

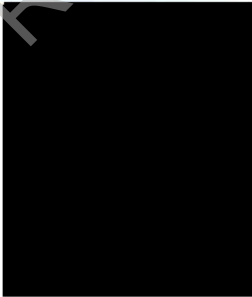
BRF 25-118 Briefing three – Public Works Act Review: Policy decisions on compensation

Ki / To: Hon Chris Penk, Minister for Land Information **Rā / Date:** 24 October 2024

Ngā mahi matua kia mahia/key actions required

Minita/Minister	Key action required:	Deadline
Hon Chris Penk, Minister for Land Information	Note LINZ will discuss the contents of this briefing with you at your meeting with officials on 29 October 2024.	29 October 2024
	Indicate your preferred options to key PWA compensation policy decisions.	30 October 2024

Toitū Te Whenua Land Information New Zealand Whakapā/contacts

Ingoa/Name	Tūnga/Position	Nama waea/ Contact number	Whakapā tuatahi/first contact
Amanda Moran	Head of Strategy, Policy and Ministerials		<input type="checkbox"/>
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Ngā kōrero a te Minita/Minister's comments

THX.

Pūtake/Purpose

This briefing seeks your decisions on key policy issues related to compensation under the Public Works Act 1981.

Pānui whāinga/Key messages

- 1 Toitū Te Whenua Land Information New Zealand (LINZ) is undertaking a targeted review of the Public Works Act 1981 (PWA), building on the advice received from the Expert Advisory Panel (the Panel).
- 2 Under the PWA, landowners are entitled to various types of compensation in addition to the value of their land, as outlined in **Appendix 2**.
- 3 The review has found there are issues with how the PWA compensation regime operates. The regime is failing to incentivise early agreement with landowners and reflect the inconvenience imposed by the process and is not adequately balancing matters of fairness and efficiency in compensation dispute procedures. This is hindering the delivery of public infrastructure.
- 4 LINZ has identified options to update and streamline the compensation provisions in the PWA. This includes:
 - improving the approach to incentive payments
 - updating existing additional compensation payments for home-loss and land-loss
 - expressly providing for advance compensation agreements and timely payment of compensation
 - modernising compensation provisions for Māori landowners, and
 - improving the dispute process for determining final compensation.
- 5 Updating the PWA compensation provisions will ensure all landowners are fairly compensated when their land is acquired and incentivised to reach agreement early in the acquisition process. It will also ensure that the processes for determining final compensation are timely, efficient and accessible, and that Māori landowners receive appropriate compensation for their land.
- 6 Several more minor issues were identified with the operation of compensation provisions in the PWA. LINZ will report back to you seeking your decisions to clarify these provisions, as well as recommended figures to update existing payments, depending on your preferred options, to be included in the March 2025 Cabinet paper.

Tohutohu/Recommendations

Toitū Te Whenua Land Information New Zealand recommends that you:

Indicate on **Appendix 1** your preferred options for compensation under the Public Works Act 1981.



Stacey Newlands

Toitū Te Whenua Land Information New Zealand

Rā/Date: 24/10/2024



Hon Chris Penk

**Te Minita mō Toitū te Whenua/
Minister for Land Information**

Rā/Date: 4.11.2024.

Tāpiritanga/Attachments

- 1 **Appendix 1:** Detailed options table: compensation
- 2 **Appendix 2:** Compensation entitlements under the PWA

Te Horopaki/Background

Fair and transparent compensation settings are essential to a well-functioning and efficient public works system

