



# fact sheet

## for property managers

NUMBER 3

May 2008

### *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 also 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.

#### **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'.

- all agencies that contract as 'the Commonwealth of Australia' are acquiring authorities. This means that most FMA agencies are acquiring authorities.
- Commonwealth authorities 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 Commonwealth statutory authorities but will exclude most Commonwealth owned companies.

#### **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 will include 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.

### **The role of the Department of Finance and Deregulation**

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

- The *Legal Services Directions* require agencies to consult Finance in relation to substantive legal advice on the interpretation of the LAA.
- A number of approval powers have been delegated to agencies. The delegation can be found on the Finance website <http://www.finance.gov.au/property/lands-acquisition/lands-acquisition-delegation.html>
- However, 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
  - acquisition of freehold interests in land whether by agreement or under compulsory acquisition processes
  - disposals of freehold interests in land.

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, as these raise specific administrative considerations. Finance has requested that, before discussing compulsory acquisition process or compensation payments with landowners, agencies 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:

- the *Financial Management and Accountability Act 1997* and Regulations
- the agency's enabling legislation
- the *Environment Protection Biodiversity and Conservation Act 1999*
- the *Native Title Act 1993*.

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, for example:

- the Commonwealth Property Disposals Policy
- the Energy Efficiency in Government Operations Policy.

## More information

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

### Canberra

**Peter Jeffery** Senior General Counsel  
T 02 6253 7091 F 02 6253 7304  
peter.jeffery@ags.gov.au

---

**Terry De Martin** Senior Executive Lawyer  
T 02 6253 7093 F 02 6253 7316  
terry.demartin@ags.gov.au

---

**Kym Lockley** Senior Executive Lawyer  
T 02 6253 7461 F 02 6253 7316  
kym.lockley@ags.gov.au

---

**Andrew Miles** Senior Executive Lawyer  
T 02 6253 7100 F 02 6253 7316  
andrew.miles@ags.gov.au

---

### Sydney

**Mark Sheridan** Senior Lawyer  
T 02 9581 7569 F 02 9581 7445  
mark.sheridan@ags.gov.au

---

### Melbourne

**Josephine Ziino** Senior Executive Lawyer  
T 03 9242 1312 F 03 9242 1481  
josephine.ziino@ags.gov.au

---

**Teresa Miraglia** Senior Executive Lawyer  
T 03 9242 1493 F 03 9242 1481  
teresa.miraglia@ags.gov.au

---

### Perth

**Lee-Sai Choo** Senior Executive Lawyer  
T 08 9268 1137 F 08 9268 1771  
lee-sai.choo@ags.gov.au

---

### Hobart

**Peter Bowen** Deputy Director, AGS Hobart Office  
T 03 6210 2104 F 03 6210 2110  
peter.bowen@ags.gov.au

---

### Brisbane

**Peter Blennerhassett** Senior Executive Lawyer  
T 07 3360 5767 F 07 3360 5797  
peter.blennerhassett@ags.gov.au

---

### Adelaide

**Peter Watson** Senior Lawyer  
T 08 8205 4287 F 08 8205 4499  
peter.watson@ags.gov.au

---

### Darwin

**James Docherty** Senior Lawyer  
T 08 8943 1405 F 08 8943 1420  
james.docherty@ags.gov.au

---

This material was prepared in May 2008. The legislation referred to may have changed since that date. This material is provided to AGS clients for general information only and should not be relied upon for the purpose of a particular matter. Please contact AGS before any action or decision is taken on the basis of this fact sheet.

© AGS All rights reserved