

In response to comments made by The Hon. Trevor Khan regarding the lack of statutory independence of the Valuer General, and independence of Angelo Konidaris from Omega who prepared the valuation.

The CHAIR: Mr Capuano, you were saying in your opening statement that the VG had made an offer. Is the VG the Valuer General?

Mr CAPUANO: Yes. Sorry. Yes.

The CHAIR: Then you found out the VG was also an employee of RMS valuers.

Mr CAPUANO: Yes. I looked at his LinkedIn profile. I have a copy here which I can table, but on his profile he says that he was with Lunney and Watt and Associates, and then he only started his business like the November before—so only four months before or prior to that. But his valuation was a copy and paste of the RMS valuation.

The Hon. TREVOR KHAN: That is not the VG. That is the valuer who undertook the valuation.

Mr CAPUANO: Yes, but the VG signs off on it.

The Hon. TREVOR KHAN: Yes, I know, but that is not the VG.

Mr CAPUANO: The VG saw it. He completely dismissed my submission and he also included—and I thought this was disrespectful—a passage about the benefits of WestConnex. If those benefits were so real, then why is my home so lowly valued? It was all pro-WestConnex. There was no statutory independence.

Paul Goldsmith from the Dept. Valuer General stated under oath during the Inquiry that he was satisfied with the independence of Angelo Konidaris from Omega. Mr Goldsmith would be aware of the significant difference between valuations – and in the interest of fairness, the Valuer General should have quashed and ordered new valuations, which the Valuer General has the power to do. But he didn't.

It would be fair to say the Valuer General would have been aware of property values in the Sydney inner-city area – given the heated Sydney property market, and therefore aware that the value of my property would have easily far exceeded the 'value' determined by Angelo Konidaris from Omega.

Based on the experiences of many residents – Leppington, Haberfield, St Peters, Randwick, etc., there can be no doubt that the Valuer General has aided the RMS and Government to deliver low offers to landowners – and is therefore not Independent, and in doing so, forced many to accept unreasonable offers and forced others into a lengthy and expensive appeal process – which delivers favourable outcomes for the Govt..

Paul Goldsmith also stated under oath, "We would look at market evidence that is not actually impacted directly by an acquisition project ("blight") so we can achieve proper market value". This is simply not true.

Adjustments were not made for 'blight' - and inferior properties in inferior suburbs are selected. Currently, the RMS, Valuer General and L&E Court refuse to make an adjustment for 'blight', resulting in low offers and determinations – the Government knows this, and they use it against the landowner.

Better checks and balances, and the implementation of a 'Valuation Commission' – with full oversight from a Parliamentary Committee, is desperately needed.

PARLIAMENT OF NEW SOUTH WALES - JOINT STANDING COMMITTEE ON THE OFFICE OF THE VALUER GENERAL

LAND VALUATION SYSTEM - REPORT ON THE INQUIRY INTO THE LAND VALUATION SYSTEM AND THE EIGHTH GENERAL MEETING WITH THE VALUER GENERAL

REPORT 2/55 –MAY 2013

"This is a valuation system that is in need of a paradigm shift. Public confidence in the system has been undermined by the Valuer General's failure to systemically afford landholders a fair hearing and provide transparency on valuation methodologies. "

Matt Kean MP
Chair

In response to the question raised by The Hon. Dr Peter Phelps regarding the establishment of an independent body to undertake government valuations.

The Hon. Dr PETER PHELPS: Yes. To Mr Capuano: You say in part of your recommendations, "You should establish an independent body to undertake government valuations."

Mr CAPUANO: Yes.

The Hon. Dr PETER PHELPS: A valuation commission. How do you envisage that working any differently to what we currently have, which is the Valuer General?

Mr CAPUANO: Well, from our experience the Valuer General is not independent. There is no independence there.

The Hon. Dr PETER PHELPS: Despite the fact that he is on a 10-year guaranteed contract and cannot be removed other than by misfeasance?

Mr CAPUANO: That is fine. I do not know the details of his employment, but it is not statutory independence. I cannot even pronounce the word. He is not independent is what I am saying. For him to only offer another \$75,000 plus copy and paste from an RMS valuation, then force me into the Land and Environment Court while sitting here today saying, "Oh, there is negotiation. We give this. We do that. We do that.", which was absolute nonsense. It was given to the RMS and I got a letter saying, "This is it. If you don't like it you are off to the VG." Three hundred thousand dollars later, then we question the Land and Environment Court, you know: Are they independent?

The lack of procedural fairness in the Compulsory Acquisition process, the independence of the Valuer General, the significant costs of litigation, and establishment of an independent body to undertake government valuations - being a **'Valuation Commission'** with full oversight from a Parliamentary Committee, has already been scrutinised and recommended by Matt Kean MP in the "Chair's Foreword" (attached) to the 2012 INQUIRY INTO THE LAND VALUATION SYSTEM

PARLIAMENT OF NEW SOUTH WALES - JOINT STANDING COMMITTEE ON THE OFFICE OF THE VALUER GENERAL

LAND VALUATION SYSTEM - REPORT ON THE INQUIRY INTO THE LAND VALUATION SYSTEM AND THE EIGHTH GENERAL MEETING WITH THE VALUER GENERAL - REPORT 2/55 -MAY 2013

Chair's Foreword

"This is a system that has systemic issues, particularly regarding the fairness in the way landholders are treated and the transparency surrounding how land is valued.

