



ANALYSIS

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1990, No. 105

An Act to enable the New Zealand Railways Corporation to be restructured, to provide for the vesting in companies incorporated under the Companies Act 1955 and in the Crown of railways assets and liabilities, to amend the New Zealand Railways Corporation Act 1981, and to provide for related matters

[28 August 1990]

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

1. Short Title—This Act may be cited as the New Zealand Railways Corporation Restructuring Act 1990.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Assets” has the same meaning as in section 29 (1) of the State-Owned Enterprises Act 1986:

“Corporation” means the New Zealand Railways Corporation as constituted under section 4 of the New Zealand Railways Corporation Act 1981:

“Crown transferee company” means a transferee company in which all the shares are held by the Ministers or their nominees:

“Debt security” has the same meaning as in section 2 (1) of the Securities Act 1978:

“Liabilities” has the same meaning as in section 29 (1) of the State-Owned Enterprises Act 1986:

“Ministers” means the Minister of Finance and the Minister for State Owned Enterprises acting on behalf of the Crown:

“Railway operator” means a transferee company or other body corporate that is declared by the Governor-General, by Order in Council, to be a railway operator for the purposes of this Act:

“Railways assets” means—

(a) Assets of the Corporation:

(b) Assets of a Crown transferee company:

(c) Assets of the Crown that are—

(i) Used by the Corporation or a Crown transferee company; or

(ii) Held for railways purposes:

“Railways liabilities” means—

(a) Liabilities of the Corporation:

(b) Liabilities of a Crown transferee company:

(c) Liabilities of the Crown incurred—

(i) In relation to the Corporation or a Crown transferee company; or

(ii) For railways purposes:

“Security” has the same meaning as in section 2 (1) of the Securities Act 1978; and includes shares:

“Share” means a share of any class in the capital of a company within the meaning of the Companies Act 1955:

“Transfer day”, in relation to a transferee company and to an employee of that company, means the date on which the rights and liabilities arising under the contract of service of that employee vest in the transferee company pursuant to section 6 of this Act:

“Transferee company” means a company formed and registered under section 4 of this Act, whether or not at any particular time any or all of the shares in its capital are held by the Ministers.

(2) Terms or expressions that are not defined in this Act, but that are defined in the New Zealand Railways Corporation Act 1981, have the meanings given to them by that Act.

(3) For the purposes of sections 13, 14, and 15 of this Act—

(a) Terms and expressions that are not defined in this Act, but that are defined in the Labour Relations Act 1987, have in those sections, the meanings given to them by the Labour Relations Act 1987:

(b) A reference to an agreement includes a reference to a registered redundancy agreement.

3. Act to bind the Crown—This Act binds the Crown.

PART I

FORMATION OF TRANSFEEE COMPANIES AND VESTING OF RAILWAYS ASSETS AND LIABILITIES

4. Formation of transferee companies—

(1) Notwithstanding the New Zealand Railways Corporation Act 1981 or any other Act, or rule of law, the Ministers may, from time to time, for the purposes of this Act, form and register under the Companies Act 1955, one or more companies limited by shares, that, or each of which,—

(a) Has such name as the Ministers shall decide; and

(b) Has a memorandum of association and articles of association in such form as the Ministers may determine.

(2) The Ministers may subscribe for shares in a transferee company to be issued on its incorporation and other shares to be so issued may be subscribed for by nominees of the Ministers.

(3) The Ministers may, from time to time, subscribe for, or acquire, other securities issued by a transferee company.

(4) The memorandum of association and articles of association of a transferee company shall be laid before the House of Representatives by the Minister for State Owned Enterprises within 12 sitting days after the incorporation of the company.

(5) All money required to be paid by the Ministers on subscribing for, or acquiring, securities of a transferee company shall be paid out of the Crown Bank Account from money appropriated by Parliament for the purpose.

(6) Nothing in section 134 of the Companies Act 1955 applies in respect of a transferee company.

Cf. 1987, No. 195, s. 4

5. Crown shareholding—(1) Securities of a transferee company that are registered in the name of a person described as the Minister of Finance or the Minister for State Owned Enterprises shall be held by the person for the time being holding the office of the Minister of Finance or the Minister for State Owned Enterprises, as the case may be.

(2) Notwithstanding any other enactment or rule of law, it shall not be necessary to complete or register a transfer of securities of a transferee company consequent upon a change in the person holding office as the Minister of Finance or the Minister for State Owned Enterprises, as the case may be.

(3) Each Minister may exercise all the rights and powers attaching to the securities of a transferee company held by that Minister.

6. Vesting of railways assets and liabilities—(1) The Ministers may, at any time or times, prepare a list or lists specifying the railways assets and railways liabilities which, in the opinion of the Ministers, should be vested in the Crown or in a Crown transferee company in accordance with this Act.

(2) Every list shall,—

- (a) Except in the case of contracts of service, contain a description of each asset and liability, either individually or as a group or class and, for the purposes of this paragraph, a class of railways assets or railways liabilities may comprise all or any of the railways assets or railways liabilities for the time being of the Corporation or the Crown or of a Crown transferee company; and
- (b) In the case of contracts of service, identify either individually or as a group or class, those contracts that are to be vested in the Crown or in a Crown transferee company; and
- (c) Except in the case of contracts of service, state the value attributed by the Ministers to each asset and liability, either individually or as a group or class; and
- (d) If the assets or liabilities are to be vested in the Crown, state that fact, or, if the assets or liabilities are to be vested in a Crown transferee company, state the name of the company; and
- (e) Be signed by the Ministers; and
- (f) Be laid before the House of Representatives by the Minister for State Owned Enterprises within 12 sitting days of its being signed.

(3) The Governor-General may, at any time or times, by Order in Council, vest in the Crown or in a Crown transferee company named in the order, on a date specified in the order, the railways assets and railways liabilities specified in the order, being assets and liabilities set out in a list prepared pursuant to subsection (1) of this section and which is referred to in the order.

(4) Every Order in Council under subsection (3) of this section that vests railways assets or railways liabilities in a Crown transferee company shall—

- (a) Specify the kind, number, nominal value, and terms of the shares, if any, that shall be issued by the transferee company consequent upon the vesting in it of the railways assets and railways liabilities referred to in the order; and
- (b) Specify the kind, number, nominal value, and terms (including interest) of the debt securities, if any, that shall be issued by the transferee company consequent upon the vesting in it of the railways assets and railways liabilities referred to in the order; and

- (c) Specify the date on which the shares and debt securities shall be issued.
- (5) On the date specified in the Order in Council—
- (a) If the Crown transferee company is a public company, it shall issue to the Ministers in equal proportions, paid up to the extent specified in the order, shares of such kind, number, nominal value, and terms as are specified in the order; and
- (b) If the Crown transferee company is a private company, the Ministers and their nominees shall resolve to increase the capital of the company to the amount specified in the order and shall subscribe for shares of the kind, number, nominal value, and terms as may be specified in the order, which shall be deemed to be paid up to the extent specified in the order; and
- (c) The Crown transferee company shall issue to the Minister of Finance debt securities of such kind, number, nominal value, and terms as are specified in the order.
- (6) Nothing in subsections (1) (b) and (2) of section 60 of the Companies Act 1955 shall apply in respect of shares issued pursuant to subsection (5) of this section.
- (7) Nothing in this section prevents railways assets or railways liabilities vesting in a Crown transferee company for a consideration other than the issue of equity securities or debt securities.
- (8) Assets that have been fixed to, or placed under or over, any land may vest in the Crown or in a Crown transferee company under this Act notwithstanding that no interest in the land also vests in the Crown or in the Crown transferee company, as the case may be, under this Act, and in any such case—
- (a) The assets and the land shall be regarded as separate assets each capable of separate ownership; and
- (b) The assets shall for the purposes of this Act and, in particular, sections 38, 39, and 40 of this Act and of every other enactment or rule of law, be treated as personal property, and not as land or an interest in land, notwithstanding that they are so affixed to, or under or over, land.
- (9) Where, pursuant to an Order in Council under this section, railways assets of the Corporation are vested in the Crown or in any Crown transferee company and the aggregate value of those assets exceeds the aggregate value of railways

liabilities of the Corporation vested in the Crown or any Crown transferee company pursuant to that order the Crown shall indemnify the Corporation to the extent of that excess.

