

Land Acquisition Legislation Amendment (Compensation) Bill 2014

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Western Australia

LEGISLATIVE ASSEMBLY

**Land Acquisition Legislation Amendment
(Compensation) Bill 2014**

A Bill for

An Act to amend the *Land Administration Act 1997*, the *Energy Operators (Powers) Act 1979*, the *Water Agencies (Powers) Act 1984* and the *Water Services Act 2012*.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary matters

1. Short title

This is the *Land Acquisition Legislation Amendment (Compensation) Act 2014*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — *Land Administration Act 1997* amended**

2 **3. Act amended**

3 This Part amends the *Land Administration Act 1997*.

4 **4. Section 241 amended**

5 (1) Delete section 241(1) and insert:

6
7 (1) The amount of compensation (if any) to be offered,
8 paid or awarded for an interest in land taken under
9 Part 9 is the amount that, having regard solely to the
10 matters referred to in this section, will justly
11 compensate the person from whom the interest is taken.

12
13 (2) In section 241(2) delete “land with any improvements, or the
14 interest of the claimant in the land, assessed as on —” and
15 insert:

16
17 interest taken, which is to be assessed as at —

18
19 (3) Delete section 241(7) and insert:

20
21 (7) If the interest in land is taken from a claimant who is
22 also the holder of an interest in adjoining land, regard
23 is to be had to the amount of any damage suffered by
24 the claimant due to either or both of the following —
25 (a) the severance of the interest taken from the
26 interest in adjoining land;
27 (b) a decrease in the value of the interest in
28 adjoining land attributable to the carrying out
29 of, or the proposal to carry out, the public work
30 for which the interest is taken.

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- 1 (8A) However, to be set off against the amount of
2 compensation that would otherwise be payable because
3 of subsection (7) is any increase in the value of any
4 interest in adjoining land held by the claimant due to
5 either or both of the following —
6 (a) the severance of the interest taken from the
7 interest in adjoining land;
8 (b) the carrying out of, or the proposal to carry out,
9 the public work for which the interest is taken.
- 10 (8B) For subsections (7) and (8A), a claimant holds an
11 interest in adjoining land if the claimant holds an
12 interest in land that —
13 (a) adjoins the land in which the interest is taken;
14 or
15 (b) is separated from the land in which the interest
16 is taken only by land (*separating land*) in
17 which the claimant also holds an interest as
18 described in subsection (8C).
- 19 (8C) For subsection (8B)(b) —
20 (a) the nature of the interest in the separating land
21 must be the same as, or greater than, the nature
22 of the interest taken; and
23 (b) the extent of the interest in the separating land
24 must be the same as, or greater than, the extent
25 of the interest taken.
26
- 27 (4) After section 241(11) insert:
28
- 29 (12A) If compensation is payable under section 203, interest
30 is to be paid at the rate prescribed under the *Civil*
31 *Judgments Enforcement Act 2004* section 8(1)(a) as at
32 the date of the entry on or occupation of the land, or the

- 1 removal of the material, and the interest is payable
2 from that date to the date —
- 3 (a) when the offer was served on the claimant, if
4 the compensation awarded by the State
5 Administrative Tribunal or the court of
6 competent jurisdiction is not more than the
7 amount offered by the acquiring authority; or
8 (b) of settlement of the claim, in any other case.
9
- 10 (5) In section 241(12) delete “subsections (10) and (11) —” and
11 insert:

12
13 subsections (10), (11) and (12A) —
14

15 **5. Part 14 inserted**

16 After section 284 insert:
17

18 **Part 14 — Transitional provision for *Land***
19 ***Acquisition Legislation Amendment***
20 ***(Compensation) Act 2014 Part 2***
21

22 **285. No application to takings before Part 2 commences**

23 The amendments effected by the *Land Acquisition*
24 *Legislation Amendment (Compensation) Act 2014*
25 Part 2 do not apply in relation to the taking of an
26 interest in land under a taking order made under
27 section 177 of this Act before that Part comes into
28 operation.
29

