



Australian Government
Department of Finance



A Guide to Acquisitions
under the
Lands Acquisition Act 1989 (Cth)

March 2023



Disclaimer on use of this guide

The contents of this guide do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters.

If you think you have a claim for compensation under the *Lands Acquisition Act 1989* (Cth) you should seek legal advice about your claim. Refer to section on “Obtaining legal advice” in this document.

Contents

Disclaimer on use of this guide	2
Introduction	5
What does the guide cover?	5
Who is responsible for Commonwealth land acquisitions?	5
Types of Acquisitions	5
Introduction	5
What is an interest in land?	6
Acquisition by agreement	6
Compulsory acquisition	6
Urgent acquisition	6
Access to land before acquisition	7
Access	7
Notice	7
Compensation for temporary access	7
Urgent acquisitions	8
Acquisition by agreement	8
Pre-acquisition declarations	9
Compulsory acquisition	11
Overview	11
Pre-acquisition declaration	11
Review	11
Acquisition declaration	12
Process	12
When do I have to leave the land?	12
What happens if the acquisition does not proceed?	13
Your compensation rights	13
Am I entitled to compensation?	13
How to claim compensation	14
The process for claiming compensation	14
How compensation is decided	16
If your home was on acquired land	18

If you do not make a claim within 12 months	19
Paying compensation	19
Advance payment under compulsory acquisition	19
How payments are made	20
Final payment	20
Statutory interest	21
Offering land back	22
Obtaining legal advice	22
Commonly used terms	23
More information and other resources	23

Introduction

What does the guide cover?

This guide explains how the Commonwealth of Australia acquires land, or interests in land, under the *Lands Acquisition Act 1989* (Cth). It covers:

- the types of acquisitions
- who can enter your land before an acquisition
- the process for urgent acquisitions
- the process for acquisitions by agreement
- the compulsory acquisition process
- your compensation rights
- when land may be offered back to the previous owner
- commonly used terms.

This guide does not cover acquisitions by state or local governments.

Who is responsible for Commonwealth land acquisitions?

The Minister for Finance has a range of powers and responsibilities under the *Lands Acquisition Act 1989* (Cth). When this guide talks about the Minister, it means the Minister for Finance.

The Minister may authorise someone else to perform a function or duty or exercise powers on their behalf. The person who has been authorised is known as a 'delegate'. The delegate can be a person from any Commonwealth Department who is authorised by the Minister.

Types of Acquisitions

Introduction

The Commonwealth can acquire land or an interest in land for a public purpose by:

- agreement;
- compulsory acquisition; or
- urgent acquisition.

The most common way the Commonwealth acquires land or an interest in land is by agreement. The Commonwealth entity acquiring the interest in land is known as the 'acquiring authority'.

What is an interest in land?

You have an interest in land if you own the land, rent the land, have the benefit of an easement over the land or are a mortgagee.

An interest in land could also be:

- an agreement about how the land is used
- an option to purchase or lease the land.

Example

Eve owns a property that she leases to Alana. Eve has a mortgage with NB Bank.

There is an easement for water pipelines in the backyard held by Water Company.

Eve, Alana, NB Bank and Water Company all have an interest in the land.

More information on interests in land is in the [commonly used terms](#) section of this guide.

Acquisition by agreement

The Commonwealth can negotiate to acquire your interest in the land in a similar way to how two private persons might negotiate the sale and purchase of land. This is different to a compulsory acquisition because it is a voluntary process. The process is set out in more detail below.

Compulsory acquisition

Compulsory acquisition happens when the Commonwealth acquires an interest in land that was not for sale, for a public purpose. The Commonwealth must pay compensation to the person whose interest is taken following a compulsory acquisition. The process is set out in more detail below.

Urgent acquisition

An urgent acquisition is a type of compulsory acquisition. An urgent acquisition only happens when:

- there is an urgent need for the acquisition and a delay would not be in the public interest, or
- the ordinary acquisition process would result in a threat to the security, defence or international relations of Australia.

Access to land before acquisition

Access

An acquiring authority can enter land to see if that land or adjoining land could be used for a public purpose. In deciding whether land can be used for a public purpose, the acquiring authority can do things like take surveys and study the soil.

Notice

Before entering your land, the acquiring authority must give you at least 7 days' notice. They must tell you:

- what they intend to do and why they intend to do it
- that you may be entitled to compensation if you suffer loss or damage as a result of them entering your land.

