

## PUBLIC WORKS AMENDMENT BILL

---

### EXPLANATORY NOTE

*Clause 1* relates to the Short Title of the Bill.

*Clause 2* deals with matters of interpretation. *Subclause (1)* repeals the definition of "essential work". *Subclause (3)* inserts a definition of "intellectual property". *Subclauses (2) and (5)* substitute new definitions of "Government work" and "public work". *Subclauses (6) and (7)*, make changes to the principal Act and to the Town and Country Planning Act 1977 consequential upon the repeal of the essential works concept.

The main effect of the changes made by this clause is that the compulsory acquisition provisions of the principal Act are to apply to all public works, following the abolition of the term "essential work" as the only category of public work compulsory powers were available for.

*Clause 3* substitutes new *sections 5, 6, and 7*. The new *section 5* makes it clear that the Ministry of Works and Development is under the control of the Minister and that the Minister may give directions to the Commissioner of Works. The new *section 6* extends the functions of the Ministry of Works and Development to include any activity or undertaking, whether or not a public work, that is performed at the request of any person, being an activity or undertaking which is the same as, or similar to, or ancillary to, any of its "public" functions. *Section 6* lists the functions of the Ministry whereas *section 7* lists the powers of the Minister. *Section 7* makes it clear that the powers conferred by it must relate back to the performance of the functions listed in *section 6*.

*Clauses 4 and 5* make amendments to *sections 9 and 14* which are consequential upon the rewriting of the functions of the Ministry.

*Clause 6: Subclause (1)* amends *section 24* of the principal Act to set out more fully the powers of the Planning Tribunal in dealing with an appeal against the compulsory acquisition of land for a public work, and, in particular, enables the Tribunal to refer the matter back to the Minister or the local authority for further consideration.

*Subclause (2)* removes from that section the Minister's powers to veto the Planning Tribunal's decision in relation to the compulsory acquisition of land.

*Clause 7* amends *section 26* of the principal Act, which deals with the actual compulsory acquisition of land, to take account of the removal of the Minister's power of veto by *clause 6 (2)* of the Bill.

No. 70—1

Price \$1.50  
incl. GST \$1.65

*Clause 8* extends the powers of the Commissioner of Works and local authorities to sell land by including sales by private treaty.

*Clause 9* deals with intellectual property developed by the Ministry and its employees.

*Clause 10* deals with the making of regulations under section 243 of the principal Act. It provides the necessary authority for the prescribing of fees payable for various activities of the Ministry.

*Clause 11* revokes the Economic Stabilisation (Building Registration and Construction) Regulations 1974 and the amendments thereto.

---

*Right Hon. Fraser Colman*

## PUBLIC WORKS AMENDMENT

---

### ANALYSIS

Title	5. Delegation of Minister's powers
1. Short Title	6. Objection to be heard by Planning Tribunal
2. Interpretation	7. When Proclamation may issue
3. New sections substituted relating to Ministry	8. Disposal in other cases of land not required for public work.
5. Ministry of Works and Development	9. Inventions, etc., by employees
6. Functions of Ministry	10. Regulations
7. Powers of Minister	11. Revocations
4. Execution of contracts, etc.	Schedules

---

### 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 1986, and shall be read together with and deemed part of the Public Works Act 1981\* (in this Act referred to as the principal Act).
- 10 2. **Interpretation**—(1) Section 2 of the principal Act is hereby amended by repealing the definition of the term “essential work”.
- 15 (2) Section 2 of the principal Act is hereby amended by repealing the definition of the term “Government work”, and substituting the following definition:
- “ ‘Government work’ means a work or an intended work that is to be constructed, undertaken, established, managed, operated, or maintained by or under the

\*1981, No. 35

Amendments: 1982, No. 182; 1983, No. 150

control of the Crown or any Minister of the Crown for any public purpose or any such work or intended work for the time being under the control of the Crown or any Minister of the Crown:”.

(3) Section 2 of the principal Act is hereby further amended 5  
by inserting, after the definition of the term “Government work”, the following definition:

“ ‘Intellectual property’ includes all property rights constituted by the Patents Act 1953, the Designs Act 1953, the Trade Marks Act 1953, and the Plant 10  
Varieties Act 1973, and includes any trade secret; but does not include any property rights constituted by the Copyright Act 1962:”.

