

**INQUIRY INTO ACQUISITION OF LAND IN RELATION TO
MAJOR TRANSPORT PROJECTS**

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Date Received: 5 July 2021

Partially
Confidential

Inquiry into the Acquisition of Land in relation to major transport projects

Richard Capuano

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Introduction

Dear Committee Members,

Thank you for establishing this Inquiry, and taking the time to consider my Submission.

Please also find attached my Submission and Questions on Notice provided to the 2018 Inquiry into the Impact of the WestConnex project, and the Land and Environment Court Determination

I would greatly appreciate the opportunity to give evidence to the Inquiry.

My home at Campbell St, St Peters was Compulsory Acquired for WestConnex. I received the acquisition notice on 4 November 2014.

The acquisition process was NOT fair and equitable, and I was punished for appealing the unreasonable RMS offer.

I have been treated unfairly by the RMS and Transport for NSW, and deliberately cheated out of compensation. The Compulsory Acquisition and Appeal process was disrespectful and belittling, and there was absolutely no negotiation. I was completely powerless throughout the entire process.

The RMS offered \$850,000 for my house, an unreasonable offer that I appealed.

The Valuer General offered \$900,000, an unreasonable offer that I appealed.

My independent valuations were consistently around \$1,400,000 to \$1,500,000.

In the Land and Environment Court, the RMS 're-valued' my home at \$825,000.

The RMS then adjusted the offer back to \$900,000 - and refused to budge any further, after the Sydney Morning Herald raised the matter with the Finance Minister Victor Dominello MP who 'vowed to review' how this could possibly happen (attached). The RMS reprimanded me for speaking to the media.

The RMS boasted they had 'deep pockets', and their Lawyers and Valuers were vicious. They delayed the Appeal process by demanding unnecessary and expensive structural and building reports - even after the house was demolished. No doubt an effort to wear me out and give up.

During proceedings, the Judge determined the market value "benchmark" was \$1,300,000+ based on comparable property evidence provided by the RMS, yet the RMS Barrister and Lawyers protested when they realised and demanded to have this evidence removed.

The RMS eventually increased their offer to \$1,000,000.

In April 2018 - after a long 6-month wait, the Judge delivered the outcome of \$1,000,000 that the RMS demanded. Not \$1,300,000+.

The Judge talked down my property, completely disregarded evidence provided by my Valuer, claimed my home was a 3-bedroom – even after pointing out the “Delightful Terrace” next door that was owned by the RMS was rented out as a 4-bedroom house (attached), and did not give any consideration to the ‘public purpose’ (‘blight’) or property acquisitions in the area when determining the market value.

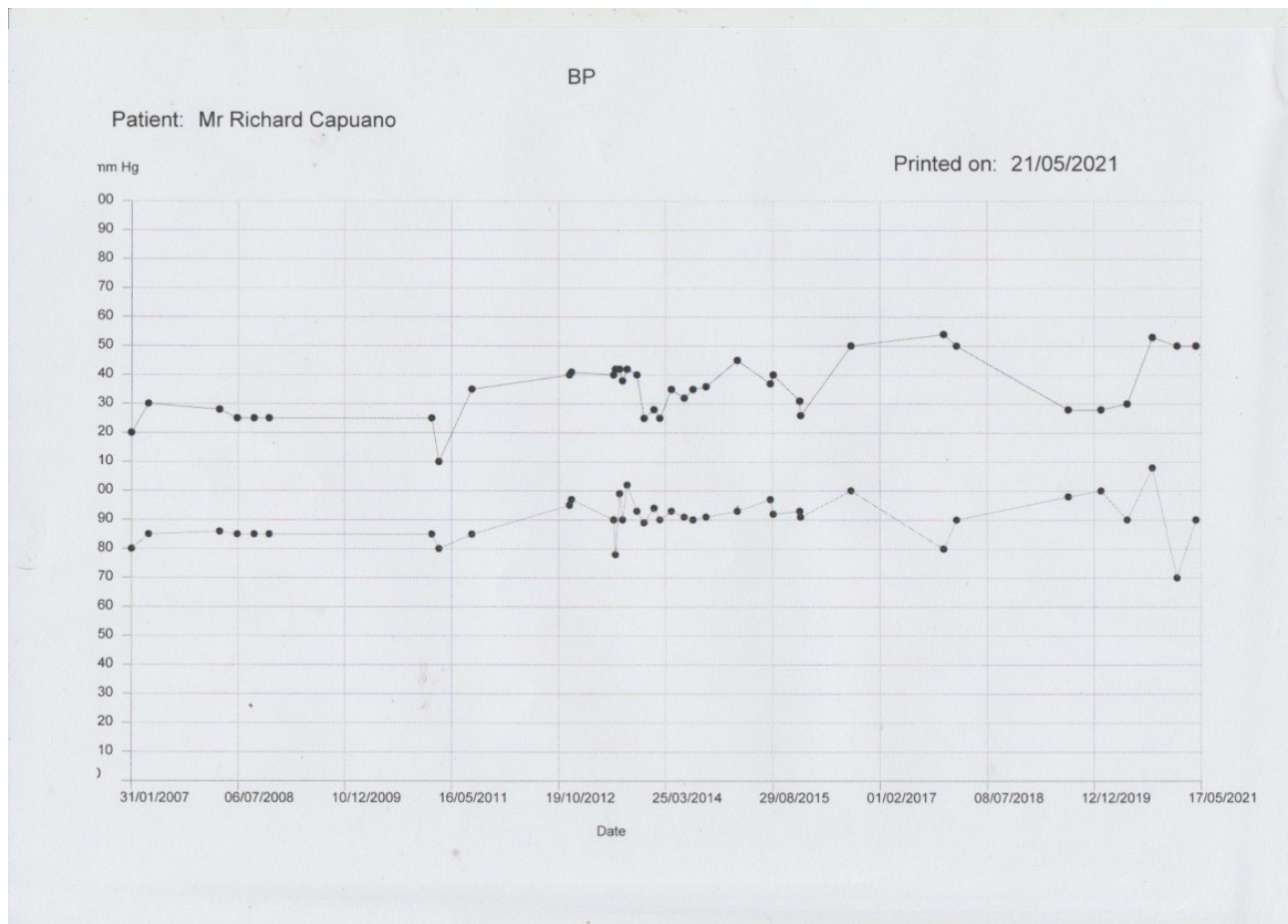
The Determination was a copy-n-paste of the RMS Valuers valuation. (attached)

