

LAND AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Land Act 1948.

Clause 1 relates to the Short Title and commencement. The Act comes into force on 1 January 1971.

Subclause (3) makes it clear that the provisions of the Bill will apply to current leases, except so far as the savings provision in *clause 12* applies. *Clause 12* ensures that no change will take effect during the current terms of existing leases.

Clause 2 amends section 63 (3) of the principal Act (relating to the rent payable under a renewable lease) by making provision for the annual rent to be reviewed at the end of the eleventh and twenty-second years of each term of 33 years.

The clause provides that the rent for the first period of 11 years shall be 4½ percent of the rental value as determined by the Land Settlement Board or of the disposal price where fixed by contract.

The rent for the next two periods of 11 years shall be determined as provided in a new section 132A (inserted by *clause 10* of this Bill).

Clause 3 amends section 66 (4) of the principal Act (relating to the rent payable under a pastoral lease), and makes provision for the annual rent under a pastoral lease to be reviewed at the end of the eleventh and twenty-second years of each term of 33 years.

Clause 4: Provisions appear in *clauses 5 (4)* and *8 (7)* prescribing the manner in which the value of all improvements included in the rental value at the commencement of the lease is to be determined for the purposes of the acquisition of the fee simple or the renewal of a renewable lease. Under section 87 of the principal Act Crown improvements can be acquired by a lessee during the currency of the lease.

This clause amends section 87 by providing that in such a case the value of the Crown improvements is to be determined in the same manner as is provided in *clauses 5 (4)* and *8 (7)*.

Clause 5 amends section 122 of the principal Act (permitting a lessee to acquire the fee simple of the land in his lease) by limiting the Crown's interest in improvements to the value at the commencement of the lease, and also confers on lessees the right to set off against the purchase price the benefit they may have under the lease of a favourable rental.

The clause inserts in section 122 new subsections (7A), (7B), and (7C), defining the manner in which the value of the lessee's goodwill in the lease is to be ascertained.

Subsection (7A) provides that the Land Settlement Board must first ascertain the amount of the yearly rent on the purchase price of the land, calculated at a percentage of that purchase price, which percentage is to be determined in accordance with *subsection (7B)*. The Board is then required to calculate the lessee's goodwill on an actuarial basis.

Subsection (7B) provides that the yearly rent under the lease is to be calculated at the percentage or proportion of the rental value prescribed by or under any Act by which the yearly rent was determined for the current term of the lease. Where that percentage or proportion was not so prescribed, it is to be calculated at $4\frac{1}{2}$ percent of the rental value.

Subsection (7C) provides that concessions to servicemen, discharged servicemen, and others are to be disregarded. Where land has been included in the lease pursuant to section 113 of the principal Act and the current rent has been determined in more than one manner or at different percentages or proportions, it is to be calculated at $4\frac{1}{2}$ percent of the rental value.

Clause 6 is a consequential amendment of section 123 of the principal Act relating to appeals to the Administrative Division of the Supreme Court against values ascertained under section 122.

Clause 7 amends section 124 of the principal Act (relating to payment of the purchase money when the fee simple is acquired), and provides that, at the time when he is required to pay the purchase price for the fee simple of the land comprised in his lease, the lessee shall also pay any amount outstanding in respect of Crown improvements which he has agreed to purchase and which is not secured by a mortgage.

Clause 8 provides that, in ascertaining the values required to establish the rental value of the land comprised in a lease for renewal purposes under section 131 of the principal Act, the value of improvements and the value of the land exclusive of improvements shall be ascertained on an equitable basis having regard to the relationship between lessor and lessee. The value of any Crown improvements is limited to the value at the commencement of the lease.

Clause 9 amends section 132 of the principal Act (relating to the elections available to lessees in respect of renewals) by reducing from 6 months to 3 months the time within which a lessee must elect to accept the values ascertained by the Board for renewal purposes or have the values determined by the Administrative Division of the Supreme Court.

Clause 10 inserts a new section 132A in the principal Act providing for a review, at the end of the eleventh and twenty-second years of the term of the lease, of the annual rent that is payable under a 33-year renewable lease.

