

NSW Government response

Review of the NSW Land Acquisition (Just Terms) Compensation Act 1991

by David Russell SC and

Housing Acquisition Review

by Michael Pratt AM
Customer Service Commissioner



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Executive summary

The NSW Government response to the review of the NSW land acquisition framework by David Russell SC and the citizen-focused review of the acquisition process conducted by the Customer Service Commissioner, Michael Pratt AM, seeks to deliver a fairer, more transparent, more equitable land acquisition process for landowners, while improving consistency and accountability of Government agencies engaged in the acquisition of private property.

The Government's position strikes a balance between the property rights of land owners and the public good derived from essential public infrastructure.

Land acquisition for essential infrastructure purposes is important, particularly in light of our growing population and Government's duty to provide essential services to its citizens.

However, it is equally important that land acquisition for these purposes is fair, transparent, and contains the necessary checks and balances. This ensures land owners can make informed decisions, have enough time to negotiate with acquiring authorities, and can be properly engaged throughout the process.

The Government's response to Mr Russell's review, and Mr Pratt's recommendations, deliver on these objectives.

Improvements to the land acquisition process fall into three categories - legislative, administrative and operational improvements.

Introduction

Legislative change

The proposed legislative changes will strengthen the *Land Acquisition (Just Terms Compensation) Act 1991* (referred to from this point as ‘the Act’) in relation to:

| ACTION | RESULT | BENEFIT |
|--|--|---|
| TRANSPARENCY AND MAKING THE PROCESS FAIR | A fixed 6 month negotiation period before compulsory acquisition can commence (commencing on the date the land owner is advised of the acquisition and ending on the date a Proposed Acquisition Notice (PAN) is issued). | <i>This will provide land owners with greater certainty, and in many cases, additional time to make decisions, understand the process and engage properly with the acquiring authority.</i> |
| | Acquiring authorities will be required to provide the Valuer General with information about any issues relevant to a compensation determination as soon as practicable but not later than seven days after compulsory acquisition of land. | <i>This will enable the Valuer General to have expedited access to all necessary information on which to base the compensation determination. Land owners are also strongly encouraged to provide information in support of their claim as soon as practicable to the Valuer General.</i> |
| | The land owner to provide the claim for compensation form (‘the section 39 form’) directly to the Valuer General (rather than via the acquiring authority). | <i>In the interests of supporting transparency, the land owner should be able to provide information directly to the Valuer General.</i> |
| | The Valuer General to provide the compensation determination (including land valuation report) directly to the land owner at the same time as the acquiring authority. | <i>Again, in the interests of transparency, the land owner should receive the determination and valuation report directly from the Valuer General rather than the agency that is acquiring their home. The land owner will have the full rationale behind the Valuer General’s independent valuation.</i> |
| | Extend the minimum timeframe in which the Valuer General must provide a compensation notice to a land owner from 30 to 45 days (noting that previously the compensation notice was provided to the land owner by the acquiring authority). | <i>This will provide the Valuer General with additional time for complex valuations and ensure there is sufficient time to provide an expert and accurate valuation.</i> |
| | Enable the Valuer General to extend the 45 day time frame to 90 days, but only with the agreement of the Minister, for Finance, Services and Property. | <i>Again, this will provide the Valuer General with additional time for complex valuations and ensure there is sufficient time to provide an expert and accurate valuation. In particular, additional time may be required for complex business valuations.</i> |
| RECOGNISING THE STRESS AND DISCOMFORT IN HAVING TO MOVE | Increase the maximum amount of solatium (to be renamed ‘disadvantage resulting from relocation’) from \$27,235 to \$75,000, indexed to CPI. | <i>This increase more equitably recognises the difficulty and disruption to a citizen in having to relocate from the principal place of residence due to its acquisition by the Government for a public purpose.</i> |
| HARDSHIP AND REVIEW MECHANISMS | Provide a merits review of hardship decisions by acquiring authorities in relation to applications by land owners to require the acquiring authority to acquire their land. Such a review will be undertaken by suitably qualified non-government professionals with legal and/or property experience. | <i>There is currently no review mechanism for decisions on hardship applications. The independent review of such decisions will provide a low-cost means of improving transparency and fairness in decision making on hardship</i> |
| REINSTATEMENT IN CERTAIN CIRCUMSTANCES | Introduce a reinstatement provision to allow for purchase of a comparable property in limited and specific circumstances. | <i>It is appropriate that the Act includes a provision to allow for reinstatement in cases where there is a limited market for unique property types.</i> |
| CONDITIONS OF OCCUPATION AFTER COMPULSORY ACQUISITION | Remove the requirement for former land owners to pay rent to the acquiring authority for up to three months after a property has been compulsorily acquired by the Government. | <i>The Government considers a fairer and more consistent approach is to legislate to ensure that former landowners do not pay rent for the three month period that they are currently entitled to remain in occupation after compulsory acquisition.</i> |
| WHERE LAND IS NO LONGER REQUIRED BY THE GOVERNMENT | Where land is acquired by an agency, but is ultimately not required for a public purpose, Government will enable the former land owner to have first right to repurchase the property. | <i>This means that former land owners will be able to reacquire a former home, should they wish to. Such a repurchase will be at its current market valuation.</i> |

Introduction

Administrative changes

| RESULT | BENEFIT |
|--|--|
| Publishing a plain English Land Acquisition Information Guide. | <i>Plain English information is helping and will continue to help land owners and others understand the land acquisition process and their rights. The guide will be available in a range of languages to ensure culturally and linguistically diverse communities are well equipped to understand the land acquisition process.</i> |
| The claim for compensation form has been reviewed and made easier to understand. | <i>The section 39 form was legalistic and difficult to understand – making it difficult for land owners to know what they were entitled to claim for. The form is now in plain English and better supports the land owner in making a claim.</i> |
| The Valuer General will provide a preliminary valuation report to the land owner before a final compensation determination is made. | <i>This will provide the land owner with the opportunity to bring to the attention of the Valuer General any additional matters they would like considered, and ask questions about issues they do not understand. It will provide a mechanism for genuine engagement between the Valuer General and the land owner.</i> |
| A circular has been issued to acquiring authorities, mandating they hold at least one face to face meeting with a land owner and provide the land owner with the Land Acquisition Information Guide or an equivalent document. | <i>This change recognises that personal contact is important in what can be a difficult and challenging process for land owners. This change reflects a new commitment by the Government to be open, transparent and put the experience of land owners at the centre of the process.</i> |
| The Valuer General has introduced a range of administrative measures to make it easier for the land owner. | <i>The valuer must contact the land owner to discuss the valuation; the land owner has every opportunity to provide information; land owners are allocated a case coordinator to make the process easier; the Valuer General shares all information relevant to the compensation determination.</i> |
| Government will collect data about land acquisitions from acquiring authorities and make it public. | <i>The data will be published online on a new land acquisition website to ensure the performance of government is more readily open to public scrutiny, including the extent to which land is acquired through agreement rather than compulsorily.</i> |

Improving operations

| RESULT |
|---|
| The Customer Service Commissioner has made 20 recommendations that go to improving the experience of the land owner and resident through what can be a difficult and stressful experience. |
| Improvements to the process to provide a better experience for landowners include: <ul style="list-style-type: none"> - a case manager to help the land owner navigate the process from start to finish - dedicated staff to provide information to the community including those whose homes are not being acquired - a review of all materials, to ensure that landowners, tenants and businesses are provided with information that is easy to understand and accurate. |
| The Customer Service Commissioner also supported key Russell recommendations including fixed negotiation period, and an increase in compensation for the disadvantage from having to relocate from a principal place of residence. |

Introduction

The Customer Service Commissioner also supported key Russell recommendations including a fixed negotiation period, and an increase in compensation for the disadvantage from having to relocate from a principal place of residence.

Government will implement the recommendations of the Customer Service Commissioner, jointly through Transport NSW and the Department of Finance, Services and Innovation (DFSI). DFSI has responsibility for the Act and plays a key role in whole of government service delivery. Transport NSW is the largest acquirer of property for infrastructure projects.

These reforms will be supported by a structural shift within Government. To ensure appropriate oversight over the acquisition process, the Minister for Finance, Services and Property will be provided with additional responsibility to oversee acquisitions across Government. As the Minister with oversight of acquisitions, this role will have responsibility for ensuring that the land acquisition process is applied fairly and empathetically across government. The Minister will also work closely with the Customer Service Commissioner on developing a more strategic approach to acquisitions.

Key to providing oversight of acquisitions undertaken across government will be the creation of the Property Acquisitions Standards Group within DFSI. The functions of this group will include auditing the performance of agencies, setting standards for resources and acquisition processes and collecting and reporting on data from acquiring authorities. This Group will also provide advice on and support a more strategic approach to acquisitions.

Introduction

The NSW Government acknowledges that property rights are fundamental rights. It does not approach acquisitions lightly, and without there being a significant benefit to the broader public.

The Government also recognises that land acquisition for the purposes of public infrastructure can be a difficult and complex experience for land owners, residents and businesses. We need to make the process fairer, easier to understand and more transparent.

At the same time, it is crucial that public infrastructure is developed to meet the needs of the NSW community and economy. The Government's current infrastructure program is the most significant in the state's history. We are creating new public transport networks to support our growing population and make it easy for people to get to work, school or university.

The Government's road building program will move traffic from congested suburban streets into new, faster and safer road routes that bypass our suburbs. Again, this will make it easier for our citizens to navigate our city and get to where they need to.

But public infrastructure is not just about roads and rail. It also includes supporting communities with new hospitals, schools, and access to electricity and water.

When it is necessary to acquire private land, Government agencies or acquiring authorities have powers to do so under various pieces of legislation. The process and rules for acquisition are set out in the Act.

The Government has approached this body of work recognising that, overall, the legislative framework under which land acquisition takes place is widely considered to be fundamentally sound. This has been recognised in the review undertaken by Mr David Russell SC, and demonstrated by the fact that, in NSW, the vast majority of land acquisitions are undertaken by agreement between the acquiring authority and the land owner, without the need for compulsory acquisition.

However, in responding to the Russell Review, the Government agrees there is more work to be done to ensure that a stressful and complex situation is made as easy as possible. We need a land acquisition framework that better supports those affected. People should have easy access to the information they need, and be provided with the appropriate support that takes account of difficult circumstances.

Mr Russell made 20 recommendations to the Government on how to improve the land acquisition

framework. The Government's approach in responding to Mr Russell's report attempts to achieve the right balance between the broader public good of delivering public infrastructure in a timely and cost-effective fashion, with the need to respect people's property rights and treat individual land owners as fairly as possible.

The Government agrees with the majority of Mr Russell's recommendations, and has already acted on many. The actions outlined in the Government's response will ensure the community has access to world class roads, transport and other public infrastructure, while at the same time making the land acquisition process more transparent, easier to manage and more empathetic and compassionate to the needs of those whose land is subject to acquisition.

The Government thanks Mr Russell for his review.

In addition to the recommendations made by Mr Russell, Premier Mike Baird asked the Customer Service Commissioner, Michael Pratt AM, to review the land acquisition process with a particular emphasis on improving the experience of those most affected – land owners and residents. The Government recognises that the way in which they are treated could be improved to provide more support, more information and more transparency.

Mr Pratt found that improvements could be made to the way in which acquiring authorities approached and supported land owners and residents during what can be a stressful process. He made 20 recommendations to Government.

The Government supports Mr Pratt's citizen-centric approach to land acquisition, which will be implemented by DFSI.

The Government is confident that the improvements made as a result of the recommendations made by Mr Russell and Mr Pratt will result in an improved land acquisition process that is fairer, more transparent and provides generous but fair compensation.

The Government also recognises that there should be continuous improvement in the way in which it deals with its citizens when their land is acquired. This will be achieved through the new responsibility provided to the Minister for Finance, Services and Property to oversee acquisitions. This role will be responsible for the framework within which acquiring agencies operate. By maintaining close oversight, the Minister will be able to examine opportunities for further improvements to the land acquisition process.

Overview of the NSW land acquisition process

Land Acquisition (Just Terms Act) 1991

In New South Wales, private land sometimes needs to be acquired to build new infrastructure like a road or railway, or public facilities like parks, schools or hospitals. Land acquisition may also involve partial land acquisitions for power lines, sewerage or water. The land includes any buildings on or other improvements to the land.

The Act prescribes the procedures a government agency must follow to acquire land from a land owner, as well as the principles for determining compensation on just terms.

The Land Acquisition Act encourages acquisition of land by agreement

The objects of the Act are to:

- provide a statutory guarantee that the amount of compensation for land acquired will be not less than the market value at the date of acquisition
- ensure compensation on just terms for land owners whose land is acquired
- establish procedures which simplify and expedite the acquisition process
- require an authority to acquire land designated for acquisition for a public purpose where hardship is demonstrated
- encourage the acquisition of land by agreement instead of compulsory process.

Section 10 of the Act provides for a statutory guarantee that when private land is acquired by government for public purposes, the Government pays no less than market value for the property.

Importantly, market value as defined in the Act means the amount that would have been paid to the seller in an open market, as if the land had not been designated for a public purpose:

Section 56 Market value

(1) In this Act:

“market value” of land at any time means the amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer, disregarding (for the purpose of determining the amount that would have been paid):

(a) any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and

(b) any increase in the value of the land caused by the carrying out by the authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired, and

(c) any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

(2) When assessing the market value of land for the purpose of paying compensation to a number of former owners of the land, the sum of the market values of each interest in the land must not (except with the approval of the Minister responsible for the authority of the State) exceed the market value of the land at the date of acquisition.

The majority of acquisitions take place in metropolitan Sydney. However, there are acquisitions that take place in rural NSW, and the Government recognises that these acquisitions can be of a different nature to acquisitions in an urban area. However, there is existing flexibility within the land acquisition framework to allow for varying types of property value to be accounted for.

Acquiring authorities

Under various pieces of legislation, government agencies, some state owned corporations and local councils (for infrastructure such as roads, community parks or sewerage facilities) have authority to acquire private land for public infrastructure or facilities. These agencies are referred to as acquiring authorities.

Acquiring authorities may need to acquire either an entire property or part of a property for a public purpose.

The Government departments, agencies and state owned corporations that comprise the major acquiring authorities are listed below:

Transport NSW

- Roads and Maritime Services
- Metro Rail
- Heavy and Light Rail

Overview of the NSW land acquisition process

Planning and Environment

Education and Communities

Family and Community Services

- NSW Land and Housing Corporation

Industry, Skills and Regional Development

State Owned Corporation

- Sydney Water Corporation
- Hunter Water Corporation
- Water NSW
- Ausgrid
- Essential Energy
- Endeavour Energy
- Transgrid

Local Councils also have the ability to acquire land for certain purposes.

Acquisition by agreement and compulsory acquisition

There are two ways in which a government agency can acquire land:

1. By agreement between the acquiring authority and the land owner
2. By compulsory acquisition

The Act encourages government acquisition by agreement, which is a process of negotiated purchase. The Government is committed to this objective.

The objects of the Act are to:

- provide a statutory guarantee that the amount of compensation for land acquired will be not less than the market value at the date of acquisition
- ensure compensation on just terms for land owners whose land is acquired
- establish procedures which simplify and expedite the acquisition process
- acquire an authority to acquire land designated for acquisition for a public purpose where hardship is demonstrated
- encourage the acquisition of land by agreement instead of compulsory process.

Where land is acquired by agreement with the land owner

As noted above, the Act encourages acquisition of land by agreement between the land owner and the acquiring authority. Most land is acquired in this way. The most recent data available indicates that about 80 per cent of acquisitions were made by agreement (see below at section 3 for further statistical information relating to acquisitions)¹.

80% of land acquired by the Government is done with the agreement of the land owner.

Acquisition by agreement commences when the acquiring authority approaches the land owner to discuss the purchase of the land.

The authority will arrange for a registered valuer to advise it on the value of the land, and land owners can obtain their own independent land valuation, the cost of which will be paid for as part of the settlement. Normally, land valuations are exchanged between the acquiring authority and the land owner to help the parties reach agreement.

Under current arrangements, the acquiring authority must try to meet the land owner at least once as part of the negotiation process.

This provides the land owner with the opportunity to discuss and understand the acquisition and valuation process. If it is not possible or practicable to meet the land owner (for example where the land owner is overseas for an extended period of time), the acquiring authority will try to meet someone chosen by the land owner to be a representative.

Under this type of acquisition, the acquiring authority and the land owner agree on a compensation package including the market value of the land. Once agreement has been reached, the land is transferred much like an open market transaction – contracts are exchanged and, at settlement, the land is transferred to the acquiring authority and compensation paid. The current process for acquiring land by agreement is set out graphically below.

¹ Data on land acquisition was collected from all acquiring authorities in March 2016. During consultation on the NSW Government Response to Russell and Pratt reviews, some agencies provided additional data, or clarifications on data already provided. This has resulted in an apparent slight reduction in the numbers of acquisitions by agreement, but reinforces the need to gather accurate and timely data from acquiring authorities.

Overview of the NSW land acquisition process



Where land is acquired by agreement, the compensation provided to the land owner is determined according to the same principles applying to compensation when land is acquired compulsorily. These principles are set out below under the heading compensation.

At present, the Act does not set a period of time in which an acquiring authority must seek to negotiate a purchase with a land owner. It is entirely within an acquiring authority's discretion to determine a suitable period, having regard to the Act's object of encouraging acquisition by agreement.

As noted in the Government's response to the Russell Review recommendations, it is proposed that the Act be amended to require a fixed 6 month period of negotiation (except in certain circumstances, such as where the acquiring authority and the land owner agree on the purchase prior to the expiry of the 6 month period, or the land owner would prefer the Valuer General to determine the compensation amount before the 6 month period has expired).

Compulsory Acquisition

When it is not possible or practicable for a land owner and acquiring authority to agree on compensation, the acquiring authority has legal authority to acquire the land without the land owner's agreement. This is called compulsory acquisition.

Currently, the Act sets out the following steps for compulsory acquisition of land:

1. If the parties have been unable to agree terms for the acquisition of the land, the acquiring authority issues a statutory notice – known as a Proposed Acquisition Notice (PAN) – to the land owner, advising the owner that his or her land needs to be acquired for a public purpose. The land will normally be acquired between 90 and 120 days from the date of the PAN. *It is important to note that after the PAN has been issued the acquiring authority will still try to reach agreement with the land owner before the PAN expires.*
2. The land owner must then be invited to complete and submit to the acquiring authority a section 39 claim for compensation form. The acquiring authority then provides a copy of the completed form to the Valuer General.
3. If the acquiring authority and land owner do not reach agreement on the purchase of the land before the PAN has expired, the acquiring authority “compulsorily acquires” the land through publication of a notice in the Government Gazette, which has the effect of officially transferring ownership of the land to the Government.
4. Once the land has been compulsorily acquired, the Valuer General independently determines an amount of compensation to be offered to the former land owner. The acquiring authority must offer the amount of compensation to the former land owner within 30 days of the date of compulsory acquisition, unless the Minister responsible for the acquisition extends the period (by up to 60 days).
5. If the land owner accepts the compensation offer determined by the Valuer General, compensation and interest are payable within 28 days of the land owner's acceptance. If the land owner does not accept the offer, he or she may lodge an appeal to the Land and Environment Court.



LAND ACQUISITION

Compulsory acquisition



Overview of the NSW land acquisition process

6. In the case of an appeal by the land owner, the acquiring authority is generally required to pay the land owner 90 per cent of the amount of compensation offered, as an advance payment, within 28 days of being told of the land owner's appeal. If the land owner does not want to accept this advance payment, the authority will pay the 90 per cent into a trust account where it will earn interest.

There are other special circumstances where land can be compulsorily acquired. For example:

- When the land owner cannot be found or contacted. In this case the land is acquired and compensation is held in trust until the land owner is located.
- When land below the surface is acquired (for example, for the purposes of building a tunnel).

In the latter case, compensation is not paid unless the works cause damage or disturbance to the surface of the land or the support of that surface is destroyed or otherwise affected.

Land owner's vacation of land

When the acquiring authority sends the PAN to the land owner, it will advise the land owner of his or her rights to remain on the land after the land has been acquired. In general, the Act allows for the following:

- If the building on the land was the land owner's principal place of residence or place of business, the land owner can continue to stay there for three months after the land is acquired and even if the compensation monies have been paid. If the compensation amount has not been paid before the end of three months, in general, the land owner may continue to stay there until the compensation is paid.
- Otherwise, if the land owner was lawfully occupying the land before it was compulsorily acquired, the land owner may continue to occupy the land until compensation is paid.

Compensation

Under section 37 of the Land Acquisition Act, compensation is payable for an interest in the land. An interest in the land is broadly defined and can refer, for example, to the interest of a land owner, a lessor, business operator or a tenant. The Act seeks to ensure that land owners are compensated on just terms by prescribing a range of matters – heads of compensation – to be taken into account in determining compensation. As noted above, whether land is acquired by agreement or compulsorily, the matters to be considered in determining compensation are the same and include:

- Market value of the property on the date of its acquisition.
- Legal costs and valuation fees reasonably incurred by the land owner.
- Financial costs reasonably incurred by the land owner (eg removalists' costs, stamp duty costs arising from the purchase of another property of equivalent value, and costs in connection with the discharge of a mortgage and obtaining a new mortgage).
- Disadvantage resulting from relocation from his or her principal place of residence (currently referred to in the Act as 'solatium' but to be renamed 'disadvantage resulting from relocation').

A land owner can claim compensation from the Government for the costs of having to move because of the acquisition.

