

[AS REPORTED FROM THE PLANNING AND DEVELOPMENT  
COMMITTEE]

*House of Representatives, 20 August 1991.*

**Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.**

*Hon. Denis Marshall*

## **FORESHORE AND SEABED ENDOWMENT REVESTING**

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### ANALYSIS

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### A BILL INTITULED

#### **An Act to revoke certain endowments of foreshore and seabed, and revest those endowments in the Crown**

BE IT ENACTED by the Parliament of New Zealand as follows:

5     **1. Short Title**—This Act may be cited as the Foreshore and Seabed Endowment Revesting Act 1989.

**2. Interpretation**—In this Act, unless the context otherwise requires,—

10     “Chief Surveyor” has the same meaning as in the Survey Act 1986:

No. 208—2

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“Harbour Board” or “Board”—

(a) Means any Harbour Board constituted before the commencement of this Act, whether under the Harbours Act 1950 or any other enactment; and

(b) Includes any municipal corporation, city council, borough council, county council, or similar body constituted before the commencement of this Act:

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“Foreshore” means such parts of the bed, shore, or banks of the sea or a river as are covered and uncovered by the flow and ebb of the tide at mean spring tides:

“Harbour Board” or “Board” means any Harbour Board constituted before the commencement of this Act, whether under the Harbours Act 1950 or any other enactment:

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“Local Authority” has the same meaning as in the Local Government Act 1974; and includes any municipal corporation, borough council, county council, catchment board, river board, or similar body constituted before the commencement of this Act:

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“Minister” means the Minister of Conservation:

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“Successor” means the regional council or other local authority that is, by virtue of Part IIB of the Local Government Act 1974, the owner of foreshore or seabed formerly vested in a Harbour Board or a local authority:

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“Treaty of Waitangi (Te Tiriti o Waitangi)” has the same meaning as the word “Treaty” as defined in section 2 of the Treaty of Waitangi Act 1975.

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**2A. Treaty of Waitangi**—All persons exercising functions and powers under this Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

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- 3. Application of Act**—(1) Subject to **subsection (3)** of this section, this Act shall apply to all foreshore and seabed alienated from the Crown and vested in a Harbour Board before the commencement of this Act, whether by or under the authority of any enactment or otherwise.
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- (2) Without limiting the generality of **subsection (1)** of this section, this Act shall apply to such foreshore or seabed even if the Board in which the area concerned was originally vested no longer exists.
- 10
- (3) This Act—
- (a) Shall apply only to foreshore and seabed vested in a Harbour Board immediately before the commencement of this Act; but
- 15
- (b) Does not apply to any foreshore or seabed sold or otherwise disposed of for valuable consideration by a Harbour Board before the commencement of this Act.
- (4) For the purposes of this section, an area of foreshore or seabed shall be deemed to have been alienated from the Crown and vested in a Harbour Board if the original legal authority concerned—
- 20
- (a) Set apart the area as an endowment for the Board; or
- (b) Endowed the area in the Board or vested the area in the Board as an endowment; or
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- (c) Vested the area in the Board as an estate in fee simple; or
- (d) Was of the kind described in any of **paragraphs (a) to (c)** of this subsection and imposed any trusts, reservations, restrictions, or conditions; or
- 30
- (e) Was expressed in such a way as to achieve any of the effects described in **paragraphs (a) to (d)** of this subsection or any combination of them.

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- 3. Application of Act**—(1) This Act applies to all land that—
- 35
- (a) Was formerly alienated from the Crown and vested in a Harbour Board or a local authority, whether by or

*New*

- under the authority of any enactment or otherwise;  
and
- (b) At the commencement of this Act, either—
- (i) Is foreshore or seabed, and is vested in a local authority (whether as a successor or otherwise); or 5
- (ii) Is land that has been reclaimed from the sea unlawfully.
- (2) Nothing in this Act applies to—
- (a) Any freehold interest in any foreshore or seabed that,— 10
- (i) At any time before the commencement of this Act, was sold or otherwise disposed of for valuable consideration by the Harbour Board or local authority in whom it was then vested; or
- (ii) Immediately before the commencement of this Act, was subject to an agreement in writing for the sale or other disposal of that interest for valuable consideration; or 15
- (b) Any land that, in its natural state or as a result of a lawful reclamation, is no longer covered and uncovered by the flow and ebb of the tide at mean spring tides; or 20
- (c) Any land that—
- (i) Is comprised and described in any of certificates of title 6C/1393, 31B/990, 31B/991, and 34A/785 (all Wellington Registry); or 25
- (ii) Is described in paragraph (g) or paragraph (t) of clause 2 of the Second Schedule to the Wellington Harbour Board and Wellington City Council Vesting and Empowering Act 1987.
- (3) For the purposes of this section, land shall be deemed to have been alienated from the Crown and vested in a Harbour Board or a local authority if the original legal authority concerned— 30
- (a) Set apart the area as an endowment for the Board or local authority; or 35
- (b) Granted the area to the Board or local authority; or
- (c) Endowed the area in the Board or local authority, or vested the area in the Board or local authority as an endowment; or
- (d) Vested the area in the Board or local authority for an estate in fee simple; or 40

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- (e) Was of the kind described in any of paragraphs (a) to (d) of this subsection and imposed any trusts, reservations, restrictions, or conditions; or
- 5 (f) Was expressed in such a way as to achieve any of the effects described in any of paragraphs (a) to (e) of this subsection or any combination of them.

