Department of Justice

Land Acquisition and Compensation Regulations 2010

Regulatory Impact Statement

This Regulatory Impact Statement has been prepared in accordance with the requirements of the *Subordinate Legislation Act 1994* and the Victorian Guide to Regulation incorporating the Victorian Regulatory Change Measurement Manual.

March 2010

LAND ACQUISITION AND COMPENSATION REGULATIONS 2010

REGULATORY IMPACT STATEMENT

This Regulatory Impact Statement (RIS) has been prepared to fulfil the requirements of the *Subordinate Legislation Act 1994* and to facilitate public consultation on the proposed Land Acquisition and Compensation Regulations 2010.

In accordance with the *Victorian Guide to Regulation*, the Victorian Government seeks to ensure that proposed regulations are well-targeted, effective and appropriate, and impose the lowest possible burden on Victorian business and the community.

A prime function of the RIS process is to help members of the public comment on proposed statutory rules before they have been finalised. Such public input can provide valuable information and perspectives, and thus improve the overall quality of the regulations. The proposed Regulations are being circulated to key stakeholders and any other interested parties, and feedback is sought. A copy of the proposed Regulations is provided as an attachment to this RIS.

Public comments and submissions are now invited on the proposed Land Acquisition and Compensation Regulations 2010. All submissions will be treated as public documents and will be made available to other parties upon request. Written comments and submissions should be forwarded by no later than **5:00pm, 14 May 2010** to:

Civil Law Policy
Department of Justice
Level 24, 121 Exhibition Street
MELBOURNE VIC 3000

or email:

civil.law@justice.vic.gov.au

This Regulatory Impact Statement was prepared for the Department of Justice by Regulatory Impact Solutions Pty Ltd.

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ABBREVIATIONS

CGT – Capital Gains Tax

IDC – Interdepartmental Committee

GLM – Government Land Monitor

GTPV – *Guide to Property Values*

MCA – Multi-criteria Analysis

NCP – National Competition Policy

Premier's Guidelines – Subordinate Legislation Act 1994 Guidelines

PV – present value

RRB – Reducing the Regulatory Burden initiative (a Victorian Government initiative to reduce the compliance cost of regulation).

r. – regulation

rr. – regulations

RIS – Regulatory Impact Statement

s. – section

ss. – sections

the current Act – *Land Acquisition and Compensation 1986*

the current Regulations – Land Acquisition and Compensation Interim Regulations 2009

the proposed Regulations – Land Acquisition and Compensation Regulations 2010

VCAT – Victorian Civil and Administrative Tribunal

VCEC – Victorian Competition and Efficiency Commission

VPS – Victorian Public Service

VPSR – *Victorian Property Sales Report*

1. SUMMARY

Context

The compulsory acquisition of land in Victoria has long been regulated and specific legislation was first introduced into Victoria in 1869. The current legislation, the *Land Acquisition and Compensation Act 1986* (the Act), establishes the regulatory framework for compulsory land acquisition in Victoria.

From the perspective of the individual, the compulsory acquisition by the state of land can be a highly invasive, and in some cases, bewildering action. Traditionally, the Crown has a prerogative to compulsorily acquire land without compensation, and this position is also reflected at common law. It is therefore important that the state has processes in place to protect individuals and to provide confidence that these actions are carried out in a fair and equitable way.

The state (or authorities carrying out functions formerly carried out by the state) also occasionally requires land to provide for social infrastructure, such as land for roads or for the provision of utility services.

The challenge, therefore, for regulation of the compulsory acquisition process is to find a balance between the infringement of individual rights and the needs of the broader community.

The Act provides protection for landowners by setting down strict processes that must be followed, along with a framework for the payment of compensation. The current Land Acquisition and Compensation Interim Regulations 2009 prescribe a range of forms, information requirements, and a fee. These requirements seek to provide certainty and transparency to parties involved in the acquisition process.

The *Subordinate Legislation Act 1994* automatically revokes regulations following 10 years of operation. This allows the government to examine whether there is still a problem that requires government intervention, and to take account of any changes or developments since the regulation was implemented. The current Regulations are due to expire and are being remade as the proposed Land Acquisition and Compensation Regulations 2010 (the proposed Regulations). This Regulatory Impact Statement (RIS) has been developed to allow the public to comment on the proposed Regulations.

Purpose of a Regulatory Impact Statement

In Victoria the *Subordinate Legislation Act 1994* requires that new or remade regulatory proposals that impose an 'appreciable economic or social burden on a sector of the public' be formally assessed in a RIS to ensure that the costs of the proposed Regulations are outweighed by the benefits, and that the regulatory proposal is superior to alternative approaches. Given that the proposed Regulations include a regulation that has as a consequence, the removal of a landowner's right to object to a land acquisition in certain circumstances, it has been determined that the burden imposed by the proposed Regulations is appreciable and therefore requires assessment in a RIS.

A RIS formally assesses regulatory proposals against the requirements in the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation*.[1] The assessment framework of this RIS examines the problem to be addressed, specifies the desired objectives, identifies viable options that will achieve the objectives, and assesses the costs and benefits of the options, as well as identifying the preferred option and describing its effect. This RIS also assesses the proposed Regulations' impact on small business, undertakes a competition assessment and reports on any changes in the administrative burden to business. Finally, it considers implementation and enforcement issues and documents the consultation undertaken.

Issue to be addressed – why regulation is required

Public policy usually begins from the premise that activities should be unregulated unless the market does not deliver socially efficient outcomes. That is, government intervention in markets may be justified on economic efficiency grounds, or to correct 'market failure'. However, in the case of land acquisition for historical and institutional reasons the rationale for government intervention primarily rests on social objectives: that is, the protection of property rights of individuals.

At the outset, it is important to note that in the majority of cases, acquisition under the Act is made by agreement (with the landowner receiving appropriate compensation) rather than through the compulsory acquisition process.[2]

As the Crown is the ultimate owner of all land in Victoria, the 'Royal prerogative' means (in theory) that the Crown could arbitrarily expropriate land from an individual. At common law there is no automatic right of compensation for the loss of an interest in land as a result of compulsory acquisition.

Objectives of the regulation

A person's right to hold and dispose of private property unencumbered by the state is an established fundamental right embedded in Western democracies. A power given to a public or private authority which has the potential to interfere with this right needs to be sufficiently regulated to enable its efficient and equitable operation.

The primary objective of the Land Acquisition and Compensation Regulations 2010 is to enable the effective acquisition of land by government and private agencies, while providing an adequate level of protection for landowners. The proposed Regulations seek to achieve this by prescribing classes of land for which reservation under a planning scheme for a public purpose is not required prior to compulsory acquisition.

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1 Department of Treasury and Finance, 2007, 2nd ed, *Victorian Guide to Regulation incorporating: Guidelines made under the Subordinate Legislation Act 1994 and Guidelines for the Measurement of Changes in Administrative Burden*, Melbourne

2 Generally, acquiring land is undertaken by compulsory acquisition and acquiring of easements is done by way of agreement. Numerically, there are far more easements acquired than land.

The secondary objective of the proposed Regulations is to provide for an efficient (cost effective) process and certainty for the compulsory acquisition of land. It seeks to achieve this by prescribing forms, information requirements and a fee.

Options that will achieve the objectives

The *Subordinate Legislation Act 1994* requires that a RIS must assess the costs and benefits of the proposed Regulations. This Act also requires that a RIS identifies practical alternatives to the proposed Regulations and assesses the costs and benefits of these compared to the proposed Regulations. In the case of the proposed Regulations the scope of consideration of feasible regulatory and non-regulatory options is limited by the existing powers of the Act and the limited focus of the proposed Regulations.

The major social and economic impact in the proposed Regulations concerns r. 6, which has the consequence of removing the right of an individual to object to land acquisitions in certain circumstances (although the economic impact is offset through monetary compensation). These circumstances are where land is acquired for a minor road widening or deviation of a road which reduces the value and area of the land by no more than 10%, or for an easement which reduces the value of the land is reduced by no more than 10% (this is known as the '10 per cent rule'). Specifically, r. 6 is an exception to the general requirement in s. 5(1) of the Act that an authority must not commence to acquire an interest in land unless the land has been first reserved under a planning instrument for a public purpose. Reserving land under a planning instrument for a public purpose is what enables landowners to object to planning proposals to acquire their land, and gives them the opportunity to claim compensation for any losses resulting from the planning reservation if the proposed acquisition does not succeed. Therefore, one of the practical effects of r. 6 is to remove a landowner's right to object to the compulsory acquisition.

Therefore, the analysis of options in this RIS will focus on compulsory acquisitions under r. 6. The viable options identified and discussed are as follows:

- **Option 1** – a statutory rule as per proposed r. 6
- **Option 2** – a statutory rule as per proposed r. 6 but with different limits or scope
- **Option 3** – acquisition by consent.

Groups directly affected by the proposal include urban and rural private property owners, urban and rural businesses, as well as acquiring authorities, including the state government, local government, VicRoads, water authorities, gas and electricity companies. The community as a whole is indirectly affected by compulsory acquisitions through the provision of utility services and better roads.

Costs and benefits of the options

The decision criteria established by the *Subordinate Legislation Act 1994* is that the benefits of a proposal should outweigh the costs, and that the preferred alternative is that which results in the largest net benefit.

Given the difficulty in measuring the costs and benefits of the options in monetary terms, this RIS uses the Multi-criteria Analysis (MCA) assessment tool to inform its decision on the preferred option.[3] Four criteria were selected as part of the MCA. The first two criteria relate to the objectives and purpose of the Act, which are the effective and efficient acquisition of land (criterion 1) and to ensure that the processes for acquiring land is fair, consistent and transparent (criterion 2). The third criterion reflects the government's commitment to minimise the regulatory burden on business and assesses the cost-effectiveness of the proposal (criterion 3). The fourth criterion assesses the cost to government of implementation of the regulatory vehicle (criterion 4).

Assessment of the alternative options using the MCA framework suggests that the proposed Regulations are superior to the alternatives, as shown in Table 1 below.

Table 1: Summary of Multi-criteria Analysis Compared to Regulations

Criteria	Weight	Option 1	Option 2	Option 3
1	**50**	37.5	42.5	-12.5
2	**30**	-7.5	-22.5	25.5
3	**10**	2.5	5.0	-7.5
4	**10**	2.5	3.5	7.5
Total		**35.0**	**28.5**	**13.0**

The proposed Regulations significantly reduce costs to acquiring authorities if reservation under a planning scheme is not required for minor acquisitions. This is particularly the case in relation to easements and road widening or deviation projects where traffic management problems exist.

The exemption from reservation under the proposed Regulations enables the acquiring authority to carry out their required minor acquisitions relating to road widening and easements with administrative efficiency. By not requiring reservation of these types of acquisitions, authorities are able to provide services to their customers without the delay and costs associated with the requirements of planning reservations. This would be the case in a situation where VicRoads sought to purchase that portion of land which abuts a roadway for the purposes of widening it. The widening of the road may be required for better traffic management in a congested area.

While it is difficult to assess costs that are incurred by an acquiring authority in complying with planning reservations, time estimates from various authorities suggest that delays of up to several months can be experienced. A straightforward

[3] Section 5.2.3 of the RIS describes the Multi-criteria Analysis assessment methodology.

application takes a minimum of 3 months to complete, while it is not uncommon for other applications to take 12 to 18 months.

The proposed Regulations provide a benefit to the community because they enable more timely and cost effective provision of the services by acquiring authorities. By regulating to allow acquiring authorities to compulsorily acquire without the need to reserve land under a planning scheme in these limited cases, the services are ultimately provided to the community more quickly and at a lower cost.

Only a proportion of those subject to a r. 6 acquisition will incur a cost in terms of the loss of choice or an option[4] (noting that monetary compensation is paid for the affect on a person's property value).[5] The social cost therefore would be highest on those who would have strongly objected to the acquisition had they had the opportunity to do so.

It should be highlighted that r. 6 is used in only a minority of cases and that owners are compensated for the loss of their land or interest in land. It is important to remember that r. 6 only applies to a small proportion of a person's property (unlike a compulsory acquisition of an entire property under which there is a right to object). Notwithstanding the impingement of a property owner's rights, acquiring authorities strongly support the 10 per cent rule and claim that it minimises project/delay costs and allows the 'first best' project option to proceed.

While Option 2 received a reasonably high score under the MCA, it was not preferred because its wider scope imposes a greater level of burden in terms of a person's right to object, thus eroding key protections established by the Act. Option 3, acquisition by consent, received a significantly lower score than the other options. While this option scored well on equity grounds (landowners did not lose their right to object to an acquisition), it scored poorly in terms of cost effectiveness and efficiency for acquiring small parcels of land.

Proposed r. 22 seeks to provide an adequate level of protection for those landowners who are required to seek an alternative place of residence as a result of compulsory acquisition by acquiring authorities. Specifically, r. 22 prescribes the market value of land that is to apply under s. 45 of the Act. Section 45 deals with the ability of acquiring authorities to lend funds to dispossessed home owners. Under s. 45, people whose land has been compulsorily acquired may apply to the acquiring authority for a loan under certain circumstances. When the regulations were last remade in 1998, the amount prescribed was $250,000. This amount was set to represent the 'average' cost of a standard principal residence in Melbourne at the time. However, this amount is now out of step with current property values.

[4] Finance theory demonstrates that options have a value, and therefore the loss of an option may result in a loss of value. For example, a person may have planned to develop the front part of their yard as a garden. The loss of this land by compulsory acquisition means that the person will no longer have the option to plant the garden.

[5] Data is not collected on the total number of acquisitions under r. 6, but by way of example in 2008/09 VicRoads made 5 such acquisitions, while the total number involved in the Sugarloaf pipelines project was approximately 70.

The amount of $500,000 is therefore proposed as the value to be prescribed in r. 22. It is important to note that such loans are usually interest free.

Finally, the Act provides for the prescribing of forms in relation to the compulsory acquisition process. The proposed Regulations prescribe 16 forms to be used throughout the various stages of the process. The forms proposed in the Regulations provide a format for the procedure of land acquisition by public authorities that allows for a degree of standardisation of documentation to be used.

The forms also enable landowners to complete the necessary documentation with an assurance that all the required steps are complied with and that they are informed of all steps involved in the acquisition process. The prime benefits of the proposed forms is that they provide certainty to parties involved in the acquisition process and lower 'search costs', particularly for landowners.

While this RIS contends that the prescribing of forms lowers costs associated with requirements of the Act, for illustrative purposes the costs of filling out the 16 forms in the proposed Regulations has been estimated at around $729,500 per annum or about $6 million (PV) over a 10-year period. Approximately two-thirds of these costs are incurred by the acquiring authority. Given that data is not collected on an aggregated basis across Victoria these figures should be viewed with caution and regarded as indicative only.[6]

Key Changes in the Proposed Regulations

The proposed Regulations are practically identical in substance to the current Regulations (see Attachment A for a description of the proposed Regulations). The only notable changes are:

- an increase in the prescribed amount of $250,000 to $500,000 in proposed r. 22. This regulation prescribes a threshold for the property value, under which a landowner may receive a loan from the acquiring authority. This takes into account rising residential property values over the last 10 years.

- a minor reduction in a fee from 4.5 fee units to 4.4 fee units (a reduction of approximately $1.15). This will align the fee in proposed r. 13 with a range of other comparable fees charged by Land Victoria. These fees were subject to a separate RIS.

The risk of not proceeding with the proposed Regulations is that the Act would not operate effectively and efficiently resulting in higher costs for the acquiring authorities and land owners, as well as less legal and administrative certainty. Certain public projects may also be significantly delayed or obstructed.

[6] This estimate is based on about 1,000 compulsory acquisitions per year across Victoria. This is considered an upward limit, and in years where there are no major projects the number, and hence cost, could be less than half of this figure.

Impact on small business

It is important to examine the impact on small business because the compliance burden of regulation often falls disproportionately on that sector of the economy. While it is understood that the impact of the proposed Regulations falls predominantly on individuals, accurate data is not available on the extent to which commercial properties are affected, and therefore there are no available data on the degree to which small businesses are affected.

However, given the nature of the proposed Regulations, and recognising that small businesses would be compensated for the market value of land and losses incurred, this RIS finds that the proposed Regulations do not disproportionately impact upon small business.

Competition assessment

The proposed Regulations affect both landowners and acquiring authorities. These two groups are identified as 'the market' for the purposes of applying the competition test in the guidelines. The proposed Regulations are procedural in nature and do not in any way limit the functions of acquiring authorities whose powers are obtained in separate legislation (known as special Acts). Similarly, landowners do not face any added restrictions in terms of their ability to function in the market.

Given that the proposed Regulations predominantly prescribe forms, set a fee, and establish administrative processes, it is assessed that they meet the National Competition Policy (NCP) 'competition test' as set out in the *Victorian Guide to Regulation* and do not restrict competition.

Change in the administrative burden

The *Reducing the Regulatory Burden* (RRB) initiative commits the Victorian Government to reducing the compliance burden of regulation. The Victorian Government is committed to cutting the compliance burden of regulation by $500 million by July 2012. The target includes reductions to not only the administrative burden of regulation, but also substantive compliance and delay costs.[7]

To measure any change in the compliance burden of regulation, the *Victorian Regulatory Change Measurement Manual* [8]states that the existing position is taken as the base line. Given that the proposed Regulations do not introduce any new administrative or compliance obligations, is it assessed that there is no change to the administrative burden.

