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Department of Finance

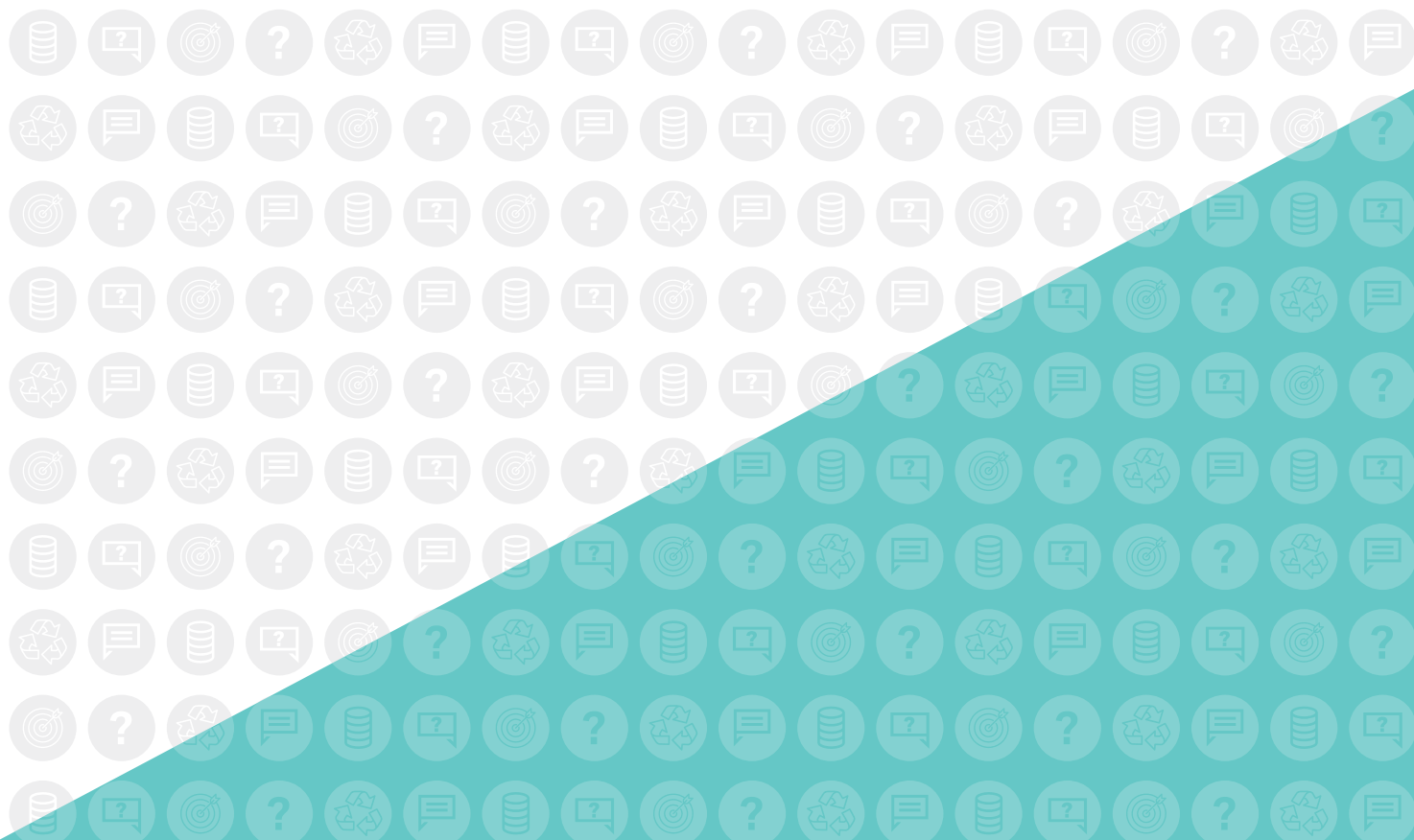


Review of the *Lands Acquisition Act 1989*

Discussion Paper

Submissions

Details of how to make a submission are available on the Department of Finance's website:
www.finance.gov.au/publications/reviews/review-lands-acquisition-act-1989.
Submissions close on **Monday 19 October 2020**.



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Foreword

I am pleased to announce the Review of the *Lands Acquisition Act 1989* (LAA).

The LAA is essential legislation that provides the Commonwealth with powers to acquire land for important public purposes, such as national security and major infrastructure, while safeguarding the rights of Australians.

Under the Australian Constitution, property owners are entitled to compensation on 'just terms' when the Commonwealth acquires property from them. The entitlement to compensation on 'just terms' is based on fundamental principles of equity, but to bring these principles to life, the assessment of the right compensation amount ought to occur in a timely and fair way.