"Regarding procedural fairness, it is readily apparent that landholders are not currently afforded a fair hearing. A fair hearing not only increases the quality and integrity of decision making by ensuring all the facts are before valuers, it also ensures that people are treated with the dignity and respect to which they are entitled.

"The fairness of the system is also undermined by the significant costs associated with litigating matters in the Land and Environment Court... For this reason, the Committee recommends that landholders should be entitled to elect to have their Valuation of Land Act or compulsory acquisition valuation resolved in the newly legislated NSW Civil and Administrative Tribunal instead of the Land and Environment Court. That is, landholders should be able to choose the forum given their financial means.

"To support these recommendations the Committee has recommended a **Valuation Commission** to replace the Office of the Valuer General. This Commission will be comprised of a Chief Valuation Commissioner who is responsible for publishing and determining guidelines and the general administration of the system. The Chief Valuation Commissioner should also have the power to quash and order new valuations (similar to the Valuer General's powers now). It will also include a Valuation Commissioner (Valuation Review/Compulsory Acquisitions) and a Valuation Commissioner (Mass Valuations). The purpose of these positions is to ensure that there is adequate separation of the original valuation and review functions. It also supports the building of appropriate capabilities. Above the Commission will sit the Ombudsman who will provide regular reports on the valuation system. This is a much-needed mechanism to provide the accountability that has been absent for too long.

Finally, many of the reforms recommended here require legislative change, but most could have been significantly furthered by the Valuer General. It is extremely disappointing that action has not been taken over the last 10 years, particularly in the areas of transparency and the provision of a fair hearing. This is a valuation system that is in need of a paradigm shift. Public confidence in the system has been undermined by the Valuer General's failure to systemically afford landholders a fair hearing and provide transparency on valuation methodologies.

Finally, many of the reforms recommended here require legislative change, but most could have been significantly furthered by the Valuer General. It is extremely disappointing that action has not been taken over the last 10 years, particularly in the areas of transparency and the provision of a fair hearing. This is a valuation system that is in need of a paradigm shift. Public confidence in the system has been undermined by the Valuer General's failure to systemically afford landholders a fair hearing and provide transparency on valuation methodologies.

I strongly believe that these reforms go a long way to improving the fairness, transparency, predictability and accountability of this system and for these reasons I commend this report to the House.

Matt Kean MP
Chair

RECOMMENDATION 1

That the NSW Government establish a **Valuation Commission**, headed by a Chief Valuation Commissioner, responsible for the land valuation functions which are currently undertaken by the Office of the Valuer General and Land and Property Information. This Commission will also support the implementation of the rules-based approach to valuation methodologies and new valuation review and compulsory acquisition systems.

Executive summary

The central reforms are discussed in more detail below:

The governance framework

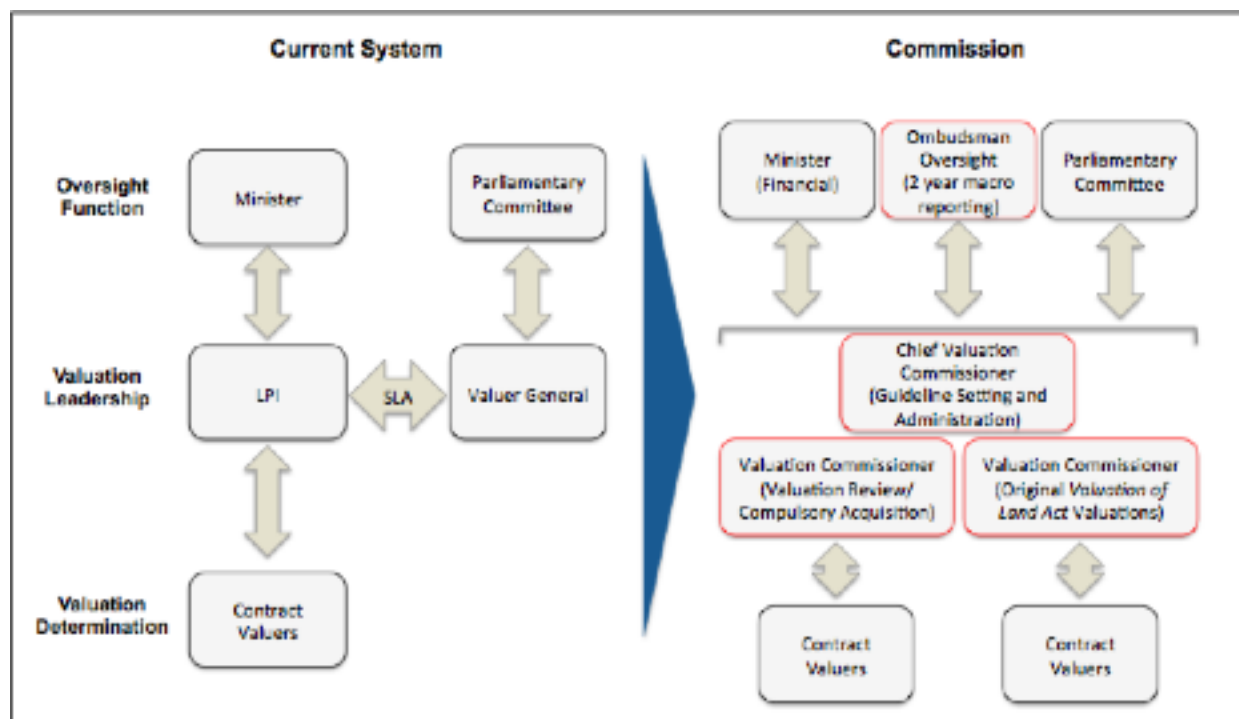
The Committee recommends a Valuation Commission be established. The Commission model involves two Valuation Commissioners and a Chief Valuation Commissioner. All Commissioners should be independent statutory appointments.

