

## PUBLIC WORKS AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill amends the Public Works Act 1928.

*Clause 2* provides machinery by which the Minister or the local authority may take proceedings to determine the amount of compensation payable in cases where not less than twelve months has expired since the claim to compensation arose and the person entitled has failed to make a claim. Under present law, until the claimant files his claim for compensation, the respondent is powerless to have the claim disposed of by the Court, and the claimant can take up to five years to file his claim. Under the new clause the claimant will have at least sixteen months to file his claim and proceed in the normal way, and the Court has power to extend that period where reasonable. After that he may still do so, but at that point the respondent becomes entitled to ask the Court to fix a date for hearing and give the claimant two months notice of that date. The claimant may still file his claim up to thirty days before the hearing. Failing that the claimant may present his claim at the actual hearing, but in that case, after the claimant has completed all of his evidence, the respondent is entitled to a reasonable adjournment while he examines the contents of the claim as presented. If the claimant does not take advantage of any of the above opportunities, the Court will assess compensation on the evidence before it. Section fifty-six of the principal Act, which enables the respondent in any claim for compensation for land taken to require the claim to be determined by the Land Valuation Court, is extended so as to make the section apply to any claim for compensation under the principal Act.

*Clause 3* provides that where two or more local authorities have duties and powers in respect of different public works on the same land, or where the works of one or more local authorities interfere or are likely to interfere with the works of another, the local authorities may agree upon what each of them will do in the fulfilment of its duties and the exercise of its powers. The agreement may provide for the integration of the works, for combined works to be undertaken by one local authority on behalf of all the local authorities concerned, and for the apportionment of the cost of combined works. Differences may be settled by arbitration. To meet cases where matters cannot be arranged as aforesaid, it is provided that any local authority may submit its proposals in respect of a combined scheme to the Minister, and may petition the Governor-General for authority to carry out its proposals. If objection is made, the Governor-General is authorized to appoint a Magistrate or other person as a Commissioner to inquire into the proposals. A warrant by the Governor-General under this clause authorizing the carrying out of any works is to have the same effect as an agreement between the local authorities concerned. Analogous provisions are to be found in section 17 of the Town and Country Planning Act 1953.

*Subclause (1) of clause 4* consolidates and amends the provisions which are now contained in section 35 of the principal Act and in the two existing amendments of that section, and which relate to the disposition of land that is held for a public work but is not required for that work. The only material changes which are being made are the following:

- (a) The second proviso to subsection (1) of the new section has been redrafted so as to enable the Minister instead of the Governor-General to give the notice declaring the land to be Crown land, and to enable the notice to take effect from a date to be specified therein:
- (b) The third proviso to the said subsection (1) is new and provides that in the case of any land held for a local work (e.g., land held by a Catchment Board for river control purposes), if the land is not required for the purpose or if for any other reason the Minister and the local authority agree that it is expedient to do so, the Governor-General may declare the land to be Crown land:
- (c) Subsection (2) of the new section 35 is new and provides that where the land to be described in a notice by the Minister is not properly defined by survey it shall be sufficient to identify the land in the notice by reference to a plan deposited at the office of the Minister at Wellington and where the land is not capable of being described in any of the manners specified in section 18 (1) of the Public Works Amendment Act 1952 and is not shown separately on a plan certified by the Chief Surveyor, the District Land Registrar shall, upon production of a certificate and plan as to survey, register that certificate and plan and if necessary amend the description and area of the land comprised in the notice.

The remainder of *clause 4* relates to consequential amendments and repeals.

Section 4 of the Public Works Amendment Act 1948 requires the Registrar to refuse to register any dedication of an access way or service lane unless he is satisfied that it has been formed and completely constructed to the satisfaction of the controlling authority. *Clause 5* permits dedication to be completed, if the local authority is agreeable, on the owner binding himself to carry out the formation work within a period of two years, or such shorter period as the local authority specifies, supported by a guarantee by a bank or insurance company or by the deposit of money or securities to an amount equal to one and a quarter times the estimated cost of the work. This is desirable in many cases so as to enable the subdivisional plan to be deposited and title given to the sections in a subdivision. The interests of a purchaser are better served by getting earlier possession, while the proposed agreement can provide safeguards to ensure that access ways and service lanes to satisfactory standards of construction will be completed as quickly as is reasonably possible. Similar provision in respect of roads and streets was made by section 2 of the Public Works Amendment Act 1953

*Hon. Mr Goosman*

## PUBLIC WORKS AMENDMENT

### ANALYSIS

Title.	3. Co-ordination of works of local authorities.
1. Short Title.	4. Land taken for public work and not wanted may be sold, etc.
2. Minister or local authority may take proceedings to determine compensation if person entitled fails to make claim.	5. Formation of access ways and service lanes.

