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## Compulsory acquisition of land: A brief legislative and statistical overview

by Tom Gotsis

### 1. Introduction

NSW has both an infrastructure deficit<sup>1</sup> and a growing population.<sup>2</sup> This has resulted in a pressing need for additional infrastructure, one which invariably conflicts with the rights of private property owners. The [Land Acquisition \(Just Terms Compensation\) Act 1991](#) (the *Just Terms Act*), which enables private land to be compulsorily acquired on just terms by an authority of the State, is an attempt to reconcile those competing public and private interests.

In NSW, projects such as WestConnex, NorthConnex, the light rail and Sydney Metro are current focal points of compulsory acquisition.<sup>3</sup> For instance, 427 residential, commercial and council properties are scheduled to be acquired for WestConnex, with 316 already having been acquired.<sup>4</sup>

Concerns have been raised about whether the compulsory acquisition process is being conducted in a fair manner and whether home owners are being adequately compensated for the market value of their homes. Addressing both concerns, Premier Mike Baird said:<sup>5</sup>

None of us would want to be in a position where our home is acquired as part of a project such as [WestConnex]. Everyone can understand there are big benefits, but we should not forget the personal circumstances of those whose homes are compulsorily acquired. As part of that, I strongly believe the process has not been anywhere near as good as it should be. ... What does that mean? It means that we have to have more personal interaction with those affected and we have to show much more empathy. As part of that I have asked the State's Customer Service Commissioner, Michael Pratt, to oversee the acquisitions recently identified as being part of stage 3 [of WestConnex] so as to ensure that this process is undertaken according to world's best practice ...

In terms of the financial arrangements, the vast majority are agreed. Obviously, some are in dispute. We have to be generous and caring and we have to do everything possible to minimise the inconvenience as part of the process. Over the past couple of

months I have said that I believe we have not done that. But we are determined to get it right so we are listening and responding.

On 16 May 2012 the then Minister for Finance and Services, Greg Pearce, announced that the Government had appointed David Russell SC to conduct a review of the [Just Terms Act](#).<sup>6</sup> The terms of reference of the review included:<sup>7</sup>

- define and clarify what real property rights or interests are;
- recommend a set of principles to guide the process for how acquisitions of real property should be dealt with by government;
- consider whether and how these principles should be reflected in current legislation; and
- recommend a process for considering these principles in future legislation.

The terms of reference did not include “the issue of the level of compensation payable for the acquisitions of real property”.<sup>8</sup>

The tensions inherently associated with the process of compulsory acquisition have been heightened by concerns that the Government has deliberately delayed the release of the Russell report.<sup>9</sup> The Government has responded to those concerns, with the Minister for Roads, Maritime and Freight, Duncan Gay, stating:<sup>10</sup>

[A]fter receiving the Russell report the Government moved quickly in August 2014 to implement a number of its recommendations. These included the development of a plain English, clear explanation of the land acquisition process and an improved process for meetings between landowners and acquiring parties. Those recommendations have been implemented, as have a series of improvements by the Office of the Valuer General to increase the transparency and fairness of the valuation system, including for valuations undertaken for compulsory acquisition of properties. ...

The Government fully intends to release the Russell report and the Government’s response. We expect to be able to do that in the coming months.

The Joint Standing Committee on the Office of the Valuer General has also examined compulsory land acquisition in its 2013 [Inquiry into the Land Valuation System](#).<sup>11</sup> That Inquiry, after raising concerns about the transparency and accountability of compulsory land acquisition valuations, recommended that:<sup>12</sup>

[T]he NSW Government introduce a new valuation review mechanism and compulsory acquisition process to replace the current objection system and compulsory acquisition valuation process.

In order to inform consideration of these issues, this paper sets out the legal basis for compulsory acquisitions in NSW. It then presents and discusses data relating to:

- the total number of properties acquired by the NSW Government over the past 8 years;

- the number of those properties acquired by agreement;
- the number of those properties compulsorily acquired;
- the number of compulsory acquisitions proceeding to the Land and Environment Court;
- the number of compulsory land acquisition cases completed by the Land and Environment Court before hearing, using alternative dispute resolution processes such as conciliation and mediation;
- the number of compulsory land acquisition cases completed by the Land and Environment Court at hearing; and
- compensation outcomes for market value in compulsory acquisition cases determined at hearing by the Land and Environment Court.

