



ANALYSIS

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1978, No. 61

An Act to establish the New Zealand Film Commission, and to define its functions, powers, and duties

[12 October 1978]

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 and commencement**—(1) This Act may be cited as the New Zealand Film Commission Act 1978.

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

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

“Appointed member” means a member appointed under paragraph (a) or paragraph (b) of section 3 (2) of this Act:

“Commission” means the New Zealand Film Commission established by section 3 of this Act:

“Film” includes a photographic film, or a recording on magnetic tape or on any other material, from which a series of images, with or without associated sounds, may be produced:

“Financial year” means a year ending with the 31st day of March:

“Minister” means the Minister for the Arts.

Constitution

3. New Zealand Film Commission—(1) There is hereby established a Commission to be called the New Zealand Film Commission.

(2) The Commission shall consist of the following members:

(a) One person to be appointed as the chairman by the Minister:

(b) Not fewer than 3 nor more than 5 other persons to be appointed by the Minister:

(c) The Secretary for Internal Affairs.

(3) The Commission is a body corporate with perpetual succession and a common seal, and may acquire, hold, and dispose of real and personal property, and sue and be sued, and do and suffer all other things that bodies corporate may lawfully do and suffer.

(4) The powers of the Commission shall not be affected by any vacancy in its membership.

4. Term of office of appointed members—(1) Except as otherwise provided in this Act, each appointed member of the Commission shall hold office for such term as the Minister shall specify in his appointment, being a term not exceeding 3 years, and may from time to time be reappointed.

(2) Each appointed member shall, unless he sooner vacates his office under section 5 of this Act, continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

5. Extraordinary vacancies—(1) An appointed member may resign his office by delivering a notice in writing to that effect to the Minister.

(2) An appointed member may be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

(3) If an appointed member dies or resigns, or is removed from office—

(a) The vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made; and

(b) The person appointed to fill the vacancy shall be appointed for the residue of the term for which his predecessor was appointed.

6. Deputy chairman—(1) At its first meeting, and thereafter at its first meeting in every financial year, the Commission shall elect one of its members to be its deputy chairman.

(2) The deputy chairman, unless he sooner vacates his office or ceases to be a member of the Commission, shall hold office until his successor is appointed and comes into office.

(3) Where the deputy chairman vacates his office or ceases to be a member of the Commission before the expiry of the term for which he was elected, the Commission shall elect another of its members to his office until the expiry of that term.

(4) During every vacancy in the office of chairman, and while the chairman is for any reason unable to perform his functions, the deputy chairman shall exercise and perform the functions, powers, and duties of the chairman.

7. Deputy of Secretary for Internal Affairs—(1) The Secretary for Internal Affairs may from time to time appoint an officer of his department to attend a meeting of the Commission in his absence.

(2) While a deputy appointed under subsection (1) of this section attends a meeting of the Commission in the absence of the Secretary for Internal Affairs, he shall be deemed for the purposes of this Act to be a member of the Commission, except that where the Secretary for Internal Affairs is for the time being the deputy chairman of the Commission, his deputy shall not in his absence be deemed to be the deputy chairman by reason of the fact that he represents the Secretary for Internal Affairs.

8. Meetings of Commission—(1) The first meeting of the Commission shall be held at a time and place to be appointed by the Minister.

(2) Subsequent meetings shall be held at such times and places as the Commission or the chairman from time to time appoints.

(3) The chairman shall call a special meeting within one month after being required in writing by not fewer than 2 members to do so.

(4) Not less than 7 clear days' notice in writing of each meeting, and of the business to be transacted at the meeting, shall be given to each member.

(5) No business may be transacted at a special meeting unless it is specified in the notice required under subsection (4) of this section.

(6) Notwithstanding subsection (4) of this section, an inadvertent failure to comply with that subsection shall not invalidate the proceedings at a meeting that is not a special meeting.

