

FOUNDATION FOR RESEARCH, SCIENCE, AND TECHNOLOGY BILL

EXPLANATORY NOTE

THIS Bill has 2 main purposes:

- (a) It establishes a Foundation for Research, Science, and Technology; and
- (b) It makes a number of amendments to a variety of Acts as a consequence of the establishment of the Ministry of Research, Science, and Technology.

Clause 1 relates to the Short Title and date of commencement. The date of commencement is 1 July 1990.

Clause 2 defines certain terms used in the Bill.

Clause 3 provides that the Crown is bound by the Bill.

Clause 4 establishes the Foundation for Research, Science, and Technology.

Clause 5 sets out the functions of the Foundation. These are as follows:

- (a) To allocate funds for the purposes of scientific and technological research; and
- (b) To provide policy advice to the Minister of Research, Science, and Technology, which advice is to be formulated after consultation between the Foundation and representatives of industry and the community.

Clause 6 provides that the Foundation is to have all powers reasonably necessary or expedient to enable it to carry out its functions.

Clause 7 provides that the Foundation is to carry out its functions in relation to the allocation of funds in accordance with the priorities that are set each year by the Minister of Research, Science, and Technology.

Clause 8 provides that the Foundation shall, so far as it considers it practicable to do so,—

- (a) Invite competitive proposals for the allocation of funds relating to scientific and technological research; and
- (b) Ensure that those persons to whom funds are allocated by the Foundation attain certain standards of performance in their use of the funds, and also account for the use of the funds.

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Clauses 9 to 11 relate to the membership of the Foundation and the disclosure of interests by members.

Clause 12 provides for the regular review of the operation of the Bill.

Clause 13 provides that the provisions set out in the *First Schedule* to the Bill are to apply in respect of the Foundation. Those provisions relate to a number of matters, including the term of office of members of the Foundation, removal from office, the meeting procedures of the Foundation, the employment of staff, financial management by the Foundation, and the personal liability of members of the Foundation.

Clause 14 provides for certain amendments to other enactments. These amendments are consequential upon the establishment of the Ministry of Research, Science, and Technology.

Right Hon. R. J. Tizard

FOUNDATION FOR RESEARCH, SCIENCE, AND TECHNOLOGY

ANALYSIS

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A BILL INTITULED

An Act—

- (a) To establish the Foundation for Research, Science, and Technology and to define its functions and powers; and**
- 5 **(b) To provide for matters incidental thereto**

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

1. Short Title and commencement—(1) This Act may be cited as the Foundation for Research, Science, and Technology Act 1989.

(2) This Act shall come into force on the 1st day of July 1990.

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

15 “Crown agency” has the meaning given to it by section 2 (1) of the Public Finance Act 1989:

“Department” has the meaning given to it by section 2 (1) of the State Sector Act 1988:

20 “Foundation” means the Foundation for Research, Science, and Technology established by section 4 of this Act:

“Minister” means the Minister of Research, Science, and Technology:

“Office of Parliament” has the meaning given to it by section 2 (1) of the Public Finance Act 1989:

“Research” means scientific research; and includes scientific development, and services: 5

“Science outputs” means goods and services that relate to research, science, or technology and that are produced by any department, Crown agency, Office of Parliament, or other body or person. 10

3. Act binds the Crown—This Act binds the Crown.

4. Foundation for Research, Science, and Technology—(1) There is hereby established a foundation called the Foundation for Research, Science, and Technology.

(2) The Foundation shall be a body corporate with perpetual succession and a common seal, and shall have and may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity. 15

(3) The Foundation shall be a Crown agency for the purposes of the Public Finance Act 1989, and, notwithstanding anything in section 1 (3) of that Act, Part V of that Act shall apply to the Foundation as if that Part of that Act were in force on the commencement of this Act. 20

5. Functions—(1) The functions of the Foundation are— 25

(a) To allocate funds for the production of science outputs:

(b) To provide independent policy advice to the Minister on matters relating to research, science, and technology, including advice on national priorities for those matters. 30

(2) The Foundation’s advice shall be formulated after consultation between the Foundation and representatives of industry and the community.