Frequently asked question

Does accessing my property mean that an acquiring authority will definitely acquire my property?

No. There are many things an acquiring authority thinks about before acquiring property.

After accessing your property, the acquiring authority may determine that:

- your land is not suitable for the public purpose, or
- there is other land that is more suitable.

Compensation for temporary access

If you suffer loss because an acquiring authority enters land you have an interest in, you may be entitled to compensation.

To claim compensation, you must provide details of the loss you have suffered and the interest you hold in the land using the [form](#).

Example

Luca owns a large farm, with several fenced paddocks. The Commonwealth is considering acquiring part of a paddock for use for weather monitoring. The investigator accidentally damages a fence when they enter the farm.

In the form, Luca writes he owns the Lot 123 located at 100 Greencamp Road, Riverside and he estimates the cost to repair the fence (time and materials) is \$2,000.

The Minister will consider your claim. If it is agreed that compensation is payable, the Minister will make you an offer. You may accept or reject the offer.

If you reject the offer, you can:

- agree to ask an expert or arbitrator to decide the compensation
- ask the Administrative Appeals Tribunal or the Federal Court to review the decision.

If the Minister rejects the claim, you may ask the Administrative Appeals Tribunal or the Federal Court to review the decision.

You will be responsible initially for your own costs involved with hiring an expert or the legal costs of seeking review with the Administrative Appeals Tribunal. Incurred costs may be allowed by the Tribunal but this is not automatic. In the event of an application to the Federal Court, costs are at the discretion of the Court and while you may recover your own costs you may also be ordered to pay the costs incurred by another party, in addition to your own costs, depending on the outcome.

Urgent acquisitions

Urgent acquisitions are not common and occur only in limited circumstances. These are the steps for an urgent acquisition.



The Minister can only sign a certificate that the land is urgently needed if satisfied that it meets the urgent acquisition criteria.

If your interest has been urgently acquired, you may claim compensation (see 'Your compensation rights' below).

Acquisition by agreement

The majority of interests acquired by the Commonwealth are by agreement. These are the steps for a negotiated agreement.



Pre-acquisition declarations

A pre-acquisition declaration may be made by the Minister. A pre-acquisition declaration means that an acquiring authority is considering acquiring an interest in the land. It does not mean your property has been or will be compulsorily acquired.

Process

A pre-acquisition declaration is required if:

- the interest is not available in the market
- it is not for an urgent acquisition, or
- the interest is not owned by the Commonwealth or a Commonwealth authority.

The pre-acquisition declaration must say:

- the land appears to be suitable for use for a public purpose
- how the land will be used or developed
- why the land is suitable for that use or development.

It may also say that the proposed use is connected with a particular government policy.

The declaration will be published in the [Australian Government Gazette](#) and, if practical, in the local newspaper.

If you are affected by the declaration, you will be sent:

- a copy of the declaration
- a sketch showing the location of the land
- a summary of your rights under the Act.

If a pre-acquisition declaration is not required, the first contact you will have with the Commonwealth is when it advises it is interested in acquiring your interest in land. This is when negotiations for the acquisition start.

Consequences of a declaration

If you receive a pre-acquisition declaration, you cannot enter into any agreement about your interest in land without telling the other party you have received it.

If you don't tell the other party, they can terminate the agreement and you may have to pay them for any loss they suffer.

Example

Harry receives a pre-acquisition declaration in the mail. It says the Commonwealth is considering acquiring his land. Two weeks later, Harry agrees to sell his land to Poppy. He doesn't tell Poppy about the pre-acquisition declaration.

Poppy can terminate the agreement and Harry may have to pay Poppy the money she spent on negotiating the agreement and any other loss or damage Poppy suffered because of Harry's failure to tell Poppy of the pre-acquisition declaration.

Frequently asked question

When is an interest available in the market?

An interest is available in the market if it is:

- being advertised for sale or lease
- listed with a real estate agent or property manager as being available for sale or lease
- offered to the acquiring authority by the owner in response to a publicly advertised request, or
- the acquisition of the interest is certified by the Minister to be a “normal commercial transaction”.

The process for an acquisition by agreement will depend on the nature of the interest being acquired.

Commonly, this will involve the Commonwealth engaging a valuer to understand the market value of the interest. You and the Commonwealth will negotiate the sale price and terms.

