

South Australia

# **Land Acquisition (Miscellaneous) Variation Regulations 2020**

under the *Land Acquisition Act 1969*

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## **Part 1—Preliminary**

### **1—Short title**

These regulations may be cited as the *Land Acquisition (Miscellaneous) Variation Regulations 2020*.

### **2—Commencement**

These regulations come into operation on the day on which they are made.

### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

## Part 2—Variation of *Land Acquisition Regulations 2019*

### 4—Substitution of regulation 8

Regulation 8—delete regulation 8 and substitute:

#### 8—Terms of tenancy

- (1) For the purposes of section 24(7)(b) of the Act, the terms and conditions determined by the Authority must, subject to any order of the Court to the contrary, include terms and conditions that—
  - (a) prevent improvements affixed to the land or attached to any part of the premises, or any fixtures and fittings, from being removed without the permission of the Authority; and
  - (b) require the premises to be used in the same manner as the existing use of the premises as at the date of acquisition (but only where that use was a lawful use); and
  - (c) require the occupier of the land to maintain (at least) the following insurance:
    - (i) building insurance;
    - (ii) plate glass insurance (commercial tenants);
    - (iii) public liability insurance; and
  - (d) exclude any warranty of fitness for purpose in relation to the premises; and
  - (e) provide that statutory rates and taxes are the responsibility of the Authority after the date of possession; and
  - (f) allow the Authority to review the rent payable no more than once every 12 months; and
  - (g) require the tenant, at the tenant's cost, to keep all fixtures and structures on the land in good state and repair; and
  - (h) allow the Authority to enter the land to carry out any works the Authority reasonably believes are necessary (including a requirement that the Authority must use reasonable endeavours to minimise any disruption to the tenant); and
  - (i) allowing the Authority to give notice (being not less than 1 month) of determination of the tenancy and requiring the tenant at the expiration of the period of notice to surrender the land to the Authority; and
  - (j) provide that maintenance and repairs, should they be required, are the responsibility of the Authority; and
  - (k) prevent the tenant from assigning, underletting, or charging or parting with the possession of the land or any part of the land; and

- (1) without limiting paragraph (b), require the tenant not to do, or to permit or suffer to be done, on the land anything that may be or become a nuisance or annoyance to the Authority or to the occupiers of any neighbouring property.
- (2) Nothing in this regulation limits any other terms and conditions that may be determined by the Authority under section 24(6) of the Act.
- (3) Nothing in this regulation prevents the Authority from waiving, conditionally or unconditionally, a requirement under a term or condition referred to in this regulation.

## **5—Insertion of regulations 10 to 16**

After regulation 9 insert:

### **10—Valuers conference**

Pursuant to section 23(10) of the Act, the following provisions apply in relation to a valuers conference convened, or to be convened, under that section:

- (a) no later than 2 weeks prior to the conference, each valuer must provide the other or others a copy of any valuation of the subject land made by the valuer;
- (b) the valuers must, in accordance with any requirements determined by the Authority (including requirements as to manner and form), prepare and provide to the Authority and the claimant a joint valuers statement in respect of the subject land;
- (c) a joint valuers statement must include a summary of matters of fact and opinion on which the valuers agree and those on which they disagree, and the reasons for any disagreement;
- (d) a joint valuers statement is, unless otherwise ordered by the Court, admissible in proceedings between the Authority and the claimant.

### **11—Settlement conference**

- (1) The Authority must cover the costs of convening a settlement conference under section 23BA of the Act, including the costs of engaging the conference coordinator.
- (2) For the purposes of section 23BA(2)(b) of the Act, a conference coordinator must be qualified as a legal practitioner and be of at least 7 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State).
- (3) For the purposes of section 23BA(4) of the Act, the reasonable costs of the claimant will be taken to be the professional costs reasonably incurred by the claimant in preparing for, or in the course of, a settlement conference, not exceeding—
  - (a) in the case of legal costs—the applicable scale of costs (if any) of a court or tribunal of this State; and

- (b) in the case of costs relating to the services of a valuer, or other professional costs—the generally accepted industry rate (if any) applicable to such services.

