



Lands Acquisition Legislation Amendment Act 2008

No. 82, 2008

**An Act to amend legislation relating to lands
acquisition, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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An Act to amend legislation relating to lands acquisition, and for related purposes

[Assented to 12 July 2008]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Lands Acquisition Legislation
Amendment Act 2008*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	12 July 2008
2. Schedules 1 to 3	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	3 September 2008 (<i>see</i> F2008L03227)
3. Schedule 4	The day on which this Act receives the Royal Assent.	12 July 2008

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Mining regulations

Lands Acquisition Act 1989

1 Paragraph 124(2)(b)

After “vesting”, insert “the Federal Court of Australia or the”.

2 After subsection 124(3)

Insert:

- (3A) Regulations made for the purposes of subsection (1) may apply, adopt or incorporate (with or without modifications) any of the provisions of a written law of a State or Territory:
- (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.

3 Subsection 124(7)

Insert:

law of a State or Territory includes regulations or any other instrument made under that law.

4 Subsection 124(7)

Insert:

modifications includes additions, omissions or substitutions.

Schedule 2—Offers by Minister of compensation where no claim is made

Lands Acquisition Act 1989

1 After section 74

Insert:

74A Minister may make offer of compensation where no claim is made

- (1) If:
- (a) the Minister is satisfied that an interest in land (other than a mortgage interest) has been acquired by compulsory process from a person; and
 - (b) a period of at least 12 months has elapsed since the date of the acquisition; and
 - (c) the person has not made a claim for compensation in accordance with section 67;
- the Minister may, by written notice given to the person, make an offer to the person of the amount of compensation to which the Minister considers the person is entitled in accordance with Division 2.
- (2) An offer under subsection (1) must contain an explanation of how the amount offered was arrived at.
- (3) If the Minister makes an offer of compensation to a person under subsection (1), the person is not entitled to make a claim for compensation, in accordance with section 67, in respect of the acquisition to which the offer relates.

2 Section 75

After “70(1)”, insert “or 74A(1)”.

Note: The heading to section 75 is altered by omitting “**Claimant**” and substituting “**Person**”.

3 Section 75

Omit “who has made a claim for compensation”.

4 Subsections 76(1) and (2)

Omit “claimant” (wherever occurring), substitute “person”.

5 Subsection 76(3)

Omit “not given the claimant” , substitute “not given the person”.

6 Paragraph 76(3)(a)

Omit “claimant” (first occurring), substitute “person”.

7 Paragraph 76(3)(a)

After “70(1)”, insert “or 74A(1)”.

8 Paragraph 76(3)(a)

Omit “claimant” (second occurring), substitute “person”.

9 Paragraph 76(3)(b)

After “70(1)”, insert “or 74A(1)”.

Note: The heading to section 77 is altered by omitting “**Claimant**” and substituting “**Person**”.

10 Section 79

Repeal the section, substitute:

79 Determination of compensation by post-acquisition agreement

If:

- (a) the Minister has made an offer (including a final offer) to a person of an amount of compensation under this Part; and
- (b) the person has accepted the offer;

the amount of compensation payable to the person in respect of the acquisition to which the offer relates is the amount of compensation so offered by the Minister and accepted by the person.

11 Subsection 82(1)

After “compensation,”, insert “or the Minister has made an offer of compensation to a person under subsection 74A(1),”.

12 At the end of subsection 82(2)

Add “or the offer of compensation under subsection 74A(1)”.

13 Subsection 83(1)

Omit “same claim”, substitute “acquisition to which the offer relates”.

14 Subsection 83(2)

After “Where,”, insert “in respect of an acquisition of an interest in land,”.

15 Subsection 83(2)

Omit “the same claim”, substitute “that acquisition”.

16 Subsection 85(2)

Omit “accepted a claim for compensation and”.

17 Subsection 85(2)

Omit “the claimant”, substitute “a person”.

18 Section 91

Omit “claimant” (wherever occurring), substitute “person”.

