

Property
Acquisition

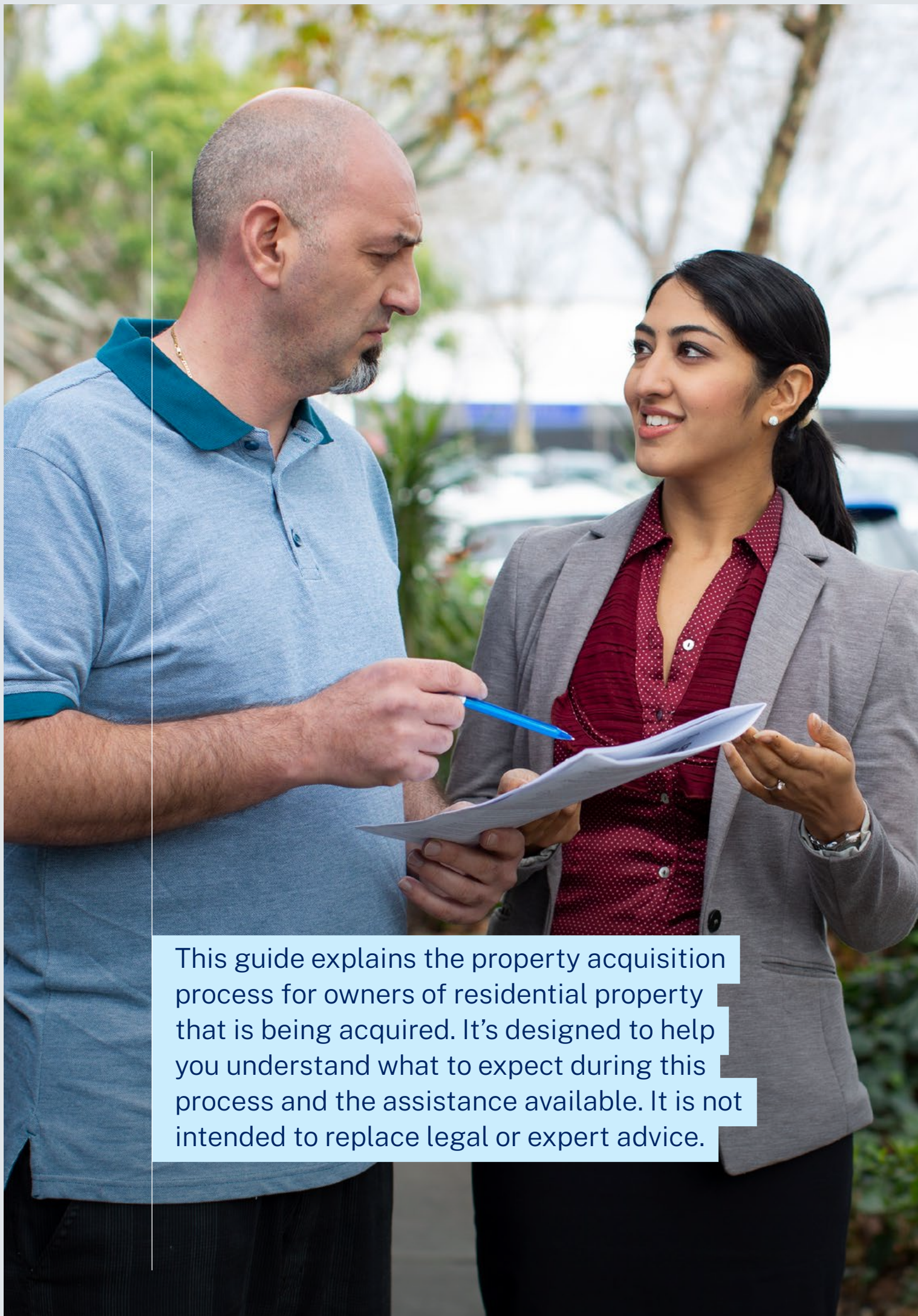
A guide to property acquisition in NSW





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This guide explains the property acquisition process for owners of residential property that is being acquired. It's designed to help you understand what to expect during this process and the assistance available. It is not intended to replace legal or expert advice.

About this guide

This guide provides information about the property acquisition process in NSW, including general guidance about the rights and responsibilities of acquiring authorities and property owners, and the role of the NSW Valuer General.