(7) Notwithstanding subsections (4) and (5) of this section, any business may be transacted at an ordinary or special meeting if all of the members who are for the time being in New Zealand (not in any event being less than the number required for a quorum) agree to its transaction at that meeting.

(8) At each meeting, a majority of the persons who for the time being hold office as members shall be a quorum.

(9) At each meeting, the chairman shall preside if he is present.

(10) Where for any reason neither the chairman nor (during any vacancy in the office of chairman or in the absence of the chairman) the deputy chairman is able to preside at a meeting, the members who are present shall elect one of their number to preside at that meeting.

(11) Each question before a meeting shall be decided by a majority of the votes of the members who are present at the meeting.

(12) On each question before a meeting, the member who is presiding shall have a deliberative vote, and in the case of an equality of votes he shall also have a casting vote.

(13) A resolution that is signed, or assented to by letter or telegram or telex, by all of the members who are for the time being in New Zealand (not in any event being less than the number required for a quorum at a meeting) shall have the same effect as a resolution passed at a meeting.

(14) Subject to this Act, the Commission may regulate its procedure in such manner as it thinks fit.

9. Committees—(1) The Commission may from time to time appoint, alter, and discharge committees, consisting of one or more persons (whether members of the Commission or not), and define and vary the terms of reference of those committees.

(2) Subject to this Act, to any rules made under section 16 of this Act, and to the control of the Commission, each committee appointed under this section may regulate its procedure in such manner as it thinks fit.

10. Remuneration of members of Commission and committees—(1) The Commission and each committee of the Commission are hereby declared to be statutory Boards within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There may, if the Minister so directs, be paid out of the funds of the Commission to—

- (a) The chairman of the Commission; and
- (b) The deputy chairman of the Commission; and
- (c) Any member of the Commission; and
- (d) The chairman of a committee of the Commission; and
- (e) Any member of a committee of the Commission—

for his services as such, remuneration by way of salary or fees or otherwise in accordance with the Fees and Travelling Allowances Act 1951.

(3) There shall be paid out of the funds of the Commission, to each person specified in any of paragraphs (a) to (e) of subsection (2) of this section, travelling allowances or

travelling expenses in accordance with the Fees and Travelling Allowances Act 1951 in respect of time spent by him travelling in the service of the Commission and of committees of the Commission.

(4) Subsections (2) and (3) of this section shall not apply to any employee of the Commission.

(5) The Fees and Travelling Allowances Act 1951 shall apply accordingly.

11. Proceedings not affected by irregularities—No proceedings of the Commission or of a committee of the Commission, or act by a person as a member of the Commission or as a member of a committee, shall be invalid by reason of any defect in the appointment or election of any person under this Act.

12. Limitation of personal liability of members—No member of the Commission or of a committee of the Commission shall be personally liable for any act done in good faith by him, or omission made in good faith by him, in the course of the operations of the Commission or of the committee.

13. Staff—(1) The Commission shall from time to time appoint a chief executive officer of the Commission.

(2) The Commission may from time to time appoint any additional officers and other employees (not exceeding such numbers as are for the time being approved by the Minister) and any agents that it thinks fit for the effective and efficient conduct of the affairs of the Commission.

(3) Subject to the terms of any agreement, the Commission may from time to time terminate the employment of any of its employees and the engagement of any of its agents.

(4) The chief executive officer shall be paid such salary and allowances as are from time to time determined by the Higher Salaries Commission.

(5) Subject to the Higher Salaries Commission Act 1977, the other employees of the New Zealand Film Commission shall be paid such salaries and allowances as it from time to time determines after consultation with the State Services Commission.

(6) The Commission may pay to any of its agents such fees as may be agreed between it and the agent.

(7) All salaries, fees, and allowances that are payable under this section shall be paid out of the funds of the Commission.

(8) The Commission may, for the purpose of providing a superannuation fund or retiring allowance for any of its employees, subsidise out of its funds any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or any other employer-subsidised scheme approved by the Minister of Finance.