### A BILL INTITULED

AN ACT to amend the Public Works Act 1928.

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 Works Amendment Act 1954, and shall be read together with and deemed part of the Public Works Act 1928 (hereinafter referred to as the principal Act).

Short Title.

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

2. (1) At any time after the expiration of twelve months after the date on which any person has acquired any right or title to make a claim for compensation, if that person has failed to make the claim, the Minister or the local authority may give notice in writing to that person of his or its intention, after the expiration of four months from the date on which the notice is given, to apply to the Land Valuation Court to determine what amount of compensation (if any) shall be paid to that person in respect of the matters and land specified in the notice, and in respect of all claims arising at or about the same time which the claimant may have in the same general connection against the same respondent.

Minister or local authority may take proceedings to determine compensation if person entitled fails to make claim.

(2) If after the expiration of the said period of four months and of any extension thereof which the Land Valuation Court may allow on application made to it in that behalf within the said period of four months the person to whom the notice has been given has failed to make the claim in accordance with section fifty-one of the principal Act, the Minister or the local authority, as the case may be, may apply to the Land Valuation Court to determine what amount of compensation (if any) shall be paid to that person in respect of the matters and land specified in the application, and to fix a suitable date for the hearing of the application.

(3) In any case where application is made to the Land Valuation Court under this section, notice of the application shall be given not less than two months before the date of the hearing of the application, to the person whose rights are to be determined thereby, and that person may,—

(a) Not less than thirty days before the date fixed for the hearing of the application, file in the Court and serve on the applicant particulars of the claim (if any) which he makes in respect of the matters and land to which the application relates:

(b) Appear and be heard on the application or claim so filed.

(4) Subject to the provisions of this section, the Land Valuation Court shall proceed to hear the parties and to examine the claim (if filed), or if no claim is filed to examine the application as if it were a claim duly made by the person to whom the application relates:

Provided that, where no claim has been filed in accordance with paragraph (a) of subsection *three* of this section but the person whose rights are to be determined has appeared and been heard, the applicant shall be entitled to an adjournment for a reasonable period if he wishes to make any further investigation of any matter arising in the claimant's evidence.

(5) If the circumstances render it desirable to do so, the Land Valuation Court may hear together two or more applications under this section.

(6) If the claim is not filed before any date of hearing is fixed, the procedure set out in the principal Act shall be complied with only so far as time permits.

(7) Section fifty-six of the principal Act is hereby amended by omitting from subsection one the words "for any land taken", and substituting the words "under this Act".

5 3. (1) Where two or more local authorities have duties and powers in respect of different public works that they desire to execute or are executing or have executed on the same land or where the works of one or more local authorities interfere or are likely to  
10 interfere with the works of another local authority or other local authorities so that removal or reconstruction or modification of the works of any of them may be necessary in the public interest, the local authorities concerned may agree in writing upon what each of them  
15 will do in the fulfilment of its duties and the exercise of its powers.

Co-ordination of works of local authorities.

(2) Notwithstanding anything to the contrary in the Act or document constituting any local authority, any agreement made between local authorities under this  
20 section may make such provision as the parties think desirable—

(a) For the integration of all of their works in the vicinity including the location, nature, and extent of the works of each of the local  
25 authorities:

(b) For all or any of the works to be undertaken on the land or on adjacent land by any local authority on behalf of the appropriate local authority or local authorities:

(c) For the cost of the works and their future maintenance to be allocated between them and to be payable in such manner by such instalments and on such dates and subject to such liquidated damages for default as may be  
30 specified in the agreement.

(3) If the local authorities fail to agree upon any aspect of the matter they may refer that aspect to arbitration under the Arbitration Act 1908, or any of them may at any time give to the other or others and to  
35 the Minister a notice stating—

See Reprint of Statutes, Vol. I, p. 346

(a) Its proposals;

(b) In what respects and on what grounds it considers agreement between the parties to be in the public interest;

