

Update: Property rights and just terms compensation

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Worthwhile read for: Property Owners

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On 12 June 2019, the Honourable Rick Mazza proposed there be an inquiry into whether where there is a public benefit to be derived from privately owned property compensation should be paid and the encumbrance registered on the Certificate of Title (**CoT**). Please see our previous alert [Property rights and just terms compensation](#) for further information and background to the inquiry.

After a 16-month inquiry, the Western Australian (**WA**) Parliament's Standing Committee on Public Administration (**Committee**) tabled its report entitled *Private Property Rights: the need for disclosure and fair compensation* (**Report**).

The Report contains 55 findings and 46 recommendations, which support a conclusion that it is often necessary for the WA Government to interfere with individual property rights for urban development, protection of the environment and preservation of sensitive resources. However, the difficulty for individuals to identify encumbrances impacting their titles, largely because many WA Government interests are not required to be registered, has led to great uncertainty and diminished community confidence in the Torrens titles system.

In this alert Solicitor [Lily Robinson](#) and colleagues provide an overview of the Report's recommendations.

Encumbrances on Certificate of Title

Many submissions received by the Committee supported the registration of all interests affecting property on a CoT. However, due to concerns with the cost and complexity associated with doing so for landowners and conveyancers, the Committee's recommendations focused on:

- creating public awareness of disclosure issues; and
- increasing disclosure of encumbrances affecting individual property rights in Property Interest Reports (**PIR**) and the Shared Land Information Platform (**SLIP**).

Some of the recommendations include:

- inclusion of disclaimers on Landgate's website about the types of interests that are not included in PIRs and disclaimers on PIRs advising that not all interests affecting land are included;
- the Premier issues a Circular instructing WA Government agencies and departments responsible for interests affecting land to share relevant data with Landgate;
- the Minister for Lands directs Landgate to inquire into and report on measures that need to be implemented and the resources required for the WA Government to guarantee that the information contained in a PIR and on the SLIP is accurate and complete; and
- the Minister for Environment directs the Environmental Protection Authority, in collaboration with Landgate, to list each individual Environmental Protection Policy in PIRs.

In acknowledging the benefits associated with the registration of all interests affecting property on a CoT, the Committee recommended that the Minister for Lands direct Landgate to inquire into and report on the consequences for WA Government agencies and landowners if the WA Government were to require all interests affecting land to be registered on the CoT.

Compensation on just terms

The Report recognised that the WA Government's need to interfere with individual private property rights for a public purpose must be balanced against the need to pay fair and reasonable compensation to those individuals whose private property rights are affected.

As mentioned in our previous [alert](#), pursuant to the *Land Administrative Act 1997* (WA), compensation is claimable by a landowner whose land is compulsorily acquired or affected by reservation, or by an authorised authority for a public purpose. However, the claim for compensation does not extend to where the government otherwise interferes with property rights for a public purpose and restricts property rights, such as declaring land an Environmentally Sensitive Area.

The Committee, among other things, considered whether a provision similar to that in the Commonwealth Constitution requiring property to be acquired on 'just terms' should be inserted into the WA Constitution. The Committee found that this would not be appropriate for reasons including:

- it could impact other areas of state legislation, which impede the WA Government in achieving its legislative agenda and the WA Parliament's ability to enact legislation;
- implementation would require a WA referendum to be introduced;
- it would represent a departure from the approach adopted in other states; and
- it could undermine public interest in private rights in situations where the compensation payable might be prohibitive.

In response to these findings, the Committee made the following recommendations:

- the WA Government amend section 241 of the *Land Administration Act 1997* to include a reference to 'just' compensation; and
- the WA Government amend relevant sections of all legislation, which enables the WA Government to take actions impacting private property rights to require compensation on just terms.

Comment

The Committee's failure to make a recommendation for the registration of all interests affecting property on a CoT is a missed opportunity to help alleviate the diminished integrity and eroded community confidence in the Torrens title system. We must now wait to see what findings are made in the Minister for Land's report, which is not required to be tabled until June 2023.

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