19 Paragraph 95(b)

Repeal the paragraph, substitute:

(b) either:

- (i) within 3 years after suffering the loss, the person makes a claim for compensation in accordance with section 97 in respect of the loss; or
- (ii) the Minister makes an offer of compensation to the person under subsection 101A(1) in respect of the loss;

20 Paragraph 96(1)(c)

Repeal the paragraph, substitute:

(c) either:

- (i) within 3 years after the declaration is revoked or ceases to have effect, the person claims compensation in accordance with section 97 in respect of the loss; or
- (ii) the Minister makes an offer of compensation to the person under subsection 101A(2) in respect of the loss;

21 Paragraph 96(2)(c)

Repeal the paragraph, substitute:

- (c) either:
 - (i) within 3 years after the certificate is revoked or ceases to have effect, the person claims compensation in accordance with section 97 in respect of the loss; or
 - (ii) the Minister makes an offer of compensation to the person under subsection 101A(3) in respect of the loss;

22 After section 101

Insert:

101A Minister may make offer of compensation where no claim is made

- (1) If:
 - (a) the Minister is satisfied that a person who owns an interest in land has suffered loss because of the exercise, in relation to the land, of powers conferred by Part III; and
 - (b) a period of at least 12 months, and not more than 3 years, has elapsed since the loss was suffered; and
 - (c) the person has not made a claim for compensation in accordance with section 97 in respect of the loss;the Minister may, by written notice given to the person, make an offer to the person of the amount of compensation to which the Minister considers the person is entitled in accordance with Division 1.
- (2) If:
 - (a) a pre-acquisition declaration is revoked or ceases to have effect because of subsection 44(2) or 46(3); and
 - (b) the Minister is satisfied that a person:
 - (i) was, when the declaration was in force, an owner of an interest affected by the declaration; and
 - (ii) suffered loss as a direct, natural and reasonable consequence of the making of the declaration; and
 - (c) a period of at least 12 months, and not more than 3 years, has elapsed since the declaration was revoked or ceased to have effect; and
 - (d) the person has not made a claim for compensation in accordance with section 97 in respect of the loss;

the Minister may, by written notice given to the person, make an offer to the person of the amount of compensation to which the Minister considers the person is entitled in accordance with Division 1.

- (3) If:
- (a) a certificate under section 24 is revoked or ceases to have effect because of subsection 46(3); and
 - (b) the Minister is satisfied that a person:
 - (i) was affected by the certificate when the certificate was in force; and
 - (ii) suffered loss as a direct, natural and reasonable consequence of the giving of the certificate; and
 - (c) a period of at least 12 months, and not more than 3 years, has elapsed since the certificate was revoked or ceased to have effect; and
 - (d) the person has not made a claim for compensation in accordance with section 97 in respect of the loss;
- the Minister may, by written notice given to the person, make an offer to the person of the amount of compensation to which the Minister considers the person is entitled in accordance with Division 1.
- (4) An offer under subsection (1), (2) or (3) must contain an explanation of how the amount offered was arrived at.
- (5) If the Minister makes an offer of compensation to a person under subsection (1), (2) or (3), the person is not entitled to make a claim for compensation, in accordance with section 97, in respect of the loss to which the offer relates.

23 Section 102

After “98(1)”, insert “or 101A(1), (2) or (3)”.

Note: The heading to section 102 is altered by omitting “**Claimant**” and substituting “**Person**”.

24 Section 102

Omit “person who has made a claim for compensation”, substitute “person,”.

25 Subsections 103(1) and (2)

Omit “claimant” (wherever occurring), substitute “person”.

26 Subsection 103(3)

Omit “not given the claimant”, substitute “not given the person”.

27 Paragraph 103(3)(a)

Omit “claimant” (first occurring), substitute “person”.

28 Paragraph 103(3)(a)

After “98(1)”, insert “or 101A(1), (2) or (3)”.

29 Paragraph 103(3)(a)

Omit “claimant” (second occurring), substitute “person”.

30 Paragraph 103(3)(b)

After “98(1)”, insert “or 101A(1), (2) or (3)”.

Note: The heading to section 104 is altered by omitting “**Claimant**” and substituting “**Person**”.

31 Section 105

Repeal the section, substitute:

105 Determination of compensation by agreement

If:

- (a) the Minister has made an offer (including a final offer) to a person of an amount of compensation under this Part; and
- (b) the person has accepted the offer;

the amount of compensation payable to the person in respect of the loss to which the offer relates is the amount of compensation so accepted by the person.