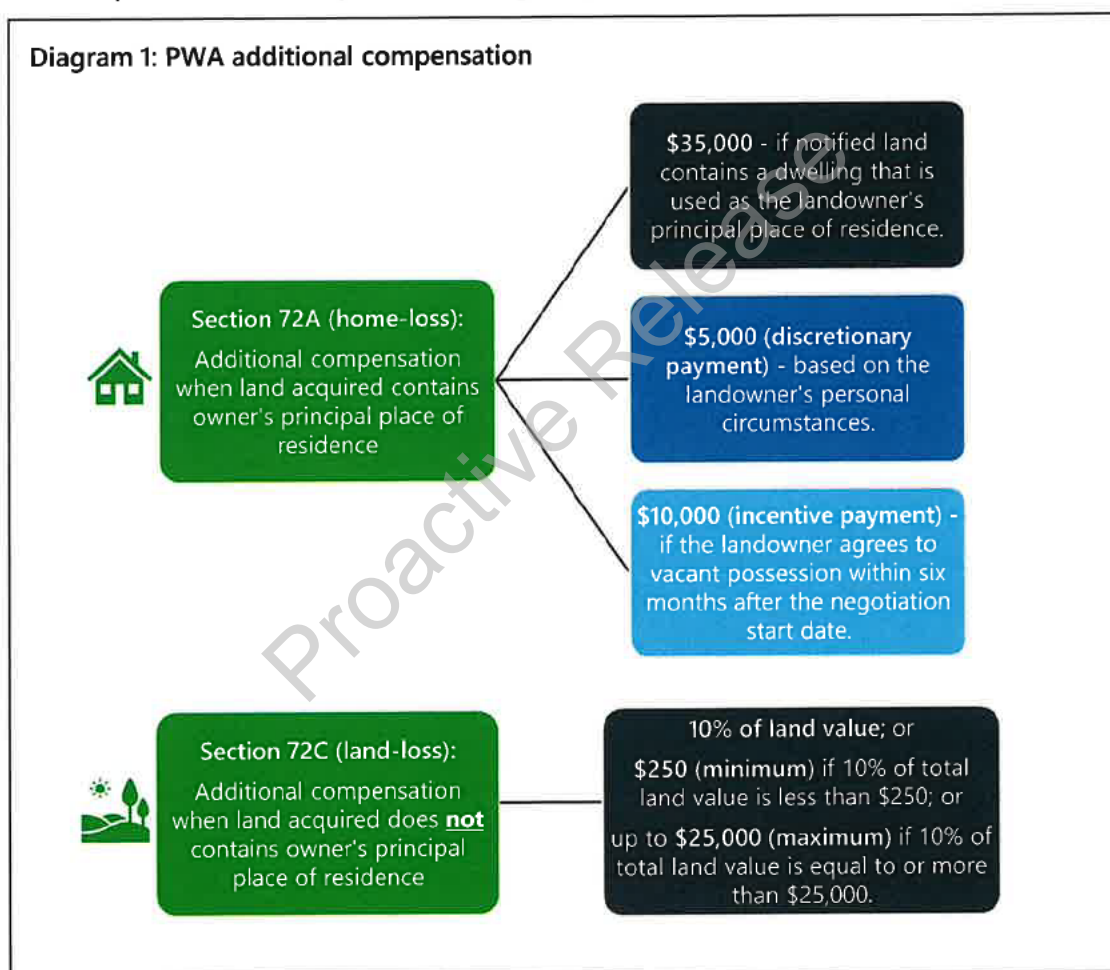
- 1 A key principle of the Public Works Act 1981 (PWA) is that landowners are entitled to full compensation for their land, to ensure their financial position is no better or worse than before any public work acquisition took place.
- 2 The total amount of compensation includes the market value of the land to be acquired, reimbursement of reasonable costs incurred (such as legal, valuation or relocation costs) and other disturbance payments. Since 2017, landowners are also entitled to additional or enhanced payments for home-loss and land-loss.¹ **Appendix 2** outlines a landowner's compensation entitlements.
- 3 If agreement cannot be reached on compensation, the Land Valuation Tribunal provides a determination on the amount a landowner is entitled to under the PWA.
- 4 The efficient delivery of infrastructure is supported by early and upfront acquisition of land by agreement with the landowner. The identified issues with the operation of the PWA compensation regime are slowing down the process for acquiring land for public works, resolving compensation and delaying project delivery.
- 5 The Expert Advisory Panel (the Panel), through their review, highlighted that the PWA compensation regime:
 - is not incentivising early agreement with landowners,
 - does not recognise that landowners are usually not willing sellers and are unable to walk away from the negotiating table, and
 - has significant delays in compensation settlement when the Land Valuation Tribunal is needed.
- 6 LINZ has built on the Panel's findings to identify options that will update and streamline the PWA's compensation provisions. This will ensure that the processes for determining compensation are timely, efficient and accessible, and landowners are fairly compensated.
- 7 LINZ has assessed all options against the key criteria as agreed to by Cabinet in the review – efficiency, effectiveness and clarity [CAB-24-MIN-023.01 refers]. For compensation options, LINZ has also considered options to ensure PWA compensation emphasises fairness, flexibility, consistency and transparency for landowners to facilitate early agreement.

