

LAND ACQUISITION LEGISLATION AMENDMENT (COMPENSATION) BILL 2014

EXPLANATORY MEMORANDUM

The Land Acquisition Legislation Amendment (Compensation) Bill 2014 amends four key pieces of legislation which enable the Government to acquire interests in land. The Acts to be amended by this Bill are:

- *Land Administration Act 1997*
- *Energy Operators (Powers) Act 1979*
- *Water Agencies (Powers) Act 1984*
- *Water Services Act 2012*

This Bill is intended to deliver a fairer and more transparent approach for the assessment and determination of compensation for landholders where private property is acquired by the State. The Bill will also ensure that compensation which is payable for the compulsory acquisition of a part of a property is assessed not only on the value of the land taken, but also on the greater impact it has on the entire property.

This Bill is also intended to reduce inconsistencies across different Acts and effect a greater recognition of the true impact of a taking on a landholder.

The Bill implements a number of the recommendations made by the Law Reform Commission of Western Australia in its 2008 report *Compensation for Injurious Affection* (Law Reform Commission Report). Specific provisions of the Bill which implement these recommendations are highlighted below.

Part 1 – Preliminary Matters

This Part contains the title of the Act and the relevant commencement provisions.

Clause 1 - Short title

This clause provides that the Act may be cited as the *Land Acquisition Legislation Amendment (Compensation) Act 2014*.

Clause 2 - Commencement

Subclause (a) provides that Part 1 of the *Land Acquisition Legislation Amendment (Compensation) Act 2014* will commence on the day on which the Act receives Royal Assent.

Subclause (b) provides that the remainder of the *Land Acquisition Legislation Amendment (Compensation) Act 2014* will commence on a day fixed by proclamation. Different days may be fixed for different provisions.

Part 2 – Land Administration Act 1997 amended

This Part amends the *Land Administration Act 1997*.

Clause 3 - Act amended

Part 2 of the *Land Acquisition Legislation Amendment (Compensation) Act 2014* amends the *Land Administration Act 1997*.

Clause 4 - Section 241 amended

This clause amends section 241 of the *Land Administration Act 1997*, which outlines how compensation is determined where interests in land are taken under Part 9 of that Act.

Subclause (1) inserts a requirement that compensation to a person from whom an interest is taken is to be on just terms. This will better ensure that all parties are aware that the provision of just compensation, having regard to the matters in the section, is an object of this section. This amendment implements Recommendation 1 of the Law Reform Commission Report.

Subclause (2) amends the wording of the opening sentence of subsection 241(2) of the *Land Administration Act 1997* to make it consistent with the remainder of section 241.

Subclause (3) replaces section 241(7) with a new subsection (7) and additional subsections (8A)-(8C). The new section 241(7) will enable claims for injurious affection to be made where any interest in land is taken from a claimant who is also the holder of an interest in adjoining land. Presently, compensation for injurious affection is only available where a freehold interest is taken from a claimant who also has a freehold interest in adjoining land. This amendment implements Recommendation 6 of the Law Reform Commission Report. Changes to the wording of section 241(7) also implement recommendations 2, 3 and 4 of the Law Reform Commission Report.

New sections 241(7) and (8A) retain the reference to “the carrying out of, or the proposal to carry out, the public work for which the interest is taken” which is presently found in section 241(7) of the *Land Administration Act 1997*. This phrase is not proposed to be inserted into section 241(2). The absence of the reference to “proposal to carry out” in section 241(2) is not intended to preclude discounting increases or decreases in the value of the interest occurring or caused by something prior to the taking, and attributable to the public work under that provision.

Subclause (3) also introduces a new section 241(8A) which replaces the existing set off requirement in section 241(7). The new set off provision requires that any increase in the value of an interest held by the claimant in adjoining land due to either the severance of the interest or the carrying out (or proposal to carry out) the public work for which the interest

is taken will be set off against any amount of compensation payable under subsection (7). This implements recommendations 11 and 12 of the Law Reform Commission Report.

For the purposes of this section, adjoining land is defined under new subsections (8B) and (8C) as land either directly adjoining the land in which the interest is taken, or land separated from the land in which the interest is taken only by land in which the claimant has an interest, the nature and the extent of which is the same as, or greater than, the nature and extent of the interest taken.

Subclause (4) inserts a new provision into section 241 of the *Land Administration Act 1997* which provides that, where compensation is payable to a person who has suffered damage as described in section 203, interest is to be calculated in a similar manner as where there has been a taking of an interest in land. Subclause (4) also specifies the date from which interest is payable. The amendment effected by subclause (4) requires interest to be paid where currently there is no requirement to do so. This is consistent with the general intent of this Bill to provide just compensation to persons whose interests in land are affected by the exercise of State powers.

