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1970, No. 145

An Act to amend the Public Works Act 1928

[3 December 1970

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

1. Short Title—This Act may be cited as the Public Works Amendment Act 1970, and shall be read together with and deemed part of the Public Works Act 1928 (hereinafter referred to as the principal Act).

2. Certain powers exercisable by Governor-General in Council to be exercisable by Minister—(1) The principal Act is hereby amended in the manner indicated in the First Schedule to this Act.

(2) The Public Works Amendment Act 1948 is hereby amended in the manner indicated in the Second Schedule to this Act.

3. Interpretation—(1) Section 2 of the principal Act is hereby amended by repealing paragraph (d) of the definition of the term “public work” and “work” (as substituted by section 46 of the Public Works Amendment Act 1948 and amended by section 59 (1) of the Universities Act 1961), and substituting the following paragraph:

“(d) Any University within the meaning of the Universities Act 1961; any school, technical institute, or teachers college established or to be established under Part III of the Education Act 1964; any kindergarten within the meaning of the Education Act 1964; any dental clinic, speech clinic, play ground, teacher’s residence, student hostel, or building for the recreational and social use of teachers or students; any housing for the members of the staff, and the employees, of any such University, school, technical institute, teachers college, or kindergarten; and any other purpose in connection with any such University, school, technical institute, teachers college, or kindergarten;”.

(2) Section 46 of the Public Works Amendment Act 1948 is hereby repealed.

(3) So much of the First Schedule to the Universities Act 1961 as relates to the Public Works Act 1928 is hereby repealed.

4. Application of Part II—Section 10 of the principal Act is hereby amended by omitting from subsection (1) the words “water power or”, and substituting the words “the generation of electricity or for”.

5. Declaration taking land by agreement—(1) Section 32 of the principal Act is hereby amended by repealing subsection (4) (as substituted by section 4 of the Public Works Amendment Act 1962), and substituting the following subsection:

“(4) Where, under this or any other Act, power is conferred on the Governor-General or the Minister to take land or any estate or interest in land under this Act, the Minister, upon being satisfied as to the sufficiency of an agreement for such taking, may issue a declaration in writing that, an agree-

ment to that effect having been entered into, the land or the estate or interest in land, is thereby taken for the purpose for which it is authorised to be taken.”

(2) The said section 32 is hereby further amended by omitting from subsection (4A) (as inserted by section 4 of the Public Works Amendment Act 1962) the words “provisions of this Act”, and substituting the words “provisions of this or any other Act”.

(3) This section shall be deemed to have come into force on the 5th day of December 1962.

6. New Part inserted—(1) The principal Act is hereby further amended by inserting, after section 101, the following new Part:

“PART IIIA

“ADDITIONAL COMPENSATION

“101A. **Interpretation**—(1) In section 101B of this Act, unless the context otherwise requires,—

‘Land’ includes a leasehold estate or interest in land:

‘Owner’, in relation to any land, includes any person who is in occupation of the land under any lease, sub-lease, or licence, or any renewal thereof, granted by the owner of the fee simple, or the lessee, of the land (other than a weekly or monthly tenancy agreement); and also includes a tenant for life of the land and a beneficial owner of the land:

“(2) In section 101c of this Act, unless the context otherwise requires, ‘owner’, in relation to any land, includes a beneficial owner of the land.

“(3) In this Part of this Act, unless the context otherwise requires,—

‘Designated’ means designated for a public work in an operative or proposed district scheme under the Town and Country Planning Act 1953:

‘Designating authority’ means any person or local authority who or which has the financial responsibility for any public work in respect of which any land has been designated or made the subject of a requirement:

‘Requirement’ means a requirement made under section 21 of the Town and Country Planning Act 1953.

“101B. Additional compensation for acquisition of designated land—(1) Subject to the provisions of this section, where any land that—

- “(a) Has been designated or made the subject of a requirement; and
- “(b) Is zoned for residential purposes in a proposed or operative district scheme under the Town and Country Planning Act 1953; and
- “(c) Contains a separate dwelling used solely as a private residence—

is taken or acquired, otherwise than at the request or instigation of the owner, for the public work for which it was designated or made the subject of a requirement, there shall be paid to the owner of that land by the designating authority, in addition to the compensation otherwise payable under this Act, a sum of \$500 by way of solatium.

“(2) No compensation shall be paid under subsection (1) of this section unless—

- “(a) Where the land has been acquired by an agreement which specifies a date for the giving of vacant possession, vacant possession of the land and all buildings and structures on the land has been given to the designating authority on or before the specified date or such later date as the authority may in any case allow:

“(b) Where—

“(i) The land has been acquired by an agreement which does not specify a date for the giving of vacant possession; or

“(ii) No agreement for sale has been entered into and the land has been taken by Proclamation—vacant possession of the land and all buildings and structures on the land has been given to the designating authority within 1 month after the date on which the authority has in writing notified the vendor or the person from whom the land was taken, as the case may be, that vacant possession is required, or within such longer period as the authority may in any case allow.