The Chief Valuation Commissioner would be responsible for setting valuation guidelines, leading the valuation system, administrative and resourcing/investment decisions required to run a broad system and have powers to order new valuations by either of the other Commissioners. The Chief Valuation Commissioner would also be party to any litigation in the same way the Valuer General is now.

One Valuation Commissioner would be responsible for the original Valuation of Land Act valuations, the other for valuation reviews and compulsory acquisition valuations. This structure ensures the separation of the original valuation process and valuation reviews, this represents best practice and is in place in Internal Revenue Services (IRS) in the United States.

The system also involves Ombudsman oversight, including a macro review every two years to provide accountability.

The structure is summarised below:



The issues I have raised in my opening statement - and the proposed **Valuation Commission**, have already been discussed in detail and recommended in 2012 – this is nothing new.

The recommendation was initially fully supported by Matt Kean MP and the Liberal Government ... yet not implemented. (Attached Government Response from Andrew Constance MP)

I am surprised that The Hon. Dr Peter Phelps is not already aware of these recommendations resulting from the 2012 Inquiry into Land Valuation System – and the Governments refusal to implement them.

However, this raises some serious concerns in that as the Government was fully aware the Compulsory Acquisition process and Valuer General “valuation methodologies” were not fair toward landowners – and then undertook acquisitions without implementing changes to the unfair process, then would this amount to fraudulent behaviour in so much as they wilfully denied and/or cheated/defrauded landowners the full compensation and ‘market value’ they are entitled.

Would this open the Government – and an incoming Government, to a legal challenge from affected landowners and a potential ‘**Class Action**’?

It is essential that the Inquiry into the Impact of the WestConnex Project recommend and proceed towards a full NSW Parliamentary Inquiry into the Compulsory Acquisition process, and immediately establish the **Valuation Commission** to undertake a full review of all acquisitions to date – from Bulahdelah, Leppington, Haberfield, St Peters, Randwick, etc., and include Valuer General and L&E Court determinations, to ensure landowners are recompensed what has been taken from them.

2012 Inquiry into Land Valuation System

<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2066>

MP Challenges NSW Valuations

29 March 2012

The NSW government has been challenged by one of its own backbenchers to change the state's statutory land valuation system.

Matt Kean, the youngest member of parliament and, prior to his election last year an audit manager at PricewaterhouseCoopers, chairs the parliamentary committee on the Office of the Valuer General.

He said NSW needed to review both the governance structure of the Valuer General and the Valuation of Land Act. "I want to see a system that is fair and equitable, and understandable by the people affected."

Mr Kean said he had deep concerns about the exposure of the state government to litigation; about the way the NSW economy had been affected by the land valuation system; and about unjust compensation paid on compulsory acquisitions.



The Minister for Finance and Services, Greg Pearce, said the government had noted the hearings of the Valuer-General committee to date.

"The government will await the full findings of the committee and consider any report or recommendations in due course," he said.

The NSW president of the Australian Property Institute,

Robert Dupont, said NSW had a pretty good valuation system. "Since it was overhauled and refined around six years ago, it now ranks as one of the better systems in the world for mass appraisal valuations," he said.

"There is a fair degree of independence there. Any mass appraisal system will always have holes in it."

This week, the Valuer General, Philip Western, was grilled by the parliamentary committee about those holes in the system and about his independence.

Mr Western oversees the valuation of 2.4 million lots a year.

He told the committee that objections are lodged on around 0.5 per cent of valuations issued and about half of those result in changed valuations.

One member of the committee, the Labor member for Cessnock, Clayton Barr, asked about the changes.

"How do we get a property worth \$22.5 million that is worth \$1 [million]? How do we get a \$30 million property now valued at \$10 million? How do we get it that wrong?" he asked.

Mr Western said that in a lot of those cases, more information, such as the degree of contamination, had become available.

In other cases, the legal system took over. "Often, when valuations go to court ... there can be some decisions made from a valuation perspective which do not quite weigh up," he said.

<https://mattkean.com.au/news/mp-challenges-nsw-valuations>

NSW Valuer-General 'grossly unfair': MP

Eugene Boisvert

Posted 9 Nov 2012, 7:27am

A New South Wales MP inquiring into mistakes made by the Valuer-General has questioned how a Broken Hill mine's land value can be cut by 300%.

The Land and Environment Court recently ruled that the land Perilya's Broken Hill mine is on is worth \$4.9 million, not \$21 million.

Liberal MP Matt Kean has been investigating problems with land valuation as chairman of the joint standing committee on the Office of the Valuer-General.

He says mistakes like the one Perilya took to court should not happen because they create uncertainty for council and government revenue.

"These people are professionals," he said.

"They are meant to be experts in valuing properties - whether it be commercial properties, whether it be mines, whether it be residential.

"So my question to the Valuer-General is: how can you get these valuations so materially wrong?"

Mr Kean says regular ratepayers don't have the means to challenge their land valuations in the Land and Environment Court.

"I think it's grossly unfair that we have an equitable system where mums and dads - residents in Broken Hill - are having to subsidise the operations of a major mining company because of a broken valuation system that's letting people down right across this state," he said.

