



Crown  
Solicitor's  
Office

CLE Seminar Series 2019

# Property & Native Title: Compulsory acquisitions – things you need to know

13 March 2019

The seminar will start at 3.30pm

# Welcome and introduction



Jodi Denehy  
Director  
Property & Native Title Practice Group

# Things you need to know about Aboriginal land and native title



Louise Darcy, CSO Senior Solicitor

# Questions to ask before a compulsory acquisition takes place

- Is the compulsory acquisition permissible if an Aboriginal Land Council is registered proprietor or if there is an undetermined or appealed Aboriginal Land Claim over the land?
- Is the compulsory acquisition of Crown land permissible where native title exists in the land?

# Section 42B

## *Aboriginal Land Rights Act 1983 (NSW)*

### **42B Appropriation or resumption of Aboriginal land**

Despite anything in any Act, land vested in an Aboriginal Land Council must not be appropriated or resumed except by an Act of Parliament.

# Section 40(2)

## *Aboriginal Land Rights Act 1983*

### 40 Interpretation

...

(2) For the purposes of this Division, land is **vested** in an Aboriginal Land Council if:

(a) the Council has a legal interest in the land, or

(a1) the land is the whole or part of land that is, pursuant to an Aboriginal Land Agreement under section 36AA, to be transferred to the Council, or

(b) the land is the whole or part of land the subject of a claim under section 36 and:

(i) the Crown Lands Minister is satisfied that the land is claimable Crown land under section 36, or

(ii) the Court has ordered under section 36 (7) that the land be transferred to the Council,

and the land has not been transferred to the Council.

# ALC Searches

**REQUEST FOR SEARCH OF LAND CLAIM REGISTER**

**OFFICE OF THE REGISTRAR**  
ABORIGINAL LAND RIGHTS ACT 1983 (NSW)

Level 3, 410 Wentworth Street  
Sydney NSW 2008  
Tel 9513 1244  
PO Box 9444  
Sydney NSW 2008

Please send the completed form via e-mail to : [Adminofficer@oralra.nsw.gov.au](mailto:Adminofficer@oralra.nsw.gov.au)

Please print all details clearly using block letters

Full name of person requesting search: (name for correspondence)

Name of company:

Postal address:

E-mail address:

Office phone number:      Mobile phone:

Land identifiers: (lot, DP, reserve number – not Crown plan number or volfold)

Parish name:

County name:

To assist the office in assigning priorities, please answer the following:

1) Purpose for which information is required:

2) If urgent consideration is required, reason for urgency:

Signature, position and date:

**Please note:**

1. The register covers only Crown land.
2. All information is required, including a name for correspondence before the search will be completed.
3. The person to whom correspondence is addressed must sign the form.
4. Searches are completed within 10 working days and returned by e-mail
5. Please be aware, it may take longer than 10 working days to respond to search requests that contain more than 10 parcels or identifiers

- Office of the Registrar  
*Aboriginal Land Rights Act 1983 (NSW)*
- Submit Request for Search of Land Claim Register

# Questions to ask

## Aboriginal Land Claims

- Who is the Registered Proprietor?
- Has a land claim been lodged with the Registrar?
- Are there undetermined claims?
- Has the appeal period expired for any refused claims?
- Have granted claims not yet been transferred?



# To recap:

s. 42B of the *ALR Act*: land vested in a Land Council cannot be appropriated or resumed except by an act of Parliament

Land transferred under s. 36(1) is subject to any native title that exists in the land

An Aboriginal Land Agreement or other agreement might be negotiated

After obtaining a title search, request a search of the Register of Aboriginal Land Claims

# Options

## No Land Council interest

- Assuming no native title exists in the land, the compulsory acquisition process is available

## Land vests in Land Council

- Assuming no native title exists in the land, broker an agreement with the Land Council *or*
- Acquisition by act of Parliament

# Native title

- “Native title” is a term generally used to refer to recognition under the Common law that Aboriginal people had rights and interests in the lands and waters of Australia before sovereignty was claimed by the Crown

# Section 7A *Land Acquisition (Just Terms Compensation) Act 1991*

An acquiring authority is authorised to:

1. acquire native title rights and interests in relation to land in the same way that other interests in the land may be acquired; and
2. comply with any relevant procedure under the *Native Title Act (1993)* (Cth) for a valid acquisition of those rights and interests.

