

Client Briefing: Compulsory Acquisition of Land by the RTA



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Summary

The Roads and Traffic Authority of New South Wales ("RTA") is able to compulsorily acquire land or an interest in land for public purposes.

This briefing sets out information about the procedure, your right to compensation and what happens if a landowner objects to the compensation offered.

The compulsory process

At least 90 days before the land is compulsorily acquired the RTA must give the property owners a **proposed acquisition notice** - which states:

- the name of the authority that wants to acquire the land (e.g. the RTA);
- a detailed description of the land;
- the public purposes for which the land is to be used (e.g. extension of the Hume Highway);
- an explanation as to why the land is considered suitable for that purpose;
- the period within which the land will be compulsorily acquired; and
- that any owner who wishes to claim compensation must lodge with the RTA a **claim for compensation** within the period specified in the notice (not less than 60 days after the notice is given to the owner).

As soon as practicable after the 90 days the RTA must acquire the land by compulsory process or by agreement, or otherwise withdraw the proposed acquisition notice. If the land has not been acquired within 120 days of the proposed acquisition notice then it is taken to have been withdrawn.

Notification

The Registrar General and the Valuer General must be notified of the proposed acquisition notice.

The RTA publishes in the Government Gazette and at least one newspaper circulating in the local area an **acquisition notice** – declaring that the land has been acquired – and the acquisition takes effect from the date of the publication of the acquisition notice in the Gazette.

Compensation

The RTA must, within 30 days after the publication of the acquisition notice, give the former owners of the land written notice of the compulsory acquisition, their entitlement to compensation and the amount of compensation offered (as determined by the Valuer-General).

The property owner can claim compensation from the RTA as soon as the land has been acquired. They must complete the **claim for compensation** form which may need to be verified by statutory declaration.

For more information, please contact:



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Compulsory Acquisition of Land by the RTA

A copy of the claim for compensation form will be provided to the Valuer-General who will determine the amount of compensation payable.

The basic principle is that the amount of compensation should be just.

Specific factors set out in the *Land Acquisition (Just Terms Compensation) Act 1991* to be considered in assessing compensation include:-

- the market value of the land on the date of acquisition;
- any special value to the owner;
- if only part of the property is acquired, whether the market value of the remainder is reduced (this is termed “severance”);
- disturbance costs – losses and reasonable expenses directly resulting from the acquisition, for example, legal or professional costs such as valuation fees and stamp duty;
- solatium – non-financial disadvantage for relocation of the principal place of residence.

What if the property owner objects to the compensation amount?

The property owner will receive a **compensation notice**. If no objection is lodged the RTA will pay the compensation in full within 28 days of receipt of a deed of release and indemnity from the property owner – barring any future claims by the property owner.

Alternatively, the property owner has 90 days to object to the compensation offered. In order to object the property owner must lodge an objection with the Land and Environment Court. The RTA must then make an advance payment of at least 90% of the amount the RTA has assessed for compensation within 28 days after notice of the institution of proceedings is given to the RTA.

The matter of compensation will then be determined by the Land and Environment Court.

Receipt of an advance payment does not bind the property owner to accept the RTA’s assessment as final.

Interest is payable on unpaid compensation from the date of the compulsory acquisition.

Land and Environment Court objection

Litigation is expensive and it is not recommended unless the property owner has exhausted negotiations with the RTA and a just amount of compensation is unable to be agreed. The property owner may ultimately have a costs order awarded in their favour in which case they may not be out-of-pocket, however, they also risk having a costs order awarded against them.

The property owner’s legal advisors can assist them to weigh up the benefits and detriments of pursuing litigation when other avenues have been exhausted.

How can Fleming Muntz help?

We can assist you to understand the procedures and provide assistance and advice in your negotiations with the RTA.

If required we can assist you in lodging an objection with the Land and Environment Court regarding the amount of compensation payable.

Important fine print

This Client Briefing is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

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