14. Status of members and staff—No person shall, by reason of his being a member of the Commission, or of a committee of the Commission, or by reason of his being an employee or agent of the Commission, be held to be employed in the State services for the purposes of the State Services Act 1962 or in the Government service for the purposes of the Government Superannuation Fund Act 1956.

15. Delegation of powers—(1) The Commission may from time to time, in respect of a specified matter or class of matters, or in respect of a specified area within or beyond New Zealand, by writing delegate any of its powers to a member, officer, committee, or agent of the Commission.

(2) Notwithstanding subsection (1) of this section, the Commission shall not delegate to a member, officer, committee, or agent—

(a) The power of delegation conferred by subsection (1) of this section; or

(b) Any power to borrow money.

(3) Subject to any general or special directions given to him or to it by the Commission, a member, officer, committee, or agent to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him or on it directly by this Act and not by delegation.

(4) Each member, officer, committee, or agent purporting to act pursuant to a delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(5) Each delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Commission.

16. Rules—(1) Subject to the other provisions of this Act, the Commission may from time to time by resolution make

rules, binding on the members, employees, and agents of the Commission, and on any trustees appointed under section 19 (2) of this Act, for all or any of the following purposes:

- (a) Regulating the proceedings of the Commission:
- (b) Regulating the proceedings of committees of the Commission, including the manner of voting at the proceedings of those committees and the quorums at meetings of those committees:
- (c) Providing for the custody of the property of the Commission and the use of its common seal:
- (d) Prescribing duties of the employees and agents of the Commission:
- (e) Prescribing duties of any trustees appointed under section 19 (2) of this Act.

(2) Notice of every proposed resolution for the making, amendment, or revocation of a rule (including a copy of the proposed rule, amendment, or revocation) shall be given to every member of the Commission for the time being in New Zealand, not less than 14 clear days before the day fixed for the meeting.

(3) On making any rule under this section, the Commission shall make a copy of the rule available, free of charge, to each person who is bound by the rule.

Functions and Powers

17. Functions of Commission—(1) The Commission shall have the following functions:

- (a) To encourage and also to participate and assist in the making, promotion, distribution, and exhibition of films:
- (b) To encourage and promote cohesion within the New Zealand film industry, and in particular—
 - (i) To encourage and promote the exchange of information among persons engaged in the film industry; and
 - (ii) To encourage and promote the efficient use of available resources within the New Zealand film industry; and
 - (iii) To co-operate with other interested or affected bodies and organisations in order to encourage and promote employment in the New Zealand film industry, and the productivity of that industry:

- (c) To encourage and promote the proper maintenance of films in archives:
 - (d) To encourage and promote, for the benefit of the New Zealand film industry, the study and appreciation of films and of film making:
 - (e) To gather, collate, disseminate, and publish information that, in the opinion of the Commission, relates to the making, promotion, distribution, and exhibition of films:
 - (f) To advise the Minister on matters relating to or affecting the functions of the Commission.
- (2) The Commission may carry out its functions within and beyond New Zealand.

18. Content of films—(1) In carrying out its functions, the Commission shall not make financial assistance available to any person in respect of the making, promotion, distribution, or exhibition of a film unless it is satisfied that the film has or is to have a significant New Zealand content.

(2) For the purposes of determining whether or not a film has or is to have a significant New Zealand content, the Commission shall have regard to the following matters:

- (a) The subject of the film:
- (b) The locations at which the film was or is to be made:
- (c) The nationalities and places of residence of—
 - (i) The authors, scriptwriters, composers, producers, directors, actors, technicians, editors, and other persons who took part or are to take part in the making of the film; and
 - (ii) The persons who own or are to own the shares or capital of any company, partnership, or joint venture that is concerned with the making of the film; and
 - (iii) The persons who have or are to have the copyright in the film:
- (d) The sources from which the money that was used or is to be used to make the film was or is to be derived:
- (e) The ownership and whereabouts of the equipment and technical facilities that were or are to be used to make the film:
- (f) Any other matters that in the opinion of the Commission are relevant to the purposes of this Act.