[7] Victorian Government, 2009, Reducing the Regulatory Burden: The Victorian Government's Initiative to Reduce Red Tape: 2008-09 Progress Report, Department of Treasury and Finance, Melbourne, p. 1.

[8] Department of Treasury and Finance, 2009, *Victorian Regulatory Change Measurement Manual*, Melbourne, December.

Implementation and enforcement issues

The regulatory framework established by the Victorian Government for compulsory acquisitions has a number of elements which facilitate compliance with the Act. This is also relevant to both provisions of the Act and the proposed Regulations, which form part of the compulsory acquisition regime.

The Government Land Monitor (GLM) administers the *Government of Victoria Policy and Instructions on the Purchase, Compulsory Acquisition and Sale of Land*.[9] The Policy must be used by Government agencies and authorities in employing a consistent best-practice approach to transactions involving the sale, purchase and compulsory acquisition of land where compensation is more than $250,000. The Victorian Civil and Administrative Tribunal (VCAT) and the Supreme Court also have a role to play in determining disputed claims under the Act.

Given that similar regulations have been in place for over 10 years, it is not expected that the proposed Regulations will raise any implementation issues or cause unintended consequences.

Evaluation strategy

It is not anticipated that the proposed Regulations will require a formal review once they are in place. This is because they largely remake the current Regulations which have been in operation for 10 years, and similar regulations have been in place for over 20 years. The current Regulations appear to be effective and efficient and were not amended over the course of their operation. That said, the Department of Justice will be monitoring the proposed Regulations closely, and should any issues arise, these will be addressed.

Conclusion – The preferred option

This Regulatory Impact Statement concludes that:

- the benefits to society of the proposed Regulations exceed the costs
- the net benefits of the proposed Regulations are greater than those associated with any practicable alternatives
- the proposed Regulations do not impact adversely on small business
- the proposed Regulations do not impose restrictions on competition, and
- the proposed Regulations will not lead to a material change in the administrative burden on businesses.

[9] Department of Sustainability and Environment, Compulsory acquisition, viewed 5 February 2010: http://www.dse.vic.gov.au/DSE/nrenptm.nsf/LinkView/F337EB6E8ECE0E55CA25750D0004DDFFD17313AAB20694ACCA25751600149699

Public consultation

The primary purpose of the RIS process is to help members of the public comment on proposed Regulations before they are finalised. Public input, which draws on practical experience, can provide valuable information and perspectives, and thus improve the overall quality of regulations. The proposed Regulations are being circulated to key stakeholders and feedback is sought. The Department of Justice, which is responsible for administering the *Land Acquisition and Compensation Act 1986* and associated regulations, welcomes and encourages feedback on the proposed Regulations.

While comments on any aspect of the proposed Regulations are welcome, stakeholders may wish to comment on:

- whether or not the current 10 per cent thresholds proposed by r. 6 (land not requiring reservation) are appropriate, efficient and equitable
- whether or not the increase in the prescribed amount from $250,000 to $500,000 under proposed r. 22 is well-targeted and equitable
- whether or not the scope (road widening and easements) of proposed r. 6 is appropriate
- whether or not the level of the fee is appropriate
- the wording, clarity and usability of the prescribed forms
- any practical difficulties associated with the proposed Regulations, and
- any unintended consequences associated with the proposed Regulations.

All submissions will be treated as public documents and will be made available to other parties upon request.

2. WHAT IS THE ISSUE/PROBLEM TO BE ADDRESSED?

2.1 Background

2.1.1 Historical Overview

The power to acquire an interest in land compulsorily is one of the 'prerogatives of the Crown'. Colonial governments automatically inherited these prerogative powers, and did not initially need specific legislation. For centuries and until relatively recently the limited role for government in the day-to-day operation of society meant that compulsory acquisition laws remained underdeveloped. At common law, there was no automatic right of compensation for the loss of an interest in land as a result of a compulsory acquisition.

These laws were properly developed only in the early part of the 19th century, with the expansion of railways in England. With their need for relatively straight tracks and wide curves, powers of compulsory acquisition soon became essential to economic development. In the United Kingdom the *Land Clauses Consolidation Act 1845* was enacted primarily to facilitate the acquisition of strips of land for railways, canals and roads and to provide compensation for such land. This Act was adopted virtually intact by the Victorian Parliament when it enacted the *Lands Compensation Statute 1869*.

With the introduction of the motor car, along with the technologies that made electricity, water and gas possible for the ordinary householder, by the early 20th century compulsory acquisition became more and more critical to the delivery of public infrastructure and social services. In the past, governments have also used compulsory acquisition powers to clear slums and improve sanitary conditions. The principal provisions of Victoria's 1869 statute were re-enacted in 1890, 1915, 1928 and 1958.

By the 1980s society had changed considerably[10] and the *Land Compensation Act 1958* – given its origins in the mid-19th century – had become outdated (not to say verbose[11] and antiquated[12]). Following a number of reviews, most notably the Morris Report[13,] the 1958 legislation was modernised and the current *Land Acquisition and Compensation Act 1986* was introduced.

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[10] Hansard, Assembly, Land Acquisition and Compensation Bill, 8 May 1986, p. 2014

[11] Section 6 is virtually unintelligible and contains a sentence of 450 words. G.L. Fricke described the *Land Compensation Act 1958* as a "venerable vehicle of Victorian verbosity" with its reference to "married women seised in their own right or entitled to dower", "lunatics and idiots", and "mansion-houses". See Fricke, 1975, *Compulsory Acquisition of Land in Australia*, Law Book Company, Sydney, p. 72

[12] The 1958 Act provides an exemption with respect to stone and slate quarry brickfields, which at the time of the passing of the 1869 Act were still commonly used in house construction.

[13] Morris, S., 1983, *Land acquisition and compensation: proposals for new land acquisition & compensation legislation: report to the Minister for Planning, Victoria. Ministry for Planning*, Melbourne

2.1.2 Public Land Acquisition under the Act

A body given the power to compulsorily acquire land is known as an 'acquiring authority'. An authority may obtain title to land either by purchasing it or by formal statutory acquisition. Many authorities have the power to compulsorily acquire land for a public purpose. These include a range of Ministers, government departments, public authorities, utility service providers and municipal councils.

An acquiring authority may acquire the whole or several pieces of land (e.g., for a school or parkland), or part of the land (e.g., for a road widening). An authority may also acquire only an interest in the land (e.g., an easement across a piece of land to allow for a pipeline or utility service).

'Compulsory' acquisition means that the land can be acquired despite the fact that the landowner may not consent to the acquisition. An authority can only compulsorily acquire land if the power to do so is set out in its governing legislation, which is deemed for such purpose to be a 'special Act' (see Attachment C for a list of these Acts). It is important to note that the *Land Acquisition and Compensation Act 1986* does not of itself provide the authority to acquire land – this power is contained in 'special Acts' – but establishes the framework for the acquisition process and compensation.

Where an authority is given the power under a special Act to compulsorily acquire land, the authority must follow the process for acquisition set out in the Act (unless those processes are altered by specific provisions in the special Act). The authority must therefore either: acquire the land or obtain an interest in the land by compulsory process; or acquire the land by agreement with the landowner in accordance with the Act.

2.2 Rationale for Government Intervention

Public policy usually begins from the premise that activities should be unregulated unless the market does not deliver socially efficient outcomes. That is, government intervention in markets may be justified on economic efficiency grounds, or to correct a 'market failure'.

However, in the case of the Act and proposed Regulations, for historical and institutional reasons the rationale for government intervention primarily rests on social objectives: that is, the protection of property rights of individuals to the extent of appropriate compensation.

State parliaments have an unchallenged right to enact legislation to expropriate real property. It is a right that flows from the sovereignty of each parliament. [14] Therefore, the Royal prerogative means, in theory, that the Crown could arbitrarily expropriate land from an individual, and at common law there is no automatic right

[14] Brown, D., 2009, Land Acquisition: An Examination of the principles of law governing the compulsory acquisition or resumption of land in Australia (6th ed), LexisNexis Butterworths, Australia, p. 13

of compensation. When the Commonwealth Constitution was framed this position was altered by the inclusion of s. 51(xxxi) which provides that compulsory acquisition of land must be on 'just terms'. However, this protection only applies to acquisitions by federal authorities. There is no equivalent constitutional protection in Victoria.

In Victoria the Charter of Human Rights and Responsibilities states that 'a person must not be deprived of his or her property other than in accordance with the law'.[15] The Charter, however, by itself does not provide a right to compensation.

Given the Crown prerogative and absence of Constitutional protection, governments have long recognised (since 1869 in Victoria) that legislative intervention is required to provide protection for landowners against acquisition without compensation. The most significant protection for landowners in relation to compulsory acquisition is the *Land Acquisition and Compensation Act 1986*, which establishes strict acquisition procedures and a compensation regime. That is, the Act stands between the Crown and the individual landowner, providing protection to the latter.

The proposed Regulations seek to improve the effectiveness and efficiency of the operation of the Act by prescribing forms (lowering search costs, creating administrative certainty, supporting legal consistency), prescribing statements (removing possible information asymmetries), prescribing a fee (to recover efficient costs), prescribing a threshold amount with respect to the value of land under which a person may be eligible for a loan (promoting equity), and to exempt certain land from reservation (community benefit, e.g., widening a road, acquiring an easement for a pipeline).

2.3 Risks of Non-intervention

The risk of not proceeding with the proposed Regulations is that the Act would not operate effectively and efficiently resulting in higher costs to the acquiring authorities and landowners, as well as leading to less legal and administrative certainty. Certain infrastructure projects may also be significantly delayed or obstructed.

2.4 Type and Incidence of Costs

The *Victorian Guide to Regulation* identifies three categories of regulatory costs: these are compliance costs, financial costs, and market costs.[16]

Compliance costs can be divided into 'substantive compliance costs' and 'administrative costs'. Substantive compliance costs are those costs that directly lead to the regulated outcomes being sought. These costs are often associated with content-specific regulation and include modifying behaviour or undertaking specified training in order to meet government regulatory requirements.

[15] Section 20 of the Charter of Human Rights and Responsibilities Act 2006
[16] DTF, 2007, ibid., p. F-7

Administrative costs, often referred to as red tape, are those costs incurred by business to *demonstrate* compliance with the regulation or to allow government to administer the regulation. Administrative costs can include those costs associated with familiarisation with administrative requirements, record keeping and reporting, including inspection and enforcement of regulation. The majority of costs affecting acquiring authorities are administrative costs (deriving from the Act) in relation to the prescribed forms, while the greatest cost affecting landowners is a substantiative compliance cost associated with proposed r. 6 (land not requiring reservation, where land is acquired for a minor road widening or deviation of a road which reduces the value and area of the land by no more than 10%, or for an easement which reduces the value of the land is reduced by no more than 10% - this is known as the '10 per cent rule' and effectively removes a right to object to the acquisition).

Financial costs are the result of a concrete and direct obligation to transfer a sum of money to the government or relevant authority. Such costs include administrative charges and taxes. For example, the fee for lodging a form for the notice of intention to acquire with the Registrar of Land Victoria (r. 13) is a financial cost.

Market costs are those costs that arise from the impact that regulation has on market structure or consumption patterns. Given the narrow focus of the proposed Regulations, it is not expected that they will impose market costs.

2.5 Problems the proposed Regulations seek to address

2.5.1 The nature of the problem

Why acquire?

Compulsory acquisition powers are vital to ensure the delivery of transport, gas, electricity and water infrastructure, both in terms of the acquisition of land and the primary installation, and for lesser interests, such as easements for the laying of pipes and cables. Compulsory acquisition is also vital to ensure that social services such as housing, health, education and public recreation are able to be delivered in the most appropriate areas. In this regard, Brown notes that, "The citizens of the nation accept that a landowner who is deprived of the land may be unfortunate or unlucky but the taking of their land, for the good of the community as a whole, is necessary".[17]

In broad philosophical terms, the rationale underlying compulsory acquisition rests on the utilitarian principle of the "greatest good for the greatest number of people". For example, the widening of a road by acquiring private land may result in tens of thousands of commuters saving several minutes of travel time per day into the future. From the perspective of the landowner the process may appear drastic (although they would receive monetary compensation), but the ongoing benefits to

[17] Brown, D., 2009, Land Acquisition: An Examination of the principles of law governing the compulsory acquisition or resumption of land in Australia (6th ed), LexisNexis Butterworths, Australia, p. 1

the community could be substantial. Similar examples also apply to easements for pipelines or transmission lines.

Broadly, the compulsory acquisition process may be viewed as attempting to balance the infringement of individual rights (which are recompensed) against the greater good of the community.

Protection of rights

From the perspective of the individual, compulsory acquisition by the state of private property is a highly invasive, and in some cases, a bewildering action. Given the prerogative of the Crown to acquire land and absence of constitutional protection at the state level, the Parliament has intervened to provide protections. These protections include clear and transparent processes for acquiring land, the general right to object to such acquisitions, and provision of compensation. Not all acquisitions include a right to object. Such is the case for proposed r. 6; however, all landowners from whom land, or an interest in land, is acquired, have a right to compensation under the Act.

In summary, a person's right to hold and dispose of private property unencumbered by the state is a fundamental right upon which our society is based. A power given to a public or private authority which has the potential to interfere with this right needs to be sufficiently regulated to enable its efficient and equitable operation.

Problem addressed by the Proposed Regulations

Managing the compulsory acquisition of land and protecting landowner rights during this process are the broad issues dealt with by the Act. This process is described in detail in Attachment B. Generally, before the commencement of the acquisition process, the land must first be reserved for a public purpose under a planning scheme. In most cases this will involve a planning scheme amendment to apply a Public Acquisition Overlay to the land. Amending a planning scheme can be a lengthy process, particularly if anyone objects to the amendment. Timing can range from 3 months for a 'swift' planning application, with other applications taking up to 12 to 18 months to complete. In these cases the entire acquisition process can take up to 2 years.

Therefore, the reservation requirement and associated delay costs are considered to be the source of the problem which the proposed Regulations seek to address, while protecting land owner rights.

The proposed Regulations seek to minimise these costs by prescribing classes of land for which reservation under a planning scheme for a public purpose is not required prior to compulsory acquisition.

In terms of land owner protection, the 'prescribed classes' of land are narrowly defined and only apply to two types of uses (road widening and easements) and only apply to a small parcels of land. The 10 per cent threshold was originally chosen because few objections are received to acquisitions within this range.

Administrative efficiency and certainty

Prescribed Forms

The Act and proposed Regulations provide administrative efficiency and certainty by prescribing forms in relation to the acquisition process. The proposed Regulations prescribe 16 forms to be used throughout various stages of the acquisition process.

The forms in the proposed Regulations provide a format for the procedures of acquiring land by authorities, which allows standardised documentation to be used. Standard forms lower the administrative costs for acquiring authorities (lawyers are not required to draft such notices as was the case in the past) and search costs are lowered for landowners (landowners are sent a form to be completed). Standard forms also ensure that acquiring authorities do not serve notices on landowners that are overly complex or written in legalese.

There is an inherent information asymmetry associated with the land acquisition process. Acquiring authorities will often have specialist staff and lawyers dedicated to the process, whereas most landowners are unfamiliar with the process (and indeed are never likely to encounter it). The provision of standard forms and information contained in statements seeks to address this information asymmetry. (The Act recognises the complexity of the process and landowners are compensated for 'reasonable expenses' in obtaining professional advice from a solicitor, valuer or other professional adviser.)

More generally, the forms provide certainty to landowners and enable them to complete the necessary documentation with an assurance that the required steps are complied with and that they are informed of key information involved in the acquisition process.

There is also a legal equity benefit associated with standard forms as standardisation ensures that landowners are treated equally under the law and receive the same minimum level of information.

Equity

Broadly, the aim of compensation is to ensure that a person is no worse off than before the acquisition. Under the Act, every person with an interest in land that is compulsorily acquired has a claim for compensation for that interest. Compensation is to be 'fair and reasonable' and the precise amount to be paid is made on the basis of independent valuation advice combined with a practical evaluation of other losses occasioned by the acquisition, together with fees and expenses. The compensation regime is principally dealt with by the Act not the regulations.

Prescribed Amount – threshold for loans

One element, however, of the proposed Regulations does deal with equity. Section 45(1)(b) of the Act provides that an acquiring authority may make a loan to a landowner whose property has been acquired, but despite compensation may still

be at a disadvantage. The rationale is provided in the second reading speech in which the Minister stated:

> certain classes of dispossessed homeowners may be given loans to acquire properties. This is considered of importance in the case of people whose properties are at the lower end of the market, and who by reason of a mass acquisition of land find themselves in the position where they are unable to acquire a similar property on the open market.[18]

Another example is where a property was acquired to widen a major highway. However, property values in streets in the immediate area (not facing the highway) were considerably higher. In this case, an authority made a loan to the landowner to purchase a house in that area (such loans are usually interest free).

Again, the broad rationale of this measure is to place the landowner whose property has been acquired on a similar footing as they were prior to the acquisition.

