The Commonwealth and You: Compulsory Acquisition of Land

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This is an information guide only.
You should seek legal advice on any potential claims arising from the operation of the Lands Acquisition Act 1989.
1. Introduction

1.1 Purpose

The purpose of this brochure is to provide information about the Commonwealth land acquisition process under the *Lands Acquisition Act 1989* (the Act). It is a guide only and should not be treated as legal advice.

1.2 Background

The *Lands Acquisition Act 1989* (the Act) provides specific powers to the Commonwealth Government to acquire interest in land.

The Act provides a regime designed to protect your interests when the Commonwealth wants to acquire an interest you hold in land.

Under the Act, if you own or have an interest in the land:

- You must be told in advance of the Commonwealth’s decision to acquire your interest in the land;
- You can ask an independent body to assess the Commonwealth’s decision to acquire your interest;
- You can get reasonable professional advice, paid for by the Australian Government, about your position; and
- You have a right to be compensated on ‘just terms’ for the Commonwealth’s acquisition of your land or interest in land.

This brochure describes the process that the Commonwealth must follow and tells you what you can do to ensure that the Commonwealth treats you fairly.

If you need more information about your rights or entitlement to compensation under the Act, please contact the relevant Finance officer listed on page 9 of this brochure.

This brochure deals only with acquisitions by the Commonwealth. Similar legislation is in place in most Australian States for acquisitions by state and territory governments.

2. Who is responsible?

The Minister for Finance and Deregulation is responsible to the Parliament for administering the Act. The Department of Finance and Deregulation (Finance) represents the Commonwealth and carries out the day-to-day administration of the Act.

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3. What is an interest in land?

The Act refers to acquiring an ‘interest in land’. Owning an interest in land means you have a part of, or all of the ‘bundle of rights’ that are conferred on a land owner. For instance, you may:

- own land outright, or
- have a mortgage, or
- have an easement right over land to be acquired, or
- be a lessee or licensee, or
- have an established native title interest.

If you hold an interest in land, you may have rights under the LAA, if such an interest is acquired by the Commonwealth. The Commonwealth can acquire your land through one of the three following ways:

- Compulsory acquisition
- Negotiated agreement
- Urgent acquisition

4. What is compulsory acquisition?

This is the process that the Commonwealth can use to obtain an interest in land anywhere in Australia. Compulsory acquisition can be used whether or not an owner is willing to sell their interest in the land, when the land has no title, when an owner has difficulty establishing proof of title, or even if the owner cannot be found.

Even if you are willing to sell your land to the Commonwealth, you can still ask to have your land acquired by the compulsory process. The compulsory process provides additional protection to your rights, but may take more time for the final compensation amount to be determined. However, it also means that the amount of compensation may be reviewed. (See the notes on pages 6 and 7 about the advance payment and review processes.)

5. What is acquisition by negotiated agreement?

The Commonwealth can also obtain land by negotiated agreement. Acquisition by negotiated agreement involves you and the Commonwealth agreeing to the terms of the agreement and the amount of compensation.

6. Urgent acquisition

In some extraordinary circumstances, such as in time of national emergency, the Commonwealth may need to acquire land urgently and therefore the process may go more quickly that the usual procedures for compulsory acquisition. In such a case, the Minister may issue a section 24 certificate in place of the pre-acquisition declaration.

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If a section 24 certificate is issued, the Minister has to provide a copy of the certificate before both Houses of Parliament within three parliamentary (3) sitting days and, as soon as possible, give you a copy if you are the owner of the interest in the land. A copy of the certificate may also be published in the Commonwealth Gazette and in a local newspaper, but this is not compulsory.

This certificate overrides any pre-acquisition declaration already issued, and means that you cannot appeal to the Administrative Appeals Tribunal about the Minister’s decision to acquire your land. All compensation rights remain unchanged.

7. Access and Pre – acquisition

The Act allows the Minister for Finance and Deregulation to authorise persons to enter on to the land on behalf of the Commonwealth. If the Minister authorises a person in that event you will receive a notice in writing which:

- explains that someone has been authorised to access your land;
- sets out the reasons why the Minister has authorised a person to access your land; and
- advises that you may be entitled to seek compensation for losses or damages you may suffer as a result of the authorised entry on to the land.

The authorised person is allowed to access your land 7 days after you have been given this written notice.

8. The compulsory acquisition process

8.1 The first step - the pre-acquisition declaration

The Minister issues a document to affected landowners, which states that the Minister is considering the acquisition by the Commonwealth land for a public purpose. This document is a pre-acquisition declaration.

- It tells you which Commonwealth authority wants to acquire the land;
- It describes the land fully;
- It states that the Minister thinks the land appears to be suitable for a public purpose;
- It states the public purpose the land has been chosen for; and
- It explains why the Minister considers the land suitable for the intended use.

