



Court Finds Compulsory Acquisition Invalid: “...State does not have open slather.”

Governments need land to build utilities and social infrastructure. And international treaties prevent them arbitrarily depriving citizens of their property. In Australia, there are statutory frameworks outlining the process by which government agencies can acquire privately-owned land.

Those frameworks require government agencies to make genuine attempts to procure landowner agreement to a voluntary sale. If negotiations fail, there is a process for compulsory acquisition as a last resort.

That process begins with a formal warning that the government agency intends to commandeer the property, subject to the landowner's right to claim compensation.

NEW SUPREME COURT DECISION

Yesterday, the NSW Supreme Court clarified how a property acquisition notice should be drafted. It examined a notice prepared in connection with Stage 3A of the Westconnex roads project. It departed from the prescribed form in several ways.

Some were inconsequential. For example, the word "this" had been omitted and replaced with the word "the" in order that the notice should make grammatical sense. The *Interpretation Act* 1987 says strict compliance with the prescribed form is not necessary and substantial compliance is sufficient.

Other departures were significant. The notice used the phrase "disadvantage resulting from relocation" in lieu of the word "solatium" (as per the prescribed form). Secondly, the notice suggested an offer of compensation could be expected within 45 days after gazettal, rather than the 30 days allowed in the prescribed form. The notice reflected the 2016 legislative amendments. As a result, it departed from the prescribed form which had not been updated.

Furthermore, the property acquisition notice said the land is required "for a public purpose" without explaining what that purpose was. That description was inadequate. The legislation requires the public purpose to be identified. The question just how much detail is required remains open. And it's not sufficient to explain the public purpose in a covering letter.

Because the notice didn't conform with legislative requirements, the compulsory acquisition was invalid. As Hammerslag J pointed out at [188],

"An authority of the State does not have open slather. If the compulsory processes under the Just Terms Act are to be invoked, they must be invoked in the mode which the grant of power imposes"

He went on to say that the true purpose of the proposed acquisition was to meet a government commitment to create open space and green parkland in Sydney's inner west. RMS could not sustain its contention that the land was needed to build an underground road interchange because that proposal was uncertain and remained in early development. The provision of parkland is beyond RMS' powers under its enabling legislation.

Read the reasons for judgement in [Desane Properties Pty Ltd v State of New South Wales](#)

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