“(3) Compensation shall not be payable under subsection (1) of this section unless the person giving vacant possession—

- “(a) Was the owner, or the spouse of the owner, of the land on the date on which it was designated or made the subject of a requirement; and

“(b) Was the owner of the land on the date on which vacant possession of the land and all buildings and structures on the land was given to the designating authority; and

“(c) Was occupying the dwelling on the land solely as a residence for himself and his family (if any) immediately before giving vacant possession.

“(4) If any payment of compensation under this section is to be made in respect of land that is owned by more than one person, the payment shall be made only to those owners who qualify for payment under subsection (3) of this section. If payment is to be made to more than one owner the amount of the payment shall be apportioned between the owners in proportion to the shares in which they owned the land.

“(5) If any compensation is payable under this section to a lessee or sub-lessee of land under a lease or sub-lease which, on the date on which vacant possession was given to the designating authority, will expire less than 5 years after that date, the amount of compensation shall be reduced so that the amount to be paid bears the same proportion to \$500 as the period from the date on which vacant possession was given to the date of expiry of the lease or sub-lease bears to a period of 5 years:

“Provided that the amount of compensation shall not be reduced under this subsection to less than the amount that the lessee or sub-lessee would have received under section 101E had he been a weekly or a monthly tenant.

“(6) For the purposes of subsection (5) of this section, the date on which any lease or sub-lease containing a right of renewal will expire shall be deemed to be the date on which it would have expired if the right of renewal had been exercised.

“101c. **Additional compensation to assist in purchase of dwelling**—(1) Subject to the provisions of this section, where any land that—

“(a) Has been designated or made the subject of a requirement; and

“(b) Contains a separate dwelling used solely as a private residence—

is taken or acquired, otherwise than at the request or instigation of the owner, for the public work for which it was designated or made the subject of a requirement, and the owner of the estate in fee simple in the land is unable to acquire another private residence of a standard and value

comparable to that of the residence on the land so taken or acquired solely on account of age and lack of means, or infirmity and lack of means, there may, in the discretion of the designating authority, be paid to that owner by the authority, in addition to the compensation otherwise payable under this Act, compensation of such an amount as the authority considers reasonable to assist the owner to acquire another private residence of such a comparable standard and value.

“(2) No compensation shall be paid to an owner of land under subsection (1) of this section unless the owner—

“(a) Has given vacant possession of the land taken or acquired and all buildings and structures on the land to the designating authority; and

“(b) Was the owner, or the spouse of the owner, of the land on the date on which it was designated or made the subject of a requirement; and

“(c) Was the owner of the land on the date on which such vacant possession was given; and

“(d) Was occupying the dwelling on the land solely as a residence for himself and his family (if any) immediately before giving such vacant possession.

“(3) If the amount of any compensation paid under this section exceeds \$1,000, the amount paid shall constitute a debt due by the person to whom it is paid to the designating authority who or which paid it, and shall be a charge on the estate or interest of that person in the land acquired by him with the assistance of the compensation, and may be registered against that land under the provisions of the Statutory Land Charges Registration Act 1928.

“(4) Except with the consent of the District Commissioner of Works (where the designating authority is the Minister) or the designating authority (in any other case) no dealing in connection with any such estate or interest (other than a dealing which is not required to be executed by the registered proprietor) shall be registered while a charge under subsection (3) of this section is registered against the land.

“(5) For the purposes of the Statutory Land Charges Registration Act 1928, notice of any charge under subsection (3) of this section and any certificate releasing any such charge, and any consent under subsection (4) of this section, may be signed by a District Commissioner of Works, where the designating authority is the Minister.

“(6) Where any money is owed to a designating authority under subsection (3) of this section, it shall be repaid to the authority—

“(a) On the sale of the land purchased with the assistance of the compensation paid under this section; or

“(b) On the vacation of the dwelling on such land by the person to whom such compensation was paid or (if that person was married when the land was acquired) by the surviving partner of the marriage; or

“(c) On the death of the person to whom the compensation was paid, or, if that person was married when such land was acquired, on the death of the surviving partner of the marriage—

whichever first occurs.

“101D. Refund of expenses incurred in negotiations for designated land no longer required—(1) Subject to subsection (2) of this section, where a designating authority has initiated negotiations for the acquisition of any estate or interest in land that has been designated or made the subject of a requirement, and discontinues the negotiations as a result of the land being no longer required for the public work for which it was designated or made the subject of a requirement, the designating authority shall, on receiving an application in that behalf from the owner of the estate or interest, pay to the owner such sum of money as the authority considers will fairly reimburse him for the costs incurred by him in entering into the negotiations.