# Relevant procedures under the *Native Title Act*

- Relevant procedures under the *Native Title Act* referred to in s. 7A of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) include:
  - a) the right to negotiate procedure under Subdivision P of Division 3 of Part 2,
  - b) the procedure under section 24MD(6B),
  - c) the procedure under an indigenous land use agreement.

# Is there native title? – searches

- The National Native Title Register is established under s. 192 of the *Native Title Act* and kept by the Registrar
- Pursuant to that Act, the Register may consist of two or more registers, each of which contains so much of the information that must be entered into the Register as the Registrar determines

# The search registers

1. Register of Native Title Claims
2. National Native Title Register
3. Register of Indigenous Land Use Agreements

A request may be made to the National Native Title Tribunal for a search of Register information

# 1. Register of Native Title Claims

- The Native Title Registrar is to enter information on the Register of claims accepted for registration under s. 190A
- Details of any claims that have been found to satisfy conditions equivalent to those set out in sections 190B and 190C, being claims of which the Registrar is notified by a recognised State/Territory body, also should be entered on the Register

# Example

Search this site...

ABOUT US FUTURE ACTS INDIGENOUS LAND USE AGREEMENTS NATIVE TITLE CLAIMS ASSISTANCE SEARCH THE REGISTERS & APPLICATIONS

**Search Register of Native Title Claims**

Search National Native Title Register

Search Register of Indigenous Land Use Agreements

Search Applications and Determinations

Search Future Act Applications and Determinations

## Search Register of Native Title Claims

The Register of Native Title Claims (RNTC) contains information about all claimant applications that have been registered. The Registrar is responsible for maintaining the RNTC.

Further information about the RNTC is available.

Tribunal file no.

Federal Court file no.

Application name

State or Territory ALL

Representative A/TSI body area

Local government area Council Of The City Of Sydney

Date filed between  and

Sort by Date filed

Search >

No results for current search criteria

# Example

ABOUT US FUTURE ACTS INDIGENOUS LAND USE AGREEMENTS NATIVE TITLE CLAIMS ASSISTANCE SEARCH THE REGISTERS & APPLICATIONS

Search Register of Native Title Claims

Search National Native Title Register

Search Register of Indigenous Land Use Agreements

Search Applications and Determinations

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Tribunal file no.

Federal Court file no.

Application name

State or Territory ALL

Representative A/TSI body area

Local government area Singleton Council

Date filed between  and

Sort by Date filed

Search >

Your search returned **3** matches.

Application name	Date filed	Tribunal file no	Federal Court file no	Date claim entered on register
Warrabinga-Wiradjuri #7	31/08/2018	NC2018/002	NSD857/2017	22/11/2018
Scott Franks and Anor on behalf of the Plains Clans of the Wonnarua People	19/08/2013	NC2013/006	NSD39/2019	16/01/2015
Plains Clans of the Wonnarua People #2	02/08/2012	NC2012/004	NSD1093/2012	14/09/2012

# 2. National Native Title Register

ABOUT US | FUTURE ACTS | INDIGENOUS LAND USE AGREEMENTS | NATIVE TITLE CLAIMS | ASSISTANCE | SEARCH THE REGISTERS & APPLICATIONS

Search Register of Native Title Claims

**Search National Native Title Register**

Search Register of Indigenous Land Use Agreements

Search Applications and Determinations

Search Future Act Applications and Determinations

## Search National Native Title Register

The National Native Title Register (NNTR) is a register established under s. 192 of the *Native Title Act 1993* (Cth).

The NNTR contains determinations of native title made by:

- the High Court of Australia
- the Federal Court of Australia
- or a recognised body such as South Australia's Supreme Court and Environment Resources and Development Court.

