

Discussion paper

A review of land acquisition in NSW



Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past and present through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Discussion paper – a review of land acquisition in NSW

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More information

This discussion paper was written by the Department of Planning, Housing and Infrastructure. For more information, email the Land Acquisition Review team at larp@dpie.nsw.gov.au

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The Berry Bypass, Shoalhaven, NSW

Foreword



I am pleased to announce the NSW Government's review into land acquisition in NSW, including the government's acquisition processes and the application of key legislation.

The NSW Land Acquisition (Just Terms Compensation) Act 1991 (the Just Terms Act) is essential legislation that provides the procedures that are to be followed when a government agency, local council or state-owned corporation is empowered by legislation to acquire land, whether compulsorily or by agreement, for public purposes and major infrastructure. It includes provisions for determining 'just' compensation.

The government intends the acquisition process to be easy to understand and transparent. It wants to strike the right balance between landowners' rights and the provision of essential public infrastructure. In our ever-growing state, it is crucial for government agencies and corporations to provide and upgrade essential infrastructure for the people of NSW. This includes creating and upgrading roads, electricity and water infrastructure, community services, schools and hospitals. The Just Terms Act plays an important role in providing these essential public purposes.

The Just Terms Act has been in place for more than 30 years and has been subject to several reviews. These include the 'Russell' and 'Pratt' reviews and a recent joint parliamentary inquiry into land acquisition for major transport projects by the Legislative Council's Portfolio Committee No. 6 – Transport and Customer Service. Community feedback has identified that there is an opportunity for an improved experience for landowners. The government wants to ensure that the Just Terms Act remains fit for purpose and continues to serve the people of NSW. That is why the Department of Planning, Housing and Infrastructure is reviewing the Just Terms Act and whole-of-government approach to land acquisitions on behalf of the NSW Government.

This discussion paper is released for public consultation and includes eight key themes for consideration. I encourage members of the community and interested parties to review the discussion paper and to have their say on options to improve land acquisition in NSW.

I look forward to considering feedback and implementing improvements that meet community and stakeholder expectations, as well as high public administration standards.

Stephen Kamper
Minister for Lands and Property

Part 1 – Introduction

The land acquisition review

In June 2023, the former Department of Planning and Environment (now the Department of Planning, Housing and Infrastructure) began a review of the Land Acquisition (Just Terms Compensation) Act 1991 (the Just Terms Act) and associated whole-of-government approach to acquisitions.

The review is a response to the 2022 parliamentary inquiry (2022 inquiry) into the acquisition of land in relation to major transport projects.¹

The NSW Government has committed to:

- conducting a review of the Just Terms Act, taking into account the concerns raised in the 2022 inquiry about acquiring land for major transport projects
- reviewing the whole-of-government approach to property acquisitions, and
- ensuring that NSW Government agencies and the public are involved in this review through consultation.

The review will consider matters raised by government, non-government, and industry groups, Aboriginal and Torres Strait Islander communities and the public.

The approach and steps for this review

The department will consider stakeholder comments, relevant legislation in other jurisdictions and feedback from the public consultation on this discussion paper.

Following the public consultation and thorough analysis of feedback, the department will submit to the government recommendations concerning legislative, policy and administrative reforms to the Just Terms Act, as well as improvements to government acquisition processes.

A timeline for the review:

- Have your say – a public consultation with all stakeholders (22 March to 3 May 2024).
- Compile feedback and prepare any suggested amendments and process improvements (mid 2024).
- Present recommendations for the government to consider (mid to late 2024).

Figure 1. A timeline for the review process



1. Legislative Council Portfolio Committee no. 6 (2022) [Acquisition of land in relation to major transport projects \(PDF 1.72 MB\)](#). Report 17 August 2022. Retrieved from www.parliament.nsw.gov.au

Consultation to date in this review

In addition to considering earlier reviews of the Just Terms Act (see Part 4), key government agencies, and acquiring authorities and local councils were consulted in late 2023. The department received 31 responses. These included suggestions to address risks and inconsistencies in the legislation and associated processes. The responses were gathered into themes and reviewed by a working group of key acquiring authorities and government agencies.

The process for changes to the Just Terms Act

The review aims to provide recommendations which:

- improve the acquisition process and provide increased transparency
- remove uncertainty or complexity in the legislation
- promote consistency, and
- clarify the legal rights of landowners and obligations for acquiring authorities.

Following the review, recommendations will be presented to the government for consideration.

No changes to the Just Terms Act can or will be made without first being introduced to and passed by the NSW Parliament.

An outline of this discussion paper

Part 1 of this discussion paper is an overview of the review process and how feedback from consultation will be used to develop recommendations for the government.

Part 2 is an overview of the Just Terms Act.

Part 3 sets out themes to prompt discussion on key issues and options. It does not reflect the government's position or recommendations for reform.

Part 4 provides information about past reviews. A summary of the findings of those reviews is outlined in Appendix 1.

Feedback on this discussion paper

The government will seek public feedback through the 'Have your say' website from 22 March to 3 May 2024. The department encourages members of the community to give written feedback and consider the questions about suggested improvements to the Just Terms Act and government acquisition processes. Visit www.planning.nsw.gov.au/land-acquisition-review.

This feedback is an essential part of the review. It will help to identify where the government can improve the Just Terms Act and associated processes.

Your feedback can respond to some or all of the questions raised in this discussion paper or you can provide your views on other aspects of the Just Terms Act or the whole-of-government approach to land acquisition.

The department will review all feedback after the 'Have your say' closing date.

Next steps

Once the consultation period ends, all feedback will be collated and used to inform recommendations to the government.

If you have any questions about the review process, please email larp@dpie.nsw.gov.au.



The Sea Cliff Bridge, Coalcliff, NSW

Part 2 – Overview of the Just Terms Act

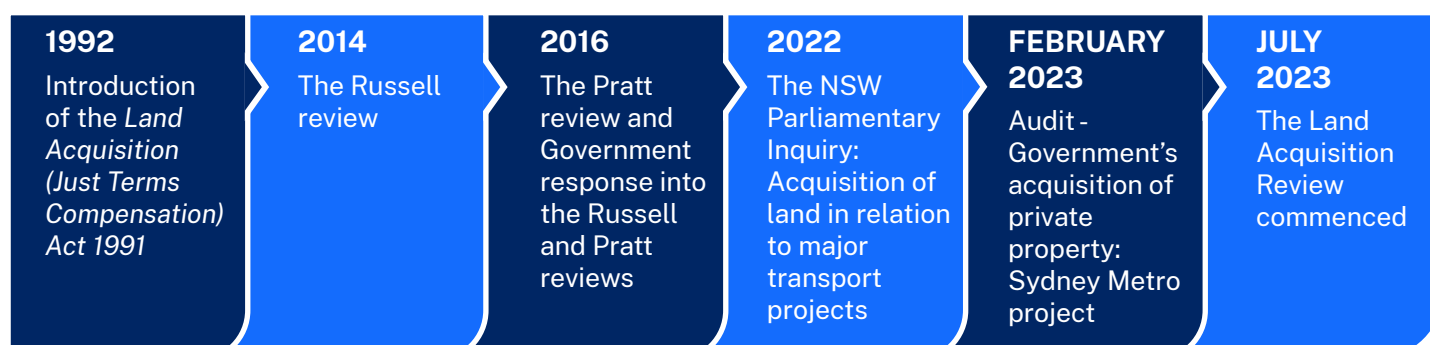
The role of the Just Terms Act

The Just Terms Act commenced on 1 January 1992. It was intended to address problems with the previous acquisition system including the:

- absence of a legal obligation for government authorities to pay compensation to landowners based on just terms
- inconsistencies in processes between acquiring authorities, and
- ability of the state government to acquire land compulsorily without notifying the landowner beforehand.