**12—Prescribed amount—section 26A of Act**

For the purposes of section 26A(1) of the Act, the amount of \$10 000 is prescribed.

**13—Prescribed amount—section 26B of Act**

For the purposes of section 26B(1) of the Act, the amount of \$10 000 is prescribed.

**14—Prescribed amount—section 26C of Act**

For the purposes of section 26C(1) of the Act, the amount of \$10 000 is prescribed.

**15—Prescribed period—section 26D of Act**

- (1) For the purposes of section 26D(1)(b) of the Act, the period of 12 months is prescribed.
- (2) For the purposes of section 26D(1)(c) of the Act, the replacement land must be in South Australia.
- (3) For the purposes of section 26D(2) of the Act, the stamp duty and registration fees are payable in relation to the purchase of replacement land up to, but not exceeding, the market value of the acquired land.
- (4) Pursuant to section 26D(4) of the Act, where the acquired land was not occupied by the owner of the land, the replacement land—
  - (a) must be of a generally similar nature to the acquired land; and
  - (b) must be purchased under the same ownership structure as the acquired land.

**16—Prescribed amount—section 26H of Act**

For the purposes of section 26H(3) of the Act, the amount of \$50 000 is prescribed.

**6—Amendment of Schedule 1—Forms**

- (1) Schedule 1, Form 1, Notice of intention to acquire land—after clause 1 insert:

**1A—Obligation to notify Authority of other interests in land (section 10A)**

If you are the owner of the land to which this notice relates, you must, no later than 14 days after receiving this notice, notify the Authority of any other person who, to your knowledge, has an interest in the relevant land and the nature of that person's interest.

It is an offence to, without reasonable excuse, refuse or fail to comply with this requirement.

- (2) Schedule 1, Form 1, Notice of intention to acquire land, clause 4—delete "14 days" and substitute:

21 days

- (3) Schedule 1, Form 1, Notice of intention to acquire land, clause 6—delete clause 6 and substitute:

### **6—Right to compensation (Part 4 Division 2)**

Both you and the Authority are required to negotiate in good faith in relation to the compensation payable for the acquisition of the land to which this notice relates. A failure to do so by either party may be taken into account by the Land and Valuation Court in awarding costs (see sections 23(1) and 36(b)(iii) of the *Land Acquisition Act 1969*).

**Note—**

- The Authority is required to negotiate with the persons who have or had, or claim to have or to have had, an alienable interest in the land that is divested or diminished by the acquisition or the enjoyment of which is adversely affected by the acquisition.
- If the land is native title land, any party may request the Environment, Resources and Development Court to mediate between the parties to assist in obtaining their agreement on the matters at issue between them.
- The Authority may offer, and must consider any request made by a party who is the holder of native title to the negotiations for, non-monetary compensation (eg a transfer of land, the provision of goods or services, or the carrying out of work for the reinstatement or improvement of land remaining in the claimant's ownership after acquisition).
- The land is acquired by notice of acquisition. Notice of acquisition may be given at any time after 3 months, and before 18 months or a longer period fixed under section 15(4a) of the *Land Acquisition Act 1969*, from the time the first of any notice of intention to acquire land is or was given in respect of the land to which this notice relates.
- At that time the Authority is required to make an offer to the person or persons whom it believes to be entitled to compensation for the acquisition, stating the amount of compensation the Authority is prepared to pay.
- However, if the Authority considers that, at the time the notice of acquisition is given, the amount of compensation is unable to be determined, the Authority must make an offer to the person or persons whom it believes to be entitled to compensation as soon as reasonably practicable after the amount is able to be determined.
- The claimant may dispute the offer made by the Authority.

