

**Submission
No 98**

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

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Date Received: 31 January 2022

**Submission to NSW Government
Inquiry
into Compulsory Acquisition 2021**

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Affected by Compulsory Acquisition of
Long-standing Medical Practice (*commenced 1981*)

**Glenmore Park Medical Centre, 45 Schoolhouse Road,
Regentville**

**Due to be demolished 2022 for widening of Mulgoa Road,
Penrith**

Wednesday, 26 April 2017 was an inauspicious day for my staff, my family and myself.

It was the day that my practice and my life were paralysed.

At 3pm I received a phone call, out of the blue, from _____ of the Roads and Maritime Services – *(now known as Transport for New South Wales, TfNSW)*.

“The New South Wales Government is compulsorily acquiring your medical practice at 45 Schoolhouse Road Regentville in 5 years time *(ie in 2022)* for road widening.”

One never forgets the time or the circumstances where bad news is broken. As a family doctor who has run his own family medical practice for over 40 years in the same location I am fully aware of the tact and empathy needed to break bad news. There are always immediate and long term consequences for those affected.

No apology was offered for the way this terrible news was delivered to me. No apology was forthcoming when I met with _____ and I gave him the opportunity to apologise on behalf of himself and the NSW Government.

My request for a simple apology was met with dead silence.

I am now in the 5th year of the most depressing years of my life.

Governments have every right to ensure the general community is well serviced by roads. Their method of dealing with the community is an absolute disgrace.

Are communities important to the NSW Government?

Although many other businesses have been affected by dealing with compulsory acquisition, I would have hoped, thought and felt that a Family Doctor who has a long standing, well-established practice in the local community should be seen as essential to that community.

Access to health services is an essential function of governments. In the complex world of federal/state/private health care, there are fewer and fewer family doctors. Doctors who are committed to an area and have significant “skin in the game” are becoming a rarity.

They provide personalised care and help to keep people out of NSW Government Hospitals. They are critical to the overall health system.

Apparently, this is not so for the NSW Government.

** See Attachments for Map

Meetings

A) **Stuart Ayers, MP for Penrith and Minister for Western Sydney** flatly refused to meet me about this matter.

This is wrong on several accounts. Firstly, my practice is on the border of two electorates – being 300 metres from his Penrith electoral boundary. Half my practice come from his electorate.

Secondly he is the Minister for Western Sydney.

That he refused to see me is totally unacceptable and an abrogation of his responsibilities.

B) **Request for meeting with Melinda Pavey**, then Minister for Transport. For five weeks phone calls to the Minister's Office were met with a positive interaction and a date "to be fixed." After five weeks, she stated that she refused to meet me.

Is the NSW Government's closure of a family doctor's practice not a significant issue? Did she consider it was best brushed under the carpet by her public servants?

C) **Meeting with John Hardwick, Executive Director RMS cancelled** Despite agreeing to meet, with the time and place diarised, at the last moment Mr Hardwick cancelled the meeting. No explanation was offered.

This is totally unacceptable for a public servant acting on behalf of the elected Government.

D) **Meeting with TfNSW Director, Kat Dunkley**

In December 2021 I met via Zoom with the newly appointed TfNSW Director, Kat Dunkley. I had a full and frank discussion with her. She appeared to understand the complete lack of empathy that the TfNSW Public Servants exhibit.

It was therefore a total surprise that she made an unacceptable demand to my solicitor. Kat Dunkley asked to see the invoices from the original, 1981, fit-out of my medical practice. Unbelievable.

In 1981 the current Premier of NSW was not born. Neville Wran was the Premier.

This epitomises the tactics to which the NSW Government will descend.

The agreement was that a new location for my medical practice would have a "like for like" fit out., which equals a fit out appropriate for 2022. There is no other interpretation.

Collateral Damage

The Collateral Damage of this matter is extraordinary.

Mandatory Reporting of Medical Practitioners to AHPRA

Doctors work under one of the most inhumane laws in the country: the law of mandatory reporting.

Transport for New South Wales were blissfully unaware that I was subject to the mandatory reporting laws. If I sought any assistance for the depression that the NSW Government had caused I could or would be reported to the AHPRA. My future as a doctor could be in jeopardy.

The reality is that I have been pushed into this matter solely by the NSW Government and I am forced to rely on self medication and internalisation to care for oneself.

