



New South Wales

# Land Acquisition (Just Terms Compensation) Amendment Act 2016 No 59

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# Land Acquisition (Just Terms Compensation) Amendment Act 2016 No 59

Act No 59, 2016

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An Act to amend the *Land Acquisition (Just Terms Compensation) Act 1991* to make further provision with respect to the acquisition of land on just terms by authorities of the State as a consequence of reviews of the operation of that Act. [Assented to 14 November 2016]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Land Acquisition (Just Terms Compensation) Amendment Act 2016*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

## **Schedule 1      Amendment of Land Acquisition (Just Terms Compensation) Act 1991 No 22**

### **[1]    Section 4 Definitions**

Omit the definition of *solutium* from section 4 (1). Insert in alphabetical order:  
*disadvantage resulting from relocation* is defined in section 60.

### **[2]    Section 10A**

Insert after section 10:

#### **10A    Minimum period of negotiation for acquisition by agreement before initiation of compulsory acquisition process**

- (1) This section applies to land that is affected by a proposal for acquisition by an authority of the State, other than a proposal to acquire:
  - (a) Crown land, or
  - (b) an easement, or right to use land, under the surface for the construction or maintenance of works, or
  - (c) a stratum under the surface for the construction of a tunnel.
- (2) The authority of the State is to make a genuine attempt to acquire the land by agreement for at least 6 months before giving a proposed acquisition notice.
- (3) The owner of the land and the authority of the State may agree to a shorter or longer period of negotiation for the acquisition of the land by agreement.
- (4) The Minister responsible for the authority of the State may approve a shorter period of negotiation, but only if the Minister is satisfied that the urgency of the matter or other circumstances of the case make it impracticable to have any longer period of negotiation. Any such approval requires the concurrence of the Minister administering this Act (being concurrence given for the particular approval or given generally for an approval of that kind).
- (5) This section does not prevent a continuation of negotiation after the giving of a proposed acquisition notice.
- (6) The authority of the State is not required to comply with this section if:
  - (a) the owner of the land notifies the authority that the owner is not prepared to negotiate with the authority for the acquisition of the land by agreement, or
  - (b) the owner of the land cannot be located after the making of reasonable inquiries.
- (7) Nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

### **[3]    Section 13 Minimum period of notice**

Insert after section 13 (2):

- (3) The approval of a shorter period of notice under subsection (2) (b) requires the concurrence of the Minister administering this Act (being a concurrence given for the particular approval or given generally for an approval of that kind).

### **[4]    Section 26 Compensation for acquisition under this Division**

Omit “solutium”. Insert instead “disadvantage resulting from relocation”.

**[5] Section 27A**

Insert after section 27:

**27A Review of decisions on hardship applications by independent person**

- (1) An owner of land who has given an authority of the State a notice under this Division requiring the authority to acquire the land may apply to the Secretary of the Department of Finance, Services and Innovation for a review of a decision of the authority not to acquire the land because:
  - (a) the land is not designated by the operation of this Division for acquisition by the authority for a public purpose, or
  - (b) the owner will not suffer hardship if there is any delay in the acquisition of the land, or
  - (c) the authority is not otherwise required under this Division to acquire the land.
- (2) An application for the review of any such decision is to be made within 28 days after the owner of the land is notified of the decision by the authority of the State.
- (3) The Secretary is to refer the application to a reviewer for determination. The reviewer is to be a suitably qualified person appointed by the Minister who is not associated with the authority of the State or the applicant.
- (4) The reviewer:
  - (a) if satisfied that this Division requires the authority to acquire the land—is to quash the decision and decide the matter in accordance with this Division, or
  - (b) if not so satisfied—is to confirm the decision.

The reviewer is to endeavour to determine the application within 28 days after the application is referred to the reviewer.
- (5) The decision of the reviewer is final and is required to be given effect to by the authority of the State.
- (6) If the authority of the State fails to acquire land under this Division within 90 days after the owner of the land gives a notice to the authority under this Division to acquire the land, the authority is taken, for the purposes only of an application for review under this section, to have made a decision not to acquire the land.
- (7) The regulations may make provision for and with respect to the making of applications under this section, the appointment of reviewers and the determination of those applications.

