

Compulsory land acquisition

Frequently asked questions

Why is my land being resumed

The Coordinator-General facilitates many of the infrastructure projects that underpin Queensland's economic development. Sometimes, the Coordinator-General needs to compulsorily acquire, or resume, the land on which these projects are to be built.

What land can be resumed?

The Coordinator-General can resume land of any type of tenure, including freehold. The Coordinator-General can acquire part of your property, all of your property or an easement on your property, depending on the need.

How is land resumed?

Land is resumed by the Coordinator-General under the *State Development and Public Works Organisation Act 1971*, which gives the Coordinator-General the power to compulsorily acquire land for various purposes.

The *Acquisition of Land Act 1967* sets out the acquisition process, including compensation. The Coordinator-General can compulsorily acquire land:

- with the landowner's agreement (section 15 of the Acquisition of Land Act)
- without the landowner's agreement

I understand I can agree to the compulsory acquisition of my land—what does that entail?

If you agree to the resumption of your land, an agreement can be struck before or after a Notice of Intention to Resume has been served on you. If you agree to the resumption, the amount of compensation you receive can be finalised at a later date. However, if you also agree to the Coordinator-General's offer of compensation, this will be included in the agreement to the resumption of your land.

The Coordinator-General's preference is to negotiate with you to compulsorily acquire your land by agreement.

What if I do not agree to the resumption?

If you do not agree to the resumption of your land, the compulsory land acquisition process will continue to run its course. Please note: not agreeing to the resumption of your land is different to you formally objecting to its resumption (see '*Objections*').

Notice of Intention to Resume

How will I know my land has been identified for resumption?

If you are the owner of, or have a legal interest in, the land earmarked for compulsory acquisition, the Coordinator-General will send you a written Notice of Intention to Resume (NIR). The NIR describes the land or easement required (lot on a plan of survey, or a map referenced to cadastral boundaries—an indicative or 'about plan'). The NIR signals the start of the acquisition process. At this stage, you are still the owner of the land.

The Notice of Intention to Resume refers to an 'easement'—what's that?

An easement is a set of rights relating to a section of land and is registered on a property title. An easement gives someone else (e.g. the Coordinator-General) the right to use the land for a specific purpose even though they are not the landowner. The easement, once acquired by the Coordinator-General, will be registered on your property title. You and any future owners of the land will be bound by the terms and conditions set out in the easement document, which will be provided to you.

The easement document explains the Coordinator-General's rights and obligations and any land-use restrictions that apply to you and anyone else with an interest in the land.

What's a 'critical infrastructure easement'?

A 'critical infrastructure easement' is an easement placed over land that is already affected by a public utility easement. These easements are acquired for 'critical infrastructure projects'. They are the same as an easement, except that landowners have no rights to object to their resumption. Critical infrastructure easements lie within the existing public utility easement corridors on landowners' properties.

Does the declaration of a state development area (SDA) automatically change the ownership of the land within the SDA?

No. However, following the declaration the Coordinator-General may compulsorily acquire land or easements within the SDA for various purposes, including the establishment of industry, essential services or infrastructure corridors. Land within an SDA is acquired as per the process set out in the *Acquisition of Land Act 1967*.

Land not resumed within an SDA remains the property of the landowner, but its use will be subject to the SDA's development scheme, a regulatory document that controls land-use and infrastructure planning and development in the area.

Objections

Can I object to the resumption of my land?

Yes—the Notice of Intention to Resume (NIR) outlines the procedure for objections. Your objection must:

- be in writing
- be made within the time specified in the NIR (not less than 30 days after the date of the NIR)
- state your grounds for objection, including supporting details (matters relating to the amount of compensation to be paid are not valid grounds for objection)
- state whether a hearing in support of your written objection is required.

On what grounds can I object?

Past objections have been based on issues such as the need for the project, that a lesser or different area or interest should be resumed, the location of the proposed infrastructure, access to land following the project's construction, and other issues likely to affect landowners' properties. Matters relating to the amount of compensation to be paid are not valid grounds for objection. (The effect the resumption has on the value of your property will be taken into account when calculating compensation.)

How will my objection be dealt with?

