

31<sup>st</sup> July 2019

To: Public Administration Committee

Re: Submission to Public Administration Committee – Inquiry into Private Property Rights

Dear Sir/Madam

I wish to make the following submission in regard to Item (d) of the Terms of Reference:

(d) asserts that fair and reasonable compensation must be paid to the owner of private property if the value of the property is diminished by a government encumbrance or resumption in order to derive a public benefit;

My submission is as follows:

1. Dispossessed landowners are at risk of not receiving fair and reasonable compensation because they cannot afford the legal fees to pursue their case. In some cases they may receive an advance payment which is then deducted from the final claim payment. Is it fair that they must pay the legal fees out of the claim amount? This means they may be getting less than fair and reasonable compensation when the purpose of the Land Administration Act is that 'owners are placed in the same position after the take as they were before the take as far as money is able to compensate'. They may get fees awarded to them if they win, but this is rarely the case.

In addition, the acquiring authority has access to the State Solicitors Office to make their case. If they are charged for this service it should be transparent to all.

In cases where landowners want a second opinion of compensation value, the acquiring authority is willing to pay for it but only the lower of two quotes and requires the valuation to be given to them. The consequence is that landowners end up with valuations done by inexperienced valuers who may not be fully cognisant of the LAA. Also, the landowner should not be required to submit the valuation to the acquiring authority as it jeopardises their claim for compensation. That's not fair!

2. The land acquisition process is not transparent to affected landowners. Many of them are left in the dark in regard to the public work. All correspondence between Shires and the Acquiring Authority should be made public.

3. Representatives of the Acquiring Authority make misleading statements to landowners in regard to the acquisition process. Example: a very recent case whereby a MRWA representative told landowners that they would only get the market value of their property (when the market value has been severely affected by the public work). They were obliged to come back two days later and admit that it would be the unaffected market value; a very different amount.

Another recent example is telling landowners that they would not get compensation because they knew of the public work (note: the LAA does not make exception for prior knowledge).

These are not rare instances; rather they are common.

4. Victoria, NSW, SA and Queensland have Land Courts which specialise in land disputes, including land compensation. WA has a variety of measures which are inconsistent (SAT, Supreme Court, Arbitration, Board of Valuers etc) and not specialised.

WA needs a specialised Land Court and alternative dispute resolution procedures which do not involve expensive legal fees.

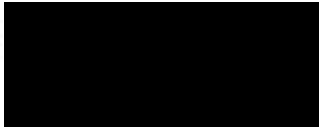
5. Landowners feel pressured to sign documents which accept the acquiring authority's valuation when they are unaware of their full rights. They should have access to impartial advice from an impartial government body.
6. Landowners of lifestyle properties who are severely affected by noise from the public work receive no form of compensation if their properties have no land taken! Yet the public work has blighted their land in terms of its value. This is not fair or just!
7. Landowners are sometimes made to complete their own accommodation works by their own efforts. The acquiring authority should be required to do it to a suitable standard.
8. Owners should have the right to appeal any decision on compensation to a body that is independent of the acquiring agency. The review of appeals should be fair, inexpensive, easily accessible and prompt.
9. To reduce costs and improve access to the appeals process, legislation should require the acquiring agency to establish alternative dispute resolution mechanisms when appropriate. Such mechanisms should be flexible, comprehensive, inexpensive, informal, and physically and technically accessible. It may be possible to use or adapt existing dispute resolution mechanisms for disputes over compensation.

In summary:

People whose land is being compulsorily acquired should be given help to understand every aspect of the process. They may need assistance contesting the decisions and actions of the acquiring authority, getting second opinions on the value of their land, and ensuring that compensation is paid.

Our government should pro-actively provide advocacy assistance to affected individuals. Our government should provide access to effective judicial and administrative channels for affected individuals and groups so they can challenge or seek redress from decisions and actions that are socially and environmentally harmful or violate human rights (eg: noise); allow civil society organizations to take legal action on behalf of affected communities or groups that do not have the resources or skills to take action themselves; and facilitate access to legal services through the provision of facilities such as legal aid and free legal advice centres.

Kind Regards



Taryn Miller

