

1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 3 November 1988

(Minister for Administrative Services)

A BILL

FOR

An Act to repeal or amend certain Acts, and to enact certain transitional provisions, in consequence of the enactment of the *Lands Acquisition Act 1988*, and for other purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Lands Acquisition (Repeal and Consequential Provisions) Act 1988*.

Commencement

2. This Act commences at the commencement of the *Lands Acquisition Act 1988*.

PART II—REPEALS AND CONSEQUENTIAL AMENDMENTS

Repeal of Acts

3. The Acts specified in Schedule 1 are repealed.

Amendments of other Acts

4. The Acts specified in Schedule 2 are amended as set out in the Schedule. 5

PART III—TRANSITIONAL PROVISIONS

Definitions

5. In this Part:

“land”, in relation to an acquisition under the 1955 Act, means the interests in land vested, or that would be vested, in the Commonwealth as a result of the acquisition; 10

“1955 Act” means the *Lands Acquisition Act 1955*;

“1988 Act” means the *Lands Acquisition Act 1988*;

“Trust Fund” has the same meaning as in the 1988 Act. 15

Effect of repeal of 1955 Act

6. Except in relation to the matters expressly dealt with, this Part shall not be taken to show a contrary intention for the purposes of section 8 of the *Acts Interpretation Act 1901*.

Acquisition by agreement 20

7. Where:

(a) before the repeal of the 1955 Act, the Commonwealth had entered into an agreement for the acquisition of land;

(b) the making of the agreement was authorised under section 7 of that Act; and 25

(c) on the repeal of the 1955 Act, the land had not been acquired; the 1955 Act continues to apply to the acquisition of the land despite the repeal of the 1955 Act.

Compulsory acquisition

8. (1) Despite the repeal of the 1955 Act, that Act continues to apply in relation to the acquisition of land acquired under section 10 of that Act before 26 May 1988. 30

(2) Where land was acquired under section 10 of the 1955 Act on or after 26 May 1988, the 1988 Act applies as if:

(a) the 1988 Act had been in force when the land was acquired; and 35

(b) the land had been acquired under section 41 of that Act.

(3) Where:

- (a) land was acquired under section 10 of the 1955 Act on or after 26 May 1988; and
- (b) before the 1955 Act was repealed, an amount was paid to a person as compensation in respect of the acquisition or on account of such compensation;

the following provisions have effect:

- (c) sections 88 and 89 of the 1988 Act do not apply;
- (d) if the amount of compensation payable under the 1988 Act exceeds the amount already paid, that Act has effect as if the amount paid were an advance under section 85 of that Act;
- (e) if the amount of compensation payable under the 1988 Act is equal to, or less than, the amount already paid, the person is not entitled to any further payment of compensation.

(4) Where:

- (a) land was acquired under section 10 of the 1955 Act; and
- (b) when that Act was repealed, either:
 - (i) a copy of the notice published under subsection 10 (3) of that Act had not been laid before both Houses of the Parliament; or
 - (ii) such a copy had been laid before both Houses of the Parliament but the period specified in subsection 12 (2) of the 1955 Act had not expired;

subsections 12 (1) and (2) of the 1955 Act continue to apply to the acquisition of the land, even though the 1988 Act may also apply under subsection (2).

(5) If a notice published under subsection 10 (3) of the 1955 Act becomes void because of subsection 12 (2) of that Act, section 96 of the 1988 Act applies as if:

- (a) the notice were a pre-acquisition declaration under the 1988 Act; and
- (b) the acquisition to which the notice relates had been disallowed under subsection 46 (2) of the 1988 Act.

(6) Where:

- (a) land was acquired under section 10 of the 1955 Act; and
- (b) compensation in relation to the acquisition was deposited in the Treasury under section 33 of that Act;

the 1988 Act has effect as if the compensation had been paid into the Trust Fund under section 90 of that Act.

Exercise of powers under Part III of the 1955 Act

9. (1) An authority in force under section 16 of the 1955 Act immediately before the repeal of that Act continues in force as if it were an authority for the purpose of section 10 of the 1988 Act.

(2) An authority in force under section 17 of the 1955 Act immediately before the repeal of that Act continues in force, in relation to the land to which the authority related, as if it were an authority for the purpose of sections 11 and 12 of the 1988 Act.

(3) In relation to an act done under section 16, 17 or 18 of the 1955 Act, the 1988 Act (other than section 9) applies as if the act had been done under the equivalent provision of the 1988 Act.

