PROPERTY RIGHTS PROTECTION BILL 1984

Date Introduced: 10 May 1984
House: Senate
Presented by: Senator J. Haines

Short Digest of Bill

Purpose

To require, in any acquisition of property under the law of the State or Territory, that the acquisition be on just terms, and to create a right of compensation for earlier acquisitions otherwise than on just terms, including that arguably effected in New South Wales by the Coal Acquisition Act 1981.

Background

The International Covenant on Civil and Political Rights entered into force for Australia on 13 November 1980. The text of the convention is set out in a Schedule to the Human Rights Commission Act 1981. Article 26 requires laws to prohibit discrimination and guarantee protection against discrimination on any ground including enumerated grounds, of which property is one.

The Coal Acquisition Act 1981 (NSW) provides in section 5 that all coal in New South Wales should vest in the Crown, freed and discharged from all trusts, leases, estates, interests etc., from a date appointed by the Governor under sub-section 2(2). Section 6 prescribes that compensation is not payable except as provided for in arrangements made by the Governor under sub-section 6(1).

New South Wales is not affected by a constitutional limitation preventing compulsory acquisition or requiring compensation on just terms. The Commonwealth Government is bound by plactium 51(xxxi) of the Constitution, which authorises laws for the "acquisition of property on just terms... for any purpose in respect of which the Parliament has power to make laws".

The scheme of the New South Wales legislation would, if enacted by the Commonwealth, contravene the Commonwealth requirement of just terms: first, because although acquisition with a consequent right to compensation would amount to "just terms"[1], acquisition with no
universal right to compensation arguably would not, and, secondly, because the arrangements to be made under the NSW legislation (section 6) authorise compensation in a particular case otherwise than on just terms.[2]

Even though there is no constitutional requirement in New South Wales for compensation, compensation is generally paid when land acreages are resumed for public purposes. A number of NSW Statutes refer to and adopt the provisions of the Public Works Act 1912 (NSW) for compulsory acquisition.

The Coal Acquisition Act 1981 (NSW) is expressed to acquire for the Crown all coal in New South Wales, other than that already belonging absolutely to the Crown. In fact, much coal under private land in NSW already belongs to the Crown because it was reserved to the Crown in the original grant of land. The Crown Lands Act 1884 required that grants under it reserve all minerals, although it was possible to obtain private rights to coal as late as 1913 through conversion of certain earlier granted titles.[3] Certain other NSW statutes also require reservation of minerals.[4] Many grants of Crown land in the early 19th century did not reserve minerals to the Crown. It is these and later private rights to coal which were affected by the Act.

The statutory scheme employed here to acquire coal was also used in the Petroleum Act 1955 (NSW) to acquire all petroleum and helium then existing in New South Wales.[5] Sub-section 6(1) of that Act stated that no compensation was to be payable.

Main Provisions

The Bill would commence on the date of Royal Assent and is expressed to extend to every Territory and to bind the Crown in right of the Commonwealth and every State or Territory.

The preamble to the Bill recites the provision against discrimination on grounds including property in Article 26 of the International Covenant on Civil and Political Rights, and the provisions of plactitum 51(xxxi) of the Commonwealth Constitution.

Sub-clause 6(1) excludes certain State property transactions.

Clause 6(2) renders "of no effect" any purported acquisition of "property", defined to "include all rights in
Clause 7 creates a right to just compensation in respect of earlier-acquired property acquired in contravention of the terms of clause 6, on or after 13 November 1980, the date of commencement for Australia of the International Covenant on Civil and Political Rights.

For further information, if required, contact:

21 August 1984

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References

1. Australian Apple & Pear Marketing Board v Tonking (1942) 66 CLR 77.

2. Minister of State for the Army v Dalziel (1944) 68 CLR 261.


5. op.cit., chapter 47.