This overview does not replace specific property acquisition guides or other more detailed information provided to property owners by acquiring authorities. These guides include:

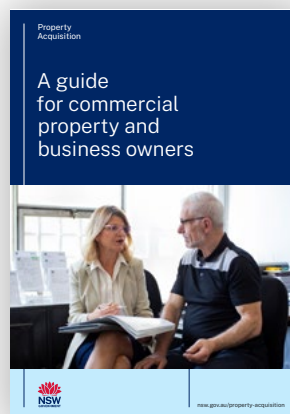
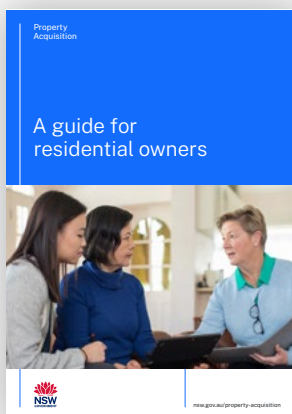
- Property Acquisition — A guide for residential owners
- Property Acquisition — A guide for commercial property and business owners
- Property Acquisition — A guide for residential tenants

This guide only provides general guidance on the property acquisition process in NSW, and it should be recognised that for certain acquisitions, for example substratum acquisitions, a different process may apply.

Affected property owners should seek further assistance and information on the property acquisition process from the relevant acquiring authority.

This guide is not intended to provide legal advice. Property owners affected by a potential property acquisition should still obtain their own legal advice if they feel this would assist them.

More information about the property acquisition process can be found at nsw.gov.au/property-acquisition



Property acquisition in NSW

NSW is home to many thriving communities in a range of busy cities and diverse regional areas. We also have the fastest growing population in Australia, which is forecast to increase to more than 10.6 million people by 2041.

Investing in infrastructure

A growing population means we need more schools, hospitals, roads, and public transport to meet the needs of our local communities. That's why billions of dollars are being invested in infrastructure to provide people with access to quality services.

When the government decides to deliver a new project such as a road or hospital, it instructs the relevant authority to investigate the best route or location.

Deciding which properties need to be acquired

Consultation is usually carried out with the community as part of the development of a major project.

In formulating a preferred design, route, or location for the project, the agency responsible — known as the **acquiring authority** — may identify properties that need to be acquired to deliver the project.

Unless the property is available for public sale, the acquisition process is governed by the *Land Acquisition (Just Terms Compensation) Act 1991* (the Just Terms Act).

What happens if you are affected by property acquisition?

The acquiring agency will conduct a door knock, visiting all affected properties. If your property is identified for proposed acquisition, a representative from the acquiring authority will contact you.

The representative will arrange a meeting to discuss the process in more detail. You may also be sent an **Introductory Letter**, which will notify you of the proposal to acquire your property.

This letter will include information about the acquisition process.

Later in the process, you will also receive a **Commencement Letter** (also known as an **Opening Letter**) which will generally mark the start of the minimum six-month negotiation period for you to reach an agreement with the acquiring authority.

Property acquisition and you

It is important that affected property owners and tenants understand their rights and obligations in the event that a property they own or occupy is to be acquired. Property owners should familiarise themselves with the Just Terms Act and seek their own advice to ensure their interests are protected.

The acquiring authority provides an acquisition support team to help property owners and tenants understand their rights and obligations, and any other aspect of the acquisition process.

The team may include:

- an **Acquisition Manager**, who initiates and manages the process of acquiring the property needed for a project,
- a **Personal Manager**, who will assist and provide support throughout the acquisition and relocation process, and
- on some projects, a **Community Place Manager**, who manages relationships between the project team and the community.

The acquiring authority provides this support team free of charge.

For most acquisitions, it is recommended that property owners engage their own independent valuer and lawyer. It is important that you remain informed and in control of your own decisions during the process.

When an acquiring agency confirms a need to acquire your property it will make contact with you to commence the engagement process.

Getting the support you need

The property acquisition process can sometimes be complicated and stressful.

To better support you, the NSW Government offers free and confidential mental and emotional support through the Property Acquisition Support Line. This service is available to all property owners, their families, tenants, commercial property and business owners, and employees affected by property acquisition. Counselling sessions are strictly confidential, operated by qualified psychologists and social workers, independently of the project team or acquiring agency.