(10) Nothing in this section authorises the making of an Order in Council in relation to the vesting of railways liabilities that arise under an agreement that is governed by the law of a country other than New Zealand.

Cf. 1987, No. 195, s. 6

7. Additional provisions relating to vesting of railways assets and railways liabilities—(1) Nothing effected or authorised by this Act—

(a) Shall be regarded as placing the Crown, the Corporation, or any other person in breach of, or default under, any contract, or in breach of confidence, or as otherwise making any of them guilty of a civil wrong:

(b) Shall be regarded as giving rise to a right for any person to—

(i) Terminate or cancel or modify a contract or an agreement; or

(ii) Enforce or accelerate the performance of an obligation; or

(iii) Require the performance of an obligation not otherwise arising for performance:

(c) Shall be regarded as placing the Crown, the Corporation, or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information:

(d) Shall release any surety from any obligation:

(e) Shall invalidate or discharge any contract or security.

(2) Where a railways asset or a railways liability that is an asset or liability of the Crown or the Corporation vests in a Crown transferee company under this Act,—

(a) The Crown or the Corporation, as the case may be, shall remain liable to any third party as if the asset or liability had not been so vested, and in any such case the Crown transferee company shall indemnify the Crown or the Corporation, as the case may be, in respect of any liability arising under this subsection:

(b) Satisfaction or performance by the Crown transferee company in respect of the asset or liability shall be deemed to be also satisfaction or performance by the Crown or the Corporation, as the case may be:

(c) Satisfaction or performance in respect of the asset or liability by any third party to the benefit of the Crown transferee company shall be deemed to be also to the benefit of the Crown or the Corporation, as the case may be.

(3) District Land Registrars are hereby authorised and directed to make such entries in their respective registers and do everything necessary to give effect to the vesting of any land or any estate or interest in land under this Act.

(4) The vesting pursuant to this Act of railways assets or railways liabilities in the Crown or in a Crown transferee company shall take effect notwithstanding any enactment, or rule of law, or agreement and, in particular, but without limitation, the vesting pursuant to this Act of any land in the Crown or in a Crown transferee company shall take effect notwithstanding any provision contained in the Land Act 1948, the Reserves Act 1977, the Public Works Act 1981, or any other Act relating to land.

(5) Nothing in subsection (4) of this section limits or affects the Conservation Act 1987.

(6) A certificate, signed by the Chief Surveyor for the land district in which the land is situated, that land described in the certificate or described in a document on which the certificate appears, is land in relation to which subsection (4) of this section applies, shall be sufficient evidence, in the absence of proof to the contrary, that that subsection applies in relation to the land.

(7) Land that vests in the Crown or in a Crown transferee company pursuant to this Act vests in the Crown or that Crown transferee company, as the case may be, subject to all leases, agreements to lease, and easements existing in respect of any part of that land immediately before the land vests in the Crown or the Crown transferee company.

Cf. 1987, No. 195, s. 7

8. Provisions relating to vesting of land—
Notwithstanding any other provision of this Act, Crown land within the meaning of the Land Act 1948, any lands of the Crown, and any lands of the Corporation or a Crown transferee company, other than land registered under the Land Transfer Act 1952, that are to be vested in the Crown or a Crown transferee company pursuant to this Act, shall—

(a) Be identified by an adequate legal description, or on plans lodged in the office of the Chief Surveyor for the land

district in which the land is situated (being plans certified as correct for the purposes of this section by that Chief Surveyor); and

- (b) As so identified, vest in the Crown or the Crown transferee company pursuant to and on a date specified in the Order in Council made under section 6 of this Act.

Cf. 1986, No. 124, s. 24; 1987, No. 117, s. 7

9. Title to land—(1) A District Land Registrar shall, on written application by any person authorised by either of the Ministers and on payment of the prescribed fee,—

- (a) Register a Crown transferee company as the proprietor, in substitution for the Crown, or the Corporation or a Crown transferee company, of the estate or the interest of the Crown or the Corporation or a Crown transferee company in any land that is incorporated in the register or otherwise registered in the land registry office of the land registration district concerned and that is vested in the Crown transferee company pursuant to this Act; and
- (b) Make such entries in the register and on any outstanding documents of title and generally do all such things as may be necessary to give effect to this section.
- (2) The powers conferred by subsection (1) of this section may be exercised in respect of any estate or interest that is incorporated in the register by virtue of a lease or licence that has expired or been determined.

(3) A District Land Registrar shall, on written application by any person authorised by either of the Ministers, and on payment of the prescribed fee, issue a certificate of title for land to which section 8 of this Act applies that is vested in a Crown transferee company pursuant to this Act in form No. 1 in the First Schedule to the Land Transfer Act 1952, amended as appropriate.

(4) A District Land Registrar shall, on written application by a person authorised by either of the Ministers, issue a certificate of title for land that is subject to the Land Transfer Act 1952 but for which no certificate of title has been issued and that is vested in a Crown transferee company pursuant to this Act, in Form No. 2 in the First Schedule to the Land Transfer Act 1952, amended as appropriate.

(5) Every application under this section shall—

- (a) Specify the name of the Crown transferee company; and

- (b) Specify the Order in Council under which the land is vested; and
- (c) Contain a description of the land that is sufficient to identify it; and
- (d) In the case of an application under subsection (3) of this section, be accompanied by a certificate by the Chief Surveyor for the district concerned as to the correctness of the description.

Cf. 1986, No. 124, s. 26; 1989, No. 57, s. 2

10. Land certification—(1) Before a District Land Registrar issues a certificate of title in respect of any land to which section 8 of this Act applies that is vested in a Crown transferee company pursuant to this Act the District Land Registrar shall either receive under the hand of, or request from, the Director-General of Survey and Land Information or any Chief Surveyor a certificate in a form substantially similar to the form set out in the Second Schedule to the Land Act 1948 as to the legal description of the land, any trusts, reservations, or restrictions affecting the land, and any other matters that the District Land Registrar considers appropriate.

(2) A certificate in accordance with subsection (1) of this section shall be filed by the District Land Registrar in the Land Registry Office and shall be conclusive evidence to the District Land Registrar of the matters required to be stated in it.

Cf. 1986, No. 124, s. 26; 1987, No. 117, s. 8; 1989, No. 57, s. 3

11. Designations—(1) Subject to subsection (2) of this section, where a designation under an operative district scheme is vested in a Crown transferee company pursuant to this Act—

- (a) The designation shall remain in force until the next review of the district scheme, and shall then lapse; and
- (b) Sections 82 and 83 and Part VI of the Town and Country Planning Act 1977 shall apply to the designation as if the Crown transferee company were a local authority and had made the requirement consequent upon which the designation was made.

