



LandTasmania

Land Acquisition Act 1993

Issues paper

June 2020

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About this document

SUSTAINABLE DEVELOPMENT requires governments to provide public facilities and infrastructure that ensure health and welfare, safety and security, social and economic enhancement, and protection of the natural environment. An early step in the process of providing such facilities and infrastructure is the acquisition of the necessary land.

THE LAND ACQUISITION ACT 1993 is an essential legislative tool that enables an acquiring authority to acquire privately owned land necessary for the construction of new public infrastructure. It also provides the basis for determination of compensation arising from the acquisition of that land. The ability to compulsorily acquire land provides an acquiring authority with a strong degree of certainty that it can obtain the necessary land required for the provision of public infrastructure. In Tasmania the *Land Acquisition Act 1993* is administered by the Minister for Primary Industries and Water, Guy Barnett. Minister Barnett in turn has delegated the Valuer-General to manage the operation of the *Land Acquisition Act 1993* on her behalf, except the power to commence a compulsory acquisition.

An acquiring authority is a body that is empowered to purchase land under the *Land Acquisition Act 1993*. Normally it is a Crown body such as a government department or statutory authority, although sometimes it is a non-Crown body such as a local Council, Tas Irrigation, TasWater or Aurora. Government and non-Crown bodies perform a range of functions for public purposes, such as building new or upgrading existing infrastructure such as hospitals, schools, roads, dams, power lines and water pipelines. Such an acquisition may be for the whole property, part of a property or for an interest over a property such as an easement for a power line.

Whilst the *Land Acquisition Act 1993* details the specific process to be followed in relation to the compulsory acquisition of privately owned land, an acquiring authority will be authorised under other legislation to use the *Land Acquisition Act 1993* to acquire land. In most instances an acquiring authority will also be required to obtain the approval of the Minister for Primary Industries and Water to use the *Land Acquisition Act 1993* to commence a compulsory acquisition of land.

The *Land Acquisition Act 1993* authorises an acquiring authority to acquire land by either (1) section 9 purchase by agreement, (2) section 16 compulsory process by agreement, and (3) section 18 by compulsory process.

This review of the *Land Acquisition Act 1993* only concerns electronic signature and service.

This *Issues paper* presents a number of issues and proposals to streamline the administrative structure of how the the *Land Acquisition Act 1993* is administered.

These issues have been identified through previous stakeholder consultation and by the Office of the Valuer-General through its administration of the Act. This is an opportunity for all interested members of the public to comment on these and related matters.

All submissions are welcome.

Your feedback will provide valuable input to the review of the legislation.

More information about the submission of comments is provided on page 10.

The case for change

The *Land Acquisition Act 1993* was preceded by the *Lands Resumption Act 1957*. The *Land Acquisition Act 1993* represented a major rewrite of its preceding legislation. The *Lands Resumption Act 1957* was in turn preceded by the *Land Clauses Act 1857*.

The *Land Acquisition Act 1993* has been in force for 27 years. Over time it becomes necessary to review legislation to ensure it continues to provide better ways of working to stay relevant with electronic transmission.

This review does not represent a major change to the operation of the *Land Acquisition Act 1993*. Instead, it proposes mostly minor amendments to streamline the administrative process and reduce red tape and to better align with case law and other Australian jurisdictions.

Overview of proposed amendments

All of the proposed amendments relate either to electronic transmission or electronic signature.

The Office of the Valuer-General is currently building an electronic process for land acquisition and by enacting legislative amendments this will complement the Acquisition process for all parties concerned.

Amendments in Summary:

- Affixing the Valuer-General's Signature electronically to all correspondence relating to Land Acquisition including the Notice to Treat and the Notice of Acquisition.
- Amending the Act to better align with the *Electronic Transaction Act 2000*. To allow electronic service without first seeking consent of the recipient. This will streamline the administrative efficiencies of the Acquisition program allowing all correspondence to be sent electronically.

