



2 May 2024

NSW Department of Planning, Housing and Infrastructure

Via online submission portal - [Land Acquisition Review | Have Your Say \(nsw.gov.au\)](https://www.nsw.gov.au/land-acquisition-review)

## **Re: Discussion paper – A review of land acquisition in NSW**

The Property Council thanks the Department of Planning Housing and Infrastructure (the Department) for the opportunity to provide feedback to the discussion paper reviewing land acquisition in NSW.

As Australia's peak representative of the property and construction industry, which employs more Australians than any other sector, the Property Council's members include investors, owners, managers and developers of property representing all asset classes across NSW.

The Property Council has a long-term interest in government land acquisition, providing input into the 2014 Russell Review of the *Land Acquisition (Just Terms Compensation) Act 1999*. We welcome this next review as part of government's ongoing commitment to refining the acquisition process to make it as transparent, fair, and equitable for those involved.

In our 2014 submission, we outlined key recommendations including the provision of an alternative dispute resolution process and the review of compensation to expand claims for disturbance loss.

This latest discussion paper compiles feedback and recommendations from the Russell and Pratt review as well as the recent 2022 Parliamentary Inquiry into land acquisition for major transport projects.

The following submission provides our principal support for most of the options proposed in this discussion paper to ensure the process of land acquisition is standardised and transparent.

Legislation and regulation should support an in-practice process that provides fair outcomes for property owners and other impacted parties whilst balancing the needs of government to deliver on the state's major infrastructure projects.

Based on the interest of our members we have provided a response to three themes; 1) genuine negotiation, 2) mediation and 3) clarify compensation provisions.

### **Theme 1 – Genuine negotiation**

The Property Council supports the improvements recommended in Theme 1 that clarify the stages and requirements for the beginning of an acquisition process. In particular we support

amending the Just Terms Act to clarify the requirements for information an acquiring authority must include in the opening letter.

Inconsistency between different acquiring authorities at this initial stage of negotiations has been a concern for property owners. Mandating requirements in the opening letter will support acquiring authorities to provide the correct information and empower property owners in understanding the process and their rights.

Inconsistency between acquiring authorities has implications further down the line as disputes fall to the Land and Environment Court.

We support the other potential improvements that are outlined in this section and endorse these to be accessible as a tool kit of correspondence templates and timeframes. The access to a timeframe flow chart will provide assurance these milestones are clear to all parties involved.

We support the introduction of a mandated evidence-based letter of offer for the reasons outlined in the discussion paper. The requirements in the valuation report should include a summary of comparable sales/values of nearby properties and valuation advice.

## **Theme 2 – Mediation**

We support the inclusion of a voluntary mediation option to support an acquisition by agreement. The informal negotiation process would include a letter of offer supported by the valuation report and be provided at least halfway through the 6-month negotiation period.

## **Theme 3 – Clarify compensation provisions.**

The Property Council is supportive of the revision and clarification of compensation provisions under the Just Terms Act and seeks to encourage further consideration for compensation for tenants impacted by land acquisitions.

The compensation process must be fit for purpose in ensuring costs are recovered by impacted parties in a timely commercial manner.

The Russel Review identified the need for revision in compensation available for tenants and businesses that are impacted. The experience of tenants and businesses should be captured to understand how the compensation regime can better suit their needs.

We have outlined some of the key issues tenants currently face:

1. Adequacy of relocation costs. Particularly due to the delay in compensation and the need to have certainty on compensation before they can move. In some instances where a soon to be dispossessed tenant must pay out an existing tenant to get them to move so that the dispossessed tenant can relocate to keep costs down, the surrender of lease cost may not be recoverable.
2. Lack of compensation for business disruption and lost revenue. NSW should clarify and align what losses and damages can be covered in line with other jurisdictions. Queensland specifically contemplates lost profits and economic losses. Tasmania references loss or damage. NSW just references “cost” which has been defined to

- mean third party expenses only and so does not cover costs like a business manager being diverted from their usual tasks to focus on relocating.
3. Failure of the legislation to consider the prospect of renewal of lease under the principle in [Aerated Water](#) whereas in other jurisdictions that prospect is considered.
  4. The requirement to prove ownership of the existing fit out to claim costs.
  5. Inadequacies of profit rent being an adequate measure to represent the value of the premises to the tenant. Such as the value of the fit out which it may not own, or the value of the location which is particular to the tenant but not so particular to be special value.
  6. Disturbance costs do not cover the cost of an accountant (forensic plus tax) or other experts.
  7. There should be explicit provisions for land tax adjustments and income tax impacts.

For landlords, there is an inability to claim stamp duty, finance and conveyancing costs where a replacement property has to be purchased but where that property is not owner occupied and is not therefore technically relocating their residence or business. This should be reviewed.

### **Conclusion**

Once again, we would like to commend the Department for this next stage in reviewing land acquisition in NSW and for these evidence-based options for change that have been proposed. We look forward to seeing the necessary changes made to the Just Terms Act and accompanying regulation. If you have any questions on our submission please contact Policy Advisor, Nikki Allen at [nallen@propertycouncil.com.au](mailto:nallen@propertycouncil.com.au).

Kind regards,



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