

2018

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

GOVERNMENT AGENCIES (LAND ACQUISITION REPORTING) BILL 2018

EXPLANATORY STATEMENT

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This explanatory statement relates to the *Government Agencies (Land Acquisition Reporting) Bill 2018* as presented to the Legislative Assembly. It 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 Assembly.

The statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Background

The purpose of the *Government Agencies (Land Acquisition Reporting) Bill 2018* is to improve integrity in land acquisitions.

There are some legislative reporting requirements for acquisitions; however a number of acquisitions made by the Territory fall outside the scope of the *City Renewal Authority and Suburban Land Agency Act 2017*. There are currently no general public reporting requirements for all acquisitions undertaken by all ACT public entity, such as acquisitions by treaty or direct sale. Transactions falling within this category have repeatedly been the subject of debate in the Assembly and investigations by the Auditor-General.

There is public interest in ensuring land acquisitions are undertaken with a high level of transparency, accountability, and rigor. This Bill ensures that due diligence is carried out across all land acquisitions made by ACT Government entities, and that the information relied upon is available for scrutiny and public debate.

Overview of the Bill

The *Government Agencies (Land Acquisition Reporting) Bill 2018* covers all land acquisitions by the Executive and ACT Government authorities. The Bill introduces reporting requirements for all acquisitions undertaken by ACT Government entities, reinforcing due diligence and procurement principles such as value for money.

The Bill requires the Minister to present quarterly reports to the Assembly and the relevant committee on all acquisitions undertaken by ACT Government entities. Under the *Lands Acquisition Act 1994* acquisitions made by agreement (section 32) or compulsory acquisitions (section 33) prompt certain notification procedures, such as legislative instruments and statements in the Assembly. The new reporting mechanism in the Bill captures those acquisitions, as well as those which fall under the exceptions of the *Lands Acquisition Act 1994* and other relevant pieces of legislation to ensure that all acquisitions, regardless of method of acquisition, are publicly reported. Importantly this reporting does not represent an undue administrative burden as the information the Government is required to publish under the proposed Bill should be part of any due diligence associated with any acquisitions.

The information contained within the quarterly reports add further necessary probity to the acquisition process, as well as providing an avenue to advise the community about the future use of these public assets. The quarterly report given to the Assembly and the relevant committee will contain substantially similar information; however particular identifiers in relation to public housing acquisitions and the identity of an individual private seller will only be made available to the relevant committee.

Human Rights

The provisions of the Bill have marginal potential effects on an individual's human rights. If an individual's human rights are limited in any capacity, the limitations would be reasonable.

Nature of the right affected

Section 12 of the *Human Rights Act 2004* entitles individuals to the right to privacy and reputation. Clause 6 of the Bill requires the Minister to present to the Assembly and the relevant committee quarterly reports on reportable acquisitions, including identifiers of the land, the seller, and compensation paid.

Generally through the course of land acquisitions, the surrounding neighbours are aware of the particulars of the land and the identity of the seller; however the exact compensation paid may not be known.

This is distinct from acquisitions made by the Territory where often the compensation and identity of the payee is published on the notifiable invoices register, but the identifiers of the land may not be known.

The quarterly reports compile all this information in one place, which may give rise to some privacy concerns.

The importance of the purpose of the limitation

The public interest in scrutinising land acquisitions by ACT Government entities does not materially compromise the rights of individuals within the community. Transparency, accountability, and rigor underpin the Bill's aims in ensuring comprehensive reporting takes place. The acquisitions are undertaken using public funds, and it is reasonable to expect core details about the purchase to be made public or available to relevant committee.

There is also a wider context regarding questionable acquisitions and the ongoing investigations into the practices of ACT Government entities. Certain acquisitions have been explored through Assembly processes and investigated by the Auditor-General. There has been a commitment to reform in this area, and the proposed publication of the information in the quarterly reports is within the remit of these policy aims.

The nature and extent of the limitation

While there may be some concern that the information contained in the quarterly reports may affect an individual's right to privacy and reputation, the most sensitive details will only be given to the relevant committee. Furthermore some information is already available to the public through a number of avenues.