**[6] Section 34 Former owner's right to occupy land until compensation paid etc**

Insert after section 34 (3):

- (3A) Despite subsection (3), rent is not payable during the relevant 3-month period by a former owner who remains in occupation of any part of a building that is the person's principal place of residence. A former owner does not include a person who only held a leasehold interest in the acquired land.

**[7] Section 39 Claim for compensation**

Insert "or with the Valuer-General" after "the land concerned" in section 39 (1).

**[8] Section 39 (5)**

Insert after section 39 (4):

- (5) As soon as practicable after an authority of the State or the Valuer-General receives a claim for compensation:
  - (a) the authority must give the Valuer-General a copy of the claim, or
  - (b) the Valuer-General must give the authority a copy of the claim, as the case requires.

**[9] Section 41 Valuer-General's determination of amount of compensation**

Omit section 41 (1). Insert instead:

- (1) The authority of the State must, within 7 days after it compulsorily acquires land, provide the Valuer-General with a list of the issues that the authority believes are relevant to the determination of the amount of compensation by the Valuer-General.

**[10] Section 41 (3)**

Insert after section 41 (2):

- (3) The Valuer-General is to provide a copy of the determination of the amount of compensation (together with any report on the value of the land prepared by or for the Valuer-General) to:
  - (a) the authority of the State concerned, and
  - (b) the former owner to whom the compensation is payable.

**[11] Section 42 Notice of compensation entitlement and offer of compensation**

Omit "30 days" from section 42 (1) and (4), wherever occurring. Insert instead "45 days".

**[12] Section 42 (4)**

Omit "The Minister responsible for an authority of the State". Insert instead "The Minister".

**[13] Section 42 (8)**

Omit the subsection. Insert instead:

- (8) The obligation of the Valuer-General under section 41 (3) to provide a copy of the determination of the amount of compensation to the former owner applies despite a failure by the authority of the State to give a compensation notice to the former owner as required by this section.

**[14] Section 55 Relevant matters to be considered in determining amount of compensation**

Omit section 55 (e). Insert instead:

- (e) the disadvantage resulting from relocation,

**[15] Section 56 Market value**

Insert after section 56 (2):

- (3) If:
  - (a) the land is used for a particular purpose and there is no general market for land used for that purpose, and

- (b) the owner genuinely proposes to continue after the acquisition to use other land for that purpose,

the market value of the land is taken, for the purpose of paying compensation, to be the reasonable cost to the owner of equivalent reinstatement in some other location. That cost is to be reduced by any costs for which compensation is payable for loss attributable to disturbance and by any likely improvement in the owner's financial position because of the relocation.

**[16] Section 60 Disadvantage resulting from relocation**

Omit section 60 (1) and (2). Insert instead:

- (1) In this Act:

*disadvantage resulting from relocation* means non-financial disadvantage resulting from the necessity of the person entitled to compensation to relocate the person's principal place of residence as a result of the acquisition.

- (2) The maximum amount of compensation in respect of the disadvantage resulting from relocation is \$75,000.

**Note.** Schedule 1A provides for the amendment of this section to enable the maximum amount of compensation to be increased by regulation and for the automatic indexation of the maximum amount in line with inflation.

**[17] Section 60 (3), (4) and (5)**

Omit "solatium" wherever occurring.

Insert instead "the disadvantage resulting from relocation".

**[18] Part 4, heading**

Insert "and return of acquired land" after "abandoned acquisition of land".

**[19] Section 71A**

Insert after section 71:

**71A Land not required for acquired purpose to be first offered to former owner**

- (1) This section applies to land:
- (a) that has been acquired by an authority of the State (being an acquisition to which this Act applied as referred to in section 5), and
  - (b) that the authority proposes to dispose of because the land is no longer required for the public purpose for which it was acquired.
- (2) The authority must, if practicable, first offer the land for sale to the former owner at the market value of the land at the time the offer is made if:
- (a) not more than 10 years has elapsed since the acquisition, and
  - (b) the authority has not made substantial improvements to the land, and
  - (c) the land is not Crown land, and
  - (d) the land is not proposed to be disposed of to another authority of the State for a public purpose.
- (3) For the purposes of this section, land is no longer required for the public purpose for which it was acquired if:
- (a) the land has not been used and is no longer proposed to be used for the public purpose for which it was acquired, or

