

Compulsory acquisition of land



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Governments acquire land and interests in land for public purposes. They may acquire the whole of the property, part of a property or an interest in the land including easements for power lines, sewer or water.

Where an acquiring authority cannot negotiate a settlement with the land owner for land to be acquired, the land can be compulsory acquired. Only a small percentage of land acquisitions by government are made by compulsory acquisition.

The *Land Acquisition (Just Terms Compensation) Act 1997* (the Act) applies to land acquired, by agreement or compulsory process, by an authority which is authorised to acquire land by the compulsory process.

The Act provides procedures as well as compensation provisions. It requires acquisitions to be on just terms and encourages purchase by negotiation in preference to compulsory acquisition. Provision is also made for owner initiated acquisitions in cases of hardship.

The Act does not apply to land which is available for public sale and which is acquired by agreement.

The Valuer General and Property NSW

When land is acquired by agreement, the acquiring authority and the land owner agreed the amount of compensation, and the Valuer General is not involved.

However, if the land is compulsorily acquired the Valuer General is required to determine the amount of compensation to be offered. Property NSW manages the determination of compensation process under delegated authority from the Valuer General.

The Valuer General is an independent statutory officer appointed by the Governor to oversee the valuation system. The Valuer General is independent in the compulsory acquisition process and does not act for either the former owner or acquiring authority.

The acquiring authority is responsible for managing negotiations with land owners and must offer the Valuer General's determination of compensation to the former land owners or persons with a registered interest in the land.

Determination of compensation

Compensation must be determined in accordance with the Act and justly compensate the former land owner for the acquisition of the land.

The relevant matters considered when determining compensation are:

- market value of the land
- any special value to the former owner
- any loss attributable to severance
- any loss attributable to disturbance
- disadvantage resulting from relocation (formerly called solatium)
- any increase or decrease in the value of any other land owned by the former owner at the date of acquisition, which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

The Land and Environment Court

Former land owners not satisfied with the amount of compensation determined by the Valuer General and offered to them by the acquiring authority can lodge an objection with the Land and Environment Court.

The Act provides that a person who has not been given a compensation notice and whose claim for compensation is rejected (or taken to be rejected) may appeal to the Land and Environment Court against the rejection of the claim.

The Land and Environment Court of NSW can be contacted at Level 4, Windeyer Chambers, 225 Macquarie Street, Sydney NSW 2000 or telephone on 02 9113 8200.

Definitions

Market value of land at any time means the amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer, disregarding (for the purpose of determining the amount that would have been paid):

- (a) any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and
- (b) any increase in the value of the land caused by the carrying out by the authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired, and
- (c) any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

Special value of land means the financial value of any advantage, in addition to market value, to the person entitled to compensation which is incidental to the person's use of the land.

Loss attributable to severance of land means the amount of any reduction in the market value of any other land of the person entitled to compensation which is caused by that other land being severed from other land of that person.

Loss attributable to disturbance of land means any of the following:

- (a) legal costs reasonably incurred by the persons entitled to compensation in connection with the compulsory acquisition of the land
- (b) valuation fees reasonably incurred by those persons in connection with the compulsory acquisition of the land
- (c) financial costs reasonably incurred in connection with the relocation of those persons (including legal costs but not including stamp duty or mortgage costs)
- (d) stamp duty costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the purchase of land for relocation (but not exceeding the amount that would be incurred for the purchase of land of equivalent value to the land compulsorily acquired)

(e) financial costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the discharge of a mortgage and the execution of a new mortgage resulting from the relocation (but not exceeding the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage)

(f) any other financial costs reasonably incurred (or that might reasonably be incurred), relating to the actual use of the land, as a direct and natural consequence of the acquisition.

Disadvantage resulting from relocation means compensation to a person for non-financial disadvantage, such as the length of time a person has resided on the land and the likely inconvenience resulting from the necessity of the person to relocate his or her principal place of residence as a result of the acquisition.

Owner initiated acquisition is where an owner of land reserved exclusively for a public purpose under an environmental planning instrument can give notice to the responsible authority to acquire the land. To acquire the land the authority must be of the opinion the owner will suffer hardship (within the meaning of section 24 of the *Land Acquisition (Just Terms Compensation) Act 1991*) if there is any delay in the acquisition of the land under this Act.

Contact us

We are here to help.



1800 110 038

8:30am - 5:00pm Mon - Fri



Valuation Services

Property NSW

PO Box 745

BATHURST NSW 2795



valuationenquiry@valuergeneral.nsw.gov.au

Do you need an interpreter?

Please call TIS National on 131 450 and ask them to call Valuation Services on **1800 110 038**



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© June 2017 DFSI (B) P16/10/042

Any enquiries relating to this factsheet may be addressed to the Office of the Valuer

General at feedback@ovg.nsw.gov.au

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