

STATEMENT OF PROCEDURES

Under Parts 9 and 10 of the *Land Administration Act 1997*

This is a statement of the procedures under Parts 9 and 10 of the *Land Administration Act 1997* for the taking, or compulsory acquisition, of land, the taking of interests in land, compensation, rights of appeal and rights as to the future disposition of interests in land taken.

DISCLAIMER

This statement does not override the *Land Administration Act 1997*. You may wish to obtain a copy of the Act from the State Law Publisher of Western Australia or from www.slp.wa.gov.au.

This statement should not be relied upon in determining your rights under Parts 9 and 10 of the *Land Administration Act 1997*, as it is a general summary only.

Parts 9 and 10 of the *Land Administration Act 1997* are complex. You should seek independent legal, valuation and other expert advice as to your rights and liabilities in relation to a taking of land or interests in land and related compensation rights.

1. GLOSSARY

Where the terms listed below are used in this document, they have the following meanings, unless the context indicates otherwise:

- “acquiring authority” means the Minister for Lands and any other Minister of the State or State instrumentality which has the power to take, or compulsorily acquire, land in accordance with Parts 9 & 10 of the LAA;
- “claimant” means a person who is entitled to claim compensation under Part 10 of the LAA;
- “holding authority” applies where land has been taken and designated for the purpose of a public work, and means:
 - (i) the management body, if the land is Crown land that is subject to a management order; or
 - (ii) the holder of the land, in any other case;
- “Interest Holder” includes the owner of the freehold land or holder of certain interests in land, as detailed in the relevant provision of the LAA;
- “LAA” means the *Land Administration Act 1997* (WA);
- “land” includes interests in land, such as leases, easements and mortgages as well as native title rights and interests in land;
- “Minister” means the Minister for Lands, which is a body corporate under the LAA;
- “NOITT” means a notice of intention to take, which is the notice that is required to be issued to initiate a taking except in a few exceptional cases;
- “NTA” means the *Native Title Act 1993* (Cth);
- “occupier” means a person who, in exercise of a right of possession, is in actual occupation of the land, but does not include anyone who is in occupation merely as a member of the family or household of that person;

- “Private Property Rights Charter” means Premier’s Circular 2014/04 issued by the Western Australian State Government on 27th November 2014 as may be amended and/or replaced from time to time;
- “public work” means:
 - (i) a public work as defined in the *Public Works Act 1902* (WA), for example roads, water supply, schools; or
 - (ii) taking land for the grant of an interest in land to a person where the Minister has formed the opinion that the use or development of the land confers an economic or social benefit on the State of Western Australia or the relevant region or locality.

2. INTRODUCTION

The LAA authorises an acquiring authority to acquire, on behalf of the State, all or part of any land, or an interest in any land, by agreement to purchase or by the compulsory taking, for a public work.

The compulsory taking of land and compensation process is designed so that Government can acquire land for public works, while giving certain Interest Holders in the land the right to object and/or the right to claim compensation for the value of the land and improvements taken.

The LAA also allows an acquiring authority to authorise a person to enter onto land to do certain things before, or as part of, carrying out a public work. Depending on the circumstances, the land can be entered before or after the taking process has commenced.

The LAA requires that where an acquiring authority is either:

- (i) directly negotiating for the acquisition of land for a public work or seeking to obtain the Interest Holder’s consent to the taking of its land;
- (ii) exercising its power to compulsorily take land; or
- (iii) authorising a person to enter onto land to do certain things before or as part of carrying out a public work

certain Interest Holders in the land must be informed of procedures for:

- the taking of that land;
- payment of purchase monies or compensation for the land taken;
- rights of appeal or review; and
- rights as to the future disposition of land taken by agreement or compulsorily taken.

This document is the statement required to be given to certain Interest Holders in any of these cases.

However, it does not apply where it relates to land that is required for:

- (i) the Dampier to Bunbury Natural Gas Pipeline (DNBGP) Corridor; or
- (ii) a planning scheme under the *Planning and Development Act 2005*

as there is a separate Statement of Procedures to be given in each of those cases.

3. AGREEMENT TO PURCHASE OR CONSENT TO TAKE

As mentioned, the LAA (section 168) authorises an acquiring authority, on behalf of the State, in relation to all or part of any land that is required for a public work:

- (i) to enter into an agreement to purchase that land; or
- (ii) to obtain the Interest Holder's consent to the taking of its land.

In line with the Private Property Rights Charter acquisition by agreement should be attempted before privately owned land is compulsorily acquired, where this will not unduly compromise the advancement of the relevant community benefit or public interest.

Agreement to purchase or taking by agreement

An agreement to purchase or taking by agreement can have a number of advantages to both the acquiring authority and the Interest Holder.

From the perspective of the acquiring authority, reaching agreement could mean that, if a notice of intention to take has not yet been registered (which starts the process of compulsory taking), it is not necessary to do so, and the process for compiling land required for the public work can proceed more quickly and be a more cost effective use of public funds.

