



ANALYSIS

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1997, No. 95

An Act to amend the Local Government Act 1974

[1 December 1997

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Local Government Amendment Act (No. 3) 1997, and is part of the Local Government Act 1974 (“the principal Act”).

(2) This Act comes into force on 1 May 1998.

2. New Part inserted—The principal Act is amended by inserting, after Part XLIIIB (as inserted by section 66 of the Local Government Amendment Act 1992), the following Part:

“PART 43C

“REMOVAL ORDERS

“*Application for Removal Order*

“692ZC. **Interpretation**—For the purposes of sections 692ZD to 692ZN, unless the context otherwise requires,—

“‘Alter’, in relation to any fence, structure, or vegetation, includes the removal of all or part of the fence, structure, or vegetation, where that removal is associated with its rebuilding or re-erection or replanting in a form specified in the removal order; and ‘alteration’ has a corresponding meaning:

“‘Applicant’ means any territorial authority or any member of the Police who applies for a removal order under section 692ZD:

“‘Controlled drug’ means any controlled drug within the meaning of the Misuse of Drugs Act 1975:

“‘Court’ means a District Court; and includes a District Court Judge:

“‘Crime involving dishonesty’ means any crime involving dishonesty within the meaning of section 2 (1) of the Crimes Act 1961:

“‘Plan’ means a plan within the meaning of the Resource Management Act 1991:

“‘Proceeds’ means any property that is derived or realised, directly or indirectly, by any person from the commission of a serious offence:

“‘Proposed plan’ means a proposed plan within the meaning of the Resource Management Act 1991:

“‘Removal order’ or ‘order’ means an order made under section 692ZD to remove or alter any fence, structure, or vegetation:

“‘Respondent’ means the person against whom an application for a removal order has been made; and includes a person against whom a removal order is made:

“‘Serious offence’ means an offence punishable by imprisonment for a term of 5 years or more:

“‘Tainted property’ means—

“(a) Property used to commit, or to facilitate the commission of, a serious offence; or

“(b) Proceeds of a serious offence:

“‘Unauthorised weapon’ means—

“(a) Any article made or altered for use, or capable of being used, for causing bodily injury; or

“(b) Any firearm, airgun, pistol, restricted weapon, ammunition, or explosive, as those terms are defined in the Arms Act 1983,—

in respect of which any offence against the Arms Act 1983 or any indictable offence has been or is about to be committed.

“692ZD. **Application for removal order**—(1) Any territorial authority or any member of the Police may, without notice to any person, apply to a District Court in the prescribed form for a removal order requiring the owner or occupier of any property to remove or alter any fence, or any structure (whether or not forming part of any dwellinghouse or other building), or any vegetation.

“(2) The Court may make an order under subsection (3) if the Court is satisfied that the property is occupied, or regularly used, by persons who have been convicted of, or have committed, or are committing, or are likely to commit, offences, and the fence, structure, or vegetation—

“(a) Has facilitated or contributed to, is facilitating or contributing to, or is intended to facilitate or contribute to,—

“(i) The concealment on the property of any unauthorised weapon or any controlled drug or any tainted property or any property that is stolen or obtained by a crime involving dishonesty; or

“(ii) The avoidance of detection or arrest of any person or persons believed or reasonably suspected to have committed any offence or offences; or

“(iii) The commission of any offence or offences by any person or persons on or from the property; or

“(b) Is intended to injure any person.

“(3) The Court may—

“(a) Order that the fence, structure, or vegetation be removed or altered (or that part of the fence, structure, or vegetation be removed and that part of it be altered); and

“(b) Order that any thing attached to the fence, structure, or vegetation be removed as a consequence of the removal or alteration ordered under paragraph (a); and