### 2. The power of compulsory acquisition

The rights associated with the ownership of land are not absolute. Parliaments have the right to enact legislation providing for the compulsory acquisition of land, a right that flows from the sovereignty of each Parliament.<sup>13</sup> Unlike the Commonwealth Parliament, which is constrained by s 51(xxxi) of the Commonwealth Constitution to compulsorily acquire land “on just terms”, State Parliaments may enact legislation to compulsorily acquire land with or without any compensation, or with compensation that is less than market value.<sup>14</sup> Notwithstanding that untrammelled power, as Kirby J said in the 2001 High Court case of *Durham Holdings Pty Ltd v New South Wales*:<sup>15</sup>

Normally, in Australia, where property is compulsorily acquired in accordance with law, the property owner is compensated justly for the property so acquired. Australian society ordinarily attaches importance to protecting ownership rights in property.

### 3. The Land Acquisition (Just Terms Compensation) Act 1991

Reflecting the importance attached by Australian society to protecting ownership rights in property, the objects of the [Just Terms Act](#) include:<sup>16</sup>

- a) to guarantee that, when land affected by a proposal for acquisition by an authority of the State is eventually acquired, the amount of compensation will be not less than the market value of the land (unaffected by the proposal) at the date of acquisition, and
- b) to ensure compensation on just terms for the owners of land that is acquired by an authority of the State when the land is not available for public sale.

#### 3.1 The application of the Just Terms Act

The [Just Terms Act](#) applies to the acquisition of land “by agreement or compulsory process” by an authority of the State that is authorised to acquire the land by compulsory process.<sup>17</sup> A broad range of State authorities are authorised to compulsorily acquire land, including Local Councils<sup>18</sup> and Roads and Maritime Services.<sup>19</sup> Of all agencies authorised to compulsorily acquire land, Roads and Maritime Services does so most often.<sup>20</sup> The [Just Terms Act](#) does not apply to an acquisition if the land in

question is initially available for public sale and then acquired by agreement.<sup>21</sup>

### 3.2. Acquisition by agreement

Before an authority of the State can acquire land, the authority has to give the owners of the land written notice of its intention to do so.<sup>22</sup> After giving the proposed acquisition notice, the State authority can acquire the land by agreement with the owners.<sup>23</sup> If the State authority and the owners of the land agree in writing on all relevant matters concerning the acquisition, including the compensation to be paid, the provisions of the *Just Terms Act* relating to pre-acquisition procedures and compensation have no further application.<sup>24</sup> Where the acquisition is by agreement, the State authority is to take into account “the same matters as are required to be taken into account ... in determining the compensation payable for an acquisition by compulsory process”.<sup>25</sup>

### 3.3 The compulsory acquisition process

A proposed acquisition notice must be given at least 90 days before the land is compulsorily acquired.<sup>26</sup> The compulsory acquisition is to be completed as soon as practicable after the expiration of the minimum period of notice.<sup>27</sup> The compulsory acquisition is given effect when, with the approval of the Governor, the relevant authority declares by notice published in the Gazette that any land described in the notice is compulsorily acquired.<sup>28</sup> On the date of publication in the Gazette of an acquisition notice, the land described in the notice is vested in the authority of the State acquiring the land.<sup>29</sup>

The Valuer General is to determine the amount of compensation to be offered to the owner of a property that is to be acquired.<sup>30</sup> The Valuer General may determine the amount of compensation to be offered before or after the acquisition takes effect.<sup>31</sup> However, a State authority which has compulsorily acquired land must, within 30 days after the publication of the acquisition notice, give the former owners of the land written notice of the compulsory acquisition, their entitlement to compensation and the amount of compensation offered (as determined by the Valuer General).<sup>32</sup> In particular, the notice must:<sup>33</sup>

- be in a prescribed form or a form approved by the Minister;
- notify the owner that the land has been compulsorily acquired;
- state that the owner is entitled to compensation;
- offer to pay a specified amount of compensation as determined by the Valuer General;<sup>34</sup>
- be accompanied by a form of deed of release and indemnity for completion if the offer is accepted; and
- inform the owner of the right to object to the amount offered.