If you choose to object to your land being resumed, a delegate of the Coordinator-General will prepare a report covering your written (and verbal, if applicable) objection. The Coordinator-General will then consider the objection report and decide whether to:

- proceed with the acquisition in its current form
- amend the Notice of Intention to Resume (e.g. seek to acquire a lesser or different area)
- not proceed with the acquisition at all.

Who pays the professional fees associated with my objection?

If you engage a solicitor or agent to assist you with the written objection and/or the hearing, those fees are your responsibility (they will not be paid by the Coordinator-General).

What if I do not want to object?

If you choose not to object to your land being resumed, you may wish to sign an agreement to the resumption of the land.

Resumption of land

What happens if the Coordinator-General decides to proceed with the acquisition?

If, after considering any objections, the Coordinator-General decides the land is required for the purpose proposed, the Coordinator-General applies to the Minister administering the *State Development and Public Works Organisation Act 1971*, requesting that the land be resumed.

After considering the Coordinator-General's application, the Minister may recommend to the Governor in Council that the land be resumed. If the Governor In Council approves the acquisition, a resumption notice is published in the Queensland Government Gazette, confirming that the land has been resumed (a copy of the notice will be sent to you).

The Coordinator-General must apply to the Minister for the land to be resumed within 12 months of the date of the Notice of Intention to Resume, otherwise the compulsory land acquisition process automatically ceases.

When does the land ownership change?

If the Coordinator-General is acquiring your land, the Coordinator-General becomes the owner of the land on the date the resumption notice is published in the Queensland Government Gazette. If the Coordinator-General is resuming an easement over your property, this will also be resumed on the date the notice is published.

Your interest in the land converts to a right to claim compensation (from the date the notice is published). All other interests (e.g. leases, easements and mortgages) are extinguished at this time and convert to a right to claim compensation.

Can the Coordinator-General enter my land before taking ownership of it?

Yes. Before the Coordinator-General assumes ownership of your land and in certain circumstances, the Coordinator-General or any persons authorised by the Coordinator-General can enter your property to inspect, value or survey it and conduct soil tests and other such activities. A Notice to Enter will be sent to you; where practicable, you will be given seven days' notice. If your property is damaged during the course of this exercise, you will be compensated.

What happens to my land title?

If the Coordinator-General is resuming part of your land or an easement, the part of your land or the easement to be resumed will be reflected in an indicative plan— an ‘about plan’ —included as part of the Notice of Intention to Resume sent to you. Later, following the construction of the relevant infrastructure, the land in question will be surveyed and an amended resumption notice will be published in the Queensland Government Gazette.

This notice will give the exact location of the boundaries of your property and the area of land or easement resumed. You will be notified when this has occurred and be provided with a copy of the notice and survey plan. The Coordinator-General will, on your behalf, amend the title for the remainder of your land, to reflect the new boundary.

However, if the exact area of land to be resumed is known at the time the Notice of Intention to Resume is issued, you will be provided with a survey plan immediately after the land is resumed. Again, the Coordinator-General will arrange for your title to be amended.

When will I be required to vacate the property?

The Coordinator-General can take possession of the property at any time following the publication of the resumption notice in the Queensland Government Gazette. You may, where practicable, be allowed to continue to occupy and use the property for a stipulated period following the resumption, subject to the terms and conditions of a landholder agreement or lease. If an easement is acquired, you retain ownership of the property and are therefore not required to vacate. Similarly, if only part of your property has been resumed, you will be able to continue living and/or working on the part you still own.

Who pays my costs to re-establish?

If you are an owner–occupier of a property, you will be reimbursed for:

- reasonable removal and storage costs
- costs reasonably incurred to connect to any services or utilities upon relocating from the land
- reasonable costs associated with the purchase of a similar replacement property (but not the purchase price of the replacement property) (e.g. legal fees, stamp duty and financial costs that have been, or may be, reasonably incurred in relation to the discharge of an existing mortgage and the execution of a new mortgage).

The costs associated with the purchase of a replacement property must be proportional to the property that was compulsorily acquired. If you choose to upgrade and buy a more expensive property, you will not receive a corresponding increase in allowable costs. The above list of the costs you may be reimbursed for is not exhaustive. For more information, seek your own legal advice.

Compensation

What is 'compensation'?

Compensation is the amount of money paid to the landowner and other parties with an interest in the land as a result of the land being resumed.

Can I claim compensation?