- (c) In what respects and how it considers the duties and powers of any of the local authorities should be varied in respect of each subject matter;
- (d) If expense is involved, how that expense in respect of construction and of maintenance should be borne as between all parties; 5
- (e) That after the expiration of two months from the date of the notice being served it is the intention of the proposers to apply to the Governor-General for power to carry out the proposals and recover the proportion of the cost thereof specified in the notice from the local authority mentioned in the notice; and 10
- (f) That any objection to the proposals must be sent to the Minister within the specified period of two months. 15
- (4) At the expiration of the aforesaid period of two months the proposers may by petition apply to the Governor-General for power to carry out the proposals on the terms mentioned in the notice aforesaid. 20
- (5) Any local authority may object to the proposals, and shall state in the objection the grounds thereof, and shall send a copy thereof to each of the proposers.
- (6) If an objection is lodged, the Governor-General may appoint any Magistrate or other person to be a Commissioner to inquire into and report to him on the matter; and the Commissioner shall have all the powers of a Commission appointed by the Governor-General in Council under the Commissions of Inquiry Act 1908. 25 30
- (7) If no objection is lodged within the two months aforesaid or if, although an objection is lodged, the Governor-General is of opinion that the proposals should be carried out, he may, if he thinks fit, by warrant under his hand publicly notified, determine in what respects and how the duties and powers of each local authority shall be modified or varied to secure proper integration, and may authorize any local authority or local authorities to carry out the proposals or any of them either as originally proposed or with such modifications or alterations as are agreed on between the local authorities concerned or as are recommended by the Commissioner, 35 40

See Reprint  
of Statutes,  
Vol. I, p. 1036

and may declare that proportions of the cost thereof and of future maintenance costs to be stated in the warrant shall be borne by each local authority, and those proportions shall be paid by the local authority accordingly.

5 (8) The Governor-General may from time to time appoint one of the local authorities to be the principal local authority for the purpose of convening meetings of representatives of the local authorities, keeping and presenting statements of accounts, and collecting and  
10 distributing contributions in accordance with any warrant or agreement for the time being in force.

(9) Each local authority affected by the warrant shall perform its duties and exercise its powers in accordance with the warrant and may from time to time  
15 as the cost accrues, make a demand in writing on the principal local authority, if any, and otherwise on each other local authority liable to contribute to the cost of the work which the local authority has executed under the warrant. Where a demand has been made on the  
20 principal local authority in respect of any such cost, or where any such cost has been incurred by the principal local authority, that local authority may make a demand on each other local authority that is liable to contribute to the cost.

25 (10) Every demand shall show in detail the cost of carrying out the proposals to the date of the demand and the amount demanded in respect of the proposals, and if the local authority on which the demand is made does not within three months from the date of the demand  
30 being made satisfy it, the local authority to which the amount is payable may recover the amount with interest at five per cent per annum or as much thereof as may be found to be payable in any Court of competent jurisdiction; but the proportion to be paid as stated in  
35 the warrant of the Governor-General shall be conclusive and binding on the Court; and it shall not be competent for the Court to question the validity of the warrant.

(11) All costs, charges, and expenses attending or incidental to the exercise of the powers conferred by or  
40 under this section upon the Governor-General or upon the Commissioner shall be a charge upon the revenues of such local authority or local authorities as the Governor-General directs, and may be recovered as a debt due to Her Majesty in any Court of competent  
45 jurisdiction.

(12) Every warrant issued under this section shall be enforceable by and against every party therein named as if it were a contract between those parties.

(13) The provisions of this section shall apply in respect of any public work whether completed or partially completed or not commenced. 5

(14) In any case to which this section applies, the respondent to any claim for compensation under the principal Act shall be the local authority whose normal functions include the work in respect of which the claim has arisen; and if there is any doubt then it shall be the local authority that actually executes that work, but in the latter case without prejudice to the right of that local authority to recoup its expenditure, if any, from whichever local authority is appropriate under the agreement or warrant. 10 15

Land taken for public work and not wanted may be sold, etc.

4. (1) The principal Act is hereby amended by repealing section thirty-five, and substituting the following section:

“35. (1) If it is found that any land held, taken, purchased, or acquired at any time under this or any other Act or Provincial Ordinance, or otherwise howsoever, for any public work is not required for that public work, the Governor-General may, by an Order in Council publicly notified and gazetted, cause the land to be sold under the following conditions: 25

“(a) A recommendation or memorial, as the case may be, as provided by section twenty-three of this Act shall be laid before the Governor-General by the Minister or local authority at whose instance the land was taken describing so much of the said land as is not required for the public work, accompanied by a map thereof certified by the Surveyor-General or an authorized surveyor appointed by him in that behalf, and setting forth the reasons for disposing of the same: 30 35

“(b) The Minister or the local authority, as the case may be, shall cause the land to be sold either by private contract to the owner of any adjacent lands, at a price fixed by a competent valuer, or by public auction or by public tender; and public notice shall be given of every auction or invitation for tenders under this section, and, in addition, 40 45

written notice thereof shall be served on every owner of land adjacent to the land proposed to be sold, so far as they can be ascertained, not later than ten days before the date fixed for the auction or for the closing of the tenders, as the case may be:

