

2018

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

***GOVERNMENT AMENDMENTS TO
GOVERNMENT AGENCIES (LAND ACQUISITION REPORTING) BILL 2018***

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
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INTRODUCTION

This Explanatory Statement addresses Government amendments to the *Government Agencies (Land Acquisition Reporting) Bill 2018* (the Bill).

The Bill was presented as a Private Member's Bill to the Legislative Assembly in August 2018, by Mr Alistair Coe MLA. The Bill seeks to establish a new Act to improve integrity in land acquisitions through increased transparency created by placing new reporting obligations about land acquisitions on all government agencies.

This Explanatory Statement has been prepared in order to assist those reading Government amendments to the Bill and to help inform debate of the Bill in the Legislative Assembly. 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

There are a number of Acts that currently make provision for reporting on specified land transactions. The principal Act is the *City Renewal Authority and Suburban Land Agency Act 2017* (CS Act). Sections 13 and 43 of the CS Act require the land entities, City Renewal Authority and Suburban Land Agency, to prepare reports to the Minister on land acquisitions. The Minister must present the reports to the Assembly. The reports must set out details of the land acquired and valuations used and provide any other information that might be prescribed as required in the regulation.

The *Lands Acquisition Act 1994* (LA Act) sets out certain requirements for publicly notified instruments and reports for land acquisitions to which that Act applies. In particular, section 33 of the LA Act requires a public notice and a notifiable instrument confirming the completion of an acquisition of land by compulsory process. Section 32(3) of the LA Act requires the Executive to a report to the Assembly on land acquired by agreement under the LA Act following an initial compulsory acquisition process. The report must set out the nature of the interest acquired, the price paid, the situation of the land, and the public purpose behind the acquisition.

The *Planning and Development Act 2007* (PD Act) includes certain reporting requirements in relation to the grant of single dwelling house leases. Section 240(1) of the PD Act sets out the circumstances in which a direct grant of a lease can be made by the planning and land authority. Among other scenarios, a direct grant can be made if the grant is of a residential lease for a single dwelling house (s240(1)(e) of the PD Act). Section 242 of the PD Act requires the planning and land authority to report on a quarterly basis to the Minister on the number of single dwelling house leases granted during the completed quarter including any other prescribed information. The Minister must present the reports to the Legislative Assembly.

Other legislation in relation to reporting on the actions of an entity generally would also require information related to significant land transactions. This would include, for example, entity annual reports as required under the *Annual Reports (Government Agencies) Act 2004* and the *Financial Management Act 1994*.

Amendments to the bill

The Bill as amended by the Government proposed amendments sets out land acquisition reporting requirements for all government agencies including all directorates, Territory Authorities, Territory instrumentalities and Territory owned corporations. This will increase transparency and accountability about the Government's acquisition of land for various purposes for the benefit of the community and in doing so make this information more readily accessible.

The bill as amended does this through building on existing acquisition reporting requirements in sections 13 and 43 of the CS Act. These provisions already require land entities to report to the Minister on land acquisitions made during the completed reporting period and for the Minister to present the report to the Assembly. The bill builds on these provisions by applying reporting requirements to all government agencies not just to the land entities. The bill will also specifically require disclosure of price as well as a statement about the reasons for acquisition, the public interest, consistency with the Territory Plan, value for money and other matters.

The intention is for the bill to improve transparency and accountability by facilitating the disclosure of key summary information to the community.

CLAUSE NOTES

Government Agencies (Land Acquisition Reporting) Bill 2018 (the Bill)

Amendment 1

Clause 2 - Commencement

This amendment substitutes the commencement clause with a new clause, to allow an additional 6 months for territory-owned corporations to set up systems to implement the new reporting requirements and reflecting their need to consider these new requirements in the context of a commercial operating environment. Currently the only territory owned corporation is Icon Water (refer s6 and schedule 1 of the *Territory Owned Corporations Act 1990*).

Amendment 2

Clause 5 – Meaning of *government agency*?

This amendment substitutes the definition of a government agency with a new definition replacing the term territory entity with territory authority, territory instrumentality and territory-owned corporation, and to clarify that the Bill does not apply to the University of Canberra.

Amendment 3

Clause 6 – Who is a *responsible Minister*?

This amendment substitutes the definition of a responsible Minister for a territory entity (clause 6 (c)) with new definitions of a responsible Minister for territory authorities, territory instrumentalities and territory-owned corporations, to reflect amendment 2.

Amendment 4

Proposed new Clause 6A – Meaning of *land acquisition*

This amendment defines the key terms used in the Bill *land acquisition* and *land*. The definition includes full ownership of a crown lease or an interest in land following the surrender, withdrawal or termination of a crown lease.

This amendment specifically excludes the transfer of land between government agencies from the definition of *land acquisition*. This is because such actions are operational matters with no significant financial implications for the Territory government.

