



The Real Estate Institute
of Victoria Ltd

ABN 81 004 210 897
335 Camberwell Road
Camberwell VIC 3124
PO Box 443
Camberwell VIC 3124

T +61 3 9205 6666
F +61 3 9205 6699
E reiv@reiv.com.au
www.reiv.com.au

12 February 2021

Department of Justice and Community Safety

RE: Land Acquisition and Compensation Regulations

The Real Estate Institute of Victoria (REIV) is grateful for the opportunity to respond to the proposed Land Acquisition and Compensation Regulations 2021 and the applicable Regulatory Impact Statement.

The REIV has reflected on the IBAC Investigation of Operation Sandon involving planning issues in the City of Casey and the comments of IBAC's Commissioner the Honourable Robert Redlich QC. The REIV supports his recommendation for an audit of planning procedures in all Councils.

The REIV provides the following responses to the specific questions in the Regulatory Impact Statement.

1. Do you think the current exemptions from the need to reserve land for minor acquisitions should be continued?

The REIV supports the continuation of the current exemptions as they support a cost effective and time efficient mechanism for dealing with minor compulsory acquisitions. However, there should be constant review of the exemptions for currency, transparency and whether other options are more appropriate.

2. Should the thresholds for exemptions (less than 10 per cent of land area and less than 10 per cent of value) be increased or decreased? If so, Why?

The REIV notes that the threshold is for minor acquisitions and 10% is commonly accepted as the upper limit of what is considered minor. Having said that, while 10% is currently accepted as applicable, it does not mean it should be accepted ongoing without a full review, including the consideration of other assessment measures to ensure the process is fair, relevant and transparent. Care needs to be given to implementing any reduction to ensure it does not become too restrictive. The Act contains other avenues for exemption (i.e. Governor in Council exemption) for acquisitions exceeding 10%. Minor changes could have significant impacts. While a proposal may relate to a third party's 10% assessment or less of another's freehold interest, the impact of the proposal needs to be clearly tested for effect, as this effect may be greater than the perceived 10% or less of the freehold interest.

3. Should the types of acquisition within the scope of the exemption be expanded, for example for water infrastructure or other projects? What would be the consequences of this?

The REIV reserves its opinion on this however makes the following comments. The acquisition of non-land interests ought to be covered by appropriate non-land legislation. Even if the same principles as the LAC Act apply to the acquisition of non-land interests, we would expect the relevant legislation should clearly set out that process without the need for reference to the LAC Act. For example if the Water Act is the enabling Act then we would expect it would/should set out the statutory process for their compulsory acquisition.

4. Do you have any comments on the proposed changes to the prescribed forms? Are there other improvements that could be made?

The REIV supports the proposed changes

5. Do you agree that acceptances of offers and claims for compensation should be able to be witnessed by any adult person, instead of only those able to witness statutory declarations?

The REIV notes that the acquisition process is often a David and Goliath battle between a less informed (regarding process) property owner and a very experienced public authority over substantial differences in compensation amounts. Often the property is the landowner's prime asset. Regardless of the quantum of the claim, the legislation should contain as many safety nets for the dispossessed/affected owner as possible.

Could there be unintended consequences of this change?

The acquisition process is very daunting for many landowners regardless of what is involved and their expertise and experience in these issues by comparison to that of an acquiring authority is limited. The statutory process is one thing; but once the acquiring authority takes possession of the land and works commence under third-party contractors, the reality for the landowner can be a nightmare. The landowners need all the protective mechanisms available. An affected landowner may not fully understand the compensation process and therefore might unwittingly be giving up his/her statutory rights relating to their most valuable asset - even with a small claim. While the witness process does not ensure informed consent, it may be a safety net for some more extreme circumstances when dealing with what is often a person's most valuable asset.

6. Is it reasonable to continue to set the threshold based on the median house price for metropolitan Melbourne?

The REIV is supportive of the median house price being the threshold whilst noting that this will naturally impact with varying application depending on location.

Is there another measure of market value that could be used?

The REIV has no recommendation in this regard.

7. Do you have any comments on continuing to set the fee for lodgement of a notice of intention to acquire land at 4.4 fee units?

The REIV has no comment on this matter.

8. Would it be beneficial to prescribe a standard form for when Authorities make a statement that it does not intend to acquire land by compulsory process?

The REIV supports this approach together with a requirement for reasons for not intending to acquire land via the compulsory process. The public is entitled to know why such a decision is being made, particularly the affected landowner who may unknowingly be giving up their statutory rights. The statutory process should be transparent at all stages.

Or prescribing standard forms for notices of intention to enter or temporarily occupy land?

The REIV supports prescribed standard forms for the issuing of notices of intention to enter and temporarily occupy land to cover the salient details of the proposed work and make provision for Notices of Entry and Land Occupation to be issued when access is required, but in advance of the nominated part of the works.

When land is to be acquired for (say) an easement involving such occupation, compensation claims might be made and settled based on forecasts because the project has not been fully costed nor fully scoped in respect to individual property requirements.

When the project commences, the required occupation period can become protracted and the owner becomes disrupted beyond what they have been compensated for.

The compliance requirements relating to entering and temporarily occupying another's land, can be many and varied. Often productive land or workplace land is involved, so the disturbance should not be underestimated, nor should the authority take the availability of the land for granted. Such agreements and notices would become statutory requirements that:

- hold the acquiring authority fully accountable for itself and its contractors' conduct; and
- provide the landowner with an avenue for expedient complaints handling.

This would help ameliorate such issues as insurance matters, loss and damage claims, disturbance claims and penalties for delays in returning land to the landowner in an appropriate manner.

Should you require further information or clarification please do not hesitate to contact me.

Yours sincerely



Gil King
Chief Executive Officer