On 13 May 2016, the Valuer General, Simon Gilkes, said:<sup>35</sup>

[T]he current average is 83 days to issue the determination of compensation from the date of gazettal. As you can see, there is a significant gap between

that and the 30 day requirement. That would be significantly inflated by a small number of cases that go on for very long periods of time in which there is major complexity. There is certainly an issue with timing at the moment.

The Office of the Valuer General, which issued 279 just terms determinations of compensation (with a total value of just under \$365 million) between 1 July 2015 and 11 May 2016, expects this “significant workload” to continue, due to the scope of planned infrastructure projects.<sup>36</sup>

### 3.4 Compensation

The *Just Terms Act* creates entitlements to compensation in respect of land that is compulsorily acquired<sup>37</sup> and land that is acquired by agreement.<sup>38</sup> The amount of compensation to which a person is entitled is such amount that will “justly compensate” the person for the acquisition of the land,<sup>39</sup> having regard only to the following “relevant matters”:<sup>40</sup>

- (a) the market value of the land on the date of its acquisition,
- (b) any special value of the land to the person on the date of its acquisition,
- (c) any loss attributable to severance,
- (d) any loss attributable to disturbance,
- (e) solatium,<sup>41</sup>
- (f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

“Market value”, which is the current focus of the compulsory acquisition debate, is defined to mean:<sup>42</sup>

The amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer, disregarding (for the purpose of determining the amount that would have been paid):

- (a) any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and
- (b) any increase in the value of the land caused by the carrying out by the authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired, and
- (c) any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

A person who is entitled to compensation may accept the compensation offered by the State authority in the compensation notice.<sup>43</sup> If within 90 days after receiving a compensation notice a person entitled to compensation does not accept the amount of compensation offered or lodge an objection with the Land and Environment Court, they can be deemed to have accepted the offer of compensation.<sup>44</sup> Alternatively, the person may, within 90 days of receiving a compensation notice, lodge with the Land and Environment Court an objection to the amount of compensation offered by the State authority.<sup>45</sup>

Commenting on the way in which compensation may be offered under the statutory scheme after an objection has been lodged, in *Maloney v Minister Administering the Environmental Planning and Assessment Act 1979*<sup>46</sup> Biscoe J said:<sup>47</sup>

It is a remarkable feature of the statutory scheme that if a dispossessed owner does not accept a statutory offer based on the Valuer-General's determination, the acquiring authority may, on an objection to the determination, contend for a lower market value.

Payment of compensation in respect of matters before the Land and Environment Court is to be made in accordance with any agreement reached during the proceedings; or, if no such agreement is reached, in accordance with the decision of the Court.<sup>48</sup>

#### 4. Extent of acquisitions under the Just Terms Act

The extent of recent acquisitions under the *Just Terms Act* was outlined in the 2016–17 Budget Estimates by the Minister for Finance, Services and Property, Dominic Perrottet, who said:<sup>49</sup>

In the past four years the New South Wales Government has acquired 1,713 properties, which is an average of 428 per year. It is very important to know to set some context that of those properties: 1,403, which represents 81 per cent, occurred by way of agreement; 242, being 14 per cent, have been compulsory acquisitions; and 68, that is 4 per cent, have gone to the Land and Environment Court. ... Over the four years predating the Liberal Government the Labor Government acquired 1,257 properties, which is equivalent to 315 a year. Of those, 89 per cent were by agreement, 8 per cent per compulsory acquisitions and 3 per cent went to the Land and Environment Court.

It is unclear whether the two periods of 4 years referred to by Minister Perrottet are continuous or separate. Nevertheless, as a record of the scale of recent compulsory acquisitions, Minister Perrottet's figures indicate that in 8 years there were:

- a total of 2970 acquisitions (an average of 371 per year);
- 2522 acquisitions (85%) by agreement;
- 343 compulsory acquisitions (12%); and
- 106 objections (4%) lodged with the Land and Environment Court.