From the perspective of the Interest Holder, reaching agreement could mean the compensation is determined (if applicable) and paid much sooner. This would enable the Interest Holder to begin making plans to either move, if the extent of the land needed for the public work requires it, or otherwise deal with the forthcoming presence of the proposed work on part of the land.

If the land acquisition is going to necessitate relocating to a home or business premises elsewhere, the agreement may deal with the timing for provision of vacant possession to help in the relocation process in an orderly way.

Interest Holders should take legal advice on how such an agreement can be negotiated to meet their circumstances.

Where no agreement on price or compensation, but the Interest Holder consents to a taking

If no agreement is reached with the Interest Holder on the purchase price or other consideration, the amount of compensation will be determined by the State Administrative Tribunal or a court of competent jurisdiction, generally the Supreme Court of Western Australia (Supreme Court).

The other consideration may include the grant of an interest in Crown land in lieu of or together with a cash payment.

Compensation is determined in the manner set out below in clauses 6 – 8, which reflects the process and principles to be followed in the case of a compulsory taking.

Where no agreement on purchase or consent to taking

If agreement between the acquiring authority and the Interest Holder cannot be reached on any of these matters, and the acquiring authority still requires the land for the public work, acquisition of the land or the relevant interest in the land may proceed by a compulsory taking, subject to the procedures in clause 4 being followed. The land may also be entered before the compulsory taking is completed in the circumstances described in clause 5 below.

4. TAKING OF INTERESTS IN LAND

4.1. Notice of Intention to Take (NOITT)

The process to compulsorily take land is started by the acquiring authority issuing a “notice of intention to take” (NOITT).

The purpose of a NOITT is to make the Interest Holder aware that the land is subject to a proposed compulsory taking of land and to give the Interest Holder the right to formally object to the proposed taking.

Where any land is required for a public work and an agreement to purchase that land or provide other consideration for the taking of that land is entered into or that land is taken with the consent of the Interest Holder (discussed above in clause 3) the acquiring authority may or may not issue a NOITT.

If the taking is to occur without the consent of Interest Holder, a NOITT must be issued by the acquiring authority and registered on the certificate of title for that land, except in the 2 cases referred to in paragraph 4.3 below.

The NOITT is registered with the Registrar of Titles at the Western Australian Land Information Authority (Landgate).

As soon as possible after the registration of the NOITT, the persons referred to in section 170(5)(b) of the LAA (listed at paragraph 4.2 below) are served with a copy of the NOITT and a copy is published in a newspaper with Statewide circulation. This is usually published in the West Australian newspaper.

For native title holders, if Part 2, Division 3, Subdivision P of the NTA applies to the proposed acquisition of native title rights and interests, the giving of notice in accordance with the NTA satisfies the requirements of section 170(5)(b) of the LAA in relation to native title holders.

For native title holders, if there is no approved determination of native title and Part 2, Division 3, Subdivision P of the NTA does not apply to the proposed acquisition of native title rights and interests, the giving of notice in accordance with section 24MD(7) of the NTA satisfies the requirements of section 170(5)(b) of the LAA in relation to native title holders.

No transactions affecting the land the subject of a NOITT can be entered into without the prior written consent of the Minister. There are certain exceptions listed in section 172(7) of the LAA. A transaction that has been entered into without the prior written consent of the Minister is void.

Further, the land must not be built on or improved in any way without the Minister first giving written approval.

A NOITT remains current for twelve (12) months from the date it is registered on the certificate of title. The Minister can extend a NOITT by giving notice to the Interest Holders. A NOITT can be extended more than once.

The Minister may also cancel or amend a NOITT, or cancel a NOITT and substitute another NOITT, by a further notice, which must be served, registered and published in a similar way as the original NOITT.

In certain circumstances, the freehold proprietor, lessee of Crown land or native title holders may require the acquiring authority to take a small portion of land that will be left after the proposed taking, in addition to the land proposed to be taken.

4.2. Right to object under the LAA

If a NOITT is issued:

- the principal proprietor of land affected by the NOITT;
- any occupier of land affected by the NOITT;
- the holder of any mining, petroleum or geothermal energy rights in land affected by the NOITT; or
- any management body whose management order will be affected by the proposal,

may, alone or jointly with any other person or body so qualified, serve and lodge with the Minister an objection to the taking of the land.

If section 24MD(6A) of the NTA applies to a proposed acquisition of native title rights and interests, the native title holders also have a right to object under the LAA.

The objection must be in writing and:

- specify the full name and address of the objector;
- identify the land;
- specify the nature of the objector's interest in the land; and
- set out the grounds for objection.

The objection must be lodged within 60 days after the registration of the NOITT or such further time as the Minister may allow, which will be set out in the NOITT. A further extension can be requested from the Minister.

Issues relating to compensation are not a valid ground for objection. Compensation issues are dealt with after the taking of the land.

The Minister must consider the objections and any other representations made by objectors. Having considered them, the Minister will determine whether the NOITT will stand unchanged, be amended or cancelled, or cancelled and substituted by a new NOITT. Objectors will be notified of the Minister's decision.