Recovery of efficient costs

Cost-recovery may be defined as the recuperation of the costs of government-provided or government-funded products, services or activities that, at least in part, provide private benefits to individuals, entities or groups, or reflect the costs their actions impose. The Victorian Government *Cost Recovery Guidelines* apply to cost-recovery arrangements of government departments and general government agencies and include the recovery of the costs incurred by government in administering regulation (e.g., processing licences and applications, issuing of permits, etc).[19]

The underlying principle is that agencies should set charges to recover all the costs of products or services where it is efficient and effective to do so, and where the beneficiaries are an identifiable group and capture the private benefits of the product or service.

Section 10(1) of the Act requires that an authority lodges with the Registrar of Titles a notice of the intention to acquire in the form approved by the *Transfer of Lands Act 1958*. Proposed r. 13 prescribes this fee.

[18] Hansard, Assembly, Second reading speech, Land Acquisition and Compensation Bill, 8 May 1986, p. 2016

[19] Department of Treasury and Finance, 2007, *Cost Recovery Guidelines: Incorporating the information formerly published in the Guidelines for Setting fees and User-Charges Imposed by Departments and Central Government Agencies*, Melbourne

2.5.2 The extent of the problem

At the outset, it is important to note that in the majority of cases, acquisition under the Act is made by agreement (with the landowner receiving appropriate compensation) rather than through the compulsory acquisition process.

Roads

VicRoads conducts the largest number of acquisitions under r. 6 (i.e., the 10 per cent rule). Table 2 below shows that such acquisitions are relatively uncommon, affecting on average about 20 properties per year over the last 9 years. VicRoads also acts for water authorities in some instances.

Table 2: Settlements through the land acquisition process by VicRoads, 2000/01 to 2008/09

Year	Acqns Settled[1]	Reserved in a Public Acquisition Overlay	Class of Land Exempt from Reservation (10%) Regulation 6	Total
2000/01	NOIA	7	6	13
	NOA	37	10	47
2001/02	NOIA	4	6	10
	NOA	76	22	98
2002/03	NOIA	3	4	7
	NOA	117	20	137
2003/04	NOIA	14	3	17
	NOA	103	16	119
2004/05	NOIA	7	0	7
	NOA	130	7	137
2005/06	NOIA	3	0	3
	NOA	109	19	130
2006/07	NOIA	2	2	4
	NOA	79	26	107
2007/08	NOIA	1	0	1
	NOA	62	14	76
2008/09	NOIA	1	0	1
	NOA	67	26	96

Notes:
1. Acquisitions settled under Notice of Intention to Acquire (NOIA) and acquisitions settled after publication of Notice of Acquisition (NOA). In 2005/06, 2006/07 and 2008/09 there were 2, 2, and 3 exemptions respectively with respect to Notices of Acquisition certified by the Governor-in-Council. Source: VicRoads.
2. NOIA means acquisitions settled where a Notice of Intention to Acquire under Section 6 of Act has been served. NOA means acquisitions settled where a Notice of Acquisition has been published under Section 19 of the Act.

Water

In terms of easements, an interest in land may be acquired by the authority rather than actually owning the land. In these cases, the easement allows a water authority, for example, a right of access to the land in order to make repairs or maintain water pipes. The Act provides acquiring authorities with the power to

acquire land through voluntary negotiation. The vast majority of land is acquired by this method. Past consultation on this issue suggests that less than 1 per cent of easements are acquired by compulsory acquisition.

Gas

Gas and fuel supply agencies acquire easements for pipelines, and as with other agencies, most of these are acquired by agreement. Only in a small percentage of cases (around 2-3 per cent) is compulsory acquisition necessary.[20] It is noted that even without reservation on a planning scheme, the *Pipelines Act 2005* requires that proposed pipelines be publicly advertised. Consequently, the public has a right to object. The gas and fuel supply agencies do not acquire easements for service pipes connecting property mains.

Loans

Loans made under s. 45(1)(b) of the Act with the limit prescribed by r. 22 are rarely made. This is probably because the prescribed limit of $250,000 is around half of the median house price in Melbourne.[21]

Over the past 3 years Melbourne Water has made no loans under this provision, whereas from 1999 to 2009 VicRoads made three loans. The last of these occurred in 2006 in country Victoria.

2.6 Regulatory Framework

2.6.1 Overview of the Land Acquisition and Compensation Process

The most significant protection for landowners in relation to compulsory acquisitions is the *Land Acquisition and Compensation Act 1986*, which establishes strict compulsory acquisition procedures and a compensation regime.

It is important to note that the Act establishes the general process to be followed when compulsorily acquiring land. It does not actually give an acquiring authority the power to compulsorily acquire land. The power to compulsorily acquire land needs to be given to an acquiring authority in a specific piece of legislation, known as Special Acts (refer to Attachment C with information on Special Acts).

The Act seeks to establish a system of land acquisition which is fair to landowners and which does not impose unreasonable burdens on acquiring authorities nor government in general, so as to allow for proper land management and planning by the public sector.

[20] Department of Justice, *Land Acquisition and Compensations Regulations Regulatory Impact Statement*, August 1998, p 7

[21] *The Age*, 'Melbourne median house price hits $520,000', 3 October 2009, viewed on 10 January 2010: http://www.theage.com.au/national/melbourne-median-house-price-hits-520000-20091003-ggvm.html

The Act places strict obligations on an acquiring authority in relation to the processes for acquisition. This includes the timing of the service of notices, when and how offers must be made and when and how possession may be taken. It also sets out processes for compensating landowners whose land is compulsorily acquired.

The Act provides that, in general, the compulsory acquisition of land by acquiring authorities be commenced by reserving the land for public purposes under a planning instrument. Once the land has been reserved, the authority may give a notice of intention to acquire an interest in the land. Once such a notice is served, the landowner may only deal with or improve the land with the consent of the acquiring authority. For example, a landowner would only be able to sell or build on the land with the acquiring authority's consent. A notice of intention to acquire lapses 6 months after service of that notice if the authority has not acquired an interest, or an extension of its period of operation has not been mutually agreed. The authority may acquire the land by agreement with the land owner at any time during that period.

If the authority fails to negotiate an appropriate settlement with the landowner, then the compulsory acquisition and compensation processes in the Act are triggered. Under these processes, and authority may publish a notice of acquisition two months after the notice of intention to acquire has been served, but before that notice expires. The interest in the land is transferred to the acquiring authority upon publication of the notice of acquisition and this is also the date on which compensation is assessed.

The Act sets out uniform compensation procedures which include: the requirement that the acquiring authority make an initial offer of compensation which reflects the market value of the land; that the offer generally be made within 14 days of acquisition; and providing that the offer of compensation be accompanied by a prescribed form which sets out the principal rights and obligations of the people whose land has been acquired.

Some general principles for assessing compensation are also set out in the Act. These include that the market value is to be assessed at the time of acquisition and allowances be made for certain losses and expenses incurred by the landowner and associated with the acquisition.

The Act also provides for powers of temporary entry and occupation of land by acquiring authorities. It also sets out a framework for determining costs on disputes about compensation matters.

Attachment B contains further details on the land acquisition and compensation process.

2.6.2 The Land Acquisition and Compensation Interim Regulations 2009

The current Land Acquisition and Compensation Interim Regulations 2009 will expire on 30 June 2010. The interim regulations were remade to allow for adequate consultation during their remaking. These regulations remade the Land Acquisition and Compensation Regulations 1998, which have been in operation since 4

November 1998. Except for a number of very small changes to the wording, the current Regulations are practically identical to the 1998 regulations. A copy of the current Regulations can be found on the Victorian Parliamentary website.[22]

The current Regulations give operational effect to the procedures and processes associated with land acquisition and compensation pursuant to the Act. They give operational effect to the Act by prescribing forms and statements, a fee, and prescribe an amount in relation to loans for certain persons whose land has been acquired. These matters are of an administrative nature and provide clarity for acquiring authorities and landowners. The current Regulations have four parts:

- Part 1 consists of five machinery regulations (i.e., objectives, authorising provision, commencement, revocation and interpretation)

- Part 2 consists of twenty regulations of which 16 prescribe forms, two prescribe information to be provided, as well as regulations which prescribe a fee and prescribing an amount with respect the value of land under which a person may be eligible for a loan in certain circumstances. The most significant element of the regulations in terms of impact on landowners is r. 6, known as the '10 per cent rule', which exempts land from the requirements of s. 5(1) of the Act (land requiring reservation). This means that the land owner cannot object to the acquisition. Such land is limited to land to be acquired for a minor road widening and for easements where:

  - In the case of road widening or the deviation of a road where the area of land to be acquired is less than 10 per cent of the total area and where its total value is less than 10 per cent.

  - In the case of an easement where the acquisition of the easement will not reduce the value of the land by more than 10 per cent.

- Part 3 prescribes a form for a referral of a dispute.

- Part 4 is a machinery regulation which prescribes the date of expiry of the regulations.

The proposed Regulations are also almost identical in substance to the current Regulations, but their language has been simplified in accordance with current drafting conventions. They have also been divided into seven parts to better reflect the structure of the Act.

Table 3 below shows how the proposed Regulations interact with the Act.

[22] See Land Acquisition and Compensation Interim Regulations 2009 at: http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/b12e276826f7c27fca256de50022686b/7658900B9CE8994ACA257657007F7F2B/$FILE/09-124sr001.pdf

Table 3: Interaction between the Act and Proposed Regulations

Reg[n]	Description	Act reference
6	Land not requiring reservation	s. 5(2)
7	Notice of intention to acquire interest in land	s. 8(1)(a)
8	Statement of rights and obligations to accompany statement of no intention to compulsorily acquire	s.7(1)(b)(ii)
9	Notice under s. 7(6) of the Act	s. 7(6)
10	Statement to accompany notice of intention to acquire	s. 8(2)
11	Information from municipal council	s. 9(2)
12	Information from responsible authority	s. 9(2)
13	Prescribed fee	s. 10(1)
14	Cancellation of notice of intention to acquire	s. 15(4)(a)
15	Statement to accompany notice of cancellation	s. 15(4)(b)
16	Notice of acquisition	s. 21(a)
17	Statement to be served with notice of acquisition	s. 22(b)
18	Warrant for possession of land	s. 28
19	Statement to accompany offer of compensation	s. 31(4)(c)
20	Notice of acceptance of offer of compensation	s. 34(1)(a)
21	Notice of claim where interest in land acquired	s. 35(1)(a)
22	Prescribed amount for loan	s. 45(1)(b)
23	Notice of claim where no interest in land is acquired	s. 48(1)(a)
24	Statement to accompany reply by Authority	s. 48(4)
25	Statement to accompany notice of entry	s. 74(2)(b)
26	Statement to accompany notice of temporary occupation	s. 75(4)(d)
27	Application or referral of a dispute	s. 82

* Regulations 1 to 5 are preliminary regulations, i.e., objective, authorisation, commencement, revocation, interpretation.

The Department of Justice advises that the 1998 and current Regulations have worked effectively over the past eleven years. As *prima facie* testament to this, the Regulations were not amended over that period.

2.6.3 Department and Agencies

As discussed above, the Act sets out processes to ensure that the compulsory acquisition of land is carried out in an efficient, fair and consistent manner. A number of agencies have involvement in the administration of the processes under the Act.

Under the Premier's General Order for the Administration of Acts, the Attorney-General is responsible for the overall administration of the Act. This means that the Attorney-General is responsible for changes to the Act and Regulations. The Department of Justice supports the Attorney-General in this role.

A number of Ministers and agencies use the processes set out in the Act and Regulations in an operational sense where they are provided with compulsory acquisition powers under a special Act (refer to Attachment C with information on special Acts).

The Government Land Monitor (GLM) operates within the Department of Planning and Community Development and administers the *Government of Victoria Policy and instructions on the Purchase, Compulsory Acquisition and Sale of Land*. The role of the GLM is to ensure that all government property transactions are legal, in the public interest and provide the best results for the Government. All government agencies must receive GLM approval to conduct land transactions, including where land is being compulsorily acquired and the compensation is $250,000 or more.

Land Victoria collects, maintains and disseminates land related information for the State. Its functions include the registration of land transactions. Land Victoria is also responsible for processing the notice of intention to acquire land under s. 10(1) of the Act to which the fee in proposed r. 13 applies.

The Victorian Civil and Administrative Tribunal (VCAT) and the Supreme Court of Victoria also have a role to play in disputed compensation claims under the Act (this is discussed under Implementation and Enforcement).

3. OBJECTIVES OF GOVERNMENT INTERVENTION

3.1 Government Policy

As an overarching principle, the Victorian Charter of Human Rights and Responsibilities states that 'a person must not be deprived of his or her property other than in accordance with the law'.[23]

The *Land Acquisition and Compensation Act 1986*, therefore, is the most significant protection for landowners in relation to compulsory acquisition of land.[24] As mentioned earlier, this Act is based on well-established public policy principles, whose antecedents date back to the mid-19th century.

3.2 Objectives

The primary objective of the Land Acquisition and Compensation Regulations 2010 is to enable the effective acquisition of land by government and private agencies, while providing an adequate level of protection for landowners.

The secondary objective of the proposed Regulations is to provide an efficient process (cost effective) and certainty for the compulsory acquisition of land. It seeks to achieve this by prescribing forms, statements and a fee.

3.3 Authorising Provision

The proposed Regulations are made under s. 110 of the *Land Acquisition and Compensation Act 1986*. Section 110 provides:

(1) The Governor in Council may make regulations prescribing all matters which by this Act are required or authorized to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation made under subsection (1) may require that some or all of the particulars required to be given in any prescribed form are to be verified by statutory declaration or otherwise.

[23] Section 20 of the Charter of Human Rights and Responsibilities Act 2006

[24] All transactions involving the purchase or acquisition of land by state government agencies, authorities and representatives must take place in accordance with the Government of Victoria's *Policy and Instructions on the purchase, compulsory acquisition and sale of land* (August 2000). The Government Land Monitor (Department of Planning and Community Development) distributes and administers the operation of the Government Policy.

4. OPTIONS TO ACHIEVE THE OBJECTIVES

4.1 Regulatory and Non-regulatory Options

The *Subordinate Legislation Act 1994* requires that a RIS must assess the costs and benefits of the proposed Regulations. This Act also requires that a RIS identifies practical alternatives to the proposed Regulations and assesses the costs and benefits of these compared to the proposed Regulations. A RIS is not required to identify alternatives that are not practicable or feasible. This section describes the viable non-regulatory and regulatory options for achieving the government's objectives (set out in section 2).

The scope of consideration of feasible regulatory and non-regulatory options is limited by the existing powers of the Act and the limited focus of the proposed Regulations. The majority of the regulations[25] relate to the prescription of forms. Given that these regulations arguably lower costs for parties (e.g., lower search costs and provide certainty) options for these are not formally analysed, although discussion is contained in section 5.5 below.

In other cases, in identifying options it seems reasonable to assume that the regulations are the only viable option because they 'give effect' or 'operationalise' key elements of the Act. While these suppositions should be generally avoided, clause 2.04 of the Subordinate Legislation Act 1994 Guidelines (the Premier's Guidelines) states when the Act requires that a thing or matter be prescribed in regulations, then it must be provided in the Regulations:

> "where the authorising Act dictates the form of subordinate legislation required, for example, where the authorising legislation provides for fees to be prescribed by statutory rule, *there is no discretion* to set those fees by another method."[26] (emphasis added)

This is relevant in relation to proposed r. 13 (prescribed fee) and r. 22 (prescribed amount to be eligible for a loan). There are no practicable alternatives for these. While there is no discretion to set the fee and the amount other than by a statutory rule, the amounts of these may be varied. The prescribed amount of land value under which a person may be eligible for a loan is discussed in section 5.4 below, while an analysis of the fee is contained in section 5A.

The major social impact in the proposed Regulations concerns r. 6, which has the consequence of removing a right to object to the land acquisitions in certain circumstances (although the economic impact is offset through monetary compensation). These circumstances are narrow as they only apply to road widening and easements whose value is less than 10 per cent of the total land (and area is less than 10 per cent in the case of road widening). Therefore, the analysis of options in this RIS will focus on compulsory acquisitions under r. 6.

[25] That is, proposed regulations. 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26 and 27.
[26] *Subordinate Legislation Act 1994* Guidelines, Revised 2007, Section 2.04.

The viable options identified and discussed are as follows:

- **Option 1** – a statutory rule as per proposed r. 6
- **Option 2** – a statutory rule as per proposed r. 6 but with different limits (e.g., 5 per cent or 20 per cent)
- **Option 3** – acquisition by consent and economic incentives

4.1.1 Option 1 – Proposed Regulation 6

A statutory rule (also known as a regulation) is a regulatory vehicle used extensively by governments to give operational effect to primary legislation. Statutory rules can be an effective policy tool. They can be used by government to achieve a range of policy objectives including: the prevention or reduction of an activity which is harmful to business, the environment or to other people; to ensure that people engaged in some occupations possess a requisite level of knowledge and competence; and to define rights, entitlements or obligations.

The Premier's Guidelines provide guidance regarding the matters suitable for inclusion in statutory rules. These include matters relating to detailed implementation of policy, general principles and standards (rather than the policy, principle or standard itself), prescribing fees to be paid for various services, prescribing forms for use in connection with legislation, and prescribing processes for the enforcement of legal rights and obligations. The latter is relevant to the proposed Regulations.

