

**State of Australian Cities (SOAC)
National Conference 2009
University of Western Australia, Perth
24-27 November 2009**

**Privatizing the 'Public Purpose Rule'
in compulsory acquisition**

Submitted for refereeing

Privatizing the ‘Public Purpose Rule’ in compulsory acquisition

Vince Mangioni

Senior Lecturer Property Economics

Member of the Asia-Pacific Centre for Complex Real Property Rights

University of Technology, Sydney

&

PhD Student

Australian School of Taxation (Atax)

University of New South Wales

Vincent.mangioni@uts.edu.au

Ph: 02 9514-8900

PO Box 123

BROADWAY NSW 2007

Keywords: Public Purpose, Compulsory Acquisition, Economic Development, Value, Taxation

Word Count: 5053 words (excluding references)

Abstract

This paper is a critique of the privatization of the 'Public Purpose Rule' in the compulsory acquisition of land in Australia and United States. Traditionally the domain of government for the provision of public infrastructure in serving the needs of the community, 'public purpose' provisions in compulsory acquisition legislation remain elusive and non-descript. In the absence of explicit definitions, this determination has been left to the courts.

In demonstrating moves by Local Government to privatize and commercialize the 'Public Purpose Rule', two landmark cases have been used to juxtapose the privatization of this rule through the use of compulsory acquisition for 'economic development' purposes in the United States and Australia. The aim of this paper through the study of these cases is to match the privatization of compulsory acquisition with requisite compensation for dispossessed parties, in concert with funding local government, in achieving acquisition by negotiation over compulsory acquisition.

Introduction

Urbanization impacts on society in many ways and further results in the intensification of land uses as cities expand horizontally and vertically. The full impact of urbanization is defined by Westman (2007 p.87);

“Urbanisation is one of the most powerful irreversible forces of the world.” ...cities make countries rich. Countries that are highly urbanized have higher incomes, more stable economies, stronger institutions.”

Australia is host to two of the world's one hundred most populated cities, namely Sydney & Melbourne, (United Nations 2007). Rosenberg (2005) highlights the density dilemma facing government as 90 percent of the earth's population live on approximately 10 percent of the land mass, with many cities having reached geographic limitations such as water, mountains and national parks. This is further accentuated in Australia where Australian Bureau of Statistics (2008) highlights that 64 percent of Australia's population live within its six major cities. As urbanization continues, the generation and regeneration of Australia's cities is a rapacious process which must provide for both its existing and anticipated populations.

The new frontier for local government in their role as planning and development authority appears to be the regeneration of existing suburbs or parts thereof. This is in contrast to their former task of the planning of initial uses of land. To this end, regeneration poses an additional layer of complexity and responsibility in the inevitable dispossession of property owners in this process. A further point for consideration is the contention that economic development is in fact is a byproduct of urban renewal. This is discussed by Black (2001) who questions the merits of 'economic development' assertions in the field of transport investment. In citing (Wilson 1966) Black (2001) highlights that negative, neutral or positive impacts are all possible outcomes resulting from the activity of economic development in transport investment.

In the evolution of the uses to which acquired land is put internationally, and the proposed attempted uses to which it may be put in Australia, two considerations need addressing. Firstly, a clear mapping strategy defining the positive impacts of any proposed renewal project for all parties including the dispossessed. The second point arising from the first, is the re-visitation of the principles of compensation is crucial. This is specifically the case where the land acquired, is totally or in part used for the occupation of future inhabitants and the impact of existing inhabitants of land.

Property rights and acquisition provisions

More than just an entitlement and right, property is a diverse bundle of rights and also responsibilities, upon which focus on those responsibilities and caveats may broadly define the understanding and meaning of freehold title. Allen (2000) discusses the importance of the State to be able to compulsorily acquire property, tax land and regulate its use. To this end, coexisting with the perception of absolutism in fee simple is the statutory reservation of government. Figure 1, highlights the extent and limitations of fee simple where the provisions of compulsory purchase are exercised by Government.

