

CLAUSE NOTES

Land Acquisition Amendment Bill 2018

- Clause 1 **Short Title**
- Clause 2 **Commencement**
- This clause provides for commencement on the day on which the Act receives Royal Assent.
- Clause 3 **Principal Act**
- This clause provides that the *Land Acquisitions Act 1993* is the Principal Act.
- Clause 4 **Section 3 amended Interpretation**
- Currently the *Land Acquisitions Act 1993* contains no definition of Commission.
- This clause provides that in subsection (1) Commission has the same meaning as in the *Tasmanian Planning Commission Act 1997*.
- “Commission” means the Tasmanian Planning Commission established under Section 4 of the *Tasmanian Planning Commission Act 1997*.
- Under *Land Use Planning and Approvals Act 1993* “Commission” means the Tasmanian Planning Commission established under the *Tasmanian Planning Commission Act 1997*.
- This clause allows correction to outdated legislative references.
- Clause 5 **Section 7D (Content of Order)**
- This clause amends “isto” to “is to”.
- This clause allows correction to grammatical errors currently appearing in the Act.
- Clause 6 **Section 12 (Notice of withdrawal)**
- An acquiring authority may withdraw a notice to treat by serving a notice of withdrawal.
- This clause inserts into subsection (1) (a) (1)(b) (2)(b) “part of the land”, after “land”. Clause also amends (4) by adding “or a part of the land”, after “owner of the land”.
- This allows part of the land to be identified in the notice to treat.
- Clause 7 **Section 13 (Registration of notice to treat and notice of withdrawal)**
- If all or any of the land to which a notice to treat, or notice of withdrawal, relates is subject to the *Land Titles Act 1980*, the acquiring authority must lodge with the Recorder of Titles in accordance with section 128 of the Act the document required by that section.

If all or any of the land to which a notice to treat or a notice of withdrawal relates is not subject to the *Land Titles Act 1980*, the acquiring authority must register the notice or the part of the notice relation to the part of the land that is not subject to that Act, as soon as practicable after the notice, or the first such notice, is served; and as provided by Division III of Part II of the Registration of Deeds Act 1935.

This clause inserts in subsection (1) and (2) “, or a part of the land,” after “land”;

This amendment allows part of the land to be identified in the registration of the notice to treat.

Clause 9 **Section 16 (Consent to taking of land)**

If the land is subject to the *Land Titles Act 1980*, a person who has power to sell and convey the fee simple estate in that land may agree to the taking of land by notice of acquisition. If the land is not subject to the *Land Titles Act 1980*. If the land is not subject to the *Land Titles Act 1980* – (i) in the case of land that is not subject to a mortgage, a person who has power to sell and convey the fee simple estate in that land; or (ii) in the case of land that is subject to a mortgage and in the possession of the mortgagor, a person who would but for that mortgage have power to sell and convey the fee simple estate in that land; or (iii) in the case of land that is subject to a mortgage and in the possession of the mortgagee, the person who has power to sell and convey the fee simple estate in that land.

This clause inserts in section 16(2) “, or a part of the land,” after “land”.

This allows part of the land to be identified.

Clause 10 **Section 17 (Payment into trust fund by promoter)**

If a notice to treat has been served on an owner of subject land by an acquiring authority that is a promoter and that authority is proposing to take that land, the acquiring authority must, before gazetting a notice of acquisition in respect of that land – (a) obtain from the Valuer-General an estimate of the amount of compensation that is likely to be payable in respect of that land; and (b) deposit that amount with the Treasurer to be kept in an account in the Special Deposition and Trust Fund.

This clause amends section 17(a) by inserting “, or a part of the land” after “take the land”; clause 17(b) by inserting “or part, as the case may be” after “acquisition in respect of that land”; clause 17(c) by inserting in paragraph (a) “or part” after “land”.

This allows part of the land to be identified.

Clause 11 **Section 18 amended (Notice of Acquisition)**

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

The amendment will permit a “Notice of Acquisition” to be issued where the land area is less than, and within the boundaries of, the area of land initially identified in the Notice to Treat under Section 11 of the Act.

Occasionally, a Notice to Treat is issued with only an estimated area of land being required based on a conceptual plan. After the formal survey plan is prepared, the area indicated on the conceptual plan may differ to that indicated on the survey plan.

This Clause will remove the need for an acquiring authority to have to recommence the acquisition process by issuing a new Notice to Treat on the amended area, for land less than the area detailed in the original Notice to Treat.

Clause 12 **Section 27(l)(b) amended (Basis of compensation)**

Section 27 contains the basis of compensation. Any special value the estate in the subject land may have to the claimant which is a financial advantage incidental to the claimant’s ownership of that estate and is in addition to its market value.

This clause will remove any consideration for a claimant’s personal taxation implications from being factored into the assessment of compensation. A claimant is otherwise protected by roll-over benefits available under taxation law.

Section 27(l)(f) amended (Basis of compensation)

Section 27(l) sub-paragraphs (a) to (g) sets out a range of matters that must be considered in determining compensation including (f) 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 clause will provide a clearer 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 compensations for disturbance.

