

COMPULSORY ACQUISITION OF LAND – COMPENSATION CLAIMS

Compensation Claims

When land is compulsorily acquired, you are entitled to claim compensation if you have an 'interest' in the land.¹ An interest in relation to land means a legal or equitable estate in the land, a right, power or privilege over the land.²

An interest in the land is extinguished and is converted into a right to claim compensation, from the date the resumption notice is published in the Queensland Government Gazette (**Gazette**).³ Following publication in the Gazette, you can lodge a written compensation claim.

The compensation items you can claim will vary depending on the category (Category 1, 2, 3 or 4) you fall within. Potential claimable compensation items for each category are summarised in the table below.

Category 1	Category 2	Category 3	Category 4
Full land acquisition	Partial land acquisition	Business or commercial resumption due to land acquisition	Volumetric sub-surface (underground) land acquisition
			

Compensation Claim Categories

Table 1: Potential claimable compensation items for each compensation category.

Category	Compensation Item			
	Land value	Severance	Injurious Affection	Disturbance Costs
1	✔			✔
2	✔	✔	✔	✔
3				✔
4	✔	✔	✔	✔

Compensation Items Defined:

Land value

The term 'value' under section 20 of the *Acquisition of Land Act 1967* (Qld), is the value to the dispossessed owner which ordinarily is the "market value", assessed at the date of the acquisition.⁴ There are some exceptions to this in cases where the land has additional or "special value", over and above its market value.⁵

A suitably qualified land valuer will need to be engaged to estimate the value of the resumed land.

"When land is compulsorily acquired, you are entitled to claim compensation if you have an 'interest' in the land"

¹ *Acquisition of Land Act* (Qld) s 12(5).

² *Acts Interpretation Act 1954* (Qld) sch 1.

³ *Acquisition of Land Act* (Qld) s 12(5).

⁴ *Brisbane City Council v Mio Art Pty Ltd* [2012] 2 Qd R 1, [31].

⁵ *Brisbane City Council v Mio Art Pty Ltd* [2012] 2 Qd R 1, [31].

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Severance

Damages caused by severance of the land taken from the other land is measured as “*depreciation in the value of the retained land, resulting from its division into two or more parts, or its reduction in area and consequent loss in value for some current or higher [potential use].*”⁶

A claim for compensation for damage resulting from severance of resumed land from other land owned by the claimant, is not confined to damage suffered in respect of land which is directly connected to the retained land.⁷ However, something more than common ownership is required to establish that the resumed land has been severed.⁸ In *Crisp & Gunn Co-operative Ltd v Hobart Corporation*⁹, a landowner owned three separate land parcels which were not directly connected, but were separated by two streets. They were, however, used by the landowner in its general business as a timber merchant.¹⁰ The court concluded that this was a case of severance even though the three parcels were not contiguous.¹¹

A suitably qualified land valuer will need to assist in determining damages caused by severance.

Injurious affection

Injurious affection is a form of damage that adversely affects the retained land.¹² It is described as damage

caused, in the exercise of any statutory power by the Constructing Authority, that affects the property by:

1. limiting the activities on or use of that land;
2. interfering with the amenity or character of the property; or
3. deterring purchasers from buying the Property or making it more expensive to use the property.¹³

In *Kabale Holdings Pty Ltd v Chief Executive, Department of Transport*¹⁴, land was taken from a housing estate to become part of a road corridor which adjoined a railway reserve. As part of the landowner’s compensation claim, the owner claimed compensation for injurious affection relating to:

1. loss of visual amenity because parts of the railway line would be seen from his retained land;
2. noise from the wheels of the passing trains; and
3. vibration to those lots in reasonable proximity to the railway corridor.¹⁵

The court concluded that they were satisfied that the noise impact from the road corridor would have made the hypothetical purchaser in the vicinity of the resumed land, at the date of resumption, less inclined to accept that the delivery authority would provide adequate and appropriate noise attenuation

⁶*Chief Executive, Department of Transport and Main Roads v Cidneo Pty Ltd* (2015) 207 LGERA 448, [37].

