

# Why should SMEs consider using forensic accounting services in compulsory land acquisitions?

Increased government infrastructure projects may expose more SMEs to compulsory land acquisition, prompting the need for forensic accountants to help navigate the complex transaction process. Forensic accountants are uniquely placed to assist in matters involving any business loss suffered because of compulsory acquisition.



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As Australian businesses look to move past the horror that was 2020, Local, State and Federal Government projects will continue to be a key platform for the nation's **return to normal**. The State and Federal budgets of late 2020 indicate an increase in government spending at all levels in an attempt to **stimulate the economy with infrastructure projects** – be they ports, roads or rail and urban, regional or rural. These measures are expected to continue in 2021.

**Any increase in government infrastructure spending will inevitably lead to the compulsory acquisition of land** to facilitate these projects. This may force business owners to alter their operations, relocate or close down, just as many have begun to get back on their feet following the government-imposed lockdowns of 2020.

Over the coming years, business valuations of SMEs will be impacted by:

- The historical financial performance of COVID; and
- The subsequent *new normal* experienced by individual businesses.

**These issues will require forensic accounting** (or business valuation) experts to look beyond the commonly adopted retrospective view. They will need to take further consideration of micro and macro-economic factors to which the business is subject.

This article discusses the importance of engaging forensic accounting experts in compulsory land acquisitions with [Andrew Power, Property Law Partner at marshalls+dent+wilmoth lawyers](#).

It explores:

- The role of an expert forensic accountant; and
- The considerations for valuing businesses in compulsory land acquisition matters

## What is the role of a forensic accountant in a compulsory land acquisition?

Power believes **business valuations are essential if the business proprietor is to receive proper compensation** when existing business premises are compulsorily acquired.

In certain circumstances, it is appropriate for multiple business valuations to be undertaken. This is a way of measuring the loss suffered as a result of relocation and/or a change in operations (comparative revenue analysis).

**Multiple business valuations** may occur in a compulsory acquisition scenario when a business proprietor can successfully relocate. Two valuations are undertaken:

- As a valuation of the existing business (on a date prior to closure); and
- As a valuation of the business in its new location (given sufficient trading time has elapsed for the relocated business to achieve some aspects of normality).

Multiple business valuations provide the evidence required to assess the **loss of business value** (if any) due to the forced relocation.

### Scenario 1

*Mick and Sam run a café in a busy suburban strip of shops near the local train station. Due to the level crossing removal, this strip of shops will be reduced, with Mick and Sam's premises lost. Mick and Sam have relocated to a vacant shopfront two blocks away. It's on a quiet street where they still cater to local weekend customers. However, they are no longer able to access the customer base from the busy strips of shops or commuters on their way to the station.*

In Scenario 1, undertaking the two valuations at specific dates will detail the lost business value suffered due to the compulsory acquisition.

Alternatively, a forensic accountant may assess the lost profits arising from Scenario 1 as the primary determinant of loss. This can serve as a cross-check to the reduction in business value.

In litigation, a forensic accountant may undertake a variety of roles involving compulsory land acquisition, particularly in rural or regional areas. Acquisitions in these areas often involve farming land. **The facts can be critical in determining the type of approach undertaken by the accounting expert.**

### Scenario 2

*Adam is a vegetable farmer based near Melton, Victoria. He owns 50 acres of land with water rights and access to his processing facility and machinery shed. The facility and shed are located on an adjacent piece of land owned by his father, over which Adam has a long-term lease.*

*The State government announces construction of a new bypass. A portion of the land owned by Adam will be compulsorily acquired.*

In Scenario 2, Adam and his legal team may seek to engage a forensic accountant to quantify the *loss of profits*. This loss may be the result of the reduction in the farming land available to Adam, as well as the compensation for the market value of the land. The forensic accountant would:

- Seek to understand the lost production capacity and any subsequent effects on existing contractual obligations; and
- Calculate the net present value of the lost profits

### Alternative Scenario 2

*Adam is left with no direct access to either the farm or the facility and shed, because the bypass runs between the properties. Farm machinery isn't permitted to travel on the bypass.*

In the Alternative Scenario 2, Adam and his legal team may engage a forensic accountant to value the entire farming business because:

1. It is no longer able to operate in its current form; and
2. The compensation required would be equal to the value of the business (with the government notionally acquiring the business and closing it down)

These scenarios provide the **nuances in which forensic accounting experts can use the expert reports**. All advice depends on the facts surrounding the matter at hand.

Ultimately, an expert's examination and awareness of specific facts are critical in assisting the affected party to determine adequate compensation.

### What are the considerations for valuing businesses when land is compulsorily acquired?

In Victoria and New South Wales, the valuation of a business for extinguishment is represented by the market value of the business if it is sold as a going concern.

South Australian legislation provides for the acquisition of land **on just terms**. It says that compensation is not necessarily assessed in relation to the market value of what has been acquired or lost. It is assessed to adequately compensate the person or company which has suffered the loss.

Despite these nuances, there are some similarities between the State laws. For example, if the business was no longer viable, in most circumstances, it would be common to seek a valuation of the fair market value as a going concern.

Some of the key aspects for a forensic business accountant's consideration include:

- **The length of the existing lease and any rights to renewal.** Arguably, a business with a long-term lease is more valuable than one with a much shorter lease.
- **The current state of the premises.** Were any substantial renovations or improvements planned and/or required? Similarly, were any major investments in fixed assets required in the short term?
- **How the owner is currently remunerated.** Does an adjustment need to occur to reflect unpaid wages and superannuation? This would reduce the profitability of the business.
- **Any recent changes in the demographic** in which the business previously operated. Had new competition recently commenced?

**Reliable written documentation is the key to any such claim.** Power says that he has seen many applicants struggle to market compensation because of insufficient or non-existent documentation. This is critical, even in a related party context.

### What are the key takeaways for forensic accounting in compulsory land acquisitions?

- Power believes that the use of forensic accountants in compulsory land acquisitions are necessary when businesses are involved
- There are many nuances to be taken into account by business valuers in compulsory acquisition valuations
- Reliable and adequate documentation is essential to assist an expert make the appropriate findings
- Forensic accountants with appropriate experience can assist applicants and/or defendants in assessing the best possible outcome, for example, through a valuation of the business or calculation of lost profits
- It is critical to seek appropriate advice regarding compulsory acquisition matters, including legal or accounting advice. Often, the cost of these engagements is to be paid or reimbursed by the acquiring authority.

If your small business is facing a compulsory land acquisition, [contact us](#) to learn more about our forensic accounting services.