The Just Terms Act and associated processes have been reviewed several times in the past decade. Part 4 provides a summary of those reviews.

Figure 2. Timeline of land acquisition reviews in NSW since the introduction of the Just Terms Act



The Just Terms Act sets out the processes the government must follow to acquire land from a landowner, compulsorily or by agreement, for a public purpose. A public purpose may include, but is not limited to, public roads, airports, schools, hospitals or environmental conservation.

Not all government agencies have acquisition powers. Specific NSW legislation gives a state government agency, state-owned corporation or local council the authority to acquire land. It also specifies the public purposes for which they may acquire the land.

An example is the *Electricity Supply Act 1995*. This Act authorises a state network operator to acquire land to exercise its functions under that Act, such as constructing transmission lines.

This discussion paper uses the term 'acquiring authorities' to refer to entities authorised to acquire land (or an interest in land) for a public purpose.

The government intends the land acquisition process to be equitable, easy to understand and transparent while striking the right balance between the rights of landowners and the delivery of essential public infrastructure. These principles, embodied in the objects of the Just Terms Act, are to:

- guarantee that when land affected by a proposal for acquisition by an authority of the state is eventually acquired, the amount of compensation will be not less than the market value of the land, unaffected by the proposal, at the date of acquisition
- ensure compensation on just terms for the landowner of land that is acquired by an authority of the state when the land is not available for public sale

- establish new procedures for the compulsory acquisition of land by authorities of the state to simplify and expedite the acquisition process
- require an authority of the state to acquire land designated for acquisition for a public purpose where hardship is demonstrated, and
- encourage the acquisition of land by agreement instead of a compulsory process.²

The process of land acquisition in NSW

When an acquiring authority identifies private land is needed for a public purpose, it can acquire the land or an interest in the land, such as an easement or lease, under the Just Terms Act.

The land can be acquired in 2 ways:

- by agreement, following negotiation, between the landowner and the acquiring authority, or
- by compulsory acquisition.

The acquisition process usually follows these steps³:

- **Opening letter** – the acquiring authority sends the landowner a notice of intention to acquire land.
- **Letter of offer** – the acquiring authority sends the landowner a written letter of offer with details of the terms and conditions of the acquisition, including the compensation payable for the acquisition.
- **Negotiation** – the landowner and acquiring authority negotiate the terms and conditions of the acquisition, including the compensation. The minimum negotiation period is 6 months.

Where a negotiated agreement for the acquisition is reached, the land is acquired. Where a negotiated agreement cannot be reached, the following steps are taken:

- **Compulsory acquisition** – the acquiring authority may start a compulsory acquisition if it cannot reach an agreement with the landowner after 6 months. It does this by sending the landowner a proposed acquisition notice.

- **Proposed acquisition notice** – this must be given at least 90 days before the land is compulsorily acquired. It may be less than 90 days if this is agreed in writing with the landowner and the acquiring authority or if the minister approves a shorter period.
- **Agreement after the compulsory process starts** – a landowner and acquiring authority may still reach an agreement after the compulsory process starts.
- **Land acquisition** – the acquiring authority acquires the land by publishing a gazette notice in the NSW Government Gazette as soon as practicable after the minimum period of notice, but within 120 days of the proposed acquisition notice being given.
- **Determination** – the NSW Valuer General determines the amount of compensation offered to the landowner by the acquiring authority for the compulsory acquisition of their land.
- **Objection** – if a landowner disagrees with the NSW Valuer General’s determination, they may lodge an objection to the amount of compensation offered by the acquiring authority with the Land and Environment Court.

The amount of compensation is calculated in accordance with the Just Terms Act⁴. It must account for:

- the market value of the land
- any special value to the landowner
- any loss due to severance
- any loss due to disturbance
- the disadvantage from relocation, and
- any change to the value of other land of the person that adjoins or is severed from other land owned if this change is due to the acquisition.

The Just Terms Act does not apply if the land is available for public sale and is then purchased by agreement.⁵

If the land is ‘land designated for acquisition for a public purpose’⁶, a landowner may apply for early acquisition on the grounds of hardship as defined by the Just Terms Act. The landowner must show they will suffer hardship if there is a delay in the acquisition of land. An acquiring authority is not required to acquire land unless it considers that the landowner will suffer hardship.

2. [Land Acquisition \(Just Terms Compensation\) Act 1991, section 3](#)

3. The Centre for Property Acquisition website gives more detailed information on the [land acquisition process](#)

4. [Land Acquisition \(Just Terms Compensation\) Act 1991, section 55](#)

5. [Land Acquisition \(Just Terms Compensation\) Act 1991, section 5](#)

6. [Land Acquisition \(Just Terms Compensation\) Act 1991, section 21](#)

Part 3 – Options for reform

As part of the review, key government agencies and all acquiring authorities were consulted, including local councils.

Eight themes for possible improvements to land acquisition in NSW were identified, being:

- **Theme 1 – Genuine negotiation**
- **Theme 2 – Mediation**
- **Theme 3 – Clarify compensation provisions**
- **Theme 4 – Hardship**
- **Theme 5 – NSW Valuer General determinations**
- **Theme 6 – Legislative amendments to clarify requirements**
- **Theme 7 – Coordination of multiagency acquisitions**
- **Theme 8 – Consistency in government acquisition processes.**

The following sections discuss these themes in greater detail. Each section offers suggestions for updates to the Just Terms Act and government acquisition processes to support a clear and accountable land acquisition process for all parties. Questions to prompt ideas and discussion are at the end of each theme.

Theme 1 – Genuine negotiation

Section 10A of the Just Terms Act provides a minimum of 6 months for the acquiring authority to make a 'genuine attempt to acquire the land by agreement' before giving a proposed acquisition notice.

Introduced in 2017, it is designed to 'encourage parties to direct substantial efforts towards reaching agreement by the end of the fixed negotiation period'⁷.

It applies to land affected by a proposal for acquisition by an acquiring authority. It does not apply to:

- a proposal to acquire Crown land
- an easement, or right to use land, under the surface for the construction or maintenance of works, or
- a stratum under the surface for the construction of a tunnel.

Clarify a 'genuine attempt' to reach agreement

In the early stages of an acquisition, the Just Terms Act requires an acquiring authority to make a 'genuine attempt' to acquire land by agreement with the landowner. However, the Just Terms Act does not clearly define what a 'genuine attempt' means. The meaning of 'genuine' has also been reviewed in court⁸.

Previous reviews have also highlighted opportunities to improve consistency in:

- how acquiring authorities negotiate with landowners, and
- the information given to a landowner to guide negotiations on compensation.

7. Russell SC David J (February 2014) [Review of the Land Acquisition \(Just Terms Compensation\) Act 1991 \(PDF 774KB\)](#)

8. [Elmasri v Transport for NSW \[2021\] NSWSC 929](#)

The Centre for Property Acquisition provides Property Acquisition Standards⁹ which guide acquiring authorities on how to:

- improve the experience of landowners by giving them enough information, and
- conducting negotiations in a way that allows the landowner to make an informed decision and to access independent advice to support this.

These standards are currently not mandated within the Just Terms Act.

Changes to section 10A have been suggested to mandate requirements within the Just Terms Act and improve consistency in whole-of-government acquisition practices. These suggested changes are explained in more detail below.

