



ANALYSIS

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1962, No. 20

An Act to authorise the making of loans, out of money appropriated by Parliament for the purpose, for the establishment and maintenance of farm woodlots

[8 November 1962

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 Farm Forestry Act 1962.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Conservator”, in relation to any land, means the Conservator of Forests in the conservancy in which the land is situated:

“Lease” means a registered lease and any lease or licence, registered or unregistered, from the Crown, including a registered or unregistered licence from the Crown to occupy any land pending the completion of the purchase of that land under a system of deferred payment, a mining privilege within the meaning of the Mining Act 1926, and a coal mining lease or coal mining right under the Coal Mines Act 1925; and “lessee” has a corresponding meaning:

“Minister” means the Minister of Forests:

“Registrar”, in relation to any land the title to which is registered in the Land Transfer Office or the Deeds Register Office (including the land comprised in a mining privilege that is registered under the Land Transfer Act 1952), means the District Land Registrar or the Registrar of Deeds, as the case may require, for the land registration district within which the land is situated; and, in relation to any land comprised in a mining privilege that is not registered under the Land Transfer Act 1952, or in relation to a coal-mining lease or coal-mining right under the Coal Mines Act 1925 that is recorded in the office of a Mining Registrar, means the Mining Registrar in whose office the mining privilege or lease or right is registered or recorded.

(2) For the purposes of this Act all land which is not otherwise occupied shall be deemed to be in the occupation of the owner in fee simple thereof.

3. Minister may make advances—Subject to the provisions of this Act, the Minister may make an advance, out of money appropriated by Parliament for the purpose, to any applicant for the purpose of establishing or managing a farm woodlot.

4. Notice of conditions—The Minister may from time to time, by notice in the *Gazette*, prescribe the terms and conditions upon which applications for advances will be considered and the dates by which applications must be received.

5. Farm forestry agreements—(1) The Minister may enter into a farm forestry agreement with the owner or lessee of any land on which trees have been or are to be planted and in respect of which the Minister has made or proposes to make an advance under section 3 of this Act:

Provided that no such agreement shall be entered into with the lessee of any land without the prior consent in writing of the owner of the land.

(2) Every such farm forestry agreement shall specify the following particulars:

- (a) The land to which the agreement relates and the area that has been or is to be planted in trees:
- (b) The species of trees planted or to be planted:
- (c) The silvicultural treatment of the trees planted or to be planted:
- (d) The amount to be advanced by the Minister:
- (e) Such other conditions as the Minister may require.

(3) Every farm forestry agreement shall include a covenant by the owner or occupier of the land binding himself and his successors in title to perform and observe the terms and conditions upon which the advance is made.

(4) A farm forestry agreement may provide for any sum repayable to be diminished in proportion to the extent to which the agreement has been performed or observed.

(5) Where the owner or occupier of any land has entered into a farm forestry agreement, that agreement may be registered against the title of that owner or occupier to the whole or any part of the land to which the agreement relates but no such agreement shall be so registered unless notice thereof has been given to every mortgagee and other person having a charge on any estate or interest in the land at the date of registration. Registration of a farm forestry agreement may be effected by depositing with the Registrar a duplicate of the agreement, certified under the hand of the Conservator, together with an application for the registration of the agreement, which application shall be signed by the Conservator and shall specify the land against which it is desired to register the agreement, and shall certify that the agreement is one that may be registered against the land under this section and that notice of the agreement has been given to the persons specified in the certificate (being every mortgagee and other person having a charge on any estate or interest in the land at the date of registration). On receipt of the duplicate agreement and application as aforesaid, the Registrar shall, without fee, enter a memorial of the agreement upon the register against the title to the land of the owner or occupier who is a party to the agreement specified in the application. In any such case it shall not be necessary for the Registrar to record the like memorial on the duplicate

certificate of title or lease. The memorial may sufficiently describe the agreement as a farm forestry agreement under the Farm Forestry Act 1962.

(6) Where any notice has to be given under this section, it may be given—

- (a) By delivering it to the person to whom it has to be given; or
- (b) By leaving it at the usual or last known place of abode in New Zealand of that person; or
- (c) By sending it by post in a registered letter addressed to that person at his usual or last known place of abode in New Zealand.

(7) Any farm forestry agreement which varies or is in substitution for an earlier farm forestry agreement (whether that agreement is registered or not) may be registered under this section.

(8) Upon the expiration or termination of a registered farm forestry agreement, the Conservator shall sign a certificate stating that the agreement has so expired or been terminated, and shall deposit the certificate with the Registrar, who shall thereupon, without fee, enter a memorial of the expiration or termination of the agreement on the register against the appropriate title.

