

ENEMY PROPERTY BILL

EXPLANATORY NOTE

1. *Clause 3* is the principal provision of the Bill; and authorizes the Governor-General, by Order in Council, to make regulations and orders providing for the administration, realization, disposal, and distribution of enemy property; and for giving effect to the provisions of any international agreement to which New Zealand now is or hereafter becomes a party so far as the agreement relates to enemy property and to claims against any enemy State.

2. During the Second World War the Custodian of Enemy Property in New Zealand received and invested certain moneys belonging to nationals of enemy-occupied countries. Following the termination of hostilities it was anticipated that the moneys would be required for payment in accordance with agreements as to the disposal thereof to be made between the New Zealand Government and the Governments of the States concerned. The investments were therefore realized, but in some cases the agreements were delayed by unforeseen difficulties. *Clause 4* provides that the Custodian of Enemy Property shall not be under any liability for making the realizations, or for retaining any moneys derived therefrom or holding them uninvested, and shall not be liable to pay any interest on any such uninvested moneys.

3. *Clause 5* validates certain regulations which continued the operation of the Enemy Property Emergency Regulations 1939 after the termination of the state of war with the enemy countries in question.

4. *Clause 6* authorizes the Attorney-General to vest property of former enemies in the Custodian in cases where the property should have been vested in the Custodian during the Second World War; and also authorizes the Custodian, with the consent of the Attorney-General or pursuant to any regulation or order made under this Bill, to pay or transfer enemy property to the person entitled thereto or to the Government or a Consul of the State of which he is a national. It prohibits the payment, transfer, or delivery of enemy property to any person without authority granted under this Bill.

5. *Clause 7* ratifies a payment which was made by the Custodian of Enemy Property into the Public Account in accordance with Article 6A of the Final Act of the Paris Conference on Reparations, to which New Zealand was a party. The clause also ratifies payments to the Governments of Denmark, France, Belgium, and the Netherlands of moneys held by the Custodian for nationals of those countries.

6. *Clause 8* authorizes a refund to the Custodian, without further appropriation, of any money or property included by mistake in any reparation payments or transfers to the Public Account or the Crown.

7. *Clause 9* protects the Custodian of Enemy Property against civil proceedings for any act, default, or error by him while he is acting in good faith in the exercise of his functions, powers, and duties under this Bill.

8. *Clauses 10* and *11* provide for the application of the Bill to the Cook Islands and Western Samoa.

Hon. Mr. Marshall

ENEMY PROPERTY

ANALYSIS

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A BILL INTITULED

AN ACT to provide for the collection, realization, management, and distribution of property of former enemies, and property of nationals of States whose territories were occupied by former enemies and property of residents of territories so occupied. Title.

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

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1. This Act may be cited as the Enemy Property Act 1951. Short Title.

2. In this Act, unless the context otherwise requires,— Interpretation.
“ Custodian of Enemy Property ” or “ Custodian ” means the Public Trustee:

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“ Enemy property ” means all property which at the commencement of this Act is held by or

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vested in the Custodian of Enemy Property in accordance with the provisions of the Enemy Property Emergency Regulations 1939, and all property which is hereafter held by or vested in the Custodian pursuant to the provisions of any regulation or order made under this Act or any order given by the Attorney-General under this Act; and includes all other property which at the commencement of this Act belongs to an enemy State or former enemy national and could, at any time while that State or national remained an enemy country, an alien enemy, or an enemy within the meaning in each case of the Enemy Property Emergency Regulations 1939, have been demanded by or vested in the Custodian under those regulations: 5 10 15

“ Enemy State ” means any State with which His Majesty has been at war at any time after the third day of September, nineteen hundred and thirty-nine, and before the commencement of this Act: 20

“ Former enemy national ” means any individual national of any enemy State, or any corporation sole or body of persons constituted or incorporated in or under the laws of any enemy State: 25

“ Property ” means real and personal property; and includes estates and interests in real and personal property, money, negotiable instruments, debts and other choses in action, and any other right or interest, whether in possession or not. 30

Regulations
and orders
in respect of
enemy property.

3. (1) The Governor-General may from time to time, by Order in Council, make regulations and orders for all or any of the following purposes:— 35

(a) Providing for the payment, transfer, delivery, administration, and realization of enemy property:

(b) Providing for the disposal and distribution of enemy property and the proceeds thereof and any income therefrom: 40

(c) Giving effect to the provisions of any international agreement to which New Zealand now is or hereafter becomes a party so far as the agreement relates to any enemy property and to claims against any enemy State.

