



# COMPULSORY ACQUISITION OF RURAL LAND A CASE FOR REFORM

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# **COMPULSORY ACQUISITION OF RURAL LAND - A CASE FOR REFORM**

**ROWAN RAMSEY**

## **My Experience – Why we need reform**

Since being first elected in 2007 I have dealt with two compulsory acquisitions by the Commonwealth on behalf of the Department of Defence, one which at the time of acquisition was just out of my electorate (now included following a re-distribution) for the Port Wakefield Proof Range, and another completely within, for the Cultana expansion. Both have caused enormous amounts of stress and disruption to families who have lost their properties and outstanding matters surrounding compensation are still unresolved more than a decade later. There simply has to be a better way.

While individuals subject to a compulsory acquisition may well struggle to understand the government's motives or intentions, in most cases I have found that eventually they accept the government's (or people's) right to compulsorily acquire their properties. However, although the process is for the greater common good, they are left embittered by the experience. This should not be the case!

The primary acquisition process takes far too long. From the moment a government announces its intention to compulsorily acquire, property owners face circumstances where all management and investment decisions are viewed through the prism of an unknown time-frame. As difficult as this process is, it is over-shadowed by the drawn-out and nebulous process of seeking compensation that leaves people feeling victimised, disempowered and worthless.

## **History of Cultana Expansion**

One of the two acquisitions I referred to earlier in this submission concerns the accumulation of five properties (or parts thereof) between Port Augusta, Whyalla and Iron Knob for the expansion of the Cultana Training Area.

The expansion was first announced by then Minister of Defence, Senator Robert Hill in 2005 and yet eight years elapsed before the Commonwealth actually activated the Compulsory Acquisition Order in 2013. It is worth noting that there has been no less than eight Ministers of Defence since Robert Hill!

This process was greatly extended by negotiations with the Native Title claimants with the Commonwealth choosing not to exercise the compulsory purchase orders until agreement had been reached with those parties. It was pointed out to me at the time that the government was intent on satisfying the demands of the groups with Native Title claims and unwilling to use its power of compulsory acquisition in their case, but had little concern for those who actually 'owned' the land through leasehold and pastoral leases.

## **The Disempowerment of Land Holders**

Outsiders can only imagine the anxiety inflicted on these families throughout the period of quasi-negotiation. The threat of acquisition means they are effectively trapped, unable to divest their properties, uncertain of the value of any long-term investment in their business, unable to expand by buying neighbouring properties because they are unsure as to whether they can retain current properties as a base. One family suffered flooding through their homestead in that time and were faced with the dilemma as to whether repair properly or just patch-up. Do they replace floor coverings, cupboards and garden fences planning for the long-term or just make do?

Eventually the compulsory acquisition orders were issued in 2013 and I managed to convince the then Minister of State, Gary Gray, to pay the full 100% of the independent valuation (instead of the legislated 90%) in recognition of the long period of indecision the families had endured thus far and I was grateful for that consideration.

However, one of the properties, Corunna, was issued with an order to compulsorily acquire their entire property when only about 20% of it was required by Defence. It was the intention of Defence to use the other 80% to gift to the Native Title claimants as a bargaining tool to obtain an Indigenous Land Use Agreement. One can only imagine the anguish of this particular family who faced the prospect of losing their property only to see it *gifted* to someone else to continue the same operations as they had for generations.

On this particular issue the French family (the owners) took the Commonwealth to court and won with the Federal Court ruling that the purchase of the extra 80% was illegal. Jubilant at first the family was distraught when the Commonwealth chose to appeal this decision. I made representations to the relevant ministers at the time, but to no avail, the minister ruled the appeal was to proceed.

At this time (2013) a change of government occurred and I made strong representations to the new minister and eventually he decided the Commonwealth should not proceed with the appeal. It was a significant win for fairness, but a graphic example of just one of the things that are wrong with the whole process of Compulsory Acquisition.

## **The Path to Compensation**

It was at this time the former owners of the properties embarked on the long, drawn out process of seeking 'compensation' to address accumulated and future losses brought about by this whole process.

The former land holders were advised to get specialist legal and financial representation to formulate their claims. All have found the process long, arduous and to this stage, spectacularly unrewarding.

Most of the landholders have had their legal expenses covered by the Commonwealth, however it is on the premise that this debt will be held against their eventual payouts (assuming they are successful). Collectively the former property owners are increasingly concerned the professionals they have engaged have no incentive to bring matters to a close. It doesn't stretch the imagination far to identify the financial reward for the legal profession in stringing out the process as long as possible!

Some portions of the properties were held or operated by different legal entities held within greater family structures and the former owners are planning to lodge multiple claims elevating extra levels of complexity in these cases. Consequently, in the seven years since the Compulsory Acquisitions were issued, only one claim has been settled with multiple claims from the different entities involved with the other properties either in a state of negotiation, rejected or yet to be lodged. In the case where claims are rejected by the Commonwealth litigants (the former owners) are left in complete confusion and struggling to know what to do next.

### **Why We Must Do Better**

Clearly this process is totally unsatisfactory. It is incredibly expensive for both the Commonwealth and the dispossessed landholders; it is lining the pockets of the legal profession with either tax-payer or land holder's dollars and it is effectively eroding the lives of families who have done nothing wrong. Law abiding families that were contributing in no insignificant way to the nation's wealth, employing other Australians, paying their taxes and wanting little more than the opportunity to pass their working assets onto their descendants. Worth noting also is the former land holders have spent hundreds of hours preparing their claims, dealing with lawyers and government officials and as they sit around the table negotiating or at home pawing over records, it is clear that having been drawn into this process against their will, they are the only ones involved who are not compensated for their time. It is a message that their time is worthless while all others involved have extremely valuable contributions to make!

