



Lands Acquisition Legislation Amendment Bill 2008

Diane Spooner
Law and Bills Digest Section

Contents

Purpose.	3
Background.	3
Lands Acquisition Act 1989 (Cth)	4
Position of significant interest groups/press commentary	5
Financial implications	5
Main provisions.	5
Schedule 1	5
Schedule 2	6
Schedule 3	7
Schedule 4	8
Concluding Comments.	8

Lands Acquisition Legislation Amendment Bill 2008

Date introduced: 13 February 2008

House: Representatives

Portfolio: Finance and Deregulation

Commencement: The majority of the operative provisions commence on Proclamation, or six months after Royal Assent, whichever is the earliest.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To amend the *Lands Acquisition Act 1989* (the Act) to

- enable Commonwealth Mining Regulations to be made so that State and Territories can administer explore and mine on Commonwealth land under a consistent regulatory scheme
- vest jurisdiction in the Federal Court under the proposed Commonwealth Mining Regulations
- amend the penalty regime under the Act
- allow the Minister to make offers of compensation in situations where no claim has been made
- remove the requirement to table certain instruments in Parliament, and
- make other minor amendments.

Background

This Bill was introduced into the Senate by the previous Government on 13 September 2007 but lapsed on the dissolution of Parliament when the election was called. It has been introduced in its entirety by the new Government. As stated in the Second Reading Speech, the Bill has various amendments to improve the Acts operation and efficiencies in a number of areas, and seeks to remove some redundant measures which are still in the Act.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

The Commonwealth under the Constitution is empowered to acquire land for any purpose for which it has power to make laws. Section 51(xxxi) of the Constitution gives the Parliament power to make laws with respect to:

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.

Section 51(xxxi) includes conditions which protects the owner of 'property', an expression which includes land and interests in land. Section 51(xxxi) guarantees just terms compensation where property is acquired compulsorily from any State or person.

Section 51(xxxi) is concerned with compulsory acquisition, not acquisition by agreement. Where the Commonwealth acquires property through agreement with the owner, the terms agreed to by the owner of the property are assumed to be 'just terms'.¹

Lands Acquisition Act 1989 (Cth)

Using its constitutional powers, the Commonwealth Parliament has enacted a statutory framework which governs the acquisition of land and interests in land by the Commonwealth, to be found under the *Lands Acquisition Act 1989*. There are procedures set out in the Act relating to the acquisition of land by agreement and by compulsory acquisition.

The procedure governing acquisition by agreement of an interest in land is set out in section 40 of the Act. An agreement may be entered into once any one of the following conditions has been satisfied: a pre-acquisition declaration relating to the acquisition has become absolute and is in force; the Minister has granted a certificate under section 24; the interest is available in the market; or the interest is owned by the Commonwealth or a Commonwealth authority. Currently the Minister is required to lay before Parliament a statement concerning the details relating to the agreement.

Section 41 of the Act enables the Minister to acquire interests in land by compulsory acquisition. Under section 41 the Minister may declare in writing that an interest is acquired by compulsory process. In this case, either a pre-acquisition declaration has become absolute or a certificate has been given under section 24 (for acquisition of land that is required urgently). The declaration that identifies the land and the purpose for which it is being acquired shall be published in the Gazette, and if appropriate, published in a local newspaper where the land is situated.

1. Lumb and Moens', *The Constitution of the Commonwealth of Australia Annotated* 6th ed, p. 147.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

Acquisitions made under the Act must be for a ‘public purpose’. Reflecting section 51(xxxi) of the Constitution, ‘public purpose’ is defined in the Act as follows:

public purpose means a purpose in respect of which the Parliament has power to make laws and includes, in relation to land in a Territory, any purpose in relation to the Territory.

Position of significant interest groups/press commentary

There has been little, if any, comment on this Bill.

