

Compulsory acquisition of land: private landowners' checklist

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Key issues:

- Under the *Land Administrative Act 1997* (WA), government agencies in Western Australia are empowered to enter on to and/or take any privately owned land for a public work such as roads, hospitals or public schools.
- Pursuant to the Land Administrative Act, an affected landowner has a right to claim compensation for their loss of interest in the land.
- To maximise the value of compensation it is recommended legal advice is obtained and a valuation secured under legal professional privilege.

Pursuant to the *Land Administrative Act 1997* (WA) (**LAA**) government agencies in Western Australia are empowered to enter on to and/or take any privately owned land for a public work such as roads, hospitals or public schools.

Compulsory acquisition of land is the formal process to take land without the landowner's consent. Pursuant to the LAA, an affected landowner has a right to claim compensation for their loss of interest in the land.

In the event an acquiring authority considers it may be necessary to use particular privately owned land for a public work, the acquiring authority may (after giving at least 30 days written notice to the landowner) enter on to that land and undertake surveys to determine the feasibility of the public work.

Notice of Intention to Take an Interest in Land

Once the acquiring authority has identified that private land is required to undertake the public work, a Notice of Intention to Take an Interest in the land (**NOITT**) is registered at Landgate (Western Australian Land Information Authority), published in a newspaper for state-wide circulation and served on the landowner. The purpose of a NOITT is to inform the landowner that the land is subject to a proposed compulsory acquisition.

The NOITT includes a description of the land to be taken, whether the intention is to take a part or the whole of the land, the purpose for which the land is to be taken and the date from which the land is likely to be required.

A NOITT remains current for 12 months from the date it is registered on the Certificate of Title (**CoT**). While the NOITT remains current, the landowner cannot build or improve the land or enter into any transactions which may affect the land.

Within 60 days of the registration of the NOITT, the landowner may object to the NOITT. In the event that it is determined that the objection does not warrant a cancellation or amendment of the NOITT, a taking order (**TO**) is issued.

Taking Order (TO)

The acquiring authority must register the TO at Landgate, publish the TO in a state-wide newspaper and serve a copy on the landowner. By registering the TO, all interests in the taken land are extinguished (except for those that are specifically preserved) and the acquiring authority becomes the owner of that land. The landowner's interest is converted into a claim for compensation.

The TO will describe:

- the land taken;
- the reason for the taking;
- the date the TO was registered on the CoT; and
- whether all interests in the land are extinguished.

The acquiring authority will also advise the landowner of the right to claim compensation for the loss of the interest in the taken land.

Claim for compensation

The landowner has six months from the date the TO is registered on the CoT to initiate a claim for compensation.

The basis of a claim for compensation is dependent on a number of factors including the value of the land taken, severance, any disruption and reinstatement of a business and in the case of a partial take of land, the impact that the land taken has on the remaining land, commonly referred to as injurious affection.

Generally, prior to lodging a claim for compensation, an independent valuation of the land is undertaken to determine the value of compensation under the different heads of compensation pursuant to the LAA.

Offer of compensation

Once the acquiring authority receives the landowner's claim it must serve an offer of compensation (**Offer**) on the landowner.

Rejection or acceptance of offer

In the event that the landowner does not accept the Offer, they have 60 days from the date that the Offer is served to reject the Offer, otherwise the Offer is deemed to be accepted.

In rejecting the Offer, the landowner may accept the amount of the Offer as an advance payment. The value of compensation can be determined by:

1. an agreement between the acquiring authority and the landowner;
2. action in the Supreme Court of Western Australia; or
3. referring the claim to the State Administrative Tribunal (**SAT**).

Initiating proceedings

To have the value of compensation determined in either the SAT or the Supreme Court, the usual limitation periods apply.

To maximise the value of compensation, it is recommended legal advice is obtained and a valuation secured under legal professional privilege.

For more information on your compensation claim please contact HopgoodGanim Lawyers' [Planning](#) team.

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