1 **Part 3 — Energy Operators (Powers) Act 1979 amended**

2 **6. Act amended**

3 This Part amends the *Energy Operators (Powers) Act 1979*.

4 **7. Section 45 amended**

5 (1) In section 45(1) after “section 43(1)” insert:

6

7 or (1aa)

8

9 (2) In section 45(2) delete “No” and insert:

10

11 Subject to subsection (3A), no

12

13 (3) After section 45(2) insert:

14

15 (3A) If the energy operator acquires the land, or an estate or
16 interest in the land, upon, in, over or under which the
17 works are placed, subsection (2) does not affect the
18 operation of the *Land Administration Act 1997*
19 section 241(7) and (8A) except where —

20 (a) the land, estate or interest taken is held by, is
21 vested in, or is otherwise occupied or managed
22 by or on behalf of, the Crown in right of the
23 State or a government department; or

24 (b) the land taken is, or the estate or interest taken
25 is in, Crown land and is held by, is vested in, or
26 is otherwise occupied or managed by or on
27 behalf of, a local government; or

28 (c) the person from whom the land, estate or
29 interest is taken requested that the works be
30 placed upon, in, over or under the land; or

1 (d) the land is part of a subdivision and the works
2 are placed upon, in, over or under the land in
3 compliance with a condition of the subdivision.
4

5 (4) In section 45(4):

6 (a) delete “the land is land to which subsection (15)
7 applies,” and insert:

8
9 subsection (15) applies in relation to the land, estate or
10 interest,
11

12 (b) in paragraph (b) delete “200 000” and insert:

13
14 132 000
15

16 (5) After section 45(4) insert:

17

18 (5A) Where an energy operator acquires by agreement any
19 land, or any estate or interest in land, that the energy
20 operator is required under subsection (4) to acquire, the
21 *Land Administration Act 1997* sections 168 and 169
22 apply as if the land, estate or interest were an interest in
23 land required for a public work and the energy operator
24 were the acquiring authority.
25

26 (6) Delete section 45(15) and insert:

27

28 (15) The requirement imposed by subsection (4) does not
29 apply in relation to land or an estate or interest in land
30 if—

31 (a) the land, estate or interest is held by, is vested
32 in, or is otherwise occupied or managed by or

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1 on behalf of, the Crown in right of the State or
2 a government department; or
3 (b) the land is, or the estate or interest is in, Crown
4 land and is held by, is vested in, or is otherwise
5 occupied or managed by or on behalf of, a local
6 government.
7

8 **8. Section 46 amended**

9 In section 46(3)(c) after “pursuant to” insert:

10
11 section 45(4) of this Act or
12

13 **9. Section 126 inserted**

14 After section 125 insert:

15
16 **126. Transitional provision for *Land Acquisition***
17 ***Legislation Amendment (Compensation) Act 2014***
18 **Part 3**

19 The amendments effected by the *Land Acquisition*
20 *Legislation Amendment (Compensation) Act 2014*
21 Part 3 do not apply in relation to the acquisition by an
22 energy operator of land, or an estate or interest in land,
23 under —

24 (a) an agreement entered into before that Part
25 comes into operation; or

26 (b) a taking order made under the *Land*
27 *Administration Act 1997* section 177, as read
28 with section 45 of this Act, before that Part
29 comes into operation.
30

1 **Part 4 — *Water Agencies (Powers) Act 1984* amended**

2 **10. Act amended**

3 This Part amends the *Water Agencies (Powers) Act 1984*.

4 **11. Section 81 amended**

5 (1) In section 81(1) delete “section 84(1) or (1a)” and insert:

6

7 section 84(1a)

8

9 (2) In section 81(2) delete “No” and insert:

10

11 Subject to subsection (3A), no

12

13 (3) After section 81(2) insert:

14

15 (3A) If the Minister acquires the land, or an estate or interest
16 in the land, upon, in, over or under which the works are
17 placed, subsection (2) does not affect the operation of
18 the *Land Administration Act 1997* section 241(7) and
19 (8A) except where —

