

## Minimum negotiation period for acquisition of land

These minimum requirements provide direction for the minimum negotiation period for land that is being acquired under the *Land Acquisition (Just Terms Compensation) Act 1991*.

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# 1 Context

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## 1.1 Purpose

The minimum requirements:

- **apply to all authorities** that acquire land under the *Land Acquisition (Just Terms Compensation) Act 1991* (the **Act**)
- **support authorities** in their statutory duty to make a genuine attempt to acquire the land by agreement
- **assist authorities** in understanding how they can best demonstrate that they have satisfied this statutory obligation.

The minimum requirements and supporting guidelines aim to ensure:

- transparency during the negotiation period
- consistency across acquiring authorities
- procedural fairness to property owners.

## 1.2 Scope

The minimum requirements and guidelines apply to all acquiring authorities that acquire land under the Act except where the proposal is to acquire:

- (a) Crown Land, or
- (b) an easement, or right to use land, under the surface, or
- (c) a stratum under the surface for the construction of a tunnel.

Land that is subject to native title or an Aboriginal land claim may have additional requirements for negotiation which acquiring authorities are to be mindful of and should seek advice on.

## 1.3 Property Acquisition Standards

The minimum requirements for fixed negotiation period will assist acquiring authorities meet the following [Property Acquisition Standards](#):

- Standard 1a)  
During the statutory six month negotiation period, acquiring authorities must make a reasonable effort to meet face-to-face with impacted property owners.
- Standard 2a)  
Prior to commencing negotiations, acquiring authorities must provide impacted property owners with plain English information about the acquisition process and their rights and obligations under the *Land Acquisition (Just Terms Compensation) Act 1991*.

- Standard 2b)  
Acquiring authorities must issue property owners with a letter advising of the acquiring authority's statutory obligation to make a genuine attempt to acquire the land by agreement, and that the minimum six month negotiation period commences when the property owner receives the letter.
- Standard 4b)  
Acquiring authorities must exchange valuation reports with property owners as soon as practicable after both parties have received their respective finalised valuations, and where the property owner is willing to do so.

## 1.4 Background

The 2014 report into the Review of the Land Acquisition (Just Terms Compensation) Act 1991 conducted by Mr David Russell SC, recommended that the Act be changed to require a fixed six month negotiation period before compulsory acquisition can commence, unless other arrangements have been agreed with the property owner.

Consistent with this recommendation, section 10A was inserted by *the Land Acquisition (Just Terms Compensation) Amendment Act 2016* and commenced on 1 March 2017.

The objective behind the six month negotiation period was to provide property owners with time to understand their rights and obligations, obtain necessary valuation and legal advice, and start to look for a new home or business premises.

## 2 Minimum requirements

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### 2.1 Provide the property owner with a commencement letter

The commencement letter should contain:

- a statement that the acquiring authority has a statutory obligation to make a genuine attempt to acquire the land by agreement prior to commencing the compulsory acquisition process
- a statement that the minimum six month negotiation period commences from the date of receipt of the letter (or such other date as is appropriate in the circumstances)
- contact details of the primary point of contact (Personal Manager)
- the public purpose that the land is being acquired for
- a copy of any relevant Centre for Property Acquisition (**CPA**) brochure on the acquisition process.

### 2.2 Inform the property owner about their rights and obligations

An acquiring authority must inform the property owner at the start of the six month negotiation period that:

- the property owner can choose to shorten the negotiation period
- the property owner can engage a lawyer and valuer
- the acquiring authority will cover the property owner's reasonably incurred legal and valuation fees as part of the agreed compensation package
- the property owner has an obligation to inform the acquiring authority about any other interests in the land that they are aware of, for example, any unregistered lease holders.

### 2.3 Inform the property owner about their compensation entitlements

An acquiring authority must:

- proactively inform the property owner of the types of compensation available under the Act
- give the property owner the opportunity to provide evidence to support their compensation claim.

## **2.4 Provide all relevant information that will assist to reach an agreement**

An acquiring authority should:

- make a reasonable effort to meet face-to-face with the property owner
- make a reasonable effort to arrange a meeting with any experts, including valuers, before the valuation reports are finalised. This meeting is to be a face-to-face meeting where possible
- propose an early exchange of valuation reports
- provide any offers to the property owner in writing
- give the property owner reasonable time to consider and respond to any offers made by the acquiring authority.

