

BUSH WORKERS AMENDMENT BILL

EXPLANATORY NOTE

This Bill amends the Bush Workers Act 1945.

Clause 1 relates to the Short Title.

Clause 2, subclause (1) substitutes a new definition of the term "bush undertaking".

The new definition is more extensive and now includes felling trees by any means for land clearance, and thinning, pruning, and topping operations in connection with silviculture, and the transportation of fitches, sawn timber, or waste products otherwise than on a public road or street.

The matters included in the existing definition, i.e. felling and logging operations or any operations incidental thereto, including the construction or maintenance of private roads, tramways, or bridges, the shifting of any plant, and the transportation of logs otherwise than on a public road or street, are also included.

Subclause (2) substitutes a new definition of the term "bush worker" to make it clear that persons working on their own account as a contractor are included.

Subclause (3) amends the definition of the term "employer" to include persons having the control or superintendence of a bush undertaking.

ADMINISTRATION

Inspectors

Clause 3 amends section 5 of the principal Act, relating to the powers of Inspectors, to make it clear that the powers are exercisable in respect of persons working on their own account as well as in respect of employees.

Records in Bush Undertakings

Clause 4 substitutes a new section 7 of the principal Act relating to wages and time books.

Subclause (3) which empowers an Inspector to require an employer to verify entries in any wages and time book is new.

Other changes are minor.

The new section will now be in line with the wording used in section 15 of the Factories Act 1946.

Clause 5 inserts a new section 8A in the principal Act.

The new section provides that every person who is regularly engaged in the business of selling or otherwise disposing of logs or timber and who lets a contract for the felling of trees by any means or for logging operations must, within seven days, notify an Inspector or the nearest office of the Department of Labour of the name and address of the person to whom the contract has been let.

SAFETY OF BUSH WORKERS

Clause 6 adds a new subsection (3) to section 9 of the principal Act (relating to the duties of employers in relation to plant) to include persons working on their own account as a contractor.

Clause 7 inserts a new section 11A in the principal Act.

The new section provides that no person shall carry out or cause or permit to be carried out any practice or method of work in connection with a bush undertaking which is or may be dangerous to the persons working in it or to any other person.

Clause 8 amends section 12 of the principal Act relating to the giving of directions by Inspectors to ensure safety.

The amendment will ensure that persons working on their own account may be given such directions.

In addition, Inspectors are given a new power to direct that protective clothing or equipment is to be provided and used.

Clause 9 amends section 13 of the principal Act which requires bush workers to report defects discovered in plant.

The amendment makes it clear that persons working on their own account are covered by the section.

MISCELLANEOUS PROVISIONS

Clause 10 inserts new sections 15A, 15B, 15C, and 15D in the principal Act. They are based on similar provisions in the Machinery Act 1950.

The new section 15A makes it an offence to—

- (a) Interfere with or misuse any safety appliance; or
- (b) Fail to use any safety appliance; or
- (c) Use or operate any plant in a dangerous manner.

The new section 15B provides that where any requirement, obligation, rule, or provision is required to be complied with or observed under the principal Act, every employer shall cause it to be complied with or observed.

The effect of this is to impose strict liability on employers, subject to the new section 15C, to see that the provisions of the Act are complied with.

The new section 15C provides that, where an employer is charged with an offence under the principal Act, he may have any person whom he alleges to be the actual offender charged at the same time.

If the Magistrate finds that the offence was in fact committed by the other person without the knowledge, consent, or connivance of the employer, and that the employer had done all that could reasonably be expected of him to prevent the offence, the employer shall not be guilty of the offence and the other person shall be convicted of it.

The new section 15D provides that if an Inspector has given any direction, authorisation, or consent, the same or any other Inspector may take further steps thereon, or revoke or vary the direction, authorisation, or consent.

Clause 11 increases the general penalty for offences against the principal Act from a maximum fine of £50 (\$100) to one of \$200.