Clause 11 re-enacts in an amended form section 133 of the principal Act (relating to appeals to the Administrative Division of the Supreme Court) by conferring on the lessee of a renewable lease the right to require values for the purposes of a review under section 132A (inserted by *clause 10* of this Bill) to be fixed by that Court.

Clause 12 is a savings provision declaring that where the Board is required under the principal Act to have ascertained values for renewal purposes before the commencement of the Act or a lessee has served notice on the Commissioner electing to freehold before that date, the provisions of the Bill will not apply and the proceedings for the renewal of the lease or the acquisition of the fee simple will be continued and completed under the existing provisions of the principal Act.

Subclause (2) is intended to ensure that the provisions of the Bill will not apply to existing leases during their current term.

Hon. Mr MacIntyre

LAND AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Land Act 1948

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 and commencement—(1) This Act may be cited as the Land Amendment Act 1970, and shall be read together with and deemed part of the Land Act 1948* (hereinafter referred to as the principal Act).

10 (2) This Act shall come into force on the 1st day of January 1971.

*1957 Reprint, Vol 7, p. 1

Amendments: 1958, No. 72; 1959, No. 70; 1960, No. 68; 1961, No. 86; 1962, No. 78; 1963, No. 93; 1964, No. 94; 1965, No. 48; 1967, No. 86; 1968, No. 50.

(3) Notwithstanding anything contained in any lease or in the principal Act or any former Land Act, but subject to section 12 of this Act, the provisions of this Act shall apply with respect to leases granted under the principal Act or any former Land Act and current immediately before the commencement of this Act. 5

2. Renewable lease—(1) Section 63 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) The yearly rent payable during the first term of a renewable lease shall be— 10

“(a) For the first 11 years of the term, $4\frac{1}{2}$ percent of the rental value of the land as determined by the Board, or, where the land is disposed of at auction or by tender, as fixed in the contract: 15

“(b) For the next 2 successive periods of 11 years of the term, at a rent determined in respect of each of those periods in the manner provided in section 132A of this Act.”

(2) Section 63 of the principal Act is hereby further amended by inserting in subsection (4), after the words “subsequent renewal”, the words “and for the second and third periods of 11 years of the term of each renewal lease”. 20

(3) The following enactments are hereby consequentially repealed: 25

(a) Subsection (2) of section 5 of the Land Amendment Act 1950:

(b) So much of the Schedule to the Land Amendment Act 1968 as relates to section 63 of the principal Act.

3. Pastoral lease—Section 66 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsections: 30

“(4) The yearly rent payable during the first 11 years of the first term of a pastoral lease shall be as determined by the Board. 35

“(4A) The yearly rent payable during the next two successive periods of 11 years of the first term and during each period of 11 years of the first and each subsequent renewal of a pastoral lease shall be determined in the

manner set out in Part VIII of this Act for the renewal of renewable leases and for the review of the annual rent during the term of such a lease, and all the provisions of that Part shall, with the necessary modifications, apply, save that
5 instead of determining the rental value of the land for the purposes of the renewal pastoral lease, or any period of 11 years within the first or any subsequent term of a pastoral lease, a fair annual rent shall be fixed."

4. Purchase of improvements during currency of lease or
10 **licence**—(1) Section 87 of the principal Act is hereby amended—

(a) By omitting from subsection (1) (as amended by section 7 (a) of the Land Amendment Act 1951) the words
15 "at the value as determined by the Board of those improvements at the date of purchase", and substituting the words "at the value at which they are included in the rental value of the land":

(b) By omitting from subsection (3) (as amended by section 7 (b) of the Land Amendment Act 1951) the words
20 "shall be reduced by the amount at which the improvements purchased were included in the rental value".