Under this amendment *land* does not include subleases (other than declared land sublease), tenancies, easements, other incorporeal or contractual rights. However, a regulation making power will enable these interests to be included in the definition of land for land acquisition reporting purposes if required.

The reporting requirement will apply to declared land subleases. A declared land sublease is a sublease of a declared crown lease. A declared crown lease is a lease declared under section 312B of the *Planning and Development Act 2007*. The Crown lease for block 1 Division 3 in Bruce held by the University of Canberra and declared under the Planning and Development (Declared Crown Leases—University of Canberra) Declaration 2015 (No 1) NI2015-346 is a declared crown lease and the only declared crown lease to date.

A declared land sublease operates in a similar manner to crown leases in that they can operate as land for residential housing with their own address and utility services and can be unit titled under the Unit Titles Act 2001 and can be subject to the payment of stamp duty etc. Like crown leases declared land subleases are registered on the land titles register under the Land Titles Act 1925. In these respects and others, owners of declared land subleases have similar obligations and rights as owners of standard crown leases (refer to the *Planning and Development (University of Canberra and Other Leases) Legislation Amendment Act 2015* and related explanatory statement). For these reasons it is appropriate for the Act to require the reporting of the acquisition of such instruments in the event that this should occur.

Amendment 5

Clause 7 – Publication of report about land acquisitions etc

This amendment substitutes the requirement for the responsible Minister to present a report to the Legislative Assembly within 6 sitting days after the end of a quarter in which an acquisition is made, followed by a report to the relevant standing committee of the Legislative Assembly within 10 working days, with a requirement for the responsible Minister to publish reports on an ACT Government website as soon as practicable after the end of the quarter in which an acquisition is made, followed by a requirement to provide a copy of the report to the relevant standing committee of the Legislative Assembly. This amendment also creates a requirement for the responsible Minister to confirm if nil acquisitions by the City Renewal Authority and Suburban Land Agency have occurred in a quarter.

This amendment simplifies the process as originally proposed and ensures that the relevant information is provided direct to the public.

Amendment 6

Clause 8 (1) Page 5, line 2 –

This amendment substitutes the term ‘an acquisition of land’ with ‘land acquisition by a government agency’, to reflect the defined term *land acquisition* in amendment 4.

Amendment 7

Clause 8 (1) (a) (iii) Page 5, line 6 –

This amendment substitutes the requirement to identify the corporation or body from whom the land was acquired, with the simpler term ‘from whom the land was acquired’. This simpler approach is made possible consistent with privacy concerns by Amendment 18. Amendment 18 outlines certain information that must not be included in a report or statement and which precludes an individual’s name from being included in a report or statement, or any document attached to a report or statement.

Amendment 8

Clause 8 (1) (d) Page 5, line 12 –

This amendment clarifies that any valuations considered by or given to the acquiring government agency must be included in the report, but omits the ambiguous obligation to include information considered by the acquiring government agency in relation to deciding amounts paid in relation to the acquisition.

Amendment 9

Clause 8 (1) (e) Page 5, line 19 –

This amendment clarifies clause 8 (1) (e) of the Bill to simply require the report to identify whether the acquisition was approved by the Territory Executive, agreed by Cabinet, approved by a stated Minister, or approved by a public servant (and if public servant identify the position of the public servant), and the date of the approval or agreement to the acquisition.

Amendment 10

Clause 8 (1) (f) and note Page 5, line 24 –

This amendment substitutes the requirements under clause 8 (1) (f), (g) and (i) with a requirement to provide a short summary statement about:

- the reason for acquisition and proposed use and development of the land;
- consistency of the acquisition with the territory plan
- consistency of the acquisition with the functions of the acquiring government agency
- how the acquisition is in the public interest;
- if relevant how the acquisition supports the principle of environmental sustainability,
- Consistency of the acquisition with any statement of financial intent
- How the acquisition is in the public interest;
- How the acquisition represents value for money.

This supports the intent of transparency and accountability, while keeping the resources required for reporting to a reasonable level and reducing the risk of cluttering and confusing the public report with excess information.

Amendment 11

Clause 8 (1) (g) Page 6, line 13 –

This amendment omits clause 8 (1) (g) of the Bill, reflecting Amendment 10.

Amendment 12

Clause 8 (1) (h) Page 6, line 17 –

This amendment omits clause 8 (1) (h) of the Bill, reflecting Amendment 16.

Amendment 13

Clause 8 (1) (i) and note Page 6, line 23 –

This amendment omits clause 8 (1) (i) and note from the Bill, reflecting Amendment 10.

Amendment 14

Clause 8 (1), examples and note Page 7, line 2 –

This amendment omits 8 (1), examples and note from the Bill. These examples are not necessary given Amendment 4 or are otherwise considered unnecessary.