(Figure 1 here)

It is not until acquisition by compulsion applies, do property owners fully understand the context and extent of freehold title. Article 17 of the Universal Declaration of Human Rights states: “Everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property” (United Nations 1948). Of importance in Article 17 are the words **own & deprived**, with particular focus on the circumstances or purposes on which property may be taken and the amount of compensation payable.

Prentice (2002) highlights the most common question asked by dispossessed parties where land is acquired, which relates to the legitimacy of the acquisition itself. Once the purpose has been determined, the following question relates to compensation quantum. The results of a survey of dispossessed parties, demonstrates the contention in relating to the quantum of compensation in which 26 dispossessed parties were surveyed in New South Wales. On the question relating to power’s of Government to acquire land by compulsory process, 78 percent of respondents were opposed to these powers.

Survey summary to questions expressed as a Yes or No percentage

Question	Yes	No	Unsure
1) Did you object to the amount of compensation that was initially offered by the acquiring authority?	61	39	n/a
2) Question to the 61 percent who objected in Q 1) above: Did your compensation amount increase?	36	64	n/a
3) In your opinion, do you think that the Commonwealth or State Government should have the power to acquire land?	22	78	nil

Source: Prentice 2002

The parties surveyed were single residential property owners, in which the property was totally acquired for road building purposes and the existing use of their property constituted the highest and best use of the land. In summary most parties dispossessed were of the view that government should not have unfettered right to acquire land for a public purpose. Of particular importance on the question of compensation amount to the parties who objected to the initial quantum of compensation, was the success in obtaining an increase in compensation quantum.

On the first issue of the right to acquire land for a public purpose, a review of the given definitions of a public purpose is the most apt way of contextualizing the extent and potential application of the compulsory acquisition of land. The definition of a 'public purpose' and provisions in the various State and Local Government legislation of Australia are varied but are largely non-descript in providing for the explicit or variety of purposes which may fit the intended application of a public purpose. A summary of these provisions are set out in Figure 2. In many instances Local Government in Australia is empowered to acquire land under State based compulsory acquisition laws, of which Local Government legislation refers directly to the relevant State legislation. In qualifying the provisions of Western Australia and particularly Queensland's legislation, a 'building' without reference to use is defined to be a purpose.

(Figure 2 here)

Whilst providing latitude, the interpretation and application of what constitutes a public purpose has not gone unchallenged. In the case *Clunes-Ross v Commonwealth* (1984) 155 CLR 193, the owner of a major portion of land on the Cocos Islands, sold their land with exception of land around their residence to the Commonwealth of Australia. Following the sale, the Commonwealth attempted to acquire the land of the retained residence in which the owner challenged the public purpose of the acquisition. The defined public purpose in the attempted acquisition was stated to be "political, social and economic advancement". Brown (1996) highlights the purpose of the acquisition was to remove the owner from the island altogether, in which the court ruled was not a public purpose. In an earlier case *Caldwell v Rural Bank of New South Wales* (1925) 53 SR (NSW) 415, offices to be acquired and used by a government organization for a public service only, was determined not to be a public purpose purely by virtue of the property being held and used by State Government.

The progress of ‘Economic Development’ as a public purpose

Economic development as a purpose in the acquisition of land has evolved in the United States since the countries post WWII rapid economic expansion. The first noted case involving “economic development” occurred in 1954, *Berman v. Parker* 348 U.S. 26 (1954) where Turnbull & Salvino (2006) notes eminent domain being used in a slum clearing program in Washington D.C., in which land acquired was sold onto private developers for redevelopment. Again in 1981, *Poletown Neighbourhood Council v. City of Detroit* 304 N.W. 2d 455 (Mich 1981) the city paid for land using eminent domain which was on-sold to General Motors for a new factory. The court ruling in favour of the compulsory taking on the grounds that it would “alleviate unemployment and revitalize the economic base of the community.” The following and most recent case solidifies the expansion of the public purpose rule in the United States, which has ramifications for property owners in Australia.

Whilst an evolving purpose in the United States, Economic Development has not gained the same level of support and implementation in Australia. Despite attempts to apply this purpose in New South Wales, the Local Government Act of NSW has been tested in the courts and found to prohibit economic development as a purpose where local Government itself is not the developer. Two cases, each in Australia and the United States have been reviewed to show the disparity in the courts views as well as the legislative constraints that apply in Australia to economic development as a public purpose. A summary and outcome of each case follows.