⁷ *Gold Coast City Council v Halcyon Waters Community Pty Ltd* [2011] QLAC 3, [20].

⁸ *Gold Coast City Council v Halcyon Waters Community Pty Ltd* [2011] QLAC 3, [20].

⁹ (1963) 110 CLR 538.

¹⁰ *Crisp & Gunn Co-operative Ltd v Hobart Corporation* (1963) 110 CLR 538 cited in *Gold Coast City Council v Halcyon Waters Community Pty Ltd* [2011] QLAC 3, [19].

¹¹ *Crisp & Gunn Co-operative Ltd v Hobart Corporation* (1963) 110 CLR 538 cited in *Gold Coast City Council v Halcyon Waters Community Pty Ltd* [2011] QLAC 3, [19].

¹² *Chief Executive, Department of Transport and Main Roads v Cidneo Pty Ltd* (2015) 207 LGERA 448, [37].

¹³ *Marshall v Director General, Department of Transport* (2001) 205 CLR 603, [46].

¹⁴ [1997-1998] 18 QLCR 166.

¹⁵ *Kabale Holdings Pty Ltd v Chief Executive, Department of Transport* [1997-1998] 18 QLCR 166, 172.

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reatment.¹⁶ The landowner was entitled to damages due to injurious affection.

A suitably qualified land valuer and experts (i.e. engineers) will need to be engaged to determine damage (if any) caused by injurious affection.

Disturbance costs

Disturbance costs cover a range of compensation items such as:

1. legal costs, valuation or other professional fees reasonably incurred in relation to preparing and filing for compensation;¹⁷
2. costs relating to the purchase of land to replace the land taken that have been reasonably incurred including stamp duty, financial costs to discharge a current mortgage and execute a new mortgage, legal costs, other financial costs)¹⁸
3. relocation costs reasonably incurred during relocation from the land taken including:
 - (a) removal and storage costs;¹⁹
 - (b) costs for connection of services and utilities (i.e. phone, gas);²⁰
 - (c) other financial costs relating to the use of the land taken and incurred as a direct and natural consequence of the land taken;²¹ and
 - (d) other economic losses and costs as a direct and natural consequence of the land taken (for e.g. cost of uniform for children enrolled

in a new school because of relocation, business relocation costs);²²

4. an amount reasonably attributed to the loss of profits resulting from interruption to your business that is a direct and natural consequence of the taking of the land.²³

Where to go for help

If you have a right to claim compensation, our specialised team of lawyers can assist you to develop a strong case in support of any compensation claim. We can assist you with the preparation, lodgment and negotiation of your compensation claim.

All reasonable legal fees to prepare and lodge your compensation claim, will be reimbursed to you as part of your overall compensation payout – this means no cost to you.

Conclusion

If you are uncertain about what compensation you can claim, please get in contact with us to discuss your specific requirements. It won't cost you anything to ask.



MARK HARLEY
PARTNER



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LAWYER

DISCALIMER: This publication is intended for your information and interest only. It is not intended to be comprehensive, and does not constitute and must not be relied on as legal advice. You must seek specific advice tailored to your circumstances.

¹⁶ *Kabale Holdings Pty Ltd v Chief Executive, Department of Transport* [1997-1998] 18 QLCR 166, 181.

¹⁷ *Acquisition of Land Act 1967* (Qld) s 20(5)(a).

¹⁸ *Acquisition of Land Act 1967* (Qld) s 20(5)(b).

¹⁹ *Acquisition of Land Act 1967* (Qld) s 20(5)(c).

²⁰ *Acquisition of Land Act 1967* (Qld) s 20(5)(d).

²¹ *Acquisition of Land Act 1967* (Qld) s 20(5)(e).

²² *Acquisition of Land Act 1967* (Qld) s 20(5)(g).

²³ *Acquisition of Land Act 1967* (Qld) s 20(5)(f).