Amendment 15

Clause 8 (2) Page 7, line 14 –

This amendment omits clause 8 (2) of the Bill, reflecting Amendment 4

This amendment also substitutes a new clause 8(2). The new clause provides that the report is not required to set out the compensation paid for the land, or any other amount paid in relation to the acquisition, for acquisitions under the *Lands Acquisition Act 1994*, unless they are acquisitions by agreement. This reflects the fact that the final amount of compensation paid for these acquisitions may not be determined until some months or years after acquisition and is also subject to review including through the ACT Civil and Administrative Tribunal and potentially the Supreme Court.

Amendment 16

Proposed new Clause 8 (3) Page 7, line 16 –

This amendment inserts a new clause providing that the report may include any additional information that the responsible Minister considers is relevant to the decision to acquire the land. Examples are provided, such as key information drawn from a relevant business case or risk assessment made in connection with the acquisition.

Amendment 17

Proposed new Clause 8 (4) Page 7, line 16 –

This amendment inserts a new clause providing that reporting requirements are more limited for land acquisitions of a type identified in 6A(1)(b) inserted by Amendment 4. These acquisition types include acquisitions:

- under the *Lands Acquisition Act 1994* (reflecting the fact that the Lands Acquisition Act already has its own reporting requirements),
- by means of surrender
- by lease termination
- through withdrawal of a lease pursuant to a lease condition,
- required under territory law or
- prescribed by regulation.

For these types of acquisition, only the matters included in clauses 8 (1) (a), (b) and (c) must be included in the report. This means that in these cases the report need only include the particulars of the land, the identity of the acquiring government agency, the identity of the source of the land, the method of acquisition and compensation (price) paid.

Amendment 18

Clause 9 – Report about acquisition of interest in land

Proposed new clause 9 – Certain information must not be included in reports or statement

This amendment substitutes clause 9 about a report about acquisition of interest in land, with a new clause about certain information which must not be included in reports for the protection of privacy.

This amendment is to protect the privacy of individuals from whom land is acquired or who surrender a land rent lease or who reside in housing assistance properties. The amendment will also prevent the disclosure of information prohibited from being disclosed under the Taxation Administration Act in connection with land rent leases, and also protect the privacy and reputation of potential users of services for sensitive community health or safety purposes.

New clause 8(1)(a)(iii) inserted by Amendment 7, will require the publication of the identity of the entity that sells the land to an acquiring agency. This amendment provides that if the seller is an individual (and not eg a company or association) then the report must not disclose the name of the individual notwithstanding new section 8(1)(a)(iii). This is the effect of new 9(2).

New section 9(3) applies to housing assistance properties, land rent leases, and land for community health or safety declared by the Minister to require privacy protection as disclosure could impact on privacy or reputations of potential users. In these cases the required report cannot disclose the specific address of the land but can only disclose the relevant “district” as defined in the *Districts Act 2002*, where the land is located. .

The amendment makes it clear in new section 9(4) that these privacy provisions do not apply if the information has already entered the public domain through another avenue.

New section 9(5) makes it clear that the report cannot include any information related to a land rent lease that would contradict the secrecy provisions in the *Taxation Administration Act 1999*.

Amendment 19

Clause 10, Page 8, line 1 –

This amendment opposes clause 10 on the basis that it covers operational, deliberative matters that would not ordinarily be covered in a summary report or matters that would already be materially covered by the summary material reported under proposed amended clause 10.

Amendment 20

Clause 11, Page 8, line 18 –

This amendment opposes clause 11 on the basis that it covers operational, deliberative matters that would not ordinarily be covered in a summary report or matters that would already be materially covered by the summary material reported under proposed amended clause 10.

Amendment 21

Proposed new Part 4A – Transitional

This amendment provides for transitional arrangements so that land acquisitions made through agreements entered into, or the surrender of leases consented to, before 1 January 2019 would be excluded from the reporting requirements. The provisions will expire on 1 July 2019.

Amendment 22

Dictionary, note 2, dot points, Page 12, line 6 –

This amendment omits the definitions of body, corporation, head of service, sitting day, territory land and territory plan, reflecting the other proposed amendments.

Amendment 23

Dictionary, note 2, proposed new dot points, Page 12, line 19 –

This amendment inserts dot points referring to the Legislation Act definitions of territory instrumentality and territory-owned corporation, to reflect amendment 2.

Amendment 24

Dictionary, definition of *land*, Page 12, line 23 –

This amendment omits the definition of *land*, to reflect amendment 4.

Amendment 25

Dictionary, proposed new definition of *land acquisition*, Page 12, line 23 –

This amendment inserts a new definition of *land acquisition*, to reflect amendment 4.

Amendment 26

Dictionary, definition of *territory entity*, Page 12, line 25 –

This amendment omits the definition of *territory entity*, to reflect amendments 2 and 23.