

SECTIONS 51 & 53 NTA 93

NATIVE TITLE ACT 1993 - SECT 51

Criteria for determining compensation

Just compensation

(1) Subject to subsection (3), the entitlement to compensation under Division 2, 2A, 2B, 3 or 4 is an entitlement on just terms to compensate the native title holders for any loss, diminution, impairment or other effect of the act on their native title rights and interests.

Acquisition under compulsory acquisition law

(2) If the act is the compulsory acquisition of all or any of the native title rights and interests of the native title holders, the court, person or body making the determination of compensation on just terms may, subject to subsections (5) to (8), in doing so have regard to any principles or criteria for determining compensation set out in the law under which the compulsory acquisition takes place.

Compensation where similar compensable interest test satisfied

(3) If:

(a) the act is not the compulsory acquisition of all or any of the native title rights and interests; and

(b) the similar compensable interest test is satisfied in relation to the act;

the court, person or body making the determination of compensation must, subject to subsections (5) to (8), in doing so apply any principles or criteria for determining compensation (whether or not on just terms) set out in the law mentioned in section 240 (which defines similar compensable interest test).

Compensation not covered by subsection (2) or (3)

(4) If:

(a) neither subsection (2) nor (3) applies; and

(b) there is a compulsory acquisition law for the Commonwealth (if the act giving rise to the entitlement is attributable to the Commonwealth) or for the State or Territory to which the act is attributable;

the court, person or body making the determination of compensation on just terms may, subject to subsections (5) to (8), in doing so have regard to any principles or criteria set out in that law for determining compensation.

Monetary compensation

(5) Subject to subsection (6), the compensation may only consist of the payment of money.

Requests for non-monetary compensation

(6) If the person claiming to be entitled to the compensation requests that the whole or part of the compensation should consist of the transfer of property or the provision of goods or services, the court, person or body:

(a) must consider the request; and

(b) may, instead of determining the whole or any part of the compensation, recommend that the person liable to give the compensation should, within a specified period, transfer property or provide goods or services in accordance with the recommendation.

Where recommendation not complied with

(7) If the person does not transfer the property or provide the goods or services in accordance with the recommendation, the person claiming to be entitled to the compensation may request the court, person or body to determine instead that the whole or the part of the compensation concerned is to consist of the payment of money.

Where recommendation complied with

(8) If the person does transfer the property or provide the goods or services in accordance with the recommendation, the transfer of the property or provision of the goods or services constitutes full compensation for the act, and the entitlement to it is taken to have been determined in accordance with this Division.

NATIVE TITLE ACT 1993 - SECT 53

Just terms compensation

Entitlement to just terms compensation

(1) Where, apart from this section:

(a) the doing of any future act; or

(b) the application of any of the provisions of this Act in any particular case;

would result in a paragraph 51(xxxi) acquisition of property of a person other than on paragraph 51(xxxi) just terms, the person is entitled to such compensation, or compensation in addition to any otherwise provided by this Act, from:

(c) if the compensation is in respect of a future act attributable to a State or a Territory--the State or Territory; or

(d) in any other case--the Commonwealth;

as is necessary to ensure that the acquisition is made on paragraph 51(xxxi) just terms.

Federal Court's jurisdiction

(2) The Federal Court has jurisdiction with respect to matters arising under subsection (1) and that jurisdiction is exclusive of the jurisdiction of all other courts except the High Court.