- (b) the regulations otherwise provide that the land is no longer required for the public purpose for which it was acquired.
- (4) The regulations may make provision for or with respect to offers for sale, the review of decisions of authorities and other matters arising under this section.
- (5) A person dealing with an authority of the State is not concerned to inquire whether this section has been complied with, and the vesting in a person of an interest in land is not affected by any contravention of this section.
- (6) In this section:
  - former owner** of land means:
    - (a) if the land was acquired by the authority of the State from only one individual who is still alive or from only one corporation that is still in existence—that individual or corporation, or
    - (b) in any other case—such persons (if any) that the authority of the State considers, having regard to the interests in the land that existed immediately before the land was acquired, should be fairly entitled to the benefit of this section.
  - market value** of land at any time means the amount that would be paid for the land if it is sold by a willing but not anxious seller to a willing but not anxious buyer.

[20] **Schedule 1A**

Insert before Schedule 2:

**Schedule 1A Increase and indexation of maximum amount of compensation for disadvantage resulting from relocation**

**1 The “maximum compensation amount”**

In this Schedule, the **maximum compensation amount** means the maximum amount of compensation in respect of the disadvantage resulting from relocation.

**2 Increase by regulation**

The regulations may amend section 60 to increase the maximum compensation amount. Any such regulation may exclude or modify the application of clause 3 as a consequence of the increase in the maximum compensation amount.

**3 Indexation for inflation**

- (1) The maximum compensation amount is to be adjusted for inflation as provided by this clause on 1 July 2017 and on 1 July in each subsequent year.
- (2) The maximum compensation amount is to be adjusted on each 1 July by multiplying the maximum compensation amount immediately before that 1 July by  $\frac{B}{A}$  where:

**B** is the Consumer Price Index number for the last quarter for which such a number was published before that 1 July.



*A* is the Consumer Price Index number for the last quarter for which such a number was published before the previous 1 July.

- (3) However, the maximum compensation amount is not to be adjusted if  $\frac{B}{A}$  is less than 1 (as a result of deflation).
- (4) If the adjusted maximum compensation amount results in an amount that is not a whole number multiple of \$1, the adjusted amount is to be rounded up to the nearest whole number multiple of \$1.
- (5) The Secretary of the Department of Finance, Services and Innovation is to publish notice of each adjusted maximum compensation amount under this clause on the NSW legislation website.
- (6) In this clause:

**Consumer Price Index** means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

**Consumer Price Index number**, in relation to a quarter, means the number for that quarter appearing in the Consumer Price Index.

#### **4 Application of Schedule**

Any increase in the maximum compensation amount under this Schedule applies to an acquisition of land on or after the increase has effect.

#### **[21] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

any Act that amends this Act

#### **[22] Schedule 3**

Insert at the end of the Schedule:

### **Part 4 Provisions consequent on the enactment of Land Acquisition (Just Terms Compensation) Amendment Act 2016**

#### **6 Definition**

In this Part:

**amending Act** means the *Land Acquisition (Just Terms Compensation) Amendment Act 2016*.

#### **7 Amendment relating to minimum period of negotiation**

Section 10A (as inserted by the amending Act) applies to any proposed acquisition by compulsory process made after the commencement of that section. Any period of negotiation that occurred before that commencement may be taken into account for the purposes of that section.

#### **8 Amendment relating to hardship acquisition**

Section 27A (as inserted by the amending Act) applies to any decision made by an authority of the State after the commencement of that section.

**9 Amendment relating to compensation on reinstatement basis**

Section 56 (3) (as inserted by the amending Act) applies to compensation for an acquisition by compulsory process made after the commencement of that subsection.

**10 Amendment relating to restoration of acquired land**

Section 71A (as inserted by the amending Act) applies to any land acquired by compulsory process under this Act after the commencement of that section.

[Second reading speech made in—  
Legislative Council on 20 October 2016  
Legislative Assembly on 9 November 2016]