Further information about the NNTR is available.

Tribunal file no.

Federal Court file no.

Short name

Case name

State or Territory

Registered Native Title Body Corporate

Representative A/TSI body area

Local government area

Determination type

Legal process

Determination outcome

Determination date between  and

Sort by

# Native Title search results



**Request for Search of Tribunal Registers**  
Search for overlapping interests i.e.: Is there a native title claim, determination or land use agreement over this land?  
**Please note: the NNTT cannot search over freehold land.**  
For further information on freehold land: [Click Here](#) (NNTT website)

## 1. Your details

NAME:

POSITION:

COMPANY/ORGANISATION:

POSTAL ADDRESS:

TELEPHONE:

EMAIL:

YOUR REFERENCE:

DATE OF REQUEST:

## 2. Reason for your request

Are you a party to a native title proceeding?  Yes  No

Please provide Federal Court/Tribunal file number/or application name:

**OR**

Do you need to identify existing native title interests to comply with the *Native Title Act 1993* (Cth) or other State/Territory legislation?  Yes  No

Please provide brief details of these obligations here:

## 3. Identify the area to be searched

If there is insufficient room below, please send more information on a Word or Excel document.

### Mining tenure

State/Territory:

Tenement ref/s:

**OR**

### Crown land / non-freehold tenure

Tenure type:  Lease  Reserve or other Crown land

State/Territory:

Lot and plan details:

Pastoral Lease number or name:

Other details: (Town/County/Parish/Section/Hundred/Portion):

Email completed form to: [GeospatialSearch@nntt.gov.au](mailto:GeospatialSearch@nntt.gov.au)

# Extract example

## Extract from the National Native Title Register

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### Determination Information:

<b>Determination Reference:</b>	Federal Court Number(s): NSD2079/2017 NNTT Number: NND2019/001
<b>Determination Name:</b>	Darkinjung Local Aboriginal Land Council v Attorney General of New South Wales
<b>Date(s) of Effect:</b>	5/02/2019
<b>Determination Outcome:</b>	Native title does not exist

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### Register Extract (pursuant to s. 193 of the *Native Title Act 1993*)

<b>Determination Date:</b>	05/02/2019
<b>Determining Body:</b>	Federal Court of Australia

### ADDITIONAL INFORMATION:

Not Applicable

### MATTERS DETERMINED:

#### THE COURT ORDERS THAT:

1. Native title does not exist in relation to the areas of land and waters comprised in and known as:
  - (a) Lot 1008 in DP1239890;
  - (b) Lot 1007 in DP1239890;
  - (c) Lot 1004 in DP1239890;
  - (d) Lot 10 of Section 18 in DP758569;
  - (e) Lot 8 of Section 18 in DP758569; and
  - (f) Lot 9 of Section 18 in DP758569.

*Note: The National Native Title Register may, in accordance with s. 195 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.*

# To recap native title:

An acquiring authority may also acquire the native title rights and interests

An acquiring authority must comply with any relevant procedure under the *Native Title Act*

Unless the Federal Court of Australia has made a determination that native title does not exist in particular land, it should be assumed that it may continue – even where there is no current native title claim over an area

Does native title exist? Check the Registers:

1. Register of Native Title Claims
2. National Native Title Register
3. Register of Indigenous Land Use Agreements

# Practical tips for searches

- Use an Approved Information Broker (approved by Land Registry Services)
- Be aware of the currency of Aboriginal Land Claims and Native Title searches as claims can be made after initial searches are undertaken
- Requesting searches directly from the Registrars should also be made in addition to your own online searches
- For native title searches, the Extracts and schedules can offer relevant information
- Legal analysis of extinguishment (tenure) documents should be undertaken with appropriate assistance