4.3. Taking order

The Minister may make a taking order that is consistent with the NOITT if the

Minister is satisfied that a NOITT has been registered in relation to the land and either:

- no objections have been received within the required timeframe; or
- any objections received do not warrant the cancellation, amendment or cancellation and substitution of the NOITT; or
- every objector has consented in writing to the purchase or taking of the objector's interest.

Where a special Act has been passed authorising the construction of a railway, the Minister may also make a taking order consistent with that Act. No NOITT will be issued prior to the taking.

If the Minister is satisfied that it is necessary to use any land for a proposed public work and because of the urgency of the work or the difficulty in tracing the proprietors of the land, it is unreasonable or impractical to delay entry onto the land until the land has been taken, the Minister must determine the interests in land to be

taken. The Minister may then make a taking order, whether or not a NOITT has been issued.

4.4. When a taking order has been made

A taking order comes into effect upon registration of that order with the Registrar of Titles at Landgate.

As soon as possible after the registration of the taking order, the Minister must advertise an extract of the order in a daily newspaper with Statewide circulation.

A copy of the taking order and forms for claiming compensation under Part 10 of the LAA will be forwarded to each Interest Holder.

If section 24MD(6A) of the NTA applies, the native title holders will be notified in the same way.

A taking order may, at any time within 90 days after its registration at Landgate, be annulled or amended by the registration of an order to that effect. As soon as possible after it is registered, a copy of the order must be published in a daily newspaper with Statewide circulation.

In addition, a copy of the order annulling or amending the taking order together with forms for claiming compensation under Part 10 of the LAA must be served on the same persons who were served with the taking order.

When a taking order or an amended taking order, is annulled or amended, any person who would otherwise have been entitled to compensation is entitled to compensation for reasonable costs incurred, in relation to the taking, up to and including the date of taking, and for any actual damage caused by any entry onto the land.

A claim for either of these types of compensation must be made to the acquiring authority within 60 days after the date of registration of the annulling or amending order, or within such longer period as the Minister may allow.

If the parties fail to agree on the amount of the compensation in either of these cases, the amount may be determined in accordance with the compensation provisions of Part 10 of the LAA, in the manner set out below in clauses 6 - 8.

4.5. Effect of a taking order on interests in land taken

When a taking order is made and registered it has the effect of extinguishing all interests (including freehold) in the land taken, except for any interests that are specifically saved, or 'preserved' in the taking order.

The person(s) who formerly held interests in the land that has been taken have their interests converted into a right to claim compensation under Part 10 of the LAA. Details of how a claim for compensation is to be made and determined is set out below in clauses 6 - 8.

5. ENTRY ONTO LAND

The Minister may authorise persons to go on to land before the land is taken, to allow certain things to be done in relation to a proposed public work. This is commonly referred to as 'early entry'. In some cases, early entry may be before a NOITT is issued. In other cases, a NOITT or a taking order may never be issued.

5.1. Land required for railway

Where there is a special Act of Parliament authorising the construction of a railway, the Minister for Lands may authorise a person to enter on the land within

the corridor described in the special Act (referred to as the ‘authorised limits of deviation’) to do anything authorised by the special Act or the *Public Works Act 1902* (WA) to construct the railway and any ancillary public works.

In these circumstances, the principal proprietor, the occupier and the holders of native title rights and interests must be given at least 7 days written notice of early entry before the land is entered. The notice must give a description of the area of land to be entered upon, a description of what is proposed to be done and the time that it is expected to take. Further, those persons must also be advised of the effect of section 183 of the LAA and the procedures under Parts 9 and 10 of the LAA (this document), unless they have already been given that advice.

5.2. Entry onto land before a taking order in certain circumstances

If the Minister is satisfied that:

- (i) it is necessary for land to be used for a proposed public work;
- (ii) the Minister is authorised to take interests in land for that work; and
- (iii) because of the urgency of the work or the difficulty in tracing the proprietors of the land, it is unreasonable or impractical to delay entry onto the land until the land has been taken in accordance with the procedures in the LAA,

the Minister may authorise a person to:

- enter on the land;
- study the feasibility of the proposed public work;
- do anything necessary as preliminary or ancillary to starting construction of, or constructing or providing, the public work; and
- carry out the public work.

The power of the Minister to authorise commencement of work without a taking order in these limited circumstances applies whether or not:

- (a) a NOITT has been issued; or
- (b) the land has been entered under any other section of the LAA.

The Minister or an authorised person must, as far as is practicable, before entering the land give to the principal proprietor, the occupier and the holders of native title rights and interests at least seven (7) days written notice of early entry before the land is entered. The notice must give a description of the area of land to be entered upon, a description of what is proposed to be done and the time that it is expected to take.

Further, those persons must also be advised of the effect of section 186 of the LAA and the procedures under Parts 9 and 10 of the LAA (this document), unless they have already been given that advice.

As soon as practicable after any land has been entered, the Minister must determine the interests in the land to be taken for the public work and may make an appropriate taking order as if this determination were a NOITT.