Clarify the start of the minimum negotiation period

Under the Just Terms Act, an acquiring authority must make a genuine attempt to acquire land by agreement for at least 6 months before giving a proposed acquisition notice. In certain circumstances, the relevant minister can approve a shorter timeframe.

Currently, the start of the minimum negotiation period is not clearly defined. However, it may be assumed to start with the first written correspondence provided to the landowner about the acquisition of land.

Amendments to section 10A could clarify that:

- an acquiring authority must give a landowner written notice (called an 'opening letter') if their land is affected by a proposal for acquisition, and
- that the minimum 6 month period of negotiation for acquisition by agreement starts when the opening letter is given to the landowner, or on a later date specified in the opening letter.

Create a clearer and consistent opening letter

There are currently no clear requirements in the Just Terms Act about the information to give the landowner at the start of negotiation for acquisition by agreement. Standard information would enhance consistency across the government and the experience of landowners. It is suggested that an opening letter could contain the relevant information to inform landowners of the processes under the Just Terms Act, as well as their rights and obligations.

Standard information that may be mandated for an opening letter includes:

- the start and end dates for the 6 month negotiation period
- information on options for advance payments that a landowner may be able to access (for example, legal and valuation costs)
- a commitment that the acquiring authority will not use non-disclosure agreements
- a commitment that any letter of offer will be evidence-based and include easy-to-understand information about the compensation offered, and
- information about the Property Acquisition Support Line¹⁰, a free service provided to landowners for emotional and psychological wellbeing and support.

Introduce a mandated negotiation timeframe after a letter of offer

It is good practice that a letter of offer is provided to the landowner, including a reasonable amount of information about the basis and breakdown of the offer of compensation, soon after the opening letter is provided so that negotiation can begin.

Some landowners have felt that offers of compensation provided late in the 6 month negotiation period did not allow them enough time to consider the offer or to come to an agreement with the acquiring authority on compensation, or the terms of the acquisition.

An option to address this may be to provide a minimum negotiation period to the landowner, for example 3 months from the date of receipt of the letter of offer, to allow for genuine negotiation. While this could increase the 6 month negotiation period in some instances, an acquiring authority may mitigate this potential increase by making an offer early in the negotiation period.

9. NSW Government (2024) [Property Acquisition Standards](#)

10. NSW Government (2024) [Property Acquisition Support Line](#)

Figure 3. How the option for a minimum timeframe of 3 months for negotiation might work



Negotiation timeframe for material changes in the acquisition

In some cases, there is a material change to the terms of the acquisition from those described in the opening letter. For example, when the area of land proposed to be acquired has substantially increased in size because of further detailed design work.

A change to the current process to allow a further minimum negotiation period could be considered in these cases. For example, a substantial material change could trigger an additional negotiation period of 3 months. This would give the landowner extra time to consider the changes, get more advice as needed, and negotiate with the modified requirements in mind.

Introduce an evidence-based letter of offer

There is no consistency in respect to acquiring authorities providing a valuation report to support their initial offer.

An option to improve consistency is to require all letters of offer to be evidence-based, with clear and easy to understand information regarding compensation. This may include a valuation report and a breakdown of the compensation in line with the Just Terms Act. If a valuation report is not included, the letter of offer may provide information to support the offer and provide a sound foundation for negotiation.

Ensure all landowners receive notice and allow minor interests to opt out of the process

A 'landowner' refers to all registered interests, including minor interests and other interests, that may or may not be entitled to compensation. In some cases, a landowner's interest is a 'minor interest' which is unaffected by the acquisition. An example of a minor interest may be a right of carriageway that slightly changes location as a result of the acquisition but continues to function in the same way.

It has been suggested that landowners with a minor interest should not be required to negotiate or receive a proposed acquisition notice where it is considered that their interest will not lead to a claim for compensation. In this case, they may voluntarily choose to opt out of notifications.

Suggested potential improvements include:

- confirming in the Just Terms Act that all interests are to be notified in writing of the intention to acquire their land (by receipt of an opening letter), and
- providing an option for minor interests to voluntarily opt out of negotiations where their interest is unaffected by the acquisition (for example, will not lead to a claim for compensation).

Allow landowners to apply for advance payments for legal, valuation or other relevant expert services

The Just Terms Act does not include options for landowners to apply for financial support before engaging their own legal or valuation services or other relevant expertise to help them during the acquisition.

The Just Terms Act requires the acquiring authority to reimburse reasonably incurred legal and valuation costs after the acquisition as part of the compensation. However, some landowners do not have the financial capacity to engage legal and valuation services at the start of the acquisition process.

A change could be considered to allow a landowner to apply for an advance payment for legal, valuation and other relevant expertise.

This could help landowners to negotiate more effectively with an acquiring authority. An advance payment could be a set amount that increases in line with the consumer price index each year.

Remove non-disclosure agreements

Feedback from the 2022 inquiry and consultation

undertaken for this review suggest that non-disclosure agreements may limit transparency and consistency, and the ability of landowners to gain support from family or their community. The use of non-disclosure agreements is also inconsistently applied by acquiring authorities.

To ensure consistency and to increase transparency, it has been suggested that acquiring authorities do not use non-disclosure agreements.

Options include:

- confirming in the Just Terms Act that the use of non-disclosure agreements is prohibited for all acquisitions, and
- mandating standard information in the opening letter, including a commitment that the acquiring authority will not use non-disclosure agreements.

Question for discussion

- **What do you think of the suggested options within Theme 1?**
- **Do you have any other suggestions to encourage acquisition by agreement?**

Theme 2 – Mediation

The Just Terms Act encourages the acquisition of land by agreement instead of by a compulsory acquisition process.

It compels acquiring authorities to make a genuine attempt to acquire land by agreement for at least 6 months before giving a proposed acquisition notice. Acquiring authorities should engage meaningfully with all aspects of a landowner's claim.

In some cases, no agreement is reached through negotiation. This may result in compulsory acquisition where the NSW Valuer General determines the compensation amount. If the landowner disagrees with the Valuer General's determination, this may lead to proceedings in the Land and Environment Court.

Provide landowners with an option to engage an independent mediator

Providing landowners with the opportunity to engage an independent mediator may support acquisition by agreement. The mediation could be voluntary for landowners, with both parties agreeing to the process before it starts. The mediation could take place during

the 6 month negotiation period and finish before the issue of a proposed acquisition notice. This provides clear timeframes for the mediation. The process could reduce uncertainty for landowners often associated with protracted negotiations.

Although there would be an initial cost to the government in setting up a panel of qualified mediators in line with the government's board and committee requirements, having the option of mediation could benefit landowners.

If implemented, the number of acquisitions by agreement may increase, reducing the need for compulsory acquisition.

Questions for discussion

- **Would a mediation option place landowners in a better negotiating position?**
- **If mediation is introduced, should it be for all land types?**

Theme 3 – Clarify compensation provisions

The Just Terms Act compensates landowners when the government acquires land that is not available for public sale. The compensation is to be paid on just terms.

The compensation amount offered to a landowner must consider:

- the market value of the land on the date of its acquisition
- any special value of the land to the person on the date of its acquisition
- any loss attributable to severance
- any loss attributable to disturbance
- disadvantage resulting from relocation (solatium), and
- any change in the value of land that is adjoining or is severed by the acquired land.

These matters apply to both acquisition by agreement and compulsory acquisition.

Feedback from the 2022 inquiry and consultation undertaken for this review suggested consideration of a range of compensation issues to increase clarity. The following sections give more detail.

Clarify or revise the definition of special value

'Special value' refers to the financial value of any advantage, in addition to market value, that is incidental to the landowner's use of the land. For example, special value may apply for a person with a disability whose house is fitted out for their specific needs.