You do not need a referral to use the Property Acquisition Support Line. Simply call 1300 089 551 and speak with a team member 24 hours a day, 7 days a week.

To find out more about the features of the service and how you can make an appointment, call 1300 029 146 or visit nsw.gov.au/property-acquisition to download a copy of the Property Acquisition Support Line fact sheet.

Relocation support

Please speak to your acquisition support team if you need support and guidance to help you relocate.

Vacating the property after agreement

Where you are required to vacate the property, your agreement will include an agreed date by which to do so.

The acquiring authority will inspect the property on the date of vacant possession to ensure it has been left in an acceptable condition.

The property acquisition framework

The NSW Government provides support for impacted owners and tenants to make it easier for them to understand the property acquisition process. The process is governed by the Just Terms Act and the **Property Acquisition Standards**, the five guiding principles that must be observed by agencies when acquiring property.

The Standards centre around outcomes that are focussed on fairness, access to information and assistance, consistency, and transparency.

The Standards state that:

1. Property owners will be treated fairly and with empathy and respect
2. Property owners will be provided with clear information about their rights
3. Property owners will be supported throughout the acquisition process with assistance tailored to meet individual circumstances
4. The acquisition process will be consistent across projects and acquiring authorities
5. The NSW Government will monitor and report publicly on the effectiveness of the property acquisition process.

The Standards can be found at nsw.gov.au/property-acquisition

Who acquires privately owned property?

Government authorities perform a range of functions for public purposes, such as building roads or upgrading infrastructure. At times, they need to acquire privately owned property to deliver these projects.

In NSW, acquiring authorities — including government agencies, some state-owned corporations, and local councils — have the power to acquire privately owned property for public purposes. This may be all or part of a property or an interest in a property, for example easements for power lines, sewerage, or water.

The powers of acquiring authorities to acquire property are contained in legislation specific to those authorities.

How privately owned property is acquired

Under the Just Terms Act, and following the issue of a formal Commencement Letter, property can be acquired in two ways:

1. By agreement between the property owner and the acquiring authority, or
2. Compulsory acquisition by the acquiring authority.

Under the Just Terms Act, there is generally a minimum six-month period in which the acquiring authority must make a genuine attempt to acquire the property by agreement with the owner. This period can be shortened in certain circumstances either by agreement with the owner or otherwise in accordance with the Just Terms Act.

If the acquiring authority and the property owner cannot reach agreement, the acquiring authority can acquire the property by compulsory process. The acquiring authority and the property owner may still reach agreement after the compulsory process has commenced.

When property is compulsorily acquired, the **Valuer General** determines the amount of compensation to be paid to the property owner. The Valuer General is a statutory official that acts independently of both the acquiring authority and the property owner. A property owner can appeal this determination by the Valuer General to the Land and Environment Court.

For more information about the Valuer General, visit valuergeneral.nsw.gov.au

The involvement of the Valuer General is not required in cases where the acquiring authority and the property owner have reached an agreement on the amount of compensation.

Regardless of whether the property is acquired compulsorily or by agreement, the matters to be considered in determining compensation remain the same.



How compensation is determined

To be considered for the payment of compensation, you must hold a legal interest in the property which is being acquired.

Anyone with a legal interest in a property that is acquired may be entitled to compensation on just terms in accordance with the Just Terms Act. The Just Terms Act outlines what must be taken into consideration when determining compensation on just terms.

There are a number of different types of compensation that may apply:

Market value is the amount that would have been paid for the property if it had been sold on the open market if the proposed project or public purpose did not exist.

Special value applies when a property has a financial value on top of the market value.

Compensation for *Severance* generally applies when an acquisition severs part of a property and, as a result, the remaining property may incur a reduction to its market value.

Compensation for *Disturbance* may include any or all of the following:

- reasonable legal costs
- reasonable valuation fees
- reasonable relocation costs
- Stamp duty costs where applicable and calculated by reference to the market value of the property acquired
- reasonable financial costs in connection with the discharge of a mortgage and the execution of a new mortgage
- other reasonable financial costs related to the actual use of the property as a result of the property acquisition.