6. COMPENSATION FOR LAND TAKEN

6.1. Persons entitled to compensation and making the claim for compensation

Every person whose land is taken under Part 9 of the LAA can claim compensation. Any person who has an interest in or who lawfully occupies land,

and who suffers damage under entry powers or for material that is removed and the land is not then subsequently taken, is entitled to compensation.

Compensation is payable by the acquiring authority for the land or interest taken, or the damage suffered. In the case of damage caused by entry, a person having an interest in the land must, during the period of the entry, give notice to the acquiring authority that the person will require compensation for such damage.

Claims for compensation are made under Part 10 of the LAA. Approved forms for compensation claims are available from the acquiring authority or from the Minister. The forms are also available on the Department of Planning, Lands and Heritage website: [Land Use Management forms \(Land Administration Act 1997\) \(www.wa.gov.au\)](http://www.wa.gov.au)

These forms will be provided at the same time as a copy of the taking order is given to each Interest Holder.

If a taking order includes land the subject of a management order on which a management body (not being a government body) has erected structures or improvements, the management body can claim compensation under Part 10 of the LAA for the depreciated value of those structures and improvements but is not otherwise entitled to compensation.

If an interest in land taken is held under any Act relating to the use of land for mining purposes, the holder of the interest is only entitled to claim compensation under Part 10 of the LAA for actual loss sustained by reason of the taking through damage to a mine on the land or the works connected with a mine.

6.2. Time limit for making claim for compensation

All claims for compensation must be served on the acquiring authority within six (6) months from:

- (a) the date of registration of the taking order; or
- (b) in the case of a claim for damage arising by reason of any entry on or occupation of the land or the removal of any material from the land and the land is not then subsequently taken, the date of the damage or removal of the material from the land.

The right to claim compensation **expires** at the end of **six (6) months** unless an extension of time to lodge a claim has been granted.

If a claimant requires a longer period of time in which to make a claim, an application for extension of time can be made to the Minister. If the Minister is satisfied that the application is reasonable and has been made in good faith, the Minister may extend the time.

When the time limit or the time limit as extended has expired, no action or proceeding can be taken against the acquiring authority for compensation.

6.3. Particulars of the compensation claim

A claim for compensation must be made in the approved form and must state:

- the full name and address for service of the claimant;
- a full description of the land the subject of the claim;
- the nature and particulars of the claimant's interest in the land;
- particulars of any lesser interests or encumbrances in respect of the land (e.g. such as a charge, lease or easement); and

- each matter on account of which compensation is claimed with full particulars of the nature and extent of the claim.

The claim for compensation must be served on the acquiring authority and accompanied by all deeds and documents necessary to establish the claimant's title to the interest or the land the subject of the claim which are in the claimant's custody, possession or power and an abstract or certified copy of all such deeds or documents as are not in the claimant's custody, possession or power.

If the claimant does not give full particulars of any matter mentioned above in his or her claim the acquiring authority may, by written notice, require the claimant to give the particulars within thirty (30) days of receipt of the written notice.

If these particulars are not given within sixty (60) days of receipt of the written notice or such extended time as a judicial member of the State Administrative Tribunal may allow, the claim is absolutely barred. ***In other words, compensation can no longer be claimed.***

6.4. Claimant may request compensation to be paid in land, goods or services

A claimant may request that the claim be satisfied in whole or part by compensation in a form other than money (e.g. by land exchange or the provision of goods or services).

If such a request is made, the acquiring authority must consider the request and negotiate in good faith with the claimant.

The Minister may also offer non-monetary consideration – refer to clauses 6.7, 8.13 and 8.15.

6.5. Where a claimant's title to the land is disputed

If the acquiring authority disputes a claimant's title to the land, or to some part of the land, it must serve on the claimant a notice in the approved form within 60 days after the service of the claim or, if further particulars were demanded, within 60 days after the further particulars were given.

If the acquiring authority disputes the claimant's title, the claimant may, upon giving eight (8) days written notice to the acquiring authority, apply to a Judge of the Supreme Court for an order:

- for a trial of any factual issues necessary to determine the question of title; and
- that any question of law arising from the dispute as to the claimant's title be argued to obtain the opinion of the court.

If the acquiring authority does not dispute the claimant's title within sixty (60) days of receiving the compensation claim, or within sixty (60) days after the receipt of further particulars, the acquiring authority is deemed to have admitted the claimant's title.

6.6. Where a claimant's title is not disputed, is only partially disputed or is confirmed by the Supreme Court

If the claimant's title to the land:

- is not disputed (as to whole or part) the acquiring authority must examine the claim within ninety (90) days after the service of the claim on the acquiring authority or within ninety (90) days after any particulars requested by the acquiring authority have been supplied by the claimant; or

(b) if the Supreme Court confirms (in whole or in part) a claimant's title to the land under dispute, the acquiring authority must examine the claim within ninety (90) days after the judgement of the Supreme Court.

When the claim has been examined the acquiring authority must prepare a report as to the value of the interest claimed over which there is no dispute and as to the damage sustained by the claimant by reason of the taking.