Financial implications

There is expected to be a reduction in administrative costs and financial burdens as a consequence of some of the amendments in this Bill.²

Main provisions

Schedule 1

Item 1 amends section 124 of the *Land Acquisition Act 1989* to allow regulations to be made to vest jurisdiction in the Federal Court of Australia in matters arising under regulations made pursuant to the Act. This reflects the amendments in **item 2** which extends the regulation making power to enable regulations to be made which will apply, adopt or incorporate provisions of State and Territory law.

Item 2 is the substantive amendment which will insert **new subsection 124(3A)**. Section 124 of the Act currently provides that regulations can be made relating to the exploration, mining and the carrying out of operations relating to that exploration and mining (subsection 124(1)). **New subsection 124(3A)** extends this regulation making power to provide that regulations made for those purposes can apply, adopt or incorporate legislation of a State or Territory. This will enable States and Territories to explore and conduct mining activities under a consistent regulatory framework to be developed in the future.³

To quote from the Department of Finance and Deregulation’s [website](#):

To date, no regulations have been made pursuant to section 124. The Act provides at subsection 124(8) that until such time as the regulations are made and take effect, the

-
2. Explanatory Memorandum, Lands Acquisition Legislation Amendment Bill 2008, p. 2.
 3. *ibid*, p. 1.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

provisions of the now repealed *Lands Acquisition Act 1955* continue. Essentially these provide that the Minister for Finance and Administration may authorise exploration on Commonwealth lands while the Governor-General may authorise the granting of leases/licences to mine on Commonwealth land. The *Lands Acquisition Act 1955* provides for exploration and mining on Commonwealth land to be subject to the relevant State/Territory mining legislation and to any conditions the Commonwealth may wish to apply.

All proposals to explore or mine on Commonwealth land are considered in accordance with the provisions of the [Environment Protection and Biodiversity Conservation Act 1999](#), the [Australian Heritage Commission Act 1975](#), and the [Native Title Act 1993](#), where applicable.⁴

Schedule 2

Part VII, Division 4, of the Act makes provision for claims for and offers of compensation. Section 67 allows a person who considers he or she is entitled to compensation to make a claim in the approved form to the Minister specifying the interest that has been acquired and the amount sought. **New section 74A (item 1)** makes provision in the event that a person does not make a claim for compensation under section 67. In this case and in certain circumstances,⁵ the Minister can now make an offer of compensation to an amount that the Minister thinks appropriate and set out how the amount offered was arrived at (**new subsections 74A(1) and (2)**). Once such an offer has been made a person cannot then make a claim under section 67 (**new subsection 74A(3)**).

If the amount offered by the Minister is accepted by the person, then that amount that has been offered and accepted is the amount of compensation that will be payable (**new section 79**). This covers the situation of post-acquisition agreements, whether or not a claim initiated the resolution.

Provisions covering the situation where the claimant does not accept the amount or allowing the court to determine the amount are consequentially amended to encompass the changes to the procedures created by **new section 74A (items 2 -21)**.⁶

Part VIII of the Act makes provision for compensation claims in the event that compulsory acquisition powers have been exercised and a person has suffered a loss as a result. This

4. See Department of Finance and Deregulation, Website, Lands Acquisition, Mining and Exploration at http://www.finance.gov.au/finframework/exploration_and_mining.html, accessed 7 March 2008.

5. The Minister must be satisfied there has been a compulsory acquisition, a period of 12 months has elapsed, and no claim has been made (**new paragraphs 74A(1)(a)-(c)**).

6. For more detail on these consequential amendments see the Explanatory Memorandum, paragraphs xiii-xvii, at pp. 4-5.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

could include injury, damage or expenses incurred.⁷ This is distinguishable from the situation where a person has had an interest in land or property compulsorily acquired. If a person considers he or she has suffered such a loss, a claim for compensation can be made to the Minister under section 97 of the Act.

