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Ms Anna Faithfull  
Deputy Secretary, Justice Policy and Data Reform  
Department of Justice and Community Safety  
Level 24, 121 Exhibition Street  
MELBOURNE VIC 3000

24 December 2020

Dear Ms Faithfull

## **REGULATORY IMPACT STATEMENT FOR LAND ACQUISITION AND COMPENSATION REGULATIONS 2021**

I would like to thank your staff at the Department of Justice and Community Safety (the Department) for working with the team at Better Regulation Victoria on the preparation of the Regulatory Impact Statement (RIS) for the proposed Land Acquisition and Compensation Regulations 2021 (the proposed Regulations).

As you know, the Commissioner for Better Regulation provides independent advice on the adequacy of analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be written clearly so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 24 December 2020 meets the adequacy requirements set out in the Subordinate Legislation Act.

### **Background**

The Land Acquisition and Compensation Regulations 2010 (the current Regulations) will sunset on 22 June 2021. The Department explains in the RIS that the current Regulations prescribe a number of things that are necessary or convenient for carrying out and giving effect to the operation of the *Land Acquisition and Compensation Act 1986* (the Act).

The current Regulations prescribe forms, procedures, fees and other matters for acquiring Authorities to follow for compulsory acquisitions of land and other interests

in land, such as easements. The procedures and calculation of compensation for the compulsory acquisition of land lie in the Act. The Regulations prescribe various forms for Authorities and landowners to complete relating to different stages of acquisition, including notifying landowners of an Authority's intention to acquire land, acquiring an interest in land and taking possession of land. The Regulations also prescribe fees associated with some forms.

In general, an Authority (being a person or body authorised by a special Act) cannot commence the process to acquire any interest in land unless the land has first been reserved by or under a planning instrument for a public purpose. Reservation for a public purpose requires amendment of the relevant planning scheme under the provisions of the *Planning and Environment Act 1987*. The Regulations provide an exemption from reserving land for road widening or deviations of a road requiring less than 10 per cent of a landowner's land and for acquisition of land covered by easements, in both cases where the value of the interest acquired is less than 10 per cent of the total area. There are also exemptions outside of the Regulations, for example, the Minister administering the Act can recommend the Governor in Council certify that reservation is not required where reservation is unnecessary, undesirable or contrary to the public interest.

The Act provides for loans by an Authority to dispossessed landowners. Where an Authority acquires an interest in land that is the principal place of residence of a landowner, and the amount of compensation payable by the Authority is insufficient to enable the landowner to purchase a similar interest in land with reasonably comparable accommodation to be used as their principal place of residence, then the Authority may, and must if directed by the Tribunal or the Court, grant a loan (with or without interest) to the dispossessed landowner. These loans are intended to be provided in special circumstances, for example, if an Authority purchased a substantial proportion of lower cost housing in a particular area, a dispossessed landowner might be unable to purchase a similar interest in the same or surrounding location. These loans are rarely used. Only three loans were identified in the past decade. Under the current Regulations these loans are limited to acquisitions of a dispossessed landowner's house and land with a market value of \$500,000 or less.

### **Policy analysis and preferred options**

The Department analyses four key elements of the proposed Regulations in the RIS:

1. prescribed forms;
2. exemptions from reserving land for a public purpose;
3. loans by Authorities to dispossessed homeowners; and
4. fee for lodgement of a notice of intention to acquire land with the Registrar of Titles.

In its analysis of prescribed forms, the Department explains that if the Regulations were to expire, no standardised forms would be prescribed, but land acquisition

procedures in the Act could still take place. The Department explains that it is proposing to continue prescribing these forms because without them it would be more difficult for Authorities to ensure they meet requirements in the Act and there would be a risk that notices to acquire land would be invalid.

Apart from making minor wording changes to the prescribed forms, the Department proposes to make changes to witnessing requirements in two forms (acceptance of offer of compensation and claim for compensation when an interest is not acquired) by removing the requirement for a witness to be a person authorised to make a statutory declaration. The Department also proposes adding a requirement to the notice of acquisition for Authorities to provide information about their power to acquire land.

For exemptions from reserving land for a public purpose, the Department discusses increasing or decreasing the current threshold for exemptions of 10 per cent of a landowner's land. The Department explains that during consultation for the RIS no views were expressed on the current threshold for exemptions, and it proposes to retain the current threshold.

For loans to dispossessed landowners, the Department notes that these loans are intended to be provided for lower cost housing and, therefore, proposes to retain a cap rather than allow Authorities to make loans for any amount. The Department proposes to increase the cap from \$500,000 to \$750,000 to reflect increases in Melbourne metropolitan property prices since 2010. The Department explains that indexing the threshold to property prices is unnecessary given that these loans are rarely activated.

In its analysis of fees prescribed for a notice of intention to acquire land with the Registrar of Titles, the Department explains that in the absence of this fee, the Registrar would have the ability to charge a miscellaneous fee, which is higher than the current fee. The Department explains that its preferred option is retaining the current fee. It notes that current fees approximate cost recovery (based on consultation with Land Use Victoria) and that although the Authorities paying the fee are government bodies, cost recovery remains an important principle.

### **Implementation and Evaluation**

In the RIS, the Department notes that the proposed Regulations largely continue the current Regulations, so no specific implementation plan is necessary. It will inform all acquiring Authorities of changes to the Regulations, particularly the revised prescribed forms, and update online information for landowners including guidance on using the prescribed forms.

The Department notes that it will monitor the effectiveness of the Regulations by reviewing issues in which acquiring Authorities seek advice from the Department and any disputes taken to the Victorian Civil and Administrative Tribunal or the

Supreme Court. The Department notes that the proposed Regulations will be evaluated when they sunset in 2031.

The Department notes that it will continue to consult with Land Use Victoria and the Victorian Government Land Monitor to gather any insights on emerging trends in the use of compulsory acquisitions.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on 03 9092 5800.

Yours sincerely



**Anna Cronin**

Commissioner for Better Regulation