

New Zealand



ANALYSIS

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1940, No. 28

Title. AN ACT to amend the Small Farms Act, 1932-33, for the Purpose of making Provision for the Settlement of Discharged Soldiers. [6th December, 1940]

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

Short Title. 1. This Act may be cited as the Small Farms Amendment Act, 1940, and shall be read together with and deemed part of the Small Farms Act, 1932-33 (hereinafter referred to as the principal Act).

Interpretation. 2. For the purposes of the principal Act, unless the context otherwise requires,—

“ Discharged soldier ” means any person who, while ordinarily resident in New Zealand, has at any time during the present war (whether before or after the passing of this Act)—

(a) Served outside New Zealand as a member of any of His Majesty's Naval, Military, or Air Forces; or

(b) Served in New Zealand as a member of the training staff of any of His Majesty's Forces; or

(c) Served in New Zealand as a member of any of His Majesty's Permanent Forces, or as a member of any of His Majesty's Forces mobilized for continuous service within New Zealand,—

but does not include any person who has ceased to be a member of any such Force by reason of incapacity resulting from his own default or misconduct:

“ Land ” means freehold land that is not set aside as an endowment or a reserve; and includes the estate or interest of the lessee or licensee in any land of the Crown held under lease or license.

3. Section five of the Small Farms Amendment Act, 1939, is hereby amended by adding to subsection two the words “ or that they are discharged soldiers ”, and by inserting, after subsection two, the following subsection:—

“(2A) The applications of discharged soldiers for leases under this section shall have preference over the applications of all other classes of persons.”

4. (1) In order to provide for the settlement of discharged soldiers under the principal Act the Minister may take any land under the provisions of this Act:

Provided that the land or estate or interest in land of any person who is absent from New Zealand as a member of any of His Majesty's Forces engaged in the present war shall not be so taken.

(2) Subject to the provisions of the principal Act (including this Act) and of any regulations under the principal Act, all the provisions of the Public Works Act, 1928, and its amendments (except the provisions specified in the First Schedule to this Act) shall, so far as they are applicable and with the necessary modifications, apply as if the power conferred by this section were a power to take land under the Public Works Act, 1928, for a Government work:

Discharged soldiers eligible to receive leases under principal Act. 1939, No. 21

Power to take land for settlement of discharged soldiers.

See Reprint of Statutes, Vol. VII, p. 622

Provided that in the application of those provisions—

- (a) References to the Minister of Public Works shall be deemed to be references to the Minister of Lands:
- (b) References to a Proclamation taking land shall be deemed to be references to a *Gazette* notice taking land under this Act:
- (c) The references to the Supreme Court in sections forty-nine, fifty-three, fifty-four, and ninety, and the first reference to the Supreme Court in paragraph (a) of section ninety-one, shall be deemed to be references to the Magistrate's Court nearest to the land in respect of which the claim for compensation arises, and all references to the Court for filing the claim shall be deemed to be references to that Magistrate's Court.

Notice of intention to take land.

5. (1) Whenever the Minister intends to take any land under this Act he shall give notice of his intention to the owners and occupiers of the land and to all other persons having any interest in the land, so far as they can be ascertained.

(2) Every notice under this section shall specify the date on which possession of the land is required.

(3) Every notice relating to part only of any property shall have attached thereto a plan showing the boundaries and area of the land to which the notice relates.

(4) Any notice under this section may be at any time amended or revoked by a subsequent notice under this section.

Objections.

6. (1) Where a notice under the last preceding section relates to part only of the land in the ownership or occupation of any person he may object to the taking of that part of the land upon the ground that the residue is not sufficient for the reasonable requirements of himself and his family.

(2) Every objection under this section shall be made in writing sent to the Minister within forty days after the giving of the notice of intention to take the land.

(3) Upon receiving any such well-grounded objection the Minister shall appoint a time and place at which the objector may appear before the Minister or some person appointed by him and support the objection by such evidence as the objector thinks fit.

7. At any time after the expiration of forty days from the giving of the notice of intention to take any land, if the last preceding section does not apply, or if (in cases where that section applies) no objection is made or the Minister after due consideration of all objections is of opinion that the land should be taken, the Minister may by notice in the *Gazette* declare that the land is taken for the settlement of discharged soldiers. The land so taken shall be the land specified in the notice of intention to take the land, except where the Minister, at the request of an objector, agrees to a variation of the area to be taken, whether by the exclusion of any part of the land or by the inclusion of any additional land. Upon a date to be specified in that behalf in the *Gazette* notice (hereinafter referred to as the date of vesting) the land specified in the *Gazette* notice shall be deemed to be vested in His Majesty the King, and to be freed from all restrictions, encumbrances, liens, and interests, except those specified in that behalf in the notice, and if the land is freehold land it shall be deemed to be Crown land subject to the principal Act.

Land to be taken by notice in *Gazette*.

8. (1) Every person having any estate or interest in any land taken under this Act shall be entitled to compensation therefor.

Compensation.

(2) No claim for compensation under this Act shall be made after a period of six months from the date of vesting specified in the *Gazette* notice taking the land.

(3) Every claim for compensation shall be made in writing in the form in the Second Schedule to this Act or to like effect, and shall be served by sending it by registered letter addressed to the Chairman of the Small Farms Board at the Head Office of the Department of Lands and Survey at Wellington, or by delivering it at that office.