United States - Kelo v City of New London 125 S. Ct. 2655 (2005)

Summary of facts

Kelo and others resided in a rundown part of the City of New London, Connecticut in which the Local Government elected to acquire the subject and surrounding land and provide this land to a developer for the purposes of urban renewal and redevelopment of that quarter of the City. Kelo choose not to move and resided in her property for four years after the order declaring the acquisition was issued. In settling the matter, the City of New London agreed to move Kelo’s house to an alternate parcel of land and further pay compensation to settle the matter. Whilst it may appear that Kelo’s plight was compensation, which whilst undisclosed was not a matter of monetary compensation, but a matter of being placed in the same position (in her home) in an alternate location, which may be more or less than the value of the location she was dispossessed of.

Justification and dissent for compulsory purchase & ruling

In the Kelo case the court was faced with an absence of specific legislation defining a public purpose in acquisition statutes. The case resulted in a broadening of the uses being established for eminent domain or compulsory acquisition through the result, which in essence supported eminent domain for the transfer of acquired land to private parties for urban renewal and job stimulation. The public purpose doctrine is described by Miceli (2004:218-219) as;

“a narrow economic rationale for eminent domain as a way of forestalling costly holdout problems that plague land assembly for large scale urban redevelopment projects, whether private or governmental. In this view, efficiency is served by any process that gets the land into the hands of parties who value it most highly.”

In deliberating on the Kelo case, the court decided in favour 5-4 for eminent domain for redevelopment purposes. An important précis of the decision follows;

The majority opinion, by Justice Stevens, found that it was appropriate to defer to the city's decision that the development plan had a public purpose, saying that "the city has carefully formulated a development plan that it believes will provide appreciable benefits to the community, including, but not limited to, new jobs and increased tax revenue." Justice Kennedy's concurring opinion observed that in this particular case the development plan was not "of primary benefit to . . . the developer" and that if that was the case the plan might have been impermissible. In the dissent, Justice Sandra Day O'Connor argued that this decision would allow the rich to benefit at the expense of the poor, asserting that "Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms." She argued that the decision eliminates "any distinction between private and public use of property—and thereby effectively delete[s] the words 'for public use' from the Takings Clause of the Fifth Amendment".

Australia – R&R Fazzolari Pty Ltd v Parramatta City Council; Mac's Pty Limited v Parramatta City Council [2009] HCA 12

Summary of facts

In 2007 the Council sent proposed acquisition notices to the owners of the land located in the town centre of Parramatta. The land was required as part of a redevelopment referred to

as 'Civic Place' The redevelopment was to be carried out under a Private Public Partnership (PPP). "Under that agreement the council would transfer certain of the acquired land to Grocon and receive substantial financial payments and other consideration from Grocon." In the first instance the Land and Environment Court ruled that the proposed acquisition was unlawful on the grounds that the purpose of the acquisition was the re-sale by council to the developer. Council appealed the matter to the Court of Appeal of New South Wales, which unanimously set aside the declarations made the lower court. In conclusion, the High Court of Australia found that the primary purpose of the acquisition was for re-sale and reinstated the decision of the Land & Environment Court NSW finding that the proposed acquisition was unlawful.

Justification and dissention for compulsory purchase & ruling

The High Court have considered in detail the agreement between Council and the developer and found that the primary purpose of the taking was for the on-sale of the land to a developer.

Local Government Act Section 188

"A council may not acquire land under this Part by compulsory process without the approval of the owner of the land if it is being acquired for the purposes of re-sale."

(a) the land forms part of, or adjoins or lies in the vicinity of, other land acquired at the same time under this Part for a purpose other than the purpose of re-sale,

In response to this sub-section 2 (a) of the Local Government Act, the High Court confirmed the position of the primary judge that this sub-section it did not apply, as the adjoining land acquired by council itself was itself acquired for the purposes re-sale, which was acquired in November 2004 and December 2006.

The High Court ordered that each appeal to the court should be allowed with costs. Further, cost should also be awarded in favour of the appellants for the courts below the High Court viz NSW Court of Appeal and NSW Land & Environment Court.