If you are an affected land owner, you will receive a copy of the pre-acquisition declaration, a sketch showing the land that the declaration covers, and a statement explaining your rights under the Act. A copy of this declaration is published in the Commonwealth Gazette and (if practical) in a local newspaper, as soon as possible after the declaration is issued.
8.2 You can appeal the pre-acquisition declaration

You can ask the Minister to reconsider their decision to acquire your land. You will get instructions for doing this with the pre-acquisition declaration. You have (28) days after you get the pre-acquisition declaration to make an appeal in writing to the Minister. A Minister in the Finance and Deregulation portfolio (or a delegate of the Minister) will reconsider the decision to acquire your land. The Minister will respond to your request by doing one of the following:

- Confirming the original pre-acquisition declaration (in which case the acquisition process continues);
- Revoking the pre-acquisition declaration; or
- Varying the pre-acquisition declaration (but not so as to acquire more land than originally specified).

The Minister will give you the decision and a statement of reasons for any decision within twenty-eight (28) days of receiving your appeal.

8.3 You can appeal to the Administrative Appeals Tribunal

If the Minister does not revoke or vary the pre-acquisition declaration, you can go to the Administrative Appeals Tribunal for a review of the Minister’s decision to acquire your interest in the land. The Tribunal is an independent body that reviews decisions made by Commonwealth Ministers, authorities and officials. While the Tribunal cannot question the merits of the Commonwealth policy decision to acquire your land it can examine all other relevant matters.

8.4 The final step in the process – the acquisition declaration

If the Commonwealth decides to acquire the land, the Minister will issue an acquisition declaration which states that the land has been acquired by the Commonwealth by compulsory process. It is published in the Commonwealth Gazette and (if practical) in a local newspaper. Within 14 days after the declaration is published in the Gazette, you will receive the following documents:

- a copy of the declaration;
- a notice telling you that you can claim compensation; and
- a compensation claim form.

If the Minister does not issue an acquisition declaration within twenty-eight (28) days of completing all of the pre-acquisition procedures, you may write to the Minister and ask for the land to be acquired. If nothing happens within three (3) months of your notice, the pre-acquisition declaration lapses and no longer has any effect. In this case, you may be entitled to be compensated for any loss or damage that has resulted from the pre-acquisition declaration being issued.

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9. Do you wish to stay on the land?

You can generally stay on the land for at least 6 months after it is acquired, provided you are occupying the land at the date it is acquired by the Commonwealth. If you want to stay, any terms or conditions (including rent for occupying the land, payable after it has been acquired) will be worked out between you and the Minister. If these negotiations break down, the Minister will set out the terms and conditions. If you are still dissatisfied, you can apply to the Administrative Appeals Tribunal for a review of the terms and conditions.

Note that there are occasions where you will be required to vacate the land when the Commonwealth requires possession of the land urgently.

10. Your compensation rights

10.1 How is compensation decided?

You can claim compensation from the Commonwealth as soon as your land has been acquired by the compulsory process. The basic principle used to decide how much compensation you are paid is that the amount should compensate you fairly and on ‘just terms’ for the acquisition.

Several factors are considered when compensation is being calculated. These include:

- **The market value of the land**
  That is, the amount that would have been paid for it if it had been sold at that time under ordinary circumstances, without any pressure on either buyer or seller. The market value is based on the most high-value use that the land could be put to and not necessarily its current use.

- **Additional financial value**
  This is the value of the land to the person that is above and beyond the market value. This additional value relates to a financial advantage that the owner has (at the time the land is acquired) that is connected to his or her owning the interest in the land. Sentimental or personal value is not considered ‘additional financial value’.

- **Severance**
  If the Commonwealth acquires only part of your property, what is left may have a reduced market value.

- **Disturbance**
  Any loss, injury, damage or reasonable expenses that you can show are a direct result of the acquisition; for example; removalist’s fees, and resettlement costs and loss of goodwill.

- **Reasonable legal or professional costs**
Such as hiring a lawyer or other professional adviser to assist you to comply with the process that goes with the acquisition. The Commonwealth will also compensate you for the cost of providing papers, such as mortgage papers, which it requires you to produce.

10.2 If you are a tenant or lessee

If you rent or lease, rather than own the land, you can claim compensation for the value of any affected property, which you hold under a lease or tenancy agreement. You can also claim for valuation, reasonable legal or professional costs and out-of-pocket expenses caused directly by the Commonwealth acquisition. A valuer will be available to advise you about the worth of any interest you have in the property.

