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TEMPLATES

HEADS OF POWER

ACQUISITION OF PROPERTY POWER (S 51(XXXI))

51. The Parliament [has] power, subject to this Con, to make laws for the peace, order & good government of the Cth with respect to: (xxxi) 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;

Elements:

1) That what the Cth has acquired is property (p. 70)

- a. High Court has adopted a broad approach to the language of s 51(xxix).
- b. As such property includes:
 - estates or interests in land recognised at law or in equity;
 - specific forms of property in a chattel or in a cause of action recognised at law or in equity;
 - innominate & anomalous interests not recognised at law or in equity.

2) That the Cth has effected an acquisition (p. 71)

- a. "Property" may be defined widely, but the section wasn't intended to apply to everything that could broadly be called an "acquisition" of property.

3) That where property has been acquired, just terms compensation must be provided (p. 73)

- a. Just terms provides for fair monetary compensation & natural justice in the manner of assessment of compensation.
- b. As most legislation passed under s 51(xxix) provides for a method of calculating & paying compensation, the court scrutinises that process to determine if just terms have been provided for.
- c. Two aspects:
 - decision making process;
 - principles of assessment or calculation of compensation.

4) Cth can only acquire property for any purpose in respect of which Parliament has power to make laws.

- a. The Cth may only acquire property on just terms under s 51(xxix) for a "purpose in respect of which the Parliament has power to pass laws".
- b. This means every law supported by s 51(xxix) must also be supported by at least one other additional legislative power.