The LAA has now been in operation for 30 years without substantive change. In recent times, state and territory governments have modernised their respective property acquisition legislation to ensure that their compensation approaches remain fit for purpose. The time is opportune to learn from some of these reforms and refine the Commonwealth's approach.

I have asked that the Review explore opportunities for reform and be guided by the principles of fairness and equity; timeliness; transparency; and value for money. These principles reflect the Government's objective of achieving a streamlined and efficient framework while protecting the rights of Australians.

Public consultation is an essential part of this Review. It will ensure stakeholder views are taken into account and community expectations are understood, noting these are likely to have changed since the LAA was introduced.

The Department of Finance is conducting the Review and will report to the Government on recommendations for reform by the end of 2020. Land acquisitions mainly occur at the behest of other departments, such as Defence and Infrastructure. The Department of Finance is responsible for the policy framework and has expertise on managing property issues.

I encourage interested parties to respond to the Discussion Paper and to provide suggestions for reform, and I look forward to delivering a modern LAA that meets contemporary community expectations and modern public administration standards.

Mathias Cormann
Minister for Finance



Section 1: Introduction and Terms of Reference

1. It is now 30 years since the commencement of the *Lands Acquisition Act 1989* (the LAA)¹, the key legislation used by the Commonwealth to acquire and dispose of interests in land. Over time, complex land acquisition processes involving compensation payments to land holders have become more difficult to finalise. The Government has therefore asked for a review of the LAA to look at how it could be improved to best support the Commonwealth and other interest holders into the future.

Terms of Reference for the Review

2. The Government has issued Terms of Reference for the Review as set out below.

The Government is undertaking a review of the LAA to ensure it:

- a. reflects community expectations around public sector responsiveness and timeliness;
- b. minimises delay and uncertainty in finalising compensation claims with affected parties; and
- c. minimises administrative costs and provides value for money.

The Review will consider the broad scope of operations and functions under the LAA, including administrative requirements. In doing so, it will consider matters such as, but not limited to:

- a. how the LAA can best support acquisition and disposal of land by the Commonwealth for public purposes in a way that is fair and efficient to all parties;
- b. whether the LAA legislation and associated guidance can be simplified to make it easier for all parties to understand and apply; and
- c. how best to balance the main objectives of the Act with modern public administrative and legal principles.

The Review will be guided by the principles of equity and fairness; timeliness; transparency; and value for money:

Equity and fairness

Ensuring affected interest holders are treated fairly (on 'just terms').

Timeliness

Ensuring community expectations around public sector responsiveness are met.

Value for money

Ensuring expenditure of public money on interests in land, and the management of land as a public resource, represents value for money.

Transparency

Being appropriately accountable to Parliament and the public for the use of acquisition powers and the management of land assets.

¹ The LAA can be accessed at www.legislation.gov.au/Details/C2016C00827

Review approach

3. The Review will be undertaken by the Department of Finance (Finance), and will report to the Minister for Finance by the end of 2020. The report will outline recommendations for Government consideration in relation to legislative, policy and administrative reforms to the LAA.
4. Finance will consider relevant international and Australian best practice, and be informed by public consultation through submissions from interested parties in response to this Discussion Paper.

Discussion Paper

5. This Discussion Paper summarises key aspects of the LAA and its administration and asks questions to prompt discussion on reform options. The questions do not reflect Government decisions, nor are they guaranteed to form part of any recommendations for reform.

Submissions

6. Public submissions are an essential part of this Review. Your views will ensure community expectations of the LAA are understood and help inform the Government about changes that should be made to strengthen the LAA.
7. Your submission does not need to address all questions asked in the Discussion Paper. You may also wish to raise other aspects of the LAA not covered in the Paper. In general, we are interested in:
 - a. your views on how the LAA and its administration is working, and
 - b. what changes could be made to improve the LAA, particularly around the Review principles of equity and fairness; timeliness; transparency; and value for money.
8. Details of how to make a submission are available on the Finance website: www.finance.gov.au/publications/reviews/review-lands-acquisition-act-1989
Submissions close on Monday 19 October 2020.

Changes to the legislation will not be retrospective

9. Changes to the legislation will not be retrospective. Any acquisition processes that commence before legislative changes occur will continue to fall under the existing LAA provisions. This will provide certainty for claimants, acquiring authorities and other persons involved in an acquisition process.

Review governance

10. A Steering Committee will oversight the Review. Membership comprises representatives from Finance (Chair); Department of Defence; Department of Infrastructure, Transport, Cities and Regional Development; and the Attorney-General's Department.



