House of Assembly—No 103A
As reported with amendments, report agreed to and passed remaining stages, 16 October 2019

South Australia

Land Acquisition (Miscellaneous) Amendment Bill 2019

A BILL FOR

An Act to amend the *Land Acquisition Act 1969*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Land Acquisition (Miscellaneous) Amendment Act 2019*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Land Acquisition Act 1969*

4—Amendment of section 6—Interpretation

Section 6, definition of ***compensation***—after "agreement" insert:

, but does not include a payment under Part 4 Division 4

5—Amendment of section 7—Application

Section 7(1a)—after "this Act" insert:

(including, to avoid doubt, underground land)

6—Amendment of section 10—Notice of intention to acquire land

(1) Section 10(1)—delete "If" and substitute:

Subject to this Act, if

(2) Section 10(4)—delete "and in the same way"

(3) Section 10—after subsection (4) insert:

(4a) To avoid doubt, a notice under subsection (4)—

(a) need not be given to a person in the same way as the notice of intention to acquire land was given to the person; and

(b) does not constitute a new notice of intention to acquire the relevant land.

7—Insertion of section 10A

After section 10 insert:

10A—Obligation to notify Authority of other interests in land

(1) An owner of land to whom a notice of intention to acquire the land is given must, no later than 14 days after receiving the notice, notify the Authority of—

(a) any other person who, to the person's knowledge, has an interest in the land; and

(b) the nature of that person's interest.

(2) A person who, without reasonable excuse, refuses or fails to comply with subsection (1) is guilty of an offence.

Maximum penalty: $5 000.

8—Amendment of section 12A—Right of review

Section 12A(3)—delete "14" and substitute:

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9—Amendment of section 15—Acquisition by agreement etc

(1) Section 15(3)—delete "and in the same way"

(2) Section 15—after subsection (3) insert:

(3a) To avoid doubt, a notice under subsection (3) need not be given to a person in the same way as the notice of intention to acquire land was given to the person.

10—Amendment of section 16—Notice of acquisition

(1) Section 16(1)—delete "last occasion on which a" and substitute:

first occasion on which any

(2) Section 16(5a)—delete "and in the same way"

(3) Section 16—after subsection (5a) insert:

(5b) To avoid doubt, a notice under subsection (5a) need not be given to a person in the same way as the notice of intention to acquire land was given to the person.

11—Substitution of heading to Part 4

Heading to Part 4—delete the heading and substitute:

Part 4—Negotiation, compensation and other payments

12—Amendment of section 22B—Entitlement to compensation

(1) Section 22B—delete "is entitled to compensation for the acquisition of" and insert:

who has an alienable interest in land is entitled to compensation for the acquisition of the

(2) Section 22B(a)—after "in" insert:

the

(3) Section 22B(b)—after "in" insert:

the

(4) Section 22B—after its present contents (now to be designated as subsection (1)) insert:

(2) However, the requirement under subsection (1) that an interest be alienable does not apply in relation to an interest consisting of native title.

13—Amendment of section 23—Negotiation of compensation

(1) Section 23(1)—delete subsection (1) and substitute:

(1) The Authority and the claimant must negotiate in good faith in relation to the compensation payable for the acquisition of land under this Act.

(2) Section 23(5)—delete subsection (5) and substitute:

(5) A party to the negotiations who is the holder of native title in the land may request non-monetary compensation, and the Authority must give due consideration to any such request.

(3) Section 23—after subsection (6) insert:

(7) The Authority must, at the request of the claimant and in accordance with any requirements set out in the regulations, convene a conference (a ***valuers conference***) between land valuers who have made a valuation of the subject land (and the Authority may convene such a conference at any other time the Authority considers appropriate).

(8) The primary purpose of a valuers conference is to determine, if possible, a valuation of the subject land that is acceptable to both valuers (having regard to any factors that may affect the original valuations of the land), and to determine those matters of fact and opinion on which they agree and those on which they disagree, and the reasons for any disagreement.

(9) Subject to this Act and the regulations, a valuers conference is to be conducted in accordance with procedures determined by the Authority.