(2) Section 87 of the principal Act is hereby further amended by adding the following subsection:

25 "(4) For the purposes of this section, the value at the commencement of the lease of all improvements included in the rental value at the commencement of the lease shall be—

"(a) The value as recorded in the schedule to the lease, in any case where in the opinion of the Board the
30 schedule contains a true and complete list of the improvements and a true and complete statement of their value; or

"(b) The value as determined by the Board, in any case
35 where in the opinion of the Board the schedule does not contain a true and complete list of the improvements or does not contain a true and complete statement of their value:

"Provided that where, on a revaluation under section 139 of this Act or the corresponding provisions of any former Land
40 Act, the value of those improvements has been reduced, then, for the purposes of this section the value of those improvements as determined on that revaluation shall be deemed to be their value at the commencement of the lease."

(3) Section 7 of the Land Amendment Act 1951 is hereby
45 consequentially repealed.

5. Right of acquisition of fee simple—(1) Section 122 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsection:

“(5) As soon as possible after receipt of the notice, the Board shall cause the following values to be ascertained: 5

“(a) The value of the improvements which are then in existence and unexhausted on the land included in the lease:

“(b) The value at the commencement of the lease of all improvements included in the rental value at the commencement of the lease: 10

“(c) The value of the land included in the lease exclusive of the improvements referred to in paragraph (a) of this subsection:

“Provided that, subject to the provisions of this Act,— 15

“(i) In ascertaining the values under paragraphs (a) and (c) of this subsection equal emphasis shall be placed on the value to be ascertained under each paragraph:

“(ii) The values shall be ascertained on an equitable basis, having regard to the relationship between lessor and lessee:

“(iii) The sum of the values under paragraphs (a) and (c) of this subsection shall be equal to the capital value of the land: 25

“(iv) The determination of the Board of the value under paragraph (b) of this subsection shall be final and binding on all persons interested therein.”

(2) Section 122 of the principal Act is hereby further amended by repealing subsection (7), and substituting the following subsections: 30

“(7) Subject to the rights of the lessee under subsection (10) of this section, the purchase price of the land shall be the sum of the values under paragraphs (b) and (c) of subsection (5) of this section, less the value of any goodwill the lessee may have in his lease calculated in accordance with subsection (7A) of this section. 35

“(7A) For the purpose of calculating the value of the goodwill (if any) of the lessee in his lease, the following provisions shall apply:

“(a) The Board shall first ascertain—

5 “(i) The amount of the yearly rent on the purchase price of the land established under subsection (7) of this section (excluding any provision for goodwill) calculated at a percentage of that purchase price, which percentage shall be determined in accordance with subsection (7B) of this section:

10 “(ii) The unexpired term of the lease, which for the purposes of this subsection shall be the unexpired term of the current period of 11 years of the lease, or, where there is no provision in the lease for a review of rent at successive periods of 15 11 years, the unexpired term of the lease or 11 years, whichever is the lesser:

20 “(b) The value of the lessee’s goodwill in the lease shall then be calculated on an actuarial basis as the lessee’s interest in the present value of the excess (if any) of the annual rent, established under subparagraph (i) of paragraph (a) of this subsection, over the annual rent payable under the lease for the unexpired term ascertained under subparagraph (ii) of that paragraph. The rate of interest for the purpose of the calculation shall be equal to the percentage of the purchase price adopted in order to ascertain the amount of the yearly rent for the purposes of subparagraph (i) of paragraph (a) of this subsection, calculated with half-yearly rests:

30 “(c) Where the Board is of the opinion that, in the case of a lease of farm land, the value ascertained under paragraph (c) of subsection (5) of this section includes a potential value for purposes other than farming purposes, the Board shall also ascertain the value of the land as if unaffected by that potential value, and the value so ascertained shall, notwithstanding the provisions of subparagraph (i) of paragraph (a) of this subsection, be used for the purpose of calculating the value of the lessee’s goodwill in the lease under this subsection.

