

DRAFT SECOND READING SPEECH

HON. GUY BARNETT MP

Land Acquisition Amendment Bill 2018

check Hansard for delivery

I move that the Bill be now read a second time.

Madam Speaker, the Bill provides a series of amendments to the *Land Acquisition Act 1993*. These amendments are primarily designed to streamline the administrative process, reduce red tape and align the assessment of compensation with acquisition legislation in other Australian jurisdictions. The bill also includes minor amendments to update what are now superseded references in the Act and to correct spelling and grammatical errors.

The Act, which is administered by the Valuer-General on my behalf, provides the legislative process by which an acquiring authority may acquire land in Tasmania and sets out the basis for the determination of compensation paid to property owners who have had all or part of their land acquired for infrastructure projects.

The Act is an important component in the provision of infrastructure to improve the way of life for Tasmanians. It has primarily been used by the Tasmanian Government to acquire land required for the upgrading of state highways. However the Act is also used by both Crown and non-Crown acquiring authorities for the provision of a wide range of infrastructure projects such as irrigation, dams, power line easements and health and educational facilities.

The Act has been in force for 25 years without any amendment or review. Reviewing the legislation presents an opportunity to review the basis for the assessment of compensation to ensure it is not unnecessarily out of step with other Australian jurisdictions. The review allows the Government to correct certain references that have been superseded over time and a number of grammatical and spelling errors.

Eight key amendments were identified during the review process.

Section 18 of the Act details the requirements that must occur before a "Notice of Acquisition" may be published in the Government Gazette.

Section 18 will be amended to permit an acquiring authority to proceed to issue a Notice of Acquisition even though the area of land being acquired is less than the area detailed in the Notice to Treat, issued under Section 11 of the Act.

This amendment will remove the need for an acquiring authority to have to recommence the acquisition process by issuing a new Notice to Treat based on the amended area in the accompanying survey plan. Thus saving costs and cutting unnecessary red tape.

Section 27(l) provides the basis for determining the amount of compensation to be paid upon the acquisition of private land.

The current definition of special value is open to interpretation to include personal taxation implications associated with a person's ownership of the acquired land.

The primary amendment here is to remove any consideration for a claimant's personal taxation implications from being factored into the assessment of compensation.

Special value has historically been associated with the claimant's use of the land and Courts have consistently ruled that personal taxation implications are not considered to be part of "special value".

A claimant is otherwise protected by roll-over benefits available under taxation law.

Section 27(l)(f) deals with any disturbance relating to any loss or damage suffered, or cost reasonably incurred, by the claimant as a consequence of the taking of the subject land.

The current law is limited to disturbance arising from the taking of the land and not arising from the authorised purpose. Authorised purpose, in relation to the acquisition of land, means a purpose for which the land is acquired by an acquiring authority.

Currently no compensation is payable for "disturbance" caused to the operation of a business such as grazing, farming and manufacturing property arising temporarily from the works or long term from the authorised purpose.

The Amendment provides a clear definition for "disturbance" as "any other financial cost reasonably incurred (or that might reasonably be incurred) relating to the actual use of the land, as a direct and natural consequence of the authorised purpose".

The Amendment will widen the assessment of compensation for disturbance by ensuring compensation for disturbances arising from the works.

Section 27 (l) (g) currently provides that compensation can be paid for "such other matters as the acquiring authority, The Court or an arbitrator may consider to be relevant."

No other Australian jurisdiction contains a clause like 27(l)(g) as it is unnecessary if all the heads of compensation are covered.

This section is removed as all the heads of compensation are covered in section 27(1)(a) to (f).

The inclusion of a new section 27 (1A) will provide protection to an acquiring authority who has, lawfully constructed infrastructure on private land, and subsequently decides to acquire that land.

This new section will clarify that an acquiring authority, or its predecessor, will not be forced to pay twice by having to purchase this infrastructure it has constructed as part of the land acquisition process.

Section 37 of the Act details the time frame in which to lodge a claim for compensation as 60 days.

If a claim is not lodged within that time frame a claimant whose land has been taken must apply to the Court to finalise compensation.

It is not logistically possible for land owners to gather the information required and prepare a claim within 60 days.

Most land owners lodge their claim within 4 to 6 months. The time to lodge a claim for compensation varies widely in other Australian jurisdictions ranging from 3 months to 3 years.

The amendment will extend the time for a property owner to lodge a claim for compensation from 60 days to 6 months.

Section 54 of the Act allows an acquiring authority, prior to commencing the process of acquisition, to enter land to investigate whether that land is suitable for the purpose of acquisition.

An acquiring authority can enter land and sink pits, examine the soil, take samples and do any other thing in relation to the land.

The current Act does not provide a general legal obligation on the acquiring authority to remedy any damage caused to the land during that investigation.

The amendment will ensure that acquiring authorities will act in the best interest of property owners and remediate any damage at its cost caused to the land as a result of the acquiring authorities entering land to investigate its suitability for a proposed scheme of works.

The amendment will obligate an acquiring authority to take reasonable care to comply with Biosecurity best practice.

Section 78 of the Act details that any time frame under the Act may be extended upon the request of the property owner or a claimant.

The Act limits an owner of land, a claimant or a former owner of land to a period of 14 days at the end of any stated time period in the Act to seek an extension of time.

The Act also requires that in a default of any agreement to extend the time frame an acquiring authority or claimant may apply to the Court to extend the time frame.

The amendment to section 78 will allow the acquiring authority to extend a time frame under the Act in the event that they are not able, for whatever reason, to obtain the property owner's request to extend time.

The final amendments relate to consequential amendment to the Act, including grammatical and spelling errors and identified superseded legislative references.

The proposed amendments are not complex and add no entirely new process to the Act but, rather, they reduce some red tape and align the assessment of compensation with other Australian jurisdictions.

There will not be any negative impact arising from the proposed amendments to the Act.

The amendments are expected to be met with positive reaction from primary users of the Act, including relevant Government Departments, Crown and non-Crown acquiring authorities, Local Government Association of Tasmania, Australian Property Institute of Tasmania, Tasmanian Law Society and the Real Estate Institute of Tasmania.

Madam Speaker, the Government fully supports the introduction of this Bill.

I commend this Bill to the House.