**4. Foreshore and seabed vested in Crown**—Subject to section 5 of this Act,—

- 10 (a) All of the original vestings of *(foreshore and seabed) land* to which this Act applies are hereby revoked; and
- (b) All of the *(foreshore and seabed) land* to which this Act applies is hereby vested in the Crown as if it had never been alienated from the Crown and free from
- 15 all subsequent trusts, reservations, restrictions, and conditions.

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- (2) For the purposes of subsection (1)(b) of this section, “foreshore” means such parts of the bed, shore, or banks of the tidal water concerned as are covered and uncovered by the flow and ebb of the tide at ordinary spring tides.
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**5. Existing licences, etc., preserved**—(1) Subject to subsections (2) to (4) of this section, every lease, licence, permit, consent, or other authority validly granted by a Harbour Board in respect of any foreshore or seabed vested in the Crown by this Act and in force immediately before the commencement of this Act shall continue in force according to its tenor.

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(2) Subject to subsection (3) of this section, the Minister may grant renewals of any such lease, licence, permit, consent, or other authority.

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(3) Where any such foreshore or seabed is included in a grant of control under section 8A or section 165 of the Harbours Act 1950, the body to which the grant is made may grant renewals of any such lease, licence, permit, consent, or other authority in respect of that foreshore or seabed.

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(4) The Minister or the body controlling the area under such a grant of control may take all such proceedings as may be

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necessary to enforce any condition in any such lease, licence, permit, consent, or other authority as if the Minister or that body, as the case may be, had granted the authority.

(5) Property that is fixed to, or under or over, any foreshore or seabed to which this Act applies shall, subject to any other enactment, remain vested in the Harbour Board or person in whom it was vested immediately before the commencement of this Act, and, where the property is vested in any person other than a Board or the Crown, the owner—

(a) Shall have reasonable access to the property; and

(b) May, after giving reasonable notice to the body controlling the area concerned, remove the property.

(6) Nothing in this section shall limit or affect section 177 of the Harbours Act 1950.

**6. Grants of control over foreshore and waters above seabed**—It is hereby declared that section 8A of the Harbours Act 1950 shall apply to the waters above the seabed to which this Act applies, and section 165 of that Act shall apply to the foreshore and seabed to which this Act applies.

**7. Certain reclamation authorities required to be confirmed**—(1) Every existing reclamation authority, as defined in subsection (6) of this section, shall be deemed to have been revoked unless it is confirmed or revoked by the Minister under subsection (4) of this section.

(2) No work shall be carried out under any existing reclamation authority until that authority is confirmed by the Minister under subsection (4) of this section.

(3) The holder of an existing reclamation authority may, by application in writing made not later than 12 months after the commencement of this Act, request the Minister to confirm that authority.

(4) Upon receipt of an application made under subsection (3) of this section, the Minister may confirm the reclamation authority concerned and in doing so may vary it, or the Minister may revoke it.

(5) If no application under subsection (3) of this section is made in respect of any existing reclamation authority within the period of 12 months specified in that subsection, that authority

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shall be deemed to have been revoked on the expiration of that period.

5 (6) For the purposes of this section, a reclamation authority is an “existing reclamation authority” if—

- (a) It enables a Harbour Board to reclaim any land from the sea; and
- 10 (b) It was conferred by or under any enactment more than 5 years before the commencement of this Act and is in force at the commencement of this Act; and
- (c) It is not expressed to expire on a specified date; and
- (d) The work authorised by it has not been completed or substantial progress towards the completion of that work has not been made before the commencement
- 15 of this Act.

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**5. Saving of existing authorities, agreements, and rights—**(1) Subject to this section,—

- 20 (a) Every lease, licence, permit, consent, or other authority granted by a Harbour Board or a local authority (whether as a successor or otherwise); and
- (b) Every agreement in writing by such a Board or local authority to grant a lease, licence, permit, consent, or other authority; and
- 25 (c) Every right within the meaning of the word “rights” as defined in section 2 of the Port Companies Act 1988 that has been transferred to a port company within the meaning of that Act, in accordance with a port company plan under that Act,—

30 that was, immediately before the commencement of this Act, in effect in respect of any land to which this Act applies shall, to the extent to which it is lawful, continue to have effect in respect of that land according to its tenor.

35 (2) The Minister is hereby authorised to execute on behalf of the Crown any instrument or other document that is required to be executed by the Crown in respect of any land to which this Act applies.

(3) The Minister may take all such proceedings as may be necessary to enforce any condition in any lease, licence, permit,

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consent, or other authority as if the Minister had granted that authority.

(4) Property that is fixed to, or under or over, any land to which this Act applies shall, subject to any other Act, remain owned by the person who owned it immediately before the commencement of this Act, and, where the property is owned by any person other than a local authority or the Crown, the owner—

- (a) Shall have reasonable access to the property; and
- (b) May, after giving reasonable notice to the nearest office of the Department of Conservation, remove the property.