The Valuer-General's office says it can't comment on the court's decision because an appeal is underway.

Broken Hill City Council and Perilya also don't want to comment on the matter.

<https://www.abc.net.au/news/2012-11-09/nsw-valuer-general-27grossly-unfair273a-mp/4362252>

Land valuations system overhaul recommended for NSW

SEAN NICHOLLS

MAY 2, 2013

Landowners in NSW will be given more power to appeal against official valuations that determine how much they pay in land tax and council rates under an overhaul of the system recommended by a parliamentary inquiry.

The inquiry into the NSW land valuation system also recommends abolishing the office of the valuer-general and replacing it with a new valuation commission.

The change, designed to redress a perceived lack of independence, would see the NSW Valuer-General, Philip Western, asked to reapply for his job.

In addition, the report contains a call to rethink how council rates are determined, to remove discrepancies in the size of the bills received by owners of similar land.

"This is a system that has systemic issues, particularly regarding the fairness in the way landholders are treated and the transparency surrounding how land is valued," said the inquiry chair, Hornsby MP Matt Kean, in a report tabled in Parliament on Thursday afternoon.

The inquiry was established in response to concerns about the fairness of the NSW land valuation system, which the government uses to assess land tax and for the compulsory acquisition of land and councils use to determine rates.

Last year, Fairfax Media reported that wealthy landowners were having their private and commercial property values reduced by billions of dollars for land tax and rating purposes because they could afford challenges in the Land and Environment Court.

In Broken Hill, a mining company, Perilya, had its land valuation reduced from \$21 million to \$4.9 million after an appeal.

It also emerged that more than 40 per cent of the valuer-general's valuations in the state's midwest were wrong. A dispute over the compulsory acquisition of a quarry by Hornsby Council raised more concerns.

The inquiry engaged an accountancy firm, Crowe Horwath, to examine the 2.4 million official valuations carried out in NSW each year for the past decade.

It found that on average, between 2001-11, valuations by the NSW valuer-general have been in line with changes in market values, but individual property owners were at risk from significant annual fluctuations.

The Kean report finds a lack of transparency in the current valuation system because the guidelines used to value land are confusing and not readily available to the public.

It finds that the independence of the office of the valuer-general has been undermined by its relationship with the department of land and property information, whose officials are sometimes involved in land valuations.

The report, unanimously endorsed by members of the joint parliamentary committee, recommends the establishment of valuation commission headed by a chief valuation commissioner, who should issue clear public guidelines about how land is valued.

It says council rates should be calculated on the average of the last three years of valuations – as land tax is currently calculated – to "dampen" large fluctuations in land tax bills and rates notices.

As well, landholders should be entitled to request a valuation review within three months, and would be able to make a submission to the review. This would include the right to have a "conference" with the valuer to discuss their submission.

After three months, the landholder would be eligible to apply to the Administrative Decisions Tribunal or the Land and Environment Court.

<https://www.domain.com.au/news/land-valuations-system-overhaul-recommended-for-nsw-20130502-2iuye/>

Mike Baird offers mea culpa on WestConnex consultation

By [Jacob Saulwick](#)

Updated 3 June 2016 — 8:19pm. First published at 3:40pm

Mike Baird says the government has not handled the consultation and property acquisition for the WestConnex motorway as well as it should, and been insensitive in some of the areas affected.

But the Premier says he will continue to make controversial decisions, because otherwise he would not be doing his job.

Mr Baird was speaking at a lunch event at Luna Park on Friday, where he addressed the criticism of those angered by the sacking of councils and contentious infrastructure projects.

Asked if there were areas where the government needed to adjust in response to the criticism, Mr Baird said: "I think there are some."

"I think look at the WestConnex process, the community consultation process hasn't been perfect," the Premier said.

He cited Sydney's inner west, where resistance to the 33 kilometre motorway has been strongest, as an area that would ultimately benefit from the project.

But he added: "There are personal individual cases where people's homes have been acquired and I think the way we've gone about it hasn't been as careful as it should have been."

"And that can be someone giving an off-the-hand comment if they might have had a bad day themselves... you have to be so vigilant on that.

The comments represent an unusual mea culpa from the government, and a thinly veiled criticism of the approach of the Roads Minister, Duncan Gay. Mr Gay has derided motorway protesters as [latte-sipping anti-road zealots](#).

Nevertheless Mr Baird said that attracting controversy was an inevitable part of attempting to implement change.

"I strongly believe that unless you are taking decisions that in some sense will be controversial, because you will have resistance ... I think you are not doing your job," the Premier said at the event, at which he was questioned on stage by ABC journalist Leigh Sales.

[Referencing a recent protest](#) against the Premier, Sales asked how he differentiated between the sort of criticism levelled at any government, and that to which he needed to pay attention.

"That's really the question," he said.

"The moment a government stops listening you're in trouble. But you also need to be mindful that any change will be resisted. People don't like it at all."

Labor's transport spokeswoman and Member for Strathfield, Jodi McKay, said the government's insensitivity to those affected by the motorway had been a major issue in the area.

"And nobody has listened to them, the minister has dismissed them out of hand," Ms McKay said. "It's just 'We are building this motorway, we are ramming it through."

"I'm pleased the Premier has acknowledged how badly it has to date but the question is what is he going to do about it now."

About 330 properties are being or have been acquired for the first two stages of the motorway. [Many families](#) have lamented receiving offers from the government well below the market rate.

