



HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 2 December 1997

MAORI RESERVED LAND AMENDMENT BILL

Proposed Amendments

MARK PECK, in Committee, to move the following amendments:

New Part 3AA: To insert, after Part 3 on page 14, the following new Part:

PART 3AA

ALTERNATIVE COMPENSATION BY WAY OF ARBITRATION

22AA. Election of compensation—(1) Notwithstanding anything in Part 2 or Part 3 or Part 3A, the lessor or the lessee of any lease to which this Act applies is entitled to elect to receive compensation either—

- (a) Pursuant to and as provided in this Act; or
- (b) Pursuant to an arbitration between lessor and lessee, in accordance with and as specified more particularly in section 22AB of this Act,

but not pursuant to both.

(2) Compensation must be paid pursuant to and as provided in this Act unless the lessor or lessee has elected in writing, at any time before any such compensation has been paid, to be compensated pursuant to an arbitration.

(3) The onus is on the lessor or lessee concerned to ensure that the Crown is advised and understands that an election in accordance with subsection (2) has been made.

(4) Each lessor or lessee may make only one election of arbitration pursuant to this Part.

(5) An election freely made to be compensated pursuant to an arbitration is final.

(6) No lessor or lessee who has made an election of arbitration may benefit under provisions implied in a lease by virtue of Part 2, but is otherwise bound by those provisions.

22AB. Arbitration process—(1) The lessor or the lessee may elect arbitration as provided in section 22AA(1) (b) for the purpose of determining, with respect to any lease to which this Act applies,—

- (a) The frequency of rent reviews;
- (b) The rent that is to be paid, and the timing of its implementation;
- (c) Whether the lessor is to have a right of first refusal in the event of assignment by the lessee of the lessee's interest in the lease;
- (d) Whether the lessee is to have a right of first refusal in the event of transfer by the lessor of land subject to the lease.

(2) An arbitration to which subsection (1) applies is to be conducted in accordance with the Arbitration Act 1996.

(3) An arbitral tribunal acting pursuant to this section—

- (a) Is to determine the issue or issues put before it on the basis of that which, in its opinion, is, in all the circumstances, fair as between the parties:
- (b) May determine that such other compensation as it considers appropriate in all the circumstances is to be payable:
- (c) Is not limited as to the considerations relevant to the lease concerned or to Maori reserved land leaseholds generally that it may take into account in determining the issue or issues before it:
- (4) An arbitral tribunal must give priority to a determination pursuant to this section with a view to the issue or issues being resolved without delay.
- (5) If, in an arbitration pursuant to this section, any question arises concerning the value of any land or lease or of any interest in any land or lease, that question is to be determined by the Valuer-General, whose determination may be appealed to the Land Valuation Tribunal pursuant to the Land Valuation Proceedings Act 1948.
- (6) The Valuer-General and the Land Valuation Tribunal must, in determining any question pursuant to subsection (5), give priority to that determination with a view to the issue or issues being resolved without delay.

Schedule 4: To insert, on page 211, after the date "1996" in new subsection 6 to be inserted in section 82 of the principal Act, the words "or to an arbitration pursuant to section 22AB of that Act."

EXPLANATORY NOTE

The purpose of this Supplementary Order Paper is to provide lessors and lessees covered by the Maori Reserved Land Amendment Bill with another option in resolving matters at issue between them. Many of those affected are concerned at the impact that the bill may have on their interests. It is important to ensure that all appropriate alternatives are available to them to provide a safety valve in this area and to help in resolving differences between lessors and lessees.

It is proposed to add a new Part 3AA which will insert two new sections into the bill. The first will give lessors and lessees the option of receiving compensation pursuant to this Act or pursuant to an arbitration process. Arbitration is an appropriate option in the present case, since it is provided for in the principal Act (section 82) and already has a role under clause 34 of Schedule 1 in resolving disputes over certain clauses in that schedule that it has not been possible to settle by mediation. It is proposed to build upon that provision, which incorporates arbitration as part of the compensation process in the bill, and to establish arbitration as a stand-alone alternative to that compensation process. Only one election of arbitration may be made however, and once an election has been made, that decision will be final. It will not be possible to choose both to be compensated under the bill and to go separately to arbitration for compensation.

The second section sets out the arbitration process, which will relate broadly to the same areas with which the compensation mechanism in the bill is concerned. The provisions in the Arbitration Act 1996 will apply, and criteria are set out that an arbitral tribunal must act upon in making its determinations. Any valuation questions are to be determined by the Valuer-General and the Land Valuation Tribunal pursuant to the Land Valuation Proceedings Act 1948. All those exercising functions under the section are required to act expeditiously.

A consequential amendment is also made to new subsection 82 (6) of the principal Act, which relates to submission to arbitration of matters or questions arising under any lease of reserved land.