A political juxtaposition in privatizing the Public Purpose Rule

Following on from the United States & Australian cases, United States legislators have sought to enact legislation prohibiting compulsory acquisition for economic development, whilst in contrast, Australia has taken steps to adopt legislation which allows land to be acquired for economic development.

In April 2008, the NSW Government released the Draft Environmental Planning and Assessment Amendment Bill 2008 in which under section 9A (3) **Acquisition of land in connection with urban renewal proposal or urban land releases**, which states:

“The corporation or a designated authority authorized by the Minister may acquire land that forms part of, or adjoins or lies in the vicinity of, land subject to an urban renewal proposal or urban land release by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.”

In summary, this provision may be seen as an attempt to privatizes the acquisition process. There is no definition of what urban renewal constitutes in this Bill and in effect the provision seeks to solidify the unqualified extent of the public purpose rule to be determined at the discretion of a corporation under the auspices of government. This provision has been best qualified as follows;

“A mans home may no longer be his castle, but it could well end up being someone else’s castle,” (Whealy cited in Grennan 2008:1)

This provision of the Draft Environmental Planning and Assessment Amendment Bill 2008 was defeated in the NSW Parliament in late 2008, however subsequent to the High Court Ruling in the Fazzolari case, Peatmen (2009) highlights new provisions before Parliament giving council power to acquire land compulsorily and transfer it to developers for re-sale for a profit.

In contrast to Australia where the High Court has ruled against the compulsory acquisition of land for re-sale and economic development, in the United States where the court has ruled in favour of economic development, State governments are legislating against local government using economic development as a purpose for compulsory acquisition. Epstein (2008) discusses the impact of the Kelo decision in the United States and the extent taken to ensure economic development is removed as a public purpose;

“With Kelo, private property made a comeback on both sides of the political spectrum. Nationwide outrage on the political left and right followed in its wake. As of early 2007, thirty-four states had adopted constitutional or statutory reforms that sought to prohibit or limit state condemnation done to advance economic development. (Pg. 3)

It is clear that a divide exists in both Australia and the United States in the use of compulsory purchase of land and the impact takings have on these parties involved. In other

jurisdictions, Azula (2009) discusses earlier remedies assigned by the courts in compensation to dispossessed parties in Columbia where the courts whilst recognizing eminent domain, have awarded excessive compensation to dispossessed parties for land acquired for infrastructure purposes. This was addressed in 1989, with the passing of the Urban Reform Act, which defined property as a social function among other factors. With this Reform Act came the important aspect of compensation and how it was to be assessed. This is discussed by Azula (2009 p. 188) as follows;

“Obviously, as a constitution text, it cannot go into the complexities of valuation techniques. But at the same time it does not surrender to the only apparently easy solution of market value. Instead it gives administrators and judges the difficult task of fixing the compensation, taking into account the interests of the community, as well as those of the affected party.”

Of particular note under section 3(1)(e), of the Land Acquisition (Just Terms Compensation) Act 1991, Objects of the Act, is the objective “to encourage the acquisition of land by agreement instead of compulsory process.” In order to fulfill this objective, a framework which extends beyond the existing heads of compensation is needed with particular reference to market value. This will be addressed after the full impact and assessment of acquisition has been addressed.

Defining cost, benefit and taxation by stealth in acquisition

In assessing the purposes for which land may be acquired and the parties to those purposes, Figure 3 highlights the defining role of the council as acquiring authority and the developer as the provider of the development service. This Figure provides a summary of the narrow framework in which Fazzolari Pty Ltd and Mac Pty Ltd successfully challenged the legitimacy of the acquisition of their land. In essence, it was not the fact that the property was to be used for housing in conjunction with a public square, it was the fact that council itself was required to be the developer, or at least one of the developers of the project.

(Figure 3 here)

Void in the framework is the land owner, who is ultimately dispensed with under the provisions of compensation in which compensation is largely equal to market value of the property prior to its acquisition. To date much of the focus has centered on the purpose and acquiring parties, with little or no consideration of the circumstances of the dispossessed

party. In summary the dispossessed party may be an individual dispossessed of their home, or a business dispossessed of their place of business resulting in its extinguishment.

