

New Zealand.



ANALYSIS

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1909, No. 19.

AN ACT to amend the Public Works Act, 1908.

[24th December, 1909.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :—

1. (1.) This Act may be cited as the Public Works Amendment Act, 1909, and shall be deemed part of and read together with the Public Works Act, 1908 (hereinafter referred to as the principal Act).

Short Title and commencement.

(2.) This Act shall come into operation on the first day of January, nineteen hundred and ten.

2. Where for the purposes of any public work it is necessary to construct any tunnel or other underground works, it shall be lawful and sufficient in taking or acquiring land for that public work under the principal Act to except the whole or any part of the surface of the land, and to take or acquire only such part of the subsoil as is required for the purposes of the public work.

Surface soil need not be taken for purposes of underground works.

3. (1.) If at any time after the issue or making of any Proclamation or Order in Council taking land under the principal Act, and before the payment or award of any compensation in respect of the taking thereof, it is found that the land or any part thereof is not required for the purpose for which it was taken, or that any error in form or substance exists in or in relation to that Proclama-

Revocation of Proclamation or of Order in Council taking land.

tion or Order in Council, or the making or gazetting thereof, the Governor may, by a subsequent Proclamation or Order in Council gazetted, revoke the former Proclamation or Order in Council either wholly or so far as he thinks necessary.

(2.) The former Proclamation or Order in Council shall thereupon, to the extent to which it has been so revoked, be absolutely void and of no effect as from the date thereof as if it had not been issued or made.

(3.) Any registration which in respect of the taking of that land has been effected by the District Land Registrar or any other person in pursuance of section twenty-four of the principal Act, or in pursuance of any other authority in that behalf, shall thereupon be cancelled, and be deemed to have been of no effect as from the date of the making thereof, to the same extent to which the said Proclamation or Order in Council has been so revoked.

(4.) Any person who has any estate or interest in the land so taken, and who has in respect of that estate or interest suffered any loss or damage by reason of the Proclamation or Order in Council taking the same, shall be entitled, in any claim made by him within one year after the gazetting of the Proclamation or Order in Council revoking the same, to compensation for that loss or damage in accordance with the provisions of the principal Act, and all the provisions of the principal Act with respect to compensation shall, so far as applicable, apply accordingly. Every such claim for compensation shall be made against the Minister when the land so taken was taken for a Government work, and against the local authority when the land so taken was taken for a local work.

(5.) A Proclamation or Order in Council may be revoked under this section, whether made before or after the commencement of this Act.

Repeal.

(6.) This section is in substitution for section twenty-three of the principal Act, which section is hereby repealed accordingly.

Section 18 of the principal Act amended.

4. Section eighteen of the principal Act is hereby amended by adding thereto the following subsections:—

“(3.) The provisions of this section requiring the names of the owners and occupiers of the land to be shown on the plan thereof, and requiring copies of the notice and description referred to in this section to be served upon the said owners and occupiers and upon all other persons having an interest in the land, shall have no application to any Native who is an owner or occupier of the land or has an interest therein, unless his title to the land is registered under the Land Transfer Act, 1908. Entry on the Provisional Register shall not be deemed to be registration within the meaning of this subsection.

“(4.) When any Native is an owner or occupier of the land, or has an interest therein, and his title is not so registered under the Land Transfer Act, 1908, a notice to the same effect as the notice gazetted in accordance with the foregoing provisions of this section shall at the same time, or as soon thereafter as practicable, be published in the *Maori Gazette*, but no proceedings for the taking of land shall be invalidated by any failure to conform to the requirements of this subsection.”

5. Section thirty of the principal Act is hereby amended by adding at the end thereof the following words:—

Section 30 of the principal Act amended.

“Provided also that in the case of any land so taken, purchased, or acquired for a Government work and not required for that purpose, the Governor may, on such recommendation as aforesaid, and without complying with any other requirements of this section, by Proclamation declare such land to be Crown land, subject to the Land Act, 1908, and thereupon the land may be administered and disposed of under that Act accordingly.”

6. Section forty-five of the principal Act is hereby repealed, and the following substituted therefor:—

Repeal.

“If the respondent does not, within sixty days after receiving such claim, give notice in writing to the claimant that he does not admit it, the following provisions shall apply:—

“(a.) At any time after the expiration of the said sixty days the claimant may file a copy of his claim, together with the receipt for the service thereof, in the Supreme Court; and thereupon the claim, unless the filing thereof is set aside as hereinafter provided, shall have the effect of an award filed in the Supreme Court, and may be enforced in manner provided in section seventy-seven hereof.

In certain cases claims for compensation may be filed in and have effect of an award of Supreme Court.

“(b.) On the application of the respondent the Supreme Court may, if it appears reasonable so to do, and on such terms as to costs and otherwise as the Court deems just, set aside the filing of the claim, and, if necessary, stay or set aside any proceedings subsequent to the filing of the claim, and may allow further time within which the respondent may give the notice referred to in this section.”