There are a number of ways the information provided in the proposed quarterly reports can be protected or already be obtained by members of the public.

Confidential nature of committee report

A number of details are withheld from the report presented by the Minister to the Legislative Assembly. Where an acquisition is made for the purposes of public housing only the suburb is identified, not the particulars of the land. The sellers are only identified when they are a corporation or other body. The identities of private individuals are not reported.

The report to the relevant committee remains confidential unless otherwise determined by the committee. Standing committees regularly deal with information that is highly confidential and there are stringent protocols that ensure the material is only used for the purposes of probity and scrutiny. There is no evidence to suggest there is a risk in providing this information to the committee, therefore the impact of these disclosures on an individual's human rights is negligible.

Particulars of the land and public housing

Block identifiers for acquisitions by agreement and compulsory acquisitions are public through processes in the *Lands Acquisitions Act 1994*, as are all acquisitions by the City Renewal Authority and the Suburban Land Agency through quarterly reports under the *City Renewal Authority and Suburban Land Agency 2017*. Land which is owned by Territory entities are identified on a number of open source ACT Government websites which can be viewed by the general public.

Public acquisitions that fall under the exceptions in the *Lands Acquisition Act 1994* or are acquired under alternate legislation are not materially different to acquisitions by agreement or compulsory acquisitions. They are included on open source platforms and identified as being owned by the ACT Government.

Publishing the suburb of new public housing acquisitions preserves the privacy of individuals who move into those homes, and of those that have sold the property to the Territory. The existence of such acquisitions does not necessarily compromise the privacy of any party involved.

Identity of the seller and compensation

Members of the public can already request information on the ownership of blocks, and the details of title transfers through the regulatory arm of the ACT Government. If members of the public were inclined to find the current or previous owner of a block, they are already able to do so for a fee as the information is on the public record.

Furthermore under the *Government Procurement Act 2001* all invoices above \$25,000 are reported on the notifiable invoices register. Recent amendments passed in the *Government Procurement (Financial Integrity) Amendment Act 2017* clarified that land acquisitions fall within the scope of the register. It is highly likely that compensation paid by the ACT Government for land acquisitions will be above \$25,000 and therefore already publicly reported on the register where the recipient is identified.

An individual seller's details and identity are not proactively published in the quarterly report; however it is important that the relevant committee knows who sold land to the Territory for probity reasons. It is also relevant to include information on the amount of compensation paid to determine value for money as tax payer funds are used for the acquisitions.

The relationship between the limitation and its purpose

There is clear public interest in the publication of the information as seen through the numerous inquiries and reports on land acquisitions. It would not be prudent to compile a report for the purposes of scrutiny and omit information on the land, the seller, and the compensation. It is logical to expect that all relevant information would be presented as part of any probity proceeding.

Where the collation of the report may pose a small risk to an individual, it has been mitigated through the restriction of the information to the relevant committee only. The provision of this information is linked to scrutiny and probity, and is both reasonable and necessary.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

It is not considered that there are less restrictive means available to achieve the purpose. Private individuals' details are only given to the relevant committee for scrutiny and probity purposes, and particulars about public housing acquisitions are kept confidential. The information published is in the public interest, and where tax payer funds are expended there is an expectation of transparency, accountability and rigor.

The extent of any limitation on an individual's rights is reasonable and proportionate when compared to the public interest in ensuring integrity in Government expenditure and acquisitions.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

The clause provides that the name of the Act is the *Government Agencies (Land Acquisition Reporting) Bill 2018*.

Clause 2 Commencement

The clause provides that the commencement date of the Act is 1 January 2019.

Clause 3 Dictionary

The clause provides that the dictionary at the end of the Act is part of the Act.

Clause 4 Notes

The clause provides that a note in the Act is explanatory and is not part of the Act.

Part 2 Important concepts

Clause 5 What is a government agency?

This clause sets out the definition of a government agency in relation to this Act.

Clause 6 Who is a responsible Minister?

This clause sets out the definition of a responsible Minister in relation to this Act.

