

23 October 2020

LAA Review Project Team
Property and Construction Division
Department of Finance
One Canberra Avenue
Forrest ACT 2603

By email: LAAreview@finance.gov.au

Dear Sir/Madam,

RE: DISCUSSION PAPER: REVIEW OF THE *LANDS ACQUISITION ACT 1989*

The ACT Law Society (Society) welcomes the opportunity to comment on the Department of Finance's Discussion Paper: Review of the *Lands Acquisition Act 1989* (the Discussion Paper).

The Society is the peak professional association that supports and represents the interests of members of the legal profession in the ACT. The Society maintains professional standards and ethics as well as providing public comment and promoting discussion regarding law reforms and issues affecting the legal profession. The Society currently represents over 2,600 legal practitioners in the ACT.

The Society's Property Law Committee (the Committee) has considered the Discussion Paper on behalf of the Society and informed the Society's views on the questions raised, as outlined in this submission.

As a general position, the Society is supportive of appropriate modernisation of legislation. Consistent with this position, the Society is supportive of the Commonwealth review of the *Lands Acquisition Act 1989* (Cth) (LAA), and of consequential changes to the LAA framework that enhance equity and fairness, timeliness, transparency, and value for money.

In particular, the Society would welcome greater harmonisation of Commonwealth, State, and Territory legislation dealing with the acquisition and disposal of interests in land by the Government, particularly in relation to compulsory acquisitions.

Improved federal harmonisation would be especially welcomed in the Australian Capital Territory (ACT), given the unique system of land administration and management that applies in the ACT, involving National Land administered and managed by the Commonwealth Government and Territory Land administered and managed by the ACT Government. Where an interest in land in the ACT is proposed to be compulsorily acquired by Government, the Society would be supportive

of the acquisition process being as consistent as possible, irrespective of whether the acquiring authority is the Commonwealth Government or the ACT Government.

In relation to some of the specific queries contained in the Discussion Paper, the Society:

- is supportive of responsibility being placed first on the Government to make a compulsory acquisition offer, rather than on the interest holder (as is currently the case in both the Commonwealth and ACT jurisdictions, acknowledging the different approach taken in Queensland and Western Australia);
- is supportive of the use of clear and reasonable timeframes in the compulsory acquisition process, with a view to expediting the process (and reducing costs) where possible;
- is supportive of the use of appropriate mechanisms to incentivise acquisition by agreement rather than compulsory acquisitions;
- is supportive of any reasonable simplification of the statutory steps involved in Commonwealth acquisition processes;
- is supportive of reasonable changes to enable acquisitions of land in a public park to be effected by agreement rather than needing to be effected compulsorily;
- is supportive of appropriate modernisation of the Commonwealth Property Disposal Policy, including to:
 - allow for off-market sale direct to a private organisation or individual in appropriate circumstances (such as in the case of a land-locked site), having regard to appropriate value for money considerations, and provided that the relevant Commonwealth entity has obtained an independent valuation/s and is selling for fair value; and
 - allow for Commonwealth acquisitions and disposals to be treated as a single transaction, particularly in the case of land swaps between the Commonwealth and ACT Governments; and
- is supportive of statutory clarification of the intended meaning of the expression ‘for a public purpose’ in the LAA context.

If legislative changes are to be made as a result of the review of the LAA, then also consistent with a general position taken by the Society, the Society would support these changes being made prospectively, rather than retrospectively.

The Society would welcome the opportunity to be further involved in the review of the LAA, including reviewing and commenting on any draft legislation that may result from the review, if this would be of assistance.

Yours sincerely,



Simone Carton
Chief Executive Officer