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Opinion: No. 4

Subject: *SEAT OF GOVERNMENT  
ACQUISITION OF TERRITORY AND PROPERTY IN NEW SOUTH WALES : CROWN LANDS*

Author: DEAKIN Alfred

Key Legislation: *CONSTITUTION, ss. 51 (xxxi), 125*

Date: 01 July 1901

Client:

Related Opinion: --

Opinion text:

- 1.As to the implied operation of the Act of Cession upon the territorial rights of New South Wales or, in other words, can the contention be constitutionally supported that 'just terms' is an expression limited to private property, and does not include State rights the loss of which may entail loss of revenue etc.?
- 2.Are roads and public highways 'Crown lands' the soil of which by being vested in the Crown, would, on transfer carry any improvements, buildings etc. thereon to the transferee without compensation?
- 3.Does this expression 'Crown lands' mean, as I have thought it might be reasonably interpreted (see paragraph 17 of my report), 'vacant Crown lands'? If not, has it the meaning attributed to that expression by our Crown Lands Acts and does it include 'church and school lands' much of which is now held under long tenures, and must be the subject of compensation to the tenants in case of dispossession?<sup>(1)</sup>

In my opinion section 125 contains all the provisions necessary for the acquisition of territory and property in New South Wales for the Federal capital. The expression 'Crown lands' therein contained means Crown rights of property of any description possessed by New South Wales in any lands vacant or occupied whether roads and public highways or church and school lands. These are to be granted to the Commonwealth 'without any payment therefor'. There is no provision for payment by the Commonwealth to the State for any prospective loss of revenue arising from the cession of State territory for the capital.

[Vol. 1, p. 15]

<sup>(1)</sup> Questions submitted by Mr Alexander Oliver, President of the Land Appeal Court (N.S.W.), subsequently appointed Royal Commissioner on Sites for the Seat of Government of the Commonwealth.

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