

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

LANDS ACQUISITION (REPEAL AND CONSEQUENTIAL PROVISIONS) BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Administrative
Services the Hon. Stewart West MP)

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OUTLINE AND FINANCIAL IMPACT STATEMENT

OUTLINE

The Lands Acquisition Bill 1988 was introduced into the House of Representatives on 26 May 1988 and was debated there on 20 October 1988.

This legislation provides for the transition from the use of powers and procedures under the present Act, the Lands Acquisition Act 1955 (the 1955 Act) to the use of powers and procedures under the new Act, the Lands Acquisition Act 1988 (the 1988 Act).

The transitional provisions reflect the Government's intention that the new Lands Acquisition legislation should apply as soon as possible. The overall intention is that where acquisition action has been started under the 1955 Act but not completed at the time of commencement of the 1988 Act then the acquisition is to be undertaken in accordance with the provisions of the 1988 Act.

In general this would mean that owners with whom the Commonwealth was negotiating regarding the acquisition of their property would be issued a pre acquisition declaration which in turn would provide to those owners the rights to appeal against the decision to acquire their property.

Furthermore the new compensation provisions of the 1988 Act are to apply as soon as possible and will apply in some instances where the activity which has given rise to the compensation claim was authorised under the 1955 Act. This will apply in relation to any compulsory acquisitions which have occurred since 25 May 1988 when the Lands Acquisition Bill was introduced into the House of Representatives identifying the proposed new compensation entitlements. It will also apply to compensation claims that arise from the use of the Commonwealth's powers to temporarily enter onto and occupy land authorised under the 1955 Act and acted on within the three years before commencement of the 1988 Act.

This Bill also amends several existing Acts. The general intention behind most of those amendments is to retain the status quo in terms of Ministerial responsibilities and after responsibilities and powers contained in existing legislation the need arises because the Lands Acquisition Bill 1988 is far more precise than the 1955 Act in specifying what activities will be bound by it with exceptions having to be precisely identified.

In some other instances the amendments substitute a reference to the 1988 Act for a reference to the 1955 Act.

FINANCIAL IMPACT STATEMENT

This Bill does not give rise to any costs to Government beyond those implied by the provisions of the Lands Acquisition Bill 1988.

PART I PRELIMINARY

Clause 1 Short Title.

This clause sets out the short title of the proposed Act.

Clause 2 Commencement.

This clause provides for the legislation to come into force on the date that the Lands Acquisition Act 1988 commences.

PART II - REPEALS AND CONSEQUENTIAL AMENDMENTS

Clause 3 Repeal of Acts.

This clause provides that the Acts identified in Schedule 1 are repealed by this legislation.

Clause 4 Amendment of other Acts.

This clause provides that the Acts identified in Schedule 2 are amended by this legislation.

PART III - TRANSITIONAL PROVISIONS

Clause 5 Definitions

This clause provides definitions of various words and terms used in the Bill. In particular the clause identifies that reference to the 1955 Act means reference to the Lands Acquisition Act 1955 and reference to the 1988 Act means reference to the Lands Acquisition Act 1988. This memorandum adopts the same form of reference.

Clause 6 Effect of repeal of 1955 Act.

This clause is provided to ensure that the effect of section 8 of the Acts Interpretation Act 1901 is preserved despite the inclusion of extensive transitional provisions of this Bill.

Clause 7 Acquisition by agreement.

This clause provides for the situation where an acquisition by agreement was initiated under the 1955 Act but not completed at the time of commencement of the 1988 Act.

With acquisitions by agreement, if the acquisition has reached the stage that a contract has been entered into and the land is acquired then the acquisition would be completed under the 1955 Act. However if negotiations had commenced but the acquisition had not been concluded, then it shall be conducted in accord with the 1988 Act.

In general this would imply issue to the owners of a pre acquisition declaration providing to them the right to appeal the decision to acquire. All other procedures and provisions of the 1988 Act would then also apply.

Claus 8 Compulsory Acquisition

This clause provides that in the case of acquisitions by compulsory process, if gazettal of the acquisition (and hence acquisition) has not occurred by the commencement of the 1988 Act then that acquisition should be conducted in accord with the 1988 Act. In general this would imply issue of a pre acquisition declaration.

Compensation following compulsory acquisition of any property after 25 May 1988 shall be determined according to the 1988 Act whether the acquisition was undertaken using that Act or the 1955 Act. If property owners in this category have been paid compensation under the 1955 Act before the date of commencement of the 1988 Act and the 1988 Act provides a right to additional compensation then adjusting payments will be made to them.