The proposed Regulations prescribe details to give effect to and expand upon elements of the Act. They prescribe forms, set a fee, and prescribe processes for legal rights and obligations. Practical experience or other developments may require changes to the matters specified in the regulations. Changing such matters is relatively straightforward compared to changing legislation. Another advantage of statutory rules is that they require formal review at least every 10 years through the RIS process.

Regulation 6 is an exception to the general requirement in s. 5(1) of the Act that an authority must not commence to acquire an interest in land unless the land has been first reserved under a planning instrument for a public purpose. Reserving land under a planning instrument for a public purpose is what enables landowners to object to planning proposals to acquire their land, and gives them the opportunity to claim compensation for any losses resulting from the planning reservation if the proposed acquisition does not succeed. Therefore, one of the consequences of r. 6 is to remove a landowner's right to object to the compulsory acquisition.

To ensure the efficient and equitable acquisition of small parcels of land this option proposes, amongst other things, to remove the requirement for a planning reservation to be in place:

- if the land is needed for minor road widening or deviation, and the area to be acquired and its value are both less than 10 per cent of the total, and

- if an easement needs to be acquired and it will not reduce the overall value of the land by more than 10 per cent.

4.1.2 Option 2 – Variation of Proposed Regulations

In some circumstances there are no practical regulatory alternatives other than to alter the scope or extent of the proposed Regulations. As noted above, clause 2.04 of the Premier's Guidelines notes that in some circumstances there is no discretion other than to prescribe some matters in statutory rules. However, there is scope to consider variations to the proposed Regulations and consider whether they are effective and cost efficient. This is relevant with respect to:

- varying the thresholds with respect to land value and land area (r. 6)
- placing a maximum ceiling on the value of land over which would trigger a right to object (r. 6)
- varying the scope to include road widening or easement acquisition only (or expanding the scope to include other proposed uses)
- varying the prescribed amount threshold (r. 22 – see section 5.4 below for discussion).

While there is potentially a large number of variations that could be considered, for the purposes of assessment of this option it is assumed that the value threshold in r. 6 is increased from 10 per cent to 20 per cent and the scope of land available for acquisition is expanded to include *any* land used for a public purpose.

4.1.3 Option 3 – Acquisition by Consent

A RIS is required to consider a non-regulatory option. In this case, the government could consider promoting a voluntary framework whereby the land is acquired by consent under private arrangements. This would involve the acquiring authority negotiating with a landowner or series of landowners to acquire land. An element of this option could be that acquiring authorities could impose a levy on all customers/clients to fund a 'war chest' to fund such acquisitions. The acquisition by consent is premised on the axiom attributed to Sir Robert Walpole that "every man has his price".[27]

It should be noted that in some cases this path is followed and acquiring authorities simply purchase land under private arrangements. Similarly, land is voluntarily acquired under the framework provided by the Act.

4.1.4 Options to improve landowner rights

Given that a result of r. 6 (which exempts land from being reserved for a public purpose) is that a landowner's right to object is removed, options could be considered to strengthen landowner rights in terms of the process and information provided. This section explores possible options to use thresholds to limit the

[27] Sir Robert Walpole: http://www.famousquotesandauthors.com/authors/sir_robert_walpole_quotes.html

application of r. 6, increased compensation to ensure that r. 6 is not over used, and additional disclosure requirements.

4.2 Regulatory Arrangements in other Jurisdictions – Regulation 6

Aside from NSW where there are no general rights to object, other states and territories in Australia generally provide such a mechanism (see Attachment D for a description of legislation).

It should be highlighted that the '10 per cent rule' is used in only a minority of cases and that owners are compensated for the loss of their land or interest in land. It is important to remember that r. 6 only applies to a small proportion of a person's property (unlike a compulsory acquisition of an entire property under which there is a right to object). Notwithstanding the impingement of a property owner's rights, acquiring authorities strongly support the 10 per cent rule and claim that it minimises project/delay costs and allows the 'first best' project option to proceed.

5. COSTS AND BENEFITS OF THE OPTIONS

5.1 Base Case

The 'base case' describes the regulatory position that would exist in the absence of the proposed Regulations. It is necessary to establish this position in order to make a considered assessment of the incremental costs and benefits of the viable options.

If the current Regulations were not remade, the base case would be represented by a regulatory situation in which:

- land for minor road widening and deviations and acquisition of minor easements would need to be reserved (i.e., the '10 per cent rule' would not apply) and landowners would have a right to object.
- no forms or statements would be prescribed.
- no fee would be prescribed.

That is, that broad land acquisition and compensation regime in Victoria would continue to operate under the Act; albeit in a less effective and efficient manner.

5.2 Methodology

5.2.1 Assessment of costs

The inherent characteristic of regulation is to modify behaviour in order to achieve certain outcomes. This can impose costs on individuals or businesses known as 'compliance costs'. In simple terms, compliance costs are the costs of complying with regulations. In the case of proposed r. 6, rather than modifying behaviour, the cost imposed is the loss of a right to object to an acquisition – or the loss of choice or an 'option'. There are various methodologies for valuing options (such as the Black and Schoeles model) however, in the case of proposed r. 6 the absence of data and landowner preferences would make estimating the value of the loss of an option extremely difficult.[28] Given these difficulties, the Multi-criteria Analysis (MCA) approach is presented in this RIS as an alternative assessment tool.

5.2.2 Multi-criteria analysis

The MCA approach is described in part 5–18 of the *Victorian Guide to Regulation.* This approach is useful where it is not possible to quantify and assign monetary values to the impacts of a proposed measure (e.g., measures that have social impacts). Furthermore, it represents a convenient way of comparing a range of alternative approaches.

[28] It is important to recall that a landowner receives monetary and in some cases non-monetary compensation (s.44 of the Act provides that a solatium of not more than 10 per cent of the value of the land may be paid) through the processes contained in the Act, so the cost of this regulation deals with the cost imposed by the loss of an option rather than compensation overall.

This technique requires judgements about how proposals will contribute to a series of criteria that are chosen to reflect the benefits and costs associated with the proposals. A qualitative score is assigned, depending on the impact of the proposal on each of the criterion weightings, and an overall score can be derived by multiplying the score assigned to each measure by its weighting and summing the result. If a number of options are being compared, then the option with the highest score would represent the preferred approach.

Four criteria were chosen and weightings selected. The first two criteria relate to the objectives and purpose of the Act, which are the effective and efficient acquisition of land (criterion 1) and to ensure that the process for acquiring land is fair, consistent and transparent (criterion 2). The third criterion reflects the government's commitment to minimise the regulatory burden on business and assesses the cost-effectiveness of the proposal. The fourth criterion assesses the cost to government of implementation of the regulatory vehicle and costs avoided. For example, reserving land and thus removing the right to object at the planning stage may indirectly save court or VCAT hearing costs in the event of disputes concerning the acquisition.

The weighting for criterion 1 of 50 per cent is relatively high. This is because it represents the prime purpose of the proposed Regulations. Criteria 3 and 4 relate to costs imposed on parties involved in the acquisition process (i.e., acquiring authorities, landowners and government) and given the Government's emphasis on reducing the regulatory burden these criteria are each assigned a weighing of 10 per cent. Therefore, the effectiveness and cost efficiency criteria receive a combined weighting of 70 per cent. Criterion 2 deals with the equity of the acquisition process, which receive a weighting of 30 per cent. The issue of equity *per se* (for example, monetary compensation) is dealt with in the Act itself rather than the regulations. That said, it is important that the acquisition process provides a clear, transparent and consistent process for persons whose land is subject to the acquisition process. Equity considerations are important but not the prime purpose of the proposed Regulations.

The criteria and weightings are described in Table 4 below.

Table 4: Multi-criteria Analysis Criteria – Regulation 6

Criterion	Description of criterion	Weighting
Effective and efficient acquisition of land	This criterion is the primary objective of the regulation, and hence a relatively high weighting of 50 is assigned.	50
Equitable acquisition of land	The fair treatment of landowners is a prime concern of the Act. However, compensation and other protections are dealt with elsewhere in the legislation. Nevertheless, the administration of proposed r. 6 needs to follow clear guidelines and exhibit procedural fairness and a weighting of 30 is assigned	30
Cost of acquiring agency	This criterion relates to ensuring that the costs imposed on acquiring authorities and landowners are kept to a minimum. Given the importance the Victorian Government is placing on reducing the regulatory burden, this criterion is assigned a weighting of 10.	10
Cost to government	This criterion relates to ensuring that the costs imposed on government (i.e., the Victorian community) are kept to a minimum. This criterion assesses the extent to which the option would require changes to other legislative instruments and/or institutional arrangements. A weighting of 10 is assigned to this criterion.	10

For the purposes of an MCA assessment, an assigned score of zero (0) represents the base case, while a score of plus one hundred (+100) means that the alternative fully achieves the objectives. A score of minus one hundred (–100) means that the proposal does not achieve any of the objectives. In terms of assessment using the MCA, under the base case each criterion is awarded a score of zero reflecting the default position (i.e., the regulatory position in the absence of the proposed Regulations). Accordingly, the base case scenario overall receives a net score of zero (see Section 7).

5.2.3 Decision Criteria

The decision criteria implied by the *Subordinate Legislation Act 1994* are that the benefits of a proposal should outweigh the costs, and that the preferred alternative is that which results in the largest net benefit.

Given the difficulty in measuring the costs and benefits of the options in monetary terms, this RIS uses the MCA assessment tool to inform its decision on the preferred option. As noted above, the option with the highest score represents the preferred approach.

5.2.4 Government Costs

A RIS usually assigns government costs to the administration and enforcement of proposed Regulations. Given the limited nature of the proposed Regulations this RIS does not present such costs. This is because such government costs are more appropriately attributable to the Act rather than regulations (which mostly prescribe forms). Where the government does incur processing costs for registering a form under s. 10(1) of the Act, these costs are fully recovered by the proposed fee contained in r. 13.

Government statutory authorities and private utility providers will obviously incur costs in executing an acquisition under r. 6; however, the alternative under the Act of reserving the land followed by an acquisition is more costly for minor acquisitions, so in that sense r. 6 lowers acquiring authorities' costs relative to the Act (or base case). Acquiring agencies are only likely to use regulation 6 where it is less costly (e.g., direct costs and delay costs) than acquisition following reservation.

5.3 Costs and Benefits of Options

5.3.1 Option 1 – Proposed Regulation 6

<u>Proposal</u>

Regulation 6 prescribes that land, or a class of land, is exempt from the requirements of s. 5(1) of the Act, which requires reservation or certification prior to compulsory acquisition. Specifically r. 6 applies to:

- land to be acquired for a minor road widening or the deviation of a road if the land is only part of an allotment and the area of the land to be acquired is:
  - less than 10 per cent of the total area of the allotment *and*
  - the total value of the interest to be acquired is less than 10 per cent of the value of the unencumbered freehold interest in the total area of the allotment;
- land over which an easement is to be acquired if the acquisition of that easement will not reduce the value of the unencumbered freehold interest in the allotment by more than 10 per cent.

Benefits

The proposed Regulations significantly reduce costs to acquiring authorities if reservation under a planning scheme is not required for minor acquisitions. This is particularly the case in relation to easements and road widening or deviation projects where traffic management problems exist. While it is difficult to assess costs that are incurred by an acquiring authority in complying with planning reservations, time estimates from various authorities suggest that delays of up to several months can be experienced if an acquiring authority is required to reserve land under a planning scheme or seek an amendment to a planning scheme through various Councils. A straightforward application takes a minimum of 3 months to complete, while it is not uncommon for other applications to take 12 to 18 months.

The exemption from reservation under the proposed Regulations enables the acquiring authority to carry out their required minor acquisitions relating to road widening and easements with relatively high administrative efficiency. By not requiring reservation of these types of acquisitions, authorities are able to provide services to their customers without the delay and cost associated with the requirements of planning reservations. This would be the case in a situation where VicRoads sought to purchase that portion of land which abuts a roadway for the purposes of widening it. The widening of the road may be required for better traffic management in a congested area.

The proposed Regulations provide for greater administrative efficiency in minor land acquisitions by eliminating the delays and administrative costs associated with the requirement to reserve land under a planning instrument. While it is not possible to assess with any accuracy the financial costs associated with such delays, situations can be cited where delays would impose a burden (see Box 1 below for an illustrative example).

Box 1: Road Widening Proposal

A road authority plans to add an additional turning lane from a major highway. The turning lane has developed into a major 'bottle neck' particularly during peak periods. Traffic engineers estimate that 10,000 cars use the turnoff daily and an additional lane would save commuters 1 minute travel time. To add an additional lane, parts of the front yards of 5 houses will need to be acquired. Three of the landowner's raise no strong objections and are happy to receive monetary compensation. However, two landowners have been in their houses for some time and have established gardens which they do not want to see reduced in size.

Using the VCEC's valuation of staff time as a proxy for the value of commuter's time, an hourly figure of $34.50 is provided. If 5,000 commuters save 1 minute per day, this translates to a daily saving in the order of $5,800.

The road authority considered reserving the land, however given the probability of objections at the planning stage, it was likely that this process would delay the road widening by six months. Thus using r. 6 commuters would save around $1 million in time savings associated with the road widening occurring 6 months earlier.

The cost of r.6 to the three non-objecting landowners are minimal given the monetary compensation received. The costs of the regulation are therefore borne by the two objecting landowners. While the benefits of the road widening are clear, the cost- benefit ratio will vary in accordance with the sense of loss (or loss in the option value) of the two objecting landowners.

* Discount rate of 3.5 per cent was used. See Assumption 3 in Attachment E.

The requirements to reserve land for the purposes of a minor road widening could result in a delay in the commencement of works or a delay in the continuation of already commenced road works. Similarly, delays in the ability of an electricity supplier to acquire an easement for the purposes of providing a landowner with a power source may result in additional costs being incurred by the acquiring authority in later providing that service (availability of technicians, equipment, etc).

The proposed Regulations provide a benefit to the community because they enable more timely and cost effective provision of the services by acquiring authorities. By regulating to allow acquiring authorities to compulsorily acquire without the need to reserve land under a planning scheme in these limited cases, the services ultimately provided to the community would be done more quickly and at a lower cost.

Costs

The effect of the proposed Regulation is to deprive landowners of the ability to object to the acquisition through the normal process of objection to the planning scheme to which it relates. In assessing these costs, two points should be borne in mind. First, the use of r. 6 may affect around 50 landowners annually in Victoria. While the actual figure is project specific and will vary from year to year, the frequency of use of this regulation is low. Second, not all landowners object to planning proposals which involve compulsory acquisition of their land, particularly

in the case of minor acquisitions such as those envisaged by the proposed Regulations.

Therefore, only a proportion of those subject to a r. 6 acquisition will incur a notional cost in terms of the loss of an option (remember that monetary compensation is paid for the affect on a person's property value). The cost therefore would be highest on those who would have strongly objected to the acquisition had they had the opportunity to do so. Consequently the regulations will affect a limited number of acquisitions where the owner seeks to object or may object to the planning scheme which reserves the land subject of the acquisition by a public or private authority.

Multi-criteria Analysis

Given the difficulty in establishing quantifiable costs and benefits of this proposal, an MCA assessment was made. Regulation 6 has proved effective over two decades of operation. It by-passes the requirement to reserve land (hence objections cannot be made at the planning stage) and allows acquiring authorities to acquire small parcels of land effectively and efficiently. Consequently, the first criterion is awarded a relatively high score of 75. Given the removal of a landholder's right to object, the second criterion which relates to equity (but not compensation) is assigned a negative score of 25. In terms of loss of rights, the proposed Regulation is more onerous than the base case. The negative score is not larger because it only relates to a small proportion of a landholder's property. In terms of cost minimisation (criterion 3), the process under r. 6 is less costly than under the base case and a more timely method of acquisition (thus reducing delay costs). Thus a score of 25 is assigned to this criterion. While r. 6 does not directly impose cost on government, the removal of the right to object may indirectly save court or VCAT hearing costs in the event of disputes concerning the acquisition (rather than compensation). Consequently a score of 25 is assigned to this criterion. Overall, this MCA assessment results in a net score of +35.0, as shown in Table 5 below.

Table 5: Multi-criteria Analysis Assessment of proposed Regulation 6

Criteria	Weighting	Assigned Score	Weighted Score
Effective and efficient land acquisition	50	75	37.5
Equitable land acquisitions	30	-25	-7.5
Cost of acquiring agency	10	25	2.5
Cost to government	10	25	2.5
Total	***100%***		***+35.0***

5.3.2 Option 2 – Variation of the Proposed Regulations

In some cases, there are no practicable regulatory alternatives other than to alter the scope or extent of the proposed Regulations. With respect to alternatives to the proposed Regulations, clause 2.04 of the Premier's Guidelines cited above notes that in some circumstances there is no discretion other than to prescribe some matters in statutory rules. However, there is scope to consider the regulatory obligations in the proposed Regulations and to consider whether they are practical, effective, and cost efficient.

Another option would be to prescribe a broader exemption. For the purposes of assessment of this option it is assumed that the value threshold in r. 6 is increased from 10 per cent to 20 per cent and the scope of land available for acquisition is expanded to include *any* land used for a public purpose. For example, the exemption would dispense with the 'road widening and deviations' limitation and would double the current exemption threshold so that the value/area of land up to 20 per cent would be exempt from the reservation process.

