



ANALYSIS

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1983, No. 137

An Act to establish the New Zealand Forestry Council, to define its functions and powers, and to make provision for the funding of its activities by means of a levy on forest production
 [16 December 1983]

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 New Zealand Forestry Council Act 1983.

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

“Appointed member” means a member of the Council appointed under section 6 (1) (a) or (b) of this Act:

“Chairman” means the Chairman of the Council appointed under section 6 (3) of this Act:

“Council” means the New Zealand Forestry Council established by this Act:

“Director” means the Director of the Council appointed under section 14 of this Act:

“Exporter” means any person who exports roundwood from New Zealand:

“Financial year” means a period of 12 consecutive months beginning with the 1st day of April:

“Forestry sector” means all matters or activities concerned with or affecting the production of goods from or on indigenous or exotic forest land, whether such land is owned or occupied by private or public interests; and shall also include all matters concerning the wilderness or environmental values of such land, the protection of soil and water quality and quantity on such land, the harvesting and processing of forest products, and the maintenance and enhancement of recreational, aesthetic, and scientific values of forests; and “sectoral” has a corresponding meaning:

“Levy” means the levy payable under this Act:

“Minister” means the Minister of Forests:

“Processor” means any person who treats, saws, cuts, turns, pulps, or dries roundwood after its removal from the place where it was felled, and who is also the first person to either treat or saw or cut or turn or pulp or dry such roundwood:

“Roundwood” means wood in its natural state as felled, or otherwise harvested; and includes all wood recovered from dead or injured trees.

3. Act to bind the Crown—This Act is to bind the Crown.

New Zealand Forestry Council

4. New Zealand Forestry Council—(1) There is hereby established a Council to be called the New Zealand Forestry Council.

(2) The Council shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property, of suing and being sued, and of doing and suffering all such acts and things as bodies corporate may do and suffer.

(3) The common seal of the Council shall be judicially noticed in all Courts and for all purposes.

5. Functions and powers of Council—(1) The general function of the Council shall be to monitor and report to the Government and the forestry sector on trends, prospects, and issues in the forestry sector.

(2) In carrying out its general function the Council may—

(a) Devise, review, report, and make recommendations to bodies and persons concerned with the forestry sector and to the Minister on forestry development programmes, having regard to the interests of the forestry sector:

(b) Foster public understanding and discussion of issues relating to forestry development:

(c) Undertake and enable integrative forestry sector planning:

(d) Monitor and evaluate developments in countries which may in the future compete with the New Zealand forestry sector for markets:

(e) Consult with and foster discussion and co-operation among Government departments and any persons and bodies concerned with forestry:

(f) Collect and store information relating to the forestry sector of New Zealand and other countries:

(g) Publish information on forestry which in the view of the Council merits wide consideration and public debate:

(h) Consider any other matter relating to the general function of the Council that is referred to it by the Minister.

(3) The Council may, for the purposes of carrying out its functions, make grants or advances to any person engaged in any activity with which the Council is concerned and on such terms and conditions as the Council sees fit.

(4) The Council shall have such other functions, powers, and duties as are conferred or imposed on it under this Act or any other enactment.

(5) The Council shall have such other powers as may be reasonably necessary to enable it to perform its functions.

6. Membership of Council—(1) The Council shall consist of the following members:

(a) Five persons to be appointed by the Minister after consultations with roundwood producers, exporters, and users:

(b) Four other persons to be appointed by the Minister:

(c) The Director-General of Forests.

(2) In appointing persons as members of the Council the Minister shall have regard to:

(a) Their personal attributes; and

(b) The need for diversity of knowledge and experience in fields relevant to the functions of the Council to be present among its members; and

(c) The capacity of the Council as a whole to promote a sense of common purpose among interests involved in the forestry sector.

(3) One of the members of the Council shall be appointed by the Minister as Chairman.

7. Terms of office of members—(1) Except as otherwise provided by this Act, every appointed member shall hold office for such terms as the Minister shall specify in his appointment, being, in the case of the Chairman, a term not exceeding 5 years and, in the case of any other member, a term not exceeding 3 years, but any member may from time to time be reappointed.