“(c) Make any consequential order that the Court thinks fit; and

- “(d) Without limiting paragraph (c), order, subject to any conditions that the Court thinks fit, that entry may be made onto any portion of land adjoining the property to which the order relates for the purposes of enforcing the order under section 692ZK (2).
- “(4) On making a removal order under this section, the Judge may, on application or on his or her own motion, give directions—
- “(a) As to the manner in which the order is to be served on any person on whom the order must be served under subsection (5) (a); and
- “(b) That the order be served on any person not referred to in subparagraphs (i) to (iv) of subsection (5) (a) who is likely to be affected by the outcome of the proceedings; and
- “(c) As to any other matter relating to service of the order on any person.
- “(5) A removal order does not take effect unless—
- “(a) A copy of the order is served in accordance with rules of Court or any directions given under subsection (4) on—
- “(i) The respondent; and
- “(ii) Where the respondent is not the owner of the property to which the order relates, the owner of the property; and
- “(iii) Any mortgagee of the property to which the order relates; and
- “(iv) The owner of any property adjoining the property to which the order relates; and
- “(v) Any person whom the Court has directed to be served under subsection (4) (b); and
- “(b) Either—
- “(i) No objection is made in accordance with section 692ZG by the respondent or any other person entitled to object to the order under that section; or
- “(ii) Where an objection or objections are made, the Court, after considering the objection or objections, confirms the order under section 692ZI, whether with or without variation.
- “(6) Notwithstanding section 701, an application made under this section must be made as provided in section 692ZN and in rules of Court.
- “(7) A removal order may be made under this section notwithstanding that the fence, structure, or vegetation—

“(a) Does not contravene a rule in a plan or in a proposed plan to which section 19 of the Resource Management Act 1991 applies; or

“(b) Has been constructed or is otherwise in accordance with—

“(i) A resource consent granted pursuant to the Resource Management Act 1991; or

“(ii) A building consent granted pursuant to the Building Act 1991.

“(8) The provisions of this Part are in addition to, and not in derogation of, any other provisions relating to the removal or alteration of fences, structures, or vegetation under this Act, the Resource Management Act 1991, or the Building Act 1991.

“692ZE. **Evidence of convictions**—(1) For the purposes of proceedings under this Part, proof that a respondent or any other person has been convicted of an offence by or before any court in New Zealand is conclusive evidence that that person committed the offence, and the conviction is admissible in evidence accordingly.

“(2) If—

“(a) A certificate containing the substance of a conviction is produced as evidence of the fact that a particular person has been convicted of an offence; and

“(b) The certificate purports to be signed by the Registrar or other officer having the custody of the records of the court by or before which the offender was convicted,—

then,—

“(c) If the name of the offender stated in the certificate is the name of the person in respect of whom the applicant seeks to prove the conviction, the offender is presumed to be that person unless the contrary is proved; and

“(d) The certificate is sufficient evidence of the conviction without proof of the signature or official character of the person appearing to have signed the certificate.

“(3) The mode of proving a previous conviction authorised by subsection (2) is in addition to, and not in exclusion of, any other mode authorised by any other enactment or rule of law.

“692ZF. **Form of removal order**—(1) Subject to subsection (2), every removal order must be in the prescribed form and must include—

- “(a) The name of the person or persons to whom it is addressed; and
 - “(b) The reasons for the order; and
 - “(c) The action required to be taken; and
 - “(d) The period within which the action must be taken, having regard to the circumstances giving rise to the removal order, being a reasonable period; and
 - “(e) The right of the respondent or any other person to object under section 692ZG to the making of the order; and
 - “(f) The consequences where a notice of objection is not filed in the Court within the specified period, and the respondent also fails to comply with the order.
- “(2) Where an objection or objections under section 692ZG have been lodged and the removal order is subsequently confirmed with or without variation, the Registrar must, without delay, issue a copy of the confirmed order which must contain such of the information specified in subsection (1) as is relevant in the circumstances, including the date specified by the Court in accordance with section 692ZI as the date by which compliance is required.

“Objection to Removal Order

“692ZG. **Notice of objection**—(1) Subject to subsection (2), where the Court makes a removal order under section 692ZD, any person described in subparagraphs (i) to (v) of section 692ZD (5) (a) may object to the making of the order.

“(2) A notice of objection under subsection (1) must be in the prescribed form and must—

- “(a) Contain sufficient particulars to indicate the reasons for giving notice and sufficient information to inform the Court of the facts relied on and the relief sought; and
- “(b) Contain any other matters required by rules of Court; and
- “(c) Be lodged with the Court and served on the applicant and, if the objector is not the respondent, the respondent within 15 working days from the date on which the removal order was served on the objector, or such further time as the Court may allow.

“(3) If—

- “(a) The respondent; or

“(b) Where the respondent is not the owner of the property to which the order relates, the owner of the property,—
objects to the making of the order and that person notifies the Court that he or she wishes to be heard in person or by his or her lawyer, the Registrar must assign a date for the hearing of the objection which, subject to subsection (5), must be as soon as practicable.