- Part 4 Division 2 of the *Land Acquisition Act 1969* governs compensation. In particular, section 25 sets out the principles for determining compensation.
- In the event that the amount of compensation does not exceed \$10 000, the payment of compensation may be made directly to you in a manner determined by the Authority, rather than being paid into the Land and Valuation Court (see section 26A of the *Land Acquisition Act 1969*).

- (4) Schedule 1, Form 1, Notice of intention to acquire land—after clause 7 insert:

**7A—Payment of professional costs relating to acquisition  
(section 26B)**

If you are the owner in fee simple of the land to which this notice relates, you may be entitled to a payment of \$10 000 from the Authority for use towards the payment of professional costs in relation to the acquisition of the land.

Professional costs include legal costs, valuation costs and any other costs prescribed by the *Land Acquisition Regulations 2019*.

- (5) Schedule 1, Form 2, Notice of intention to acquire native title in land for purpose of conferring rights or interests on third party—after clause 1 insert:

**1A—Obligation to notify Authority of other interests in land  
(section 10A)**

If you are the owner of the land to which this notice relates, you must, no later than 14 days after receiving this notice, notify the Authority of any other person who, to your knowledge, has an interest in the relevant land and the nature of that person's interest.

It is an offence to, without reasonable excuse, refuse or fail to comply with this requirement.

- (6) Schedule 1, Form 2, Notice of intention to acquire native title in land for purpose of conferring rights or interests on third party, clause 4—delete "14 days" and substitute:

21 days

- (7) Schedule 1, Form 2, Notice of intention to acquire native title in land for purpose of conferring rights or interests on third party, clause 6—delete clause 6 and substitute:

**6—Right to compensation (Part 4 Division 2)**

Both you and the Authority are required to negotiate in good faith in relation to the compensation payable for the acquisition of the land to which this notice relates. A failure to do so by either party may be taken into account by the Land and Valuation Court in awarding costs (see sections 23(1) and 36(b)(iii) of the *Land Acquisition Act 1969*).

**Note—**

- The Authority is required to negotiate with the persons who have or had, or claim to have or to have had, an interest in the land that is divested or diminished by the acquisition or the enjoyment of which is adversely affected by the acquisition.
- Any party may request the Environment, Resources and Development Court to mediate between the parties to assist in obtaining their agreement on the matters at issue between them.
- The Authority may offer, and must consider any request made by a party who is the holder of native title to the negotiations for, non-monetary compensation (eg a transfer of land, the provision of goods or services, or the carrying out of work for the reinstatement or improvement of land remaining in the claimant's ownership after acquisition).
- The land is acquired by notice of acquisition. Notice of acquisition may be given at any time after 3 months, and before 18 months or a longer period fixed under section 15(4a) of the *Land Acquisition Act 1969*, from the time the first of any notice of intention to acquire land is or was given in respect of the land to which this notice relates.
- At that time the Authority is required to make an offer to the person or persons whom it believes to be entitled to compensation for the acquisition, stating the amount of compensation the Authority is prepared to pay.
- However, if the Authority considers that, at the time the notice of acquisition is given, the amount of compensation is unable to be determined, the Authority must make an offer to the person or persons whom it believes to be entitled to compensation as soon as reasonably practicable after the amount is able to be determined.
- The claimant may dispute the offer made by the Authority.
- Part 4 Division 2 of the *Land Acquisition Act 1969* governs compensation. In particular, section 25 sets out the principles for determining compensation.

- In the event that the amount of compensation does not exceed \$10 000, the payment of compensation may be made directly to you in a manner determined by the Authority, rather than being paid into the Land and Valuation Court (see section 26A of the *Land Acquisition Act 1969*).

### **6A—Payment of professional costs relating to acquisition (section 26B)**

If you are the owner in fee simple of the land to which this notice relates, you may be entitled to a payment of \$10 000 from the Authority for use towards the payment of professional costs in relation to the acquisition of the land.

Professional costs include legal costs, valuation costs and any other costs prescribed by the *Land Acquisition Regulations 2019*.