Compensation for *Disadvantage resulting from relocation* only applies when a principal place of residence is acquired. It considers:

- your interest in the property,
- the length of time you have lived in the property,
- the inconvenience likely to occur, and
- how long after the acquisition you have been, or will be allowed to, remain in possession of the property.

Compensation for *Any decrease in the value of other property* considers any change in the value of other property owned by the same property owner that adjoins or is severed from the property being acquired as a result of the public purpose for the acquisition.

Your acquisition support team will help you through the process.



Types of acquisition

Acquisition by agreement

The preferred method of acquiring a property, or any interest in a property, is for both parties to reach an agreement on the amount of compensation to be paid. Most property is acquired this way in NSW.

The engagement process includes the owner receiving a formal **Commencement Letter** (also known as an **Opening Letter**) which explains the property acquisition process. This commences a period, generally a minimum of six months from the Commencement Letter, during which the acquiring authority must make a genuine attempt to acquire the property by agreement. This period can be shortened in certain circumstances either by agreement with the owner or in accordance with the Just Terms Act.

Following notification of property acquisition, the acquiring authority will engage a qualified valuer to value the property and provide a valuation report. Owners are entitled to engage their own independent valuer and lawyer. Reasonably incurred valuation, legal, and some other associated costs will form part of the compensation payable to the owner. We recommend you discuss this with the acquiring authority before incurring these costs.

The acquiring authority will issue a formal offer of compensation. The parties then discuss any differences between this offer and the valuation obtained by the property owner and try to reach an agreement on compensation.

If the acquiring authority and the property owner agree on the amount of compensation, the process for transferring ownership of the property is similar to a standard open market transaction. Contracts for sale of land are exchanged, a date for settlement agreed, and the property transferred into the name of the acquiring authority. Compensation is paid on settlement.

Compulsory acquisition

If you and the acquiring authority are unable to reach an agreement on compensation, the property may be acquired compulsorily under the Just Terms Act. Compensation is then determined by the Valuer General although, should you not accept the final determination, you have a right to object to the determination in the Land and Environment Court.

Following a period of negotiation (generally a minimum of six months from the Commencement Letter), the first official step in the **compulsory acquisition** process is for the acquiring authority to issue a **Proposed Acquisition Notice (PAN)** to the property owner.

The PAN states the acquiring authority's intention to compulsorily acquire the property or an interest in the property after a certain time, which is usually at least 90 days. This timeframe can be shortened in certain circumstances in accordance with the Just Terms Act.

You can continue negotiations and agree any compensation payable with the acquiring authority after a PAN has been issued.

You should complete a Section 39 **Claim for Compensation** form within the time stated in the Proposed Acquisition Notice (PAN), including all information you would like the Valuer General to consider when determining your compensation. You will have at least 60 days from the PAN to complete the Claim for Compensation. You can send the completed form to either the Valuer General or the acquiring authority. It is important that you fully explain and justify your claim and include all the issues that you wish the Valuer General to consider.

We recommend that you submit your completed Claim for Compensation as early as you can to assist the Valuer General with assessing your claim.

If agreement still cannot be reached, the acquiring authority will publish an acquisition notice in the **NSW Government Gazette**. When this acquisition notice is published, it means:

- the Governor of NSW has approved the property acquisition,
- property ownership transfers to the acquiring authority, and
- the Valuer General must determine the compensation.

The Government Gazette can be viewed at legislation.nsw.gov.au

What happens next?

If an agreed acquisition is not concluded within the required PAN period, the acquiring authority will arrange for an Acquisition Notice to be published in the NSW Government Gazette. This is often referred to as the Gazettal.

The Gazettal happens as soon as practicable after the end of the PAN period and within 120 days of the PAN being issued.

The acquiring authority takes ownership of the property from the date the Acquisition Notice is published in the NSW Government Gazette.

Your interest in the property is converted to an entitlement to compensation.

You will be entitled to remain in occupation of the property (if you were occupying it before the acquisition) for three months after it is compulsorily acquired, unless the Minister responsible determines that immediate vacant possession is required.

Talk to your Acquisition Manager for further details.

Who determines the compensation payable?