A minor drafting amendment is also made.

Clause 12 provides that the principal Act shall bind the Crown, except in respect of bush undertakings in which members of the armed forces are engaged in the course of their duties.

Hon. Mr Shand

BUSH WORKERS AMENDMENT

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A BILL INTITULED

An Act to amend the Bush Workers Act 1945

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 Bush Workers Amendment Act 1967, and shall be read together with and deemed part of the Bush Workers Act 1945* (hereinafter referred to as the principal Act).

10 2. Interpretation—(1) Section 2 of the principal Act is hereby amended by repealing the definition of the term “bush undertaking”, and substituting the following definition:

*1957 Reprint, Vol. 1, p. 721

“‘Bush undertaking’ means any tree-felling or logging undertaking, conducted for commercial purposes, in which any person is engaged in felling trees by any means or logging operations; and, whether or not conducted for commercial purposes, includes— 5

“(a) Felling trees by any means for the purpose of land clearance:

“(b) Thinning, pruning, and topping operations in connection with silviculture:

“(c) Transportation of logs, fitches, sawn timber, 10 or waste products otherwise than on a public road or street or a Government railway:

“(d) Construction and maintenance of private roads, tramways, or bridges, and the shifting of any plant, for the purpose of any of the foregoing operations:” 15

(2) Section 2 of the principal Act is hereby further amended by repealing the definition of the term “bush worker”, and substituting the following definition:

“‘Bush worker’ means any person engaged, whether 20 on his own account as a contractor, or as an employee, in a bush undertaking:”.

(3) Section 2 of the principal Act is hereby further amended by adding to the definition of the term “employer” the words “; and includes every person having the control or super- 25 intendence of any bush undertaking”.

ADMINISTRATION

Inspectors

3. Powers of Inspectors—Section 5 of the principal Act is hereby amended by omitting from paragraphs (a), (c), 30 and (d) of subsection (1) the word “employed” in every place where it occurs, and substituting in each case the word “working”.

Records in Bush Undertakings

4. Wages and time book—The principal Act is hereby 35 further amended by repealing section 7, and substituting the following section:

“7. (1) Subject to subsection (2) of this section, every employer shall at all times keep in the prescribed form a record in English (called the wages and time book) showing, 40 in the case of each employee,—

“(a) The name of the employee;

“(b) His age, if under twenty-one years of age;

- “(c) The kind of work on which he is usually employed;
“(d) The award or industrial agreement (if any) under which he is employed;
“(e) The hours of his employment during each day, and the days of his employment during each week;
5 “(f) The wages paid to him on each pay day, and the date of payment; and
“(g) Such other particulars as are prescribed.
“(2) An Inspector may in any particular case authorise
10 an employer to keep the wages and time book in a form approved by the Inspector instead of in the prescribed form.
“(3) The wages and time book in use for the time being, and every such book used at any time within the two preceding years, shall at all times be open to inspection by an
15 Inspector.
“(4) An Inspector may at any time during ordinary working hours require the employer to verify the entries in any wages and time book by statutory declaration, or in such manner and form as may be prescribed.
20 “(5) Every employer who fails to comply with any of the provisions of this section commits an offence against this Act.
“(6) This section shall not apply in respect of any person who is normally employed as an agricultural worker and
25 only occasionally employed as a bush worker if his employer is required to keep a wages and holiday book in respect of that person under section 27 of the Agricultural Workers Act 1962.”

5. Notification of contracts for bush undertakings—The
30 principal Act is hereby further amended by inserting, after section 8, the following section:

“8A. Every person who is regularly engaged in the business of selling or otherwise disposing of logs or timber and who lets a contract for the felling of trees by any means or for logging
35 operations shall, within seven days, notify an Inspector or the nearest office of the Department of Labour of the name and address of the person to whom the contract has been let.”

