

Compensation for Land Must be Fair

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Every day governments make decisions that have serious implications for members of the public. One area that is particularly relevant at the moment is the compulsory acquisition of land and compensation.

Throughout Australia there are a number of basic principles that apply in calculating the compensation that you are entitled to. Firstly, if it is a Federal Government department behind the resumption of your land you are entitled to compensation on "just terms." Also, regardless of whether it is a state or federal resumption, you are entitled to have compensation calculated on a liberal basis. A classic statement is that "the dispossessed owner has the right to be put, so far as money can do it, in the same position as if the land had not been taken from the owner."

Compensation can extend to losses over and above the market value of the land such as costs of removal or relocation of structures because of the loss of the land, loss of profits and the like. The owner is also entitled to reasonable legal and valuation fees.

Sometimes land can have what is termed "special value" to an owner over and above the price that the owner might obtain in the open market. It is a principle of compensation law that, in such a case, the owner should be paid for the particular value of the land to that owner – so the compensation takes into account this additional value.

There can also be certain unique characteristics of the land that need to be factored into the calculations. For example, the land might have the potential to be developed for a particular use or there might be a resource on the land that would increase its value.

Similarly, a dispossessed owner is entitled to have compensation assessed on the basis of the highest and best use of the land (although in such cases the value of improvements no longer required when the land is put to that use will be excluded).

A word of warning however, in my experience it is often very difficult to get what an owner would see as adequate compensation out of a government department – at least not without a fight.

Often, the owner will be insulted by the opening offer. Sometimes cases can even end up in the Land Court. So you have to prepare carefully and methodically and be focused.

Yes, you are fighting a large and well funded opponent but that does not mean that you cannot achieve a fair and reasonable result.

If anyone is affected by a proposed resumption, I would recommend that you obtain legal advice at the earliest opportunity.

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