

PUBLIC BODIES' LEASES BILL.

MEMORANDUM.

THIS Bill is intended as a substitute for the Public Bodies' Leasing-powers Act, 1908, which re-enacts the Public Bodies' Powers Act, 1887. It makes general provision as to the leasing-powers of local and other public authorities, so as to avoid the necessity of making special provisions in every Act which establishes such an authority. The Bill differs from the existing law in two chief respects:—

(1.) It lays down more adequate and explicit rules as to the granting of renewable leases. Two kinds of perpetually renewable leases are provided for in the Schedule, namely,—

- (a.) A lease renewable at a rent to be determined by valuation, on the analogy of the renewable lease of Crown lands; and
 - (b.) A lease which is to be offered by auction at the end of each successive term, the incoming tenant paying to the outgoing tenant the value of his improvements. Both forms of lease are substantially the same as those now granted by Municipal Corporations under the authority of the Municipal Corporations Act.
- (2.) The Bill is wider in its application than the existing law. It applies,—
- (a.) To specified kinds of local authorities (*e.g.*, County Councils, Town Boards, Harbour Boards, &c.), without the sanction of any Order in Council:
 - (b.) To any body or persons to whom it is made applicable by any subsequent Act:
 - (c.) To any body or persons in whom lands are vested for any public purpose and to whom with their own consent the Act is made applicable by Order in Council.

The powers conferred on a leasing authority by the Act will be in addition to any powers conferred on that authority by any other Act or instrument, but can be exercised only so far as they are not contrary to the provisions of any other Act or any trust by which the lands are affected.

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Hon. Mr. McNab.

PUBLIC BODIES' LEASES.

ANALYSIS.

Title.	
1. Short Title and commencement.	9. Commencement of lease.
2. Interpretation.	10. Reservation of rack-rent.
3. Powers conferred by Act subject to certain restrictions.	11. Payment by incoming lessee of value of improvements.
4. Governor may declare leasing authorities.	12. Powers of leasing authority as to surrender of lease, reservation of rent, &c.
5. Powers of leasing authority to grant leases.	13. Lease not invalidated by failure of leasing authority to observe provisions of Act.
6. Covenants and conditions in leases.	14. Repeal and saving.
7. Lease may authorise waste.	Schedules.
8. Leases to be sold by public auction or public tender. Sale by private contract in certain cases.	

A BILL INTITULED

AN ACT to consolidate and amend the Law relating to the Powers of certain Public Bodies to lease Lands. Title.

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

1. This Act may be cited as the Public Bodies' Leases Act, 1908, and shall come into operation on the first day of January, nineteen hundred and nine. Short Title and commencement.

2. In this Act, unless a contrary intention appears,— Interpretation.
 "Leasing authority" means—

(a.) A County Council, Road Board, Town Board, Harbour Board, Fire Board, Hospital Board, Charitable Aid Board, or Hospital and Charitable Aid Board, River Board, or Drainage Board;

(b.) Any person or body of persons, whether incorporated or not, declared to be a leasing authority within the meaning of this Act by any Act hereafter to be passed;

(c.) Any person or body of persons, whether incorporated or not, declared by any Order in Council made in pursuance of the provisions hereinafter contained to be a leasing authority within the meaning of this Act:

"Lessee" includes the executors, administrators, and assigns of a lessee:

"Special resolution" means in the case of any leasing authority consisting of a body of persons (whether incor-

porated or not) a resolution passed at a meeting of the leasing authority or of the governing body thereof, and confirmed at a subsequent meeting held not earlier than six clear days after the day on which the said resolution was passed.

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Powers conferred by Act subject to certain restrictions.

3. The powers conferred by this Act on a leasing authority shall be in addition to and not in substitution for any powers vested in that authority by any other Act for the time being in force, whether passed before or after the passing of this Act, or by any trust, whether created before or after the passing of this Act, save that no power conferred by this Act shall be exercised by any leasing authority if the exercise of that power would be contrary to the provisions of any such Act or trust.

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Governor may declare leasing authorities.