¹Prior to these amendments, landowners were entitled to \$2,000 for home-loss.

Ngā tirohanga me ngā kōwhiringa o Toitū Te Whenua/Toitū Te Whenua LINZ views and options

The additional compensation structure under the PWA is not incentivising early agreement or appropriately recognising loss to landowners

- 8 In 2017, reforms to the Resource Management Act 1991 made consequential amendments to the PWA to introduce and increase additional compensation payments for landowners. These were intended to incentivise early agreement and better recognise that landowners are usually not willing sellers by compensating for non-quantifiable losses, such as the impact of being forced to move from a home and the inconvenience of the PWA process.
- 9 These are paid after vacant possession is given, and are calculated as in the diagram below:



- 10 The Panel considers these payments are inadequate for incentivising landowners to reach agreement early in the acquisition process. LINZ agrees and recommends clearly separating incentive payments from home-loss and land-loss payments to ensure all payments have a clear purpose in the legislation.

A new approach to incentive payments is needed to encourage early agreement

- 11 The Panel has advised that the existing \$10,000 incentive payment provided for under section 72A has not been effective in changing behaviour. Landowners are entitled to this payment when their principal place of residence is acquired, and agreement to a vacant possession date is reached within six months of negotiations commencing. Issues arise because the payment is too low and the timeframe too short, meaning landowners can become ineligible for the payment through no fault of their own. This can lead to further disputes between the parties and delay early agreement.
- 12 LINZ agrees with the Panel and recommends introducing a new, separate statutory incentive payment within the PWA that is not tied to a landowner's home being acquired.
- 13 LINZ proposes the payment's structure is a percentage of land value, to ensure that it will be effective and proportionate to the land being acquired.
- 14 The Panel highlights that creating additional incentives for landowners to agree to acquisition within the initial months of engagement and negotiation is likely to reduce the time it takes for acquiring authorities to secure land. They found that incentive payments should be tagged to acquisition stages rather than the time taken to reach agreement. Tying a landowner's eligibility for such a payment to time taken is restrictive and causes problems in the existing regime that can prejudice and be unfair to landowners.²
- 15 LINZ therefore recommends the incentive payment is only paid if agreement is reached prior to the issue of a section 23 notice of intention to take land. This would encourage upfront engagement and negotiations on compensation, and provide clarity, consistency and transparency to landowners and acquiring authorities.
- 16 There is a risk with this approach, as it may not provide sufficient flexibility in the amount to be paid. This means landowners may be compensated over the amount that may be required to reach agreement. To help mitigate this risk, LINZ recommends including a mechanism in the legislation to update compensation amounts.
- 17 The work to accelerate critical infrastructure delivery will legislate for premium payments for eligible projects in the accelerated process [BRF 25-131 refers].³ This will be separate to any incentive payment included as part of the PWA review, to ensure all landowners whose land is being acquired will receive payments for early agreement. Landowners will not be entitled to both payments. LINZ will ensure decision-making is aligned across both projects.
- 18 Incentive payment options LINZ has considered (see table below) assume that existing incentives are too low or not appropriately structured, and that this can be a barrier to agreement, rather than other non-financial factors.