(2) Where the designation was made under section 43 (1) (d) or section 118 (1) (d) of the Town and Country Planning Act 1977 the designation shall be included in the district scheme when it is next reviewed.

(3) Where any land is vested in a Crown transferee company under this Act but the designation in respect of that land is not vested pursuant to this Act, any use of that land that is established at the date of the vesting of the land shall be deemed to be a use permitted as of right under the Town and Country Planning Act 1977 until the next review of the operative district scheme. To the extent that any use which would be lawful under the designation has not been established by the date of the vesting of the land, the designation shall be deemed to be a consent under Part IV of the Town and Country Planning Act 1977 granted as at the date of the vesting of the land and section 70 of that Act shall apply accordingly.

(4) Where any requirement has been made under section 43 or section 118 of the Town and Country Planning Act 1977 in respect of any work which has been vested in a Crown transferee company pursuant to this Act, the procedures specified in the Town and Country Planning Act 1977 may be completed as if a Minister of the Crown continued to be financially responsible for the work and as if the work were a public work.

Cf. 1986, No. 124, s. 23 (9), (9A), (9B); 1987, No. 117, s. 6 (2); 1988, No. 82, s. 2

12. Ancillary powers to grant leases and other rights to use railways assets—(1) The Ministers or the Corporation, as the case may be, may grant to a transferee company or a railway operator leases, licences, easements, and permits or rights of any kind in respect of railways assets owned by the Crown or the Corporation for such consideration and on such terms and conditions as the Ministers or the Corporation, as the case may be, may agree with the transferee company or railway operator.

(2) Nothing in Part XX of the Local Government Act 1974 applies to the granting of a lease to a railway operator under subsection (1) of this section unless the land in respect of which the lease is granted is used or is intended to be used solely or principally for car parking or for administration or residential purposes or for a purpose that is not connected with the operation of a railway.

13. Continuity of employment—Where the rights and liabilities arising under a contract of service between a worker and the Corporation or between a worker and a Crown

transferee company are vested in a Crown transferee company pursuant to this Act—

- (a) For the purposes of every enactment or rule of law, every award or agreement, and every contract of service, the contract of service of that worker shall be deemed to have been unbroken and any period of service with the Corporation or the Crown transferee company, as the case may be, shall be deemed to have been a period of service with the Crown transferee company by whom the worker is employed:
- (b) The worker is not entitled to receive any payment or other benefit by reason only of that worker ceasing to be employed by the Corporation or the Crown transferee company and being employed by the Crown transferee company in which those rights and liabilities are vested.

14. Union coverage—(1) The National Union of Railway Workers of New Zealand, the New Zealand Railway Trades Association, and the New Zealand Railway Officers' Institute shall each be deemed to have coverage over any worker employed by a transferee company over whom they would separately have coverage if that worker were employed by the Corporation.

(2) The Registrar of Unions under the Labours Relations Act 1987 shall, as soon as possible after each transfer day and with effect from that transfer day, unless the membership rules have been previously amended to that effect, amend the membership rules of each of the unions specified in subsection (1) of this section to include within its coverage all workers employed by a transferee company over whom that union would have had coverage if those workers were still employed by the Corporation and the provisions of the Labour Relations Act 1987 relating to union coverage shall apply thereafter according to their tenor.

15. Awards and agreements—(1) Every award that, immediately before a transfer day, applies to a category of workers that includes workers whose contracts of service are vested in a transferee company pursuant to this Act, shall, on and after that day and while it continues in force, apply to those workers as if they were employed by the Corporation.

(2) Every agreement relating to the terms and conditions of employment of any category of workers employed by the

Corporation that has been registered with the Arbitration Commission shall, on and after the transfer day and while it is current, be deemed to apply in relation to—

- (a) All workers in that category employed by a transferee company; and
- (b) All workers employed by a transferee company who would fall into that category if they were employed by the Corporation—

as if the agreement had been made between the union or unions concerned and the transferee company, and related to employment of that category of workers by the transferee company.

(3) Where, pursuant to subsection (2) of this section, an agreement is deemed to apply to any worker employed by a transferee company, that transferee company shall be deemed to be a party to the agreement.

16. Contributors to Government Superannuation Fund—(1) Any person employed by a transferee company who, immediately before the transfer day, was employed by the Corporation or another transferee company and was a contributor to the Government Superannuation Fund under the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues in the service of the company and the Government Superannuation Fund Act 1956 shall apply to that person in all respects as if the service with the transferee company were Government service.

(2) Subject to the Government Superannuation Fund Act 1956, nothing in subsection (1) of this section shall entitle any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(3) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with subsection (1) of this section, to a person who is in the service of a transferee company and is a contributor to the Government Superannuation Fund the term “controlling authority”, in relation to that person, means that company.

17. Application of Income Tax Act 1976—For the purposes of sections 61 (2) and 197B of the Income Tax Act 1976, every transferee company some or all of whose shares

are held by, or on behalf of, Ministers of the Crown is deemed to be a company specified in the Fourteenth Schedule to that Act.

18. Application of State-Owned Enterprises Act 1986—

(1) Every transferee company in which the Crown holds 50 percent or more of the ordinary shares shall be deemed to be a State enterprise to which Part III of the State-Owned Enterprises Act 1986 applies.

(2) For the purposes of subsection (1) of this section, a date specified by the Governor-General, by Order in Council, as the date on which the Crown ceased to hold 50 percent or more of the ordinary shares in a transferee company shall be taken to be the date on which the Crown ceased to hold those shares.

(3) On the date specified in any Order in Council made under subsection (2) of this section—

(a) The Audit Office shall cease to be the auditor of the transferee company and every subsidiary of the transferee company:

(b) Any person or firm holding office as an additional auditor of the transferee company or any subsidiary of the transferee company under section 19 (3) of that Act shall cease to hold that office:

(c) The directors of the transferee company and of every subsidiary of the transferee company shall appoint an auditor or auditors of the transferee company and of every subsidiary of the company, and every such appointment shall be deemed to have been made by the directors to fill a casual vacancy in the office of auditor under section 163 (5) of the Companies Act 1955.

19. Application of Ombudsmen Act 1975 and Official Information Act 1982—(1) Every transferee company in which the Crown holds 50 percent or more of the ordinary shares shall be deemed to be—

(a) A person named in Part II of the First Schedule to the Ombudsmen Act 1975; and

(b) A person named in the First Schedule to the Official Information Act 1982.

(2) For the purposes of this section, a date specified by the Governor-General, by Order in Council, as the date on which the Crown ceased to hold 50 percent or more of the ordinary

shares in a transferee company shall be taken to be the date on which the Crown ceased to hold those shares.

20. Corporation not to acquire Crown land without consent—The Corporation shall not, without the prior consent of the Ministers, exercise the powers conferred on it—

- (a) By section 24 (b) of the New Zealand Railways Corporation Act 1981, to acquire in its own name without further payment any property vested in or held or occupied by the Crown for railways purposes; or
- (b) By section 32 (1) of the New Zealand Railways Corporation Act 1981, to request a District Land Registrar to issue a certificate of title in the name of the Corporation for land vested in the Crown for railways purposes.