7. (1.) On the hearing of any claim for compensation under the principal Act it shall not be lawful for the claimant to adduce evidence in relation to any matter not disclosed in the claim, but he may, with the leave of the Court, amend his claim in any particular.

Amendment of claim for compensation in certain cases.

(2.) Such leave shall be granted only on such terms and conditions as to notice to parties, payment of costs, or otherwise as the Court thinks fit.

8. Section one hundred and eighty-four of the principal Act is hereby amended as follows:—

Section 184 of the principal Act amended.

(a.) As to subsection one thereof, by inserting, after the word “practicable,” the words “and suitable.”

(b.) As to subsection three thereof, by omitting the words “five years,” and substituting the words “ten years from the date of the order.”

(c.) By adding thereto the following subsections (which shall extend and apply to any order made under that section before the passing of this Act, except so far as they are inconsistent with the terms of that order):—

“(7.) Subject to the terms of the order by which the same is authorised, any tramway authorised under this section may be worked by steam or other mechanical power.

“(8.) An order made under this section may in like manner be renewed from time to time, with or without a variation of the terms and conditions thereof, but no such renewal shall be for a longer period than ten years from the expiry of the last preceding term.

“(9.) All the provisions of this section with respect to an original order shall, so far as applicable, and with all necessary modifications, extend and apply to any such order of renewal.

“(10.) Every application for a renewal shall be made within one year before the expiry of the last preceding term.

“(11.) At any time during the term of any order made under this section or during the term of any renewal thereof, or within two months after the expiry of any such term and of any renewal thereof, it shall be lawful for the applicant to enter upon the land and remove therefrom all works, structures, and materials placed by him upon the land in the exercise of the rights conferred upon him by the order.

“(12.) When application has been made to a Magistrate for an order under this section he may, if he thinks fit, pending the making of any such order, and on such terms and conditions as to the payment of compensation by the applicant or otherwise as he thinks fit, authorise, by warrant under his hand, the applicant or any other person or persons to enter upon the land which is the subject of the application for the purpose of making thereon any survey which the Magistrate thinks necessary or expedient in the matter of the application.

“(13.) Any person who obstructs any entry or survey so authorised by the Magistrate shall be liable on summary conviction to a fine of twenty pounds.

“(14.) In this section the term ‘applicant’ includes the executors, administrators, and assigns of the applicant.”

Connecting railways not exceeding one mile in length not to require authority of special Act.

9. (1.) The provisions of subsection one of section one hundred and eighty-six of the principal Act shall not apply in the case of railways not exceeding one mile in length intended to connect any railway with a ballast-pit or other undertaking required for the purposes of the railway.

(2.) Land required for any such connecting railway may be taken in accordance with the provisions of section twenty-nine of the principal Act.

Land taken for road may be used for railway.

10. In every case where by statute or other lawful authority the Governor or any Minister is at the passing of this Act or theretofore has been empowered to take any land for a road, such authority shall be deemed to include and to have at all times included power to take that land for a railway.

Power to carry goods, &c., on railway before completion.

11. Notwithstanding anything in the Government Railways Act, 1908, or section two hundred and eight of the principal Act, the Minister of Public Works is hereby authorised to convey goods and

passengers on any railway at any time prior to its being opened for traffic under the Government Railways Act, 1908, and also to charge such rates and fares for goods and passengers, and impose and make such conditions, regulations, and by-laws for the carriage thereof, as he may from time to time declare by order in writing under his hand. All expenses incurred in respect of such traffic shall be a charge against the vote or votes for the construction of that railway, and all revenue derived therefrom shall be credited to the same vote or votes.

12. (1.) Where a road or street lies along the boundary of two or more districts, whether that road or street is wholly within one or is partly within one and is partly within another of those districts, or is within none of those districts, the following provisions shall have effect:—

Control and maintenance of boundary roads or streets.

- (a.) The Governor may from time to time, by warrant under his hand and gazetted, direct which of the local authorities of those districts shall have control of the road or street or of any part thereof.
- (b.) The Governor may in like manner determine from time to time whether any other of those local authorities shall contribute to the cost of the construction or maintenance of that road or street, and, if so, in what proportions.
- (c.) Any warrant of the Governor under this section may be altered or revoked from time to time as he thinks fit, and every such warrant shall have effect according to its tenor.
- (d.) So long as any such warrant remains in force every road or street which is so placed under the control of a local authority shall be deemed for all purposes to be within the jurisdiction of that local authority in the same manner as if it formed part of the district thereof, and every road which by virtue of this section is under the control of a Borough Council shall, so long as it so remains, be vested in the Corporation of that borough in the same manner as if it were a street within the borough.
- (e.) Where any local authority is, pursuant to any such warrant, liable to pay any proportion of the cost of constructing or maintaining any such road or street, the amount of that proportion shall be recoverable from that local authority in any Court of competent jurisdiction as a debt due to the Corporation of the local authority having the control of the road.