4. (1.) The Governor may from time to time, by Order in Council, declare that any person or body of persons (whether incorporated or not) having power to lease any land held in trust for religious, charitable, educational, scientific, or public purposes (whether the said land is vested in the said person or body of persons or not, and whether the trust is created by statute or in any other manner), is a leasing authority within the meaning of this Act.

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(2.) Any such Order in Council may impose such exceptions, restrictions, limitations, or conditions (if any) as the Governor in Council thinks fit, on the exercise by the said leasing authority of the powers conferred on leasing authorities by this Act.

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(3.) No such Order in Council shall be made except on the request of the person or body of persons to whom it relates.

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(4.) Any such Order in Council may be at any time revoked.

(5.) No Order in Council purporting to have been made under this Act shall be questioned or invalidated on the ground of want of jurisdiction to make the same, or of any irregularity in the exercise of that jurisdiction.

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(6.) While any such Order in Council remains unrevoked the person or body of persons to whom it relates shall be a leasing authority within the meaning of this Act, and shall possess all the powers conferred upon leasing authorities by this Act, subject, however, to any exceptions, restrictions, limitations, or conditions imposed by the said Order in Council.

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Powers of leasing authority to grant leases.

5. When a leasing authority has power to let any land, it may let the same under the provisions of this Act on any of the tenancies or leases following:—

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(a.) A tenancy at will:

(b.) A tenancy terminable by the leasing authority at any time by six months' notice, or any shorter notice:

(c.) A tenancy for any term not exceeding fifty years, without right of renewal:

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(d.) A tenancy with a right of renewal for one or more terms, at a rent to be determined in the original lease, but so that the aggregate duration of the original and of the renewed terms shall not exceed fifty years:

(e.) A tenancy for any term not exceeding twenty-one years, with a perpetual right of renewal for the same or any

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shorter term, at a rent to be determined by valuation, in accordance with the provisions of the *First* Schedule hereto:

- 5 (f.) A tenancy for any term not exceeding twenty-one years, with a provision in accordance with the *Second* Schedule hereto that on the expiration of the term a new lease for the same or any shorter term shall be offered for sale by auction, and so on from time to time in perpetuity:
- 10 (g.) A tenancy for any term not exceeding twenty-one years, with a provision in accordance with the *First* and *Second* Schedules hereto that on the expiration of the term the lessee shall have an option either to accept a renewed lease in accordance with the *First* Schedule hereto, or to have a new lease offered for sale by auction in accordance with the *Second* Schedule hereto, and so on from time to time in perpetuity:
- 15 (h.) A tenancy in accordance with the provisions of any of the three last preceding paragraphs, save that the right of renewal or of having a new lease offered for sale by auction is limited in duration in such manner as the leasing authority thinks fit, in lieu of being perpetual.
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6. A lease granted by a leasing authority in pursuance of this Act may contain such powers of re-entry and such covenants and conditions (other than a covenant on the part of the leasing authority to pay compensation to the lessee for his improvements) as the leasing authority thinks fit, and as are consistent with the provisions of this Act.

Covenants and conditions in leases.

7. Any lease granted by a leasing authority in pursuance of this Act may authorise the lessee to extract minerals from the land demised, or to cut timber, or to commit any other species of waste thereon, and in any such case the rent reserved may be or include a royalty or other similar payment in respect of any minerals, timber, or other thing extracted or removed from the land demised.

Lease may authorise waste.

8. (1.) Except so far as otherwise provided by this Act, every lease granted in pursuance of this Act shall be sold by the leasing authority by public auction or public tender, of which notice has been published in some newspaper circulating in the neighbourhood of the land to be leased.

Leases to be sold by public auction or public tender.

(2.) Every such notice shall be so published once at least not less than thirty days before the day appointed for the auction, or before the last day appointed for making a tender, as the case may be, and twice after such first notice and before the day so appointed.

(3.) Every such notice shall contain particulars as to the material provisions of the lease proposed to be sold, but so far as regards the provisions contained in the *First* or *Second* Schedule to this Act it shall be sufficient in any such notice to refer to that Schedule.

