

CINEMATOGRAPH FILMS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Cinematograph Films Act 1928 so as to provide for the constitution of a Licensing Authority which will be responsible for the issue of renters' and exhibitors' licences, and to provide also for a Licensing Appeal Authority which may hear appeals against decisions of the Licensing Authority.

Clause 1 relates to the Short Title and commencement of the Bill. It is to come into force on 1 April 1961.

Clause 2 contains provisions governing interpretation.

Cinematograph Films Licensing Authority

Clause 3 constitutes the Cinematograph Films Licensing Authority. It is to consist of—

- (a) One member, being an officer of the Department of Internal Affairs, who shall be appointed as the Chairman of the Licensing Authority and shall hold office at the pleasure of the Governor-General;
- (b) One member to be appointed for his special knowledge of the Film Industry;
- (c) One member to be appointed for his special knowledge of the Film Industry, being a person who has no financial interest in the exhibition or renting of cinematograph films.

Members are to be appointed by the Governor-General; and, except in the case of the Chairman, will normally hold office for three years.

Clause 4 declares that the quorum for the Licensing Authority shall be two members, including the Chairman or his deputy. The clause contains normal provisions governing meetings of the Licensing Authority.

Clause 5 enables the Licensing Authority to delegate certain of its powers.

Clause 6 requires members of the Licensing Authority to preserve secrecy in connection with their duties.

Clause 7 provides for the appointment of deputies of members of the Licensing Authority.

Clauses 8 and 9 provide for the appointment of a Secretary and officers, and for the payment to members of fees and travelling allowances.

Cinematograph Films Licensing Appeal Authority

Clause 10 provides that the Governor-General may appoint a suitable person to be Cinematograph Films Licensing Appeal Authority. The person to be so appointed must be a barrister or solicitor of not less than seven years' practice. Appointment is to be for a term of four years, and a deputy may be appointed.

Clause 11 declares that the Licensing Appeal Authority shall sit as a judicial authority for the determination of appeals from any decision of the Licensing Authority.

Clause 12 permits the Licensing Appeal Authority to receive any evidence which would assist it to deal effectually with matters before it, whether or not the evidence would be otherwise admissible in a Court of Law.

Clause 13 restricts appeals against decisions of the Licensing Appeal Authority.

Clause 14 governs sittings of the Licensing Appeal Authority.

Clause 15 declares that there shall be a right of appeal within 28 days after the date of the decision appealed against from the whole or any part of any decision of the Licensing Authority in respect of any licence or in respect of any application made to the Licensing Authority. The persons entitled to appeal are specified.

Clauses 16 and 17 govern the procedure on appeals and the hearing and determination of appeals.

Clause 18 provides that the Licensing Appeal Authority may, instead of determining any appeal, direct the Licensing Authority to reconsider the matter.

Clause 19 provides for the notification of the decision on an appeal.

Renters' and Exhibitors' Licences

Clauses 20 to 22 amend the principal Act so as to provide that applications for renters' and exhibitors' licences must in future be made to the Licensing Authority.

Clause 23 saves existing licences.

Hon. Mr Anderton

CINEMATOGRAPH FILMS AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Cinematograph Films Act 1928

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 Cinematograph Films Amendment Act 1960, and shall be read together with and deemed part of the Cinematograph Films Act 1928 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the first day of April, nineteen hundred and sixty-one.

2. Interpretation—Section 2 of the principal Act is hereby amended by inserting in their appropriate alphabetical order the following definitions:

“Licensing Authority” means the Cinematograph Films Licensing Authority established under the Cinematograph Films Amendment Act 1960: 5

“Licensing Appeal Authority” means the Cinematograph Films Licensing Appeal Authority established under the Cinematograph Films Amendment Act 1960:

Cinematograph Films Licensing Authority 10

3. Constitution of Licensing Authority—(1) There is hereby established an authority to be called the Cinematograph Films Licensing Authority, which shall have such functions as are conferred on it by this Act and by regulations.

