LAND ACQUISITION (JUST TERMS COMPENSATION) AMENDMENT BILL 2016

First Reading

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Duncan Gay.

Second Reading

The Hon. DUNCAN GAY (Minister fo r Roads, Maritime and Freight, and Vice-President of the Executive Council) (15:44): I move:

That this bill be now read a second time.

The Government is pleased to introduce the Land Acquisition (Just Terms) Compensation Amendment Bill 2016 to the House. The Act was an initiative of Deputy Premier Wal Murray in 1991. The bill was introduced into this place on 11 April of that year. The Act, as it became, achieved three major reforms. Firstly, it provided a statutory guarantee that when private land was acquired by government for public purposes, the Government would pay no less than market value for the property. Secondly, it introduced a compensation framework based on just terms, including for legal costs, valuation costs, costs for disturbance and solatium—that is, compensation for the disadvantage of having to relocate from the principal place of residence. Thirdly, it established a consistent and uniform system for the compulsory acquisition of private property by all government authorities, including local councils; that is, when agreement on market value and compensation cannot be reached through negotiation the property is compulsorily acquired.

The 1991 Act was the result of considerable consultation—with the Law Society, acquiring authorities and the public. The central tenet of the 1991 Act was, and is, to provide the same treatment for land owners irrespective of which acquiring authority they are dealing with, and to provide the same heads of compensation. Before 1991, there was no consistency; there were differing policies depending on the authority acquiring the land; and there were no set time frames for settling of acquisitions.

The Act recognised the significant disadvantage to land owners whose land was designated for a public purpose. The land would devalue and it would be almost impossible to sell at its former market value before that designation. The Act addressed this problem. The Act also recognised that land owners should receive a range of compensation, on just terms, to ensure they would be no worse off after the acquisition by Government than before. A timetable for the payment of compensation was also legislated to ensure certainty and fairness for land owners.

One of the key objects of the Act is to encourage authorities to acquire land by agreement rather than through a compulsory process. However, in the event agreement on the compensation is not possible, the Act allows for objection to the amount of compensation to be determined by the Land and Environment Court. Importantly, the Act provided for owner-initiated acquisitions under the hardship provisions. This meant that in certain circumstances where land has been designated for future acquisition for a public purpose, the land owners could require the government authority to acquire their land in advance of when it was actually required. The bill before the House today will build on and strengthen the Act and introduce a number of

significant measures to assist land owners when their property is acquired for public infrastructure purposes.

As the House will be aware, a review of the Land Acquisition (Just Terms) Compensation Act was undertaken by Mr David Russell, SC. He provided his report to government in early 2014. In June 2013, Mr Russell released a consultation paper inviting submissions from interested parties. Thirty-three submissions were received from land owners, government agencies and peak bodies. Among issues raised by individual land owners were what was perceived to be a complex process; lack of face-to-face contact with representatives of the acquiring authorities; a desire for a fixed negotiation period; and difficulty in meeting hardship test requirements.

More recently, the Premier asked the Customer Service Commissioner, Mr Michael Pratt, AM, to review the land acquisition framework from a citizen-centric perspective.

The Government released Mr Russell's report and the full Government response on 18 October. The response also addresses Mr Pratt's recommendations. The Government thanks Mr Russell for his review. The Government also thanks Mr Pratt for the work he has done, in particular with the transport cluster in looking at how the citizen's experience can be improved in difficult circumstances.

The full Government response, backed up by this package of legislative amendments, strikes the right balance between the needs of the public for high-quality public infrastructure and those of the landowners. Over all, both Mr Russell and Mr Pratt found that the Act is fundamentally sound in delivering on its key objective of acquisition by agreement with the landowner. For example, 80 per cent of Government land acquisitions where private land is required for vital public infrastructure are achieved through agreement. This means in the vast majority of cases the acquiring authority and the landowner agree on land valuation and compensation and ownership of the land is transferred to the Government. Only approximately 20 per cent of matters proceed to compulsory acquisition, which occurs when the acquiring authority and the landowner are unable to agree on land valuation and compensation.