<https://www.smh.com.au/national/nsw/mike-baird-offers-mea-culpa-on-westconnex-consultation-20160603-gpb3r2.html>

Legal bill for forced property purchases jumps to more than \$650 million

By [Mario Christodoulou](#)

Updated 29 October 2017 — 2:06pm. First published at 12:15am

The state government's potential legal bill arising from compulsory acquisitions has soared to more than \$650 million, as landowners challenge the forced purchase of their properties.

Internal emails show officers at Roads and Maritime Services were aware of rezoning submissions that had the potential to significantly increase the amount it would pay for properties.

RMS has been scooping up properties to make way for major infrastructure projects such as WestConnex and NorthConnex using its compulsory acquisition powers.

But the practice has upset some landowners who say RMS is acting opportunistically and offering compensation that's only a fraction of what a property is potentially worth.

That frustration is spilling over into the courts. Since 2012 the value of court cases – expressed as a potential liability in the agency's financial statements – has increased from \$52 million to almost \$658.9 million last year.

An RMS spokeswoman said the rise was in part due to an increasing number of infrastructure projects in recent years.

She said 84 per cent of acquisitions in the past financial year were mutually agreed without compulsory acquisition and that the agency was defending 31 court cases.

"Roads and Maritime Services understands property acquisition is a sensitive issue and works closely with affected property owners," she said.

Tony Debenham, from Gillespie Cranes in Rozelle, said he was offered more than \$50 million for his commercial site from a property company just months before RMS approached him with a compulsory acquisition value of \$13 million.

RMS is building the third stage of the WestConnex project in Rozelle, which will provide a link between the M4 and M5 motorways.

"The offer they have given us is just absurd, it is at least 100 per cent below what we could sell it for as an industrial property," he said.

On the same road as Gillespie Cranes, property company The Desane Group has also fought against RMS's valuation of its 5200-square metre site.

The company believes the site is worth upwards of \$100 million, despite being offered \$18.4 million by RMS. The company is challenging the valuation in the Supreme Court.

There are strict rules surrounding compulsory property acquisitions. A compensation offer must reflect what a "willing but not anxious buyer" is prepared to pay.

Development proposals or rezoning applications can also influence property prices. Desane and Gillespie were among a number of Rozelle landowners that made rezoning submissions to the Department of Planning after the WestConnex project was announced, but before detailed plans were released to the public.

The submissions had the potential to significantly increase the value of the properties.

An email from inside RMS showed staff at both WestConnex and RMS were aware of the submissions.

"Basically the sooner we are out there talking to the affected owners & tenants the better!" a senior RMS staff member said in an email discussing the submissions.

The emails also show RMS reached out to the Department of Planning to find out when they would respond to the rezoning submissions.

"I asked that he let me know before he responded but that we were hopeful of having our announcement before then & that would trigger a meeting request from RMS to the owners," the staff member said in the email.

RMS did not respond to questions on the email. The agency said disputes over property valuations are determined by the Valuer-General or the Land and Environment Court.

More than 70 per cent of compulsory acquisition cases that go to the Land and Environment Court are settled before they reach a hearing, according to a 2016 report by the NSW Parliamentary Research Service.

The report looked at 10 cases which did proceed to hearing and found seven resulted in a higher compensation offer which was on average about a third more than the original sum.

"In most of the relatively few compulsory acquisition cases that were determined at hearing since 2007, the court's determination of market value was higher than the offer made to the property owner," the report found.

Paul Waterhouse, chairman of the Australian Valuers Institute, said in most cases RMS is more than fair in their property valuations, but determining future value of a property remains a grey area.

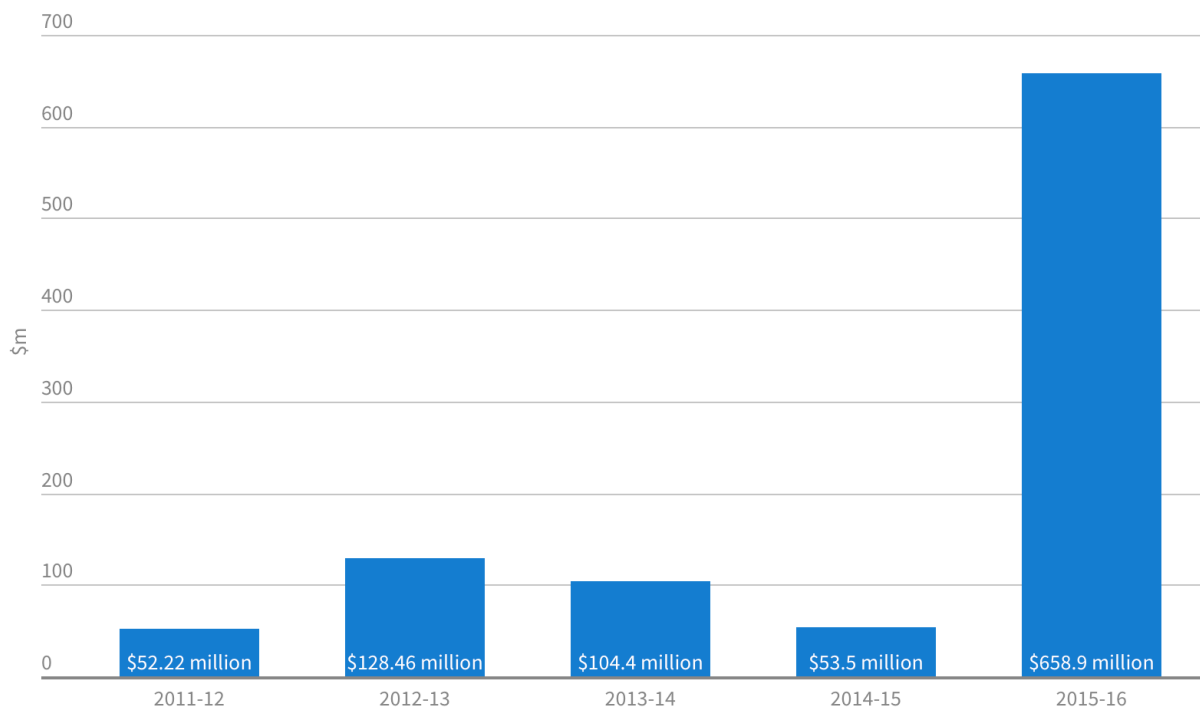
"They are too generous, they give away too much of our taxpayers' money," he said.