(2) The Licensing Authority shall consist of: 15

(a) One member, being an officer of the Department of Internal Affairs, who shall be appointed as the Chairman of the Licensing Authority and shall hold office at the pleasure of the Governor-General:

(b) One member to be appointed for his special knowledge of the Film Industry: 20

(c) One member to be appointed for his special knowledge of the Film Industry, being a person who has no financial interest in the exhibition or renting of cinematograph films. 25

(3) Members of the Licensing Authority shall be appointed by the Governor-General on the recommendation of the Minister.

(4) Except as provided by subsection (5) of this section, every member of the Licensing Authority appointed under paragraph (b) or paragraph (c) of subsection (2) of this section shall hold office for a term of three years, but may from time to time be re-appointed or may be at any time removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Minister. 35

(5) If any member of the Licensing Authority to whom subsection (4) of this section refers dies, is removed from office, or resigns, the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made. Every person so appointed shall be appointed for the residue of the term for which his predecessor was appointed. 40

(6) Unless he sooner vacates his office as provided in subsection (5) of this section, every member of the Licensing Authority to whom subsection (4) of this section refers shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

(7) No member of the Licensing Authority shall be personally liable for any act done or omitted to be done by the Licensing Authority or by any member thereof in good faith in pursuance of the powers and authority of the Licensing Authority.

(8) For the purpose of any hearing, inquiry, or investigation to be held or made by it under this Act the Licensing Authority shall be deemed to be a Commission under the Commissions of Inquiry Act 1908; and, subject to the provisions of the principal Act and this Act, the provisions of the Commissions of Inquiry Act 1908 shall apply accordingly.

4. Meetings of Licensing Authority—(1) At all meetings of the Licensing Authority the quorum necessary for the transaction of business shall be two members, including the Chairman or his deputy.

(2) The Chairman or his deputy shall preside at every sitting of the Licensing Authority.

(3) If at any sitting of the Licensing Authority two members only are present, the Chairman or his deputy shall have a casting vote. In every other case a decision of the majority of the members present shall be the decision of the Licensing Authority.

(4) Every sitting of the Licensing Authority shall be held in private.

(5) Except as otherwise provided in this section, the Licensing Authority shall determine its own procedure.

5. Delegation of powers of Licensing Authority—The Licensing Authority may, for any particular purpose, delegate to any of its members or to any person or persons any of the powers of inquiry or investigation conferred upon it by this Act, and the person or persons to whom any such delegation is made shall possess for the purpose all the powers of the Licensing Authority with respect to the inquiry or investigation.

6. Preservation of secrecy—(1) Every member of the Licensing Authority and every person engaged or employed in connection with the work of the Licensing Authority shall—

- (a) Maintain and aid in maintaining the secrecy of all matters relating to the principal Act and this Act which come to his knowledge and shall not communicate any such matters to any person, except for the purpose of carrying into effect the principal Act and this Act and any other enactment relating to cinematograph films; and
- (b) Before he begins to perform any official duty under the principal Act or this Act, take and subscribe such oath or affirmation of fidelity and secrecy as is prescribed.

(2) Every person who wilfully acts in contravention of the true intent of that oath or affirmation commits an offence against this Act, and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds.

7. Deputies of members—(1) In any case in which the Minister is satisfied that the Chairman or any other member of the Licensing Authority is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the Minister may appoint a deputy to act for the Chairman or for that other member during his incapacity.

(2) Any deputy appointed under this section shall, while he acts as such, be deemed to be a member of the licensing Authority, and any deputy acting for the Chairman shall have all the powers of the Chairman.

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

8. Appointment of Secretary and officers—There may from time to time be appointed under the provisions of the Public Service Act 1912 a Secretary to the Licensing Authority and such other officers as may be deemed necessary for the purposes of the principal Act and this Act.

9. Fees and travelling allowances—(1) There may be paid to the members of the Licensing Authority remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

(2) The Licensing Authority is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

10 *Cinematograph Films Licensing Appeal Authority*

10. Cinematograph Films Licensing Appeal Authority—

(1) The Governor-General may from time to time appoint a suitable person to be a Cinematograph Films Licensing Appeal Authority.

15 (2) The person appointed to be the Licensing Appeal Authority shall be a barrister or solicitor of the Supreme Court of not less than seven years' practice whether or not he holds or has held any judicial office.