In considering the full gambit of impact to parties dispossessed of property, consideration must first be given to their circumstance and use of the land which is a core component in the assessment of value. In previous cases, this factor is either lost or has not been well defined and articulated. Running parallel with this issue is the lack of benchmarking by which these factors can be easily measured. In the main they are assigned to intangible factors which whilst given recognition in principle under various statutory heads of compensation such as special value, solatium and disturbance, are not fully quantifiable in the acquisition process.

For some home and business owners, the acquisition of their property means the extinguishment of their tenement in land or livelihood, of which the assessment of market value under traditional terms by reference to similar property transaction is not parity of value. This is primarily due to the amount of compensation offered being insufficient to re-establish the dispossessed parties freehold tenement or business. From a residential perspective, this may result in the extinguishment of a home.

This is of greatest concern for those with marginal value property or property at the lower end of the market in low socio economic locations where dispossessed parties are not in a financial position to increase levels of debt to accommodate the purchase and finance of alternate value premises. To these dispossessed parties, the value of their dispossession is the security of their environment in which they live and bears no relevance to the Spencer Principle of value, as the option of being a willing seller would not realistically become an option of choice. In these circumstances, it must be asked whether the objectives of compensation principles and statutes are exercised on 'Just Terms'.

In contrast to dispossessed parties in marginal value locations, the potential windfalls gains for some property owners are considerable. Curtin & Witten (2005) highlight the disparity between various States in the US on the views of windfall gains, giving's and takings of land compulsory acquired. In states and cities with structured planning policy in the United States such as Boston, the benefits of such projects as the 'Big Dig', which rerouted traffic around the city centre of Boston between 2000 and 2008 at a cost of \$22bn US provided significant windfall gains for many resident and business owners. To this end the utilitarian view is that in the scheme of progress, the gains and losses even out to the benefit of the greater community.

In contrast to the payment of compensation to parties affected by the taking of land, Curtin & Witten (2005) ask whether parties benefiting from public projects should in fact pay for the increase in property values brought about by such projects, this gives rise to the potential for a betterment tax. In the case of large community infrastructure projects there are winners, the parties who remain and who benefit from the project. This is in contrast to the parties dispossessed of their property who gain no benefit from such projects. The question asked is, should those who benefit be made to pay?

The exclusion of compensation to dispossessed parties on the basis of zoning alone where the purposes to which the acquired land constitutes highest and best use by reference to demand, is of specific concern for local government where they are both a party to the acquisition and gatekeeper of land uses. To date, the Pointe Gourde principle has been the artificial basis on which land has been assessed at its value in use. Brown (1996) summarizes Pointe Gourde as the principle of disallowing any added value to the acquired property resulting from the scheme underlying the acquisition.

In the case of economic development where specific property is earmarked for redevelopment to a higher and better use, and an underlying demand for that potential use exists, an issue arises. The definition of highest and best use of land by the Australian Property Institute (2007) is as follows;

The most probable use of a property which is physically possible, appropriately justified, legally permissible, financially feasible, and which result in the highest value of the property being valued. (p. 31)

In considering the highest and best use of land, there is no doubt that the underlying legality of use is vested in the approval by the consent authority, council. The issue of financial feasibility rests on the underlying value of the land, that is, there must be a demand for the use to which the land is to be put in order for a developer to strip out a factor over and above a straight builders profit margin. In the case of economic development, it is the developer's profit margin that is in dispute as was the issue in the Fazzolari and Mac case, of which that profit margin is being shared between council and the developer, without any reference to a split or share of the uplift in value with the land owner. Urban Taskforce (2009) have responded to this dilemma and have raised the recommendation that developers be permitted to deal direct with property owners in cases of economic development. This would then pave the way for the development of a local government betterment tax on the gains made from the uplift in value by reference to their rezoning of the property.