- (8) Schedule 1, Form 3, Notice of amendment of notice of intention to acquire land, clause 2—delete the clause and substitute:

#### **2—Notice of amendment**

This notice is to inform you that the Authority has changed the boundaries of the land it proposes to acquire as follows:

This notice does not constitute a new notice of intention to acquire the relevant land and, as such, the time periods under the *Land Acquisition Act 1969* that apply based on the giving of a notice of intention to acquire land are not affected by this notice.

This notice is given under section 10(4) of the *Land Acquisition Act 1969*.

### **2A—Payment of professional costs relating to acquisition (section 26B)**

If you are the owner in fee simple of the land to which this notice relates, you may be entitled to a payment of \$10 000 from the Authority for use towards the payment of professional costs in relation to the acquisition of the land.

Professional costs include legal costs, valuation costs and any other costs prescribed by the *Land Acquisition Regulations 2019*.

- (9) Schedule 1, Form 4, Notice of determination not to proceed with acquisition of land—after clause 3 insert:

### **3A—Payment of professional costs relating to acquisition (section 26B)**

If you are the owner in fee simple of the land to which this notice relates, you may be entitled to a payment of \$10 000 from the Authority for use towards the payment of professional costs in relation to the acquisition of the land.

Professional costs include legal costs, valuation costs and any other costs prescribed by the *Land Acquisition Regulations 2019*.

(10) Schedule 1, Form 5, Notice of acquisition, clause 2—after "interest" insert:  
consisting of native title or an alienable interest

(11) Schedule 1, Form 5, Notice of acquisition—after clause 2 insert:

**2A—Payment of professional costs relating to acquisition  
(section 26B)**

If you are the owner in fee simple of the land to which this notice relates, you may be entitled to a payment of \$10 000 from the Authority for use towards the payment of professional costs in relation to the acquisition of the land.

Professional costs include legal costs, valuation costs and any other costs prescribed by the *Land Acquisition Regulations 2019*.

(12) Schedule 1, Form 6, Offer of compensation—delete Form 6 and substitute:

**Form 6—Offer of compensation**

*Land Acquisition Act 1969*

(section 23A)

TO:

of

**1—Notice of acquisition**

*[insert name of the Authority]*

of

has, by notice published in the Gazette on *[insert date]* at *[insert Gazette reference]*,

acquired the following interests in the following land:

**2—Offer of compensation (section 23A)**

The Authority makes an offer of compensation in respect of the acquisition of your interest in the land as follows:

*[The offer must (where appropriate) differentiate between, and quantify, the component of compensation representing the value of the acquired land and the component referable to disturbance or other compensable matters.]*

The amount of compensation will be paid, within 7 days, into the Land and Valuation Court.

The Authority may, after making this offer of compensation, increase the offer by further notice to you, or apply to the Land and Valuation Court to decrease the offer if the Authority becomes aware of information that negatively affects the value of the relevant land (see section 23A(5) of the *Land Acquisition Act 1969*).

In the event that an offer is decreased, the Authority may apply to the Court for an order that the difference between the original offer and the decreased offer (together with any accrued interest) be paid to the Authority (see section 23A(6) of the *Land Acquisition Act 1969*).

(If Part 4 Division 1 of the Act applies and the Authority has already paid an amount into the Environment, Resources and Development Court, the amount (if any) paid into the Land and Valuation Court will be the amount by which the amount of the offer exceeds that amount already paid into the Environment, Resources and Development Court.)

### **3—Solatium payment (section 25A)**

If, at the time the notice of intention to acquire land was given to you in relation to the land to which this notice relates, you were the owner and occupier of the land and, as a result of the acquisition, your principal place of residence was acquired, the Authority may (but is not required to) increase the amount of compensation payable to you by way of a solatium payment.

The solatium payment will total either 10% of the market value of the relevant land, or \$50 000, whichever is the lesser amount.

Payment of the solatium will be made on final resolution of the amount of compensation payable in relation to the acquisition of the relevant land.