(10) The regulations may make further provision in relation to a valuers conference (including, to avoid doubt, requiring a report of the valuers conference to be prepared and provided to the Authority and the claimant).

14—Amendment of section 23A—Offer of compensation and payment into court

(1) Section 23A(1)—delete "When" and substitute:

Subject to this section, if

(2) Section 23A—after subsection (1) insert:

(1a) However, the Authority need not make an offer under subsection (1) in the following circumstances:

(a) if the Authority considers that the amount of compensation is unable to be determined at time the notice of acquisition is given, in which case the Authority must, as soon as is reasonably practicable after the amount of compensation is able to be determined, make an offer in accordance with subsection (1);

(b) in any other circumstances prescribed by the regulations, in which case the Authority must make an offer in accordance with any requirements set out in the regulations.

(3) Section 23A—after subsection (4) insert:

(5) In relation to an offer of compensation made under this section, the Authority may—

(a) if after making the offer the Authority becomes aware of information that negatively affects the value of the relevant land—apply to the Court for an order that the offer be decreased by a specified amount (and the Court may make such an order); or

(b) in any case—increase the offer by a specified amount by notice to the person or persons to whom the original offer was made.

(6) If an offer is decreased in accordance with subsection (5)(a), the Authority may apply to the Court for (and the Court may make) an order that the difference between the original offer and the decreased offer, together with any accrued interest, be paid to the Authority (whether by the claimant or the Registrar, as the case may be).

(7) If an offer is increased in accordance with subsection (5)(b), the difference between the original offer and the increased offer, together with any accrued interest—

(a) if the amount offered has been withdrawn by, or on behalf of, the claimant —may be paid directly to the claimant; or

(b) if the amount offered has not been withdrawn by, or on behalf of, the claimant—must be paid into the Court.

15—Insertion of sections 23AB and 23AC

After section 23A insert:

23AB—Responding to an offer of compensation

(1) A person to whom an offer of compensation is made under section 23A must respond to the offer in accordance with this section.

(2) The response must—

(a) be made within the prescribed period; and

(b) be in writing; and

(c) indicate whether the person accepts or rejects the offer; and

(d) comply with any other requirements set out in the regulations.

(3) A response must be made under this section whether or not an amount of money paid into Court in relation to an acquisition has been withdrawn by, or on behalf of, the person to whom the offer is made.

(4) If a person does not respond in accordance with this section within the prescribed period, any money paid into the Court under section 23A in respect of the relevant acquisition (being money that has not been withdrawn by, or on behalf of, the person) will, by force of this subsection, be paid to the Authority.

(5) To avoid doubt, nothing in subsection (4) affects an entitlement of a person to compensation in respect of an acquisition of land.

(6) Money paid to the Authority under subsection (4) will be taken not to accrue interest to which the person to whom the offer was made is entitled.

(7) To avoid doubt, nothing in this section creates a contractual relationship between the Authority and the person to whom an offer is made.

(8) In this section—

Authority means the Authority who paid the relevant money into Court under section 23A;

prescribed period means—

(a) 6 months from the date of the offer of compensation; or

(b) if the Authority, on the application of the person, specifies a longer period—that period.

(9) A person who is aggrieved by a decision of the Authority to refuse to specify a longer period under subsection (8)(b) may refer the matter to the Court for review and, on the matter being so referred, the Court may make such orders as it considers necessary to resolve the matter.

23AC—Reversion of compensation moneys

(1) This section applies to an amount or amounts of money paid into the Court under section 23A (being an amount of money equal to the amount of compensation offered in respect of the acquisition of the relevant land).

(2) Subject to this section, money to which this section applies must be withdrawn by, or on behalf of, the claimant within 24 months after the money is paid into the Court.

(3) If amounts of money to which this section applies are paid into the Court on different dates, the period referred to in subsection (2) will be calculated from the latest date the money was paid into the Court.

(4) The Authority must, not later than 30 days before the day on which money to which this section applies is to be paid to the Authority, give written notice to the claimant setting out—

(a) the effect of this section; and

(b) the date on which the money will be paid to the Authority; and

(c) any other information required by the regulations.

