Lands Acquisition Bill 1988

Date Introduced: 25 May 1988
House: House of Representatives
Presented by: Hon. Stewart West, M.P., Minister for Administrative Services

Digest of Bill

Purpose
To provide for the acquisition by the Commonwealth of land required for public purposes and the payment of compensation.

Background
Section 51(xxix) of the Constitution gives the Commonwealth power to make laws for the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws. The Lands Acquisition Act 1955 (the Principal Act) governs acquisition of land on behalf of the Commonwealth.

The Commonwealth acquires on average approximately 2000 properties per year. The majority of property acquisitions involve freehold interests, of which 42% are acquired by compulsory process. The nature of modern acquisitions increasingly involves the acquisition of residences. In 1970 the Perth airport acquisition involved 42 residences. Of the 435 properties acquired in 1974 for the Brisbane airport extension 78% included residences. In 1973 the Commonwealth acquired 32 square miles of land comprising 155 separate properties and 53 residences, for the expansion of the city of Darwin. In more recent times, most activity has centered on the acquisition of property for the second Sydney international airport near Badgery’s Creek.

To a considerable degree, the existing law reflects the 19th century code adopted by the United Kingdom Parliament, which was primarily designed to facilitate the acquisition of, and to compensate for, strips of land taken for railways and canals. The historical context and limitations within which the English statute was enacted are reflected in the Principal Act. The nature of modern Australian acquisitions contrast markedly with England in earlier times, for example, the greater involvement of residences. As well, governments are increasingly required to provide public facilities such as airports and roads. Such large scale developments have resulted in large numbers of people being displaced by large scale acquisitions of land, often in urban areas. The Principal Act provides no mechanism for an individual adversely affected by a decision to compulsorily acquire property to require the acquiring authority to justify publicly the need for, and choice of, their property. Money is the sole form of compensation available. There is no practical assistance for the intangible effects of removal from residences, such as social dislocation.
Currently, a claimant is required to make a claim without information on the value the Commonwealth has placed on the land. The claimant must hire a valuer, and often other experts to give advise on the value of the property. The Commonwealth's valuation does not have to be supported by a statement setting out the basis and method of computation.

Individual property owners may be adversely affected by public knowledge of a proposal to acquire their land. This knowledge may deter purchases buying at normal market value, and the owner under the present legislation is unable to compel the government to purchase it. The property owner may thus be forced to hold onto the land until the government is ready to acquire it, or to sell to a buyer at less than market value. Many of the problems of compulsory acquisition are further compounded by inflation. Compensation is calculated as at the date of acquisition.

In July 1977, the Attorney-General requested the Australian Law Reform Commission (ALRC) to examine existing Commonwealth lands acquisition legislation. Their report was tabled in April 1980. The recommendations of the ALRC provide for more open procedures in the acquisition process; greater public accountability for administrative decisions to acquire property; and more generous provisions for compensation for persons who have their land acquired by the Commonwealth. This Bill is largely based on those recommendations.

Main Provisions

Clauses 9, 13 and 95 provide that where the Commonwealth temporarily enters and occupies land, an authorised person is to provide seven days notice of the proposed entry; cause as little detriment, inconvenience and damage as is practicable to the land and anything on that land; and compensate the land owner for any expenses, damage or loss incurred as a consequence of the temporary occupation.

Clauses 16–21 list the nature of interests in land that the Commonwealth may acquire, and the steps to be taken in acquisition by agreement and by compulsory process. In both cases a pre-acquisition declaration is generally to be made. This is a statement of intention which provides the landowner with the government’s reason for the acquisition, and notification of legal rights conferred by the Bill. However, the declaration may include a statement that the proposed use is connected with the implementation of a policy decision and the policy decision is not subject to review or appeal (clause 22). Clause 24 provides that where the Minister can certify that the land is urgently required for a public purpose, or that the making of a pre-acquisition declaration would result in the disclosure of information prejudicial to the security, defence or international relations of Australia, the owner of the land is not entitled to a pre-acquisition declaration.

Where a land owner has been served a pre-acquisition declaration and agrees in writing to the acquisition, the Commonwealth is to acquire the property within 3 months or the declaration will cease to have effect (clause 44).
Where a pre-acquisition declaration has been issued, and the acquisition does not proceed, clause 96 provides for compensation for any loss suffered. The claimant must seek compensation within 3 years of the pre-acquisition declaration ceasing to be in force.

