



Our Ref: JC:lb:1293393
Direct Line: 9926 0202

17 June 2009

The Hon. Carmel Tebbutt,
Minister for Commerce
Level 30
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister,

Land Acquisition (Just Terms Compensation) Amendment Bill 2009 (Bill)

I am writing to you at the request of the Law Society's Property Committee (Committee).

The Committee does not support the Bill for reasons set out below.

The Government claims that the effect of the Bill is to make it clear that the *Land Acquisition (Just Terms Compensation) Act 1991 (JTC Act)* does not of itself ground rights of acquisition but merely provides a mechanism or framework for acquisitions within power under another Act.

The Committee is concerned that the Bill does more than this.

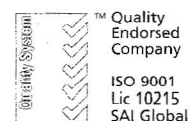
The Committee appreciates that section 7B of the *JTC Act* enables a Council to compulsorily acquire its own land. Indeed the only power a Council has to compulsorily acquire its own land is pursuant to this section.

Once the Bill is passed, section 7 as amended will link section 7B of the *JTC Act* to the powers to compulsorily acquire land under the *Local Government Act 1993 (LGA)*.

Under the *JTC Act*, as amended by the Bill, councils will be able to compulsorily acquire their own land (such as roads) and then use the power in section 188(2)(a) of the *LGA* to compulsorily acquire any land which forms part of, or lies in the vicinity of, councils' own land. The land acquired under this latter acquisition will be able to be resold whether by way of joint venture with the private sector or otherwise.

Whether the concerns expressed about the effect of the Bill are accepted or not, the Committee considers the Bill does not in fact do what the Explanatory notes imply it was designed to do- address the issues raised in the High Court case of *R & R Fazzolari Pty Limited v Parramatta City Council; Mac's Pty Limited v Parramatta City Council* [2009] HCA 12 (*Fazzolari case*).

Important issues raised by that case remain unresolved, for example, whether the acquisition purpose is considered on a "sole/dominant/one of a number of purposes" test; whether the power of acquisition should extend to land adjacent to land already vested in Council, such as a road.




The Committee considers that the Bill should only proceed in conjunction with a Bill amending the *LGA* to deal with all of the issues raised in the *Fazzolari* case. For this reason, a copy of this letter is also being forwarded to the Minister for Local Government, Ms Barbara Perry.

The High Court judgement of French CJ in the *Fazzolari* case noted the presumption, in the interpretation of statutes, against an intention to interfere with vested property rights. The Committee suggests that in order to be unambiguous, amendment to the statutes grounding rights of acquisition should be given priority over this Bill which does not, in any event, achieve its stated purpose.

If you have any queries in relation to this submission, please contact Ms Liza Booth, Executive Member, Property Law Committee on (02) 9926 0202 or by email to ljb@lawsocnsw.asn.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Joseph Catanzariti', with a stylized flourish extending to the right.

Joseph Catanzariti
President