(4) Section 2 of the principal Act is hereby further amended 15  
by omitting from the definition of the term “local authority”, the words “Education Board”, and substituting the words “Education Authority within the meaning of the Education Act 1964, Council of any University within the meaning of the Universities Act 1961”.

(5) Section 2 of the principal Act is hereby further amended 20  
by repealing the definition of the term “public work” and “work”, and substituting the following definition:

“ ‘Public work’ and ‘work’ mean—

“(a) Every Government work or local work that the 25  
Crown or any local authority is authorised to construct, undertake, establish, manage, operate, or maintain, and every use of land for any Government work or local work which the Crown or any local authority is authorised to construct, undertake, 30  
establish, manage, operate, or maintain by or under this or any other Act; and include anything required directly or indirectly for any such Government work or local work or use:

“(b) Every Government work or local work 35  
constructed, undertaken, established, managed, operated, or maintained by any Education Authority within the meaning of the Education Act 1964 and every use of land for any Government work or local work which such Education Authority constructs, undertakes, establishes, manages, operates, or 40  
maintains, and include anything required directly or indirectly for any such Government work or local work or use:

“(c) Any Government work or local work that is, or is required, for any university within the meaning of the Universities Act 1961:”.

(6) The principal Act is hereby consequentially amended in 5 the manner indicated in the **First** Schedule to this Act.

(7) The Town and Country Planning Act 1977 is hereby consequentially amended in the manner indicated in the **Second** Schedule to this Act.

**3. New sections substituted relating to Ministry**—The 10 principal Act is hereby amended by repealing sections 5, 6, and 7, and substituting the following sections:

“**5. Ministry of Works and Development**—(1) There shall continue to be a Department of State to be known as the Ministry of Works and Development, which shall be the same 15 department as the Ministry of Works and Development established under section 2A of the Public Works Act 1928.

“(2) The Ministry shall continue to be under the control of the Minister of Works and Development.

“(3) The Minister may from time to time, for the purposes of 20 the carrying out of the functions, powers, and duties of the Ministry, give such directions as he thinks fit to the Commissioner of Works.

“**6. Functions of Ministry**—(1) The Ministry shall have and undertake all such functions as are necessary for the due and 25 proper administration of this Act and the enactments specified in the Seventh Schedule to this Act.

“(2) Without limiting the generality of **subsection (1)** of this section the Ministry shall have the following functions:

30 “(a) To investigate, design, establish, construct, manage, operate, and maintain any activity or undertaking in relation to any public work or any matter which is ancillary to any public work:

35 “(b) To prepare reports, tender advice or recommendations, and provide consultancy services in relation to any public work or any matter which is ancillary to any public work:

40 “(c) To prepare reports and tender advice or recommendations to, and provide consultancy services for the Minister or other Government agencies or any other person in terms of the functions of the Ministry:

“(d) To enter any activity or undertaking related to the efficient and orderly development and use of

natural resources, including a consideration of conservation requirements, cost effectiveness, and such other matters as may be relevant:

- “(e) To promote the objectives of the Town and Country Planning Act 1977 and to provide technical, advisory, research, and administrative services as required in relation thereto: 5
- “(f) To provide technical, advisory, research, and administrative services to the National Water and Soil Conservation Authority, the National Roads Board, and any committees appointed by the Minister under **section 11** of this Act: 10
- “(g) To assemble, consider, report on, and disseminate information on the activities of the building and construction industry, and to assimilate such information into Ministry policies, procedures, and work systems, where appropriate: 15
- “(h) To promote the research and development of intellectual property and property capable of attracting copyright relevant or ancillary to the functions of the Ministry: 20
- “(i) To formulate, implement, co-ordinate, and review effective and efficient policies in relation to the organisation and productivity of Ministry staff and resources and to co-operate with such persons as may be conducive to the performance of this function. 25
- “(3) Without limiting the generality of the functions specified in **subsections (1) and (2)** of this section the Ministry shall be entitled— 30
- “(a) To perform any activity or undertaking, whether a public work or not, and whether in New Zealand or elsewhere:
- “(b) To provide any service for, or supply any professional, trade, labour, or administrative services or any real or personal property in respect of any activity or undertaking,— 35

which is the same as or similar to, or ancillary to, any of the functions specified in those subsections.