21. Application of Public Works Act 1981—Notwithstanding section 30 of the New Zealand Railways Corporation Act 1981, nothing in sections 40 to 42 of the Public Works Act 1981 applies to—

- (a) Land that is held or occupied by the Crown for railway purposes;
- (b) Land that is held by the Corporation, or by a transferee company, or by a railway operator.

22. Interpretation—For the purposes of this section and sections 23, 24, and 26 of this Act,—

“Affected land” means—

- (a) Land held under the Public Works Act 1981 by the Crown or the Corporation for a public work, other than land acquired after the 31st day of January 1982 and before the 31st day of March 1987 (being the date of commencement of the Public Works Amendment Act (No. 2) 1987) for a public work that was not an essential work, and which is held by the Corporation, or by the Crown, for railways purposes; or
- (b) Land that has been vested in a Crown transferee company pursuant to section 6 of this Act or sold to a railway operator by the Corporation, as the case may be, that—

- (i) Has at all times since being so vested or sold been held by a transferee company or a railway operator; and
- (ii) Before being so vested in the Crown transferee company or sold to the railway operator, was held under the Public Works Act 1981 by the Crown or the Corporation for a public work, other than land acquired after the 31st day of January 1982 and before the 31st day of March 1987 (being the date of the commencement of the Public Works Amendment Act (No. 2) 1987) for a public work that was not an essential work:

“Local authority” has the same meaning as in section 2 of the Public Works Act 1981:

“Public work” has the same meaning as in section 2 of the Public Works Act 1981:

“Successor”, in relation to any person, means the person who would have been entitled to the land under the will or intestacy of that person had he or she owned the land at the date of his or her death; and, in any case where part of a person’s land was acquired or taken, includes the successor in title of that person.

23. Disposal of affected land by Corporation—(1) Where the Corporation proposes to sell any affected land to a person other than a railway operator, it shall offer to sell the land by private contract to the person from whom it was acquired by the Crown or the Corporation, or to the successor of that person, at the current market value of the land determined by a valuation carried out by a registered valuer appointed by the Corporation unless—

- (a) The Corporation considers that it would be impracticable, unreasonable, or unfair to do so; or
- (b) There has been a significant change in the character of the land for the purposes of, or in connection with, the public work or other activities for which it was acquired or is held; or
- (c) The person from whom it was acquired, or the successor of that person, was, or is, a local authority.

(2) The person to whom an offer is made may, within 20 working days after receipt of the offer, give notice to the Corporation that that person requires the current market value

of the land to be determined by the Land Valuation Tribunal and the Corporation shall, on receipt of the notice, refer the matter to that Tribunal for determination.

(3) If—

(a) An offer under subsection (1) of this section is not accepted within 40 working days after the making of the offer or, if an application is made to the Land Valuation Tribunal, within 20 working days after the determination of the Tribunal, whichever is later, and the parties have not agreed on other terms for the sale of the land; or

(b) Paragraph (a) or paragraph (b) or paragraph (c) of subsection (1) of this section applies to the land,—
the Corporation may sell or otherwise dispose of the land to any person on such terms and conditions as it thinks fit.

(4) Notwithstanding anything in this section, where the Corporation believes on reasonable grounds that, because of the size, shape, or situation of the land it could not expect to sell the land to any person who did not own land adjacent to the land to be sold, the land may be sold to an owner of adjacent land at a price negotiated between the parties.

24. Disposal of affected land by transferee company or railway operator—(1) Where a transferee company or a railway operator proposes to sell any affected land to a person other than a railway operator, it shall give notice to the Director-General of Survey and Land Information of its desire to sell that land.

(2) The Director-General shall, within 20 working days, or such further time as he or she considers on reasonable grounds is required to make the determination, determine—

(a) Whether it would be impracticable, unreasonable, or unfair to require the land to be offered for sale to the person from whom it was acquired or that person's successor; or

(b) Whether there has been a significant change in the character of the land for the purposes of, or in connection with, a railway—

and shall notify the transferee company or railway operator in writing of that determination.

(3) The Director-General shall give notice in writing to the transferee company or railway operator of the period of any extension under subsection (2) of this section and shall state in the notice the reasons for the extension.

(4) Unless the Director-General gives notice to the transferee company or railway operator that he or she has determined that—

- (a) It would be impracticable or unreasonable or unfair to do so; or
- (b) There has been a significant change in the character of the land for the purposes of, or in connection with, a railway,—

the transferee company or railway operator shall offer to sell the land by private contract to the person from whom it was acquired by the Crown or the Corporation, or to the successor of that person, at the current market value of the land as determined by a valuation carried out by a registered valuer appointed by the transferee company or railway operator.

(5) The person to whom an offer is made may, within 20 working days after receipt of the offer, give notice in writing to the transferee company or railway operator that that person requires the current market value of the land to be determined by the Land Valuation Tribunal and the transferee company or railway operator, as the case may be, shall, on receipt of the notice, refer the matter to that Tribunal for determination.

(6) If—

- (a) An offer made under subsection (4) of this section is not accepted within 40 working days after the making of the offer, or if an application has been made to the Land Valuation Tribunal, within 20 working days after the determination of the Tribunal, whichever is later, and the parties have not agreed on other terms for the sale of the land; or
- (b) The Director-General gives notice to the transferee company or railway operator under subsection (4) (a) or subsection (4) (b) of this section;—

the transferee company or the railway operator may sell or otherwise dispose of the land to any person on such terms and conditions as it thinks fit.

(7) Nothing in this section applies—

- (a) In relation to affected land that was acquired from a local authority; or
- (b) In a case where the successor of the person from whom any affected land was acquired is a local authority.

(8) Nothing in this section applies where the Director-General of Survey and Land Information gives notice in writing to the transferee company or railway operator that he or she believes on reasonable grounds that the land could not be sold to a

person who did not own land adjacent to the land to be sold. In any such case the land may be sold to an owner of adjacent land at a price negotiated between the parties.

25. Disposal of land—(1) Any land disposed of under section 23 or section 24 of this Act may be transferred by a memorandum of transfer under the Land Transfer Act 1952.

(2) Any such memorandum of transfer may contain a recital that the land being transferred shall be amalgamated with any other land in an existing certificate of title; and that recital shall be sufficient authority to the District Land Registrar to amend such certificate of title accordingly, without fee.

(3) On such amendment the land transferred shall become subject to and, where applicable, receive the benefit of, all encumbrances, easements, and other interests noted on the certificate of title.

(4) Within 1 month after the registration of the memorandum of transfer, the transferor shall give to the Chief Surveyor written notice of the registration and of the full name, address, and occupation of the transferee.

26. Disposal of former Maori land—Where any affected land was, immediately before it became affected land,—

(a) Maori freehold land or general land owned by Maori (as those terms are defined in section 2 of the Maori Affairs Act 1953); and

(b) Beneficially owned by more than 4 persons; and

(c) Not vested in any trustee or trustees—

the Corporation or the transferee company, or railway operator, as the case may be, may, instead of making an offer under section 23 or section 24 of this Act, as the case may be, apply to the Maori Land Court for the district in which the land is situated for an order under section 436 of the Maori Affairs Act 1953 as if it were an authority for the purposes of that section.