To add further insult, the RMS then “recouped” the \$100,000 awarded by the Judge by only reimbursing 65% of solicitors fees, and refusing to pay my Valuers full costs and expert fees - despite demanding several unnecessary structural and building reports.

Component	Actual Fee Incurred	Settlement Amount [\$219,765.23] And Payments
Solicitor fees	\$158,485.80	\$30,775.89
Counsel fees	\$26,180.00	\$0.00
Building/engineering expert fees	\$12,616.31	\$0.00
Valuation fees (Rowlands)	\$5,500.00	\$0.00
Valuation fees (Szalay)	\$68,803.80	\$54,718.00
Other disbursements	\$10,030.13	\$0.00
Reimbursement to the Client		\$134,271.34
TOTAL	\$281,616.04	\$219,765.23

After a long struggle to be properly compensated, I now faced an uncertain future. I was stuck in limbo experiencing extreme emotional highs and lows.

My health had significantly deteriorated and my blood pressure increased. I was significantly stressed and depressed. My business collapsed. I was also receiving Counseling. My Doctor and Counselor were so concerned about my health that they advised I leave Sydney.



My blood pressure readings during the Compulsory Acquisition and Appeal process.

I moved to the Central Coast and forced into rental accommodation – another unnecessary expense. I thought it would be temporary.

There was absolutely no way I could purchase a comparable home in the area. I was priced out of the market that had significantly increased since the acquisition process commenced in 2014.

I was advised the RMS would BANKRUPT me if I appealed the Land and Environment Court decision.

I was devastated.

There is no doubt I was **punished** for appealing the unreasonable RMS offer. I was dragged through the unfair Appeal process, and it cost close to \$300,000 in legal and associated expenses.

No doubt the cost to Govt would have been significantly more, and it begs the question why the Govt was happy to waste taxpayer money to drag me through the Land and Environment Court - bully, belittle and cheat me, instead of properly compensating me in the first place.

It's unbelievable that the Appeal process took 3 years, and caused considerable stress and anxiety despite assurances by the NSW minister for finance, services and property, Dominic

Perrottet MP – the same person who kept the Russell Review 'secret', that "the government was committed to a land acquisition process that is fair and efficient for all parties." ¹

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. ²

It makes no sense.

What chance do homeowners have when faced with an acquisition process that is driven by a penny pinching Govt that has trampled on their property rights, and is intent on cheating them out of compensation – simply to save costs.

It's heartless and cruel.

I know many of my neighbours were also cheated. They believed they had no choice and were forced to accept the unreasonable offer under threat of a lengthy and expensive Appeal process.

I am still traumatised by the experience.

This has to end. Pay back what you have cheated us.

¹ Warning of 'unfair' process unheeded as government forges ahead with property resumptions, SMH, 10 January 2016

² SMH article, Legal bill for forced property purchases jumps to more than \$650 million, Mario Christodoulou, 29 October 2017

Summary - My Compulsory Acquisition and Appeal experience

1. I purchased the property at _____ St Peters in 1998.
2. The property was a 4-bedroom 2-storey terrace with original/heritage features, built in the early 1900s to accommodate workers at the former brickworks in what is now *Sydney Park*.
3. Marrickville Council identified the property as a proposed Heritage Item, yet this was later abandoned due to the WestConnex project.
4. The property was located across the road from *Sydney Park*, conveniently close to public transport with easy access to the CBD, and short walking distance to *Newtown* and *Marrickville Metro*. I could also see Centrepont Tower from my front balcony.

The Acquisition process commences

5. On Tuesday 4 November 2014, *Melbourne Cup Day*, residents in St Peters received formal notification from the RMS that our homes would be Compulsory Acquired for the WestConnex project.
6. My neighbours and I did not have any objection to this.
7. On Monday 10 November 2014, we attended a meeting with _____ (former WestConnex Stage 2 Project Director), representatives from the WestConnex Communication Team and RMS Acquisition team - including _____ to discuss the Acquisition process.
8. We expressed concerns that residents in Haberfield were not being compensated the full Market Value for their properties, and they assured that we would be 'well looked after', that we would be 'more than adequately compensated', and that the process would be 'on our timeframe' and completed by the end of 2015. _____ from the WestConnex Communication Team repeatedly asked 'where do you want to be New Year 2015?'
9. We left the meeting feeling confident about the Compulsory Acquisition process, that we would have nothing to worry about, and that we would be able to purchase another home in the St Peters area.
10. In late January 2015, the RMS commenced the Compulsory Acquisition process, and we engaged Slater and Gordon to help navigate us through the Acquisition process. We were told to prepare our properties for Valuation.
11. In early March 2015, RMS Valuer _____, Certified Practising Valuer for MJ Davis Realty Appraisals, requested access to the property. I explained that I was painting and in the process of obtaining finance to undertake some minor renovations to prepare

the house for Valuation.

