

Agreement in Principle

Mr JOHN AQUILINA (Riverstone—Parliamentary Secretary) [10.06 a.m.]: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce the Lands Acquisition (Just Terms Compensation) Amendment Bill 2009. The bill overcomes some unintended consequences of two provisions of the Lands Acquisition (Just Terms Compensation) Act revealed by a recent High Court decision. It will restore the intended effect of sections 7A and 7B of that Act. Sections 7A and 7B of the Act deal with the ability of a public authority to acquire and extinguish native title interests, as well as to acquire land already vested in it. The High Court recently held that an acquisition of a road already vested in a local council was done under section 7B of the Lands Acquisition (Just Terms Compensation) Act, not the Local Government Act. It was never intended that sections 7A or 7B would establish a separate legal authority for acquiring these types of property interests in such circumstances.

The policy intention of these sections is only to extend or limit—as the case may be—the rights of public authorities to acquire land where those rights already are established by other legislation. It was not intended, for example, that local councils could acquire native title interests under section 7A without reference to the powers and processes—such as the need for prior ministerial consent to land acquisition—contained in the Local Government Act. It was also not intended, for example, that a State Government authority would be able to acquire its own land under section 7B, with no reference to the limits on land acquisition imposed by that authority's parent legislation. This bill overcomes that unsatisfactory situation. Clause 1 of the bill clarifies that any acquisitions of native title or property already vested in a public authority are always taken to be an acquisition under other legislation empowering the authority to acquire land. This will ensure that public authorities, including councils, follow any mandatory processes set out in their parent legislation.

Clause 3 ensures that any past acquisitions of a public authority's own land or native title interests also are taken to be acquisitions under the parent legislation, not the Lands Acquisition (Just Terms Compensation) Act. This is necessary to ensure certainty of land tenure not only for public authorities, but also for any third parties who might subsequently have bought or leased land that would have been affected by the High Court's decision. The retrospective application of the bill will not, of course, extend to any acquisition of native title interests that might have occurred contrary to any general mandatory requirements regarding land acquisition in the parent legislation. Although it is very unlikely there are any such cases, it is necessary to ensure constitutional validity that acquisition of native title and other interests in land occurs in a non-discriminatory way.

It is important to note also that the bill is not designed to extend the powers of councils to acquire land already vested in them. The intention of the amendments is to ensure the Lands Acquisition (Just Terms Compensation) Act operates in the way it had been understood to operate prior to the High Court's recent decision in the Fazzolari appeal. The bill does not have any impact on the compulsory acquisition notices issued by Parramatta City Council that were the subject of the High Court litigation. The High Court found those particular notices to be unlawful and this bill will not change that. It is a matter for the council whether it takes any further acquisition action in relation to those particular properties. The focus of the bill is to overcome an aspect of the High Court's decision that the Government considers may produce anomalous and unintended consequences for landowners, native titleholders and public authorities alike. It achieves that purpose in a clear, concise and proportionate manner. I commend the bill to the House.