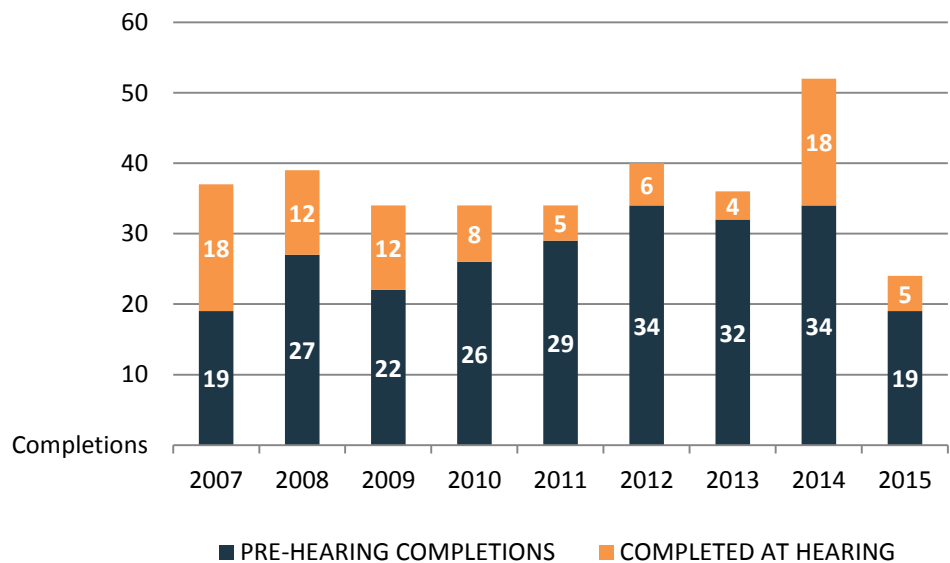
Set out below (Figure 1) is a separate set of data provided by the Land and Environment Court which details the number of compulsory acquisition cases finalised by the Court both pre-hearing and at hearing over the period 2007 to 2015.<sup>50</sup>

#### 5. Number of court cases finalised pre-hearing and at hearing

As discussed above (at 3.4), the *Just Terms Act* provides property owners with a right to lodge with the Land and Environment Court, within 90 days of receiving a compensation notice, an objection to the amount of compensation offered.<sup>51</sup> By means of this statutory right of objection, the Land and Environment Court remains an integral component of the scheme established under the *Just Terms Act* to ensure that owners of compulsorily acquired land receive just compensation.

The primary approach of the Land and Environment Court is to promote the efficient and amicable resolution of cases before hearing by means of [alternative dispute resolution](#), particularly [mediation](#) and [conciliation](#). As set out in Figure 1, over 2007 to 2015 the Land and Environment Court resolved 73% of compulsory land acquisition cases before hearing. An initiative of the Court which has contributed towards the achievement of this outcome is the Court's use, where appropriate, of accredited mediators and land valuers as part of the alternative dispute resolution process.

**Figure 1: Land and Environment Court compulsory acquisition cases, mode of completion**



Source: Land and Environment Court<sup>52</sup>

### 6. Outcome of court cases finalised at hearing

In order to provide an indication of the outcome of compulsory acquisition cases finalised at hearing, a list of cases was compiled using the Caselaw NSW website and the search term “compulsory acquisition”. Cases not containing a final order for compensation for market value were excluded.<sup>53</sup> Where a case involved more than one distinct claim for compensation, each claim was treated as a separate case.<sup>54</sup> This process resulted in a list of 58 cases (the “population sample”), ranging from 2007 to mid-September 2016. Each case in the population sample was then examined to identify:

1. the Valuer General's statutory offer of compensation or, where that was not detailed in the judgment, the acquiring authority's first assessment of market value (“the offer”); and
2. the Court's final assessment of market value (“the determination”).

To account for increasing property prices over time, the difference between the offer and determination was calculated as a percentage.<sup>55</sup>

Ten of the 58 cases (17.2%) that were finalised at hearing involved urban residential land. The percentage change in compensation for market value ordered by the Court in those 10 cases was: negative in 2 cases;<sup>56</sup> positive in 7 cases;<sup>57</sup> and zero in 1 case<sup>58</sup> (where, during the hearing, the parties

agreed to market value and the Court made an order for the agreed market value). In short, in 7 out of the 10 cases (70%) involving urban residential land, the Court’s determination of compensation for market value was higher than the offer. The average percentage change in compensation for market value offered to the applicants in the 10 cases involving urban residential land was 32.62%, compared to 57.84% for all 58 cases in the population sample.