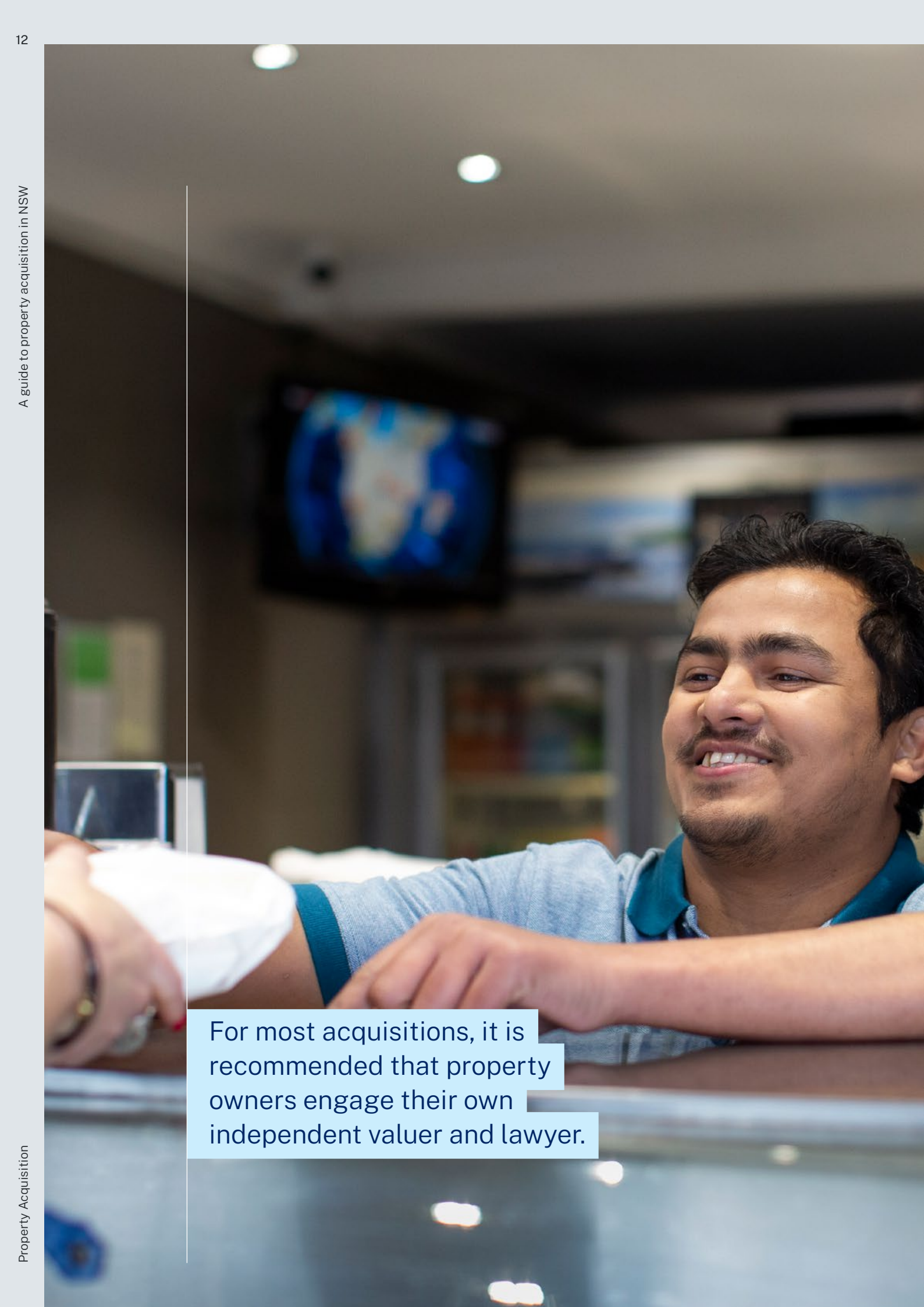
The **Valuer General** determines the amount of compensation following Gazettal. The Valuer General is a statutory official that acts independently of both the acquiring authority and the property owner. A property owner can appeal this determination by the Valuer General to the **NSW Land and Environment Court**.

The Office of the Valuer General will:

- carry out their own independent valuation in line with the Just Terms Act
- speak with you and the acquiring authority, and may seek further information from you
- meet with you or your representative to discuss the valuation
- share all information being considered for the valuation report with the parties involved – this includes information provided to the Valuer General by the property owner and the acquiring authority
- issue you with a **Preliminary Determination** showing the draft amount of compensation proposed to be determined as being payable, and how it was determined, generally allowing you 10 working days to provide feedback before the Valuer General finalises the determination.
- issue a determination of compensation including a property report explaining the determination to you and the acquiring authority.