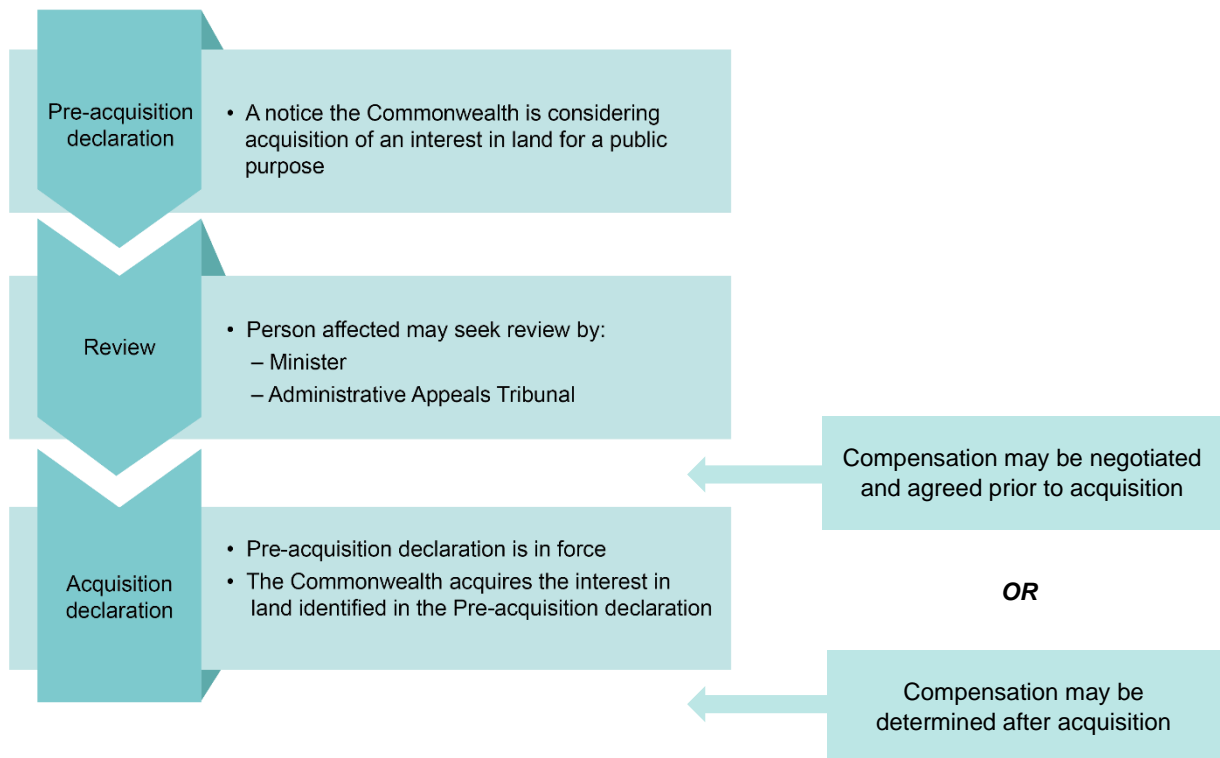
If the negotiation is successful, a contract for the acquisition of the interest will be signed. The acquisition will be completed in accordance with the terms of the agreement.

Payments under negotiated agreements

You will be paid the amount set out in the agreement. You will not be entitled to compensation in addition to the negotiated price.

Compulsory acquisition

Overview



Pre-acquisition declaration

The process for issuing a pre-acquisition declaration is set out in detail under 'Acquisition by agreement' above.

Review

Reconsideration by the Minister

If you are affected by a pre-acquisition declaration, you can ask the Minister to reconsider. To do this, you must:

- make your request within 28 days of receiving the declaration
- explain why you want the Minister to reconsider the decision to make the pre-acquisition declaration.

The Minister must consider your request and will tell you whether or not they will change or cancel the pre-acquisition declaration.

If you are unhappy with the Minister's decision you may apply to the Administrative Appeals Tribunal for review of the decision.

However, the Minister's decision cannot be reviewed by the Administrative Appeals Tribunal if the acquisition is essential for implementation of a policy, particulars of which are set out in the pre-acquisition declaration.

Review by Administrative Appeals Tribunal

If you want the Administrative Appeals Tribunal to review the decision to make a pre-acquisition declaration, you must apply within 28 days of receiving the Minister's reconsideration (which will confirm, revoke or vary the declaration).