Current Law

Signature

An electronic signature will suffice for notice to treat and notice of acquisitions, provided that the requirements of section 7 of the *Electronic Transaction Act 2000* are met. However, the *Land Acquisition Act 1993* does not cover the recipients consent to the electronic signature.

Currently seeking legislative reform to allow the use of electronic signature on notice to treat and notices of acquisition, without the consent of the recipient.

In the absence of legislative amendment the Office of the Valuer- General would be required to send a form seeking consent to electronic signature to land-owners in advance of the first communication to the land owner and thereafter, only using the electronic signature where written consent has been received.

The act of signing a document “is a formal act ‘which itself ordinarily conveys a representation to a reasonable reader of the document. At common law electronic signatures are generally acceptable and meet a requirement to sign a document, so long as the electronic signature can be regarded, as a question of fact, to have conveyed the same representation as a traditional signature: that is, the signature must identify the person signing; and indicate that the person so signing adopts the content of the communication signed.

Provision for electronic signatures is also made in the *Electronic Transactions Act 2000*.

Section 7 of the *Electronic Transactions Act 2000* allows electronic signatures to be recognised for transactions, in place of traditional signatures:

7. Signatures

(1) If, under a law of this jurisdiction, the signature of a person is required, that requirement is taken to have been met in relation to an electronic communication if:

(a) a method is used to identify the person and to indicate the person's intention in respect of the information communicated; and

(b) the method used was either –

(i) as reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

(ii) proven in fact to have fulfilled the functions described in paragraph (a) , by itself or together with further evidence; and

(c) the person to whom the signature is required to be given consents to that requirement being met by way of the use of the method mentioned in paragraph (a)

Consent to the use of electronic signature might be inferred if a party responds to a notice to treat to by commencing negotiations or similar. However, consent within the meaning of the *Electronic Transaction Act 2000* was found not to be present in the *State of Tasmania v Herlihy [2019] TASC 5*. This case related to consent to receiving a written communication via electronic means under 6 (1) (a) of the *Electronic Transaction Act 2000*, rather than consent to an electronic signature, however the definition of consent is the same in either case. However, there was nothing in the form indicating that the worker had a choice about giving this information. Several emails had been sent to her, and a read receipt had been received, but the worker had not replied via email or sent email correspondence to the employer. Consent was not inferred.

Legislative change is the preferred choice due to this case law. By enacting legislative change, the Office of the Valuer-General will not have to send a form seeking consent to electronic signature to land owners in advance of the first communication to the landowner and thereafter, only using the electronic signature where written consent has been received.

Service

In the Act express provision is made on how service of notices is to occur. Amendments to the Act are required if notices are to be served in a manner or other method than specified in Section 80 of the Act. The *Land Acquisition Act 1993* (“the Act”) makes express provision for service of notices in s 81:

81. Service of notices and other documents

(1) A notice or other document is effectively served under this Act if –

(a) in the case of a natural person, it is –

(i) given to the person; or

(ii) left at, or sent by post to, the person's postal or residential address or place or address of business or employment last known to the person required by this Act to serve the notice or other document; or

(iii) sent by way of facsimile to the person's facsimile number; and

(b) in the case of any other person, it is –

(i) left at, or sent by post to, the person's principal or registered office or principal place of business; or

(ii) sent by way of facsimile to the person's facsimile number.

(2) A notice or other document required or permitted by this Act to be served on or given to –

(a) the Crown or the Minister, may be served or given by –

(i) leaving it at, or sending it by post to, the office of the Secretary; or

- (ii) sending it by way of facsimile to the Secretary at that office; or
- (b) an acquiring authority other than the Crown, may be served or given to the authority by –
 - (i) leaving it at, or by sending it by post to, the office of the authority or its principal office if there are more offices than one; or
 - (ii) serving it on or giving it to, or sending it by post to, the clerk or the authority's legal practitioner; or
 - (iii) sending it by way of facsimile to that office, the clerk or the authority's legal practitioner.
- (3) A notice or other document served under this Act by sending it by post is served at the time when the letter is deposited in a post box or at a post office for delivery by post.

