

PHOSPHATE COMMISSION OF NEW ZEALAND BILL

EXPLANATORY NOTE

THIS Bill establishes the Phosphate Commission of New Zealand to manage stocks of phosphate in the interest of the fertiliser industry of New Zealand.

Clause 1 relates to the Short Title.

Clause 2 is the interpretation provision.

Clause 3 establishes the Commission, which is to consist of 3 members appointed by the Minister by notice in the *Gazette*. One of the members is to be appointed as the Chairman and one on the nomination of the New Zealand Phosphate Company Limited.

Clause 4 provides that the Commissioners are to be appointed for a term not exceeding 3 years.

Clause 5 provides for the Minister to appoint a deputy for any Commissioner who is incapacitated.

Clause 6 provides for the filling of extraordinary vacancies.

Clause 7 regulates meetings of the Commission.

Clause 8 permits the Commission to delegate any matter to any Commissioner or to any other person.

Clause 9 provides that the Commission is to comply with the policy of the Government, as communicated in writing by the Minister from time to time.

Clause 10 sets out the functions of the Commission.

Clause 11 sets out the powers of the Commission.

Clause 12 provides for the investment of funds by the Commission.

Clause 13 provides for the Commission's banking.

Clause 14 deals with the borrowing powers of the Commission.

Clause 15 provides for annual accounts, audit, and the annual report.

Clause 16 permits unauthorised expenditure not exceeding \$5,000 a year.

Clause 17 provides for the remuneration of the Commissioners.

Clause 18 vests the present phosphate stockpile in the Commission and provides that the value thereof is to be the original capital of the Commission.

Clause 19 exempts the Commission from income tax and land tax.

Clause 20 is a consequential amendment to the list of Acts administered by the Ministry of Agriculture and Fisheries.

Right Hon. Mr MacIntyre

PHOSPHATE COMMISSION OF NEW ZEALAND

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A BILL INTITULED

An Act to establish a Phosphate Commission of New Zealand to manage stocks of phosphate in the interest of the fertiliser industry of New Zealand

5 **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 Phosphate Commission of New Zealand Act 1981.

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

“Commission” means the Phosphate Commission of New Zealand established under section 3 of this Act:

“Company” means the New Zealand Phosphate Company Limited incorporated under the Companies Act 1955:

“Minister” means the Minister of Agriculture.

3. Establishment of the Phosphate Commission of New Zealand—(1) There is hereby established a Commission to be called the Phosphate Commission of New Zealand. 5

(2) The Commission shall consist of 3 members to be appointed by the Minister by notice in the *Gazette* and of whom— 10

(a) One shall be appointed as Chairman; and

(b) One shall be appointed on the nomination of the Company.

(3) The Commission 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, and employing staff, and of suing and being sued, and of doing and suffering all such acts and things as bodies corporate may do and suffer. 15

(4) No person shall be deemed to be employed in the Government service for the purposes of the Government Superannuation Fund Act 1956, or in the State services for the purposes of the State Services Act 1962, or of the State Services Conditions of Employment Act 1977, by reason only of his being a Commissioner or being employed by the Commission. 25

4. Term of office—(1) Subject to this section, every Commissioner shall be appointed for a term not exceeding 3 years.

(2) Unless he sooner vacates his office under section 6 of this Act, every Commissioner shall continue in office until his successor comes into office. 30

5. Deputies of Commissioners—(1) If the Minister is satisfied that a Commissioner is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, he may appoint a suitable person to be deputy of that Commissioner during his incapacity: 35

Provided that the deputy of the Commissioner appointed under section 3 (2) (b) of this Act shall be appointed on the nomination of the Company.

(2) Any deputy who is appointed under this section shall, while he acts as such, be deemed to be a Commissioner and to have the same status as the Commissioner of whom he is deputy.

5 (3) No appointment of a deputy and no acts done by him as such, and no acts done by the Commission while any deputy is acting as such, shall in any proceedings be questioned on the ground that the occasion for his appointment has not arisen or had ceased.

10 **6. Extraordinary vacancies**—(1) Any Commissioner may at any time be removed from office by the Minister for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister, and may at any time resign his office by writing addressed to the Minister; and
15 if any Commissioner dies or is removed from office, or resigns, his office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.

(2) Where an extraordinary vacancy has arisen the
20 Minister may appoint some suitable person to be a Commissioner for the residue of the term for which the vacating Commissioner was appointed.

(3) The appointment of a person for the residue of the
25 term for which a vacating Commissioner was appointed shall be made in the same manner as the appointment of the vacating Commissioner.

7. Meetings of Commissioners—(1) The first meeting of the Commission shall be held on a day to be appointed by the Minister.

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

(3) No meeting of the Commission shall proceed unless the 3 Commissioners are present.

35 (4) Every question before any meeting of the Commission shall be decided by a majority of votes.

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

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

8. Delegation of powers of Commission—(1) The Commission may, in respect of any particular matter or class of matter, or in respect of any particular area within or outside New Zealand, by writing under its seal, delegate to any Commissioner or to any other person whomsoever, any of its powers under this Act (including the power to execute deeds on behalf of the Commission, but not including this power of delegation), so that the delegated powers may be exercised by him in respect of the matter or class of matter or area specified in the instrument of delegation.