20 (3) Any person appointed under this section to be the Licensing Appeal Authority may hold that office concurrently with any other office held by him.

(4) The person appointed to be the Licensing Appeal Authority shall hold office for a term of four years, but may from time to time be reappointed, or may be at any time removed from office by the Governor-General in Council for disability, insolvency, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Prime Minister.

30 (5) Where the person who is the Licensing Appeal Authority becomes from any cause incapable of acting or where that person deems it not proper or desirable that he should adjudicate at any specified appeal, the Governor-General in Council may appoint a suitable person to be the Deputy Cinematograph Films Licensing Appeal Authority. The person so appointed shall, subject to the conditions or limitations and for the period specified in his appointment, have all the powers, duties, and functions of the Licensing Appeal Authority.

40 (6) The fact that any person is acting as the deputy of the Licensing Appeal Authority shall be conclusive evidence of his authority so to do, and no person shall be concerned to inquire whether the occasion for his appointment had arisen or ceased.

(7) No person shall be appointed a deputy of the Licensing Appeal Authority under this section unless he is eligible for appointment as the Licensing Appeal Authority.

11. Functions of Licensing Appeal Authority—The Licensing Appeal Authority shall sit as a judicial authority for the determination of appeals from any decision of the Licensing Authority. 5

12. Evidence in appeals before Licensing Appeal Authority—(1) The Licensing Appeal Authority may receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectually with the matters before it, whether or not the same would be otherwise admissible in a Court of law. 10

(2) Subject to the foregoing provisions of this section, the Evidence Act 1908 shall apply to the Licensing Appeal Authority, and to all proceedings before the Licensing Appeal Authority, in the same manner as if the Licensing Appeal Authority were a Court within the meaning of that Act. 15

(3) The Licensing Appeal Authority shall, within the scope of its jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of the principal Act and this Act, all the provisions of the Commissions of Inquiry Act 1908 shall apply accordingly. 20

13. Proceedings before Licensing Appeal Authority not to be appealed against—Proceedings before the Licensing Appeal Authority shall not be held bad for want of form; and no appeal shall lie from any order of the Licensing Appeal Authority; and, except on the ground of lack of jurisdiction, no proceeding or order of the Licensing Appeal Authority shall be liable to be challenged, reviewed, or called in question in any Court. 25 30

14. Sittings of Licensing Appeal Authority—(1) Every sitting of the Licensing Appeal Authority shall be held in public and at such place as it deems convenient having regard to the nature of the matter to be decided: 35

Provided that the Licensing Appeal Authority may in any case, if it considers it in the interests of the parties and of all other persons concerned, order that the hearing or any part thereof shall be held in private. 40

(2) Any sitting of the Licensing Appeal Authority may be adjourned from time to time and from place to place.

(3) The Licensing Appeal Authority may make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings in any appeal before it:

Provided that no such order shall be made prohibiting the publication of the names and descriptions of the parties to the appeal, or particulars of any licence thereby affected, or of any decision of the Licensing Appeal Authority.

(4) Except as otherwise provided in the principal Act or this Act, the Licensing Appeal Authority shall determine its own procedure.

15. Appeals to Licensing Appeal Authority from decisions of Licensing Authority—

(1) There shall be a right of appeal within twenty-eight days after the date of the decision appealed against from the whole or any part of any decision of the Licensing Authority in respect of any licence or in respect of any application to the Licensing Authority for a licence or for variation of the terms of an existing licence.

(2) The following persons and no others may exercise a right of appeal as specified in subsection (1) of this section:

- (a) The person in respect of whose application the decision of the Licensing Authority was given:
- (b) The holder of any current or expired licence in the locality affected by the application in respect of which the decision was given:

Provided that the holder of an expired licence may not appeal under this paragraph unless he has applied during the currency of that licence for the renewal thereof and either he has not received advice of any final decision in respect of the renewal of the licence or has been advised of a decision not to renew his licence within twenty-eight days of the date of the decision against which he appeals under this paragraph:

Provided also that no appeal shall lie under this paragraph against any decision to renew an existing licence.