The Administrative Appeals Tribunal will consider a number of things when reviewing the pre-acquisition declaration. These include:

- the effect of the acquisition on affected persons
- the impact on the environment if the land was used
- whether there is another means of accommodating the acquiring authority's needs.

The Tribunal may consider additional relevant things beyond the above items when reviewing the pre-acquisition declaration.

The Tribunal will make a recommendation to the Minister. The Minister must consider this recommendation.

The Minister has 90 days to consider the Administrative Appeals Tribunal recommendation. If the Minister does not want to follow the recommendation of the Tribunal, the Minister must put the reasons for rejecting the recommendation before both Houses of Parliament.

Acquisition declaration

Process

The pre-acquisition declaration becomes 'absolute' 28 days after:

- the last day to apply for a reconsideration of the pre-acquisition declaration has passed
- the last day to apply for a review of the pre-acquisition declaration has passed
- an application for review by the Administrative Appeals Tribunal has been decided.

Once the pre-acquisition declaration has become absolute, the Minister may make an acquisition declaration and publish it in the [Australian Government Gazette](#). Once this occurs, this means the Commonwealth has acquired the specified interest in the land.

Within 14 days of the publication of the acquisition declaration, the Minister must give persons affected:

- a copy of the declaration
- a notice stating they appear to be entitled to compensation
- a compensation claim form.

When do I have to leave the land?

If you are occupying land that has been acquired by the Commonwealth, you may be entitled to stay in occupation of the land for 6 months after the acquisition. You must give a written notice to the Minister which specifies which parts of the land you wish to continue to occupy.

You should give written notice to the Minister as soon as possible before the land has been acquired by the acquiring authority. In some circumstances, it may be essential that the Commonwealth take possession of the land sooner and you will not be entitled to continue to

occupy the land. If this occurs, the Minister will give you a written notice with reasons and fixing a date for you to vacate the land.

The terms on which you remain on the land (including any rent payable by you, or any occupation for longer than six months) will be agreed between you and the Minister.

If you and the Minister cannot agree on the terms on which you remain on the land, the Minister will decide what the terms will be.

You may appeal to the Administrative Appeals Tribunal any decision of the Minister on the terms of you remaining on the land.

What happens if the acquisition does not proceed?

If the pre-acquisition declaration has been 'absolute' for 28 days and the land has not been acquired, you may give notice to the Minister requiring the Commonwealth to acquire the land.

If it is not acquired within three months after you give this notice, the declaration lapses and becomes ineffective.

You are entitled to compensation if:

- you suffer loss because investigations are undertaken on your land and it is not acquired
- a pre-acquisition declaration or urgent acquisition certificate is revoked or stops being effective.

You must make a claim within three years after the declaration is revoked or lapses to be entitled to compensation. The process operates the same way as the process for other compensation using [form](#).

Your compensation rights

Am I entitled to compensation?

You are entitled to compensation if you have an interest in land acquired by the compulsory process, including through an urgent acquisition. You are also entitled to compensation in certain circumstances if investigations are undertaken on your land or a pre-acquisition declaration has been issued but the acquisition does not proceed (see above).

The Constitution of Australia states that you will receive just terms for the acquisition of your interest.

Example

Sue owns a property. There is an easement which runs through her property for a gas pipeline held by The Gas Company.

Sue's interest in the property is compulsorily acquired. However, because the gas pipeline will not be affected by the public purpose, the easement is not acquired. Sue is

entitled to compensation for her interest. The Gas Company which holds the gas pipeline easement is not entitled to compensation.

Tenants and Lessees

If you are a tenant or a lessee you have an interest in land. If the property you rent is compulsorily acquired, you are entitled to receive compensation for the acquisition of your interest.

How to claim compensation

The following outlines the process if compensation was not agreed prior to the acquisition. If you had agreed to compensation prior to acquisition, you cannot claim further amounts.

Making a claim

If you consider that you are entitled to compensation for an acquisition of an interest in land, you must make the claim in the approved form:

- specifying:
 - the interest that has been acquired by compulsory process, and
 - the amount of compensation you claim for the acquisition.

You must also provide evidence in support of your claim.