The acquiring authority will issue you with a **compensation notice** which must offer you the amount determined by the Valuer General.

For more information about the Valuer General's role, including the steps involved in responding to a Preliminary Determination, visit valuergeneral.nsw.gov.au

A man with dark hair and a mustache, wearing a light blue polo shirt, is smiling and looking towards the left. He is sitting at a desk with a laptop. In the background, there is a television screen displaying a map of Australia. The setting appears to be an office or a meeting room.

For most acquisitions, it is recommended that property owners engage their own independent valuer and lawyer.

Agreeing with the compensation notice

If you agree with the compensation notice, you must complete a **Deed of Release and Indemnity** and return it to the acquiring authority.

The acquiring authority will pay your compensation within 28 days of receiving the Deed of Release and Indemnity and any other required documents.

Disagreeing with the compensation

If you disagree with the compensation notice, you are entitled to lodge an objection with the **NSW Land and Environment Court**. You are strongly recommended to seek legal advice.

The objection must be lodged within 90 days of the compensation notice being issued to ensure the Court will hear the objection and determine the amount of compensation to be paid. As the applicant, you must also give the acquiring authority notice that you have begun proceedings in the NSW Land and Environment Court by serving a copy of the application on the agency.

Advance payments while the Court proceedings are under way

If you disagree with the Valuer General's compensation determination and have commenced Court proceedings, you will be entitled to receive 90 per cent of the Valuer General's determination of compensation within 28 days of the commencement of Court proceedings (this is called the advance). Accepting the advance will not affect your objection to the Valuer General's determination – that is, you are not deemed to have accepted the Valuer General's compensation determination by accepting the advance.

The acquiring authority will also pay interest on the advance for the period from the date the Acquisition Notice was published in the NSW Government Gazette to the date the advance is paid.

If you don't accept the advance, the advance and interest will be deposited into a statutory trust account pending the Court's decision.

The NSW Land and Environment Court

Former landowners not satisfied with the amount of compensation determined by the Valuer General and offered to them by the acquiring authority can lodge an objection with the Land and Environment Court.

The Just Terms Act provides that a person who has not been given a compensation notice and whose claim for compensation is rejected (or taken to be rejected) may appeal to the Land and Environment Court against the rejection of the claim.

Hardship acquisition

An acquiring authority may designate land for future acquisition for a public purpose, even though it may not need the land for some time. The owner of the property may be able to apply for early acquisition under section 23 of the Just Terms Act.

To apply for early acquisition, the owner must be able to show they would suffer hardship if the acquisition of the land were to be delayed.

The owner must ensure their claim for hardship is genuine and substantiated.

Details on how hardship is determined and how compensation is assessed can be found in the *Owner-initiated acquisition in cases of hardship* fact sheet available at nsw.gov.au/property-acquisition

Acquiring authorities must take the owner's individual circumstances into account when making a decision on the amount of compensation to be paid. If the authority determines that any one of these types of compensation is not to be paid, it must explain why that decision is fair and reasonable under the circumstances.

Partial property acquisition

Depending on the project requirements, it may be necessary to acquire the entire property (known as a 'whole' acquisition) or a portion of it (a 'partial' acquisition).

If a project requires only part of the property, the acquiring authority will provide details of the partial acquisition, including the proposed new boundary and any property adjustments such as modifications to driveways or fencing.

Substratum acquisition

Some projects — such as underground road or rail tunnels, water pipes, or electrical cables — require the acquisition of property that is below the ground surface. This type of acquisition is known as a substratum acquisition.

Compensation is not payable for substratum acquisitions except in very limited circumstances, such as when the surface of the overlying soil is disturbed.

If an owner believes they have a claim for compensation for a substratum acquisition, they should discuss this with the relevant acquiring authority.

The six-month negotiation period prior to compulsory acquisition does not generally apply to substratum acquisitions as compensation is not generally payable.

Acquisition of easements or other rights

Acquiring authorities may require privately owned property for an easement or other right to build or upgrade infrastructure. The authority will contact the owners as early as possible to provide them with details of the proposed route or other available design options and inform them about potential impacts and compensation.