This option would have the advantage of greater administrative efficiency from the acquiring authority's perspective. On the other hand, it would disadvantage a greater number of landowners who would be deprived of the opportunity to object to proposals to acquire their land. In view of the policy of the Act that landowners should generally have the opportunity to object, it is considered that exemptions from the reservation requirement should be confined to those minor acquisitions.

The figure of ten per cent was originally chosen on the basis of information supplied by officers from acquiring authorities who indicated that few objections are received to acquisitions within this range, although more landowners object to larger acquisitions of their property. The figure of 10 per cent is chosen as it is considered that it strikes a balance between retaining the right to object for those majority of landowners so affected, and at the same time, allowing for the efficient acquisition of land by acquiring authorities with respect to minor acquisitions without the need to first reserve the land for a 'public purpose'.

Multi-criteria Analysis

There are many variations with respect to proposed r. 6, for example, the land area or land value threshold could be varied, the coverage of the regulation could be narrowed or broadened, or other value thresholds could be imposed. For the purpose of this MCA, it is assumed that the value threshold is increased from 10 per cent to 20 per cent and that the scope of acquisitions is expanded to include all land for a public purpose.

The effective and efficient land acquisition criterion receives a relatively high score of 85 reflecting the greater scope and frequency of acquisitions made under this option. The greater efficiency of acquisition, however, comes at a cost in terms of equity because a greater number of landowners would lose the right to object; hence a negative score of 75 is assigned to this criterion. A greater level of cost savings would accrue to acquiring authorities because they would not need to reserve land in as many cases and at the margin the government may save court/tribunal resources by removing the right to object. Consequently, the cost

minimisation and cost to government criteria are assigned scores of 50 and 35 respectively. This scoring results in a net score for this option of +28.50.

The scoring of this option presents the inherent tension between providing an efficient and effective acquisition for authorities, while protecting landowner rights.

Table 6: Multi-criteria Analysis Assessment of variation to proposed Regulation 7

Criteria	Weighting	Assigned Score	Weighted Score
Effective and efficient land acquisition	50	85	42.5
Equitable land acquisitions	30	-75	-22.5
Cost of acquiring agency	10	50	5.0
Cost to government	10	35	3.5
Total	**100%**		**+28.50**

5.3.3 Option 3 – Acquisition by consent

An option could be to consider acquiring land by negotiating with landowners. This option differs from voluntary acquisitions mentioned above, which are undertaken through the framework of the legislation. In this case, the government could consider promoting a voluntary framework whereby the land is acquired by consent under private arrangements; that is, the acquiring authority would essentially act as a private party. This would involve the acquiring authority negotiating with a landowner or series of landowners to acquire land.

The *Victorian Guide to Regulation* notes that economic incentives may be used as an alternative to other regulatory instruments in order to change the behaviour of an economic agent (most regulations seek to do this by some form of coercion (e.g., fines or penalties)). An element of the acquisition by consent option could be that acquiring authorities could impose a levy on all customers/clients to fund a 'war chest' to fund such acquisitions.

In terms of an effective and efficient land acquisition process, an MCA score of -25 is assigned. Voluntary acquisition may work reasonably well in isolated circumstances where the landowner is willing to sell and amendable to negotiation, however if several properties were required a single property owner's refusal to sell could delay or prevent the project from occurring. Separate negotiations may lack transparency and could cause delays by encountering the 'prisoner's dilemma' problems by which a property owner holds out to see what their neighbours are doing. In addition, land speculators could acquire land in the expectation that an easement or road would be required on the land. Under this option, the land acquisition process would not be efficient or effective, returning to a situation similar to that in the mid-19th century. (Indeed, one of the reasons for the original UK statute was to prevent speculators buying up tracts of land which was required by railway lines.)

On equity grounds, landowners would hold a right of refusal (and as noted above rights and options have value) and would receive compensation they considered appropriate (compensation is limited under the Act). In terms of equity, this criterion receives a relatively high score of 85. However, on a practical note, some landowners are unlikely to prefer this option as private payments for land would have Capital Gains Tax (CGT) implications, whereas CGT can usually be deferred under compensation arrangements.[29]

Negotiating on a case by case basis, while landowners have incentive to 'hold out' to increase their bargaining power, would result in inefficiencies and higher costs for acquiring authorities. The quantum of the compensation could also be higher. The cost to acquiring authorities is likely to be far greater than under the other options and relative to the base case, therefore a score of -75 is assigned to this criterion.

Assuming that arrangements are undertaken on a private basis, the government would have no role and would not incur costs. Therefore the costs to government criterion would receive a relatively high score (relative to the base case in which government costs are incurred) of 75. This assessment results in a net score of 13.0, which receives the lowest score of the options. The reason relates directly to the lack of cost effectiveness and efficiency for acquiring small parcels of land.

Table 7: Multi-criteria Analysis Assessment of variation to proposed Regulation 6

Criteria	Weighting	Assigned Score	Weighted Score
Effective and efficient land acquisition	50	-25	-12.5
Equitable land acquisitions	30	85	25.5
Cost of acquiring agency	10	-75	-7.5
Cost to government	10	75	7.5
Total	***100%***		***+13.0***

5.3.4 Options to protect landowner rights

Given that a result of r. 6, which exempts land from being reserved for a public purpose, is that a landowner's right to object is removed, options could be considered to strengthen landowner rights in terms of the process and information provided. In some instances the options listed below would require amendments to the legislation, so these are not formally assessed in this RIS. That said, stakeholders may wish to comment of the following options:

- A monetary threshold could be applied to r. 6 to limit its application. For example, any acquisition whose value is more than $1 million would not be

[29] A similar position also applies in relation to GST. If land is purchased under Section 7(1)(a) or (b) of the LACA the acquiring authority must pay GST on the purchase of the land.

able to use the r. 6 exemption. An argument could be made that land worth $1 million does not represent a 'minor' acquisition.

- An automatic 10 per cent solatium could be paid to landowners subject to r. 6 acquisitions. Solatium is an additional sum of compensation to console an owner for intangible, non-pecuniary loss (e.g. emotional hardship, inconvenience, sentimental attachment to the land). Section 44 of the Act currently places a limit on solatium of 10 per cent of the value of the land. Such a payment may prevent overuse of r. 6 by an acquiring authority.

- Acquiring authorities could be required to publish in the Government Gazette details of the land that was acquired, the price, and reasons for acquisition under r. 6. This could improve the transparency of the process as well as providing data on the number of r. 6 acquisitions. Publication of the price would allow the Valuer-General Victoria to 'monitor' compensation by government and non-government acquiring authorities to ensure that payments are 'fair'.

The Department of Justice welcomes comments on these options, and encourages any other suggestions to improve the efficiency and effectiveness of the proposed Regulations.

5.4 Prescribed amount – threshold of land value to be eligible for a loan

The section above formally assesses options associated with proposed r. 6. In the case of proposed r. 22, which simply prescribes a land value amount, feasible alternatives are limited by the Act.

The proposed Regulation seeks to provide an adequate level of protection for those landowners who are required to seek an alternative place of residence as a result of compulsory acquisition by acquiring authorities. Specifically, r. 22 prescribes the market value of land that is to apply under s. 45 of the Act. Section 45 deals with the ability of acquiring authorities to lend funds to dispossessed home owners. Under s. 45, people whose land has been compulsorily acquired may apply to the acquiring authority for a loan if:

- the interest in land acquired includes the person's principal place of residence

- the market value of the interest in the land does not exceed the amount prescribed in the regulations, and

- the compensation payable to the person is insufficient to enable the person to purchase a comparable residence.

If these conditions apply, the authority may (or must, if directed by a court), grant the person a loan to make up the gap between the compensation payable and the cost of a comparable residence. Such loans may be granted with or without interest. If granted with interest, the interest rate must not exceed the rate of

interest fixed under the *Penalty Interest Rates Act 1983*. At present, this interest rate is 10.5 per cent per annum.[30] The loan must be secured by a mortgage on the property, is repayable if the property is sold or ceases to be used as a principal place of residence, and is subject to such other terms as are agreed between the person and the acquiring authority. (It is important to realise that these arrangements are not a part of the proposed Regulations but are governed by the Act and private agreement.)

The policy behind these provisions is that they should operate on the basis of need, so that those landowners whose residences represent the 'average' cost of properties or less have access to the loan provisions. This is to ensure that the financial resources of acquiring authorities are used wisely and with maximum fairness.

When the regulations were last remade in 1998, the amount prescribed was $250,000. This amount sought to represent the 'average' cost of a standard principal residence in Melbourne at the time. However, this amount is now out of step with current property values.

The *Victorian Property Sales Report* (VPSR) is released quarterly by Land Victoria. The report contains median sales prices for houses, units and vacant land based on settled property sales across Victoria over a 15 month period.[31] As the data in the report is based on settled sales, both auction and private treaty, it is regarded as the most authoritative and comprehensive property sales data available. The most recent VPSR reported the median house price in Melbourne to be $400,000 (June 2009).

Land Victoria also produces the annual *Guide to Property Values* (GTPV) to supplement the VPSR. The guide aims to present factual statistical data relating to settled property sales that have occurred throughout Victoria during a calendar year. The guide includes data for residential property, summary statistics for each of the 79 local government areas and yearly medians by suburb. According to the latest guide (which shows prices for 2008), the median sale price for Melbourne houses was $388,088 and the mean price was $512,065. Median house prices across the state have increased by 148 per cent over last 10 years from $135,000 to $355,000. [32]

The Department of Justice considers that a median value is more suited to the policy purpose of the Act loan provisions than a mean value because the median represents the mid-point of prices, with 50 per cent of prices falling below the median. The number of sales for residential properties in Melbourne represents about 73 per cent of the total number of residential property sales in Victoria,

[30] The current penalty interest rate of 10.5% took effect on 1 February 2010. See Victorian Government Gazette, G2 14 January 2010.

[31] Department of Sustainability and Environment, 2009, *Quarterly Victorian Property Sales Report*: http://services.land.vic.gov.au/landchannel/content/guidequarterly

[32] See A Guide to Property Values, Department of Sustainability and Environment 2009

therefore using figures for Melbourne provides a fair and representative basis for setting the prescribed figure.

There is no power in the Act to allow for the prescribed amount to be linked to the annual median value of house prices in Melbourne as published in the Valuer-General's annual report. Therefore, a fixed amount must be prescribed in r. 22.

The median sale price for houses in Melbourne has increased over the past three years at an average rate of 6.67 per cent per year. Based on this average rate, the estimated value for the median Melbourne house price in three years time would be around $470,000. Recent evidence has pointed to continued strength in the residential metropolitan house market. While based on a different series than the Victorian Valuer-General's guide, the Real Estate Institute of Victoria recently reported in its *Property Update* that the median house price for a house in Melbourne increased by 15 per cent from the September quarter to $540,500 in the December quarter.[33]

The amount of $500,000 is therefore proposed as the value to be prescribed in r. 22. The Government may review the amount in three years time to assess its relevance and currency.

5.5 Prescribed forms

The Act provides for the prescribing of forms in relation to the compulsory acquisition process. The proposed Regulations prescribe 16 forms to be used throughout the various stages of the process.

The forms proposed in the Regulations provide a format for the procedure of land acquisition by public authorities that allows for a degree of standardisation of documentation to be used. The forms also enable landowners to complete the necessary documentation with an assurance that all the required steps are complied with and that they are informed of all steps involved in the acquisition process.

The prime benefits of the proposed forms are that they provide certainty to parties involved in the acquisition process and lower 'search costs', particularly for landowners. In this case, search costs would consist of the landowner becoming familiar with the Act and regulations and then attempting to draft, or paying someone, perhaps a lawyer, to draft responses to satisfy the requirements of the Act. This was largely the practice under the 1958 legislation.

While this RIS does not formally discuss alternatives to the prescribed forms, the Department of Justice welcomes feedback on the prescribed forms, including but not limited to the:

- usability of the forms

[33] Real Estate Institute of Victoria, viewed 29 January 2010, *A new record Melbourne median house price: $540,500,:* http://www.reiv.com.au/news/details.asp?NewsID=890

- wording and clarity of the forms
- options to lower costs (e.g., posting template forms online).

While this RIS contends that the prescribing of forms lowers costs associated with requirements of the Act, for illustrative purposes the costs of filling out the 16 forms in the proposed Regulations has been estimated at around $729,500 per annum or about $6 million (PV) over a 10-year period. Approximately two-thirds of these costs are incurred by the acquiring authority. Given that data is not collected on an aggregated basis across Victoria these figures should be viewed with caution and regarded as indicative only.[34]

Most forms are straight-forward to complete and simply require completing fields. In the 16 forms proposed, there are around 200 fields to be completed, 90 per cent of which relate to basic information (e.g., dates, names of parties, name of acquiring authority). About 75 per cent of all information to be entered into the forms simply relates to entering the name of the acquiring authority.

The estimated cost of a land owner (value of time taken) completing the prescribed forms (i.e., forms 3, 11 and 12) is in the order of $250 to $350. If a lawyer completes the form for an individual, this cost would be fully recoverable through the compensation process.

5.6 Groups Affected

Groups directly affected by the proposal include: urban and rural private property owners; urban and rural businesses; and acquiring authorities, including the State Government, local government, VicRoads, water authorities, gas and electricity companies.

[34] This estimate is based on about 1,000 compulsory acquisitions per year across Victoria. This is considered an upward limit, and in years where there are no major projects the number, and hence cost, could be less than half of this figure.

5A. FEES

In September 2007 the Victorian Government released its *Cost Recovery Guidelines* to clarify its policy principles underpinning cost-recovery arrangements. The Guidelines establish a whole-of-government framework thereby ensuring that cost-recovery arrangements in Victoria are transparent, efficient, effective and consistent with legislative requirements and government policy. These Guidelines are framed by the principle that properly designed cost-recovery arrangements can deliver both equity and efficiency benefits to the community. However, poorly designed arrangements may create inappropriate incentives, and could potentially undermine the achievement of other government objectives.

Cost-recovery may be defined as the recuperation of the costs of government-provided or government-funded products, services or activities that, at least in part, provide private benefits to individuals, entities or groups, or reflect the costs their actions impose. The Guidelines apply to cost-recovery arrangements of government departments and general government agencies and include the recovery of the costs incurred by government in administering regulation (e.g., processing licences and applications, issuing of permits, etc).

The underlying principle of the *Cost Recovery Guidelines* is that agencies should set charges to recover all the costs of products or services where it is efficient and effective to do so, and where the beneficiaries are an identifiable group and capture the private benefits of the product or service. These characteristics are relevant for private acquiring authorities as they generally capture the main benefits from the acquisition (although these benefits are often diffused amongst utility users). In addition, to ensure competitive neutrality fees should be applied to government bodies.

Options for setting the fee in proposed r. 13 would include zero cost recovery (i.e., setting no fee), partial cost recovery or full cost recovery. Given that Land Victoria charges fees for a range of similar services and the acquiring authority is capturing a benefit from the service, a full taxpayer subsidy would be difficult to justify. (An option could be to consider not charging government agencies or statutory authorities a fee since this represents an economic transfer within the government sector; however this option is not considered because it raises competitive neutrality issues.)

Some arguments may be put forward that in some cases land acquisition may represent a public good, for example, an acquisition of land for a park or for heritage reasons. The proposed Regulation, however, deals with a much more narrow range of acquisitions and it would be extremely difficult to isolate a 'public good' component in these.

Full cost recovery is consistent with the underlying principles in the *Cost Recovery Guidelines* and would recover efficient costs. The quantum of the proposed fee (around $50) is small compared to costs associated with the acquisition process (many thousands of dollars) and full cost recovery is unlikely to deter acquisition or compliance. Therefore, it is proposed to re-set the fees on a full cost recovery basis (as is currently the case).

Proposed Regulation 13 — Lodgement of Intention to Acquire Fee

Section 10(1) of the Act states that the authority must, without delay after the service of a notice of intention to acquire under s. 6 or amendment of such a notice under s. 14, lodge with the Registrar of Titles notice in the form approved under the *Transfer of Land Act 1958* of the notice of intention to acquire or the amended notice (as the case may be) together with the prescribed fee.

In 2009 there was a total of 318 lodgements under s. 10(1) of the Act (298 lodgements of notices and 20 amended lodgements). Land Victoria advise that there have been a similar number of lodgements in previous years. Around half of such acquisitions were by VicRoads.

Land Victoria advises that administrative tasks required for processing a notice under s. 10(1) of the Act is similar to processing a number of notices under the *Transfer of Land Act 1958*. Following examination of the activities associated with processing a notice of intention to acquire and advice from Land Victoria, it is proposed to set the proposed fee under r. 13 at 4.4 fee units (i.e. around $51.45[35]). This fee aligns with 26 other similar fees charged by Land Victoria, which were subject to a RIS in 2004.[36]

Assuming that Land Victoria receives 320 notices per annum, this would result in annual fee revenue of approximately $16,500, which offsets the cost incurred of processing the application. Over a 10 year period this would provide fee revenue in the order of $137,000 (PV).[37] Given that Land Victoria deals with around 750,000 transactions annually, the some 300 notice lodgements under s. 10(1) is considered a minor activity.