“(2) No payment shall be made under subsection (1) of this section unless the application for payment by the owner of the estate or interest is made to the designating authority before the expiry of 6 months after the date on which the authority first advised the owner that the land concerned was no longer required for the public work for which it was designated or made the subject of a requirement.

“101E. Compensation for tenants of residential and business premises—(1) Subject to the provisions of this section, where—

“(a) Any land has been designated or made the subject of a requirement; and

“(b) The land was, at the date on which it was designated or made the subject of a requirement, whichever was the earlier, occupied for residential, commercial, or industrial purposes by a weekly or monthly tenant; and

“(c) The tenant was on that date in occupation of the land under a tenancy agreement which commenced

before the land was taken or otherwise acquired by the designating authority; and

- “(d) The tenant occupied the land continuously from that date to the date on which he vacated the land so that vacant possession could be given to the designating authority—

there may, in the discretion of the designating authority, be paid to the tenant by the authority such compensation as is provided for in subsection (2) of this section, on receiving an application in that behalf from the tenant.

“(2) Subject to subsection (3) of this section, the amount of compensation payable under subsection (1) of this section shall be—

- “(a) In the case of a tenant who occupied the land for residential purposes, such sum of money not exceeding \$300 as the designating authority considers will fairly reimburse the tenant for—

“(i) The actual and reasonable costs incurred by him in moving the personal and household effects of himself and his family (if any) to other accommodation within 30 miles of the land vacated; and

“(ii) The value or loss in value of any floor coverings and soft furnishings that have been necessarily abandoned or spoilt as a result of moving to such other accommodation:

- “(b) In the case of a tenant who occupied the land for commercial or industrial purposes, such sum of money not exceeding \$1,500 as the designating authority considers will fairly reimburse him for the actual and reasonable costs incurred by him in moving his equipment, plant, and stock to other accommodation within 30 miles of the land vacated.

“(3) No compensation shall be paid under this section unless—

- “(a) Not less than 14 days’ notice of the proposed move has been given by the tenant to the designating authority; and

- “(b) Application for payment by the tenant is made to the designating authority before the expiry of 2 months after the date on which the removal costs were incurred or on which the abandonment or spoiling of floor coverings or soft furnishings occurred, as the case may be.

“(4) If any compensation is payable under this section in respect of a Government work, the references in paragraph (a) and paragraph (b) of subsection (2) of this section to a distance of 30 miles may, in the discretion of the Minister, be read as references to a distance of 50 miles.”

(2) This section shall—

(a) Be deemed to have come into force on the 28th day of October 1969, in respect of Government works:

(b) Come into force on the passing of this Act, in respect of local works.

(3) Notwithstanding the provisions of paragraph (b) of subsection (2) of this section—

(a) Every payment made before the passing of this Act in accordance with section 101B of the principal Act (as inserted by subsection (1) of this section) in respect of a local work is hereby validated and declared to have been lawfully made:

(b) Where a local authority has agreed to make any payment in accordance with the said section 101B in respect of land taken or acquired for a local work on or after the 28th day of October 1969, the local authority is hereby authorised to make that payment.

7. Where land sold, road or street to give access to be dedicated to public use—(1) Section 125 of the principal Act is hereby amended by inserting in subsection (5) (as substituted by section 24 of the Public Works Amendment Act 1948), after the words “permanently surfaced”, the words “to a reasonable standard”.

(2) The said section 125 is hereby further amended by omitting from subsection (5) (as so substituted) the words “For the purposes of this subsection a carriageway or footpath shall be deemed to be permanently surfaced if it has received a sealing coat of tar, bitumen, or other suitable material to the satisfaction of the local authority”, and substituting the words “Any owner aggrieved by the decision of a local authority in respect of any of the provisions of this subsection may appeal against the decision to the Town and Country Planning Appeal Board constituted under the Town and Country Planning Act 1953 within 21 days after the date on which he received notification of the decision. Every such appeal shall be made and determined by the Town and Country Planning Appeal Board in the manner prescribed by the Town and Country Planning Act 1953 and the regula-

tions for the time being in force under that Act, and the decision of the Appeal Board on any such appeal shall be final and conclusive.”

8. Land may be taken for generation of electricity, etc.—Section 276 of the principal Act is hereby amended by omitting the words “water power”, and substituting the words “the generation of electricity”.

9. Construction of buildings and facilities on, under, or adjacent to motorways—The Public Works Amendment Act 1947 is hereby amended by inserting, after section 8, the following section:

“8A. (1) At the request of the National Roads Board, the Minister may—

“(a) Construct any vehicular parking place or parking building on land adjacent to or under any motorway:

“(b) Construct and operate, or allow to be constructed and operated, on or adjacent to any motorway, any building, facility, amenity, or service that the Board considers to be desirable for the convenience of motorway users.

