



Owner's Guide

*PURCHASE OR COMPULSORY ACQUISITION OF PROPERTY
BY THE CROWN FOR A PUBLIC PURPOSE*

APRIL 2021

Purchase or compulsory acquisition of property for a public purpose – what does this mean?

From time to time the community needs additional land, for example to build a new road or widen an existing road, build a hospital or school, construct sewerage works or a reservoir, or provide pipelines and way-leaves. Specific legislation controls how this process is managed.

This brochure provides information about the process that must be followed to purchase the land and how it may affect you.

The decision to acquire your land is not taken lightly and in all cases, each alternative is considered before contacting you.

The legislation managing acquisitions by the Crown in Tasmania is the *Land Acquisition Act 1993* (the Act).

What is an Acquiring Authority?

This is the body that needs to purchase your land. Normally it is a **Crown** body such as a Government Department or statutory authority, although sometimes it is a **non-Crown** entity such as a local council, Tas Irrigation, TasWater or Aurora.

What does the *Land Acquisition Act 1993* do?

This Act specifies how land is to be purchased from you, what the acquiring authority must do to purchase the land, your responsibilities after being formally notified that the land is required, how the compensation for the land is determined and the time frame in which all of this happens.

How is land acquired?

There are two methods for acquiring land:

1. The land can be purchased on the 'open market' in much the same way as a private person might purchase a property. In this case, you and the acquiring authority reach an agreement about the sale price and then sign a Contract of Sale.
2. The land can be acquired 'compulsorily', if the acquiring authority considers it essential that a particular property or parcel of land is required for a public purpose. This eliminates any misunderstandings or doubts that the land is needed and puts in place a set of procedures to be followed within a set time frame.

Who decides that the land is to be acquired?

Whilst the acquiring authority looks at property from an operational perspective, in most cases two Ministers make the final decision and approve a compulsory acquisition – they are, the Minister responsible for the acquiring authority and the Minister responsible for the Act.

Why is the Office of the Valuer-General involved in the compulsory acquisition process?

The Valuer-General is responsible for administration of the Act, including approval of the amount of compensation which is agreed between you and the acquiring authority. In nearly all cases where an acquisition of land is made, the Office of the Valuer-General (OVG) will act for the acquiring authority by preparing the valuation, preparing most of the paperwork required by the Act and in all negotiations with you and your solicitor/valuer.

What is the compulsory acquisition process?

| Step 1 | Step 2 | Step 3 | Step 4 | Step 5 |
|---|--|---|---|---|
| Consultation | Notice to Treat | Notice of Acquisition | Claim for Compensation | Negotiation & Settlement |
| Meetings held to explain the purchase, process and timeframes | Formal notification is issued to the land owner(s) and any person /organisation with an estate or interest in the land | Ownership of the property is transferred to the acquiring authority | An amount of compensation is claimed or offered | Discussions are held to arrive at an agreed compensation amount |

Step 1 – Consultation

The acquiring authority normally phones you to arrange a meeting to explain why some, or all of your property needs to be purchased and to inform you of the process and timeframes involved.

The acquiring authority may seek your agreement to enter your property to undertake a preliminary investigation and to accurately survey the land. If only part of your land is required, the acquiring authority will also discuss any reinstatement works that may be required, such as fencing and access.

Step 2 – Notice to Treat

Once a decision about exactly which part of your land is required a *Notice to Treat* is issued to you. This is the formal advice about the purchase and is the same as if you and the acquiring authority had signed an *Agreement of Sale* with the purchase price to be agreed at a later date.

The *Notice to Treat* tells you:

- exactly what part of your land is to be acquired;
- invites you to negotiate the amount of compensation;
- warns you not to do anything to the land that would affect its value;
- requires you to notify the acquiring authority of all estates and interests in the land, for example mortgages, leases, agreements etc; and
- sets a date at which compensation is to be assessed.

Once the date of compensation is set, the acquiring authority does not have to pay compensation for anything done to increase the value of the land after the date of the notice.

