

Environmental Planning and Assessment Amendment (Reserved Land Acquisition) Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to change the procedure by which a person whose land has been reserved for use exclusively for a public purpose by an environmental planning instrument under the *Environmental Planning and Assessment Act 1979* may require the land to be acquired by a public authority. At present, land owners can choose to have their land acquired under the terms of the environmental planning instrument that reserves their land or in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*. Under the amended provisions, the single procedure will be the owner-initiated acquisition request provisions of the *Land Acquisition (Just Terms Compensation) Act 1991*, which applies where an owner will suffer hardship if there is a delay in acquisition of land by the relevant public authority.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date on which notice was given in Parliament for leave to introduce the Bill for the Act.

Clause 3 is a formal provision that gives effect to the amendment to the *Environmental Planning and Assessment Act 1979* set out in Schedule 1.

Clause 4 amends the *Land Acquisition (Just Terms Compensation) Act 1991* as a consequence of the amendment proposed to be made to the *Environmental Planning and Assessment Act 1979* by Schedule 1 to the proposed Act. The proposed amendment omits section 28, which provides that the *Land Acquisition (Just Terms Compensation) Act 1991* does not affect any obligation of an authority of the State to acquire land as referred to in section 27 of the *Environmental Planning and Assessment Act 1979*, but gives a choice for such an acquisition to be effected by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991*.

Clause 5 provides for the repeal of the proposed Act after the amendments made by the proposed Act have commenced. Once the amendments have commenced, the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of the amending Act does not affect the amendments made by the Act.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

Owner-initiated acquisitions under the Environmental Planning and Assessment Act 1979

Section 26 (1) (c) of the *Environmental Planning and Assessment Act 1979* provides that an environmental planning instrument may make provision for reserving land for use for certain public purposes (such as open space, road and transport corridors and facilities such as schools and hospitals). Section 27 (1) of that Act provides that where an environmental planning instrument reserves land for use exclusively for a purpose referred to in section 26 (1) (c) that environmental planning instrument must make provision for or with respect to the acquisition of that land by a public authority (unless the land is owned by a public authority and held by that public authority for that purpose).

Owner-initiated acquisitions under the Land Acquisition (Just Terms Compensation) Act 1991

The *Land Acquisition (Just Terms Compensation) Act 1991* makes provision for just terms compensation for the compulsory acquisition of land by authorities of the

State. Division 3 of Part 2 of that Act deals with land designated or reserved for acquisition for a public purpose by an authority of the State. Section 23 of that Act provides that the owner of land designated for acquisition for a public purpose may require an authority of the State, by notice in writing given to that authority, to acquire that land under that Act, but only if the owner considers that he or she will suffer hardship if there is any delay in the acquisition of the land under that Act. Section 24 provides that an authority of the State is not required to acquire land unless it is of the opinion that the owner will suffer hardship if there is any delay in the acquisition of the land under that Act. Also, section 27 provides that an authority of the State is not required to acquire land if, before it is required to acquire the land, the authority gives the owner of the land written notice that the land is no longer designated by that authority for future acquisition or the authority gives the owner a written undertaking that it will use its best endeavours to remove the relevant reservations and a written notice that the land is no longer designated for future acquisition.

Current position: choice of procedures

At present, a person who owns land that has been reserved for use exclusively for a public purpose by an environmental planning instrument may choose either acquisition under the environmental planning instrument made under the *Environmental Planning and Assessment Act 1979* or acquisition under the *Land Acquisition (Just Terms Compensation) Act 1991*.

Proposed amendment

Schedule 1 amends the *Environmental Planning and Assessment Act 1979* to provide that the procedure for the acquisition of land reserved for use exclusively for a public purpose under that Act is the owner-initiated acquisition request procedure in the *Land Acquisition (Just Terms Compensation) Act 1991*.

The proposed amendment provides that an environmental planning instrument that reserves land for use exclusively for a purpose referred to in section 26 (1) (c) of the *Environmental Planning and Assessment Act 1979* must specify an authority of the State that will be the relevant authority to acquire the land if the land is required to be acquired under Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

Under the proposed amendment, an environmental planning instrument is not to be construed as requiring an authority of the State to acquire land, except as required by Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*. Therefore, land acquisitions by public authorities resulting from the reservation of land under environmental planning instruments under the *Environmental Planning and Assessment Act 1979* will take place under the *Land Acquisition (Just Terms Compensation) Act 1991*. Accordingly, an authority of the State will not be required to acquire land unless it is of the opinion that the owner will suffer hardship if there is any delay in the acquisition of the land under the *Land Acquisition (Just Terms Compensation) Act 1991*.

Under the proposed amendment, section 21 of the *Land Acquisition (Just Terms Compensation) Act 1991* applies for the purposes of determining whether an environmental planning instrument reserves land for use exclusively for a purpose referred to in section 26 (1) (c) of the *Environmental Planning and Assessment Act 1979*. Section 21 of the *Land Acquisition (Just Terms Compensation) Act 1991* provides that land is reserved by an environmental planning instrument for use exclusively for a public purpose only if the land is expressly set apart by that instrument for use exclusively for such a purpose or the land is expressly set apart by that instrument for use for such a purpose and also for other purposes, but those other purposes do not constitute a reasonable use of the land. Section 27 of the *Environmental Planning and Assessment Act 1979* currently applies only where the land is reserved exclusively. Therefore, the amended provision provides for

acquisition in an extended category of cases.