Notices to treat must be served on landowners (see s 11(1)(b)). Service on the landowner is also required for notices of withdrawal under s 12 and for notices to former owners after acquisition under s 21. Service of notices on the Public Trustee is required where the owner cannot be ascertained under s 66. Claims for compensation also need to be served by landowners on the relevant authority pursuant to s 36(2)(d). Section 80 applies to all of these notices.

Notices of acquisition are published in the Gazette rather than being served and so s 80 is not applicable so far as the notice of acquisition is concerned, or at least, not until after acquisition as provided by s 21. Amendments are sought to make this process electronic in a nature.

The proposed amendments include:

1. Section 11 – This amendment will update the Act to allow electronic signature on a notice to treat without the consent of the Recipient.
2. Sections 12 – This amendment will allow for electronic service and signature of the notices of withdrawal to be served electronically.
3. Section 18 – This amendment will update the Act to allow electronic signature and service on the notice of acquisition.
4. Section 21 – This amendment will update the Act to allow for electronic signature and service without consent on the former owner after Acquisition.
5. Section 36 – This amendment will allow for electronic signature and service of the Claim for Compensation.
6. Section 66 – This amendment will update the Act to allow electronic signature and service on the Public Trustee.
7. Section 81 – This amendment will update the Act to allow for electronic service under the Act.

Proposed Amendment 1: Section 11

Add section 11(1)(c) legislative amendment to allow for the use of electronic signature

Section 11 refers to the notice to treat. (1) An acquiring authority must – (a) take all reasonable steps to ascertain all owners of any land the authority proposes to take and the addresses of those owners; and (b) cause a notice to treat to be served on every owner so ascertained whose address has also been ascertained.

Section 80 of the Act provides that where the notices must be provided to be served on any person “that notice, or document is to be signed by the clerk of the authority or by the Minister as the case requires”. Notices to treat must be served on landowners. A notice to treat must be served in a form approved by the Secretary and this at present requires manual signature.

It is suggested that an additional clause be added to section 11(1) allowing for a notice to treat to be served on every owner so ascertained whose address has been ascertained by means of electronic communication with an electronic signature.

Proposed Amendment 2: Section 12

Section 12(4) of the Act refers to notice of withdrawal. An acquiring authority may withdraw a notice to treat by serving a notice of withdrawal. Where a notice of withdrawal is served on an owner as provided in this section, any other owner of the land, or a part of the land, to which the notice relates who is unknown, or whose address is unknown, to the acquiring authority is taken to have been served with a notice of withdrawal in respect of that land or part of the land, as the case may be.

It is suggested that this clause should be amended to allow for electronics communication with an electronic signature.

Proposed Amendment 3: Section 18

Section 18(3) refers to the notice of acquisition. A notice of acquisition (a) is to be in a form approved by the Secretary and (b) is to specify the authorised purpose for which the land to which the notice relates is being taken; and (c) where the acquiring authority is not the Crown, is, to be signed on behalf of the authority by the clerk or the authority’s legal practitioner.

Section 80 of the Act provides that where the notices must be provided to be served on any person “that notice or document is to be signed by the clerk of the authority or by the Minister as the case requires”. Notices of acquisition must be served on landowners. A notice of acquisition must be served in a form approved

by the Secretary and this at present requires manual signature.

It is suggested that an additional clause be added to allow for electronic communication with an electronic signature. The wording suggests that the Act contemplates that all notices of acquisitions are required to be signed.

Proposed Amendment 4: Section 21

Section 21 refers to notices to former owners after acquisition. An acquiring authority must within the period, of 30 days after a notice of acquisition is gazetted, serve on every former owner of the land taken.