"The question is should the client be allowed to have any future value of that property – if the future is not that far away, we tend to argue they should be paid for it."

I'll see you in court



Value of court cases brought against RMS over compulsory acquisitions



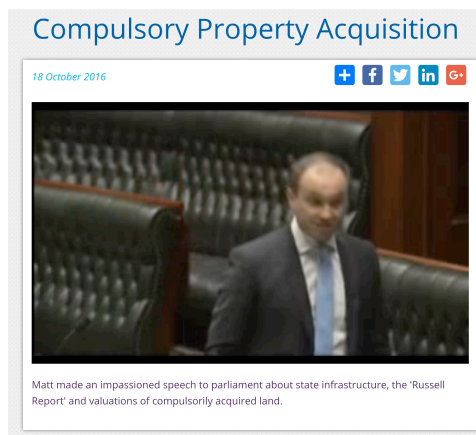
Source: RMS

<https://www.smh.com.au/national/nsw/legal-bill-for-forced-property-purchases-jumps-to-more-than-650-million-20171028-gza5td.html>

Legislative Assembly Hansard – 18 October 2016

Mr MATT KEAN (Hornsby) (15:58): As much as I like the member for Cessnock I will not allow him to rewrite history in this Chamber. Members know the truth. The member for Maroubra passed the member for Cessnock a note instructing him to revise the motion and thus rewrite history regarding Labor's concern for property owners whose land was compulsorily acquired. **The member for Maroubra was not concerned when Frances Vumbacca's and Koola Rafaedies' property rights were trampled by the Labor Government. Where was the Opposition's concern for the Bligh family, whose property rights were trampled? * The market value of their property was thrown out the window when Labor tried to deliver its project under budget.**

The amendment moved by the member for Maroubra should be seen for the cheap, shabby political stunt that it is. The reality is that Labor cannot be trusted on this issue. When Labor was in government it knew that there were systemic problems. That is exactly what the Russell report highlights and exactly what the Government report of the inquiry into land valuation highlighted. I commend the member for Cessnock for his outstanding work on defending in a bipartisan manner the interests of landowners across the State. The Russell report does exactly that. **Anything that balances the ledger between individual landowners and government is a good thing. That is what the Russell report does.**



Moreover, the Russell report seeks to make the valuation and compulsory acquisition process more transparent, accountable and fair. That is something everyone in this House should support. The public will not be fooled by Labor's tawdry political stunt, its attempt to get mileage out of this issue. **The reality is that when Labor was in government, when it had a chance to fix this, it trampled on the property rights of individual landowners. Labor gave inadequate compensation and delivered an inadequate result.** At the same time, Labor did not build additional infrastructure. The Russell report focuses on that. I commend the Minister for Finance, Services and Property for his outstanding work. He is delivering a system that will look after landowners who are being tackled by big government. The system will also be more transparent, fair and accountable to the public, who deserve that. **That transparency and accountability will make sure that people are treated with the dignity and respect they deserve when they go up against big government in the compulsory acquisition process.**

<https://mattkean.com.au/video/compulsory-property-acquisition>

<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-93995/HANSARD-1323879322-93997>

Despite Matt Kean's MPs 'impassioned' speech in 2016, the LNP Govt was fully aware in 2012 that the acquisition and valuation process was unfair toward landowners - and yet they continued to acquire properties and pay \$millions to Lawyers, Barrister and Valuers to bully and cheat residents - forcing landowners to accept unreasonable offers or forced into the lengthy and expensive appeals process.

Yet despite the former Premier Mike Baird's 'mea culpa' and 'customer service' changes resulting from the Russell Review – which was marked 'Never to be released' and suppressed for 2 years, Matt Kean and the LNP Govt refuse to acknowledge they have not treated landowners with the dignity and respect Matt Kean spoke passionately about – and yet the Government still refuses to review all acquisitions and recompense landowners the compensation they have wilfully cheated landowners.

* Frances Vumbuca has stated: "Matt Kean is wrong. Labor may have started the acquisitions, but Liberal finished us off. Why didn't the Liberal Govt make things right after being caught out on the cut and paste that was found in in the Leppington Valuations. It was brushed under the carpet." (also, 2012 Report attached)

Damning report on NSW Government housing acquisitions marked 'never to be released', documents reveal

KELLY BURKE, The Daily Telegraph
August 24, 2016 12:00am

PREMIER Mike Baird is being pressured to release a highly critical report on compulsory home acquisitions he has suppressed for more than two years

The damning report into the NSW government's process had been marked never to be released, according to confidential documents obtained by *The Daily Telegraph*.