(3) In carrying out its functions, the Commission shall in relation to the content of any film have due regard to the observance of standards that are generally acceptable in the community.

19. General powers of Commission—(1) For the purposes of carrying out its functions, the Commission may from time to time do all or any of the following things:

- (a) Make advances, grants, or awards of money to any person in connection with the making, promotion, distribution, or exhibition of any film:
- (b) Subscribe for, purchase, or otherwise acquire any shares, stocks, or interest, or otherwise participate in any body corporate, firm, or joint venture that is or is to be involved in any specific project or series of projects relating to films:
- (c) Organise, participate in, or act as an agent for any consortium for the purposes of assisting the film industry:
- (d) Give or receive guarantees or indemnities in respect of the making, promotion, distribution, or exhibition of films (subject, in the case of the giving of a guarantee or indemnity by the Commission, to ensuring that sufficient funds will be available to meet the liability of the Commission under any such guarantee or indemnity as that liability arises):
- (e) Participate in the management of enterprises to whose finances it has contributed:
- (f) Acquire any copyright or other rights in respect of any film:
- (g) Engage and pay fees to professional or technical consultants to advise or assist the Commission in carrying out any of its functions:
- (h) Execute, make, draw, accept, endorse, discount, issue, or negotiate cheques, promissory notes, bills of exchange, drafts, and other negotiable or transferable instruments, or buy, sell, or otherwise deal in them, and accept deposits of money at interest or otherwise:
- (i) Purchase, exchange, lease, hire, or otherwise acquire any land, buildings, plant, machinery, equipment, or other real or personal property:
- (j) Sell, exchange, lease, hire out, or otherwise dispose of or make charges for the use of any of its property (including rights in respect of any film):

- (k) Make charges for the provision of any of its services or the use of any of its facilities:
- (1) Exercise any other powers that are reasonably necessary or expedient to enable it to carry out its functions.
- (2) In the exercise of its powers under subsection (1) of this section, the Commission may—
- (a) Make advances with or without security, and at such rates of interest as it determines or free of interest; and
- (b) Guarantee, with or without security and with or without making any charge, advances made by any person to any other person; and
- (c) With the consent of the Minister of Finance, establish endowments or create trusts, on such terms and conditions and for such objects within the purposes of this Act as the Commission thinks fit, and appoint trustees in respect of any such trusts.
- (3) Notwithstanding subsection (1) or subsection (2) of this section, in giving a guarantee or indemnity the Commission shall not undertake any liability that, by itself or in the aggregate with its liability under all other guarantees and indemnities for the time being given by it, exceeds an amount that is for the time being approved by the Minister of Finance.
- (4) Any trustees appointed in respect of a trust established under subsection (1) of this section shall keep the accounts of the trust in such manner as may be directed by the Commission and approved by the Audit Office.

Financial Provisions

20. Funds of Commission—The funds of the Commission shall consist of the following money:

- (a) All money that is received by the Commission out of money appropriated by Parliament for the purposes of the Commission:
- (b) All money that is received by the Commission under the Gaming and Lotteries Act 1977:
- (c) All money that is otherwise lawfully contributed, donated, or bequeathed to the Commission:
- (d) All interest, repayments of capital, profits, and other money that is received by the Commission in respect of investments lawfully made by the Commission:

- (e) All money that is received by the Commission by way of rent or fees or otherwise in respect of any real or personal property that is owned by the Commission or in respect of the exercise of any of the functions or powers of the Commission:
- (f) All money that is received by the Commission from the disposal of any real or personal property of the Commission:
- (g) All accumulations of money belonging to the Commission.

21. Estimates of expenditure—(1) The Commission shall before the 1st day of March in each financial year prepare and submit to the Minister for his approval an estimate of the administrative costs of the Commission for the next financial year.

(2) Before approving an estimate that is submitted to him by the Commission for any financial year, the Minister may require the Commission to amend the estimate.