6. Powers of Foundation—The Foundation shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions. 35

7. Foundation to adhere to Government priorities—

(1) Not later than the 1st day of March in each year, the Minister shall, by notice in writing to the Foundation, advise the Foundation of the priorities that the Foundation shall adhere to 40

in carrying out its functions under **section 5 (1) (a)** of this Act during its next financial year.

5 (2) In each financial year, the Foundation shall carry out its functions under **section 5 (1) (a)** of this Act in accordance with the priorities advised to it by the Minister pursuant to **subsection (1)** of this section in respect of that financial year.

(3) Nothing in **subsection (1)** of this section authorises the Minister to give a direction under that subsection in respect of the production of science outputs by a particular person.

10 (4) Where a notice is given to the Foundation under **subsection (1)** of this section, the Minister shall, as soon as practicable after the giving of the notice,—

(a) Publish a copy of it in the *Gazette*; and

(b) Lay a copy of it before the House of Representatives.

15 **8. Contracts in relation to use of funds**—In carrying out its functions under **section 5 (1) (a)** of this Act, the Foundation shall, to the extent that, in the opinion of the Foundation, it is practicable to do so,—

20 (a) Invite competitive proposals for the provision of science outputs; and

(b) Ensure by the terms of contracts pursuant to which the Foundation funds the production of science outputs that the producers of those outputs are obliged both to attain specified standards of performance in relation to those outputs and to account for the use of the funds provided by the Foundation; and

25 (c) Adopt measures to ensure that those terms are complied with.

30 **9. Membership of Foundation**—(1) The Foundation shall consist of not less than 3 nor more than 9 members, who shall be appointed by the Governor-General on the recommendation of the Minister.

(2) No person shall be recommended for appointment as a member of the Foundation unless, in the opinion of the Minister, that person is qualified for appointment, having regard to the functions and powers of the Foundation.

(3) One member of the Foundation shall be appointed as Presiding Member and another shall be appointed as Deputy Presiding Member.

40 (4) Any person appointed as a member of the Foundation may hold that office concurrently with any other office.

10. Co-opted members—(1) For the purposes of any matter before the Foundation, the Foundation may co-opt any one or more persons whose qualifications or experience are likely, in the opinion of the Foundation, to be of assistance to the Foundation in dealing with that matter. 5

(2) Every person co-opted under this section for the purposes of any matter shall be entitled to take part in the Foundation's proceedings in relation to that matter, but shall not be entitled to vote on that matter.

(3) Where any person co-opted under this section fails to exercise, in relation to any matter, any right conferred on that person by subsection (2) of this section, that failure shall not affect the validity of any meeting or other proceeding of the Foundation in respect of that matter. 10

11. Disclosure of interests—(1) Any member of the Foundation who, otherwise than as a member, is directly or indirectly interested in the exercise or performance of any power or function by the Foundation, or who is directly or indirectly interested in any arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by the Foundation, as soon as practicable after the relevant facts have come to the member's knowledge, shall,— 15

(a) If that person is the Presiding Member, disclose the nature of the interest to the Minister: 20

(b) In any other case, disclose the nature of the interest to the Presiding Member. 25

(2) Where a member of the Foundation makes a disclosure under this section, that member—

(a) Shall not take part, after the disclosure, in any deliberation or decision of the Foundation relating to the exercise or performance of the power or function by the Foundation or relating to the arrangement, agreement, or contract; and 30

(b) Shall be disregarded for the purpose of forming a quorum of the Foundation for any such deliberation or decision. 35

(3) Failure to comply with this section shall not affect the validity of any action taken, or contract made, by the Foundation.

