

Businesses

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.

Why does land need to be acquired?

South Australia's record investment in infrastructure is improving and developing new roads, schools, hospitals and housing projects across the state, while creating thousands of jobs.

To enable the construction of these projects, the Government of South Australia will, on occasion, need to acquire privately owned land.

What process do acquisitions need to follow?

The Land Acquisition Act 1969 (the Act) sets out South Australia's land acquisition process and the compensation affected parties are entitled to.

Who is considered to have an interest in the property and entitled to compensation?

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 may be monetary or non-monetary compensation and must adequately

compensate a party for any loss incurred by reason of the acquisition.

If a business is unable to operate due to the acquisition of land on which the business is located, the business owner may be entitled to claim compensation for losses suffered as a natural, reasonable and direct consequence of the acquisition. Compensation may be payable for loss occasioned as a result of the business being reinstated at a different location, for example: costs involved in relocating, refit of a new premises, or impact on profits.

To assist your understanding, if the cost to relocate the business substantially exceeds the value of the business as a going concern, it would not ordinarily be reasonable to relocate the business. Given this, it may be that the acquisition in such circumstances has effectively caused the extinguishment of the business and compensation would then be assessed on the value of the business as a going concern (less moveable plant and equipment and stock).

The business owner should take reasonable steps to reduce or minimise the losses incurred by the business as losses that are unreasonably incurred may not be compensable. Any claim for loss must be reasonable and must be substantiated with sufficient evidence to the acquiring authority's satisfaction.

When will I know if my business is to be affected by an acquisition?

Once a project is planned, funded and approved and the need for any privately owned land is known, affected parties will be contacted if their property needs to be acquired.

Businesses that own the relevant land, or occupy it under a lease, licence or other arrangement, will also be contacted.

How will compensation be assessed?

To determine compensation, business owners must provide the acquiring authority with some or all of the following:

- Profit and Loss Statements for the business for at least the past three years
- lodged Business Activity Statements
- other information requested by the acquiring authority needed to determine the value of the business
- any known information, quotes, claims or costs related to the relocation of the business
- any information, documentation or evidence to substantiate any other claims made by the business.

Once the acquiring authority receives the business' financial records, an independent business valuer will likely be instructed to undertake an assessment to determine the value of the business as a going concern. The acquiring authority may also instruct an independent quantity surveyor or similar, to assess the likely costs of relocating the business to new premises.

When both the value of the business and the costs associated with relocating the business have been established, it will become clear as to whether compensation should be based on the relocation or cessation of the business.

If the acquiring authority is satisfied that relevant matters and claims are substantiated, a settlement will be offered to the business owner who may also submit a claim for consideration.

To help facilitate settlement, the business should provide its accurate financial information as well as information about its possible relocation to the acquiring authority as soon as possible.

What professional advice can I receive?

The owners of businesses that operate on land identified to be acquired can obtain independent valuation and legal advice relating to their claim for compensation.

At the completion of a matter that is resolved by negotiation, the acquiring authority will reimburse fair and reasonable professional fees. Legal costs are subject to adjustment to the applicable Supreme Court Scale rate at the time legal services were provided. If the question of compensation is referred to the Court for determination, the Court will make a ruling as to which party is liable to pay costs on the conclusion of the matter.

What assistance is available?

As a business operator with an interest in land to be acquired, you will be allocated Acquisition Case Managers who will meet with you and support you throughout the process. Should you require assistance in locating a replacement premises for your business, the acquiring authority will provide the service of a real estate advocate at no cost to you.

As well as the practical advice you will receive from your Acquisition Case Managers, you can also obtain confidential counselling. 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. Aboriginal and Torres Strait Islander people can obtain support and legal representation from the Aboriginal Legal Rights Movement by calling **1800 643 222**.

If you operate a business on land that has been identified for acquisition you will be contacted to discuss the acquisition process and what it means for you.

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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