In subclause (5), section 241(12) is amended to include a reference to new subsection 241(12A) of the *Land Administration Act 1997*.

Clause 5 - Part 14 inserted

This clause sets out the transitional arrangements for Part 2 of the *Land Acquisition Legislation Amendment (Compensation) Act 2014*. It inserts a new Part 14 into the *Land Administration Act 1997*.

Where an interest in land is taken, the amendments to the *Land Administration Act 1997* effected by Part 2 of the *Land Acquisition Legislation Amendment (Compensation) Act 2014* will not apply where the interest in land is taken under a taking order pursuant to section 177 of the *Land Administration Act 1997* made prior to Part 2 coming into operation.

No specific transitional arrangements have been included in relation to new subsection 241(12A), which operates in relation to interest payable on compensation for the entry on, or occupation of land, or the removal of material under Division 4 of Part 9. Consequently, the changes effected by Clause 4 subclauses (4) and (5) will apply to any existing claims for compensation which are outstanding on the date when Part 2 comes into operation. Subclauses (4) and (5) of Clause 4 remedy an existing oversight in section 241 of the *Land Administration Act 1997* and it is therefore appropriate for these subclauses to have different transitional arrangements to the remainder of Clause 5, which is aimed at changing the basis of determining compensation.

Part 3 – Energy Operators (Powers) Act 1979 amended

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

Clause 6 - Act amended

Part 3 of the *Land Acquisition Legislation Amendment (Compensation) Act 2014* amends the *Energy Operators (Powers) Act 1979*.

Clause 7 - Section 45 amended

This clause amends section 45 of the *Energy Operators (Powers) Act 1979*, which sets out the circumstances under which a claim for compensation can be made against an energy operator for placing works on land.

Subclause (1) amends section 45(1) of the *Energy Operators (Powers) Act 1979* to preclude claims being made against an energy operator in respect of damage attributable to the placing of any works, or other things to which subsection 43(1aa) applies, except where a claim is made within the scope of section 45(3).

Subclause (2) provides that the preclusion of claims for loss of enjoyment or amenity value, or a change in the aesthetic environment, against an energy operator is subject to the new section 45(3A) of the *Energy Operators (Powers) Act 1979*.

Subclause (3) inserts new section 45(3A) into the *Energy Operators (Powers) Act 1979*. This subsection provides that where the energy operator acquires land, or an estate or interest in land, upon, in, over or under which the works are placed, claims that may be made for injurious affection under section 241(7) of the *Land Administration Act 1997* are not prevented from including any effect on value relating to loss of enjoyment or amenity, or a change in the aesthetic environment, except where one of the exceptions discussed below applies.

Aside from the exception categories, this Bill will remove the existing impediment to claims for compensation for injurious affection in relation to the acquisition of interests in land where there is a loss of enjoyment or amenity value, or a change in the aesthetic environment. This is consistent with the intent of recommendation 28 of the Law Reform Commission Report.

Compensation for loss of enjoyment or amenity value, or a change in the aesthetic environment, cannot be claimed where the interest taken is held by, vested in or otherwise occupied or managed by or on behalf of the Crown. This includes where a Local Government holds, or has an interest in Crown land vested in it, or occupies or manages Crown land.

Local Governments are not precluded from claiming relevant compensation, however, where an interest in freehold land held by a Local Government is taken under the Act. In this respect, a Local Government is to be treated the same as a private holder of freehold land.

Where the affected landholder has requested the works to be placed on their land, they will not be entitled to claim compensation for any loss of enjoyment or amenity value, or a

change in the aesthetic environment, alleged to be caused by the placement of those works. In such circumstances, the landholder is receiving a benefit and has already made an informed decision about any detrimental impacts which may be incurred prior to making the request for the infrastructure.

Where the land is part of a subdivision and the works are placed on the land pursuant to a condition of the subdivision, the landholder will not be entitled to claim compensation for any loss of enjoyment or amenity value, or a change in the aesthetic environment, which results from the placement of the works. In that instance, the benefit of being able to proceed with the subdivision is considered to outweigh any detrimental impact on enjoyment or amenity value, or change to the aesthetic environment.

However, should an easement be taken over land to construct infrastructure servicing a subdivision on neighbouring land, the impacted landholder outside of the subdivision will be entitled to compensation.

Subclause (4)(a) inserts into section 45(4) of the *Energy Operators (Powers) Act 1979* a reference to an estate or interest to which subsection (15) applies. This, together with amendments to subsection 45(15), clarifies the intent that the requirement to acquire land imposed by subsection 45(4) does not apply to land, estates or interests in land which is held by or on behalf of the Crown or a Government Department or a Local Government (where the land is Crown land).