16. Procedure on appeals—(1) Every appeal to the Licensing Appeal Authority shall be in the prescribed form and shall be forwarded to the Secretary for Internal Affairs.

(2) Every such appeal shall be referred forthwith to the Licensing Appeal Authority for determination in accordance with the provisions of this Act.

(3) For the purposes of every such appeal the Secretary shall furnish to the Licensing Appeal Authority a copy of any notes of evidence taken by the Licensing Authority in connection with the subject-matter of the appeal. 5

(4) As soon as conveniently may be after the receipt of any appeal, the Licensing Appeal Authority shall fix a time and place for the hearing of the appeal and shall give not less than fourteen clear days' public notice of the time so fixed, and shall also give not less than fourteen clear days' notice in writing to the appellant and to the holder of or applicant for any licence in respect of which the appeal is made. 10 15

17. Hearing and determination of appeal—(1) At the hearing of any appeal, the Licensing Appeal Authority shall hear all the evidence tendered and all representations made by or on behalf of the appellant and other persons which it deems relevant to the subject-matter of the appeal. 20

(2) In its determination of any appeal the Licensing Appeal Authority may confirm, modify, or reverse the decision appealed against.

18. Licensing Appeal Authority may refer appeals back to Licensing Authority—(1) Notwithstanding anything to the contrary in section 17 of this Act, the Licensing Appeal Authority may in any case, instead of determining any appeal under that section, direct the Licensing Authority to reconsider the matter in respect of which the appeal was made. 25 30

(2) In any case where the Licensing Appeal Authority issues a direction under subsection (1) of this section, the decision appealed against shall have no effect, and the Licensing Authority shall again consider the matter as if no decision had previously been made, and the provisions of this Act shall apply as if the Licensing Authority had received an original application in respect of the matter to which the direction relates. 35

(3) Whenever the Licensing Appeal Authority directs the Licensing Authority to reconsider a matter, the Licensing Appeal Authority shall advise the Licensing Authority of its reasons for so doing; and the Licensing Authority in reconsidering the matter shall have regard to those reasons. 40

19. **Notice of decision on appeal**—The determination of the Licensing Appeal Authority in any appeal shall be communicated by the Licensing Appeal Authority to the Secretary for Internal Affairs, who shall thereupon notify that determination to the Licensing Authority and to every other person who in the opinion of the Secretary for Internal Affairs is directly concerned, and the Licensing Authority shall forthwith take all necessary steps to carry into effect the decision of the Licensing Appeal Authority.

10 *Renters' and Exhibitors' Licences*

20. **Renters' licences**—(1) Section 28 of the principal Act is hereby amended by omitting from subsection (2) the words “to the Minister, or to an officer of the Public Service to be appointed to receive applications for and to issue such licences”, and substituting the words “to the Secretary to the Licensing Authority”.

(2) Section 28 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsection:

20 “(2A) On receipt of any such application, the said Secretary shall refer it forthwith to the Licensing Authority, which, in accordance with regulations made under this Act, may issue or refuse to issue a renter's licence in accordance with the application.”

25 21. **Exhibitors' licences**—(1) Section 32 of the principal Act is hereby amended by omitting from subsection (2) the words “to the Minister, or to an officer of the Public Service to be appointed to receive applications for and to issue such licences”, and substituting the words “to the Secretary to the Licensing Authority”.

(2) Section 32 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsection:

35 “(2A) On receipt of any such application, the said Secretary shall refer it forthwith to the Licensing Authority, which, in accordance with regulations made under this Act, may issue or refuse to issue an exhibitor's licence in accordance with the application.”

22. Regulations—Section 43 of the principal Act, as amended by section 3 of the Cinematograph Films Amendment Act 1956, is hereby further amended—

- (a) By omitting from subsection (1A) the words “Licensing Officer” in each place where they occur, and substituting in each case the words “Licensing Authority”: 5
- (b) By omitting from paragraph (a) of the said subsection (1A) the word “his”, and substituting the word “its”. 10

23. Savings—Every renter’s licence and exhibitor’s licence issued under the principal Act and subsisting immediately before the commencement of this Act shall be deemed to have been issued under the principal Act as amended by this Act, and shall continue and have effect accordingly. 15