It is suggested that an additional clause be added to allow for electronic communication with an electronic signature.

Proposed Amendment 5: Section 36

Section 36 refers to the claim for compensation. This amendment will allow for a person who claims to be entitled to compensation to lodge that claim electronically with an electronic signature.

It is suggested that an additional clause be added to allow for electronic communication with an electronic signature.

Proposed Amendment 6: Section 66

Section 66 refers to the Public Trustee. If an acquiring authority is unable to ascertain the existence or address, of an owner of subject land, the authority must serve on the Public Trustee any notice in respect of that land that it is required to serve on the owner.

It is suggested that an additional clause be added to allow for electronic communication with an electronic signature.

Proposed Amendment 7: Section 81

The *Land Acquisition Act 1993* (“the Act”) makes express provision for service of notices in s 81:

81. Service of notices and other documents

- (1) A notice or other document is effectively served under this Act if –
 - (a) in the case of a natural person, it is –
 - (i) given to the person; or

-
- (ii) left at, or sent by post to, the person's postal or residential address or place or address of business or employment last known to the person required by this Act to serve the notice or other document; or
 - (iii) sent by way of facsimile to the person's facsimile number; and
- (b) in the case of any other person, it is –
- (i) left at, or sent by post to, the person's principal or registered office or principal place of business; or
 - (ii) sent by way of facsimile to the person's facsimile number.
- (2) A notice or other document required or permitted by this Act to be served on or given to –
- (a) the Crown or the Minister, may be served or given by –
 - (i) leaving it at, or sending it by post to, the office of the Secretary; or
 - (ii) sending it by way of facsimile to the Secretary at that office; or
 - (b) an acquiring authority other than the Crown, may be served or given to the authority by –
 - (i) leaving it at, or by sending it by post to, the office of the authority or its principal office if there are more offices than one; or
 - (ii) serving it on or giving it to, or sending it by post to, the clerk or the authority's legal practitioner; or
 - (iii) sending it by way of facsimile to that office, the clerk or the authority's legal practitioner.
- (2) A notice or other document served under this Act by sending it by post is served at the time when the letter is deposited in a post box or at a post office for delivery by post.

Express provision is made for how service of notices is to occur. Amendment is required to the Act for service of notices to occur in a manner other than the methods specified in s 80. Notices to treat must be served on landowners (see s 11(1)(b)). Service on the landowner is also required for notices of withdrawal under s 12 and for notices to former owners after acquisition under s 21. Service of notices on the Public Trustee is required where the owner cannot be ascertained under s 66. Claims for compensation also need to be served by landowners on the relevant authority pursuant to s 36(2)(d). Section 80 applies to all of these notices. Notices of acquisition are published in the Gazette rather than being served and so s 80 is not applicable so far as the notice of acquisition is concerned, or at least, not until after acquisition as provided by s 21. Preferred method of service is electronic.

Submissions in response to this paper

If you would like to comment on any issues raised in this document, including the identification of alternative approaches, please forward your written submission to:

The Valuer-General, Land Tasmania, GPO Box 44, HOBART TAS 7001

Or to Simone.lickiss@dpipwe.tas.gov.au

All submissions are most welcome. **Submissions close midnight 16 July 2020.**

All submissions will be treated as public documents and made available on the Department's website. If you wish your submission to be treated as confidential, either in whole or in part, please note this in writing at the time of making your submission. (However, see below on the *Right to Information Act 2009*.)

The Right to Information Act 2009 and confidentiality

By law, information provided to the Government may be provided to an applicant under the provisions of the *Right to Information Act 2009* (RTI). If you have indicated that you wish all or part of your submission to be confidential, the statement that details your reason will be taken into account in determining whether or not to release the information in the event of an RTI application for the assessed disclosure.

Next steps

After all feedback is collated, the outcomes and recommendations of this consultation process will be reflected in a *Stakeholder and Community Consultation Report*, which will be made publicly available.