Section 2: Lands Acquisition Act – Overview

Purpose of the LAA

1. The purpose of the LAA is to provide a mechanism for the Commonwealth to acquire land for essential public infrastructure (e.g. roads, Defence facilities and airports), while respecting the rights of interest holders, such as those whose land is being acquired.
2. The LAA sits within the context of Section 51(xxxi) of the Australian Constitution, that states the Commonwealth can make laws with respect to 'the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has the power to make laws'. The LAA provides the Commonwealth with a legislative framework for its property transactions, including to ensure acquisitions occur on just terms.
3. While much of the LAA focusses on land acquisitions, the Act also regulates other Commonwealth dealings in land interests including:
 - a. disposals of land
 - b. temporary entry onto land
 - c. land situated overseas (e.g. Australian embassies), and
 - d. mining on Commonwealth land.

Unlike acquisitions, these are not governed by section 51(xxxi) of the Constitution.

4. The *Public Governance, Performance and Accountability Act 2013* includes rules governing how Commonwealth officials are to use public resources, including those relevant to the acquisition or management of land as a public resource.

Application of the LAA

5. Unless exemptions apply², all Commonwealth agencies that acquire land are subject to the LAA. These 'acquiring authorities' include non-corporate and corporate Commonwealth entities³. Some corporate Commonwealth entities are alternatively able to deal with land (by agreement, but not by compulsory acquisition) through their own enabling legislation, which gives the entity the ability to acquire and dispose of property including land, similar to that of a natural person.
6. The LAA falls under the responsibilities of the Minister for Finance (Minister) and the Department of Finance (Finance). The Minister has delegated some powers under the LAA to officials within Finance and other acquiring authorities. Attachment 1 provides further details on the key elements of acquisition and Attachment 2 provides a flowchart of acquisition processes under the LAA.



1. What are your views on the range of land interests and entities covered by the LAA?

² See the *Lands Acquisition Act Regulations 2017* for exempt authorities (entities): <https://www.legislation.gov.au/Details/F2018C00896>

³ Flipchart of Commonwealth entities at <https://www.finance.gov.au/government/managing-commonwealth-resources/structure-australian-government-public-sector/pgpa-act-flipchart-list>



Section 3: Acquisitions

1. Under the LAA, there are two types of acquisitions: by compulsory process and by agreement.

Compulsory acquisitions

2. Compulsory acquisitions occur in a smaller number of cases than acquisitions by agreement. They do not need the agreement of the interest holder and occur by the Minister using powers under the LAA, based on the advice of the acquiring authority (e.g. a Commonwealth department or agency).
3. To ensure the acquisition occurs on just terms, the LAA provides an entitlement to compensation and sets out the types of compensation that may apply. Finance manages the compensation process in consultation with the acquiring authority.
4. The process for making and agreeing a compensation claim can be complex. Some claims are made and finalised quickly, while others take a long time (see further discussion at Section 4). In recent years, governments have increasingly recognised the potential impact on interest holders of compulsory acquisition processes, and invested in administrative improvements to reduce this impact. For example, NSW has introduced Property Acquisition Standards⁴, which are guiding principles for the acquisition of property.

Acquisitions by agreement

5. Most Commonwealth acquisitions occur by agreement, where the seller is willing. The Commonwealth pays an agreed price for acquisitions by agreement, rather than compensation⁵. Once the parties agree the terms of sale, the acquisition takes place by contract, in much the same way that a standard sale and purchase of land would occur between two private parties.
6. Acquisitions by agreement are usually simpler and therefore faster than compulsory acquisitions (which means less money is spent on costs such as professional advice and interest payments⁶) and are the Commonwealth's preferred approach. The Commonwealth authority acquiring the interest in land manages the process.
7. One of four conditions must be met in order to acquire by agreement:
 - a. the interest in land is 'available in the market'. This has a specific meaning under the LAA, being that either:
 - i. the interest in land is advertised as being available for sale or lease, listed with a real estate agent or offered in response to a publicly advertised request, or
 - ii. the acquisition is certified by the Minister as being a standard commercial transaction, i.e. the Minister is satisfied that the acquisition would amount to a normal commercial transaction between parties dealing with each other on equal terms.
 - b. Pre-Acquisition Declaration (PAD) has become absolute and is in force. A PAD is the formal notice of intention to acquire an interest in land. It becomes 'absolute' (i.e. final) 28 days after the review mechanisms lapse or are exhausted.
 - c. the Minister has given a section 24 certificate (used for urgent acquisitions, where it would be not be in the public interest to delay acquisition).
 - d. the interest is owned by the Commonwealth or a Commonwealth authority (for example, a corporate Commonwealth entity is acquiring land from a non-corporate Commonwealth entity).

