

[AS REPORTED FROM THE LANDS COMMITTEE]

House of Representatives, 4 November 1953

Words struck out by Lands Committee are shown in italics within bold brackets; words inserted are shown in black or in roman with rule down side.

Hon. Mr Corbett

LAND AMENDMENT

ANALYSIS

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A BILL INTITULED

AN ACT to amend the Land Act 1948.

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 Land Amendment Act 1953, and shall be read together with and deemed part of the Land Act 1948 (hereinafter referred to as the principal Act).

PART I

COMMUNITY WATER SUPPLIES

Amending
provisions
as to water
supplies.

2. (1) Section fifty of the principal Act is hereby amended by inserting, after subsection two, the following subsection:

“(2A) For the purposes of this section the term ‘occupier’, in relation to any Crown land, means the lessee or licensee; and, in relation to any other land, means the owner, or, where that other land is for the time being held on lease perpetually renewable, the lessee.”

(2) Section fifty of the principal Act is hereby further amended as follows:

- (a) By omitting from subsection four the words “Each person to whom water is supplied under this section shall pay for the water such amounts as the Board may from time to time levy”, and substituting the words “The occupier of any land in a water area declared pursuant to subsection six of this section shall pay in respect of the waterworks constructed or purchased for the supply of water to that area such amounts by way of levy as the Board determines from time to time.”:
- (b) By omitting from subsection four the words “to which the water has been supplied”:
- (c) By omitting from subsection five the words “to which water is supplied”:
- (d) By omitting from subsection six the words “define any land to which water is supplied under this section, and the land so defined”, and substituting the words “declare any land to be a water area for the purposes of this section (being land on which waterworks are erected or are intended to be erected for the supply of water to that land), and the area so declared”:
- (e) By omitting from subsection eight the words “for the supply of water”:

(3) Section fifty of the principal Act is hereby further amended by inserting, after subsection six, the following subsection:

“(6A) Any land which before the commencement of this subsection has been defined by the Board by notice in the *Gazette* to be land to which water is supplied under this section shall be deemed to be a water area
5 for the purposes of this section.”

(4) Section fifty of the principal Act is hereby amended by omitting from subsection nine the words “section one hundred and forty-five of the Land Transfer Act 1915”, and substituting the words
10 “section one hundred and thirty-seven of the Land Transfer Act 1952”. 1952, No. 52

3. The principal Act is hereby amended by inserting, after section fifty, the following new sections: New sections inserted.

“50A. (1) Any two or more persons, being occupiers
15 of land situated within a water area may, by subscribing their names to a memorandum of association in the prescribed form, and otherwise complying with the provisions of the Companies Act 1933, as modified by
20 this Act, form an incorporated association with limited liability under the name of “The [*Distinctive name of association*] Community Water Supply Association Limited”. 1933, No. 29

“(2) Every association shall be registered in the manner provided by the Companies Act 1933 for the
25 registration of private companies notwithstanding that its members may exceed twenty-five, and, subject to the provisions of this section and the *next three succeeding* sections, shall be deemed to be a private company incorporated under that Act having the liability of its
30 members limited by shares, and the provisions of that Act relating to private companies shall apply accordingly.

“(3) The memorandum and articles of association of every association shall be in a form to be prescribed
35 by the Governor-General by Order in Council, and the association may not alter the conditions contained in its memorandum or alter or add to its articles except with the prior consent of the Board.

“(4) The principal objects of an association shall
40 be—

“(a) To construct and operate a community water supply scheme:

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- “(b) To acquire from the Board under subsection seven of section fifty of this Act any waterworks constructed or purchased by the Board:
- “(c) To add to, maintain, and replace, in whole or in part, any community water supply scheme: 5
- “(d) To borrow money for the purpose of constructing, purchasing, adding to, or replacing, in whole or in part, any community water supply scheme, and for that purpose to give such security over the whole or any part of its assets, including its uncalled capital, as the association from time to time by resolution determines: 10 15
- “(e) To supply water to its members and to other persons on such conditions and subject to payment of such charges as the association from time to time by resolution determines:
- “(f) To do all such acts, matters, and things as may be necessary or expedient for carrying into effect all or any of the objects specified in the foregoing provisions of this subsection. 20
- “(5) Every association shall, for the purposes of section fifty of this Act, be deemed to be an association comprised of or acting on behalf of the owners, lessees, and licensees of land in the water area, and shall have, in respect of the waterworks comprised in the community water supply scheme (whether constructed by the association or purchased by it), the powers conferred on the Board by subsections three, four, and five of that section as if references in those subsections to the Board were references to the association. 30
- “(6) An association may from time to time invest any of its funds in any securities that are for the time being authorized by law for the investment of trust funds, or in such other securities as the Board from time to time approves. 35