If in the case of a compulsory acquisition, the acquisition had been gazetted before commencement of the 1988 Act, the Parliamentary veto right (Section 12 of the 1955 Act) would still apply to the acquisition even if the time allowed for disallowance extended beyond the date of commencement of the 1988 Act.

Where either House of Parliament disallows an acquisition under section 12(2) of the 1955 Act after commencement of the 1988 Act the owner would be entitled to compensation under section 96 of the 1988 Act for costs he may have incurred as a result of the disallowed acquisition.

Where under the 1955 Act an interest in land has been compulsorily acquired, compensation has been assessed and the monies paid into the Treasury under section 33 of the 1955 Act, the former owner retains entitlement to that compensation despite repeal of the 1955 Act.

Clause 9 Exercise of powers under Part III of the 1955 Act.

This clause provides that where an authority under the 1955 Act is in force in relation to powers to examine lands and to occupy land temporarily, then those authorities continue to be in force as if they had been issued for the purposes of sections 10, 11 and 12 of the 1988 Act. Any actions done under those authorities will be considered to have been done under the equivalent provisions of the 1988 Act which are listed in the clause.

This will imply that the compensation to be paid that arises out of any of those activities even though initially authorised under the 1955 Act will be assessed according to the requirements of the 1988 Act.

Where an Act was done under sections 16, 17 or 18 of the 1955 Act, then this clause provides that they would be equivalent to actions undertaken under sections 10, 11 and 12 of the 1988 Act. Consequently the limitation specified in section 95 of the 1988 Act that limits claims for compensation to within 3 years after suffering the loss will apply.

In such instances, if the 1988 Act provides an additional entitlement to compensation to such persons then additional compensation will be paid.

Clause 10 Offer of land to former owner.

Section 121 of the 1988 Act provides that where land has been acquired by compulsory process within the last seven years and the Commonwealth wishes to dispose of that land regard would be had to the general principle that the land would be offered back to the former owner.

The 1955 Act contains a similar provision which applies whether the land was originally acquired either by compulsory process or by agreement. In the transition of an owners entitlement in this regard from the conditions of the 1955 Act to the conditions of the 1988 Act, where a property has been acquired by agreement under section 7 of the 1955 Act, then the former owner's entitlement to the sale back offer will continue to apply for a period of 3 years following the date of repeal of the 1955 Act.

Clause 11 Person in possession of acquired land

Section 47 of the 1988 Act provides that an owner whose property is acquired by compulsory process may stay in occupation of the land for a period of up to 6 months or as otherwise agreed between the former owner and the Minister. Clause 11 of this Bill stipulates the conditions that would apply where a person's land has been compulsorily acquired under the 1955 Act after 25th of May 1988 and that person is by agreement continuing to occupy the land that has been acquired at the time the 1988 Act commences.

If the terms of the original agreement fixed a period of time that the former owner could remain in occupation of the land, then those terms shall be regarded as having been determined under subsection 47(1) of the 1988 Act. If the original agreement had not identified a period of time of continued occupation then, for the purposes of subsection 47(1) of the 1988 Act, the period will be deemed to have been 6 months after commencement of the 1988 Act.

Any terms and conditions of the original agreement under section 56 of the 1955 Act shall be deemed to have been agreed for the purposes of subsection 47(4) of the 1988 Act.

Clause 12 Warrants for possession of land

Where a warrant is in force that has been issued under section 57 of the 1955 Act, although the 1955 Act is repealed, the warrant is considered to remain in force as if it had been issued under the 1988 Act.

Clause 13 Certificates as to ownership of land

This clause has been provided to make it clear that certification of Commonwealth ownership of land under subsection 17(1) of the Commonwealth Places (Application of Laws) Act 1970 should not be brought into question even though there may now be no authorising persons as a consequence of the repeal of the 1955 Act.

SCHEDULE 1

REPEAL OF ACTS

This schedule identifies the list of Commonwealth Acts which are repealed at the commencement of the 1988 Act.

SCHEDULE 2

AMENDMENTS OF OTHER ACTS

Aboriginal and Torres Strait Islanders (Queensland Reserves and Community Self Management) Act 1978

Subsections 15(1), (2) and (3)

These amendments ensure that the Commonwealth will be able to make land available to Aboriginal Councils under this Act without being bound by the requirements of the 1988 Act.

Aboriginal Land Grant (Jervis Bay Territory) Act 1986

Section 38

This Act provided for a specific land grant from the Commonwealth to the Wreck Bay aboriginal community. This amendment of section 38 is required to permit the Aboriginal Council to continue to grant leases under this legislation despite any provisions of the 1988 Act.

Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987

Sections 11 and 12

These amendments provide that references to particular sections of the 1955 Act will continue to be effective as if that Act had not been repealed.