Sixteen of the 58 cases (27.5%) that were finalised at hearing involved rural residential land.<sup>59</sup> In all 16 cases (100%) involving rural residential land, the Court’s determination of compensation for market value was higher than the offer. The average percentage change in compensation for market value offered to the applicants in the 16 cases involving rural residential land was 42.14%, compared to 57.84% for all 58 cases in the population sample.

Table 1 sets out the average percentage change in compensation for market value by land type for the population sample of cases finalised at hearing.

Table 1: Average change (%) in compensation for market value of compulsorily acquired land after hearing, 2007 to mid-September 2016, by land type		
Land category	Number of cases	Average change (%)
Easements	3	109.08%
Rural industrial	1	0%
Rural other	8	14.99%
Rural residential	16	42.14%
Urban commercial	7	70.46%
Urban industrial	2	32.16%
Urban other	11	122.72%
Urban residential	10	32.62%
All residential cases	26	38.48%
<b>All cases</b>	<b>58</b>	<b>57.84%</b>

Note: “Other” refers to land that is vacant or used for public purposes

Figure 2 sets out the percentage difference in compensation for market value following a hearing for the entire population sample.

Figure 3 sets out the percentage difference in compensation for market value following a hearing for the 26 residential cases in the population sample. The 10 cases involving urban residential land are indicated in red, while the 16 cases involving rural residential land are indicated in blue. Of the 10 urban residential land cases, two 2009 cases share the same red marker due to having near identical percentage differences of 31.10% and 31.27%.<sup>60</sup>





- The Valuer General's statutory offer was not detailed in every case in the population sample.
- The statistics are not an indication of what compensation for market value will or should be awarded in any future case. The outcome of each case turns on its own particular facts.

Notwithstanding these limitations, the statistics presented in Table 1, Figure 2 and Figure 3 do indicate that for most of the 58 cases in the population sample which could not be finalised pre-hearing, the compensation for market value ordered by the Land and Environment Court was greater than the compensation for market value offered to property owners.

### 7. Conclusion

Government acquisitions of private property to facilitate major infrastructure projects such as WestConnex have been criticised for the manner in which they have been conducted and for not providing adequate levels of compensation to land owners. Premier Baird has recently responded to these concerns and has asked the Customer Service Commissioner to oversee acquisitions as part of Stage 3 of WestConnex. The Minister for Roads has noted the implementation of some recommendations from the 2014 Russell report; and has said that the Government will release that report and its response in the coming months.

To assist with ongoing debates on these issues, this paper has outlined the statutory requirements for compulsory acquisitions and has presented available data on acquisitions and related court cases. The data reveals that: a large proportion of completed acquisitions have occurred by agreement; a large proportion of the compulsory acquisition cases that have proceeded to the Land and Environment Court were resolved prior to hearing through conciliation and mediation; and, 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.

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<sup>1</sup> See generally, NSW Government, "[State Infrastructure Strategy](#)".

<sup>2</sup> NSW Government, Planning and Environment, "[2016 NSW Population Projections Data](#)".

<sup>3</sup> For instance see: S Gerathy, "[Calls for the NSW Government to change forced home acquisition procedures](#)", 11 January 2016, *ABC News*; S Nicholls, "[Baird government rejected WestConnex fairness advice due to project delay fears](#)", 23 August 2016, *The Sydney Morning Herald*; S Nicholls, "[Cost of WestConnex property acquisitions set to exceed \\$1.5b](#)", 16 September 2016, *The Sydney Morning Herald*.

<sup>4</sup> NSW Parliament, [General Purpose Standing Committee No 1, Examination of proposed expenditure for the portfolio area of Finance, Services and Property](#), 31 August 2016, p 6 (D Perrottet).

<sup>5</sup> [NSWPD, 3 August 2016, p 42](#).

<sup>6</sup> "[NSW Government Launches Examination of Just Terms Legislation](#)", 16 May 2012, NSW Government Media Release (Greg Pearce MLC).

<sup>7</sup> "[NSW Government Launches Examination of Just Terms Legislation](#)", 16 May 2012, NSW Government Media Release (Greg Pearce MLC).

<sup>8</sup> "[NSW Government Launches Examination of Just Terms Legislation](#)", 16 May 2012, NSW Government Media Release (Greg Pearce MLC).