6.7. Offer of Compensation

As soon as possible after receipt of a report, the acquiring authority must serve on the claimant in the approved form, an offer of compensation with respect to the land or the interest in the land or the part of the interest in question (Offer of Compensation).

The Minister may offer interests in Crown land as part or as the whole of the compensation – refer to clauses 8.13 and 8.15.

6.8. Claim and Offer of Compensation may be amended

At any time before the claim for compensation is fully settled between the parties, and provided proceedings for determination of the amount of compensation have not been commenced in the Supreme Court or before the State Administrative Tribunal (Tribunal):

- the claimant can amend the claim, but only as to the amount of compensation claimed; and
- the acquiring authority can amend the Offer of Compensation.

Each of the claimant and the acquiring authority is required to give notice to the other of the amendment.

6.9. Rejecting an Offer of Compensation

If the claimant wishes to reject the Offer of Compensation or any amended Offer of Compensation made by the acquiring authority, the claimant must give the acquiring authority written notice in an approved form rejecting it within 60 days after service of the Offer of Compensation or the amended Offer of Compensation. *If this is not done, then the Offer of Compensation or any amended Offer of Compensation is deemed to have been accepted.*

6.10. Method of determining compensation when Offer of Compensation is rejected or is not made by the acquiring authority within time

If the claimant serves the acquiring authority with a written notice rejecting the Offer of Compensation or amended Offer of Compensation, the compensation payable to the claimant may be determined by any one of the following methods:

- agreement between the acquiring authority and the claimant;
- a legal action in the Supreme Court for compensation by the claimant against the acquiring authority under Part 10 of the LAA; or
- referring the claim to the Tribunal under Part 10 of the LAA.

If a claimant rejects the acquiring authority's Offer of Compensation or amended Offer of Compensation, and fails to take legal action in the Supreme Court or refer the claim to the Tribunal within six (6) months after service of the notice of rejection on the acquiring authority, the acquiring authority may apply to the Tribunal for a direction.

Before an acquiring authority applies to the Tribunal for a direction, the acquiring authority must give thirty (30) days' notice to the claimant of its intention to do so.

If an acquiring authority has not made an Offer of Compensation to the claimant within 120 days of:

- (i) if acquiring authority does not dispute the claimant's claim by the latest of:
 - (a) the day of service of the claimant's claim;
 - (b) the day of service of any amendment to the claim; or
 - (c) the day of compliance with any requirement for further particulars;or
- (ii) if the title of the claimant was disputed and the Supreme Court upheld the claimant's title in whole or in part – the day of the Supreme Court judgement,

the claimant may, on giving 30 days' notice of its intention to do so either:

- commence legal action in the Supreme Court for compensation against the acquiring authority; or
- refer the claim for the compensation to the Tribunal.

7. THE COURT AND THE STATE ADMINISTRATIVE TRIBUNAL

7.1. Notice of intention to commence Legal Action must be given

A claimant may not commence legal action in a court for compensation unless the acquiring authority has been given 30 days' written notice of those proceedings. The Supreme Court will determine the amount of compensation payable in respect of the taking of the land in such circumstances.

7.2. Referral of claim to Tribunal

A claimant who wishes to refer his or her claim to the Tribunal has two options with regard to the composition of the Tribunal:

- (i) if the claimant and the acquiring authority agree, the Tribunal may be constituted solely by a judicial member or a senior member who is legally qualified person;
- (ii) if either the claimant or the acquiring authority does not agree, the claimant must serve on the acquiring authority notice, in an approved form, of the appointment of an assessor together with copies of the assessor's consent to act and declaration.

This applies whether the claimant rejected the Offer of Compensation or no Offer of Compensation has been made.

Within thirty (30) days of being served with a notice of appointment of an assessor, the acquiring authority must:

- appoint an assessor and serve on the claimant a copy of the appointment in the approved form; or
- serve on the claimant an Offer of Compensation, or, if an Offer of Compensation has already been made, an amendment to the offer increasing the amount of compensation offered.

If the acquiring authority does not comply with the above, the claimant may request the President of the Tribunal to choose an assessor for the acquiring authority.

7.3. Composition of Tribunal

When the Tribunal is dealing with a claim for compensation, the Tribunal will consist of a judicial member or a senior member who is a qualified person, and two assessors, one appointed by the claimant and one by the acquiring authority; or if the claimant and the acquiring authority agree in writing, the Tribunal may be constituted solely by a judicial member or a senior member who is a qualified person.

8. ASSESSING COMPENSATION

The law and principles of compensation, and the procedures for dealing with a claim for compensation by a court or the Tribunal are complex. Claimants are strongly recommended to obtain expert legal advice as to how that law and principles apply to and affect the claim for compensation, and the procedures required to be followed.

8.1. Date from which compensation is assessed

Where land is taken by agreement, compensation is assessed as at the date of execution of that agreement, or such other date as agreed by the parties.

Where land is taken by way of a taking order, compensation is assessed at the date of registration of the taking order on the certificate of title of the land at Landgate, unless the taking order specifies the date of actual occupation of the land as the date of taking.

