

2017

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

LANDS ACQUISITION AMENDMENT BILL 2017

**SUPPLEMENTARY
EXPLANATORY STATEMENT**

**Presented by
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Minister for Planning and Land Management**

SUPPLEMENTARY EXPLANATORY STATEMENT

Introduction

The Lands Acquisition Amendment Bill 2017 (the bill) amends the *Lands Acquisition Act 2004* (the Act) to provide that if a person whose interest in land is acquired (interest holder) does not make a claim for compensation within three years of an acquisition then the Executive has the option of making an offer of compensation. Once the Executive makes the offer, a claim for compensation will no longer be able to be made under section 56 of the Act.

This supplementary explanatory statement relates to Government amendments proposed by the Minister for Planning and Land Management (the Amendment Bill) to the Lands Acquisition Amendment Bill 2017 (Bill) as presented to the ACT Legislative Assembly on 8 June 2017.

The supplementary explanatory statement has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly. The supplementary explanatory statement must be read in conjunction with the Amendment Bill. It is not, and is not meant to be, a comprehensive description of the Amendment Bill.

Overview

The bill amends the Act to provide that if a person whose interest in land is acquired (interest holder) does not make a claim for compensation within three years of an acquisition then the Executive has the option of making an offer of compensation (under new section 61A inserted by clause 5 of the bill). Once the Executive makes the offer, a claim for compensation will no longer be able to be made under section 56 of the Act.

The Amendment Bill includes amendments to remove any doubt that a right to apply to the ACT Supreme Court for a determination of the nature of an interest is available to interest holders who have received an offer of compensation by the Territory Executive under new section 61A. The Amendment Bill also amends transitional provisions to require the Executive to give notice of the proposed new three year time limit to persons who had land that has already been acquired and who may be affected by the new three year time frame.

The Amendment Bill addresses issues highlighted by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) in its Scrutiny Report Number 7 of 18 July 2017 (pages 4, 5).

The Amendment Bill includes amendments to ensure rights to take action in the Supreme Court to confirm the nature of relevant interests in land are extended to the situation when the Government has made an offer of compensation under new section 61A inserted by clause 5 in the bill. This amendment supports the human right to Fair trial in section 21 of the Human Rights Act.

The amendments to the bill include amendments to new section 201 inserted by clause 14 of the bill to ensure that those people whose land has been acquired before the commencement of the bill are properly informed of the new time frames for making a claim for compensation. This amendment also supports the human right to Fair trial and issues of procedural fairness.

The Human rights implications for the bill are addressed in the explanatory statement for the bill.

Clause Notes for the Amendment Bill

Amendment 1 - Proposed new clause 13A

Inserts new clause 13A which amends section 106(1)(a) of the Act.

Section 106 of the Act permits the Executive or a private person who has, or may, claim compensation to apply to the Supreme Court for a determination of the nature of the relevant interest and who holds it and also for the Supreme Court to make consequential declarations.

Section 106 presently states:

106 General power of Supreme Court to adjust rights

(1) The Supreme Court may, on the application of the Executive or of any interested person— (a) determine the person or persons who, at any relevant time, held an interest or interests in particular land in relation to which a claim for compensation has been or may be made under this Act; and (b) determine the nature of such an interest or interests; and (c) make such orders as are appropriate for declaring or adjusting rights or liabilities of persons in connection with the land or interests in the land, or arising out of transactions in relation to, or mortgages over, the land or interests in the land.

(2) A determination or order under subsection (1) is binding on the applicant, the Executive, the Commonwealth and all other persons who had interests in the land and to whom notice of the application has, before the commencement of the hearing, been given by the applicant, whether or not those other persons were represented on the hearing of the application.

The intention was to continue to permit an application to be made to the Supreme Court in circumstances where an offer of compensation under new s61A (2) has been made. To remove any doubt about whether section 106 applies in such circumstances, new clause 13A substitutes a new section 106(1)(a). New s106(1)(a) provides that the Supreme Court may determine the person or persons who held an interest when a claim for compensation has been, or may be, made; or an offer of compensation has been made under section 61A(2).

This amendment to the bill addresses an issue highlighted by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) in its Scrutiny Report Number 7 of 18 July 2017 (page 4).

Amendment 2 - Clause 14 Proposed new section 201

A transitional provision in the bill (new section 201) proposes that for persons who have had their interest in land compulsorily acquired but at the time of the commencement of the bill have not yet made a claim for compensation will have three years to make a claim from the date of the commencement of the bill after which time the Executive can make an offer of compensation under new section 61A.

While the bill does not preclude a fresh notice being issued to these persons, it is conceivable the proposed three year period could in theory elapse without the interest holder being formally made aware of the time limit to make a claim for compensation.

To remove any doubt, section 201 of the bill is amended to require a notice to be sent to the interest holders in this transition scenario and for the three year period to run from the date of the notice.

The Executive must send the notice within 14 days of the commencement of the bill. This time period is the same as the time period in which a section 38 notice about compensation has to be sent to an interest holder when land is compulsorily acquired.

The notice will have similar content to the notice that goes to persons subject to a new acquisition post the commencement of the bill ie it will include a copy of the acquisition declaration, compensation form, and notice about the three year time limit and that the three year period runs from the date of the notice.