(4.) It shall not be necessary in any such sale by auction or public tender for the leasing authority to accept the highest or any bid or tender; but when all bids or tenders have been made, the leasing authority may in its discretion accept such one of those bids or tenders as it thinks fit.

Sale by private contract in certain cases.

(5.) Notwithstanding anything in this section, a lease that has been offered for sale as aforesaid and not sold may at any time within twelve months after the day of the auction, or after the last day for the delivery of tenders for the same, as the case may be, be sold by private contract at a rent not less than the upset rent at which the lease was so offered. 5

Commencement of lease.

(6.) Nothing in this section shall prevent a leasing authority from leasing any land by private contract for a tenancy at will, or for any term not exceeding ~~one year~~ *two years*, or for a term determinable at any time by the leasing authority by six months' notice or any shorter notice. 10

Reservation of rack-rent.

9. (1.) Every lease granted in pursuance of this Act shall take effect in possession within six months after the granting thereof.

(2.) It shall not be lawful for any leasing authority (save in pursuance of the right to grant a renewable lease, or otherwise in pursuance of the express provisions of this Act) to enter into any contract to grant a lease under this Act which is not to be executed and to take effect in possession within six months after the making of the contract. 15

Payment by incoming lessee of value of improvements.

10. Every lease granted in pursuance of this Act shall reserve a rack-rent without fine or premium, but the rent need not be uniform for the whole term. 20

11. Any lease granted in pursuance of this Act may contain a provision that the lessee shall pay to the leasing authority or to an outgoing lessee the value of any buildings, fixtures, or other improvements on the land, and in any such case the value of the said buildings, fixtures, or improvements shall be determined in such manner as the leasing authority thinks fit. 25

Powers of leasing authority as to surrender of lease, reservation of rent, &c.

12. (1.) A leasing authority may—

(a.) Accept on such terms and conditions as it thinks fit a surrender of any lease, whether with respect to the whole or to any part of the land comprised in the lease: 30

(b.) At any time or times during the currency of a lease, reduce the rent to be paid thereunder during the remainder or any part of the remainder of the term: 35

(c.) At any time or times during the currency or after the determination of a lease, compromise with the lessee for any rent due by him:

(d.) On the surrender of a lease, grant to the lessee, or to any other person with the consent of the lessee (without offering the same for sale by auction or tender), a new lease of the whole or any part of the land comprised in the surrendered lease for the remainder or any part of the remainder of the term of the surrendered lease, at such rent as the leasing authority determines, and with such provisions as are authorised by this Act and as the leasing authority thinks fit, including therein, if the leasing authority thinks fit, such right of renewal, or of having a new lease offered for sale by auction, as is consistent with the provisions of section *five* of this Act. 40 45 50

(2.) In this section the term "lease" includes an agreement for a lease, and the term "lessee" has a corresponding meaning.

(3.) This section applies to leases existing at the passing of this Act as well as to future leases, and applies to all leases granted by a leasing authority whether in pursuance of this Act or in the exercise of any other power in that behalf.

5 (4.) No leasing authority which consists of a body of persons, whether incorporated or not, shall exercise any of the powers conferred by this section except by or in pursuance of a special resolution.

10 13. (1.) No lease granted by a leasing authority shall be invalidated by any failure of the leasing authority to conform to the requirements of this Act as to the offer of a lease for sale by auction or public tender or as to the passing of a special resolution.

Lease not invalidated by failure of leasing authority to observe provisions of Act.

15 (2.) Notwithstanding anything in this section, any lease granted in breach of the said requirements of this Act shall be voidable on the part of the leasing authority as against any lessee or other person who has fraudulently been party or privy to the said breach.

20 14. (1.) The Public Bodies' Leasing-powers Act, 1908, is hereby repealed, but the repeal of the said Act shall not affect any lease or agreement granted or made under the authority thereof before the commencement of this Act.

Repeal and saving. 1887, No. 34.