During negotiations on the purchase of land, the acquiring authority and land owner will normally exchange various pieces of information that are relevant to determining the compensation package, including market valuations of the land and costs associated with the land owner's relocation (eg removalists' fees).

Overview of the NSW land acquisition process

If an acquiring authority moves to compulsory acquisition by issuing a PAN to the land owner, the land owner will be given at least 60 days to fill out and lodge a section 39 claim for compensation form (as prescribed by section 39 of the Act) with the acquiring authority. A copy of the claim for compensation form is enclosed with the PAN and invites the land owner to specify the compensation that he or she considers appropriate under each of the heads of compensation.

Once the property has been gazetted, the compensation amount, including market value and compensation for all other matters, is determined by the Valuer General.

All information that is brought to the attention of the Valuer General and is relevant to the determination will be considered in determining compensation.

This includes -

- the land owner's claim for compensation.
- any land valuations undertaken for the land owner or the acquiring authority.
- any other relevant information made available to the Valuer General by the land owner or the acquiring authority.



JUST TERMS COMPENSATION

What can I be compensated for?



| | | |
|--|--|---|
|  <p>Market value</p> |  <p>Special value (if the land has a special value to the landowner)</p> |  <p>Severance (if the land has been cut into two or more portions)</p> |
|  <ul style="list-style-type: none">• Valuation costs• Legal costs• Relocation costs such as buyer's advocate, removalists, reconnection of utilities and mail redirection |  <ul style="list-style-type: none">• Stamp duty• Mortgage fees |  <p>Compensation for disadvantage resulting from relocation</p> |

Overview of the NSW land acquisition process

The final determination of compensation (inclusive of compensation items) will normally include the Valuer General's full valuation report which:

- shows what has been considered by the valuer.
- addresses the concerns recorded by the former landholder on the section 39 claim for compensation form.
- addresses any other valuation issues raised by either the former landholder or acquiring authority during the valuation process.
- explains how the amount of compensation was determined.

The Role of the Valuer General

The Valuer General is an independent statutory officer, appointed by the Governor of NSW to oversee the State's land valuation system. The Valuer General's functions are primarily set out in the *Valuation of Land Act 1916*.

The Act requires the Valuer General to determine compensation for land owners when land is compulsorily acquired. The Valuer General does not become involved in determining compensation when land is acquired by agreement.

The Valuer General does not represent either the acquiring authority or the land owner during the compulsory acquisition process. The Office performs its functions independently, but works with both parties to ensure that the determination is informed by all relevant information and those parties have an adequate opportunity to respond to issues raised by each other. The factors the Valuer General must use in the compensation determination are those outlined in the Act.

The Valuer General has published a number of policies on valuation to improve transparency of valuation methodologies. One of those policies is in relation to 'Compensation Following Compulsory Acquisition'. It is important to note that, in relation compulsory acquisition compensation determinations, the Valuer General's policy is to resolve any reasonable doubt over the valuation in favour of the former land owner.

When the Valuer General provides a determination of compensation for compulsory acquisition, any reasonable doubt over the value of the land is resolved in favour of the land owner.

Land owners and acquiring authorities are encouraged to provide information, ask questions and clarify matters during the determination of compensation process.

After the Valuer General has issued the determination of compensation, a coordinator is available to discuss the determination with the landholder (or their representative) and the acquiring authority.

The Government's response to the Russell Review recommendations will result in changes to the way the Valuer General provides compensation determinations for compulsory acquisitions. In particular, the Valuer General will be provided with additional time and land owners will also be provided the opportunity to consider a preliminary version of the Valuer General's final determination report. These changes are discussed further in response to specific recommendations.

The Valuer General is an independent statutory officer responsible for:

- Setting the standards and policies for the land valuation system and the determination of compensation in the compulsory acquisition process
- Monitoring the quality of the land values and services provided to the community
- Providing professional leadership and stewardship to the valuation industry

The Valuer General only becomes involved in the acquisition process when the land needs to be acquired compulsorily.

Overview of the NSW land acquisition process

The Land and Environment Court

When the acquiring authority makes a compensation offer to the land owner based on the determination of the Valuer General, the land owner may choose not to accept the offer. If this happens, the land owner can appeal the compensation determination to the NSW Land and Environment Court.

Further information about the process for lodging an appeal is available at:

<http://www.lec.justice.nsw.gov.au>

Few matters proceed to the Land and Environment Court. Where they do, the matter is contested between the land owner and the acquiring authority. The Valuer General is not a party to the action (except in limited circumstances), but both parties are able to provide the Valuer General's determination for consideration by the Court.

Most matters are dealt with through informal, low-cost mechanisms for dispute resolution such as mediation, conciliation and neutral evaluation, without the need for a court hearing. Between 2010 and 2015, 80 per cent of land acquisition matters appealed to the Land and Environment Court were dealt with through these mechanisms³. Making conciliation conferences a mandatory step in the appeal process, and the appointment of three experts in valuation as Commissioners of the Land and Environment Court – with power to hear and determine court proceedings, and conduct conciliation, mediation and neutral evaluation – have contributed to this high success rate.

The Government recognises that there are costs associated with filing an appeal, such as the engagement of a solicitor and other experts. However, there are two key observations to be made on this.

- First, as noted above, an acquiring authority is required to pay the land owner 90 per cent of the amount of compensation offered, as an advance payment, within 28 days of being told of the land owner's appeal. Such a payment is typically made well before any conciliation conference, and is usually sufficient to pay the costs of any appeal.
- Secondly, the former owner is generally entitled to be paid their legal and other costs of any appeal by the acquiring authority at the conclusion of the case. Only in very limited circumstances will the former owner need to pay their own costs. This usually arises where the former owner was offered an amount to settle the case, declined the offer and the amount eventually received was less than the offer.

The Land and Environment Court provides a range of information on its mediation, conciliation and neutral evaluation services at www.lec.nsw.gov.au.

The Land and Environment Court can hear and finalise proceedings involving claims for compensation under the *Land Acquisition (Just Terms Compensation) Act 1991*.

If the person does not receive a compensation notice and their claim for compensation is rejected, they can appeal against the rejection of the claim to the Land and Environment Court.

If the person receives a compensation notice but feels that the amount of compensation is not enough, that person can lodge an objection with the Land and Environment Court.

3. Neutral evaluation is a process of evaluation of a dispute in which an impartial evaluator seeks to identify and reduce the issues of fact and law in dispute. The evaluator's role includes assessing the relative strengths and weaknesses of each party's case and offering an opinion as to the likely outcome of the proceedings, including any likely findings of liability or the award of damages. Department of Justice has advised that approximately 80% of matters are finalised before proceeding to a full hearing.

Acquisitions in other jurisdictions

Each of the nine Australian jurisdictions (states and territories and the Commonwealth) has acquisition legislation. Each jurisdiction's legislation contains detailed provisions governing the steps to be followed where an agency, with powers of compulsory acquisition, commences the process of acquiring land.

In some jurisdictions, such as NSW, Victoria and South Australia, the power for an acquiring authority to acquire land lies outside the acquisition legislation and is found in other specific Acts.

In the Commonwealth, Queensland, Western Australia and Tasmania, the acquisition legislation contains powers of acquisition jurisdictions as well as provisions governing the actual acquisition process.

Each of the nine jurisdictions' acquisition legislation sets out the matters to be taken into account when determining the amount of compensation to be paid to a land owner whose land is being acquired. NSW acquisition legislation is broadly similar to legislation in other Australian jurisdictions on the issue of determining the amount of compensation. However, in the context of Mr Russell's review, there are two features of NSW's legislation that are worth highlighting for the purposes of illustrating differences and similarities in approaches across jurisdictions.

The first is in relation to the payment of compensation for non-financial disadvantage experienced by a land owner as a result of having to relocate his or her principal place of residence – in some jurisdictions referred to as solatium.

In NSW, the Act explicitly provides for solatium and sets the amount at \$15,000, or any higher amount set by the Minister responsible for the Act. Since 1998, the maximum amount has been indexed annually by CPI by the Government, and currently stands at \$27,235.

The Victorian and Western Australian legislation provides for an increase of up to 10% of the market value of the land to address intangible and non-pecuniary disadvantages from the acquisition. In Western Australia, there is a power to award a larger sum in exceptional circumstances.

Tasmania provides for compensation over and above that necessary to allow the person to acquire another principal place of residence for "hardship that the claimant may suffer because the claimant cannot establish himself or herself in a suitable residence solely by reason of age, infirmity or want of means."

The heads of compensation in the Commonwealth and ACT Acts include compensation for any loss, injury or damage suffered, or expense reasonably incurred, as a result of the land acquisition.

Queensland and South Australia do not explicitly provide compensation for non-economic loss.

The Government acknowledges the distress and inconvenience caused by acquisition of properties generally. In particular, we recognise the challenges that face land owners who need to leave their home and acquire another principal place of residence, often in situations where there is strong competition for properties.

Bearing in mind that the original maximum amount of \$15,000 was set in 1991, the Government considers that the maximum amount for disadvantage resulting from relocation should be increased to \$75,000 (see the Government's response to recommendation 7 of Mr Russell's review).

The second feature is in relation to the payment of compensation on a "reinstatement" basis.

Acquisitions in other jurisdictions

In NSW, the heads of compensation at sections 55-60 provide for the land owner to be compensated, among other things, for the market value of the acquired property and disturbance costs. Such costs include legal, valuation and relocation costs. If the land to which they move has no existing dwelling, the former owner can also claim costs associated with designing and obtaining approval for the new house, connecting services and utilities, rent during the construction period and so on. In effect, these provisions seek to “reinststate” the former land owner to the position they were in prior to the acquisition – no better, no worse.

The Russell review, however, suggests that most other jurisdictions’ compensation provisions are more generous than NSW’s in that they cater for the problem faced by some former land owners in not being able to afford a new residence in the same locality even though they have been paid market value for their previous residence. In the Government’s view, this observation is not entirely correct.

In fact, the land acquisition frameworks in most other jurisdictions – and in particular, the jurisdictions most similar to NSW, including Victoria, Queensland, South Australia and Western Australia – operate on a similar basis to NSW, with compensation for residential dwellings focusing on the market value of the property being acquired.

By contrast, the Commonwealth framework, and the frameworks operating in the ACT and Tasmania, also provides for compensation calculations to consider in some circumstances the cost of a reasonably equivalent replacement property.

On balance, the Government considers that the circumstances in which this approach may be necessary are highly unlikely to arise in a residential property market as large and as diverse as the NSW market, and it is appropriate for the current approach to continue, in line with Victoria, Queensland, South Australia and Western Australia.

Separately, some jurisdictions (such as Victoria, South Australia and the Northern Territory) have special provisions that deal with unique situations where there is no market for the property that has been acquired (for example a church or a community centre), so it is not possible to ascertain with any certainty what the true market value of the property is.

In these cases, the Government considers it is appropriate for the amount of compensation to which the former owner is entitled to include consideration of the cost of acquiring a similar property to be used for the same purpose. However, these circumstances are rare and such provisions do not apply to land acquisitions involving standard residences.

Notwithstanding, the Government will include a provision in the Act to provide for reinstatement in specific circumstances, similar to the Victorian model (see the Government’s response to Russell’s recommendation 17).

Acquisitions between July 2010 and March 2016

From July 2010 to March 2016, about 80% of all acquisitions in NSW were by agreement and did not proceed to compulsory acquisition⁴.

Only 5% of acquisitions were appealed in the Land and Environment Court.

| | Acquisitions by agreement | % By agreement | Acquisitions through compulsory process | % Through compulsory process | LEC appeals | % Appealed to LEC* | Total |
|--------------------------------------|---------------------------|----------------|---|------------------------------|-------------|--------------------|-------------|
| All transport | 2239 | 81% | 387 | 14% | 122 | 4% | 2748 |
| Roads and Maritime | 1999 | 81% | 363 | 15% | 92 | 4% | 2454 |
| Metro Rail | 105 | 76% | 7 | 5% | 27 | 19% | 139 |
| Heavy and Light Rail (TfNSW) | 135 | 87% | 17 | 11% | 3 | 2% | 155 |
| Planning and Environment | 107 | 69% | 32 | 21% | 17 | 11% | 156 |
| Health | 37 | 69% | 17 | 31% | 0 | 0 | 54 |
| Education | 4 | 29% | 8 | 57% | 2 | 14% | 14 |
| Justice | 0 | | 0 | | 0 | | 0 |
| Family and Community Services | 0 | | 0 | | 0 | | 0 |
| Industry | 0 | | 0 | | 0 | | 0 |
| Local Councils | 14 | | 24** | | Not known | Not known | 38 |
| Total | 2401 | 80% | 468 | 20% | 141 | 5% | 3010 |

*These acquisitions are not in addition to the number of compulsory acquisitions but are included within the total number of compulsory acquisitions

**This figure represents all compulsory acquisitions including those which were subject to an LEC appeal.

Although there are areas for improvement to better balance the needs of property owners and the state's infrastructure agenda, these figures point to a land acquisition process that, overall, is functioning efficiently and effectively, and is meeting one of the key objectives of the Act – to encourage acquisition by agreement between the land owner and the acquiring authority.

Acquisitions by the Transport NSW and its associated agencies and entities including Roads and Maritime Services, Metro Rail, and Heavy and Light Rail represent 91% of all acquisitions across NSW, demonstrating that acquisitions in NSW are largely due to transport-related infrastructure projects. Within the Transport Cluster, RMS is responsible for the majority of acquisitions. Mr Pratt's findings relate mostly to the operations of the Transport Cluster, given their significant undertaking of acquisitions.

4. Data on land acquisition was collected from all acquiring authorities in March 2016.

The Russell Review

Commissioning Mr David Russell SC

The NSW Government commissioned David Russell SC to undertake an examination of the State's just terms legislation as it applies to real property rights.

Mr Russell is a barrister and member of the Bar Association, specialising in property compensation law.

The Review's Terms of Reference were to:

- define and clarify what real property rights or interests in real property are
- recommend a set of principles to guide the process for how acquisitions of real property should be dealt with by Government
- consider whether and how these principles should be reflected in current legislation
- recommend a process for considering these principles in future legislation.

A consultation paper was issued and submissions invited. The Review received 57 submissions from a range of stakeholders, including landholders, government agencies and industry associations.

Since Mr Russell provided his Review to the Government, a number of changes have already been made to the land acquisition process to:

- further encourage acquiring authorities to acquire land by agreement
- minimise litigation once land has been compulsorily acquired, and
- facilitate timely payment of compensation.

These changes were implemented through whole-of-government directions to acquiring authorities issued by the Department of Finance, Services and Innovation and other measures introduced by the Valuer General.

| IMPROVEMENT | OUTCOME |
|---|--|
| When the acquiring authority contacts the land owner, it must provide a plain English guide to the process. | <i>Land owner gains a better understanding of acquisition process including rights and responsibilities of the acquiring authority and the land owner.</i> |
| When making a formal offer, the acquiring authority must have at least one face to face meeting with the land owner (unless agreed otherwise). | <i>Land owner has an opportunity to meet with acquiring authority and gain insight into the valuation methodology and price offer. This personalises the process and promotes genuine engagement and bona fide negotiations.</i> |
| When the acquiring authority issues a Proposed Acquisition Notice, the Valuer General writes to land owner, explaining its role and compensation determination process, and providing contact details for a case coordinator. | <i>Land owner gains better understanding of the compensation determination process and the Valuer General's role, and is able to obtain information and assistance when required.</i> |
| After a compulsory acquisition, the Valuer General writes to the land owner, advising on status of determination and indicating that all information relevant to the determination will be shared with land owner and acquiring authority before determination is finalised | <i>Land owner better understands the information relied upon to determine the compensation amount, and has an opportunity to respond.</i> |
| After the compensation is finalised by the Valuer General, a plain English determination is provided to the land owner. Acquiring authorities are required to attach the determination to the final compensation notice. | <i>Land owner is better able to understand the basis for the Valuer General's determination.</i> |
| When the acquiring authority provides a compensation notice to the land owner, the Valuer General can commence the compensation process immediately. | <i>This facilitates the timely issuing of compensation notices and payment of compensation.</i> |
| When the land owner is considering the compensation offer, the Valuer General now requires the case coordinator to answer questions raised by the acquiring authority and the land owner. | <i>Both the land owner and acquiring authority have a better opportunity to review and query aspects of the compensation determination.</i> |

The Joint Standing Committee on the Office of the Valuer General

In May 2013, the Joint Standing Committee on the Office of the Valuer General (referred to here as the “Joint Standing Committee”), chaired by the Hon Matt Kean MP, undertook a review of the NSW land valuation system. The Joint Standing Committee’s report identified concerns with the transparency surrounding valuation methodologies, the procedural fairness currently afforded to land owners and the governance framework of the valuation system.

The Joint Standing Committee made a number of recommendations to address these concerns, including replacing the position of Valuer General with a Valuation Commissioner, supported by two Deputy Valuation Commissioners. At the time, the Government response indicated that further consultation was required on these and other recommendations. This consultation was undertaken by the Department of Finance, Services and Innovation. The consultation indicated that stakeholders did not support the structural changes proposed by the Joint Standing Committee’s report.

It is the Government’s position that the office of Valuer General should be retained. The position is well established and enjoys broad support and respect. Nonetheless, the Government acknowledges issues raised by both the Joint Standing Committee and Mr Russell in relation to the transparency and fairness of the land valuation process, including the management of compensation determinations under the Act.

The Valuer General has published land valuation policies for different categories of land to help land owners gain a better understanding of land valuation methodologies. Further, as outlined in the Government response (section 6 above and at Russell recommendation 4), the Valuer General has implemented a range of improvements to improve land owners’ understanding of the compensation determination process and provide opportunities for land owners to ask questions, provide information, and generally participate more fully in the process.

The Government has also implemented organisational changes to increase accountability and manage land owner queries and objections effectively. For example, there is a specialist team dedicated to compulsory acquisitions and another to more general valuation work.

The Customer Service Commissioner

To complement the work of Mr Russell and to enhance the Government's response, in 2016 the Premier asked the NSW Customer Service Commissioner, Michael Pratt AM to separately undertake a review the land acquisition process from the point of view of the land owner, business owner or resident with a view to further improve the experience of people whose property is being acquired by government.

The findings of Mr Pratt's and the 20 recommendations he made to Government are considered in detail in the final chapter of this document.

However in the interests of articulating the new approach by Government to the land acquisition process in NSW, Mr Pratt's recommendations are considered together with those of Mr Russell in the Government's response, as set out in the following section.

The Government's response to the Russell Review recommendations

Compensation, procedures and timeframes

Noting that the overall framework for the land acquisition process is sound, Mr Russell has nonetheless made some recommendations to improve the fairness and transparency of the process. These are largely echoed by Mr Pratt's findings.

Recommendation 1

That there be a compulsory negotiation period of 6 months, before any step can be taken to compulsorily acquire land under the Land Acquisition Act, or under any other cognate legislation.

Background

One of the objects of the Act is for acquiring authorities to acquire land by agreement with land owners rather than through a compulsory process. Recommendations 1-4 of Mr Russell's report are designed to encourage and facilitate bona fide negotiations for an agreed acquisition price.

As Mr Russell notes, and as discussed in the Joint Standing Committee Report of 2013, key criteria for bona fide negotiations are the ability for the land owner to understand and properly participate in the process, obtain answers to their concerns and participate in a joint conference, if that is desirable for the land owner.

Mr Russell pointed out a number of difficulties for land owners in the acquisition process. For example, several land owners considered themselves at a disadvantage in dealing with government authorities, and that a caseworker or dedicated case manager/mediator could assist in the negotiation process.

However, he also noted that RMS, which is responsible for the vast majority of land acquisitions in NSW, provided land owners with what he considered to be good examples of information to assist them. Mr Russell also noted there were very few land owners who made submissions to his review, and that it would seem RMS is doing something right in the way it conducts its negotiations.

Response

On the whole, the objective of the Act to encourage acquisition by agreement is being achieved. Over the period July 2010 to March 2016, about 80% of private land acquisitions were achieved through agreement with the land owner.

However, the Government shares Mr Russell's view that a reasonable, clearly defined negotiation period would better facilitate bona fide and respectful discussions between the land owner and the acquiring authority, providing certainty for land owners as to when they can expect the compulsory acquisition period to commence, and minimising as far as possible the stress and disruption experienced by land owners during negotiations.

Mr Pratt also emphasised the need for land owners to be given adequate time for consideration, negotiation, decision-making and relocation, without unduly delaying the project. Mr Pratt agrees with Mr Russell's recommendation that such a period should, in general, be six months to ensure the resident is provided with all relevant information in a timely, easy-to-understand and transparent manner at all steps in the process, and recommended that this six month period should be prior to the serving of the PAN. The timeline and any deadlines should be clearly explained to the land owner. Further, this requirement should not prevent a land owner from negotiating a shorter timeframe.

Mr Pratt recommended that this period could be shortened but only with the agreement of the Cabinet Infrastructure Committee. He also noted that projects already underway would require transitional arrangements. In this respect, the Government notes the importance of ensuring existing contractual arrangements are not unduly affected by this reform and unnecessary costs are not borne by the taxpayer.

The Government's response to the Russell Review recommendations

In line with Mr Russell's and Mr Pratt's recommendation, the Government therefore proposes to amend the Act to require a fixed period of not less than 6 months in which an acquiring authority must seek to achieve agreement with the land owner, unless:

- agreement is achieved before expiry of the 6 month period, or
- the land owner formally notifies the acquiring authority that he or she is not prepared to reach a negotiated agreement and requests that the Valuer General determine the compensation, or
- the Minister for the acquiring authority, with the concurrence of the Minister for Finance determines a shorter period of negotiation, but only if satisfied that the urgency of the matter or other circumstances of the case make a 6 month period impracticable, or
- the acquiring authority allows a longer period of negotiation.