Mr Baird was advised by his Property Minister Dominic Perrottet in December to keep the Russell Review secret, because the report's recommendations on how to create a fairer process for families forced to sell their homes could lead to delays in a raft of major infrastructure projects such as WestConnex. Many homeowners are currently in dispute with the government, saying the compensation offered is tens of thousands of dollars less than market value.

After being grilled in parliament, Mr Perrottet admitted he later had a change of heart and wrote again to the Premier and Deputy Premier Troy Grant in February recommending the government revisit the report. Six months on and the Premier still has not acted and the report remains under cover.

In a statement, Mr Perrottet said over the Christmas break he became more aware of growing community concern over the way the government was handling the forced acquisitions and advised Mr Baird that additional reforms needed to be considered "to provide certainty to landowners and government agencies".

Mr Perrottet released a letter dated 3 February 2016 but with the date recommended for Cabinet to reconsider the report's findings redacted.

Mr Perrottet said the government fully intended to release the Russell Report. Mr Baird's office declined to comment.

Opposition MP Jodi McKay, who confronted the property minister on the issue in question time yesterday, said the correspondence released yesterday further proved Mr Baird's intention to sit on the report indefinitely.

"The Baird Government has only acted now because it has been shamed into doing so and its hypocrisy has been exposed," she said.

Hundreds of families have already had their homes compulsorily acquired to make way for major infrastructure projects such as the WestConnex, and more households are in protracted negotiations or disputes with the NSW government.

But the independent review, commissioned by Mr Baird's predecessor Barry O'Farrell as part of an election promise and conducted by David Russell SC, has found huge flaws in the way the government is handling the acquisition process, with major concerns over fairness and transparency.

The Daily Telegraph understands at least nine recommendations on how to make the compulsory acquisition process fairer and less distressing for families affected were made by Mr Russell. However, all but two of the recommendations have been privately rejected under advice from the government's transport, planning and environment divisions.

Opposition leader Luke Foley described it as hypocrisy of the highest order.

"At every media conference where Mr Baird feigned sympathy he knew he had the information that could fix the problem."

<https://www.dailytelegraph.com.au/news/damning-report-on-nsw-government-housing-acquisitions-marked-never-to-be-released-documents-reveal/news-story/bd7db776b6ac9667c9daf71d69c5a00b>

In response to Russell Review Recommendation 20, the Dept. Finance, Services and Innovation (DFSI) initiated the **Property acquisition Standards (PAS)***, which was formulated in response to recommendations by Michael Pratt.

Property Acquisition Standards - Version 1.1 (30/06/2017)

Purpose of this document

This document sets out standards to achieve the targeted resident, community and government outcomes covering recruitment and training, communications with landowners / residents and reporting on the property acquisitions process covered by the *Land Acquisition (Just Terms Compensation) Act 1991*.

Scope

These standards apply to all acquiring authorities that acquire land under the *Land Acquisition (Just Terms Compensation) Act 1991* (the Act). References to acquiring authorities include all NSW Government Agencies, local councils and any organisation undertaking land acquisition under the Act, and must be adhered to by their staff and contractors.

Required Outcomes

The purpose of these standards is to support acquiring authorities in achieving the following outcomes:

- Landowners/residents are, and feel they were treated fairly, with empathy and respect, and had the support and information they needed to manage the land acquisition process in accordance with the Act.
- The community feel confident the government applies consistent, transparent, and fair land acquisition processes, support and compensation outcomes that deliver public value – both financial and social
- The government feels confident the property acquisition process is fair, transparent and is listening to and responding to community feedback
- DFSI, CPA and acquiring authorities support the delivery of the optimal resident, community and project outcomes

Review

These standards will be reviewed by PAS every six months in consultation with the CPA. Any changes to standards will then be clearly communicated to acquiring authorities to ensure they are aware of any new obligations. For any questions relating to the standards or the application of the standards please contact land@finance.nsw.gov.au

* Please find copy of DFSI circular attached.

To date, the **Property Acquisitions Standards Group** should have already completed two (2) reviews, as stated, and that a biannual report will be issued and made public as stated on Page 7.

2. Reporting

2.1. PAS will report on a bi-annual basis to the public and ministers on whole of government property acquisition activities, and provide other related reporting as required.

It is not known whether a review has been completed, and there is no information directing the public and Government officials to where they can access both the report and reviews - which should have been released early and mid 2018.

Throughout the PSA, the outcome objectives for AA,PMA, CMP ,CPA are to deliver a better experience for the soon to be dispossessed landowner. There is, to date, no way to determine if the PAS are being adequately undertaken and/or what random checks or audits – if any, are being carried out to ensure the PAS are being followed and/or there is any empathy shown towards the landowner.

RECOMMENDATION

That an Independent Parliamentary Committee be established to oversee the acquisition of property, with full powers to undertake random unannounced checks of acquiring authorities, and scheduled face-to-face meetings with dispossessed owners – no survey by post or email. The committee can then satisfy themselves the PAS is being followed, and landowners are indeed being treated fairly and in the right spirit in accordance with PAS

Ensure that Customer Relationship Management (CRM) system is being regularly used and updated, and a flow of information is occurring between the AA, PMA etc and CPA and PAS.

RECOMMENDATION

That an Independent Parliamentary Committee be able to readily access the CRM – without hesitation, to ensure it is being used effectively, that any complaints are being properly recorded, and any actions taken by the AA, PMA, etc. are duly noted, so as to ensure the PAS are being followed - and provide a real-time snapshot of what's occurring to adequately oversee the acquisition of property.