(5) If money to which this section applies is not withdrawn in accordance with subsection (2), the money, together with any accrued interest, will, by force of this subsection, be paid to the Authority (however, nothing in this subsection affects an entitlement of the claimant to compensation in respect of the acquisition of the relevant land).

(6) Money paid to the Authority pursuant to subsection (5) will be taken not to accrue interest to which a claimant is entitled.

(7) Subsection (2) does not apply to such portion of money required to give effect to any orders under section 26.

(8) In this section—

Authority means the Authority who paid the relevant money into the Court under section 23A.

16—Insertion of section 23BA

After section 23B insert:

23BA—Settlement conference

(1) The Authority—

(a) may, before referring a matter to Court under section 23C; and

(b) must, on an application by a claimant under section 23C(1a),

convene a conference under this section (a ***settlement conference***) in relation to the relevant matter.

(2) The following provisions apply in relation to a settlement conference:

(a) the Authority must appoint a conference coordinator to conduct the settlement conference;

(b) the conference coordinator must hold qualifications prescribed by the regulations;

(c) the conference coordinator must—

(i) fix a time and place for the settlement conference; and

(ii) advise the persons referred to in paragraph (f) of the time and place of the settlement conference;

(d) the conference coordinator may, by notice in writing, give such directions as the coordinator considers necessary for the purposes of the settlement conference (including, to avoid doubt, directions to attend at the time and place fixed under paragraph (c));

(e) the Authority and the claimant must provide to each other party any valuation reports in relation to the matter within the period specified by the conference coordinator;

(f) the following persons are entitled to attend a settlement conference:

(i) the conference coordinator;

(ii) a representative of the Authority;

(iii) the claimant and the claimant's legal representative (if any),

(however, nothing in this paragraph prevents other persons from attending the settlement conference);

(g) the conference coordinator, and the settlement conference, must comply with any other requirements set out in the regulations.

(3) Evidence of anything said or done in the course of a settlement conference is inadmissible in proceedings before a court (other than proceedings under section 36) except by consent of all parties to the proceedings.

(4) The reasonable costs of a claimant in relation to a settlement conference (determined in accordance with the regulations) are to be met by the Authority.

(5) 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.

Maximum penalty: $ 2 500.

17—Amendment of section 23C—Reference of matters into court

Section 23C—after subsection (1) insert:

(1a) However, before referring a matter to Court under this section, a claimant must apply to the Authority to convene a settlement conference under section 23BA, and take part in such a conference, in relation to the matter.

18—Substitution of section 24—Entry into possession

Section 24—delete the section and substitute:

24—Entry into possession

(1) Subject to this section, if the Authority acquires an interest in land that confers a right of possession the Authority must, as soon as is reasonably practicable after a notice of acquisition is published in relation to land, give written notice to the occupier of that land of the date on which the Authority will enter into possession of the land (the ***possession date***), being a date not less than 3 months after the date on which the notice of acquisition is published.

(2) If the Authority acquires an interest in land consisting of an easement or other interest that does not confer a right of possession, the Authority must, as soon as is reasonably practicable after a notice of acquisition is published in relation to the land, give written notice to the occupier of the land of the date from which the Authority may enter onto the land.

(3) If the relevant land is vacant at the time the notice of acquisition is published, the Authority may enter into possession from the date the notice is so published.

(4) If an occupier of land to whom a notice was given under subsection (1) ceases to occupy the land before the date specified in the notice, the Authority may enter into possession of the relevant land from the time the occupier ceases to occupy the land.

(5) A notice under subsection (1) may be varied to fix an earlier or later possession date on the application, or with the agreement, of the person to whom the notice was given.

(6) If an occupier to whom a notice under subsection (1) is given remains in occupation of the relevant land after the possession date, the occupier will be taken to occupy the land pursuant to a tenancy, the terms and conditions of which are as determined by the Authority from time to time.

