FINANCE BILL (NO. 4)

EXPLANATORY NOTE

Clause 1 relates to the Bill's Short Title.

PART I

CERTAIN LAND NOT LIABLE TO RESUMPTION BY THE CROWN UNDER STATE-OWNED ENTERPRISES ACT 1986

Clause 2 of the Bill provides that sections 8A to 8C of the Treaty of Waitangi Act 1975 and sections 27B and 27C of the State-Owned Enterprises Act 1986 do not apply in relation to 6 properties that are listed in the clause.

The properties are situated in Newmarket, Auckland. The properties, which were owned by the Crown, were, in 1989 and 1990, transferred under the State-Owned Enterprises Act 1986 to State enterprises and later transferred to the Crown for railway purposes. The properties are now either in private ownership or subject to unconditional agreements for sale to private owners.

At the time of the transfer, memorials under section 27A of the State-Owned Enterprises Act 1986 were entered on the relevant certificates of title. The memorials state that the land is subject to section 27B of that Act which provides for the resumption of land on the recommendation of the Waitangi Tribunal.

Section 8A of the Treaty of Waitangi Act 1975 confers power on the Waitangi Tribunal to make, in the case of land that has been transferred to a State enterprise, a recommendation that the land be returned to Maori ownership. The Tribunal may make a recommendation for the return of the land even though the land is no longer owned by the State enterprise. If the Tribunal makes such a recommendation and it is confirmed, the Crown is required, under section 27B of the State-Owned Enterprises Act 1986, to resume the land and return it to Maori ownership. Section 27C of the Act requires the land to be resumed under the Public Works Act 1981.

Clause 2 removes any obligation that the Crown may at any time have to resume the land under the State-Owned Enterprises Act 1986 and return it to Maori ownership and gives effect to an agreement between the Crown and representatives of Ngati Whatua and Ngati Paoa for the settlement of Treaty of Waitangi claims in relation to the sale of surplus New Zealand Railways Corporation land in the central Auckland area. The amendments will preclude the Tribunal from recommending to the Crown that it return any of the land to which the clause applies to Maori ownership. The Tribunal will, however, retain

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jurisdiction to make other recommendations to the Crown in relation to claims affecting the land.

PART II

CROWN FOREST ASSETS

Clause 4 amends section 2 (1) of the Crown Forests Assets Act 1989 by inserting definitions of the terms "drainage works" and "erosion works". The terms are used in the definition of the term "Crown forestry assets" and also in Crown forestry licences granted under the Act. It was always intended that the term "drainage works" should be limited to drainage work carried out in relation to buildings and should not include general land drainage work carried out in connection with drainage of the licensed land itself. In the case of "erosion works", it was always intended that the term should be limited to work done in relation to the protection of roads from erosion and should not include work done in relation to the protection from erosion of the licensed land itself.

This clause is deemed to have come into force on 25 October 1989 which was the date on which the principal Act came into force.

Clause 5 repeals section 29 of the Act and substitutes new *sections 29* and *29A*.

The present section 29 requires every Crown forestry licence to provide for the payment, and periodic review, of an annual fee for the use of the licensed land based on market rates for the land in its unimproved state taking into account the terms and conditions of the licence.

A number of licences have been granted under the Act. These licences provide for the payment of an annual licence fee of a specified amount and for the periodic review of that fee. The licences provide that the fee payable on a review is to be a fixed percentage of the land value at the date of the review. The licences also provide that the value of certain specified works carried out on or for the benefit of the land is to be included in the valuation. These works include drainage, excavation, filling, reclamation, stabilising, grading or levelling, removal of rocks, stone, sand, or soil, removal of vegetation, alteration of soil fertility, and protection against soil erosion and floods.

Proceedings have been commenced in the High Court by an existing licensee in which it is contended that the inclusion in the licence of the terms referred to above is contrary to the Act. It is contended that a licence fee that is a fixed percentage is not a fee based on market rates. It is also contended that the inclusion of the value of the kinds of work referred to above in the value of the land means that the licence fee is not a market rate for the land in its unimproved state.