To omit any share of the uplift in value in meeting market demand for a higher and better use which is subject to the consent by the authority which stands to gain from its own actions, is stated by Warren (2009) to constitute a one hundred percent betterment tax on the land of the dispossessed party. There is no tax in Australia or internationally levied at one hundred percent. In the Fazzolari case it may well be argued from a taxation perspective that the windfall gain is taxed at one hundred percent by council acting as both consent authority and collector of a gain in part derived from its own actions.

The Planning Institute of Australia (2009) in considering the 'Net Community Benefit Test' (NCBT) raise the issue of equity and highlight that whilst some may have an overall benefit, others in the community may experience disbenefit. Its criticism of the adhoc application of the NCBT highlights the test has not been applied consistently. In many respects, the dispossessed party may well be one of the disbenefited parties as they are dispossessed of their property with no provision for either reinstatement under current compensation principles, or the provision for sharing in the highest and best use of their land. This results from the withholding of its rezoning by the party acquiring their property for re-sale at a profit.

A framework for change

Despite the theoretical arguments of Epstein (1985) supporting the sharing of the uplift in value of land acquired for a higher and better use, the concept of compensation tied to public benefit opens a challenge to the long standing principle of 'Pointe Gourde' which prohibits any uplift in value resulting from the scheme underlying the acquisition. This in part seeks to expand the 'Raja Principle'. The Raja Principle is applied where there are limited buyers due to the nature of the land i.e. swamp land. Emanating out of Raja, Brown (1996) highlights the emerging principle that in the formulation of value, the value of the land to the purchaser cannot be entirely disregarded;

"The value of land is not to be estimated at its value to the purchaser. The fact that a particular purchaser might desire the land more than others is not to be disregarded."
(p. 109)

In this regard Kalbro and Sjodin (1993) highlight the differences between a voluntary versus involuntary sale of the property and how compensation may be assessed incorporating the dispossessed. In Figure 4, it is shown through voluntary bargaining how part of the value of the property to the purchaser may be established and split between the buyer and seller. It is suggested by these authors that this concept should be included as part of negotiating the price in compulsory acquisition cases.

(Figure 4 here)

In the case of economic development, void in this model is the presence of the consent authority, namely council. There is no provision for sharing with all relevant parties in this model. Unlike the Australian case, there was no provision for sharing with the dispossessed party beyond the underdeveloped value of their property. In moving forward on this basis, a resolvable outcome would be for each party inclusive of local government and the dispossessed party to benefit from economic development.

Figure 5 is a framework which embraces a return for local government on behalf of its community by way of a betterment tax based on the difference in value of the land before and after its rezoning. The developer undertaking the development achieves a return on both construction cost and development value. The property owner is remunerated through an up lift in value achieved by rezoning. To this end a three way joint venture is adopted and economic development is achieved in accordance with the object of the Land Acquisition (Just Terms Compensation) Act 1991 “to achieve acquisition by negotiation over the compulsory acquisition process”.

(Figure 5 here)

Conclusion

The use of compulsory acquisition for the purpose of economic development adds an additional layer of complexity to an already complex and contentious function of local government in its endeavour to regenerate and stimulate existing urbanized locations. In its moves to joint venture with developers or to acquire land for direct sale to developers for economic development purposes, corresponding innovative commerciality in compensation principles are needed. The existing principles of compensation for land acquired for public infrastructure and community amenity are a mismatch for the evolving commercial pursuits of economic development.

If government in Australia is to avoid the responsive measures of legislators in the United States to ban the use of economic development as a public purpose in compulsory acquisition, and the discourse of the dispossessed, an adjustment in understanding their new commercial role is needed. The role of local government does not alter as an important provider for its community however, a revolution is needed in providing for those who it dispossesses in providing housing, business accommodation and public amenity for others. This revolution must include land acquisition policy within urban development and planning

policy and hence requires rigorous debate and consultation. The forum for further evolution of urban redevelopment and planning cannot be left to the black letter of land acquisition statutes, these are merely defined prescriptive steps in the process. Urban development and planning are the overarching principles which should inform acquisition statutes and drive the broader framework, what currently prevails is the antithesis of this.