“**7. Powers of Minister**—(1) The Minister shall have all such ancillary powers as are necessary, conducive, or incidental to the performance of any of the functions specified in **section 6** of this Act. 40

“(2) Without limiting the generality of **subsection (1)** of this section the Minister shall, for the purpose of exercising any of the functions specified in **section 6** of this Act, and whether or not in respect of any public work, have power—

5. “(a) To lodge tenders and enter into any contracts or arrangements with any person on such terms and conditions as may be agreed upon to facilitate the functions of the Ministry:
- 10 “(b) To acquire any land, buildings, or structures required to carry out any of the functions specified in **section 6** of this Act and to administer, develop, improve, transfer, or dispose of such property:
- 15 “(c) To acquire or hire personal property, including plant, stores, and equipment necessary to the performance of any activity or undertaking, and dispose of such property when no longer required or when commercially practicable:
- 20 “(d) To carry out inspections appropriate to the functions of the Ministry and ensure compliance with any legal requirements or standards appropriate to any such inspection:
- 25 “(e) To investigate, co-ordinate, and provide assistance to any local authority or person for district, regional, or maritime planning and to take such action as may be necessary to achieve or promote the objectives of the Town and Country Planning Act 1977:
- 30 “(f) To carry out any activity or undertaking jointly with any other person, body corporate, firm, partnership, or joint venture:
- 35 “(g) With the concurrence of the Minister of Finance, to subscribe for, purchase, or otherwise acquire, and sell or otherwise dispose of, shares, stocks, or interests, and otherwise participate in, any body corporate, firm, partnership, or joint venture having power to engage in any activity or undertaking which is the same as or similar to or ancillary to the functions specified in **section 6** of this Act:
- 40 “(h) To exercise all of the rights and powers of the Crown as the holder of any shares, stocks, and interests in any undertaking specified in **paragraph (g)** of this subsection:
- 45 “(i) To assemble information relating to the activities of the building and construction industry as a whole and

to consider and report on the demands being made on the industry and the relation of such demands to available and potential resources:

- “(j) To direct any activity or undertaking, whether a public work or not, in relation to the orderly and efficient use or development of natural resources: 5
- “(k) To buy, sell, or otherwise deal in intellectual property, property capable of attracting copyright (whether Crown copyright or otherwise), patents, designs, trade marks, or trade secrets which are capable of being used to the Ministry’s advantage.” 10

**4. Execution of contracts, etc.**—Section 9(1) of the principal Act is hereby amended by omitting the words “for the execution of Government works or in any way connected with Government works”, and substituting the words “relating to any of the functions specified in section 6 of this Act”. 15

**5. Delegation of Minister’s powers**—Section 14(1) of the principal Act is hereby amended—

- (a) By omitting the word “except—”:
- (b) By repealing paragraphs (a) and (b). 20

**6. Objection to be heard by Planning Tribunal—**

(1) Section 24 of the principal Act is hereby amended by repealing subsections (7) and (8), and substituting the following subsection:

- “(7) The Planning Tribunal shall— 25
- “(a) Ascertain the objectives of the Minister or local authority, as the case may require:
- “(b) Enquire into the adequacy of the consideration given to alternative sites, routes, or other methods of achieving those objectives: 30
- “(c) In its discretion, send the matter back to the Minister or local authority for further consideration in the light of any directions given by the Tribunal:
- “(d) Decide whether, in its opinion, it would be fair, sound, and reasonably necessary for achieving the objectives of the Minister or local authority, as the case may require, for the land of the objector to be taken: 35
- “(e) Prepare a written report on the objection and on the Tribunal’s findings: 40
- “(f) Submit its report to the Minister or local authority, as the case may require.”



(2) The said section 24 is hereby further amended by repealing subsections (10), (11), and (12), and substituting the following subsection:

“(10) The report of the Planning Tribunal shall be binding  
5 on the Minister or, as the case may be, the local authority.”