[35] The current Regulations set this fee at 4.5 fee units. The proposed fee of approximately $51.45 will therefore be $1.15 lower than the current fee.

[36] The *Regulatory Impact Statement Transfer of Land (Fees) Regulations 2004* stated that the costs of fees are based on time taken to process them. Of the 250 dealing types, most transactions take an average of 6 minutes. This is based on the detailed assessment of the workload for each of the processing steps. The vast majority of transactions occur within 6, 12 or 18 minute increments. Land Victoria advise that the processing time involved for a section 10(1) notification would take 6 minutes, therefore it is proposed to set the fee at 4.4 fee units.

[37] This figure assumes 320 applications per annum over 10 years at $51.45 per application. Annual figures were discounted at a real discounted rate of 3.5 per cent.

5B. IMPACT ON SMALL BUSINESS

The *Victorian Guide to Regulation* provides a definitive guide to developing regulation in Victoria within the context of the government's vision of well-targeted, effective and appropriate regulation. In particular, it is important to examine the impact on small business because the compliance burden often falls disproportionately on that sector of the economy. [38]

While it is understood that the impact of the proposed Regulations falls predominantly on individuals, accurate data is not available on the extent to which commercial properties are affected and therefore there are no available data on the degree to which small businesses are affected.

However, given the nature of the proposed Regulations, and recognising that small businesses would be compensated for the market value of land and losses incurred, this RIS finds that the proposed Regulations do not disproportionately impact upon small business.

[38] Victorian Government, 2007, *Small Business Regulatory Impact Assessment Manual*, Melbourne, April 2007. The ABS defines a small business as a business employing less than 20 people. ABS Cat. 1321.0

6. ASSESSMENT OF COMPETITION IMPACTS

At the Council of Australian Governments (COAG) meeting in April 1995 (reaffirmed in April 2007), all Australian governments agreed to implement the National Competition Policy (NCP). As part of the *Competition Principles Agreement*, all governments, including Victoria, agreed to review legislation containing restrictions on competition under the following principle. The guiding principle is that legislation (including acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:

(a) The benefits of the restriction to the community as a whole outweigh the costs, and

(b) The objectives of the regulation can only be achieved by restricting competition.

The NCP 'competition test' was used to assess the proposed Regulations against any possible restrictions on competition. The test asks whether the proposed Regulations:

- allow only one participant to supply a product or service
- require producers to sell to a single participant
- limit the number of producers of goods and services to less than four
- limit the output of an industry or individual producers
- discourage entry by new persons into an occupation or prompt exit by existing providers
- impose restrictions on firms entering or exiting a market
- introduce controls that reduce the number of participants in a market
- affect the ability of businesses to innovate, adopt new technology, or respond to the changing demands of consumers
- impose higher costs on a particular class or type of products or services
- lock consumers into particular service providers, or make it more difficult for them to move between service providers, and/or
- impose restrictions that reduce range or price or service quality options that are available in the marketplace.

The proposed Regulations affect both landowners and acquiring authorities and these two groups are identified as 'the market' for the purposes of applying the competition test in the guidelines. The proposed Regulations are procedural in nature and do not in any way limit the functions of acquiring authorities whose powers are obtained from separate special Acts. Similarly, landowners are not affected in terms of any restrictions in their ability to function in the market.

Given that the proposed Regulations predominantly prescribe forms, set a fee, and establish administrative processes, it is assessed that the proposed Regulations are considered to meet the NCP 'competition test' as set out in the *Victorian Guide to Regulation* and do not restrict competition.

7. THE PREFERRED OPTION

The decision criteria implied by the *Subordinate Legislation Act 1994* is that the benefits of a proposal should outweigh the costs, and that the preferred alternative is that which results in the largest net benefit.

Given the narrow scope of proposed r. 6 and the difficulty in measuring the costs and benefits of the options in monetary terms, an MCA assessment was carried out to inform its decision on the preferred option. Assessment of the options using the MCA framework also suggests that the proposed Regulations are superior to the alternatives, as shown in Table 8 below.

Table 8: Summary of Multi-criteria Analysis Compared to Regulations

Criteria	Weight	Option 1	Option 2	Option 3
1	**50**	37.5	42.5	-12.5
2	**30**	-7.5	-22.5	25.5
3	**10**	2.5	5.0	-7.5
4	**10**	2.5	3.5	7.5
Total		**35.0**	**28.5**	**13.0**

Option 1, the proposed Regulations, exempting certain categories of minor land acquisitions from the reservation requirement has been created to achieve a balance between the rights of landowners and the need for acquiring authorities to carry out their public functions efficiently. This is also a key objective of the Act. It is considered that the benefits the proposed Regulations provide in enabling acquiring authorities to provide services in a timely and cost effective way outweigh the costs associated with the loss of a landowner's right to object in these limited cases. It is also important to remember that r. 6 is used infrequently, perhaps in the order of 20 to 50 times per annum (the frequency of the use of r. 6 is project specific).

Similar regulations to the proposed Regulations have been in effect for around 20 years and discussions with stakeholders have confirmed that the regulations are working effectively. Alternatives were suggested along the lines of those analyses in the RIS, however feedback was that any such changes were not required or would not be as effective as the proposal.

While Option 2 received a reasonably high score under the MCA, it was not preferred because its wider scope and application imposed a greater level of burden on a person's right to object and thus would have eroded key protections established by the Act. Option 3, acquisition by consent, received a significantly lower score than the other options. While this option scored well on equity grounds (landowners did not lose their right to object to an acquisition), it scored poorly in terms of cost effectiveness and efficiency for acquiring small parcels of land.

The proposed Regulations do not impose a disproportionate burden on small business (almost all businesses affected by the proposal employ more than 20 staff). The proposed Regulations are also considered to satisfy the 'competition test' as set out in the *Victorian Guide to Regulation*.

This Regulatory Impact Statement concludes that:

- the benefits to society of the proposed Regulations exceed the costs
- the net benefits of the proposed Regulations are greater than those associated with any practicable alternatives
- the proposed Regulations do not impact adversely on small business
- the proposed Regulations do not impose restrictions on competition, and
- the proposed Regulations will not lead to a material change in the administrative burden on businesses.

7A. CHANGE IN ADMINISTRATIVE BURDEN

The *Reducing the Regulatory Burden* (RRB) initiative commits the Victorian Government to reducing the compliance burden of regulation. The Victorian Government is committed to cutting the existing administrative burden of regulation by 25 per cent or equivalent to $256 million by July 2011. The original target has been increased to a new target of $500 million by July 2012. The new target includes reductions to not only the administrative burden of regulation, but also substantive compliance and delay costs.[39]

In December 2009 the Department of Treasury and Finance released its new *Victorian Regulatory Change Measurement Manual*.[40] The manual sets out the regulatory instruments and categories that are to be measured for the purposes of the RRB initiative. All legally enforceable obligations imposed by State Government Ministers, courts, departments, regulatory agencies and local governments in Victoria are within the scope of the RRB imitative. These obligations must relate to the compliance costs (substantive compliance costs and administrative costs) of regulation.

To measure any change in the compliance burden of regulation, the existing position is taken as the base line. Given that the proposed Regulations do not introduce any new administrative obligations, compliance obligations, compliance requirements or compliance activity, there is no change to the administrative burden.

Therefore, in accordance with and for the purposes of the Victorian Guide to Regulation and Victorian Regulatory Change Measurement Manual, it has been determined that the proposed Land Acquisition and Compensation Regulations 2010 will not lead to a material change in the compliance burden on business, not-for-profit organisations, economic (income generating) activities of private individuals, and government services in Victoria.

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[39] Victorian Government, 2009, Reducing the Regulatory Burden: The Victorian Government's Initiative to Reduce Red Tape: 2008-09 Progress Report, Department of Treasury and Finance, Melbourne, p. 1.

[40] Department of Treasury and Finance, 2009, *Victorian Regulatory Change Measurement Manual*, Melbourne, December.

8. IMPLEMENTATION AND ENFORCEMENT ISSUES

The regime of compulsory acquisitions established by the Victorian Government has a number of elements which facilitate compliance with the Act. This is also relevant to the proposed Regulations which form part of the compulsory acquisition regime.

As mentioned above, the GLM administers the *Government of Victoria Policy and instructions on the Purchase, Compulsory Acquisition and Sale of Land*. The Policy must be used by Government agencies and authorities in employing a consistent best-practice approach to transactions involving the sale, purchase and compulsory acquisition of land. Acquiring authorities that are not part of government (e.g., utility companies) are not subject to the Policy.

Under the Policy, the GLM's approval is required for compulsory acquisitions where the compensation to be paid is $250,000 or more. Where approval has been denied or withheld by the GLM, the agency in question may confer with the Director of the GLM. If the matter remains unresolved it will be determined by the Minister for after taking all the circumstances into consideration. The Minister may confer with the Minister responsible for the agency in question. Following consultation with the GLM, the Policy provides that the Minister may approve transactions that do not accord with the Policy provided circumstances are established that justify that approval. The Policy has been in place since 2000.

As mentioned elsewhere in this RIS, VCAT and the Supreme Court have a role to play in determining disputed claims under the Act. A claim becomes a disputed claim when the steps that relate to payment of compensation under Part 3 of the Act do not occur within the required timelines.

The Act sets out that:

- if the amount in dispute is under $50,000, the matter will be in VCAT unless there are questions of unusual difficulty or general importance (sections 81(1)(a)(c) of the Act)

- if the amount is over $50,000, then the matter may be heard by VCAT or the Supreme Court at the option of the claimant, except:

  - if the option to take up the offer of compensation is not exercised within a month, then the acquiring authority can decide whether to go to VCAT or the Supreme Court

  - if the claim raises issues of unusual difficulty or general importance, then the Supreme Court will have jurisdiction (sections 81(1)(b)(c) of the Act).

Finally, given that similar regulations have been in place for over 10 years, it is not expected that the proposed Regulations will raise any implementation issues or cause unintended consequences.

9. EVALUATION STRATEGY

The *Subordinate Legislation Act 1994* revokes statutory rules following 10 years of operation. This allows the government to examine whether there is still a problem that requires government intervention, and to take account of any changes or developments since the regulation was implemented. When regulations are remade, the government assesses whether the objectives of the regulation are being met, whether practical experience suggests ways in which they can be improved, or whether a different regulatory approach is warranted. Final development of the regulations is informed by public input through the RIS process.

It is not anticipated that the proposed Regulations will require a formal review once they are in place. This is because they largely remake the current Regulations which have been in operation for 10 years, and similar regulations have been in place for over 20 years. When the current Regulations remade the 1987 regulations a number of wording changes were made to make the regulations more 'user friendly'; however, the substances of the regulations were not changed. The current Regulations appear to be effective and efficient and were not amended over the course of their operation.[41]

That said, the Department of Justice will monitor the proposed Regulations closely, and should any issues arise with respect to their operation these will be rectified.

[41] The was a single minor amendment, which related to the commencement date.

10. CONSULTATION

As part of the remaking of the proposed Regulations, an Interdepartmental Committee (IDC) was consulted. Members of the IDC are the Department of Justice, Department of Sustainability and Environment (DSE), Department of Premier and Cabinet, Department of Education and Early Childhood Development, Department of Planning and Community Development, Department of Human Services and VicRoads. The IDC acknowledged that the proposed Regulations were practically identical to the current Regulations and did not raise specific issues concerning the proposal.

In terms of acquiring authorities, a number of statutory authorities and utility providers were consulted:

- The Department of Transport was satisfied with the operation of the regulations; however it considered that r. 6's limitation to road widening and easements could be extended to rail or tramway reserves. This is analogous to a road widening, but involves rails. The department commented that not having access to r. 6 made minor acquisitions very time consuming. The department also noted that the forms could be amended to make provision for a leasee's interest in land (currently the forms refer to landowners).

- DSE (responsible, amongst other things, for acquiring land for conservation purposes and for easements for water pipelines) supported the current regulations as being effective (by removing risks for projects) and efficiency. However, one issue was raised with respect to s. 75 (temporary occupation of land) and Form 15. This requires parties who enter or occupy the land to be listed as an authorised person. Contract arrangements (including public-private-partnerships) may mean that names of all authorised persons are difficult to determine in advance. For example, in theory a contractor delivering a single load of gravel may require a separate authorisation if he or she is not listed on the original form.

- While a matter for the Act rather than the regulations, a number of stakeholders queried the relevance of s. 45 and the provision of loans. They submitted that this provision was originally established for large acquisitions relating to public housing. It has probably been used less than ten times in the last 10 years, and managing loans and keeping track of the loan principal is difficult. (Under the 1958 Act there was no provision to charge interest for such loans.)

This RIS will be publicly available on the Department of Justice's website at (www.justice.vic.gov.au) and will be advertised in the Herald Sun on 15 April 2010 and the Victorian Government Gazette. Copies of this RIS have been forwarded to key stakeholders inviting comments.

This RIS represents another step in the consultation process and the Department of Justice welcomes comments or suggestions with respect to the nature, extent, and likely impacts of the proposed Regulations, and any variations that may improve the overall quality of the proposed Regulations.

The *Subordinate Legislation Act 1994* requires that the public be given at least 28 days to provide comments or submissions regarding the proposed Regulations. Given that the proposed Regulations are being remade with minimal changes this period is considered adequate. Consequently the consultation period for this RIS will be 30 days, with written comments required by no later than **5.00pm, 14 May 2010.**

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11. ATTACHMENTS

Attachment A

DESCRIPTION OF PROPOSED STATUTORY RULE

Part 1: Preliminary – Regulations 1 to 5

Regulation 1 sets down the objective of the proposed Regulations. The objective of the Regulations is stated as to prescribe forms, procedures, fees and other matters for the purposes of the *Land Acquisition and Compensation Act 1986*.

Regulation 2 authorises that the proposed Regulations are made under s. 110 of the *Land Acquisition and Compensation Act 1986*.

Regulation 3 provides that the proposed Regulations will commence on 29 June 2010.

Regulation 4 revokes the current Regulations, the Land Acquisition and Compensation Interim Regulations 2009.

Regulation 5 clarifies the operation of the proposed Regulations. This regulation defines 'allotment' as a lot of land for which a plan of subdivision under the *Subdivision Act 1988* has been registered, or in respect of any other land, land of which a part cannot be sold, transferred or conveyed without the land being subdivided and for which a single certificate of title is or may be issued. In addition, in the proposed Regulations a reference to the Act is a reference to the *Land Acquisition and Compensation Act 1986*.

Part 2: Acquisition of Interests in Land – Regulations 6 to 18

Section 5 of the Act deals with the reservation or certification of land required before acquisition. Specifically, s. 5(1) states that the Authority must not commence to acquire any interest in land under the provisions of the special Act unless the land has been first reserved by or under a planning instrument for a public purpose. However, this subsection does not apply in respect of prescribed land or land in a prescribed class of land (s. 5(2)).

For the purposes of s. 5(2), **Regulation 6** prescribes the classes of land that are prescribed as exempt from the requirements of s. 5(1). Such land is land to be acquired for:

- a minor road widening or the deviation of a road if the land is only part of an allotment and the:
    - area of the land to be acquired is less than 10 per cent of the total area of the allotment *and*
    - the total value of the interest to be acquired is less than 10 per cent of the value of the unencumbered freehold interest in the total area of the allotment;

- land over which an easement is to be acquired if the acquisition of that easement will not reduce the value of the unencumbered freehold interest in the allotment by more than 10 per cent.

For the purposes of s. 8(1)(a) of the Act, **Regulation 7** prescribes the form of notice of intention to acquire an interest in land. This form is contained as Form 1 in Schedule 2 of the proposed Regulations.

For the purposes of s. 7(1)(b)(ii) of the Act, **Regulation 8** prescribes the form of notice relating to the statement of rights and obligations to accompany a statement by an Authority that it does not intend to acquire an interest by compulsory process. This statement must be in the form as prescribed by Form 2 in Schedule 2 of the proposed Regulations.

For the purposes of s. 7(6) of the Act, **Regulation 9** requires that notice to an Authority requiring the Authority to determine to serve a notice of intention to acquire the interest or to serve statements under s. 7(1)(b) must be in the form of Form 3 in Schedule 2.

For the purposes of s. 8(2) of the Act, **Regulation 10** states that a statement setting out principal rights and obligations to accompany a notice of intention to acquire must be in the form of Form 4 in Schedule 2.

Section 9 of the Act deals with a copy of notice to be served on particular authorities. Specifically, sub-section 9(2) requires that upon receipt of a request in writing by the Authority, the responsible authority and municipal council must without delay give the Authority in writing any prescribed information so requested. **Regulation 11** prescribes the matters about land in which a municipal council must inform the Authority as:

- any building permit or approval pursuant to which any construction on the land could be carried out, if that construction is not completed
- any construction on the land which, in the opinion of the council, is not in accordance with a building permit or approval or contravenes any regulation or local law administered by the council
- any plan of subdivision or consolidation in respect of the land or part of the land certified by the council under the *Subdivision Act 1988* in the 12 months before the date of the notice or any other such certified plan which, to the council's knowledge, has not been lodged with the Registrar of Titles under the *Subdivision Act 1988*
- any plan in respect of the land or part of the land re-certified by the council under the *Subdivision Act 1988* in the 12 months before the date of the notice or any other such re-certified plan which, to the council's knowledge, has not been lodged with the Registrar of Titles under the *Subdivision Act 1988*
- any works, plans, schemes or proposals which the council is carrying out or which it proposes to carry out in the 12 months following the date of the notice and which may affect the value of an interest in the land

- any works, plans, schemes or proposals which, to the council's knowledge, any Government department or public authority (other than the acquiring authority) proposes to carry out in the 12 months following the date of the notice and which may affect the value of an interest in the land
- any local law of the council which may affect the value of an interest in the land and any changes to such a local law which the council proposes to make at the date of the notice.

