



17 June 2018

Office of the Valuer General  
GPO Box 44  
Hobart TAS 7001

By email: [ovg@dpipwe.tas.gov.au](mailto:ovg@dpipwe.tas.gov.au)

Dear Madam / Sir,

## **Amendments to Land Acquisition Act 1993**

Thank you for the opportunity to comment on the Issues Paper outlining proposed changes to the *Land Acquisition Act 1993*.

EDO Tasmania is broadly supportive of the proposed amendments, particularly the express inclusion of remediation and biosecurity obligations, extended timeframes for compensation claims, and confirmation that compensation is payable for injurious affection arising from the ongoing use of acquired land. The following brief comments address other proposed amendments:

### **1. Negotiation**

We acknowledge the impracticality of expecting that negotiations for purchase following a Notice to Treat can be effectively concluded within 30 days. We also acknowledge that an acquiring authority can still undertake negotiations to purchase by agreement and issue a Notice to Treat only after negotiations fail.

However, the compulsory acquisition of private land is a power to be exercised in limited circumstances only and efforts to negotiate with landowners should be actively encouraged. We recommend that:

- Section 11(2)(e) be amended to provide that, unless a waiver is granted by the Minister under s.11(2A), the acquiring authority will negotiate in good faith for purchase but can commence compulsory acquisition if no agreement is reached within 90 days (or earlier, if the landowner advises earlier that agreement will not be reached).
- A new subsection 11(2A) be inserted to provide that the Minister may waive the requirement to negotiate in appropriate circumstances, including where the acquisition is urgent, the acquiring authority can demonstrate reasonable efforts made prior to issuing the Notice to Treat have been unsuccessful, or the landowner cannot be located. Where a waiver is granted, the Notice to Treat will provide that the acquiring authority may negotiate but can commence acquisition within 30 days if no agreement is reached.

No waiver should be granted for acquisitions for private sector infrastructure projects.

- Section 15 be amended to provide:

*Where the Minister has granted a waiver under s.11(2A), an acquiring authority may, subject to this Act, take an estate in subject land where the owner of that estate does not agree to sell it to the authority within:*

- (a) *Where the Minister has granted a waiver under s.11(2A), 30 days after being served with a notice to treat.*
- (b) *Where no waiver has been granted under s.11(2A), 90 days after being served with a notice to treat.*

#### **4. Other land**

The proposed definition of "other adjoining land" should be broadened to capture situations where land in the same ownership is separated by a waterway or a narrow strip of land used as an access or infrastructure corridor and owned by the Crown, Council or a service provider.

There may also be situations where adjoining parcels of land within a large farming operation are owned by different family members or trusts, but the overall farming operation will be affected by the proposed acquisition. The definition should be revised to require affected land to be part of the same operation, rather than being under the same ownership.

Legislative changes should also consider whether "other land" in section 7H should also be amended to "other adjoining land" subject to the proposed definition.

#### **7. Other considerations**

We do not support the proposed removal of the current s.27(1)(g). The amendments to s.27(1)(f) will remove the need for s.27(1)(g) to be used to address ongoing disturbance and financial loss, however it is possible that other issues may arise that do not fit neatly under the express heads of compensation in s.27(1)(a) – (f). In our view, it is preferable for the court to have available an "other relevant matters" head of power to avoid appropriate compensation claims being denied.

The qualification that the matter be something that the Court or an arbitrator considers relevant is sufficient to ensure the subsection is used sparingly.

If you wish to discuss any of the comments made in this submission, please do not hesitate to contact me.

Yours sincerely,

**Environmental Defenders Office (Tas) Inc.**

Per



Jess Feehely  
Principal Lawyer