(9) In any case where, under section 105 of the Land Transfer Act 1952 or otherwise, on a sale by a mortgagee or other person having a charge on any estate or interest in land, or on the registration of a transfer pursuant to such a sale,—

- (a) That estate or interest is discharged from any charge thereon arising under a certificate that relates to a farm forestry agreement and is registered under section 7 of this Act; or

- (b) That estate or interest would have been so discharged if such a certificate had been so registered—

that agreement shall thereupon be deemed to cease to be registered against the title to the land, unless the purchaser and the Minister, by consent in writing endorsed on or attached to the instrument of transfer, agree to the retention of its registration against that title.

6. Registered farm forestry agreements to run with the land—(1) While the farm forestry agreement is registered against the title of any owner or occupier to any land, and until the expiry of the agreement by effluxion of time or (where the agreement is registered against the title of a

lessee) the sooner determination of the lease and every renewal thereof by effluxion of time or otherwise, the agreement shall run at law with the land against the title to which it is registered, so as to confer and impose upon every person who at the date of registration of the agreement, or at any time thereafter, is for the time being the occupier of that land or of any part thereof, a right to enforce and an obligation to observe and perform the agreement during the period of his occupancy of the land or of any part thereof in the same manner as if the occupier had been a party to the agreement. Where there are two or more such occupiers, the obligation and liability so imposed on them shall be borne by them in such manner as the Minister and those occupiers may agree or in default of agreement shall be borne by those occupiers jointly.

(2) Where the lessee for the time being under any lease of the land or of any part thereof surrenders his lease and obtains a new lease in exchange therefor, the farm forestry agreement and the provisions of this Act shall continue to apply as if the new lease were a renewal of the surrendered lease.

(3) Upon the registration of any such new lease or of the renewal of any lease, the Registrar shall record on the register against the title to the land of the lessee under the new or renewed lease any subsisting memorial in respect of the agreement recorded against the title to the land of the lessee in respect of the surrendered or expired lease.

(4) Where the lessee for the time being under any lease of the land or of any part thereof obtains a title in fee simple to the land or any part thereof, the farm forestry agreement and the provisions of this Act shall continue to apply to the land to which the title in fee simple has been obtained as if the agreement, so far as it affects that land, had been made with the legal owner in fee simple of the land. Upon the registration of any such title in fee simple, the Registrar shall record in the register against the title to the land of the owner of the fee simple any memorial in respect of the agreement recorded against the title to the land of the lessee at the time of the acquisition of the title in fee simple.

(5) No farm forestry agreement which runs with the land in accordance with this section shall confer any right or impose any personal liability on any party to the agreement or any occupier of the land, except in respect of the period of his occupation of the land:

Provided that nothing in this subsection shall affect the amount of any charge on the estate or interest in the land affected by the agreement arising under subsection (2) of section 7 of this Act.

7. Money payable under registered farm forestry agreement may be made a charge on the land—(1) If at any time there is default in the observance or performance of any of the obligations in respect of the land which are specified in the farm forestry agreement, the Conservator may deposit with the Registrar a certificate under his hand specifying the amount payable and unpaid under the agreement in respect of the default, and the Registrar shall thereupon, without fee, register the certificate in respect of the estate or interest in the land affected by the agreement.

(2) Upon registration of the certificate, the amount mentioned therein, and all money which after the signing of the certificate and before the release thereof accrues due under the farm forestry agreement, shall, until payment thereof, be a charge on the said estate or interest in the land affected by the agreement. Unless the Conservator otherwise agrees in any case, every charge in respect of which a certificate is registered under subsection (1) of this section shall have priority in relation to all other transactions affecting the land as if it had been registered at the time when the farm forestry agreement was registered under this Act, and section 105 of the Land Transfer Act 1952 shall apply as if the charge arose under a mortgage and created an estate or interest in the land.

(3) Where any occupier has an interest in the land as lessee under a lease, the charge shall extend to the interest (if any) of the lessee in any improvements to the land and in any money that may be payable by the lessor and by an incoming tenant and otherwise for any such improvements, whether during the term of the lease or thereafter.

(4) For the purpose of enforcing any charge under this section, the Supreme Court or a Judge thereof may make such order as it or he thinks fit, either for the sale of the estate or interest which is subject to a charge, or for the appointment of a receiver or otherwise; and any order for sale shall be carried into effect by the Sheriff in the same manner as in the case of a writ for sale, with any modifications that may be necessary or may be provided by rules of Court in that behalf:

Provided that, in the case of Maori freehold land within the meaning of the Maori Affairs Act 1953, the charge shall be enforceable against the owner of that land only by the appointment of a receiver in accordance with section 33 of that Act and subsections (3) to (5) of that section shall apply to the receiver so appointed.

8. Section 37 of State Advances Corporation Act 1936 not to apply—Section 37 of the State Advances Corporation Act 1936 shall not apply to any farm forestry agreement or certificate to which this Act applies.

This Act is administered in the New Zealand Forest Service.