Section 9 of the Act deals with a copy of notice to be served on particular authorities. Specifically, sub-section 9(2) requires that upon receipt of a request in writing by the Authority, the responsible authority and municipal council must without delay give the Authority in writing any prescribed information so requested. **Regulation 12** prescribes the matters about land in which a responsible authority must inform the Authority as:

- any planning permit pursuant to which any use or development of the land may take place or any other matter or thing which may be done in respect of the land if that use has not commenced or that development is not completed or that matter or thing has not been done
- any use, development, matter or thing carried out or being carried out on or in respect of the land which, in the opinion of the responsible authority, is not in accordance with a planning permit or a planning scheme
- any amendment to a planning scheme applying to the land which may affect the value of an interest in the land, notice of which has been given in accordance with Part 3 of the **Planning and Environment Act 1987** but which has not been adopted or approved in accordance with Part 3 of that Act, if that amendment is not or would not be disclosed on a planning certificate
- any strategy, plan or other policy adopted by the responsible authority which does not form part of the planning scheme and which may affect the operation of the planning scheme applying to the land or the exercise of any discretion under the **Planning and Environment Act 1987** which may affect the value of an interest in the land.

Note that Regulation 11 relates to information from municipal councils, whereas Regulation 12 relates to information from responsible authorities.

Section 10(1) of the Act states that the Authority must, without delay after the service of a notice of intention to acquire under s. 6 or amendment of such a notice under s. 14, lodge with the Registrar of Titles notice in the form approved under the *Transfer of Land Act 1958* of the notice of intention to acquire or the amended notice (as the case may be) together with the prescribed fee. **Regulation 13** prescribes this fee as 4.4 fee units (i.e., around $51.45). This amount aligns this fee with many other similar fees charged by Land Victoria.

Section 15 provides that the Authority may at any time after the service of a notice of intention to acquire an interest in land (but before the publication of a notice of acquisition of that interest, or the lapsing of the notice under s. 16) determine not to proceed with the acquisition of the whole or part of that interest. **Regulation 14**

prescribes that the cancelling of a notice of intention to acquire must be in the form of Form 5 in Schedule 2.

Regulation 15 provides that a statement for the purposes of s. 15(4)(b) setting out rights and obligations to accompany a statement of cancellation must be in the form of Form 6 in Schedule 2.

Section 21 of the Act provides that a notice of acquisition must be in the prescribed form, and contain a description sufficient to identify the interest in land acquired and the land in which that interest subsists. **Regulation 16** prescribes this form, which must be on Form 7 in Schedule 2.

Section 22 deals with a statement to be served with a notice of acquisition. Section 22(b) requires that a statement must be in the prescribed form setting out the rights and obligations under the Act of the person whose interest has been acquired. **Regulation 17** provides this statement must be in the form of Form 8 in Schedule 2.

Section 28 deals with proceedings where a person refuses to deliver possession. If, in any case the Authority is authorised to enter into possession of any land, the owner or occupier of the land or any other person refuses to give up the possession of the land, or hinders the Authority from entering upon and taking possession of the land, the Authority may issue its warrant under this section to the sheriff. A warrant issued under s. 28 authorizes the Sheriff to enter onto the land specified in the warrant, deliver possession of the land to the Authority or the person appointed in the warrant to receive possession of the land, and use such force as is reasonably necessary to execute the warrant. **Regulation 18** provides that a warrant issued to the Sheriff by an Authority under s. 28 must be in the form of Form 9 in Schedule 2.

Part 3: Compensation for Acquisition – Regulations 19 to 21

Section 31(4) of the Act deals with offers of compensation. An offer under this section must be accompanied by (a) a copy of the certificate of valuation to which the Authority has had regard in making its offer; (b) a statement explaining the difference between its offer and the valuation if these differ; and (c) a statement in the prescribed form setting out the principal rights and obligations of persons whose interests in land have been acquired under this Act. **Regulation 19** provides that a statement for the purposes of s. 31(4)(c) setting out the principal rights and obligations to accompany an offer of compensation must be in the form of Form 10 in Schedule 2.

Regulation 20 provides that a notice of acceptance of an offer of compensation for the purposes of s. 34(1)(a) must be in the form of Form 11 in Schedule 2.

Regulation 21 provides that a notice of claim for compensation for the acquisition of an interest in land for the purposes of s. 35 must be in the form of Form 11 in Schedule 2.

Part 4: Measure of Compensation – Regulation 22

Section 45 of the Act deals with loans to dispossessed homeowners. If the market value of the claimant's interest in the land does not exceed the amount prescribed from time to time by the Governor in Council and the amount of compensation payable to the claimant under this section is insufficient to enable the purchase of a similar interest in land to be used by the claimant as a principal place of residence providing accommodation reasonably comparable with the accommodation on the acquired land the Authority may grant a loan of such amount as the claimant may reasonably require, in addition to the compensation payable, to enable the claimant to purchase such reasonably comparable accommodation. **Regulation 22** prescribes this amount as **$500,000** for the purposes of s. 45(1)(b).

Part 5: Compensation where no interest in land is acquired – Regulations 23 to 24

Regulation 23 provides that a notice of claim for compensation where no interest in land is acquired for the purposes of s. 48(1)(a) must be in the form of Form 12 in Schedule 2.

Regulation 24 provides that a statement for the purposes of s. 48(4) of the Act setting out principal rights and obligations which is to accompany a statement of reply must be in the form of Form 13 in Schedule 2.

Part 6: Powers of Entry and Temporary Occupation – Regulations 25 to 26

Regulation 25 provides that a statement for the purposes of s. 74(2)(b) setting out rights and obligations which is to accompany a notice of intention to enter land must be in the form of Form 14 in Schedule 2.

Regulation 26 provides that a statement for the purposes of s. 75(4)(d) of principal rights and obligations which is to be contained in a notice of temporary occupation must be in the form of Form 15 in Schedule 2.

Part 7: Determination of Disputes – Regulation 27

Section 80 deals with applications or referrals of disputed claims. This section provides that the Authority or the claimant may apply to VCAT for determination of a disputed claim in accordance with the Act, or refer a disputed claim to the Court for determination in accordance with the Act. **Regulation 27** requires that a referral of a disputed claim for determination to the Court under s. 80 must be in the form of Form 16 in Schedule 2.

Attachment B

REGULATORY FRAMEWORK: OVERVIEW OF THE LAND ACQUISITION AND COMPENSATION PROCESS

The Land Acquisition and Compensation Act 1986

The most significant protection for landowners in relation to compulsory acquisitions is the *Land Acquisition and Compensation Act 1986*, which establishes strict compulsory acquisition procedures and a compensation regime.

It is important to note that the Act establishes the general process to be followed when compulsorily acquiring land. It does not actually give an acquiring authority the power to compulsorily acquire land. The power to compulsorily acquire land needs to be given to an acquiring authority in a specific piece of legislation, known as a special Act.

The second reading speech of the Land Acquisition and Compensation Bill succinctly states the main objects of the Bill[42] as:

- to establish uniform practices to be adopted by acquiring authorities in the course of compulsory or negotiated acquisition of land
- to remove, consolidate and codify the law relating to compensation for interests in land
- to establish a system of land acquisition which is equitable to all land owners and which does not impose such burdens on Government so as to prevent proper planning and public sector activity
- to ensure certainty in the practices of land acquisition
- to encourage a co-operative rather than confrontationist relationship between Government and landowner, and
- to establish a speedy system of resolution of disputed claims concerning acquisition of interests in land.

Overview of the Acquisition Process under the Act

The Act places strict obligations on an acquiring authority in relation to the processes for acquisition. This includes the timing of the service of notices, when and how offers must be made and when and how possession may be taken. The land acquisition process is set out in Part 2 of the Act, which contains five divisions representing each step in the process.

Division 1 states that once an authority is empowered under a special Act to acquire an interest in land by compulsory process, it must follow the procedure in

[42] Section 1 of the Act notes that the main purposes of the Act are to establish a new procedure for the acquisition of land for public purposes; and to provide for the determination of the compensation payable in respect of land so acquired.

Part 2 of the Act, whether it is acquiring that interest by compulsory process or by agreement.

Division 2 requires that an authority must not commence action to acquire any interest in land unless the land has first been 'reserved' by or under a planning instrument for a public purpose. There are a number of exemptions from the need to reserve land for a public purpose. These include:

- if the Governor in Council on the recommendation of the Attorney-General has certified that the reservation is unnecessary, undesirable or contrary to the public interest
- if no notice of intention to acquire is needed because ss. 7(1)(a) or 7(1)(b) apply
- where a declaration under s. 172(2) of the *Planning and Environment Act 1987* has been made
- if the land is special project land under s. 201I(3) of the *Planning and Environment Act 1987*
- if the land is needed for minor road widening or deviation, and the area to be acquired and its value are both less than 10 per cent of the total, and
- if an easement needs to be acquired and it will not reduce the overall value of the land by more than 10 per cent.

The last two items are exempted by the current Regulations, while the other exemptions arise from the Act.

Division 3 deals with notices of intention to acquire land. A number of the prescribed forms in the proposed Regulations arise from this division. Section 6 requires that a notice of an intention to acquire must be served on each person who has an interest in the land. Section 7 states when a notice of intention to acquire is not needed, and s. 8 outlines the form that a notice of intention to acquire an interest in land must take (Form 1).

The notice of intention to acquire has three major functions:

- it is the first formal notification of the authority's intention to acquire an interest in the land (after the reservation in the planning scheme, if applicable)
- it prevents the landowner carrying out improvements on the land without consent of the authority
- it provides an opportunity for the authority to elicit information from the person served about the land and other interested parties (e.g., information obtained from municipal governments and responsible authorities: see proposed rr. 11 and 12).

The notice of intention to acquire lapses six months after the service of that notice if the authority has not acquired an interest, or an extension to the period of its operation has not been mutually agreed.

The acquiring authority can ask the council or responsible authorities for certain information (rr. 10 and 11). For example, it may seek information on the zoning or possible use or development of the land, in order to assist with the assessment of compensation.

Section 9 of the Act states that a copy of a notice of intention to acquire must be served on particular authorities, while s. 10(1) requires that the Registrar of Titles and Register-General must also receive notice of an intention to acquire. The Land Registry has an approved form that is to be used for lodging these notices, which are lodged pursuant to s. 106(e) of the *Transfer of Land Act 1958.*

Division 4 deals with acquisition of interests in land. Section 21 of the Act requires that a notice of acquisition must be in the prescribed form (Form 7) and contain a description sufficient to identify the interest in the land acquired. The map, which forms part of the notice of acquisition, must be sufficient to identify the land and must describe precisely what is being acquired. In addition, a statement of rights and obligations (Form 8) must be served within fourteen days of the date of acquisition.

An authority formally acquires the land by publishing a notice in the *Government Gazette*. Unless agreed in writing between the parties, or unless time is varied under s. 106 of the Act, the authority must not acquire the land until two months after service of the notice of intention to acquire. Given that a notice of intention to acquire expires after six months, this generally means that an acquiring authority has a period of two to six months in which to complete its acquisition.

When a notice of acquisition is published in the *Government Gazette*, the interest in the land described in the notice frees the authority of all mortgages, encumbrances, licences and charges. Public utility easement rights are preserved unless specifically acquired. This means that, from the date of publication, the acquiring authority owns the land, even if compensation has not by then been assessed or paid.

A copy of the notice of acquisition must also be published in the prescribed form in a newspaper generally circulating in the area in which the land is situated (s. 23).

Division 5 deals with entry into possession of land. Where an interest in land is vested in the Authority pursuant to the Act, the Authority must diligently endeavour to obtain agreement with the owner or occupier regarding the terms upon which it will enter into possession (s. 26). Generally, the authority cannot take possession of land used as a principal place of residence or business until three months after the date of acquisition. However, if a person refuses to deliver possession of land, the authority may apply to the Sherriff for a warrant of possession (s. 28, prescribed by Form 9).

Overview of the Land Compensation Process

A fundamental equitable principle of the Act is that every person who had an interest in land that is compulsorily acquired has a claim for compensation for that interest (s. 30).

After the notice has been published in the *Government Gazette*, the Authority must make an offer in writing to all people it is aware are entitled to compensation. An initial offer of compensation must be made within fourteen days of publishing a notice of acquisition. The offer must set out the amount the authority has assessed as a fair and reasonable estimate of the amount of compensation payable to the claimant (s. 31). Such an offer must be accompanied by a copy of the certificate of valuation, a statement explaining any difference between the offer and the valuation, and a statement in the prescribed form setting out the rights of the claimant (Form 10).

A claimant is to respond with a notice of acceptance or a notice of claim, on the prescribed forms, within three months of the offer being served (Form 11). If the claimant fails to serve a notice on the authority, the claim becomes a disputed claim and can be referred to the Land Valuation Division of the VCAT or the Supreme Court. If the amount of compensation offered is not disputed by the claimant, the amount offered is binding on the authority, unless the authority can demonstrate that information contained in the offer, and relied upon by the authority, was incorrect.

The authority must reply to a notice of claim within three months of receiving it. This is done through a statement in writing (Form 13). The authority may admit a claim in whole or part, propose to vary a previous offer, or reject the claim and repeat its offer.

If the authority fails to reply to the notice of claim within three months, it is deemed to have rejected the claim and to have repeated its offer. The claim then becomes a disputed claim. If the authority offers to increase or vary its first offer, the claimant must accept or reject the revised offer within two months of receiving it. If the authority rejects the claim by the claimant, the claim becomes a disputed claim.

Either the acquiring authority or claimant may apply to VCAT for determination of a disputed claim, or refer a disputed claim to the Supreme Court of Victoria for determination (Form 16).

Attachment C

SPECIAL ACTS FOR THE PURPOSES OF THE LAND ACQUISITION AND COMPENSATION ACT 1986

What is the special Act?	Who is the acquiring authority?	Who is the relevant person/ corporation/Authority?	What is the purpose for which they may acquire land?
Border Railways Act 1922: s. 12 Note: refers to Lands Compensations Acts	The Board of Land and Works	Public Transport Corporation	Construction of any railways, bridges or works authorised by the Act or Agreement
Casino Control Act 1991: s. 128J	The Minister	The Minister	For purposes of the Melbourne Casino project or access to or within the Melbourne Casino area
Cemeteries and Crematoria Act 2003: s. 32	The Minister	The Minister	For cemeteries and crematoria purposes
Commonwealth Games Arrangements Act 2001: s. 33	The Secretary	The Department Head of the Department for Victorian Communities	For a Commonwealth Games project (e.g. developing facilities, Games Village project, etc)
Conservation, Forests and Lands Act 1987: s. 14	The Secretary	The Department Head of the Department of Sustainability and Environment	For the purposes of the Act (conservation and productive use of the State's lands, water, flora and fauna)
Country Fire Authority Act 1958: s. 21B	The Country Fire Authority	The Country Fire Authority	Purposes of prevention and suppression of fires (e.g. acquiring fire stations)
Crown Land (Reserves Act) 1978: s. 5	The Minister	The Minister	Reserving land for preservation and conservation purposes, public parks, gardens and ornamental plantations, and camping areas

What is the special Act?	Who is the acquiring authority?	Who is the relevant person/ corporation/Authority?	What is the purpose for which they may acquire land?
Deakin University Act 1974 : s. 33 [to be replaced by *Deakin University Act 2009*: s. 36]	The Minister	The Council (the governing body of the University) [to be replaced by the University in the new Act]	For purposes of or in connection with the University. Note: Minister can only acquire land after consulting with the Council [consultation required with the University in the new Act]
Docklands Act 1991: s. 19	The Docklands Authority	The Victorian Urban Development Authority	For the purposes of the Act (e.g. development of docklands area). Note: can only compulsorily acquire land with the Minister's approval
EastLink Project Act 2004: sections 35 and 47	Southern and Eastern Integrated Transport Authority	Southern and Eastern Integrated Transport Authority	For the purposes of the EastLink project or purposes connected with the project
Education and Training Reform Act 2006: s. 5.2.3	The Minister	The Minister	Purposes of the Act (e.g. operating schools)
Electricity Industry Act 2000: sections 86 and 87	Section 86: a corporation to which the section applies Section 87: the Minister	Section 86: a distribution company, a transmission company or a generation company Section 87: a generation company or an associated entity	Section 86: erecting or laying power lines and maintaining power lines Section 87: generating electricity in the LaTrobe area
Financial Management Act 1994: s. 54N	The Minister	The Minister	Construction, completion or extension of any public works or for related purposes