“(4) If any person described in subparagraph (iii), (iv), or (v) of section 692ZD (5) (a) objects to the making of the order and that person notifies the Court that he or she wishes to be heard in person or by his or her lawyer, the Court may,—

“(a) If the Court is satisfied that there should be an oral hearing, assign a date for the hearing of the objection which, subject to subsection (5), must be as soon as practicable; or

“(b) If it thinks fit, decide the objection without holding an oral hearing.

“(5) If an oral hearing is to be held in accordance with subsection (3) and the Court decides under subsection (4) that an oral hearing should be held, the Court may assign a date for the objections to be heard together.

“(6) Lodgement of a notice of objection under subsection (1) operates as a stay of the removal order pending the Court’s decision on the objection.

“692ZH. **Vexatious objections**—Without limiting any other power of the Court, the Court may strike out any objection made under section 692ZG if it is satisfied that the objection is frivolous or vexatious or an abuse of the procedure of the Court.

“692ZI. **Court may confirm, vary, or discharge order**—
(1) After considering any objection or objections to a removal order made under section 692ZG, the Court may—

“(a) Confirm the order; or

“(b) Confirm the order but vary all or any of its terms; or

“(c) Discharge the order.

“(2) Before exercising its power under subsection (1), the Court must give—

“(a) Any other person entitled to object under section 692ZG (1); and

“(b) The applicant—
an opportunity to be heard, either orally, or in writing, as the Court thinks fit.

“(3) Where, under subsection (1), the Court confirms or varies an order, the Court must specify the date by which the respondent must comply with the order.

“692ZJ. **Appeal to High Court final**—If any party to proceedings under this Part appeals to the High Court under Part V of the District Courts Act 1947, the decision of the High Court on that appeal is final.

“Compliance with Removal Order

“692ZK. **Compliance with removal order**—(1) If—

“(a) Neither the respondent nor any other person entitled to object to the order under section 692ZG notifies the Court under that section that he or she objects to the making of the order; or

“(b) Where the respondent or any other person does so object, the Court, after considering the objection or objections, confirms the order, with or without variation,—

the respondent must—

“(c) Comply with the order within the period specified in the order; and

“(d) Unless the order directs otherwise, pay all the costs and expenses of complying with the order.

“(2) If the respondent fails to comply with a removal order, the applicant may,—

“(a) Without further notice, and using such force as is reasonable in the circumstances, enter—

“(i) The place where the fence, structure, or vegetation is situated; and

“(ii) If reasonably necessary and if authorised by the Court in the removal order, any portion of the adjoining land,—

to remove or alter the fence, structure, or vegetation or arrange for its removal or alteration in accordance with the terms of the removal order; and

“(b) Sell or otherwise dispose of any structure or materials salvaged in complying with the order; and

“(c) After allowing for any moneys received under paragraph (b), if any, recover the costs and expenses of doing so as a debt from the respondent.

“(3) Any costs or expenses which remain unpaid under subsection (2) (c) may be registered under the Statutory Land

Charges Registration Act 1928 as a charge on any property in respect of which a removal order is made.

“(4) The power to enter the place where the fence, structure, or vegetation is situated (and any adjoining land) conferred by subsection (2) (a) is subject to the following conditions:

“(a) Entry upon the property must be made only by—

“(i) A member of the Police; or

“(ii) Where the order was made on the application of a territorial authority, an officer of that authority or a member of the Police or both,—

and any other person, whether a contractor, or agent or otherwise, who is authorised in writing by the member of the Police or the territorial authority, as the case requires, and whose presence is necessary to effect the alterations to, or removal of, the fence, structure, or vegetation as required by the order; and

“(b) Entry must be made at reasonable times; and

“(c) Any person entering the property must carry with him or her and must produce on initial entry, if required to do so, evidence of his or her authority to enter and of his or her identity; and

“(d) As soon as practicable after entry is made, the applicant must give to the owner and to the occupier of the property, notice in writing, in the prescribed form and manner, of the entry and the reasons for it.

“(5) Section 698 (3) does not apply in respect of the non-compliance by any person with any order made under section 692ZD.