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(2) Without limiting the general powers hereinbefore conferred, it is hereby declared that regulations or orders may be made under this section for all or any of the following purposes:—

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(a) Conferring and imposing on the Custodian such powers, discretions, and duties in connection with enemy property as may be prescribed by any regulation or order:

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(b) Providing for the payment or transfer to and the vesting in the Custodian of any enemy property not already held by or vested in him; and discharging any person from liability in respect of things done or omitted to be done in relation to property transferred by him to the Custodian:

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(c) Providing for the release, payment, or transfer of any enemy property to any person appearing to the Custodian to be entitled thereto:

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(d) Providing for the payment of any moneys at any time held by the Custodian into the Consolidated Fund by way of reparations or otherwise:

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(e) Providing for the payment or transfer of any enemy property held by the Custodian for or on behalf of the nationals of, or persons resident in the territories of, any State to the Government of that State or to any Consular Officer or agent of that Government:

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(f) Providing for the calling for claims by New Zealand nationals or persons resident in New Zealand against any enemy State or any former enemy national and the satisfaction of those claims out of enemy property held on account of the enemy State or nationals of the enemy State against which, or against the nationals of which, the claims are made:

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- (g) Providing for the determination of the question whether any such claim is established for the purposes of any regulation or order wholly or in part and of the amount payable in respect thereof: 5
- (h) Providing for the charging by the Custodian of commission and fees in respect of enemy property and in respect of any claims made as aforesaid:
- (i) Providing for the investment of moneys held by the Custodian and the interest (if any) to be allowed in respect thereof: 10
- (j) Providing for the amendment, variation, or revocation of any licence in respect of copyright granted by the Registrar of Copyright pursuant to the Patents, Designs, Trade Marks, and Copyright Emergency Regulations 1940; and for conferring and imposing on the Registrar of Copyright or the Custodian such powers, discretions, and duties in respect of any such amendment, variation, or revocation as may be prescribed by the order: 15 20
- (k) Prescribing penalties for offences against the regulations not exceeding, in the case of an individual, a fine of one hundred pounds or imprisonment for a term of three months or both, and, in the case of a body corporate, a fine of five hundred pounds. 25

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- (3) Regulations and orders made under this section may be so made as to— 30
- (a) Exclude from the application of any regulation or order such classes of enemy property and claims as may be prescribed by the regulation or order or as may be determined by any Minister of the Crown or by the Custodian: 35
- (b) Differentiate between different classes of claims, as regards the priority in which payments are to be made and the extent of the payments.
- (4) All regulations and orders made under this Act shall be laid before Parliament within twenty-eight days after the date of the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-eight days after the date of the commencement of the next ensuing session. 40

4. Where any moneys were held by the Custodian of Enemy Property under the Enemy Property Emergency Regulations 1939 for any person who was a national of any State any territory of which was at any time after 5 the third day of September, nineteen hundred and thirty-nine, occupied by or under the control of any enemy State or enemy States, or who was at any time after that date resident in any such territory, and the moneys were invested in accordance with the directions of the Minister 10 of Finance in New Zealand Government inscribed stock, the Custodian shall not be under any liability for realizing any such investment at any time after the first day of June, nineteen hundred and forty-five, or for retaining any moneys derived from any such realization, 15 or for holding any such moneys uninvested; and shall not be liable to pay any interest on any such uninvested moneys.

Investments held for nationals of enemy-occupied countries.
Serial number 1939/153

5. The Enemy Property Emergency Regulations 1939, Amendment No. 7, and the Enemy Property 20 Emergency Regulations 1939, Amendment No. 8, are hereby declared to be valid and to have been validly made.

Validating certain regulations.
Serial numbers 1951/50 and 1951/170

6. (1) The Attorney-General may, by order signed by him, vest in the Custodian any property which at the 25 commencement of this Act belongs to an enemy State or former enemy national and could, at any time while that State or national remained an enemy country, an alien enemy, or an enemy within the meaning in each case of the Enemy Property Emergency Regulations 1939, have 30 been demanded by or vested in the Custodian under those regulations.

Control of enemy property.

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(2) The Custodian, pursuant to any regulation or order made under this Act or (subject to any such regulation or order) with the consent of the Attorney- 35 General, may—

(a) Pay, transfer, or deliver any enemy property to any person appearing to the Custodian to be entitled thereto:

40 (b) Pay, transfer, or deliver any enemy property held by the Custodian for or on behalf of any national of, or person resident in the territory of, any State to the Government of that State or to any Consular Officer or agent of that Government.

(3) The Custodian shall not pay, transfer, or deliver any enemy property to any person unless he is authorized to do so under subsection *two* of this section.

Ratifying certain payments and delivery of a debenture.

