

Australian Property Institute
Property Institute of New Zealand
New Zealand Institute of Valuers

RESOURCE PACK – VALUATIONS FOR COMPENSATION AND COMPULSORY ACQUISITION

Reference	Resource Pack - ANZVTIP 13 Valuations for Compensation and Compulsory Acquisition
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Resource Pack

1.0 Introduction

The contents of this Resource Pack are provided as a guide and should be read in conjunction with the Technical Information Paper (TIP) ANZVTIP 13 Valuations for Compensation and Compulsory Acquisitions.

Valuer Members will need to ensure they are aware of and maintain a sound knowledge of current relevant legislation, precedents and Court Rules at the time of accepting instructions, and subsequent provision of advice, reports and expert evidence at Court.

The Valuer Member is responsible for choosing the most appropriate approach and practice in a matter, based upon the task and instructions provided by their client. TIPs and Resource Packs are a guide and measure of acceptable professional practice. If a Valuer Member is unclear, they should seek professional advice before having regard to ANZVTIP 13 – Valuations for Compensation and Compulsory Acquisitions and Resources Pack.

Case law and relevant legislation may change over time and whilst the Australian Property Institute (API), the Property Institute of New Zealand (PINZ) and New Zealand Institute of Valuers (NZIV) consider this guide accurate at the time of publication, Valuer Members and those who use Members' services should have regard to legislative changes and new rulings.

If any Member considers any information or advice in this TIP or Resources Pack to not be accurate or up to date, refer this to standards@api.org.au and standards@property.org.nz.

2.0 Commonwealth legislation and case law

- *Lands Acquisition (Northern Territory Pastoral Leases) Act 1981* (Cth)
http://classic.austlii.edu.au/au/legis/cth/consol_act/latpla1981584/
- *Native Title Act 1993* (Cth)
http://www5.austlii.edu.au/au/legis/cth/consol_act/nta1993147/
- Australian Real Property Guidance Note 2 - ARPGN 2 Native Title Issues
<http://anzvps.api.org.au/documents/ANZVPS-12-02.pdf>

3.0 New South Wales

- *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (Land Acquisition Act)
http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol_act/latca1991442/
<https://www.legislation.nsw.gov.au/#/view/act/1991/22>
- Land Acquisition Act Reform 2016

The Land Acquisition Act was amended in 2016. Members should draw their attention to the new sub-section within section 56.

– *Section 56(1) of the Just Terms Compensation Act defines ‘market value’.*

Sub-section (3) stipulates if:

- (a) the land is used for a particular purpose and there is no general market for land used for that purpose, and*
- (b) the owner genuinely proposes to continue after the acquisition to use other land for that purpose,*

the market value of the land is taken, for the purpose of paying compensation, to be the reasonable cost to the owner of equivalent reinstatement in some other location. That cost is to be reduced by any costs for which compensation is payable for loss attributable to disturbance and by any likely improvement in the owner’s financial position because of the relocation.”

This section introduces:

- ‘reinstatement’;
- ‘for a particular purpose’; and
- ‘equivalent reinstatement in some other location’.

This sub-section could impact the assessment of compensation for properties including land commonly zoned open space, churches, premises adjoining specialised facilities such as hospitals or sporting facilities, and other specialised uses.

- NSW Government Valuer General
Compulsory acquisitions
http://www.valuergeneral.nsw.gov.au/compulsory_acquisitions

Compensation following compulsory acquisition

http://www.valuergeneral.nsw.gov.au/_data/assets/pdf_file/0019/200359/Compensation_following_compulsory_acquisition.pdf

- NSW Government - Property Acquisition
<https://www.propertyacquisition.nsw.gov.au/>

The NSW Government Reform in 2016 stipulated that people affected by property acquisition now have their own designated Personal Manager and Acquisition Manager appointed as their primary points of contact.

The formal acquisition process starts once an impacted property owner is sent an 'Opening Letter'. The Opening Letter includes that a qualified valuer will be appointed and recommends that the owner obtain a valuation from a qualified valuer and legal advice themselves; the reasonable costs of which will be reimbursed.

Owners are provided 6 months to reach a compensation agreement. If agreement is not reached in the given time, the Valuer General is appointed to compulsorily acquire the property.