Where land is taken for a railway or other work authorised by a special Act of Parliament, compensation is assessed as at the first day of the session of Parliament in which the Act was introduced.

8.2. How compensation is assessed

In determining compensation for the land taken, regard is to be had to the value of the land with any improvements or the interest of the claimant in the land at the date from which compensation is assessed, and discounting any increase or decrease in value attributable to the proposed public work.

In addition, regard is to be had to the loss or damage, if any, sustained by the claimant by reason of:

- (a) removal expenses;
- (b) disruption and reinstatement of a business;
- (c) the stopping of building works in progress at the date when the land is taken and the consequential termination of building contracts;
- (d) architect's or quantity surveyor's fees actually incurred in respect of proposed buildings or improvements which cannot be commenced or continued as a consequence of the taking of the land; or
- (e) any other facts which the acquiring authority, the Supreme Court or the Tribunal considers it just to take into account in the circumstances of the case.

If freehold land is taken from a person who is also the owner of adjoining freehold land, regard is to be had to the amount of any damages suffered by the claimant:

- (a) due to the severing of the land taken from that adjoining land; or
- (b) due to a reduction of the value of that adjoining land,

if the value of any freehold land owned by the claimant is increased by the carrying out or proposed carrying out of the public work for which the land was taken, then the increase in the value of the freehold land will be set off against the amount of compensation that would otherwise have been payable to the claimant for a reduction in the value of any adjoining land above.

8.3. Transactions affecting the land

Where between the date of registration of a NOITT and the date at which compensation is to be assessed, a transaction relating to the land has affected the value of the land, regard is to be had to the value of the land at the date from which compensation is assessed and discounting the effect of the transaction.

As discussed above at clause 4.1, a transaction affecting land the subject of a NOITT cannot be entered into without the prior written consent of the Minister.

8.4. Improvements on the land

Where any improvements are made on the land after the registration of a NOITT and the consent of the Minister was not obtained, no compensation will be paid for such improvements.

In the case of a railway or other work authorised by a special Act of Parliament, the value of any improvements made after the first day of the session of Parliament in which the Act was introduced but before the registration of the taking order are allowed, not exceeding their actual cost.

If a NOITT was registered, the value of any such improvements will only be allowed if the Minister consented to the improvements.

8.5. Additional compensation for taking land without agreement

If land is taken without agreement, the Supreme Court or Tribunal, or an Offer of Compensation by the acquiring authority can include an additional amount of compensation. This may not be more than 10% of the amount of compensation awarded or offered, unless exceptional circumstances justify a higher amount. This is often referred to as 'solatium'.

8.6. Interest on compensation payments

- (1) If the land taken produces rent or profits, then at the option of the acquiring authority, either:
 - (a) the amount of the rent or profits received by the acquiring authority, less the reasonable costs of collection, for the period from the date of registration of the taking order to the date of payment of compensation or the date of the award of compensation by the Supreme Court or Tribunal, whichever is the earlier, is to be added to the compensation payable; or
 - (b) interest is to be paid on the amount of compensation for the same period referred to in a) above at the rate of 6% per annum or such higher rate as the acquiring authority, the Supreme Court or the Tribunal considers adequate having regard to the circumstances of the case.

If the land ceases to produce any rent or profits after the taking, interest is to be paid in accordance with paragraph (b).

- (2) If the land taken does not produce any rents or profits, interest is to be paid at the rate prescribed under section 8(1) of the *Civil Judgments Enforcement Act 2004* as at the date of early entry for construction or

carrying of the public work or the date of registration of the taking order, whichever is the earlier. The interest is payable from:

(a) the date of service of the claim for compensation on the acquiring authority; or

(b) the date of early entry for the construction or carrying of the public work,

whichever is earlier, to the date:

(c) when the Offer of Compensation was served on the claimant, if the compensation was awarded by the Tribunal or the Supreme Court is not more than the amount offered by the acquiring authority; or

(d) of settlement of the claim for compensation, in any other case.

(3) Subject to (1) & (2) above;

(a) when any amount representing an advance payment of compensation is paid to a claimant, interest on the total amount of compensation is payable only to the date of the first payment, and interest is then only payable on the balance outstanding from time to time; and

(b) when any amount is offered by the acquiring authority as an advance payment of compensation pending settlement of the claim and the offer is not accepted by the claimant within 30 days of the date of service of the offer of advance payment, no interest is payable from then on in respect of the amount offered by way of advance payment.

(4) If an Offer of Compensation or an offer of advance payment is made and the acquiring authority publishes in a daily newspaper with Statewide circulation a notice that the acquiring authority intends to make the payment and within 3 months after the publication of the notice, no person has been able or being able, has not agreed, to accept that payment or any portion of that payment, the acquiring authority may cause the moneys to be paid into the Supreme Court and dealt with under s249 of the LAA and thereafter no further interest is payable on the moneys.