“(7) In this section and in the *next five succeeding sections*—

- “ ‘ Association ’ means a community water supply association constituted under this section:
- 5 “ ‘ Community water supply scheme ’ means a scheme for the supply of water for irrigation or for household or farming purposes to land situated in a water area; and includes all waterworks forming part of the scheme:
- 10 “ ‘ Member ’ means a person to whom shares in an association have been allotted or transferred; and includes—
- “ (a) The personal representative of a deceased member:
- 15 “ (b) The assignee in bankruptcy of a member:
- “ (c) In the case of a mentally defective person within the meaning of the Mental Defectives Act 1911, being a patient within the meaning of that Act, the Public Trustee or, as the case may be, the committee of his estate:
- 20 “ (d) In the case of a member in respect of whom a protection order is in force under the Aged and Infirm Persons Protection Act 1912, the manager of his estate:
- 25 “ (e) In the case of a member being a company which is being wound up, the liquidator of the company:
- 30 “ ‘ Occupier ’, in relation to any Crown land, means the lessee or licensee, and, in relation to any other land, means the owner in fee simple or, where that other land is for the time being held on lease perpetually renewable, the lessee:
- 35 “ ‘ Water area ’ means any land declared as such under subsection six of section fifty of this Act:
- 40 “ ‘ Waterworks ’ has the same meaning as in section fifty of this Act.

See Reprint
of Statutes,
Vol. V, p. 743

Ibid., Vol. II,
p. 887

Share capital
of associations.

“ 50B. (1) The share capital of an association shall be divided into ordinary shares of one pound each, and shall be of an amount determined by the Board having regard to the value of and benefit to the water area of the community water supply scheme. The number of shares to be allotted to each subscriber to the memorandum of association shall be determined by the Board, having regard to the benefit likely to be derived by his land from the scheme. Every decision of the Board under this subsection shall be final, and shall be binding on the association and its members. 5 10

“(2) No share certificate shall be issued in respect of shares in an association.

“(3) Calls may be made upon the members of an association in respect of any moneys unpaid on their shares for expenditure for the following purposes only: 15

“(a) Preliminary expenses in the formation and registration of the association:

“(b) Capital works in respect of the community water supply scheme and additions to and replacement of the whole or any part of the scheme: 20

“(c) Discharging liabilities arising under a mortgage or debenture given by the association:

“(d) Discharging liabilities on the winding up of the association. 25

“(4) No member shall sell or otherwise dispose of his shares except to a person who also purchases or otherwise acquires the whole or part of the interest of the member in land within the water area. 30

“(5) Where a member sells or otherwise disposes of the whole or part of his interest in land within the water area, he shall also transfer to the purchaser or transferee his shares in the association or, where only part of his interest in the land is sold or disposed of, such proportion of his shares as the Board determines. 35

“(6) Where any member fails to comply with the provisions of subsection *five* of this section within a period of three months after the sale or disposal of his interest in the land or, in any case where only part of his interest in the land is sold or disposed of, within three months after the determination of the Board under 40

that subsection is communicated to him, the shares which he is required by that subsection to transfer to the purchaser or transferee shall, at the expiration of that period be deemed to have been surrendered to the association and **[may] shall** be reissued by the association to the purchaser or transferee as if they had not been previously issued.

“(7) For the purposes of this section a member shall be deemed to have sold or disposed of his land or part thereof if he enters into a binding agreement to sell or dispose of the land or part thereof.

“(8) A member shall not mortgage, charge, or otherwise encumber his shares.

“(1) Every member shall, when called upon in writing by the association to do so, execute in favour of the association a registrable mortgage as a charge on his interest in the land in the water area to secure to the association the amount from time to time unpaid on his shares and also all levies from time to time made upon him by the association under section fifty of this Act. Every such mortgage shall be in a form approved by the Board and shall be subject to such terms and conditions as the Board approves, but shall not provide for the payment of interest except on the default by the mortgagor in the payment of any moneys secured by the mortgage. Notwithstanding anything in section eighty-nine of this Act, the consent of the Board shall not be required to any mortgage given by a member to the association under the provisions of this section.

