

Just Compensation: When do we want it? Now!

12 October 2015

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In July last year, we published an article that considered the *Taking of Property on Just Terms Bill 2014* (**TPJT Bill**) in relation to the acquisition of private property in Western Australia. Here we consider the *Land Acquisition Amendment (Compensation) Bill 2014* (**LAA Bill**) and the State Government's more recent approach to reforming private property rights of landowners in WA.

Acquisition of land in Western Australia

A host of legislative instruments give government authorities the power to acquire private property either compulsorily or by agreement with the landholder (**Taking Acts**).¹ The State's powers to acquire land and pay compensation are principally governed by the *Land Administration Act 1997* (WA) (**the Act**) which enables any interest in land to be taken for the provision of public works such as roads, hospitals and schools.

What's all the noise about?

The shortcomings of the current legal framework in protecting the rights of private landowners have long been recognised by the State Government. In 2013, the Government made a commitment "to clarify and improve legislation providing for compensation when the state acquires privately held land for a public purpose".²

Not all Taking Acts expressly provide for the payment of compensation to affected landowners. Pursuant to the *Environmental Protection Act 1986* (**EPA**), private land may be declared an 'Environmentally Sensitive Area' (**ESA**). ESAs are prohibited from being cleared without a permit. Typically, conduct defined as 'clearing' under the EPA may catch day-to-day farming activities such as grazing of stock.³ This means that a farmer whose land is declared an ESA is effectively prevented from using that land for farming. In 2009 WA farmer, Peter Swift, found himself charged for illegally clearing his land and it took until 2013 for the matter to progress and Swift to be found not guilty.⁴ That case highlights the devastating financial consequences and disruption to business caused by the legislative deficiency.

The current legislative framework governing the acquisition of property in WA fails to account for the wide variety of circumstances in which private land may be interfered with by the State.

Proposed Reforms

Taking of Property on Just Terms Bill 2014

The TPJT Bill was introduced into Parliament on 14 May 2014. As highlighted in our previous alert, the TPJT Bill, if enacted, will enshrine the common law right to compensation on just terms. The TPJT Bill will remedy the current shortfall in the legislative framework by expressly providing for compensation to be paid on just terms to all affected landowners where the State takes, or otherwise interferes with property, either directly or indirectly and whether intentionally or unintentionally.

This expansive approach to reforming the current legislative framework would see compensation paid to landowners whose land is declared an ESA.

Land Acquisition Legislation Amendment (Compensation) Bill 2014

The LAA Bill was introduced into Parliament on 27 November 2014. The aim of the Bill is to reinforce private property rights and provide for a fairer approach to the assessment of compensation paid to landowners when public works are performed on their land.

The LAA Bill will ensure the amount of compensation paid to an affected landowner will take into account the full impact the taking has on an interest in land (including purchasing, leasing or taking an easement over land). The most extensive reforms focus on compensation to be provided by water and energy providers for loss of amenity where an interest in land is acquired.

Also, the LAA Bill will introduce 'A Private Property Rights Charter for Western Australia' (**Charter**). The Charter is intended to be used as a guide by the government when making decisions that affect private property rights. The Charter emphasises principles of transparency, timeliness and fair compensation.

It appears the State Government will be taking a more restrictive approach to reforming the current legislative framework if the LAA Bill is enacted rather than the TPJT Bill. Although the LAA Bill will extend compensation to include situations where property is interfered with by the State in providing essential services by energy and water providers, it fails to extend to other situations in which interests in land are interfered with by the State, such as under the EPA.

Watch this space

Successive governments have grappled with the complex legal framework surrounding the acquisition of land in WA. In today's society where private property is interfered with in a wide variety of circumstances, it is appropriate for the government to remedy the interference of property rights by introducing an appropriate legislative framework to ensure just compensation is paid to affected landowners.

Both Bills are currently before the Legislative Assembly and it will be interesting to observe which Bill ultimately succeeds.

For more information of discussion, please contact HopgoodGanim Lawyers' [Planning & Environment](#) team.

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1. See for example the *Public Works Act 1902*, the *Planning and Development Act 2005* and the *Environmental Protection Act 1986*.
 2. Western Australia, *Parliamentary Debates*, Legislative Assembly, 27 November 2014, 8992b, Mr C. J. Barnett, Premier.
 3. *Environmental Protection Act 1986* (WA) s 51A.
 4. <http://www.abc.net.au/news/2014-11-10/farmer-wants-compensation-after-environmental-laws-lock-up-land/5880890>

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