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“(7B) For the purposes of paragraph (a) of subsection (7A) of this section, the yearly rent shall be calculated—

“(a) At the percentage or proportion of the rental value prescribed by or under any Act by which the yearly rent was determined for the current term of the lease: 5

“(b) At $4\frac{1}{2}$ percent of the rental value, in any case where the yearly rent for the current term of the lease was determined in any other manner or where no specific percentage or proportion was so prescribed. 10

“(7C) For the purposes of subsection (7A) of this section, and notwithstanding anything in that subsection or in subsection (7B) of this section,—

“(a) Where the lessee is a serviceman or discharged serviceman and the yearly rent has been determined pursuant to section 29 of the Statutes Amendment Act 1943 or subsection (5) of section 63 of this Act or the lessee is in receipt of a concession allowed by the Board under section 153 of this Act, then, notwithstanding the provisions of the lease, the percentage or proportion of the rental value of the land and the rental value of the land shall be the percentage or proportion of the rental value of the land and the rental value of the land, respectively, which would become applicable on the transfer, sublease, or other disposition of the lease to any person not being a serviceman or discharged serviceman: 15 20 25

“(b) Where the lessee has been granted any other concession by the Board, no account shall be taken of that concession: 30

“(c) Where land has been incorporated in a lease pursuant to section 113 of this Act and the current yearly rent payable under the lease has been determined in more than one manner or by more than one percentage or proportion of the rental value of the land, then, subject to paragraphs (a) and (b) of this subsection, the yearly rent shall be calculated at $4\frac{1}{2}$ percent of the rental value of the land,” 35

(3) Section 122 of the principal Act is hereby further amended by repealing subsection (8), and substituting the following subsection:

5 “(8) As soon as practicable after the values have been
ascertained under subsection (5) of this section, and the
value of the lessee’s goodwill (if any) in the lease has
been ascertained under subsection (7A) of the section, the
Commissioner shall deliver to the lessee a notice in writing
10 informing him of those values, the amount of the value of
the goodwill (if any), and the purchase price of the land.”

(4) Section 122 of the principal Act is hereby further amended by adding the following subsection:

15 “(12) For the purposes of this section, the value at the
commencement of the lease of all improvements included in
the rental value at the commencement of the lease shall be—

20 “(a) The value as recorded in the schedule to the lease,
in any case where in the opinion of the Board the
schedule contains a true and complete list of the
improvements and a true and complete statement
of their value; or

25 “(b) The value as determined by the Board, in any case
where in the opinion of the Board the schedule
does not contain a true and complete list of the
improvements or does not contain a true and com-
plete statement of their value:

30 “Provided that where, on a revaluation under section 139 of
this Act or the corresponding provisions of any former Land
Act, the value of those improvements has been reduced, then,
for the purposes of this section the value of those improvements
as determined on that revaluation shall be deemed to be their
value at the commencement of the lease.”

6. Appeal to Administrative Division of Supreme Court—

(1) Section 123 of the principal Act is hereby amended—

35 (a) By omitting from subsection (1) the words “subsection
five”, and substituting the words “paragraphs (a)
and (c) of subsection (5) or the value ascertained
by the Board pursuant to paragraph (c) of sub-
section (7A)”:

40 (b) By inserting in subsection (1), after the words “said
values”, the words “or, as the case may be. the value
so ascertained”:

- (c) By omitting from subsection (2) the words “subsection five of the last preceding section”, and substituting the words “paragraphs (a) and (c) of subsection (5) of section 122 of this Act or, as the case may be, in paragraph (c) of subsection (7A) of that section”: 5
- (d) By repealing the proviso to subsection (2):
- (e) By repealing subsections (3) and (4).
- (2) Section 10 of the Land Amendment Act 1951 is hereby consequentially amended by repealing subsections (1) and (2). 10

7. Payment of purchase money—Section 124 of the principal Act (as amended by section 15 (a) of the Land Amendment Act 1950) is hereby further amended by inserting in subsection (1), after the word “Commissioner”, the words “and the balance of purchase price owing by the lessee in respect of the purchase by the lessee from the lessor of any improvements on the land included in the lease, and not secured by any encumbrance registered against the lease.” 15

8. Valuation for calculation of renewal rent—(1) Section 131 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection: 20

“(1) Not earlier than 2 years and not later than 1 year before the expiry of a renewable lease the Board shall cause the following values to be ascertained:

“(a) The value of the improvements which are then in existence and unexhausted on the land included in the lease: 25

“(b) The value at the commencement of the lease of all improvements included in the rental value at the commencement of the lease: 30

