

The Land Administration Act 1997

The *Land Administration Act 1997* (LAA) is Western Australia's principal legislation dealing with the acquisition of land for public works. The LAA is administered by the Minister for Planning and Infrastructure, in her statutory capacity as Minister for Lands, and the Department for Planning and Infrastructure. The Department undertakes land acquisition functions on behalf of the State and local government with the exception of those agencies which have their own special statutory powers and property acquisition staff. This brochure deals only with acquisitions under the LAA.

When may interests in land be taken?

The LAA provides that interests in land may be taken by the State for a public work. Section 2 of the *Public Works Act 1902* (PWA) defines the various undertakings which come within the meaning of a "public work". Other statutes may provide that additional undertakings coming within the PWA's definition – for example, the *Western Australian Land Authority Act* and the *Government Railways Act*.

Who may take interests in land?

The LAA empowers the Minister to take interests in land on behalf of the State or any "acquiring authority". An "acquiring authority", as defined in the LAA, is any agency (including a local government) empowered by statute to construct a public work. There are also other agencies or their Ministers which are empowered by their governing legislation to use the LAA's land acquisition powers and there are other acts (in particular planning legislation), which provide for acquisition of land. Finally, the LAA makes specific provisions for the delegation of the LAA's land acquisition powers to a number of Ministers and for sub-delegation to specified agencies.

There are a number of specialist agencies which undertake their own acquisitions. For example:

- Western Australian Planning Commission
- Main Roads Department
- Water Corporation
- Western Power

What is the Department's role?

The Department reports to the Minister for Planning and Infrastructure. Certain powers and responsibilities under the LAA are delegated to senior officers of the Department's State Land Services Branch.

Native Title and the State estate

The federal *Native Title Act 1993* (NTA), provides that Native Title rights exist in relation to lands which have not been alienated (eg., sold or leased) or used for government works, under circumstances defined by that Act. The NTA then prescribes the way in which land subject to Native Title may be dealt with by governments and allows that such land may be taken pursuant to a "compulsory acquisition Act" after due notice and consideration of objections.

About 93 per cent of Western Australia's area of 2,527,600 square kilometres comprises State estate – land administered under the LAA by the Minister for Lands and not alienated in fee simple to private parties. The majority of this land is potentially subject to Native Title.

The LAA is the State's "compulsory acquisition Act", for the purposes of the NTA. Before State land which is potentially subject to Native Title may be used for a public work (eg., a new road or a power transmission line) or leased or sold (eg., as part of a new townsite subdivision) it must either first be compulsorily taken in a manner satisfying the procedural requirements of the NTA, or an agreement must be reached with the relevant Native Title parties and registered in accordance with the provision of the NTA.

The Department undertakes this important function as part of its normal administration of the State estate.

How may interests in land be taken?

The LAA empowers the State to acquire land by negotiated purchase, or by taking (ie., compulsory acquisition). The latter process has also been known as "resumption", because the State is taking back (resuming) interests given in the original part of the affected land. Even with fee simple land, the State (represented by the Governor in WA) remains the ultimate owner.

What interests in land may be taken?

The LAA provides for the taking of any interest in land. A taking may take all interests in a specified parcel of land, or may take only a limited interest, such as an easement. Furthermore, a notice of taking may take all interests in land, except certain specified interests such as mining tenements.

What compensation must be paid?

On completion of a taking, all interests are converted to a claim for compensation. The LAA has detailed provisions for payment of fair compensation, with determination by agreement between the parties or by a court of competent jurisdiction or the State Administrative Tribunal.

When is negotiated acquisition used?

The preferred mode of land acquisition is by way of agreement under section 168 of the LAA. Every effort is made to negotiate settlement on fair terms. Compulsory acquisition is used as a last resort or where special circumstances warrant.

Who undertakes negotiations?

The Department may undertake negotiations on behalf of client agencies. Alternatively, the client agency may perform this function itself, generally in liaison with the Department (see notes below).

Conditions imposed on delegations to departmental officers under the LAA require the Valuer General to assess the valuation of property being acquired. Where the price negotiated falls within a specified margin of the Valuer General's valuation, the Department can approve purchase at officer level. Frequently, the Valuer General will be closely involved in negotiations and it may occasionally be necessary to obtain valuations by an independent valuer with costs usually being met by the client.

If negotiations are successful, the Department will project-manage the acquisition to finality ie., arrange settlement and attend to any required changes in land tenure after settlement.