In addition, the fixed 6 month negotiation period would not apply where -

- the land owner cannot be found or contacted, or
- land below the surface is acquired (for example, for the purposes of building a tunnel).

The six month fixed negotiation process would commence when the land owner is first advised by the acquiring authority that it intends to begin the process for acquiring the property for a public purpose.

After the fixed six month negotiation period, the acquiring authority would be able to provide a PAN to the landowner to commence the compulsory acquisition.

The Act already provides a set timeframe for the process following the issuing of a PAN - a minimum 90 days before the property is Gazetted and the acquisition becomes effective. On that basis, the landowner would have up to nine months before their land is acquired (except by agreement for a shorter period), with the right to remain in the property for a further 3 months after the acquisition has been completed.

This proposal will complement other mechanisms aimed at fostering productive engagement between acquiring authorities and land owners, including providing more, easy-to-understand information about the land acquisition process (as outlined in the response to recommendations 2-4).

It is also acknowledged that a fixed timeframe may provide more certainty for both acquiring authorities and land owners by providing a clear timeframe about when the compulsory acquisition process may commence.

More effective monitoring of acquisitions by Government

To ensure that acquiring authorities continue to make every reasonable effort to reach mutual agreement with land owners before resorting to compulsory process, it is also important that the Government closely monitor the effectiveness of the land acquisition framework and how the Act is delivering on the objective of encouraging acquisition by agreement.

In the interests of transparency and accountability, therefore, the Government now requires acquiring authorities and the Valuer General to report biannually to the Department of Finance, Services and Innovation (which administers the Act on behalf of the Minister for Finance, Services and Property) on key land acquisition data.

The data will be published online to ensure the performance of government is able to be publicly scrutinised, including the extent to which land is acquired through agreement rather than compulsorily. The reporting requirement will be implemented through a release of a DFSI circular.

Improvement to the land acquisition process:

Amend the Land Acquisition Act to introduce a fixed 6 month negotiation period before compulsory land acquisition can commence.

Improvement to the land acquisition process:

Regularly collect data from acquiring authorities and the Valuer General to monitor the land acquisition process, and make the data publicly available.

The Government's response to the Russell Review recommendations

Recommendation 2

That prior to commencement of the negotiation period, the acquiring authority is obliged to provide a detailed written explanation to the land owner, written in “plain English”, setting out an explanation of the land acquisition process and setting out the rights and responsibilities of both the land owner and the acquiring authority.

Response

The Government agrees that land acquisition is in most cases an unfamiliar and complex process for land owners. Land owners should have access to plain English information that makes the process clear, and sets out the rights and responsibilities of the land owner, the acquiring authority and the Valuer General.

Information on the land acquisition process, which is unfamiliar to most people, should also be available in a range of languages. This will ensure people from non-English speaking backgrounds do not feel disadvantaged and are able to fully participate and understand what they need to know.

Such information makes it much easier for authorities and land owners to negotiate in good faith because such negotiations will be based on a clear understanding of the process.

The Government supports and has already implemented this recommendation by providing easy to understand information to land owners whose land is to be acquired.

In December 2014, the Land Acquisition Information Guide was published. Acquiring authorities are required to provide this guide or an equivalent document (such as, for example, Roads and Maritime Services' land acquisition guide) to the land owner.

This guide can be accessed online at <https://arp.nsw.gov.au/ofs-2015-01-changes-land-acquisition-processes-acquiring-authorities>, so that land owners who may be concerned about possible acquisition also have an opportunity to find out about the process before it commences.

While providing plain English guidance, and information in a range of languages to assist land owners with what is a new and complex process is important, there is more work to do. Government has a duty to ensure the land owner's experience is consistent across agencies and provides people with certainty about what to expect and when.

The Customer Service Commissioner has suggested that Government improve the standard and consistency of communication with citizens. Work will commence to develop a set of communication standards that apply to all government agencies that undertake acquisitions (see CSC recommendation 5). Land owners will have a right to have a primary point of contact for information and questions.

While noting Mr Russell's discussion in his Review about how RMS, as an example, is achieving high levels of acquisition by agreement, there is more work to do in reviewing service levels currently provided to land owners. Such service levels would include standard processes around citizen engagement, provision of a full range of plain English information and regular updates about project status.

Improvement to the land acquisition process:

Plain English Information Guide on the land acquisition process.

Ensure that the guide is available in other languages.

The Government's response to the Russell Review recommendations

Recommendation 3

That the land owner and the acquiring authority, during the fixed negotiation period, conduct at least one face-to-face meeting, with a view to negotiation of an appropriate acquisition price, unless both parties agree that such a meeting is not necessary or can be conducted by a different means e.g. telephone conference.

Response

As noted above in relation to recommendations 1 and 2, the Government supports dialogue and transparency in the land acquisition process. Bona fide negotiations will demand proper engagement between parties, and face to face meetings are an important part of that engagement, particularly at the commencement of the process.

In his advice to the Government, Mr Pratt stressed the need for the land owner to be informed personally and promptly about the land acquisition process, including the land owner's rights and obligations.

The Government agrees with recommendation 3, and has already taken action to ensure that land owners are offered a face to face meeting.

Improvement in the land acquisition process:

Acquiring agencies must arrange at least one face-to-face meeting during the fixed negotiation process.

This recommendation was implemented in January 2015 by issuing a whole-of-government direction to acquiring authorities, requiring them to use all reasonable endeavours to hold at least one face to face meeting with a land owner (unless an alternative arrangement is agreed). The direction can be accessed at <https://arp.nsw.gov.au/ofc-2015-01-changes-land-acquisition-processes-acquiring-authorities>.

While face to face meetings during the negotiation process are important, the Government intends to further review and consider how best to make that engagement productive, and ensure land owners are provided with service levels that take account of their circumstances.

This includes ensuring that land owners are first advised of the possible acquisition of their land through an approach that is more respectful and personal, and does not include finding out about the acquisition through pro-forma correspondence from the Government.

Mr Pratt recommended the creation of a new role of Personal Manager Acquisitions. This role would provide each land owner with a single point of contact within government and facilitate a more personal approach to navigating the land acquisition process.

The Government supports the Customer Service Commissioner's recommendations to reform service delivery in relation to land acquisition processes and administration discussed further below.

Recommendation 4

That a new compulsory acquisition process be adopted, so as to afford procedural fairness. That process should be in accordance with Recommendation 11 made in the JSC Report.

Background

In 2013, the Joint Standing Committee undertook a review of the NSW land valuation system. Recommendation 11 was prompted by concerns that land owners were not being given enough opportunity to raise issues relevant to the Valuer General's determination of compensation, and that land owners did not have access, or the opportunity to respond, to "adverse" information – that is, information provided by the acquiring authority to the Valuer General. The Joint Standing Committee recommended that land owners be provided with a number of entitlements:

1. *The right to make submissions.*
2. *The right to a conference after they make their submission.*
3. *The right to be provided a preliminary valuation report, along with any other adverse and credible information relevant to the determination.*
4. *The right to make any further submissions within 30 days of receipt of the preliminary valuation report, and the right to a further conference to discuss those submissions.*

The Government's response to the Russell Review recommendations

5. *The right to receive written reasons for the acceptance or rejection of the submissions.*

Response

The Government's position on each of these is as follows.

1. The right to make submissions

As noted by the Joint Standing Committee, land owners have an existing right to make submissions. When an acquiring authority submits a PAN to the land owner, indicating the authority's intention to acquire land compulsorily, it must provide the land owner with a section 39 claim for compensation form.

The form has been revised in plain English. It is now easier to understand and makes it more straightforward for land owners to provide details of matters they consider should be taken into account by the Valuer General in making a compensation determination.

While land owners are not required to make a claim for compensation in order to receive compensation, making a claim gives the land owner the opportunity to raise any issues or concerns that are relevant to the Valuer General's determination of compensation.

In 2014, the Valuer General introduced measures to encourage land owners to submit a claim for compensation form:

- a) A plain English brochure on the Valuer General's role in the land acquisition framework was published.
- b) After the acquiring authority has issued a PAN to the land owner, the Valuer General also writes to the land owner, enclosing the brochure and setting out the steps that the Valuer General will take in determining compensation, including providing opportunities for conferences (see below).

Currently, the Act stipulates that, once the acquiring authority receives a completed claim for compensation form from the land owner, it must provide a copy of the form to the Valuer General. However, in the interests of promoting transparency and land owners' confidence in the land acquisition process, the Government proposes to amend the Act to allow the land owner to provide the form directly to the Valuer General as well. This will ensure that the landowner has a clear opportunity to make submissions directly to the Valuer General.

2. The right to a conference after they make their submission

The Government supports and has implemented this recommendation. There should be as much information sharing as possible during the determination process to ensure that the determination is as well informed as possible.

In 2015, the Valuer General introduced the following requirements:

- a) The valuer acting on behalf of the Valuer General will contact the land owner or representative to discuss his or her claim for compensation and answer any questions about the compensation determination process. Arrangements can also be made for this valuer to meet the land owner's valuer and the acquiring authority's valuer.
- b) A case coordinator will be assigned to each determination to provide a central point of contact for the land owner or representative as well as the acquiring authority.

Even if the land owner does not lodge a claim for compensation form, he or she is given a number of opportunities to provide information to assist the determination of compensation.

The Government's response to the Russell Review recommendations

By way of example to illustrate the work of the Office of the Valuer General, during 2015 and 2016*, the Office issued 88 determinations of compensation related to the WestConnex project. In determining compensation in these matters, the Valuer General's office facilitated:

- 88 face to face meetings between the land owner/tenant/business owner/solicitor and the contract valuer undertaking the independent valuation
- 28 telephone contacts between the land owner/tenant/business owner/solicitor and the valuer/coordinator
- 2 face to face meetings between land owner/tenant/business owner/solicitor and the valuer/coordinator.

3. The right to be provided a preliminary valuation report, along with any other adverse and credible information relevant to the determination

4. The right to make any further submissions within 30 days of receipt of the preliminary valuation report, and the right to a further conference to discuss those submissions

5. The right to receive written reasons for the acceptance or rejection of the submissions

The Government agrees that the determination of compensation should be informed by all relevant information, and that parties to the acquisition should have an opportunity to review and respond to such information before the determination is finalised.

In addition, the rationale for a determination should be clearly explained. Land owners must have access to all information that informs the Valuer General's determination so that the process is as transparent as possible. Further, and for the same reasons, complex valuation information and data should be provided to the land owner so they fully understand the compensation notice and valuation of their property.

In 2015, the Valuer General took action to meet these requirements:

- All information provided to the Valuer General that is relevant to the determination is shared with the land owner and the acquiring authority during the determination process, so that both have an opportunity to respond to it. This information will be enclosed with the determination of compensation.
- The determination contains a plain English explanation of how the compensation amount was determined and how any matters of contention have been addressed.
- The case coordinator and valuer must be available to address any questions from the land owner or acquiring authority following completion of the determination.

The Government supports the recommendation that a draft valuation report be provided to the land owner before a final compensation determination is made by the Valuer General. This will ensure that, as the valuation report is being undertaken, the land owner will have the opportunity to bring to the attention of the Valuer General any additional matters that would like considered, and ask questions about issues they do not understand.

In addition to the above, in order to further improve the capacity of land owners to tell their story and understand the compulsory acquisition process, the Government:

- has reviewed the section 39 claim for compensation form to ensure that it is easy to understand and use.
- will require the Valuer General to provide the compensation determination (including land valuation report) directly to the land owner (except for sub-surface acquisitions where compensation is, in accordance with the legislation, generally nil).

These improvements will result in greater transparency in the valuation process. Information is shared and there is a greater focus on engagement with the land owner.

* Advice provided by the Office of the Valuer General, September 2016.

The Government's response to the Russell Review recommendations

| | |
|--|--|
| Improvement to the land acquisition process | Improvement to the land acquisition process |
| <p>Section 39 Claim for Compensation Form</p> <p>Require acquiring authorities to use a new Section 39 claim for compensation form, which has been rewritten to ensure that it is easy to understand and use.</p> | <p>Valuer General writes to land owner enclosing brochure and setting out the steps in the determination of compensation process for the land owner's information.</p> |
| Improvement to the land acquisition process | Improvement to the land acquisition process |
| <p>Valuer General Issues a plain English brochure outlining the Valuer General's role in the land acquisition process.</p> | <p>Compensation determination contains a plain English explanation of how the compensation amount was determined and how any issues raised during the process have been addressed.</p> |
| Improvement to the land acquisition process | Improvement to the land acquisition process |
| <p>All information provided to the Valuer General that is relevant to the determination of compensation is provided to the land owner and the acquiring authority during the determination process.</p> | <p>Amend the Act to require the Valuer General to provide the compensation determination (including the land valuation report) with the compensation notice, directly to the land owner.</p> |
| Improvement to the land acquisition process | |
| <p>Preliminary Valuation Report</p> <p>Require the Valuer General to provide a preliminary valuation report to the land owner before the final valuation and compensation determination is made.</p> | |

Severance Loss

Recommendation 5

That section 55(c) of the Land Acquisition Act be retained in its current form.

Background

Section 55(c) governs the provision of compensation where part of an owner's land is acquired and part is retained by the owner. The owner is compensated for the part taken and any reduction in value of the retained land as result of the acquisition.

Mr Russell noted that no submissions raised substantive issues in relation to the operation of the section. He also noted that many of the external submissions relating to severance loss were actually in relation to planning issues rather than those relating to just terms compensation.

Response

The recommendation is supported.

A land owner can be compensated even if only part of the land is acquired.

The Government's response to the Russell Review recommendations

Disturbance loss

Recommendation 6

That further consultation be held with interested parties to ascertain whether the Land Acquisition Act provides adequate compensation in the assessment of business claims, and, if not, what amendments should be contemplated to properly compensate such claims.

Background

In this part of the Review, Mr Russell considered submissions relating to the heads of compensation provided under the Act. As noted in the Review, a range of views were expressed by parties who made submissions about whether these provisions required amendment.

Mr Russell did not make recommendations to alter the heads of compensation.

In relation to business claims, it was suggested by the Law Society of NSW that there be a separate head of compensation for business claims, and there be a more detailed framework for assessing them. Mr Russell found there was insufficient detail in the submissions to make a specific recommendation.

The Government acknowledges that businesses face particular costs and disruptions as a result of land being acquired, which are often different from the types of costs normally facing owners of residential premises. For example, business owners may need to obtain development consent for the relocated business, supported by relevant professional advice (eg architectural, engineering, valuation etc). They may lose access to, for example, local manufacturing or transport services.

It is important to note that claims for compensation for business relocation can already be made under existing provisions of the Act. Section 59(f) provides for compensation in respect of "any other financial costs reasonably incurred (or that might reasonably be incurred) relating to the actual use of the land, as a direct and natural consequence of the acquisition." There is therefore a broad range of business-related costs that can be compensated.

The Government also recognises that the office of the Valuer General retains expertise and experience to assess the complex matters that arise in acquisitions involving businesses.

Response

The Government strongly supports the recommendation that businesses receive adequate compensation in respect of financial costs and that acquiring authorities and the Valuer General should assess business claims on a consistent basis. Like land owners, business owners are entitled to a full range of information about how business-related claims are assessed so there is full transparency in the process. This will make it easier for businesses to claim the full range of compensation they are entitled to.

Acquisitions of business premises were outside the scope of Mr Pratt's review. However, consistent with his review's recommendations on improving service levels, the Government will explore extending the Personal Manager Acquisitions role to businesses during the land acquisition process. There are a wide range of matters to consider in moving a business premises and the acquiring authority should be able to advise on how to make this happen as seamlessly as possible so as to minimise disruption.

The Government's view is that the central issue identified by Mr Russell in this recommendation is a lack of consistency in the assessment of compensation payable to businesses involved in a compulsory acquisition. To address this, the Government has developed detailed guidelines for acquiring authorities to ensure a more consistent assessment of business claims.

The Government's response to the Russell Review recommendations

The Government's expectation is that, together with the overall changes to the land acquisition process to improve consistency in the determination of compensation, the new guidelines will address the issues raised by Mr Russell in relation to acquisitions involving businesses. However, the Government will continue to monitor outcomes for businesses in considering whether any further action is necessary in the future.

Improvement to the land acquisition process:

Guidelines have been developed to assist in the assessment of business claims.

Recommendation 7

That section 60(2) of the Land Acquisition Act be amended to provide that the maximum amount of compensation in respect of solatium is \$50,000, and that such amount be indexed yearly to the CPI.

Background

The Act provides for compensation to be paid to a land owner or resident for non-financial disadvantage (referred to as solatium) arising from the need for the land owner to relocate his or her principal place of residence. The maximum amount was originally set at \$15,000, or any higher amount set by the Minister responsible for the Act. Solatium is generally paid to the maximum amount to land owners whose homes are being acquired, and a lesser figure to residential tenants.

The maximum amount has been indexed annually by CPI by the Government, and currently stands at \$27,235. This is in addition to compensation paid for other matters such as the value of the land that has been acquired and legal and valuation costs.

Mr Russell noted that Victoria and Western Australia provide for the amount of compensation to be increased by up to 10% for solatium (i.e. 10% of the valuation of the property), whereas Queensland and South Australia do not provide compensation in respect of solatium.

Mr Russell did not support moving to the Victorian and Western Australian systems, as the amount should not be determined by whether or not the land is of high value or low value. However, he considered that an increase in the current amount of compensation to \$50,000 was warranted given the potential for land acquisition to cause disruption for land owners.

Response

The Australian Property Institute submitted that the then current maximum figure of \$24,240 was outdated in relation to current property values. Dr Nicholas Brunton, a legal expert in land acquisition, submitted that the then current amount of solatium was 'far below' what would actually provide solace to land owners.

The submission from NSW Young Lawyers suggested solatium be paid at 10 per cent of the total compensation figure, which Mr Russell rejected.

The review process, including Mr Pratt's work, has highlighted that land acquisition can be stressful and upsetting for land owners and tenants, given the need not only to leave a residence and acquire new accommodation, but also to face other potential challenges, such as families needing to find new schools for their children, and establish new networks in an unfamiliar area.

Mr Pratt also recommended an increase in the maximum solatium amount to \$50,000 given the length of time since any significant increase (other than CPI), and the significant disruption to land owners' and residents' lives.

As Mr Russell points out, selecting a precise dollar figure for solatium is challenging, given it is intended to compensate for a non-financial impact when property is acquired. The Government agrees with Mr Russell that the maximum solatium compensation should be increased.

The Government's response to the Russell Review recommendations

In carefully considering the potential impact land acquisition can have on families and individuals – and with a view to moving away from an approach to land acquisition compensation that has, to date, tended not to focus on the emotional and social cost of land acquisition – the Government considers the maximum amount of solatium payable under the Act should be increased even more substantially than recommended by Mr Russell and Mr Pratt, to a maximum of \$75,000, indexed annually to the CPI.

The Government does not support calculating solatium based on property value. The non-financial impact on a property owner or resident should not be contingent on such a factor. However, given that Victorian legislation provides for up to 10% of the value of the property (with a median house value of approximately \$725,000 in Melbourne⁵), an amount of \$75,000 does not put NSW outside the scope of what other jurisdictions currently provide for this type of compensation.

This figure of \$75,000 will be, as is currently the case, in addition to compensation paid for costs that may be reasonably incurred as a result of the land acquisition, such as legal costs and land valuation fees.

The Act currently lists various factors to be considered in determining the amount of compensation awarded:

- (3) In assessing the amount of compensation in respect of solatium, all relevant circumstances are to be taken into account, including:*
- (a) the interest in the land of the person entitled to compensation, and*
 - (b) 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), and*
 - (c) the inconvenience likely to be suffered by the person because of his or her removal from the land, and*
 - (d) 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.*

All these factors will be retained in the Act.

The increased solatium compensation payment (or the pro rata payment amount to residents who received less than the maximum solatium amount) will apply retrospectively to former land owners whose acquisitions were settled on or after 26 February 2014 – the date Mr Russell's report was provided to Government.

To improve clarity and understanding both among persons whose properties are acquired by Government, and in the community in general, Mr Pratt recommended the Government amend the term "solatium" to more clearly articulate what this form of compensation relates to. Government will amend the Act to refer to solatium as 'disadvantage resulting from relocation'.

The Government has developed additional guidance for acquiring authorities and the Valuer General to assist in determining the amount of compensation payable in relation to the inconvenience of having to relocate from a principle place of residence. This guidance has been developed in consultation with the Customer Service Commissioner. This will help to ensure that there is clear guidance on the amount of compensation payable in a range of circumstances.

Improvement to the land acquisition process:

Government will amend the Land Acquisition Act to increase the maximum compensation for disadvantage resulting from relocation to \$75,000 to be indexed annually by CPI.

5. Real Estate Institute of Victoria – media release regarding June 2016 quarter property value data

The Valuer-General

Mr Russell made a series of recommendations relating to the responsibilities of the Valuer General. As noted above, the Valuer General has already made a number of changes to improve engagement with land owners. The Government supports the following recommendations relating to the Valuer General.

Recommendation 8

That formal arrangements be set out in the Land Acquisition Act to require acquiring authorities to pay the reasonable costs of the Valuer General for providing a compulsory compensation valuation.

Background

The Valuer General has informal arrangements with acquiring authorities providing for the payment of the Valuer General's reasonable costs for undertaking compensation determinations. To address any risk of these costs not being paid, Mr Russell recommended the Act be amended to require such costs to be paid.

