (Claim for compensation)

Section 19—

insert—

- ‘(3) A claim for compensation may be served on the constructing authority only within 3 years after the day the land was taken.
- ‘(4) Despite subsection (3), the constructing authority may accept, and deal with, a claim for compensation served by the claimant more than 3 years after the day the land was taken if the constructing authority is satisfied it is reasonable in all the circumstances to do so.
- ‘(5) If the constructing authority does not accept a claim served by the claimant more than 3 years after the day the land was taken, the claimant may apply to the Land Court to decide whether it is reasonable in all the circumstances for the constructing authority to accept the claim.
- ‘(6) If the Land Court decides it is reasonable in all the circumstances for the constructing authority to accept the claim, the constructing authority must accept, and deal with, the claim under this Act.

[s 14]

‘(7) If the constructing authority accepts and deals with a claim for compensation served by the claimant more than 3 years after the day the land was taken, the Land Court must take into account the late service of the claim in deciding any amount of interest payable under section 28 in relation to the claim.’.

14 Amendment of s 20 (Assessment of compensation)

(1) Section 20(1), from ‘also to the damage’—

omit, insert—

‘also—

(a) to the damage, if any, caused by any of the following—

(i) the severing of the land taken from other land of the claimant;

(ii) the exercise of any statutory powers by the constructing authority otherwise injuriously affecting the claimant’s other land mentioned in subparagraph (i); and

(b) to the claimant’s costs attributable to disturbance.’.

(2) Section 20—

insert—

‘(2A) However, in assessing the compensation, a contract, licence, agreement or other arrangement (a *relevant instrument*) entered into in relation to the land after the notice of intention to resume was served on the claimant must not be taken into consideration if the relevant instrument was entered into for the sole or dominant purpose of enabling the claimant or another person to obtain compensation for an interest in the land created under the instrument.’.

(3) Section 20—

insert—

‘(5) In this section—

costs attributable to disturbance, in relation to the taking of land, means all or any of the following—

- (a) legal costs and valuation or other professional fees reasonably incurred by the claimant in relation to the preparation and filing of the claimant's claim for compensation;
- (b) the following costs relating to the purchase of land by a claimant to replace the land taken—
 - (i) stamp duty reasonably incurred or that might reasonably be incurred by the claimant, but not more than the amount of stamp duty that would be incurred for the purchase of land of equivalent value to the land taken;
 - (ii) financial costs reasonably incurred or that might reasonably be incurred by the claimant in relation to the discharge of a mortgage and the execution of a new mortgage, but not more than the amount that would be incurred if the new mortgage secured the repayment of the balance owing in relation to the discharged mortgage;
 - (iii) legal costs reasonably incurred by the claimant;
 - (iv) other financial costs, other than any taxation liability, reasonably incurred by the claimant;
- (c) removal and storage costs reasonably incurred by the claimant in relocating from the land taken;
- (d) costs reasonably incurred by the claimant to connect to any services or utilities on relocating from the land taken;
- (e) other financial costs that are reasonably incurred or that might reasonably be incurred by the claimant, relating to the use of the land taken, as a direct and natural consequence of the taking of the land;
- (f) an amount reasonably attributed to the loss of profits resulting from interruption to the claimant's business that is a direct and natural consequence of the taking of the land;

[s 15]

- (g) other economic losses and costs reasonably incurred by the claimant that are a direct and natural consequence of the taking of the land.

Example of costs for paragraph (g)—

cost of school uniforms for children enrolled in a new school because of relocation from the land taken’.

15 Amendment of s 21 (Grant of easement etc. in satisfaction of compensation)

- (1) Section 21, heading, ‘in satisfaction’—

omit, insert—

‘or transfer of land in satisfaction’.

- (2) Section 21—

insert—

‘(1A) Also, the constructing authority and the claimant may agree that the constructing authority will transfer land held in fee simple by the constructing authority to the claimant in satisfaction wholly or partly of the claimant’s claim for compensation.’.

- (3) Section 21(2), ‘case’—

omit, insert—

‘cases’.

- (4) Section 21(2), ‘grant’—

omit, insert—

‘grant or transfer’.