(2.) All references in any Act to the Public Bodies' Powers Act, 1887, and its amendments, or to the Public Bodies' Leasing-powers Act, 1908, shall be read as references to this Act.

25 (3.) All Orders in Council in force under the Public Bodies' Leasing-powers Act, 1908, with respect to the leasing authorities mentioned in paragraph (a) of section *two* hereof are hereby revoked; all other Orders in Council in force under that Act shall, until revoked, continue in force as if the said Act was still in operation, but any such Order in Council may be at any time revoked.

SCHEDULES.

Schedules.

FIRST SCHEDULE.

Section 5.

PROVISIONS OF LEASE GRANTED UNDER SECTION 5, PARAGRAPH (e), OF THE PUBLIC BODIES' LEASES ACT, 1908.

A LEASE granted under paragraph (e) of section *five* of this Act may contain the following provisions or any provisions substantially to the same effect:—

1. On the expiration by effluxion of time of the term hereby granted, the lessee shall have a right to obtain, in accordance with the provisions hereinafter contained, a renewed lease of the land hereby demised, at a rent to be determined by valuation in accordance with the said provisions, for the term of [*the same period of years for which the original lease is granted or any shorter period*] computed from the expiration of the lease hereby granted, and subject to the same covenants and provisions as this lease, including this present provision for the renewal thereof, and all provisions ancillary or in relation thereto.

2. Within six calendar months previous to the expiry by effluxion of time of the lease hereby granted, or so soon thereafter as may be, a valuation shall be made of the fair annual rent of the land hereby demised, so that the rent so valued shall be uniform throughout the whole term of the renewed lease.

3. In making the said valuation no account shall be taken of the value of the following improvements on the said land: [*Specifying, as the leasing authority thinks fit, the kinds of improvements, whether made during the term or at any other time, which are not to be taken into account in the valuation of the rent.*]

4. The said valuation shall be made by two indifferent persons as arbitrators, one of whom shall be appointed by the lessor and the other by the lessee.

5. The arbitrators, before commencing to make the said valuation, shall together appoint a third person who shall be an umpire as between them.

6. The decision of the two arbitrators if they agree or in such respects as they agree, or of the umpire if the arbitrators do not agree or in such respects as they do not agree, shall be binding on all parties.

7. The duty of the umpire, on reference to him of any question, shall be to consider the respective valuations of the two arbitrators in the matters in which their valuations do not agree, and then to make an independent and substantive valuation, and the last-mentioned valuation shall be the decision of the umpire; but in giving his decision on any question so referred to him the umpire shall in every case be bound to make a valuation not exceeding the higher and not less than the lower of the valuations made by the arbitrators respectively.

8. The provisions herein contained for the making of a valuation shall be deemed to be a submission to arbitration under and within the meaning of the Arbitration Act, 1908, or any enactment for the time being in force in substitution therefor or amendment thereof, and all the provisions of any such enactment shall, so far as applicable, apply accordingly.

9. Within two calendar months after the making of the said valuation and the giving of notice thereof to the lessee, the lessee shall give notice in writing signed by him or by his agent duly authorised in that behalf and delivered to the lessor stating whether the lessee desires to have a renewed lease of the land.

10. Any such notice may be given by the lessee within the time aforesaid, although the term hereby granted has already expired by effluxion of time, or although the said valuation has not been made or notice thereof has not been given to the lessee until after the expiration of the said term by effluxion of time, unless before the giving of such notice by the lessee he has given up to the lessor the possession of the land hereby demised or has been duly ejected therefrom in pursuance of the judgment or order of any Court of competent jurisdiction.

11. Any such notice by the lessee of his desire to have a renewed lease shall be deemed to constitute a contract between the lessor and lessee for the granting and acceptance of a renewed lease at the rent so valued, and for the term and subject to the covenants and provisions referred to in clause 1 of these presents.

12. If the lessee fails within the time aforesaid to give any notice as to whether he desires a renewed lease or not, or if he gives notice in writing signed by himself or by his agent duly authorised in that behalf that he does not desire a renewed lease, his right to a renewed lease shall cease on the expiry of the time aforesaid, or on the date at which such notice is received by the lessor, as the case may be.