(4) For the purpose of subsection (3):

(a) section 10 of the 1988 Act is equivalent to section 16 of the 1955 Act;

(b) section 11 of the 1988 Act is equivalent to section 17 of the 1955 Act; and

(c) section 12 of the 1988 Act is equivalent to section 18 of the 1955 Act.

(5) Where:

(a) an act was done under section 16, 17 or 18 of the 1955 Act; and

(b) before the repeal of the 1955 Act, compensation was paid to a person under that Act;

the following provisions have effect:

(c) sections 112 and 113 of the 1988 Act do not apply;

(d) if the amount of compensation payable under the 1988 Act exceeds the amount already paid, that Act has effect as if the amount paid were an advance under section 110 of that Act;

(e) if the amount of compensation payable under the 1988 Act is equal to, or less than, the amount already paid, the person is not entitled to any further payment of compensation.

Offer of land to former owner

10. (1) Section 121 of the 1988 Act applies to an interest in land acquired under section 7 of the 1955 Act during the last 3 years as if the 1988 Act had been in force when the interest was acquired and the interest had been acquired under section 41 of the 1988 Act.

(2) The expression “the last 3 years” means the period of 3 years that ended on the repeal of the 1955 Act.

Person in possession of acquired land

11. (1) This section applies where:

(a) immediately before the commencement of the 1988 Act, a person was in possession of land under an agreement made with the Minister under section 56 of the 1955 Act; and

- (b) the land had been acquired under section 10 of the 1955 Act on or after 26 May 1988.

(2) Where this section applies, the following provisions have effect for the purpose of section 8 of this Act:

- 5 (a) if the agreement does not fix a definite period of possession, the person shall be regarded as having given the Minister notice under subsection 47 (1) of the 1988 Act specifying a period ending 6 months after the date of commencement of the 1988 Act;
- 10 (b) if a period of possession is fixed by the agreement and the period is 6 months or less, the person shall be regarded as having given the Minister notice under subsection 47 (1) of the 1988 Act specifying that period;
- 15 (c) if a period of possession is fixed by the agreement and the period is longer than 6 months, the period shall be regarded as having been fixed by agreement between the Minister and the person for the purpose of subsection 47 (1) of the 1988 Act;
- 20 (d) the terms and conditions of the agreement under section 56 of the 1955 Act shall be regarded as having been agreed upon by the Minister and the person for the purpose of subsection 47 (4) of the 1988 Act.

Warrants for possession of land

12. A warrant in force under section 57 of the 1955 Act immediately before the repeal of that Act has the same effect (if any) after that repeal as it would have had if:

- 25 (a) the 1988 Act had been in force when the warrant was granted; and
(b) the warrant were an order granted under section 131 of the 1988 Act.

Certificates as to ownership of land

30 13. (1) In this section, "certificate" means a certificate under subsection 17 (1) of the *Commonwealth Places (Application of Laws) Act 1970*.

(2) A certificate admitted in evidence in proceedings before the repeal of the 1955 Act has the same effect after the repeal of that Act as it would have had if the Act had not been repealed.

SCHEDULE 1

Section 3

REPEAL OF ACTS

Lands Acquisition Act 1955
 Lands Acquisition Act 1957
 Lands Acquisition Act 1973
 Lands Acquisition Amendment Act 1977
 Lands Acquisition Amendment Act 1978
 Lands Acquisition Amendment Act 1987

SCHEDULE 2

Section 4

AMENDMENTS OF OTHER ACTS

Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-management) Act 1978

Subsection 15 (1):

After “any” insert “interest in”.

Subsections 15 (2) and (3):

Omit the subsections, substitute the following subsection:

“(2) In this section, ‘interest’, in relation to land, has the same meaning as in the *Lands Acquisition Act 1988*.”.

Aboriginal Land Grant (Jervis Bay Territory) Act 1986

Section 38:

Add at the end the following subsection:

“(6) The *Lands Acquisition Act 1988* does not apply to the grant of a lease under this section.”.

Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987

Section 11:

Omit “Part IV of the *Lands Acquisition Act 1955*”, substitute “In spite of the repeal of the *Lands Acquisition Act 1955*, Part IV of that Act”.

Section 12:

Omit “Sections 13, 55, 58, 59 and 62, of the *Lands Acquisition Act 1955*”, substitute “In spite of the repeal of the *Lands Acquisition Act 1955*, sections 13, 55, 58, 59 and 62 of that Act”.