² Examples of this include when owners of multiply owned Māori land require more time to engage, or when delays are due to an acquiring authority changing its land requirements and plans or are unable to make an offer in the timeframe.

³ Eligible projects will be those listed on Schedule 2 of the Fast-track Approvals Bill that are being undertaken by agencies that can directly or indirectly access PWA powers, and the Roads of National Significance listed in the Government Policy Statement on land transport 2024-2034.

- 19 LINZ will undertake further analysis and report back on recommended amounts for incentive payments to be included in your March 2025 Cabinet paper, depending on your preferred option.

Options for incentive payments		
Policy issue	Panel support	Key trade off
1. Clarify the acquisitions by agreement provision in the PWA to state the minimum compensation entitlement is in Part 5 of the PWA, meaning payments could be made above this as part of an agreement. LINZ would produce guidance on additional payments.		<p>May not incentivise early agreement and could encourage landowners to 'hold out' for a better deal.</p> <p>Not binding on acquiring authorities to follow and apply guidance.</p> <p>May increase negotiating time with landowners.</p> <p>However, allows the process to evolve and provides flexibility for acquiring authorities to negotiate additional incentives, accounting for different circumstances.</p>
2. (LINZ preferred option) Introduce a statutory incentive payment in the PWA that is a percentage of land value and paid if agreement is reached prior to issuing a section 23 notice.		<p>Provides the most clarity, consistency and transparency to landowners and acquiring authorities, and is most likely to generate early agreement.</p> <p>Encourages early agreement linked to the acquisition stages.</p> <p>Provides a clear distinction between the incentive payment and home-loss payment.</p> <p>May introduce a ground of challenge to a section 23 notice, if the acquiring authority does not give sufficient prior notice.</p> <p>Not linked to a prescribed time period. However, a section 18 notice requires a minimum of three months good faith negotiations before a section 23 notice is issued and expires after 12 months.</p>
3. Clarify the acquisitions by agreement provision in the PWA to state the minimum compensation entitlement (as per option 1) and introduce a staggered incentive payment for acquisitions by agreement (similar approach as per option 2).	✓	<p>The 'staggered incentive payment' would become part of the minimum compensation entitlements under section 17.</p> <p>Acquiring authorities would be able to offer above this to reach agreement, negating the benefit of introducing a separate incentive payment.</p> <p>A staggered payment also may cause more disputes, as it is banded by land value.</p>

The value of compensation payments for home-loss and land-loss are no longer adequate

- 20 LINZ views that the home-loss and land-loss payments should be separate from any incentive payment and should be increased, as they have not been updated since 2017. The Panel supported retaining a home-loss payment, as it is the most significant disturbance a landowner can be subject to. They also supported increasing the home-loss and land-loss payments if their preferred approach to incentive payments is not adopted.
- 21 Internationally, there are examples of a home-loss payment being linked to a percentage of land value (Victoria, Australia) or being a set amount regardless of value (New South Wales, Australia). The Panel noted (and LINZ agrees) that the home-loss payment should not be

linked to land value as it could discount the extent of loss experienced by landowners for lower value properties and could create a windfall for landowners with high value property.

- 22 LINZ will undertake detailed analysis and report back on new amounts and an appropriate mechanism for updating these amounts to be included in your March 2025 Cabinet paper, depending on your preferred option.

Options for updating home-loss and land-loss payments		
Policy issue	Panel support	Key trade off
1. (LINZ preferred option) Increase existing payments for home-loss and land-loss.	✓	Recognises that for home-loss the payment landowners receive is the same, regardless of the value of their land. Reflects changes to allow for a separate incentive payment, providing greater clarity as to landowner's entitlements.
2. Change the home-loss payment to a percentage of the value of land acquired.		Raises equity issues, as landowners with higher value land will receive a higher proportion of costs. This discounts the purpose of the payment by linking it to land value, instead of recognizing the inconvenience, intangible costs, and emotional value of losing your home.