12. advised me not to undertake any renovations - stating it would have "absolutely no impact on the Valuation". I cancelled the finance application and halted the renovations on her advice.
13. I next heard from in early April when she told me the RMS were putting 'considerable pressure' on her to submit Valuations. I told her she was welcome to inspect the property, but she declined and advised she would undertake a 'curbside valuation'. At no time did visit the property.
14. asked about the property and any improvements, which I explained in detail. She was shocked to learn it was a 4 bedroom 2-storey terrace with new ceilings and rosettes, polished floorboards, and original/heritage features.
15. told me she thought it was a 2br single-storey semi, and assured me she would adjust the Valuation to take this into consideration - which did not happen.

RMS Initial Offer

16. In May 2015, I received the initial offer from the RMS.
17. I was shocked at the unreasonable offer of \$850,000, and that had compared my property to significantly inferior properties that included a 2-bedroom single-storey semi on the Princes Highway, Sydenham directly under the flight path.
18. The initial RMS offer did not in any way reflect the true Market Value of my property.
19. I found that my neighbours also received significantly low offers.
20. We then learned that a 3-bedroom single-storey property at **132 Campbell St, St Peters** was acquired in April 2015 for \$2,400,000, which better reflected the true Market Value of properties in St Peters.
21. My neighbours and I asked from Slater and Gordon why this property was not taken into consideration in our Valuation and/or RMS offer, and requested he raise the issue with the RMS.
22. told residents that the RMS "**would not take acquisitions into consideration**" when determining offers. This was unfair.
23. My neighbours, Ray and Sandra Greig - who had a significantly superior property to 132 Campbell St, St Peters, were initially offered \$1,425,000 – a staggering \$975,000 difference.

24. The Greig's, being elderly residents, were stressed by the process and feared for their health, and were forced to accept a second unreasonable offer of \$1,600,000 - a difference of \$800,000.
25. I understand that _____ told them 'that is the best offer the RMS would make, that was it'. They are elderly and were not able to appeal the unreasonable offer, and fearful of a lengthy and expensive Appeal process.
26. I was in close contact with my neighbours. We were stressed and overwhelmed by the way we were being treated. We realised we had been misled and deceived, and that the RMS had betrayed our trust.
27. The flow-on effect was that it significantly reduced the value of our properties, a deliberate strategy by the RMS to reduce costs.
28. I also noticed significant differences between offers for surrounding properties - for example, several 2-bedroom single-storey weatherboard properties on Alfred Street directly behind my property, were offered \$1.450,000. It didn't make sense that I was offered \$600,000 less.
29. The acquisition process was causing considerable stress for many residents, and the RMS were bullying and intimidating residents into accepting their unreasonable offers - under threat of lengthy and expensive Appeals process. **They stress you out, to get you out.**
30. I know many residents felt under duress, and that they did not sign over their homes willingly. An abuse of their authority.
31. At no time did the RMS negotiate with me - instead dictating their terms, and I was left with no choice but to appeal the offer to the Valuer General.

Appeal to the Valuer General

32. I rejected the RMS offer, in accordance with the timetable set out in the *Land Acquisition (Just Terms Compensation) Act 1991*, yet I heard nothing from the RMS and the acquisition process stalled for 6 months. I was left in limbo without any explanation.
33. After the lengthy delay, and considerable stress and anxiety, the remaining homes were 'Gazetted' on 22 April 2016 - the day after Stage 2 works were approved.
34. I no longer had any confidence in Slater and Gordon, and engaged another Lawyer to prepare my Submission to the Valuer General.

35. My submission included properties that were acquired by the RMS – including the property at 132 Campbell St, St Peters and those directly behind my home in Albert St. I believed this better reflected the Market Value of the property. The valuation of my property was \$1,500,000.
36. In June 2016, the Valuer General made his Determination. I was only offered \$900,000 – which was a \$50,000 increase.
37. I believed this to be an unreasonable offer. The Valuer General had completely ignored my submission, and included a page in his Valuation that talked up the benefits of the WestConnex project. Disrespectful considering I was unable to benefit from any of the uplift he had outlined.
38. I learned the Valuer for the Valuer General, _____, Omega Property Consultants (est. September 2015), was/is employed by RMS Valuers Lunney Watt & Associates. This was a conflict of interest. A hired gun.
39. I learned that the Valuer General assigned to us is Paul Goldsmith, had also under-valued many properties – including _____. Under oath during the 2018 Inquiry into WestConnex, Paul Goldsmith indicated he had no issue with this. I appealed the valuation.
40. According to information available on the Valuer Generals' website:
"The Valuer General is appointed by the Governor of New South Wales as a statutory officer and acts independently of both State and local government. This independence is important so there is a clear separation between the acquisition of land by government for a public purpose and the determination of compensation."
41. I believe there was significant bias toward the RMS, and that the Statutory Independence of the Valuer General was 'tainted' and/or there was significant 'interference' by the Department and Minister with the intention to deliberately and willfully cheat residents out of compensation.

Land and Environment Court appeal

42. I had no choice but to appeal the Valuer General Determination in the Land and Environment Court, and was upset that I had been forced into this situation.
43. I was not entitled to receive any compensation until after I had submitted the appeal application, and was required to pay \$665 per week in rent from the date my home was 'Gazetted' on April 22 2016 - for the privilege of continuing to live in my former home. I wonder if the rent was calculated on a 4-bedroom house - not 3-bedroom, as the RMS had argued.

