

Valuer General

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Compensation following compulsory acquisition

Guidance Note

February 2024



Acknowledgement of Country

The office of the Valuer General and Valuation NSW acknowledges that we stand on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past and present through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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More information

Enquiries relating to this guidance note should be addressed to the office of the Valuer General via email to valuergeneral@dpie.nsw.gov.au.

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1 Introduction

1.1 Purpose

This document is intended to provide professional guidance on the completion of recommendations for the Valuer General's determination of compensation for the compulsory acquisition of land..

This guidance note is informed by the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* and the associated body of case law.

1.2 Background

In NSW, all levels of government (including state-owned corporations) can, where authorised, acquire privately owned land for a public purpose. These government agencies are known as acquiring authorities.

Where the acquiring authority is the NSW State government or Local government, this acquisition process is set out in the *Land Acquisition (Just Terms Compensation) Act 1991* (the Act). When the acquisition process occurs on a compulsory basis, the Valuer General is required to determine the amount of compensation to be paid by the acquiring authority to the landowner.

The Valuer General may delegate their determination functions to Valuation NSW (VNSW). VNSW may then prepare recommendations of compensation inhouse or seek to engage external contractors.

2 Interest in land

Fundamental to the right to compensation under the Act is that the former owner must have an interest in land.

Interest in land means:

- a legal or equitable estate or interest in the land, or
- an easement, right, charge, power or privilege over, or in connection with, the land.

An interest in land which may be entitled to compensation can include:

- the owner of the fee simple
- the interest of a beneficiary of an easement, right of way or restriction of user over land
- a lessee's interest in the land
- the interest of a business operating under a lease or tenancy agreement on the land
- anyone having a transferrable right, charge, power or privilege over, or in connection with, the land.

Generally, the acquiring authority will identify all compensable interests. However, if you identify an interest that has not already been identified you must notify the Valuer General's delegate who will notify the acquiring authority of that interest. You will be provided with advice on how to proceed with the recommendation from that point.

Comments on a tenants' interest: As a rule, you must only consider the interest of a tenant where a clearly defined tenancy arrangement is in place. This can be a legally executed lease that is current or expired.

Tenancies holding over on an expired lease are also relevant interests in land. However, the continuance of the tenancy cannot be assumed to be without risk or for an indefinite period and this will affect the determination of compensation.

3 Matters to be considered when assessing compensation

When you recommend the amount of compensation you must consider the requirements of section 55 of the Act:

(a)	The market value of the land on the date of its acquisition.
(b)	Any special value of the land to the person on the date of its acquisition.
(c)	Any loss attributable to severance.
(d)	Any loss attributable to disturbance.
(e)	The disadvantage resulting from relocation.
(f)	Any increase or decrease in the value of any other land of the person 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.

These matters, which are often referred to as the heads of compensation, are discussed below.

3.1 The market value of the land

The market value of land means the amount that would have been paid for the land, or interest in land, if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.

When you determine the market value of the land on the date of its acquisition you must disregard:

- 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
- any increase in the value of the land caused by the carrying out by the acquiring authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired, and
- any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

The sum of the market value for all interests in the land must not exceed the market value of the land, at the date of acquisition.

In cases where land is used for a particular purpose for which there is no general market (and an owner genuinely proposes to use other land for that purpose), market value may be determined by reference to its reinstatement value. Reinstatement value is to be reduced by any disturbance compensation and any likely improvement in the owner's financial position because of the relocation.

In assessing the market value of an interest, consideration should be given to the items listed in the following table:

Assumption/considerations	Comment/exceptions
The definition of market value	The market value of an interest in land at the date of acquisition is the amount that would have been paid for the interest if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.
The market value includes the added value of improvements	The market value of land includes the value of any improvements on the land or to the land. Excluded from this however are any improvements for the public purpose that have been carried out by the Acquiring Authority, before the land was acquired.
The sum of interests in land is not to exceed the full fee simple in possession value of the land	There may be more than one interest to be compensated when land is acquired. Other interests could include easements, covenants, mortgages, leases, caveats and life interests. Where all interests in a parcel of land are acquired, the sum of all interests must not exceed the market value of the land unencumbered. At times, land will be acquired but the easements over the land will not. This corresponds with normal sale conditions where existing easements continue to apply to the land.
Value the land at its highest and best use	Care should be taken to determine the highest and best use possible for the land. That use may be the existing use or a redevelopment. Where redevelopment is the highest and best use, the time, cost and risk of achieving that use, including demolition of existing improvements, must be considered.

The market value is not to reflect the reservation for the public purpose.

Generally, land acquired for a public purpose is subject to a zoning or reservation for the public purpose. This imposes a legal constraint on possible development and hence market value.

In assessing compensation, you must disregard the impact on value caused by the zoning or reservation for the public purpose for which the land is being acquired and adopt the zoning that most likely would have applied if there had been no zoning or reservation for the public purpose.

When establishing the zone to adopt, you should consider the surrounding zoning in conjunction with the physical quality of the land and any environmental constraints such as flora and fauna.