The Valuer General is then engaged to provide an independent valuation and a compensation determination. Only approximately 5 per cent of the Valuer General's compensation determinations are the subject of objections to the Land and Environment Court. There were just over 140 objections in the five-year period from July 2010 to March 2016, with more than 80 per cent being resolved before going to hearing. For major urban motorways projects, such as WestConnex, the Government always attempts to limit construction wherever possible within government-owned road corridor reservations or vacant roadside land that is not occupied by commercial or residential properties. In relation to the latter, a prime example is how the Government is utilising a 16-hectare former landfill site at Alexandria for an interchange at St Peters—a key part of the new M5 project.

Furthermore, to help to reduce the number of property acquisitions, the Government is building approximately two-thirds of the WestConnex project underground in road tunnels. Nine-kilometre twin road tunnels also are being built under Pennant Hills Road to remove the missing link between the M1 and M2 motorways, which also is an action designed to help significantly reduce the need for commercial or residential property acquisitions. These statistics tell us one story—that overall the Act is delivering against its key objective of land acquisition by agreement. However, the Government accepts that land acquisition, either by agreement or through compulsory means, is one of the most difficult and stressful experiences any citizen can confront.

For the broader public benefit, people have to be dislocated, and they need to understand and negotiate a new and unfamiliar process. They may be losing a home in which they have lived for 20 years or more.

The Government does not underestimate in any way the significant personal impact that that can have. With that in mind, the New South Wales Government's response to the Russell review provides for a comprehensive package of improvement to the land acquisition process, and improved transparency and fairness. The Government's position strikes the appropriate balance between the property rights of landowners and the public good that is derived from public infrastructure. Land acquisition for infrastructure purposes is critical, particularly in the light of the State's growing population and the Government's duty to provide essential services to its citizens. There is no doubt that the Government's infrastructure program will dramatically improve the quality of life for the people of New South Wales. Since March 2011 the Government has been rebuilding New South Wales. In doing so, the Government has created almost 110,000 new jobs, significantly reduced underemployment, and is investing $73.3 billion towards new and improved infrastructure over the next four financial years.

However, as important as this historic program of work is, it is equally important that land acquisition for those purposes is fair, transparent and contains the necessary checks and balances. The Government needs a framework that ensures that landowners can make informed decisions, have enough time to negotiate with the acquiring authorities, and can be properly engaged throughout the process. The Government's response to Mr Russell's review and Mr Pratt's findings deliver on those objectives. The Government response to Mr Russell's review commits the Government to strengthening the Act to provide for more certainty, transparency and greater compensation for landowners and residences impacted by land acquisition. In order to deliver those objectives, the Government is acting decisively in making a number of amendments to the Land Acquisition (Just Terms Compensation) Amendment Bill 2016.

The first change is to require a fixed six-month negotiation period before compulsory acquisition can occur. Consistent with Mr Russell's recommendation, the Act will require as a standard a fixed six-month negotiation period before compulsory acquisition can commence, unless other arrangements have been agreed with the landowner. That amendment will provide landowners with the necessary time to make decisions, understand the process and engage properly with the acquiring authority. Feedback during both the Russell and Pratt reviews was that landowners may not have enough time to negotiate a completely new and unfamiliar process, especially when they are understandably focused on their work and their families. A fixed six-month negotiation period will provide much-needed certainty. It will allow people the time to understand their rights and obligations, take legal and valuation advice, and start looking for a new home. An acquiring authority will be able to shorten the minimum six-month period only with approval of both the responsible Minister and concurrent approval of the Minister responsible for the Act.

Consistent with existing provisions in the Act, a shorter negotiation period will be possible only when the urgency of the matter or other circumstances make it impracticable to have a longer period of negotiation—in other words, in exceptional circumstances where serving the public interest requires a shorter period. Achieving acquisition by agreement is and remains the Government's preference. The six-month period has been factored into forthcoming acquisition processes.