Response

The Government is not aware of any evidence that acquiring authorities are not paying the reasonable costs of the Valuer General in determining compensation for the compulsory acquisition of land, including costs associated with the land valuation.

While the Government does not consider a change to the Act to be necessary to give effect to what is essentially an internal government administration matter, nonetheless the Government supports the recommendation that arrangements be formalised to ensure the payment of the Valuer General's reasonable costs. The Government will action this through a DFSI Circular, providing a clear instruction that the Valuer General's reasonable costs are to be met by the acquiring authority.

Improvement to the land acquisition process:

Arrangements for the payment of the Valuer General's reasonable costs will be formalised.

Recommendation 9

That the Land Acquisition Act be amended to require both the acquiring authority and the land owner to notify the Valuer General of any issues that may affect the determination of compensation, within 7 days of the acquisition being gazetted.

Background

This recommendation was prompted by concerns that, when an acquiring authority and a land owner do not reach agreement on an acquisition, the Valuer General is not always aware of why an agreement could not be reached or other issues that may be relevant to the determination.

Response

As noted at the discussion in relation to recommendation 4, in 2014 and 2015 a range of administrative measures were introduced to ensure the Valuer General has access to all information that is relevant to the compensation determination.

These measures focus on giving land owners regular opportunities to ask questions, raise issues and provide information to the Valuer General as soon as the compulsory acquisition process commences and throughout the period leading up to the finalisation of the compensation determination. In addition, plain English revisions to the section 39 claim for compensation form will make it easier for land owners to express a view on compensation and raise any issues.

The timely provision of relevant information held by acquiring authorities is also critical to the Valuer General's capacity to produce a well-informed and accurate compensation determination, and to avoid delays in the payment of compensation. Given this and the importance of the information held by acquiring authorities, it is proposed to require acquiring authorities to provide any information relevant to the determination within 7 days of land being compulsorily acquired.

The Government's response to the Russell Review recommendations

This measure will further help to ensure that, when land has been compulsorily acquired, the Valuer General is aware of all issues that are relevant to the determination of compensation. However, the Government does not consider that the same legislative requirement should be imposed on land owners. Land owners are less well-resourced than acquiring authorities, and the range of administrative measures introduced to encourage land owners to provide information to the Valuer General are considered sufficient at this time.

However, landowners will still be provided with the opportunity to provide relevant information to the Valuer General and this will be achieved through the section 39 'claim for compensation' form. To ensure that the process is fair, both parties can submit information but the obligation will only fall to the acquiring authority.

As noted by the Customer Service Commissioner, providing a primary point of contact through the Personal Manager Acquisitions should further improve the flow of information between land owners, the Valuer General and acquiring authorities. Communication and information provision should be part of the standard service suite that is provided to land owners, so they are aware of opportunities to provide a full range of considerations and information to the Valuer General.

Improvement to the land acquisition process:

Government will amend the Act to require acquiring authorities to notify the Valuer General of any issues that may affect the determination of compensation, within 7 days of the acquisition being gazetted.

Recommendation 10

That the Land Acquisition Act be amended so that the 30 day timeframe for the issue of compensation notices by acquiring authorities be amended to 45 days.

Background

As noted at recommendation 4, within 30 days of land being compulsorily acquired, the Valuer General must inform the acquiring authority of the determination of compensation and the acquiring authority must provide a compensation notice to the former land owner. Under section 42(4) of the Act, the Minister responsible for the relevant acquiring authority may extend the 30 day timeframe by up to 60 days.

Noting that compensation determinations can be complex, often requiring particular expertise and consultation with various stakeholders, Mr Russell recommended that the timeframe be extended from 30 to 45 days.

Response

In developing its position on this recommendation, the Government has had regard to competing policy considerations. On the one hand, Ministers for acquiring authorities already have powers to extend the 30 day timeframe if necessary, and the Valuer General has entered into arrangements with acquiring authorities allowing work to commence on aspects of the determination before land has been compulsorily acquired. Further, it is in the interests of ensuring timely payment of compensation that the Valuer General complete the determination as soon as practicable.

On the other hand, the 30 day timeframe has proved frequently challenging, and it is undesirable and inefficient that the Valuer General should need to seek extensions of time to complete determinations. In addition, if strictly adhered to, the timeframe potentially limits the capacity of the Valuer General, acquiring authorities and land owners to engage fully and constructively with each other prior to a compensation determination being finalised.

The Government's response to the Russell Review recommendations

On balance, therefore, the Government considers that, in the interests of ensuring that the compensation determination is informed by a thorough assessment of all relevant issues and adequate consultation between the Valuer General, acquiring authorities and land owners, the 30 day timeframe for provision of a compensation notice to land owners should be increased to 45 days.

To allow for flexibility in complex valuation matters, it is appropriate that the Minister responsible for the acquisition retain the right to extend the timeframe by up to 60 days. However, the Government will monitor this issue carefully through the data collection arrangements outlined at recommendation 1, so that compensation continues to be paid in a timely fashion.

As noted above, the Valuer General has established arrangements with acquiring authorities allowing the Valuer General to start work on aspects of the determination as soon as the acquiring authority has notified the land owner of its intention to compulsorily acquire land. These arrangements will be formalised through a DFSI Circular.

Improvement to the land acquisition process:

Amend the Land Acquisition Act to extend the time frame in which an acquiring authority is required to provide a compensation notice to a land owner from 30 to 45 days.

Recommendation 11

That the Land Acquisition Act be amended to give the Valuer General authority to extend the time period for which a compensation notice is to be given to 90 days, if, in the opinion of the Valuer General, such additional time is required.

Background

As noted at recommendations 4 and 10, the 30 day timeframe for providing a compensation notice to a former land owner can be extended by up to 60 days with the permission of the Minister accountable for the acquisition. However, noting that requests for extension of the timeframe by the Valuer General are not always granted, Mr Russell recommended that the Valuer General should also have discretion to increase the timeframe by up to 60 days.

Response

The Valuer General has the ability to request an extension of up to 60 days, on top of the existing 30 day timeframe to complete a determination. It is noted that the former Valuer General in his submission to the Russell Review was open to an extension of time in which to complete a determination.

In the Government's view, it would not be appropriate to give an independent official, who has no role in the planning and delivery of public infrastructure, discretion to increase the timeframe in which an acquiring authority must provide a land owner with a compensation notice.

However, given valuation work can be time consuming in complex cases, it is appropriate that there is scope for the new 45 day time frame to be extended to 90 days. The Minister for Finance, Services and Property, with new portfolio responsibilities for acquisitions will have the authority to extend the time frame by an additional 45 days upon the request of the Valuer General.

Improvement to the land acquisition process

If the Valuer General requires an extension of up to 90 days to complete a compensation determination, agreement can be sought from the Minister for Finance, Services and Property.

The Government's response to the Russell Review recommendations

Recommendation 12

The Review does not support extension of merits appeals against a compulsory acquisition valuation to acquiring authorities. The Act should remain as it is.

Background

The Act allows a land owner to appeal the Valuer General's determination of compensation, but does not provide this right to the acquiring authority.

Response

The Government supports this recommendation.

As acquiring authorities command greater resources than individual land owners, it would be inappropriate and unfair to allow them to appeal the Valuer General's determination of compensation. Granting such a right to acquiring authorities would arguably compromise the objectives of the Act, which seek to ensure that land owners are dealt with fairly in the context of a difficult situation, namely the acquisition of their properties.

Only land owners can appeal a decision about the compensation provided when land is compulsorily acquired.

Hardship Provisions

Recommendation 13

That the Land Acquisition Act be amended to remove the requirement for a land owner to establish hardship, and that a land owner have a right to give a notice, without asserting or needing to establish hardship, which obliges the acquiring authority to either acquire the land within 90 days or abandon the proposal to acquire the land.

Background

Infrastructure projects such as new roads or railway lines often need to be planned many years ahead, with land "designated" or "reserved" for public purposes. This allows time for an acquiring authority to undertake detailed planning and design, and determine exactly which properties need to be acquired before construction actually commences.

When the Act was introduced in 1991, it included provisions to allow land owners to compel the government to acquire land where it was designated for a public purpose but only where they were able to demonstrate hardship.

However, prior to 2006, where land had been reserved exclusively for a public purpose under an environmental planning instrument, land owners could require an acquiring authority to acquire the land under alternative procedures. Under the *Environmental Planning and Assessment Act 1979*, a land owner could compel an acquiring authority to acquire land on demand. Local councils, in particular, were often forced to acquire land they did not require but which had been identified for potential uses under local environment planning instruments.

In 2006, legislative amendments were made to the *Environmental Planning and Assessment Act 1979* to ensure that all future owner-initiated acquisitions were dealt with in accordance with the hardship provisions of the Act. Essentially the amendments ensured that in cases where land was originally identified for public purposes such as a road or rail line, the land owner could not compel Government to acquire it without demonstrating, in accordance with the requirements set out in the Act, that they would suffer hardship if the acquisition was not made.

The Government's response to the Russell Review recommendations

Under the hardship provisions, the land owner must demonstrate that:

- the owner is unable to sell the land at its market value because the land has been designated for future acquisition, and
- it has become necessary to sell the property without delay for pressing personal, domestic or social reasons, or to avoid a substantial loss in income.

Mr Russell acknowledged that there were sound policy and financial reasons for allowing acquiring authorities to designate land for a public purpose without having to acquire land until it was actually needed.

However, he considered that removal of the provisions would mitigate the risk of land owners having to wait several years before their land was acquired.

Response

The Government accepts that reserving land for future infrastructure requirements can create uncertainty for land owners. In particular, the Government notes that the process of reserving land, as indicated in submissions to the Russell Review, can be long, arduous and costly, and that agencies must take care in designating land for future public purposes.

This is obviously a difficult issue for individuals, which needs to be weighed up against the broader public interest of ensuring that the long term infrastructure needs of the community are planned for and met.

This is particularly relevant in a city such as Sydney, whose sprawling urban and suburban footprint, unique geographical layout, and relative lack of historical long-term planning mean that infrastructure projects invariably need to be integrated with already densely populated areas, requiring careful planning years in advance.

Reserving land for future infrastructure projects is part of the broader work of designing suburbs, releasing land for development and ensuring that as the city's population becomes more geographically diverse, there are sufficient and high quality public services.

Prior to 2006, the absence of any limits on such acquisitions in environmental legislation forced acquiring authorities to acquire land many years in advance of actual construction. This acted as a disincentive for long term infrastructure planning. The 2006 amendments to planning legislation set limits to owner-initiated acquisitions.

Mr Pratt accepted the rationale behind the hardship criteria, but agrees with Mr Russell that existing criteria are too restrictive. He noted that the existing process was lengthy and intrusive, and onerous for acquiring authorities in relation to partial acquisitions, corridor residents and land owners whose homes could be significantly impacted by becoming near neighbours to the project.

Mr Pratt recommended that further work be undertaken with a view to potentially removing existing hardship criteria, and providing more flexibility for acquiring authorities in relation to partial acquisitions, corridor residents and land owners whose homes could be significantly impacted by becoming near-neighbours to the project.

In the Government's view, the recommendations of Mr Russell and Mr Pratt should be considered in the context of a process that is in many important ways operating effectively. They allow acquiring authorities to plan for the infrastructure needs of the community, while also providing an avenue for land owners who are in difficult circumstances to compel acquisition of properties that have a public purpose designation.

In this regard, it is important to note that many hardship applications are approved. In the period July 2010 to March 2016, approximately 85% of applications submitted to NSW Government acquiring authorities were accepted.

The Government's response to the Russell Review recommendations

While the Government considers that the case for abolishing the hardship test is not strong, it nonetheless considers three key improvements need to be made in relation to hardship applications to enhance fairness and transparency for land owners.

- Firstly, as outlined in the Government response to recommendation 14, land owners should have the right to seek an independent merits review of an acquiring authority's rejection of a hardship application (see the Government response to Recommendation 14). This will improve transparency and rigour around decision making on hardship applications.
- Secondly, guidance needs to be provided to land owners on what constitutes hardship to help with the preparation of an application. As such, the Government has developed hardship guidelines, which will be available on the new land acquisition website.
- Thirdly, reasonable costs associated with the hardship application should be met by the acquiring authority.

Further, acquiring authorities can also purchase land in advance of the designated road or rail route being finalised. RMS, for example, has a policy to allow for owner-initiated acquisitions where, because a number of possible routes have been identified, the owner may find it difficult to sell their property. RMS applies the same hardship criteria, but such acquisitions are not undertaken pursuant to the Act. This approach by RMS provides an additional and important option for land owners.

Rather than amending the hardship provisions, Government considers that agencies should be undertaking a more strategic, upfront approach to land acquisition. This is consistent with Mr Pratt's recommended approach and is not mutually exclusive to retaining the requirement that landowners establish hardship in order to compel the Government to acquire land.

The Government supports reviewing the acquiring authorities' approach to acquisitions to ensure that there is sufficient flexibility for negotiation between land owners and government and for government agencies to be more strategic in the way in which they approach infrastructure projects. This work will be led by Mr Pratt in consultation with the Minister for Finance, Services and Property.

Improvement to the land acquisition process:

Land owners will be supported in making applications to have the government acquire their land for reasons of hardship.

Recommendation 14

If the recommendation to abolish the hardship provisions of the Land Acquisition Act is not adopted, then the Review recommends that the Land Acquisition Act be amended to introduce a merits review for land owners whose hardship acquisition application is rejected by an acquiring authority.

Background

Mr Russell considered that a further disadvantage with the current hardship provisions is that they provide no right for a merits based appeal against an acquiring authority's rejection of a hardship application.

Response

As noted in the Government's response to recommendation 13, the Government considers that hardship needs to be demonstrated in order to require an agency to acquire land. Agencies need to be able to carefully and strategically plan complex projects years into the future.

However, the Government agrees there should be a right of appeal in relation to hardship when the application is declined by the acquiring authority. There is an important balance to be struck between the need for the government to plan for future infrastructure, and the right of a land holder to seek a merits-based review of an acquiring authority's decision.

The Government's response to the Russell Review recommendations

Notwithstanding the fact that 85% of hardship applications are accepted, the Government accepts that an acquiring authority's decision in such cases may not be perceived as independent, and this is reflected in some submissions to Mr Russell.

For this reason, the Government proposes that the Act be amended to provide for merits-based review by a suitably qualified professional, independent of Government, with high level legal and/or property-related experience. There are good reasons for this approach.

Firstly, the review should be conducted by someone independent of the acquiring authority and having no connection with the project related to the acquisition.

Secondly, it will be a relatively informal mechanism where land owners can provide a range of information relevant to their application. Such information can be personal in nature, and the land owner may not wish to provide it to the acquiring authority.

Finally, a merits-based review will be low cost and efficient. It is not envisaged that there will be any application fee and the Secretary will be able to provide an independent decision in a matter of weeks. Land owners will have four weeks to seek a merits review, and will be assisted through plain English guidelines and a straightforward application form. The review will be undertaken within four weeks and a response provided directly to the land owner with findings.

While 85% of hardship applications are approved, there is also a need for clear guidelines on how such applications are assessed. We will publish guidelines on the assessment of hardship applications to promote a consistent and transparent approach by acquiring authorities. Land that is not used for a project

Improvement to the land acquisition process:

Amend the Land Acquisition Act to provide for merits review of decisions on hardship applications by a suitably qualified person who is independent of Government

Improvement to the land acquisition process:

Guidelines on assessment of hardship applications have been developed.

Land that is not used for a project

Mr Russell considered situations in which land that is acquired for a project is not eventually used, and whether the former owner should be granted rights in relation to that land.

Recommendation 15

That the Land Acquisition Act be amended to require acquiring authorities to give land owners a first right of refusal to repurchase land, where a project does not proceed at all, or where not all of the acquired land is ultimately needed by the acquiring authority.

Recommendation 16

That the Land Acquisition Act be amended so that if a dispossessed land owner reacquires part or all of their land (pursuant to a first right of refusal clause) then such reacquisition be at the market price paid by the acquiring authority, so that any uplift in value accrues to the benefit of the dispossessed land owner. Further, such amendment should also operate where it is the acquiring authority which resells the land to a third party, to the intent that the acquiring authority ought to account to the dispossessed land owner for any uplift in value.

The Government's response to the Russell Review recommendations

Background

On occasions, acquiring authorities acquire more land than is actually necessary to implement a particular project, or a project does not proceed at all.

Hunter Water Corporation submitted to Mr Russell's review the example of the withdrawn Tillegra Dam project. A number of land owners asked for the option of a "first right of refusal" clause to be written into sale contracts in the event that the project did not go ahead. The Corporation suggested that agencies adopt a standard clause in all compulsory acquisitions providing an opportunity for dispossessed land owners to buy back residual land at the market value of the day, agreed by independent valuation process.

An individual submission to the review recommended that the dispossessed land owner should be able to repurchase land which was found to be excess to the requirements of the acquiring authority, but at the same price they had been paid for such land. If the excess land were sold off, then her suggestion was that 80% of the profit should go to the land owner and 20% to the acquiring body.

Urban Taskforce Australia submitted that if excess land at the conclusion of an authority project was available, any profit from sale of that land should go to the original owner. Further, if land was acquired but was then rezoned which gave it greater development potential, the uplift in value should be distributed evenly between authority and original land owner.

Mr Russell considered that in these situations the dispossessed land owner should be given the option of repurchasing the land or the part of the land not used by the acquiring authority (rec 15). In addition, it was recommended that the land owner should be permitted to repurchase the land at the market price paid by the acquiring authority, or, if the acquiring authority sells the land to a third party, the original land owner should receive the uplift in value (rec 16).

Mr Russell's justification for these recommendations is that they would help to restore the position that the land owner would have been in had the acquisition not taken place. Further, they would encourage acquiring authorities to plan their acquisitions carefully to avoid needlessly acquiring excess land.

Response

The Government recognises that former land owners whose land has been acquired for a project but is not used may want the opportunity to take back possession, especially if they had a strong attachment to the property and given the disruption and inconvenience they may have experienced during the acquisition process, as determined by an independent valuation at the time the land is offered to the former land owner.

As such, it is reasonable and fair in such circumstances that the former land owner be offered first right to repurchase the property. This recognises that the government should acquire private property where it is needed and, if it is not ultimately required due to essential route changes for example, then the former land owner should be afforded the opportunity to be able to consider whether the re-purchase the property.

However, the offer to repurchase will only be at the market value, as determined by an independent valuation, at the time that the land is offered to the former land owner. The property would generally be offered for repurchase at the conclusion of a project and only within 10 years of the date of acquisition. Further, the former land owner will only be able to be offered the right to repurchase the land where that land has not been used for any public works within the 10 year period, and where the land has not been substantially improved.

The Government considers that this should happen in limited circumstances as property should only be acquired where it is needed.

If the former landowner does not take up this offer then it would be at the discretion of the acquiring agency to dispose of the property as appropriate.

The Government's response to the Russell Review recommendations

There are sound reasons for limiting repurchase rights to the current market value and not at the price that the acquiring agency purchased the property, as suggested by Recommendation 16.

Recommendation 16, if implemented as Russell recommended, may place the land owner in a significantly better position than before. For example, a former land owner who has been compensated under the Act has already been afforded the opportunity to invest the compensation as he or she sees fit, including in the property market, and thereby benefit from any uplift in the market.

Providing a land owner an exclusive right to reacquire a property at the price originally paid by the acquiring authority – a property whose value may have risen on account of the expenditure of public funds on infrastructure – would provide the former land owner with a windfall at the expense of the taxpayer.

Recommendation 16 is contrary to the well-established policy that any public land that is sold should maximise return to the taxpayer.

For the above reasons, the Government supports recommendation 15 but does not support recommendation 16.

Improvement to the land acquisition process

If at the conclusion of an infrastructure process land is not required, the former land owner will be provided with an offer to repurchase their former land and where the land has not been improved or cleared.

Reinstatement

Recommendation 17

That the Land Acquisition Act be amended so as to provide for compensation on a reinstatement basis, in relation to a dwelling house, in terms similar to those of Section 61(2)(b) of the equivalent Commonwealth legislation.

Background

The premise for this recommendation was the concern that NSW's legislation does not adequately address the situation where a former land owner cannot afford to buy an equivalent property in the same area, and therefore requires additional compensation.

For the purposes of this recommendation, Mr Russell has referred to this kind of compensation as "reinstatement", further suggesting that most other jurisdictions provided compensation on the basis of "reinstatement", and it was anomalous that NSW did not.

Response

The issues raised by Mr Russell on the subject of "reinstatement" require careful clarification, in particular because the term and concept of "reinstatement" are used inconsistently – and in significantly different contexts – in legislation in other jurisdictions.

Residential dwellings

At a basic level, the concept of 'reinstatement' has at its core the principle of restoring someone to their previously held position. In the context of compulsory land acquisitions, this principle is the very foundation of land acquisition legislation in all Australian jurisdictions, including NSW.

For example, in NSW, the heads of compensation at sections 55-60 provide for the land owner to be compensated, among other things, for the market value of the acquired property (to enable them to acquire an equivalent dwelling on equivalent land) as well as any out of pocket expenses arising as a consequence of the acquisition, including legal costs, valuation costs and relocation costs.

In effect, these provisions seek to "reinstatement" the former land owner to the position they were in prior to the acquisition, no better, no worse – an equivalent home on equivalent land, and no out of pocket expenses.