When you receive a *Notice to Treat* it is best that you seek the advice of your own solicitor or valuer as they will act on your behalf in negotiations for compensation. These negotiations normally involve several technical legal and valuation matters including the determination of your land's Market Value or Special Value (which is a financial advantage incidental to your ownership and is in addition to Market Value); damage caused by severance; betterment; injurious affection; disturbance; and other matters which may be raised by the Court or at arbitration of the compensation.

It is normal for the acquiring authority to pay your reasonable legal and valuation fees.

Step 3 - The Notice of Acquisition

When a *Notice of Acquisition* is published in the Tasmanian Government Gazette the acquiring authority becomes the owner of the land described in the Notice. Your rights and entitlements are then converted to a claim for compensation. The Act provides that interest is payable on the agreed compensation amount from the date of acquisition.

The acquiring authority issues you with a *Notice of Acquisition* of land and a *Claim for Compensation Form*. The Notice sets out what is required of each party and the time in which the various actions need to be completed.

Step 4 - Claim for Compensation

Once your rights and entitlements are converted to a claim for compensation, you will be provided with a Claim for Compensation Form. At this stage of the process, you are called a **claimant**. As a claimant, you have the following options available to you:

- complete and submit the Claim for Compensation Form within 6 months from the date of service of the Notice of Acquisition. The claim must include particulars of your estate and entitlement in the land and specify the compensation claimed; or
- wait for the acquiring authority to provide you with an offer to settle compensation.

If you do not return the claim form or respond to the acquiring authority's offer within the timeframe, being 6 months from the date of service of the Notice of Acquisition, then the acquiring authority must apply to the Supreme Court to determine the claim.

If you submit a claim form, the Valuer General will consider the amount of compensation and determine whether the claim should be accepted or rejected. If the claim is accepted, the matter can be settled, and compensation will be paid. If the claim is rejected, the acquiring authority will make a counteroffer. If the counteroffer is not accepted within 30 days then the claim becomes a **disputed claim for compensation**.

There are specific things which are disregarded in assessing compensation. They are:

- (a) any increase in value resulting from the land being used illegally;
- (b) any increase or decrease in the value of the land being acquired because of the new use by the acquiring authority;
- (c) any special value the land may have to the acquiring authority, because it is needed which is over and above its market value;
- (d) any expectation which a lessee may have about renewal of the lease which is not based on an option agreement.

Step 5 – Negotiations and Settlement

The acquiring authority will negotiate with you and/or your solicitor and valuer to reach a mutually acceptable agreement about the amount of compensation payable to you.

If you do not agree with the amount being offered by the acquiring authority, a disputed claim for compensation may be determined or resolved:

- by agreement between the parties;
- by arbitration;
- by a Special Arbitrator; or
- by Supreme Court action by either party.

The vast majority of claims for compensation are settled amicably. However, it is natural that you may have concerns and uncertainties because of the sudden and unexpected event of a property acquisition.

You are able to discuss any concerns fully with the representative of the acquiring authority so that all matters relating to the acquisition and your entitlement for compensation are taken into consideration. Very few compensation matters require referral to the Supreme Court of Tasmania, although, if the disputed claim is not resolved within 90 days, then the acquiring authority **must** apply to the Supreme Court to have the claim resolved.

Frequently asked questions

about compensation matters

Can time frames be extended?

Yes. The Act provides that all time frames or periods may be extended on the application of a claimant. It is however, important for you to keep in touch with the person acting for the acquiring authority so that appropriate arrangements can be made to extend the timeframes.

What type of compensation is payable if the property is my principal residence?

The Act makes special provision for the acquisition of an owner's property which is ordinarily used as their principal residence. Compensation can be assessed on a basis of the reasonable cost of rehousing at no cost to the owner in a suitable residence of at least equivalent standard and location to the one acquired.

Is there special compensation for cases of hardship?

Yes, the Act provides for some special cases where additional compensation may be paid if a claimant suffers from any hardship such as age or infirmity.

Can I receive a partial payment of compensation, while I wait for the final claim to be resolved?

Yes, you can request the acquiring authority to make an initial payment of up to 90% of the compensation authorised by the Valuer-General. This payment does not prevent you from pursuing the total compensation being claimed.