8.7. Apportionment of rates and taxes

If land affected by a taking order:

(a) is unoccupied on the date of taking, all rates and taxes which are a charge on the land and are payable or paid by the claimant, are to be apportioned between the claimant and the acquiring authority as at that date; or

(b) is occupied on the date of taking, the rates and taxes referred to in paragraph (a) above are to be apportioned between the claimant and the acquiring authority as at the date when the claimant gave up possession to the acquiring authority or when, by agreement with the acquiring authority, the claimant ceased to be responsible for the payment of rates and taxes.

On the apportionment of rates and taxes above, the aggregate amount, if any;

(a) due by the claimant is to be deducted from the amount of compensation paid to the claimant; or

(b) paid by the claimant in respect of any period subsequent to the date on which rates and taxes are to be apportioned, is required to be added to the amount of compensation paid to the claimant.

8.8. Lessening the suitability of the land

If the Tribunal or Supreme Court considers that the claimant has, after registration of the NOITT, or, if no NOITT was issued, after the date of taking, done anything to the land which has the effect of making the land less suitable for the purpose of the public work, the Tribunal or Supreme Court is to take this into account and may deduct such amount from the compensation amount.

If the Tribunal or the Supreme Court considers that the action taken on the land by the claimant has increased the cost of the public work so that the increase in cost is greater than the value of the land taken, the Tribunal or the Supreme Court may order that the claimant pays to the acquiring authority the difference and the costs of the inquiry.

8.9. Advance payment of compensation or purchase money

Where a claim for compensation has been made, the acquiring authority may offer to the claimant an advance payment pending settlement of the claim or, whether or not an advance payment is offered, the acquiring authority may offer to rectify any damage caused to the claimant's land for which the claimant is entitled to claim compensation, pending settlement of the claim.

If the acquiring authority has made an Offer of Compensation and the claimant has not accepted an offer of rectification, the claimant may require the acquiring authority to pay an amount of not more than 90% of the Offer of Compensation as an advance payment, pending settlement of the claim.

In the case where the land or an interest in land is acquired by negotiation and agreement, payment of the purchase price for that land of interest in land will be paid at settlement.

Where an acquiring authority has offered the claimant an amount as an advance payment of compensation and this is not accepted by the claimant within thirty (30) days of that offer, no interest is payable to the claimant from the date of that offer on the amount offered.

8.10. Compensation for mortgaged land

If land, the subject of a claim for compensation, is mortgaged, then, on the application of the mortgagee, the compensation, or so much of it as is required for the purpose, will be paid to the mortgagee in discharge of the mortgage debt, up to the total of the compensation payable.

For this purpose, 'mortgage debt' includes the interest payable on the mortgage for a period of up to 6 months after the date of the taking.

8.11. Land being sold on payment by instalments

If land, the subject of a claim for compensation, was being purchased by the claimant at the date of taking by instalments, then, on application of the seller of the land, the compensation or so much of it as is required for the purpose, will be paid firstly in discharge of the balance of the purchase price then owing and, if any interest is owing in respect of the purchase price, secondly in payment of interest that has accrued on the purchase price during the 12 month period after the date of taking.

8.12. Land subject to rent-charge or annuity

If land, the subject of a claim for compensation, is subject to any rent-charge or annuity, the Tribunal or Supreme Court hearing a claim for compensation is to determine:

- (a) if the interest in land is part only of the interest subject to the rent-charge or annuity – what proportion of the rent-charge or annuity is to be redeemed so that the remaining interest constitutes as good a security for the remaining rent- charge or annuity as the whole of the interest constituted for the whole of the charge or annuity; and
- (b) what part of the compensation is to be paid to the party entitled in redemption of the rent-charge or annuity.

8.13. Minister may agree to grant easements etc. in lieu of compensation or purchase money

If the amount of compensation or purchase money to be paid to any person is determined by agreement, the Minister may agree to grant to the person any easement, right of way, right of occupation, or any other interest, or any right, privilege or concession in relation to the land designated for the public work, or any part of it, in satisfaction in whole or in part of the compensation claimed.

8.14. Court/Tribunal may award easement etc. in lieu of compensation

If the amount of compensation to be paid to any person is determined by the Tribunal or Supreme Court:

- (a) the acquiring authority may offer and the Tribunal or Supreme Court may award to the claimant, any easement, right of way, right of occupation, or any other interest, or any right, privilege or concession in relation to the land designated for the public work, or any part of it, in whole or in part satisfaction of the compensation claimed; and
- (b) the Tribunal or the Supreme Court may declare which (if any) of the easements, interests, rights, privileges or concessions so offered are to be granted to the claimant in satisfaction in whole or in part or in mitigation of the compensation claim.

8.15. Minister may grant surplus interests in land in lieu of compensation

The Minister, may, with the consent of the claimant, grant to the person or persons from whom the land has been taken or purchased, any interest in Crown land available to be granted or disposed of, in whole or in part satisfaction for any land taken or purchased.

The value of the interest, together with any money compensation, must not exceed the amount which it appears to the Minister would probably have to be paid if compensation were made wholly in money in the usual way.

8.16. Costs of the compensation claim

The costs of an action for compensation in the Supreme Court are at the discretion of the court. The costs of an action for compensation in the Tribunal will be in accordance with Division 5 of Part 4 of the *State Administrative Tribunal Act 2004*.