The Government's response to the Russell Review recommendations

Central to the NSW land acquisition framework is the idea that compensation should be based primarily on the true market value of the home being acquired, plus additional costs, special value, and compensation for inconvenience (or “solatium”). This is the same approach taken in Australia’s most populous jurisdictions – Victoria, Queensland, South Australia and Western Australia.

On the other hand, the Commonwealth land acquisition framework, and the frameworks operating in the ACT and Tasmania, also provide (to a limited degree) that in acquisitions involving the land owner’s residential dwelling, the calculation of compensation may also consider the cost of acquiring a reasonably equivalent property.

It is important to note that, contrary to Mr Russell’s contention, the NSW framework is not in fact anomalous in the way it approaches the valuation of residential dwellings – like Victoria, Queensland, South Australia and Western Australia, the NSW framework focuses on the market value of the property being acquired, not the value of the a property the dispossessed land owner may subsequently purchase.

Each of these jurisdictions is home to a large and diverse residential property market in which there is a low likelihood that the compensation paid to land owners based on the market value of the property being acquired would be insufficient to enable the purchase a reasonably equivalent dwelling.

By contrast, the Commonwealth legislation is required to operate in all jurisdictions and a wide variety of unique market circumstances, while the residential property markets in Tasmania and the ACT are far more limited, both in size and in diversity of available housing, than those of the mainland States. It is therefore appropriate that the valuation mechanisms in place in the Commonwealth, ACT and Tasmanian legislation differ from those in the mainland States to account for potential deficiencies in the relevant markets.

It is also important to note that, while the Commonwealth, ACT and Tasmanian legislation provide for the consideration of the cost of purchasing reasonably equivalent dwelling in the, and despite

a significant degree of misunderstanding in the community about provisions of this nature, their object is not to enable persons whose residential homes have been acquired to improve their position by acquiring a “better” home – rather it is to secure a reasonably equivalent dwelling.

In consideration of the position of other jurisdictions and the circumstances and market conditions in which acquisitions take place in NSW, the Government considers it is appropriate for the current approach – in which compensation for residential dwellings is based on a market valuation of the home being acquired – should continue, in line with Victoria, Queensland, South Australia and Western Australia.

Limited markets

Separate to the issue of residential acquisitions, some jurisdictions, such as Victoria, South Australia and the Northern Territory, explicitly provide for additional compensation to deal with unusual circumstances in which there is a limited (or non-existent) market for a particular kind of property that the Government must acquire (for example land on which there is a church or a golf course).

In such situations, the absence of a market for the property means that it is not possible to ascertain with any certainty what the true market value of the property is, so an alternative measure for calculating compensation is necessary.

The most obvious and appropriate means of calculating the amount of compensation in those cases is by reference to the cost of acquiring a similar property to be used for the same purpose. States whose legislative frameworks incorporate this approach do so only in strictly limited circumstances, requiring the acquisition to meet a range of criteria which commonly include the following:

- The land must be used for a particular purpose.
- There is no general demand or market for land used for such a purpose.
- The land owner must have a bona fide intention to acquire land to be used for the same purpose as the land that has been acquired.

The Government's response to the Russell Review recommendations

Because of these strict criteria, the “reinstatement” compensation provided for in Victoria, South Australia and the Northern Territory would not entitle the owner of a standard residential dwelling to any additional compensation.

The Government notes that there is currently no equivalent provision for this specific kind of reinstatement compensation in the NSW legislation.

Proposed amendment

In circumstances where:

- land used for specific purposes for which there would be no general market (such as a church, community building or sports centre); and
- but for the acquisition, the land would have continued to have been used for that purpose, the Government considers that an amendment to the Act to include a provision to allow for reinstatement compensation is likely to deliver a fairer outcome for the affected land owners.

The Government will therefore amend the Act to allow for reinstatement in those limited circumstances, to operate in a similar manner to section 42 of the *Victorian Land Acquisition and Compensation Act 1986*.

Improvement to the land acquisition process:

Amend the Land Acquisition Act to provide for reinstatement in limited circumstances where there would be no general market.

Electricity Transmission Issues

Recommendation 18

That further consultation be held with TransGrid, Essential Energy and other electricity transmission authorities, together with any other interested parties:

- (a) to ascertain whether a limitation should be placed upon the categories of “right, power or privilege” over the land which should be the subject of compensation for compulsory acquisition;
- (b) to ascertain whether the perceived granting of easements for electricity substations without compensation requires attention.

Background

Under the Act, “land” includes any “interest in land”. “Interest in land” is defined as -

- a legal or equitable estate or interest in the land, or
- an easement, right, charge, power or privilege over, or in connection with, the land.

Mr Russell noted the suggestion from some electricity transmission authorities that the definition of “interest in land” is overly legalistic and would benefit from clarification.

Mr Russell also noted concerns expressed by the Property Council of Australia that local councils could impose conditions on land owners that require an easement to be set aside for the installation of an electricity substation, if needed. As such arrangements are not “acquisitions” for the purposes of the Act, they are not compensable.

Response

In relation to part (a) of recommendation 18, it should be noted that the definition of “interest in land” has been in place since the Act’s commencement and is intended to capture a range of interests in land that may be acquired and therefore be subject to compensation. The Government would want to consider carefully any amendments that narrow or otherwise alter the definition, thereby potentially affecting existing rights to compensation. The Government will therefore review this issue further, in consultation with the relevant electricity authorities and other stakeholders.

In relation to part (b) of recommendation 18, local councils are entitled to impose conditions on land owners that dedicate an area of land for the installation of an electricity substation, if required. The Government considers this to be a planning issue, and not relevant to the acquisition of land under the Act.

The Government's response to the Russell Review recommendations

Aboriginal Land Claims

Recommendation 19

That the record of undetermined Aboriginal land claims kept by Crown Lands be made available to all potential acquiring authorities, and that all such authorities be informed in writing of the practice which has developed to protect undetermined claims. Further, Crown Lands should be obliged to advise all Local Councils in writing, on a regular basis, of the existence and particulars of all undetermined Aboriginal land claims in the particular area relevant to each Local Council.

Background

At present, when an acquiring authority seeks to acquire Crown Land that is subject to an undetermined Aboriginal land claim, Crown Lands, a division within the Department of Industry, Skills and Regional Development, will instruct the acquiring authority to obtain the consent of the relevant land council to the proposed acquisition before it will release the land.

While Mr Russell noted that no submission to the Review had suggested that any Crown land that was subject to an undetermined Aboriginal land claim had been acquired without the consent of the relevant land council, he indicated that it was not known whether all acquiring authorities knew of the above Crown Lands practice.

Response

An acquiring authority may at any time contact the Registrar, Aboriginal Land Rights Act 1983, who is the official custodian of Aboriginal land claims, to determine whether Crown land is subject to an undetermined land claim. Given this and the existing Crown Lands practice in relation to acquisitions where the land is subject to a claim, the broad intent of the recommendation has been satisfied.

However, the Government agrees that there is merit in formally advising acquiring authorities of the above Crown Lands practice.

Accordingly, in 2015 the Government formalised the practice of Crown Lands advising all local councils in writing, on a regular basis, of all undetermined Aboriginal land claims in the particular area relevant to each local council.

Recommendation 20

That the review of the Just Terms Compensation legislation be conducted by a reviewer who is obliged to hold public hearings and take evidence from interested parties. Further, such reviewer should be assisted by an expert panel comprising representatives of government authorities, user groups, industry groups, academics and dispossessed land owners, to report upon the effect of any amendments to the Act adopted as a result of this review, and of the Just Terms Compensation legislation generally.

Improvement to the land acquisition process:

Formally notify acquiring authorities via a DFSI circular of the Crown Lands practice in relation to acquisitions of Crown land to ensure that, where Crown land is subject to an undetermined Aboriginal land claim, the agreement of the relevant Aboriginal land council is obtained before the land is acquired.

Response

The Government agrees that a future review of the Act should allow for full and effective contributions from interested parties.

The Customer Service Commissioner

Michael Pratt AM was appointed by the NSW Government as the inaugural Customer Service Commissioner in 2012, with a broad mandate to reimagine government service delivery, reduce touch points and streamline and consolidate transactional services.

Service NSW, delivering over 800 services on behalf of agencies – face to face, online and over the phone – is the key outcome of his new thinking about government service delivery. In addition to this significant achievement, Mr Pratt has urged agencies to continue to focus on customer service delivery and build a culture in our staff that always places the customer at the centre of service design.

Given Mr Pratt's experience in improving service delivery from the customer's perspective in both the private and public sectors, the Premier asked him to review the land acquisition process from the point of view of the land owner, business owner or resident – in effect, from the perspective of those people in the unenviable position of losing their homes for broader public benefit.

The Customer Service Commissioner looked at the land acquisition process from end to end. For example:

- How people first find out about a proposed infrastructure project and how it would impact their home
- How people are treated by agencies during what is a difficult and complex process
- Whether they have sufficient and easy to understand information about the process
- Whether the process affords people sufficient time to negotiate, make informed decisions and relocate
- How agencies can measure their own performance to ensure they are dealing with people in the most effective way.

Mr Pratt has made 20 recommendations, the vast majority of which the Government supports. The recommendations in Mr Pratt's review are outcome-orientated and in most cases suggest a flexible approach to implementation to ensure policy-makers are able to use a broad range of tools.

In most cases Mr Pratt recommended that implementation should be led by the Transport Cluster, which is by far the largest acquirer of private property for road and rail projects. This will allow for a consistent, citizen-focused approach to land acquisition.

Mr Pratt's review included engagement with a wide range of stakeholders including land owners and residents, acquiring authorities, the Valuer General, DFSI and RMS staff.

Guiding principles for his work were as follows:

1. The resident or land owner has a primary point of contact – their assigned Personal Manager. The Personal Manager will provide support and assistance in navigating the acquisition process by being the central point of access to Government specialists.
2. The resident is treated with respect and sensitivity at all times – their needs and those of their family are listened to and given consideration.
3. The resident is informed personally and promptly early in the process, from relocation to resettlement, and there is regular, timely engagement throughout the process through their Personal Manager.
4. The resident is provided with all relevant information in a timely, easy to understand and transparent manner at all steps in the process, with sequencing managed through their Personal Manager.
5. The process allows the resident adequate time for consideration, negotiation, decision-making and relocation, without unduly delaying the project. The timeline and any deadlines are clearly explained.

The Customer Service Commissioner

6. The valuation and acquisition process is fair, consistent and transparent based on 'market value', not 'reinstatement'.
7. Clear reasons and explanations are given for financial calculations, offers and terms of settlement.
8. A full suite of support options and entitlements are unambiguous, easy to understand, simple to access and straightforward to administer.
9. Support options can be tailored to a resident's individual needs within the bounds of the overall offering.
10. Record, manage and monitor the resident's progress throughout the acquisition process to aid engagement in way that best meets the needs of the resident or land owner.

Mr Pratt's recommendations and the Government's response are detailed below.

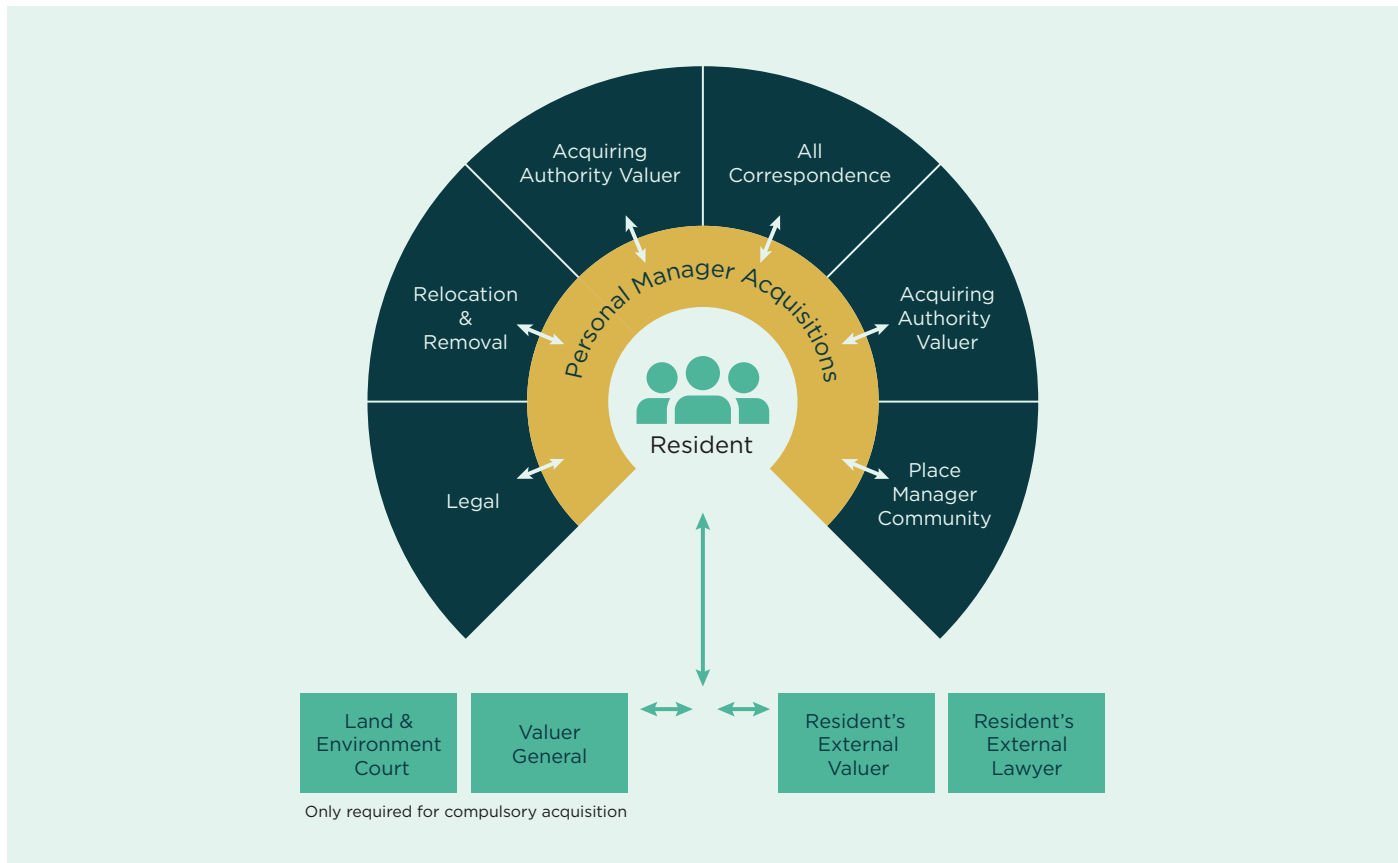
Operating Model

We operate with the resident in the centre, closely supported by, and key interactions co-ordinated through, the Personal Manager Acquisitions (see recommendation 2)

Recommendation 1: Implement a new resident focused operating model to manage property acquisitions and establish an operational centre of excellence for resident engagement

Discussion

The proposed model responds to feedback from citizens about improving and simplifying the resident experience throughout the property acquisition process. This includes providing the resident with a single point of contact and ensuring high levels of service, consistency of message and resident empowerment, as illustrated in the model shown below.



The Customer Service Commissioner

From an acquiring authority perspective, the introduction of the Personal Manager Acquisitions will provide a primary touch point for all resident communication. The role will be recruited, trained and deployed across projects, both within and outside the Transport Cluster, through a whole of government Operational Centre of Excellence for Resident Engagement.

The application of common standards and introduction of performance indicators relating to resident engagement, owned by a new Property Acquisitions Standards Group in Transport for NSW (see Recommendation 20) will further embed increased accountability and transparency throughout the process.

The Government supports this recommendation. People who are going through the land acquisition process - including tenants and business in addition to residential land owners - should have a consistent point of contact within Government.

However, given its responsibility for service delivery to other government agencies, it is most appropriate that this recommendation be implemented by DFSI."

People

We have a workforce that has a deep understanding of residents and is proactive in responding to their needs.

Recommendation 2: Create the role of Personal Manager, Acquisitions (PMA) to assist landholders and tenants navigate the property acquisition process

Discussion

Mr Pratt has recommended that each resident whose property is acquired for a major project under the Act will be allocated a Personal Manager Acquisitions (PMA) by the relevant acquiring authority.

The PMA will provide end-to-end management of the project's interaction with the resident and all collateral to the resident will go through the PMA. The PMA will also be responsible for:

- Conducting initial doorknocks
- Providing the resident with a clear understanding of the process and their rights and responsibilities
- Acting as the face of the project and as the primary point of contact for the resident's interaction with the project and government
- Ensuring that the resident feels they are informed about the process
- Ensuring that the resident is fully informed of the services available to support them
- Act as a filter for all Government communication to the resident to ensure context and sequencing are correct
- Updating the Customer Relationship Management system (CRM) to ensure that all interactions with the resident are fully documented.

The Government supports this recommendation, noting that agencies need to provide appropriate support to land owners, residents and businesses throughout the acquisition process.

This recommendation will be implemented by Transport for NSW.

Recommendation 3: Assign Community Place Managers (CPMs) for all infrastructure projects that require property acquisitions to provide timely and accurate information to the community

Discussion

Place Managers are used already on a number of projects to provide timely and accurate information to the community. It is recommended that this model is standardised in all NSW acquisition processes.

The responsibilities of Place Managers would include:

- Contributing to the due diligence prior to the door knock to be better informed regarding the correct approach
- Being the primary point of contact for corridor and neighbour residents for the duration of the project
- Undertaking all project general communication including community information sessions
- Communicating broader project related information, e.g. rationale, benefits
- Developing a keen understanding of the local community, meeting as many members of the community as possible and building strong relationships
- Interacting closely with the Personal Manager Acquisitions to share resident information as required.

Similar to the Personal Manager Acquisitions, the Community Place Manager role will be recruited, trained and deployed across projects, both within and outside the Transport Cluster, through a whole of government Operational Centre of Excellence for Resident Engagement located in RMS.

The Government supports this recommendation, noting that agencies need to provide appropriate support to communities, including land owners who are impacted by an infrastructure project but are not having their land or homes acquired.

This recommendation will be implemented by Transport for NSW.

Recommendation 4: Clarify position accountabilities and apply consistent recruitment and training standards for all key roles involved in the property acquisition process

Discussion

Staff will be given appropriate training to ensure that they can write in plain English; understand the situation from the perspective of the resident and demonstrate appropriate empathy; and can recognise when there is a need to escalate a difficult issue to a more appropriately trained colleague.

A set of training standards will also be developed and owned by the newly-established Property Acquisitions Standards (PAS) Group in Transport for NSW (see Recommendation 20) and implemented by the newly-created whole of government Operational Centre of Excellence (see Recommendations 1-3).

The Government supports this recommendation and acknowledges that staff working for acquiring authorities have the difficult role of navigating the land acquisition process with land owners. These staff need to have the appropriate skills and training to help guide land owners, tenants and businesses.

However, this recommendation will be implemented by DFSI because of the additional responsibility to be provided to the Minister for Finance, Services and Property, and because of its key role in delivery services to other NSW Government agencies.

Recommendation 5: Conduct a comprehensive review of all resident collateral to improve the standard and consistency of communication

Discussion

A comprehensive review of all information provided to residents and their representatives will be conducted to ensure they are clear, timely, accurate and updated. A set of common communication standards is already being developed.

Mr Pratt identified potential standards for inclusion based on resident feedback including providing regular updates even when there is nothing new to report, having the ability for landholders to contact someone at any time, and having information available through a range of channels that suit resident preferences.

The Customer Service Commissioner

The PAS Group will review and refresh standards on a regular basis, as well as identify best practice materials.

Consistent with the Russell Review, the Government supports a focus on providing clear, consistent communication. The plain English Land Acquisition Guide provides a clear guide about the acquisition process. Other communication products should have a similar focus on providing clear, consistent communication.

The Government supports this recommendation.

Recommendation 6: Review and enhance the end to end support and services provided to residents

Discussion

The range of services available to support residents throughout the process will be improved and easily accessible. All residents will have access to services including counselling, removalist and translation services. The Personal Manager will have discretion to arrange additional services to meet individual needs, which could include relocation consultants, storage and temporary accommodation.

To ensure that land owners and tenants are supported through the acquisition process, the government supports this recommendation, which will be implemented by DFSI.

Process

We simplify and streamline our processes so that they are easier to understand, navigate, use and access.

Recommendation 7: Conduct in-depth and thorough pre-contact due diligence to be aware of possible and potential issues early in the process

Discussion

Mr Pratt has recommended that Community Place Managers and Personal Managers Acquisition should work together so that the Personal Manager is well prepared with all necessary location information for the initial door knock.

The availability of good quality information about residents before the initial door knock in acquisition cases is a critical success factor, and assists with determining the level of support that the resident will need to take them through the process.

The Government acknowledges that through the land acquisition process there may be a range of individual circumstances. The intent of this recommendation is to ensure the appropriate level of support is provided to residents during the process by getting a better understanding of the communities being impacted.

Projects where there has been intensive community engagement may be more at ease with the infrastructure development, particularly as some projects may have a relatively lengthy duration.

The Government supports this recommendation, with implementation to be led by Transport for NSW.

Recommendation 8: Provide greater transparency on planned infrastructure projects to residents and the community

Discussion

To improve the scope of information available to residents and the community, Mr Pratt recommended broadening the scope of information returned by a Local Council Zoning Certificate search through the section 149 certificate to include projects being discussed in the public domain.

In addition, Mr Pratt put forward other potential options to make more information available, with the ideal outcome being a single website where a citizen can enter their address and receive all relevant public planning information.

This will address resident concerns that they were unaware of potential impacts of public infrastructure development.