27. Sections 21 to 26 not to affect existing rights—Nothing in sections 21 to 26 of this Act affects—

(a) The application of sections 40 to 42 of the Public Works Act 1981 to any land which has been the subject of an offer under section 40 (2) or section 40 (4) of the Public Works Act 1981, or of an application under section 41 (e) of that Act, prior to the commencement of this Act; or

- (b) The determination of any issue relating to the existence of an obligation or entitlement under sections 40 to 42 of the Public Works Act 1981 arising in proceedings commenced before the 22nd day of March 1990; or
- (c) The application of sections 40 to 42 of the Public Works Act 1981 in any case where it has been determined in proceedings commenced before the 22nd day of March 1990 that section 40 (1) of that Act applied to any land before that date.

28. Exercise of powers under Public Works Act 1981 by Corporation—Without limiting section 30 of the New Zealand Railways Corporation Act 1981 (as enacted by section 2 of the New Zealand Railways Corporation Amendment Act 1988) the discharge of a duty or the exercise of a power, whether before or after the commencement of this Act, imposed or conferred by the Public Works Act 1981 shall not be treated as invalid by reason only that the duty was discharged or the power was exercised by the Corporation.

PART II

GENERAL

29. Authority for railway operators—Railway operations carried on by a railway operator shall be deemed for the purposes of the law of nuisance to be authorised by Act of Parliament.

30. Conflict with New Zealand Railways Corporation Act 1981—(1) Nothing in the New Zealand Railways Corporation Act 1981 shall be construed as limiting or derogating from any provision contained in this Act and the powers conferred by this Act, and in particular the power to vest railways assets and railways liabilities conferred by section 6 of this Act, may be exercised notwithstanding anything contained in that Act.

(2) Without limiting subsection (1) of this section, nothing in section 12 of the New Zealand Railways Corporation Act 1981 shall be construed as imposing an obligation on the Corporation to perform the functions specified in that section.

31. Application of New Zealand Railways Corporation Act 1981—The provisions of the New Zealand Railways Corporation Act 1981 specified in the First Schedule to this Act

shall apply in relation to every railway operator subject to the modifications specified in relation to those provisions in that Schedule.

32. Regulations relating to railway operators—

(1) Regulations may, on the recommendation of the Minister, be made under section 110 of the New Zealand Railways Corporation Act 1981 applying to railway operators and to railways and other services operated by railway operators.

(2) The Governor-General may, by Order in Council, on the recommendation of the Minister, declare that regulations made pursuant to section 110 of the New Zealand Railways Corporation Act 1981 that do not apply to railway operators shall apply, subject to such modifications as may be specified in the order, to railway operators or any class of railway operator and the regulations shall apply accordingly as if the making of the regulations applying to railway operators or that class of railway operator was authorised by that section.

(3) The Minister shall not make a recommendation under subsection (1) or subsection (2) of this section unless the Minister has consulted with all railway operators who, in the Minister's opinion, are likely to be affected by the proposed regulations or by regulations made under section 110 of the New Zealand Railways Corporation Act 1981 applying to them, as the case may be, and those persons have a reasonable opportunity to make submissions to the Minister.

(4) The failure to comply with the requirements of subsection (3) of this section shall not invalidate any regulations or Order in Council made under this section.

33. Amendment to Land Tax Act 1976—(1) Section 27 (1) (f) of the Land Tax Act 1976 (as substituted by section 6 of the Land Tax Amendment Act 1989) is hereby amended by inserting after the word "Corporation" the words "or a railway operator within the meaning of section 2 of the New Zealand Railways Corporation Restructuring Act 1990".

(2) This section shall apply with respect to land tax for the year of payment commencing on the 1st day of April 1990 and for every subsequent year.

34. Amendments to New Zealand Railways Corporation Act 1981—The New Zealand Railways Corporation Act 1981 is hereby amended in the manner indicated in the Second Schedule to this Act.

35. Amendments to other Acts—The enactments specified in the Third Schedule to this Act are hereby amended in the manner indicated in that Schedule.

36. Repeals—The enactments specified in the Fourth Schedule to this Act are hereby repealed.

37. Savings—(1) The repeal by section 36 of this Act of the New Zealand Railways Corporation Amendment Act 1987 does not affect the amendments to the New Zealand Railways Corporation Act 1981 made by section 3 of that Act.

(2) The repeal by section 36 of this Act of the New Zealand Railways Corporation Amendment Act (No. 2) 1987 does not affect the provisions of section 10 of that Act.

PART III

MAORI LAND CLAIMS

38. District Land Registrar to register necessary memorial—(1) Where land owned by the Crown or an interest owned by the Crown in land is vested in a Crown transferee company under section 6 of this Act, the District Land Registrar shall, without fee, note on the certificate of title the words “Subject to section 39 of the New Zealand Railways Corporation Restructuring Act 1990 (which provides for the resumption of land on the recommendation of the Waitangi Tribunal and does not provide for third parties, such as the owner of the land, to be heard in relation to the making of any such recommendation)”.

(2) Subsection (1) of this section shall not apply in relation to any piece of land or interest in land that is excluded from section 39 of this Act by subsection (2) or subsection (3) of that section.

Cf. 1986, No. 124, s. 27A; 1988, No. 105, s. 10

39. Resumption of land on recommendation of Waitangi Tribunal—(1) Where the Waitangi Tribunal has, under section 8A (2) (a) of the Treaty of Waitangi Act 1975 (as applied by section 8HJ of that Act), recommended the return to Maori ownership of any land or interest in land that, immediately before being vested in a Crown transferee company pursuant to section 6 of this Act, was, land owned by the Crown or an interest owned by the Crown in land, as the case may be, that land or interest in land shall, if the recommendation has been confirmed with or without

modifications under section 8B of that Act (as so applied) be resumed by the Crown in accordance with section 40 of this Act and returned to Maori ownership.

(2) This section shall not apply in relation to any piece of land that, at the date of its vesting in a Crown transferee company under section 6 of this Act, was subject to—

- (a) A deferred payment licence issued under the Land Act 1948; or
- (b) A lease under which the lessee had the right of acquiring the fee simple.

(3) This section shall not apply in relation to any piece of land or interest in land in respect of which a certificate issued under section 8E (1) of the Treaty of Waitangi Act 1975 (as so applied) has been registered.

(4) Subject to subsection (5) of this section, this section shall not apply in relation to land or an interest in land that is for the time being held by a railway operator and used for the purposes of a railway.

(5) Where land or an interest in land in relation to which the Waitangi Tribunal has made a recommendation for the return to Maori ownership—

- (a) Ceases to be held by a railway operator; or
- (b) Ceases to be used by a railway operator for the purposes of a railway—

the land or interest in land shall be resumed by the Crown and returned to Maori ownership as soon as practicable after it ceases to be so held or used.

40. Resumption of land to be effected under Public Works Act 1981—(1) Where section 39 of this Act requires any land or interest in land to be resumed by the Crown, the Minister of Lands shall acquire that land or interest in land under Part II of the Public Works Act 1981 as if it were land or an interest in land required for both a Government work and a public work and Parts II, IV, V, VI, and VII of that Act and the First, Third, Fourth, and Fifth Schedules to that Act shall, subject to the modifications set out in the Fifth Schedule to this Act and to all other necessary modifications, apply accordingly.

(2) The existence on the certificate of title to any land or interest in land acquired pursuant to subsection (1) of this section of a memorial under section 38 of this Act shall not be taken into account in any assessment of compensation made under the Public Works Act 1981 in relation to the acquisition of that land or interest in land.

(3) The power conferred by this section does not include the power to acquire or take and to hold under section 28 of the Public Works Act 1981 any interest in land described in section 8A (6) of the Treaty of Waitangi Act 1975 (as applied by section 8HJ of that Act).