What are the Department's requirements prior to negotiated acquisition?

The following requirements must be addressed by the client prior to the Department being instructed:

- the preferred site should be clearly identified (if part of a lot is required, specific dimensions must be provided for the required area);
- the site should be acceptable for the proposed purpose;
- funds must be immediately available (additional costs may be involved if taking is required – see note below);
- a check should be made on whether there are any other alternative sites available, particularly from the State estate;
- costs must have been taken into account for the provision of services to the site, if not already available ("services" covering legal access, power, water etc);
- zoning should be compatible or potentially compatible with the proposed use;
- if the land is to be held in a body other than the State, that body must be a legal entity capable of holding land under a statute which provides specific property powers – not just the usual "corporate powers" clause of many acts; and
- the LAA (section 168(2)) requires that a statement "in an approved form" be given to the land owner at the commencement of negotiations, advising of procedures and rights.

Should a client agency initiate negotiations prior to approaching the Department?

In some situations it is acceptable for the purchasing agency to enquire whether the registered proprietor is a willing vendor:

1. At an acceptable selling price; and
2. At or close to the Valuation services valuation.

However, under normal circumstances the purchaser should not initiate negotiations as this could complicate the Department's later involvement in negotiating the purchase of the land.

Exceptions may occur eg., local governments will normally negotiate an agreement before requesting the Department to undertake acquisition and dedication of roads.

When is compulsory acquisition used?

Interests in land may be compulsorily acquired under the following circumstances:

- serious attempts at negotiation have failed;
- the land is needed urgently for a public work and the acquisition is frequently preceded by a notice of entry (see notes below);
- the owner of the interest has consented to the acquisition (section 168(1)(b) of the LAA);
- the State has already entered into a contract with the owner to acquire the interest; or
- the affected land is State land and compulsory acquisition procedures are being employed to satisfy the requirements of the NTA.

What are the requirements for compulsory acquisition?

The Department's requirements are the same as for a negotiated acquisition.

In addition, clients such as "acquiring authorities" (as defined by the LAA) who do their own negotiations will need to provide:

1. Proof of negotiation;
2. Indemnity to the Minister for Lands against any claims or costs arising from the taking;
3. Proof of an owner's consent to acquisition, where relevant; and
4. Where a local government is taking land for a road, a statement that the appropriate resolution has been made pursuant to section 56 of the LAA (and advice of date).

What notification is given?

A Notice of Intention to Take must be lodged with the Department of Land Information (DLI) and registered against the relevant title. Copies of the notice are published in a State newspaper and served on the owner, occupier, any Native Title parties and any mining/petroleum right holders, who are invited to object to the proposed taking. Notification requirements are more extensive in relation to native title, involving publication in a number of periodicals, radio broadcasting and service on representative Aboriginal bodies.

The notice specifies:

1. A description of the relevant land;
2. The interest in land to be taken;
3. The purpose of the public work;
4. Where the plan can be inspected;
5. Reason why the land is suitable or needed;
6. The date from which the land is likely to be required; and
7. A name and place where objections may be served or enquiries made.

What are the procedures for objection?

Objections must be lodged within 60 days of registration of the Notice of Intention to Take. Objections should not be related to questions of valuation; these issues are attended to as part of the compensation resolution process, if resumption proceeds.

Objections received are referred by the Department to the client agency for comments, prior to a report being forwarded to the Minister for adjudication.

If the objection is dismissed by the Minister, taking action will proceed. Alternatively, the Minister or the Department may require the client agency to give further consideration to issues raised in the objection, conduct further negotiations, or consider other options. Ultimately, the Minister may decline to proceed with the taking.

How is taking completed?

If taking proceeds, a Taking Order is lodged with DLI and registered against the relevant title. A copy of the taking order is published in a State newspaper and served on the owner and the occupier. A form for claiming compensation accompanies the order, together with details on how to proceed with the claim.

From the date of registration, the specified interest in land becomes the State's property, and the former owner has instead a claim for compensation.

What is the Department's role in relation to compensation?

The acquiring authority is responsible for settling compensation. Where the Department is involved in a taking of land, it is acting on behalf of client agencies. Once the taking has been completed, in most cases the client agency will be asked to take direct responsibility for negotiating compensation with the former owner in accordance with the provisions of the LAA.

