

# Article

## Compulsory Acquisition

### Don't Ask, Don't Get: Compulsory Acquisition in South Australia

By Helene Chryssidis and Lachlan Goddard

DW Fox Tucker has been involved in a number of compulsory acquisition matters involving both residential and commercial land.

Anecdotally, we have observed that the initial offers of compensation put forward by the acquiring authority are lower than the compensation which our clients are entitled to, and ultimately receive.

This anecdotal evidence is not isolated. A 2016 [report](#) published by the New South Wales Parliamentary Research Service<sup>1</sup> provided data to show that in New South Wales, compulsory acquisition matters which are contested in court typically resulted in higher amount of compensation for the dispossessed landowner when compared to the initial offer of compensation given by the acquiring authority.

The report found that in 70% of cases involving urban residential land, the Court's determination of compensation for market value was higher than the initial offer presented by the acquiring authority. On average, compensation increased by a staggering 33%.

For cases involving rural land, the proportion of dispossessed owners who received a higher quantum of compensation after trial was 100%. The average compensation increased by 42%.

This issue is not confined to New South Wales. In 2022, South Australia's Public Works Committee published its [final report](#) on the Inquiry into Intersection Works and Compulsory Acquisition.<sup>2</sup>

A key finding of this report was that homeowners and business owners struggle to move into similar premises with compensation payments that did not always reflect market value. It described the compulsory acquisition process as a '*cumbersome process beset by delays*' that leaves dispossessed owners '*out-of-pocket, stressed and unable to locate a similar sized property in the same area for the compensation payment offered to them*'.<sup>3</sup>

The report detailed examples of valuers engaged by the acquiring authority using methods to minimise the amount of compensation payable to the dispossessed owner. For example, relying on comparable sales from two years before the date of acquisition and preparing valuation reports in advance of the acquisition date of the property. This resulted in values for the acquired properties that were lower than the true market value (which a dispossessed owner is entitled to under the *Land Acquisition Act 1969* (SA)). This left claimants vulnerable to underpayment and unable to find a comparable property if the housing market boomed after acquisition.

<sup>1</sup> Tom Gotsis, *Compulsory Acquisition of Land: A Brief Legislative and Statistical Overview* (e-Brief Issue 6/2016, NSW Parliamentary Research Service, September 2016).

<sup>2</sup> Public Works Committee, *An Inquiry Into Intersection Works & Compulsory Acquisition* (Final Report, September 2022).

<sup>3</sup> Public Works Committee, *An Inquiry Into Intersection Works & Compulsory Acquisition* (Final Report, September 2022) 2.

In our experience, a dispossessed owner would need to pay legal fees out of their own pocket and engage in costly, lengthy, and often protracted processes in order to contest these valuations. This can be stressful for a person who is experiencing the emotional and financial hardship which is naturally associated with the compulsory acquisition process.

The report also criticised the approach taken by the authority when acquiring properties, saying that it 'damaged the relationship between government and public'.<sup>4</sup> This report contains a number of case studies and is worth reading in full for those who would like more insight into the difficulties faced by owners.

The findings of this report align with our experience. One dispossessed business owner had his business shut down as a result of the acquisition. After 10 years of successful trade, the business was forced to close its doors in December 2023. We put the acquiring authority on notice of this forced closure as early as June 2023. But the acquiring authority did not accept that his business was in fact extinguished by the acquisition until March 2024. This meant that our client was left without an income, or compensation, for several months. As at the date of this article, our client is yet to receive the compensation payment in relation to his business, which has been inexplicably delayed.

This same client is also fighting for the market value for his land. The acquiring authority initially offered him just \$990,000 to compensate him for the acquisition of his land. However, the valuation report obtained by our client concluded that our client was entitled to \$1,320,000. This disparity of 31% is difficult to justify in a strong real estate market. It is for these such reasons that the relationship between the government and the public are becoming increasingly strained.

### What does this mean for you?

In South Australia, projects such as the Torrens to Darlington are resulting in the compulsory acquisition of

<sup>4</sup> Public Works Committee, *An Inquiry Into Intersection Works & Compulsory Acquisition* (Final Report, September 2022) 1.

a significant number of homes and businesses. Whilst the authors understand that these acquisitions are necessary, owners should be fairly compensated for the value of their land and businesses.

The statistics show that it pays to closely consider the offer of compensation provided to you by the acquiring authority to determine whether it aligns with the market value of your property. This process can be challenging, as landowners are typically required to pay their legal costs as they are incurred, and then seek reimbursement for these costs at the conclusion of the matter. However, with an average disparity of 33% in the value of land, it is a worthwhile enquiry for landowners.



[MORE INFO](#)

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