20 (a) the land, estate or interest taken is held by, is
21 vested in, or is otherwise occupied or managed
22 by or on behalf of, the Crown in right of the
23 State or a government department; or

24 (b) the land taken is, or the estate or interest taken
25 is in, Crown land and is held by, is vested in, or
26 is otherwise occupied or managed by or on
27 behalf of, a local government; or

28 (c) the person from whom the land, estate or
29 interest is taken requested that the works be
30 placed upon, in, over or under the land; or

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1 (d) the land is part of a subdivision and the works
2 are placed upon, in, over or under the land in
3 compliance with a condition of the subdivision.
4

5 (4) After section 81(4) insert:
6

7 (5A) Where the Minister acquires by agreement any land, or
8 any estate or interest in land, that the Minister is
9 required under subsection (4) to acquire, the *Land*
10 *Administration Act 1997* sections 168 and 169 apply as
11 if the land, estate or interest were an interest in land
12 required for a public work and the Minister were the
13 acquiring authority.
14

15 **12. Part XI inserted**

16 After section 112 insert:
17

18 **Part XI — Transitional provisions**

19 **113. Transitional provision for *Land Acquisition***
20 ***Legislation Amendment (Compensation) Act 2014***
21 **Part 4**

22 The amendments effected by the *Land Acquisition*
23 *Legislation Amendment (Compensation) Act 2014*
24 Part 4 do not apply in relation to the acquisition by the
25 Minister of land, or an estate or interest in land,
26 under —

27 (a) an agreement entered into before that Part
28 comes into operation; or

29 (b) a taking order made under the *Land*
30 *Administration Act 1997* section 177, as read

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with this Act, before that Part comes into
operation.

1 **Part 5 — *Water Services Act 2012* amended**

2 **13. Act amended**

3 This Part amends the *Water Services Act 2012*.

4 **14. Section 166 amended**

5 After section 166(5) insert:

6

7 (6A) Where a licensee acquires by agreement any interest in
8 land that the licensee is required under subsection (5)
9 to acquire, the *Land Administration Act 1997*
10 sections 168 and 169 apply as if the interest were an
11 interest in land required for a public work and the
12 licensee were the acquiring authority.

13 (6B) Subject to subsection (6C), no claim lies against a
14 licensee by reason only of any loss of enjoyment or
15 amenity value, or by reason of any change in the
16 aesthetic environment, alleged to be occasioned by the
17 licensee acquiring an interest under this section.

18 (6C) Subsection (6B) does not affect the operation of the
19 *Land Administration Act 1997* section 241(7) and (8A)
20 except where —

21 (a) the interest taken is held by, is vested in, or is
22 otherwise occupied or managed by or on behalf
23 of, the Crown in right of the State or a
24 government department as defined in the *Water*
25 *Agencies (Powers) Act 1984* section 3(1); or

26 (b) the interest taken is in Crown land and is held
27 by, is vested in, or is otherwise occupied or
28 managed by or on behalf of, a local
29 government; or

30 (c) the person from whom the interest is taken
31 requested that the water service be provided, or

- 1 the water service works be provided, operated
2 or maintained, on the land; or
3 (d) the land is part of a subdivision and the water
4 service is provided, or the water service works
5 are provided, operated or maintained, on the
6 land in compliance with a condition of the
7 subdivision.
8

9 **15. Schedule 1 Division 2 inserted**

10 At the end of Schedule 1 insert:
11

12 **Division 2 — Transitional provision for *Land Acquisition***
13 ***Legislation Amendment (Compensation) Act 2014 Part 5***

14 **17. No application to acquisitions before Part 5 commences**

15 The amendments effected by the *Land Acquisition*
16 *Legislation Amendment (Compensation) Act 2014 Part 5* do
17 not apply in relation to the acquisition by a licensee of an
18 interest in land under —

- 19 (a) an agreement entered into before that Part comes
20 into operation; or
21 (b) a taking order made under the *Land Administration*
22 *Act 1997* section 177, as read with section 166 of
23 this Act, before that Part comes into operation.
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