Updating the timing of compensation payments will better facilitate land acquisition

- 23 The Panel noted the value of advance compensation agreements in allowing earlier acquisition of land while compensation disputes are resolved and supported recognising these within the PWA.
- 24 Advance compensation agreements allow landowners to receive payment, and the acquiring authority to take possession, with full and final agreement on compensation negotiated at a later date. This typically allows for any potential claims that may arise from the construction of the public work, such as noise and flood risk. Advance compensation agreements occur in practice but are not expressly provided for within the PWA. Providing for these agreements within the PWA may facilitate earlier land acquisition by improving transparency and consistency and will bring New Zealand in line with overseas jurisdictions which provide for advance payments in legislation (Queensland, South Australia, British Columbia and Alberta).
- 25 There is also opportunity to streamline and standardise the process for when compensation is paid after land has been taken by proclamation. This creates less liability for acquiring agencies in compensation amounts, and allows landowners to receive compensation as soon as possible, rather than potentially having to wait until the outcome of any dispute process. This may also reduce compensation claims to the Land Valuation Tribunal.
- 26 The options for clarifying timing of compensation payments are outlined in the below table, noting they are not mutually exclusive:

Options for updating timing of compensation payments		
Policy issue	Panel support	Key trade off
1. (LINZ preferred option) Expressly provide for advance compensation agreements within the PWA to align with what is occurring in practice.	✓	May remove some flexibility in agreements, but legislating would likely not be prohibitive on form of the agreement. Aligns with what is occurring internationally and in practice. This will improve consistency and transparency, and promote upfront agreement.
2. (LINZ preferred option) Require acquiring authorities to pay the compensation assessed as at the date of proclamation.	(Panel did not comment)	May reduce impetus to resolve outstanding amounts. However, provides payment upfront once land is taken by proclamation. Provides landowners with funds to move forward.

Modernising compensation provisions for Māori landowners

- 27 Māori freehold land is valued less than general land, due to adjustments in the valuation of Māori freehold land for multiple ownership and special significant sites. Māori landowners are therefore eligible for less compensation under the PWA for comparable land. However, Crown practice is that the amount paid is that of comparable land.
- 28 The Panel recommends Māori freehold land is valued in alignment with comparable land. LINZ agrees, and this would bring the PWA up to date with existing practice within the Crown and ensure all acquiring agencies approach Māori freehold consistently.

Option for valuation of Māori freehold land		
Policy issue	Panel support	Key trade off
1. (LINZ preferred option) Require that when Māori freehold land is acquired or taken for a public work, it must be valued as if it were general land.	✓	LINZ understands acquiring authorities may already pay close to this amount in practice. This would make it a requirement for all acquisitions of Māori freehold land.

- 29 The Panel also suggested that principles regarding compensation for whenua Māori be included in the PWA, as the PWA compensation regime does not directly address the cultural significance of whenua to Māori, and practice of acquiring agencies is variable. The Panel were told that there is an overall view that New Zealand Transport Agency (NZTA) is willing to engage in culturally appropriate negotiations. LINZ considers that improved consistency in practice can be facilitated through updating standards and guidelines in line with best practice.
- 30 The Panel emphasised that the PWA does not recognise that dwellings on multiply owned Māori land can be separately owned. This means that where there are several dwellings, such as for papakāinga⁴, only one home-loss payment can be paid. They recommended that the PWA allow for home-loss payments to be made for each separately owned dwelling.

⁴ Papakāinga refers to the development of housing on Māori land and can include other activities associated with the nature and function of the papakāinga.

- 31 LINZ agrees that extending the payment to multiple dwellings would more greatly achieve the policy intent of the 2017 reforms which introduced the home-loss payment.

