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1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

LANDS ACQUISITION BILL 1988

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Amendments to be moved on behalf of the Government)

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

This memorandum supplements the explanatory memorandum presented
to the House of Representatives in October 1988

Amendments 1, 2 and 3

Operation of Territory Laws Clause 5

- Minor technical amendments have been made to the text in subclauses 5(1)(a), (b) and (c).

Amendments 4, 5, 6 and 7

Clause 6

- Amendment has been made to the definition of Commonwealth authority to exclude authorities incorporated under a law of the Norfolk Island Territory from being bound by the provisions of the Lands Acquisition Bill.
- Technical amendment to the definition of an interest.
- The definition of owner has been deleted. The definition in the Bill may have implied that a person who held an interest in land that could only be returned to the State rather than assigned to another person eg. a particular form of mining tenement, would not be an owner or person affected.
- A technical amendment has been made to the definition of public purpose.

Amendment 8

This is a technical amendment consequential to amendment (5).

Amendments 9 and 10

Acquisitions to be in Accordance with Act Clause 21

- Addition of subclause (2) is a technical amendment which allows for an acquiring authority to have the benefit of a restriction on the use of particular land which results from actions by others eg. where a State applies a restriction.
- Clause 21 subclauses (3) and (4) have been added to provide any regulation exempting an acquiring authority will not be effective until after Parliamentary scrutiny of the regulation.

Amendment 11

Declaration that land is suitable for acquisition. Clause 22

This is a technical amendment to provide for details to be made available in a declaration related to an acquisition of a restriction on the use of land.

Amendments 12 and 13

Acquisitions where land required urgently.

Clause 24(1)(b)

The Bill contains provisions that limit the ability of a property owner to appeal a decision to acquire his property where it is essential that particular land be acquired.

The situation is covered in two instances in the Bill, at Clause 22(4) (where a pre acquisition declaration would be issued, appeal to the Minister to reconsider would be available but appeal to the AAT would not be available), and at Clause 24(1)(b) (where no pre acquisition declaration would be issued and there would be no appeal rights at all). This amendment deletes Clause 24(1)(b).

Amendments 14, 15, 16 and 17

Considerations to be taken into account on review.

Clause 31

- These are technical amendments to cover circumstances where a restriction on the use of the land is to be acquired.

Amendments 18 and 19

Minister to consider AAT recommendations

Clause 33

Subclause 33(1)

This subclause is being amended to provide that the Minister has 90 days from the date of effect of the Tribunal's decision to reject that decision/recommendation.

Subclause 33(2)

This subclause is being amended to reduce the time within which the Minister must advise Parliament of his decision to reject an AAT recommendation. The original 15 sitting days limit is being reduced to 3 sitting days.

Amendment 20

Acquisition by compulsory process.

Subclause 41(6)

Technical amendment only.

Amendment 21

Disallowance of an acquisition in a public park.

Subclause 6(2)

This amendment changes the time within which either House of Parliament can disallow an acquisition in a Public Park from 22 calendar days to 7 sitting days.

Amendments 22 and 23

Amount of compensation - general principles.

Clause 55

This amendment provides that in determining compensation following the compulsory acquisition of part of a person's property a factor to be considered is any increase or decrease in the value of the remaining property as a result of what the Commonwealth does on the property acquired.

Amendment 24

No general market for interest acquired.

Subclause 58(3)

This amendment revises the definition of how an owner's improvement of his financial position would be assessed.

The amendment clarifies that replacement of a new facility for an old facility will not in itself improve an owner's financial position although any clearly identifiable reduction in maintenance and operating costs would.

Amendment 25

Acquisition of a dwelling

Clause 61

Subclause 61(2)

The amendment increases the amount of the solatium payment from \$5,000 to \$10,000 and provides for that amount to be increased in line with the Consumer Price Index on an annual basis.

Amendment 26

Entitlement to compensation when acquisition does not proceed.

Clause 96

This Clause is being amended to provide that where the acquisition process has started but the Commonwealth does not proceed to acquisition, owners would be entitled to compensation whether the acquisition procedure was commenced by a pre acquisition declaration or a section 24 certificate.

Amendment 27

Disposals to be in accordance with Act.

Clause 117(b)

This amendment provides that any regulation exempting an acquiring authority will not be effective until after Parliamentary scrutiny of the regulation.

Amendment 28

Interest in land to be offered first to former owner.

Clause 121

This clause is being amended by;

- a technical amendment to the definition of "former owner"
- a technical amendment to provide that the term "market value" has the same meaning in this Clause as elsewhere in the Bill
- providing that the former owner would have 28 days within which to indicate his interest in negotiating with the Commonwealth
- providing that the former owner and the Commonwealth may seek from the AAT a determination of the price at which the land will be offered back to the former owner where negotiations have not led to agreement on the price.

Amendments 29, 30 and 31

Mining etc on certain land.

Clause 124

Subclause 124(5)

Technical amendment.

Subclause 124(7)

A technical amendment to define the terms used in the Clause.

Subclause 124(9)

This amendment provides that the present arrangement for the issue of exploration and mining licences over land vested in an Aboriginal Land Trust in the Northern Territory would be retained.

Amendment 32

Indexation of solatium payment.

Clause 126

This clause provides the means by which a solatium payment under Clause 61, is to be indexed. The index used is the All Groups Consumer Price Index.

Amendment 33

Injunction.

Clause 130

This clause is a new clause which provides a means by which the Commonwealth can enforce an acquired restriction on the use of land.

Amendment 34

Delegation.

Clause 137

This amendment specifies that the Minister or the Attorney-General may delegate powers under the Act to a person who is a member of the Australian Public Service.