Members to give security to association for uncalled capital and payment of levies.

“(2) Where any member fails to execute a registrable mortgage in favour of the association when called upon to do so under subsection *one* of this section, the association may refuse to supply water to the member until he executes such a mortgage.

“(3) Where the association exercises its power of sale under a mortgage given to it pursuant to subsection *one* of this section, the shares of the mortgagor in the association shall be deemed to have been surrendered to the association and **[may] shall** be reissued by the association to the purchaser as if they had not been previously issued, or, where the association is the purchaser in exercise of its power of sale, shall be held by the association and **[may] shall** be so reissued to the purchaser when the land is subsequently resold.

“(4) Where any other mortgagee of land of a member within a water area exercises his power of sale under the mortgage—

“(a) The shares of the member in the association, or, where the land forms a part of the land of the member within the water area, such proportion of his shares as the Board determines, shall be deemed to have been surrendered to the association, and [may] shall be reissued to the purchaser as if they had not previously been issued: 5 10

“(b) The association, in any case where the mortgage has priority over a mortgage to the association given to it pursuant to subsection *one* of this section, may refuse to supply water to the purchaser until he executes in favour of the association a registrable mortgage as a charge on his interest in the land securing to the association payment of the same amount as was secured at the date of the sale by the mortgage given to the association by the former mortgagor. 15 20

“(5) Where under this section the association reissues any shares deemed to have been surrendered to it, there shall be paid to the former owner of the shares from the proceeds (if any) received by the association on that reissue such amount as may be agreed upon between the association and the former owner, or in default of agreement, such amount (if any) as the Board determines. 25 30

“50d. (1) A member may, with the consent of the association, withdraw from membership of an association upon payment to the association of the amount for the time being secured by any mortgage given by him to the association. 35

“(2) Where a member withdraws from membership of an association,—

“(a) Any moneys paid by him to the association under subsection *one* of this section in respect of uncalled capital may be applied only for the purposes specified in subsection *three* of section *fifty B* of this Act: 40

Right of shareholder to withdraw from association.

“(b) His shares shall be deemed to have been surrendered to the association and may be reissued by the association to any occupier of land in the water area as if they had not been previously issued.

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“50E. Advances and readvances to any association may from time to time be made out of the Land Settlement Account from moneys appropriated by Parliament for the purpose for such of the purposes of the association as the Board approves, and upon such security for repayment of the advances and readvances, either by debenture over the assets of the association or otherwise, as the Board thinks fit, and at such rate of interest as the Minister of Finance determines.

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Board may
make advances
to associations.

“50F. (1) Subject to the provisions of subsection *two* and paragraph (b) of subsection *four* of section *fifty c* of this Act, every association shall, having regard to the total amount of water at its disposal, supply to every member [*who is not for the time being in default in payment of any moneys owing by him to the association*] such amount of water as he may reasonably require for irrigation or for household or farming purposes on his land in the water area.

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Associations
to supply water
to members.

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New

“(2) Where any dispute arises between any member (being a lessee or licensee of Crown land) and the association as to the amount of water to which the member is entitled under subsection *one* of this section, or as to whether the association is supplying to such a member the amount of water to which he is so entitled, the dispute shall be referred to the Land Settlement Board, whose decision thereon shall be final and binding on the member and the association.

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“(3) The procedure to be adopted by the Land Settlement Board in hearing and determining any dispute referred to it under subsection *two* of this section shall be as prescribed by regulations made under this Act or, where there are no such regulations or in so far as the regulations do not extend, as the Board determines.

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“(4) In this section the term ‘member’ includes the mortgagee in possession of the land of a member or the lessor or licensor who is in possession of the land of a member in exercise of any right of forfeiture or re-entry in any lease or licence.”

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PART II

MISCELLANEOUS AMENDMENTS

Amending
provisions as
to Land
Settlement
Committees.