New section 101A (item 22) allows the Minister to make an offer of compensation in the event a person has suffered a loss⁸ (if the Minister is satisfied of this factor) and the person has not made a claim for compensation under section 97 of the Act. This is similar to the proposed amendments that are envisaged in **new section 74A**. Once an offer of compensation has been made the person is not then entitled to make a claim under section 97. This will have the effect of preventing the Minister from making an offer under both **proposed section 101A** and section 98 of the Act.⁹

Item 47 makes a consequential amendment to the jurisdiction of the Federal Court of Australia to make determinations either when a claim has been made or an offer for compensation has been made under **new sections 74A and 101A**.

The amendments made to Schedules 1 and 2 apply after the proclamation of the Schedules or on the first day after the expiration of 6 months from the date of Royal Assent (**item 48 and clause 2** of the Bill).

Schedule 3

Item 1 of this Schedule amends the Act to ensure that the Cocos Islands land administration is exempt from the Act, consistent with the treatment of Christmas Island and Norfolk Island which are exempt already under section 5 of the Act.

Items 3 and 4 have the effect of no longer requiring the Minister to table in Parliament an agreement for the acquisition of an interest that is available in the market only. According to the Explanatory Memorandum an agreed acquisition of an interest that is available in the market is already reported on AusTender, and the removal of the requirement to table such transactions eliminates duplication in reporting. It should be noted that the existing requirement to table in Parliament does not give Parliament any power to disallow such statements.

Section 122 of the Act makes provision for Commonwealth land that is set aside for a public purpose to be then vested in trustees upon trust to carry out the particular purpose.

7. Section 94, *Lands Acquisition Act 1989*.

8. This applies when the loss has occurred as a result of: (a) powers exercised in the course of an acquisition, (b) the revocation of pre-acquisition document or (c) the revocation of a section 24 certificate (**new subsections 101A (1), (2) and (3)**).

9. Explanatory Memorandum, paragraph xxiv, p. 5.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

If the setting aside (or dedication of the land for a public purpose) is varied or revoked the trustees are required to deliver to the Attorney-General (or a person specified by the Attorney-General) all relevant title documents. **Item 7** removes the reference to the Attorney-General and replaces it with the ‘Minister’ in accordance with the Administrative Arrangements Orders which have the Act under the auspices of the Minister for Finance and Deregulation, not the Attorney-General.

Item 8 makes a similar amendment to section 138 of the Act to include recognition of the signature of the Minister or a delegate of the Minister, as well as the Attorney-General’s signature.

However, the Bill does not consequentially amend section 136 of the Act which states:

136 Execution of documents for and on behalf of Commonwealth

All instruments, receipts and documents relating to:

- (a) the acquisition of an interest in land; or
- (b) land vested, or that has been vested, in the Commonwealth;

may be executed by the Attorney-General for and on behalf of the Commonwealth.

Schedule 4

Schedule 4 repeals the *Lands Acquisition (Defence) Act 1968* which dealt with certain land acquired in New South Wales for defence purposes and is now redundant.¹⁰

Concluding Comments

As noted above, existing section 136 is not being amended to delete mention of the Attorney-General and replace it with the ‘Minister’ as is being proposed by **item 7**, nor is it being amended to insert the ‘Minister’ along side the Attorney-General as is being proposed by **item 8**. However, although Attorney-General can delegate this power to execute documents,¹¹ in the interests of consistency, Parliament may wish to consider this provision’s status.

10. Explanatory Memorandum, p. 7, paragraph xliii.

11. Section 139, *Lands Acquisition Act 1989*.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

© Copyright Commonwealth of Australia

This work is copyright. Except to the extent of uses permitted by the *Copyright Act 1968*, no person may reproduce or transmit any part of this work by any process without the prior written consent of the Parliamentary Librarian. This requirement does not apply to members of the Parliament of Australia acting in the course of their official duties.

This work has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Feedback is welcome and may be provided to: web.library@aph.gov.au. Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Entry Point for referral.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2526.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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