(2) Subject to any general or special directions given or conditions imposed by the Commission, the person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this Act and not by delegation.

(3) Every person purporting to act pursuant to any 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.

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

9. Commission to comply with policy of Government—In the exercise of its functions and powers under this Act, the Commission shall comply with the policy of the Government in relation to those functions and powers, as communicated from time to time in writing by the Minister.

10. Functions of Commission—The functions of the Commission shall be—

- (a) To acquire and distribute, through agents or otherwise, such supplies of phosphate as the Commission may from time to time determine:
- (b) To manage and hold such stock of phosphate as the Commission may from time to time determine in consultation with the Government and the Company:
- (c) To perform such functions and duties as are necessary in relation to the supply of phosphate in New Zealand:
- (d) To report to the Minister from time to time in relation to all or any of the functions specified in paragraphs (a) to (c) of this section.

11. Powers of Commission—(1) In the exercise of its functions, the Commission may do the following things:

- (a) Purchase phosphate by agents or otherwise:
- 5 (b) Sell or offer for sale phosphate through agents or otherwise:
- (c) Negotiate and enter into agreements, contracts, and arrangements within or outside New Zealand:
- 10 (d) Purchase, take on lease, or hire, or otherwise acquire such land, buildings, plant, machinery and equipment as are, in the opinion of the Commission, necessary for the performance of any of its functions, and erect, improve, alter, extend, equip, furnish, repair, and maintain buildings on any such land:
- 15 (e) Sell, exchange, transfer, lease, hire, or otherwise dispose of its real and personal property:
- (f) Require agents to provide periodic returns as to actual expenditure for purchase, shipping, and distribution transactions, and half-yearly audit reports certifying the returns:
- 20 (g) Require manufacturers to give audit certificates or make statutory declarations as to the amount of the stocks of phosphate in their possession:
- 25 (h) Receive payment from manufacturers for stocks of phosphate used:
- (i) Advance money to, and guarantee advances to, manufacturers and the Company:
- 30 (j) Exercise such other powers and authorities as are conferred on it by this Act or any other enactment, or as are necessary for, or incidental to, the exercise of its functions under this Act or any other enactment.
- (2) Nothing in this section or in section 10 of this Act shall be construed as affecting or limiting any provision of the Commerce Act 1975, or the exercise of any power under that
- 35 Act.

12. Investment of funds of Commission—(1) If at any time the Commission has surplus funds, the Commission may invest those funds in any manner authorised under the Trustee Act 1956 or any other Act for the investment of trust funds, or in

40 such other securities or in such manner as may for the time being be authorised by the Minister of Finance.

(2) In the exercise of its power to invest funds the Commission shall have regard to the need to maintain its capital funds and to provide for such reserves as it thinks desirable.

13. Bank accounts—(1) The Commission may from time to time open such bank accounts (including imprest and subsidiary accounts) as it considers necessary.

(2) Every account opened under subsection (1) of this section shall be operated upon by cheque or other instrument signed by such person or persons as may from time to time be authorised in that behalf by the Commission. 5

14. Commission may borrow money—The Commission may, with the consent of the Minister of Finance, borrow money and mortgage or charge any of its real or personal property. 10

15. Financial statements and annual report—(1) The Commission shall, as soon as practicable after the 30th day of June in every year, prepare the financial statements of the Commission for the financial year ending with that date, which shall consist of statements of financial position, profit and loss, changes in financial position, and such other statements as may be necessary to show fully the financial position of the Commission and the financial results of its operations during that financial year. 15 20

(2) The Commission shall be audited by the Audit Office, which for that purpose shall have all such powers as it has under the Public Finance Act 1977 in respect of public money and stores and persons dealing therewith.

(3) As soon as practicable after the 30th day of June in every year, the Commission shall furnish to the Minister a report of the Commission's operations for the financial year ending on that date, together with a copy of the Commission's financial statements for that year and the report thereon of the Audit Office. 25 30

(4) A copy of the report, the financial statements, and the Audit Office's report in each year shall be laid before Parliament as soon as practicable after their receipt by the Minister.

16. Unauthorised expenditure—In any financial year the Commission, for purposes not authorised by this Act or any other Act, may expend any sum or sums not amounting in the whole to more than \$5,000. 35

17. Remuneration and expenses of Commissioners—

(1) There shall be paid by the Commission to the Commissioners such remuneration by way of salaries, fees, and allowances as the Minister of Finance may from time to time
5 approve, either generally or in any particular case.

(2) The Commissioners shall be paid by the Commission travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951.

18. Vesting of phosphate stockpile in Commission—(1) The
10 phosphate stockpile held by the Crown immediately before the commencement of this Act shall, on the commencement of this Act, vest in the Commission.

(2) The value of such stockpile, as determined by the
15 Minister of Agriculture and the Minister of Finance jointly, shall form the original capital of the Commission.

19. Exemption from taxation—The Commission shall be exempt from income tax and land tax.

20. Consequential amendment—The Ministry of Agriculture and Fisheries Act 1953 is hereby consequentially
20 amended by inserting in the Schedule, in its appropriate alphabetical order, the following item:

“The Phosphate Commission of New Zealand Act 1981.”