

## PUBLIC WORKS AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill amends the Public Works Act 1981.

*Clause 1* relates to the Short Title.

*Clause 2* amends section 42 of the principal Act relating to the disposal of land not required for a public work.

The new subsection (6) makes it clear that any land may be disposed of by a memorandum of transfer under the Land Transfer Act 1952.

In addition, it is provided that where any such land is amalgamated with other land in an existing certificate of title, the land transferred is to become subject to and, where applicable, receive the benefit of, all encumbrances, easements, and other interests noted on the certificate of title.

The new subsection (7) provides that, within 1 month after the registration of the memorandum of transfer, the transferor is to give to the Chief Surveyor written notice of the registration and of the full name, address, and occupation of the transferee.

*Clause 3* amends section 47 (1) of the principal Act to make it clear that the certificate of title issued in the name of the Crown is to be for the estate in the land acquired for the public work.

*Clause 4* amends section 107 of the principal Act relating to the grant of land in exchange for land acquired for a public work.

*Subclause (1)* provides for the form set out in the Fifth Schedule to the principal Act to be used for grants of land under section 106 as well as section 105 of the principal Act.

*Subclauses (2) and (3)* make it clear that provisions relating to the issue of a new certificate of title for land granted by the Crown apply only if there is not an existing certificate of title for the land.

If there is an existing certificate of title, the certificate of grant by the Crown is to operate as a memorandum of transfer.

*Subclause (4)* rewrites provisions relating to the amalgamation of titles and the bringing down of encumbrances.

A new provision requires consultation with the District Land Registrar before titles are amalgamated.

*Subclause (5)* provides that a new description is to be given to the land being granted only if the Chief Surveyor considers it necessary or expedient or if the District Land Registrar so requests.

*Subclause (6)* repeals subsections (12) and (13) of section 107. They are replaced by the new subsections (9A) and (9B).

*Subclause (7)* rewrites subsection (14) of section 107 in order to omit the present paragraph (b) which relates to the bringing down of encumbrances in their original registered priority.

(The District Land Registrar will bring down encumbrances in their current priority, which may have changed from the original priority.)

*Subclause (8)* adds a new subsection (19) to section 107.

The new subsection provides that, within 1 month after the registration of a certificate granting land under section 107, the grantor is to give to the Chief Surveyor written notice of the registration and of the full name, address, and occupation of the grantee.

*Subclause (9)* amends the Fifth Schedule to the principal Act so that the certificate set out in it may be used for grants of land under section 106 as well as section 105 of the principal Act.

In addition, the subclause omits from the form an unnecessary provision relating to the issue of certificates of title for land granted. The issue of certificates of title is provided for in subsection (8) of section 107.

*Subclause (10)* repeals the Sixth Schedule as it is made redundant by the amendments contained in *subclauses (1) and (9)*.

*Clause 5* inserts a new section 107A in the principal Act.

The new section, in effect, brings leases and licences within the ambit of section 105 of the principal Act. That section provides for the granting of land as compensation where equivalent land is not readily available in the same area.

Thus, if a lease or licence is acquired for an essential work and section 105 is applicable, the notifying authority is to take all reasonable steps to grant a lease or licence of land owned by the authority.

*Clause 6* amends section 202 of the principal Act, relating to notification of proposed irrigation schemes, to provide for the different charges which may be made under sections 209 (2) and 211 (3) of the principal Act (as added by *clauses 8 and 9* of the Bill).

*Clause 7* inserts a new section 208A in the principal Act.

Subsection (1) of the new section provides that the Governor-General may, on the advice of the Minister given after consultation with the National Authority, by Order in Council—

- (a) Abolish any irrigation district by revoking the Order in Council which constituted the district and any amending Order in Council made under subsection (2) of section 208;
- (b) Reduce the size of an irrigation district by amending the Order in Council constituting the district, and any amending Order in Council made under subsection (2) of section 208, to redefine the district or exclude any land from the district.

Subsection (2) of the new section provides that on the abolition of an irrigation district or the reduction in size of an irrigation district under the new section, the provisions of Part XIX of the principal Act shall cease to apply in respect of the abolished district or in respect of the land no longer forming part of the district, as the case may be.

Subsection (3) of the new section provides that if any Order in Council is made which reduces the size of an irrigation district, the basic charge and the water availability charge is not to be increased by virtue of that fact, and any subsequent adjustment of either of those charges under section 210 or section 212 of the principal Act is to be calculated as if the Order in Council had not been made.