Local Government is not a developer, but has an opportunity of establishing itself as both a facilitator of development and urban renewal in concert with its communities. In this process the dispossessed party is a key participant with the developer. The role of Government in funding itself is through taxation and the taxation system. A significant opportunity exists for Local Government in Australia to assert itself through the introduction of a betterment tax on economic development projects. A landowner and developer derived agreement facilitated by local government is a far more conducive way of achieving outcomes that benefit the broader community and avoid time consuming and costly court challenges.

References

- Australian Bureau of Statistics (2008). GEO 05 – Population of Australian Cities. Commonwealth of Australia
- Allen, T (2000). The Right to Property in Commonwealth Constitutions. Cambridge, Cambridge University Press.
- Australian Property Institute and Appraisal Institute (2007). THE VALUATION OF REAL ESTATE. Canberra, Australian Property Institute.
- Azula, A. (2009). The Use of Eminent Domain in Sao Paulo, Bogota and Mexico City. Property Rights and Land Policies. G. K. Ingram, & Hong, Y. Massachusetts, Lincoln Institute of Land Policy.
- Black, W.R. (2001) An unpopular essay on transportation, *Journal of Transport Geography* 9 (2001) pp.1-11.
- Brown, D. (1996). Land Acquisition. Chatswood, Lexis Nexis Butterworths.
- Curtin, D. J., & Witten, J.D., (2005). "Windfalls, wipeouts, givings and takings in dramatic redevelopment projects: Bargaining for better zoning on density, views and public access." Boston College Environmental Affairs Law Review **Boston College, School of Law**.
- Epstein, R. A. (1985). Takings: Private Property and the Power of Eminent Domain. Cambridge MA, Harvard University Press.
- Epstein, R. A. (2008). Supreme Neglect. Oxford, Oxford University Press.
- Grennan, H. (2008). The state can take and sell your home. Sydney Morning Herald. Sydney. **19-20 April 2008: 1**.
- Haddad, S. (2009). Response to Draft Centres Policy. Urban Taskforce.
- Kalbro, T., & Sjodin, E., (1993). "Ersattning vid fastighetsreglering (Compensation for Reallotment)." Stockholm.
- Miceli, T. J. (2004). The economics approach to law. Stanford, CA, Stanford University Press.
- Moore, M. (2009). Councils win bonus in forced land sales. Sydney Morning Herald. M. Peatman. Sydney. **18 May 2009**.
- NSW Parliament (2008). Draft Environmental Planning and Assessment Bill 2008. Sydney, NSW.
- Planning Institute of Australia (2009). Submission on Draft Centres Policy Planning for Retail and Commercial Development. N. D. Planning Institute Aust.
- Prentice, P. (2002). Are the obligations of the (Just Terms Compensation) Act 1991 being achieved?, University of Technology, Sydney.
- Rosenberg, M. T. (2005). Population Density - The Handy Geography Answer Book. Colorado, Visible Inc Press.
- Turnbull, G. K., & Salvino, R., (2006). Kelo v. Leviathan: The Public Purpose Doctrine and Government Size. Working Paper No. 06-02. Georgia State University.
- United Nations (1948). Univesral Declaration of Human Rights. General Assembly Resolution 217A(III). New York.
- United Nations (2007). World Urbanisation Prospect Report 2007. New York.

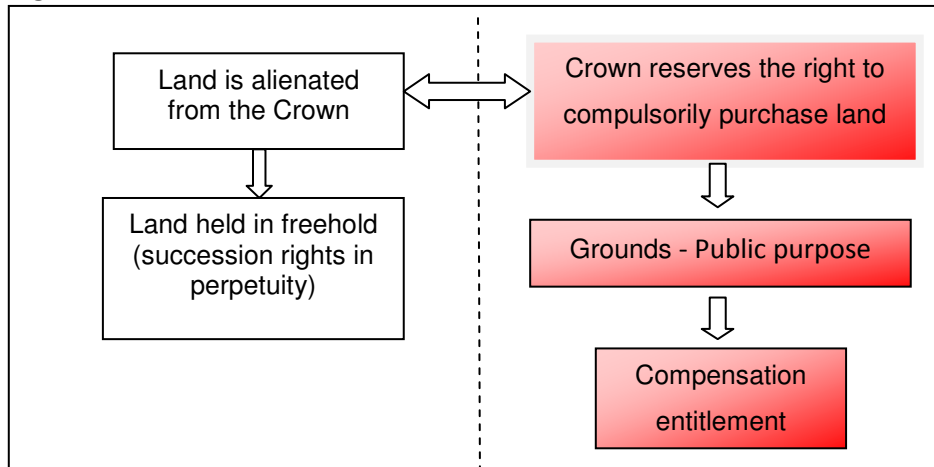
Urban Taskforce Australia (2009) Promoting economic growth and competition through the planning system. Sydney 3 July 2009