44. I subsequently found that the RMS had deducted over \$9,000 in rent. This practice seemed very unfair to me, however it was recovered at the Land and Environment Court Conciliation Conference.
45. In late August 2016, we were assigned "Customer Service Representatives". They did not care that we were being forced out of our homes – or that we wouldn't be able to purchase another property in the area considering the unreasonable RMS and Valuer General offers.
46. They bullied and lied to us. It was clear their role was to facilitate the removal of residents from their properties, and they put undue pressure on us to vacate – simply to accommodate the RMS schedule.
47. I was shocked when they forced my neighbor _____ into a tiny studio serviced apartment with only basic tea/coffee making facilities - it was so tiny she couldn't even swing a cat. Removalists came into her home, packed up her belongings, and shoved them in storage somewhere. She was treated with little dignity, and was broken and humiliated by the 'brutal' experience - she was unhappy and broke down in tears.
48. They also tried to shove me in the same apartments, but I preferred to find my own alternative rental accommodation.
49. There was also an underlying threat of police intervention if we did not comply – which made me feel very uneasy, and this was evidenced when my neighbor Van was forcibly removed from his home and thrown in jail - for trying to defend his family and home.
50. I was terrified about an uncertain future as I would soon be homeless without finding a suitable place to live. I had no idea what was going to happen to me. I was stressed and dreaded when Customer Service Representatives would contact me, I felt they were pressuring me into accepting a 'solution' that did not meet my needs or adequately replace my former home.
51. I felt that the RMS had taken control of my life and were dictating how and where I should live. My choices had been taken away from me and I was of the view that RMS had no interest in the welfare of residents undergoing Compulsory Acquisition of their properties.
52. During this time, my physical and mental health deteriorated. I was depressed, anxious, and considerably stressed. I suffered both physical and mental symptoms. My doctor diagnosed me with anxiety, depression and insomnia, and I was referred to a Thyroid Specialist who diagnosed me with the autoimmune disease Hashimoto's hypothyroidism. I was prescribed anti-depressant tablets, sleeping medication, thyroid medication, and was referred to Counseling. My doctor and Specialist monitored my health. It was recommended I move away from Sydney to remove myself from the stress and repair my health, and wait for the Appeal in the Land and Environment Court.

53. At the time, I understood I wouldn't be able to get a Land and Environment Court Conciliation Conference date until mid-2017.
54. I was forced to live with the stress and uncertainty every day. I was constantly reminded about my situation – I was consumed by it, and it was making me sick. I had no home and no future prospects of being able to purchase in the current Sydney market.
55. On November 18, I handed over the keys to my home to the Customer Service Representative while RMS Valuer undertook another valuation of the property. It started out amicably, however indicated he would value the property as 3-bedroom – not 4-bedroom, and kept going on about some minor water damage in the stairway. This upset me, and I knew the RMS was going to make it difficult for me.
56. I cried as I left my home.
57. In early December 2016, my Lawyers notified me that had requested that I provide a building inspection and consultants' reports - at my expense, for no specified reason. refused to reveal what the 'issues' were, and I requested the RMS pay for these unnecessary reports. I received no response. I could not understand why and the RMS needed these reports when they intended to bulldoze the property.
58. On February 28 2017, I attended the Land and Environment Court Conciliation Conference. The RMS would only offer \$825,000 for my home, which was \$75,000 less than the VG Determination of \$900,000. My independent Valuation was reduced to \$1.45m to accommodate the RMS.
59. RMS Valuer claimed that the house was seriously defective, which he did not have the expertise to ascertain, indicating it would cost \$350,000 to repair the property – for which he had no quotes or evidence. By this time, the RMS had already demolished the property. This indicated he thought my property was estimated at \$1,250,000.
60. The RMS reluctantly increased the offer to the Valuer General offer of \$900,000. The Commissioner had also picked up that had not submitted a property value in his Valuation.
61. I had no choice, no other option than to proceed to a full hearing in the Land and Environment Court.
62. The RMS refused a full hearing at the Land and Environment Court in June/July - saying they didn't have any staff available, and made we wait until mid-September. By this time, it was nearly 3 years since the Compulsory Acquisition process commenced. This was extremely unfair.

63. I soon understood why... RMS Valuers Lunney and Watt bombarded me with unnecessary Structural and Engineers reports, it was obviously a tactic to overwhelm me with the legal and associated costs – it seemed that every time they sneezed it cost another \$50,000.
64. During the Hearing, the RMS Barrister, _____ went on endlessly about negative adjustments to comparable properties (some already affected by 'blight') - and eventually argued for a value of \$1,000,000.
65. The RMS and Land and Environment Court Judge refused to consider any adjustment for 'blight', even though two properties considered clearly demonstrated the affect of 'blight' on sales in the area.
66. One of these two properties put forward by the RMS arrived at a value of \$1,300,000 - after numerous adjustments (except for 'blight'), and the Judge carefully considered the 'benchmark' to be \$1,300,000. Adding adjustment for 'blight' – and the 4th bedroom, the value would have been around my initial 2015 valuation of \$1,500,000.
67. After three years, there was now hope that I would be properly compensated – and clear evidence before the Land and Environment Court that demonstrated the value of my property was closer to my valuation, which had again been reduced to \$1,400,000 to accommodate the RMS.
68. When the RMS realised this, their Barrister _____ and Lawyer _____ from Clayton Utz tried desperately to have the comparable property dismissed. The Judge considered it to be a comparable property – much to the dismay of the RMS Lawyer and Barrister.
69. There was finally clear evidence that the RMS had willfully cheated residents out of compensation.
70. I waited another long 6 months before receiving the Land and Environment Court Judgment, only to find I was offered \$1,000,000 – what the RMS barrister and Lawyers had demanded.
71. The Judge 'disregarded' the \$1,300,000+ property.
72. The Judge also dismissed that my house contained 4-bedrooms. The property next door at _____ Campbell Rd, St Peters was a mirror image, which was owned and rented out by the RMS as a 4-bedroom house.
73. I was devastated and angry, and desperately wanted to appeal the Judgment – yet was told the RMS would tie me up in the Courts with endless appeals and **bankrupt** me.