“(c) The value of the land included in the lease exclusive of the improvements referred to in paragraph (a) of this subsection: 30

“Provided that, subject to the provisions of this Act,—

“(i) In ascertaining the values under paragraphs (a) and (c) of this subsection, equal emphasis shall be placed on the value to be ascertained under each paragraph: 35

“(ii) The values shall be ascertained on an equitable basis, having regard to the relationship between lessor and lessee: 40

“(iii) The sum of the values under paragraphs (a) and (c) of this subsection shall be equal to the capital value of the land:

5 “(iv) The determination of the Board of the value under paragraph (b) of this subsection shall be final and binding on all persons interested therein.”

(2) Section 131 of the principal Act is hereby further amended by omitting from subsection (3) the words “at his option”, and substituting the words “as the Board may determine”.

10 (3) Section 131 of the principal Act is hereby further amended by repealing paragraph (b) of subsection (3) (as substituted by section 3 of the Land Amendment Act 1968), and substituting the following paragraph:

15 “(b) Pay interest at the rate of $4\frac{1}{2}$ percent per annum on the value so determined, in the same manner as rent.”

(4) Section 131 of the principal Act is hereby further amended—

20 (a) By inserting in subsection (4), before the word “term”, the words “first period of 11 years of the”:

 (b) By omitting from subsection (4) the word “elects”, and substituting the words “is required”.

25 (5) Section 131 of the principal Act is hereby further amended by repealing subsection (5) (as substituted by section 3 of the Land Amendment Act 1968), and substituting the following subsection:

30 “(5) The yearly rent for the first period of 11 years of the term of the new lease shall be $4\frac{1}{2}$ percent of the rental value as defined in subsection (4) of this section.”

(6) Section 131 of the principal Act is hereby further amended—

35 (a) By omitting from subsection (6) the words “eighteen months”, and substituting the words “9 months”:

 (b) By inserting in subsection (6), after the words “rent based on those values”, the words “for the first period of 11 years of the term of the lease”:

40 (c) By omitting from subsection (6) the words “and to make his election in respect of improvements in accordance with subsection three of this section”.

(7) Section 131 of the principal Act is hereby further amended by adding the following subsection:

“(8) For the purposes of this section, the value at the commencement of the lease of all improvements included in the rental value at the commencement of the lease shall be— 5

“(a) The value as recorded in the schedule to the lease, in any case where in the opinion of the Board the schedule contains a true and complete list of the improvements and a true and complete statement of their value; or 10

“(b) The value as determined by the Board, in any case where in the opinion of the Board the schedule does not contain a true and complete list of the improvements or does not contain a true and complete statement of their value: 15

“Provided that where, on a revaluation under section 139 of this Act or the corresponding provisions of any former Land Act, the value of those improvements has been reduced, then, for the purposes of this section the value of those improvements as determined on that revaluation shall be deemed to be their value at the commencement of the lease.” 20

(8) The following enactments are hereby consequentially repealed:

(a) Section 14 of the Land Amendment Act 1950:

(b) So much of the Schedule to the Land Amendment Act 1968 as relates to section 131 of the principal Act. 25

9. Lessee's election—Section 132 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Within 3 months after the receipt of the notice referred to in section 131 of this Act, notice in writing shall be given to the Commissioner by the lessee to the effect— 30

“(a) That he accepts the offer of a renewal lease and agrees to pay rent based on the values set out in the notice for the first period of 11 years of the term of the lease, and agrees to purchase the improvements at the value and on the terms and conditions determined by the Board in accordance with subsection (3) of section 131 of this Act or to pay interest on the value so determined in the same manner as rent, 40 as the Board may require; or

- “(b) That he does not desire a renewal lease, and agrees to the value of improvements as ascertained under paragraph (a) of subsection (1) of the said section 131; or
- 5 “(c) That he does not desire a renewal lease, but requires the value of the improvements as ascertained under paragraph (a) of subsection (1) of the said section 131 to be fixed by the Administrative Division of the Supreme Court as hereinafter provided; or
- 10 “(d) That he desires a renewal lease, and requires the values specified in paragraphs (a) and (c) of subsection (1) of the said section 131 to be fixed by the Administrative Division of the Supreme Court as hereinafter provided.”