Warren, N. (2009). Betterment taxation in land acquisition. Vince Mangioni Interview. Sydney, Australian School of Taxation 9-6-09.

Westman, U. (2007). PRO POOR APPROACHES TO COMPENSATION AND EXPROPRIATION IN DEVELOPING COUNTRIES. Compensation and land acquisition takings FIG COMMISSION 9. Helsinki, Finland 6-8 Sept 2007.

Figures & Tables

Figure 1 – Title and tenure to land



Author

Figure 2: Legislative comparison of acquisition provisions

State	Legislation	Provisions
Western Australia	Local Government Act 1995 refers to Public Works Act 1902 s2 - Terms	Specific purposes stated
Queensland	Land Acquisition Act 1967 ss45 & 47	Specific purposes stated
New South Wales	Local Government Act 1993 s186	Non-specific purposes stated s188 prohibits acquisition and resale of land acquired
Victoria	Local Government Act 1989 s187	Non-specific purposes stated
South Australia	Local Government Act 1999 s191	Non-specific purposes stated

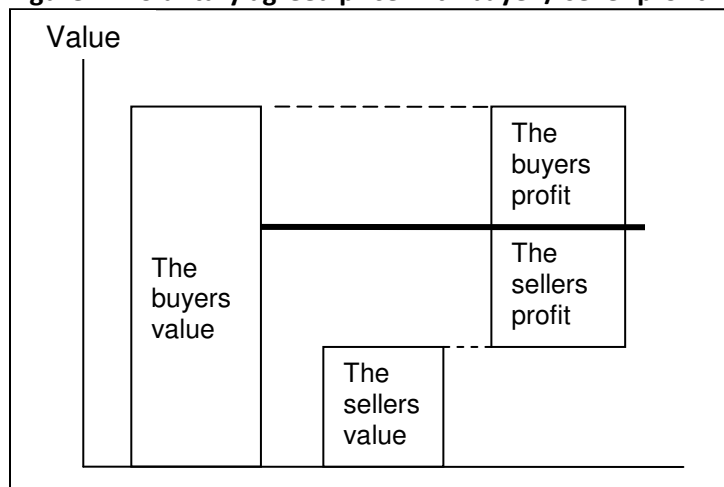
Source: Austlii.edu.au

Figure 3: Current scope of acquiring parties and purposes

Parties	Prohibited	Permissible
Local Government	Compulsorily acquiring land for the purposes of re-sale to a developer	Acquiring land for development in which Local Government is either: <ul style="list-style-type: none"> • The developer • A joint venture developer
Private Developer	Compulsory acquisition of land for any purpose	<ul style="list-style-type: none"> • Undertake joint venture with Local Government • Undertake development on contract for Local Government

Author

Figure: 4 Voluntary agreed price with buyer / seller profit



Source: Kalbro and Sjodin 1993

Figure 5: Compensation framework for total acquisitions

Party	Infrastructure Projects		Economic Development	
	Current	Proposed	Current	Proposed
Residential / Business Owner Occupier	Market value & Disturbance	Market value & Disturbance or <i>Reinstatement</i>	Market value & Disturbance	Market value or <i>Reinstatement or Percentage share of land value as a redevelopment</i>
Residential / Business Investor	Market value & Disturbance	Market value & Disturbance	Market value & Disturbance	Market value or <i>Reinstatement or Percentage share of land value as a redevelopment</i>
Residential / Business Tenant	Disturbance	Disturbance or <i>Reinstatement</i>	Disturbance	Disturbance or <i>Reinstatement</i>
Local Government				Betterment Tax
Developer				Developer & builders profit

Author