23 August 2019

The Hon Vickie Chapman MP
Attorney-General
GPO Box 464
ADELAIDE SA 5001

By email: agd@agd.gov.sa.au

Dear Ms Attorney

Land Acquisition (Miscellaneous) Amendment Bill 2019

1. I refer to your letter of 2 August 2019 in relation to the Land Acquisition (Miscellaneous) Amendment Bill 2019 (“the Bill”).

2. The Bill seeks to amend the Land Acquisition Act 1969 (“the Act”) to enact the recommendations contained in the June 2017 report of the Parliamentary Select Committee on Compulsory Acquisitions of Properties for North-South Corridor Upgrade. The Society understands the Bill also contains additional suggested amendments by the Department of Planning, Transport, and Infrastructure.

3. The Society notes that there has only been a short time provided for consultation on the Bill, however, it addresses briefly below some concerns with the proposed amendments.

Settlement conference

4. The Society notes clause 14 of the Bill proposes the insertion of section 23BA which provides that the Authority may, before a matter is referred to a court under section 23C, convene a settlement conference in relation to the matter.

5. The Society supports the concept of a conference to resolve a matter before it reaches court proceedings in principle. However, it has a number of concerns with the proposed amendment. Its concerns and suggested amendments are noted below.

Who may refer a matter

6. The Bill provides that only the Authority is able to refer a matter to a settlement conference. The Society suggests that this should either be expanded to include a claimant, or be made a mandatory obligation on the parties.

Time frames

7. The Society notes that there are no time frames set out in the Bill as to when a matter must be referred to a settlement conference. The Society suggests the Bill should stipulate that the matter
must be referred to a settlement conference within a certain number of days after a notice of 
acquisition and/or an offer of compensation is made.

Conference coordinator

8. The Society notes proposed section 23(2) requires that the Authority must appoint a conference 
coordinator to conduct the settlement conference.

9. The Bill does not set out any relevant qualifications/criteria/experience as to who can be appointed 
as a conference coordinator.

10. Further, the Bill provides that the coordinator must be appointed by the Authority only. This has 
the potential to raise the issue of bias (on the basis that the Authority may appoint someone who is 
more favourable to its position or has been more favourable to its position in the past). This is 
particularly so in circumstances where representative of the Authority is likely to be more 
experienced than the claimant in land acquisition matters. This potential issue is exacerbated in the 
Act being unclear as to whether the claimant is entitled to reasonable legal fees for the settlement 
conference process.

11. The Society considers that the decision to appoint a conference coordinator should be made jointly 
(i.e. from an approved list). Alternatively, consideration could be given to conciliation conferences 
being conducted by an independent body/tribunal such as the Land and Valuation Division (LVD) of 
the Supreme Court or the South Australian Civil and Administrative Tribunal.

Failure to comply with a direction

12. Proposed section 23BA(3) provides that a person who, without reasonable excuse, refuses or fails 
to comply with a direction of the conference coordinator under this section is guilty of an offence. 
A maximum penalty of $5000 applies.

13. The Society has serious concerns with respect to this provision in that the claimant can be 
prosecuted for failing to comply with a direction of the conference coordinator, in circumstances 
where the qualification of the conference coordinator is not clear (and would appear to be a non-
judicial person), where the direction does not have to be reasonable and where the conference 
coordinator is able to give any directions he or she considers necessary.

14. The Society considers this amendment is inappropriate and suggests it be removed.

Costs

15. The Bill does not indicate who is responsible for the cost of the settlement conference. In the 
Society's view, given the removal of property is imposed by the Authority on an individual under 
compulsion, the costs of the whole settlement conference process should be borne by the 
Authority and should be stipulated in the Bill.

Entry into possession

16. The Society notes the proposed amendment with respect to entry into possession represents a 
significant shift with respect to the rights of the claimant. Presently, the Act provides that the 
Authority must apply to the Court for an order that a person in possession of the land is a tenant 
and the Court sets the rent payable. This is an appropriate safeguard in the view of the Society.
17. The Bill, however, shifts the onus onto the claimant/tenant to apply to the Court in relation to any issues relating to the tenancy, with no provision for suspension of any terms and conditions of the tenancy in the meantime.

18. The Society does not support the proposed amendment which will essentially provide the Authority with a carte blanche to set the terms and conditions of the tenancy.

**Solatium**

19. The Society commends the inclusion of a solatium under section 25(A). However, while section 25A(2) provides relevant circumstances to be taken into account, the amendment does not list the circumstances in which a solatium should or should not be granted, nor does it establish any ability to challenge a decision in relation to the payment of a solatium. The Society suggests that section 25(A) is amended to include these relevant details.

**Payments relating to professional costs**

20. The Society considers the inclusion of Section 26A and the reference to payment for professional costs as a positive step. However, further detail is required as to how this payment for professional costs is to differ from payment for other professional costs.

21. Section 26A refers to a prescribed maximum amount with respect to the payment of professional costs. It is important that the prescribed amount is adequate and does not impact upon a person’s ability to seek professional assistance in these circumstances.

**Underground land acquisition**

22. The Society notes the amendments in the Bill with respect to the acquisition of underground land. The amendments do not appear to provide for the payment of compensation. This is of concern to the Society, as there may be circumstances where an underground acquisition causes impacts which should be compensable. These could be impacts above or below ground, for example, there may be underground elements of a building, such as a cellar, which could be impacted by the works and, on the face of it, could be acquired with no compensation being payable. A further example is that of a bore for the supply of water.

23. The Society considers that in the case of underground land acquisitions the normal compensation process should apply. If necessary, this could be limited in some way to circumstances where the underground land is being used, or where the use of the acquisition of the underground land will have impacts above ground.

Yours sincerely

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