12. Review of operation of Act—As soon as practicable after the expiry of the period of 3 years beginning on the date of commencement of this Act, and then at intervals of not more than 5 years, the Foundation shall— 40

- (a) Review the operation of this Act since—
- (i) The date of its commencement (in the case of the first review carried out under this paragraph); or
 - (ii) The date of the last review carried out under this paragraph (in the case of every subsequent review); and
- (b) Consider—
- (i) Whether the Foundation should be retained or abolished; and
 - (ii) Whether any amendments to this Act are necessary or desirable; and
- (c) Report its findings to the Minister.

13. Further provisions applying to Foundation—The provisions set out in the **First Schedule** to this Act shall apply in respect of the Foundation.

14. Consequential amendments and repeal—(1) The enactments specified in the **Second Schedule** to this Act are hereby amended in the manner indicated in that Schedule.

(2) Section 2 of the Carter Observatory Amendment Act 1977 is hereby consequentially repealed.

SCHEDULES

Section 13

FIRST SCHEDULE

PROVISIONS APPLYING IN RESPECT OF FOUNDATION

1. Term of office—Every member of the Foundation—

- (a) Shall be appointed by notice published in the *Gazette*;
- (b) Shall be appointed for a term not exceeding 3 years;
- (c) Shall take office from the date of the notice of appointment or such later date as may be specified in the notice;
- (d) Shall be eligible for reappointment for 1 further term not exceeding 3 years.

2. Continuation in office after term expires—Notwithstanding clause 1 of this Schedule, every member of the Foundation whose term of office has expired shall, unless sooner vacating office under clause 3 of this Schedule, continue to hold office by virtue of the appointment for the term that has expired, until—

- (a) That member is reappointed; or
- (b) A successor to that member is appointed; or
- (c) That member is informed in writing by the Minister that the member is not to be reappointed and that a successor to that member is not to be appointed.

3. Extraordinary vacancies—(1) Any member of the Foundation may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

(2) Any member of the Foundation may at any time resign his or her office by giving written notice to that effect to the Minister.

(3) If any member of the Foundation dies, or resigns, or is removed from office, the vacancy so created shall be deemed to be an extraordinary vacancy.

(4) An extraordinary vacancy may be filled by the appointment of a person by the Governor-General on the recommendation of the Minister.

(5) Every person appointed to fill an extraordinary vacancy shall be appointed for the residue of the term for which the vacating member was appointed.

(6) The powers of the Foundation shall not be affected by any vacancy in its membership.

4. Meetings—(1) Meetings of the Foundation shall be held at such times and places as the Foundation or its Presiding Member from time to time appoints.

(2) At any meeting of the Foundation the quorum necessary for the transaction of business shall be,—

- (a) If the Foundation has an even number of members, half the number of members; or
- (b) If the Foundation has an odd number of members, a majority of the number of members,—

but in no case shall the quorum be fewer than 3 members.

5. Presiding Member to preside at meetings—(1) At every meeting of the Foundation the Presiding Member shall preside if he or she is present.

FIRST SCHEDULE—*continued*

PROVISIONS APPLYING IN RESPECT OF FOUNDATION—*continued*

(2) If the Presiding Member is not present at any such meeting, or if there is no Presiding Member, the Deputy Presiding Member, if present, shall preside.

(3) If neither the Presiding Member nor the Deputy Presiding Member are present at any such meeting, or if there is no Presiding Member and no Deputy Presiding Member, the members present shall elect some member present to preside at that meeting, and the person so elected shall have and may exercise in such case all the powers and functions of the Presiding Member for the purposes of that meeting.

6. Voting at meetings—(1) All questions arising at any meeting of the Foundation shall be decided by a majority of the votes cast by the members present.

(2) The member presiding at any such meeting shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

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

7. Procedure—Subject to this Act, the Foundation may regulate its procedure in such manner as it thinks fit.

8. Committees—(1) The Foundation may from time to time appoint committees, consisting of 2 or more members of the Foundation and such other persons (if any) as the Foundation thinks fit, to inquire into and report to the Foundation on such matters within the scope of its functions as are referred to them by the Foundation, or to exercise on behalf of the Foundation any of its functions or powers, and may from time to time delegate to any such committee any such function or power.

