

# Determination of compensation for disadvantage resulting from relocation<sup>1</sup>

under the *Land Acquisitions (Just Terms Compensation) Act 1991*

These guidelines provide direction for the determination of compensation for disadvantage resulting from relocation under the *Land Acquisition (Just Terms Compensation) Act 1991*.

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<sup>1</sup> NB, the change from the term *solatium* to *disadvantage resulting from relocation* is subject to consideration by the NSW Parliament

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# 1 Context

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## 1.1 Role of guidelines

These guidelines apply to all NSW acquiring authorities in determining compensation for disadvantage resulting from relocation under the *Land Acquisition (Just Terms Compensation) Act 1991* (Land Acquisition Act).

These guidelines will ensure the following policy objectives are achieved:

- the payment of compensation for disadvantage resulting from relocation to landowners is fair
- the determination of compensation for disadvantage resulting from relocation is consistent across all authorities of the state
- the process for determining compensation for disadvantage resulting from relocation is transparent
- decisions to reduce the level of payment for compensation for disadvantage resulting from relocation from the maximum amount provided in the legislation are evidenced based and rationalised.

## 1.2 Background

These guidelines are part of the NSW Government response to reviews of the land acquisition framework by David Russell SC and Michael Pratt AM, the Customer Service Commissioner. The response provides for a comprehensive package of improvements to the land acquisition process.

## 2 Guidelines

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### 2.1 Scope

**Relevant matters**  
**public purpose**

Follow these guidelines to determine the amount of compensation for disadvantage resulting from relocation to be paid to a landowner or tenant where land is being acquired for a public purpose.

See section 55 (e) of the Land Acquisition Act - *Relevant matters to be considered in determining amount of compensation.*

### 2.2 What is disadvantage resulting from relocation

**Definition**  
**principal place of residence**

Section 60 of the Land Acquisition Act defines disadvantage resulting from relocation as "non-financial disadvantage resulting from the necessity of the person entitled to compensation to relocate the person's principal place of residence as a result of the acquisition."

Compensation for disadvantage resulting from relocation is often described as a payment over and above actual damages for inconvenience, stress and physical attachment to the land.

### 2.3 When is compensation for disadvantage resulting from relocation paid

**Eligibility**  
**compensable interest**  
**acquiring authorities**

Compensation for disadvantage resulting from relocation forms part of the compensation paid to a person who has a compensable interest in land acquired by an acquiring authority.

Compensation for disadvantage resulting from relocation is only paid where a person is required to relocate their principal place of residence as a result of the acquisition. This includes residential tenants.

**Partial acquisition**

Section 60 (4) states:

*Compensation is payable in respect of disadvantage resulting from relocation if the whole of the land is acquired or if any part of the land on which the residence is situated is acquired.*

Compensation for disadvantage resulting from relocation shall be paid where only part of the land is acquired if the public purpose for which the land is being acquired causes the

owners to permanently vacate their principal place of residence.

**Home held in two or more names** Except in the case of separate occupations as described in the following text, only one payment is made for a home even where the home may be owned by two or more people.

**More than one home on the land** Where there is more than one home on the land, only one payment of compensation for disadvantage resulting from relocation is made unless each home is occupied by different people with separate compensable interests.

**Tenants**  
**tenancy at will**  
**board** A person who is renting a property has a compensable interest and is therefore also entitled to compensation for disadvantage resulting from relocation, as long as the home is their principal place of residence.

As with a home owned by two or more people, a tenancy is considered to be only one compensable interest and therefore only one payment of compensation for disadvantage resulting from relocation is made, even if the lease is in two or more names.

A tenancy is generally established by a lease but can also be a tenancy at will.

Paying board does not constitute a tenancy.

**Owner and tenant in same house** Where a home is occupied by the landowner and is also leased to a tenant, both parties may be entitled to an amount for compensation for disadvantage resulting from relocation. The residences of each party must be adapted for separate occupation, with separate access and separate amenities such as kitchens, bathrooms, toilet, bedrooms and living areas.

**Impact of valuation methodology** The method used to determine market value has no impact on the determination of compensation for disadvantage resulting from relocation. Where land is valued on the basis of a higher use, over and above the current use, compensation for disadvantage resulting from relocation is still paid if the home has been acquired.

## 2.4 How is compensation for disadvantage resulting from relocation determined

### Factors taken into consideration

In assessing the amount of compensation the Land Acquisition Act requires that all relevant circumstances are to be taken into account, including:

1. the interest in the land of the person entitled to compensation, and
2. the inconvenience likely to be suffered by the person because of his or her removal from the land, and
3. the period after the acquisition of the land during which the person has been (or will be) allowed to remain in possession of the land, and
4. in the case of tenancy, the length of time the person has resided on the land (and in particular whether the person is residing on the land temporarily or indefinitely)

### Minister determines maximum amount

maximum amount  
government gazette

The Land Acquisition Act details the requirements for the calculation of compensation for disadvantage resulting from relocation in section 60(3).