Example

If you are valuing land zoned for open space, which was acquired for the public purpose of providing open space and it is surrounded by residentially zoned land, it may be likely that the zone adopted will be residential.

When there is more than one public purpose zoning or reservation on the land being acquired, only the public purpose for which the land is being acquired is to be disregarded.

However, when assessing market value, you need to have regard to all circumstances affecting the land, including the potential for the land to be acquired for the second public purpose, which has not been disregarded.

If the underlying zoning cannot be readily determined by reference to adjacent land, the advice of an expert town planner may be required.

3.1.1 Interest of mortgage

Where land is acquired and is subject to one or more mortgages, the compensation is to be assessed without regard to the mortgage(s).

Where there is a mortgagee's interest, this interest should be cojoined with that of the registered proprietor.

3.2 Any special value

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

Special value has been said to represent the additional price that the landowner would be prepared to pay for the land rather than lose it.

Example

The site being acquired is a retail business and the owner of the business also occupies the adjoining site where they manufacture the goods sold in the shop. The land owner may claim a special value for that retail site over the market value due to the financial advantage of manufacturing from the adjoining site.

The advantage must be specific to the land owner only and incidental to their use. Special value does not include unique features of the site which enhance the value of the property since these are reflected in the market value.

3.3 Any loss attributable to severance

Any loss attributable to severance of land is defined in the Act as:

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.

Compensation for severance generally arises from the separation or division of the landowner's land as a result of the acquisition and the reduction in value of the retained parcel.

Example

A dairy farm is divided into two parcels of farmland by the acquisition of land for a highway. As a result, one of the retained parcels no longer has access to the dairy facilities. This retained land therefore suffers a loss in value.

3.4 Any loss attributable to disturbance

Loss attributable to disturbance refers to costs reasonably incurred by the person entitled to compensation due to the acquisition. Disturbance includes any of the following:

Legal costs and valuation fees	a) Legal costs and b) valuation fees reasonably incurred by the person entitled to compensation in connection with the compulsory acquisition of the land excluding costs incurred for acting as an agent for the owner.
Relocation costs	c) Financial costs reasonably incurred by the person entitled to compensation in connection with their relocation (including legal costs but not transfer duty (stamp duty) or mortgage costs).
Stamp duty costs	d) Stamp duty (transfer duty) costs reasonably incurred (or that might reasonably be incurred) by the person entitled to compensation in connection with the purchase of land for relocation. The cost must not exceed the amount that would be incurred for the purchase of land of equivalent value to the land compulsorily acquired.
Mortgage costs	e) Costs reasonably incurred (or that might reasonably be incurred) by the person entitled to compensation in connection with the discharge of a mortgage and the execution of a new mortgage. This amount must not exceed the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage.
Other financial costs	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.

Example

A typical assessment of disturbance costs for an owner-occupied cottage incurred in connection with a compulsory acquisition would include the following:

- legal costs (section 59(1)(a))
- valuation fees (section 59(1)(b))
- legal cost on purchase of a replacement property of the same value (section 59(1)(c))
- removal expenses (section 59(1)(c))
- pest inspection (section 59(1)(c))
- identification survey (section 59(1)(c))
- building inspection (section 59(1)(c))
- electricity and telephone reconnection (section 59(1)(c))
- mail redirection (section 59(1)(c))
- stamp duty on purchase of a property of the same value (section 59(1)(d))
- discharge of mortgage costs (section 59(1)(e))
- mortgage reinstatement cost on a replacement property (section 59(1)(e)).

Stamp duty is generally only recoverable under s. 59(1)(d) in connection with the purchase of land for relocation.

3.4.1 Buyer's/lessee's agent

Costs associated with a buyer's or lessee's agent in relation to securing a new property as part of a relocation, will not normally be compensable unless exceptional circumstances apply including, but not limited to:

- the claimant is resident overseas and only visits Australia infrequently; or
- the technical specifications of the property or business are of such complexity that the claimant is unable to undertake an alternative property search himself/herself; or
- such reason as the Valuer General may consider reasonable.

3.4.2 Costs for disturbance not yet incurred

Costs that have not been incurred, but which might reasonably be incurred, may be considered where allowed for in s59(1) of the Act. However, it must be likely that they would be incurred, sometime in the not too distant future, and that they would be reasonably incurred.

The term 'incurred' is to be interpreted broadly, as it relates to costs that might reasonably be expected to be incurred given the balance of probability.

3.4.3 Proof of expenditure

Proof of expenditure (such as invoices) for disturbance costs incurred, or estimates from providers for disturbance costs not yet incurred, must be provided as evidence of the disturbance costs claimed.

3.4.4 Costs to be reasonably incurred

The Act requires that an amount attributable to disturbance be provided for costs or fees reasonably incurred. Courts have held that the "reasonableness" relates to the incurring of the costs, and not necessarily the costs themselves. Nevertheless, exorbitant costs could not be said to be "reasonably incurred".

Care should be taken to ensure that costs are not exorbitant and that direction given to professionals such as valuers and solicitors by the land owner is in connection to the acquisition.