(5) Nothing in **subsection (4)** of this section shall limit or affect any lease, licence, permit, consent, other authority, agreement, or right continued in force by **subsection (1)** of this section.

(6) Nothing in this section shall limit or affect section 177 of the Harbours Act 1950.

**6. Certain existing reclamation authorities required to be confirmed**—(1) Subject to **subsection (2)** of this section, every existing reclamation authority shall—

- (a) Continue in force for a period of 12 months commencing on the day on which this Act comes into force; and
- (b) Shall, as from the close of that period of 12 months, be deemed to have been revoked, unless it is sooner confirmed by the Minister under **subsection (4)** of this section.

(2) No work shall be carried out under any existing reclamation authority until that authority has been confirmed by the Minister under **subsection (4)** of this section.

(3) An application for confirmation of an existing reclamation authority shall be made in writing by or on behalf of the holder of the authority before the close of the period of 12 months specified in **subsection (1) (a)** of this section.

(4) On receiving an application in accordance with **subsection (3)** of this section, the Minister—

- (a) May, after consultation with the appropriate Conservation Board, either—
  - (i) Confirm the authority without amendment; or



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- (ii) Confirm the authority and amend it in any manner that does not extend the scope of the authority; or
- 5 (b) May decline the application.
- (5) Every decision made under **subsection (4)** of this section shall be notified to the applicant in writing and shall state the reasons for the decision.
- 10 (6) For the purposes of this section, a reclamation authority is an “existing reclamation authority” if—
- (a) It enables the holder to reclaim any land from the sea; and
- (b) It was conferred by or under any enactment more than 2 years before the commencement of this Act; and
- 15 (c) The work authorised by it has not been completed before the commencement of this Act.
- (7) Nothing in this section applies to any reclamation authority that has been transferred to a port company, within the meaning of the Port Companies Act 1988, in accordance with a port company plan under that Act.
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**8. Provisions relating to existing certificates of title—**

- (1) Every existing certificate of title in respect of any (*area of foreshore or seabed*) land revested in the Crown by this Act that is not subject to any current registered lease or registered licence shall, on the request of the Minister and without further authority than this subsection, be cancelled by the appropriate District Land Registrar.
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- (2) Where the certificate of title for any such area is subject to such a lease or licence, the appropriate District Land Registrar shall, on the request of the Minister and without further authority than this subsection, make any necessary endorsements on the certificate of title, and the certificate of title shall thereafter enure in the name of Her Majesty the Queen in right of New Zealand for the purposes of this Act
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- until the expiration or sooner determination of the lease or licence, and shall then be cancelled by the District Land Registrar.
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- (3) Where the Minister makes any request under **subsection (1)** or **subsection (2)** of this section, the Minister shall also—

- (a) Produce the duplicate of the certificate of title concerned to the District Land Registrar for cancellation or endorsement, as the case may require; or
- (b) Certify that the duplicate is unavailable by reason of loss or damage.

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**9. Minister may apply for new certificates of title—**

(1) The Minister may cause a plan of survey of any (*area of foreshore or seabed*) land revested in the Crown by this Act to be made by a registered surveyor and approved by the Chief Surveyor, and lodge it for deposit at the office of the appropriate District Land Registrar.

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(2) On or after the deposit of a plan of survey approved by the Chief Surveyor, the District Land Registrar shall, notwithstanding anything in the Land Transfer Act 1952, issue to Her Majesty the Queen in right of New Zealand for the purposes of this Act, free of charge, a certificate of title under that other Act in respect of the area to which the plan relates.

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(3) Where a new certificate of title is issued for the purposes of this Act, the District Land Registrar shall cancel any other certificate of title in respect of the area concerned or partially cancel that other certificate of title, as the case may require.

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(4) The District Land Registrar shall record against every such new certificate of title the order of priority of any registered leases or registered licences in respect of the area concerned.

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(5) Nothing in this section shall prevent the Minister applying in accordance with the provisions of the Land Transfer Act 1952 for the issue of a new certificate of title in respect of any area revested in the Crown by this Act.

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**9A. Other Acts affected—**The provisions of this Act shall have effect notwithstanding the provisions of the Land Transfer Act 1952 or any other enactment or rule of law relating to land.

**9B. Act not to render Crown liable for civil wrong—** Nothing effected or authorised by or under this Act—

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- (a) Shall be regarded as making the Crown guilty of a civil wrong; or
- (b) Shall be regarded as—

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- 5 (i) Placing the Crown in breach of any contract, deed, agreement, or other instrument having effect in respect of any land to which this Act applies; or
- (ii) Assigning to the Crown any liability of any local authority under any such contract, deed, agreement, or instrument; or
- 10 (c) Shall be regarded as placing the Crown or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any land or any other property.

**10. Amendment to Conservation Act 1987**—The Conservation Act 1987 is hereby amended by inserting in the  
15 First Schedule, in its appropriate alphabetical order, the following item:

“The Foreshore and Seabed Endowment Revesting Act  
**1989**”.