The second change I announce today is that acquiring authorities will be required to provide the Valuer General with issues relevant to a compensation determination within seven days.

Acquiring authorities will be required to provide the Valuer General with issues that are relevant to a compensation determination as soon as is practicable, but not later than seven days after compulsory acquisition of land. That will enable the Valuer General to have expedited access to all necessary information on which to base the compensation determination. Landowners also are strongly encouraged to provide information in support of their claim as soon as practicable to the Valuer General.

In 2014 and 2015 the Government introduced a range of administrative measures to ensure that the Valuer General had access to information that is relevant to the compensation determination. Those measures focus on giving landowners regular opportunities to ask questions, raise issues and provide information to the Valuer General as soon as the compulsory acquisition process commences and throughout the period leading up to the finalisation of the compensation determination.

It is appropriate to formalise through legislation the requirement for the acquiring authority to provide information promptly. This measure will help to ensure that, when land has been compulsorily acquired, the Valuer General is aware of all issues that are relevant to the determination of compensation.

The third change in this reform package is that the landowner will be able to provide the claim for compensation form directly to the Valuer General. The Government accepts that the circumstances of land acquisition are difficult. When negotiations between a landowner and the agency are not successful, it may be more appropriate for the landowner to deal directly with the Office of the Valuer General, which becomes involved when the acquisition proceeds to a compulsory process. In the interests of supporting transparency and independence, the landowner should be able to provide information directly to the Valuer General, rather than using the acquiring authority as an intermediary. This may be the preference of the landowner, in particular where negotiations have been unsuccessful. The Act will be amended to enable landowners to provide the claim for compensation form directly to the Valuer General.

The fourth change again goes to the issue of full transparency. The Valuer General will be required to provide the compensation determination, including a land valuation report, directly to the former landowner at the same time as the acquiring authority. Again, in the interests of transparency, the former landowner should receive the determination and valuation report directly from the Valuer General, rather than through the agency that is acquiring their home. The former landowner will also receive the full rationale behind the valuation. The Act will be amended accordingly.

The fifth legislative change recognises the significant stress and personal difficulty in going through the land acquisition process. The Government will amend the Act to increase the maximum solatium payment from $27,235 to $75,000. The Act provides for compensation, or solatium, to be paid for non-financial disadvantage arising from the necessity of the person to relocate his or her principal place of residence as a result of the acquisition. As I have already said, the Government appreciates that losing the family home can be one of the most stressful experiences in life. It has been compared, in some circumstances, to bereavement. People need to relocate, find new schools and build new social and possibly work networks. The maximum amount was originally set at $15,000, or any higher amount set by the Minister responsible for the Act. The maximum amount has been indexed annually by the consumer price index [CPI] by the Government, and currently stands at $27,235. Solatium is paid in addition to compensation for

other matters such as the market value of the land that has been acquired and legal and valuation costs.

As members of this House may be aware, Mr Russell in his report discussed the difficulty in applying a financial figure to what is compensation for non-financial impact—but that it should be increased from its current level. The Government agrees with Mr Russell that the maximum solatium compensation should be increased. However, in light of the impacts of land acquisition on families and individuals, the Government considers the amount should be increased even more substantially than the $50,000 in Mr Russell's report.

The Government will change the Act to make the maximum non-financial impact payment $75,000, indexed annually to the CPI. The increased solatium compensation payment, or the pro-rata amount, will also apply retrospectively to former residential landowners and tenants whose acquisitions were settled on or after 26 February 2014, the date Mr Russell's report was provided to the Government. For clarity, the Government will amend the term "solatium" to "disadvantage resulting from relocation", which more clearly articulates what this form of compensation relates to.

