

Chapter 8

Human Rights and the Tasmanian Dam Case

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The *Tasmanian Dam Case*¹ is a landmark decision in many respects, especially through its construction of federal legislative power. It is less obviously important when it comes to the topic of human rights. Indeed, readers of the case might wonder whether it has anything of substance to do with human rights at all.

1 Acquisitions of Property

The most obvious link to human rights on the face of the decision is that it raised questions about the ‘acquisition of property’ power in s 51(xxxi) of the Constitution, which states that such acquisitions must be on ‘just terms’. However, only one judge dealt with this issue in detail, that being Deane J.² Other judges did not need to do so because they held that there had not been an ‘acquisition of property’ as the Commonwealth legislation merely prevented the use of land for specified purposes, and did not vest or divest any possessory or proprietary rights.³

Deane J made the point that where there has been an acquisition of property the requirement to provide just terms must, if compensation is not readily presented, provide fair procedures for determining such compensation. Section 17 of the *World Heritage Properties Conservation Act 1983* (Cth) provided a scheme for the fixing of compensation in respect of any acquisition of property. Claims under \$5,000,000 were to be heard by the Federal Court, while for claims over \$5,000,000 there was to be a six-month waiting period, during which compensation might be agreed to, followed by a Commission of Inquiry which was to recommend, within 12 months of its formation, ‘fair and just’ compensation. For Deane J, these procedures were insufficient. He said:

1 *Commonwealth v Tasmania* (1983) 158 CLR 1 (*Tasmanian Dam Case*).

2 *Ibid* 281-92.

3 See, *ibid* 145-6 (Mason J), 181-2 (Murphy J), 246-8 (Brennan J).

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