PART IV

AMENDMENTS TO TREATY OF WAITANGI ACT 1975

41. This Part to be read with Treaty of Waitangi Act 1975—This Part of this Act shall be read together with and deemed part of the Treaty of Waitangi Act 1975 (in this Part referred to as the principal Act).

42. Functions of Tribunal—Section 5 (1) of the principal Act is hereby amended by inserting, after paragraph (ac) (as inserted by section 39 of the Crown Forest Assets Act 1989), the following paragraph:

“(ad) To make recommendations in accordance with section 8D of this Act (as applied by section 8HJ of this Act) that land or any interest in land that, immediately before being vested in a Crown transferee company pursuant to section 6 of the New Zealand Railways Corporation Restructuring Act 1990, was land owned by the Crown or an interest owned by the Crown in land, be no longer subject to resumption under section 39 of that Act:”.

43. Claims relating to land vested under New Zealand Railways Corporation Restructuring Act 1990—The principal Act is hereby amended by inserting, after section 8HI (as inserted by section 40 of the Crown Forest Assets Act 1989), the following heading and section:

“Recommendations in Relation to Land Vested under New Zealand Railways Corporation Restructuring Act 1990

“8HJ. **Claims relating to land vested under New Zealand Railways Corporation Restructuring Act 1990**—In respect of every claim submitted to the Tribunal under section 6 of this Act that relates in whole or in part to land or an interest in land that, immediately before being vested in a Crown transferee company pursuant to section 6 of the New Zealand Railways Corporation Restructuring Act 1990, was land owned by the Crown or an interest owned by the Crown in land, whether or not the land or interest in land is still vested in that company,

the provisions of sections 8A to 8H of this Act shall apply with such modifications as may be necessary and, in particular, as if—

- “(a) The reference in section 8A (1) of this Act to land or an interest in land to which that section applies was a reference to land or an interest in land that, immediately before being vested in a Crown transferee company pursuant to section 6 of the New Zealand Railways Corporation Restructuring Act 1990, was land owned by the Crown or an interest owned by the Crown in land, whether or not that land or interest in land is still vested in that company:
 - “(b) The reference in section 8A (6) of this Act to an interest in land was a reference to an interest in land that was vested in a Crown transferee company under section 6 of the New Zealand Railways Corporation Restructuring Act 1990 but where the land itself was not vested in that company:
 - “(c) The references in sections 8A (2) (b) and (c), 8D (1), 8E (1) and (3) (b), and 8G (3) (f) of this Act to section 27B of the State-Owned Enterprises Act 1986 were references to section 39 of the New Zealand Railways Corporation Restructuring Act 1990:
 - “(d) The reference in section 8G (3) (c) of this Act to land or an interest in land transferred to or vested in a State enterprise was a reference to land or an interest in land vested in a Crown transferee company pursuant to the New Zealand Railways Corporation Restructuring Act 1990.”
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SCHEDULES

FIRST SCHEDULE

Section 31

APPLICATION OF NEW ZEALAND RAILWAYS CORPORATION ACT 1981 TO RAILWAY OPERATORS

1. Sections 19, 31A, 50, 51, 53, 55, 57, 115, and 116 of the New Zealand Railways Corporation Act 1981 shall apply to a railway operator and to every railway or service operated by a railway operator in the same way as they apply in relation to the Corporation and to the Corporation railway. Notwithstanding the foregoing provisions of this clause, nothing in paragraphs (f) to (l) of subsection (1) of section 115 of the New Zealand Railways Corporation Act 1981 shall apply in relation to a railway operator that is not a Crown transferee company.

2. Section 35 (4) of the New Zealand Railways Corporation Act 1981 shall apply in relation to every railway operator in the same way as it applies in relation to the Corporation but as if the words "as provided in this section" were omitted.

3. The powers conferred on the Minister or the Corporation in relation to the Corporation or the Corporation railway or a proposed railway under sections 30 (1) and (2), 44, and 119 of the New Zealand Railways Corporation Act 1981 may be exercised by the Minister or the Corporation, as the case may be, in relation to, or for the purposes of, any railway operator or railway operated, or proposed railway to be operated, by a railway operator.

4. (a) The powers conferred on the Corporation by sections 31, 52, and 58 of the New Zealand Railways Corporation Act 1981 may, with the prior written consent of the Minister of Railways, which may be given either generally or in specific cases, be exercised by a railway operator in relation to any railway operated, or proposed railway to be operated, by that railway operator. The provisions of section 52 (3) of that Act, in particular, shall apply in relation to that railway.

(b) Without limiting paragraph (a) of this clause, section 58 of the New Zealand Railways Corporation Act 1981 shall apply in relation to a railway operated, or proposed railway to be operated, by a railway operator in the same way as it applies to the Corporation railway.

5. Section 56 of the New Zealand Railways Corporation Act 1981 shall not apply to a railway operated by a railway operator.

6. The Corporation and officers of the Corporation shall have the same responsibilities under sections 46 and 47 of this Act in relation to railways operated by a railway operator as they have in relation to Corporation railways.

Section 34

SECOND SCHEDULE

AMENDMENTS TO NEW ZEALAND RAILWAYS CORPORATION ACT 1981

Title	Amendment
1981, No. 119—The New Zealand Railways Corporation Act 1981	<p>To insert in section 2(1), in their appropriate alphabetical order, the following definitions:</p> <p>“‘Crown transferee company’ has the same meaning as in section 2(1) of the New Zealand Railways Corporation Restructuring Act 1990:</p> <p>“‘Railway operator’ has the same meaning as in section 2(1) of the New Zealand Railways Corporation Restructuring Act 1990:</p> <p>“‘Transferee company’ has the same meaning as in section 2(1) of the New Zealand Railways Corporation Restructuring Act 1990.”</p> <p>By repealing the definitions in section 2(1) of the following terms, “apprentice”, “master”, “member”, “promotion”, “service organisation”, “service organisation membership clause”, and “Union Membership Exemption Tribunal”.</p> <p>By repealing subsections (2) and (3) of section 4, and substituting the following subsections:</p> <p>“(2) The Corporation shall consist of not more than 7 directors appointed by the Minister.</p> <p>“(3) The Minister shall appoint one of the directors to be the Chairman of the Corporation.”</p> <p>By repealing section 4(6), and substituting the following subsection:</p> <p>“(6) A director may be removed from office by the Minister by notice in writing for disability, bankruptcy, neglect of duty, conflict of interest, or misconduct, proved to the satisfaction of the Minister.”</p> <p>By repealing section 6(4), and substituting the following subsection:</p> <p>“(4) At all meetings of the directors, a majority in number of the directors</p>

SECOND SCHEDULE—*continued*AMENDMENTS TO NEW ZEALAND RAILWAYS CORPORATION ACT 1981—
continued