### **4—Requirement to respond to offer of compensation (section 23AB)**

You must respond to this offer in writing within 6 months of the date of the offer. Your response must indicate whether you accept or reject the offer.

You may apply to the Authority for a longer period than specified above. If the Authority specifies a longer period as a result of your application, you must respond to the offer in writing within that time period. If the Authority refuses to specify a longer time period, you may refer the matter to the Land and Valuation Court for review of that decision.

A failure to respond to this offer within the relevant time period will result in the compensation money offered to you and paid into the Land and Valuation Court being paid to the Authority. Should this occur, it will not affect your entitlement to compensation in respect of the acquisition of the relevant land. However, you will not be entitled to any interest accrued on the money from the time it is paid to the Authority.

### **5—Requirement to withdraw compensation money within 24 months (section 23AC)**

You must withdraw the compensation money offered to you for the acquisition of the relevant land within 24 months after the money is paid into the Land and Valuation Court.

A failure to withdraw the money within that time period will result in the money, together with any accrued interest, being paid to the Authority.

Should this occur, it will not affect your entitlement to compensation in respect of the acquisition of the relevant land. However, you will not be entitled to any interest accrued on the money from the time it is paid to the Authority.

### **6—Reference of matters into Court and mandatory settlement conference (sections 23BA and 23C)**

If you wish for a question arising in the course of negotiations with the Authority to be referred to the Land and Valuation Court, you must first apply to the Authority to convene a settlement conference.

The Authority will be responsible for convening the conference and will appoint a conference coordinator to conduct the conference. See section 23BA of the *Land Acquisition Act 1969* for details of the conference and how it will be conducted.

It is an offence to, without reasonable excuse, refuse or fail to comply with a direction of the conference coordinator.

If the settlement conference does not result in the resolution of the matter, you or the Authority may refer a question arising in the course of negotiations into the Land and Valuation Court (see section 23C of the *Land Acquisition Act 1969*).

The principles for determining compensation are set out in section 25 of the *Land Acquisition Act 1969*.

### **7—Payment of professional costs relating to acquisition (section 26B)**

If you are the owner in fee simple of the land to which this notice relates, you may be entitled to a payment of \$10 000 from the Authority for use towards the payment of professional costs in relation to the acquisition of the land.

Professional costs include legal costs, valuation costs and any other costs prescribed by the *Land Acquisition Regulations 2019*.

### **8—Inquiries**

Inquiries should be directed to:

Date:

Signed:

## **Form 6A—Notice of reversion of compensation money**

*Land Acquisition Act 1969*

(section 23AC)

TO:

of

### **1—Notice of reversion of compensation money**

The compensation money offered to you and paid into the Land and Valuation Court in respect of the acquisition of the following land:

will revert and be paid to *[insert name of the Authority]* on *[insert date]* unless you withdraw the money before that date.

This notice is given under section 23AC of the *Land Acquisition Act 1969*.

### **2—Requirement to withdraw compensation money within 24 months**

It is a requirement that you withdraw the compensation money offered to you for the acquisition of the relevant land within 24 months after that money is paid into the Land and Valuation Court.

A failure to withdraw the money will result in the money, together with any accrued interest, being paid to the Authority.

### **3—Entitlement to compensation not affected**

Neither this notice nor the reversion of money to the Authority affects your entitlement to compensation in respect of the acquisition of the relevant land. However, you will not be entitled to any interest accrued on the money from the time it is paid to the Authority.

### **4—Payment of professional costs relating to acquisition (section 26B)**

If you are the owner in fee simple of the land to which this notice relates, you may be entitled to a payment of \$10 000 from the Authority for use towards the payment of professional costs in relation to the acquisition of the land.

Professional costs include legal costs, valuation costs and any other costs prescribed by the *Land Acquisition Regulations 2019*.

