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# fact sheet

## for property managers

July 2020

### *Lands Acquisition Act 1989*

The *Lands Acquisition Act 1989* (Cth) (LAA) applies to most Commonwealth acquisitions and disposals of interests in relation to land. It has relevance for exploration and mining on land vested in the Commonwealth. It also authorises temporary entry to and occupation of land to assess its suitability. The LAA is an important part of the Commonwealth's Property Management Framework.

#### **Which agencies have to comply with the Lands Acquisition Act?**

The LAA applies to the acquisition or disposal of an interest in land by an 'acquiring authority'.

- Non-corporate Commonwealth entities that contract as 'the Commonwealth of Australia' are acquiring authorities.
- Corporate Commonwealth entities are also acquiring authorities if they are incorporated by or under a law of the Commonwealth or Territory, and are not exempted under the LAA or regulations. This will cover most corporate Commonwealth entities.
- Commonwealth companies are not acquiring authorities.

#### **Which entity holds the interest in land?**

For entities that have a separate legal status from the Commonwealth, check whether the entity is able to hold property in its own name. Usually the enabling legislation will deal with this issue.

#### **What types of transactions require Lands Acquisition Act approval?**

Any transaction that will result in an acquiring authority acquiring or disposing of an 'interest' in relation to land is likely to be subject to the LAA unless the transaction, or the entity, is exempted:

- an 'interest' in relation to land under the LAA includes any legal or equitable estate or interest in the land, a restriction on the use of the land or any other right, charge, power or privilege over or in connection with the land or an interest in the land
- accordingly easements, leases, freehold disposals and acquisitions will require approval
- licences, permits etc will also require approval even though they are usually regarded as providing personal rights rather than real property rights – this is because 'interest' in relation to land under the LAA is defined more broadly than the common law concept
- some security interests such as those consisting of mortgages and charges do not require an LAA approval.

## When do approvals under the Lands Acquisition Act have to be obtained?

The LAA pre-acquisition procedures will apply to some acquisitions. For others, the interest might be available in the market or the pre-acquisition procedures might not apply for some other reason. In all cases, there should be compliance with LAA requirements before a binding agreement comes into existence. This means that care needs to be taken to avoid creating a binding agreement; for example, through exchange of correspondence or heads of agreement before the relevant approvals have been obtained.

Commonwealth contracts that contain ancillary rights that have the effect of acquiring or disposing of an interest in land (or agreeing to do so in the future) are also likely to require approval under the LAA. For example, an agreement by the Commonwealth to grant an easement to a third party in the future.

## The role of the Department of Finance

The LAA is administered by the Department of Finance (Finance).

- The *Legal Services Directions* require agencies to consult Finance in relation to substantive legal advice on the interpretation of the LAA.
- Some LAA decisions can only be made by the Finance Minister or, in some cases, a Finance delegate. For example:
  - leases with a term in excess of 22 years
  - acquisitions of interests in land under compulsory acquisition processes.
- A number of approval powers have been delegated to agencies. The Lands Acquisition Delegation 2020 (No 2) can be found on the Finance website <http://www.finance.gov.au/property/lands-acquisition/delegations.html>

Accordingly, you should consult Finance early if the transaction will require:

- non-routine advice on the interpretation of the LAA
- an approval by the Finance Minister or a Finance delegate under the LAA
- compulsory acquisitions. Before discussing the compulsory acquisition process or compensation payments with landowners, agencies should consult with Finance (as Finance will be responsible for providing the relevant approval).

## Don't forget other approvals

There may be other Government approvals required for a property transaction in addition to the approvals under the LAA. Legislation which should be considered includes:

- *Public Governance, Performance and Accountability Act 2013* and Rules
- the agency's enabling legislation
- *Environment Protection Biodiversity and Conservation Act 1999*
- *Native Title Act 1993*
- *Building Energy Efficiency Disclosure Act 2010*.

There may also be Government policies relevant to the acquisition or disposal of an interest in land which have not been considered in this fact sheet such as the Whole-of-Australian Government Leasing Strategy, the Property Services Co-ordinated Procurement Arrangements, the Commonwealth Property Disposal Policy or the broader considerations under the Commonwealth Property Management Framework.

## More information

If you require further information about LAA issues in property transactions, please contact:

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