⁴ www.propertyacquisition.nsw.gov.au/standards-and-principles#property-acquisition-standards

⁵ After being approached to acquire land by agreement a willing seller can also request the acquisition occur through a compulsory acquisition process, provided the acquiring authority agrees

⁶ Interest accrues while a claim for compensation (after compulsory acquisition) is being resolved

Acquisition of land in a public park

8. Special provisions are included in the LAA to cover the acquisition of land in a public park. Such land cannot be acquired by agreement, even if the relevant state, territory, or local government agrees to the acquisition. Instead, a compulsory acquisition process is required.
9. The need to acquire land in a public park can arise in cooperative, uncontentious circumstances. An example would be acquiring a portion of land classed as a 'public park' that borders a Commonwealth facility, where the land is not in active use as a recreational area.
10. These provisions restrict cooperative arrangements between the Commonwealth and other levels of government, in particular:
 - a. the requirement to use compulsory acquisition to acquire land in a public park; and
 - b. the need to obtain a certificate from the Minister that an acquisition from a state/territory or local government is a 'standard commercial transaction' if the acquisition is to proceed by agreement. An acquisition in pursuit of a shared policy goal may not be a 'standard commercial transaction'.

Q

2. How could acquisitions and their administration be reformed to encourage acquisition by agreement and improve the experience for interest holders?



Section 4: Compensation for Compulsory Acquisitions

1. When an interest in land is acquired by compulsory process, the LAA provides an entitlement to compensation to ensure the acquisition occurs on just terms. While the Constitution and the LAA do not define 'just terms', the LAA steps out the compensation process and the types of compensation that might be payable.
2. Claims usually start with a claimant advising the Commonwealth of the amount they consider they are entitled to⁷. As there is no time limit in which to make a compensation claim, there may be a lengthy delay while the claimant develops their claim.
3. Under the LAA, the Minister is not required to make an offer of compensation other than in response to a claim, but may decide to do so when 12 months have passed since the acquisition took effect and no claim has been made.
4. If the interest holder does make a claim, the Minister considers the claim and supporting evidence and then makes a first offer of compensation.
5. The claimant may accept or reject the Minister's offer of compensation and has unlimited time in which to do so. If the claimant rejects the offer, they must advise the Minister of the amount they consider is payable. The Minister then reconsiders the amount and provides a final offer to the claimant within two months of receiving the rejection notice and updated claim. The claimant then has unlimited time in which to accept or reject the offer.
6. There is no requirement under the LAA to offer mediation when the parties do not agree on the amount of compensation. Where there is disagreement, the LAA provides that the Administrative Appeals Tribunal (AAT) or the Federal Court can decide the amount payable.
7. Other Australian jurisdictions' compulsory acquisition laws vary in terms of whether the responsibility is placed first on the interest holder to make a claim, or on the Government to make an offer. The Government makes an offer in NSW, Vic, SA, ACT⁸ and NT, and the claimant makes a claim in Qld and WA (but there is a time limit of three years and six months respectively). In either case, the offer must be the Government's genuine estimate of the compensation amount, and not a 'starting offer' as in a commercial negotiation.

Advance payment

8. Prior to the Minister making the first offer, the Commonwealth may make an advance payment of the amount of compensation that may become payable. When the first offer is made, the Commonwealth must pay no less than 90 per cent of the offered compensation. This has the effect that compensation claims do not need to be finalised before claimants can access the compensation offered. The Commonwealth's offer represents the Commonwealth's assessment of the compensation payable for the compulsory acquisition. In practice, the Commonwealth often pays 100 per cent of the offer amount once the first offer is made.



3. What changes could be made to reduce the time to resolve compensation claims? You might like to consider which party should start the process, whether timeframes should apply and the use of face to face meetings and mediation.

⁷ Unless the parties have agreed an amount of compensation under section 78 of the LAA—Determination of compensation by pre-acquisition agreement

⁸ In the ACT, the interest holder makes a 'standing claim' first but the Government makes the first offer of a compensation amount

Types of compensation

9. To provide assurance that compulsory acquisitions occur on just terms, the LAA sets out a number of types of compensation including:
 - a. **market value:** the market value of the interest in land at the time of acquisition, assuming a willing but not anxious buyer and seller;
 - b. **special value:** additional financial advantage to the interest holder of the interest in land which is acquired (e.g. a home also used as a business);
 - c. **severance loss:** where only part of the interest in land is acquired, the reduction in market value of the remaining interest caused by the severance;
 - d. **injurious affection:** where only part of the interest in land is acquired, the reduction in the market value of the remaining interest caused by the Government works or development;
 - e. **disturbance loss:** loss directly and reasonably arising from the acquisition (e.g. relocation costs, fees associated with acquiring a new residence, or for businesses, loss of location goodwill);
 - f. **disadvantage payment** (also known as 'solatium'): available where the acquired interest is a principal place of residence. This is a fixed sum under the LAA, currently \$23,697.45 (as at 30 September 2019); and
 - g. **professional costs:** reasonable legal and professional costs arising from the acquisition.
10. Most types of compensation relate to the market value of the acquired land at the time of acquisition, however, professional costs, injurious affection and disturbance loss can be forward-looking.