The Bill provides that a landowner may request the Minister to reconsider the acquisition decision (clause 26). If the acquisition decision is reaffirmed, the landowner can seek a review by the Administrative Appeals Tribunal (AAT). Clause 30 provides that the AAT may make a recommendation to the Minister that the declaration be confirmed, revoked or varied. Clause 31 provides a list of matters to be taken into account by the AAT when conducting the review, including:

- the nature of the public purpose set out in the declaration;
- the nature of the proposed use of the land;
- the extent to which the proposed use is in the public interest; and
- the extent to which the environment would be affected if the land were used or developed in the manner propose.

Clause 40 details the pre-requisites to acquisition by agreement, including that a pre-acquisition declaration in relation to the acquisition has come into force, and that the interest is available on the market.

Clause 52 establishes an entitlement to compensation where an interest in land is compulsorily acquired.

Clause 55 provides the general principles to be observed when calculating the sum of compensation a former landowner is entitled to, including:

- the market value of the land on the day of acquisition;
- the value of any financial advantage to the owner additional to market value; and
- any loss or damage suffered as a consequence of the acquisition.

Where land is used for a purpose other than carrying on a business and there is no market for land used for that purpose, compensation will be based on the cost of ceasing to use that land and commencing to use other land for that purpose (clause 58).

A fixed payment of $5000 is provided to compensate for intangible and unquantifiable losses incurred by a home owner where the land compulsorily acquired contains a dwelling which was the person's principal place of residence and the person is no longer entitled to occupy the dwelling (clause 61).

Any increase or decrease in the value of a property due to proposed work by the Commonwealth is to be disregarded in assessing compensation (clause 60).
Where a person considers they are entitled to compensation, they must prepare a claim on an approved form (clause 67). On receipt of the claim, the Commonwealth has 42 days to accept the claim and offer compensation, or to reject it (clause 70). Where it is rejected, the claimant may seek review by the AAT (clause 71). Recourse to the Federal Court is available where the claimant has not made an application to the AAT (clause 72). In that court, the claimant may seek a declaration that the interest specified in the claim was compulsorily acquired.

Where the Commonwealth makes an offer of compensation to a claimant, the claimant may then respond by either accepting or rejecting the Commonwealth’s offer, informing the Minister of the amount of compensation to which the person considers they are entitled and the basis of the calculation (clause 75).

A person who has rejected a final offer of compensation may apply to the AAT for a review of the Minister’s decision on the amount of compensation (clause 81). Similarly, clause 82 will allow such matters to be determined by the Federal Court.

Clause 103 provides that where the Minister’s offer of compensation is rejected, the Minister is required to reconsider the amount of compensation, having regard to the counter offer of the claimant, and to make a final offer. If, after two months, the Minister fails to make a final offer, the original offer will be deemed to be the final offer.

The Bill contains provisions which are aimed at minimising difficulties faced by owners during a protracted negotiations or review period. Clause 47 allows a land owner to remain in occupation for 6 months where the Commonwealth has no immediate need of the property. Clause 110 provides for advance payment of 90% of the Commonwealth’s offer of compensation where the Minister has accepted a claim and made a offer of compensation, whether the offer has been accepted or not. Clause 115 provides that a claimant is entitled to interest on the balance of the amount compounded at three monthly intervals.

Where the Commonwealth has acquired an interest in land through compulsory acquisition, and the land is being disposed of within seven years of being acquired, the Minister, if practicable, should first offer the interest to the former owner. This provision does not apply where the Commonwealth has make substantial improvements to the land (clause 121).

Special provisions apply regarding acquisition of land in a public park. Clause 42 requires that where the Commonwealth seeks to acquire land in a public park, the Commonwealth must have State or Territory agreement to the acquisition and an enquiry under the Environment Protection (Impact of Proposals) Act 1974 must be completed unless Parliament vetos the requirement for a full enquiry. A full environmental impact statement must be prepared where the property to be acquired is part of World Heritage property or a property on the National Estate. Both Houses of the Parliament may disallow the acquisition.
The Governor-General will be able to make regulations consistent with this Bill, and, in particular, may make regulations prescribing penalties not exceeding $1000 for offences against the regulations (clause 138).

References
2. Ibid.
3. Ibid., p.18.
4. Ibid., p.20.

For further information, if required, contact the Law and Government Group.

24 October 1988

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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