

LAND ACQUISITION LEGISLATION AMENDMENT (COMPENSATION) BILL 2014

Introduction and First Reading

Bill introduced, on motion by **Mr C.J. Barnett (Premier)**, and read a first time.

Explanatory memorandum presented by the Premier.

Second Reading

MR C.J. BARNETT (Cottesloe — Premier) [11.35 am]: I move —

That the bill be now read a second time.

The Land Acquisition Legislation Amendment (Compensation) Bill 2014 is aimed at reinforcing the property rights of landholders and delivers on commitments made by the government during the 2013 election campaign. Legal recognition and protection of the rights of private property owners is the foundation of our society and fundamental to our economy. The government is determined to address some long-recognised shortcomings of our current legal framework to protect these rights for all landholders, including pastoral leaseholders. The government also recognises that, from time to time, it will be necessary to acquire or impinge on private interests in order to provide essential services, such as water, electricity or roads. When this affects the rights of landholders, it is important that they are treated fairly. This includes being justly compensated for adverse impacts arising from the government's action. Unfortunately, in some cases current legislation does not strike an appropriate balance between the interests of affected landholders and the interests of the broader community.

The legal framework that enables government to acquire interests in land, and to provide compensation when doing so, is complex and spread across a number of different acts. In addition, there are inconsistencies between acts, further adding to the complexity. The government's commitment in 2013 was to clarify and improve legislation providing for compensation when the state acquires privately held land for a public purpose. The Land Acquisition Legislation Amendment (Compensation) Bill meets that commitment. The bill responds to earlier detailed reviews that identified shortcomings in existing law in this area, and implements 14 of the recommendations made by the Western Australian Law Reform Commission in its July 2008 project 98 report "Compensation for Injurious Affection". This is an important step to improve protection of private property rights and reduce excessive or unfair impacts of regulation on property owners.

In addition to the Land Acquisition Legislation Amendment (Compensation) Bill 2014, the government is progressing a number of other initiatives including preparation of further reforms to the Land Administration Act 1997, which will implement additional recommendations made by the Law Reform Commission as well as reforms that go beyond the scope of this bill, and the government's planning reforms, which have already achieved significant streamlining since the first phase was launched in 2009. Phase 2 of the reforms, currently underway, include changes to local planning scheme regulations, which will introduce uniform planning provisions across local governments and reduce red tape, and amendments made to the Environmental Protection (Clearing of Native Vegetation) Regulations 2004 have extended clearing exemptions and increased the time allowed to maintain previously lawfully cleared land for pasture, cultivation or forestry without a clearing permit. The government is also preparing further amendments to the Environmental Protection Act 1986 to reduce unnecessary regulatory burdens.

The government also intends to issue, as a Premier's circular, a private property rights charter that sets out a clear set of principles to guide government agencies when dealing with actions that adversely affect the rights of landholders. This charter emphasises the principles of fair compensation, transparency, timeliness and the use of compulsory acquisition processes as a last resort. I table a copy of "A Private Property Rights Charter for Western Australia".

[See paper 2439.]

Mr C.J. BARNETT: It is within the context of these extensive private property rights reforms that the bill at hand amends the Land Administration Act 1997, the Energy Operators (Powers) Act 1979, the Water Agencies (Powers) Act 1984 and the Water Services Act 2012. Following these amendments, when an interest in land is acquired by the state, the landholder will receive just compensation. Inconsistencies across different acts will be reduced, and there will be a greater recognition of the true impact of a taking on a landholder.

Importantly, this bill will enable a landholder to claim compensation for a reduction in the value of retained land when any interest in their land is taken. This type of compensation, referred to as injurious affection, is currently available to a landowner only if the interest taken in their land is a freehold interest. As such, when lesser interests, such as leases or easements, are taken in order to provide for the installation of infrastructure for a public purpose, compensation for any resulting reduction in the value of adjoining land is not available. This bill will remedy this and provide for appropriate compensation for the decline in property value caused by the

state. In addition, this bill will enshrine in the Western Australian Land Administration Act 1997 the requirement that compensation be provided to landholders on just terms. Although in practice there are well-established common law rules to require that there be just compensation, the insertion of an express reference to just terms will ensure that all parties must recognise this.

In drafting this bill, consideration has been given to the extent to which energy and water providers need to acquire interests in land in order to provide essential services. Although landholders should be fairly compensated for any interest in their land that is taken, energy and water providers and their customers should not have to face insurmountable project costs in order to deliver essential services. Essential services must be delivered at an affordable cost. To address this, the bill contains provisions specific to energy and water service utilities. These provisions will enable essential projects for the community to continue, while still providing more equitable compensation for affected landholders than is currently the case. For example, an energy operator or water provider will not be required to pay compensation for the loss of amenity value when they are utilising existing legislative powers to enter onto land to construct or maintain works without acquiring an interest in land to do so. These powers may need to be utilised regularly or on short notice to ensure the continued supply of energy or water. In these circumstances, there is minimal impact on the landholder and it is not appropriate for compensation to be provided.

Further, compensation for loss of amenity value will not be available for crown land, including when it is vested in or managed by a local government. This will encourage utilities to use land already owned by the government rather than acquiring interests in privately held land. However, lessees of crown land will be entitled to compensation in the same way as other private property owners.

It is important to recognise that the Land Acquisition Legislation Amendment (Compensation) Bill 2014 will not create new costs; rather, by requiring that just compensation be paid, costs that are currently imposed on landholders will be more appropriately transferred to the government authority that is undertaking the public purpose. The Land Acquisition Legislation Amendment (Compensation) Bill 2014 will ensure that proper regard is paid to the rights of private land owners who may be adversely affected by a government action. I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.