What is the special Act?	Who is the acquiring authority?	Who is the relevant person/ corporation/Authority?	What is the purpose for which they may acquire land?
Forests Act 1958: s. 38	The Minister	The Minister	Conservation and protection of State forests, preventing erosion, among other related purposes
Gas Industry Act 2001: sections 142 and 143 (easements)	Section 142: The Minister Section 143: a corporation to which the section applies	Sections 142 and 143: a gas transmission company or gas distribution company	Construction or operation of a transmission pipeline or distribution pipeline
Health Services Act 1988: s. 67	The Minister	The Minister	Purposes of a registered funded agency (e.g. public hospital, public health service, residential care service, among others). Note: can only compulsorily acquire land after inquiry and report by the Secretary to the Department of Human Services
Heritage Act 1995: s. 142	The Heritage Council	The Heritage Council	Protection and conservation of places listed on the Victorian Heritage Register. Note: can only compulsorily acquire land with the consent of the Minister
Housing Act 1983: clause 1 of Schedule 2 (see also s. 14)	The Director	The Director of Housing	Provision of public housing

What is the special Act?	Who is the acquiring authority?	Who is the relevant person/ corporation/Authority?	What is the purpose for which they may acquire land?
Land Act 1958: sections 103, 133E and 209	Sections 103 and 209: the Minister Section 133E: person granting the lease	Sections 103 and 209: the Minister Section 133E: person granting the lease	Section 103: draining swamps (including construction of canals, ditches, drains, channels, waterways, sewers, embankments and dams, among other things) Section 133E: deals only with compensation under the LAC Act Section 209: providing access to Crown land
La Trobe University Act 1964: s. 36 [to be replaced by *La Trobe University Act 2009*: s. 36]	The Minister	The Council (the governing body of the University) [to be replaced by the University in the new Act]	For purposes of or in connection with the University. Note: Minister can only acquire land after consulting with the Council [consultation required with the University in the new Act]
Local Government Act 1989: s. 187	The Council	A municipal council	Performance of its functions (e.g. providing facilities for the local community and providing and maintaining local community infrastructure)
Major Transport Projects Facilitation Act 2009: sections 113 and 127	Sections 113 and 127: the project authority	An appointed project proponent or an entity appointed as the project authority by the Project Minister	An approved project or collateral purpose relating to the approved project (i.e. for transport projects) Section 127 relates to native title rights and interests

What is the special Act?	Who is the acquiring authority?	Who is the relevant person/ corporation/Authority?	What is the purpose for which they may acquire land?
Marine Act 1988: s. 66A	The Minister	Land required by the Director of Marine Safety, a port management body, a local port manager or a waterway manager	Provision of a navigation aid for State waters
Melbourne University Act 1958: s. 41A [to be replaced by the *University of Melbourne Act 2009*: s. 36]	The Minister	The Council (the governing body of the University) [to be replaced by the University in the new Act]	For purposes of or in connection with the University Note: Minister can only acquire land after consulting with the Council [consultation required with the University in the new Act]
Metropolitan Fire Brigades Act 1958: s. 24A	Metropolitan Fire and Emergency Services Board	Metropolitan Fire and Emergency Services Board	For purposes of the Act (fire prevention and suppression services and emergency prevention and response services)
Monash University Act 1958: s. 35 [to be replaced by the *Monash University Act 2009*: s. 36]	The Minister	The Council (the governing body of the University) [to be replaced by the University in the new Act]	For purposes of or in connection with the University Note: Minister can only acquire land after consulting with the Council [consultation required with the University in the new Act]
Murray-Darling Basin Act 1993: s. 17	The relevant water authority	The body declared by the Minister by notice published in the Government Gazette to be the relevant water authority for the purposes of the Act	Construction, maintenance, operation, protection and control of the works set out in the Murray-Darling Basin Agreement

What is the special Act?	Who is the acquiring authority?	Who is the relevant person/ corporation/Authority?	What is the purpose for which they may acquire land?
Pipelines Act 2005: s. 96	The licensee	A person who is the holder of a licence issued under the Act	Construction and operation of a pipeline. Note: can only compulsorily acquire an easement if the Minister has consented to the acquisition
Planning and Environment Act 1987: sections 172 and 201I	Section 172: the Minister or the responsible authority Section 201I: the Secretary	Section 172: the Minister or the municipal council (or someone specified as the responsible authority for a planning scheme) Section 201I: the Department Head of the Department of Innovation, Industry and Regional Development	Section 172: the use or development of an area in accordance with a planning scheme Section 201I: for purposes of a declared project (as declared by notice published in the Government Gazette)
Project Development and Construction Management Act 1994: s. 20	The responsible Minister or the facilitating agency (as the case requires)	The Minister or the public statutory authority corporation specified in the nomination order as the Minister/facilitating agency for that project	For the purposes of a nominated project (as declared by Order published in the Government Gazette)
Rail Corporations Act 1996: s. 13C	Rail Track	Victorian Rail Track (may trade as VicTrack)	Establishment, management and maintenance of railways, tramways, and rail and tram infrastructure. Note: can only compulsorily acquire land with the approval of the Minister

What is the special Act?	Who is the acquiring authority?	Who is the relevant person/ corporation/Authority?	What is the purpose for which they may acquire land?
River Entrance Docks Railway Construction Act 1970: s. 6. Note: refers to *Lands Compensation Act 1958*	The Minister of Public Works	The State Transport Authority	Construction of the railway works and conveniences authorised by the Act
Road Management Act 2004: clause 11 of Schedule 5 and clause 20 of Schedule 5A	Clause 11: a State road authority Clause 20: VicRoads	Clauses 11 and 20: VicRoads	Clause 11: road management purposes Note: can only compulsorily acquire land with the approval of the Minister Clause 20: relates to native title rights in the Redevelopment Project area for the purposes of the M1 Redevelopment Project
Royal Melbourne Institute of Technology Act 1992: s. 37	The Minister	The Council (the governing authority of the University)	For purposes of or in connection with the University. Note: Minister can only acquire land after consulting with the Council
Sale Station Relocation and Development Act 1981: s. 7	The State Transport Authority or the Council	The State Transport Authority or the Mayor, Councillors and Citizens of the City of Sale	Relocation and development of Sale railway station land

What is the special Act?	Who is the acquiring authority?	Who is the relevant person/ corporation/Authority?	What is the purpose for which they may acquire land?
Shell (Corio to Williamstown) Pipelines Act 1964: s. 8. Note: refers to *Lands Compensation Act 1958*	The Company	Shell Refining (Australia) Pty Ltd and any other related company	Easements over land required for the construction, operation, inspection, maintenance, and repair of the pipeline
State Electricity Commission Act 1958: s. 103	The Commission	The State Electricity Commission of Victoria	Land required for or in connection with its functions Note: can only compulsorily acquire land with the approval of Governor in Council

Attachment D

COMPARISON OF AUSTRALIA JURISDICTIONS: REGULATION 6

Jurisdiction	Does the jurisdiction have a similar provision to Regulation 6? Does the jurisdiction otherwise grant and/or take away the right to object to acquisition?
NSW – *Land Acquisition (Just Terms Compensation) Act 1991*	Under the Act, a State authority cannot compulsorily acquire land without giving the landowners written notice of its intention to acquire the land: s11. However, there is no specific process by which a landowner or other interested party may object to the acquisition of land by the authority.
QLD – *Acquisition of Land Act 1967; Acquisition of Land Regulation 2003*	Under the Act, the constructing (i.e. acquiring) authority must serve a notice of intention to resume on the relevant parties (i.e. parties who are entitled to claim compensation under the Act and mortgagees): s7(1). The parties then have a right to object to the taking of the land: s7(3)(d). The parties are also entitled to be heard in relation to their objection provided they state in their objection that they desire to be so heard: s8(1). The constructing authority shall consider the grounds of objection to the taking of land: s8(2). After considering the objections, the constructing authority may discontinue or amend the notice of intention to resume (s8(2A)) or may determine that the land is required for the relevant purpose and then apply to the Minister for the land to be taken: s9(2). There is nothing in the Act or the Regulations which removes this right to object to the acquisition of land in circumstances similar to those in Regulation 6 in Victoria.
SA – *Land Acquisition Act 1969; Land Acquisition Regulations 2004*	Once a notice of intention to acquire the land is given (as required under s10 of the Act), a person with an interest in the land has a right to object and to request that the authority not proceed with the acquisition: s12(1). The authority must consider this request: s12(4). If the authority refuses this request, the person who made the request may apply to the Minister for a review of the decision: s12A(1). On completion of the review, the Minister may confirm, vary or reverse the original decision to acquire the land: s12A(8). The decision made on a review is not itself subject to review by a court or tribunal: s12A(9). There are also additional rights to object under the Act in relation to the acquisition of certain native title rights: see s12B. There is nothing in the Act or Regulations which removes this right in a similar fashion to Regulation 6 in Victoria.

WA – *Land Administration Act 1997*; *Land Administration Regulations 1998*; *Land Administration (Land Management) Regulations 2006*	Under s170(1), the Minister must issue a notice of intention before taking any interest in land without agreement. An exception applies if the proposed taking is for the purpose of a railway authorised by a special Act, in which case a notice need not be issued: s170(2). Once a notice of intention has been issued, a person with an interest in the relevant land can then serve on the Minister a written objection to the taking of the land: s175(1). The Minister must consider the objection (s175(4)) and may then confirm, cancel or amend the original notice of intention: s175(5). Apart from the abovementioned exception for railways, there is nothing in the Act or Regulations which removes the right to object to acquisition by an interested party.
NT – *Lands Acquisition Act; Lands Acquisition Regulations*	Before compulsorily acquiring land, the Minister must serve a notice of proposal on any person with an interest in the land: s32(1) and s42A(1). Depending on the type of land in question, where this notice has been served the interested party can either lodge an objection to the acquisition with the Minister under s34(1) or lodge comments on the acquisition with the Minister under s42C(1). Where comments are lodged on the acquisition, the Minister cannot compulsorily acquire the land unless he/she has taken into account these comments: s42D. If an objection is lodged, the Minister must invite that party to consult with him/her over a period of 3 or 4 months and either party may refer the matter to mediation: ss36-37. The Minister and/or the interested party may also apply to the Tribunal to have the objection heard: s38. If the Minister has complied with these pre-acquisition procedures, he/she may compulsorily acquire the land. An exception to this requirement exists such that where the Minister certifies that it is not practicable to delay acquisition due to the urgency of the matter or other exceptional circumstances, he/she is not bound by the pre-acquisition procedures and objection process: s44. However, where the matter is referred to the Tribunal, the Minister cannot compulsorily acquire the land until receiving and considering the Tribunal's recommendation: s43(2). In the case of the acquisition of native title interests, the Minister must comply with the Tribunal's recommendation unless the Minister has consulted with the Minister for Indigenous Affairs, taken that consultation into account, and it is in the interests of the Territory to not comply with the recommendation: s45.

	Apart from these limited circumstances, there is nothing in the Act or Regulations which removes the right to object to acquisition. There is no equivalent to Regulation 6 in Victoria.
ACT – *Lands Acquisition Act 1994; Lands Acquisition Regulations 1999*	Section 19 of the Act sets out the procedure for the Executive to make a pre-acquisition declaration. However, the making of a pre-acquisition declaration is not required where the Executive certifies that it is satisfied that there is an urgent necessity for the acquisition or that the making of a pre-acquisition declaration would be prejudicial to the ACT: s17(2) and s21(1). In these cases, the interest in land may be acquired without preparing a pre-acquisition declaration: s21(3). Where a pre-acquisition declaration is made, a person affected by the declaration may apply for reconsideration of the declaration by the Executive: s23(1). The Executive must reconsider the matter and can then confirm, revoke or vary the original declaration: s24(1). There is no equivalent to Regulation 6 in Victoria in the Act or Regulations.
CTH – *Lands Acquisition Act 1989*; *Lands Acquisition Regulations 1989*	Section 22 of the Act sets out the procedure for the Minister to make a pre-acquisition declaration. However, the making of a pre-acquisition declaration is not required where the Minister certifies that there is an urgent necessity for the acquisition or where making a pre-acquisition declaration would be prejudicial to the security, defence or international relations of Australia: see s24(1) and s20(2). Once a pre-acquisition declaration has been made, a person with an interest in the land may apply to the Minister for a reconsideration of the declaration: s26(1). The Minister must reconsider the decision to make the declaration and may confirm, revoke or vary the original declaration: s27(1). If the declaration is confirmed by the Minister, the person can then apply to the AAT for review of the declaration: s28(1). This does not apply to 'unreviewable pre-acquisition declarations' (i.e. where there is a statement by the Minister that the declaration is essential for the implementation of policy and is hence not subject to review by the AAT): see s28(2) and s22(6). Where the AAT recommends that the Minister take particular action, the Minister must consider the recommendations and can then accept or reject the recommendations: s33(1).

	The Regulations also specify that the Act (which would include the review procedure set out above) does not apply in relation to acquisitions in some very limited circumstances. For example, the Act does not apply to an acquisition from the Defence Housing Authority of an interest in land, other than a freehold interest, for the purpose of providing housing to meet the operational needs of the Defence Force. See more detail in clauses 4, 4A, 4B, and 4C. There is no equivalent in the Act or Regulations to Regulation 6 in the Victorian context.

Attachment E

INDICATION COST OF COMPLETING FORMS CONTAINED IN THE PROPOSED REGULATIONS

Proposed Land Acquisition and Compensation Regulations 2010					
Indicative cost of completing forms					
Forms	*Description*	*Tariff ($)* [1]	*Time (hrs)* [2]	*Fequency* [3]	*Administrative Cost ($)*
Form 1	Notice of intention to acquire	81.66	3.00	1,000	244,980
Form 2	Statement that authority does not intend to acquire interest by compulsory process	81.66	0.17	500	6,805
Form 3	Notice to require authority to make determination	34.50	1.00	5	173
Form 4	Statement to accompany notice of intention to acquire interest in land	81.66	0.25	1,000	20,415
Form 5	Cancellation or partial cancellation of notice of intention to acquire	81.66	1.00	100	8,166
Form 6	Statement of cancellation or partial cancellation of notice of intention to acquire	81.66	0.17	50	681
Form 7	Notice of acquisition: compulsory acquisition of interest in land	81.66	2.00	1,000	163,320
Form 8	Statement to Accompany Notice of Acquisition	81.66	0.25	1,000	20,415
Form 9	Warrant for possession	81.66	0.50	20	817
Form 10	Statement to accompany initial offer of compensation	81.66	0.25	1,000	20,415
Form 11	Response to offer	34.50	5.00	1,000	172,500
Form 12	Notice of claim: (where no interest in land is acquired)	34.50	5.00	50	8,625
Form 13	Statement to Accompany Reply by Authority to Claim	81.66	0.25	200	4,083
Form 14	Statement to Accompany Notice of Intention to Enter Land	81.66	0.25	25	510
Form 15	Statement under Section 75(3) of Intention to Occupy Land Temporarily	81.66	0.25	25	510
Form 16	Referral of disputed claim	81.66	2.00	200	32,664
	Postage *via* registered mail	3.40		7,175	24,395
			Annual Nominal Cost		***729,473***
			Present Value - 10 year period		**6,066,742**

Notes:

1. (a) The cost of a landowner's time used to calculate 'administrative costs' is $34.50 per hour. The cost of an acquiring authority's time is $81.66 per hour, which is based on the VPS5 hourly casual rate multiplied by 1.75 provide for labour and corporate overheads. These rates are based on the methodology contained in the Methodology and Value for Staff Time in BIA/RIS Analysis.
   (b) Australia Post pre-paid registered letter (130mm x 240mm) is $3.40
2. Desk top exercise (with in input from VicRoads)
3. Estimate based on discussions with the Victorian Land Monitor and VicRoads (these figures are indicative and presented for illustrative purposes only).
4. Annual figure discounted over a 10 year period at the rate of 3.5 per cent, which is the rate published in the Victorian Guide to Regulation (Section C.3, p. C-9). Excel calculation: =PV(.035,10,665522,0,0)

Attachment F

ASSUMPTIONS

1. As a proxy for valuing an hour of a person's time, the following formula is given:

$HR_x = AE_x/AW_x \times AH_x$, where

AE_x = average weekly earnings multiplied by 52;

AW_x = number of weeks worked per annum (44 weeks);

AHx = average weekly hours for full time workers (41 hours).

See *Victorian Guide to Regulation* (*VGR*) (Section C.2.1 Valuing staff time, p. C-5). Labour on-costs and overhead costs are excluded from the calculation for patients, partners and donors. This provides an hourly value of a person's time of **$34.50** (i.e. $1,197.50 divided by (44 x 41)). ABS Cat 6302.0 – Average Weekly Earnings, Australia, May 2009, Canberra, Full-time adult ordinary time earnings (private and public sectors) is $1,197.50 per week.

The hourly cost of time for an acquiring authority is estimated to be **$81.66** per hour. This is based on the VPS Casual Hourly Rates for a VPRG5 officer (1 February 2010) which is $46.66 multiplied by a factor 1.75 to allow for labour and corporate on-costs (*VGR*, Section C.2.1 Valuing staff time, p. C-5)

2. The discount rate used in this RIS is **3.5** per cent. In doing so, the RIS adopts the rate published in the *Victorian Guide to Regulation* (Section C.3, p. C-9).

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