## 3 Guidelines

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### 3.1 Minimum period for negotiation

<b>Legal obligation to negotiate for six months</b>	<p>Section 10A of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> provides that an acquiring authority “is to make a genuine attempt to acquire the land by agreement for at least 6 months before giving a proposed acquisition notice.”</p> <p>This provides property owners with time to understand the acquisition process, engage with the acquiring authority, obtain legal and valuation advice, make the necessary decisions and look for another property.</p>
<b>When the legal obligation applies</b>	<p>The acquiring authority must engage in negotiations with each person who has an interest in the land. This includes, for example, a registered proprietor, a tenant, and a beneficiary of an easement.</p> <p>A property owner has a legal obligation to inform the acquiring authority of any interests in land that are known to them.</p>
<b>When the legal obligation does not apply</b>	<p>The legal obligation to make a genuine attempt to acquire the land by agreement for at least six months does not apply to:</p> <ul style="list-style-type: none"> <li>• the acquisition of land owned by the Crown, a local council or an authority of the State</li> <li>• the acquisition of an easement or right to use land under the surface</li> <li>• the acquisition of a stratum for tunnels</li> <li>• property owners who cannot be located even though an acquiring authority has made reasonable enquiries</li> <li>• property owners that have stated in writing they are not prepared to negotiate with the acquiring authority.</li> </ul>
<b>Changing the length of the period</b>	<p>The minimum period of negotiation may be shortened or lengthened with the agreement of the property owner.</p> <p>The period may also be shortened by Ministerial approval.</p> <p>See section 3.6.</p>

**Negotiation can continue** Negotiation between the acquiring authority and the property owner can continue after a proposed acquisition notice (**PAN**) is issued.

## 3.2 Commencement of the minimum period

**Issuing a commencement letter** The six month negotiation period generally commences with formal, written communication from the acquiring authority to a property owner which indicates the intention to acquire the land. This is sometimes referred to as the 'Commencement Letter' or the 'Opening Letter'.

**What the commencement letter contains** The commencement letter is issued once the acquiring authority has made a formal decision to proceed with the acquisition.

The minimum requirements outline what the commencement letter must contain.

A sample commencement letter can be obtained from the CPA Property Acquisition Portal.

**Genuine negotiation must follow commencement letter** The commencement letter will only open the statutory negotiation period where it is followed by genuine negotiations. Section 3.3 explains what is required to demonstrate genuine negotiation.

## 3.3 Demonstrating a genuine attempt to acquire the land by agreement

**Key principles that apply to genuine attempt** Acquiring authorities have a legal obligation to make a genuine attempt to reach an agreement with the property owner during the negotiation period.

At a minimum, this requires an acquiring authority to:

- communicate with the property owner with the express aim of achieving agreement
- genuinely consider the position of the property owner, but not so as to require the acquiring authority to subordinate its position
- act honestly



- be proactive about sharing information, including any valuation report and results of investigations and inquiries
- ensure offers are genuine, and that there is a timely response to any counter offer
- provide timely responses to questions raised by the property owner
- where possible have meetings to discuss any offers and take the valuer engaged by the acquiring authority along to at least one meeting.

While this is not an exhaustive list, it provides an indication of the type of conduct required to demonstrate that a genuine attempt was made.

**Parties to meet face-to-face**

The acquiring authority and property owner should ideally meet to discuss any differences, or have their experts meet to discuss differences.

The standards and minimum requirements direct acquiring authorities to make a reasonable effort to arrange a face-to-face meeting with the property owner and their valuer.

**Offers must be made in writing**

To reach agreement, an acquiring authority must make an offer in writing. Property owners should respond to the offer in writing.

The minimum requirements direct acquiring authorities to provide any offers to the property owner in writing and to give the property owner reasonable time to consider and respond to any offers made.

**How to demonstrate negotiations have occurred**

To demonstrate that the negotiation period has been conducted in good faith, an acquiring authority should carefully document the whole six month (or longer) process, including keeping:

- detailed file notes from all conversations with the property owner
- copies of all correspondence sent and received
- detailed notes of all meetings conducted with the property owner and their experts.

**Additional obligations for negotiation**

In addition to the obligation to comply with the Act, acquiring authorities should also be mindful of compliance with the [Model Litigant Policy](#) (Premiers Memorandum M2016-03) and the NSW Independent Commission Against Corruption (ICAC) guidelines '[Direct Negotiations: Guidelines For Managing Risks](#)' (see Chapter 3).

The Model Litigant Policy and ICAC Guidelines for Direct Negotiations provide an important framework for how acquiring authorities conduct these negotiations to ensure fairness and high standards of probity in the process.