Options for multiple home-loss payments		
Policy issue	Panel support	Key trade off
1. Extend the home-loss payment to apply to all separately owned dwellings on Māori land, provided there are formal legal arrangements in relation to each dwelling.	✓	Recognises the impact of the PWA process for Māori landowners and achieves the policy intent of the home-loss payment. Does not account for other arrangements not based on Māori land. Would not account for arrangements based on tikanga.

- 32 If you agree to the above option, LINZ seeks your agreement to undertake further analysis on whether the payment should apply where there are multiple dwellings, regardless of the nature and owner of the land.⁵ This would enable the home-loss payment to apply in a range of scenarios, such as where dwellings have been constructed without formal legal arrangements in place or where land is held based on tikanga. Should you agree, LINZ will report back to you on an approach to be included in your March 2025 Cabinet paper.

Providing faster resolution of compensation issues will benefit the wider system

- 33 If a compensation agreement cannot be reached, the Land Valuation Tribunal (LVT) provides a determination on the amount of compensation a landowner is entitled to. While it is rare for cases to end up at the LVT, the Panel noted that when the LVT is used, it is expensive, slow, offers limited benefits to parties, and slows down infrastructure delivery.
- 34 Alternative dispute resolution can occur voluntarily ahead of the LVT. For acquisitions for projects under the former New Zealand Upgrade Programme, landowners may elect to enter a Land Acquisition Resolution Service (LARS) mediation. The Crown covers costs for landowners to attend. Uptake of this service has been low, as only four cases have been through this voluntary process, but all have reached agreement.
- 35 The Panel supports compulsory alternative dispute resolution prior to an LVT claim, noting that most parties do want to reach agreement and would want an efficient alternative to the LVT. LINZ supports this approach as it will ensure there is a cost and time efficient alternative which supports landowner relationships.
- 36 LINZ and the Panel's preferred approach to alternative dispute resolution is for parties to decide what form of dispute resolution is most beneficial in their case, from mediation to binding or non-binding expert determination. This will mean parties have flexibility to decide what dispute resolution is most beneficial in their case, with a minimum threshold in the legislation and the process and detail outlined in guidance.
- 37 In the Panel's view, facilitators with specialist experience provide better support to parties in resolving PWA compensation matters than generalist mediators. While LINZ agrees, options need to consider how to best meet the needs of the parties without creating bottlenecks in

⁵ An example of this is on farms, where multiple homes may be on one parcel of land, and individual owners of the land live in each of the homes.

the system given the limited land law, dispute resolution and valuation expertise available (such as experienced judges and valuers).

Options for quicker resolution of compensation disputes		
Policy issue	Panel support	Key trade off
1. (LINZ preferred option) Introduce compulsory alternative dispute resolution, parties decide what form it takes from mediation to binding or non-binding expert determination, prior to an LVT claim.	✓	While it could be an additional step that could create more delay and costs in the process, it is intended to provide a quicker and cheaper intermediate step to resolve compensation while maintaining landowner relationships. Allows flexibility for unique and varying situations of parties in negotiations.
2. Landowners can enter a LARS mediation, if eligible, or other voluntary mediation if available, otherwise any compensation dispute is heard at the LVT (status quo)		LARS only covers projects included in the New Zealand Upgrade Programme for acquisitions by NZTA, meaning not all landowners can use the service. The LVT process is slow and costly to both landowners and acquiring authorities.

Mātanga kōrero/Consultation

- 38 Ministries for the Environment, Primary Industries, Culture and Heritage, Transport, Housing and Urban Development, Business, Innovation and Employment, Justice, Education, and Health, and Departments of Internal Affairs, Conservation, and Corrections, the Treasury, Te Puni Kōkiri, Te Arawhiti, New Zealand Defence Force, New Zealand Transport Agency, New Zealand Infrastructure Commission Te Waihangā, KiwiRail, Transpower, and Health New Zealand were consulted in preparing this briefing.