Key stages of the acquisition by agreement process

1

The acquiring authority will contact you

If you are directly impacted by an acquisition, someone from the authority will try to meet with you face-to-face to introduce themselves and explain the process. If they can't contact you in person, they will send you an email or letter.

This will happen just prior to, or soon after, a project is announced.

You will be provided with an acquisition support team which may include a Personal Manager and an Acquisition Manager.

They will arrange a meeting to help you to understand the process and discuss the next steps.

They will provide more information about the acquisition process and answer any questions.

You should prepare a list of questions you have about the project and what you should do.

2

You receive a Commencement Letter

The acquisition support team will send you a Commencement Letter, also known as an Opening Letter.

This will usually:

- explain your rights and obligations
- explain that the authority will seek to acquire your property by agreement with you
- advise that the acquiring authority will arrange a valuation by an independent valuer
- encourage you to get your own valuation by a qualified valuer and to obtain independent legal advice
- explain that reasonably incurred legal and valuation costs will be paid as part of the compensation package.

3

Both parties obtain valuation reports

An independent valuer will inspect your property or business on behalf of the acquiring authority to determine your entitlement to compensation.

Your own valuer should also carry out a valuation and prepare a valuation report.

The valuation report will outline the types of compensation you may be eligible for and how the compensation was calculated.

If you need to engage other services such as accountants, town planners or surveyors, it is recommended that you first discuss this with the acquiring authority.

The acquiring authority generally exchanges valuation reports with property owners as soon as practicable after both parties have received their final valuations and where the property owner is willing to do so.

4

You receive an offer

Once the acquiring authority's valuation is completed, they will provide you with a Letter of Offer.

This will include the amount of compensation you are being offered.

The offer will be based on information from the acquiring authority's valuation report and your discussions.

You should seek independent legal advice on the details of the offer if you want to.

5

Working to reach an agreement

The acquisition authority will try to arrange a meeting between both valuers to try to reach an agreement on compensation.

This may involve one or more meetings where each valuer presents the evidence their valuation is based on. You are welcome to attend these meetings.

For most acquisitions the acquiring authority must make a genuine attempt over a minimum period of six months from the Commencement Letter to acquire your property by agreement. This period can be shortened in certain circumstances either by agreement with you or otherwise in accordance with the Just Terms Act.

You may wish to seek legal advice before you formally accept an offer if you want to.

If you and the acquiring authority are unable to reach an agreement, the acquiring authority will commence the compulsory acquisition process.

6

An agreement is reached and finalised

Once an agreement on compensation has been reached -or the compulsory acquisition has been finalised -and a settlement date agreed on, the acquiring authority will arrange for contracts to be prepared and sent to you or your lawyer.

Where the acquisition is for your whole property, you will be required to vacate the premises within an agreed period. Your acquisition support team will be available to help you relocate.

Partial acquisitions will involve discussions with the acquisition support team regarding the necessary property adjustments to be made.

The acquiring authority will invite you to complete a survey and give feedback on the acquisition process.

Key stages of the compulsory acquisition process

1

You receive a Proposed Acquisition Notice

If you have not reached an agreement on compensation with the acquiring authority, you will be sent a Proposed Acquisition Notice (PAN).

This notice will state the acquiring authority's intention to compulsorily acquire the property after a certain time.

You will have the opportunity to lodge your own claim for compensation with the acquiring authority, which will also be provided to the Valuer General.

You generally have at least 60 days from receiving the PAN to lodge your Section 39 Claim for Compensation form, which is available at nsw.gov.au/property-acquisition

This form ensures your claim for compensation and issues raised are recorded and the Valuer General can take them into consideration if the acquisition becomes compulsory. Accordingly, we recommend you submit your completed form as early as possible.

2

Negotiations continue and Valuer General commences

Negotiations between you and the acquiring authority can continue and an agreement can still be reached after a PAN has been issued.

The Valuer General will send you a letter explaining their role if the acquisition becomes compulsory and informing you that work will begin on undertaking an independent determination.

An independent valuer will make a new valuation for the determination of your compensation, on behalf of the Valuer General.

You should note the timelines outlined in your letter from the Valuer General and provide any information requested of you in a timely way.

3

Your property will be acquired

If an agreement still isn't reached, the acquiring authority will compulsorily acquire your property.