Title	Amendment
1981, No. 119—The New Zealand Railways Corporation Act 1981— <i>continued</i>	<p>holding office shall constitute a quorum.”</p> <p>By inserting, after section 10, the following section:</p> <p>“10A. Directions to carry out functions and exercise powers of Corporation—(1) The Minister may, from time to time, by notice in writing, direct that a person or persons specified in the notice shall carry out the functions and exercise the powers of the Corporation or any of its officers under this Act specified in the notice.</p> <p>“(2) Subject to any general or specific directions given or imposed by the Minister, a person to whom a direction is given may exercise that function or power in the same manner and to the same extent as if it had been conferred on that person directly by this Act.</p> <p>“(3) Every person acting pursuant to a direction under this section shall be presumed to be acting in accordance with the direction in the absence of proof to the contrary.</p> <p>“(4) A direction under this section may be given to the holder of a specified office or appointment or to the holders of offices or appointments of a specified class.</p> <p>“(5) A direction made under this section may be revoked at any time.</p> <p>“(6) No direction as to the exercise of any function or power under this section shall prevent the exercise of that function or power by the Corporation.</p> <p>“(7) A direction under this section shall, until revoked, continue in force according to its tenor and, in the event of the holder of a specified office to whom the direction has been given</p>

SECOND SCHEDULE—*continued*AMENDMENTS TO NEW ZEALAND RAILWAYS CORPORATION ACT 1981—
continued

Title	Amendment
1981, No. 119—The New Zealand Railways Corporation Act 1981— <i>continued</i>	<p>ceasing to hold office, the direction shall continue to have effect as if made to the person for the time being holding that office.”</p> <p>By omitting from section 32 (1) the words “for the land”, and substituting the words “for the estate in the land or part of the land specified in the request”.</p> <p>By adding to section 36, the following subsection:</p> <p>“(4) The Corporation may from time to time, by resolution, recommend to the Minister of Finance that the capital of the Corporation be reduced, and in any such case, the Governor-General on the advice of the Minister of Finance may, by Order in Council, decrease the capital of the Corporation to such amount as may be prescribed in that order.”</p> <p>By inserting, after section 37A (as inserted by section 2 of the New Zealand Railways Corporation Amendment Act 1989), the following section:</p> <p>“37B. Financial provisions relating to liability of the Crown in respect of Corporation’s debt—All money that is required by the Crown to discharge obligations—</p> <p>“(a) To make payments to or on behalf of the Corporation in respect of loans or swap transactions or forward rate agreements raised or entered into by the Corporation; or</p> <p>“(b) To make payments to or on behalf of NZ Railways Finance Corporation Limited in respect of the issue of redeemable preference shares or convertible notes—</p>

SECOND SCHEDULE—*continued*AMENDMENTS TO NEW ZEALAND RAILWAYS CORPORATION ACT 1981—
continued

Title	Amendment
1981, No. 119—The New Zealand Railways Corporation Act 1981— <i>continued</i>	<p>that arise under any agreement made between the Crown, the Corporation, and NZ Railways Finance Corporation Limited shall be paid out of the Crown Bank Account by the Minister of Finance or the Treasury without further appropriation than this section.”</p> <p>By repealing section 44 (2), and substituting the following subsection:</p> <p>“(2) Any person concerned in any inquiry under this section may appear before the Board of Inquiry either personally or by an agent appointed by that person in writing.”</p> <p>By repealing section 45 (2) (d), and substituting the following paragraph:</p> <p>“(d) An employee may appear in person or by an agent appointed by the employee in writing and the Corporation may be represented by a person appointed by the Corporation in writing.”</p> <p>By repealing section 70 (as substituted by section 5 of the New Zealand Railways Corporation Amendment Act 1987).</p> <p>By omitting from section 103 (1) the definition of the term “member”, and substituting the following definition:</p> <p>“ ‘Member’ means a worker employed by the Corporation or a transferee company or a railway operator who is admitted as a member of the society.”</p> <p>By inserting in section 104 (2), after the word “Corporation”, the words “or a transferee company or railway operator”.</p>

SECOND SCHEDULE—*continued*AMENDMENTS TO NEW ZEALAND RAILWAYS CORPORATION ACT 1981—
continued

Title	Amendment
1981, No. 119—The New Zealand Railways Corporation Act 1981— <i>continued</i>	<p>By inserting in section 104 (3), after the word “Corporation”, the words “or a Crown transferee company”.</p> <p>By repealing section 106 (2), and substituting the following subsections:</p> <p>“(2) The Welfare Board shall consist of—</p> <p>“(a) Four persons appointed by the Corporation; and</p> <p>“(b) One person appointed by each of the following:</p> <p style="padding-left: 40px;">The New Zealand Locomotive Engineers’ Association:</p> <p style="padding-left: 40px;">The National Union of Railway Workers of New Zealand:</p> <p style="padding-left: 40px;">The New Zealand Railway Officers’ Institute:</p> <p style="padding-left: 40px;">The New Zealand Railway Trades Association.</p> <p>“(2A) Before appointing a person to be a member of the Welfare Board, the Corporation shall consult with any transferee companies in existence at the time of the proposed appointment or with an appropriate organisation representing the interests of any such transferee companies.”</p> <p>By repealing section 107 (1), and substituting the following subsection:</p> <p>“(1) The members of the Welfare Board shall elect one of their number to be the Chairman. In the absence of the Chairman from a meeting of the Welfare Board, the members present (whether in person or by deputy) shall elect one of their number to be the Chairman of the meeting.”</p>

SECOND SCHEDULE—*continued*AMENDMENTS TO NEW ZEALAND RAILWAYS CORPORATION ACT 1981—
continued

Title	Amendment
1981, No. 119—The New Zealand Railways Corporation Act 1981— <i>continued</i>	<p>By repealing subsections (1) and (2) of section 108, and substituting the following subsections:</p> <p>“(1) The Corporation or a transferee company or railway operator may, at the request of the Welfare Board, make arrangements for the collection of contributions and levies due from members to the welfare fund. The contributions, and any levies collected under section 106 of this Act, shall be paid into the Corporation’s bank account or any other bank account designated by the Corporation and shall be held by the Corporation as agent for the society.</p> <p>“(2) The Corporation and any Crown transferee company may, from time to time, make loans to the society subject to such conditions as the Corporation or the company, with the approval of the Minister of Finance, thinks fit to impose.</p> <p>“(2A) A transferee company (not being a Crown transferee company) and a railway operator may make loans to the society on such conditions as the company or railway operator thinks fit to impose.</p> <p>“(2B) The aggregate amount of all loans in any year must not exceed one half of the income of the society as estimated by the society for the year in which the loans are made.”</p>

Section 35

THIRD SCHEDULE
OTHER ENACTMENTS AMENDED

Enactment	Amendment
1908, No. 49—The District Railways Act 1908 (R.S. Vol. 6, p. 163)	By adding to the definition of the term “company” in section 2 (1) the words “; but does not include a railway operator (as that term is defined in section 2 of the New Zealand Railways Corporation Restructuring Act 1990)”.
1971, No. 51—The Stamp and Cheque Duties Act 1971 (R.S. Vol. 23, p. 771)	By adding to section 11 (2) the following paragraph: “(s) Section 6 of the New Zealand Railways Corporation Restructuring Act 1990.”
1974, No. 66—The Local Government Act 1974 (R.S. Vol. 20, p. 1)	By repealing section 279 (8A) (as substituted by section 12 of the Local Government Amendment Act 1988), and substituting the following subsection: “(8A) Where the proposed subdivision or any part of it adjoins a railway operated by the New Zealand Railways Corporation or a railway operator (within the meaning of section 2 of the New Zealand Railways Corporation Restructuring Act 1990), the council shall send a copy of the scheme plan to the Chairman of the Corporation or the chief executive of the railway operator, as the case may be, for his or her comments within 35 days after the receipt by him or her of a copy of the plan.”
1978, No. 50—The Fencing Act 1978	By repealing section 3 (1) (c), and substituting the following paragraphs: “(c) Land held for railway purposes other than for the accommodation of employees by the Crown, New Zealand Railways Corporation, or a railway operator that is a Crown transferee company (as those terms are defined in section 2 of the New Zealand Railways Corporation Restructuring Act 1990); “(ca) Land held or occupied for the operation of a railway by a railway operator, not being a Crown transferee company (as