74. I was terrified that I would lose everything – that I would never be able to purchase another home, which was in stark contrast to terms of the *Land Acquisition (Just Terms Compensation) Act 1991*.
75. My life and choices were no longer my own, I was completely dependent on decisions made by government employees who are strangers to me. I had lost control over my own life. I was unable to operate my business due to the stress caused by this situation - which has increased my distress financially and emotionally.
76. I was stuck in a rental situation and unable to purchase another home in Sydney.
77. The RMS then skimmed on reimbursing my legal and associated costs. They refused to pay my Valuer his full costs, and only reimbursed 65% of the solicitors costs. They had taken back the \$100,000 that the Land and Environment Court Judge had determined. Unfair and nasty.
78. Another concern is that there is no set timeframe for the RMS to reimburse legal and associated costs.
79. In the end, my legal and associated expenses for the Land and Environment Court proceedings amounted to over \$280,000 - a staggering amount of money, with the Valuer General costs around \$20,000. This is clearly a deterrent to appeal an unreasonable RMS offer. No landowner should be forced into the situation.
80. I would **NEVER** have willingly sold my home for \$1,000,000 on the open market.
81. I would never wish a Compulsory Acquisition on anyone.

2018 Inquiry into impact of the WestConnex project

A missed opportunity

I provided evidence to the 2018 Inquiry into WestConnex, and have attached my submission and Questions on Notice.

I was disappointed to find that Committee Members did not deliver any reasonable outcomes for affected residents, despite it being acknowledged that:

"A number of residents and businesses have had their properties compulsorily acquired for the WestConnex project. Compulsory acquisition is a sensitive and stressful circumstance for any property owner. It is a matter that must be dealt with in a careful, considered and sensitive manner by any government. I was saddened to hear that compulsory acquisition has not always been managed with an appropriate level of care. This has left many property owners in state of distress and anxiety. This is unacceptable. The report includes recommendations that aim to make the compulsory acquisition process fairer and more transparent."

Revd the Hon Fred Nile MLC
Committee Chairman ³

I attended all the hearing dates; it was at times unbearable to hear the lies and deception, particularly RMS Chief Executive, Mr Ken Kanofski, who had demonstrated a lack of respect towards homeowners who had their properties Compulsory Acquired.

5.27 Mr Ken Kanofski, Chief Executive of Roads and Maritime Services, acknowledged that compulsory acquisition is 'probably one of the most stressful things that can happen to a home owner' and that RMS seeks to manage the process 'as well, and as professionally, as it can be managed'. ⁴

Even comments by Mr Paul Goldsmith, Principal Valuer – Compensation, Valuation Services, Property NSW, were disingenuous and cynical, and he was quick to dismiss concerns regarding any conflict of interest and bias shown by the Valuer engaged by the Valuer General.

³ Final report, Public Accountability Committee, The impact of the WestConnex Project, 17 December 2018 p.viii

⁴ Final report, p.86.

Recommendation 14

That the NSW Government undertake a review into the merits of a process where all offers of compensation are administered by the Valuer General from the beginning of the property acquisition process.

Seriously...

"The committee notes that its recommendations on compulsory acquisition thus far are forward looking. They are not retrospective and therefore will not directly address the grievances expressed by property owners who have already had their homes acquired by RMS for the WestConnex project."

Many residents are heartbroken that the 2018 Inquiry into WestConnex was a whitewash. We had been subjected to an unfair Compulsory Acquisition process, belittled and humiliated, only to find that the Committee wasn't concerned with ensuring that homeowners would be treated fairly and recompensed what was cheated from us.

There was clearly no intention to provide justice after the way we had been treated despite the lies and deception from Govt representatives, the heartache and tears shed by homeowners who were bullied into accepting unreasonable offers – or dragged through an unjust Appeal process that favoured the Govt.

But wait, a glimmer of hope...

"However, the committee believes that those property owners who have had their property compulsorily acquired, and remain unsatisfied about the process and their treatment, should have their grievances addressed by government. It is recommended that the NSW Government devise a process, through which property owners can apply to have the process by which their property was compulsorily required, reviewed."

Nope, false hope...

There has been no review, not even an attempt to reach out to homeowners, nothing. The Committee failed to hold the RMS and Govt accountable – and many are of the opinion they have turned their backs on us.

Even in his response to the 2018 Inquiry into WestConnex, Andrew Constance MP dismissed our concerns, belittled homeowners, and failed to acknowledge how the RMS and Govt had treated us. There was obviously no mention of a review or recompensing homeowners what they had been cheated.

The Compulsory Acquisition and Appeals is unfair and needs to be fixed.

Recommendation 22

That the NSW Government:

- Devise a mechanism, through which property owners can apply to have the process by which their property was compulsory acquired, reviewed.

Andrew Constance responded:

A mechanism for review of the process, after the acquisition has been effected, would be of little practical benefit to a former owner of land.⁵

And just like that, Andrew Constance MP and the Govt dismissed concerns raised by homeowners who they had cheated out of compensation.

For many, trying to escape a review and any scrutiny over its actions is an admission that the Govt knew they had cheated homeowners.

Residents have expressed “little faith” in the Inquiry

We sincerely thank the Committee for establishing this Inquiry. It is long overdue, and we hope it will achieve the outcomes that homeowners need to ensure the Compulsory Acquisition and Appeal process is fair and Just.

I have also spoken to a number of residents who had their homes Compulsory Acquired in St Peters and elsewhere who have decided not to provide a submission to this Inquiry.

Unfortunately, many have expressed that their wounds have not healed and it is too painful to relive the experience – or to get their hopes up again only to be disappointed.