Section 30

This section is being amended to retain the present arrangements under which the Victorian Government can issue mining and exploration licences over this land, regardless of anything contained in the 1988 Act.

Aboriginal Land Rights (Northern Territory) Act 1976

Subsection 3(1) (paragraph (a) of the definition of "Crown Land")

The definition of Crown Land in this Act is amended to delete reference to the 1955 Act so that the definition of Crown Land would not include land set apart for a public purpose under any Commonwealth legislation.

Subsection 3(3)

This subsection is being amended such that where this Act is referring to the authorisation of mining for minerals it should be read as referring to section 124 of the 1988 Act.

After Section 3B

A new section is to be added to this Act to make clear that powers provided in this Act would have effect despite anything in the 1988 Act.

Section 5

This subsection is being added to make clear that a Land Trust is able to acquire land under this Act despite anything in the 1988 Act.

Paragraph 12(2)(c)

This subsection is being amended so that the issue of licences for mining and the exploration of minerals shall be done according to the requirements of section 124 of the 1988 Act rather than relevant sections in the 1955 Act.

After subsection 12(2)

Where a deed of grant executed before the commencement of the 1988 Act contains a reservation that rights to explore for minerals and leases or licences to mine for minerals may be granted under provisions of the 1955 Act then that reservation has effect on or after the commencement of the 1988 Act as if it were a reservation that such rights, leases or licences could be granted in accordance of section 124 of the 1988 Act.

Airports (Business Concessions) Act 1959

Subsection 6(2)

Section 6 of this Act provides that the Minister responsible for the Act may issue leases and licences in respect of land within an airport. This amendment provides that the Minister retains these powers regardless of anything contained in the 1988 Act.

Section 13

Section 13 of this Act provides that where the Commonwealth takes possession of land by use of a Lands Acquisition Act provision then references in section 131 of the 1988 Act to the Minister shall be read as references to the Minister responsible for this Act and references in section 131 of the 1988 Act to an authorised person will be a reference to a person authorised by the Minister responsible for this Act.

Australian National Railways Commission Act 1983

Subsection 78B(1)

Under the Act Australian National Railways is exempt from the provisions of the Lands Acquisition Act 1955. This amendment alters the reference to the 1955 Act to a reference to the 1988 Act.

Australian Trade Commission Act 1985

Section 23

This amendment provides that lands vested in the Australian Trade Commission can be disposed of by the Commission regardless of the requirements of sections 117 and 119 of the 1988 Act.

Canberra Water Supply (Googong Dam) Act 1974

Subsection 13(6)

This subsection specifies that where land is entered onto and materials are obtained for purposes related to Googong Dam then the compensation payable to the owner of that land would be determined under the Lands Acquisition Act. This amendment changes the reference from the 1955 Act to the 1988 Act.

Christmas Island Act 1958

Subsection 21A(1)

Section 21A of this Act provides for the disposal of land at Christmas Island. This amendment deletes reference to the 1955 Act and replaces it with reference to the 1988 Act. This has the effect that disposals authorised by ordinances under this Act will not be bound by the requirements of the 1988 Act.

Civil Aviation Act 1988

Section 97

Section 97 of this Act exempts the Civil Aviation Authority from the provisions of the 1955 Act. This amendment alters a reference to the 1955 Act to a reference to the 1988 Act.

Commonwealth Places (Application of Laws) Act 1970

Paragraph 17(2)(a)

This amendment alters the definition of an authorised person for the purposes of this Act from being a person delegated under section 64 of the 1955 Act to a person delegated under section 137 of the 1988 Act.

Defence Housing Authority Act 1987**Section 61**

This section provides that the Lands Acquisition Act does not apply in relation to the Defence Housing Authority. This amendment changes reference to the 1955 Act to reference to the 1988 Act.

Federal Airports Corporation Act 1986**Section 36**

This section provides that the Lands Acquisition Act does not apply to a series of powers to deal in land. This amendment alters a reference to the 1955 Act to a reference to the 1988 Act.

High Court of Australia Act 1979**Subsection 17(4)**

This amendment provides that the High Court will be an acquiring authority for the purposes of the 1988 Act.

Lighthouses Act 1911**Subsection 6A(3)**

This subsection of the Act provides that where a lighthouse is to be acquired from a State by compulsory process under this Act then the provisions of the 1955 Act will apply. The amendment changes that reference so that the 1988 Act will apply.

National Gallery Act 1975**Subsection 11(14)**

This section of the Act provides that where compensation is to be paid following compulsory acquisition of a work of art then the compensation procedures are to be those provided in the Lands Acquisition Act and in that Act references to an

interest in land shall be taken to be a reference to a legal estate in the work of art and reference in that Act to the Minister to be taken as reference to the Minister administering this Act. This amendment changes the reference from the appropriate segments of the 1955 Act to the appropriate segments of the 1988 Act.