The Government supports the intent of this recommendation noting it requires further development and consultation with the Office of Local Government and the Department of Planning and Environment. A whole of government working group will be established to oversee implementation of this recommendation.

Recommendation 9: Provide sufficient lead time and flexibility around negotiation for residents to be fully informed by introducing a minimum six month negotiation period

Discussion

A six month negotiation period, also recommended in the Russell Review, will ensure that residents have sufficient time to negotiate with acquiring authorities, fully understand their rights and responsibilities and can source the right advice to inform how they approach what is often a difficult and complex process.

Mr Pratt recommended that the six month negotiation period should be prior to the issuing of a PAN, and that measures are put in place for Government to approve a shortened timeframe.

He noted a clear causal link between the period of time for voluntary negotiations and the rate at which voluntary agreements are successful. WestConnex involved expedited project timeframes, requiring a reduction in the negotiation timeframe from six to three months. This has had a negative impact on the ability of the acquiring authority and the land owner to reach a voluntary settlement.

The Government supports the 6 month negotiation timeframe, however any shortened timeframe will be through agreement between the acquiring authority and the land owner, or where the responsible Minister, with the concurrence of the Minister for Finance, Services and Property (that is the Minister responsible for overseeing acquisitions), is satisfied that the urgency of the matter or other circumstances of the case make it impracticable to have a longer period of negotiation.

Recommendation 10: Review hardship criteria with a view to replacing it with a more commercial strategic approach to owner-initiated acquisition

Discussion

The hardship test has already been discussed in this report. The Government favours retaining the hardship test while introducing a new merits review process.

Residents have concerns that the hardship criteria are difficult to meet and that the process is lengthy and intrusive. There are particular concerns where, for example, only a part of their property is to be acquired but they have no access to consideration of the hardship criteria by acquiring authorities.

Mr Pratt recommended that further work be undertaken with a view to removing the hardship criteria, providing more flexibility for partial, near neighbour and corridor residents and replacing it with a more commercial and strategic approach.

The Government supports reviewing the way in which government agencies approach the planning and implementation of infrastructure projects, to ensure that there is sufficient flexibility for negotiation between land owners and government.

Government agencies should be more strategic in the way in which they approach acquisition of land for infrastructure projects. However, it is also acknowledged that this will involve cross-agency discussions about appropriate ways in which to consider and balance project budgets.

It is the Government's view that a more strategic and commercial approach to land acquisition by government agencies is not mutually exclusive with a process for owner-initiated acquisitions, where landowners can compel the Government to acquire land if they can establish hardship.

Developing a more, strategic commercial approach to land acquisition, either in advance of or during infrastructure projects will continue to be developed by the Customer Service Commissioner in consultation with the Minister for Finance, Services and Property and the Property Standards Acquisitions Group.

Recommendation 11: Ensure residential rental charges for former owners that are yet to receive payment where payment is held in trust are deferred and capped by extending Roads and Maritime Services' rental policy changes across the whole of government

Discussion

Once land has been compulsorily acquired, and if it was a principal place of residence, the Act allows a former landowner to remain in occupation for up to three months, unless the land is more urgently required. This is considered fair, given that the landowner must make appropriate arrangements to find other accommodation. This also coincides with the period in which the land owner can make a decision to pursue the matter of their compensation further in the Land Environment Court.

This circumstance is distinguishable from an arrangement between an acquiring authority and a former landowner, where occupation and rent may be negotiated as part of the settlement of an agreed acquisition of land.

Where the landowner has not accepted an offer from government and a compensation determination has been made by the Valuer General and they remain in occupation of the land, section 34 of the Act allows an acquiring authority to set certain terms for the three month occupation.

RMS recently revised its policy to limit the maximum rent charged to residents once their property has been compulsorily acquired and where the resident continues to live in the property after it has been gazetted.

This limit is capped at the level of statutory interest accruing on their compensation payment, where that payment has not yet been paid to the former landowner. It should be noted that this occurs in limited circumstances. This policy change guarantees former owners do not receive less compensation than they were entitled to at the date of acquisition.

While the Government supports the intent of this recommendation, it will go further and amend the Act to make clear that acquiring authorities cannot charge rent during the three month post-acquisition period.

This is considered to be fair, given that the landowner has a right to remain in occupation for three months while they find other accommodation. After this three month period the Government may charge rent as a means to incentivise the former landowner to find alternative accommodation.

Recent judicial decisions have found that rent paid to the Government during this period, can be considered as part of the compensation that the landowner is entitled to under different provisions of the Act. In effect, rent may be paid by the landowner to the government may be paid back to them as part of their overall compensation for the compulsory acquisition. In such instances, it appears that there is an inconsistency in the Act and this inconsistency will be amended as a result of the Government's response to this recommendation.

There would be no changes to instances where rent is paid to the government as a result of a negotiated settlement, as this is an agreement between the landowner and the government prior to compulsory acquisition.

Recommendation 12: Amend legislation to ensure legal fees and other costs incurred in the acquisition process are reasonable

Discussion

The Act allows landowners to be compensated for legal (and other) fees "reasonably incurred".

Mr Pratt noted that weaknesses in existing legislation relating to the calculation of legal fees were identified by a number of stakeholders. He recommended changing the legislation to ensure legal fees and other costs incurred by the landowner are reasonable as well as reasonably incurred.

The drafting of the NSW Act is largely consistent with compulsory acquisition legislation in other jurisdictions. For example, the Commonwealth legislation provides compensation for legal fees "reasonably incurred in relation to the acquisition". The Victorian legislation also provides for compensation for legal and other professional expenses "necessarily incurred".

There is also some legal ambiguity, with the courts finding that the test for 'reasonable legal fees' and 'legal fees reasonably incurred' is the same; as such landowners can only be compensated for reasonable legal fees, notwithstanding the current drafting of the legislation.

The Government supports the intent of this recommendation but considers that more work will need to be done in assessing whether there is a need to amend legislation. This will be considered as part of developing a more strategic approach to acquisitions, given that the recovery of legal and other fees can form part of the offer made to landowners.

Recommendation 13: Increase solatium to a maximum of \$50,000 and provide a standardised formulaic approach on how payments are calculated

Discussion

Consistent with a key Russell Review recommendation (Russell Review Recommendation 7), Mr Pratt also recommended an increase in the solatium to \$50,000. He recommends that residential owner-occupiers be eligible for the full amount, with further work to be undertaken to clarify the entitlement of tenants to this payment (recommended to be up to 50% of payment depending on length of occupancy).

In addition to the increase, and in order to ensure greater clarity as to the purpose of the payment, Mr Pratt recommended that it be renamed "Residential Disruption Payment".

The Government supports the recommended in solatium, but will increase the maximum payment to \$75,000, rather than \$50,000. This recognises the difficulty and disruption caused from being required to move home for both owner occupiers and residential tenants.

Guidelines will be developed, taking on-board Mr Pratt's recommendations, to ensure a consistent approach to solatium by the Valuer General and acquiring authorities.

The Government supports the benefit of changing the term to provide greater clarity, however proposes the term 'disadvantage resulting from relocation', which more clearly articulates what this form of compensation relates to.

Recommendation 14: Provide landholders a more cost effective merits review of the Valuer General's determination

Discussion

This recommendation addresses the potentially costly appeals process through the Land and Environment Court. Mr Pratt recommends investigating the most appropriate alternative forum.

The Land and Environment Court already provides informal, merits-based mechanisms including conciliation and mediation services for reviews of compensation determinations, which successfully deal with approximately 80% of appeals.

Other suggested improvements to the land acquisition framework should help land owners navigate the process.

Government considers that the Land and Environment Court already provides the appropriate jurisdiction for land owners to pursue a merits-based review of compensation determinations and therefore does not support this recommendation. The court's focus on and support for providing alternative dispute resolution mechanisms should continue to provide a more cost-effective solution to litigation.

Recommendation 15: Require the Valuer General's determination of compensation to be provided directly to interested parties and the acquiring authority

Discussion

This recommendation would reinforce the independence of the Valuer General from the acquiring authorities.

The Government supports this recommendation. See the response to Recommendation 4 of the Russell Report for more detail.

Performance

We measure our performance and be transparent and accountable in providing services to our residents and encourage continuous improvement.

Recommendation 16: Establish standards for data collection, monitoring and reporting

Discussion

As noted above in the response to Russell's recommendations, in order to ensure that acquiring authorities continue to make every reasonable effort to reach mutual agreement with land owners before resorting to a compulsory process, it is also important that the Government closely monitor the effectiveness of the land acquisition framework and how the Act is delivering on the objective of encouraging acquisition by agreement.

In the interests of transparency and accountability, the Government will require acquiring authorities and the Valuer General to report biannually to the Department of Finance, Services and Innovation (which administers the Act on behalf of the Minister for Finance, Services and Property) on key land acquisition data.

Mr Pratt recommended that the newly-established PAS Group could be given a role in the reporting requirements in DFSI to ensure capture of precise and consistent definitions across projects and across government. This would also ensure consistent, periodically published figures are available on property acquisitions across NSW.

The Government supports this recommendation.

Recommendation 17: All agencies to use a CRM system to capture common data to manage the property acquisition process

Discussion

One of the key findings of this Review is that inconsistency of information undermines government's ability to achieve optimal land acquisition outcomes. It is essential that Government is able to quickly get a single view of the status of any property acquisition.

To ensure that this is possible, and to ensure a consistent approach to handling property acquisitions across the sector, it is recommended that the PAS Group identify standards for CRMs to be used for all NSW Government property acquisitions.

Government supports this recommendation in principle, subject to privacy considerations being accounted for.

Recommendation 18: Establish a resident feedback mechanism throughout the acquisition process and on resettlement

Discussion

It is important that Government obtain regular feedback on the acquisition process to enable continual and ongoing review and improvement in our approach and offering.

Currently, apart from specific research on acquisitions commissioned from time to time, there is no regular and feedback from residents on the acquisition process.

The Government supports this recommendation. The PAS Group will develop a survey instrument and process to capture resident feedback.

Recommendation 19: Mandate and operationalise the recommended acquisition process across all NSW Government agencies

Discussion

This is supported by Government and will be referred to Transport NSW for implementation, in consultation with the Customer Service Commissioner and DFSI.

Recommendation 20: Establish the Property Acquisition Standards (PAS Group) to implement and monitor whole of government performance standards

Discussion

The Government supports the creation of a new team within DFSI to improve the approach to and management of land acquisitions.

The effectiveness of the new operating model depends on consistent standards being set on how to approach engagement with landholders and tenants. A new centrally located PAS Group, based in Transport for NSW should be established to set and maintain these standards.

This group should be responsible for:

- Developing, maintaining, and reviewing the operating framework
- Collateral standards for all materials related to the residential acquisition process
- Providing case advice on individual cases as needed
- Developing KPIs to measure success in the acquisition process/outcomes
- Producing consolidated performance reporting, and
- Auditing the housing acquisition process across projects, providing advice on how to address issues, and escalating issues as required to an appropriate forum
- The ability to provide advice to acquiring agencies on a strategic approach to land acquisitions, including the ability to provide advice on specific acquisitions

The PAS Group would also be responsible for ensuring there is whole of government visibility of cumulative impacts of multiple projects on a specific area and the alignment of communication with the residents whose properties will be acquired.

Therefore, although this group would be based in DFSI, the focus and coverage should be whole of government to ensure acquisitions undertaken outside of the Transport Cluster are captured in this framework.

LAND ACQUISITION IN NSW

THE PROCESS AND WHAT YOU CAN EXPECT

ACQUISITION BY AGREEMENT

1

Landowner notified

An acquiring authority notifies the landowner of the intention to acquire all or part of their land.

The acquiring authority will allow 6 months for negotiation before taking any action to compulsorily acquire land.

2

Independent valuations

The landowner and the acquiring authority seek independent land valuations.

3

Negotiation on compensation amount

The landowner and the acquiring authority negotiate compensation.

4

Land is acquired by agreement

Agreement is reached, compensation is paid and the land is transferred to the acquiring authority.

Note: There is a fixed negotiation period of 6 months (180 days) before the land can be compulsorily acquired.

COMPULSORY ACQUISITION PROCESS STARTS

5

Proposed Acquisition Notice (PAN) and Claim for Compensation form issued

Where agreement is not reached, the acquiring authority starts compulsory acquisition by issuing a PAN.

The PAN will indicate when the land will be compulsorily acquired - normally this is between 90 and 120 days from the date of the PAN.

The landowner is provided a Section 39 claim for compensation form at the same time as PAN. The landowner has at least 60 days to submit the form to the acquiring authority.

6

Negotiation can continue until the PAN expires

The landowner provides a completed compensation form to the acquiring authority, which provides a copy to the Valuer General. The landowner may provide the form directly to the Valuer General.

Negotiation to reach agreement may continue until the PAN expires. If agreement is reached, the land will be transferred to the acquiring authority and compensation paid (as in step 4)

Continued

The Customer Service Commissioner

LAND COMPULSORILY ACQUIRED

7

Notice of acquisition

If agreement is not reached, the land will be compulsorily acquired in accordance with the timeframe set out in the PAN.

The acquiring authority compulsorily acquires the land by publishing an acquisition notice in the Government Gazette.

Note: Land is compulsorily acquired 3-4 months (90-120 days) from the date of the PAN

COMPENSATION DETERMINED, OFFERED AND PAID

8

Compensation determined

Once land has been compulsorily acquired, the Valuer General determines compensation based on a number of factors including the market value of land, disturbance costs and non-economic loss, formally known as solatium.

Acquiring authorities must provide the Valuer General with all information relevant to the determination within 7 days of the land being compulsorily acquired.

Preliminary valuation report provided to the landowner.

The Valuer General provides the compensation determination to the acquiring authority and the landowner.

9

Landowner offered compensation amount

The acquiring authority sends a Compensation Notice to the landowner, offering the amount of compensation determined by the Valuer General.

The authority has 45 days to provide the Notice to the landowner from the date of compulsory acquisition (unless the Minister responsible extends the period by up to 60 days).

The landowner has 90 days to decide whether to accept or reject the offer of compensation.

10

Compensation is paid

If the landowner agrees to the compensation, the acquiring authority will pay it within 28 days of the landowner's acceptance.

11

Property vacated

In general, the former landowner can remain on the land until compensation is paid.

If the land was a principal place of residence or business, the former owner may remain on the land for 3 months after compulsory acquisition even if compensation has been paid before the 3 month period expires.

Landowners staying in their homes for a period after acquisition will not have to pay rent for a period of up to 90 days.

12

Legal proceedings

If the landowner does not accept the offer of compensation, they can appeal to the Land and Environment Court within 90 days of receiving the offer.

Making the NSW land acquisition process fairer and more transparent



How are we making the process better?

- ✓ Introduce a **6 month negotiation period** before compulsory acquisition, providing ample time for landowners to understand the process and obtain advice
- ✓ Case manager to help landowner understand their rights
- ✓ **Extend time** for issuing compensation notices from **30 to 45 days**, allowing the Valuer General more time to make complex valuations
- ✓ Introduce **reinstatement provisions** for land used for limited, specific purposes (e.g. a community centre)
- ✓ **Right to repurchase** at current market value at the time the property is offered to the former landowner.



How are we making the process more transparent?

- ✓ Enable landowner to provide the claim for **compensation form** (s39 form) **directly to the Valuer General**, rather than via the acquiring authority
- ✓ Provide preliminary valuation report to the landowner for comment
- ✓ Require acquiring authorities to provide the Valuer General with **issues relevant to the compensation determination not later than 7 days** after compulsory acquisition
- ✓ Require Valuer General to provide compensation determination (including land valuation report) **directly to the landowner at the same time as the acquiring authority**
- ✓ Provide landowner with merits-based review by independent adjudicators for hardship applications.



How are we making compensation fairer?

- ✓ Increase the **maximum payment** for disadvantage resulting from relocation to **\$75,000 (up from \$27,235)** to provide adequate cover for non-financial impact, and to recognise the personal costs of relocation (e.g. finding new schools and building new social networks)
- ✓ **Remove requirement to pay rent** to acquiring authority for up to 90 days post acquisition.

Appendices

- 2015 OFS Circular on land acquisition
- Land Acquisition Information Guide
- Valuer General's policy on compulsory land acquisition

2015 OFS Circular on land acquisition

Changes to improve fairness and transparency in the land acquisition process.

This circular applies to –

authorities of the State, as defined under the Land Acquisition (Just Terms Compensation) Act 1991 (the Act) and commonly referred to as ‘acquiring authorities’, and the acquisition by an acquiring authority of any interest in privately owned land under the Act (except interests under the surface of land as referenced in section 62 (1) and (2) of the Act).

Under the Act, acquiring authorities may acquire land by agreement with the land owner or through compulsory process. The Act prescribes the steps that must be undertaken to acquire land, and the matters to be considered in determining compensation for the land owner.

This circular imposes the following administrative requirements on acquiring authorities to improve fairness and transparency in the land acquisition process.

Improved engagement with the land owner

The Act encourages acquisition by agreement with the land owner. To support this objective, when acquiring authorities seek to acquire privately owned land by agreement, they must use all reasonable endeavours to have at least one face to face meeting with the land owner. The meeting will usually be with the owner registered on the land title.

Where it is not possible or practicable to meet the land owner (eg where the land owner is overseas for an extended period of time), the acquiring authority must use all reasonable endeavours to meet a representative nominated by the land owner.

The parties may agree to hold a meeting by a different means (eg telephone), or agree not to have a meeting at all.

Improved information on the land acquisition process

In the interests of improved transparency for land owners, acquiring authorities must also provide the land owner with a copy of the Land Acquisition Information Guide or an equivalent document.

The above changes take effect from 1 February 2015 and apply to all prospective acquisitions commenced from that date. Acquiring authorities are encouraged to apply them to any existing acquisition processes as at that date.

Compliance with this circular is mandatory for acquiring authorities except State Owned Corporations, which are encouraged to comply.

Land Acquisition Information Guide

Government bodies perform a range of functions for public purposes, such as developing or upgrading infrastructure. At times, they need to acquire privately owned land to perform these functions.

Such bodies may acquire the whole of a property, part of a property, or an interest in a property, such as a lease for a construction site or a right to run power, sewer or water lines. The body acquiring the land is commonly called the “acquiring authority”.

In general, when an acquiring authority acquires privately owned land, it will need to comply with the *Land Acquisition (Just Terms Compensation) Act 1991*. This Act sets out the steps that must be undertaken by acquiring authorities to acquire land and the matters to be considered in determining the amount of compensation to be paid to a land owner.

This guide provides information about the land acquisition process, including general guidance about the rights and responsibilities of acquiring authorities and land owners, and the role of the Valuer General. The guide is not intended to provide legal advice, and land owners may wish to obtain their own legal advice.

Some acquiring authorities, such as Roads and Maritime Services, may have their own detailed guides for land acquisitions. This information guide does not replace those specific guides or other more detailed information provided to land owners by acquiring authorities.

Land owners are welcome to approach acquiring authorities to obtain further assistance and information on the land acquisition process.

More detailed information on the role of the Valuer General in the land acquisition process may be obtained by going to:

<http://www.valuergeneral.nsw.gov.au>

Who acquires privately owned land?

In NSW, acquiring authorities, including government agencies, some state owned corporations, and local councils, have powers to acquire privately owned land for public purposes.

The powers of acquiring authorities to acquire land are contained in legislation specific to those authorities. However, in general, the process for acquiring land will need to comply with the *Land Acquisition (Just Terms Compensation) Act 1991* (“the Act”).

The acquiring authority manages the acquisition process, including any negotiations with the land owner.

How is privately owned land acquired?

Under the Act, land can be acquired in two ways:

1. through agreement between the acquiring authority and the land owner, or
2. compulsorily.

A key difference between the two types of acquisition is that when land is compulsorily acquired the Valuer General must determine the amount of compensation to be paid to the land owner. The Valuer General is an independent statutory official and does not represent either the acquiring authority or the land owner. When land is acquired by agreement, the acquiring authority and the land owner agree the amount of compensation, and the Valuer General is not involved.

Whether land is acquired by agreement or compulsorily, the matters to be considered in determining compensation for the land owner are the same (except in cases of hardship). Further information on how compensation is determined is set out later in this guide.

1. Acquisition through agreement

The Act encourages acquisition of land by agreement between the acquiring authority and the land owner. Most land is acquired in this way.

The acquiring authority will normally approach the land owner to discuss the purchase of the land and arrange for a registered valuer to advise the authority on the value of the land. Land owners are also welcome to obtain their own independent advice, including the services of a registered valuer to carry out a valuation of the land.

When acquiring land by agreement, the acquiring authority will try to meet the land owner at least once. The meeting will usually be with the owner registered on the land title.

Where it is not possible or practicable to meet the land owner (e.g. where the land owner is overseas for an extended period of time), the acquiring authority will seek to meet someone nominated by the land owner to be a representative.

The parties may agree to hold a meeting in a different way (e.g. telephone), or not to have a meeting at all.

When the acquiring authority and the land owner agree on the amount of compensation, the process for transferring ownership of the land will be similar to an open market transaction – contracts for sale of land will be exchanged, a date for settlement agreed, and the property transferred into the name of the acquiring authority and compensation paid on settlement.

2. Compulsory acquisition

While acquiring authorities aim to acquire land by agreement with the land owner, this is not always possible or practicable. When this happens, the acquiring authority may need to acquire the land compulsorily.

Start of compulsory acquisition

Compulsory acquisition starts when the acquiring authority notifies the land owner in writing that it intends to acquire the land compulsorily. This is done through a *proposed acquisition notice*.