13. The term of any such renewed lease shall run from the date of the expiration of the prior lease, and the rent as so valued shall accrue as from the said date, in lieu of the rent reserved in the prior lease, notwithstanding the fact that the renewed lease may not be executed until after that date.

14. The reasonable cost of any such valuation as aforesaid shall be paid by the lessee.

15. If the lease hereby granted is not renewed in accordance with the foregoing provisions, or if it is determined by forfeiture, re-entry, or otherwise, all buildings and improvements on the land demised shall absolutely revert to the lessor free from any payment or compensation whatever.

16. Any notice required to be given to the lessee in accordance with the foregoing provisions may be sent by post to his last known place of business or residence in New Zealand, and shall in such cases be deemed to have been duly received by him on the day on which it would be delivered at that place of business or residence in the ordinary course of post.

17. Nothing in the foregoing provisions shall exclude or restrict the right of the lessee to obtain relief against any forfeiture or determination of the lease or of his right to a renewal thereof in the same cases and on the same conditions as if the lease had been granted otherwise than in the execution of statutory powers in that behalf.

18. The expression "lessor" as herein used includes the successors and assigns of the lessor, and the expression "lessee" as herein used includes the successors, executors, administrators, and assigns of the lessee.

SECOND SCHEDULE.

PROVISIONS OF LEASE GRANTED UNDER SECTION 5, PARAGRAPH (f), OF THE PUBLIC BODIES' LEASES ACT, 1908. Section 5.

A LEASE granted under paragraph (f) of section five of this Act may contain the following provisions, or any provisions substantially to the same effect:—

1. Within six calendar months previous to the expiration by effluxion of time of the term hereby granted, two separate valuations shall be made—namely, a valuation of all the buildings and improvements then on the land hereby demised, whether erected or made during or before the commencement of the term hereby granted [or a valuation of any specified descriptions of buildings or improvements, as the leasing authority thinks fit], and another valuation of the fair annual ground-rent of the said land, without the buildings or improvements so to be valued, for a further term of [the same period of years for which the lease is granted or any shorter period] from the expiration of the term hereby granted, so as that rent shall be an even annual sum payable throughout the term without increase or diminution during the term.

2. The said valuations shall be made by two indifferent persons as arbitrators, one of whom shall be appointed by the lessor and the other by the lessee.

3. The arbitrators shall, before commencing to make the valuations, together appoint a third person who shall be an umpire as between them.

4. The decision of the two arbitrators if they agree or in such respects as they agree, or of the umpire if the arbitrators do not agree or in such respects as they do not agree, shall be binding on all parties.

5. The duty of the umpire, on reference to him of any question, shall be to consider the respective valuations of the two arbitrators in the matters in which their valuations do not agree, and then to make an independent and substantive valuation, and the last-mentioned valuation shall be the decision of the umpire, but in giving his decision on any question so referred to him the umpire shall in every case be bound to make a valuation not exceeding the higher and not less than the lower of the valuations made by the arbitrators respectively.

6. The provisions herein contained for the making of valuations shall be deemed to be a submission to arbitration under and within the meaning of the Arbitration Act, 1908, or any enactment for the time being in force in substitution therefor or amendment thereof, and all the provisions of any such enactment shall, so far as applicable, apply accordingly.

7. Before the expiration by effluxion of time of the term hereby granted, the right to a lease of the land hereby demised for a further term of [the period specified in clause 1 of these presents], containing the same covenants and provisions as are contained in this lease (including the provisions herein contained for valuation and for the offer of a new lease for sale by auction, and all clauses auxiliary or in relation thereto), shall be offered by the lessor by public auction at the upset annual rent of the said land as determined by the arbitrators or the umpire as aforesaid, without the buildings and improvements so valued as aforesaid, subject to the payment by the purchaser of the value of the said buildings and improvements as so determined by the said arbitrators or their umpire.