10.3 If your home is on acquired land

A payment called a ‘solatium’ covers the unseen effects of having to move from your home, whether you rent it or own it. Each household receives an amount equivalent to $10,000 as indexed according to the Consumer Price Index each year from June 1989.

10.4 How to claim compensation

You will receive a claim form with the acquisition declaration. You should consult your lawyer before committing any money or attempting to prepare a claim for compensation. After you have consulted your lawyer, fill in the claim form and send it to the address for claim notices. See page 9 for addresses.

10.5 Pre-acquisition compensation

The Commonwealth may do an initial assessment to see if your land is suitable for acquisition. This process for the initial assessment may start before a pre-acquisition declaration is issued and continue through to the eventual acquisition by the Commonwealth. If you have suffered a loss as a direct result of Commonwealth activity on your land prior to the actual acquisition you are entitled to make a claim for compensation. This includes compensation for losses that may arise as a result of injury or damage you suffered and from expenses that you have to pay as a direct result of the Commonwealth activity. To commence the process, you need to complete and submit a claim form.

11. Payment of compensation

11.1 Advance payment under compulsory acquisition

Once your claim for compensation has been received, it will be checked to see if it is a legitimate compensable interest and whether the amount claimed is correct.
If the claim is legitimate and the amount is correct the Minister or a delegate shall write to you to make an offer of compensation. The Commonwealth pays the amount soon after the time of offer.

If the Minister accepts some but not all aspects of your claim, then the Minister or a delegate decides what amount to offer you in writing. The Commonwealth makes an advance payment of at least 90% of the amount of the offer.

When you accept an advance payment, you are not bound to accept the Commonwealth’s Minister’s assessment as final. You are still entitled to continue with negotiations and, or appeals.

11.2 Payments under negotiated agreements

In a negotiated agreement, the Commonwealth cannot pay you any money until all negotiations have been completed.

11.3 How is payment made?

Usually payment is made directly into a bank account nominated by you.

11.4 Timing of payment

You should talk to your lawyer about the payments time frames set out in the Act.

11.5 Rights of appeal

If you are unable to agree with the Commonwealth on the amount of compensation you should get, you can choose to have it decided by any one of the following:

- **Arbitration**

- **An expert**
  An ‘expert’ is someone expert in the determining the value of the particular kind of land in question- for example, if your poultry farm is to be acquired, you could choose an expert in valuation of poultry farms to deal with the matter. No time limit has been imposed on the approach to an arbiter or an expert.

  Arbitration or expert decisions may lead to legal expenses that you will not be compensated for as the cost of the mediated settlement is shared between the Commonwealth and you the claimant. If you choose either of these first two methods, you and the Minister must agree as to who should be the arbiter or expert.

- **Administrative Appeals Tribunal review**
  You must make an appeal to the Tribunal within three (3) months of the final offer of compensation; or
• **The Federal Court**

No minimum time limit restricts your right to appeal to the Federal Court. However, the Commonwealth cannot apply to the Federal Court until three (3) months after the claim has been filed.

**11.6 Final payment**

The Commonwealth will pay the full amount of compensation as soon as the final amount has been agreed. This final payment will take into account any advance payment you have received, or any rates or other charges the Commonwealth may have paid for you. Interest will be included where applicable in this payment. Any overpayment must be returned to the Commonwealth.

**11.7 Statutory interest**

Under the Act, you may be entitled to interest on the amount of compensation owing. You should seek advice on how the interest is calculated.

**11.8 Taxation Consequences**

You should seek advice about any taxation implications that may result from an acquisition by agreement or as a result of a compulsory acquisition of an interest in your land. In the case of a compulsory acquisition, the reasonable cost of such advice is recoverable by you under the Act.

**12. Other points**

**12.1 Alerting the market place**

The Commonwealth must alert the market place to the fact that it is considering acquiring your land by lodging details of the pre-acquisition declaration with the Registrar of Titles (or equivalent in your State or Territory). You must inform any other prospective buyer that the Commonwealth intends to acquire your land.

The Commonwealth will also lodge the acquisition declaration with the Registrar of Titles.

**12.2 Compensation for improvements**

Compensation is not normally paid for any improvements you make to the land after the pre-acquisition declaration has been issued, unless you obtain written approval beforehand from the Commonwealth.

**12.3 Other rights to appeal**

In addition to the appeal rights outlined in this brochure, you may have other rights to apply to have decisions made under the Act reviewed. For example, you are entitled to make a

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complaint to the Commonwealth Ombudsman or make an application to have the decision reviewed under the *Administrative Decisions (Judicial Review) Act 1977*.

**13. Contact Details**

Director  
Land Operations and Public Works  
Special Claims & Land Policy Branch  
Department of Finance & Deregulation  
02 6215 2222

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