**7. When Proclamation may issue**—Section 26 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) If no objection is made within the time allowed under  
10 this Act or, if made, is withdrawn by the objector or is disallowed by the Planning Tribunal, and the Minister or, as the case may be, the local authority, is of the opinion that the land should be taken for the public work specified in the notice given under section 23 of this Act, and that no private injury  
15 will be done for which due compensation is not provided in this Act, the land intended to be taken may be taken in the following manner:

“(a) Subject to the provisions of section 32 of this Act—

20 “(i) A survey plan shall be prepared, in duplicate, showing accurately the position and extent of the land proposed to be taken; and

“(ii) Such plan shall be signed by the Chief Surveyor as evidence of its accuracy; and

25 “(iii) A duplicate print of the title plan shall be prepared; and

“(b) In the case of any Government work, the Minister shall recommend the Governor-General to issue a Proclamation taking the land:

“(c) In the case of any local work—

30 “(i) The local authority shall submit to the Governor-General a request to take the land proposed to be taken, together with the plan in duplicate unless the provisions of section 32 of this Act apply:

35 “(ii) Every such request shall be signed by the principal administrative officer of the local authority, and need not be under seal:

40 “(iii) A statutory declaration by the Chairman or Mayor or the principal administrative officer of the local authority, in the form set out in the Second Schedule to this Act, may be accepted by the Governor-General as sufficient without making further inquiry:

“(iv) Every such declaration shall be accompanied, where applicable, by the relevant report of the Planning Tribunal.”

**8. Disposal in other cases of land not required for public work**—Section 42 (1) (d) of the principal Act is hereby amended by inserting, after the word “tender”, the words “private treaty,”.

**9. Inventions, etc., by employees**—The principal Act is hereby amended by inserting, after section 225, the following section:

“225A. (1) Notwithstanding anything in any other enactment, any intellectual property devised or developed by an officer or employee of the Ministry shall belong to the Crown (which, for this purpose, shall be deemed to be the assignee of the officer or employee in respect of that intellectual property) if—

“(a) It was devised or developed in the course of the duties of the officer or employee; or

“(b) It was devised or developed wholly or principally by or through the use of resources provided by the Crown—

but any other intellectual property devised or developed by an officer or employee shall, as between that person and the Ministry, belong to the officer or employee.

“(2) All intellectual property belonging to the Crown under this section shall be made available for use on such conditions (including the payment of royalties or other money) as the Minister may from time to time agree.

“(3) Where intellectual property belonging to the Crown under this section was devised or developed wholly or partly through the use of resources other than public money or public stores as defined in section 2 (1) of the Public Finance Act 1977, the Minister, on the advice of the Commissioner of Works, may assign that intellectual property or any interest in it to the person or persons who provided those resources upon such terms and conditions as may be agreed between that person or those persons and an authorised officer or employee of the Ministry.”

**10. Regulations**—Section 243 (1) of the principal Act is hereby amended by repealing paragraph (e), and substituting the following paragraph:

“(e) Prescribing the fees payable by any Government department, local authority, or any other body corporate or person in respect of—

5 “(i) Checking, processing and, where applicable, gazetting any document:

“(ii) Any inspection carried out pursuant to **section 7 (2) (d)** of this Act:

10 “(iii) Any other regulatory activity that the Ministry may be required to undertake from time to time:”.

**11. Revocations**—The following regulations are hereby revoked:

- (a) The Economic Stabilisation (Building Registration and Construction) Regulations 1974:
- 15 (b) The Economic Stabilisation (Building Registration and Construction) Regulations 1974, Amendment No. 1:
- (c) The Economic Stabilisation (Building Registration and Construction) Regulations 1974, Amendment No. 2.

## SCHEDULES

### FIRST SCHEDULE

Section 2 (6)

#### AMENDMENTS TO PRINCIPAL ACT

Section Amended	Amendment
Section 3 .. ..	By repealing this section.
Section 17 .. ..	By repealing subsection (3).
Section 18 .. ..	By repealing paragraph (b) of subsection (7).
Section 22 .. ..	By omitting from subsection (1) the word “essential”, and substituting the word “public”.
Section 23 (1) .. ..	By repealing this section.
Section 26 .. ..	By omitting the word “essential”, and substituting the word “public”.
Section 27 (2) .. ..	By omitting from subsections (1), (2), and (3) the word “essential”, and substituting in each case the word “public”.
Section 34 (1) .. ..	By omitting the words “that is an essential work”.
Section 40 .. ..	By omitting the words “an essential” and substituting the words “a public”.
	By omitting from paragraph (b) of subsection (1) the word “essential”, and substituting the words “other public”.