There are few occasions where claims for special value have been successful when tested in court. Therefore, it is suggested that the definition of special value may need to be clarified or revised to better explain to landowners when this compensation is payable.

Provide greater certainty on disturbance costs

Under the Just Terms Act¹¹, acquiring authorities must reimburse reasonably incurred legal costs and valuation fees. However, landowners sometimes need advice from other experts such as town planning, quantity surveying, geotechnical and hydrology professionals to determine the value of their land.

The Just Terms Act does not provide that the fees of non-valuation experts are payable by acquiring authorities. Recent Land and Environment Court decisions have allowed these costs where a lawyer requires the expert to provide advice on the amount of compensation payable. It has been suggested that the Just Terms Act be amended to confirm this position. This would remove the risk that the recent court decisions are overturned on appeal.

Such an amendment could also address another issue raised in the review involving business valuers and accountants. Presently, there are restrictions on claiming the costs of these experts as valuation fees under section 59(1)(b). This is despite these experts regularly advising on the acquisition of business interests.

In terms of costs generally, a NSW Court of Appeal decision stated that section 59 needs an assessment of whether the costs have been 'reasonably incurred' and not necessarily whether the costs are 'reasonable'. However, it would not be appropriate for an acquiring authority to pay 'unreasonable' costs. The payment of costs should be evidence-based, fair and transparent. An amendment to the Just Terms Act may be appropriate to confirm that the acquiring authority is obliged to pay the 'reasonable costs' incurred by landowners.

Clarify the position on compensation for lost profits

Until recently, a person carrying on a business on the acquired land could claim lost profits arising from the relocation of the business or where the business was extinguished by the acquisition. Recent NSW Court of Appeal decisions have raised doubts that the loss of profits is claimable. Options could be considered for further clarifying provisions relating to lost profits in the Just Terms Act.

Clarifying provisions for stamp duty (transfer duty)

A landowner can claim compensation for stamp duty incurred on the purchase of other land for relocation if they own and occupy the acquired land. In Queensland, the legislation expressly allows an investor to claim stamp duty and other costs in buying replacement land.

Recent case law has changed the interpretation of provisions relating to stamp duty in the Just Terms Act. It is therefore suggested that the application of stamp duty provisions be clarified.

11. [Land Acquisition \(Just Terms Compensation\) Act 1991, section 59](#)

Account for changes in value of adjoining or severed land and part interests (injurious affection)

The Just Terms Act states that ‘any increase or decrease in value of any other land of the person’ that ‘adjoins or is severed from the acquired land’ is to be accounted for in any compensation. This is called compensation for ‘injurious affection’.

It is not clear how this applies if the adjoining land is owned by the dispossessed landowner and another person as joint tenants or tenants in common. The Just Terms Act could be clarified to confirm that the landowner should only be compensated for the loss of value to adjoining land based on the percentage or share of their ownership of that adjoining land.

Consider compensation for strata lots and community lots

Some acquisitions can have significant impacts on unit owners in a strata plan or landowners in a community title subdivision.

Owners of lots within a strata plan cannot claim compensation where the common property in the strata plan is acquired because they have no ‘interest’ in the common property. The *Strata Schemes Development Act 2015*¹² excludes unit holders from claiming compensation. This is the same for community land under the *Community Land Development Act 2021*.¹³

Queensland legislation was changed in 2009 to enable unit owners to claim for injurious affection to better compensate owners.

It has been raised during the review that changes could be considered to allow strata unit owners, and landowners in community title subdivisions, to claim compensation for injurious affection.

Clarify how payments are calculated for ‘disadvantage resulting from relocation’ (solatium)

Disadvantage resulting from relocation (often referred to as solatium) is compensation paid to a person for non-financial disadvantage resulting from the need to relocate from their principal place of residence because of an acquisition.

If a landowner terminates a tenant’s interest at short notice after receiving an opening letter, the tenant cannot claim for disadvantage resulting from relocation. A tight rental market may mean tenants cannot find

alternative accommodation, particularly if they are unemployed, on pensions or live with a disability.

An option to address this may be to add a new requirement in the Just Terms Act to compensate the person who was the occupier of the acquired land/ dwelling at the date of the opening letter. The term of the lease could be taken into account in this instance.

Compensation payments under this section also need to be more consistent across government. A government guideline on how to fairly calculate the amount for disadvantage resulting from relocation could support this objective.

Further clarify the provision for reinstatement compensation

‘Reinstatement’ is compensation based on how much the landowner would need to acquire a comparable property in another location.

This matter was extensively examined during the Russell review and the Just Terms Act was amended on 1 March 2017 with the insertion of section 56(3) to include a provision to allow for reinstatement in cases where there is a limited market for unique property types. Several other jurisdictions have similar provisions.

The review has highlighted areas of uncertainty in how reinstatement provisions in the Just Terms Act are interpreted and applied in practice. An option to address this may be to amend section 56(3) of the Just Terms Act to provide more clarity around the circumstances where reinstatement applies.

Other ‘just’ mechanisms

Other options to ensure a landowner is not disadvantaged by the acquisition process may include:

- clarifying when compensation is payable for substratum impacts – for example, the threshold for disturbance. Compensation would still be paid for substratum acquisitions that affect the land surface or the support of the surface
- considering a timeframe for lodging a substratum claim, such as three years after works in the subsurface stratum are complete
- considering options to claim compensation if the acquiring authority starts an acquisition but abandons it before issuing a proposed acquisition notice (for example, allow the landowner to claim for any legal costs, valuation and other necessary expert fees).

12. [Strata Schemes Development Act 2015](#)

13. [Community Land Development Act 2021](#)

Questions for discussion

- What do you think of the suggested options to clarify certain compensation provisions?
- Do you have any other suggestions to clarify compensation provisions?

Theme 4 – Hardship

A landowner can apply for early acquisition on the grounds of hardship. Hardship may occur when a landowner's land has been designated for acquisition, but the acquiring authority does not need the land for some time.

To establish hardship, the landowner must show they cannot sell the land or sell it at market value because it has been designated for acquisition. They must also show they need to sell the land due to pressing personal, domestic or social reasons or to avoid a loss of income.

The government provides guidelines for landowners on the hardship application process and for acquiring authorities on the assessment process. These include information on application requirements, designation over land, assessing hardship, the merits review of a hardship application, the method and timing of the acquisition of land and assessing compensation. These guidelines could be strengthened to ensure acquiring authorities apply hardship provisions consistently.

Options to support better regulation of hardship may include:

- defining in the Just Terms Act the minimum information needed to support a hardship application, and
- mandating reporting on hardship acquisitions (for example, reporting key data for hardship acquisitions where compensation is agreed between the landowner and acquiring authority, and where compensation is determined by the NSW Valuer General).

Other options are described below.

Review timeframes to determine hardship

The Just Terms Act is not clear on the timetable for the review of hardship applications.

The following are proposed as options to provide clarity to hardship review timeframes:

- amend the Just Terms Act to make it clear that the application for hardship must be determined by the acquiring authority within, say, 28 days after receiving the application
- where hardship is accepted, the acquiring authority must complete the acquisition of the land within, for example, 60 days of accepting the application, and
- where hardship is rejected but later overturned on review, the acquiring authority must complete the acquisition of the land within say 60 days of the decision on the review.

No change is proposed concerning how compensation is to be assessed (other than for disturbance as discussed below). The parties can either agree on compensation or, if not agreed, the acquisition will be compulsory in which case compensation is determined by the NSW Valuer General.