Subclause (4)(b) amends section 45(4) of the *Energy Operators (Powers) Act 1979* to require that energy operators acquire an interest in land where works are placed for electricity transmission works operating at 132 000 volts or above. Presently, this requirement only applies for electricity transmission works operating at 200 000 volts or above. This amendment recognises the similarity of impact on land which works between 132 000 volts and 200 000 volts have to those operating at or over 200 000 volts.

Subclause (5) ensures that, where an acquisition by agreement is initiated by the energy operator, that operator must inform the landholder of their rights and the processes which would take place should a compulsory acquisition occur. This requirement already exists in the *Land Administration Act 1997*, and this amendment will remove the existing inconsistency between that Act and the *Energy Operations (Powers) Act 1979*.

This amendment gives effect to recommendation 24 of the Law Reform Commission Report.

Subclause (6) remedies an existing drafting issue with section 45(15) of the *Energy Operations (Powers) Act 1979*. Currently, section 45(15) may be interpreted so as to apply to freehold land held by a Local Government. This interpretation would be inconsistent with the policy intent of subclause (3) of this Bill, which treats freehold land held by a Local Government in the same way as privately held freehold land.

As such, subclause (6) clarifies that the exception to the application of subsection 45(4) of the *Energy Operations (Powers) Act 1979* only applies to land, or an interest in land, held by, or on behalf of, the Crown or a Government Department or a Local Government (where the land is Crown land).

Clause 8 - Section 46 amended

This clause clarifies that the power of entry conferred by section 46 of the *Energy Operations (Powers) Act 1979* does not authorise or require an energy operator to acquire any interest in land, except as provided for in section 45(4). This drafting is consistent with the equivalent provision in the *Water Agencies (Powers) Act 1984*; section 70(3)(c).

Clause 9 - Section 126 inserted

This clause sets out the transitional arrangements for Part 3 of the *Land Acquisition Legislation Amendment (Compensation) Act 2014*.

The amendments effected by Part 3 will not apply to acquisitions of interests in land where either the relevant agreement has been entered into or a taking order has been made before Part 3 comes into operation.

Part 4 – Water Agencies (Powers) Act 1984 amended

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

Clause 10 - Act amended

Part 4 of the *Land Acquisition Legislation Amendment (Compensation) Act 2014* amends the *Water Agencies (Powers) Act 1984*.

Clause 11 - Section 81 amended

This clause amends section 81 of the *Water Agencies (Powers) Act 1984*, which sets out the circumstances under which a claim for compensation can be made against the Minister for placing works on land.

Subclause (1) precludes, subject to subsection 81(3) of the *Water Agencies (Powers) Act 1984*, claims being made against the Minister in respect to damage caused by the placing of works to which section 84(1aa) applies or the grant of a right of access under subsection 84(2). This provision also removes the reference to subsection 84(1), which was previously deleted from the *Water Agencies (Powers) Act 1984*.

Subclause (2) provides that the preclusion of claims for loss of enjoyment or amenity value, or a change in the aesthetic environment, against the Minister is subject to the new section 81(3A) of the *Water Agencies (Powers) Act 1984*.

Subclause (3) inserts new section 81(3A), into the *Water Agencies (Powers) Act 1984*. This subsection provides that, where the Minister acquires land, or an estate or interest in land, upon, in, over or under which the works are placed, claims that may be made for injurious affection under section 241(7) of the *Land Administration Act 1997* are not prevented from including any effect on value relating to loss of enjoyment or amenity or a change in the aesthetic environment, except where one of the exceptions discussed below applies.

Aside from the exception categories, this Bill will remove the existing impediment to claims for compensation for injurious affection in relation to compulsory acquisition of interests in land where it results from loss of enjoyment or amenity value, or a change in the aesthetic environment. This is consistent with the intent of recommendation 29 of the Law Reform Commission Report.

Compensation for loss of enjoyment or amenity value, or a change in the aesthetic environment cannot be claimed where the interest taken is held by, vested in, or otherwise occupied, or managed by, or on behalf of, the Crown. This includes where a Local Government holds or has an interest in Crown land vested in it, or occupies or manages Crown land.

Local Governments are not precluded from claiming relevant compensation, however, where an interest is taken under the Act in freehold land held by a Local Government. In this respect, a Local Government is to be treated in the same way as a private holder of freehold land.

Where the affected landholder has requested the works to be placed on their land, they will not be entitled to claim compensation for any loss of enjoyment or amenity value, or a change in the aesthetic environment, alleged to be caused by the placement of those works. In such circumstances, the landholder is receiving a benefit, and has already made an informed decision about any detrimental impacts which may be incurred, prior to making the request for the infrastructure.