“(2) Notwithstanding anything to the contrary in the principal Act, the Minister may, with the consent of the National Roads Board, lease or let, or grant a licence in respect of, any such parking place, parking building, building, facility, amenity, or service for such period, at such rental, and on such terms and conditions, as the Minister thinks fit.

“(3) Any land or estate or interest in land may be taken or otherwise acquired for the purposes of this section under Part II of the principal Act as for a public work.”

10. Provisions affecting access ways and service lanes—Section 7 of the Public Works Amendment Act 1948 is hereby amended by inserting, after subsection (6), the following subsection:

“(6A) Any access way or service lane that has been permanently stopped or closed may be sold, exchanged, or otherwise disposed of in the same manner as stopped or closed roads or streets may be sold, exchanged, or otherwise disposed of under this or any other Act.”

SCHEDULES

FIRST SCHEDULE

Section 2 (1)

AMENDMENTS TO PRINCIPAL ACT

Section	Amendment
Section 40 	By omitting from subsection (1) the words "Governor-General may by Order in Council", and substituting the words "Minister may, by notice published in the <i>Gazette</i> ,".
Section 112 	By omitting from subsection (1) the word "Governor-General", and substituting the word "Minister". By omitting from subsection (2) the words "Governor-General may, by Order in Council duly gazetted", and substituting the words "Minister may, by notice published in the <i>Gazette</i> ,". By omitting the word "Governor-General", wherever it occurs in subsections (3), (4), and (5), and substituting in each case the word "Minister". By repealing subsection (6), and substituting the following subsection: "(6) The powers conferred on the Minister under this section may be exercised from time to time, and any notice made under this section may at any time be revoked in whole or in part or amended."
Section 149 	By omitting from paragraph (a) the words "consent thereto of the Governor-General by Order in Council gazetted is obtained", and substituting the words "Minister has consented to the stopping by notice published in the <i>Gazette</i> ." By omitting from paragraph (b) the words "such Order in Council or of the <i>Gazette</i> containing the same", and substituting the words "the <i>Gazette</i> notice containing the Minister's consent". By omitting from paragraph (c) (as substituted by section 8 (1) of the Public Works Amendment Act 1963) the words "Governor-General may by Order in Council publicly notified", and substituting the words "Minister may, by notice published in the <i>Gazette</i> ".

Section 2 (2)

SECOND SCHEDULE

AMENDMENTS TO PUBLIC WORKS AMENDMENT ACT 1948

Section	Amendment
Section 2	<p>By omitting from the definition of the term "access way" in subsection (1) the words "Governor-General by Order in Council", and substituting the words "Minister by notice published in the <i>Gazette</i>".</p> <p>By omitting from the definition of the term "service lane" in subsection (1) the words "Governor-General by Order in Council", and substituting the words "Minister by notice published in the <i>Gazette</i>".</p>
Section 3	<p>By omitting from subsection (1) the words "Governor-General may, by Order in Council", and substituting the words "Minister may, by notice published in the <i>Gazette</i>,".</p> <p>By omitting from subsection (3) the words "Governor-General may, by Order in Council", and substituting the words "Minister may, by notice published in the <i>Gazette</i>".</p>
Section 8	<p>By omitting from subsection (2) the words "Governor-General by Order in Council", and substituting the words "Minister, by notice published in the <i>Gazette</i>,".</p>
Section 9	<p>By omitting from subsection (1) the words "Governor-General by Order in Council", and substituting the words "Minister, by notice published in the <i>Gazette</i>,".</p>
Section 37	<p>By omitting from subsection (1) the word "Governor-General" in both places where it occurs, and substituting in each case the word "Minister".</p> <p>By omitting from subsection (1) the words "Order in Council", and substituting the words "notice published in the <i>Gazette</i>,".</p> <p>By omitting the words "Order in Council" wherever they occur in subsections (2), (3), (4), (5), (6), and (7), and substituting in each case the word "notice".</p> <p>By omitting from subsection (6) the word "Governor-General", and substituting the word "Minister".</p> <p>By omitting from subsection (6) the word "Order" where it last occurs, and substituting the word "notice".</p>

SECOND SCHEDULE—*continued*AMENDMENTS TO PUBLIC WORKS AMENDMENT ACT 1948—*continued*

Section	Amendment
Section 37— <i>continued</i>	By omitting from subsection (8) the words “an Order in Council”, and substituting the words “a notice”.
Section 39	By omitting from subsection (1) the words “Order in Council”, and substituting the words “the Minister by notice published in the <i>Gazette</i> ”. By omitting from subsection (2) the words “any Order in Council so provides”, and substituting the words “the Minister so directs by notice published in the <i>Gazette</i> ”.

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This Act is administered in the Ministry of Works.

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