4. Section fourteen of the principal Act is hereby amended by omitting from subsection eight the words "No associate member shall be deemed to be a member of the Committee for the purposes of subsection five or subsection six of this section, nor shall he be entitled to vote, but he shall be deemed to be a member of the Committee for all other purposes", and substituting the words "Notwithstanding the foregoing provisions of this section, where the Board appoints one or more associate members of any committee the Board may in its discretion make such provision as it thinks fit with respect to the constitution of the committee, the voting powers (if any) of the associate members, and the number of members (whether ordinary members or associate members) necessary to form a quorum."

Incorporation
of additional
land in leases.
1952, No. 46

5. (1) Section fifty-four of the principal Act is hereby amended by adding to subsection three (as amended by section two of the Land Amendment Act 1952) the words "In this subsection the expression 'lease or licence from the Crown' includes a lease, registered under the Land Transfer Act 1952 and current at the date when the land first became Crown land subject to this Act, of land of which Her Majesty the Queen is the registered proprietor under a certificate of title under the Land Transfer Act 1952."

1952, No. 52

(2) Section one hundred and thirteen of the principal Act is hereby amended by adding the following subsection:

"(4) In this section the expression 'lease or licence' includes a lease current at the date when the land first became Crown land subject to this Act of land of which Her Majesty the Queen is the registered proprietor under a certificate of title under the Land Transfer Act 1952. Where land is incorporated in any such last-mentioned lease the District Land Registrar, on production of the certificate by the Commissioner referred to in subsection one of this section, shall, without further authority than this subsection, issue a certificate of title in the name of Her Majesty the Queen for the land incorporated in the lease. Every

such last-mentioned certificate of title shall continue in force until the expiration or sooner determination of the lease, and shall then be cancelled by the District Land Registrar."

- 5 **6.** Section eighty-three of the principal Act is hereby amended by inserting in subsection one, after the words "pursuant to", the words "section forty-eight of this Act or to".
- 10 **7.** Section one hundred and sixteen of the principal Act is hereby amended by inserting, after subsection four (as inserted by section eight of the Land Amendment Act 1951), the following subsection:
 " (4A) The date fixed by the certificate of the Commissioner and the Chief Surveyor as the date of acquisition of title to the land comprised in that certificate shall—
 " (a) In the case of a purchase for cash, be the date of payment of all moneys as aforesaid:
 20 " (b) In the case of a purchase pursuant to the right of purchase contained or implied in any lease or licence, be the date of payment of all moneys as aforesaid or the date on which the lease or licence has expired, whichever is the earlier."
- 25 **8.** The principal Act is hereby amended as from the commencement of that Act by inserting, after section one hundred and fifty-three, the following new section:
 " 153A. (1) Where—
 30 " (a) The yearly rent payable under any lease to which this section applies is for the time being payable at a reduced rate pursuant to section twenty-nine of the Statutes Amendment Act 1943; and
 35 " (b) The lessee transfers, subleases, or otherwise disposes of the whole or any part of his interest in the lease to any person (not being a serviceman or discharged serviceman who is for the time being entitled pursuant to subsection one of section one hundred and fifty-three of this Act to a variation in
 40 the yearly rent payable under the lease),—
 then, notwithstanding anything in the lease or in the said section twenty-nine or in the enactments specified in subsection *two* of this section, the yearly rent payable

Amending provisions as to registration of certain leases.

Fixing the ante-vesting date where fee simple acquired.
 1951, No. 60

Reduction in rent to cease to operate where lease transferred to person who is not a discharged serviceman.
 1943, No. 20

under the lease shall, as from the date of the registration of the transfer or sublease or other instrument of disposition, be the yearly rent that would have been payable under the lease if the said section twenty-nine had not been passed.

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1935, No. 9
1939, No. 21

Provisions
relating to
kauri gum.

“(2) This section applies with respect to every lease current at the commencement of this Act and granted under section eight of the Small Farms Amendment Act 1935 or section five of the Small Farms Amendment Act 1939.”

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9. (1) Section one hundred and sixty-five of the principal Act is hereby amended by inserting in subsection one, after the word “ guano ”, the words “ kauri gum ”.

(2) Section two of the principal Act is hereby amended as follows:

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(a) By inserting in the definition of the term “ minerals ”, after the word “ limestone ”, the words “ kauri gum ”:

(b) By omitting from the same definition the words “ kauri gum, or ”.

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(3) The enactments specified in the Schedule to this Act are hereby repealed.