Where the land is part of a subdivision and the works are placed on the land pursuant to a condition of the subdivision, the landholder will not be entitled to claim compensation for any loss of enjoyment or amenity value, or a change in the aesthetic environment, which results from the placement of the works. In that instance, the benefit of being able to proceed with the subdivision is considered to outweigh any detrimental impact on enjoyment or amenity value, or the aesthetic environment.

However, should an easement be taken over land to construct infrastructure servicing a subdivision on neighbouring land, the impacted landholder outside of the subdivision will be entitled to compensation.

Subclause (5) ensures that where an acquisition by agreement is initiated by the Minister, the Minister must inform the landholder of their rights and the processes which would take

place should a compulsory acquisition occur. This requirement already exists in the *Land Administration Act 1997*, and this amendment will remove the existing inconsistency between that Act and the *Water Agencies (Powers) Act 1984*.

This amendment gives effect to recommendation 24 of the Law Reform Commission Report.

Clause 12 - Part XI inserted

This clause sets out the transitional arrangements for Part 4 of the *Land Acquisition Legislation Amendment (Compensation) Act 2014*. It inserts a new Part XI into the *Water Agencies (Powers) Act 1984*.

The amendments effected by Part 4 will not apply to acquisitions of interests in land where either the relevant agreement has been entered into or a taking order has been made before Part 4 comes into operation.

Part 5 – Water Services Act 2012 amended

This Part amends the *Water Services Act 2012*.

Clause 13 - Act amended

Part 5 of the *Land Acquisition Legislation Amendment (Compensation) Act 2014* amends the *Water Services Act 2012*.

Clause 14 - Section 166 amended

This clause amends section 166 of the *Water Services Act 2012*, which sets out the circumstances under, and processes by which, a licensee may take an interest in land. Sections 166(6A) to (6C) are to be inserted into the Act.

Section 166(6A) ensures that, where an acquisition by agreement is initiated by the licensee, that licensee must inform the landholder of their rights and the processes which would take place should a compulsory acquisition occur. This requirement already exists in the *Land Administration Act 1997*, and this amendment will remove the existing inconsistency between that Act and the *Water Services Act 2012*.

Sections 166(6B) and (6C) ensure a consistent approach is adopted to claims for compensation for loss of enjoyment or amenity value, or a change in the aesthetic environment, alleged to be caused by a licensee acquiring an interest under section 166, with equivalent claims under the *Energy Operators (Powers) Act 1979* and *Water Agencies (Powers) Act 1984*. This is consistent with the intent of recommendation 29 of the Law Reform Commission Report.

In particular, where a licensee acquires an interest in land, a claim that may be made for injurious affection under section 241(7) of the *Land Administration Act 1997* is not

prevented from including any effect on value relating to loss of enjoyment or amenity, or a change in the aesthetic environment, except where one of the exception categories below applies.

Compensation for loss of enjoyment or amenity value, or a change in the aesthetic environment, cannot be claimed where the interest taken is held by, vested in, or otherwise occupied or managed by, or on behalf, of the Crown. This includes where a Local Government holds or has an interest in Crown land vested in it, or occupies or manages Crown land.

Local Governments are not precluded from claiming relevant compensation, however, where an interest is taken under the Act in freehold land held by a Local Government. In this respect, a Local Government is to be treated the same as a private holder of freehold land.

Where the affected landholder has requested the water service be provided or water service works be provided, operated or maintained on their land, they will not be entitled to claim compensation for any loss of enjoyment or amenity value, or a change in the aesthetic environment, alleged to be caused by the licensee acquiring an interest in the land. In such circumstances, the landholder is receiving a benefit, and has already made an informed decision about any detrimental impacts which may be incurred, prior to making the request for the infrastructure.

Where the land is part of a subdivision and the water service is provided, or water service works are provided, operated, or maintained works are placed on the land pursuant to a condition of the subdivision, the landholder will not be entitled to claim compensation for any loss of enjoyment or amenity value, or a change in the aesthetic environment, which results from the placement of the works. In that instance, the benefit of being able to proceed with the subdivision is considered to outweigh any detrimental impact on enjoyment or amenity value, or change in the aesthetic environment.

However, should an easement be taken over land to construct infrastructure servicing a subdivision on neighbouring land, the impacted landholder outside of the subdivision will be entitled to compensation.

Clause 15 - Schedule 1 Division 2 inserted

This clause sets out the transitional arrangements for Part 4 of the *Land Acquisition Legislation Amendment (Compensation) Act 2014*.

The amendments effected by Part 5 will not apply to acquisitions of interests in land where either the relevant agreement has been entered into or a taking order has been made before Part 5 comes into operation.