The Act states that disturbance includes costs and fees that are reasonably incurred or, in certain circumstances that might reasonably be incurred. For a cost or fee to be considered allowable it must:

- relate directly to the acquisition process
- if not already incurred, be likely to occur on the balance of probabilities
- return the land owner to an equivalent position to their position prior to the acquisition

- be relevant to the matter and not be whimsical or obstructive (see professional fees below).

Costs associated with relocation and those relating to the actual use of the land must be determined on the basis of returning the former owner to an equivalent situation they were in before the acquisition.

Example

If land prior to the acquisition had three phase electricity available and a partial acquisition removed that service, the cost of re-establishing that service would generally be payable.

In some cases, the acquiring authority will carry out the reinstatement of the service, but this needs to be confirmed prior to disallowing a disturbance item. This is especially so if reinstatement works are required to be carried out upon any residue land and where the landowner and acquiring authority have not agreed those works. If the reinstatement works are going to be completed by the acquiring authority by agreement or because of a requirement under a planning approval for the project, no further compensation should be assessed for these items.

Costs should not be determined on the basis of improving the land. Using the example of electricity supply given above, it would generally not be appropriate to calculate the cost of establishing three-phase electrical supply if it was not available prior to the acquisition.

3.4.5 Professional fees must be in connection with the acquisition

Professional fees for services such as solicitors and valuers must be in connection with the compulsory acquisition and not to possible future actions taken by the landowner. It is reasonable for the landowner to claim for costs directly associated with advice prior to the determination of compensation and to also include costs for advice after the determination. Post determination advice should be limited to the professional explaining the outcome of the determination and the landowner's further rights and opportunities for appeal.

No amounts should be allowed for possible future court action which may or may not eventuate. If court action does occur the landowner will have a further opportunity to have those costs considered.

No professional fees relating to whether the acquisition can be avoided or in respect of the making a hardship application are to be allowed as disturbance items.

The fees of town planners, surveyors, flooding engineers, etc., that may be engaged to assist in determining the highest and best use of the acquired land are generally not compensable unless they can be characterised as "legal costs" under s 59(1)(a) of the Act. If lawyers require the input from the experts in order to advise their client, they would be "legal costs". Costs of non-legal and

non-valuation consultants may be claimable under s. 59(1)(f) if they relate to the “actual use of the acquired land”. For example, if an acquisition leads to wasted development application costs on a development site.

Actions taken by professionals must relate specifically to the acquisition and they must be guided by their professional ethics and codes of conduct. It must be noted that fees for professional services will vary, and the landowner cannot be expected to have expertise in this area.

Whether the costs themselves are reasonable or exorbitant must be considered on a case-by-case basis. Where costs have been incurred by the landowner you must determine that the costs are not exorbitant by considering the documentary evidence provided and whether the costs are within a reasonable range of similar costs incurred for similar services in the market.

3.5 Disadvantage resulting from relocation

3.5.1 Eligibility

Compensation for disadvantage resulting from relocation is only paid where a person is required to relocate their principal place of residence as a result of the acquisition. This includes residential occupiers who are not landowners.

3.5.2 Partial acquisition

Section 60 (4) states:

‘Compensation is payable in respect of disadvantage resulting from relocation if the whole of the land is acquired or if any part of the land on which the residence is situated is acquired.’

Compensation for disadvantage resulting from relocation shall be paid where only part of the land is acquired if the public purpose for which the land is being acquired causes the owners to permanently vacate their principal place of residence.

3.5.3 Home held in two or more names

Except in the case of separate occupations as described below, only one payment is made for a home, even where the home may be owned by two or more people.

3.5.4 More than one home on the land

Where there is more than one home on the land, only one payment of compensation for disadvantage resulting from relocation is made unless each home is occupied by different people with separate compensable interests.

3.5.5 Occupiers

A person who is renting a property may have a compensable interest and is therefore also entitled to compensation for disadvantage resulting from relocation, as long as the home is their principal place of residence.

As with a home owned by two or more people, an occupancy is considered to be only one compensable interest and therefore only one payment of compensation for disadvantage resulting from relocation is made, even if the occupancy agreement is in two or more names.

An occupancy is generally established by a lease or written agreement. Paying board does not constitute an interest in land.

3.5.6 Owner and occupier in same house

Where a home is occupied by the landowner and is also leased to an occupier, both parties may be entitled to an amount for compensation for disadvantage resulting from relocation. The residences of each party must be adapted for separate occupation, with separate access and separate amenities such as kitchens, bathrooms, toilet, bedrooms and living areas.

3.5.7 Impact of valuation methodology

The method used to determine market value has no impact on the determination of compensation for disadvantage resulting from relocation. Where land is valued on the basis of a higher use, over and above the current use, compensation for disadvantage resulting from relocation is still paid if the home has been acquired.

3.5.8 Factors taken into consideration

In assessing the amount of compensation for disadvantage resulting from relocation, the Act requires all relevant circumstances are considered, including:

1. the interest in the land of the person entitled to compensation, and
2. the inconvenience likely to be suffered by the person because of his or her removal from the land, and

3. the period after the acquisition of the land during which the person has been (or will be) allowed to remain in possession of the land, and
4. the length of time the person has resided on the land (and in particular whether the person is residing on the land temporarily or indefinitely).