“(6) Section 32 (1) of the Building Act 1991 does not apply to the removal or alteration of any fence, structure, or vegetation in accordance with this section.

“692ZL. **No civil proceedings against person executing removal order**—No civil proceedings can be brought against any person referred to in section 692ZK (4) (a) for any act done in good faith by that person under section 692ZK.

“Miscellaneous Provisions

“692ZM. **Relationship with Fencing Act 1978**—(1) If—

“(a) Any fence, structure, or vegetation is altered in accordance with a removal order made under this Part; and

“(b) That fence, structure, or vegetation is a fence within the meaning of the Fencing Act 1978,—

that fence, structure, or vegetation is presumed, unless a court orders otherwise under the Fencing Act 1978, to be an adequate fence for the purposes of that Act in respect of the part of the boundary of the property that it covers until the expiration of the period described in subsection (4).

“(2) If any fence, structure, or vegetation is removed under a removal order made under this Part, then the Fencing Act 1978 applies in respect of any boundary on the property affected by the removal as if section 9 of that Act requires the occupier of the property in respect of which the order was made to pay the total cost of work on a fence until the expiration of the period described in subsection (4).

“(3) For the purposes of subsection (2), ‘occupier’ has the meaning given to that term in section 2 of the Fencing Act 1978.

“(4) The period referred to in subsections (1) and (2) is—

“(a) The period of 3 years from the date of the removal order; or

“(b) The period from the date of the removal order until the date on which the respondent ceases to occupy or, if the respondent was the owner of the property, ceases to own, the property in respect of which the order was made,—

whichever is the shorter period.

“(5) For the purposes of subsection (4), the date of the removal order is the date on which the order was made under section 692ZD or, if any objection was made under section 692ZG, the date on which the order was confirmed or varied under section 692ZI.

“692ZN. **Rules of Court**—(1) In addition to all other powers conferred by the District Courts Act 1947, the Governor-General may from time to time, by Order in Council, make rules under that Act—

“(a) Regulating the practice and procedure of District Courts in proceedings relating to removal orders under sections 692ZD to 692ZK:

“(b) Providing for such matters as are contemplated by or necessary for giving full effect to sections 692ZD to 692ZK and for their due administration.

“(2) Without limiting subsection (1), rules made under the District Courts Act 1947 in accordance with that subsection may—

“(a) Prescribe the procedure for serving removal orders, notices, and other documents for the purposes of

sections 692ZD to 692ZK (including without limitation the circumstances in which service may be effected by leaving a copy of the order, notice, or document at the property to which the order relates); provide for substituted service, and for service to be dispensed with, in such circumstances as are specified in the rules:

“(b) Prescribe the circumstances, and, where applicable, the manner, in which persons entitled to object to a removal order may be served with a copy of notices of objection or other notices or documents in the proceedings:

“(c) Provide that Registrars may exercise specified powers of the Court or a Judge:

“(d) Provide that proceedings may be stayed or dismissed, or an objection may be struck out, or that a party may not appear at the hearing of an objection to a removal order (whether not at all or only on such terms as the Court considers appropriate),—

“(i) If certain specified requirements of the rules are not complied with; or

“(ii) Unless or until certain specified requirements of the rules are complied with; or

“(iii) If any order made under the rules is not complied with; or

“(iv) Unless or until any order made under the rules is complied with:

“(e) Prescribe such forms as are necessary for the purposes of sections 692ZD to 692ZK:

“(f) Apply, with or without modification, provisions of the District Courts Rules 1992.

“(3) Rules made under the District Courts Act 1947 in accordance with this section are part of the District Courts Rules 1992.

“(4) In the absence of any rules made under the District Courts Act 1947 in accordance with this section or in any situation not covered by any such rules, the District Courts Rules 1992 apply, with all necessary modifications, to proceedings under sections 692ZD to 692ZK.”

3. Removal of fences, structures, and vegetation—

(1) The principal Act is amended by repealing section 695A.

(2) The Local Government Amendment Act (No. 2) 1987 is consequentially repealed.

4. Savings and transitional provision—All applications, appeals, proceedings, and other matters that, before the commencement of this Act, have been brought or made under or pursuant to section 695A of the Local Government Act 1974, and that have not been determined or completed before the commencement of this Act, must be determined and completed as if this Act had not been passed.

This Act is administered in the Department of Internal Affairs.