The new *section 29* provides that the annual licence fee shall be a market rate agreed by the Crown and the licensee or determined in a manner agreed by them and specified in the licence. The new section will also allow the parties to provide in the licence that the licence fee shall be a fixed percentage of the value of the land and that land shall be valued on the basis of excluding improvements other than the kinds of work referred to above.

The new *section 29A* re-enacts the provisions of the present section 29 other than those relating to the annual licence fee.

The new sections are deemed to have come into force on 25 October 1989 which was the date on which the principal Act came into force.

Clause 6 validates, and removes certain inconsistencies in, existing licences.

Subclause (1) deems all existing licences to comply with the new *sections 29* and *29A*.

Subclause (2) provides that in every existing licence the terms "drainage works" and "erosion works" shall be deemed to have, and always to have had, the

meanings that those terms have in section 2 of the principal Act. The subclause removes an inconsistency in the present licences and makes it clear that drainage works and erosion works, as so defined, are not to be included among improvements to licensed land for valuation purposes but that general land drainage work and erosion protection work may be so included.

Subclause (3) provides that the clause will apply notwithstanding any judgment, determination, or order of a Court given before or after the commencement of the clause in proceedings commenced before the commencement of the clause.

PART III

FIRE SERVICE

Clause 8 amends section 56 of the Fire Service Act 1975. That section provides for the payment of gratuities on the retirement or death of members of volunteer fire brigades.

The section provides for the payment on the retirement of a member who has had not less than 10 years service, of a gratuity at the rate of $80 for each year of service and, in the case of the death of a member who has not received a gratuity on retirement, of a gratuity at the same rate irrespective of the length of the member's service. The maximum amount payable by way of gratuity is $2,000.

Clause 8 increases, with effect from 1 January 1994, the amount of the gratuity from $80 for each year of service to $120 for each year of service and increases the maximum amount of the gratuity to $3,000.

PART IV

RADIOCOMMUNICATIONS

Clause 10 amends section 116 of the Radiocommunications Act 1989, which empowers the making of regulations. The amendment confers power to make regulations providing for the allocation of radio apparatus licences by competitive tender or auction.

Clause 11 amends section 146 of the Radiocommunications Act 1989. That section provides for incumbency rights in relation to certain frequencies set out in the Fourth Schedule to that Act. In relation to any frequency specified in Part A of that Schedule that is used by TVNZ or TV3, section 146 (1) (a) (i) of that Act currently provides that the incumbent is the person who held the radio apparatus licence in relation to that frequency on 31 March 1990. Since that date, some otherwise qualifying radio apparatus licences have been amended, and new radio apparatus licences have been granted, in relation to certain frequencies that fall within that class, and the holder of such licences will therefore have no incumbency status in relation to those frequencies when they are brought under the management rights regime. So that the holders of radio apparatus licences in relation to the frequencies specified in Part A of the Fourth Schedule to the Act are all treated equally when those frequencies are brought under the management rights regime, *clause 8* amends section 146 (1) (a) of the Act so that incumbency status will be conferred on the person who holds the radio apparatus licence in relation to any such frequency immediately before the frequency is brought under the management rights regime.

Clause 12 amends section 149 (3) of the Radiocommunications Act 1989. That section provides for the payment, by persons who hold incumbency rights in relation to certain frequencies specified in the Fourth Schedule to that Act, of an annual levy or a lump sum payment in respect of any licence granted to them by virtue of that incumbency status. When the Act was passed, it was expected that the process for bringing those frequencies under the management rights regime contained in the Act would be completed before 30 June 1992, and section

149 (3) currently provides that any such lump sum payment must be paid on 30 June 1992.

Because of the complexity of the work, the process for bringing the VHF frequencies used for television broadcasting under the management rights regime contained in the Act has taken much longer than anticipated. The work is now expected to be completed in early 1995, and accordingly *clause 9* amends section 149 (3) so that any lump sum payment in respect of a licence granted to an incumbent in relation to a VHF television frequency must be paid on 30 June 1995.

Rt. Hon. W. F. Birch

FINANCE (NO. 4)

ANALYSIS

A BILL INTITULED

An Act to make provision with respect to public finances and other matters

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Finance Act (No. 4) **1994**.