7. The payments and delivery specified in the Schedule hereto are hereby ratified and declared to have been lawfully made; and no claim shall lie against the Custodian in respect of any moneys or property included in or represented by the moneys and debenture the payments and delivery of which are so ratified. 5

Refund of moneys paid into the Public Account by mistake.

8. (1) If it is established to the satisfaction of the Minister of Finance that any part of the amount mentioned in the Schedule to this Act which was paid into the Public Account by way of reparations should not have been paid into the Public Account, a sum equal to that part of the amount shall be refunded to the Custodian out of the Public Account without further appropriation than this Act; and all sums which have been refunded to the Custodian out of the Public Account before the commencement of this Act and which could have been refunded under this subsection if this subsection was in force at the date of the refund shall be deemed to have been refunded under this subsection. 10 15 20

(2) If any moneys are paid into the Public Account or any property is transferred or delivered to the Crown in pursuance of any regulation or order made under this Act and it is subsequently established to the satisfaction of the Minister of Finance that for any reason the moneys or property should not have been so paid, transferred, or delivered the moneys shall be refunded to the Custodian out of the Public Account or the property shall be transferred or delivered to the Custodian by the Crown without further appropriation than this Act. 25 30

Custodian under no liability for acts done in good faith.

9. No civil proceedings shall be brought against the Custodian by any person whatsoever for any act, default, or error of the Custodian while he is acting in good faith in the exercise of any functions, powers, or duties conferred or imposed upon him by this Act or by any regulation or order made under this Act. 35

Enemy property in Cook Islands.

10. (1) This Act shall be in force in the Cook Islands. (2) In the application of this Act to the Cook Islands, unless the context otherwise requires,— 40

(a) Every reference to New Zealand shall be construed as a reference to the Cook Islands:

- 5 (b) Every reference to the Custodian of Enemy Property or the Custodian shall be construed as regards the Cook Islands other than Niue as a reference to the Resident Commissioner of Rarotonga and as regards the Island of Niue as a reference to the Resident Commissioner of Niue.
- 10 (c) Every reference to the Public Account shall be construed as a reference to the Cook Islands Treasury.
- (d) Every reference to the Crown shall be construed as a reference to His Majesty in respect of the government of the Cook Islands:
- 15 (e) Every reference to the Emergency Regulations 1939 shall be construed as a reference to those regulations (including amendments thereof) so far as they have been or are at any time applied to the Cook Islands by the Dependency Emergency Regulations (No. 2) 1939 and the Cook Islands Applied Regulations Order 1947 and any other enactment or order. Serial numbers 1939/153, 1939/234, and 1947/189
- 20 **11.** (1) This Act shall be in force in Western Samoa, and shall be a reserved enactment for the purposes of section nine of the Samoa Amendment Act 1947. Enemy property in Western Samoa.
- 25 (2) In the application of this Act to Western Samoa, unless the context otherwise requires,— 1947, No. 48
- (a) Every reference to New Zealand shall be construed as a reference to Western Samoa:
- 30 (b) Every reference to the Custodian of Enemy Property or the Custodian shall be construed as a reference to the Public Trustee of Western Samoa:
- (c) Every reference to the Public Account shall be construed as a reference to the Samoan Treasury.
- 35 (d) Every reference to the Crown shall be construed as a reference to the Government of Western Samoa:
- 40 (e) Every reference to the Attorney-General or any Minister of the Crown shall be construed as a reference to the High Commissioner of Western Samoa:

Serial numbers
1939/153,
1939/234,
and 1947/188

(f) Every reference to the Emergency Regulations 1939 shall be construed as a reference to those regulations (including amendments thereof) so far as they have been or are at any time applied to Western Samoa by the Dependency Emergency Regulations (No. 2) 1939 and the Samoa Applied Regulations Order 1947 and any other enactment or order. 5

Schedule.

SCHEDULE

Section 7

PAYMENTS AND DELIVERY RATIFIED

£90,845 paid by the Custodian into the Public Account on the 12th day of September 1946 on account of reparations.

£1,582 18s. 11d. paid by the Custodian to a representative of the Government of Denmark in the years 1946 and 1947.

£5,600 paid by the Custodian to a representative of the Government of France in the years 1940, 1941, and 1942.

£42,998 4s. paid by the Custodian to a representative of the Government of France in the year 1946.

One £100 Waimairi County Council debenture delivered by the Custodian to a representative of the Government of France in the year 1946.

£5,013 3s. paid by the Custodian to a representative of the Government of the Netherlands in the year 1946.

£8,670 19s. 6d. paid by the Custodian to a representative of the Government of Belgium in the year 1945.