THIRD SCHEDULE—*continued*OTHER ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1978, No. 50—The Fencing Act 1978— <i>continued</i>	those terms are defined in section 2 of the New Zealand Railways Corporation Restructuring Act 1990), other than land used principally for car parking, the storage of freight, materials, and ancillary equipment, or administration or residential purposes:".
1981, No. 35—The Public Works Act 1981	By repealing the definition of the term "local railway" in section 176, and substituting the following definition: " 'Local railway' means all railways and tramways, whether constructed under the authority of this Act or any other Act; but does not include railways vested in, or held or occupied by, the Crown or a railway operator (as that term is defined in section 2 of the New Zealand Railways Corporation Restructuring Act 1990):".
1988, No. 97—The Rating Powers Act 1988	By adding to Part II of the First Schedule the following clause: "24. (1) Land occupied by a railway operator that is— " (a) Used as part of the permanent way of the railway, being land upon which is sited any railway line together with such contiguous areas of land as are occupied incidentally thereto, and are not otherwise used; or " (b) Used, or upon which is sited any structure or premises used, solely or principally for the loading or unloading of goods or passengers on to or from any train situated on a railway line—

THIRD SCHEDULE—*continued*
OTHER ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1988, No. 97—The Rating Powers Act 1988— <i>continued</i>	<p>but excluding any land used for administrative or other ancillary purposes in relation to such use.</p> <p>“(2) For the purposes of this clause—</p> <p>“ ‘Railway line’ has the same meaning as in the New Zealand Railways Corporation Act 1981:</p> <p>“ ‘Railway operator’ has the same meaning as in the New Zealand Railways Corporation Restructuring Act 1990.”</p>

FOURTH SCHEDULE

Section 36

ENACTMENTS REPEALED

- 1981, No. 15—The Holidays Act 1981: Section 26.
 1985, No. 105—The New Zealand Railways Corporation Amendment Act 1985.
 1987, No. 80—The New Zealand Railways Corporation Amendment Act 1987.
 1987, No. 122—The New Zealand Railways Corporation Amendment Act (No. 2) 1987.

FIFTH SCHEDULE

Section 40

MODIFICATIONS OF PROVISIONS OF PUBLIC WORKS ACT 1981
 APPLICABLE TO ACQUISITION OF LAND PURSUANT TO
 RECOMMENDATION OF WAITANGI TRIBUNAL

1. For the purposes of section 40 of this Act, the following provisions of Part II of the Public Works Act 1981 and of the Third Schedule to that Act shall not apply, namely,—

- (a) Section 23 (1) (b) (iv);
- (b) Section 23 (3);
- (c) Sections 24 and 25;
- (d) Form B in the Third Schedule.

2. For the purposes of section 40 of this Act, section 23 (1) (b) of the Public Works Act 1981 shall have effect as if, for subparagraphs (ii) and (iii), there were substituted the following subparagraph:

“(ii) A statement that the land is to be resumed under section 40 of the New Zealand Railways Corporation Restructuring Act 1990 pursuant to a recommendation of the Waitangi Tribunal; and”.

3. For the purposes of section 40 of this Act, section 26 of the Public Works Act 1981 shall have effect as if, for subsection (1), there was substituted the following subsection:

“(1) After the expiration of the period of 20 working days specified in the notice served under section 23 (1) (c) of this Act, the land intended to be taken shall be taken in the following manner:

“(a) Subject to the provisions of section 32 of this Act—

“(i) A survey plan shall be prepared, in duplicate, showing accurately the position and extent of the land proposed to be taken; and

“(ii) Such plan shall be signed by the Chief Surveyor as evidence of its accuracy; and

“(iii) A duplicate print of the title plan shall be prepared; and

“(b) The Minister shall recommend the Governor-General to issue a Proclamation taking the land.”

4. For the purposes of section 40 of this Act, the First Schedule to the Public Works Act 1981 shall have effect as if, for the form set out in that Schedule, there were substituted the following form:

FIFTH SCHEDULE—*continued*MODIFICATIONS OF PROVISIONS OF PUBLIC WORKS ACT 1981
APPLICABLE TO ACQUISITION OF LAND PURSUANT TO
RECOMMENDATION OF WAITANGI TRIBUNAL—*continued*

“NOTICE OF INTENTION TO TAKE LAND IN [*Insert name of territorial authority district*] FOR THE PURPOSE OF GIVING EFFECT TO A
RECOMMENDATION OF THE WAITANGI TRIBUNAL

To [*Full Name*] of [*Address*]

1. Take notice that the Minister of Lands proposes to take under the Public Works Act 1981 your interest in the land described in the Schedule to this notice.

2. The land is to be resumed under section 40 of the New Zealand Railways Corporation Restructuring Act 1990 pursuant to a recommendation of the Waitangi Tribunal. That Tribunal recommended on [*Date*] that the land be returned to Maori ownership.

3. A copy of the recommendation of the Waitangi Tribunal is attached.

4. A plan of the land intended to be taken is attached.

[*May be deleted if all the land is in a surveyed lot.*]

OBLIGATION TO ACQUIRE LAND

5. Under section 39 of the New Zealand Railways Corporation Restructuring Act 1990 the Minister of Lands is obliged to acquire your interest in the land.

6. Your interest in the land will not be acquired until at least 20 working days after the service of this notice on you.

YOUR RIGHT TO COMPENSATION

7. This notice relates to the taking of your interest in the land and not to your right to compensation. Under the Public Works Act 1981 you are entitled to full compensation for your interest in the land. If this compensation cannot be agreed between you and the Minister of Lands, it can be determined in separate proceedings before the Land Valuation Tribunal.

WARNING

THIS NOTICE CONCERNS YOUR RIGHTS OVER THE LAND REFERRED TO. IF YOU ARE IN ANY DOUBT ABOUT ITS EFFECT, YOU SHOULD OBTAIN LEGAL ADVICE IMMEDIATELY.

Do not delay.

[*Insert name*] Land District

[*Give general description of the land required to be taken, including the postal address or some other readily identifiable description of the place where the land is situated.*]

[*Add legal description of land*]

Dated at

this

day of

19

[*Signature*]

for Minister of Lands”.

FIFTH SCHEDULE—*continued*MODIFICATIONS OF PROVISIONS OF PUBLIC WORKS ACT 1981
APPLICABLE TO ACQUISITION OF LAND PURSUANT TO
RECOMMENDATION OF WAITANGI TRIBUNAL—*continued*

6. For the purposes of section 40 of this Act, Form A in the Third Schedule to the Public Works Act 1981 shall have effect as if—

- (a) For the words “or [*Name of local authority*] for the purpose of [*Insert name of public work mentioned in Proclamation or declaration*]”, there were substituted the words “so that it can be returned to Maori ownership pursuant to a recommendation of the Waitangi Tribunal”;
- (b) For the words “said work”, there were substituted the words “taking of the land mentioned in Table A below”;
- (c) For the words “said land and the construction of the said public work”, there were substituted the words “land mentioned in Table A below”.

This Act is administered in the Treasury.
