

Residential Tenants

2021

This fact sheet provides general information about the land acquisition process and the assessment of compensation for businesses. It is a guide only and should not be relied upon as legal advice.

When will I know if I will be affected by an acquisition?

In some circumstances, land is required for roadwork projects. An extensive planning process, including the allocation of funding and Government approvals, is always undertaken before any project can proceed.

Once a project is approved and the necessary land requirements are known, you will be notified if your interest in land may be affected.

What is land acquisition?

The Land Acquisition Act 1969 (Act) prescribes the land acquisition process. Land can be acquired by agreement or by a compulsory process.

Once a project is funded, land that is required to deliver the project can be acquired by agreement or by a compulsory process:

Acquisition by Agreement

Acquisition by agreement involves the land owner and the acquiring authority reaching agreement about the value of the land and compensation payable in respect of the acquisition of the land. If agreement is reached,

then the land will be able to be transferred to the acquiring authority in the ordinary way.

Compulsory Acquisition

Land is compulsorily acquired by the acquiring authority publishing an official notice in the *South Australian Government Gazette*.

The acquiring authority will then negotiate with parties who had an interest in the acquired land at the date of acquisition (including the owner, a residential tenant or a party carrying on a business under a lease or licence). Through negotiations, agreement is reached about the value of the land, the party's interest and their entitlement to compensation for the acquisition. In rare cases when agreement cannot be reached, a question arising in the course of negotiations can be referred to the Supreme Court for determination following a mandatory settlement conference.

How does the acquisition process work?

If land you lease has been identified for acquisition you will be allocated Acquisition Case Managers who will be available to meet with you and assist you throughout the land acquisition process.

Notice of Intention to Acquire Land (NOI)

Under the Act, the first notice you will receive is a NOI. This notice describes the land that the acquiring authority requires and your rights under the Act.

After you receive a NOI, you are able to seek an explanation of the reasons for the acquisition. You also have the right to object to the acquisition on specified grounds and request a review of this decision. The Act sets the timeframes and processes in relation to objection and review.

Following the service of a NOI, you can reach agreement with the acquiring authority in relation to your compensation and you will be paid compensation as if the property had been acquired.

Notice of Acquisition (NOA)

If the compulsory acquisition process does proceed, you will receive a NOA following a minimum period of three months (and up to 18 months) after receiving the NOI. The NOA will also be published in the *South Australian Government Gazette*. Upon publication of the NOA, the acquiring authority becomes the owner of the land.

At the time that you receive the NOA, you will be advised of the acquiring authority's offer of compensation. If the amount of compensation is unable to be determined at that time, then the acquiring authority will make an offer of compensation to you as soon as is reasonably practicable after the amount of compensation is determined.

How is compensation determined?

You may be entitled to compensation in respect of the acquisition if you have an alienable interest in the land and your interest is divested or diminished or your enjoyment of your interest is adversely affected by the acquisition. An alienable interest in land is one which the owner is able to dispose of or transfer to another party.

Compensation for land or an interest in land must adequately compensate a party for any loss incurred by reason of the acquisition.

For affected residential tenants, an assessment of compensation will be determined by an independent qualified valuer based on your interest in the land. If you are a business

tenant, further information about the assessment of compensation will be made available to you in the 'Businesses' Fact Sheet.

Offer of Compensation and Payment into Court

Payment into Court is the mechanism by which monies are held on account of the acquisition. The sum that the acquiring authority is prepared to offer you will be paid into the Supreme Court Suitors' Fund. If the amount of compensation is assessed at \$10,000 or below, the acquiring authority has a discretion to pay this amount to you directly instead of it being paid into Court.

Responding to the Offer of Compensation

You must respond in writing to the acquiring authority's offer within 6 months of the date of the offer. Your response must indicate whether you accept or reject the offer. The parties are required to negotiate in good faith in relation to the compensation payable for the acquisition of the land.

You may apply to the acquiring authority to extend the 6 month period. If the acquiring authority grants a longer period as a result of your application, you must respond to the offer in writing within that extended time period. If the acquiring authority refuses to grant a longer period, you may refer that decision to the Land and Valuation Division of the Supreme Court for review.

If you fail to respond to the acquiring authority's offer within the relevant time period, any monies held in the Suitors' Fund will be paid to the acquiring authority. Should this occur, it will not affect your entitlement to compensation in respect of the acquisition of the land. However, you will not be entitled to any interest accrued on the monies from the time these are paid to the acquiring authority.

Withdrawal or Reversion of Compensation

You must withdraw the compensation offered to you for the acquisition of the land within 24 months after the monies are paid into the

Suitors' Fund. A failure to withdraw the monies within that time period will result in the monies, together with any accrued interest, being paid to the acquiring authority.

Should this occur, it will not affect your entitlement to compensation in respect of the acquisition of the land, but you will not be entitled to any interest accrued on the monies from the time of payment to the acquiring authority.

If you would like to apply to withdraw the monies from the Suitors' Fund, you may elect to engage your own solicitor. Alternatively, you may ask your allocated Acquisition Case Manager to arrange for the acquiring authority to instruct their solicitors to make the application on your behalf at no cost to you. The withdrawal and payment of these monies to you does not affect your right to claim further compensation from the acquiring authority.

Reference into Court and Settlement Conference?

The compulsory acquisition process does not prevent a resolution of a matter by negotiation. However, if you wish for a question arising in the course of negotiations with the acquiring authority to be referred to the Court, you must first apply to the acquiring authority to convene a settlement conference. The acquiring authority will be responsible for convening the conference and will appoint a conference coordinator.

It is an offence to, without reasonable excuse, refuse or fail to comply with a direction of the conference coordinator. If the settlement conference does not result in the resolution of the matter, then you or the acquiring authority may refer a question arising in the course of negotiations into the Court.

What professional advice can I seek?

Once you are advised that your interest in land may be affected, you may wish to obtain independent legal advice and other professional advice in relation to your claim

for compensation arising from the acquisition of the land. Subject to the terms set out in the 'Legal and Valuation Services and Fees' Fact Sheet, the acquiring authority will reimburse your fair and reasonable professional fees.

What other support is available to me?

In addition to the practical assistance you can receive from your Acquisition Case Manager, the acquiring authority offers confidential counselling services which are run by external professionals. If the property you occupy is being acquired and you consider this service useful, please advise your allocated Case Managers who will assist and provide you with the counseling providers contact details. Additional support and legal representation is available to Aboriginal and Torres Strait Islander peoples through the Aboriginal Legal Rights Movement (ALRM).

This service is confidential and ALRM can be contacted on **1800 643 222**.



All acquisitions are managed by the South Australian Government
in accordance with the relevant legislation.

www.dit.sa.gov.au/landacquisition



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Authorised by The Government of South Australia.