PART I

CERTAIN LAND NOT LIABLE TO RESUMPTION BY THE CROWN UNDER STATE-OWNED ENTERPRISES ACT 1986

2. Certain land not liable to resumption by the Crown under State-Owned Enterprises Act 1986—(1) Nothing in sections 8A to 8C of the Treaty of Waitangi Act 1975 (as inserted by section 4 of the Treaty of Waitangi (State

Enterprises) Act 1988) and nothing in sections 27B and 27C of the State-Owned Enterprises Act 1986 (as substituted by section 10 of the Treaty of Waitangi (State Enterprises) Act 1988) shall apply in relation to any land to which this section applies.

(2) **Subsection (1)** of this section shall apply in relation to any claim submitted to the Waitangi Tribunal under section 6 of the Treaty of Waitangi Act 1975 whether before or after the commencement of this Part of this Act.

(3) The District Land Registrar of the North Auckland Land Registration District shall, as soon as practicable after the commencement of this Part of this Act, cancel the memorial entered, pursuant to section 27A of the State-Owned Enterprises Act 1986, on the certificate of title of each of the pieces of land to which this section applies.

(4) This section applies to the following land situated in the North Auckland Land Registration District:

(a) All that parcel of land comprising 319 square metres, more or less, being Lot 1 on Deposited Plan 34120, and being part Allotment 22 Section 4 Suburbs of Auckland, and being all of the land comprised and described in Certificate of Title 78D/45 (North Auckland Registry):

(b) All that parcel of land comprising 5310 square metres, more or less, being Lot 1 on Deposited Plan 139738, and being part Allotment 22 Section 4 Suburbs of Auckland, and being all of the land comprised and described in Certificate of Title 83A/185 (North Auckland Registry):

(c) All that parcel of land comprising 3.9887 hectares, more or less, being Lot 1 on Deposited Plan 136599, and being part Allotments 23 and 24 of Section 4 and Part Allotments 27 and 35 of Section 14 Suburbs of Auckland, and being all the land comprised and described in Certificate of Title 80C/204 (North Auckland Registry):

(d) All that parcel of land comprising 105 square metres, more or less, being Lot 1 on Deposited Plan 133723, and being part Allotment 27 Section 14 Suburbs of Auckland, and being all the land comprised and described in Certificate of Title 79A/43 (North Auckland Registry):

(e) All that parcel of land comprising 304 square metres, more or less, being Lot 11 Deeds Plan 16 Blue, and being part Allotment 22 Section 4 Suburbs of

Auckland, and being all the land comprised and described in Certificate of Title 78D/43 (North Auckland Registry):

(f) All that parcel of land comprising 370 square metres, more or less, being Allotment 38 Section 4 Suburbs of Auckland, and being part Block VIII Rangitoto Survey District, and being all the land comprised and described in Certificate of Title 75B/153 (North Auckland Registry).

PART II

CROWN FOREST ASSETS

3. Part to be read with Crown Forest Assets Act 1989—(1) This Part of this Act shall be read together with and deemed part of the Crown Forest Assets Act 1989* (in this Part of this Act referred to as the principal Act).

(2) **Sections 4** and **5** of this Act shall be deemed to have come into force on the 25th day of October 1989.

4. Interpretation—Section 2 (1) of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

" 'Drainage works' means all drains associated with buildings:

" 'Erosion works' means work done for the purpose of protecting roads against erosion:".

5. New sections substituted—The principal Act is hereby amended by repealing section 29, and substituting the following sections:

"29. **Annual licence fee**—(1) Every Crown forestry licence shall provide for the payment, and periodic review, of an annual fee for the use of the licensed land.

"(2) The annual licence fee shall be a market rate agreed, or determined in a manner agreed, between the Crown and the licensee and specified in the Crown forestry licence.

