

FORESTRY ENCOURAGEMENT AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Forestry Encouragement Act 1962.

Clause 1 specifies the Short Title to the Bill.

Clause 2 amends section 5 of the principal Act by declaring that forestry encouragement agreements, whether entered into before or after the commencement of this Bill, shall be deemed to be mortgages for the purposes of sections 80A and 118 (1A) of the Property Law Act 1952. Section 80A provides for the protection of further advances under a mortgage securing further advances. Section 118 (1A) provides that a lessor who serves notice on the lessee of his intention to exercise a right of re-entry or forfeiture in respect of the lease must forthwith serve a copy of the notice on any mortgagee of the lease.

Clause 3: Farm forestry agreements run with the land so that a person who ceases to own the land interest against which the agreement has been registered ceases to be liable under the agreement. However, if the land interest is leasehold, the personal covenant does not bind anyone when the lease expires. To keep the agreement alive the clause preserves the liability of the last lessee.

Clause 4 amends section 7 (1) of the principal Act so as to provide that a certificate creating a charge may be registered in relation to land subject to a forestry encouragement agreement if at any time there is default in the observance or performance of any of the obligations specified in the agreement. The present provision refers only to obligations in respect of the land.

Clause 5: Section 9 (2) of the Forestry Encouragement Amendment Act 1965 amended section 7 (2) of the principal Act so as to provide that the priority of a charge in respect of a forestry encouragement agreement may be postponed in favour of any other charge or lien of any description. The clause extends the provision so as to provide that the priority may be advanced or otherwise varied.

Clause 6 gives express power to the Minister to delegate his powers under the principal Act to officers of the New Zealand Forest Service. The clause is made retrospective to the commencement of the principal Act so as to cover delegations that have heretofore been made.

Hon. Mr MacIntyre

FORESTRY ENCOURAGEMENT AMENDMENT

ANALYSIS

Title	
1. Short Title	4. Default in performance of agreement
2. Forestry encouragement agreements	5. Priority of charges on land
3. Preserving personal covenant where lease expires	6. Delegation of Minister's powers

A BILL INTITULED

An Act to amend the Forestry Encouragement Act 1962

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. **Short Title**—This Act may be cited as the Forestry Encouragement Amendment Act 1967, and shall be read together with and deemed part of the Forestry Encouragement Act 1962* (hereinafter referred to as the principal Act).
- 10 2. **Forestry encouragement agreements**—Section 5 of the principal Act, as amended by section 2 of the Forestry Encouragement Amendment Act 1966, is hereby further amended by inserting, after subsection (10), the following subsection:

*1962, No. 20
Amendments: 1965, No. 118; 1966, No. 62

“(10A) Forestry encouragement agreements, whether entered into before or after the commencement of this subsection, shall be deemed to be mortgages for the purposes of sections 80A and 118 (1A) of the Property Law Act 1952 (as inserted by sections 2 and 3 of the Property Law Amendment Act 1959). 5

3. Preserving personal covenant where lease expires—Section 6 of the principal Act is hereby amended by adding to subsection (5) the following additional proviso:

“Provided also that, where the agreement is registered 10 against the title to a lease which determines before the expiry of the agreement, the personal liability of the person who was the lessee immediately before the determination shall, for the purposes of subsection (1) of this section, continue until the expiry of the agreement as if he were still the 15 occupier of the land to which the lease related.”

4. Default in performance of agreement—Section 7 of the principal Act is hereby amended by omitting from subsection (1) the words “in respect of the land”.

5. Priority of charges on land—Section 7 of the principal Act, as amended by section 9 (2) of the Forestry Encouragement Amendment Act 1965, is hereby further amended— 20

(a) By omitting from subsection (2) the words “postponed in favour of any other charge or lien of any description”, and substituting the words “postponed or 25 advanced or otherwise varied wholly or in part in relation to any other charge or lien of any description”:

(b) By inserting, after the word “Conservator” in each place where it appears in paragraphs (a) and (b) 30 of subsection (2), the words “and by the registered owner of the land and any person who is detrimentally affected thereby”.

6. Delegation of Minister’s powers—(1) The principal Act is hereby further amended as from its commencement by 35 adding the following section:

“9. (1) The Minister may from time to time, by writing under his hand, delegate to the Director-General of Forests, or to any other Forest Officer within the meaning of the Forests Act 1949, or to the holder for the time being of any 40 office in the New Zealand Forest Service, such of his powers under this Act as he thinks fit.

“(2) Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Minister.

5 “(3) Any such delegation may be made subject to such restrictions as the Minister thinks fit, and may be made either generally or in relation to any particular case.

10 “(4) Unless and until any such delegation is revoked, it shall continue in force according to its tenor. In the event of any Minister by whom any such delegation has been made ceasing to hold office it shall continue to have effect as if made by the person for the time being holding office as Minister and, in the event of the Director-General or other officer to whom any such delegation has been made ceasing to hold office, it shall continue to have effect as if made to the person
15 for the time being holding the office.

“(5) The fact that the Director-General or any other Forest Officer purports to exercise any power of the Minister shall in the absence of proof to the contrary be sufficient evidence of his authority so to do.”