<sup>9</sup> For instance, [NSWPD, 25 August 2016](#), pp 34–35, and 38; and P Lockie, "[The human toll of Mike Baird's WestConnex](#)", 23 August 2016, *The Sydney Morning Herald*.

<sup>10</sup> [NSWPD, 24 August 2016, p 19](#).

<sup>11</sup> NSW Parliament, 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](#), 2013, Sydney NSW

<sup>12</sup> NSW Parliament, 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](#), 2013, Sydney NSW: Recommendations 11. See also Recommendations 12, and 14–16.

<sup>13</sup> *The State of NSW v The Commonwealth; The Commonwealth v The State of NSW* (1915) 20 CLR 54, per Barton J at 77–78.

<sup>14</sup> D Brown, *Land Acquisition*, 2009, LexisNexis, Sydney, pp 13-14; *Commonwealth v NSW* (1915) 20 CLR 54; *Commonwealth v WMC Resources Ltd* (1998) 194 CLR 1 at 149; *Pye v Renshaw* (1951) 84 CLR 58, *Durham Holdings Pty Ltd v NSW* (2001) 205 CLR 399; *Rafalidis v Roads and Maritime Services (No 2)* [2014] NSWLEC 9 at [21]-[32].

<sup>15</sup> *Durham Holdings Pty Ltd v NSW* (2001) 205 CLR 399 at [17].

<sup>16</sup> Section 3(1) of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>17</sup> Section 5(1) of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>18</sup> Sections 186 and 187 of the *Local Government Act 1993*.

<sup>19</sup> Sections 177 and 178 of the *Roads Act 1993*.

<sup>20</sup> NSW Government, Finance and Services, *NSW Government Just Terms Compensation Legislation Review Consultation Paper*, 2012, Sydney, p 24. The number of acquisitions by agreement and compulsory process by agency, for the 5 years since January 2007, are detailed in the 2012 Consultation Paper as follows: Hunter Water Corporation (57); Attorney General and Justice (1); Education and Communities (17); Sydney Water Corporation (249); Division of Local Government (469); Department of Planning and Infrastructure (193); Office of Environment and Heritage (11); Department of Trade and Investment, Regional Infrastructure and Services (32); Department of Family and Community Services (490); Roads and Maritime Services (1927); NSW Land and Housing Corporation (6).

<sup>21</sup> Section 5(2) of the *Land Acquisition (Just Terms Compensation) Act 1991*. As defined by s 5(3), land is available for public sale if it is: advertised by the owners as being available for sale; listed by the owner with a real estate agent as being available for sale; or otherwise held out by the owner as being available for sale.

<sup>22</sup> Section 11(1) of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>23</sup> Sections 11(2) and 30(1) of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>24</sup> Section 30(2) of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>25</sup> Section 38 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>26</sup> Section 13(1) of the *Land Acquisition (Just Terms Compensation) Act 1991*. Under s 13(2) the Minister can approve a shorter period of notice but only if satisfied that the urgency of the matter or other circumstances make the longer period of notice impracticable.

<sup>27</sup> Section 14 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>28</sup> Section 19 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>29</sup> Section 20(1)(a) of the *Land Acquisition (Just Terms Compensation) Act 1991*. The land in question is also freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land: s 20(1)(b).

<sup>30</sup> Section 47 of the *Land Acquisition (Just Terms Compensation Act) 1991*.

<sup>31</sup> Section 41(2) of the *Land Acquisition (Just Terms Compensation Act) 1991*.

<sup>32</sup> Section 42(1) of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>33</sup> Section 43 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>34</sup> See also s 47 of the *Land Acquisition (Just Terms Compensation) Act 1991*, which states: "The Valuer-General is to determine the amount of compensation to be offered to a person under this Part."

<sup>35</sup> NSW Parliament, Joint Standing Committee on the Office of the Valuer General, [Report on the Tenth General Meeting with the Valuer General](#), 2016, para 3.72.

<sup>36</sup> NSW Parliament, Joint Standing Committee on the Office of the Valuer General, [Report on the Tenth General Meeting with the Valuer General](#), 2016, paras 3.67 and 3.69–3.70.