Professional costs and interest

11. The Commonwealth generally reimburses claimants' legal and professional costs on an 'as incurred' basis. This assists claimants to access expert advice and negotiate with the Commonwealth on a fair basis. However, it is different from the dynamics that apply when a claimant is pursuing a legal claim and is paying legal costs out of their own funds unless and until there is an agreed settlement or court decision in favour of the claimant.
12. Interest on compensation is payable by the Commonwealth at a rate outlined in the regulations⁹. The interest is payable from the date of acquisition until the day on which the compensation is paid, or would have been paid, but for the delay of the claimant. Interest is compounded quarterly.
13. As there is no time limit applied to the interest holder making a claim and no cap on reimbursement of reasonable legal and professional costs, a situation may develop where there is limited incentive to resolve a claim, particularly given the Commonwealth pays no less than 90 per cent of the offered compensation when the first offer is made. Delays in finalising claims may also result in increased legal and professional costs, potentially committing the Commonwealth to substantial sums for such costs even before a claim has been submitted.
14. On occasion, reimbursement of professional costs has accounted for up to 10 per cent of the total of the quantum of a claim. Together with the requirement to pay compounded statutory interest, the claims process can be both protracted and costly.

Q

4. What changes could be made to the types of compensation to ensure expenditure of public money represents value for money? You might like to consider time limits and caps in your response.

⁹ <https://www.legislation.gov.au/Details/F2018C00896>

Review processes and reconsideration avenues

15. The LAA sets out the statutory steps for acquisitions including the various courses of action available to interest holders. These are summarised in Attachment 2 and are generally more complex (involving more steps) than state and territory equivalent legislation. For example, responses to offers and final offers have a statutory basis in the LAA. The LAA provides for a claim, an offer, a response, a final offer and four determination mechanisms: by an expert or arbitrator (if the parties agree), review of the final offer by the AAT, or determination by the Federal Court. State legislation generally provides for a claim, an offer, and one or two determination mechanisms.
16. Another example of the statutory steps, including reconsideration avenues, is during the notice of intention to acquire an interest in land. Where a PAD is reviewable, the interest holder may apply for an internal review by the Minister and, if dissatisfied, external review by the AAT. The AAT can make a recommendation to the Minister. The Minister does not have to accept the AAT's recommendation.

Q

5. How could the LAA review processes and reconsideration avenues be changed to encourage early resolution?



Section 5: Disposals

1. The LAA provides that an 'acquiring authority' must not dispose of interests in land without the written agreement of the Minister. The Minister has delegated the power to approve disposals to a range of Commonwealth entities, which must comply with the Commonwealth Property Disposal Policy (CPDP)¹⁰. Given this, the Review is also considering the CPDP, and whether reform is required to support better land use management and administrative practices.
2. The CPDP requires that Commonwealth property is held only where it contributes to government service delivery outcomes and ownership represents value for money. The default position is for surplus land to be sold on the open market at fair market value. Exceptions to the rule (i.e. off-market sales) are allowed in limited circumstances such as to state and territory governments and local councils for specific purposes. There are no provisions in the CPDP for an off-market sale direct to a private organisation or individual.

Land swaps

3. Sometimes acquiring authorities receive a proposal relating to the simultaneous disposal of land and acquisition of land by the acquiring authority. For example, a local council, which runs a facility adjacent to a Defence facility, may offer to help relocate the Defence facility to more suitable land in exchange for acquiring the land on which the Defence facility is situated. Currently, there is no provision to treat the acquisition and disposal as a single transaction.

Disposals in specific circumstances

4. The CPDP does not currently provide for off-market sales to a private entity, even where there is only one obvious buyer (e.g. a landlocked site with one surrounding landowner) and an on-market approach (e.g. selling by a real estate agent) would not be an efficient use of public money. Where land has no competitive 'market', an off-market sale may be more efficient, provided the relevant Commonwealth entity has obtained an independent valuation and is selling for fair value.

Q

6. What changes could be made to the CPDP to support better land use management and/or administrative practices? You might like to consider off-market sales and land swaps in your response.

¹⁰ www.finance.gov.au/government/property-construction/commonwealth-property-disposal-policy