SCHEDULE 2—continued

Section 30:

Add at the end the following subsection:

“(3) Regulations made for the purposes of section 124 of the *Lands Acquisition Act 1988* do not apply to the relevant land.”.

Aboriginal Land Rights (Northern Territory) Act 1976

Subsection 3 (1) (paragraph (a) of the definition of “Crown Land”):

Omit “the *Lands Acquisition Act 1955* or under any other Act”, substitute “an Act”.

Subsection 3 (3):

Omit all the words from and including “reference to:” to the end of the subsection, substitute “reference to section 124 of the *Lands Acquisition Act 1988*.”.

After section 3B:

Insert the following section:

Act has effect despite *Lands Acquisition Act*

“3C. This Act has effect despite anything contained in the *Lands Acquisition Act 1988*.”.

Section 5:

Add at the end the following subsection:

“(3) The *Lands Acquisition Act 1988* does not apply to the acquisition by a Land Trust, under this Act, of an estate or interest in land.”.

Paragraph 12 (2) (c):

Omit “subsections 51 (1A) and 53 (2A) of the *Lands Acquisition Act 1955*”, substitute “section 124 of the *Lands Acquisition Act 1988*.”.

After subsection 12 (2):

Insert the following subsection:

“(2AAA) Where a deed of grant executed before the commencement of the *Lands Acquisition Act 1988* is expressed to be subject to a reservation that rights to explore for minerals, and leases or licences to mine for minerals, on or below the surface of the land may be granted under subsections 51 (1A) and 53 (2A) of the *Lands Acquisition Act 1955*, that reservation has effect on and after the commencement of the *Lands Acquisition Act 1988* as if it were a reservation to the effect that such rights, leases or licences may be granted in accordance with section 124 of the *Lands Acquisition Act 1988*.”.

SCHEDULE 2—continued

Airports (Business Concessions) Act 1959

Subsection 6 (2):

Omit the subsection, substitute the following subsection:

“(2) This section has effect despite anything contained in the *Lands Acquisition Act 1988*.”.

Section 13:

Repeal the section, substitute the following section:

Orders to obtain possession

“13. In the application of section 131 of the *Lands Acquisition Act 1988* in relation to land within an airport:

- (a) the references in that section to the Minister shall be read as references to the Minister for the time being administering this Act; and
- (b) the reference in that section to an authorised person shall be read as a reference to a person authorised for the purposes of that section by the Minister administering this Act.”.

Australian National Railways Commission Act 1983

Subsection 78B (1):

Omit “*Lands Acquisition Act 1955*”, substitute “*Lands Acquisition Act 1988*”.

Australian Trade Commission Act 1985

Section 23:

Add at the end the following subsection:

“(5) Sections 117 and 119 of the *Lands Acquisition Act 1988* do not apply to the disposal of interests in land vested in the Australian Trade Commission.”.

Canberra Water Supply (Googong Dam) Act 1974

Subsection 13 (6):

Omit the subsection, substitute the following subsection:

“(6) Part VIII of the *Lands Acquisition Act 1988* applies in relation to the determination of compensation under this section as if anything done by the Authority under this Act had been done under Part III of the *Lands Acquisition Act 1988*.”.

SCHEDULE 2—continued
Christmas Island Act 1958

Subsection 21A (1):

Omit “*Lands Acquisition Act 1955*”, substitute “*Lands Acquisition Act 1988*”.

Civil Aviation Act 1988

Section 97:

Omit “*Lands Acquisition Act 1955*”, substitute “*Lands Acquisition Act 1988*”.

Commonwealth Places (Application of Laws) Act 1970

Paragraph 17 (2) (a):

Omit “or function under section 64 of the *Lands Acquisition Act 1955-1966*”, substitute “under section 137 of the *Lands Acquisition Act 1988*”.

Defence Housing Authority Act 1987

Section 61:

Omit “*Lands Acquisition Act 1955*”, substitute “*Lands Acquisition Act 1988*”.

Federal Airports Corporation Act 1986

Section 36:

Omit “*Lands Acquisition Act 1955*”, substitute “*Lands Acquisition Act 1988*”.

High Court of Australia Act 1979

Subsection 17 (4):

Omit the subsection, substitute the following subsection:

“(4) For the purposes of the *Lands Acquisition Act 1988*, the Court shall be deemed to be an authority incorporated by a law of the Commonwealth.”.