What I found troubling is that many believe they have been forgotten – especially after the Inquiry into WestConnex failed to deliver any accountability or reassurance that they would have their concerns taken seriously, or be recompensed.

Many also expressed they have little faith that this Inquiry will deliver any substantial outcomes, hold the Govt accountable, or ensure they are reimbursed the compensation they were cheated.

Many residents fear a repeat of the 2018 Inquiry into WestConnex where their issues were ignored, there was a lack of accountability, Govt representatives were dishonest, and the Govt failed to acknowledge or accept responsibility for their actions. I hope this Inquiry proves us wrong.

⁵ NSW Government response, Inquiry into the Impact of the WestConnex project, p. 26

Bias by the Valuer General & Land and Environment Court

During the 2018 Inquiry into the impact of the WestConnex project, I raised concern about the considerable bias shown by the Valuer General and Land and Environment Court Judge who delivered outcomes demanded by the RMS.

I noted the Valuer assigned by the Valuer General was formerly employed by RMS Valuers - and questioned the integrity and Independence of the Valuer General.

In response, Paul Goldsmith from the Dept. Valuer General stated under oath during that he was satisfied with the independence of the Valuer.

Mr Goldsmith would have been aware of the significant difference between valuations – and in the interest of fairness, 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 'market value' determined by the Valuer.

Of course my concerns were dismissed.

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

Recent evidence provided by current NSW Valuer General Dr David Parker to the Joint Standing Committee on the Office of the Valuer General on June 11, 2021 indicated there was "**some interference by the department in my ability to fulfil my role under the Valuation of Land Act.**" ⁶

Dr Parker described the situation as "**unworkable**". ⁷

This evidence provides proof that that the Department and Minister have exercised considerable influence over valuations for Compulsory Acquisitions in the past – that the Valuer General was indeed a "**lickspittle**" for WestConnex⁸ as The Hon Dr Peter Phelps put it, and that their "**interference**" has indeed undermined the statutory independence of the Valuer General.

⁶ Evidence, Dr David Parker, Report on proceedings before Joint Standing Committee on the Office of the Valuer General, fourteenth General Meeting with the Valuer General, NSW Parliament, 11 June 2021, p.4

⁷ Evidence, Dr David Parker, Report on proceedings before Joint Standing Committee on the Office of the Valuer General p.5.

⁸ The Hon Peter Phelps, Final report - Impact of the WestConnex Project – 14 December 2018, p.1.

There can be no doubt that the Valuer General and Land and Environment Court are biased – and that there is considerable “*interference*” by the Govt, to deliver outcomes that favour the acquiring authority.

The Acquisition and Appeals Process is unfair and biased. The Govt is fully aware of this; there is no doubt that they have engaged in misleading and fraudulent behavior.

But more importantly, this has set a dangerous precedent that residents can no longer have any trust or faith in the Valuer General and Land and Environment Court to appeal the unreasonable RMS offers.

The abuse of their position of trust and authority - and the cruelty shown by the RMS and Transport for NSW, goes against everything the *Land Acquisition (Just Terms Compensation) Act 1991* stands for.

2012 Inquiry into Land Valuation System

Valuation Commission

The proposed **Valuation Commission** has already been discussed in detail and recommended in 2012 by Matt Kean MP – this is nothing new.

The recommendation was initially fully supported by Matt Kean MP and the NSW Govt ... yet not implemented. (see "Government Response" from Andrew Constance MP)

To date, the NSW Govt has refused to implement the recommendations from the 2012 Inquiry.

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

This essentially raises serious concerns that the Govt was fully aware the Compulsory Acquisition process and Valuer General "valuation methodologies" were not fair toward landowners – yet still undertook acquisitions without implementing changes to the unfair process. This would amount to **misleading and fraudulent behaviour** in so much as they willfully denied and/or cheated/defrauded landowners the full compensation and 'market value' they are entitled.

It is essential that this Inquiry recommend an **Independent Valuation Commission with full oversight by a Parliamentary Committee.**