Section 6: Other Matters

Acquisitions and Public Purpose

1. Under the LAA, interests in land can only be acquired 'for a public purpose', which is defined as a purpose for which the Federal Parliament has power to make laws. Both compulsory acquisitions and acquisitions by agreement must be for a public purpose.
2. In 2013, the Federal Court considered the meaning of the phrase 'for a public purpose' in the context of a proposed compulsory acquisition process, in *French v Gray, Special Minister of State*¹¹. The Federal Court held that an acquisition of an interest in land should only be considered to be for a public purpose if the acquiring authority is acquiring the land for physical use for a public purpose (although physical use may be passive e.g. as a 'buffer area' adjoining a Defence facility). The judgement also suggests that land cannot be acquired by compulsory process in order to be transferred to a third party.
3. The judgement raises some questions about the interpretation of the LAA in other contexts, which would be sensible to clarify. In part, this is because the provisions relating to acquisition by agreement use the same phrase ('for a public purpose') as the provisions relating to compulsory acquisition. Two useful potential clarifications are to make it clear that:
 - a. an interest in land can be acquired *by agreement* (but not by compulsory acquisition) to transfer to another person where this facilitates an underlying public purpose¹²; and
 - b. an interest in land can be acquired *either by agreement or by compulsory acquisition* where an interest in the land (e.g. a long term lease) is then granted to a third party developer/operator of a public infrastructure project (e.g. transport, energy, and communications)¹³. In this scenario, the land will be physically used for a public purpose, but by the third party rather than by the acquiring authority.

Overseas Land

4. Acquisition and disposal of overseas land by acquiring authorities (e.g. for Australian embassies) is not subject to the same requirements as exist for those occurring in Australia but are a matter of public interest. Unless an exception applies approval by the Minister or delegate is required before an acquiring authority can acquire (or dispose) of interests in land situated overseas. Details of acquisitions must be tabled in both Houses of Parliament within 15 sitting days of the acquisition taking effect.



7. Is the concept of 'public purpose' sufficiently clear? If not, how could it be improved?
8. Are any changes required to the LAA provisions dealing with acquisitions and disposals of overseas land?

¹¹ [2013] Federal Court of Australia 263

¹² An example would be if land is being acquired by compulsory process from person A for physical use as a Defence facility, and neighbouring land is acquired by agreement (i.e. willing seller) from person B to transfer to person A as part of a negotiated compensation arrangement with person A

¹³ See for example Part 1A *Tasmanian Land Acquisition Act 1993* (Tas)

Native Title

5. Although compulsory acquisition under the LAA can extinguish native title interests in land (which would trigger a compensation right), it is Government policy to use this measure as a last resort. The preferred approach is to negotiate an Indigenous Land Use Agreement (ILUA) with relevant native title claimants.
6. Commonwealth land management law and policy, including the LAA and the CPDP, are also relevant when the Commonwealth is negotiating an ILUA, as the Commonwealth may wish to make land available to a claimant group as part of an ILUA.

Mining

7. The legal framework for mining on Commonwealth-owned land has resulted in complex administrative arrangements for access to explore or mine for minerals. The LAA provides¹⁴ that where no mining regulations have been made, section 51 and subsections 53(2) and (2A) of the previous Act, the *Lands Acquisition Act 1955* apply. As no mining regulations exist, the Minister has the power to grant access for exploration¹⁵. This power has not been delegated to Commonwealth officials.
8. The Governor-General can grant mining interests on Commonwealth land, apply state law to such interests and arrange for regulatory functions to be carried out by state officers. The 1955 Act¹⁶ empowers the Governor-General to authorise a mining lease over Commonwealth-owned land and that state mining laws will operate, so far as applicable, to that lease or licence¹⁷.
9. Organisations seeking to undertake exploration, mining and related activities on Commonwealth land apply to Finance, and a 'deed of access' may be negotiated before the proposal is presented to the Governor-General for approval.
10. The interaction with some state laws can add to the complexity of arrangements for access and exploration on Commonwealth land. For example, before issuing a mining tenement over Commonwealth-owned land, the relevant Western Australian Minister must seek the concurrence of the Commonwealth Finance Minister to the issue of that mining tenement¹⁸. In addition, access arrangements for entry onto Commonwealth land are managed and administered by acquiring authorities and treated as a disposal of an interest in land.

Q

9. Are any changes to the LAA and/or CPDP needed in the context of negotiating ILUAs?
10. Are the current arrangements for mining on Commonwealth land sufficient and appropriate?

¹⁴ S124(8) of the LAA

¹⁵ S53(2) of the *Lands Acquisition Act 1955*

¹⁶ S51(1) of the *Lands Acquisition Act 1955*

¹⁷ S51(2) of the *Lands Acquisition Act 1955*

¹⁸ S25A(2) of the *WA Mining Act 1978*

Future land use

11. This review is also an opportunity to consider how the Act could be adapted to support public purposes into the future. Land uses have evolved over time as both the economy grows and Government priorities change. The Act provides support for the delivery of various priority initiatives from public housing, military purposes and infrastructure. However, the Act should remain flexible to support priorities as they evolve, e.g. offshore or space exploration.

Is there a need for national uniformity?

12. While compensation types vary by name across Australian jurisdictions, the compensation payable (or paid) for comparable land does not vary considerably between jurisdictions¹⁹. However, the Australian Property Institute highlighted in their submission to the NSW Review of the *Land Acquisition (Just Terms Compensation) Act 1991* that "cross jurisdictional harmonisation of the principles for the assessment of compensation should be a consideration, given that much infrastructure construction over the next decade will have no respect for geographic jurisdictional boundaries"²⁰.