Section 27(l)(g) removed (Basis of compensation)

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

All Heads of compensation are covered under section 27(1).

Insertion of 27(1A) (Basis of compensation)

This clause will provide protection to an acquiring authority who has, lawfully constructed infrastructure on private land, and subsequently decides to acquire that land. The acquiring authority will not have to pay twice by having to purchase its own infrastructure as part of the land acquisition process.

- Clause 13 **Section 29 amended (Provisions applicable where land is zoned or reserved for public purpose)**
- Under the Act an acquiring authority must apply to the Commissioner for Town and Country Planning for a determination which would most likely apply if the subject land was not otherwise zoned for a public purpose.
- Under *Land Use Planning and Approvals Act 1993* “Commission” means the Tasmanian Planning Commission established under the *Tasmanian Planning Commission Act 1997*.
- This clause is amended by omitting from subsection (2) “Commissioner for Town and Country Planning” and substituting “Commission”, and (b) by omitting from subsection (3) “Commissioner for Town and Country Planning” and substituting “Commission”.
- This clause allows correction to outdated legislative references.
- Clause 14 **Section 37 amended (Time for making claim for compensation)**
- Section 37 of the Act details the time frame in which to lodge a claim for compensation to 60 days.
- This clause extends the time for a dispossessed owner to lodge a claim for compensation from 60 days to 6 months.
- Clause 15 **Section 38 amended (Effect of failure to make claim for compensation)**
- Section 38(3) of the Principal Act is amended by omitting “claimfor” and substituting “claim for”.
- This clause allows correction to grammatical errors currently appearing in the Act.
- Clause 16 **Section 40 amended (Procedure on receipt of claim for compensation in respect of amount claimed)**
- Section 40(8) of the Principal Act is amended by omitting “mustobtain” and substituting “must obtain”.
- This clause allows correction to grammatical errors currently appearing in the Act.
- Clause 17 **Section 48 amended (Acquiring authority to pay certain costs)**
- Currently the fees of the claimant's legal practitioner payable by the acquiring authority are to be determined in accordance with Table B of Appendix M to Part I of the 1965 Rule.
- The *Supreme Court Rules 1965* have been repealed.
- This clause is amended by adding a determination of costs with the provisions of – (a) the relevant Supreme Court Rules; (b) any regulation made under the *Supreme Court Civil Procedure Act 1932*. In relation to the taxation of costs the relevant Supreme Court rules; and any regulations made under the Supreme Court Civil Procedure Act 1932 apply.

All Reference to the “1965 Rules” is omitted from the Principal Act.

This clause allows correction to outdated legislative references.

Clause 18 **Section 54 amended (Power of entry and examination)**

Section 54 details how an acquiring authority may enter private land prior to the issue of a “Notice to Treat” to investigate whether the land will be suitable for the authorised purpose.

Section 54(2)(b) enables an acquiring authority to enter land and sink pits, examine the soil, take samples and do any other thing in relation to the land.

This clause will ensure that acquiring authorities act in the best interests of property owners and remediate any damage caused to the land as a result of the acquiring authorities entering land to investigate its suitability for a proposed scheme of works.

Clause 19 **Section 59 amended (Procedure and powers of the Court)**

This Clause omits “Rules of Court” and substitutes “relevant Supreme Court Rules”.

This clause allows correction to outdated legislative references.

Clause 20 **Section 60 amended (Costs)**

This Clause omits section 60(3) “either Table A or table B of Appendix M to Part I of the 1965 Rule” and substitutes “the relevant Supreme Court Rules,” and in section 60(4) omits “Table B of Appendix M to Part I of the 1965 Rules” and substitutes “the relevant Supreme Court Rules”.

This clause allows correction to outdated legislative references.

Clause 21 **Section 61 substituted**

This Clause refers to a review of costs.

Where an application is made to the Court under section 48 or 60 for an order to review the taxation of costs, the review of the taxation of costs is to occur in accordance with the relevant Supreme Court Rules.

This clause allows correction to outdated legislative references.

Clause 22 **Section 68 amended (Apportionment of rent where part of leased land taken)**

This Clause amends section 68(4) of the Principal Act by omitting “ofan” and substituting “of an”.

This clause allows correction to grammatical errors currently appearing in the Act.

Clause 23 **Section 78 amended (Extension of time or period)**

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

An owner of land, a claimant or a former owner of land can seek an extension of time within 14 days of the end of any stated time period in the Act.

Section 78(1)(b) details that in default of any agreement to extend the time frame the acquiring authority or the claimant may apply to the Court to extend the time frame.

This clause allows 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. This alleviates the need to seek a Court Order.

Clause 24 **Section 85 repealed**

Transitional provisions are removed as they have no effect as the provision refers to Schedule 2 and refers to the *Lands Resumption Act 1857* and the *Lands Resumption Act 1957*.

Clause 25 **Schedule 2 repealed**

Schedule 2 is repealed because the Transitional Provisions refer to the *Land Clauses Act 1857* and the *Land Resumption Act 1957*.

Part 2 – CONCLUDING PROVISIONS

Clause 26 **Repeal of Act**