The Government will increase the time frame in which an acquiring authority must provide a compensation notice to a landowner from 30 to 45 days. Currently, in cases of compulsory acquisition, the acquiring authority has 30 days in which to provide the landowner with the compensation notice. Ministers for acquiring authorities have powers to extend the 30-day time frame if necessary. Further, the Valuer General has entered into arrangements with acquiring authorities allowing work to commence on aspects of the determination before land has been compulsorily acquired. However, the overriding consideration must be to ensure timely payment of compensation, and that the Valuer General can complete the determination as soon as practicable.

The 30-day time frame has proved frequently challenging, and it is undesirable and inefficient that the Valuer General should need to seek extensions of time to complete determinations. The Government considers that, in the interests of ensuring the compensation determination is informed by a thorough assessment of all relevant issues and adequate consultation between the Valuer General, acquiring authorities and land owners, the 30-day time frame for provision of a compensation notice to landowners should be increased to 45 days. To allow for flexibility in complex valuation matters, the Act will be amended to allow for the Minister responsible for the Act, at the request of the Valuer General, to extend the time frame by up to 60 days.

In the interests of transparency and natural justice, the Government will change the Act to allow landowners to seek a review of unsuccessful hardship applications. Under the hardship provisions of the Act, the landowner can require their property to be acquired immediately if they can demonstrate that it has become necessary to sell the property without delay for pressing personal, domestic or social reasons, or to avoid a substantial loss in income, and the owner is unable to sell the land at its market value because the land has been designated for future acquisition. The hardship test was designed to set sensible limits on owner-initiated acquisitions. Prior to 2006, the absence of such limits forced acquiring authorities to acquire land many years in advance of actual construction. This acted as a disincentive for long-term infrastructure planning.

In the Government's view, the current provisions are operating effectively. They allow acquiring authorities to plan for the infrastructure needs of the community, while also providing an avenue

for landowners who are in difficult circumstances to compel acquisition of properties that are designated for a public purpose. It is important to note that many hardship applications are approved. In the period July 2010 to March 2016, approximately 85 per cent of applications submitted to acquiring authorities were accepted. However, there is currently no review mechanism for decisions on hardship applications.

Review of such decisions by suitably qualified independent persons will provide an independent low-cost means of review, and improve transparency and fairness in decision-making. The Government will establish an independent panel of professionals to undertake this task. The Government will legislate to include reinstatement provisions in respect of land used for limited specific purposes. A number of jurisdictions have reinstatement provisions to account for the acquisition of properties that have a specific function and purpose.

For example, if a church were to be acquired by a government authority, it may not be possible to determine a market value because of its unique use. In these circumstances there is no general market under which to determine market value, which is the fundamental basis of the Act. It is important that such circumstances are accounted for in the Act, and there is a new provision to clarify that such community or sporting facilities will be able to be compensated for the reasonable cost to the owner of equivalent reinstatement. I note that Victorian land acquisition legislation, for example, has similar provisions and New South Wales will mirror this approach in the Land Acquisition (Just Terms Compensation) Act.

Finally, the Government will legislate so that those whose homes have been compulsorily acquired will be exempt from the requirement to pay rent to the acquiring authority. There remains a sound rationale for acquiring authorities to charge landowners rent while they remain in a property after it has been acquired by government, particularly in circumstances where an acquiring authority may need possession of the property in a timely manner following compulsory acquisition. Despite this, the Government considers a fairer and more consistent approach is to quarantine from rent the three-month period that former home owners are currently entitled to under the Act to live in their former place of residence after compulsory acquisition.

On some occasions land acquired for a public purpose is not ultimately required for that purpose. The final infrastructure project may have a different footprint than initially planned or in the most extreme cases a project may be cancelled. The bill includes provisions that require the acquiring authority to first offer the land for sale to the former owner at the market value of the land at the time the offer is made, provided it is not more than 10 years after the date of acquisition and where other criteria are met. This significant new provision is intended to give former owners the opportunity to re-acquire the property at market value, if they so wish.

In conclusion, the package of legislative amendments before the House will better balance the needs of land owners and the development of public infrastructure. The package recognises the significant personal impact of land acquisition and provides for more compensation, greater transparency and more certainty for land owners. I commend the bill to the House.