15 **10. Review of annual rent under renewable lease**—The principal Act is hereby further amended by inserting, after section 132, the following section:

“132A. (1) Not earlier than 2 years and not later than 1 year before the end of the first and second periods of 11 years of the term of a renewable lease, the Board shall cause to be ascertained the values specified in paragraphs (a) and (c) of subsection (1) of section 131 of this Act in the same manner as if for the renewal of a renewable lease.

20 “(2) As soon as possible after the values have been ascertained under subsection (1) of this section, and not later than 9 months before the end of the current period of 11 years of the term of the lease, the Commissioner shall deliver to the lessee a notice in writing informing him of those values and requiring him within 3 months after the receipt of the notice to advise the Commissioner in writing whether he agrees to pay the yearly rent stated in the notice for the next ensuing period of 11 years or whether he requires the values referred to in subsection (1) of this section to be fixed by the Administrative Division of the Supreme Court as hereinafter provided.

35 “(3) If the lessee omits to give to the Commissioner within the time limited therefor the notice referred to in subsection (2) of this section, he shall be deemed to have agreed to pay the yearly rent stated in the notice given to him by the Commissioner under that subsection for the next ensuing period of 11 years.

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“(4) The yearly rent for the next ensuing period of 11 years shall be $4\frac{1}{2}$ percent of the sum of—

“(a) The value specified in paragraph (b) of subsection (1) of section 131 of this Act; and

“(b) The value specified in paragraph (c) of that subsection, as applied for the purposes of this section by subsection (1) of this section.” 5

11. Appeal to Administrative Division of Supreme Court—

(1) The principal Act is hereby further amended by repealing section 133, and substituting the following section: 10

“133. (1) Where the lessee requires the values specified in subsection (1) of section 132 or subsection (1) of section 132A of this Act to be determined by the Administrative Division of the Supreme Court as provided in subsection (1) of the said section 132 or subsection (2) of the said section 132A, as the case may be, the Commissioner shall, as soon as possible after the lessee’s notification of his election is received, file in the nearest office of the Court in the district in which the land is situated an application to have the said values determined by the Court. The application shall be accompanied by a copy of the Commissioner’s notification to the lessee pursuant to subsection (6) of the said section 131 or subsection (2) of the said section 132A, as the case may be, and a copy of the lessee’s notice of election pursuant to subsection (1) of the said section 132 or subsection (2) of the said section 132A. 15 20 25

“(2) After hearing the application, the Land Valuation Committee to which the application is referred shall determine the values as required by the lessee or any of those values, as the case may be. Subject to any right of appeal to the Administrative Division of the Supreme Court vested in any party, the rental value of the land for the purposes of any renewal lease or, as the case may be, for the next ensuing period of 11 years of the term of a renewable lease shall be fixed in accordance with the value of the land included in the lease exclusive of improvements as so determined by the Committee and the value of improvements, if any, as ascertained by the Board under paragraph (b) of subsection (1) of section 131 of this Act.” 30 35

(2) Section 10 of the Land Amendment Act 1951 is hereby further consequentially amended by repealing subsections (3) and (4). 40

12. Savings—(1) Notwithstanding anything in this Act, where—

5 (a) Under the provisions of the principal Act the Board is required, before the commencement of this Act, to determine values under Part VIII of the principal Act for renewal purposes; or

10 (b) Any lessee who has complied with the provisions of section 122 of the principal Act has delivered notice of his election to acquire the fee simple of the land in his lease to the Commissioner before the commencement of this Act,—

15 the proceedings for the renewal of the lease or the acquisition of the fee simple shall be continued and completed under the provisions of the principal Act as if this Act had not been passed.

20 (2) Notwithstanding anything in section 2, section 3, section 8, or section 10 of this Act, the provisions of the principal Act shall continue to apply, as if those sections had not been enacted, to every renewable lease or pastoral lease in force immediately before the date of the commencement of this Act during the term thereof that is current on that date.