3.5.9 Minister determines maximum amount

The Act details the requirements for the calculation of compensation for disadvantage resulting from relocation in section 60(3).

The maximum amount is determined by the Minister and published in the Government Gazette.

The maximum amount is adjusted each year according to CPI.

3.5.10 Freehold

In considering the owner's interest in the land, or tenure, the owners of freehold land would consider that they have complete rights to occupy and deal with the land as they see fit.

The owners of freehold land would also consider that they are residing on the land indefinitely or until any time of their choosing and that they would be able to pass the land on as part of their estate if they wished.

The level of inconvenience caused by the need to relocate would be high, regardless of the landowner's situation or length of ownership.

Therefore, every resident owner-occupier is entitled to the maximum amount of compensation for disadvantage resulting from relocation, being 100% of the amount determined by the Minister and published in the Government Gazette, except in extenuating circumstances.

Such circumstances may include any other agreement between the landowner and the acquiring authority regarding residing in the property for an extended period.

The Act provides an offset if the landowner is allowed to remain in the property after the acquisition.

3.5.11 Leasehold

Where an interest in land exists because of a lease, the payment of compensation for disadvantage resulting from relocation requires further consideration. Each case will need to be considered on its merits taking into account that an occupier may have:

limited expectations of an ongoing tenure due to the short-term nature of the lease agreement

less or no emotional attachment to the property or the area in which it is located

less difficulty in finding alternative accommodation and relocating.

Although the points above may apply in the majority of situations, there will be circumstances where an occupier has a strong connection to the land and also expects to have a long tenure.

For example, a person may be renting the family home from their parents, a home that they were raised in and a home they expect to inherit. Their attachment and expectation of a long tenure would likely be no less than as if they were the freehold owner of the property.

3.5.12 Compensation for disadvantage resulting from relocation calculation for a lessee

The Valuer General will consider each case on its own merits. As a guide, in the absence of any other relevant circumstances, the following compensation amount will be determined based on the length of occupancy:

Tenancy	Percentage of the amount determined by the Minister and published in the Government Gazette
Recently commenced occupancy (<1 year)	10%
Occupancy 1 to 5 years	20%
Occupancy 5 to 10 years	30%
Occupancy longer than 10 years	50%

3.5.13 More than one payment

If separate payments of compensation are made, such as to a lessee and a landowner, the maximum amount cap applies to each payment and not to the total of the payments.

3.6 Increase or decrease in the value of other land

When you determine compensation, you must have regard to any increase or decrease in the value of land held by the landowner which adjoins or is severed from the acquired land due to the public purpose for which the land was acquired. This is often termed *injurious affection* or *betterment*, though these terms do not appear in the Act.

Where the value of such land is increased, because it has benefited from the public purpose, you must reduce the amount of compensation payable (excluding s55(d) and s55(e)) by the amount of that increase in value.

Conversely, the value of the land may be reduced due to the impact of the public purpose on that land or due to its inability to be used for its previous existing use because it has been severed from the acquired land. In this case, you must increase the compensation payable by the reduction in value.

3.7 Exclusions – compensation

3.7.1 Where the market value reflects an unrealised potential of land

Market value must assume the highest and best use of the land.

In accordance with section 61 of the Act when you assess the market value of land based on the potential use of the land rather than the current use of the land, you must not include:

- any financial advantage that would necessarily have been forgone in realising that potential, and
- any financial loss that would necessarily have been incurred in realising that potential.

In other words, if the valuation is made for a higher potential use and not on the current use, a claim cannot be made for costs that would arise from the loss of the current use. To do so would be double recovery.

For example, where you assess market value on the basis of a higher potential use rather than the current use and the existing improvements would have to be demolished (forgone) to achieve that higher use, relocation costs are not compensable.

For section 61 to apply, the potential higher use should be achievable within a reasonable timeframe.

3.7.2 Future profits

Lost profit for a business may be able to be considered as a disturbance item, for the reasonable time it takes to relocate a business.

No compensation is to be determined for lost future profits due to the unrealised potential of land. Such potential is contained within market value.

4 Owner initiated acquisition in cases of hardship

A landowner of land reserved for a public purpose under an environmental planning instrument or given written notice by an authority that land is designated for future acquisition, can ask the responsible authority to acquire the land.

To acquire the land the acquiring authority must be of the opinion that the owner will suffer hardship if there is any delay in the acquisition of the land under the Act.

In determining compensation following the compulsory acquisition of land, on the basis of hardship, the Valuer General need not take into account:

- special value
- severance
- disturbance and
- the disadvantage resulting from relocation

This is to be determined on a case-by-case basis. All matters determined under the hardship provision should be referred to the Valuer General's delegate for direction.

Legal costs incurred by the landowner in making the hardship application are not compensable disturbance costs.