The maximum amount is determined by the Minister and published in the Government Gazette.

The maximum amount is adjusted each year according to CPI.

### Freehold

freehold  
tenure  
life tenant

In considering the owners interest in the land, or tenure, the owners of freehold land would consider that they have complete rights to occupy and deal with the land as they see fit.

The owners of freehold land would also consider that they are residing on the land indefinitely or until any time of their choosing, and that they would be able to pass the land on as part of their estate if they wished.

The level of inconvenience caused by the need to relocate would be high, regardless of the land owner's situation or length of ownership.

Therefore, each resident owner-occupier is entitled to the maximum amount of compensation for disadvantage resulting from relocation except in extenuating circumstances.

Such circumstances may include any other agreement between the land owner and the acquiring authority regarding residing in the property for an extended period. The Land Acquisition Act provides an offset if the landowner is allowed to remain in the property after the acquisition.

Any doubts should be resolved in favour of the landowner.

**Leasehold  
tenant**

Where an interest in land exists because of a tenancy the payment of compensation for disadvantage resulting from relocation requires further consideration. Each case will need to be considered on its merits taking into account that a tenant may have:

- limited expectations of an ongoing tenure due to the short term nature of the lease agreement
- less or no emotional attachment to the property or the area in which it is located
- less difficulty in finding alternative accommodation and relocating.

Although the points above may apply in the majority of situations, there will be circumstances where a tenant has a strong connection to the land and also expects to have a long tenure.

For example a person may be leasing the family home from their parents, a home they were raised in and a home they expect to inherit. Their attachment and expectation of a long tenure would be no less than as if they were the freehold owner of the property.

**Compensation for disadvantage resulting from relocation calculation table, for tenants**

The following table is a guide for compensation for tenants, based on length of tenancy.

Tenancy	Amount (\$)
Recently commenced tenancy (< 1 year)	\$3,750
Tenancy 1 to 5 years	\$7,500
Tenancy 5 to 10 years	\$22,500
Tenancy longer than 10 years	\$37,500

**More than one payment**

If separate payments of compensation are made, such as to a tenant and a landowner, the maximum amount applies to each payment, and not to the total of the payments.

**Initiation date**

The entitlement for compensation for disadvantage resulting from relocation commences when the acquiring authority formally approaches the tenant to advise them that the land is to be acquired for a public purpose and commence negotiations on the acquisition.

## 2.5 When is payment made

### **Notice of Compensation**

#### **notice of compensation**

Compensation for disadvantage resulting from relocation is to be included in the compensation provided by the acquiring authority or by the Valuer General and described separately in the notice of compensation.



## 3 References

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### 3.1 Definitions

<b>Acquiring Authority</b>	Means an authority of the state with the power to acquire land, defined in section 4 of the Land Acquisition Act as: <ul style="list-style-type: none"><li>(a) a Minister of the Crown, or</li><li>(b) a statutory body representing the Crown, or</li><li>(c) a council or a county council within the meaning of the Local Government Act 1993, or</li><li>(d) any other authority authorised to acquire land by compulsory process.</li></ul>
<b>Board</b>	The provision of meals on a regular basis in connection with the provision of lodging.
<b>Compensable Interest</b>	Is an interest in land entitling the person to an amount of compensation.
<b>Freehold</b>	The term is used in this document to mean the ownership of land in fee simple.
<b>Government Gazette</b>	Government Gazettes are the official publication of notices about the decisions and actions of the New South Wales government. The Gazette is compiled by the Parliamentary Counsel's Office (PCO). It is ordinarily published every Friday (except public holidays) on the NSW legislation website ( <a href="http://www.legislation.nsw.gov.au">www.legislation.nsw.gov.au</a> ).
<b>Life Tenant</b>	Means a person who has exclusive possession and use of the land for as long as they live.
<b>Maximum amount</b>	The maximum amount is the amount determined by the Minister in accordance with section 60 (2) of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> .
<b>Notice of Compensation</b>	A Notice of Compensation is written advice provided by an authority of the state to an owner detailing their entitlement to compensation and the amount of compensation offered (as determined by the Valuer General).
<b>Principle place of residence</b>	The principal residence where a person resides for the majority of the time. A person can have only one principal residence.

**Public purpose** Means any purpose for which land may by law be acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991*.

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**Tenant** The term tenant is used in these guidelines to describe a person or persons with a compensable interest in land due to the existence of a lease or tenancy at will.

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**Tenancy at will** A lessee who is granted possession (often by implication) by the lessor, subject to either party having a right to terminate the resulting lease at any time.

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**Tenure** Means the manner in which land is held. The title or interest in land.

## 3.2 Laws and guidelines

**Governing law**      *Land Acquisition (Just Terms Compensation) Act 1991*

**Related Guidelines**    Hardship  
                                 Compensation of a business



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