***Surely they deserve much better!***

### **A Solution**

Having concluded that the Commonwealth has the right to acquire property compulsorily for public benefit then it becomes a matter of how the nation should treat those who stand to lose the most (the landholders). We must engineer changes so they are put in a far stronger position, one where they may be able to view the disruption to their lives as an opportunity.

The basis of building trust with the landholders is firstly to give them certainty and secondly to put a minimum offer on the table that greatly improves the financial position of them and their families. This should be formalised in a '**Protected Minimum Offer**' (PMO) to be put to the landholders at the time of the announcement of the government's intention to acquire the land for the public good.

The PMO should be determined as a valuation three times an independent valuation of the whole contiguous property. While others may suggest a different multiple to determine this

figure, it is essential the PMO should be of such a value that the average business would view the advent of the Commonwealth acquisition of their property as an economic opportunity.

By offering a PMO of three times the market value, the landholder knows from day one that they will be forced to accede to the rights of the state, as is the case at the moment, but they will also know that their family farming business wherever it chooses to relocate or re-invest will be significantly enhanced.

The landholders would retain the right to refuse the deal, however in that case the circumstances would revert to the current arrangements with all its inherent uncertainty and high legal and emotional cost.

Should the landholder accept the PMO (likely most would), there should be provision for a 'claw back' facility. Given the Commonwealth had announced an '*intention to purchase*', and tabled a PMO and then for other reasons, the eventual completion of the task may take some years, or perhaps even never be completed. This claw back provision should allow the landholders to either stay in place until the final decision is made or return if it falls over completely.

Until the point of final decision the landholders should have the opportunity to stay in place operating their business (even though they had accepted the offer) on a 'lease back' arrangement at market rates until such matters are decided. They may or may not choose to take up this offer. Essentially it gives them the opportunity to move on in a financial sense, but retain an interest perhaps largely for sentimental reasons if the eventual project does not proceed.

In the case where the landholders elected to stay and in the fairly unlikely case that the government's previous plans for the property fail, the property should be placed on the open market and the previous landholders should not be precluded from purchasing the property. While this would lead to a substantial financial penalty for the Commonwealth it has the great bonus of ensuring that meticulous consideration is given to the absolute necessity of the project before public announcements are made in the first instance.

By accepting a PMO the landholder has committed to a voluntary sale and the Commonwealth will have the right to proceed. It is highly unlikely the landholder would refuse the offer given its generosity and the knowledge that rejection of the offer would allow the Commonwealth to proceed under the current Compulsory Acquisition arrangements. In this case the landholders would subsequently forfeit their property rights (and have to fight for compensation in the current unsatisfactory manner). Alternatively if the project fails they would be able to repurchase and be in a much stronger financial position to do so. Whatever the outcome, the whole process would have increased their viability.

The great gains of this methodology are fairly easily identified:

- The Commonwealth would all but eliminate legal actions and associated costs of those actions.

- The families concerned would be given a certain future and guaranteed outcome from day one of the process. On that basis they would be able to make solid decisions for their future based on that certainty.
- The family businesses would be spared the mental anguish and sense of persecution
- The Commonwealth would be seen as acting as a body of 'good faith' towards its citizens

### **A Much Fairer Outcome**

What has now become apparent is that the 2013 Cultana acquisition effectively valued the properties on that date and while the former owners were given some consideration at the time the balance of their claims are yet to be resolved. While they have sought their full and rightful compensation since the time of property confiscation the price of similar properties has risen by about 80%. As most have been awaiting final settlement before considering re-investment in the industry they have seen the value of their claims in real-terms for the purpose of buying replacement land effectively slashed by 40%.

In the case of the other Port Wakefield acquisition which I referred to at the beginning of this paper, the claims have now been fully settled after a 20 year period. However it is worth noting that while the original acquisition allowed the property owners to stay in place, subsequent acquisitions their property was eroded to the point where it became unviable, a modern day "death by a thousand cuts". The compensation scheme I propose would have circumvented this outcome by purchasing the whole property in the first effort.

Reaching a situation where landholders are at least willing, if not enthusiastic to relinquish their properties, would take much of the heat out of the local arguments and while others may not welcome the development it is unlikely that sufficient support is generated to fuel public dissent on the issue.

The underlying strength of this approach is that it delivers certainty to both the landholder and the Commonwealth. Landholders know they will be generously rewarded (a tripling of wealth), but it must be made clear that if the PMO is accepted the Commonwealth has the right to proceed.

### **Excess Land Accumulated by Commonwealth**

Various alternatives remain for land management on the excess land purchases. Landholders may choose to remain, selling only the land directly required for the project, although this would seem an unlikely circumstance given the potential for the financial gain on offer for a complete sale. Another alternative may include the Commonwealth leasing out the unaffected parts of the property for agricultural purposes, possibly even to the original landholder, or they may even elect to sell those parts of the property not required with the new owners being fully aware that they would be adjacent to a Commonwealth facility operating within the boundaries of the original leases.

## **Summary**

It is clear the current system of Compulsory Acquisition is anything but fair on those who are dispossessed of their properties, sometimes held in their families for generations. This proposal accepts the right of the Commonwealth to compulsorily acquire land for the public good but in doing so recognizes the incredible stress and sense of powerlessness the current acquisition and compensation arrangements place on landholders who are on the whole totally bewildered by the complexity of the system.