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“ Provided that the Governor-General may without complying with any of the foregoing provisions of this section, sell by private contract or grant to any Education Board any land taken for Government works, and may execute such grants, conveyances, and assurances as may be necessary to give effect to the sale or grant:

“ Provided also that in the case of any land so held, taken, purchased, or acquired for a Government work, if the land is not required for that purpose, or if for any other reason the Minister considers it expedient to do so, he may at any time without complying with any other requirements of this section, by notice in the *Gazette*, declare the land to be or to have been Crown land subject to the Land Act 1948 as from a date to be specified in the notice which date may be the date of the notice or any date before or after the date of the notice; and as from the date so specified the land shall be or be deemed to have been Crown land subject to the Land Act 1948:

“ Provided further that in the case of any land so held, taken, purchased, or acquired for a local work, if the land is not required by the local authority for that purpose or if for any other reason the Minister and the local authority agree that it is expedient to do so, the Governor-General may, on the recommendation of the Minister and without complying with any other requirements of this section, by Proclamation declare the land to be Crown land subject to the Land Act 1948, and thereupon the land shall vest in the Crown as Crown land subject to that Act and may be administered and disposed of under that Act accordingly.

“(2) Where the land to be described in a notice by the Minister under this section is not properly defined by survey it shall be sufficient to identify the land in the notice by reference to a plan deposited in the office of the Minister at Wellington; and where any such land is not capable of being described in any of the manners

- 1952, No. 58 specified in subsection one of section eighteen of the Public Works Amendment Act 1952, and is not shown separately on a plan certified by the Chief Surveyor of the district in which the land is situated, the District Land Registrar shall, upon a certificate properly describing the land comprised in the notice together with a plan defining that land being lodged with him by the said Chief Surveyor, register that certificate and plan and if necessary amend the description and area of the land comprised in the notice.” 5
- (2) The following enactments are hereby repealed: 10
- 1935, No. 27 (a) Section fourteen of the Public Works Amendment Act 1935:
- 1952, No. 58 (b) Section five of the Public Works Amendment Act 1952. 15
- 1948, No. 64 (3) Section one hundred and sixty-seven of the Land Act 1948 is hereby amended by omitting the words “second proviso”, and substituting the words “second and third provisoes”.
- Formation of access ways and service lanes. 20
- 1948, No. 39 5. Section four of the Public Works Amendment Act 1948 is hereby amended by omitting from subsection three all words after the words “Registrar of Deeds”.
- 1952, No. 58 (2) Section four of the Public Works Amendment Act 1948, as amended by subsection four of section seventeen of the Public Works Amendment Act 1952, is hereby further amended by adding the following subsections: 25
- “(5) The Registrar shall refuse to register any instrument referred to in subsection three of this section, unless he receives a certificate in writing, duly executed by the controlling authority, certifying either— 30
- “(a) That the access way or service lane, as the case may be, has been formed and completely constructed to the satisfaction of the controlling authority; or 35
- “(b) That the owner has executed a deed, in a form prescribed by the Minister by notice in the *Gazette* or approved by the Minister in any particular case, binding the owner to carry out and complete the works required from him by the controlling authority pursuant to 40

subsection three of this section within a period of two years from the date of that certificate or within such shorter period as the controlling authority specifies (which shorter period may from time to time be extended by the controlling authority but not so as to extend beyond the said period of two years), and, as security for the due carrying out and completion of the works by the owner,—

“(i) A bank or insurance company carrying on business in New Zealand has executed the deed as guarantor binding itself to pay to the controlling authority, if the owner makes default in carrying out and completing the works, a sum equal to one and a quarter times the estimated cost of the works, as determined by the controlling authority; or

“(ii) The owner has deposited with the controlling authority money or negotiable securities to the amount or value of one and a quarter times the estimated cost of the works as so determined.

“(6) Where pursuant to this section the owner has deposited money or negotiable securities with the controlling authority and is proceeding with the works, the controlling authority may from time to time, as the works proceed, repay or return to the owner such portions of the money or securities as in the opinion of the controlling authority are commensurate with the cost of the completed portions of the works, but so that the balance of the money or securities for the time being retained by the controlling authority is not less than one and a quarter times the estimated cost as determined by the controlling authority of the uncompleted portions of the works, and on the completion of the works the controlling authority shall return to the owner the money or securities then remaining on deposit.

“(7) Where the owner fails to complete the works within the prescribed or extended period, the controlling authority may enter on the land and complete the works, and may recover the cost thereof from the owner or out of any money or securities deposited with the controlling authority or money paid by the guarantor, so far as the money or securities will extend, and on the completion of the works any money or securities remaining in the hands of the controlling authority after payment of the cost of the works shall be returned to the owner or guarantor, as the case may be.”

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