



ANALYSIS

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1983, No. 150

An Act to amend the Public Works Act 1981

[16 December 1983]

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 1983, and shall be read together with and deemed part of the Public Works Act 1981 (hereinafter referred to as the principal Act).

2. Disposal in other cases of land not required for public work—Section 42 of the principal Act is hereby amended by repealing subsection (6), and substituting the following subsections:

“(6) Any land disposed of under section 40 of this Act or under this section may be transferred by a memorandum of transfer under the Land Transfer Act 1952. 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. 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.

“(7) 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.”

3. Issue of certificates of title to land held for public work—Section 47 (1) of the principal Act is hereby amended by omitting the words “for the land”, and substituting the words “for the estate in the land or part of the land specified in the request”.

4. Provisions relating to grants of land in exchange—(1) Section 107 (7) of the principal Act is hereby amended by omitting the words “, in the case of land granted under section 105 of this Act, and in the form set out in the Sixth Schedule to this Act, in the case of land granted under section 106 of this Act”.

(2) Section 107 (8) of the principal Act is hereby amended by omitting the word “Every”, and substituting the words “If a certificate of title for the land has not been issued, the”.

(3) Section 107 of the principal Act is hereby amended by inserting, after subsection (8), the following subsection:

“(8A) If a certificate of title for the land has been issued, the certificate issued under this section by the Minister or Minister of Railways shall be deemed to be a memorandum of transfer of the land described in it from the Crown to the person to whom the land is granted; and the District Land Registrar shall register it without fee.”

(4) The said section 107 is hereby amended by inserting, after subsection (9), the following subsections:

“(9A) Subject to subsection (9C) of this section, any certificate issued under this section may contain a recital that the land to which the certificate relates 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. On such amendment the land granted shall become subject to and, where applicable, receive the benefit of, all encumbrances,

easements, and other interests noted on the certificate of title.

“(9B) Where any land is so amalgamated, the District Land Registrar may, if he thinks fit, dispense with any survey that would otherwise be required for the purposes of the issue of a certificate of title under this section, and may issue a certificate of title limited as to parcels.

“(9C) Before including a recital in a certificate under subsection (9A) of this section, the Minister, Minister of Railways, or local authority, as the case may be, shall consult with the District Land Registrar as to whether or not it is practicable to amalgamate the land in an existing certificate of title and, if the District Land Registrar advises that it is not practicable to do so, no such recital shall be included in the certificate.”

(5) Section 107 (10) of the principal Act is hereby amended by omitting the word “Before”, and substituting the words “If the Chief Surveyor considers it necessary or expedient or if in any case the District Land Registrar so requests, before”.

(6) Section 107 of the principal Act is hereby amended by repealing subsections (12) and (13).

(7) Section 107 of the principal Act is hereby amended by repealing subsection (14), and substituting the following subsection:

“(14) Where any land acquired under this Act is subject to or has the benefit of any encumbrance, lien, or interest, and land is to be granted in exchange under this section, any certificate of title issued under this section, with the consent of the person to whom the land is to be granted, may show that the land to which the certificate relates is to be subject to or is to have the benefit of any such encumbrance, lien, or interest that is specified in the certificate.”

(8) Section 107 of the principal Act is hereby amended by adding the following subsection:

“(19) Within 1 month after the registration of a certificate under this section, the grantor shall give to the Chief Surveyor written notice of the registration and of the full name, address, and occupation of the grantee.”

(9) The Fifth Schedule to the principal Act is hereby amended—

(a) By inserting in the heading, after the figures “105”, the words “OR SECTION 106”:

(b) By inserting, after the words “or acquired”, the words “or for the land injuriously affected or for the damage done”:

(c) By omitting the words “, and I hereby further certify that the District Land Registrar is hereby authorised to issue under the Land Transfer Act 1952 accordingly a certificate of title in form 1 or form 2, as the case may require, in the First Schedule to that Act”.

(10) The Sixth Schedule to the principal Act is hereby repealed.

5. Grant of lease or licence as compensation—The principal Act is hereby amended by inserting, after section 107, the following section:

“107A. (1) Notwithstanding anything in section 62 of this Act, where—

“(a) The interest of a lessee or licensee in land is taken or acquired for an essential work; and

“(b) The lessee or licensee is entitled to compensation under section 105 of this Act—

the notifying authority (unless the lessee or licensee is to be granted an estate in fee simple), with the agreement of the lessee or licensee, shall take all reasonable steps to grant to him a lease of any land, or a licence to occupy any land, described in paragraph (c), paragraph (d), or paragraph (e) of section 105 (1) of this Act, in payment or satisfaction or part payment or satisfaction of the compensation to which the lessee or licensee may otherwise be entitled, subject to payment by way of equality of exchange where appropriate.

“(2) The provisions of subsections (3), (4), and (4A) of section 105 of this Act, with the necessary modifications, shall apply in respect of any lease or licence granted under this section.

“(3) The lessee or licensee of any land that has been notified may apply to the Tribunal for an order requiring the notifying authority to take action in accordance with subsection (1) of this section.