9. RIGHTS AS TO THE FUTURE DISPOSITION OF INTERESTS IN LAND

In certain circumstances former Interest Holders in land may have rights in respect of that land if, in the future, the land is no longer needed in whole or in part for the proposed public work.

9.1. Land taken for a public work used for another public work or the designation for the public work can be cancelled

Where any land is taken for a public work, there must be a designation on the certificate of title or certificate of Crown land title that the land has been taken for the specific public work.

Where any land is no longer required for the designated public work or is not exclusively required for the public work, the Minister may by order:

- (a) designate the land or a part of it, for another public work; or
- (b) cancel the designation, and it will be removed from the certificate of title or certificate of Crown land title.

In cases where paragraphs 9.2 or 9.3 apply, the Minister cannot exercise this power to designate the land or a part of it, for another public work or to cancel the designation until the requirements in that paragraph has been complied with and all persons entitled to exercise an option to purchase the land have declined to do so.

9.2. Option to purchase if interest less than freehold not required for public work

If an interest in land less than the freehold has been taken and designated for a public work, and the Minister is satisfied that the interest is not required for the public work, the holding authority must notify the holder of the freehold and grant the holder an option to purchase the interest.

The purchase price under the option will be the current market value of the interest as determined by the holding authority on the advice of the Valuer General.

9.3. Option to purchase freehold land, no longer required for public work

In certain cases outlined below, the holding authority must grant the former land owner or the legal representative of the former land owner's deceased estate (qualified person) an option to purchase the freehold land that was taken for a public work.

A grant of an offer to purchase such land is to be made where:

- (a) the freehold land was taken without agreement under the LAA or any other Act and either:
 - the taking or resumption was done less than 10 years ago; or
 - the land has not been used for any public work;
- (b) the Minister proposes to:
 - cancel the designation of the public work for which the freehold land was taken; or
 - change the designation for a public work that is not ancillary or incidental to the purpose for which the land was originally taken;
- (c) the land is not a small portion of land that was taken at the request of the former land owner;
- (d) the land has not been substantially improved since the taking; and
- (e) either -

- the land as a separate lot complies with the requirements of the *Planning and Development Act 2005*; or
- the land can be amalgamated with adjoining land, that is owned in freehold by a qualified person in such a way that the land when amalgamated is a separate lots(s) that complies with the *Planning and Development Act 2005*.

In all of the above cases, the holding authority must –

- publish once in a daily newspaper with Statewide circulation a notice to the effect that the land is no longer required for the public purpose for which it was taken; and
- serve a copy of that notice on each person who appears to be a qualified person.

A qualified person who wishes to apply for an option to purchase the freehold must apply in writing to the holding authority within 30 days, or such extended period approved by the Minister (Period), after the publication of the notice.

The holding authority must grant an option to purchase the freehold land to any applicant that the authority is satisfied is qualified, and notify any applicant of its decision within 60 days after the end of the Period.

The purchase price for the grant of the option will be the current market value of the freehold land as determined by the holding authority on the advice of the Valuer General.

If there is more than one applicant, the holding authority must satisfy itself as to which of the applicants is qualified and may determine such order or priority for the exercise of options granted as it thinks reasonable.

An option is to be granted on such terms and conditions as the holding authority considers reasonable and may include a condition prohibiting assignment of the option.

If any person is aggrieved with the decision of the holding authority in:

- not being granted an option to purchase;
- the priorities of the options being granted;
- the purchase price; or
- the other terms and conditions of the option,

that person may, within 21 days of receipt of notice of the decision or longer if approved by the Minister, lodge an appeal with the Minister for Lands for a review by the Governor under Part 3 of the LAA.

9.4. Request for determination

Where any freehold land has been designated for the purpose of a public work and is not being used for that work, a person who would have been qualified, if the requirements in paragraph 9.2 were to apply, may by notice in writing to the Minister, require the Minister to determine whether the land is required for the purpose of the public work or not.

A person who obtains a determination is not entitled to require another determination in respect of the interest for a period of 12 months after being notified of the determination.

If the Minister determines that the land is not required for the public work, the Minister must notify the holding authority of the decision and the holding authority must proceed with the offering of an option to purchase to such qualified applicants in accordance with paragraphs 9.2 or 9.3 above, as appropriate.

10. USE OF APPROVED FORMS

Many of the forms for claiming compensation (and for other purposes) must be in a form approved pursuant to the LAA. Interested parties are advised to ensure that they are using the correct forms. Copies of the approved forms can be obtained from the acquiring authority or from the website of the Department of Planning, Lands and Heritage:

[Land Use Management forms \(Land Administration Act 1997\) \(www.wa.gov.au\)](http://www.wa.gov.au)

11. TAKING UNDER OTHER ACTS

Land may also be taken under legislation other than the LAA. That legislation may adopt Parts 9 and 10 of the LAA either in whole or in part with modifications. Persons with interest(s) in land taken under other legislation are advised to consult the relevant Act.