The process for claiming compensation

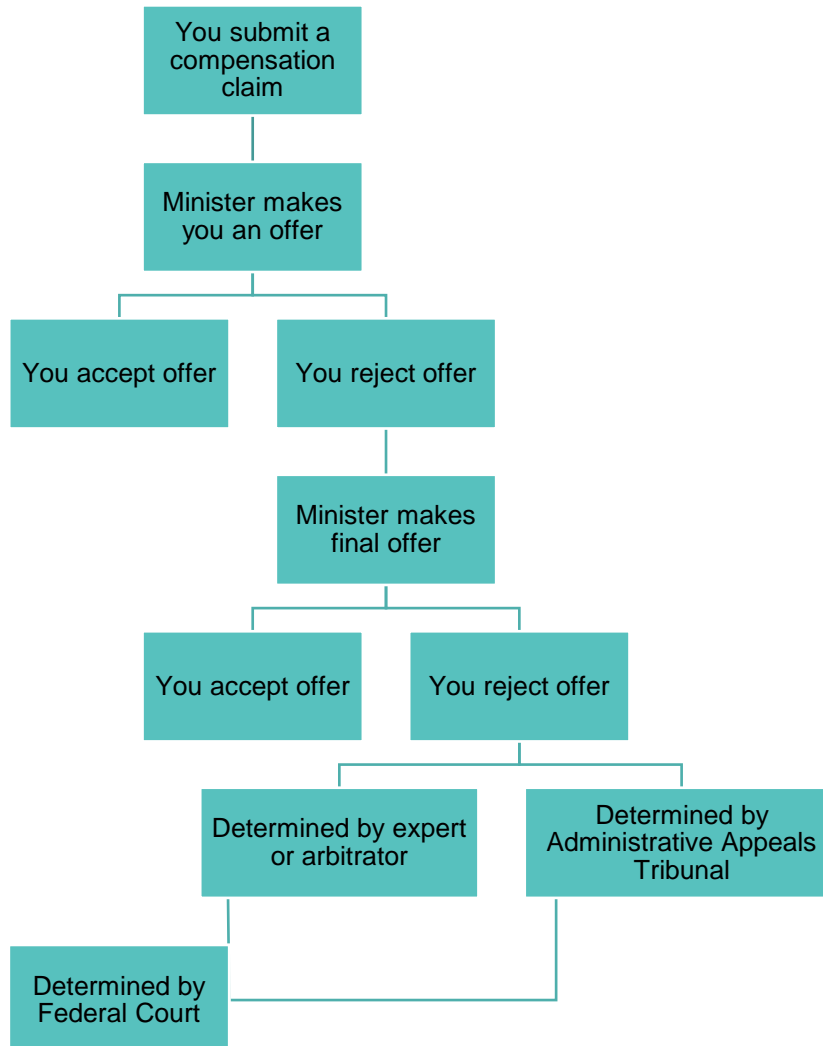
Deciding if your interest has been acquired

Once you have made a claim for compensation, the Minister must decide whether you have an interest in land that has been acquired by compulsory process. If the Minister is satisfied that your interest in land specified in your claim has been acquired by compulsory process, the Minister will inform you that your claim is accepted and make you an offer of compensation and explain how the amount of compensation was arrived at.

If the Minister decides that you do not have an interest that has been acquired by compulsory process, you can apply to the Administrative Appeals Tribunal for a review of the Minister's decision or you may apply to the Federal Court seeking a declaration that the interest specified in your claim was acquired by compulsory process.

Determining compensation

The process for determining compensation is shown in the diagram below.



You are not entitled to make an application to the Administrative Appeals Tribunal or commence court proceedings if you have accepted an offer for compensation.

You will be responsible initially for your own costs involved with hiring an expert or the legal costs of seeking review with the Administrative Appeals Tribunal. Incurred costs may be allowed by the Tribunal but this is not automatic. In the event of an application to the Federal Court, costs are at the discretion of the Court and while you may recover your own costs you may also be ordered to pay the costs incurred by another party, in addition to your own costs, depending on the outcome.

How compensation is decided

The amount of compensation you will receive is the amount that will justly compensate you for the acquisition.

All relevant matters will be taken into account including:

- market value of your interest at the date of acquisition
- any special economic value the land has to you
- reduction in value of other land owned by you because of severance ('severance' is explained below)
- loss caused because the interest you retain is reduced after the acquisition
- any loss or cost you reasonably incur because of the acquisition
- if your interest will end at a particular time (for example, because your interest is a lease), the likelihood of renewal or extension
- legal or professional (for example, an accountant or valuer) costs.

