

Valuer General's Policy

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Determination of compensation for disadvantage resulting from residential relocation

What

This policy addresses the determination of compensation for disadvantage resulting from relocation under the Land Acquisition (Just Terms Compensation) Act 1991 (the Act).

How

This policy applies to all valuations to determine compensation for disadvantage resulting from relocation for the purposes of the Act.

Land may be acquired by an authority of the State for a public purpose when the land is not available for sale. The Valuer General determines compensation when an agreement for the purchase of the land cannot be reached between the land owner and the acquiring authority.

Compensation is assessed in accordance with the Act.

Why

This policy will ensure that:

- land owners are justly compensated for the disadvantage resulting from residential relocation
- compensation offered to land owners is in line with the Act.

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1 Policy

1.1 Scope

Relevant matters public purpose	<p>This policy should be followed to assess the amount of compensation for disadvantage resulting from relocation to be paid to a landowner or occupier where land is being acquired for a public purpose.</p> <p>See section 55 (e) of the Act - <i>Relevant matters to be considered in determining amount of compensation.</i></p>
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1.2 What is disadvantage resulting from relocation?

Definition Principle place of residence	<p>Section 60 of the Act defines disadvantage resulting from relocation as "non-financial disadvantage resulting from the necessity of the person entitled to compensation to relocate the person's principal place of residence as a result of the acquisition."</p> <p>Compensation for disadvantage resulting from relocation is often described as a payment over and above actual damages for inconvenience, stress and physical attachment to the land.</p>
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1.3 When is compensation for disadvantage resulting from relocation paid?

Eligibility compensable interest acquiring authorities	<p>Compensation for disadvantage resulting from relocation forms part of the compensation paid to a person who has a compensable interest in land acquired by an acquiring authority.</p> <p>Compensation for disadvantage resulting from relocation is only paid where a person is required to relocate their principal place of residence as a result of the acquisition. This includes residential occupiers who are not land owners.</p>
Partial acquisition	<p>Section 60 (4) states:</p> <p><i>Compensation is payable in respect of disadvantage resulting from relocation if the whole of the land is acquired or if any part of the land on which the residence is situated is acquired.</i></p> <p>Compensation for disadvantage resulting from relocation shall be paid where only part of the land is acquired if the public purpose for which the land is being acquired causes the owners to permanently vacate their principal place of residence.</p>

Home held in two or more names	Except in the case of separate occupations as described below, only one payment is made for a home, even where the home may be owned by two or more people.
More than one home on the land	Where there is more than one home on the land, only one payment of compensation for disadvantage resulting from relocation is made unless each home is occupied by different people with separate compensable interests.
Occupiers tenancy at will board	<p>A person who is renting a property has a compensable interest and is therefore also entitled to compensation for disadvantage resulting from relocation, as long as the home is their principal place of residence.</p> <p>As with a home owned by two or more people, an occupancy is considered to be only one compensable interest and therefore only one payment of compensation for disadvantage resulting from relocation is made, even if the occupancy agreement is in two or more names.</p> <p>An occupancy is generally established by a lease or written agreement but can also be a tenancy at will.</p> <p>Paying board does not constitute an occupancy.</p>
Owner and occupier in same house	Where a home is occupied by the landowner and is also leased to an occupier, both parties may be entitled to an amount for compensation for disadvantage resulting from relocation. The residences of each party must be adapted for separate occupation, with separate access and separate amenities such as kitchens, bathrooms, toilet, bedrooms and living areas.
Impact of valuation methodology	The method used to determine market value has no impact on the determination of compensation for disadvantage resulting from relocation. Where land is valued on the basis of a higher use, over and above the current use, compensation for disadvantage resulting from relocation is still paid if the home has been acquired.

1.4 How is compensation for disadvantage resulting from relocation determined?

Factors taken into consideration

compensable

In assessing the amount of compensation for disadvantage resulting from relocation, the Act requires that all relevant circumstances are to be taken into account, including:

1. the interest in the land of the person entitled to compensation, and
2. the inconvenience likely to be suffered by the person because of his or her removal from the land, and
3. the period after the acquisition of the land during which the person has been (or will be) allowed to remain in possession of the land, and
4. the length of time the person has resided on the land (and in particular whether the person is residing on the land temporarily or indefinitely).

Minister determines maximum amount

maximum amount

government gazette

The Act details the requirements for the calculation of compensation for disadvantage resulting from relocation in section 60(3).

The maximum amount is determined by the Minister and published in the Government Gazette.

The maximum amount is adjusted each year according to CPI.

Freehold

freehold

tenure

life tenant

In considering the owner's interest in the land, or tenure, the owners of freehold land would consider that they have complete rights to occupy and deal with the land as they see fit.

The owners of freehold land would also consider that they are residing on the land indefinitely or until any time of their choosing and that they would be able to pass the land on as part of their estate if they wished.

The level of inconvenience caused by the need to relocate would be high, regardless of the landowner's situation or length of ownership.