(2) Any appointed member of the Council may be removed from office at any time by the Minister, for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister, or may at any time resign his office by writing addressed to the Minister.

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

(4) No appointment of a person under this section and no act done by him while acting as a member of the Council shall, in any proceeding, be questioned on the grounds that the occasion for his appointment had not arisen or had ceased.

8. Transitional provisions—At the first meeting of the Council after the commencement of this Act, the Chairman shall conduct a ballot to determine the terms of office of all

appointed members of the Council, other than the Chairman, on the following basis—

- (a) The terms of office of 3 members to expire 1 year from the dates of appointment of such members:
- (b) The terms of office of 3 other members to expire 2 years from the dates of appointment of such members:
- (c) The terms of office of all members other than those in paragraphs (a) and (b) above to expire 3 years from the dates of appointment of such members.

9. Deputy Chairman—(1) At its first meeting in each financial year, the members of the Council shall elect one of their number to be Deputy Chairman.

(2) Any person elected as Deputy Chairman shall hold office as such for the financial year in which he is elected or until he sooner vacates office as a member of the Council.

(3) At the first meeting of the Council after a vacancy occurs in the office of Deputy Chairman, the Council shall elect one of its members to be Deputy Chairman.

(4) The Deputy Chairman shall have and may exercise all the powers, duties, and functions of the Chairman—

- (a) In the case of illness, absence, or other temporary incapacity of the Chairman:
- (b) In the case of any vacancy in the office of the Chairman.

10. Deputies of members—(1) In any case where the Minister is satisfied that any appointed member of the Council is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the Minister may appoint a person to act in the place of that member during his incapacity.

(2) Any person appointed under this section shall, while he acts as such, be deemed to be a member of the Council, but any person appointed in the place of the Chairman shall not be appointed as the Chairman.

(3) No appointment of a person under this section and no act done by him while acting as a member of the Council shall, in any proceeding, be questioned on the grounds that the occasion for his appointment had not arisen or had ceased.

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

(2) Subsequent meetings of the Council shall be held at such times and places as the Council or the Chairman of the Council may from time to time appoint.

(3) The Chairman, or any 5 members, may at any time call a special meeting.

(4) The quorum necessary for the transaction of business at any meeting of the Council shall be 6 members.

(5) At all meetings of the Council the Chairman shall preside. In the absence of the Chairman, the Deputy Chairman shall preside. If the Chairman and the Deputy Chairman are both absent, the members present shall appoint one of their number to be chairman of the meeting.

(6) All questions arising at any meeting of the Council shall be decided by a majority of the valid votes recorded thereon.

(7) At any meeting of the Council the Chairman or other person presiding shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(8) A resolution in writing signed, or assented to by letter, telegram, or telex, by all the members of the Council shall be as valid and effectual as if it had been passed at a meeting of the Council duly called and constituted.

(9) Subject to the provisions of this Act, the Council may regulate its procedure in such manner as it thinks fit.

12. Work programme—(1) The Council shall prepare annually and publish a work programme.

(2) The work programme shall describe the intended activities of the Council for a period of 3 years from its date of publication and shall include, for the purposes of setting a levy, a budget for the following financial year.

13. Council may appoint advisory and technical bodies and employ experts—(1) The Council may from time to time appoint competent persons representing sectoral affiliations as well as experts in particular fields, whether Council members or not, to be a committee or committees to assist the Council in the exercise of its functions. The Council may also employ experts on contract to make such enquiries or to conduct such research or make such reports as may be necessary for the efficient carrying out of its functions as may be required by the Council.

(2) Subject to the provisions of this Act or to any general and special directions of the Council, any such committee may regulate its procedure in such manner as it thinks fit.

(3) The Council shall pay persons appointed by it under this section for services rendered by them fees or commission or both, and may separately reimburse them for expenses

reasonably incurred in rendering services for the Council, subject to section 18 (2) of this Act.

14. Employees of Council—(1) Subject to the provisions of this section, the Council may from time to time appoint directly or by secondment from the private sector or the public service—

(a) A Director; and

(b) Such other officers and employees, including acting or temporary or casual officers and employees, as it thinks necessary for the efficient carrying out of its functions, powers, and duties under this Act or any other Act.

