



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: JD:lb:gl:EPDProperty:626569
Direct line: 9926 0375

Your ref: 57442

15 June 2012

Ms Rosemary Chandler
Just Terms Coordinator
NSW Department of Finance & Services
McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

Via email: rosemary.chandler@services.nsw.gov.au

Dear Ms Chandler

Just Terms Compensation Legislation Review

Thank you for your invitation to suggest issues to be considered by the review.

The Terms of Reference of the review have been considered by the Law Society's Property Law Committee (PL Committee) and the Environmental Planning and Development Committee (EPD Committee).

The PL Committee advises the Council of the Law Society on developments in the area of property law and is comprised of experienced and specialised practitioners drawn from the ranks of the Society's members who act for various stakeholders in the conveyancing process.

The EPD Committee has responsibility to consider and deal with any matters relating to or associated with environment planning and development law, and to advise the Council of the Law Society on all issues relevant to that area of practice. Membership of the EPD Committee is drawn widely from experienced professionals whose expertise has been developed variously in representing the interests of local government, government instrumentality, corporate and private clients.

The PL Committee nominates the following issues for consideration by the review:

1. Should State law be harmonised with the Commonwealth position in this area?
2. Should the law be altered to provide for just terms compensation for the acquisition of all private property in New South Wales?
3. If the law is to be changed, should it include all property or should there be some exceptions?

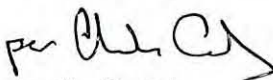
4. What form should such an alteration take (e.g. ordinary Act, State constitutional provision)?
5. Is it appropriate to look at just terms legislation as part of a strategic regional land use policy or are there wider issues to be considered, e.g. the property rights of individuals?

The EPD Committee endorses the list of issues nominated by the PL Committee and suggests the following additional issues be included in the review:

6. Should an acquiring authority have a right of appeal against the Valuer General's valuation?
7. Should an acquiring authority have the power to acquire land for resale? If so, on what basis?
8. Should the effect of the *Environmental Planning and Assessment (Reserved Land Acquisition) Act 2006* be reversed?
9. If not:
 - a. Should the owner of land be given a right of appeal against a decision of an acquiring authority not to acquire land under section 24 of the *Land Acquisition (Just Terms Compensation) Act 1991* on the grounds of hardship?
 - b. Should the definition of "hardship" under section 24 of the *Land Acquisition (Just Terms Compensation) Act 1991* be broadened?
10. Where an acquiring authority acquires land zoned "open space" owned by a local council, should the legislation require compensation to be payable to that council on the basis of the cost of replacing that land?
11. Is a period of 90 days within which to lodge an objection with the Land and Environment Court against the amount of compensation offered under section 45 of the *Land Acquisition (Just Terms Compensation) Act 1991* sufficient, particularly given the Land and Environment Court's current practice direction for such matters?

The Law Society appreciates the opportunity to submit issues for inclusion in the proposed consultation paper. The Committees look forward to providing a more detailed submission in response to the consultation paper in due course. If you have any questions arising from the Committees' comments, please contact Gabrielle Lea on telephone (02) 9926 0375 or email: gabrielle.lea@lawsociety.com.au.

Yours sincerely



Justin Dowd
President