(3) The Commission shall not expend on administrative costs in any financial year, without the prior approval of the Minister, any amount or amounts exceeding in the aggregate the estimate for that financial year as approved by the Minister.

(4) Notwithstanding any other provision in this section, the Commission may vary its estimated expenditure for administrative costs for any financial year in any manner that does not increase the total amount of the estimated expenditure that has been approved by the Minister for that financial year.

22. Annual grants to Commission—For the purposes of providing funds for the Commission, the Minister may in each financial year pay to the Commission, out of money appropriated by Parliament for the purpose, such sum or sums as he may determine.

23. Gifts—Any local authority within the meaning of the Local Authorities Loans Act 1956, public body, body corporate, trustee or trustees, unincorporated body of persons, or other person may, unless expressly prohibited from doing

so by any enactment or by the terms of any trust or endowment, make to the Commission any gifts of real property, or of money or other personal property; and the Commission may accept any gifts so made.

24. Borrowing powers—The Commission may from time to time, with the consent of the Minister of Finance and subject to such conditions (if any) as he thinks fit to impose, borrow money and for that purpose issue securities and mortgage or charge any of its real or personal property.

25. Bank accounts—(1) The Commission shall open in its own name and maintain a principal bank account.

(2) The Commission may from time to time open in its own name and maintain such other bank accounts as it may determine.

(3) All money that is lawfully received by the Commission shall, as soon as practicable after receipt by a proper officer, be paid into a bank account opened under this section.

(4) No money shall be paid out of a bank account opened under this section except with the authority of and in accordance with any general or special directions of the Commission.

(5) A bank account opened under this section may only be operated on by cheque or other instrument signed by a member or officer of the Commission who is authorised by it to sign cheques drawn on the account, and countersigned by another member or officer of the Commission who is authorised by it to sign such cheques.

26. Overdrafts—(1) Notwithstanding section 24 of this Act, the Commission may from time to time, in anticipation of its receipts from grants, borrow money from a bank by way of overdraft.

(2) Notwithstanding subsection (1) of this section, the Commission shall not—

(a) During its first financial year, borrow money under this section exceeding an amount to be approved by the Minister of Finance; or

(b) In any subsequent financial year, borrow money under this section to such an extent that there is at any time owing by the Commission under this section any sum or sums exceeding in the aggregate 75 percent of the Commission's receipts from grants during the preceding financial year.

(3) As long as the money borrowed from a bank by the Commission under this section does not exceed the limit specified in subsection (2) of this section, the bank shall not be liable in any manner in respect of any failure of the Commission to comply with this section; and nothing in this section shall affect the right of the bank to be repaid, out of the assets of the Commission, any money advanced by the bank not exceeding that limit.

(4) The Commission shall apply its receipts from grants in each financial year towards the repayment of all money for the time being owing under this section, before applying any part of those receipts for any other purpose.

(5) For the purposes of this section, the amount of any cheque that is drawn on a bank account of the Commission but is not presented before the end of a financial year shall be deemed to be money owing on that account at the end of that financial year.

(6) In this section, "receipts from grants" means funds specified in paragraph (a) or paragraph (b) of section 20 of this Act that are received by the Commission.

27. Investment of money—(1) Subject to the terms of any trust or endowment, the Commission may from time to time invest, in any manner in which trustees are for the time being authorised to invest trust funds, any money of the Commission that is available for investment.

(2) Notwithstanding subsection (1) of this section, the Commission shall not invest any money under this section for a period exceeding 12 months, without the consent of the Minister of Finance.

(3) Nothing in this section shall be construed to limit any power of the Commission under section 19 of this Act.

28. Unauthorised expenditure—The Commission may in any financial year expend out of its funds, for purposes not authorised by this Act or any other enactment, any sum or sums not exceeding in the aggregate \$1,000.

29. Commission to be a charity for certain purposes—For the purposes of the Inland Revenue Acts (as defined in section 2 of the Inland Revenue Department Act 1974), and for the purposes of the Gaming and Lotteries Act 1977, the Commission is hereby declared to have been established exclusively for charitable purposes in New Zealand.

