

# **ACQUISITION OF LAND AMENDMENT BILL 1999**

## **EXPLANATORY NOTES**

### **OBJECTIVES**

The Bill makes amendments to the Acquisition of Land Act 1967 (the Act) to:

- modernise provisions in the Act as they apply to the deliberative powers of the Governor in Council which are inconsistent with the legislative approaches taken with other legislation. Following the Electoral and Administrative Review Commission's (EARC) report in 1990, virtually all legislation which conferred deliberative powers on the Governor in Council has been updated with alternative arrangements put in place. It is appropriate to adopt the more contemporary approach whereby the Minister investigates the merits of each application and, if satisfied with the findings, takes forward a recommendation (through the Executive Council process) for the taking of land by gazette notice. The current practice of publishing a proclamation in gazette (proclamation) of the Governor in Council's decision to take an interest in land would be replaced by the publication of a notice in the gazette;
- to provide a more reasonable approach for both land holders and constructing authorities alike in the identification of the land to be taken by not necessarily requiring an actual plan of survey to be prepared to obtain a gazette notice (proclamation). This does not change the requirement for the land to be surveyed to enable registration in the Land Titles Registry. Rather it enables a constructing authority to substantially identify the land required in the first instance and then prepare a plan of survey of the precise needs of the constructing authority after construction. This ensures that no more land is taken than is necessary. This

approach does not in any way limit or alter the land holders right to be compensated; and

- Validate the practices followed by the Department of Main Roads in taking land which did not always use plans of survey in support of the proclamations taking the land.

These long standing practices were originally considered to have been exempted from the requirement under s9(4) of the Act to use plans of survey when gazette notices (proclamations) were issued. This view was based on s25(11) of the Transport Planning and Coordination Act 1994 which in turn was based on provisions effectively carried through from the *Main Roads Act 1920*.

Whilst the practices followed are well suited to the type of infrastructure provided by the Department of Main Roads and serve both the public interest and the best interests of land holders, those practices are now considered not to comply with s9(4) of the Act. This legislation aims to remove any doubt or possible disruption to the roads infrastructure program that might otherwise arise if the proposed amendments did not proceed.

## **HOW POLICY OBJECTIVES WILL BE ACHIEVED**

The amendments to the Act in this Bill will allow the administrative processes associated with the Governor in Council's deliberative role in acquisitions to be transferred to the relevant Minister.

It will also allow the taking of land by means of plans of survey and additionally plans which substantially identify the land that will be subsequently defined by plans of survey.

The amendment will validate existing acquisitions of interests in land which were not accompanied by plans of survey when applications were made.

## **ADMINISTRATIVE COST TO GOVERNMENT**

The proposed changes will not alter existing administrative costs.

## **CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PROVISIONS**

By validating takings where gazette notices (proclamations) have issued but which are not registered in the Land Titles Registry, it is arguable that the legislation is retrospective. However, it is important to note that landholders rights to claim compensation are not adversely affected. In addition landholders for many years have had their land acquired in support of road infrastructure following practices which are proposed to be codified by this Bill. These practices are fair to land holders both in terms of compensation and in minimising the land taken for projects.

## **CONSULTATION**

Consultation has occurred within Government.

## **NOTES ON CLAUSES**

### **PART 1—PRELIMINARY**

*Clause 1* sets out the short title of the Act

*Clause 2* identifies the Act being amended

### **PART 2—MAJOR AMENDMENTS**

Clause 3(1) amends section 9 by inserting an additional provision in section 9(4) to permit the use of plans sufficient to substantially identify the land, which are not plans of survey in support of taking under the Act.

*Clause 3(2)* replacing section 9(6) transferring responsibility from the Governor in Council to the Minister to investigate and decide on the merits of each application.

- insert new section 9(7) to enable the Governor in Council to gazette a notice to declare that the land is taken.

- insert new section 9(8) to establish that the taking of land is effective on the day of the publication of notice.

*Clause 4(1)* replaces section 10(1C) to reflect similar amendments to those proposed in Clause 3(2) above.

*Clause 4(2)* amends section 10(3) by inserting an additional provision to reflect similar amendments to those proposed in clause 3(1) above.

*Clause 5(1)* amends section 15(3B) by inserting an additional provision to reflect similar amendments to this proposed in clause 3(1).

*Clause 5(2)* replaces section 15(4) to reflect similar amendments to those proposed in Clause 3(1) above.

*Clause 5(3)* replaces section 15(6) to reflect similar amendments to those proposed in Clause 3(2) above.

*Clause 6* inserts a new part 6 after section 43 to validate the taking of land which was not accompanied by a copy of a plan of survey but was accompanied by a plan sufficient to substantially identify the land in the application.

## **PART 3**

### **SCHEDULE OF CONSEQUENTIAL AND MINOR AMENDMENTS**

Amendments 1 to 63 make consequential and minor amendments necessary to reflect the changes proposed in Clause 3 above and to update provisions.