

Possession of Land

2021

This fact sheet sets out the manner in which acquiring authorities will enter into possession of acquired land. The information in this fact sheet should not be relied upon as legal advice.

Approach to possession

The acquiring authority will notify you that land is required for a project by serving you with a Notice of Intention to Acquire Land (“NOI”). Following a minimum of three months and one day after the serving of the NOI, the acquiring authority may serve you with a Notice of Acquisition (“NOA”) and the NOA must also be published in the South Australian Government Gazette.

Occupiers

Where the acquiring authority has an interest in land that confers a right of possession, it must give written notice to the occupier of the land of the date upon which it will enter into possession of the land (“Possession Date”). The Possession Date must be at least 90 days after the date the NOA is published.

The occupier may apply to the acquiring authority to vary the Possession Date. The acquiring authority will consider your application and advise you in writing of their decision. Alternatively, the acquiring authority may seek to vary the Possession Date to an earlier date with the occupier’s consent.

If the acquiring authority refuses to vary the Possession Date, an occupier of the land may refer that matter into Court for adjudication. This referral must be made within 60 days of the date of publication of the NOA or the date that written notice of the Possession Date is given, whichever is the later.

Vacant or vacated land

Where the land is vacant at the time the NOA is published, the acquiring authority may enter into possession of the land from that date. Similarly, where the land is vacated before the Possession Date, the acquiring authority may enter into possession of the land from the date the land is vacated.

Land will be taken to be vacant at a particular time if it:

- (a) is residential land on which no person is lawfully residing at the time
- (b) is non-residential land that is not genuinely being used for income producing purposes at the time
- (c) is primary production land that is not actively being used for grazing, cropping, horticultural, horse keeping, intensive animal keeping, animal husbandry or other primary production purposes at the time
- (d) is land, or land of a class, prescribed by the regulations for the purposes of this paragraph.

Where the land is vacant but there are chattels and/or other personal property (not being a fixture) on the land, the acquiring authority may take possession of the land 30 days after the date of publication of the NOA. The owner of the chattels and/or other personal property will need to arrange for those items to be removed from the land before the acquiring authority takes possession of the land.

Deemed tenancy and payment of rent

If an occupier remains on the land after the publication of the NOA, they will be deemed to occupy the land pursuant to a tenancy on terms and conditions determined by the acquiring authority, which must comply with any requirements set out in the Land Acquisition Regulations 2019 (“Tenancy”).

If an occupier of the land remains in occupation 90 days after the date of publication of the NOA, rent (not exceeding reasonable market rates) will be payable in relation to the Tenancy, unless the acquiring authority determines otherwise.

An occupier of the land or the acquiring authority may refer the following matters into Court:

- A matter relating to the amount of rental fixed by the acquiring authority for the Tenancy
- A matter relating to any other term or condition of the Tenancy.

The acquiring authority may apply to the Court for payment orders in relation to rental arrears owed by an occupier pursuant to the Tenancy. The acquiring authority may enter into possession of the land on or after the Possession Date despite the commencement of Court proceedings.

What happens if the land is not vacated by the Possession Date?

If the occupier of the land does not vacate the land by the Possession Date, the acquiring authority may apply to the Court for an ejectment order or such other orders as the acquiring authority considers appropriate.

Outstanding Rent

Any outstanding rental owed by you pursuant to the Tenancy may be deducted from the compensation payable to you as a result of the acquisition.

How to seek assistance

An Acquisition Case Manager will be allocated to you and will assist you throughout the process. This officer will be available to meet with you to discuss any questions you have. Additionally, the acquiring authority offers confidential counselling services which are run by external professionals. If the property you own or 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**.



**Government
of South Australia**

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