Permitting landowners to claim costs to support a hardship application

Currently, landowners are unable to claim the legal costs of proving they fall within the category of hardship. In addition, the payment of reasonably incurred legal, valuation and other expert fees incurred to work out the market value of the land is subject to a discretion by the acquiring authority.

There may be merit in introducing a new requirement that if hardship has been established, the acquiring authority pays the legal costs to support a hardship application and the usual legal costs, valuation fees and costs for other relevant expertise to determine appropriate compensation.

Improve guidance on the impact of reserving land for a public purpose

If an acquiring authority reserves land for a future public purpose, it may impact a landowner or the saleability of the land.

If an acquiring authority no longer wants to acquire land subject to a reservation, it must use its 'best endeavours' to remove the reservation on the land in line with section 27(b) of the Just Terms Act. The section does not state any time limit and this action rarely happens in practice.

It has been suggested that acquiring authorities need better guidance on the implications of reserving land within an environmental planning instrument for use exclusively for a public purpose. Guidance is also suggested for the process of removing a reservation.

Question for discussion

- **What do you think of the suggested options regarding hardship?**
- **What would be a suitable timeframe for an acquiring authority to acquire the land after a hardship application is made?**

Theme 5 – NSW Valuer General determinations

There is no stated requirement for the NSW Valuer General to determine compensation within a specific time, but the Just Terms Act implies 45 days after the publication of the acquisition notice in the gazette (gazettal date).

Recent reviews¹⁴ considered the NSW Valuer General's timeliness in determining compensation. Valuation NSW and the NSW Valuer General have recently introduced process improvements. It is noted however that 45 days may be an unrealistic timeframe to determine complex acquisitions that require multiple experts engaged under government procurement rules.

Suggested options may include:

- require the NSW Valuer General to complete the determination within a clear timeframe, for example, 60 days after the gazettal date. An exception could be a written agreement with the landowner and the acquiring authority with appropriate reasons for a longer timeframe, such as engaging a specific expert, or when the landowner or acquiring authority ask for more information
- provide a mechanism to implement a 'stop-the-clock'¹⁵ provision for complex matters to improve transparency around timeframes. A stop-the-clock provision could exclude the time taken by processes outside of the NSW Valuer General's control, such as the time taken to procure a specialist report or advice. Timeframes for any stop-the-clock provisions would need to be clearly defined to ensure transparency
- consider a separate timeframe for compensation determinations that include native title.

The NSW Valuer General's policy¹⁶ provides more detail around the current timeframes.

The Just Terms Act does not mandate that an acquiring authority must pay the service fee for the NSW Valuer General's compensation determination. It has been suggested during the review that this requirement be mandated.

Questions for discussion

- **Should the timeframe for the NSW Valuer General to make a determination be extended to 60 days, for example? Note this may not apply to native title determinations.**
- **Would a stop-the-clock provision provide greater transparency for landowners on when they will receive their determination of compensation?**

14. Audit Office of New South Wales (9 February 2023) [Government's acquisition of private property: Sydney Metro project](#)

15. Collins Dictionary (2024) [Definition of stop the clock](#)

16. NSW Valuer General (2021) [Your guide to the Valuer General's role in compulsory acquisition](#)

Theme 6 – Legislative amendments to clarify requirements

Feedback during the review has given several suggestions for legislative amendments. These could be an opportunity to clarify requirements and improve experiences for the acquiring authority and the landowner.

Clarify the meaning of ‘land’ and ‘interest in land’

There is some confusion on the definition of land in the Just Terms Act. ‘Land’ sometimes means physical land and at other times an ‘interest in land’.

It has been suggested to:

- simplify the definition of ‘land’ in the Just Terms Act, and align it with recent Court of Appeal decisions¹⁷
- clarify if the term ‘land’ used in the Just Terms Act, refers to the concept of land as a physical thing or the concept of ‘interest in land’, and
- issue a government guidance note on the meaning of ‘land’ and ‘interest in land’ to assist landowners and acquiring authorities.

Increase timeframes to gain Governor approval for gazetting a compulsory acquisition

The Governor of NSW currently gives approval to gazette a compulsory acquisition after a proposed acquisition notice is issued. A proposed acquisition notice must be given at least 90 days before the land is compulsorily acquired and must be completed within 120 days of the notice, giving a 30 day timeframe for which the gazette can be published.

Where not completed in 120 days, the proposed acquisition notice is considered to be withdrawn. An acquiring authority cannot issue a new proposed acquisition notice within 12 months without ministerial approval.

Some acquiring authorities find they need more time for Governor approval to gazette the acquisition notice for compulsory acquisition.

Consideration could be given to increasing the timeframe to gazette an acquisition notice.

Ensure acquiring authorities carry out reporting

The Just Terms Act does not provide for managing and sharing acquisition information. Mandatory reporting could increase accountability and transparency for all parties involved in compulsory acquisitions. An option is to add a new section in the Just Terms Act concerning data sharing, reporting and evaluation, which also provides for prescribed annual acquisition reporting on key acquisition data for all freehold and non-freehold interests.

Some acquiring authorities do not invite landowners to complete a post-acquisition survey. This means a critical evaluation element is missing from the acquisition process.

It has been suggested that acquiring authorities could be required to issue a standard survey after acquisition. This would give all landowners the chance to give the government feedback on their experiences. It also provides an opportunity for the government to act on feedback.

The Centre for Property Acquisition has an important role within government to collect and publish key property acquisition data from acquiring authorities. Property acquisition data is available on their website¹⁸.

Update references and clarify minor procedural matters

It has been identified as part of this review that there is an opportunity to update redundant references to other legislation and entities in the Just Terms Act. The review could also clarify minor procedural matters to improve consistency.

Questions for discussion

- What do you think about these suggested options?
- Do you have any other suggestions for legislative changes to clarify requirements?

17. [Olde English Tiles Australia Pty Ltd v Transport for NSW \[2022\] NSWCA 108](#); [Dial A Dump Industries Pty Ltd v Roads and Maritime Services \[2017\] NSWCA 73](#)

18. Centre for Property Acquisition (2024) [Property acquisition data](#)

Theme 7 – Coordination of multiagency acquisitions

The government is working to improve how acquisitions are coordinated when more than one acquiring authority needs to acquire land on the same property. Feedback from this review has also highlighted the opportunity to improve the experience for the landowner.

Improve coordination of multiagency acquisitions

A coordinated approach could mean landowners would not receive multiple approaches from different acquiring authorities. While agencies and local councils already collaborate to reduce the disruption for landowners, there is potential to improve and formalise this. Better coordination between acquiring authorities could also:

- help landowners get a complete picture of the acquisition processes affecting their land
- provide a central point of contact, and
- help reduce duplicated costs across multiple acquiring authorities for legal, valuation and other expert services for the same land.

Options for centrally coordinated functions may include:

- analysis of land required by the various acquiring authorities
- coordination of proposed acquisition notices
- status reporting for acquisitions supported by a central register
- a central negotiation point for the landowner
- dispute resolution
- assessment of hardship applications, and
- requiring acquiring authorities to consolidate their proposed acquisition notices and spend time with the landowner to explain the plans and timing.

Greater coordination could provide a net saving to government and, more importantly, a consistent experience for landowners.

Questions for discussion

- Do you have suggestions to improve the coordination of multiagency acquisitions?

Theme 8 – Consistency in government acquisition processes

Opportunities have been identified under this review to improve how acquiring authorities interpret and apply the objects of the Just Terms Act. Most acquiring authorities have clear and auditable processes for acquisitions. However, some acquiring authorities do not have the same resources or experience to appropriately interpret the legislation and conduct acquisitions in such a robust and timely way. The options below seek to improve consistency.