5 Acquisition for the purpose of constructing a tunnel

Where land under the surface is compulsorily acquired for the construction of a tunnel, compensation is not payable unless:

- the surface of the overlying soil is disturbed, or
- the support of that surface is destroyed or injuriously affected by the construction of the tunnel, or
- any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected.

The Valuer General generally issues a determination of nil compensation immediately after gazettal. In matters where it may be unclear whether these provisions should apply, the matter should be referred to the Valuer General's delegate for direction.

6 Easements

Where an easement is acquired over land, compensation for the landowner will generally be assessed as a percentage of the value of the land subject to the easement. The percentage assessed will depend on the terms of the easement and should be consistent with case law.

In the absence of relevant comparable sales supporting the value impact of an easement, the table below should be followed to determine the percentage reduction in land value to reflect the compulsory acquisition of an easement over that land:

Range 0-10% Commonly 0%	Negligible impact – for example: <ul style="list-style-type: none">• where the easement has no physical impact on the land• Where the sole impact of the easement is as a blot on title• Where the easement is fully sub-surface (eg a tunnel, pipe or rock anchor), noting the provisions in s. 62 of the Land Acquisition Act
Range 10-30% Commonly 10%	Limited impact – for example: <ul style="list-style-type: none">• where the easement will traverse open space that can in any case only be used by the landowner as open space (eg a public park)• where above-ground or overhead structures result in loss of visual amenity• where the easement otherwise does not significantly impinge landowner's use of land
Range 30-60% Commonly 50%	Low to Moderate impact – for example: visible surface impact (eg such as pipes above the surface of the ground or electricity substations) that diminish visual amenity for the landowner and create inconvenience but still allow the land to be used

Percentage Reduction	Impact of Easement on Underlying Land
Range 60-80% Commonly 80%	Moderate to High impact – for example: other restrictions on use or rights under easement that significantly impinge landowner's use of land
Range 80-100% Commonly 100%	Severe to total impact – for example: <ul style="list-style-type: none"> where the landowner is legally unable to build in the easement area (eg beneath an electricity transmission line) where the terms of the easement authorise the land to be occupied by a structure such as a pumping station or electricity pylon which completely forestalls the landowner's use of that land

Where an acquiring authority seeks to acquire an easement over an existing easement, there may be an entitlement to compensation for the landowner and/or the existing easement beneficiary depending on the terms of the respective easements.

7 Treatment of GST

Where GST is paid in a property transaction, you must treat GST as part of the market price. This is consistent with a number of court decisions. When you analyse sales of property any GST paid by the purchaser is to be included as part of the sale price.

Determinations of compensation issued under the Act will use the full market price. This price will include any GST which has formed part of the purchase price.

However, where the valuer uses a hypothetical development model to determine the market value of land subject to acquisition, the treatment of GST as a cost in the actual development needs to be considered.

Where compensation is paid for disturbance, the full costs actually, or likely, to be incurred will form the basis of compensation, unless, because of a landowner's circumstances, an input tax credit can otherwise be claimed in relation to GST. Therefore, if a landowner is registered for GST, disturbance compensation will exclude GST as an input tax credit could be claimed.

8 Compensation where a business is affected

8.1 Who is entitled to compensation?

The legal status of the business will be considered in determining an entitlement to compensation:

- If the business was being conducted by its owner as a sole trader, the business is not a separate legal entity. The business itself does not own an interest in the land in that situation. Therefore, the claim for compensation associated with the sole trading business must be made by the individual(s) who own and operate the business in their personal capacity. This is most commonly done by sole traders as part of their claim as the owner of the land or as a lessee.
- Where the business was being conducted by a corporation and the corporation has an interest in the land (again usually by way of owning the land or having a lease from the owner), that entity may lodge the claim for compensation. If the corporation owns the land and also operates its business on that same land then there would be only one claim for compensation. If there are different corporations that own the land and operate the business, then separate claims are required.
- To be entitled to compensation, the business must be lawful. Compensation is not payable for relocation costs associated with an unlawful enterprise.
- Where a business is operating without development consent and consent could be provided by the local council if an application was made, the business owner would still be eligible for compensation. The compensation, however, needs to have regard to the fact that the business does not currently have such approval, the obtaining of which would involve time, cost and risk.

8.2 Nature of the interest in land

When assessing compensation in respect of a business, the nature of the business' interest in the acquired land must be considered. For example, if the business leases the acquired land, the length of the lease will affect the calculation of any market value compensation and the assessment of any disturbance items.

8.3 Market value

Typically, a lessee is not entitled to compensation for market value unless there is a profit rental in existence under a lease. A profit rental is where the current rent being paid is less than the market rent. In these situations, the rental saving is calculated for the term of the saving, normally the un-expired lease term or until the next market rental review. The amount is calculated as a lump sum, present value of the saving for the remaining period of the lease or to the next market rental review.

On rare occasions, the market value of a lease may be established if it can be demonstrated that someone would pay a price for the transfer of a lease, notwithstanding that the rental paid under the lease is a market rent.

8.4 Relocation or extinguishment

Compensation may be calculated on the basis of relocation of the business or extinguishment of the business.