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

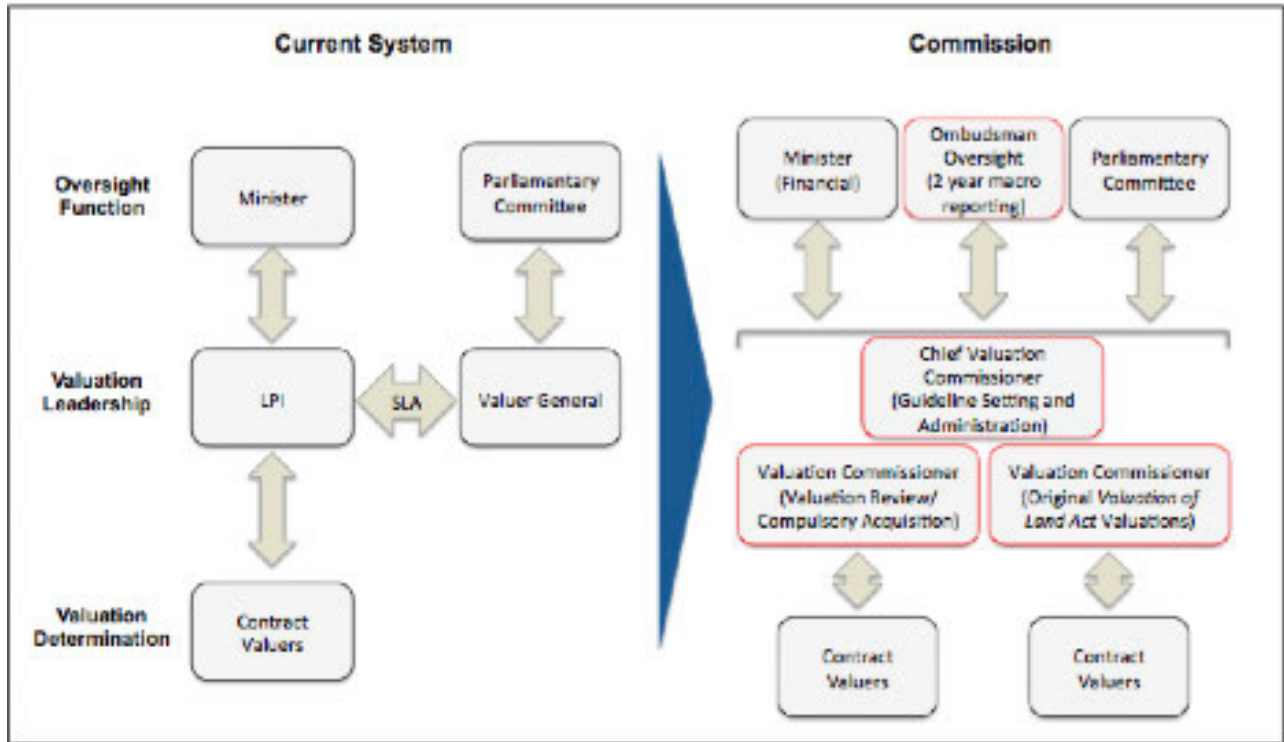
The governance framework

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.



Where was the concern by Matt Kean MP when homeowners had their property rights absolutely trampled, had the market values that they were delivered absolutely chucked out the window, with his own Govt trying to save costs and deliver their projects under budget.

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

Issues with Land Acquisition (Just Terms Compensation) Act 1991

SECT 56 Market value

Determining the “market value” of land is obviously problematic – even Dr Parker acknowledged, “I accept that accuracy is a difficult word in valuation because valuation is a matter of opinion.”⁹

Unfortunately, it is usually the “opinion” of the acquiring authority.

What is needed is **clear definition** to what constitutes “market value”, and **clear guidelines** to arrive at a more ‘**accurate**’ valuation.

- It would be fair to say that a homeowner who appeals an offer is NOT a willing but not anxious seller – they did NOT choose to sell.

As outlined in my experience, this is met with hostility and viciousness by the acquiring authority – or the threat of a lengthy and expensive Appeal process.

In response to the lack of procedural fairness in the Compulsory Acquisition process, concerns raised regarding the independence of the Valuer General and Land and Environment Court, and the significant costs of litigation, Matt Kean MP in the “Chair’s Foreword” to the 2012 INQUIRY INTO THE LAND VALUATION SYSTEM has already scrutinised and recommended the establishment of an independent body to undertake government valuations - being a ‘**Valuation Commission**’ with full oversight from a Parliamentary Committee.

- When an infrastructure project is announced – or an area re-zoned, there is undoubtedly a direct negative impact on the value of properties in the area (“blight”) due to the public purpose. This should be taken into consideration with **an adjustment of 25% for the negative public purpose influence**.
- When determining comparable properties, those that have already been acquired must be taken into consideration when determining the market value of a property. This would overcome any ‘inconsistencies’ and ensure all homeowners in the area are treated fairly – and potentially negate any negative impact of “blight” that has affected normal (comparable) sales.

⁹ Evidence, Dr David Parker, Report on proceedings before Joint Standing Committee on the Office of the Valuer General p.10.

SECT 71A Land not required for acquired purpose to be first offered to former owner

(2) The authority must, if practicable, first offer the land for sale to the former owner at the market value of the land at the time the offer is made if:

(d) the land is not proposed to be disposed of to another authority of the State for a public purpose.

This, I understand, is a recent addition to the Land Acquisition Act, and goes to the heart of concerns raised about “land grabs” – especially after the Desane debacle.

More recently...



‘Acquiring land to make billions’: Airport Metro

Transport Minister Andrew Constance has come to the defence of the NSW Government’s land acquisitions for the Sydney Metro at Orchard Hills.

Orchard Hills land grab claims: Government accused of acquiring land to sell to developers
<https://www.dailytelegraph.com.au>

25 Feb 2021 — Residents in Orchard Hills fear the **NSW Government** is buying **land** en masse for the Sydney Metro Airport line to sell to developers, a hearing has been told.

Residents have “contended that there is ... lack of clarity and transparency in particular as to why so much land is required. Residents questioned whether scale of land being acquired was fair, given so much was taken for “future expansion”, and expressed concern over the “sheer

scale of the land to be taken for what Sydney Metro has described as 'construction, storage and landing areas'.¹⁰

Considering there has been considerable concern about "land grabs" and claims the Govt is "land banking", **it would be fair that this section be repealed**.

Further considerations

- Remove capital gains tax on privately owned land from forced acquisitions and acquisitions by agreement.
- Equal rights for those facing long and short term acquisitions – if the Govt places a gazetted corridor over your property then they must be willing to start the Forced Acquisition process at the request of the land owner – Land Owners must not have a Governmentally imposed burden over their properties without access to compensation.
- Recognise the right for a property owner to use the Land Acquisition (Just Terms Legislation) Act 1991 when their property has been affected by 'blight' from projects built by acquiring authorities.
- Include an amendment to the current legislation to give ALL parties a RIGHT to negotiate in good faith as is done as part of land negotiations under the Native Title Act – this system has a proven track record under Land Rights legislation and should be available to all citizens facing Governmental Land Dealings.

¹⁰ Portfolio Committee No.6 – Transport and Customer Service - Site visit to Orchard Hills, p. 1

Russell Review and Government Response

Much has already been written about the Russell Review.

Despite acknowledging inconsistencies with the method of determining 'market value', the Russell Review and Govt Response does little to address the unfair treatment of residents – particularly **re-instatement** and **review** of acquisitions.