- Common Law Precedent
 - *Melino v Roads and Maritime Services* [2018] NSWCA 251. Lost profits – when can they be claimable
 - *Moloney v Roads and Maritime Services* [2018] NSWCA 304.
 - *Roads and Maritime Services v United Petroleum Pty Ltd* [2019] NSWCA 41.
 - *Alexandria Landfill Pty Ltd v Roads and Maritime Services* [2019] NSWLEC 98.
 - *Monti v Roads and Maritime Services (No 4)* [2019] NSWLEC 11.
 - *Desane Properties Pty Limited v State of New South Wales* [2018] NSWSC 173. Compulsory land acquisition will only be permitted if it is for a clear purpose, and if the required procedure is fully followed.
 - *Leichhardt Council v Roads and Traffic Authorities of NSW (No. 3)* [2009] NSWLEC 3. In calculating compensation, regard must be had for 'equivalent reinstatement in some other location'.
 - *Sutherland Shire Council v Sydney Water Corporation* [2008] NSWLEC 303. An assessment may be dependent on whether a council has any open space land available to purchase.
 - *Corrie v MacDermott* [1914] UKPCHCA 4. 'Value to owner' approach to calculating compensation.
 - *Hornsby Shire Council v Roads & Traffic Authority of New South Wales* [1998] 100 LGERA 105
 - *City of Brighton v Road Construction Authority* [1986] VR 255.
 - *R & R Fazzolari Pty Ltd v Parramatta City Council; Mac's Pty Ltd v Parramatta City Council* [2009] HCA 12.
 - *Woollahra Municipal Council v Minister for the Environment* (1991) 23 NSWLR 710.

4.0 Queensland

- *The Acquisition of Land Act 1967* (QLD)
<https://www.legislation.qld.gov.au/view/html/inforce/current/act-1967-048>
- Queensland Government - Land acquisition and resumption
<https://www.qld.gov.au/law/your-rights/legal-and-property-rights/government-land-acquisition-and-resumption>
- Queensland Government - Department of State Development, Manufacturing, Infrastructure and Planning – Compulsory land acquisition
<https://www.statedevelopment.qld.gov.au/compulsory-land-acquisition/>

- The Coordinator-General – Land acquisition information brochure
<http://www.dlgrma.qld.gov.au/resources/project/cg/land-acquisition-information-brochure.pdf>
- The Co-ordinator General in Queensland may acquire or take land under the *State Development and Public Works Organisation Act 1971*
<https://www.legislation.qld.gov.au/view/html/inforce/current/act-1971-055>

5.0 Victoria

- *Land Acquisition and Compensation Act 1986* (Vic)
http://classic.austlii.edu.au/au/legis/vic/consol_act/laaca1986322/
- *Planning and Environment Act 1987* (Vic)
http://www5.austlii.edu.au/au/legis/vic/consol_act/paea1987254/
- Planning Victoria – Acquisition and Compensation Guide
https://www.planning.vic.gov.au/_data/assets/pdf_file/0022/94531/6_Acquisition-and-Compensation.pdf
- VicRoads -Land acquisition and compensation
<https://www.vicroads.vic.gov.au/planning-and-projects/land-acquisition-and-compensation>
- Victoria State Government – Government valuations
<https://www.propertyandlandtitles.vic.gov.au/valuation/government-valuations>

6.0 South Australia

- *Land Acquisition Act 1969* (SA)
http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/sa/consol_act/laa1969174/
- Legal Services Commission of South Australia – Compulsory Acquisition of Land
<https://lawhandbook.sa.gov.au/ch28s02s10.php>

7.0 Western Australia

- *The Land Administration Act 1997* (WA)
http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/wa/consol_act/laa1997200/
- Government of Western Australia – Department of Planning, Lands and Heritage – Compulsory Acquisitions
<https://www.dplh.wa.gov.au/information-and-services/crown-land/compulsory-acquisitions>

8.0 Tasmania

- *Land Acquisition Act 1993* (Tas)
http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/tas/consol_act/laa1993174/
- Tasmanian Government – Department of Primary Industries, Parks, Water and the Environment – Land Tasmania – Office of the Valuer General
<https://dpiwpe.tas.gov.au/land-tasmania/office-of-the-valuer-general>

- Tasmanian Government – Premier of Tasmania – Land Acquisition Act Amendment Bill. Media release 22 November 2018.
http://www.premier.tas.gov.au/releases/land_acquisition_act_amendment_bill

9.0 Northern Territory

- *Lands Acquisition Act 1978* (NT)
<https://legislation.nt.gov.au/en/Legislation/LANDS-ACQUISITION-ACT-1978>
- NT Government – Land acquisitions
<https://nt.gov.au/property/land/buying-and-selling-land/land-acquisitions>

10.0 Australian Capital Territory

- *Lands Acquisition Act 1994* (ACT)
http://classic.austlii.edu.au/au/legis/act/consol_act/laa1994192/

11.0 New Zealand

- Public Works Act 1981 (NZ)
<http://www.legislation.govt.nz/act/public/1981/0035/latest/DLM45427.html>
- Land Information New Zealand – Public Works Act acquisition process
<https://www.linz.govt.nz/crown-property/acquisition-and-disposal-land/land-involved-public-works/landowners-rights-when-crown>
- Land Valuation Proceedings Act 1948
<http://www.legislation.govt.nz/act/public/1948/0050/latest/DLM249213.html>
- Land Valuation Tribunal of New Zealand case law decisions:
<http://www.nzlii.org/nz/cases/NZLVT/>

Additional Case Law resources can be found through the PINZ website <https://propertyinstitute.nz>