(2) Officers and employees of the Council shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Council from time to time determines in consultation with the State Services Commission, or as the Minister from time to time determines in any case where the Council and the State Services Commission fail to agree.

(3) Any determination under subsection (2) of this section shall take effect on such date (whether the date thereof or any earlier or later date) as may be specified therein. If no date is specified the determination shall take effect on the date thereof.

15. Application of certain Acts to members and staff of Council—(1) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or the Government Superannuation Fund Act 1956 by reason of his being a member of the Council or an officer or employee of the Council, or a person appointed by the Council under section 13 of this Act.

(2) Every member of the Council or of a committee appointed by the Council, and every officer or employee of the Council, and every person appointed under section 13 of this Act shall be deemed for the purposes of sections 105 and 105A of the Crimes Act 1961 to be officials.

16. Superannuation or retiring allowances—(1) For the purpose of providing a superannuation fund or retiring allowance for any of the officers or employees appointed under this Act or for any full-time appointed members, sums by way of subsidy may from time to time be paid into any scheme under the National Provident Fund Act 1950 containing

provision for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this section.

(2) Notwithstanding anything in this Act, any person who immediately before becoming an officer or employee of the Council or a full-time appointed member (whether before or after the commencement of this Act) is a contributor to the Government Superannuation Fund shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as he continues to be an officer or employee of the Council or to hold office as such full-time appointed member of the Council; and that Act shall apply to him in all respects as if his service as such officer or employee or as such member were Government service.

(3) Subject to the Government Superannuation Fund Act 1956, nothing in subsection (2) of this section shall entitle any such person to become a contributor to the Government Superannuation Fund after he has once ceased to be a contributor.

(4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with subsection (2) of this section, to a person who is in the service of the Council, whether as an officer or employee or as a member, and is a contributor to the Government Superannuation Fund, the term "controlling authority", in relation to any such person, means the Council.

17. Members of Council, etc., not personally liable—No member of the Council or employee of the Council, or of any committee appointed by the Council, shall be personally liable for any act performed or omitted in good faith in pursuance or intended pursuance of the provisions of this Act.

18. Fees and travelling allowances—(1) The Council is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There shall be paid to members of the Council and to every member of any committee appointed by the Council, remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951; and, in the case of any such committee, the provisions of that Act shall apply as if that committee were a statutory Board within the meaning of that Act.

19. Contracts—(1) Any contract, which if made between private persons must be by deed, shall if made by the Council be in writing under its seal.

(2) Any contract, which if made between private persons must be in writing signed by the parties to be charged therewith, shall if made by the Council be in writing under its seal or signed by any person acting on its behalf and under its express or implied authority.

(3) Any contract, which if made between private persons may be made orally, may be similarly made by or on behalf of the Council by any person acting under its express or implied authority.

(4) The Council may, by writing under its common seal, empower any person, either generally or in respect of any specified matter, to execute on its behalf, in any place in or beyond New Zealand, instruments under or for the purposes of this Act. An instrument executed by such an attorney on behalf of the Council shall bind the Council, and, if executed as a deed, shall have the same effect as if it were under the common seal.

(5) Notwithstanding anything in the foregoing provisions of this section, no contract made by or on behalf of the Council shall be invalid by reason only that it was not made in a manner provided by this section, if it was made pursuant to a resolution of the Council or to give effect to a resolution of the Council.

Financial Provisions

20. Forestry Council Account—(1) For the purposes of this Act there shall be established at such bank as the Council may appoint an account to be known as the Forestry Council Account.

(2) The Council may also open such imprest or other subsidiary accounts as it may deem necessary or desirable for the exercise of its functions or powers.

(3) Every account under this section shall be operated on only by cheque or other instrument signed by such person or persons as the Council appoints from time to time for that purpose.

(4) There shall be credited to the Forestry Council Account all levies and other money lawfully payable under this Act.

21. Authorisation of expenditure—Every withdrawal or payment of money made by the Council from its funds shall be authorised by a prior resolution of the Council or shall be

submitted to it for authorisation at its next ordinary meeting after the date of payment.