If, on the date the resumption notice is published in the Queensland Government Gazette, you have an interest in the land resumed (for example, if you are the owner, lessee or licensee), you can claim compensation. You may be able to claim compensation for other types of interests you have in the land; you should obtain legal advice about your specific circumstances.

When can I receive compensation?

Shortly after the resumption notice has been published in the Queensland Government Gazette, the Coordinator-General will usually make an offer of compensation to you. If you are satisfied with the Coordinator-General's offer, settlement will be arranged as quickly as possible, usually within a few weeks. If you do not agree with the offer made by the Coordinator-General, you or your legal representative should lodge a written compensation claim—if you have not already done so—so that negotiations on the amount of compensation to be paid can commence.

How do I make a compensation claim?

Along with a copy of the gazette resumption notice, you will receive a compensation claim form to complete and return to the Coordinator-General. If you do not wish to use this form, you can lodge your claim in any written format you choose, however it must comply with all of the requirements of section 19 of the *Acquisition of Land Act 1967*. It is recommended you engage a registered valuer and solicitor to help you prepare and lodge your claim (and to participate in any subsequent compensation negotiations).

If you need to engage other specialist consultants, it is recommended you contact the relevant professional bodies, who will be able to provide you with referrals. For land resumed after February 2009, claimants must lodge their claims within three years of the publication of the resumption notice in the Queensland Government Gazette. If a claim is received after that deadline, it is at the Coordinator-General's discretion whether to accept it or not.

Who pays the professional fees associated with the preparation and lodgement of my claim?

If you engage a registered valuer and solicitor to prepare and lodge your claim on your behalf, reasonable fees incurred will be reimbursed as part of your overall compensation payout. There is no pre-determined amount as to what 'reasonable legal fees' are. The Coordinator-General determines whether or not a claim is reasonable by looking at a number of different factors, such as the complexity of the claim and the land interest that has been resumed. If you are concerned that the legal fees you are being charged may not be reasonable, the Coordinator-General can give you an indication of fees paid for similar claims. We also recommend you ask your legal advisers for a fee estimate.

How is compensation assessed?

Regardless of whether you obtain your own land valuation, the Coordinator-General will arrange for your property to be independently valued by a registered valuer. After your property has been resumed, the Coordinator-General-appointed valuer will contact you to arrange an inspection of your property to assess the amount of compensation payable to you.

The compensation payable is based on: the assessment of the property as it was on the date the gazette resumption notice was published; the principles set out in the *Acquisition of Land Act 1967*; and previous decisions of the Land Court of Queensland.

In addition to the land value of your property, you may also be eligible to claim compensation for 'disturbance costs' you have incurred as a result of the resumption of the land. These disturbance costs are defined in the *Acquisition of Land Act*.

Disturbance costs can include:

- legal costs, and other professional fees
- costs relating to the purchase of a replacement property
- removal and storage costs
- costs reasonably incurred to connect to any services or utilities upon relocating from the land resumed

- loss of profit or other economic losses resulting from the interruption to a business directly attributable to the resumption
- other financial costs that have been, or may be, reasonably incurred or that might reasonably be incurred, relating to the use of the land resumed, as a direct and natural consequence of the resumption of the land.

When assessing the compensation payable to a landowner who has had part of their land resumed, the Coordinator-General will consider whether the exercise of any statutory powers by the Coordinator-General caused 'injurious affection' to the landowner's remaining land.

What is 'injurious affection'?

In the case of *Marshall v The Director General, Department of Transport* (2001) 205 CLR 603, the High Court considered the meaning of 'injurious affection' for the purposes of s20(1)(a)(ii) of the *Acquisition of Land Act 1967* (at the time of the High Court's decision, that section was numbered 20(1)(b)). In this case the High Court found that:

Damage for the purpose of s20(1)(b) is not confined to physical damage to the remaining land. Injurious affection does not include damage resulting from the act of severing the land. That is a separate head of damage. But it includes any other injurious consequence, resulting from the exercise of a statutory power, which depreciates the value of or increases the cost of using the "other land". If the exercise of the power limits the activities on or the use of that land, interferes with the amenity or character of the land, deters purchasers from buying the land or makes it more expensive to use the land, the claimant is entitled to compensation for injurious affection.

Can I claim compensation for emotional distress?

Emotional distress and other health issues resulting from the resumption of land are not compensable.

What evidence is required in support of my compensation claim?