Reporting - Page 3, Point 4.1, states that “PAS will be provided with access to anonymised data from the CRM tool necessary to carry out its functions.

This would prove problematic.

As we have already seen, many residents have been bullied into accepting unreasonable offers – and inevitably end up in the so-called 80% by agreement column.

To better analyse the data, it would be crucial that published data be made available that includes:

- Initial offer of compensation made by acquiring authority – including verbal offers, including the landowner independent valuations
- Offer made by the Valuer General and any valuations undertaken, the landowner valuation – and the final offer of compensation agreed to
- Whether the landowner appealed to the VG offer to the L&E Court

This information will better flag any major discrepancies between AA offers and landowner valuations that can be better resolved by an Independent Parliamentary Committee to ensure the landowner isn't forced into unnecessary and expensive appeal process.

The *Land Acquisition (Just Terms Compensation) Act 1991* clearly states fair compensation to landowners, however the current process does not provide an opportunity to negotiate. To date, the Acquiring Authority strives to make a saving by the “go low and work up” approach – instead of what the property is actually worth as is the case in any normal commercial negotiation, which is stressful and unfair to the landowner who is being cheated out of the full market for their property.

Access to this data via the CRM system would ensure better scrutiny, oversight, and accountability of the acquiring authority to detect ‘lowballing’, and ensure that negotiations are fair and amicable, any complaints are properly recorded, and the landowner is not left out of pocket – and able to purchase a comparable property in the same area.

Resident/Landowner Support (Page 5, Point 4.3)

Resident/landowner feedback will be incorporated into all materials developed and revised by the CPA. Insights from resident/landowner feedback will be issued to PAS in order to consider development of land acquisition policies and standards.

To date, how many acquisitions have been reviewed based on landowner feedback, and what changes have occurred from such reviews.

RECOMMENDATION

That an Independent Parliamentary Committee undertake to establish whether any feedback mechanisms are in place for landowners to provide feedback, whether any feedback is properly recorded and actioned – and not simply understated and ignored, and that the committee has powers to undertake random unannounced checks of acquiring authorities and schedule face-to-face meetings with dispossessed owners.

5. Reporting (Page 6)

5.5. CPA must provide (and procure from AAs) accurate and timely information to PAS for the purposes of PAS fulfilling its roles and responsibilities.

Can the PAS confirm it is receiving regular flow of information from CPA, and provide evidence to ensure the data can be analysed to give a picture of what is actually happening.

What, if any public feedback has PAS received?

It is a widely held belief that Acquiring Authorities operate with little empathy and actually take advantage of landowners to acquire land at under its true market value. This issue was raised by the speech delivered in Parliament by Matt Kean MP on October 18, 2016. (<https://mattkean.com.au/video/compulsory-property-acquisition>)

Clearly this is against the *Land Acquisition (Just Terms Compensation) Act 1991*, and the spirit of PAS.

What mechanism or standard or deterrent can PAS implement to admonish and warn Acquiring Authorities that deliberate manipulation or undervaluing will meet dire consequences for the AA and any individual found operating in this manner?

The Acquiring Authority and Landowner both undertake valuations that are provided to the independent Valuation Commissioner to assess the Market Value of the property. The landowner has the opportunity to explain any special features of his property and/or alert the Commissioner to important information that will effect valuation – modifications, rental income, zoning plans etc. These valuations must be within 10% of each other otherwise it will trigger an automatic review of the valuations. The Acquiring Authority has no part in the process to balance the existing power imbalance, and the average or highest valuation is the compensation figure.

Valuations will always be contentious and the crux of most stalemates, but if it is clearly demonstrated that any group or individual operated in a manner to take advantage financially of a dispossessed landowner that very serious consequences should and will occur.

It is the role of the Valuation Commissioner and Parliamentary Committee to put the 'fear of God' into Acquiring Authorities so they act in accordance with the legislation both in word and spirit, and fairness would be achieved from the oversight of a Valuation Commission and regular Standing Parliamentary Committee empowered to undertake spot audits and reviews.

RECOMMENDATIONS

I ask that the committee recommend to:

- **Initiate a Royal Commission into WestConnex – with strong focus on Compulsory Acquisitions and review of RMS, Valuer General and L&E Court processes.**
- Halt any further acquisitions and immediately initiate a full Inquiry into the Compulsory Acquisition and Appeals process,
- Immediately review all acquisitions to date – and please ensure residents and businesses are recompensed what has been stolen from them.
- Implement the 're-instatement' recommendation in the *Russell Review* that the Government refused, to ensure residents can purchase another home in their area,
- Immediately review the *Just Terms Compensation legislation* – as per Recommendation 20 of the *Russell Review*.
- Review the negative impact of "blight" on property values –
 - 'Blight' is not taken into consideration when determining valuations, and adjustments are not permitted in the L&E Court for the impact of the 'public purpose' – which decreases market value, and
 - there are currently no considerations within the legislation to compensate residents impacted in infrastructure corridors,
- Establish an Independent Body to undertake Government Valuations – "Valuation Commission" as proposed in 2013 and rejected by the Government,
- Ensure Hardship provisions are easier to access for residents living next to infrastructure projects, in Road Corridors, or areas re-zoned for future Infrastructure projects.
 - Landowners affected by infrastructure zoning would also benefit from a hardship review Commissioner as Recommended in The Russell review should cases of hardship occur.