



Premier's Circular

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TITLE

A PRIVATE PROPERTY RIGHTS CHARTER FOR WESTERN AUSTRALIA

POLICY

The State Government has adopted a Private Property Rights Charter for Western Australia (The Charter) (**Attachment A**) which aims to ensure proper regard is given to the rights of private land owners.

Public officers should have regard to the principles in the Charter when contemplating or taking government action which may adversely affect private property rights in land. This Circular applies to all entities covered by the *Public Sector Management Act 1994 (WA)*. In addition, those entities listed in Schedule 1 of the Act are encouraged to comply.

BACKGROUND

The Government is committed to ensuring fairness, transparency and certainty for private land holders when Government actions may affect the value, enjoyment or ownership of privately owned land throughout the State.

The Private Property Rights Charter sets out principles to inform the decision making process of public officers.

Except where otherwise indicated, this Charter applies to the following government actions which may adversely affect private property rights in land:

- Making or amending laws or subsidiary legislation for the compulsory acquisition of privately owned land;
- Making or amending laws or subsidiary legislation which restrict the use of privately owned land;
- Compulsory acquisition of privately owned land; and
- The exercise of statutory powers which may restrict the development or use of privately owned land (including by refusing to grant a permission which will relax those restrictions).

This Charter is intended to guide public officers in the choices available to them when exercising relevant statutory powers. It is not intended to affect or alter the conditions provided by statute or the common law for the valid exercise of any statutory power. Public officers must continue to exercise those powers in

accordance with all applicable statutory procedures and requirements. Government action which adversely affects private property rights in land may only be taken as authorised by, and in accordance with, the law.

Colin Barnett MLA
PREMIER

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| Other relevant Circulars: | n/a |
| Circular/s replaced by this Circular: | n/a |

A PRIVATE PROPERTY RIGHTS CHARTER FOR WESTERN AUSTRALIA

Legality

Government action which adversely affects private property rights in land may only be taken as authorised by, and in accordance with, the law.

Providing a community benefit

Government action which adversely affects private property rights in land should endeavour to benefit the community or otherwise advance the public interest.

Public officials should only take government action which adversely affects private property rights in land when they consider it to be justified, having regard to the appropriate balance between the public interest to be advanced by the action and the public interest in the protection of private property rights in land.

Considering the interests of private land owners

Cost, inconvenience and loss sustained by private property owners should be considered when contemplating government action which will adversely affect private property rights in land, so far as the applicable legislation permits.

Public officials should resolve matters affecting private property rights in land, including any negotiations on acquisitions or compensation, without unreasonable delay. Whilst disputes should be attempted to be resolved by agreement in the first instance, public officials should initiate available legal processes to determine the dispute in order to avoid protracted delays.

Considering alternatives

Public officers should consider whether there are any alternative means by which the relevant community benefit or public interest could be advanced in a manner which avoids or reduces adverse effects on private property rights in land.

Compulsory acquisition as last resort

Acquisition by agreement should be attempted before privately owned land is compulsorily acquired, where this will not unduly compromise the advancement of the relevant community benefit or public interest.

Fair compensation, on just terms

Laws for the compulsory acquisition of privately owned land should provide for compensation in an amount that will, having regard to all relevant matters, justly compensate the landowner for the acquisition of the land in a manner which is fair to the community and the landowner.

Transparency and clarity

Laws which provide for government action that adversely affects private property

rights in land should endeavour to ensure that legislation and processes pertaining to the acquisition are clear and readily understood.

Certainty and Consistency

Laws for the compulsory acquisition of privately owned land should endeavour to provide:

- holders of interests in land with certainty as to the relevant rules and processes; and
- consistent rules and processes across different laws, where this will not unduly compromise the advancement of the relevant community benefit or public interest.

Consultation

Before taking government action that will have a direct adverse effect on private property rights in land, the land owner should be consulted where this will not unduly compromise the advancement of the relevant community benefit or public interest

Independence and Contestability

Private land owners should be provided with the opportunity to have compensation for the compulsory acquisition of their land determined by an independent and impartial body.

Private land owners should be provided with the opportunity to refer other matters concerning the administration of laws which adversely affect private property rights in land to the State Ombudsman.