# Things you need to know about compulsory acquisition procedures

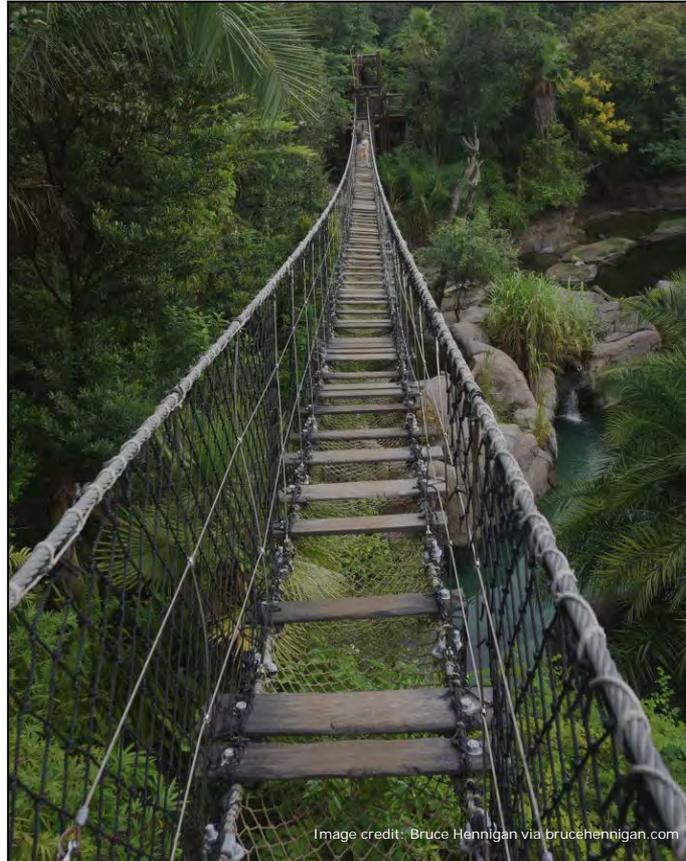


Paul Rankins, CSO Senior Solicitor

# Seemingly straightforward



# Potentially catastrophic if you put a foot wrong



# Road Map

1. What are you acquiring? What *exactly* do you need?
2. Do you have the power to acquire it?
3. Ok, you have the power, how do you do it?
4. Agreements under s. 30 of the JTC Act
5. Compulsory process



Image credit: Zmicer Kavabata via Shutterstock

# Identifying *exactly* what you're acquiring

- **land** includes any interest in land
- **interest** in land means:
  - (a) a legal or equitable interest in the land, or
  - (b) an easement, right, charge, power or privilege over, or in connection with, the land.

# Scenario One



# Scenario One

- Acquisition for a light rail corridor
- Acquiring authority needs:
  1. Permanent ownership of the rail line and stations
  2. Temporary occupation of land on either side for construction compound

# Scenario Two



Image credit: denisbin via flickr.com

# Scenario Two

- Acquisition for a large stormwater pipe
- Acquiring authority:
  1. Doesn't need to own the land
  2. Wants ongoing access for maintenance and repairs