Lighthouses Act 1911

Subsection 6A (3):

- (a) Omit “*Lands Acquisition Act 1955*”, substitute “*Lands Acquisition Act 1988*”.
- (b) After “acquisition of” (first occurring) insert “interests in”.
- (c) Omit “land” (last occurring), substitute “interests”.

SCHEDULE 2—continued

National Gallery Act 1975

Subsection 11 (14):

Omit the subsection, substitute the following subsection:

“(14) Parts VII and IX of the *Lands Acquisition Act 1988* apply in relation to a right to compensation referred to in subsection (13) as if:

- (a) that right were an entitlement to compensation under section 52 of that Act;
- (b) a reference in those Parts to an interest in land were a reference to the legal estate in the work of art to which that right relates; and
- (c) a reference in those Parts to the Minister were a reference to the Minister administering this Act.”.

Subsection 11 (16):

Omit “*Lands Acquisition Act 1955*”, substitute “*Lands Acquisition Act 1988*”.

National Library Act 1960

Subsection 7A (2):

Omit the subsection.

National Parks and Wildlife Conservation Act 1975

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

Omit the paragraphs, substitute the following paragraphs:

“(a) an interest of either of the following kinds granted before the commencement of the *Lands Acquisition Act 1988*:

- (i) a lease or licence granted under section 51 of the *Lands Acquisition Act 1955*;
- (ii) a right (however described) to explore or prospect for minerals granted under section 53 of the *Lands Acquisition Act 1955*; or
- (b) a right (however described) to explore for minerals, or to mine for or recover minerals, granted under section 124 of the *Lands Acquisition Act 1988*.”.

After subsection 9 (3):

Insert the following subsection:

“(3A) The *Lands Acquisition Act 1988* does not apply to the grant or surrender of a lease or sub-lease under this section.”.

SCHEDULE 2—continued

Northern Territory (Self-Government) Act 1978

Subsection 70 (4):

Omit “*Lands Acquisition Act 1955*”, substitute “*Lands Acquisition Act 1988*”.

Section 70:

Add at the end the following subsection:

“(12) This section has effect despite anything contained in the *Lands Acquisition Act 1988*.”.

OTC Act 1946

Subsection 79D (1):

Omit “*Lands Acquisition Act 1955*”, substitute “*Lands Acquisition Act 1988*”.

Pipeline Authority Act 1973

Subsection 35 (5):

Omit the subsection, substitute the following subsection:

“(5) Part VIII of the *Lands Acquisition Act 1988* applies in relation to the determination of compensation under this section as if anything done by the Authority under this Act had been done under Part III of the *Lands Acquisition Act 1988*.”.

Section 37:

Repeal the section.

Postal Services Act 1975

Subsection 114B (1):

Omit “*Lands Acquisition Act 1955*”, substitute “*Lands Acquisition Act 1988*”.

Public Order (Protection of Persons and Property) Act 1971

Subsection 13 (2):

Omit “or function under section 64 of the *Lands Acquisition Act 1955-1966*”, substitute “under section 137 of the *Lands Acquisition Act 1988*”.

Satellite Communications Act 1984

Subsection 18B (1):

Omit “*Lands Acquisition Act 1955*”, substitute “*Lands Acquisition Act 1988*”.

SCHEDULE 2—continued

Seat of Government (Administration) Act 1910

Section 7A:

Omit "*Lands Acquisition Act 1955*", substitute "*Lands Acquisition Act 1988*".

Section 9A:

Omit "*Lands Acquisition Act 1955*", substitute "*Lands Acquisition Act 1988*".

Snowy Mountains Hydro-electric Power Act 1949

Subsection 33 (4):

Omit the subsection, substitute the following subsection:

"(4) Part VIII of the *Lands Acquisition Act 1988* applies in relation to the determination of compensation under this Part as if anything done by the Authority under this Act had been done under Part III of the *Lands Acquisition Act 1988*."

Telecommunications Act 1975

Subsection 110B (1):

Omit "*Lands Acquisition Act 1955*", substitute "*Lands Acquisition Act 1988*".

World Heritage Properties Conservation Act 1983

Section 17:

Add at the end the following subsection:

"(3A) The *Lands Acquisition Act 1988* does not apply in relation to an acquisition of property that results from the operation of this Act."