(4) In determining the amount of compensation to be awarded on a claim for the hearing of which a

Compensation Court is constituted the Court shall assess the compensation at the value (as at the date of vesting) of the claimant's estate or interest, based on the market value of the land or, if the Court is satisfied that the productive value is higher than the market value, based on the productive value of the land:

Provided that the Court may add to the compensation as so assessed such amount or amounts as the Court considers the claimant to be entitled to by reason of any special loss arising out of the compulsory taking of the land. Full particulars of every amount so added and of the grounds on which it is added shall be specified in the award of the Court.

(5) For the purposes of this section,—

(a) The market value of any land shall be deemed to be the amount that in the opinion of the Court the land might be expected to realize if offered for sale wholly for cash:

(b) The productive value of any land shall be deemed to be an amount equal to the net annual income that in the opinion of the Court can be derived from the land by an average efficient farmer, capitalized at the rate of five per centum per annum. In ascertaining the net annual income the Court shall have regard to the prices received for farm products during the ten years preceding the date of vesting and to such deductions from the gross income as the Court deems proper.

9. (1) Subject to the provisions of the Public Works Act, 1928, as applied by this Act, the Compensation Court to determine any claim for compensation under this Act shall consist of a Magistrate to be appointed by the Minister of Justice and the two assessors appointed as provided in sections fifty-four and fifty-five of the Public Works Act, 1928, and the Magistrate shall be the President of the Court.

(2) The Minister of Justice may from time to time appoint any Magistrate to be the President of the Court for the purposes of all claims under this Act or of any specified claim or class of claims.

Magistrate
and two
assessors to
constitute
Compensation
Court.

See Reprint
of Statutes,
Vol. VII, p. 622

10. (1) During the period between the giving of the notice of intention to take any land under this Act and the date of the vesting of the land in His Majesty, the owner or occupier of the land—

Land taken to be properly farmed until date of vesting.

- (a) Shall continue to farm the land in accordance with the accepted practice of good husbandry in the district in which the land is situated:
- (b) Shall maintain all buildings, fences, structures, and fixtures on the land in good and substantial repair:
- (c) Shall not overstock the land to the extent that the grazing value of the land may be injuriously affected:
- (d) Shall not do anything upon or under the land with the purpose or effect of rendering the development or settlement of the land more difficult or costly.

(2) If any owner or occupier fails to comply with the provisions of this section the Court may reduce the compensation to be awarded to him by the amount of the loss or damage caused by the non-compliance, and may if necessary amend its award accordingly.

11. (1) The Minister or any person authorized by him either specially or generally may from time to time after the publication in the *Gazette* of the notice taking any land under this Act and before the date of the vesting of the land in His Majesty enter upon the land and carry out any works or do any other things considered necessary for the purpose of promoting the development or settlement of the land.

Power to carry out works on land before date of vesting.

(2) Any person having any estate or interest in the land who is prejudicially affected by the exercise of the powers conferred by this section shall be entitled to compensation therefor as for a special loss under this Act.

(3) The value of any improvements effected by the Minister under this section shall not be taken into account by the Court in assessing the value of the land for the purposes of compensation.

12. The Board or any person authorized by it either specially or generally may enter on any land at any time for the purpose of making any inspection, valuation, or survey for the purposes of the principal Act (including this Act).

Entry on land for purposes of inspection, &c.

Schedules.

SCHEDULES.

Section 4 (2)

FIRST SCHEDULE.

PROVISIONS WHICH DO NOT APPLY WHERE LAND IS TAKEN UNDER THIS ACT.

- 1928, No. 21.—The Public Works Act, 1928 (Reprint of Statutes, Vol. VII, p. 622): Sections 18, 19, 22, 23, 31, 35 to 40, 42, 43, 45, 51 (1) and (2), 59 to 64, 80 to 82.
 1936, No. 36.—The Finance Act (No. 2), 1936: Section 28.

Section 8

SECOND SCHEDULE.

CLAIM TO COMPENSATION UNDER THE SMALL FARMS AMENDMENT ACT, 1940.

To the Minister of Lands,
 Care of the Chairman of the Small Farms Board,
 Head Office, Department of Lands and Survey,
 Wellington.

WHEREAS by a notice in the *Gazette* dated the day of , 19 , the land mentioned in Table A hereunder, in which I have an interest as described in Table B hereunder, has been taken and vested in His Majesty for the settlement of discharged soldiers. .

This is to give notice that I claim the sum of £ as compensation for all loss arising out of the taking of the aforesaid land, which sum is made up as follows:—

		£	s.	d.
Market [or Productive] Value of acres				
roads perches of land taken at £	per			
acre: £	.			
Value of my interest, based on above value	..			
Special loss [<i>Give details</i>]			
Total claim			

[*The claimant must attach hereto a statement of income and expenditure showing the net income adopted to assess productive value.*]

Given under my hand this day of , 19 .

Claimant: [*Name in full.*]

Address: [*Address in full.*]

TABLE A.

DESCRIPTION OF LAND TAKEN.

[Here describe the area and situation of land taken, giving name of survey district, and number of block and section, as in the Gazette notice.]

TABLE B.

NATURE OF INTEREST IN LAND TAKEN.

[Here state in full the nature of the interest—as owner in fee-simple, mortgagee, lessee, or occupier; and, if the land is leased or encumbered or subject to any easement, give particulars of such lease or encumbrance, &c.]