(7) The terms and conditions determined by the Authority under subsection (6) must—

(a) fix the amount of rent payable to the Authority in relation to the tenancy (not exceeding a reasonable market rate); and

(b) comply with any requirements set out in the regulations.

(8) The Authority or a person to whom a notice is given under subsection (1) may refer 1 or more of the following matters into the Court:

(a) a refusal by the Authority to fix a later possession date;

(b) a matter relating to the amount of rent payable in relation to the relevant tenancy;

(c) a matter relating to any other term or condition of the relevant tenancy determined under subsection (6).

(9) On the reference of a matter into the Court, the Court may—

(a) if of the opinion that the question should be the subject of further negotiation—adjourn the matter to allow further negotiation to take place; or

(b) make such orders as the Court considers appropriate to resolve the matter (including, to avoid doubt, orders fixing the amount of rent payable in relation to the relevant tenancy).

(10) The Authority may enter into possession of the relevant land on or after the possession date despite the commencement of proceedings under this section.

(11) Without limiting the ways in which the Authority may recover rent owed to the Authority, the Authority may deduct rent owed by a person to the Authority under this section from compensation payable to the person under this Act.

(12) Despite any other Act or law, the Authority is not liable for injury, damage or loss occurring on, or in relation to, land acquired under this Act prior to the Authority entering into possession of the land.

24A—Court orders in relation to entry into possession etc

(1) The Authority may apply to the Court for 1 or more of the following orders:

(a) if the Authority is entitled to enter into possession of land acquired under this Act—an order that a person be ejected from that land;

(b) an order that a person who owes rent to the Authority under section 24 pay the rent owed to the Authority;

(c) such other orders as the Authority considers appropriate.

(2) The Court may, on an application under this section, make such orders as it considers appropriate.

19—Insertion of section 25A

After section 25 insert:

25A—Solatium

(1) The Authority may increase the amount of compensation payable to a person in relation to the acquisition of land by the prescribed amount by way of solatium if—

(a) the person was an owner and occupier of the acquired land; and

(b) as a result of the acquisition of the land, the person's principal place of residence was acquired.

(2) A payment of solatium under this section is to be made on final resolution of the amount of compensation payable under this Act in respect of the acquisition of the relevant land.

(3) Despite any other provision of this Act, or any other Act or law, no interest is payable in relation to a payment of solatium under this section.

(4) In this section—

prescribed amount means—

(a) 10% of the market value of the land; or

(b) —

(i) if the regulations prescribe an amount for the purposes of this paragraph—that amount; or

(ii) if the regulations do not prescribe an amount for the purposes of this paragraph—$50 000,

whichever is the lesser amount.

20—Insertion of Part 4 Divisions 3 and 4

After section 26 insert:

Division 3—Direct payments of compensation

26A—Payments of compensation under prescribed amount may be made directly to claimant

(1) Despite any other provision of this Act, a payment of compensation under this Act not exceeding the prescribed amount may be paid directly to the claimant in a manner determined by the Authority.

(2) The regulations may make further provision in relation to payments under this section (including, to avoid doubt, limiting the circumstances in which such payments can be made).

Division 4—Other payments

26B—Payments relating to professional costs

(1) The Authority may pay a prescribed person an amount (not exceeding the prescribed amount) towards payment of professional costs relating to an acquisition, or a proposed acquisition.

(2) Nothing in subsection (1) affects any other amount payable by the Authority in relation to professional costs (however, any amount paid to a person under this section is to be taken into account in determining any other amount payable in relation to professional costs).

(3) In this section—

prescribed person means—

(a) a person who is an owner and occupier of the land in relation to which a notice of intention to acquire land is given; or

(b) any other person prescribed by the regulations;

professional costs mean—

(a) legal costs; and

(b) valuation costs; and

(c) any other costs prescribed by the regulations.

26C—Payments to residential tenants

(1) The Authority may, after a notice of intention to acquire land is given to a person who is a residential tenant of land, but before the relevant land is acquired, pay the person an amount (not exceeding the prescribed amount) towards payment of the person's relocation costs.