Q

11. How can the 'disposal' power under the LAA be flexible enough to manage future policy priorities?
12. Should amendments be made to the LAA to support future joint projects between the Commonwealth and states and territories?

¹⁹ Newton and Conolly (2017) *Land Acquisition* (7th Ed.) LexisNexis Butterworths page 3

²⁰ https://www.finance.nsw.gov.au/sites/default/files/David_Russell_SC_JTC_Review_Report.pdf

Attachment 1 – Key elements of acquisition

Decision to acquire: Land may only be acquired for a 'public purpose', which is a purpose for which the Federal Parliament has power to make laws.

Notice of intention to acquire: The two types of notices are served on affected interest holders and published in the Gazette and (if practicable) a local newspaper. The two types are:

- a. pre-acquisition declarations (PAD), which can generally be reviewed and may have a longer implementation period; and
- b. section 24 certificates, which can only be used in circumstances of 'urgent necessity' or where a PAD would compromise national security. Publication is discretionary for section 24 certificates.

Review of the PAD: An interest holder can ask the Minister to reconsider a PAD and may escalate the issue to the Administrative Appeals Tribunal (AAT) for review if they are unsatisfied with the Minister's decision. The AAT can only make recommendations to the Minister, with the Minister making the final decision. The Minister may also include a statement in the PAD that the proposed use (or restriction) on the land is connected with essential policy implementation and for that reason will not be subject to review by the AAT.

Acquisition by agreement: Acquiring authorities can only acquire property by agreement after a PAD or section 24 certificate has been issued; where the property is available in the market as defined in the LAA; or from another acquiring authority.

Acquisition by compulsory process: Compulsory acquisition can occur after a notice of intention to acquire is issued. The acquisition is completed by Ministerial declaration. Upon publication in the Gazette, the interest identified in the declaration vests in the acquiring authority by law and the former owner of that interest has a statutory right to compensation. Unless possession is urgent, the interest holder can remain for six months after the acquisition.

Claim for compensation: For compulsory acquisitions, the interest holder is entitled to make a claim (no time limit applies) to the Minister for compensation. If the Minister rejects a claim, the claimant can apply to the AAT or the Federal Court for a review or determination.

Offer of compensation: The Minister may make a first offer of compensation in response to a claim; or if no claim is made within 12 months after the acquisition, of their own volition. The claimant can then accept/reject the Minister's first offer and may make a counter-claim in response. The Minister can then make a final offer.