Subsection (4) of the new section provides that the owner and occupier of any land which formed part of an irrigation district, and which is no longer within the district by virtue of an Order in Council made under the new section, shall be entitled to claim reimbursement from the Minister for all costs and expenses actually and reasonably incurred by the owner and occupier in anticipation of the land being irrigated.

Subsection (5) of the new section provides that every claim for such reimbursement shall be made, determined, and paid in accordance with Part V of the principal Act as if it were a claim for compensation; and the provisions of that Part, so far as they are applicable and with the necessary modifications, are to apply accordingly.

*Clause 8* amends section 209 of the principal Act relating to the annual basic charge in relation to irrigation schemes.

The amendment provides that where varying irrigation demands of different properties will affect the capital cost of an irrigation scheme, different annual basic charges may be set in respect of those properties.

*Clause 9* amends section 211 of the principal Act relating to the calculation of the water availability charge.

The amendment provides that where varying irrigation demands of different properties will affect the running costs of an irrigation scheme, different water availability charges may be set in respect of those properties.

*Hon. A. P. D. Friedlander*

## **PUBLIC WORKS AMENDMENT**

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### ANALYSIS

Title	
1. Short Title	5. Grant of lease or licence as compensation
2. Disposal in other cases of land not required for public work	6. Notification of proposed irrigation scheme
3. Issue of certificates of title to land held for public work	7. Reduction in size and abolition of irrigation district
4. Provisions relating to grants of land in exchange	8. Calculation of basic charge or charges
	9. Calculation of water availability charge or charges

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### A BILL INTITULED

#### **An Act to amend the Public Works Act 1981**

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

- 1. Short Title**—This Act may be cited as the Public Works Amendment Act 1983, and shall be read together with and deemed part of the Public Works Act 1981\* (hereinafter referred to as the principal Act).
- 10 **2. Disposal in other cases of land not required for public work**—Section 42 of the principal Act is hereby amended by repealing subsection (6), and substituting the following subsections:
- 15 “(6) Any land disposed of under section 40 of this Act or under this section may be transferred by a memorandum of transfer under the Land Transfer Act 1952. Any such

\*1981, No. 35  
Amendment: 1982, No. 182

memorandum of transfer may contain a recital that the land being transferred shall be amalgamated with any other land in an existing certificate of title; and that recital shall be sufficient authority to the District Land Registrar to amend such certificate of title accordingly, without fee. On such amendment the land transferred shall become subject to and, where applicable, receive the benefit of, all encumbrances, easements, and other interests noted on the certificate of title.

“(7) Within 1 month after the registration of the memorandum of transfer, the transferor shall give to the Chief Surveyor written notice of the registration and of the full name, address, and occupation of the transferee.”

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

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

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

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

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

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

“(9A) Subject to **subsection (9c)** of this section, any certificate issued under this section may contain a recital that the land to which the certificate relates shall be amalgamated with any other land in an existing certificate of title; and that recital shall be sufficient authority to the District Land Registrar to amend such certificate of title accordingly, without fee. On such amendment the land granted shall become subject to and, where applicable, receive the benefit of, all encumbrances, easements, and other interests noted on the certificate of title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(b) The general revenues of the notifying authority, in any other case.

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

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

(a) By inserting in subparagraph (iii), after the words “annual basic charge”, the words “or charges”:

(b) By inserting in subparagraph (iv), after the words “water availability charge”, the words “or charges”.

**7. Reduction in size and abolition of irrigation district—**

The principal Act is hereby amended by inserting, after section 208, the following section:

5 “208A. (1) Notwithstanding anything in this Part of this Act, the Governor-General may, on the advice of the Minister given after consultation with the National Authority, by Order in Council—

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

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

20 “(2) Subject to **subsection (4)** of this section, on the abolition of an irrigation district or the reduction in size of an irrigation district under **subsection (1)** of this section, the provisions of this Part of this Act shall cease to apply in respect of the abolished district or in respect of the land no longer forming part of the district, as the case may be.

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

30 “(4) The owner and the occupier of any land which formed part of an irrigation district, and which is no longer within the district by virtue of an Order in Council made under this section, shall be entitled to claim reimbursement from the Minister for all costs and expenses actually and reasonably incurred by the owner and the occupier in anticipation of the

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

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



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

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**9. Calculation of water availability charge or charges—**  
Section 211 of the principal Act is hereby amended by adding the following subsection:

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

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