It is now public knowledge that the Russell Review was '**kept secret**' by the Govt - and only released following considerable pressure, after a large number of properties were Compulsory Acquired and homeowners cheated out of compensation.

The Government was fully aware the Compulsory Acquisition process is unfair towards landowners – and failed/refused to fix the process. There are numerous media articles that support this. (attached)

It's well known the Government withheld the *Russell Review* and refused to implement a number of Recommendations - particularly the '**re-instatement**' and '**review**', that would have ensured accountability so residents would be fully compensated and able to purchase another home in their area.

Former Premier Mike Baird and Minister Perrottet told the media they wouldn't implement the 're-instatement' recommendation because 'Market Value should be sufficient to purchase another home' - yet we know this is an absolute lie.

The Government has spent over \$650,000,000 on legal and associated costs (SMH, Oct 2017) to cheat landowners, brushed aside numerous complaints from residents who were deliberately and willfully cheated out of compensation, and they have refused to accept responsibility for their actions.

Recent 'Customer Service' changes do not go far enough towards addressing these issues and/or make the Compulsory Acquisition and Appeals process any fairer for landowners – and we have seen that residents continue to be treated unfairly and cheated out of compensation.

There can be no doubt that the Government and RMS have engaged in **misleading and deceptive conduct** with the intent to deliberately and willfully cheat and defraud landowners out of compensation – this should be the basis of this Inquiry, to hold the Govt accountable and recompense homeowners.

Despite the 'mea culpa' from former Premier Mike Baird nothing has really changed.

The Government has made a mockery of the *Land Acquisition (Just Terms Compensation) Act 1991*, and has only been empowered by the failure of the 2018 Inquiry into WestConnex to hold them accountable – the Govt knows there is nothing is standing in their way.

Recommendation 17 - Re-Instatement

That the Land Acquisition Act be amended so as to provide for compensation on a **reinstatement** basis, in relation to a dwelling house, in terms similar to those of Section 61(2)(b) of the equivalent Commonwealth legislation.

There should be a special payment and/or adjustment to allow those effected to be able to buy back into the general area they have been removed from.

There needs to be clear definitions of "market value" and clear guidelines to ensure that affected homeowners are able to purchase a comparable home in the area.

Maybe not setting out to cheat homeowners is a good start.

Recommendation 20 - Reviews

That the next review of the Just Terms Compensation legislation be conducted by a reviewer who is obliged to hold public hearings and take evidence from interested parties. Further, such reviewer should be assisted by an expert panel comprising representatives of government authorities, user groups, industry groups, academics and dispossessed landowners, to report upon the effect of any amendments to the Act adopted as a result of this review, and of the Just Terms Compensation legislation generally

We are yet to hear about any reviews involving stakeholders.

The establishment of a independent body to undertake government valuations – being the **'Valuation Commission'**, with full oversight from a Parliamentary Committee as scrutinised and recommended by Matt Kean MP in the "Chair's Foreword" (attached) to the 2012 INQUIRY INTO THE LAND VALUATION SYSTEM.

This would provide a much needed separation of valuation and acquisition processes from the Acquiring Authority to prevent very obvious conflict of interest.

Any reviews need to be Affordable and accessible, and not involve considerable expense of lawyers and fees to homeowners who have been treated unfairly. This could be achieved through a special Ombudsman or Independent Oversight Committee.

Homeowners and businesses are now aware of the way the Govt conducts itself during the compulsory acquisition process - we should not tolerate this behaviour any longer as the Govt rolls out more infrastructure projects and grabs more land.

"Compulsory Acquisition" are now dirty words that inspire fear in homeowners – and instantly reduce property values.

Recommendations

1. **A FULL audit and review of ALL Compulsory Acquisitions.**
2. **Recompense** homeowners and businesses the compensation they have been cheated.
3. Provide **clear definition** to what constitutes "market value", and **clear guidelines** to arrive at a more '**accurate**' valuation. Include acquisitions to determine 'market value' to ensure fairness.
4. Implement **Recommendation 17 – 'Re-Instatement'** of the *Russell Review* that the Government refused.

That the Land Acquisition Act be amended so as to provide for compensation on a **reinstatement** basis, in relation to a dwelling house, in terms similar to those of Section 61(2)(b) of the equivalent Commonwealth legislation.

5. Implement **Recommendation 20 – 'Reviews'** of the *Russell Review* - devise a mechanism to soften the blow, through which property owners can apply to have the process by which their property was compulsory acquired, reviewed.

That the next review into the Just Terms Compensation legislation be undertaken by a reviewer who is obliged to hold public hearings and take evidence from interested parties.

6. Ensure the Statutory Independence of the VG, without 'interference' by the Department and Govt Ministers.
7. 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.
8. **Repeal SECT 71A 2(d)** of the Land Acquisition Act - Land not required for acquired purpose to be first offered to former owner, to ensure the Govt cannot 'land grab'.
9. HALT any further acquisitions until the Compulsory Acquisition and Appeal process is FIXED.

There can be no doubt that the Compulsory Acquisition and Appeals process is '**broken**', and needs to be '**fixed**' to ensure the process is fair and just for everyone.

Ultimately, **A ROYAL COMMISSION** into the way Compulsory Acquisitions have been undertaken is urgently needed to review our acquisitions, and recompense residents and businesses what we have been willfully and deliberately cheated, and finally hold the Govt accountable.

In summary, all we are asking is to be recompensed the compensation that the Govt has willfully and deliberately cheated us, and to ensure the acquisition process is fair and just for everyone - so nobody has to go through what I and many others have experienced.

Thank you for taking the time to consider my submission.

Kind regards,
Richard Capuano