The acquiring authority will publish a notice in the NSW Government Gazette, meaning the NSW Governor has approved the acquisition. The Valuer General will determine the compensation owed to you (see next step) and the acquiring authority becomes the owner of the property.

If the property which you owned that has been compulsorily acquired is your residence or place of business, you are entitled to remain in occupation of the building for up to three months.

If the property which you owned is your primary residence, you will not be charged rent during this period. The period you can remain in occupation can be shortened in certain circumstances in accordance with the Just Terms Act.

4

The Valuer General determines compensation

The Valuer General will review your claim and make a new assessment on the amount of compensation you are entitled to.

A Preliminary Determination is provided to both you and the acquiring authority for feedback and consideration before the final determination of compensation is issued.

5

You receive a final determination

The acquiring authority will send you a compensation notice that will contain the final determination.

If you agree with the compensation notice, the acquiring authority will send you a Deed of Release and Indemnity to complete and return to the acquiring authority.

You will be paid the compensation within 28 days of the authority receiving the Deed and any other required documents.

You will also be paid interest earned on the compensation, calculated from the published date of the notice in the NSW Government Gazette.

6

If you don't agree with the compensation notice

If you don't agree with the amount of compensation determined by the Valuer General, you can lodge an objection with the NSW Land and Environment Court.

You must lodge your objection within 90 days of receiving your compensation notice from the acquiring authority.

The Court will then determine your compensation following the necessary proceedings.

Definitions

Acquiring Authority

A NSW authority that has the legal power to acquire land.

Claim for Compensation form

A form to be completed by the property owner when making a claim for compensation under Section 39 of the Just Terms Act.

Commencement Letter (or Opening Letter)

A letter from the acquiring authority that generally marks the start of the minimum six-month negotiation period for you to reach an agreement with the acquiring authority. This letter will also include the contact details of your acquisition support team and information about the acquisition process.

Land Acquisition (Just Terms Compensation) Act 1991 (the Just Terms Act)

The legislation that governs the process for acquisition of land in NSW and defines compensation entitlements, also referred to as the Just Terms Act in this guide.

NSW Government Gazette

The official Government Gazette that is published weekly, in which official proclamations, orders, declarations and notices are published at legislation.nsw.gov.au

NSW Land and Environment Court

A specialist NSW Court that has the authority to hear claims for compensation arising from property acquisitions where the property owner disagrees with the Valuer General's determination of compensation.

Property Acquisition Standards

The Property Acquisition Standards are the five guiding principles that must be observed by agencies that acquire property under the Just Terms Act.

Valuer General

The Valuer General is required to independently determine the amount of compensation to be paid by the acquiring authority to the property owner when an agreement can't be reached.

Valuation report

A comprehensive document used to form the basis of an offer from the acquiring authority. It may include a list of improvements to the property, any special features that have been added and other considerations.

Contacts and Services

For a comprehensive overview of property acquisition in NSW, visit nsw.gov.au/property-acquisition

Centre for Property Acquisition

The NSW Government agency that oversees the property acquisition process in NSW.

nsw.gov.au/property-acquisition
1300 029 146

NSW Law Society

Provides independent information on finding a lawyer.

lawsociety.com.au
02 9926 0333

Australian Property Institute

Provides independent information on finding a qualified valuer.

api.org.au
1800 111 274

Australian Valuers Institute

Provides independent information on finding a qualified valuer.

valuersinstitute.com.au
1300 748 506

Royal Institution of Chartered Surveyors

Provides independent information on finding a qualified valuer.

rics.org/oceania
1300 737 657

Translating and Interpreting Service

Provides interpreting services over the phone for speakers of languages other than English.

tisonational.gov.au
131 450

Valuer General

Makes an independent determination of compensation for compulsorily acquired properties.

valuergeneral.nsw.gov.au
1800 110 038

NSW Government Gazette

Publishes official notices issued by the NSW Government.

legislation.nsw.gov.au/gazette

Australian Taxation Office

Provides advice on a range of tax-related topics.

ato.gov.au
13 28 65



This document is available in other languages at nsw.gov.au/property-acquisition/publications. You can also contact the Translating and Interpreting Service on 131 450 and ask for Centre for Property Acquisition.

nsw.gov.au/property-acquisition

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