# Scenario Three



- Underground tunnel for roadway

# Do you have the power to acquire the interest?

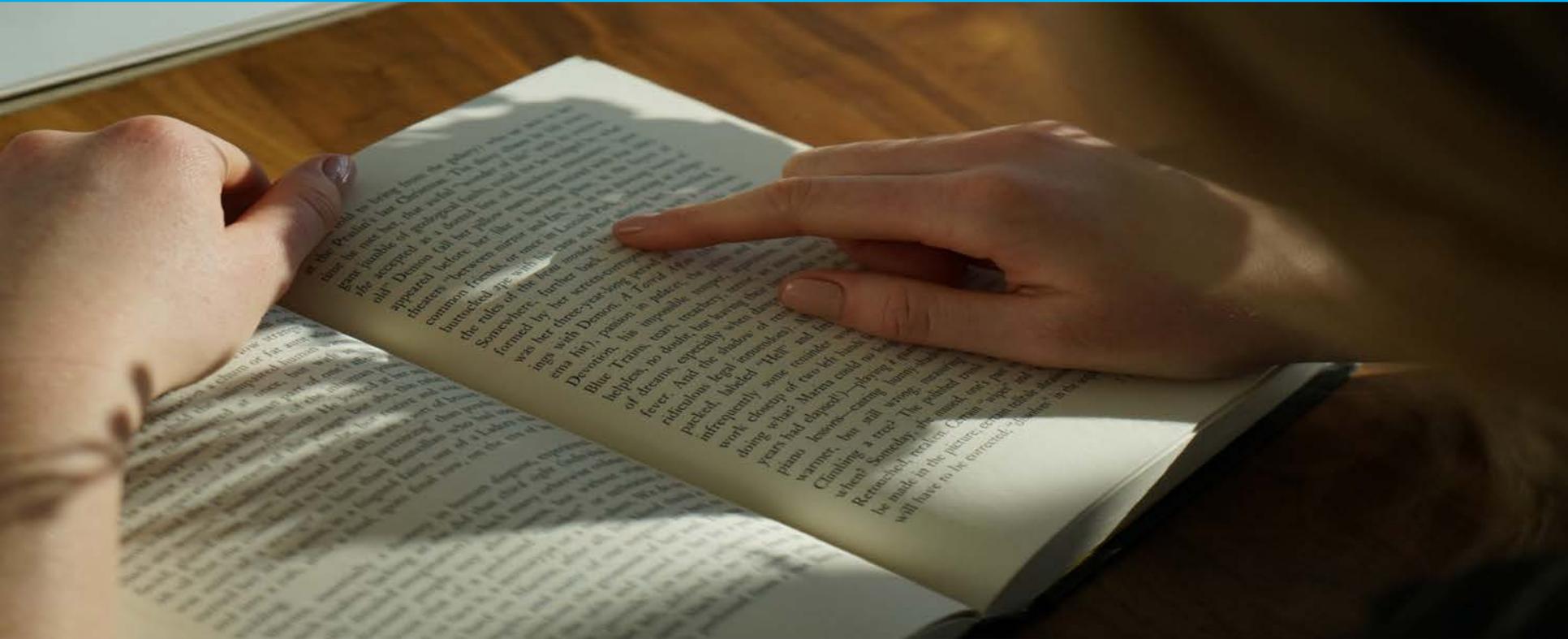


- 47 statutes that contain compulsory acquisition powers for authorities

# Do you have the power to acquire the interest?

- The real question is whether you are exercising the acquisition power for a proper purpose

# Read the acquisition power carefully



# Read the acquisition power carefully

For example:

