



**The Hon. Kevin Anderson MP**  
Minister for Lands and Water  
Minister for Hospitality and Racing

## **NSW Government Response to NSW Parliamentary Inquiry Report: Acquisition of land in relation to major transport projects**

The NSW Government welcomes the Report of the NSW Parliamentary Inquiry into *Acquisition of land in relation to major transport projects*. The Inquiry examined, amongst other things, the processes of land acquisition and the basis for determining compensation.

Over the course of the Inquiry, the Inquiry members heard from landowners impacted by the compulsory acquisition process and from acquiring agencies which seek to acquire property in accordance with the requirements of the *Land Acquisition (Just Terms Compensation) Act 1991* (the Act). The NSW Government acknowledges the stress sometimes experienced by landowners who undergo compulsory acquisition of their land as a result of the design, construction and implementation of state significant infrastructure, place based, precinct related or other projects of that nature – projects that ensure the ongoing prosperity of NSW and that NSW remains the number one place to live, work and play. The NSW Government thanks all those who have shared their experiences with the Inquiry and appreciates the effort they have made to help inform the Inquiry recommendations.

The Inquiry has made 10 recommendations in total, 9 of which are directed at the NSW Government. The NSW Government is not responding to recommendation 10 as it is directed at the Legislative Council. The recommendations broadly relate either to suggested improvements to the operation of the Act or to whole of government improvements and/or targeted review of the processes by which acquisitions are undertaken.

The NSW Government is committed to working towards the objectives identified by the Inquiry but has identified the need to undertake further extensive consultation and analysis (particularly with NSW Government agencies and local councils) in 2023 to properly address the issues and recommendations raised by the Inquiry.

Rec No.	Recommendation	Government Response
1	<p>That the NSW Government commission an independent review into land acquisitions undertaken in relation to each of the major transport projects referred to in this report, with:</p> <ul style="list-style-type: none"> <li>• this review to consider probity issues and compliance with the legislative framework and compensation outcomes for affected landholders</li> <li>• previous property owners entitled to additional compensation to rectify errors by acquiring authorities</li> <li>• the findings of this review to be made publicly available.</li> </ul>	<p><b>Supported in-principle</b></p> <p>The NSW Government is committed to ensuring compliance with the legislative framework. Significant compliance and process reform work has been completed by Transport for NSW since the 2021 NSW Auditor-General’s report, <i>Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia</i>. This work was progressed concurrently with the inquiry and is an initial step towards addressing this recommendation.</p> <p>On the 10 August 2022, the Audit Office of NSW (Audit Office) commenced a performance audit into Government acquisition of private properties. The aim of this audit is to assess the effectiveness of acquisitions of private properties for Sydney Metro projects. It will focus on completed acquisitions conducted for selected Sydney Metro projects and assess a sample of acquisitions including residential properties and businesses. It is also considering the role of the Centre for Property Acquisition (within Transport for NSW), the Department of Planning and Environment and the Valuer General in supporting acquisition processes.</p> <p>The Audit Office will address through the audit objectives the following:</p> <ol style="list-style-type: none"> <li>1. Communication with and support for affected parties.</li> <li>2. Conduct of compensation processes (negotiation and determinations).</li> <li>3. Adherence to governance and probity requirements.</li> </ol> <p>The audit will assess processes for the acquisition of private properties and will include the implementation of recommendations from previous reviews.</p> <p>Following the findings from the Audit Office audit being made available and considered, the NSW Government will commence the following two reviews in 2023:</p>

Rec No.	Recommendation	Government Response
		<p>i) a legislative review of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (the Act). This review will include both NSW Government, and public consultation.</p> <p>ii) a review of the whole of government approach to property acquisitions (WoG property acquisitions review) so that appropriate consideration and rigour is applied to the operationalisation of any reforms to the Act arising from the legislative review.</p> <p>Probity issues and compliance with the legislative framework can be included in the WoG property acquisitions review.</p> <p>The recommendation relating to additional compensation is noted. The Act currently provides for a determination of compensation by the Valuer General if a landowner is dissatisfied with the amount of compensation offered by the acquiring authority and recourse to the Land and Environment Court if the landowner is dissatisfied with the amount of compensation determined by the Valuer General.</p> <p>The WoG property acquisitions review will be forward looking, recommending changes to WoG policies and procedures impacting future acquisitions.</p>

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2	<p>That the NSW Government implement a continuous review process, to ensure acquiring authorities comply with legislative frameworks for future acquisitions related to transport projects.</p>	<p><b>Supported</b></p> <p>The NSW Government is committed to ensuring acquiring authorities comply with legislative frameworks for future acquisitions.</p> <p>As referred to in the NSW Government response to recommendation 1 above, significant compliance and process reform work was completed by Transport for NSW in response to the 2021 Auditor-General's performance audit of the acquisition of 4-6 Grand Avenue, Camellia. This work included continuous improvement of its acquisition processes as part of the Property Acquisition Reform Program (PARP), completed in December 2021.</p>
3	<p>That the NSW Government amend section 10A of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (and any other associated provision) to ensure that:</p> <ul style="list-style-type: none"> <li>• acquiring authorities are obliged to genuinely negotiate;</li> <li>• letters of offer are provided soon after the negotiation period commences, with a reasonable amount of information provided to affected owners on the basis and breakdown of offers;</li> <li>• acquiring authorities provide partial upfront payments to</li> </ul>	<p><b>Supported in-principle</b></p> <p>The NSW Government supports this recommendation in-principle.</p> <p>It is noted that:</p> <ul style="list-style-type: none"> <li>• the obligation to genuinely negotiate is already included in the Act</li> <li>• many legal and valuation firms representing landowners accept their reasonable fees being paid at settlement as part of the overall compensation determined. Some agencies, including Transport for NSW, which is responsible for the majority of the compulsory acquisitions by the NSW Government, currently reimburse adviser costs when needed upon request from the landowner</li> <li>• under NSW Property Acquisition Standards any valuation commissioned by an acquiring authority must be consistent with Valuation and Property Standards jointly issued by the Australian Property Institute and the Property Institute of New Zealand. These include maintaining the highest standards of professional practice and adherence to rules of professional conduct and code of ethics.</li> </ul>