Examples of some of these matters are set out below.

Market value

The market value of the interest being acquired is the starting point in calculating compensation.

Frequently asked questions

What is market value?

Market value is the amount that would have been paid for your interest in land by a willing buyer at the date of acquisition by the Commonwealth.

It is an estimate of what a valuer considers is likely to be the price paid for the interest. It assumes both you and the buyer know all relevant information about the interest.

For example, if your house is being acquired, the valuer will generally consider the price for which comparable houses in the same area have recently sold to determine the market value of the property.

Special economic value

You could be entitled to additional compensation if your interest in land has a unique economic value to you. This does not include emotional value of the interest in land.

Example

Waste Company owns a piece of land which it uses as a rubbish dump. There is no other land nearby suitable to use as a rubbish dump. The land is compulsorily acquired.

The land has special economic value to the Waste Company and it is entitled to compensation for that value in addition to any other loss suffered.

Reduction in value of other land owned by you because of severance

You could be entitled to additional compensation if your interest in land is 'severed' by the Commonwealth.

Severance is where:

- the Commonwealth's acquisition of part of your interest has the effect of separating parts of your remaining interest, and
- this separation means the value of your remaining interest is less.

Example

Sara owns a cattle property made up of three separate lots. The middle lot is acquired. In order to move her cattle between paddocks, Sara now has to drive her cattle around the acquired land. She will be entitled to compensation for severance.

Loss caused because your interest is smaller after the acquisition

If part of your interest is acquired, it can have an effect on what you can use your remaining interest for. If this means you can't use your remaining interest in the same way, you could be entitled to additional compensation.

This is more likely to occur if the acquisition is of part of your land.

Example 1

Michelle owns a free-range chicken farm which is on three lots. Part of one lot is compulsorily acquired.

Because of this Michelle has to reduce the number of chickens she keeps to avoid overcrowding. Michelle is entitled to compensation.

Example 2

Lee runs a trucking business from an industrial property. On the land are a warehouse, office and large parking area for the trucks.

Part of the parking area is compulsorily acquired. The value of the remainder of Lee's land is reduced because he cannot park as many trucks on the remaining area. Lee is entitled to compensation for the loss of value to his remaining land.

Other special provisions

There are special provisions in the Act to address:

- where the land is not being used for the highest and best use to which the land could be put
- where there is no general market for your property.

Example

Albert owns a block of land which he uses for farming. The block is also able to be used for industrial purposes under the current zoning. The land is compulsorily acquired.

If the value of the property if used for industrial purposes is higher than for agricultural purposes, Albert will be entitled to the higher value.

Compensation for improvements

If you make improvements after a pre-acquisition declaration or an urgent acquisition certificate is given to you, you are not entitled to compensation for those improvements unless the Minister approves the improvements in writing.

Example

Fred receives a pre-acquisition declaration. After he receives the notice, he decides to build a large shed on his property. Fred does not get the approval of the Minister to build the shed.

When Fred's land is acquired, he is not entitled to compensation for the shed.

If your home was on acquired land

If your home (known as your 'principal place of residence') is acquired by compulsory process, and you were occupying your principal place of residence immediately before the acquisition, and you are no longer entitled to occupy your principal place of residence because of the acquisition then you are entitled to be paid an additional component of compensation. This is an amount of \$10,000 (in 1989 dollars) that will be indexed according to Consumer Price Index **plus** compensation which is the greater of:

- the compensation you would otherwise be entitled to; or
- the amount necessary to reimburse you for the costs of acquiring a reasonably equivalent type of home at the date of acquisition.

Example

Immediately before the acquisition of his interest in land, Patrick owned and lived in a house, as his principal place of residence. The compensation he is entitled to is \$250,000.

However, to buy a similar house in the same area will cost him \$270,000. Patrick is entitled to \$25,100 (indexed amount as at 2022) + \$270,000, a total of \$295,100.

If you do not make a claim within 12 months

If the Minister is satisfied that an interest in land has been acquired from you by compulsory process and you do not make a claim for compensation within 12 months of the acquisition of your interest, the Minister may make you an offer of compensation without you submitting a claim.

If the Minister makes you an offer, it will contain details of how the amount offered was arrived at.