16 Insertion of new s 26A

After section 26—

insert—

‘26A Jurisdiction about recovery of advance against compensation

- ‘(1) This section applies if, in relation to land taken—
- (a) a constructing authority advances an amount to a claimant under section 23; and
 - (b) the Land Court later decides an amount of compensation payable to the claimant that is less than the amount mentioned in paragraph (a).
- ‘(2) The amount (the *outstanding amount*) that is the difference between the following amounts is an amount owing to the constructing authority by the claimant—
- (a) the amount mentioned in subsection (1)(a);
 - (b) the total of the amount of compensation decided by the Land Court and any interest payable on that amount to the claimant.
- ‘(3) The Land Court has jurisdiction to make an order that the outstanding amount be paid by the claimant to the constructing authority.
- ‘(4) The Land Court may make an order under subsection (3) at any time after it decides the amount of compensation.
- ‘(5) The Land Court may order the claimant to pay interest on the outstanding amount for all or any part of the period—
- (a) starting on the day the amount mentioned in subsection (1)(a) was advanced to the claimant; and
 - (b) ending at the beginning of the day the claimant pays the outstanding amount to the constructing authority.
- ‘(6) Interest mentioned in subsection (5) is payable by the claimant—
- (a) at the rate stated in the order that the Land Court considers appropriate; and
 - (b) when the outstanding amount is payable.
- ‘(7) An order under subsection (3) may be enforced as if it were an order made by the Supreme Court.’

[s 17]

17 Insertion of new pt 6, div 3

After section 45—

insert—

‘Division 3 Provisions for Acquisition of Land and Other Legislation Amendment Act 2009

‘46 Making claims for compensation

‘Section 19(3) to (6) does not apply in relation to a claim for compensation for land taken by a constructing authority before the commencement of this section.

‘47 Recovery of advance against compensation

‘Section 26A does not apply in relation to land taken by a constructing authority before the commencement of this section if, before the commencement, a proceeding for the recovery of an amount of an advance made under section 23 for the land has started.’.

18 Replacement of schedule

Schedule—

omit, insert—

‘Schedule Purposes for taking land

section 5

‘Part 1 Purposes relating to transportation

- aviation and related purposes

[s 18]

- buildings
- caravan parks
- cemeteries or crematories
- departmental and official purposes
- electrical works
- fire stations
- pounds
- works for the conservation of hydraulic or other power
- works for any public works, or other work or purpose of a similar nature
- works for the construction or erection of any public or other works that the constructing authority is authorised under any Act or resolution of Parliament to construct or erect, or for the purposes of any Act

‘Part 13 Purposes relating to non-profit or not-for-profit organisations

- non-profit or not-for-profit organisations, including a charity, charitable institution, public benevolent institution, charitable fund and income tax exempt fund

‘Part 14 Other purposes

- any purpose declared under a regulation to be a purpose for which land may be taken under this Act’.

[s 24]

24 Insertion of new s 34IA

After section 34I—

insert—

‘34IA Particular matters about issue of deed of grant

- ‘(1) The Minister may recommend to the Governor in Council the issue of a deed of grant only if satisfied the deed of grant would be an appropriate tenure for the reserve, having regard to—
- (a) the public purpose for which the land was reserved and set apart under the repealed Act; and
 - (b) the current and proposed use of the land.
- ‘(2) If the Minister decides to recommend to the Governor in Council the issue of a deed of grant, the Minister must decide the purchase price for the land in the reserve.’.

25 Amendment of s 34J (Notice of proposal to issue deed of grant)

- (1) Section 34J(1), ‘Governor in Council proposes to issue’—
omit, insert—
‘Minister proposes to recommend to the Governor in Council the issue of’.
- (2) Section 34J(2)(b)(ii), ‘Governor in Council’—
omit, insert—
‘Minister’.

26 Amendment of s 34K (Submissions)

- (1) Section 34K(1), ‘Governor in Council’—
omit, insert—
‘Minister’.
- (2) Section 34K(3)—

omit, insert—

- ‘(3) The Minister must consider all submissions received under this section before recommending to the Governor in Council the issue of the deed of grant.’.

27 Amendment of s 35 (Use for community purposes of land granted in trust)

- (1) Section 35, heading, ‘for community purposes’—

omit.

- (2) Section 35(1)(a), ‘community’—

omit.

28 Amendment of s 36 (Amalgamating land with common purposes)

Section 36(1), ‘for a purpose’—

omit, insert—

‘for a community purpose’.

29 Amendment of s 38B (Notice of proposal to add community purpose, amalgamate land or cancel)

Section 38B, ‘the Minister proposes’—

omit, insert—

‘it is proposed’.

30 Amendment of s 57 (Trustee leases)

Section 57(4), after ‘lease’—

insert—

‘, other than a construction trustee lease,’.

[s 31]

31 Amendment of s 61 (Conditions on trustee leases and trustee permits)

- (1) Section 61(3), ‘community’—
omit.
- (2) Section 61(4), ‘building’—
omit, insert—
‘construction trustee lease or to a building’.

32 Amendment of s 100 (Public notice of closure)

- Section 100(3)—
insert—
‘(c) the road closure application is to close part of a road adjoining transport land and the closure will not adversely affect the part of the road being used as a road.’.

33 Amendment of s 167 (Provisions for deciding application)

- (1) Section 167(1)(m)—
omit.
- (2) Section 167(1)(n) to (p)—
renumber as section 167(1)(m) to (o).