FIRST SCHEDULE—*continued*AMENDMENTS TO PRINCIPAL ACT—*continued*

Section Amended	Amendment
	By repealing subsection (3), and substituting the following subsection: “(3) Subsection (2) of this section shall not apply to land acquired after the 31st day of January 1982 and before the date of commencement of the <b>Public Works Amendment Act 1986</b> for a public work that was not an essential work.”
Section 52 (1) ..	By omitting the words “section 40 of this Act and”.
Section 59 .. ..	By omitting from paragraph (b) of the term “notified” the words “an essential”, and substituting the words “a public”.
Section 60 (1) ..	By omitting from paragraph (a) and from paragraph (b) the word “essential”, and substituting in each case the word “public”.
Section 64 .. ..	By omitting the word “essential” in both places it occurs, and substituting in each case the word “public”.
Section 65 (1) ..	By omitting the words “an essential”, and substituting the words “a public”.
Section 66 (1) ..	By omitting the words “an essential”, and substituting the words “a public”.
Section 67 (1) ..	By omitting the words “an essential”, and substituting the words “a public”.
Section 68 (1) ..	By omitting the words “an essential”, and substituting the words “a public”.
Section 71 (2) ..	By omitting the words “an essential”, and substituting the words “a public”.
Section 72 (1) ..	By omitting the word “essential”, and substituting the word “public”.
Section 73 (1) ..	By omitting the word “essential”, and substituting the word “public”.
Section 74 (1) ..	By omitting the word “essential”, and substituting the word “public”.
Section 76 (1) (c) ..	By omitting the words “an essential” and substituting the words “a public”.
Section 80 .. ..	By omitting from subsection (1) the words “any essential” in both places where they occur, and substituting in each case the words “a public”.
Section 105 (1) ..	By omitting from subsection (8) the words “an essential”, and substituting the words “a public”.
Section 105 (1) ..	By omitting the word “essential”, and substituting the word “public”.

FIRST SCHEDULE—*continued*  
AMENDMENTS TO PRINCIPAL ACT—*continued*

Section Amended	Amendment
Section 107A (as inserted by section 5 of the Public Works Amendment Act 1983)	By omitting from subsection (1)(a) the words "an essential", and substituting the words "a public".
Part XVI .. ..	By omitting from the heading the word "ESSENTIAL", and substituting the word "PUBLIC".
Section 187 .. ..	By omitting from subsection (1), in both places where it occurs, and from subsection (3) the word "essential", and substituting in each case the word "public".
Section 249 .. ..	By omitting the words "as if the claim related to an essential work, or the taking or acquisition of land for an essential work, as the case may require".
First Schedule .. ..	By omitting from the heading and from clause 2 the words "essential", and substituting in each case the word "public".
Second Schedule .. ..	By omitting from clause 1 the word "essential", and substituting the word "public".

SECOND SCHEDULE

Section 2(7)

AMENDMENTS TO TOWN AND COUNTRY PLANNING ACT 1977

Section Amended	Amendment
Section 2 .. ..	By repealing the definition of the term "essential work" in subsection (1). By repealing paragraph (a) of subsection (4), and substituting the following paragraph: "(a) From whom any land was taken or acquired under the Public Works Act 1981 or any former Public Works Act; and".
Section 36 .. ..	By omitting from subsection (8)(a) the words "which is an essential work and". By repealing paragraphs (b) and (c) of subsection (8). By omitting from subsection (8)(d) the words "which is an essential work and".
Section 43 .. ..	By omitting from subsection (1)(a) the words "which is an essential work and".

SECOND SCHEDULE—*continued*AMENDMENTS TO TOWN AND COUNTRY PLANNING ACT 1977—*continued*

Section Amended	Amendment
Section 118	<p>By repealing paragraphs (b) and (c) of subsection (1).</p> <p>By omitting from subsection (1) (d) the words "which is an essential work and".</p> <p>By omitting from subsection (1) (a) the words "which is an essential work and".</p> <p>By repealing paragraphs (b) and (c) of subsection (1).</p> <p>By omitting from subsection (1) (d) the words "which is an essential work and".</p>