Develop minimum requirements and standard documents

Developing standard minimum requirements and guidelines for acquiring authorities could support consistency and promote a better experience for landowners. This may range from standard guidelines and templates for key acquisition processes, to legislated 'minimum standards' or 'codes of practice', which standardise acquisition processes for acquiring authorities.

Greater central oversight functions within government

It has been suggested that there is a need to clearly define a central role within government to administer all aspects of the Just Terms Act. This may include monitoring and reporting on the performance of acquiring authorities and their compliance with processes under the Just Terms Act. Central oversight may work to improve transparency by ensuring processes are open and known for all users of the legislation, including landowners. Reporting and evaluation will also help to build trust with the community and promote accountable administration of land acquisition in NSW. The role may also include the periodic review of the Just Terms Act and associated whole-of-government acquisition processes to respond to changing circumstances and needs.



Ballina Skatepark

It is important to note that the Centre for Property Acquisition¹⁹ is an existing independent service that has the role of helping landowners to understand the property acquisition process. They also provide information and training to help acquiring authorities to understand their obligations, as well as monitoring and reporting on the performance of acquiring agencies relating to acquisitions in NSW.

Register acquisition managers

The government wants to ensure appropriately experienced and qualified persons conduct acquisition activities.

An option to ensure this may be to register acquisition managers and require they undertake standard training in acquisition processes provided by the Centre for Property Acquisition. This would help to ensure that acquisition managers are appropriately skilled and up to date with industry standards. It may also promote a greater level of expertise across government and improve the experience for landowners.

Strengthen guidance on native title and Aboriginal land rights when acquiring land

When an acquiring authority acquires Crown land, the land is often subject to native title and Aboriginal interests. Feedback to this review has identified an opportunity to expand on guidance for acquiring authorities on how to manage these interests.

The review received feedback from the government, Aboriginal stakeholders and the community that highlighted that there could be better understanding of the relationship between the Just Terms Act, the *Native Title Act 1993* (Cth), and the *Aboriginal Land Rights Act 1983* and how these work together.

There is no intention, as part of this review, to remove or change the legislative rule under the Aboriginal Land Rights Act that land vested to an Aboriginal land council cannot be acquired under the Just Terms Act without an Act of parliament²⁰. However, there is an opportunity to strengthen government guidance on native title and Aboriginal interests when acquiring land for a public purpose.

Question for discussion

- What do you think of the suggested options within Theme 8?
- Do you have any suggestions to improve guidance and consistency for whole-of-government acquisition processes?

19. NSW Government (2024) [About the Centre for Property Acquisition](#)

20. [Aboriginal Land Rights Act 1983 –s.42B](#)

Part 4 – Supplementary information

Previous reviews

The Russell review

The Russell review was commissioned by the NSW Government in 2012. The review was conducted by David J. Russell SC and submitted to the then Minister for Finance and Services in February 2014. The review aimed to examine the state's just terms compensation legislation as it applied to real property rights. The terms of reference of the review included:

- defining and clarifying real property rights or interests in real property
- recommending a set of principles to guide the process for how acquisitions of real property should be dealt with by the government
- considering whether and how those principles should be reflected in current legislation, and
- recommending a process for considering these principles in future legislation.

The review did not include the amount of compensation payable for acquisitions of real property²¹. A summary of the recommendations is included in Appendix 1.



Dulwich Hill Station – light rail, Sydney

The Pratt review

The Pratt review was a citizen-focused review of the property acquisition process in NSW. The review was led by Michael Pratt AM, the then NSW Customer Service Commissioner. The review aimed to deliver a fairer, more transparent process for landowners, while improving the consistency and accountability of acquiring authorities. A summary of the recommendations is included in Appendix 1.

Reforms following the Russell and Pratt reviews

A significant program of land acquisition reforms was undertaken in response to the Russell and Pratt reviews²². A total of 20 proposed changes were made, falling into three categories: legislative, administrative and operational improvements. These aimed to provide a fairer, more transparent and equitable process for landowners.

Reforms included:

- a fixed 6 month negotiation period before compulsory acquisition could start
- an increase in the maximum amount of disadvantage from relocation (formerly solatium) from \$27,235 to \$75,000 indexed to the consumer price index (it is currently \$91,560 for acquisitions of land on or after 1 July 2023)
- the introduction of an independent merits review of hardship decisions by acquiring authorities
- reinstatement in certain circumstances
- publication of a plain language land acquisition guide²³
- mandating that acquiring authorities hold at least one face-to-face meeting with the landowner and provide them with the land acquisition information guide
- the NSW Valuer General provide a preliminary valuation report to the landowner before a final determination of compensation is made, and

21. Russell SC David J (February 2014) [Review of the NSW Land Acquisition \(Just Terms\) Compensation Act 1991 \(PDF 774KB\)](#)

22. NSW Government (2014) [NSW Government response-Review of the NSW Land Acquisition \(Just Terms\) Compensation Act 1991 and Housing Acquisition Review \(PDF 1.79MB\)](#)

23. Centre for Property Acquisition (August 2022) [A guide to property acquisition in NSW \(PDF 1.66MB\)](#)

- several improvements to provide landowners with a better experience, such as a dedicated case manager and a review of all materials to ensure landowners, tenants and businesses were provided with accurate and easy-to-understand information.

Several of the reforms have been implemented through policy and some through legislation. But further work is needed to ensure that the reforms are applied in a robust and consistent way across government agencies. The review aims to take these learnings and recommend further reforms to address the issues raised.

Inquiry into acquisition of land in relation to major transport projects

The Legislative Council Portfolio Committee No. 6 – Transport and Customer Service conducted an inquiry into the acquisition of land for major transport projects and handed down its report, *Acquisition of land in relation to major transport projects*²⁴, on 10 August 2022. The 2022 inquiry received 99 submissions and held six formal hearings, with input from a broad range of stakeholders including members of parliament, councils, government bodies and officials, business owners, community groups, solicitors and individual landowners.