(2.) For the purposes of this section, "local authority" means a County Council, Borough Council, Town Board, or Road Board; and "district" means a county, borough, town district, or road district.

(3.) This section shall extend and apply to any case in which a road lies along the boundary of a road district and a county, whether the road district is included in that county or not, and to any case in which a road lies along the boundary of a town district and a county, whether the town district is included in that county or not.

(4.) The Governor may from time to time direct any person to inquire and report to him on any question which he deems necessary

to enable him to determine any matter referred to in this section; and that person shall have all the powers of a Commissioner appointed by the Governor in Council under the provisions of the Commissions of Inquiry Act, 1908.

(5.) All costs, charges, and expenses of or incidental to the exercise of the powers hereby conferred on the Governor shall be a charge upon the revenues of such one or more local authorities as the Governor directs, and may be recovered in any Court of competent jurisdiction as a debt due to the Crown.

Repeals.

(6.) This section is in substitution for section one hundred and fifty-seven of the Counties Act, 1908, section one hundred and ten of the principal Act, and sections one hundred and fifty-four to one hundred and fifty-eight of the Municipal Corporations Act, 1908, all of which sections are hereby accordingly repealed.

(7.) Notwithstanding the repeal of the sections referred to in the last preceding subsection, all instruments issued by the Governor, agreements between local authorities, and awards of Magistrates made under any of the repealed enactments and in force on the commencement of this Act shall continue in force until superseded by a warrant of the Governor under this section; and all roads or streets shall remain subject to the control and jurisdiction of the same local authorities under whose control and jurisdiction they are at the commencement of this Act; and those local authorities shall remain subject to all such liabilities to contribute to the cost of the maintenance or construction of those roads or streets as they are subject to at the commencement of this Act, until other provisions are made in that behalf either by a warrant of the Governor under this section or otherwise in due course of law.

Miscellaneous amendments of principal Act.

13. The principal Act is hereby amended in manner indicated in the Schedule hereto.

Schedule.

SCHEDULE.

MISCELLANEOUS AMENDMENTS OF THE PUBLIC WORKS ACT, 1908.

Number of Section affected.	Nature of Amendment.
Section 2 ...	By adding to the definition of "Minister" the words "and, to the extent provided for in subsection two of section six of the Government Railways Act, 1908, also means the Minister of Railways."
	By omitting from the definition of "Native land" all words after the word "usages."
Section 3 ...	By inserting, after the words "Public Works Office" in subsection (4), "or, as the case may require, to the Railway Office."
Section 19 ...	By omitting the words "publicly notified" in paragraph (d). By adding to paragraph (d) the words "Every such Proclamation shall be publicly notified within one month after the making thereof, but a Proclamation shall not be invalidated by any error, defect, or delay in the public notification thereof."

MISCELLANEOUS AMENDMENTS OF THE PUBLIC WORKS ACT, 1908—*continued.*

Number of Section affected.	Nature of Amendment.
Section 25	... By omitting the words "and of the map referred to therein."
Section 43	... By inserting, after the words "Public Works Office" in subsection (2), the words "or, as the case may require, at the Railway Office."
Section 46	... By inserting, after the words "the said sixty days" wherever those words occur in subsections (1) and (2), the words "or within such further time as is allowed by the Supreme Court in this behalf."
Section 90	... By omitting from paragraph (a) thereof the words "to be gazetted for at least one month after the making thereof," and substituting the word "gazetted"; and by omitting the word "first" before the word "gazetting."
Section 91	... By omitting the words "land held or owned under title derived from the Crown," and substituting the words "other land (whether the legal title to that land is vested in the Native owners themselves, or in a Maori Land Board, or in a body corporate of the owners thereof)."
Section 100	... Repeal subsection (1).
Section 119	... By omitting from paragraph (f) of subsection (2) the words "on the completion thereof," and substituting the words "from time to time as the work proceeds."
Section 120	... By inserting in paragraph (g) of subsection (2), after the words "cost of the work," the words "to the date of the demand"; and by substituting in that paragraph the words "one month" for the words "three months"; and by inserting in that paragraph, after the words "recover the amount," the words "with interest at five per centum per annum."
Section 127	... By adding to subsection (1) the words "or any combined road and railway bridge; but nothing herein shall authorise the Governor to vest the care, control, and management of any such combined bridge in any local authority."
Section 127	... By adding to subsection (1) the words "or until such road has within that period been fenced on both sides."
Section 145	... By inserting, after the word "road" where it first occurs, the words "or bridge."
Section 227	... By inserting as paragraph (g) the words "Digs up or removes any stone, gravel, sand, or other material from a river-bed and within thirty yards of a bridge."
Section 227	... By inserting, after the words "this Act" in subsection (1), the words "or by reason of rifle-firing on any land taken or used for a rifle range."