

# Planning and Environment (Amendment) Bill

## EXPLANATORY MEMORANDUM

*Clause 1* states the purpose of the Act—to amend the **Planning and Environment Act 1987** in relation to compensation and to the purchase of land required for public purposes.

*Clause 2* provides for commencement.

*Clause 3* identifies the **Planning and Environment Act 1987** as the Principal Act.

*Clause 4* inserts new provisions in the **Planning and Environment Act 1987**, in place of those in Part 5 of the Act which provide for compensation, as follows:

*Proposed section 98* defines terms used in the new Part 5 of the Act.

*Proposed section 99* (1) sets out that the situations in which the new provisions apply. Sub-section (2) ensures that an authority has power to purchase land under this Division.

*Proposed section 100* defines which is the relevant authority which may be required to purchase land.

*Proposed section 101* enables a person whose land is affected to require the relevant authority to purchase it, and sets time limits within which this may be done. It further provides that if an offer to purchase under this Part is refused, or lapses, the owner cannot make a further request within two years of the refusal or lapsing.

*Proposed section 102* sets out requirements to be complied with by a person making a request. (Further requirements can be prescribed using existing powers in the Principal Act).

*Proposed section 103* requires the relevant authority to make an offer within 3 months of being asked to purchase land in accordance with this Part, and provides that the time may be extended by agreement or as determined by the Tribunal.

*Proposed section 104* requires an offer to be in writing and to specify the amount offered by the relevant authority, and provides that if the amount is different from the asking price, it must be accompanied by a copy of the certificate of valuation to which the relevant authority had regard.

*Proposed section 105* sets out the matters to be taken into account in valuing land for the purposes of this Part, and matters to be disregarded in such valuation.

*Proposed section 106* provides that if an authority is requested to purchase land which it believes to be contaminated, it may refer the matter to the Tribunal and that if the Tribunal determines that the land is contaminated and the cost of decontamination would exceed the value after decontamination, the authority is not required to make an offer to purchase the land.

*Proposed section 107* provides that an owner must accept an offer, withdraw the request to purchase, or refer any dispute about the amount of the offer to the Tribunal,

within 3 months from receiving the authority's offer, and that if the owner does not do so, the offer lapses.

*Proposed section 108* allows an owner who disputes the amount of the offer to refer the dispute to the Tribunal, and further provides that if the authority does not make an offer within the 3 months allowed, the owner may refer the matter to the Tribunal.

*Proposed section 109* requires the Tribunal to determine the amount which the relevant authority should have offered.

*Proposed section 110* allows the Tribunal to award costs which it thinks proper, and sets matters to be taken into consideration in doing so. It provides that if an order is made in favour of an owner, that order must be conditional upon the sale to the authority being completed. It applies sections of the **Administrative Appeals Tribunal Act 1984** to the awarding of costs under this section.

*Proposed section 111* requires the authority to make an offer, no less than the amount determined by the Tribunal, within 30 days after the Tribunal has determined the amount to be paid.

*Proposed section 112* requires the owner to either accept or refuse the offer within 30 days; the offer lapses if the owner refuses or fails to accept it.

*Proposed section 113* provides for registration on title of the lapsing or refusal of any offer or a determination in relation to contaminated land, and the removal of such registration after two years.

*Proposed section 113A* replaces provisions in the existing section 113 of the Act which allow the Minister administering the **Land Acquisition and Compensation Act 1987** to declare a proposed reservation.

*Proposed new Division 3, proposed sections 113B to 113H*, re-enact the current provisions or Part 5 for paying compensation to the owner of land where access to that land is removed by a road closure in a planning scheme.

*Proposed section 113I* includes transitional arrangements so that a person who has been paid compensation under the **Planning and Environment Act 1987** or earlier legislation cannot require an authority to purchase land in accordance with the new provisions, and corrects an anomaly in the present Act in relation to the ability of an authority to require repayment of compensation previously paid, if circumstances change and the original reason for the payment of compensation no longer applies (the anomaly being that the current provision applies only to land for which compensation was paid under the **Planning and Environment Act 1987**—ie., since 16 February 1988—but not under a previous enactment).