Compensation for relocation of the business will be considered where the business is able to demonstrate a real and not remote intention to relocate, with a reasonable prospect of relocation in the circumstances.

Compensation for extinguishment of the business will be considered where there is no demonstrated intention to relocate, the intention to relocate is remote, relocation is not feasible or the business cannot be relocated.

Relocation cost is covered in section 59(1)(c) of the Act.

Extinguishment has typically been covered by section 59(1)(f) of the Act.

Compensation is not adjusted for company tax or capital gains tax liabilities.

8.4.1 Relocation

The types of relocation costs that may be claimed are broad. Each situation will be different and must be considered on its merits.

Typical relocation costs claimable under section 59(1)(c) by the owner of a business interest may include, but are not limited to:

- legal costs
- valuation fees
- professional costs (such as engineers or town planners) relating to securing a replacement location
- buyers/lessee's agent costs if:

- the claimant is resident overseas and only visits Australia infrequently; or
- the technical specifications of the property or business are of such complexity that the claimant is unable to undertake an alternative property search himself/herself; or
- such reason as the Valuer General may consider reasonable.
- fit-out costs for the replacement location
- new signage
- costs of reprinting stationary
- notification of new address to customers
- costs of relocating telephones and internet services
- costs of removing and installing computers
- general removal expenses
- stock losses (not the value of the stock on hand)
- Australia Post mail redirection
- loss of business profits due to acquisition.

An important principle of business compensation is that the costs of re-establishing improvements that existed on the acquired land cannot be claimed if they were included in the assessment of market value. To do so would be compensating for the same item twice. For example, if the claimant was compensated for the value of a loading dock in the acquired premises, then the costs of installing a loading dock on the new premises would not be claimable. However, it may be appropriate to allow such works as fit out costs of a new premises if the landlord and tenant are different.

Disturbance compensation for a business is limited to financial costs reasonably incurred or that might reasonably be incurred as a direct result of the acquisition.

Secondary or other impacts due to the nature of the works constructed on the acquired land or elements of the public purpose may only be considered under s. 55(f) of the Act.

8.4.2 Future lost profits

Future lost profits for the reasonable time it takes to relocate and re-establish a business enterprise can be considered as a disturbance item pursuant to s59(1)(c) of the Act.

8.4.3 Paying a higher rent at new location

The underlying principal of just compensation is to ensure the dispossessed owner is not placed in a better or worse position as a result of the acquisition. There may be occasions when a business interest relocates but is required to pay more rent in the new location, or in the temporary locations occupied prior to relocation to the new location.

Compensation under s59(1)(c) is to include the extra rental required (rent differential), as long as there is no additional income or saving benefits to the business and it should be calculated for the remaining period of the lease that the business had before the acquisition. Any assessment of market value of the lease (s55(a)) should also be deducted from the rent differential calculated to avoid double recovery.

8.4.4 Extinguishment

Compensation for extinguishment comprises financial costs incurred in the cessation of the business and its obligations. Types of financial costs claimable for extinguishment include legal costs and administrative and possible penalty costs of winding up.

Lost profits or losses in the goodwill of the business are typically not compensable under s59(1)(f).

8.5 Where businesses own the acquired land

Where the land and business interest are held by the same entity and compensation for the land has been based on a higher use than the current use which enables the operation of the business, the business would therefore be expected to be forgone to realise the higher use (and hence value) of the land. In this instance there may be no compensation to be determined for the business interest.

9 Valuation and compensation methods

9.1 Direct comparison

Direct comparison involves comparing market evidence with the subject property. Direct comparison is usually the primary method of valuation.

Use the direct comparison method to determine the market value of the property. When using this method you must explicitly and transparently:

- establish the highest and best use of the land,
- accumulate and consider all directly comparable market evidence,
- analyse all directly comparable market evidence to a common basis for adjustment. This common basis may include analysis of areas, improvements, planning controls/zonings, dwelling entitlements and any other relevant matters,
- consider all factors that influence the property's market value such as the land's location, size, shape, permitted uses and any other relevant characteristics,
- adjust, using an evidence based approach where possible, all analysed directly comparable market evidence to allow for similarities and differences between the market evidence and subject property
- apply the adjusted directly comparable market evidence to the subject property.

You must analyse enough comparable market sales to establish the market value of the property at the acquisition date.

When adjusting sales you should place the greatest weight on sales of properties with similar characteristics. Sales that have different characteristics or occur further in time from the valuation date will need to be adjusted to take those differences into account. All adjustments need to be rationalised by reference to market evidence if possible.

Care should be taken to avoid using sales which reflect an impact of the proposed public works/purpose, whether positive or negative. It may be necessary, where the impact of the public purpose is widespread, to obtain sales from other non-impacted locations which, historically, have reflected similar value levels.

9.2 Summation method

When using the summation method you must aggregate or sum the elemental components of the land and improvements of a property to obtain the property's market value.

You may, for example, determine the market value of an improved rural property comprising a mix of land classes by separately considering the value of the land and the improvements.

The value of the different classes of land may be determined by direct comparison with sales of other farm land reflecting those different classes.