I have first hand knowledge of the difference between being sad and being depressed.

The effects of my depression spread to my family, staff and friends as they try helplessly to assist.

When writing these words, the depression is in full focus.

- Politicians with depression take “time off to be with their family”.
- Public servants suffering from depression claim Workers Compensation.
- Depressed Doctors face mandatory reporting to their regulator, AHPRA.

Bulldozing a medical practice which I (literally) built, established and grew hits right at the heart of one’s very existence, one’s vocation, one’s lifetime work.

Staff

As a family doctor, I am highly reliant on my staff not only to assist me but also to provide the public face of the practice: patients ring for appointments, repeat scripts, test results, referrals and a multitude of other issues. All this needs to be handled with tact and compassion.

The person who is at the front of a practice is so important.

Compulsory acquisition has meant the loss of staff. They wish to know they have a secure future and dealing with the NSW Government does not provide any certainty.

Loss of staff results in increased costs. Not only is there the cost of finding staff, there is training and, initially, a loss of efficiency. Replacing a staff member would cost about \$10000.

The pandemic has pushed family doctors to the forefront of response. We have a far higher risk of infection as we deal with sick people!

Since the pandemic began the number of phone calls to the practice have increased by 25%. The pressure on the staff has increased and is immense.

Staff re-deployment

My work as a family doctor is entirely face-to face. Family doctors work incredibly hard. It is inconceivable that I could find sufficient time to work through the issues associated with this compulsory acquisition without help.

My secretary/PA had to be given time away from her work within the practice to assist. Who else would organise meetings, arrange quotes, valuations, take notes, minute meetings – the list goes on? Remember that underlying this is a fear that if the NSW Government fails to fulfil its commitment to practice re-location, then she would be out of a job. Her job is on the line.

Cost of re-deployment of work in excess of \$25000.

Does the NSW Government acknowledge this? No.

Does the NSW Government concede that compulsory acquisition of a business creates costs for which there is no compensation? No

Theft of my time

Compulsory acquisition has stolen an extraordinary amount of my time. I estimate at the moment 1500 hours and this figure was agreed to by Mr _____ Senior Manager TfNSW(phone call 10.12.21).

Once financial matters are settled I am still left with the issue of moving practice location.

Total time taken will exceed 2000 hours. This does not include the 1000 sleepless nights.

Why does it take so much time?

- 1) Understanding the issues
- 2) Understanding the law
- 3) Dealing with Accountants
- 4) Dealing with Lawyers
- 5) Dealing with Valuers
- 6) Dealing with Councils
- 7) Dealing with Real Estate Agents
- 8) Obtaining quotes
- 9) Meetings
- 10) Writing and keeping account of events

This list is not exhaustive but the platitudes of the NSW Government Public Servants do not come close to a deep understanding of the havoc and distress they cause.

The NSW Government apparently could not care about any of this.

This process would be the same for any business but I have to continue my work as a family doctor dealing with the depressed, the diseased, the demented and the dying.

I have to continue to run my medical practice and responding to the ever increasing demands for medical help, with good advice and good humour.

Does the NSW Government stand by its claim in 2017 that their Compulsory Acquisition has no effect on my practice?

It is virtually an unbearable disgrace that any politician, any public servant, any member of the NSW Government could hold that view.

My only reassurance by the NSW Government was by Mr (meeting 6.8.18) that the Government would provide “like for like”. No proviso, no stipulation, no conditions.

The Generic Hardship offer

The knocking down of my medical practice was initially in the unfunded “Stage 2” of the road widening. Funding of \$240 Million “became available” in about November 2018.

At a meeting on 6th August 2018 it was stated by Mr “As soon as the funding is available, we will start..... (compensation under the)Land acquisition Just Terms Act will be paid with a RMS initiated acquisition”

In December 2018, Mr rang to tell me that the NSW Government would be in a position to work with me to re-locate my practice.

In June 2019, a most appalling offer, signed by Mr , was sent to me. The NSW Government offered \$25000 less for my building than they had just paid for number 6 Mulgoa Road, a 1930s/40s fibro house on a 20% smaller block.

The letter sent did not warrant a reply. It was a disgrace.

Mr stated in March 2021 that this was a “generic hardship” letter. His exact words stated in front of Mr , my wife and my personal assistant.