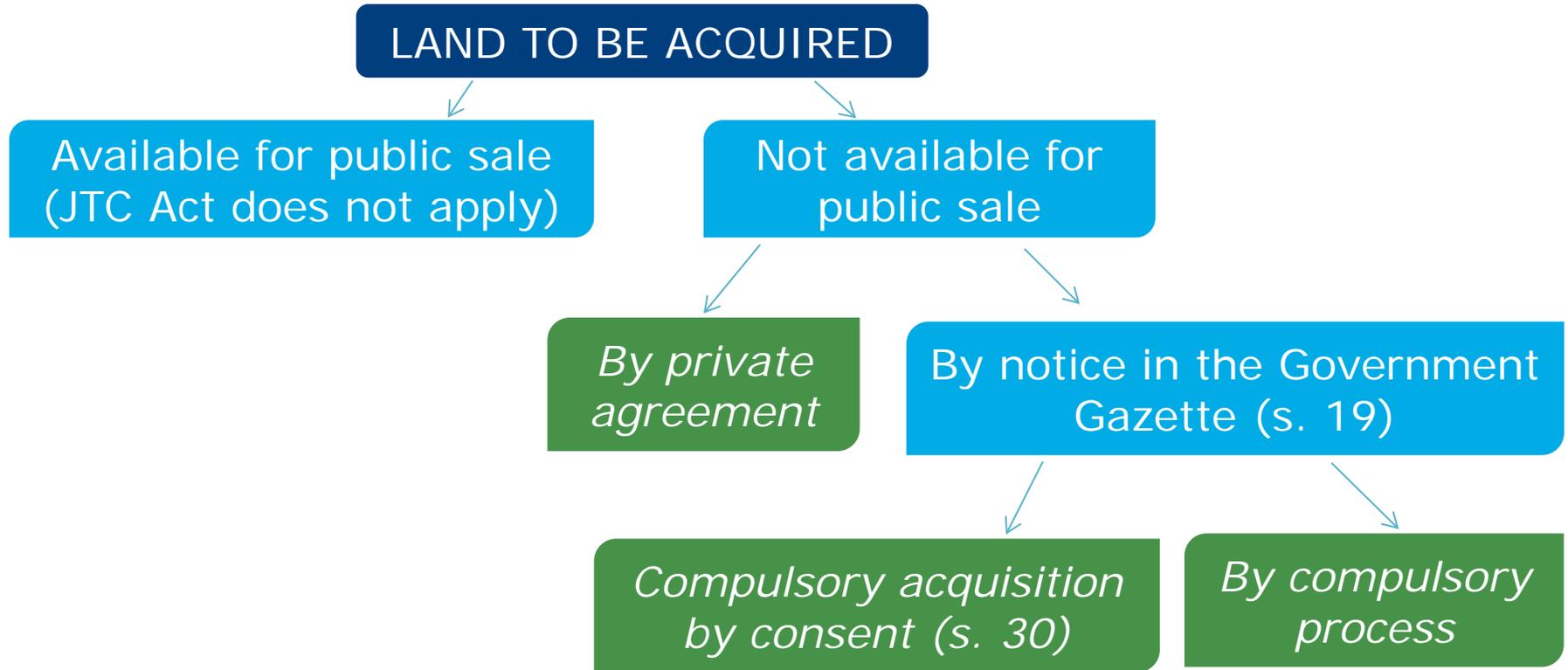
- s. 177 and s. 178 of the *Roads Act 1993*
- s. 125 of the *Education Act 1990*
- s. 186 and s. 187 of the *Local Government Act 1993*

# *Roads and Maritime Services v Desane Properties Pty Ltd [2018] NSWCA 196*



Image credit: Desane

# You have the power – how do you do it



# Section 10A: negotiation for acquisition



# Section 10A: negotiation for acquisition

- Personal Manager
- Transaction Manager
- Place Manager



<https://www.shelbycountyreporter.com/2015/09/14/helena-approves-amendment-on-door-to-door-soliciting-ordinance/>

# Section 30 agreements

## 30 Compulsory acquisition with consent of owners

- (1) An authority of the State and the owners of land may agree in writing that the land be compulsorily acquired by that authority.
- (2) The provisions of Division 1 (Pre-acquisition procedures) and Part 3 (Compensation for acquisition of land) do not apply to any such compulsory acquisition if the owners have agreed in writing on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

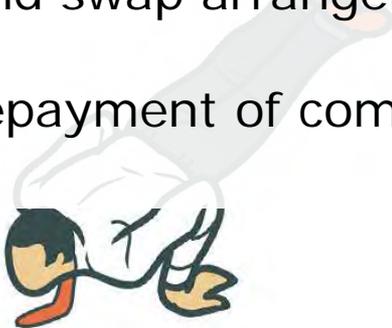
# Section 30 agreements



# Section 30 agreements

Some examples:

- Nil consideration
- Land swap arrangements
- Prepayment of compensation



# Compulsory acquisition



90-120 days



<https://www.groupon.es/deals/utensilios-de-cocina-san-ignacio-6>

# Compulsory acquisition

## Notifying the “Generals”

- Registrar-General
- Valuer-General



[https://nl.m.wikipedia.org/wiki/Bestand:US\\_Joint\\_Chiefs\\_of\\_Staff\\_Apr\\_1994.jpg](https://nl.m.wikipedia.org/wiki/Bestand:US_Joint_Chiefs_of_Staff_Apr_1994.jpg)

# Road Map

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<https://www.surveymonkey.com/r/PNTMar19>

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[csomarketing@cso.nsw.gov.au](mailto:csomarketing@cso.nsw.gov.au)