On receipt by the relevant agency, the completed claim form has to be certified as being in order by the State Solicitor's Office and comments are also sought from the Valuer General as to the amount claimed.

Both parties enter into further negotiation, and if a dead-lock occurs, the matter is referred to a court of competent jurisdiction (the District Court or the Supreme Court, depending on the amount of money involved) or to the Compensation Court, in accordance with the LAA's provisions or the State Administrative Tribunal.

In relation to acquisitions of State land undertaken to satisfy the procedural requirements of the NTA, the Department has a more immediate role in negotiating and settling claims for compensation and associated issues.

Does the former owner have any right to reclaim the land?

The LAA provides that, where land has been acquired for a public work and it becomes surplus to requirements, the former owner has certain entitlements. Those entitlements vary according to circumstances specified in the LAA. Generally speaking where:

1. The land was taken less than ten years previously, or has not been used for any public work; and
2. The land can be sold as a separate lot or can be amalgamated with adjoining land, owned by the former owner.

Then the former owner has a right to the land's return at current market value.

The Department retains records relating to a property's acquisition and advises the Minister on the extent and nature of a former owner's rights.

It is most important that agencies holding land liaise with the Department before they progress disposal of any government land to ensure the LAA's requirements are satisfied.

What powers of entry does the State have?

The LAA empowers the State to enter land to conduct surveys, carry out feasibility surveys or to commence works (where urgent need dictates). In each case, notice must be given as follows:

Entry for feasibility study	30 days	(s. 182)
Railways, under a Special Act	7 days	(s. 183)
Entry for survey, inspection	48 hours	(s. 184)
Entry for temporary occupation	7 days	(s. 185)
Entry for urgent commencement of work	7 days	(s. 186)

How long do the various processes take?

The length of time for the various procedures depends on the complexity of each action, with delaying factors including the following:

- any need for survey and plan preparation;
- need for further negotiation;
- resolution of planning issues;
- consideration of objections;
- legal complexities; and
- procedural requirements of the NTA.

Approximate average timeframes for the various actions are indicated below (from date of receipt of submission):

Type of Action	Timeframe
Notice of Entry – s. 186	6 weeks
Notice of Entry – Other	4-6 weeks
Notice of Intention to Take	2-3 months
Consideration of objection	2-3 months
Taking Order	2-3 months after survey
Negotiated purchase	18 months

Acquisition of State land for a public work (NTA):

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| 1. | If there are no objections | 6 months |
| 2. | If there are objections | 6-12 months |

Acquisition of State land for a third party grant (NTA):

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| 1. | If there are no objections or claims for Native Title | 9-15 months |
| 2. | If there are objections or claims for Native Title | 12-24 months |

What fees and charges are payable by a client agency?

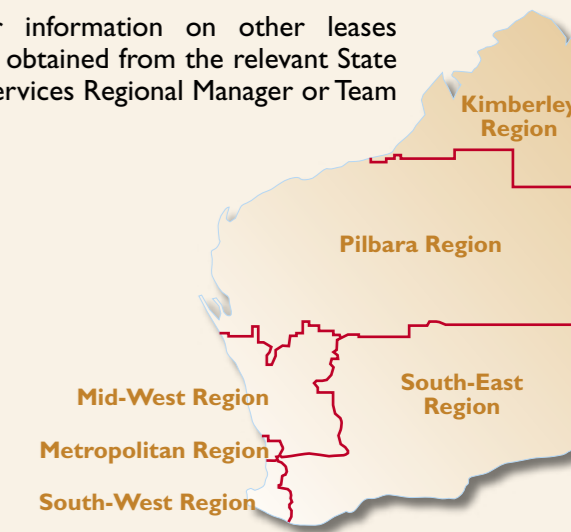
At this stage, there are no statutory fees payable to the Department for acquisitions it undertakes on behalf of clients.

Each agency is however, responsible for paying costs incurred in survey and plan drafting; purchase, settlement and transfer (for negotiated acquisitions); and compensation (for compulsory acquisitions).



Where to get help?

Further information on other leases may be obtained from the relevant State Land Services Regional Manager or Team Leader.



State Land Services	Phone	Fax
Manager, Metropolitan	9347 5107	9347 5002
Manager, Mid-West	9347 5100	9347 5003
Manager, Pilbara	9347 5034	9347 5001
Manager, South-East	9347 5049	9347 5004
Manager, Kimberley	9347 5052	9347 5002
Manager, South-West	9347 5090	9347 5005

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