"(3) For the purposes of this section, a Crown forestry licence may, if the Crown and the licensee agree,—

"(a) Provide that on a periodic review the annual licence fee shall be an amount equal to a specified percentage of the value of the licensed land:

"(b) Provide that the annual licence fee shall be based on the value of the licensed land excluding improvements

*1989, No. 99
Amendments: 1992, No. 135; 1993, No. 78

specified in the licence, but including the value of such of the following classes of work done on or for the benefit of the land by any owner or occupier, whether before or after the commencement of the licence, as may be referred to in the licence:

"(i) Draining, excavation, filling, reclamation, or stabilising of the land or construction of retaining walls or other works appurtenant to such draining, excavation, filling, reclamation, or stabilising:

"(ii) Grading or levelling of the land or the removal of rocks, stone, sand, or soil from the land:

"(iii) Removal or destruction of vegetation or effecting any change in the nature or character of vegetation:

"(iv) Alteration of soil fertility or the structure of the soil:

"(v) Arresting or eliminating erosion or flooding:

"(vi) Such other classes of work as may be referred to in the licence.

"29A. **Other provisions of Crown forestry licences**—(1) Subject to the terms of the licence, a Crown forestry licence may be assigned by the licensee at any time.

"(2) Subject to this Act, every Crown forestry licence shall confer or impose on the licensee such other rights and obligations and contain such other terms and conditions as the responsible Ministers and the licensee may agree."

6. Validation of certain Crown forestry licences—(1) For the avoidance of doubt it is hereby declared that every Crown forestry licence granted under section 14 of the principal Act before the commencement of this section shall be deemed to comply, and to have always complied, with **sections 29** and **29A** of the principal Act (as enacted by **section 5** of this Act).

(2) In every Crown forestry licence granted under section 14 of the principal Act before the commencement of this section, the terms "drainage works" and "erosion works" shall be deemed to have, and always to have had, the meanings given to those terms by section 2 (1) of the principal Act (as amended by **section 4** of this Act).

(3) This section shall have effect notwithstanding any judgment or determination or order of any Court given before or after the commencement of this section in any proceedings commenced before the commencement of this section.

PART III

FIRE SERVICE

7. Part to be read with Fire Service Act 1975—(1) This Part of this Act shall be read together with and deemed part of the Fire Service Act 1975* (in this Part of this Act referred to as the principal Act).

(2) This Part of this Act shall be deemed to have come into force on the 1st day of January 1994.

*R.S. Vol. 27, p. 11
Amendments: 1992, No. 133; 1993, No. 85; 1994, No. 71

8. Gratuities on retirement or death of members of volunteer fire brigades—(1) Section 56 (1) of the principal Act (as substituted by section 41 (1) of the Fire Service Amendment Act 1990) is hereby amended by omitting the expression "$80", and substituting the expression "$120".

(2) Section 56 (2) of the principal Act (as so substituted) is hereby amended by omitting the expression "$80", and substituting the expression "$120".

(3) Section 56 (4) of the principal Act (as so substituted) is hereby amended by omitting the expression "$2,000", and substituting the expression "$3,000".

PART IV

RADIOCOMMUNICATIONS

9. Part to be read with Radiocommunications Act 1989—This Part of this Act shall be read together with and deemed part of the Radiocommunications Act 1989† (in this Part of this Act referred to as the principal Act).

†1989, No. 148
Amendments: 1990, Nos. 22, 104

10. Regulations—Section 116 (1) of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph:

"(ca) Providing for the allocation of radio apparatus licences by competitive tender or auction, and for the payment of consideration to the Crown pursuant to any such tender or auction:".

11. Incumbents in relation to Fourth Schedule frequencies—Section 146 (1) (a) of the principal Act is hereby amended by repealing subparagraph (i), and substituting the following subparagraph:

"(i) Where that frequency is within any of the ranges of frequencies specified in Part A of the Fourth Schedule to this Act, the person who,

immediately before a record of management rights is recorded, pursuant to section 10 (2) of this Act, in relation to that frequency, is the holder of a radio apparatus licence in relation to that frequency; or".

12. Payments for licences—Section 149 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

"(3) The payment required by subsection (1) (b) of this section shall be payable,—

"(a) In the case of any licence issued in relation to a frequency to which section 146 (1) (b) of this Act applies, on 30 June 1992:

"(b) In the case of any licence issued in relation to a frequency to which section 146 (1) (a) of this Act applies, on **30 June 1995**."

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