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Information on Compulsory Acquisition

The NSW Government is empowered to compulsorily acquire land for public purposes, such as the delivery of public infrastructure through the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (Acquisition Act) which prescribes the procedures for compulsory acquisition of land in New South Wales.

Property that is compulsorily acquired carries a guarantee that there will be compensation for such land required for acquisition by an authority not less than the market value of the land (unaffected by the proposal) at the date of acquisition.

The State Authority may not acquire land by compulsory process unless the authority has given the owners of the land written notice of its intention to do so. The minimum period of a notice is 90 days however the Minister has discretion for a shorter period only if:

- (a) the authority of the State and the owners of the land agree in writing to the shorter period, or
- (b) the Minister responsible for that authority approves of the shorter period, but only if that Minister is satisfied that the urgency of the matter or other circumstances of the case make it impracticable to give any longer period of notice.

The Acquisition Act does not itself empower a public authority to acquire land compulsorily - this lies in the *Transport Administration Act 1988* (NSW) (Empowering Act).

The purposes for which the land can be acquired is set out in the Transport Administration Act and which identifies the acquiring authority which has the right to do so.

What can be compulsorily acquired?

As the acquiring authority RailCorp has the power to acquire land (including fixtures) or an interest in land, such as existing easements or leases over the affected property.

RailCorp will acquire only those interests it needs for delivery of the public purpose.

How will the acquisition be made?

An acquisition can be made by:

- agreement with the land owner; and/or,
- compulsory acquisition.



The authority may approach the land owner with a view to reaching a commercial agreement to purchase the land but, due to timing constraints or the possibility that an agreement may not be achieved, may also commence the compulsory process by issuing a proposed acquisition notice (PAN) to the land owner.

If agreement is reached with the owner, the transfer of the land may take place by way of a sale contract or an agreement on the amount of compensation.

A PAN must be given to any person with a registered interest in the land or any person in lawful occupation of the land. This applies to a lessee under a registered lease.

Unless the compulsory acquisition notice specifically excludes certain interests, all interests are discharged upon completion of the compulsory acquisition. This will include all estates, trusts, restrictions, dedications, reservations, charges, rates and contracts over or in connection with the land.

How long is the compulsory acquisition process?

The Acquisition Act requires that the acquisition process be expedited and it for this reason there are various time periods specified in the Acquisition Act to ensure that the process is not unduly delayed. The compulsory acquisition process will generally take between 3-12 months to complete.

The PAN must provide at least a 90 day period before the land can be acquired. This period can be reduced with the consent of the land owner or with express Ministerial approval. The Minister will not grant a reduced period unless the circumstances (such as urgency) justify a reduced period.

If a person entitled to compensation under this Part does not accept the amount of compensation within 90 days after receiving a PAN or lodge with the Land and Environment Court an objection to the amount of compensation offered then the offer of compensation is taken to have been accepted.

As soon as practicable after the PAN period has expired, the acquiring authority must acquire the land. This is to be done either by agreement with the land owner or by publishing the acquisition in the New South Wales Government Gazette and at least one local newspaper.

On the date of publication of the notice in the Gazette, the land or interest being acquired is vested in the acquiring authority.

What are the rights of the previous land owner or other interested parties?

Just Compensation

The Acquisition Act guarantees that when land or an interest in land is compulsorily acquired, "just compensation" must be paid which is equivalent to market value of the land or the interest at the date of the acquisition and any special value, loss attributable to severance or disturbance and non-financial disadvantage as a result of relocation. The method of calculation of the compensation is set out in the Acquisition Act and the compensation is determined by the Valuer-General. Compensation can also be paid by providing other land or the carrying out of works.

In determining the amount of compensation to which a person is entitled is calculated on the basis on the following:

- (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 which is 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,
- (d) any loss attributable to disturbance,
- (e) solatium,



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- (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.

Calculation of *market value* of the land 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.

The amount of compensation must also take into consideration the *loss attributable to disturbance* of land which 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.

Calculation of just compensation must also take into consideration *solatium* which is compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence as a result of the acquisition. The maximum amount of compensation in respect of solatium is \$15,000 a higher amount as negotiated with the Minister that is published in the government Gazette. In assessing the amount of compensation in respect of solatium, all relevant circumstances are to be taken into account, including:

- (a) the interest in the land of the person entitled to compensation, and
 - (b) 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), and
 - (c) the inconvenience likely to be suffered by the person because of his or her removal from the land, and
 - (d) 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.
- (4) Compensation is payable in respect of solatium if the whole of the land is acquired or if any part of the land on which the residence is situated is acquired.



- (5) Only one payment of compensation in respect of solatium is payable for land in separate occupation.
- (6) However, if more than one family resides on the same land, a separate payment may be made in respect of each family if:
 - (a) the family resides in a separate dwelling-house, or
 - (b) the Minister responsible for the authority of the State approves of the payment.

Following the acquisition, the land owner's rights are limited to a claim in compensation. The validity of the acquisition is not affected by an earlier failure to comply with the notice requirements under the Acquisition Act or a subsequent failure to comply with any requirement of the Acquisition Act.

Complaints regarding the procedure of the acquiring authority leading up to the decision to acquire land may be referred to the Ombudsman.

Statutory Right of Objection

The Acquisition Act provides that an owner of land or a person claiming an interest in land may lodge a claim for compensation within the period specified in the PAN (which must not be less than 60 days). A person entitled to compensation or any person claiming an interest has a statutory right to object to the amount of compensation within 90 days after receiving a compensation notice through the Land and Environment Court (Class 3 proceedings). The Land and Environment Court is usually a no costs jurisdiction, and the Court tends to mediate 90% of claims. If a claim for compensation is made, the person claiming compensation will have the onus of proving they have an interest in the land which entitles them to compensation.

A person in lawful occupation of the land prior to the acquisition, who has a right to compensation, may remain on the land until the compensation is paid (or an advance payment of at least 90% of the offer of compensation is paid or placed into a trust account by the acquiring authority). If the acquired land is a principal place of residence or business, the person is entitled to remain on the land for 3 months, whether or not compensation has been paid to them.

We would suggest that each affected landholder **get independent legal advice on their rights**. The EDO as a Community Legal Centre only provides general advice and information on such matters. This factsheet should not be taken as legal advice as it aims to set out basic information about the process.