The proposed acquisition notice is sent to all parties who have an interest in the land, including those who are registered on the land title or are lawfully occupying the land.

The proposed acquisition notice advises when the land will be compulsorily acquired. This is normally between 90 and 120 days after the notice has been provided to the land owner.

The acquiring authority will also provide information about other matters including when the land owner needs to vacate the property once it has been compulsorily acquired, how compensation for the land owner will be determined, and when compensation will be paid. Further information on these matters is provided later in this guide.

While the proposed acquisition notice starts the compulsory acquisition process, the acquiring authority and land owner can still try to agree on the amount of compensation to be paid. However, if the parties are unable to agree within the notice period, the land will generally be compulsorily acquired, and the Valuer General will then determine the amount of compensation payable.

When an acquiring authority provides a land owner with a proposed acquisition notice, the authority must also notify the Valuer General and the Registrar General of the proposed acquisition.



Photo: Banora Point

Among other things, the Registrar General administers the title registry for Torrens title land, including registration of land dealings and plans of subdivision, and management of title searches.

Land owner's claim for compensation

Within 60 days of receiving a proposed acquisition notice, a land owner can make a claim for compensation by filling out and lodging an approved claim for compensation form with the acquiring authority. The acquiring authority will enclose a copy of this form with the proposed acquisition notice.

A land owner who is entitled to compensation does not need to make a claim in order to receive compensation. However, making such a claim will help to ensure that the Valuer General is informed about any particular issues or concerns of the land owner when the Valuer General is determining the amount of compensation payable.

The land owner is also welcome to raise any other issues or questions with the acquiring authority to help the land owner prepare for the acquisition.

Completion of compulsory acquisition and vacation of property

When the acquiring authority publishes an *acquisition notice* in the Government Gazette, the authority becomes the owner of the land from the date of the notice. The acquisition notice will normally be published between 90 and 120 days after the proposed acquisition notice was sent. The Government Gazette can be accessed at:

<http://www.legislation.nsw.gov.au>

When the acquiring authority starts the acquisition process, it will advise the land owner of the terms and conditions under which he or she may continue to occupy the land after it has been compulsorily acquired. In general:

- A former owner who was lawfully occupying land immediately before it was compulsorily acquired and is entitled to compensation may continue to occupy the land until compensation is paid.
- If a building on the acquired land is the former owner's principal place of residence or place of business, the former owner can continue to occupy the building for three months even though compensation has been paid

to the former owner during that period. If compensation has not been paid before the three month period ends, the former owner may continue to occupy the building until compensation is paid.

Determination and payment of compensation

Once the acquisition notice is published in the Government Gazette, the Valuer General independently determines the amount of compensation that the acquiring authority must offer the former owner.

Within 30 days of the publication of the acquisition notice:

- the Valuer General must inform the acquiring authority of its determination of the amount of compensation to be offered to the former owner, and
- the acquiring authority must provide the former owner a *compensation notice*, which formally advises the former owner of the acquisition and offers the amount of compensation determined by the Valuer General.

Sometimes, the determination of compensation may be particularly complex. In such cases, the Minister responsible for the authority may agree to extend the 30 day timeframe by up to 60 days.

If the former owner accepts the compensation offer, the authority will pay the amount within 28 days of receiving the former owner's acceptance. The compensation notice will advise the former owner of the documents or forms that need to be completed and returned to the authority before compensation is paid.

Interest is payable by the acquiring authority on the amount of compensation from the date the land is acquired until payment is made.

Appeal

Former land owners who do not want to accept the compensation offer may lodge an appeal with the NSW Land and Environment Court.

An appeal must be lodged within 90 days of receiving the compensation notice from the acquiring authority. If the objection is lodged late, the Court will only hear the appeal if there is good cause for it being late.

Further information about the process for lodging an appeal, including the form that needs to be completed, is available at:

<http://www.lec.justice.nsw.gov.au>

How is compensation determined?

The Act lists the matters to be considered in determining compensation, including the market value of the land acquired and certain costs that the former owner may have incurred as part of the acquisition process. These matters are set out fully in Appendix A, and will also be outlined in the claim for compensation form that comes with the proposed acquisition notice.

The acquiring authority will usually cover costs that the former owner has reasonably incurred as part of the acquisition process. These costs include fees for professional valuation and legal advice. The acquiring authority may provide further advice to the land owner on what are reasonably incurred costs.

Acquiring authorities may seek further information from the land owner to support the costs claimed. If the acquiring authority is not satisfied that the costs have been reasonably incurred, it may only agree to pay a portion of those costs.

When seeking independent advice about the acquisition, it is important for land owners to consider carefully what services are being provided and the costs of those services. Land owners may discuss these matters with the acquiring authority before purchasing such services.

The compensation principles stated above apply to many acquisitions under the Act. However, where the land is acquired under the hardship provisions of the Act, compensation is calculated on a different basis. This is explained in the following section.

Compensation is generally not payable where the acquiring authority only acquires rights to land below the surface of land.

Hardship

Before an acquiring authority starts an acquisition of privately owned land, the land can sometimes have already been designated for a public purpose. Designation can occur either by written notice from the acquiring authority or by an environmental planning instrument. All environmental planning instruments can be viewed at:

<http://www.legislation.nsw.gov.au>

For various reasons, there may be a period of time between the designation of the land and the start of acquisition. Under the Act's hardship provisions, a land owner can request an acquiring authority to buy all or some of the owner's land before the acquiring authority needs the land.

In order for an acquiring authority to acquire land under the hardship provisions, the land owner must demonstrate that:

- it has become necessary to sell the property without delay for pressing personal, domestic or social reasons, or to avoid a substantial loss in income, and
- the owner is unable to sell the land at its market value because the land has been designated for future acquisition.

Where land is acquired under the hardship provisions, the compensation is generally based on the market value of the land as if the public purpose designation had not been made.

Unlike other acquisitions under the Act, additional costs are generally not included in the compensation payment. This is because the owner's request to have his or her land acquired is taken as a willingness to accept the normal costs associated with selling a property.

More information



land@finance.nsw.gov.au

Land Acquisition Information Guide

- Appendix A

The main provisions of the Act relating to the calculation of compensation are set out below. Owners should use these provisions as a general guide only. The Courts have developed case law on the meaning of these provisions. In some circumstances, other legislation can also be relevant. Owners may wish to obtain legal advice as to the precise legal effect of these provisions and their entitlement to compensation.

General compensation provisions

54 Entitlement to just compensation

1. The amount of compensation to which a person is entitled under this Part is such amount as, having regard to all relevant matters under this Part, will justly compensate the person for the acquisition of the land.
2. If the compensation that is payable under this Part to a person from whom native title rights and interests in relation to land have been acquired does not amount to compensation on just terms within the meaning of the Commonwealth Native Title Act, the person concerned is entitled to such additional compensation as is necessary to ensure that the compensation is paid on that basis.

55 Relevant matters to be considered in determining amount of compensation

In determining the amount of compensation to which a person is entitled, regard must be had to the following matters only (as assessed in accordance with this Division):

- a) the market value of the land on the date of its acquisition,
- b) any special value of the land to the person on the date of its acquisition,
- c) any loss attributable to severance,
- d) any loss attributable to disturbance,
- e) solatium,
- f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

56 Market value

1. In this Act:

market value of land at any time means the amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer, disregarding (for the purpose of determining the amount that would have been paid):

- a) any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and
 - b) any increase in the value of the land caused by the carrying out by the authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired, and
 - c) any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.
2. When assessing the market value of land for the purpose of paying compensation to a number of former owners of the land, the sum of the market values of each interest in the land must not (except with the approval of the Minister responsible for the authority of the State) exceed the market value of the land at the date of acquisition.

57 Special value

In this Act:

special value of land means the financial value of any advantage, in addition to market value, to the person entitled to compensation which is incidental to the person's use of the land.

58 Loss attributable to severance

In this Act:

loss attributable to severance of land means the amount of any reduction in the market value of any other land of the person entitled to compensation which is caused by that other land being severed from other land of that person.

59 Loss attributable to disturbance

In this Act:

loss attributable to disturbance of land means any of the following:

- a) legal costs reasonably incurred by the persons entitled to compensation in connection with the compulsory acquisition of the land,
- b) valuation fees reasonably incurred by those persons in connection with the compulsory acquisition of the land,
- c) financial costs reasonably incurred in connection with the relocation of those persons (including legal costs but not including stamp duty or mortgage costs),
- d) stamp duty costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the purchase of land for relocation (but not exceeding the amount that would be incurred for the purchase of land of equivalent value to the land compulsorily acquired),
- e) financial costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the discharge of a mortgage and the execution of a new mortgage resulting from the relocation (but not exceeding the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage),
- f) any other financial costs reasonably incurred (or that might reasonably be incurred), relating to the actual use of the land, as a direct and natural consequence of the acquisition.

60 Solatium

1. In this Act:

solatium means compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence as a result of the acquisition.

2. The maximum amount of compensation in respect of solatium is:

- a) except as provided by paragraph (b) –\$15,000, or

- b) such higher amount as may be notified by the Minister by notice published in the Gazette.

Note: The maximum amount notified under section 60(2)(b) is currently \$26,260.

3. In assessing the amount of compensation in respect of solatium, all relevant circumstances are to be taken into account, including:
 - a) the interest in the land of the person entitled to compensation, and
 - b) 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), and
 - c) the inconvenience likely to be suffered by the person because of his or her removal from the land, and
 - d) 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.
4. Compensation is payable in respect of solatium if the whole of the land is acquired or if any part of the land on which the residence is situated is acquired.
5. Only one payment of compensation in respect of solatium is payable for land in separate occupation.
6. However, if more than one family resides on the same land, a separate payment may be made in respect of each family if:
 - a) the family resides in a separate dwelling-house, or
 - b) the Minister responsible for the authority of the State approves of the payment.
7. If separate payments of compensation are made, the maximum amount under subsection (2) applies to each payment, and not to the total payments.

61 Special provision relating to market value assessed on potential of land

If the market value of land is assessed on the basis that the land had potential to be used for a purpose other than that for which it is currently used, compensation is not payable in respect of:

- a) any financial advantage that would necessarily have been forgone in realising that potential, and
- b) any financial loss that would necessarily have been incurred in realising that potential.

Compensation for hardship acquisitions

26 Compensation for acquisition under this Division

The special value of land, any loss attributable to severance or disturbance and solatium (as referred to in Part 3) need not be taken into account in connection with an acquisition of land under this Division, despite anything to the contrary in that Part.

Compensation for acquisitions below the surface

62 Special provision relating to acquisition of easements or rights, tunnels etc

1. If the land compulsorily acquired under this Act consists only of an easement, or right to use land, under the surface for the construction and maintenance of works (such as a tunnel, pipe or conduit for the conveyance of water, sewage or electrical cables), compensation is not payable except for actual damage done in the construction of the work or caused by the work.
2. If land under the surface is compulsorily acquired under this Act for the purpose of constructing a tunnel, compensation is not payable (subject to subsection (1)) unless:
 - a) the surface of the overlying soil is disturbed, or
 - b) the support of that surface is destroyed or injuriously affected by the construction of the tunnel, or

- c) any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected.

3. If the land compulsorily acquired under this Act consists of or includes an easement or right to use the surface of any land for the construction and maintenance of works (such as canals, drainage, stormwater channels, electrical cables, openings or ventilators), the easement or right is (unless the acquisition notice otherwise provides) taken to include a power, from time to time, to enter the land for the purpose of inspection and for carrying out of any additions, renewals or repairs. Compensation under this Part is payable accordingly.



Valuer General's Policy

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Compensation following compulsory acquisition

What

This policy guides valuers on the methods to use, and factors to consider, when determining compensation for the compulsory acquisition of land or an interest in land.

How

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

Valuers assist the Valuer General, in this task by investigating and assessing the amount of compensation payable.

Compensation is assessed in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (Land Acquisition Act).

Why

This policy will ensure that:

- landholders are justly compensated for the acquisition of land
- compensation offered to landholders is in line with the Land Acquisition Act.

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1 Policy

1.1 Scope

Compulsory acquisition of land

public purpose

Where land is required for a public purpose an authorised acquiring authority will negotiate with the landholder to purchase the land. If the owner and the authority cannot come to an agreement on the compensation to be paid, the acquiring authority can compulsorily acquire the land.

The land is compulsorily acquired through publication of the acquisition in the government gazette, at which time ownership passes to the acquiring authority.

Compulsory acquisition of land is the acquisition of the land by compulsory process under the Land Acquisition Act. Land includes any interest in land.

Land which is compulsorily acquired may be in private or public ownership. This policy is specific to land which is privately owned.

1.2 Assessing compensation

Interest in land

easement

fee simple in possession

interest in land

Land for which compensation is assessed must include any interest in land.

Interest in land means:

- a legal or equitable estate or interest in the land, or
- an easement, right, charge, power or privilege over, or in connection with, the land.

An interest in land which may be due compensation upon compulsory acquisition of land can include:

- the owner of the fee simple in possession
- the interest of a beneficiary of an easement, right of way or restriction of user over land
- a lessee's interest in the land
the interest of a business operating under a lease or tenancy agreement on the land
- anyone having a legal financial interest in the land.

Generally, the acquiring authority will identify all compensable interests. However, if you identify an interest that has not already been identified you must notify the Valuer General or the Valuer General's delegate who will notify the acquiring authority of that interest. You will be provided with advice on how to proceed with the determination from that point.

As a rule, you must only consider the interest of a tenant where a clearly defined tenancy arrangement is in place. This can be a legally executed lease that is current or expired. It may also be a verbal agreement to occupy between two parties.

Tenancies at will or holding over need to establish the probability a new lease would be agreed for that interest to be considered, however it cannot be assumed to be without risk or for an indefinite period.

Matters to be considered when assessing compensation

When you determine the amount of compensation you must consider the requirements of section 55 of the Land Acquisition Act:

| | |
|----|---|
| 1. | The market value of the land on the date of its acquisition. |
| 2. | Any special value of the land to the person on the date of its acquisition. |
| 3. | Any loss attributable to severance. |
| 4. | Any loss attributable to disturbance. |
| 5. | Solatium |
| 6. | Any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired. |

These matters, which are often referred to as the heads of compensation, are discussed below.

1. The market value of the land

The market value of land means the amount that would have been paid for the land, or interest in land, if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.

When you determine the market value of the land on the date of its acquisition you must disregard:

- any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and
- any increase in the value of the land caused by the carrying out by the acquiring authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired, and

- any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

The sum of the market value for all interests in the land must not exceed the market value of the land, at the date of acquisition.

The assumptions and the methods you use to assess the market value of the land are discussed at section 1.4 and section 1.6.

2. Any special value

claimant

Special value of the land to the claimant is the financial value of any advantage, in addition to market value which is incidental to the person's actual use of the land.

Special value may lead to an increase in compensation where the land acquired has some quality or potential for use in the hands of the claimant which makes it more valuable to them than a general purchaser in the market place. Special value has been said to represent the additional price that the claimant would be prepared to pay for the land rather than lose it.

The advantage must be specific to the claimant only. Special value does not include unique features of the site which enhance the value of the property since these are reflected in the market value.

Example where special value may arise

The site being acquired is a retail business and the owner of the business also occupies the adjoining site where he manufactures the goods sold in the shop. The claimant may value that site over the market value due to the advantage of operating from the adjoining site.

3. Any loss attributable to severance

Any loss attributable to severance of land is defined in the Land Acquisition Act as:

the amount of any reduction in the market value of any other land of the person entitled to compensation which is caused by that other land being severed from other land of that person.

Compensation for severance generally arises from the separation or division of the claimant's land as a result of the acquisition and the reduction in value of the retained parcel.

Example:

Severance results in the creation of two parcels of farmland

used for dairy. One of the retained parcels no longer has access to the dairy facilities due to severance by a highway. The land therefore suffers a loss in value.

Sometimes severance can increase the value because it creates an alternate, higher and better use. For example, where new roadwork provides access to formally inaccessible land the value of the retained land may increase. (refer to page 8 - increase or decrease in the value of other lands)

4. Any loss attributable to disturbance

Loss attributable to disturbance refers to costs reasonably incurred by the claimant due to the acquisition and includes any of the following:

| | |
|---------------------------------------|---|
| Legal costs and valuation fees | a) Legal costs and b) valuation fees reasonably incurred by the claimant in connection with the compulsory acquisition of the land excluding costs incurred for acting as an agent for the owner. |
| Relocation costs | c) Costs reasonably incurred by the claimant in connection with their relocation (including legal costs but not stamp duty or mortgage costs). |
| Stamp duty costs | d) Stamp duty costs reasonably incurred (or that might reasonably be incurred) by the claimant in connection with the purchase of land for relocation. The cost must not exceed the amount that would be incurred for the purchase of land of equivalent value to the land compulsorily acquired. |
| Mortgage costs | e) Costs reasonably incurred (or that might reasonably be incurred) by the claimant in connection with the discharge of a mortgage and the execution of a new mortgage. This amount must not exceed the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage. |
| Other financial costs | f) Any other financial costs reasonably incurred (or that might reasonably be incurred) relating to the actual use of the land, as a direct and natural consequence of the acquisition. |

Where an acquired property is held as an investment, legal and stamp duty replacement costs will still apply.

A typical assessment of disturbance costs for an owner occupied cottage incurred in connection with a compulsory acquisition would include the following:

- legal costs (section 59(a) of the Land Acquisition Act)
- valuation fees (section 59(b))
- legal cost on purchase of a replacement property of the same value (section 59(c))
- removal expenses (section 59(c))
- pest certificate (section 59(c))
- identification survey (section 59(c))
- building inspection (section 59(c))
- electricity and telephone reconnection (section 59(c))
- mail redirection (section 59(c))
- stamp duty on purchase of a property of the same value (section 59(d))
- discharge of mortgage costs (section 59(e))
- mortgage reinstatement cost on a replacement property (section 59(e))

Costs for disturbance not yet incurred

The Land Acquisition Act requires that the Valuer General **must** have regard to the heads of compensation detailed in section 55. The assessment of compensation for disturbance must therefore be made whether the costs associated have actually been incurred or not.

Costs that have not occurred at the date of acquisition but which might reasonably be incurred are still to be considered. However it must be reasonable that they would be incurred, sometime in the not too distant future.

The term 'incurred' is to be given the broadest interpretation possible, as it relates to costs that might reasonably be expected to be incurred given the balance of probability.

Proof of expenditure Proof of expenditure for disturbance costs should be sourced where available. Although owners must submit a claim for compensation, providing details of costs is not a statutory requirement. Therefore the assessment of compensation is to include a reasonable allowance for costs attributable to disturbance whether or not proof of expenditure has been received.

Costs to be reasonably incurred

The Land Acquisition Act states that disturbance includes costs and fees that are reasonably incurred or that might reasonably be incurred. For a cost or fee to be considered allowable it must:

- relate directly to the acquisition process
- if not already incurred be likely to occur on the balance of probabilities
- return the owner to an equivalent position to their position prior to the acquisition
- be relevant to the matter and not be whimsical or vexatious (see professional fees below).

Costs associated with relocation and those relating to the actual use of the land must be determined on the basis of returning the former owner to an equivalent situation they were in before the acquisition. For example if land prior to the acquisition had three phase electricity available and a partial acquisition removed that service, the cost of re-establishing that service would in most cases be payable.

Costs should not be determined on the basis of improving the land. Using the example of electricity supply given above, it would not be appropriate to calculate the cost of establishing three-phase electrical supply if it was not available prior to the acquisition.

In some cases the acquiring authority will carry out the reinstatement of the service. In these cases no further compensation should be assessed for these items.

Reasonable costs

The Land Acquisition Act requires that an amount attributable to disturbance be provided for costs or fees reasonably incurred, accepting that the “reasonableness” relates to the incurring of the costs, and not necessarily the costs themselves. Nevertheless exorbitant costs could not be said to be “reasonably incurred”.

Care should be taken to ensure that costs are not exorbitant and that direction given to professionals such as valuers and solicitors by the landholder relates directly to the acquisition.

Owners are required to exercise the same level of care in incurring such cost as they would assuming that such costs were not payable by the acquiring authority.

Action taken by professionals must relate specifically to the acquisition and they must be guided by their professional ethics and code of conduct. It must be noted that fees for professional services will vary and the landholder cannot be expected to have expertise in this area.

Whether the cost themselves are reasonable or exorbitant must be considered on a case by case basis. If the costs are thought to be exorbitant, proof may then be required. Where there is doubt, instructions and itemised accounts for the professional services should be obtained to confirm the appropriateness of the fees. Professional fees can also be vetted through professional associations such as the Law Society.

Where costs have been incurred by the landholder you must determine if the costs are reasonable by considering:

- whether documentary evidence has been provided
- whether they are within a reasonable range of similar costs incurred for similar services in the market.

Professional fees must relate to acquisition

Professional fees for services such as solicitors and valuers must relate directly to the acquisition and not to possible future actions taken by the landholder. It is reasonable for the landholder to claim for costs directly associated with advice prior to the determination of compensation and to also include costs for advice after the determination. Post determination advice should be limited to the professional explaining the outcome of the determination and the landholder's further rights and opportunities for appeal.

For valuation and legal fees to be determined the owner must have engaged, or be in the process of engaging those services.

No amounts should be assessed for possible future court action which may or may not eventuate. If court action were to occur the landholder will have a further opportunity to have costs considered.

5. Solatium

Solatium is compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence (home) as a result of the acquisition.

The maximum amount payable for solatium is set by the State Government and adjusted annually. It is published in the NSW Government Gazette in late February each year.