Subsection 11(16)

This amendment changes the reference from the 1955 Act to the 1988 Act.

National Library Act 1960

Subsection 7A(2)

This section provides that the National Library can take out leases of land or buildings for its purposes using powers of the 1955 Act unless the Minister responsible for that Act determines otherwise. This is an unnecessary provision and is being deleted.

National Parks and Wildlife Conservation Act 1975

Paragraphs 8A(12)(a) and (b)

These subsections provide that where regulations made under section 8A of the Act are inconsistent with a lease or licence to mine or explore for minerals issued under the Lands Acquisition Act then the regulations would have no effect.

This amendment repeats that provision with particular reference to the 1955 Act and adds that the same thing would apply to a licence to mine or explore for minerals granted under section 124 of the 1988 Act.

After subsection 9(3)

This amendment provides that where the Director of the National Parks and Wildlife Service grants or surrenders a lease or sublease under this section of the Act then the provisions of the 1988 Act do not apply.

Northern Territory (Self Government) Act 1978**Subsection 70(4)**

This subsection relates to the acquisition of interests in land vested in the Northern Territory by the Commonwealth for public purposes. It provides for the publication of a notice in the Gazette following authorisation by the Governor-General. This amendment changes the reference in this subsection from the 1955 Act to the 1988 Act.

Section 70

This amendment provides that powers in relation to acquisitions identified in the section shall have effect despite anything contained in the 1988 Act.

Overseas Telecommunications Act 1946**Subsection 79D(1)**

This subsection provides that the 1955 Act does not apply to acquisition of interests in land by OTC. This amendment changes the reference from the 1955 Act to the 1988 Act.

Pipeline Authority Act 1973**Subsection 35(5)**

This subsection of the Act provides that where the Pipeline Authority's activities have given rise to a claim for compensation as a result of damage to land that has been entered onto and/or occupied then the provisions governing compensation in such situations in the Lands Acquisition Act shall apply. This amendment is specifying that actions of this nature done by the Authority under this Act shall be taken as having been done under Part III of the 1988 Act and as such Part VIII of the 1988 Act relating to the determination of compensation following those actions will apply.

Section 37

This section provides that the Lands Acquisition Act will apply to the acquisitions of land for the purposes of the Pipeline Authority. This amendment deletes that section of the Act because the Pipeline Authority has now been exempted from the requirements of the Lands Acquisition Act.

Postal Services Act 1975

Subsection 114B(1)

This subsection provides that the Lands Acquisition Act 1955 does not apply to acquisitions of interests in land by Australia Post. This amendment changes the reference from the 1955 Act to the 1988 Act.

Public Order (Protection of Persons and Property) Act 1971

Subsection 13(2)

This subsection defines an authorised person for the purposes of the clause dealing with the giving of evidence under this Act. The definition is being amended to refer to the 1988 Act rather than the 1955 Act.

Satellite Communications Act 1984

Subsection 18B(1)

This subsection provides that the Lands Acquisition Act 1955 does not apply to acquisition of interests in land by Aussat. This amendment changes the reference from the 1955 Act to the 1988 Act.

Seat of Government (Administration) Act 1910

Sections 7A and 9A

These sections provide that acquisition and disposal of lands in the ACT can be done under an ordinance in the Territory and the Lands Acquisition Act will not apply to those acquisitions or disposals. This amendment changes reference to the 1955 Act to a reference to the 1988 Act.

Snowy Mountains Hydro-electric Power Act 1949

Subsection 33(4)

This subsection provides that where actions of the Snowy Mountains Hydro-electric Authority damages land then compensation will be paid according to the provisions of the 1955 Act.

This amendment provides that any actions by the Authority giving rise to compensation claims will be taken as having been done under Part III of the 1988 Act and as such compensation provisions of Part VIII of the 1988 Act will apply.

Telecommunications Act 1975

Subsection 110B(1)

This subsection provides that the Lands Acquisition Act 1955 does not apply in relation to the activities of Telecom. This amendment changes the reference from the 1955 Act to the 1988 Act.

World Heritage Properties Conservation Act 1983

Section 17

This section of the Act provides that the Commonwealth can certify that particular land will be classified as a World Heritage property and as such activities on that land will be constrained.

Since such a constraint can be considered to be an acquisition of an interest in land as defined in the 1988 Act this section is being amended to make clear that the 1988 Act does not apply in relation to an acquisition of an interest in property through the operation of this Act.