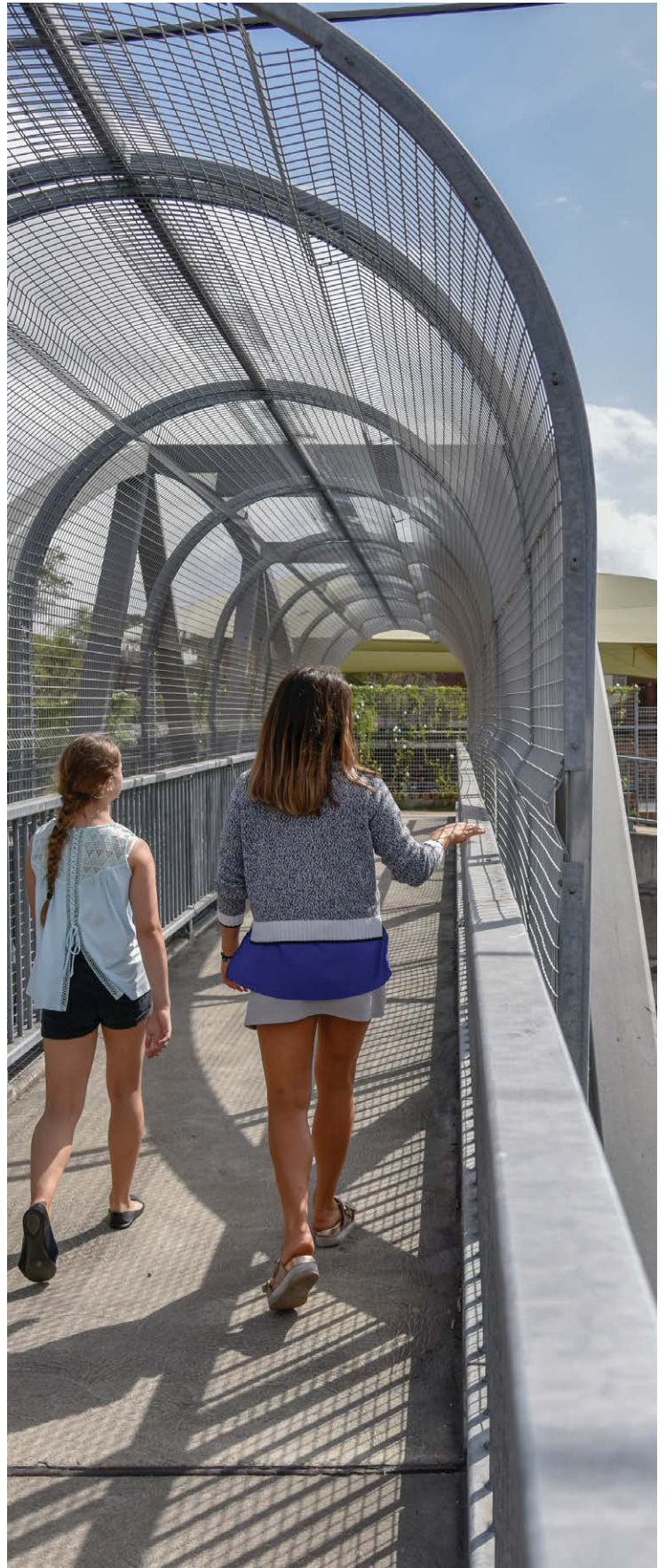
The report documented ten recommendations for improvements to the operation of the Just Terms Act and to whole-of-government improvements to the acquisition process.

A summary of the 2022 inquiry’s findings and recommendations is in Appendix 1.

Performance Audit – Government’s acquisition of private property: Sydney Metro project

On 9 February 2023, the NSW Auditor General published a report into the effectiveness of the acquisition of private properties for the Sydney Metro project²⁵. The performance audit assessed agencies against the legislative and policy requirements in place for government acquisitions of private property in NSW.

A summary of findings and recommendations is outlined in Appendix 1.



A pedestrian bridge over the Princes Highway at Arncliffe

24. Legislative Council of NSW (August 2022) [Report 17-Acquisition of land in relation to major transport projects \(PDF 1.72MB\)](#)

25. Audit Office of NSW (9 February 2023) [Government’s acquisition of private property: Sydney Metro project \(PDF 2.15MB\)](#)

Appendix 1 – Summary of previous review findings

Inquiry into land acquisitions for major transport projects

The Legislative Council Portfolio Committee No. 6's inquiry into the acquisition of land in relation to major transport projects (the inquiry) started in March 2021.

The inquiry's findings were released in August 2022 as *Report 17: Acquisition of land in relation to major transport projects*. It made ten recommendations that broadly related either to suggested improvements to the Just Terms Act or government improvements to compulsory acquisition processes.

Recommendations 1 to 9

That the NSW Government:

1. commission an independent review into land acquisitions undertaken in relation to each of the major transport projects referred to in this report, with:
 - this review to consider probity issues and compliance with the legislative framework and compensation outcomes for affected landholders
 - previous property owners entitled to additional compensation to rectify errors by acquiring authorities
 - the findings of this review to be made publicly available (out of scope of this review)
2. implement a continuous review process to ensure acquiring authorities comply with legislative frameworks for future acquisitions related to transport projects
3. amend section 10A of the Just Terms Act to ensure that:
 - acquiring authorities are obliged to genuinely negotiate
 - letters of offer are provided soon after the negotiation period commences, with a reasonable amount of information provided to affected owners on the basis and breakdown of offers
 - acquiring authorities provide partial upfront payments to affected owners including for expert reports and legal fees
 - acquiring authorities ensure the independence of valuers and where conflicts of interest arise these are drawn to the attention of the owner
 - owners can access an independent mediator, if requested
4. seek to remove all non-disclosure terms that currently apply in all residential land acquisition agreements and any other agreements entered into by acquiring authorities with residents impacted as a result of infrastructure projects and not enter into any such future non-disclosure agreements
5. urgently amend the basis for determining compensation in the Just Terms Act to introduce a 'reinstatement' approach to the calculation of 'market value'
6. act to ensure that the eligibility and quantum of solatium payments associated with land acquisitions are adequate and that access to those payments is sufficiently broad and includes compensation for unreasonable delays
7. improve the transparency of the procedures and review the guidelines for hardship acquisitions for owners that experience a reduction in property value, are negatively impacted by construction or a property rezoning that arises as a result of a government project
8. undertake an investigation into the workings of the office of the NSW Valuer General, with this investigation to include a root cause analysis of the delays in the provision of determinations and an audit of a sample of determinations from the last 5 years to ensure compliance with legislation and case law (out of scope for this review), and
9. via the Centre for Property Acquisition, ensure that all acquiring authorities develop and implement strategies to measure customer satisfaction, with a breakdown of results between substratum and above ground acquisitions and the outcomes to be publicly reported on at least an annual basis.

That the Legislative Council:

1. consider an inquiry into the status of land at the Sydney Science Park, infrastructure provision to that site and related matters (out of scope of this review).

The Russell review

The Russell review was commissioned by the NSW Government and its findings released in 2014. A total of 20 recommendations were made.

Summary of recommendations:

1. There should be a compulsory negotiation period of 6 months prior to compulsorily acquiring land.
2. Prior to the negotiation period, the acquiring authority must provide a detailed written explanation to the landowner, setting out the process as well as rights and responsibilities of both parties.
3. During the negotiation period there should be at least one face-to-face meeting for negotiation unless agreed by both parties that it is not required.
4. A new compulsory acquisition process be adopted to afford procedural fairness.
5. There should be no changes to section 55(c) of the Just Terms Act.
6. Hold a consultation with interested parties to ascertain whether the Just Terms Act provides adequate compensation in the assessment of business claims, and if not, what amendments should be contemplated to properly compensate such claims.
7. Amend section 60(2) of the Just Terms Act to increase solatium.
8. Amend the Just Terms Act to introduce formal arrangements to require acquiring authorities to pay reasonable cost to the NSW Valuer General for providing a compulsory compensation valuation.
9. Amend the Just Terms Act to require the acquiring authority and landowner to advise the NSW Valuer General of any issues affecting determination of compensation within 7 days of gazettal.
10. Amend the Just Terms Act to increase the timeframe for the issue notices by the acquiring authority from 30 to 45 days.
11. Amend the Just Terms Act to allow NSW Valuer General to increase time for issuing notification of compensation to 90 days if required.
12. No changes to be made to the Just Terms Act supporting the extension of a merits appeals against a compulsory acquisition valuation to acquiring authorities.
13. Amend the Just Terms Act to remove the requirement for the landowner to establish hardship.
14. If recommendation 13 is not adopted, then the Just Terms Act should be amended to introduce a merit review for landowners whose application is rejected by an acquiring authority.
15. Amend the Just Terms Act to require acquiring authorities to give landowners first right of refusal to repurchase land if the land is no longer needed.
16. Amend the Just Terms Act so that if a dispossessed landowner reacquires part or all of their land, the reacquisition be at the market price paid by the acquiring authority, so that any uplift in value accrues to the benefit of the dispossessed landowner. The amendment should also operate where it is the acquiring authority that resells the land to a third party, to the intent that the acquiring authority ought to account to the dispossessed landowner for any uplift in value.
17. Amend the Just Terms Act to provide compensation on a reinstatement basis for residential dwellings.
18. There should be further discussions between government and electricity transmission authorities to ascertain whether there should be a limitation on the categories of 'right, power and privilege' over the land that should be the subject of compensation for compulsory acquisition and to ascertain whether perceived granting of easements for electricity substations without compensation requires attention.
19. A record of undetermined Aboriginal land claims, kept by [the] Crowns Lands [division of the department], be made available to potential acquiring authorities, and that they be informed in writing of the practice that has developed to protect undetermined claims. Crown Lands should be obliged to advise all local councils in writing on a regular basis of the existence and particulars of all undetermined Aboriginal land claims in the particular area relevant to each local council.
20. The next review of the Just Terms Act should be conducted by a reviewer obliged to hold public hearings and take evidence from existing parties and be assisted by an expert panel.