Compensation for solatium can be the whole amount allowable or a proportion of that amount.

In assessing the amount of compensation for solatium you must consider:

- the interest in the land of the person entitled to

compensation,

- the length of time the person has resided on the land (in particular, whether the person is residing on the land temporarily or indefinitely), and
- the inconvenience likely to be suffered by the person because of his or her removal from the land, and
- 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.

Compensation is payable in respect of solatium if the whole of the land is acquired or if any part of the land on which the residence is situated is acquired.

Only one payment of compensation in respect of solatium is payable for land with a single dwelling (even if there are two families occupying the single dwelling).

However, if more than one family resides on the same land in separate legally approved dwellings, a separate payment may be made for each family. A family can constitute a single person provided they are unrelated to other occupants on the land.

If separate payments of compensation are made, the maximum amount of solatium applies to each payment, and not to the total payments.

6. Increase or decrease in the value of other land

When you determine compensation you must have regard to any increase or decrease in the value of land held by the claimant which adjoins or is severed from the acquired land due to the public purpose for which the land was acquired.

Where the value of such land is increased, because it has benefited from the public purpose, you must reduce the amount of compensation by the amount of that increase in value.

The value of the land may be reduced due to the impact of the public purpose on that land or due to its inability to be used for its previous existing use because it has been severed from the acquired land. In this case you must increase the compensation payable by the corresponding amount.

1.3 Exclusions - compensation

Where the market value reflects an unrealised potential of land

In accordance with section 61 of the Land Acquisition Act when you assess the market value of land based on the potential use of the land rather than the current use of the land, you must not include:

- any financial advantage that would necessarily have been

- forgone in realising that potential, and
- any financial loss that would necessarily have been incurred in realising that potential.

In other words if the valuation is made for a higher use and not on the current use, a claim cannot be made for costs that would arise from the loss of the current use. To do so would be double recovery.

Market value must assume the highest and best use.

Where you assess market value on the basis of a higher potential use rather than the current use and the existing improvements add no value for that higher use, relocation costs are not paid.

For section 61 to apply, the potential higher use should be achievable within a reasonable timeframe.

Future profits

Lost profit for a business or other enterprise can be considered as a disturbance item, for the reasonable time it takes to relocate and re-establish a business enterprise.

No compensation is to be determined for lost future profits upon the extinguishment of a business as compensation will be for the market value of the business. See section 1.4, Compensation where a business is affected.

No compensation is to be determined for lost future profits due to the unrealised potential of land. Such potential is contained within market value.

Owner initiated acquisition in cases of hardship

environmental planning instrument

A landholder owning land reserved for a public purpose under an environmental planning instrument or given written notice by an authority that land is designated for future acquisition, can give notice to the responsible acquiring authority requiring acquisition of the land.

To acquire the land the acquiring authority must be of the opinion that the owner will suffer hardship if there is any delay in the acquisition of the land under the Land Acquisition Act (section 24).

An owner suffers hardship if:

- (2) (a) the owner is unable to sell the land, or is unable to sell the land at its market value, because of the designation of the land for acquisition for a public purpose, and
- (b) it has become necessary for the owner to sell all or any part of the land without delay:
 - (i) for pressing personal, domestic or social reasons, or
 - (ii) in order to avoid the loss of (or a substantial reduction in) the owner's income.

(3) However, if the owner of the land is a corporation to which this Division applies, the corporation does not suffer hardship unless it has become necessary for the corporation to sell all or any part of the land without delay:

- (a) for pressing personal, domestic or social reasons of an individual who holds at least 20 per cent of the shares in the corporation, or
- (b) in order to avoid the loss of (or a substantial reduction in) the income of such an individual.

Under the hardship provision there is a discretion as to the requirement for the determination of compensation for:

- special value
- severance
- disturbance and
- solatium.

Following the compulsory acquisition of land, the Valuer General has the discretion to determine amounts under the above heads of compensation on a case by case basis. All matters determined under the hardship provision should be referred to the Valuer General or his or her delegate for direction.

Acquisition for the purpose of constructing a tunnel

Where land under the surface is compulsorily acquired for the construction of a tunnel, compensation is not payable unless:

- the surface of the overlying soil is disturbed, or
- the support of that surface is destroyed or injuriously affected by the construction of the tunnel, or
- any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected.

1.4 Valuation assumptions

The market value

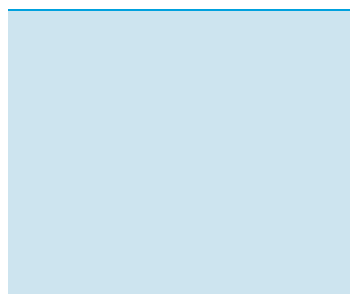
Land which is identified for acquisition may be:

- the whole of an existing parcel of land (total acquisition)
- a part of an existing parcel of land or
- an interest in land (an easement or some other such right over land).

The total compensation for the market value of all interests in the land is not to exceed the market value of the land as a whole.

In assessing the market value of an interest, consideration should be given to the items listed in the following table:

| Assumption/considerations | Comment/exceptions |
|---|--|
| The definition of market value | The market value of an <u>interest in land</u> at the date of acquisition is the amount that would have been paid for the <u>interest</u> if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer. |
| The market value includes the added value of improvements | The market value of land includes the value of any improvements on the land or to the land. |
| The sum of interests in land is not to exceed the full fee simple in possession value of the land | There may be more than one interest to be compensated when land is acquired. Other interests could include easements, covenants, mortgages, leases, caveats and life interests. Where all interests in a parcel of land are acquired, the sum of all interests should not exceed the market value of the land unencumbered. At times, land will be acquired but the easements over the land will not. This corresponds with normal sale conditions where existing easements continue to apply to the land. |
| Value the land at its highest and best use | <p>Highest and best use refers to the possible use of a property that would give the highest market value. The use must be lawful, physically possible and financially feasible.</p> <p>Care should be taken to determine the highest use possible for the land. That use may be the existing use or a redevelopment. Where redevelopment is the highest use, the cost of achieving that use, including demolition of existing improvements, must be considered.</p> |
| The market value is not to reflect the reservation for the public purpose. | Where the current zoning reflects the public purpose for which the land has been acquired, it is to be set aside. The zoning most likely to apply if not for the public purpose is to be adopted. This zoning will often reflect the zoning of adjoining and surrounding land. |



If the underlying zoning cannot be determined by reference to adjacent land, the advice of an expert town planner will be required.

On occasions a property may have more than one layer of public purpose zoning, eg a zoning by a roads authority and also a zoning by a local council.

Market value not to reflect the public purpose

When assessing the market value of the land to be acquired you must ignore any increase or decrease in its value which results from the carrying out or the proposal to carry out the public purpose for which the land was acquired.

Generally land acquired for a public purpose is subject to a zoning reservation for future acquisition. In effect this imposes a legal constraint on possible development and hence market value.

In assessing compensation, you must disregard the reservation zoning for the public purpose for which the land is being acquired and adopt the zoning most likely to apply if there had been no reservation zoning for the public purpose.

When there is more than one public zoning on the land being acquired, only the public purpose zoning for which the land is being acquired should be disregarded. However you need to have regard to all circumstances affecting the land including the potential for the land to be acquired for the second public purpose.

When establishing the zone to adopt you should consider the surrounding zoning in conjunction with the physical quality of the land and any environmental constraints such as flora and fauna.

For example, if you are valuing land reserved for road widening, and it is surrounded by residentially zoned land it is likely that the zone adopted will be residential.

Compensation not to be less than market value

The Land Acquisition Act guarantees that, when land is acquired, the amount of compensation will not be less than market value. Compensation is to be made on just terms.

When determining the market value of land subject to acquisition, any reasonable doubt should be resolved in favour of the former owner ensuring that the compensation will not be less than market value.

However in the event there is an increase in the value of the owners other land, the increase should be offset in the compensation.

Interest of mortgagee

Where land is acquired and is subject to one or more mortgages, the compensation is to be assessed as if the land was not subject to a mortgage.

If compensation is payable in respect of a mortgagee's

interest, the compensation paid to the owner of the land will be reduced by the amount of compensation to be paid to the mortgagee.

Treatment of GST

Where GST is paid in a property transaction, you must treat GST as part of the market price. This is consistent with a number of court decisions.

When you analyse sales of property any GST paid by the purchaser is to be included as part of the sale price.

Statutory valuations issued on behalf of the Valuer General, including determinations of compensation issued under the Land Acquisition Act, will use the full market price. This price will include any GST which has formed part of the purchase price.

Where compensation is paid for disturbance, the full costs actually, or likely, to be incurred will form the basis of compensation, irrespective of a claimant's circumstances in relation to GST. Where disturbance is based on the extinguishment of a business, it will reflect the value of the business as a going concern and, consequently, there is no liability for GST.

However, where the valuer uses a hypothetical development model to determine the market value of land subject to acquisition, the treatment of GST as a cost in the actual development needs to be considered.

Compensation where a business is affected

Compensation related to a business which is located on the acquired land is considered as a loss attributable to disturbance.

It is assessed on the basis of either relocating or extinguishing the business.

The landholder's actual intentions for the future of the business are not necessarily relevant when you establish whether to assess the compensation based on relocation or extinguishment.

You must decide the most appropriate method given the circumstances. For instance a café in a high street location in an area with shops of a similar standard could easily relocate. However a unique waterfront restaurant in a rare location would have difficulty re-establishing in the area.

Compensation for the relocation of a business should generally not exceed the compensation that would be determined for the extinguishment of the business.

| | |
|-----------------------------------|---|
| Relocating the business | <p>You must consider all reasonable costs associated with the relocation of the business.</p> <p>Costs will include:</p> <ul style="list-style-type: none"> • loss of profits during relocation and re-establishment period • advertising costs • advising clients of the relocation • storage costs for equipment • fitout specific to the business • stock losses |
| Extinguishing the business | <p>Compensation for the extinguishment of the business is based on the market value of the business on a walk in walk out basis.</p> <p>You must be appropriately skilled and experienced in business valuations to assess this type of compensation.</p> |

If the compensation is based on extinguishing the business, the compensation will be paid for stock losses, incurred in a forced sale of stock. Fixtures such as plant and equipment are usually part of the business, and are included in the business value.

However, stock in trade and other items of personal property do not, by the compulsory land acquisition process, become the property of the acquiring authority.

1.5 Provision of information

Information provided by the landholder and the acquiring authority

When compensation is being determined the Valuer General will receive and consider all information provided by both the landholder and the acquiring authority.

Landholders often provide information to support their claim for compensation under section 39 of the Land Acquisition Act. Claims must be made to the acquiring authority and this information is then provided to the Valuer General.

There are times when the landholder will provide information directly to the Valuer General. In this case the Valuer General will accept the information, but the

landholder should be aware that a copy of the information will be given to the acquiring authority. Following publication of the acquisition notice in the Government Gazette information provided by the acquiring authority is also to be provided to the landholder.

If a document is voluntarily given to the Valuer General over which a claim for privilege (either legal or commercial) might have been made the privilege is waived. This means that if legal privilege or commercial in confidence status is to be maintained the information or document should not be provided to the Valuer General.

The Valuer General's determination of compensation will consider all relevant material information or documents provided, whether they are from the landholder, the acquiring authority, or independently commissioned by the Valuer General. The valuation report which accompanies the determination will include these documents.

1.6 Valuation methods used to determine market value

Direct comparison Direct comparison involves comparing market evidence with the subject property. Direct comparison is usually the primary method of valuation.

Use the direct comparison method to determine the market value of the property. When using this method you must:

- establish the highest and best use of the land
- consider all directly comparable market evidence
- consider all factors that influence the property's market value such as the land's location, size and shape, permitted uses and the condition and style of any buildings
- use an evidence based approach to make any adjustments between the market evidence and subject property.

Summation method

When using the summation method you must individually value the component parts of the land and improvements on the land to obtain the property's market value.

You may, for example determine the current market value of a rural property by separately considering the value of the land and the improvements.

The value of the land maybe determined through the

analysis and comparison of other vacant farm land. While the sheds and home may be valued by depreciation of the cost new.

Where depreciation is applied to adjust the cost to build the improvements, the rate of depreciation used must be rationalised.

Take care when assessing the added value of unique or unusual improvements as they may not represent the highest and best use of the land. Even newly built improvements may not add the same level of value as the cost to build them.

You must be careful to ensure that the summation method does not produce a higher value than would reasonably be expected in that market. Cost does not necessarily equal value and circumstances where the land has been over capitalised must be taken into account.

Capitalisation method

capitalisation
capitalisation rate
market rent

When using the capitalisation method you must:

- determine the capitalisation rate by analysing sales of comparable investment properties
- determine the market rental based on the analysis of comparable rentals
- review the terms of the lease, especially in regard to rent review conditions
- consider the term of the lease and the likelihood of the income continuing.

Before and after method

public purpose

The before and after method can be used to determine compensation where only part of the land is acquired.

The advantage of this method is that it captures the impact of severance and any increase or decrease in the value of adjoining land as well as the market value of the acquired land.

Using this method you must make two valuations, usually using the direct comparison method.

| | |
|-----------|---|
| 1. | Value the property as if it were unaffected by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired (valuation of the original land before the acquisition). |
| 2. | Value the residual land, assuming that any works that will be made by the acquiring authority have already been constructed and are in use (valuation of the parcel after the acquisition). |

You should seek advice from the acquiring authority about proposed action to adjust services, public utilities, relocate fences or alleviate any impact of the works.

The difference between the two valuations is the compensation payment for the partial acquisition which reflects any reduction in value of the remaining land.

Piece meal method

The piece meal method can also be used to determine compensation where only part of the land is acquired.

This method should be adopted when only a small piece of land is acquired or significant improvements are located on the residue land and the difference in value resulting from the acquisition is too small to be reliably measured using the before and after method.

Using this method you must establish the market value of the whole parcel to derive a rate per square metre and then apply the rate to the acquired land.

This method will not capture severance or the increase/decrease in adjoining land value.

This method is appropriate to use where the acquisition is not considered to have an impact on the value of the residue land.

Before adopting this method, you must assess the possible impact of the public purpose, on the value of the whole parcel.

Hypothetical Development Method

gross realisation

Where there are not enough sales and the sales that are available lack comparability the hypothetical development method can be used.

To derive the value of a site suitable for redevelopment using the hypothetical development method you must:

1. Estimate the total gross realisation of the site based on the hypothetical highest and best use of the land.
2. Deduct the estimated cost of developing the site (including holding costs and developer's margin) from the total sales value.

Alternatively, if the highest and best use of the site is as an income producing building/suite of buildings you can :

1. Estimate the net rental return which could be obtained from a hypothetical building which represents the

| | |
|----|--|
| | highest and best use of the land. |
| 2. | Capitalise the estimated net rental return to arrive at the improved value of the site. |
| 3. | Deduct the estimated cost of developing the site (including holding costs and developer's margin) from the improved value of the site. |

The cost of developing the site includes ancillary costs such as purchase fees and stamp duty. Costs should include an allowance for interest payments based on 100 per cent funding for the project. However, interest payment calculations for development costs should reflect the progressive payment of these costs.

An allowance should also be made for the developer's margin which would be appropriate for the type of development being considered. This should reflect the appropriate margin a developer would require to allow for the risk associated with the development while still ensuring a reasonable return from the development.

The hypothetical development method generally relies on advice from a quantity surveyor or a comparison of unit costs and rates for similar development schemes. These can then be applied to the particular development being analysed. You should clearly state any assumptions made when you apply the method with reference to evidence, research and reasoning.

1.7 Market analysis

Wide analysis of sales evidence

You should, if available, analyse enough comparable market sales to establish the market value of the property at the acquisition date.

Sales that occur further in time from the valuation date will need to be adjusted to the date of acquisition. Sales analysis should be supported by photographs. When analysing sales you should place the greatest weight on sales of properties with similar characteristics. All adjustments need to be rationalised.

Rental analysis is required where the property or interest is valued using the capitalisation method. Sales showing rental returns and capitalisation rates of properties are required to support the rental basis and applied capitalised values. Care should be taken to avoid using sales which reflect an impact of the proposed public works. Such sales may reflect either a positive or negative impact depending on the circumstances

specific to the property.

It may sometimes be necessary, where the impact of the public work is widespread, to obtain sales from other locations which, historically, have reflected similar value levels.

1.8 Valuation reports

Valuation report standard

All valuation reports must clearly explain the rationale for any assumptions made and address the landholders claim for compensation.

You must include supporting evidence and clearly rationalise the comparability or otherwise of sales and rental evidence.

A summary of technical information is to be included in the report with full supporting documents annexed.

Material within the report such as photographs should be taken on inspection of the property. In instances where material is obtained from other sources it must be appropriately referenced.

The report provided should be written in accordance with the requirements of the International Valuation Standards 2013.

Independent advice

Where required you should obtain independent professional advice. There may be times when using advice already provided by either the landholder or acquiring authority is appropriate. For example:

- where the parties agree to rely on the advice of one professional
- where it is unlikely for the advice to be subject to opinion and is likely to be consistent no matter which professional provided such advice
- where there is a very limited field of expertise and the best advice is considered to have been obtained.

All professional advice must be appropriately referenced and annexed to the valuation report.

Where advice has been provided by other stakeholders and that advice is in conflict with the basis of the determination, you must rationalise why that advice was not accepted.

Property inspections and communication with landholders

Property inspections should be made during the valuation process. Where possible, you should obtain the permission of the landholder.

You should speak to landholders in person to address any issues or concerns they have. You should also encourage

landholders to provide any supporting material that they feel is relevant to the determination.

It is important that the process is transparent and that all stakeholders have access to relevant material and the opportunity to scrutinise and query that material.

1.9 Post determination process

Valuer Generals role following completion of the determination

The Valuer General's formal responsibilities under the Land Acquisition Act are completed when the Determination of Compensation is issued to the acquiring authority. However, the Valuer General can amend a Determination of Compensation to correct any errors.

Determinations of Compensation are a final decision and so need to be made with the full understanding of all the issues. Therefore you are required to make all enquires necessary to gain a complete understanding of the factors affecting the level of compensation. Every effort should be made to clarify and where possible resolve any issues of fact with the owner and the acquiring authority prior to completion of your advice.

Objections against the amount of compensation determined are between the former owner and the acquiring authority. However, valuers providing advice on behalf of the Valuer General are to make themselves available to discuss the Determination of Compensation with owners and the authority involved.

Appeals as to the amount of compensation are made against the acquiring authority not the Valuer General.

The Land and Environment Court provides dispute resolution services through its conference process. Matters may be settled through these conferences or may proceed to a full hearing.

1.10 Quality control

Quality reviews

The quality assurance process is an important step in the management of issuing determinations of compensation valuations to acquiring authorities for the Valuer General.

It is expected that valuers undertaking determinations of compensation will adopt quality assurance processes, including revision of all calculations and peer review, prior to the final issue of a recommendation of determination of compensation.

Land and Property Information are required to review all valuation reports to ensure there is consistency and accuracy in the assessment of compensation.

2 References

2.1 Definitions

| | |
|--|--|
| capitalisation | Capitalisation is a method used to determine the current market value of a property by converting the net income stream into a capital value using a single conversion factor. |
| capitalisation rate | Expression of risk and return as a percentage that is used to convert the net income in perpetuity from an investment into value at a given time. |
| claimant | A claimant is a person or legal entity entitled to a claim for compensation after the compulsory acquisition of land or an interest in land. |
| easement | An easement is an acquired legal right enjoyed by the owner of land over the land of another. |
| environmental planning instrument | A legal document that regulates land use and development under state environmental planning policies and local environmental plans. |
| fee simple in possession | Absolute title to land, free of any other claims against the title, which one can sell or pass to another by will or inheritance. |
| gross realisation | The property's value (or gross sales) upon completion of construction. |
| interest in land | Interest in land means: <ul style="list-style-type: none"> (a) a legal or equitable estate or interest in the land, or (b) an easement, right, charge, power or privilege over, or in connection with, the land |
| market rent | The estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion. |
| public purpose | A "public purpose": means any purpose for which land may by law be acquired by compulsory process under the <i>Land Acquisition (Just Terms) Compensation Act 1991</i> . |

2.2 Laws and policies

| | |
|--------------------------|---|
| Governing NSW law | <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (Land Acquisition Act) |
|--------------------------|---|

| | |
|--------------------------------------|-----|
| Related Valuer General policy | N/A |
|--------------------------------------|-----|

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 is responsible for the determination of compensation to be offered to the former owner 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*.

The Valuer General delegates the determination of compensation process to Land and Property Information (LPI). An LPI valuer or private valuer contracted to LPI will assess the amount of compensation for determination by the Valuer General or his or her delegate.

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

3.2 Background

Compulsory acquisitions

Where land is acquired for a public purpose, compensation is paid to the owner of the land and any other parties having a compensable interest in the land. The Land Acquisition Act requires the acquiring authority to seek agreement with all parties, having an interest in that land, on the compensation which should be paid for the loss of their interest.

Where agreement cannot be reached, the interest will be compulsorily acquired. The Valuer General provides an independent determination of compensation for those interests which are compulsorily acquired.

Once acquired, all interests (gazetted) in land are vested in the acquiring authority, by written notification printed in the NSW Government Gazette. The identified land will be freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over, or in connection with, the land.

Any compensable interest in the land will be converted to a right for compensation

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Title: Compensation following compulsory acquisition

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feedback@ovg.nsw.gov.au

Author: Office of the Valuer General


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Document control

Approval

| Name and position | Signature and date |
|------------------------------|--|
| Simon Gilkes, Valuer General |  18/12/2014 |

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