At no time had I mentioned “hardship provisions”. I had never applied for “hardship”. The letter did not mention “hardship”. This letter had nothing to do with “hardship” but to tell me that it was a “hardship” letter was, in my view, the only way the NSW Government could explain away its **disgraceful and unacceptable offer**.

Is this really a tactic of the NSW Government?

Does the NSW Government have any collective conscience at all?

Does the NSW Government have any concept of the long-term devastating affect it has on those whose lives and livelihoods are irrevocably altered by their actions?

The days of Governments running rough shod over the population are over. The position taken by the NSW Government is totally un-Australian and totally unacceptable.

Personal Managers

To soften the face of the NSW Government, a Personal Manager is appointed to those affected by Compulsory Acquisition. I believe the concept of the “Personal Manager” is solely to dress up the public face of the actions of the New South Wales Public Servants.

I always thought public servants’ work was to serve the public, not to give the public a serve.

I have had 4 “Personal Managers”. Although I was introduced to two of them at meetings, not one single contact outside these meetings was made for 4 ½ years.

Do the personal managers have no concept of what the NSW Government is doing to me?

Not once was I informed that my “Personal Manager” had “left”.

After pointing this out to Mr _____, I was contacted by my latest Personal Manager, Mr _____. He seemed indeed very pleasant. He was actually sympathetic. This was the first time since 26th April 2017 that any empathy was offered to my plight by the NSW Government.

The concept of “Personal Managers” is either a nonsense or needs to be re-invented.

Death

Should I die before the end of this matter, the NSW Government will assume I have had no business and just pay compensation for “a house”.

This is a disgraceful and totally unacceptable position taken by the NSW Government.

Like many businesses, one’s family is totally immersed in its beginning, its evolvment, its successes and any failures.

My Family Medical Practice was paralysed on the fateful afternoon of 26th April 2017. To suggest that as a sole trader I have to remain alive till the matter is settled is despicable in the extreme.

The date when a business owner is informed of the Compulsory Acquisition is the date when the NSW Government should concede that the business has been adversely affected and that **the survival or death of the business owner should have no bearing on the compensation.**

Which side of the road?

My medical practice is on the eastern side of Mulgoa Road. Its houses were built in the 1980s and 1990's. All are high quality housing. **Nine of these houses** are to be demolished for the road widening.

On the other side of the road, the western side of Mulgoa Road, the housing ranges from low quality to a slum. Nearly all the houses are fibro and were built 1930s/40s. The area would have been greatly enhanced if this side of road had been resumed.

The only potential issue with the western side of Mulgoa Road is the Jim Aitken Real Estate Offices owned by the current Penrith Councillor and ex-Mayor of Penrith, Jim Aitken.

Mr _____, at an onsite meeting in March 2021 clearly stated that demolishing the Western Side of Mulgoa Road had “not ever been considered”. This statement is not borne out by the attached map.

**See attachments

Property Valuation

The general principle: “doubts should be resolved in favour of a more liberal estimate.” (<https://www.projectlawyers.com.au/2017/07/05/resolving-doubts-in-favour-of-the-dispossessed-when-the-principles-of-caruso-are-engaged>)

is a fine ideal but testing this in Court is undesirable and impractical due to the costs. That is well known to TfNSW with Mr _____ citing a “97% success rate” in settling compulsory acquisition matters.

I employed a highly experienced lawyer, Mr David Newhouse of Newhouse & Arnold Solicitors.

I employed a property valuer, Mr Kent Wood, who also has worked for TfNSW and, therefore, it would be reasonable to assume his valuation would be trusted by the NSW Government and I would receive a fair valuation.

- It is always a matter of debate as to “property price”, particularly in a market that has increased by 27% over the past 12 months.
- The NSW Government does not recognise the value of a unique location.
- There is no assigned value to the enormous potential of a location in the centre of a booming housing estate.
- There is no recognition of the pre-1985 Capital Gain Tax-free status of a property.

All points are in the NSW Government's favour.

Ultimately a price was agreed. This was under duress, as a new practice location had a settlement date of 28th January 2022.

Further pressure was subtly applied by way of a 6 week delay from when the NSW Government received their valuers report to when they responded with an offer. Likewise the Christmas break was looming.

Then the NSW Government reduced its offer by \$30,000. True and unbelievable.

Is this really the tactics of a Government that has a concept of being “in favour of the dispossessed”?