32 Subsection 108(1)

After “compensation,”, insert “or the Minister has made an offer of compensation to a person under subsection 101A(1), (2) or (3),”.

33 At the end of subsection 108(2)

Add “or the offer of compensation under subsection 101A(1), (2) or (3)”.

34 Subsection 109(1)

Omit “same claim”, substitute “loss to which the offer relates”.

35 Subsection 109(2)

After “Where”, insert “, in respect of a loss,”.

36 Subsection 109(2)

Omit “the same claim”, substitute “that loss”.

37 Subsection 110(2)

Omit “accepted a claim for compensation and”.

38 Subsection 110(2)

Omit “the claimant” (first occurring), substitute “a person”.

39 Subsection 110(2)

Omit “the claimant” (second occurring), substitute “the person”.

40 Subsection 115(1)

Omit “claimant”, substitute “person”.

41 Subsection 115(2)

Omit “claimant” (first occurring), substitute “person”.

42 Subsection 115(2)

After “claim for the compensation”, insert “, or the Minister made an offer of compensation to the person under subsection 101A(1), (2) or (3),”.

43 Subsection 115(2)

Omit “claimant” (second occurring), substitute “person”.

44 Subsection 115(3)

Omit “claimant” (wherever occurring), substitute “person”.

45 Subsection 115(4)

Repeal the subsection, substitute:

(4) If, on the day following the end of a period referred to in subsection (4A), the interest payable to the person under subsection (2) in respect of the period has not been paid, this Part has effect as if, on that day, the amount of compensation payable were increased by the amount of the unpaid interest.

(4A) For the purposes of subsection (4), the periods are as follows:

- (a) the period of 3 months that commenced on the day on which:
 - (i) the person made the claim for the compensation; or
 - (ii) the Minister made an offer of compensation to the person under subsection 101A(1), (2) or (3);
- (b) any succeeding period of 3 months.

46 Subsection 115(5)

Omit “claimant”, substitute “person”.

47 Paragraph 127(1)(a)

Repeal the paragraph, substitute:

- (a) determine the person or persons who, at any relevant time, held an interest or interests in particular land in relation to which:
 - (i) a claim for compensation has been or may be made under this Act; or
 - (ii) an offer of compensation has been made under subsection 74A(1) or 101A(1), (2) or (3); and

48 Application

- (1) The amendments made by items 1 to 18 apply to an acquisition by compulsory process of an interest in land, if the acquisition is made after the commencement of those items.
- (2) The amendments made by items 19 to 46 apply to a loss to which Division 1 of Part VIII of the *Lands Acquisition Act 1989* applies, if the loss is suffered after the commencement of those items.

Schedule 3—Other amendments

Lands Acquisition Act 1989

1 After subsection 5(2)

Insert:

- (2A) If a provision referred to in section 18B of the *Cocos (Keeling) Islands Act 1955* is in operation, this Act does not apply to anything dealt with by the provision.

2 Paragraph 21(1)(a)

After “5(2)”, insert “, (2A)”.

3 Subsection 40(3)

Omit “The”, substitute “Subject to subsection (3A), the”.

4 After subsection 40(3)

Insert:

- (3A) Subsection (3) does not apply to an agreement for the acquisition of an interest that is available in the market.

5 Application

The amendments made by items 3 and 4 apply to an acquisition by agreement of an interest in land if the acquisition is made after the commencement of those items.

6 Paragraph 117(1)(a)

After “5(2)”, insert “, (2A)”.

7 Subsection 122(3)

Omit “Attorney-General” (wherever occurring), substitute “Minister”.

8 Subsection 138(1)

Omit all the words after “interest”, substitute:

in land:

- (a) of the Attorney-General or of a delegate of the Attorney-General, if the signature purports to be witnessed by an officer of the Attorney-General's Department; or
- (b) of the Minister or of a delegate of the Minister, if the signature purports to be witnessed by an officer of the Minister's Department.

9 Subsection 138(2)

After "Attorney-General," insert "Minister,".

10 Section 140

Omit "\$1,000", substitute "50 penalty units".

Schedule 4—Repeal of the Lands Acquisition (Defence) Act 1968

1 The whole of the Act

Repeal the Act.

*[Minister's second reading speech made in—
House of Representatives on 13 February 2008
Senate on 14 May 2008]*

(25/08)