Part 3 Reporting requirements

Clause 7 Presentation of report about acquisition

This clause includes the requirements for the reports to be laid before the Assembly and the relevant committee.

Clause 7(1) provides that the responsible Minister must present a report to the Legislative Assembly within six sitting days after the end of a quarter.

Clause 7(2) provides that within ten working days of presenting the report to the Legislative Assembly, the responsible Minister must also provide the relevant committee with a copy of the report which includes the withheld information from the public version.

Clause 7(3) sets out that the relevant committee is either nominated by the Speaker or the committee of the Legislative Assembly responsible for public accounts.

Clause 8 Report about acquisition of land

This clause details the contents of the quarterly report the Minister must present to the Assembly.

The report given to the Assembly must set out the interest in the land that was acquired, including the identification of the land; the government agency that acquired the land; and the seller if it was acquired from a corporation or other body.

The report must also describe the way in which the acquisition was made and the Act provides examples. The compensation paid for the interest in the land in addition to any other amount paid in relation to the acquisition, such as consultant fees or commissions, must also be included in the report. Information considered by the acquirer of the land in relation to determining the compensation and other amounts paid must be published; this includes valuations.

The report must state which Minister, if any, considered the acquisition; whether the acquisition was considered by Cabinet; as well as who approved the acquisition and on what date.

The report must explain the reason for the acquisition in addition to how value for money was pursued in accordance with the *Government Procurement Act 2001*, section 22A. Further information on evaluation and planning for the site, including how the acquisition meets the requirements of the *Planning and Development Act 2007*, as well as the current and future status of the land under the territory plan and Crown lease conditions must be included. The report must also explain how the acquisition, including the intended use of the land, supports development that is in the public interest and environmentally sustainable.

The report must include the information considered in relation to the acquisition, including any advice received from the head of service or another government agency, and all risk assessments made or received by the government agency in relation to the acquisition. If the acquirer is the territory authority, the report must set out how the acquisition upholds the statement of intent under the *Financial Management Act 1996* for the territory authority.

Furthermore the report must include anything prescribed by regulation. If the land was acquired for public housing, the suburb of the acquisition is only required.

Clause 9 Report about acquisition of interest in land

This clause sets out the alternate reporting requirements for easements or any other interest in land that is not the legal or equitable estate in the land. This includes identifying the particulars of the land; the government agency that acquired the land; the seller if a corporation or other body; the method of acquisition; compensation paid in relation to the acquisition; and information considered during the acquisition, such as valuations.

Clause 10 Report about acquisition – additional matters for city renewal authority

This clause sets out additional reporting requirements if the acquirer is the City Renewal Authority.

In relation to acquisitions made by the City Renewal Authority, the report must additionally explain how the acquisition complies with directions made under the *City Renewal Authority and Suburban Land Agency Act 2017*; the objects and functions of the authority; the statement of expectations; statement of operational intent; and anything prescribed by regulation.

Clause 11 Report about acquisition – additional matters for suburban land agency

This clause sets out additional reporting requirements if the acquirer is the Suburban Land Agency.

In relation to acquisitions made by the Suburban Land Agency, the report must additionally explain how the acquisition complies with directions made under the *City Renewal Authority and Suburban Land Agency Act 2017*; the objects and functions of the authority; and anything prescribed by regulation.

Part 4 Miscellaneous

Clause 12 Relationship to other laws

This clause provides that this Act is in addition to the requirements of any other territory law; and that if a Minister is required to prepare a report about the acquisition of land, the Minister may prepare a report that complies with this Act and the other law.

Clause 13 Regulation-making power

This clause provides that the Executive may make regulations.

Part 5 Consequential amendments

Clause 14 *City Renewal Authority and Suburban Land Agency Act 2017* Sections 13 and 43

This clause omits sections 13 and 43 in the *City Renewal Authority and Suburban Land Agency Act 2017* as this Act has higher reporting requirements and applies to acquisitions by the City Renewal Authority and Suburban Land Agency.

Dictionary

The dictionary contains definitions for terms used in the Act.