### 3.4 Issues for discussion during the negotiation period

**Each case will have different issues**

The six month minimum negotiation period aims to provide time for a wide range of complex issues to be identified, considered and negotiated.

The range of issues to be discussed will depend on the circumstances of each individual case.

Many of these issues would be known to the property owner, and not the acquiring authority.

These issues can include:

- market value
- special value
- disadvantage resulting from relocation
- financial costs incurred as a direct result of the acquisition.

**Common issues for discussion**

Section 55 of the Act outlines the range of issues that must be considered when determining the amount of compensation payable.

Market value is only one of many issues on which agreement may be reached. Other common issues include:

- timing for the acquisition and when the property owner is required to give vacant possession
- access prior to the acquisition
- whether the property owner requires any ongoing access
- how much of the land is acquired

- relocation and other disturbance costs
- non-monetary compensation including in the form of land or works as provided under section 64 of the Act.

### 3.5 Determining an interest in the land

#### **Existing interests in the land**

Existing interests in the land will likely be identified by the acquiring authority during the due diligence phase.

Property owners have an obligation to inform the acquiring authority of any other interests in the land that they are aware of. This obligation arises if the property owner submits a claim for compensation.

#### **Existing interest discovered later**

In some cases, an existing unregistered interest in land may be discovered during the minimum six month negotiation period. The exact circumstances will determine whether a new minimum six month negotiation period will be required for this newly discovered interest.

If a new negotiation period is required, there may be circumstances where the urgency of the matter requires the negotiation period to be shortened, see section 3.6 below.

#### **New interests created after commencement letter**

New interests in the land that are created after the commencement letter is issued may be discovered during the minimum six month negotiation period.

Property owners have an obligation to inform the acquiring authority of any newly created interests in land.

Generally, a new minimum six month negotiation period will not be required for this new interest because negotiations have commenced with the interest holder that has created this interest. However the exact circumstances will determine whether or not this is the case.

If a new negotiation period is required, there may be circumstances where the urgency of the matter requires the negotiation period to be shortened, see section 3.6 below.

**Interests discovered after Proposed Acquisition Notice** Interests in land may be discovered after the PAN is issued. A PAN should also be issued to the holders of these interests once the acquiring authority becomes aware of their existence.

The creation or discovery of a new interest does not invalidate previous negotiations.

### 3.6 Shortening the minimum negotiation period

**When there is agreement with property owner** An acquiring authority can agree with the property owner to shorten the negotiation period to less than six months. If this occurs, the acquiring authority will send a letter to the property owner outlining the agreement and stating that the negotiation period has ended early.

**When the property owner refuses to negotiate** The negotiation period does not apply where a property owner has notified the acquiring authority that they are not prepared to negotiate for the acquisition of the land by agreement. The acquiring authority should confirm this in writing and document any interactions with the property owner.

**When the property owner cannot be found** The acquiring authority must make all reasonable inquiries to locate the property owner. If after these efforts the property owner still cannot be found, the negotiation period does not apply.

**When the Minister has given consent** In exceptional circumstances, the public interest may require a shorter period of negotiation. In these cases, the urgency of the circumstances must make it impracticable to have the minimum six month period of negotiation. If agreement cannot be obtained with the property owner, the negotiation period may be shortened by seeking the approval of both the Minister for the acquiring authority and the Minister for Water, Property and Housing. Contact the CPA for more information on how to request a shortened negotiation period.

## 4 References

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### 4.1 Laws and guidelines

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

### 4.2 Definitions

**The Act**              *Land Acquisition (Just Terms Compensation) Act 1991*

**CPA**                      Centre for Property Acquisition

**PAN**                      Proposed acquisition notice issued by the acquiring authority under section 11 of the Land Acquisition (Just Terms Compensation) Act 1991

**Property owner**      Any person that has an interest in land as defined in section 4 of the Land Acquisition (Just Terms Compensation) Act 1991

### 4.3 Useful resources

**Sample letter**        Commencement letter template



# Copyright

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Any enquiries relating to these minimum requirements and guidelines may be addressed to the Centre for Property Acquisition at [info@propertyacquisition.nsw.gov.au](mailto:info@propertyacquisition.nsw.gov.au)

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# Disclaimer

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The Centre for Property Acquisition has prepared these minimum requirements and guidelines, however, they are not intended as a substitute for legal advice. Users should obtain their own advice when making decisions that draw upon this document.

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