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	<p>affected owners including for expert reports and legal fees;</p> <ul style="list-style-type: none"> <li>• acquiring authorities ensure the independence of valuers and where conflicts of interest arise these are drawn to the attention of the owner;</li> <li>• owners can access an independent mediator, if requested.</li> </ul>	<p>The NSW Government supports the recommendation that owners can access an independent mediator, noting the mediator would need to be appointed by a body independent to the acquiring authority, such as the CPA or the Valuer General.</p> <p>The NSW Government will consider the recommended changes as part of the proposed legislative review.</p>
4	<p>That the NSW Government:</p> <ul style="list-style-type: none"> <li>• seek to remove all non-disclosure terms that currently apply in all residential land acquisition agreements, and any other agreements entered into by acquiring authorities with residents impacted as a result of infrastructure projects</li> <li>• not enter into any such future non-disclosure agreements.</li> </ul>	<p><b>Supported in-principle</b></p> <p>The NSW Government supports greater transparency between Government and landowners impacted by the Act.</p> <p>The NSW Government will consider the recommended changes as part of the proposed legislative review.</p>
5	<p>That the NSW Government urgently amend the basis for determining compensation in the <i>Land Acquisition (Just Terms Compensation) Act 1991</i>, to introduce a 'reinstatement' approach to the calculation of 'market value'.</p>	<p><b>Supported in-principle</b></p> <p>The NSW Government supports this recommendation in-principle.</p> <p>It is noted that reinstatement provisions are already embodied within the Act under Section 56(3), however these provisions are limited to unique properties that have a particular purpose of which</p>

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		<p>there is no general market for e.g., a place of worship. The expansion of this provision will be considered as part of the legislative review.</p> <p>Careful consideration would be required in the operationalisation of this approach, including an impact analysis to understand how the change to a 'reinstatement' valuation approach would impact key stakeholders including landowners, NSW Government, and the valuation sector.</p>
6	<p>That the NSW Government act to ensure that the eligibility and quantum of solatium payments associated with land acquisitions is adequate and that access to those payments is sufficiently broad and includes compensation for unreasonable delays.</p>	<p><b>Supported in-principle</b></p> <p>The NSW Government supports the payment of adequate compensation and this recommendation in-principle.</p> <p>An independent review of the disadvantage resulting from relocation "solatium" provisions will be required to ensure adequacy of eligibility, quantum, and access and to inform any necessary changes to legislation. This is proposed to form part of the broader legislative review.</p> <p>It is noted that:</p> <ul style="list-style-type: none"> <li>• acquisitions by agreement are generally concluded within the standard six-week settlement period adopted in market transactions unless the landowner requests a longer settlement</li> <li>• solatium was significantly increased as a result of <i>the Land Acquisition (Just Terms Compensation) Amendment Act 2016</i> and is increased annually</li> <li>• additional payment in the form of statutory interest is added to the compensation payable for the period from the date of acquisition to the date compensation monies are paid to the dispossessed owner.</li> </ul>

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7	That the NSW Government improve the transparency of the procedures and review the guidelines for hardship acquisitions for owners that experience a reduction in property value, are negatively impacted by construction or a property rezoning which arises as a result of a government project.	<p><b>Supported</b></p> <p>The NSW Government supports this recommendation.</p> <p>The WoG property acquisitions review will consider any further improvements to transparency of the procedures and review of the guidelines for hardship acquisitions.</p>
8	That the NSW Government undertake an investigation into the workings of the office of the Valuer General NSW, with this investigation to include a root cause analysis of the delays in the provision of determinations and an audit of a sample of determinations from the last 5 years to ensure compliance with legislation and case law.	<p><b>Supported in-principle</b></p> <p>As above, the Audit Office has commenced a performance audit into Government acquisition of private properties. This will include the implementation of recommendations from previous reviews and will focus on completed acquisitions conducted for selected Sydney Metro projects. The role of the CPA, the Department of Planning and Environment, and the Valuer General in supporting acquisition processes will also be considered.</p> <p>The findings from the Audit Office should be made available and considered prior to initiating the proposed investigation.</p>
9	That the NSW Government, via the Centre for Property Acquisition, ensure that all acquiring authorities develop and implement strategies to measure customer satisfaction, with a breakdown of results between sub-stratum and above ground	<p><b>Supported in-principle</b></p> <p>The NSW Government supports the development of a customer satisfaction measurement strategy, to be publicly reported on an annual basis. The CPA have already commenced implementation of this strategy.</p>

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	acquisitions, with the outcomes to be publicly reported on at least an annual basis.	Given the Act excludes substratum acquisitions from compensation except in limited circumstances, the inclusion of a breakdown between substratum and above ground acquisitions is not considered beneficial and is therefore not supported.
10	That the Legislative Council consider an inquiry into the status of land at the Sydney Science Park, infrastructure provision to that site and related matters.	<b>This recommendation is a matter for Legislative Council consideration.</b>