8. If any person other than the lessee becomes the purchaser at the said auction of the said right to a lease, that person shall within two calendar months from the date of the auction pay in cash to the lessor, in trust for the lessee, the amount of the value of the buildings and improvements so determined as aforesaid, and accept and execute a lease of the said land for the said further term at the annual ground-rent at which the right to the said lease has been so purchased by him.

9. The lessor shall on demand (all rent and outgoings payable by the lessee having previously been paid) pay over to the outgoing lessee the amount of the value of the said buildings and improvements paid to the lessor by the said purchaser without any deduction whatever.

10. Nothing in these presents contained shall be deemed to render the lessor liable to pay to the lessee any part of the value of any buildings or improvements save after having received the amount thereof as aforesaid.

11. Upon any sale by auction as aforesaid of the right to a lease, the lessor may make usual and any other fair and reasonable conditions of sale to carry out the intention of these presents, and in particular shall provide for the payment by the purchaser at the auction (if a person other than the lessee) of a deposit of one-fifth of the amount of the valuation of the buildings and improvements, or of such smaller

deposit as is agreed upon between the lessor and lessee, and that in the event of the purchaser refusing or neglecting to complete his purchase according to the conditions of sale he shall forfeit his deposit to the lessor for the benefit of the lessee.

12. In any such conditions of sale the lessor may in addition provide that, if the purchaser refuses or neglects to complete the purchase according to the conditions of sale, he shall pay to and for the benefit of the lessor as liquidated damages a sum not exceeding one-half of the total deficiency (if any) during the term of years of the rent agreed to be paid by the new purchaser at a subsequent sale by auction held in consequence of the default of the original purchaser, as compared with the rent that would have been reserved had such original purchaser not made default, together with all expenses attending the first sale.

13. If, owing to delay on the part of the arbitrators or the umpire or otherwise, the right to a new lease is not offered at auction before the expiration of the term hereby granted, or if, owing to the purchaser, other than the lessee, at any auction (whether the original auction or a subsequent one held on account of the default of the purchaser to complete) refusing or neglecting to complete his purchase according to the terms and conditions thereof, the purchase is not completed, then and in any such case the right to the new lease shall be offered at auction as soon as conveniently can be after the expiration of the term hereby granted or (as the case may be) after such refusal or neglect as aforesaid, notwithstanding that the term hereby granted has expired.

14. If the purchaser at the last-mentioned auction, being any person other than the lessee, makes default as aforesaid, the right to the new lease shall again be offered at auction as soon as conveniently can be after such default, and so on from time to time.

15. In every case in which the right to a new lease is sold by auction the new term shall run from the date of the expiration of the term hereby granted, but the rent shall not begin to run until the purchaser obtains possession.

16. The lessee shall have a right to bid for and to become the purchaser of the right to a new lease at any such auction.

17. The lessor shall be bound in all cases to accept at any such auction the highest bid made thereat for the new lease, if that bid is not less than the upset annual ground-rent as valued in manner aforesaid.

18. If at any auction there is no bid equal to or greater than the upset annual ground-rent as valued in manner aforesaid, then, at or (as the case may be) as from the expiration of the term hereby granted, the land hereby leased, with all buildings and improvements thereon (other than fixtures removable by the lessee before the expiration of the term), shall absolutely revert to the lessor free from any payment or compensation whatever.

19. At every auction held under the foregoing provisions the conditions of sale shall be the same (so nearly as may be) as those in respect of the first auction hereinbefore provided for.

20. In the event of the term hereby created being determined by forfeiture or otherwise than by effluxion of time, the lessee shall not be entitled to any compensation for buildings or improvements.

21. Nothing in the foregoing provisions shall exclude or restrict the right of the lessee to obtain relief against any forfeiture or determination of the lease or of any right in respect thereof in the same cases and on the same conditions as if the lease had been granted otherwise than in the execution of statutory powers in that behalf.

22. The expression "lessor" as herein used includes the successors and assigns of the lessor, and the term "lessee" as herein used includes the successors, executors, administrators, and assigns of the lessee.