ACQ-01 Acquisitions

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1 Acquisition by the Commonwealth of Australia

Land may be acquired by the Commonwealth in one of two ways:

- By Agreement:

Where the land is acquired by agreement, the Commonwealth and the registered proprietor enter into the normal process of sale by way of transfer and the Commonwealth only obtains the land and interest that the owner has to sell.

- By compulsory process:

Where the land is acquired by compulsory process, a notice is published in the Commonwealth Gazette that the land has been acquired for a public purpose. On publication of the notice all the land to which the notice applies is:

(i) vested in the Commonwealth; and

(ii) freed and discharged from all encumbrances of whatever nature.

The acquisition may also be for the purpose of an easement or include an easement for the benefit of the land acquired, over land not acquired. In these cases, the Second Schedule of the title is endorsed with an easement created by acquisition.

The original authority for the Commonwealth to acquire land was set out in the Lands Acquisition Act 1906. The Act has been repealed and replaced twice, in 1955 and 1989. An Act of this State, the Real Property (Commonwealth Titles) Act 1925 complements the Commonwealth Act and permits implementation of its provisions.

1.1 Notice of Pre-Acquisition Declaration
When a copy of the notice of a pre-acquisition declaration is served on the Registrar, a “Sundry” document is created and a memorandum noted on the title for the land affected. Such memorandum is a notice only and instruments over the subject land will be accepted where the notice of pre-acquisition declaration (Sundry document) has been noted in the Limitations, Interests, Encumbrances and Notifications panel (where there is one).

A notice of a pre-acquisition declaration may be varied, and the notice ceases to be in force if the interest is acquired, the notice is revoked, or the notice ceases to have affect because of either sections 25, 44(2) or 46(3) of the Lands Acquisition Act 1989.

1.2 Acquisition Declaration

All Commonwealth acquisitions by compulsory process are given effect to, by an application on a Blank Instrument form addressed to the Registrar, together with a copy of the notification in the Commonwealth Gazette.

Where the land acquired is not under the TLA, the application has the effect of bringing the land under the operation of the Act. The title acquired by the Commonwealth is said to be a grant of the fee simple without the normal reservations.

Where the land acquired is under the TLA, as a result of the application the title will be registered in the name of the Commonwealth (i.e: The Commonwealth acquires the whole estate and interest in the land, without the normal reservations contained in the previous owner’s title).

2 Acquisition Order under the LAA

At the request of a Local Government, the Minister for Lands under section 52 of the Land Administration Act 1997 (LAA) and by way of an Acquisition Order, may acquire as Crown land:

- any freehold land designated for a public purpose on a plan or sketch lodged with the Registrar;

- any private road (see ROA-03 Roads and their Closure); or

- any freehold land in a town site which the Minister proposes to abolish.

The Local Government before making a request must comply with the requirements set out in section 52 of the LAA. This includes taking all reasonable steps to give notice of the request to the holder of the freehold land to be acquired and to any adjoining freehold land holder of that land, unless the local government holds those lands. Notice must also be given to all suppliers of public utility services to the land.

Registration of an Acquisition Order extinguishes all encumbrances, including any section 167A TLA implied ROW burden rights, affecting the land acquired and vests the land as Crown land. Where an absolute caveat affects the land being acquired, it should be removed prior to registration of the Acquisition Order. There is no requirement for the duplicate title to be provided.

Compensation is payable to any holder of the freehold being acquired who suffers a loss, excluding any person with an interest in a private road that is acquired.