Is this the actions of a Government that had expounded the principle of “like for like”, agreed to re-location and moreover said that they would work towards my practice “closing on a Friday and opening the next Monday”.

The true situation is that the negotiations are “in favour of the acquiring authority”. They know full well that being taken to Court is an unlikely scenario – particularly for myself as a Family Doctor running a solo, private practice. In the end they agreed to the initially accepted price.

At every step, the Government wants a “deal”. If the Government is unable to afford to compensate appropriately those who are the victims of compulsory acquisition then the Government is “living beyond its means”.

The price of progress should not be at the expense of those who have created local communities.

Summary

That phone call on 26th April 2017 would have been more honest if it had said:

“This is the NSW Government. We will be compulsorily acquiring your 40 year old medical practice.

You will find the next 5 years very stressful and depressing.

The time taken from you will be immense.

To the NSW Government you are just a number, an inconvenience.

Your life will never be the same.”

How to improve Compulsory Acquisition?

The harrowing nature of the Compulsory Acquisition process is simply horrific and all-consuming for those affected.

Small businesses are particularly badly affected. Unless there is a fundamental change in attitude from the NSW Government, all that will occur is more taxpayers' money will be used for another report. Nothing then happens and the status quo continues.

This should be unacceptable to every voter.

Recommendations:

i) **Pratt Review 2016** Recommendation 4 stated:

Clarify position accountabilities and apply consistent recruitment and training standards for all key roles involved in the property acquisition process

Discussion:

*Staff will be given appropriate training to ensure that they can write in plain English; understand the situation from the perspective of the resident and **demonstrate appropriate empathy**; and can recognise when there is a need to escalate a difficult issue to a more appropriately trained colleague.* (bolding added)

It is plainly evident that no member of the TfNSW has any concept of Recommendation 4.

Can you learn “empathy”? The prerequisite to “developing empathy” is a desire to be more empathetic. Having empathy – an essential for any Family Doctor – creates a personal vulnerability.

Having a lack of empathy and a sociopathic trait currently seems an essential requirement to be part of TfNSW.

- ❖ *Recommendation 1: All **current TfNSW staff** associated with Compulsory Acquisition should undertake an Emotional Intelligence test (EQ) and those failing should be re-deployed.*
- ❖ *Recommendation 2: All **new staff** appointments should require the taking of an Emotional Intelligence test (EQ).*

ii) **Personal Managers**

- ❖ *Recommendation 3: The concept of Personal Managers should either be “Formalised or Forgotten”.*

iii) **Date of Initial Approach**

- ❖ *Recommendation 4: The date of initial approach from TfNSW (equivalent to the legal concept of the “filing date”) is accepted as the date on which a business is potentially adversely affected and this should be acknowledged by the NSW Government.*

iv) **In Favour of the Dispossessed**

It is evident that the process is **heavily weighted** in favour of the NSW Government

Recommendation 5: The Just Term Act should be reviewed to reflect the specific issues that small businesses have with Compulsory Acquisition

Solatium, now referred to as “disadvantage resulting from relocation”, recognises the “non-financial disadvantage resulting from the necessity of the person to relocate.” It is defined as: “compensation for injured feelings or emotional pain and suffering.”

Why are Small Businesses not eligible for solatium? Does the NSW Government consider that Small Businesses do not suffer “non-financial disadvantage, pain and suffering”?

- ❖ *Recommendation 6: Solatium (disadvantage resulting from relocation) should be paid to all Small Businesses*

Valuations of property owned by Small Businesses are inherently difficult. There are many factors unique to those Small Businesses, which make their property valuable for them. This should be recognised by the Government.

- ❖ *Recommendation 7: An allowance of 10% above the NSW Government purchase price of a property owned by a small business to be paid if that business purchases and re-locates to an alternate property.*

To ensure NSW Government valuations are fair:

- ❖ *Recommendation 8: The acquiring authority should pay 100% of all Court costs*
- ❖ *Recommendation 9: If the Court finds in favour of the disposed land owner the acquiring authority should pay double the amount that the Court finds in favour of the dispossessed*

v) TfNSW Director, Kat Dunkley’s request for an invoice from 1981 is a totally unacceptable tactic from the NSW Government to not pay for the relocation of my practice. This is the first time in over 4 years that such a request has been made. She should urgently step down.