The farm improvements may be valued preferably by calculating their added value to the land referable to analysed market evidence. In some instances these improvements may be valued by depreciation of the cost new.

Where depreciation is applied to the cost to build the improvements, the rate of depreciation used must be rationalised.

Take care when assessing the added value of unique or unusual improvements as they may not represent the highest and best use of the land. Even newly built improvements may not add the same level of value as the cost to build them.

You must be careful to ensure that the summation method does not produce a higher value than would reasonably be expected in that market. The cost of a building does not necessarily equal its added value and circumstances where the land has been over capitalised must be taken into account.

The amount determined for the added value of improvements should preferably be evidence based, for example, by using the paired sales approach.

9.3 Capitalisation method

When using the capitalisation method you must:

- review the terms of the leases, especially in regard to rent review conditions
- determine the market rentals of the leased areas based on the analysis of comparable rentals
- consider the terms of the leases and the likelihood of the income continuing
- determine the appropriate capitalisation rate by analysing sales of comparable properties.

The subjective intentions of an actual landlord and/or tenant cannot be taken into account in the hypothetical assessment of market value carried out under s. 56 of the Act.

Rental analysis is required where the property or interest is valued using the capitalisation method. Sales showing rental returns and capitalisation rates are required to support the rental basis and applied capitalised values.

9.4 Hypothetical Development Method

Only where there is insufficient comparable sales evidence to make a reliable valuation, the hypothetical development method may be used.

Depending on the nature of the site, the hypothetical development method may be static (residual) or cash flow based.

To derive the value of a site using the hypothetical development method you must:

1.	Estimate the total gross realisation of the site based on the hypothetical highest and best use of the land.
2.	Deduct the estimated cost of developing the site (including holding costs and developer's margin) from the total sales value.

Alternatively, if the highest and best use of the site is as an income producing building/suite of buildings you can:

1.	Estimate the net rental return which could be obtained from a hypothetical building which represents the highest and best use of the land.
2.	Capitalise the estimated net rental return to arrive at the improved value of the site.
3.	Deduct the estimated cost of developing the site (including holding costs and developer's margin) from the improved value of the site.

The cost of developing the site includes ancillary costs such as purchase fees and stamp duty.

For a static model, costs should include an allowance for interest payments based on 100 per cent funding for the project. However, interest payment calculations for development costs should reflect the progressive payment of these costs.

An allowance should also be made for the developer's margin which would be appropriate for the type of development being considered. This should reflect the appropriate margin that a developer would require to allow for the risk associated with the development while still ensuring a reasonable return from the development.

The hypothetical development method generally relies on advice from a quantity surveyor or a comparison of unit costs and rates for similar development schemes. These can then be applied to the particular development being analysed. You should clearly state any assumptions made and inputs selected when you apply the method with reference to evidence, research and reasoning.

9.5 Before and after method

The before and after method is the typical method used to determine compensation where only part of the land is acquired.

The advantage of this method is that it captures the impact of severance and any increase or decrease in the value of adjoining land as well as the market value of the acquired land.

While the before and after method of valuation is the primary method of determining compensation where only part of the land is acquired, however, it may not be suitable if only a small piece of land is acquired and the public purpose has no impact. . In these cases, the piece meal method may be applied.

Using this method, you must undertake two valuations:

1.	Before : Value the property as if it were unaffected by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired (valuation of the original land before the acquisition). Advice from other consultants (such as a town planner) may be required to determine the value of land unaffected by the carrying out, or the proposal to carry out, the public purpose.
2.	After : Value the residual land, assuming that any works that will be made by the acquiring authority have already been constructed and the impact of the public purpose is manifest. (valuation of the parcel after the acquisition and the impact of the public purpose). You should seek advice from the acquiring authority about proposed action to adjust services, public utilities, relocate fences or alleviate any impact of the works.

The difference between the two valuations is the compensation assessment for the partial acquisition which reflects any increase or decrease in value of the remaining or residual land.

9.6 Piece meal method

The piece meal method can also be used to determine compensation where only part of the land is acquired.

The piece meal method involves the individual assessment of each of the heads of compensation separately, as distinct from the before and after approach.

For assessing market value of the land acquired, you must first establish the market value of the parent property, based on the before value as set out under above. From this result the market value of the land acquired may be derived.

As noted this method will require separate identification and calculation of all heads of compensation. In particular, when adopting this method, you must separately consider any increase or decrease in the value of land held by the landowner which adjoins or is severed from the acquired land due to the public purpose for which the land was acquired.

10 Valuation reports

10.1 Preliminary valuation report

Before the determination of compensation is finalised, the Valuer General may send the landowner and the acquiring authority the preliminary valuation report and issue response document. The report is to include the proposed amount of compensation and how it was determined. The land owner and acquiring authority have 10 working days to correct matters of fact.

10.2 Reporting standard

Valuation reports must be full speaking and of a professional standard. Reports must clearly:

- set out the facts relied upon
- explain the rationale for the assessments provided
- detail all the steps in the assessment processes undertaken. In particular all adjustments made between the market evidence and subject property and the reasoning for those adjustments.

