

Overview Land Acquisition and Compensation Act 1986 Information

(Note: some of the items can run in parallel/cross timeframes)

ITEM	DESCRIPTION
1.	<p>Council's power to compulsorily acquire land</p> <ul style="list-style-type: none"> • "(1) A Council may purchase or compulsorily acquire any land which is or may be required by the Council for or in connection with, or as incidental to, the performance of its functions or the exercise of its powers. • (2) The Land Acquisition and Compensation Act 1986 (LACA) applies to this Act and for that purpose- <ul style="list-style-type: none"> • (a) the Local Government Act 2020 is the special Act; and - • (b) the Council is the Authority." • This section makes a Council an "Acquiring Authority".
2	<p>Concepts and Definitions</p> <ul style="list-style-type: none"> • "Acquire" – this includes "compulsion" and "agreement". • "Interest" (in relation to land) includes any interest in land, including an easement
3	<p>Acquisition or purchase must be in accordance with the LACA</p> <ul style="list-style-type: none"> • "<i>An Authority which is empowered under a special Act to acquire an interest in land by compulsory process <u>must not</u> acquire that interest by compulsory process or by agreement except in accordance with this Part</i>" [being Part 2 of the LACA].

4	<p>Step 1 – Reservation or Certification</p> <p>Reservation</p> <ul style="list-style-type: none"> • “The Authority must not <u>commence</u> to acquire any interest in land under the provisions of the special Act unless the land has first been reserved by or under a planning instrument for a public purpose”. (section 5(1)). <p>Planning and Environment Act ...Public acquisition overlay.</p> <p>Prescribed land</p> <ul style="list-style-type: none"> • “Land not requiring reservation - • The following classes of land are prescribed as exempt from the requirements of section 5(1) – • (a) land to be acquired for a <u>minor road widening</u> or the <u>deviation of a road</u> if the land is only part of an allotment; and – • (i) the <u>area</u> of the land to be acquired is <u>less than ten per centum of the total area of the allotment; and</u> • (ii) the <u>total value of the interest to be acquired is less than ten per centum of the value of the unencumbered freehold interest in the total area of the allotment;</u> • (b) land over which an <u>easement</u> is to be acquired if the acquisition of that easement will <u>not reduce the value of the unencumbered freehold interest in the allotment by more than ten per centum</u>”. <p>Certified Land</p> <ul style="list-style-type: none"> • Land certified by the Governor in Council on the recommendation of the Minister for which reservation is “unnecessary, undesirable or contrary to the public interest”. <p>Section 7(1)(a) LACA</p> <ul style="list-style-type: none"> • Reservation is not required if the interest or the land in which the interest subsists has been <u>publicly available for sale</u> and the Authority believes in good faith that the interest is <u>still available for sale</u> at the time the Authority proposes to acquire the interest <p>Section 7(1)(b) LACA</p> <ul style="list-style-type: none"> • Reservation not required if the person whose interest is being acquired is <u>served</u> with – • A <u>statement in writing</u> that the Authority does not intend to acquire the interest by compulsory process; and • A statement in the <u>prescribed form</u> setting out the principal rights and obligations of the person under the Act. <p>Declared land</p> <ul style="list-style-type: none"> • Reservation not required where land is in an area in respect to which a declaration under section 172(2) <i>Planning and Environment Act</i> 1987 in force. • “If the Governor in Council is satisfied that to enable the <u>better use, development or planning of an area</u>, it is desirable that the Minister or a responsible authority compulsorily acquire land in the area, the Governor in Council may, by <u>notice published in the Government Gazette</u>, declare the area to be an area to which subsection (1)(c) applies.” <p>Consequences of electing to proceed by agreement</p> <ul style="list-style-type: none"> • If a statement under section 7(1)(b) and a Form 2 is served, the Authority – <i>in the event of not being able to acquire the land or interest by agreement</i> – is prohibited from proceeding
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	<p>to acquire the interest by compulsory process for a period of twelve months.</p> <ul style="list-style-type: none"> • Subject only to Ministerial intervention. • Note also, section 7(6) – if Authority has <u>commenced negotiations to acquire interest</u>, person interested in land may require Authority to determine to serve notice of intention to acquire or statements under section 7(1)(b).
5	<p>Step 2 - Notice of Intention to Acquire – Forms 1 and 4</p> <ul style="list-style-type: none"> • Service of forms – as per title searches (check Council's property data base). • Also serve mortgagees and any other person with an interest in the land. • Notice to Registrar of Titles. <p>Time Limits</p> <ul style="list-style-type: none"> • After service of Notice of Intention to Acquire, the Authority should try to acquire by agreement. • Cannot proceed to compulsorily acquire before expiration of two months. • Notice lapses after six months, unless extended by agreement for periods of up to three months at a time.
6	<p>Step 3 – Acquisition of Land</p> <ul style="list-style-type: none"> • Publication of notice in the <i>Government Gazette</i>. • Forms 7 and 8.
7	<p>Compensation</p> <ul style="list-style-type: none"> • Must make offer within fourteen days of acquisition. • Certificate of valuation • Statement in prescribed form. • Form 10 <p>Principles on which compensation based</p> <ul style="list-style-type: none"> • Market value. • Special value. • Loss attributable to severance. • Loss attributable to disturbance. • Legal, valuation and other professional expenses. • Interest. • Solatium

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8	<p>Entry into possession</p> <ul style="list-style-type: none"> • Given a Council's role as a public authority, this step should be taken with compassion and sensitivity. • The formal steps available to the Council through the Court (warrant of possession) should be an "avenue of last resort". • Contrary to "popular misunderstanding" • steps relating the entitlement to possession are not subject to compensation being agreed to.
9	<p>Disputes arising Statutory definition</p> <ul style="list-style-type: none"> • <i>VCAT</i> – where amount in dispute not more than \$50,000, or if more by the Tribunal or the Supreme Court at the option of claimant, or if claimant does not exercise option within one month after being requested to do so by the Council, at the option of the Council