Ngā Tāwhaitanga/Next Steps

- 39 This is the third of a series of briefings seeking your direction on matters for inclusion in the draft Cabinet paper, expected to be provided to you in early November 2024.
- 40 LINZ will provide you with further briefings intended to address several minor compensation issues identified by the Panel. This includes prescribing how land value is to be determined, how landowners are reimbursed for their costs, and examining compensation provisions for drafting clarity. The briefings will seek your decisions to update and clarify the operation of the PWA on these issues, and other minor changes, to be included in the March 2025 Cabinet paper.
- 41 Should you agree to progress the options identified in this briefing, LINZ will also report back on what amount the payments should be updated to, and how best to extend the home-loss payment to multiple dwellings.

Appendix 1: Detailed options table: compensation

Proactive Release

Appendix 2: Compensation entitlements under the PWA

In addition to the value of the land being acquired, landowners are entitled to the following:

Circumstance	Entitlement
If the land being acquired includes the affected party's principal place of residence s72, 72A PWA	Additional compensation of up to \$50,000. This is made up of: <ul style="list-style-type: none"> \$35,000 if landowner qualifies for compensation under s72(1); and \$10,000 if an agreement is negotiated and signed within six months from the start of negotiations and the agreement specifies date of vacant possession; and a further \$5,000 at the Minister's discretion based on an owner's personal circumstances.
Additional compensation if land acquired excludes home s72C PWA	Additional compensation at the rate of 10% of the value of the land acquired is payable, from a minimum of \$250 to a maximum of \$25,000 provided landowners give up occupation of their land on the agreed date.
Legal and valuation costs s66 PWA	Landowners are entitled to reimbursement of the reasonable costs of legal and valuation advice about the land acquired (or any replacement land).
Household removal costs s66 PWA	Landowners are entitled to claim the reasonable cost of moving their household goods. There are some limitations depending on the distance to the new home.
Accessibility improvements s66(1)(b) PWA	If landowners have permanent improvements on their land that improve accessibility for a person with disabilities, and that have not been included in the land valuation, landowners can recover these costs.
Other professional costs s66 PWA	Other professional or expert advice costs may be reimbursed. LINZ requires pre-approval of these before expert is engaged (LINZ standards).
Other disturbance costs s66 PWA	Any other costs incurred by an owner in moving from the land acquired (e.g., temporary stock fencing) are considered on a case-by-case basis, with evidence required from the owner.
Repayment of mortgage loss s67 PWA	Compensation where an owner incurs losses relating to mortgages for land acquired and replacement properties.
Business losses s68 PWA	If there is a business on the land being acquired, the owner may be entitled to have that business relocated. The owner can claim for business loss resulting from the business relocation including loss of actual profits and business goodwill and any loss from having to close the business temporarily while moving. If the business is not relocated but is still affected by the construction of the public work, the owner can seek compensation for any actual loss incurred.
Assistance to purchase property s73, 74 PWA	Though rarely used, the PWA provides for advances to be made to the owner to purchase a private residence (s73) or farm, commercial or industrial property (s74) where the land taken is less value than a replacement property (of comparable standard).
Business and/or residential tenant removal costs s75 PWA	Any business or residential tenants that have to give up occupation are entitled to have their reasonable removal expenses paid by the Crown.
Injurious affection ss60(1)(b), 63 PWA	Where other land held by the owner suffers injurious affection arising from the taking of land (such as a loss of value of their remaining land) they are entitled to compensation. This can also include situations where an affected party has not had any land acquired for the project but has suffered a loss during construction of the work.
Damage to land s60(1)(c) PWA	If the owner suffers any damage from the exercise of any power under the PWA that is not otherwise compensated under the Act, then they are entitled to compensation.
Where no market for land s65 PWA	Where there is no market for the land because of its particular use (e.g., a church or health facility), an owner can be paid the cost of replacing the existing buildings (equivalent reinstatement).