The issue response document must clearly:

- address the landowner's claim and the acquiring authority's contention of compensation
- identify the issues raised
- respond to any issues or concerns raised by the landowner or acquiring authority

The valuation report is a complete de novo valuation report. It discloses all relevant information relied upon, including advice relied upon from non-valuation experts engaged. No non-valuation expert or technical reports will be attached to the valuation reports produced.

Material within the report such as photographs should be taken on inspection of the property. In instances where material is obtained from other sources you must have the right to use the material and it must be appropriately referenced.

The report provided should be written in accordance with the current requirements of the International Valuation Standards Council and the Australian Property Institute Code of Ethics.

10.3 Issuing the determination of compensation

Determinations of Compensation are issued by the Valuer General or delegate having regard to the preliminary valuation report and the issue response document and clarification of matters of fact arising therefrom.

After the valuation report and the issue response document have been finalised, the Valuer General or delegate will issue the determination of compensation together with the final valuation report and the issue response document to both the land owner and the acquiring authority.

10.4 Quality control

The quality assurance process is an important step in the management of issuing determinations of compensation valuations to land owners and acquiring authorities for the Valuer General.

It is expected that valuers undertaking determinations of compensation will adopt quality assurance processes, including the revision of all calculations and peer review, prior to the issue of any valuation report.

The Valuer General or delegate is required to review all valuation reports to ensure there is consistency and accuracy in the assessment of compensation.

10.5 Post determination process

10.5.1 Valuer General's role following completion of the determination

The Valuer General's formal responsibilities under the Act are completed when the Determination of Compensation is issued to the landowner and the acquiring authority. However, the Valuer General can amend a Determination of Compensation to correct a clerical error or obvious mistake.

Where a clerical error or obvious mistake is identified on a Determination of Compensation, the Valuer General may amend the Determination of Compensation, but only if the compensation notice offered by the relevant acquiring authority has not been accepted by the claimant.

The response to the preliminary report provides an opportunity for the acquiring authority and the claimant to raise errors of fact for consideration by the Valuer General. After a Determination of Compensation has been issued, provided it has not been accepted by the claimant, the Valuer General will only consider requests for amendment on provision of a valid reason being exceptional and/or unexpected circumstances such as:

- the claimant is self-represented and does not have a solicitor or professional adviser

- the claimant suffered an unexpected serious illness, injury or health issue
- there had been a death or unexpected serious illness or injury in the claimant's family
- the claimant was unexpectedly out of the country or away from home for an extended period when the Determination of Compensation was issued
- other exceptional and/or unexpected circumstances, however these circumstances need to be well explained.

The Valuer General is not bound to accept a request for amendment for any of the above reasons.

Failure to have provided full details of disturbance costs incurred within responses to the preliminary report will not be considered a valid reason for a change to a Determination of Compensation.

Objections against the compensation notice are between the landowner and the acquiring authority. However, valuers providing advice on behalf of the Valuer General must make themselves available to discuss the valuation report and issue response document with landowners and the acquiring authority involved if required.

10.5.2 Dispute resolution

If the landowner wishes to object to the offer of compensation in accordance with the Valuer-General's determination, it may do so in the Land and Environment Court. The Valuer-General is not a party to such litigation.

References

Definitions

Term	Meaning
capitalisation	Capitalisation is a method used to determine the capital value of a property by converting the net income stream into a capital value using a single conversion factor.
capitalisation rate	Expression of risk and return as a percentage that is used to convert the net income in perpetuity from an investment into capital value at a given time.
easement	An easement is an acquired legal right enjoyed by the easement holder over the land of another.
environmental planning instrument	A legal document that regulates land use and development under state environmental planning policies and local environmental plans.
fee simple	Absolute title to land, free of any other claims against the title, which can be sold or passed to another by will or inheritance.
gross realisation	The property's value (or gross sales) upon completion of development.
highest and best use	Valuation concept that refers to the possible use of a property that would give the highest market value. The use must be lawful, physically possible and financially feasible.
interest in land	Interest in land means: <ul style="list-style-type: none">• a legal or equitable estate or interest in the land, or• an easement, right, charge, power or privilege over, or in connection with, the land.
market rent	The estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

Term	Meaning
owner	Any person with an interest in land
paired sales approach	The paired sales approach refers to the analysis of the added value of improvements by comparing sales with no improvements or poor improvements to sales with improvements to determine how much those improvements add to the value of land otherwise comparable.
passive investor	A passive investor is a person who acquires, builds or develops property with a view to holding it long-term to derive rent, but who may later sell the property. Conversely an active investor acquires, builds or develops property with a view to profiting from its sale in the short term.
public purpose	A “public purpose” means any purpose for which land may by law be acquired by compulsory process under the Land Acquisition (Just Terms) Compensation Act 1991.

Related documents and legislation

[Land Acquisition \(Just Terms Compensation\) Act 1991](#) (the Act)

Compulsory acquisition advice

Compensation following compulsory acquisition involving possible conflicts of interest