22. Investment of money—Subject to the terms of any trust or endowment, funds held in the Forestry Council Account and available for investment may be invested by and in the name of the Council in the same manner as the Treasury may invest money under section 50 (1) of the Public Finance Act 1977.

23. Borrowing powers of Council—With the prior consent in writing of the Minister of Forests and of the Minister of Finance, the Council may borrow money from any body or person and, for the purpose of securing any money so borrowed, may mortgage, charge, or pledge any right, title, estate, or interest in any of its property.

24. Accounts and audit—(1) The Council shall keep full and correct accounts of all its financial transactions, assets, liabilities, and funds; and its accounts shall be audited by the Audit Office which for that purpose shall have and may exercise all such powers as it has under the Public Finance Act 1977 in respect of public money and stores and persons dealing therewith.

(2) At the end of each financial year, the Council shall prepare an income and expenditure account showing its financial transactions for that year, together with a balance sheet as at the last day of the financial year.

(3) As soon as practicable after the end of its financial year, the Council shall submit its income and expenditure account and balance sheet to the Audit Office for audit.

25. Annual report—(1) The Council shall, within 3 months after the end of each financial year, furnish to the Minister a report of its proceedings and activities during that financial year, together with a copy of the Council's accounts and balance sheet for the year, and the report thereon of the Audit Office.

(2) A copy of the Council's report, the accounts and balance sheet, and the Audit Office's report in each year shall be laid before Parliament as soon as practicable after their receipt by the Minister.

Annual Levy

26. Annual levy—(1) For the purposes of this Act and in accordance with its provisions, the Council may, with the consent of the Minister of Forests and the Minister of Finance,

require an annual levy to be paid to the Council in respect of each financial year by processors and exporters of roundwood (other than the Crown) with respect to every cubic metre of roundwood processed or exported by such persons during the preceding financial year:

Provided that the rate of levy in respect of any financial year shall not exceed 5 cents with respect to each cubic metre of roundwood so processed or exported.

(2) The rate of any levy shall be notified by the Chairman of the Council by notice in the *Gazette* on or before the 31st day of August in any year, or such later date as the Minister may determine, and at least 14 days before it is to come into force.

(3) Any notice under subsection (2) of this section may in like manner be amended or revoked at any time.

27. Director to assess and receive amounts due—(1) As soon as practicable after notification by the Chairman in the *Gazette* of the rate of levy under section 26 of this Act, the Director shall assess the amount of levy payable by every person by whom the levy is to be payable, and shall require payment from every such person accordingly.

(2) Every person from whom payment has been required under subsection (1) of this section shall pay to the Council by the 20th day of November in any year, or such later date as the Minister may determine, the amount so required, and the Director shall, by the last day of that month, notify the Council as to whether payment has been made under this Act.

(3) The Council may impose a penalty, not exceeding 10 percent of the levy payable under subsection (1) of this section, on any amount not paid within one month of payment being required pursuant to that subsection.

(4) In any case where an amount due under subsection (2) or subsection (3) of this section has not been paid by any person by the due date, the Director shall inform the Council of the name of that person and the amount payable, and the amount shall be recoverable in any court of competent jurisdiction as a debt due to the Council.

28. Contribution by the Crown—There shall be payable in every financial year to the Council by the Crown, out of money appropriated by Parliament for the purpose, a contribution equal to the total annual levy payable under section 26 of this Act for that year.

29. Expenditure of levies—The money received by the Council from levies imposed under this Act, or from any other source, may be spent by the Council for all or any of the following purposes:

- (a) The carrying out of any of the functions, powers and duties of the Council as prescribed in section 5 of this Act:
- (b) The acquisition of land and premises (whether by lease, purchase, or otherwise) for the purposes of the Council:
- (c) The erection of premises for the purposes of the Council, and the maintenance, alteration, improvement, or decoration of the Council's premises:
- (d) The payment of fees, salaries, and allowances, and travelling allowances and expenses to members of the Council, and of superannuation on behalf of any such full-time member:
- (e) Any payments authorised pursuant to section 13 (3) of this Act:
- (f) Any payment of salaries and wages and travelling allowances and expenses to the officers and employees of the Council and the payment on behalf of such officers and employees of superannuation:
- (g) The payment of expenses incurred in connection with—
 - (i) The day-to-day administration of the Council:
 - (ii) Meetings of persons conducting the affairs of the Council, or meetings of any committee appointed by the Council:
 - (iii) Any general conference of persons involved in the forestry sector:
 - (iv) The establishment of the Council:
- (h) Such other purposes in furtherance of the purposes of the Council as the Council thinks fit and may be approved by the Minister.

