

# COMPULSORY LAND RESUMPTION – BUSINESS ACQUISITION

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**Has the Queensland Government issued you with an intention to resume land that adversely affects your business?**

## THE PROBLEM

The Queensland Government (**Government**) want to compulsorily acquire the land on which I run my business and I have been served with a notice of intention to resume (**Notice**).

## AS THE BUSINESS OWNER, WHAT CAN I DO?

You can either object to the Notice or not object and therefore accept the Notice.

Object to Notice	Accept the Notice
<p>If you object to the Notice:</p> <ul style="list-style-type: none"><li>(a) the objection must occur within 30 days after the date of the Notice;<sup>1</sup></li><li>(a) you must send an objection in writing to the Government and it must contain the grounds of the objection and the facts and circumstances relied on by you to support the grounds;<sup>2</sup> and</li><li>(b) you must state in the written objection whether you wish to appear and be heard by the Government or its delegate in support of the grounds of the objection.<sup>3</sup></li></ul> <p>Any matter pertaining to the compensation amount is not a ground of objection.<sup>4</sup></p>	<p>If you do not object to the Notice:</p> <ul style="list-style-type: none"><li>(a) you are entitled to claim compensation from the Government following publication of the taking of land notice in the Government gazette.<sup>5</sup></li><li>(b) We recommend engaging us once you receive Notice and we can assist you with your claim for compensation.</li></ul>

<sup>1</sup> Acquisition of Land Act 1967 (Qld) s 7(3)(d).

<sup>2</sup> Acquisition of Land Act 1967 (Qld) s 7(3)(e)(i).

<sup>3</sup> Acquisition of Land Act 1967 (Qld) s 7(3)(e)(iii).

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## WHAT COMPENSATION AM I ENTITLED TO?

In circumstances where the entire land is resumed and your business cannot continue to operate on the land, you are entitled to disturbance costs. Disturbance costs include the following compensation heads:

- (a) business losses flowing from the resumption made up of loss of profits and loss in the value of the business;<sup>6</sup>
- (b) relocation expenses;<sup>7</sup> and
- (c) professional, legal and valuation costs reasonably incurred.<sup>8</sup>

Section 20 of the *Acquisition of Land Act 1967* (Qld) (**Act**), provides for the assessment of compensation as follows:

20	Assessment of compensation
(1)	In assessing the compensation to be paid, regard shall in every case be had not only to the value of land taken but also— <ul style="list-style-type: none"><li>(a) to the damage, if any, caused by any of the following—<ul style="list-style-type: none"><li>(i) the severing of the land taken from other land of the claimant;</li><li>(ii) the exercise of any statutory powers by the constructing authority otherwise injuriously affecting the claimant's other land mentioned in subparagraph (i); and</li></ul></li><li>(b) to the claimant's <b><u>costs attributable to disturbance</u></b>.</li></ul>
(2)	Compensation shall be assessed according to the value of the estate or interest of the claimant in the land taken on the date when it was taken.

### (a) Business losses

You will need to instruct us to engage a business valuer on your behalf who will calculate the value of your business and evaluate a potential claim for losses as a direct and natural consequence of the land resumption. The business

<sup>4</sup> *Acquisition of Land Act 1967* (Qld) s 7(3)(e)(ii).

<sup>5</sup> *Acquisition of Land Act 1967* (Qld) s 12(5).

<sup>6</sup> *Acquisition of Land Act 1967* (Qld) s 20(5)(f).

<sup>7</sup> *Acquisition of Land Act 1967* (Qld) s 20(5)(c), 20(5)(d), 20(5)(g).

<sup>8</sup> *Acquisition of Land Act 1967* (Qld) s 20(5)(a); *Jensim Family Pty Ltd t/a Bank of Queensland Coorparoo v Chief Executive, Department of Transport & Main Roads* [2012] QLC 58, [16].

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valuer will consider such things as any loss of goodwill, increased rent and business losses suffered through the transfer to the alternate location.

## **(b) Relocation costs**

Relocation costs may include such things as:

- removal costs;
- storage costs;
- insurance expenses paid to cover damage of equipment during relocation;
- phone, internet, power reconnection fees;
- cost of the internal fit-out at the new site (you may not be entitled to the full cost of the fit-out if there is evidence there was any alternative to a new fit-out or other suitable premises);
- advertising costs to advise the public of the relocation;
- cost of finding a new site;
- other items such as external signage, security systems (if you can prove similar provisions were located at old site that cannot be relocated); and
- professional fees associated with relocation such as interior designer fees, project management.

## **(c) Professional, legal and valuation costs**

If you decide to object to the Notice, legal fees you incur will be your responsibility and will not be recoverable by the Government.

If you do not object to the Notice, legal costs, valuation costs and other professional fees reasonably incurred by you in relation to the preparation and filing of your claim will be reimbursed by the Government as part of your Claim.<sup>9</sup> If you engage us to submit your claim, we do not require payment of our legal costs until a compensation agreement is reached between you and the Government or an advance against compensation is reached. We will provide you with a cost agreement when you initially engage us to act for you in relation to your compensation claim.

## **WHAT WILL HAPPEN IN CIRCUMSTANCES WHERE THE BUSINESS CANNOT MOVE?**

In circumstances where you cannot relocate your business to another suitable site, this would result in a total destruction of the business. In this instance you are entitled to the value of the business usually assessed primarily

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<sup>9</sup> *Acquisition of Land Act 1967* (Qld) s 20(5)(a).

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as the market value of the business. Losses may also be claimable for loss of profits due to the running down of stock prior to the cessation of the business.

## WHAT INFORMATION DO I NEED TO PROVIDE TO SUPPORT RELOCATION COSTS?

To support a claim for relocation costs, you will need to provide the Government with quotations, invoices and receipts which prove your claim for relocation expenses as a direct and natural consequence of the taking of the land. Internal costs, such as an employee moving the equipment may not be recoverable and therefore it is recommended to engage a third party for the relocation and obtain tax invoices specifically detailing what was removed, the time taken and hourly rates.

## HOW CAN BOSS LAWYERS HELP?

Our team is experienced in acting for business owners in compulsory acquisition matters and can provide specialist legal advice tailored to your specific circumstances. We can advise you about your entitlement to claim compensation, assist in guiding you through the process, draft your compensation claim and liaise with the Government and any experts.

If you engage us to submit your claim, we do not require payment of our legal costs until an agreement is reached between you and the Government or an advance against compensation is reached.



**MARK HARLEY**  
Principal



**SHARON SORBELLO**  
LAWYER