“(4) If the Tribunal is satisfied that the lessee or licensee is a person to whom subsection (1) of this section applies, and that it would be just and proper to do so, it may order the notifying authority to act in accordance with that subsection.

“(5) Subject to subsection (6) of this section, all rents and profits derived from any lease or licence granted under this section shall be paid into—

“(a) The Consolidated Account, where the notifying authority is a Minister of the Crown:

“(b) The appropriate revenue account of the notifying authority, in any other case.

“(6) Any lease or licence granted in accordance with this section in respect of Crown land shall be granted by the Land Settlement Board, and shall be administered under the Land Act 1948.

“(7) Nothing in this section shall oblige the notifying authority to grant a lease or licence on terms more favourable to the lessee or licensee than the lease or licence taken or acquired by the notifying authority.”

6. Use by traffic of land held for motorway purposes—

Section 146 of the principal Act is hereby amended by adding the following subsections:

“(4) The National Roads Board may open for the use of traffic or any specified category of traffic any land held for motorway purposes notwithstanding that it has not been declared to be a motorway under section 138 of this Act.

“(5) While any land is open for the use of any traffic or category of traffic pursuant to subsection (4) of this section the land shall be deemed to be—

“(a) A road for the purposes of the Transport Act 1962 and of any regulations in force under that Act; and

“(b) A motorway for the purposes of any regulations in force under this Act relating to motorways and of section 52 of the Transport Act 1962.”

7. New sections relating to motorways substituted—

(1) The principal Act is hereby amended by repealing section 148, and substituting the following sections:

“148. **Restrictions on use of motorways**—(1) Except as provided in this or any other enactment, a person shall not be on a motorway unless the person is—

“(a) In or on a vehicle that is entitled to be on the motorway; or

“(b) On the motorway as a result of an accident, breakdown, or other emergency; or

“(c) On the motorway in connection with any work that is authorised by the National Roads Board or under any enactment to be carried out on the motorway or any work that is being carried out pursuant to a delegation granted by the National Roads Board under section 147 (2) of this Act; or

“(d) On the motorway for the purposes of enforcing any enactment.

“(2) No person shall cause or permit any animal or thing that is or ought to be under his control to be on any motorway unless—

“(a) It is a vehicle that is entitled to be on the motorway or is carried in or on such a vehicle; or

“(b) It is on the motorway for the purposes of assisting at any accident, breakdown, or other emergency; or

“(c) It is on the motorway in connection with any work that is—

“(i) Authorised by the National Roads Board or under any enactment to be carried out on the motorway; or

“(ii) Being carried out pursuant to a delegation by the National Roads Board under section 147 (2) of this Act; or

“(d) It is expressly authorised by any enactment to be on a motorway.

“(3) The owner or person in charge of any animal or thing which is on a motorway in breach of subsection (2) of this section shall be liable for any damage that may result from collision with or attempted avoidance of the animal or thing, unless he proves that the presence of the animal or thing on the motorway in breach of that subsection was not due to any negligence on his part.

“148A. **Vehicles which may be operated on motorways**—A person may operate any vehicle or combination of vehicles on a motorway if—

“(a) The vehicle, or each vehicle of the combination, is supported by pneumatic tyres while it is being operated and is registered under the Transport Act 1962; and

“(b) In the case of a vehicle or combination of vehicles which may not be operated on a motorway without a permit issued under regulations in force under this or any other Act, such a permit is in force.

“148B. **Restrictions on access to motorways**—(1) A person driving a vehicle shall not enter, cross, or leave any motorway except at a motorway, State highway, or road from which vehicular access to the motorway has been constructed and is authorised by the National Roads Board, and subject to such conditions as may be approved and publicly notified by the Minister on the recommendation of the National Roads Board.

“(2) Notwithstanding subsection (1) of this section, the Board may, in writing, subject to such conditions (whether as to

payment or otherwise) as it thinks fit, authorise the construction and use of a special access to any property or any part of a property adjoining the motorway to which access is not reasonably available from another road.”

8. Motorway deemed to be road—(1) The principal Act is hereby amended by repealing section 150, and substituting the following section:

“150. (1) Except as expressly provided in this Act or in any other enactment, a motorway shall be deemed to be road for the purposes of every enactment and all civil or criminal proceedings under any enactment.

“(2) A motorway shall be deemed not to be a road for the purposes of the exercise of any right involving the subdivision or use of land if that right is conditional upon the land having a frontage or access to a road or is in any other way conditional upon the existence of a road.”

9. Notification of proposed irrigation scheme—Section 202 (1) (a) of the principal Act is hereby amended—

- (a) By inserting in subparagraph (iii), after the words “annual basic charge”, the words “or charges”;
- (b) By inserting in subparagraph (iv), after the words “water availability charge”, the words “or charges”.