<sup>37</sup> Section 37 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>38</sup> Section 38 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>39</sup> Section 54 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>40</sup> Section 55 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>41</sup> Section 60(1) of the *Land Acquisition (Just Terms Compensation) Act 1991* defines solatium to mean compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence as a result of the acquisition.

<sup>42</sup> Section 56(1) of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>43</sup> Section 44 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>44</sup> Section 45 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>45</sup> Section 66 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>46</sup> *Maloney v Minister Administering the Environmental Planning and Assessment Act 1979* [2011] NSWLEC 121.

<sup>47</sup> *Maloney v Minister Administering the Environmental Planning and Assessment Act 1979* [2011] NSWLEC 121 at [15]. See also: L Knowles and A Branley, "[NorthConnex: Property Owner to invoke The Castle defence to fight 'low ball' acquisition](#)", 16 September 2016, ABC News.

<sup>48</sup> Section 68 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>49</sup> NSW Parliament, [General Purpose Standing Committee No 1, Examination of proposed expenditure for the portfolio area of Finance, Services and Property](#), 31 August 2016, pp 5-6 (D Perrottet).

<sup>50</sup> Email from the Land and Environment Court to the author, 8 September 2016.

<sup>51</sup> Section 66 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

<sup>52</sup> Email from the Land and Environment Court to the author, 8 September 2016.

<sup>53</sup> For instance, some cases on the list dealt only with costs, questions of law or procedural matters; while other cases, such as *Murlam Pty Ltd v Roads and Traffic Authority of NSW* [2009] NSW LEC 1365 and *George D Angus Pty Ltd v Health Administration Corporation* [2013] NSWLEC 212, awarded compensation only on the basis of disturbance.

<sup>54</sup> For instance, *Penfold and Bracey v Health Administration Corporation* [2009] NSWLEC 157, which involved two parties claiming compensation, each in respect of a different allotment of neighbouring land.

<sup>55</sup> Using the formula:  $((\text{Determination} - \text{Offer}) \div \text{Offer}) \times 100$ .

<sup>56</sup> *Nairobi Finance v Parramatta City Council* [2007] NSWLEC 134 and *Halley v Minister Administering the Environmental Planning and Assessment Act 1979* [2010] NSWLEC 6.

<sup>57</sup> *Penfold v Health Administration Corporation* [2009] NSWLEC 157; *Bracey v Health Administration Corporation* [2009] NSWLEC 157; *Al Amanah College Incorporated v Minister for Education* [2011] NSWLEC 189; *Davies v Sydney Water Corporation (No 2)* [2012] NSWLEC 150; *Goluzd v Minister Administering the Environmental Planning and Assessment Act* [2012] NSWLEC 25; *Bonomo v Transport for NSW* [2014] NSWLEC 25; and *G Suonaf Holdings Pty Ltd v Roads and Maritime Services* [2016] NSWLEC 116.

<sup>58</sup> *Owners Corporation of Strata Plan 30859 v Roads and Traffic Authority of NSW* [2009] NSWLEC135.

<sup>59</sup> *Raguz v Roads and Traffic Authority of NSW* [2007] NSWLEC 136; *Cook v Roads and Traffic Authority of NSW* [2007] NSWLEC 136; *Saad v RTA* [2007] NSWLEC 136; *Cassidy v Sydney Water Group* [2008] NSWLEC 223; *McDonald v Roads and Traffic Authority of NSW* [2009] NSWLEC 105; *Taylor v Port Macquarie-Hastings Council* [2010] NSWLEC 113; *Attard & Ors v Transport for NSW* [2014] NSWLEC 44 (7 separate entries); *Chircop v Transport for NSW* [2014] NSWLEC 63; *De Battista v Transport for NSW* [2014] NSWLEC 39; and *Rafilidis v Roads and Maritime Services (No 2)* [2014] NSWLEC 9.

<sup>60</sup> The two cases are, respectively, *Penfold v Health Administration Corporation* [2009] NSWLEC 157 and *Bracey v Health Administration Corporation* [2009] NSWLEC 157.

<sup>61</sup> Set out in s 55 of the *Land Acquisition (Just Terms Compensation) Act 1991* as being: (a) the market value of the land on the date of its acquisition; (b) any special value of the land to the person on the date of its acquisition; (c) any loss attributable to severance; (d) any loss attributable to disturbance; (e) solatium; and (f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

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