*Lands Acquisition Act 1989*



## **Section 48 Notice**

Introduction

It appears that you may be a person affected by a declaration of acquisition, within the meaning of subsection 41(6) of the *Lands Acquisition Act 1989* (the LAA), and that in consequence you appear to be entitled to compensation in respect of the acquisition.

Section 48 of the LAA requires the provision of a copy of the declaration of acquisition, a notice of possible entitlement to compensation, information with respect to the operation of the LAA and a compensation claim form.

This document is the notice of possible entitlement to compensation and contains information with respect to the operation of the LAA.

**These notes are provided for the guidance of claimants and are not intended to be exhaustive.**

Persons who may be affected by the declaration of acquisition, and who may have an entitlement to compensation under the LAA, are advised to consider obtaining professional advice and assistance in preparing a claim for compensation.

These notes are arranged as follows:

1. Entitlement to compensation
2. Assessing the amount of compensation
3. Claims for, and offers of, compensation
4. Payment of compensation

A. Entitlement to compensation

The entitlement to compensation under the LAA arises on the date when the interest in land acquired by the compulsory process vests in the Commonwealth: that is, the date when the declaration of acquisition was published in the *Commonwealth Gazette*.

Part VII of the LAA sets out the arrangements for compensation for the compulsory acquisition of interests in land.

Importantly, section 52 of the LAA describes the entitlement to compensation in the following terms:

*A person from whom an interest in land is acquired by compulsory process is entitled to be paid compensation by the Commonwealth in accordance with this part in respect of the acquisition.*

The expression ‘an interest in land’ is defined in section 6 of the LAA:

***interest****, in relation to land (including overseas land), means:*

*any legal or equitable estate or interest in the land;*

*a restriction on the use of the land, whether or not annexed to other land; or*

*any other right (including a right under an option and a right of redemption), charge, power or privilege over or in connection with the land or an interest in the land;*

*and includes the interest of the Commonwealth, a State or a Territory in Crown land.*

B. Assessing the amount of compensation

Part VII Division 2 of the LAA sets out the scheme for determining the amount of compensation for interests in land other than mortgage interests.

The scheme for determining the amount of compensation for mortgage interests is set out in Part VII Division 3.

These notes relate to the determination of compensation for the compulsory acquisition of interests *other than* the compulsory acquisition of mortgage interests.

Under section 55 of the LAA, the amount of compensation to be paid in respect of the compulsory acquisition of an interest in land is as follows –

*The amount of compensation to which a person is entitled ... in respect of the acquisition of an interest in land is such amount as, having regard to all relevant matters, will justly compensate the person for the acquisition.*

*In assessing the amount of compensation to which the person is entitled, regard shall be had to all relevant matters, including:*

* *the market value of the interest in land on the day of acquisition;*
* *special value, that is, the value on the day of acquisition, of any financial advantage, additional to market value, incidental to ownership of the interest in land;*
* *severance, that is, the amount of any reduction in the market value of any other interest in land caused by its severance from the acquired interest;*
* *enhancement or injurious affection - this category deals with a situation where part of a property is acquired and the acquiring authority’s activities on the acquired land has caused or will cause an increase or decrease in the market value of the interests in the remaining part of the property. The total amount of compensation could be increased or decreased depending on the circumstances;*
* *disturbance, that is, any loss, injury or damage suffered or expenses reasonably incurred by the person as a direct, natural and reasonable consequence of acquisition of the interest in land or the making or giving of a pre-acquisition declaration (or certificate under section 24 of the LAA) in relation to the acquisition of the interest;*
* *expectation of lease renewal - where the interest in land is subject to termination or to a limitation as to time, regard shall be had to the likelihood of continuation or renewal of the interest and the likely terms and conditions of any continuation or renewal; and*
* *any legal or other professional costs reasonably incurred in relation to the acquisition, including the costs of -*
* *obtaining advice in relation to the acquisition; the entitlement of the person to compensation; or the amount of compensation; and*
* *executing, producing or surrendering such documents, and making out and furnishing such abstracts and attested copies as are required by the Commonwealth.*

Section 60 of the LAA lists those matters that are to be disregarded in the assessment of compensation:

*In assessing compensation, there shall be disregarded:*

1. *any special suitability or adaptability of the relevant land for a purpose for which it could only be used pursuant to a power conferred by or under law, or for which it could only be used by a government, public or local authority;*
2. *any increase in the value of the land caused by its use in a manner or for a purpose contrary to law;*
3. *any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the purpose for which the interest was acquired; and*
4. *any increase in the value of the land caused by the carrying out, after a copy of the pre‑acquisition declaration or certificate under section 24 in relation to the acquisition of the interest was given to the person, of any improvements to the land, unless the improvements were carried out with the written approval of the Minister.*

Special provision is made for interests in land that are subject to a mortgage (see section 62 of the LAA and Part VII Division 3).

C. Claims for, and offers of, compensation

Part VII Divisions 4 and 5 of the LAA set out the way in which persons may make claims for, and for the Minister to make offers of, compensation.

Key points include:

* claims are required to be made in the form approved by the Minister;
* the Minister may accept a claim for compensation or may reject the claim;
* where a claim is rejected, the claimant may apply to the Administrative Appeals Tribunal (AAT);
* proceedings for the determination of compensation may be brought in the Federal Court;
* the Minister may make an offer of compensation where no claim for compensation is made;
* the Minister’s offer may be accepted or rejected;
* compensation can be agreed post-acquisition; and
* the amount of compensation may be determined by arbitration or by expert, or by the AAT or by the Federal Court or the High Court.

D. Payment of compensation

The arrangements for payment of compensation are set out in Part VII Division 6 of the LAA.

Key points include:

* the Minister may make an advance on account of compensation that may become payable to a person;
* where the Minister has made an offer of compensation, the Minister is required to make an advance on account of compensation of an amount not less than 90% of the amount of the Minister’s offer of compensation;
* receipt by a person of an advance on account of compensation does not constitute an acceptance of an offer made by the Minister;
* where an advance is paid, and there is no entitlement to compensation, the advance may be recovered as a debt due to the Commonwealth; and
* interest may be payable on compensation that a person is entitled to receive.