34 Amendment of s 275 (Registers comprising land registry)

- Section 275(b), ‘and trustees of trust land’—
omit.

35 Amendment of s 276 (Registers to be kept by chief executive)

- Section 276(b), ‘and trustees of trust land’—
omit.

36 Amendment of s 279 (Registration of land management agreements and transition to sale agreements)

Section 279(1), '240P'—

omit, insert—

'240O'.

37 Amendment of s 360A (Minister may change term leases, other than State leases, or perpetual leases)

(1) Section 360A(2), 'plan subdivision'—

omit, insert—

'plan of subdivision'.

(2) Section 360A(3)(c)—

renumber as section 360A(3)(d).

(3) Section 360A(3)—

insert—

'(c) the Minister has approved that an area of unallocated State land be included in the lease; or'.

38 Amendment of s 373AA (Compliance with s 373A)

Section 373AA, second mention—

renumber as section 373AB.

39 Amendment of s 376 (Deed of grant or lease may issue in name of deceased person)

Section 376(1), 'or lease'—

omit, insert—

'or freeholding lease, and the Minister may issue a term or perpetual lease,'.

[s 40]

40 Amendment of s 391A (General provision about approvals)

Section 391A(1), 'It'—

omit, insert—

'If'.

41 Amendment of s 442 (Lapse of offer)

Section 442(6), 'offeree to extend'—

omit, insert—

'offeror to extend'.

42 Amendment of s 462 (Terms of post-Wolfe freeholding leases)

(1) Section 462(1)(f)—

omit.

(2) Section 462(1)(g) to (i)—

renumber as section 462(1)(f) to (h).

43 Omission of ch 8, pt 7A (Brigalow and other lands development provisions)

Chapter 8, part 7A—

omit.

44 Omission of s 521K (Application made before commencement)

Section 521K—

omit.

45 Insertion of new ch 9, pts 1F and 1G

Chapter 9—

insert—

**‘Part 1F Further transitional provisions
for Land and Other Legislation
Amendment Act 2007**

‘521Q Definition for pt 1F

‘In this part—

commencement means the commencement of this section.

**‘521R Outstanding applications continued under
post-amended Act**

- ‘(1) An outstanding application continues under the provisions of the post-amended Act.
- ‘(2) However, the matters the designated officer, designated person or other person deciding the application must consider are—
- (a) if the applicant for the application asks that the matters to be considered in deciding the application are the matters to be considered under the post-amended Act—the matters to be considered for a similar application under the post-amended Act; or
 - (b) otherwise—the matters that would have been considered in deciding the application under the pre-amended Act.
- ‘(3) Also, chapter 7, part 2A of the post-amended Act does not apply to the application.
- ‘(4) In this section—

outstanding application means an application made under the pre-amended Act but not dealt with as at the commencement.

post-amended Act means the *Land Act 1994* as in force from time to time on and after 1 January 2008.

pre-amended Act means the *Land Act 1994* as in force immediately before 1 January 2008.

[s 45]

‘521S Particular new leases exempted from particular provisions

‘(1) The following provisions do not apply to a new lease—

- section 162A
- section 168A
- section 176H.

‘(2) In this section—

new lease means a lease offered and accepted under this Act before 1 January 2008 but not granted as at the commencement.

‘Part 1G Transitional provision for Acquisition of Land and Other Legislation Amendment Act 2009

‘521T Provision about change of purpose for reserves

‘(1) This section applies if—

- (a) under section 31B as in force before the commencement, the purpose of a reserve that was not a community purpose was changed to a community purpose; and
- (b) the change was registered before the commencement.

‘(2) The change is taken to have been lawfully made under this Act.

‘(3) In this section—

commencement means the day this section commences.’

46 Amendment of sch 6 (Dictionary)

- (1) Schedule 6, definitions, *agreement, corporation, fund* and *repealed Act*—
omit.
- (2) Schedule 6—
insert—
‘repealed Act means the Land Act 1962.’.

Part 4 Amendment of other Acts

47 Other Acts amended

The schedule amends the Acts it mentions.

Schedule **Consequential amendments of other Acts**

section 47

Integrated Planning Act 1997

1 **Schedule 8, part 1, table 3, item 1(e)(i) and (f), ‘paragraph (a)’—**

omit, insert—

‘parts 1 to 13 (other than part 10, second dot point)’.

2 **Schedule 9, table 3, item 2(e)(i), ‘paragraph (a)’—**

omit, insert—

‘parts 1 to 13 (other than part 10, second dot point)’.

South Bank Corporation Act 1989

1 **Section 4(a)(v), ‘paragraph (a)’—**

omit, insert—

‘parts 1 to 13 (other than part 10, second dot point)’.