The Pratt review

The Pratt review was a citizen-focused review of the property acquisition process in NSW, led by Customer Service Commissioner Michael Pratt AM in 2016. The review aimed to improve the fairness, transparency and equity of the land acquisition framework for landowners, while enhancing the consistency and accountability of acquiring authorities. The review made 20 recommendations, which were accepted by the NSW Government. The recommendations were grouped into four main categories: operating model, people, process and performance.

Summary of recommendations

Operating model

1. Implement a new resident focused operating model to manage property acquisitions and establish an operational centre of excellence for resident engagement.

People

1. Create the role of personal manager acquisitions to assist landholders and tenants navigate the property acquisition process.
2. Assign community place managers for all infrastructure projects that require property acquisitions to provide timely and accurate information to the community.
3. Clarify position accountabilities and apply consistent recruitment and training standards for all key roles involved in the property acquisition process.
4. Conduct a comprehensive review of all written communications to the resident to improve the standard and consistency of communication.
5. Review and enhance the end-to-end support and services provided to residents.



Mort Bay Park, Balmain, Sydney

Process

1. Conduct in-depth and thorough pre-contact due diligence to be aware of possible and potential issues early in the process.
2. Provide greater transparency on planned infrastructure projects to residents and the community.
3. Provide sufficient lead time and flexibility around negotiation for residents to be fully informed by introducing a minimum 6 month negotiation period.
4. Review hardship criteria with a view to replacing it with a more commercial strategic approach to owner-initiated acquisitions.
5. Ensure residential rental charges for former owners where payment is held in trust are deferred and capped by extending Roads and Maritime Services' rental policy across the whole of government.
6. Amend legislation to ensure legal fees and other costs incurred by residents in the acquisition process are reasonable.
7. Increase solatium to a maximum of \$50,000 and provide a standardised formulaic approach to how payments are calculated.
8. Provide landholders a more cost-effective merits review of the NSW Valuer General's determination.
9. Require the NSW Valuer General's determination of compensation to be provided directly to interested parties and the acquiring authority.

Performance

1. Establish standards for data collection, monitoring and reporting.
2. All agencies should use a customer relationship management system to capture common data to manage the property acquisition process.
3. Establish a resident feedback mechanism through the acquisition process and on resettlement.
4. Mandate and operationalise the recommended acquisition process across all NSW government agencies.
5. Establish the Property Acquisition Standards Group to implement and monitor whole-of-government performance standards.



Tamworth Hospital

Performance Audit – Government’s acquisition of private property: Sydney Metro project

The objective of this audit was to assess the effectiveness of acquisitions of private properties for the Sydney Metro project. The audited agencies were Sydney Metro, the NSW Valuer General (at the former Department of Planning and Environment) and Transport for NSW (the Centre for Property Acquisition).

The audit assessed agencies against the framework for property acquisitions in NSW.

Recommendations

By 30 June 2023, Sydney Metro should:

1. develop consistent acquisition plans, risk assessments and negotiation strategies for all high-value and high-risk property acquisitions.

The former Department of Planning and Environment (now the Department of Planning, Housing and Infrastructure) should:

1. as a part of the review of Just Terms Act scheduled to commence in 2023, consider whether the provisions relating to legislative time lines for issuing compensation determinations for compulsory acquisitions require amendment, and
2. continue work to support improvements in the timeliness of the NSW Valuer General’s compensation determinations, including:
 - consultation with acquiring authorities that require compensation determinations, and
 - monitoring and reporting on the impact of the reforms.

By 30 June 2023, Transport for NSW should:

1. commence work to improve the quality of its data on the experiences of people subject to property acquisitions by:
 - evaluating the impact that introducing personal managers has had on the experiences of people subject to residential property acquisitions
 - developing and implementing practices to increase the response rate to post-acquisitions surveys, and
 - analysing survey responses from people subject to residential acquisitions separately to those from people subject to business, commercial and industrial acquisitions.

Appendix 2 – Glossary

Term	Meaning
Aboriginal land claim	Claims for ownership of some Crown land made by Aboriginal land councils under the <i>Aboriginal Land Rights Act 1983</i>
Aboriginal land rights	An interest in land under the <i>Aboriginal Land Rights Act 1983</i>
Acquiring authority	For this discussion paper, this means entities authorised by legislation to compulsorily acquire land (or an interest in land) for a public purpose
Acquisition	The freehold transfer of land or an interest in land (see definition of ‘interest’)
Court decision	A decision based on a court case in the NSW Land and Environment Court, Court of Appeal or High Court
Court of Appeal	Part of the NSW Supreme Court that hears appeals from the NSW Land and Environment Court
Disadvantage resulting from relocation (formerly known as solatium)	Non-financial disadvantage resulting from the necessity of the landowner or tenant to relocate the person’s principal place of residence due to the acquisition
Disturbance	Compensation for costs reasonably incurred by the landowner in connection with the acquisition. These are specifically defined in Section 59 of the Just Terms Act.
Injurious affection	A decrease in the value of adjoining or severed land
Interest	A legal or equitable estate or interest in the land or an easement, right, charge, power or privilege over, or in connection with, the land
Just Terms Act	The <i>Land Acquisition (Just Terms Compensation) Act 1991</i>
Landowner	All registered interests in land, including minor and other interests, that may or may not be entitled to compensation
Market value	The amount that would have been paid for the land if it had been sold at that time
Native title	An interest in land under the <i>Native Title Act 1993</i> (Cth)
Non-disclosure agreement	A legally binding agreement to protect sensitive or confidential information from being shared
NSW Valuer General	NSW Valuer General is an independent statutory officer appointed by the Governor of NSW to, among other functions, ensure that owners are justly compensated when their land is compulsorily acquired, in line with the Just Terms Act
Proposed acquisition notice	A notice under section 11 of the Just Terms Act of the intention to acquire land by compulsory process

Term	Meaning
Public purpose	Any purpose for which any land may by law be acquired by compulsory process under the Just Terms Act
Severance	Compensation for any reduction in market value of the impacted land specifically because of the land being severed. An example of this is where land is acquired for a road or rail line through the middle of a rural property.
Solatium	This term is now defined in the Just Terms Act as “Disadvantage resulting from relocation.” Solatium is a well-known legal term regularly referred to by lawyers and valuers. This is to reflect the inconvenience suffered when a landowner or tenant relocates their principal place of residence due to an acquisition.
Special value	The financial value of any advantage, in addition to market value, to the person entitled to compensation that is incidental to the person’s use of the land – this is defined in section 57 of the Just Terms Act
Stop the clock	To postpone an official or legal deadline by ceasing to count the hours/days that elapse
Transfer duty	A state government tax on the purchase and title transfer of land (previously known as stamp duty)