Therefore, every resident owner-occupier is entitled to the maximum amount of compensation for disadvantage resulting from relocation, being 100% of the amount determined by the Minister and published in the Government Gazette, except in extenuating circumstances.

Such circumstances may include any other agreement between the landowner and the acquiring authority regarding residing in the property for an extended

period. The Act provides an offset if the landowner is allowed to remain in the property after the acquisition.

Leasehold

occupier

Where an interest in land exists because of an occupancy, the payment of compensation for disadvantage resulting from relocation requires further consideration. Each case will need to be considered on its merits taking into account that an occupier may have:

- limited expectations of an ongoing tenure due to the short term nature of the lease agreement
- less or no emotional attachment to the property or the area in which it is located
- less difficulty in finding alternative accommodation and relocating.

Although the points above may apply in the majority of situations, there will be circumstances where an occupier has a strong connection to the land and also expects to have a long tenure.

For example, a person may be renting the family home from their parents, a home that they were raised in and a home they expect to inherit. Their attachment and expectation of a long tenure would likely be no less than as if they were the freehold owner of the property.

Compensation for disadvantage resulting from relocation calculation for occupiers

While the Valuer General will consider each case on its merits, as a guide, the following compensation amount will be determined based on the length of occupancy in the absence of any other relevant circumstances:

Tenancy	Percentage of the amount determined by the Minister and published in the Government Gazette
Recently commenced occupancy (< 1 year)	10%
Occupancy 1 to 5 years	20%
Occupancy 5 to 10 years	30%
Occupancy longer than 10 years	50%

However, the Valuer General will assess each circumstance on its own merits.

More than one payment

If separate payments of compensation are made, such as to an occupier and a landowner, the maximum amount applies to each payment and not to the total of the payments.

1.5 When is payment made?

Notice of compensation

[notice of compensation](#)

Compensation for disadvantage resulting from relocation is to be included in the compensation provided by the acquiring authority or by the Valuer General and described separately in the notice of compensation.

2 References

2.1 Definitions

Acquiring Authority	Means an authority of the state with the power to acquire land, defined in section 4 of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> as: <ul style="list-style-type: none"> (a) a Minister of the Crown, or (b) a statutory body representing the Crown, or (c) a council or a county council within the meaning of the Local Government Act 1993, or (d) any other authority authorised to acquire land by compulsory process.
Board	The provision of meals on a regular basis in connection with the provision of lodging.
Compensable Interest	Is an interest in land entitling the person to an amount of compensation.
Freehold	The term is used in this document to mean the ownership of land in fee simple.
Government Gazette	Government Gazettes are the official publication of notices about the decisions and actions of the New South Wales government. The Gazette is compiled by the Parliamentary Counsel's Office (PCO). It is ordinarily published every Friday (except public holidays) on the NSW legislation website (www.legislation.nsw.gov.au).
Life Tenant	Means a person who has exclusive possession and use of the land for as long as they live.
Maximum amount	The maximum amount is the amount determined by the Minister in accordance with section 60 (2) of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> .
Notice of Compensation	A Notice of Compensation is written advice provided by an authority of the state to an owner detailing their entitlement to compensation and the amount of compensation offered (as determined by the Valuer General).
Principle place of residence	The principal residence where a person resides for the majority of the time. A person can have only one principal residence.

Public purpose Means any purpose for which land may by law be acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991*.

Tenancy at will An occupier who is granted possession (often by implication) by the lessor, subject to either party having a right to terminate the resulting occupancy at any time.

Tenure Means the manner in which land is held. The title or interest in land.

2.2 Laws and policies

Governing NSW law

Land Acquisition (Just Terms Compensation) Act 1991

Related Valuer General policy

Compensation following compulsory acquisition

Compulsory acquisition advice

Compensation following compulsory acquisition involving possible conflicts of interest

Compensation following Compulsory Acquisition of a substratum interest

Determination of compensation following the acquisition of a business

3 Context

3.1 Role of the Valuer General

The Valuer General for NSW

In NSW, the *Land Acquisition (Just Terms Compensation) Act 1991* requires that the Valuer General determine the compensation to be offered to the person entitled to compensation and any other parties having a compensable interest in the land following a compulsory acquisition of land, or an interest in land, by a state or local government authority.

The Valuer General is an independent statutory office appointed under the Valuation of Land Act 1916.

A Valuer General NSW valuer or private valuer contracted to Valuer General NSW will prepare a valuation for recommendation of compensation for the Valuer General or his or her delegate.

The Valuer General is committed to an open and transparent valuation process that is easy for persons entitled to compensations to understand.

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Document control

Approval

Name and position	Signature and date
David Parker, Valuer General	 10 March 2022

Version

Number	Status	Date	Prepared by	Comments
1.0	Final	10/03/2022	Dr David Parker	Former DFSI Guidelines updated following stakeholder consultation to better align with the requirements of the Land Acquisition (Just Terms Compensation) Act 1991 and subsequently converted to VG policy.

Next review

Date	Comments
March 2023	Annual policy review, may be reviewed sooner following release or as needed.