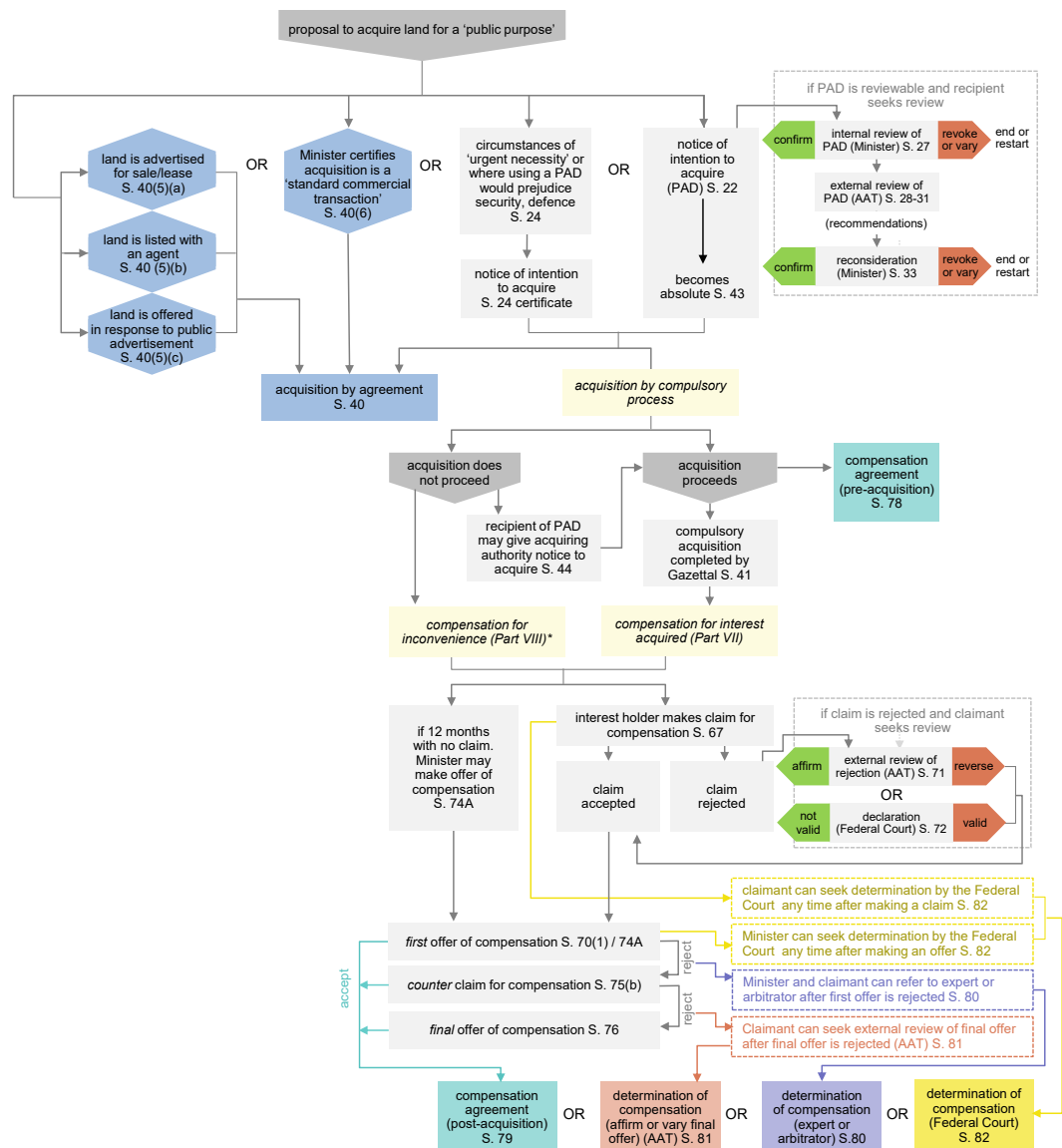
Compensation agreement: There are two ways to reach agreement on compensation. The Minister and the owner of an interest in land (other than a mortgage interest) may agree on the amount of compensation to which the owner will be entitled if the interest is acquired by compulsory process within a time specified in the agreement (known as a section 78 agreement). Alternatively, the Minister may make an offer of compensation (including a final offer) and the person accepts the offer (known as a section 79 agreement).

Determination of compensation: There are several mechanisms for external determination of the compensation amount:

- a. the parties can apply to the Federal Court for determination any time after a claim or offer of compensation is made (provided 3 months have lapsed); or
- b. the parties may agree to have the compensation dispute determined by an expert or through arbitration; or
- c. the claimant may apply to the AAT for a review of the final offer after a final offer is made.

Attachment 2 – Process Flowchart of Acquisitions under the *Lands Acquisition Act 1989*

This flowchart sets out the acquisition by agreement and compulsory acquisition process contained in the *Lands Acquisition Act 1989*.





Glossary

Term	Meaning
AAT	Administrative Appeals Tribunal
Acquiring authority	The entity that acquires the land. An acquiring authority is the Commonwealth or a Commonwealth authority.
Available in the market	Means: <ul style="list-style-type: none"> it is advertised as being available for sale or lease, or it is listed with a real estate agent, or it is offered in response to a publicly advertised request, or the acquisition is certified by the Minister as being a standard commercial transaction, i.e. the Minister is satisfied that the acquisition would amount to a normal commercial transaction between parties dealing with each other on equal terms.
CPDP	Commonwealth Property Disposal Policy
Finance	Department of Finance
Freehold	Outright (permanent and absolute) ownership of land and property
Government	Government of the Commonwealth of Australia
ILUA	Indigenous Land Use Agreement
Interest in land	'Land' means land in Australia. An 'interest', in relation to land means: <ul style="list-style-type: none"> a legal or equitable estate or interest in land a restriction on the use of the land; or any other right, charge, power or privilege over or in connection with the land or an interest in land
LAA (the Act)	<i>Lands Acquisition Act 1989</i> (Cth)
Land	See 'interest in land'
Leasehold	A type of tenure where you can own the property but lease the land from the freeholder (see Freehold)
Minister	Federal Minister for Finance (and where the context permits, includes a delegate)
Native Title	<i>Native Title Act 1993</i> (Cth)
PAD	A pre-acquisition declaration under section 22 of the LAA
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i> (Cth)
Public park	Land that, under a law of a state or territory, is dedicated or reserved, or is vested in trustees, as a public park or national park or otherwise for the purposes of public recreation
Public purpose	A purpose in respect of which the Parliament has power to make laws
Regulations	<i>Lands Acquisition Regulations 2017</i> (Cth)
Section 24 certificate	A fast track for acquisitions under section 24 of the LAA, which avoids the requirement for many of the usual pre-acquisition process steps which can only be used in circumstances of 'urgent necessity' or where a PAD would compromise national security. Publication is discretionary for section 24 certificates.