30. Accounts—(1) The Commission shall keep full and correct accounts of all money received and expended by it.

(2) The Commission shall, as soon as practicable after the end of each financial year, prepare a balance sheet and such other statements of account as are necessary to show fully the financial position of the Commission and the financial results of its operations during that financial year.

31. Audit of accounts—The accounts of the Commission shall be audited by the Audit Office, which for that purpose shall have the same powers as it has under the Public Finance Act 1977 in respect of public money and stores and in respect of persons dealing with public money and stores.

Miscellaneous Provisions

32. Annual report—The Commission shall, as soon as practicable after the end of each financial year, furnish to the Minister a report of the proceedings and operations of the Commission for that financial year, together with a copy of its audited accounts for that financial year and the report of the Audit Office on those accounts.

33. Tabling of report in Parliament—A copy of the report and of the audited accounts, together with a copy of the report of the Audit Office on those accounts, shall be laid before Parliament as soon as practicable after they have been received by the Minister.

34. Protection of name—(1) No body shall be incorporated or registered, under any enactment or in any other manner,—

(a) Under the name “New Zealand Film Commission”; or
(b) Under any other name that so resembles the name of the Commission as to be likely to mislead any person.

(2) No person other than the Commission shall, by himself or with any other person or persons,—

(a) Trade or carry on business under the name “New Zealand Film Commission”; or
(b) Trade or carry on business under any other name, knowing that the name so resembles the name of the Commission as to be likely to mislead any person.

(3) Any person who contravenes subsection (2) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$200.

(4) In any criminal proceedings in which a person is charged with having contravened subsection (2) of this section, it shall be a defence to the charge if he proves that, either by himself or with any other person or persons, he has carried on business continuously under the name to which the charge relates since any date before the 23rd day of August 1978.

35. Application of other enactments—The enactments specified in the Schedule to this Act are hereby amended in the manner indicated in that Schedule.

36. Transitional provisions—(1) All real and personal property to which this section applies that, immediately before the commencement of this Act, was vested in the Interim Film Commission shall on the commencement of this Act, without conveyance, transfer, or assignment, vest for the purposes of this Act in the Commission for the estate and interest of the Interim Film Commission in that property, subject to all liabilities, charges, obligations, and trusts affecting the property.

(2) This section applies to the following property:

- (a) Property that comprises or is derived from the expenditure of money paid to the Interim Film Commission by the New Zealand Lottery Board referred to in section 85 of the Gaming and Lotteries Act 1977 (whether the money was paid before or after the commencement of that Act):
- (b) Property that comprises or is derived from the expenditure of money paid to the Interim Film Commission by the Minister of Internal Affairs.

(3) In this section, “Interim Film Commission” means the committee comprising William Newton Sheat of Lower Hutt, David Rendel Kingston Gascoigne of Wellington, John Dempsey O’Shea of Wellington, Royce Joseph Moodabe of Auckland, and Mervyn Miles Nelson Corner of Auckland, appointed by the Minister of Internal Affairs on the 17th day of November 1977 as an Interim Film Commission.

SCHEDULE

Section 35

ENACTMENTS AMENDED

Title of Act	Amendment
1959, No. 98—The Public Bodies Contracts Act 1959 (Reprinted 1975, Vol. 3, p. 2251)	By inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item: "The New Zealand Film Commission 1978, No. 61—The New Zealand Film Commission Act 1978."
1968, No. 147—The Local Authorities (Members' Interests) Act 1968 (Reprinted 1974, Vol. 3, p. 2399)	By inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item: "The New Zealand Film Commission 1978, No. 61—The New Zealand Film Commission Act 1978."
1977, No. 110—The Higher Salaries Commission Act 1977	By inserting in Part I of the First Schedule, in its appropriate alphabetical order, the following item: "The New Zealand Film Commission."

This Act is administered in the Department of Internal Affairs.