Examples of the evidence the Coordinator-General requires in support of your compensation claim include invoices for professional reports or written expert opinions. A compensation claim cannot be considered without this evidence.

Can I get an advance payment against compensation?

Yes. Following the lodgement of your compensation claim, you can make a written request for an advance payment against the compensation. The Coordinator-General will then pay you the compensation previously offered in writing to you or the amount the Coordinator-General estimates the compensation should be (based on independent professional advice).

You will receive the advance payment within 90 days of lodging a properly completed claim form and requesting the advance.

If you do not agree with the compensation amount, you can nonetheless accept the advance payment. This advance payment in no way affects either party's right to negotiate further to reach agreement on the final amount of compensation, or to have the compensation amount determined by the Land Court of Queensland.

What if I have a mortgage?

If you have a mortgage, the mortgagee (e.g. the relevant bank) is entitled to be paid the compensation (to the extent of the mortgage amount owing). A clearance from the mortgagee will be required prior to any compensation payment (including any advance) being made.

What if I don't accept the Coordinator-General's compensation offer?

If you choose not to accept the Coordinator-General's offer of compensation, a representative of the Coordinator-General will meet with you (and your legal representative, if applicable) to negotiate a settlement. These negotiations are usually treated as being 'without prejudice' to either party's claim or response—to allow the negotiations to be open and frank and improve the prospect of issues being resolved without the need for a hearing in the Land Court of Queensland. Without prejudice negotiations are generally inadmissible during future litigation, should it occur.

These negotiations are also considered confidential and should not be disclosed to third parties.

What happens if agreement cannot be reached over the amount of compensation payable?

If agreement on the compensation amount cannot be reached, either the Coordinator-General or you, as the claimant, can refer the matter to the Land Court of Queensland for a decision. The Coordinator-General views the court as a last resort due to its very high financial cost to claimants and the State. The Coordinator-General has an excellent record of settling matters through negotiation, with over 99% of matters settled this way. This can be a much more cost-effective way of resolving compensation matters for both parties.

Who pays costs if I challenge the amount of compensation in the Land Court of Queensland?

Usually, you, the claimant, are responsible for the costs of any lawyers, valuers and other specialists you engage to prepare for a Land Court of Queensland hearing. However, in addition to deciding the final compensation amount payable, the court can award an amount for court costs to either the Coordinator-General or you. It is rare for one party to recover all of its court costs from the other party.

Is compensation for an easement assessed differently to that for land?

Yes. An easement is a set of rights to use a section of land in a particular way—the acquisition is not of land but of rights to use the land. Consequently, when assessing the compensation payable, the Coordinator-General considers how the use of those rights adversely affects your use of your land.

Will I be paid interest from the time my land is resumed to the time I get paid compensation?

If the Land Court of Queensland determines the compensation amount, the court may require the amount to include the interest the landowner would have earned from the time their land was resumed to when compensation was settled (excluding any compensation paid in advance). The interest rates are determined by the court—they are not commercial rates—and are published regularly on the court's website. In cases not involving the court, the Coordinator-General will consider each claim on its merits and may, where appropriate, make allowance for interest in compensation offers.

What about GST?

The Australian Taxation Office (ATO) website includes decisions as to whether GST applies to the compulsory acquisition of land. Generally, the resumption of land or easements is not considered to be a supply by the ATO and therefore compensation payments typically do not attract GST. For more information, visit the ATO website. Claimants should always obtain their own financial advice about tax liability.

What happens if the land resumption process is discontinued or lapses?

You will be advised in writing should the Coordinator-General decide to discontinue the land resumption process or if the process lapses. You cannot claim compensation for any loss or damage resulting from being served with the Notice of Intention to Resume (NIR) or the discontinuance of the resumption. However, you can claim compensation for any costs or expenses you reasonably incurred after the NIR was served on you and for any damage to your land caused by the exercise of the Coordinator-General's powers.

Who pays any taxes, rates and charges outstanding at the date the land is resumed?

Any taxes, rates and charges due and unpaid as at the date the land is resumed are the responsibility of the former landowner and may be deducted from the compensation payout.

Disclaimer

The contents of this publication, current at July 2019, are for reference purposes only. They do not constitute legal advice and should not be relied upon as such. Legal advice about your specific circumstances should always be sought before taking any action based on this publication

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