



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: EPD:RHIB1978294

9 October 2020

Mr Michael Tidball
Chief Executive Officer
Law Council of Australia
GPO Box 1989
Canberra ACT 2601

By email: alexandra.wormald@lawcouncil.asn.au

Dear Mr Tidball,

Review of the *Lands Acquisition Act 1989* (Cth)

The Law Society of NSW appreciates the opportunity to provide its comments to the Law Council of Australia ("LCA") on the Review of the Lands Acquisition Act 1989 (Cth) ("LAA"). The Law Society's Environmental Planning and Development Committee contributed to this submission.

General comments

Review

We note that the LAA has been in operation for thirty years without substantial amendment. We support more frequent reviews of the Act, to give effect to the aims of the current review and to reflect the guiding principles set out in the Discussion Paper.

Professional costs

We note the comments in paragraphs 13 and 14 on page 8 of the Discussion Paper relating to current protracted processes and the effect on the professional costs claimed. We consider that the processes could be reviewed to make them more efficient, as set out in our responses to the specific questions in the Discussion Paper. We do not support any restrictions being placed on the legal or valuation fees claimable by a landowner in the LAA, as this would potentially operate unfairly on claimant landowners. We consider that there are existing channels which adequately deal with disputes in relation to costs.

Specific questions

Our responses to some of the specific questions in the Discussion Paper are set out below.

2. How could acquisitions and their administration be reformed to encourage acquisition by agreement and improve the experience for interest holders?

We suggest that to encourage acquisition by agreement, some of the broader categories of compensation (that would be available if the land was acquired compulsorily) could be

offered at the discretion of the resuming authority; for example, transfer duty on a replacement acquisition. This could assist in filling the gap between assessments of market value and may encourage the landowner to agree to an acquisition at an earlier stage rather than waiting for a compulsory acquisition. Some authorities use financial payments as incentives, but these incentives can exert undue pressure on a landowner because the additional payment is withdrawn if no agreement is reached within a certain timeframe.

3. What changes could be made to reduce the time to resolve compensation claims? You might like to consider which party should start the process, whether timeframes should apply and the use of face to face meetings and mediation.

There should be flexibility enabling either the claimant or the acquiring authority to start the process, but we consider that if the acquiring authority starts the process then there should be a mandated time period of at least six months so that the landowner can consider a potential compensation claim. Advance payments of valuation and legal fees should be made available to enable the landowner to consider the offer. These fees could be reimbursed upon production of a report and attendance at a face to face meeting.

4. What changes could be made to the types of compensation to ensure expenditure of public money represents value for money? You might like to consider time limits and caps in your response.

See our response above to question 3 where we suggest that there is some reimbursement of expenses, rather than just the current 90% of offered compensation, to encourage discussions. Compensation offers by the authority should set out the basis for the offer so that the offer can be tested and considered.

5. How could the LAA review processes and reconsideration avenues be changed to encourage early resolution?

A balance between the current Commonwealth and State regimes should be considered. The State regimes involve less steps and so may appear to offer an attractive option for this reason. However, we suggest that caution should be exercised, because if the only appeal process is to the Court where the parties fail to reach agreement, this will likely add substantial cost and time to the process, whichever regime is considered.

7. Is the concept of 'public purpose' sufficiently clear? If not, how could it be improved?

We consider that the concept of public purpose is sufficiently clear, based on case law. It is an important measure to ensure that land is only resumed for the greater good and for a specific purpose. That purpose needs to be clear because it has implications for the claim for compensation – in particular injurious affection. Further, it is important for landowners to know the entity they are dealing with and there are likely to be some concerns if the entity with the future benefit of the land and who then carries out the project is a private entity. This is because resuming authorities may make commitments to landowners as part of the acquisition which may not be reflected in the sale contract or any offer of compensation e.g. noise predictions, landscaping, access being maintained.

12. Should amendments be made to the LAA to support future joint projects between the Commonwealth and states and territories?

We consider that harmonisation is important. Inland rail and electricity transmission lines are good examples where the project may be of national importance, but the approach may be different within each State if the State resumes the land as opposed to the Commonwealth.

If you have any questions in relation to this letter, please contact Liza Booth, Principal Policy Lawyer on (02) 9926 0202 or by email: liza.booth@lawsociety.com.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'R Harvey', with a large, sweeping flourish underneath the name.

Richard Harvey
President