Miscellaneous Provisions

30. Collection of information—(1) The Director may from time to time, for the purposes of determining the rate of the levy, require any person in a position to provide it, to produce any statistics relating to the forestry sector and may require those statistics to be provided to him by a stated date, and to be verified by statutory declaration or such other means as the Director thinks fit.

(2) Every person who may be lawfully required to provide information pursuant to this Act shall, for the purpose of providing that information, to the best of his knowledge or belief, answer all questions asked of him by the Director, or by any officer or employee of the Council authorised in writing by the Director in the manner required pursuant to subsection (1) of this section.

(3) Subject to section 27 (4) of this Act, all information received by the Director or any officer or employee of the Council pursuant to subsection (1) of this section shall be confidential to the Director and the officers and employees of the Council, but shall be disclosed to the Council if the Council so requests, and, except where the Council so authorises, may be published only when this can be done in such a manner as will prevent the identification of any person who has supplied the information.

(4) Except in respect of a prosecution under this Act or an action for the recovery of any amount due under this Act, no information supplied to the Director or any officer or employee of the Council pursuant to subsection (1) of this section and no copy of any information so supplied shall be disclosed or used as evidence in any proceedings whatever, and no member, officer, or employee of the Council shall be compellable in any proceedings whatever to give oral testimony regarding information or to produce any return, document, or record with respect to any information obtained in the course of administering that subsection.

(5) The Director shall, subject to this Act, take such measures as in the Council's opinion may be appropriate to ensure confidentiality of information and statistics obtained under this section.

(6) The Director-General of Forests may from time to time supply the Director with such information as is available to him for the purposes of assisting the Council—

- (a) To decide the basis, incidence, and rate of the annual levy; and
- (b) To determine the persons by whom the levy is payable.

31. Offences—(1) Every person liable for levy payment under this Act commits an offence and shall be liable on summary conviction to a fine not exceeding \$1,000 who—

- (a) Without reasonable cause, fails to make a statistical or other return required by this Act before the period during which it is to be made expires; or

(b) Makes any statistical or other return which to his knowledge is false in any material particular or is not made in the required manner; or

(c) Fraudulently avoids or attempts to avoid paying money due by him pursuant to this Act.

(2) If a body corporate commits an offence against subsection (1) of this section, every director, manager, secretary, or other similar officer of the body corporate, and every person purporting to act in any such capacity, shall also be guilty of that offence if the act or omission constituting the offence occurred with his knowledge and consent.

32. Indemnity insurance—The Council may from time to time enter into contracts of insurance, indemnifying itself and its employees for loss or damages arising from any act or omission of the Council or any of its employees while acting within the scope of their employment.

33. Exemption from taxation—The Council shall be exempt from land tax and income tax.

34. Consequential amendments—(1) The Ombudsmen Act 1975 is hereby amended by inserting in Part II of the First Schedule, after the item relating to the New Zealand Defence Council, the item “New Zealand Forestry Council”.

(2) The Forests Act 1949 is hereby amended by omitting from section 72 (1) (u) the words “and requiring returns to be made from time to time by producers and distributors of timber and other forest produce in respect of timber and other forest produce acquired, sawn, cut, hewn, converted, held, and disposed of by them”.

(3) Section 72 (1) of the Forests Act 1949 is hereby further amended by inserting, after paragraph (v), the following paragraph:

“(va) Requiring returns to be made from time to time by growers, producers, distributors, processors, exporters, and consumers of timber and other forest produce grown, acquired, sawn, cut, hewn, processed, converted, held, produced, exported, or disposed of by them; and, subject to section 30 (5) of the New Zealand Forestry Council Act 1983, regulating the disclosure of information contained in such returns:”.