SAFETY OF BUSH WORKERS

6. Duties of employer in relation to plant—Section 9 of
40 the principal Act is hereby amended by adding the following subsection:

“(3) For the purposes of this section and of section 10 of this Act the term ‘employer’ includes any person engaged on his own account as a contractor in a bush undertaking.”

7. Dangerous methods of work, etc., prohibited—The principal Act is hereby further amended by inserting, after section 11, the following section:

“11A. (1) No person shall carry out or cause or permit to be carried out any practice or method of work in connection with a bush undertaking which is or may be dangerous to the persons working in it or to any other person. 5

“(2) Every person who acts in contravention of the provisions of this section commits an offence against this Act.”

8. Inspector may give directions to ensure safety in certain cases—Section 12 of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraphs: 10

“(b) That any bush undertaking is being carried on in such a manner as to be dangerous to the persons working in it or to any other persons; or 15

“(c) That the provision and use of protective clothing or equipment is necessary to prevent accidents—”.

9. Bush workers to report defects discovered in plant—Section 13 of the principal Act is hereby amended by omitting from subsection (1) the word “employed”, and substituting the word “working”. 20

MISCELLANEOUS PROVISIONS

10. New sections inserted—The principal Act is hereby further amended by inserting, before section 16, and under the heading “Miscellaneous”, the following sections: 25

“15A. **Offences by bush workers**—Every person commits an offence against this Act who, without reasonable cause,—

“(a) Interferes with or misuses any means, appliance, or other thing that is provided in accordance with this Act for securing safety; or 30

“(b) Fails to use any means, appliance, or other thing for securing safety that is provided in accordance with this Act; or

“(c) Uses or operates any plant in a manner likely to endanger himself or others. 35

“15B. **Offences by employers**—In every case where under this Act any requirement, obligation, rule, or provision is imposed or enacted or required to be observed, every employer shall cause it to be duly and faithfully complied with or observed, and if it is not duly and faithfully complied with or observed the employer commits an offence against this Act. 40

“15c. Employer may have actual offender charged—

(1) Where an employer is charged with an offence under this Act he shall be entitled, on information duly laid by him, to have any other person whom he alleges to be the actual offender brought before the Magistrate on the same charge; and to enable both charges to be heard together the charges against the employer may be adjourned for such time as the Magistrate thinks reasonable.

“(2) In any such case, if the charges are heard together and the offence is proved but the Magistrate finds that—

“(a) The offence was in fact committed by that other person without the knowledge, consent, or connivance of the employer; and

“(b) That the employer had done all that could reasonably be expected of him to prevent the offence,—that other person shall be convicted of the offence, and the employer shall not be guilty of it.

“(3) If, before the commencement of any proceedings against the employer in respect of any offence under this Act, the Inspector is satisfied that if any other person were charged with the offence under the foregoing provisions of this section that other person would be convicted of it, the Inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the employer. In any such case the provisions of subsection (2) of this section shall apply with the necessary modifications, notwithstanding that no proceedings have been commenced against the employer.

“15d. Matters may be completed by different Inspectors—

Notwithstanding anything to the contrary in this Act, if an Inspector has given any direction, authorisation, or consent, whether on or subject to any conditions or not, the same or any other Inspector may take further steps thereon, or revoke or from time to time vary the direction, authorisation, or consent, or any condition on or subject to which it has been given.”

11. General penalty for offences—The principal Act is hereby further amended by repealing section 16, and substituting the following section:

“16. Every person who commits an offence against this Act for which no specific penalty is provided elsewhere than in this section shall be liable to a fine not exceeding two hundred dollars and, if the offence is a continuing one, to a further fine not exceeding ten dollars for every day or part of a day during which the offence has continued.”

12. Act to bind the Crown—The principal Act is hereby further amended by adding the following section:

“20. This Act shall bind the Crown:

“Provided that nothing in this Act shall bind the Crown or any member of the New Zealand armed forces in respect of any bush undertaking in which those members are engaged in the course of their duties.” 5