### **5—Inquiries**

Inquiries should be directed to:

Date:

Signed:

## **Form 6B—Notice of acquisition of underground land**

*Land Acquisition Act 1969*

(section 26F)

TO:

of

### **1—Notice of acquisition**

*[insert name of the Authority]*

of

acquires the following interests in the following land:

(If the Authority seeks to enter into possession of the underground land on a date other than the date the notice was published in the Gazette, the notice must state that date.)

This notice is given under section 26F of the *Land Acquisition Act 1969*.

### **2—Compensation not payable unless certain water infrastructure or rights are affected**

You are not entitled to compensation in relation to the acquisition of the underground land to which this notice relates, unless the following conditions are satisfied:

- you held at least one of the following interests in relation to the underground land immediately before the notice of acquisition was published in relation to the land—
  - ownership of a lawful well that provides access to underground water in the underground land, and any underground infrastructure associated with the well; or
  - a right to take underground water from the underground land by means of such a well;
- you notified the Authority of your interest in response to a notice given under section 26G of the *Land Acquisition Act 1969*;
- the acquisition of the underground land either—
  - involved the acquisition of your interest; or
  - resulted in the discharge of your interest; or
  - resulted in you being unable to take water by means of, or pursuant to, your interest;
- you make an application for compensation to the Authority under section 26H of the *Land Acquisition Act 1969*.

### **3—Application for compensation under section 26H**

If you believe you are entitled to compensation, you must apply to the Authority for compensation within 6 months after the publication of the notice of acquisition in relation to the underground land to which this notice relates.

The application must be in the following manner and form:

The application must be accompanied by the following information or documents:

(If further requirements have been set out in the regulations in relation to this application, the notice should state those requirements or refer the recipient to the regulations.)

After receiving the your application, the Authority may (but is not required to) make you a written offer of compensation not exceeding \$50 000.

See section 26H(4) of the *Land Acquisition Act 1969* for further details on the payment of compensation.

### **4—Payment of professional costs relating to acquisition (section 26B)**

If you are the owner in fee simple of the land to which this notice relates, you may be entitled to a payment of \$10 000 from the Authority for use towards the payment of professional costs in relation to the acquisition of the land.

Professional costs include legal costs, valuation costs and any other costs prescribed by the *Land Acquisition Regulations 2019*.

### **5—Inquiries**

Inquiries should be directed to:

Date:

Signed:

### **Form 6C—Notice of requirement to notify Authority of other interest in underground land**

*Land Acquisition Act 1969*

(section 26G)

TO:

of

#### **1—Notice of requirement to notify Authority of other interest in underground land**

This notice relates to the following underground land:

(Delete whichever of the following is inapplicable:

*[insert name of the Authority]* acquired the underground land by notice published in the Gazette on *[insert date]* under section 26F of the *Land Acquisition Act 1969*.

*[insert name of the Authority]* is proposing to acquire the underground land under section 26F of the *Land Acquisition Act 1969*.)

This notice is to inform you that the Authority requires that you notify the Authority of the following:

- any person who, to your knowledge, has an interest in the underground land, or who had an interest in the underground land immediately before it was acquired, and the nature of that person's interest (including your interest and its nature);
- the existence of any well, bore or other infrastructure located within the underground land, or on surface land under which the underground land is located, and any entitlement (whether yours or otherwise) that exists to take water by means of that infrastructure;
- *[insert other information that is required if necessary]*

It is an offence to, without reasonable excuse, refuse or fail to comply with this notice.

This notice is given under section 26G of the *Land Acquisition Act 1969*.

## **2—Payment of professional costs relating to acquisition (section 26B)**

If you are the owner in fee simple of the land to which this notice relates, you may be entitled to a payment of \$10 000 from the Authority for use towards the payment of professional costs in relation to the acquisition of the land.

Professional costs include legal costs, valuation costs and any other costs prescribed by the *Land Acquisition Regulations 2019*.

## **3—Inquiries**

Inquiries should be directed to:

Date:

Signed:

### **Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

**Made by the Governor**

with the advice and consent of the Executive Council  
on 2 July 2020

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