You may accept the Minister's offer or reject the offer in the same way as if the Minister's offer was made in response to a claim made by you.

Paying compensation

Advance payment under compulsory acquisition

If the Minister is satisfied that your interest in land has been acquired by compulsory process, as part of the process, the Minister will make you an offer of compensation (see above). When this occurs, you will be paid part of the amount of your compensation as an advance. The remainder will be paid when the compensation is determined or agreed.

There may be situations where an advance is received prior to the compensation offer being made.

The advance payments will not be less than 90 per cent of the Minister's offer.

Payment of the advance does not mean that you have accepted the Minister's offer of compensation.

Example

Ruthvik receives a notice advising that his house is being acquired by the Commonwealth. The Minister's offer for compensation is \$500,000.

Minimum advance

$$\$500,000 \times 90\% = \$450,000$$

Maximum advance

$$\$500,000 \times 100\% = \$500,000$$

The amount of advance paid when the offer is made will be between \$450,000 and \$500,000.

How payments are made

Compensation is normally paid directly into your nominated bank account.

In the same way as if you had sold your interest in the land, there may be deductions before you are paid.

If you owe rates or other similar charges on the interest, those charges may be deducted from your compensation and paid to the party you owe money to.

If you have a mortgage over your property, the mortgagee can claim compensation for the outstanding debt. This will be deducted from your compensation and paid to the mortgagee in the same way as if you had sold your property.

Taxation

You should get independent advice about the tax effect of a compulsory acquisition or an agreement to acquire your land.

Final payment

When compensation is determined, you will receive your final payment.

This will be the amount of compensation less any payment you have already received.

Example

Anna received an advance payment of \$200,000. Her compensation was determined to be \$310,000.

Compensation	\$310,000
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Less advance	\$200,000
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Final payment	\$110,000 + interest
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What happens if I was paid too much as an advance?

If the determined amount of compensation is less than you received in advance, or it is determined that you did not have an interest in the land, you may be required to repay the advance.

Example

Edwina was paid \$1,000 as an advance for the acquisition of an easement at the back of her property. Compensation was eventually determined as \$900. Edwina may have to repay \$100.

Statutory interest

You will be entitled to be paid interest on the compensation you receive from the date of the acquisition until you are paid.

The interest rate which applies is set under a [regulation](#).

If the Minister has made an offer of compensation, you reject the offer and the amount of compensation is subsequently determined to be less than the Minister's final offer, payment of compensation will be taken to have been delayed and you will not receive interest for the period after the final offer was made.

Example

William rejected a final offer of \$150,000. His compensation was subsequently determined by the Federal Court as \$140,000.

William is only entitled to interest on his compensation from the date of the acquisition until he received the final offer.

Offering land back

If your interest has been compulsorily acquired; the acquiring authority wants to dispose of the interest within 7 years; or the acquiring authority has not made substantial improvements to the interest, then the Minister will have regard to the general principle that the interest should be first offered for sale to the former owner at the current market value.

If an offer is made, you will have 28 days to consider the offer, and you may apply to the Administrative Appeals Tribunal for review of the amount specified as the current market value.

Obtaining legal advice

This guide does not cover everything to do with acquisitions. If you think you have a claim for compensation under the *Lands Acquisition Act 1989* (Cth) you should seek legal advice about your claim.

Frequently Asked Question

Who pays for legal advice?

If an interest in your land is being compulsorily acquired, you can be reimbursed for your reasonable legal expenses.

If you are selling your interest to the Commonwealth, you are responsible for your own legal advice (although you can include the cost of this in the price you set for your interest in land).

Commonly used terms

Act means the *Lands Acquisition Act 1989* (Cth).

Acquiring authority means the Commonwealth or a Commonwealth authority.

Not all Commonwealth authorities are allowed to use the powers under the *Lands Acquisition Act 1989* (Cth). For example, the Australian Postal Corporation and the Australian Broadcasting Corporation are not subject to the *Lands Acquisition Act 1989* (Cth).

Interests in land include:

- any legal or equitable estate or interest in the land
- a restriction on the use of the land, whether or not annexed to other land
- any other right, charge, power or privilege over or in connection with the land or an interest in the land.

Market value means the amount that would have been paid for your interest by a willing seller to a willing buyer at the date of acquisition by the Commonwealth.

Minister means the Minister for Finance.

More information and other resources

If you would like more information, please contact LAA@finance.gov.au.