(2) If a residential tenant accepts a payment under subsection (1), no further compensation or other payment is payable to them under this Act in relation to their interest as a residential tenant of the relevant land.

(3) A payment under this section may be conditional or unconditional.

(4) The Authority may vary or revoke a condition of a payment under this section.

(5) If a person, without reasonable excuse, refuses or fails to comply with a condition of a payment under this section, the payment will, by force of this subsection, become a debt owing to the Authority.

26D—Payment of transfer costs

(1) This section applies in circumstances where—

(a) the Authority has acquired land under this Act (being the whole of the fee simple land contained in a particular certificate of title); and

(b) a person who was an owner of the land so acquired has, within the prescribed period, purchased other land (the ***replacement land***) to replace the acquired land; and

(c) the replacement land satisfies any requirements set out in the regulations for the purposes of this paragraph.

(2) The Authority may, on application under this section and in accordance with any requirements set out in the regulations, pay the prescribed transfer costs of a person in relation to the purchase of replacement land.

(3) An application under subsection (2) must—

(a) be in a manner and form determined by the Authority; and

(b) be made within the prescribed period after the relevant land is acquired under this Act (or such longer period as may be specified by the Authority); and

(c) be accompanied by such documents or information as may be specified by the Authority.

(4) The regulations may make further provision in relation to payments under this section.

(5) In this section—

prescribed transfer costs, in relation to the purchase of replacement land, means the sum of the following costs payable in relation to the purchase or transfer of the replacement land:

(a) stamp duty payable under the *Stamp Duties Act 1923*;

(b) registration fees payable to the Registrar-General under the *Real Property Act 1886*;

(c) any other costs, or costs of a kind, prescribed by the regulations,

but, to avoid doubt, does not include an amount payable by way of capital gains tax.

21—Insertion of Part 4A

After Part 4 insert:

Part 4A—Special provisions relating to acquisition of underground land

26DA—Application of Part to native title

(1) The provisions of this Part do not apply to an acquisition of underground land in which native title exists.

(2) To avoid doubt, an acquisition of native title in underground land may only proceed in accordance with Part 4 Division 1.

26E—Application of Act to acquisition of underground land

The following provisions of this Act do not apply to the acquisition of underground land under this Part:

(a) Part 2;

(b) Part 3 (other than section 17);

(c) Part 4, Division 2.

26F—Acquisition of underground land

(1) The Authority may, at any time, publish a notice of acquisition of underground land in the Gazette.

(2) On publication of a notice of acquisition of underground land under this section—

(a) the underground land specified in the notice vests in the Authority to the extent of the interest specified; and

(b) any mortgage, charge, encumbrance, trust or other interest affecting the land is discharged; and

(c) if a residual interest in the underground land remains after the acquisition, the interest is modified to the extent required by the acquisition.

(3) The Authority will enter into possession of underground land in relation to which a notice of acquisition of underground land is published under this section—

(a) if a date is specified in the notice—on that date; or

(b) if a date is not specified in the notice—on the date the notice is published.

(4) The Authority must, as soon as is reasonably practicable after a notice of acquisition of underground land is published, give notice of that fact to the person who was the owner of the relevant land immediately before the land was acquired.

(5) Despite a provision of this Act, or any other Act or law, no compensation is payable in relation to an acquisition of underground land under this section (including, to avoid doubt, in relation to the discharge or modification of an interest or right under subsection (2)).

26G—Obligation to notify Authority of other interest in underground land

(1) If the Authority has acquired, or is proposing to acquire, underground land under section 26F, the Authority may, by notice in writing, require a person from whom the land was, or is to be, acquired to notify the Authority within the period specified in the notice of—

(a) any other person who, to the person's knowledge, has an interest in the land, or who had an interest in the land immediately before the acquisition; and

(b) the nature of that person's interest.

(2) A person who, without reasonable excuse, refuses or fails to comply with subsection (1) is guilty of an offence.

Maximum penalty: $5 000.

22—Amendment of section 36—Costs

Section 36(b)—after paragraph (ii) insert:

(iii) a failure on the part of the Authority or the claimant to negotiate in good faith.