(4) Notwithstanding the repeal of any enactment specified in the Schedule to this Act, every licence granted under any such enactment and in force at the passing of this Act shall, unless it is sooner cancelled or revoked, continue in force for the term for which it was issued, and shall continue to have effect and be subject to the same provisions and restrictions and the licensee shall have the same rights (except the right of renewal) and be subject to the same liabilities in all respects as if this section had not been passed.

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See Reprint
of Statutes,
Vol. V, p. 845

(5) Section four of the Coal Mines Act 1925 is hereby consequentially amended by omitting from subsection two the words “ paragraphs (c), (d), (e), (f), and (g) ”, and substituting the words “ paragraphs (c), (e), (f), and (g) ”.

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(6) All lands heretofore set apart as kauri gum reserves or for the systematic recovery of kauri gum shall as from the passing of this Act be deemed to be no longer set apart for those purposes and shall be deemed to be ordinary Crown land subject to the principal Act.

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10. The principal Act is hereby amended by inserting, after section one hundred and seventy, the following new section:

Variation of covenants in leases and licences.

5 “170A. (1) The covenants, conditions, and restrictions expressed or implied in any lease or licence may at any time be expressly varied, negatived, or added to by a memorandum of variation containing such particulars as may be necessary in the circumstances of the case.

10 “(2) The provisions of subsection two of section one hundred and seventy of this Act shall, as far as they are applicable and with the necessary modifications, apply with respect to every memorandum of variation under this section as if it were a memorandum of
15 variation to which that section applies.

“ (3) If the interest of the lessee or licensee is at the time of the registration of the memorandum of variation subject to any mortgage, the memorandum shall not be binding on the mortgagee unless he has
20 consented in writing thereto in the memorandum.”

11. (1) Section one hundred and sixty-seven of the principal Act is hereby amended by repealing subsection one, and substituting the following subsection:

Amending provisions as to setting apart reserves.

25 “(1) The Minister may from time to time, by notice in the *Gazette*, set apart as a reserve any Crown land for any purpose which in his opinion is desirable in the public interest. Every such notice shall take effect from the date thereof or from such later date as may be specified in the notice.”

30 *New*

(1A) Section one hundred and sixty-seven of the principal Act is hereby further amended by adding the following subsection:

35 “(6) A copy of any notice by the Minister under subsection one of this section and published in the *Gazette* may be forwarded to the District Land Registrar or the Registrar of Deeds, as the case may require, who shall thereupon, without payment of any fee, record the copy of the notice and register it against the appropriate
40 title (if any).”

(2) This section shall come into force on the first day of April, nineteen hundred and fifty-four.

SCHEDULE

Schedule.

ENACTMENTS REPEALED

Section 9 (3)

- 1908, No. 92—
The Kauri Gum Industry Act 1908. (Reprint of Statutes, Vol. IV, p. 443.)
- 1910, No. 35—
The Kauri Gum Industry Amendment Act 1910. (Reprint of Statutes, Vol. IV, p. 452.)
- 1914, No. 41—
The Kauri Gum Industry Amendment Act 1914. (Reprint of Statutes, Vol. IV, p. 453.)
- 1915, No. 60—
The Kauri Gum Industry Amendment Act 1915. (Reprint of Statutes, Vol. IV, p. 456.)
- 1918, No. 24—
The Appropriation Act 1918: Section 45.
- 1919, No. 5—
The Kauri Gum Industry Amendment Act 1919. (Reprint of Statutes, Vol. IV, p. 458.)
- 1925, No. 39—
The Coal Mines Act 1925: Paragraph (d) of subsection (1) and paragraph (i) of subsection (2) of section 4. (Reprint of Statutes, Vol. V, p. 845.)
- 1927, No. 32—
The Kauri Gum Industry Amendment Act 1927. (Reprint of Statutes, Vol. IV, p. 459.)
- 1930, No. 40—
The Finance Act 1930 (No. 2): Section 17. (Reprint of Statutes, Vol. IV, p. 455.)
- 1933, No. 41—
The Finance Act 1933 (No. 2): Section 24.
- 1937, No. 38—
The Statutes Amendment Act 1937: Section 16.
- 1948, No. 64—
The Land Act 1948: Section 178.
- 1949, No. 19—
The Forests Act 1949: Subsection (2) of section 31.