10. Reduction in size and abolition of irrigation district—The principal Act is hereby amended by inserting, after section 208, the following section:

“208A. (1) Notwithstanding anything in this Part of this Act, the Governor-General may, on the advice of the Minister given after consultation with the National Authority, by Order in Council—

“(a) Abolish any irrigation district by revoking the Order in Council which constituted the district and any amending Order in Council made under section 208 (2) of this Act:

“(b) Reduce the size of an irrigation district by amending the Order in Council constituting the district, and any amending Order in Council made under section 208 (2) of this Act, to redefine the district or exclude any land from the district.

“(2) Subject to subsection (4) of this section, on the abolition of an irrigation district or the reduction in size of an irrigation district under subsection (1) of this section, the provisions of

this Part of this Act shall cease to apply in respect of the abolished district or in respect of the land no longer forming part of the district, as the case may be.

“(3) If any Order in Council is made under subsection (1) (b) of this section, the basic charge and the water availability charge shall not be increased by virtue of that fact, and any subsequent adjustment of either of those charges under section 210 or section 212 of this Act shall be calculated as if the Order in Council had not been made.

“(4) The owner and occupier of any land which formed part of an irrigation district, and which is no longer within the district by virtue of an Order in Council made under this section, shall be entitled to claim—

“(a) Reimbursement from the Minister for all costs and expenses actually and reasonably incurred by the owner and occupier in anticipation of the land being irrigated, to the extent that the costs and expenses are no longer of any value to the owner and occupier; and

“(b) Notwithstanding the provisions of section 60 of this Act, full compensation from the Minister under Part V of this Act in respect of injurious affection of the land.

“(5) Every claim for such reimbursement shall be made, determined, and paid in accordance with Part V of this Act as if it were a claim for compensation; and the provisions of that Part, so far as they are applicable and with the necessary modifications, shall apply accordingly.”

11. Calculation of basic charge or charges—Section 209 of the principal Act is hereby amended by adding the following subsection:

“(2) Where varying irrigation demands of different properties will affect the capital cost of the irrigation scheme, different basic charges may be set in respect of those properties; and in any such case elements C and H in subsection (1) of this section shall be adjusted accordingly.”

12. Adjustment of basic charge—Section 210 of the principal Act is hereby amended by repealing subsections (1) and (2), and substituting the following subsections:

“(1) The Minister may, on the advice of the National Authority,—

“(a) In the notice given under section 217 (1) of this Act determining the commencement of availability of supply of water; and

“(b) From the end of the season in which the basic charge reaches the full amount and from the end of any subsequent season—

adjust the basic charge to compensate for any difference in element C or element H of that charge from the figure estimated under section 209 of this Act for that element to the figure applicable at that time or estimated for the future.

“(2) The Minister may at any time reduce element P or alter element F, and adjust the basic charge accordingly.”

13. Calculation of water availability charge or charges—

Section 211 of the principal Act is hereby amended by adding the following subsection:

“(3) Where varying irrigation demands of different properties will affect the costs of the irrigation scheme, different water availability charges may be set in respect of those properties, and in any such case elements C, O, R, and W in subsection (1) of this section shall be adjusted accordingly.”

14. Adjustment of water availability charge—Section 212 of the principal Act is hereby amended by repealing subsections (1) and (2), and substituting the following subsections:

“(1) The Minister may, on the advice of the National Authority,—

“(a) In the notice given under section 217 (1) of this Act determining the commencement of availability of supply of water; and

“(b) From the end of the season in which the water availability charge reaches the full amount and from the end of any subsequent season—

adjust the water availability charge to compensate for any difference in element C, element O, element R, or element W of that charge from the figure estimated under section 211 of this Act for that element to the figure applicable at that time or estimated for the future.

“(2) The Minister may at any time reduce element P or alter element F, and adjust the water availability charge accordingly.”

15. Regulations—(1) Section 243 (1) of the principal Act is hereby amended by repealing paragraphs (b) and (d).

(2) Section 243 (1) (f) of the principal Act is hereby amended by adding the words “or under any regulations in force under this Act”.

16. Amending Transport Act 1962—(1) Section 2 (1) of the Transport Act 1962 (as substituted by section 2 (1) of the Transport Amendment Act 1972) is hereby amended by omitting from the definition of the term “road” the words “; but does not include a motorway within the meaning of the Public Works Amendment Act 1947”.

(2) Section 52 of the Transport Act 1962 (as substituted by section 8 (3) of the Local Government Amendment Act 1979) is hereby amended by adding the following subsection:

“(6) Nothing in this section shall apply in respect of any motorway within the meaning of the Public Works Act 1981.”

(3) Section 68B (1) of the Transport Act 1962 (as inserted by section 8 (1) of the Transport Amendment Act (No. 2) 1967) is hereby amended by inserting, after the words “those Acts” (as inserted by section 25 (1) (a) of the Road User Charges Act 1977) the words “, and section 148 of the Public Works Act 1981 and any regulations in force under section 243 (1) (a) of that Act,”.

(4) Section 77 (1) (v) of the Transport Act 1962 is hereby amended by adding the words “or any specified class of road”.

This Act is administered in the Ministry of Works and Development.