(2) Every committee appointed under this clause shall be subject in all things to the control of the Foundation, and may at any time be discharged, altered, or reconstituted by the Foundation.

(3) Subject to any general or special directions given or conditions imposed by the Foundation, any committee to which any function or power is delegated under this clause may exercise that function or power in the same manner and with the same effect as if it had been conferred directly by this Act and not by delegation.

(4) Every committee purporting to act pursuant to any delegation under this clause shall, until the contrary is proved, be presumed to be acting in accordance with the terms of the delegation.

(5) Any delegation under this clause may be revoked at any time.

(6) No delegation under this clause shall prevent the exercise of any function or power by the Foundation.

9. Remuneration and travelling allowances—(1) The members of the Foundation, and the members of any committee appointed by the Foundation, shall be paid such fees, salaries, and allowances, and such travelling allowances and expenses, as the Foundation may from time to time determine with the approval of the Minister.

(2) Any persons co-opted, under **section 10** of this Act, by the Foundation shall be paid such fees, salaries, and allowances, and such travelling

FIRST SCHEDULE—*continued*

PROVISIONS APPLYING IN RESPECT OF FOUNDATION—*continued*

allowances and expenses, as the Foundation may from time to time determine with the approval of the Minister.

10. Employees—(1) The Foundation may appoint such officers and employees, including officers and employees on secondment from other organisations, as it thinks necessary for the efficient performance of its functions.

(2) Subject to the terms and conditions of employment, the Foundation may at any time terminate or suspend the employment of any of its officers and employees.

(3) Officers and employees appointed under **subclause (1)** of this clause shall be employed on such terms and conditions of employment, and shall be paid such salaries and allowances, as the Foundation from time to time determines after consultation with the State Services Commission.

(4) Any determination under **subclause (3)** of this clause shall take effect on such date (whether the date of the determination or any earlier or later date) as may be specified in the determination.

(5) If no date is so specified, the determination shall take effect on the date of the determination.

11. Personnel policy—(1) The Foundation shall operate a personnel policy that complies with the principle of being a good employer.

(2) For the purposes of this clause, a “good employer” is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—

- (a) Good and safe working conditions; and
- (b) An equal employment opportunities programme; and
- (c) The impartial selection of suitably qualified persons for appointment; and
- (d) Recognition of—
 - (i) The aims and aspirations of Maori; and
 - (ii) The employment requirements of Maori; and
 - (iii) The need for greater involvement of Maori as employees of the employer operating the personnel policy; and
- (e) Opportunities for the enhancement of the abilities of individual employees; and
- (f) Recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
- (g) Recognition of the employment requirements of women; and
- (h) Recognition of the employment requirements of persons with disabilities.

12. Equal employment opportunities programme—(1) The Foundation—

- (a) Shall develop and publish in each year an equal employment opportunities programme;
- (b) Shall ensure in each year that the equal employment opportunities programme for that year is complied with.

(2) For the purposes of this clause and **clause 11** of this Schedule, an equal employment opportunities programme means a programme that is aimed

FIRST SCHEDULE—*continued*

PROVISIONS APPLYING IN RESPECT OF FOUNDATION—*continued*

at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons.

(3) The Foundation shall include in every annual report of the Foundation a statement of the extent to which the Foundation's equal employment opportunities programme for the year to which the report relates was complied with.

13. Superannuation or retiring allowances—(1) For the purpose of providing a superannuation fund or retiring allowance for any of the officers or employees of the Foundation, sums by way of subsidy may from time to time be paid into any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this clause.

(2) Notwithstanding anything in this Act, any person who, immediately before becoming an officer or employee of the Foundation, is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to be an officer or employee of the Foundation; and that Act shall apply to that person in all respects as if that person's service as such an officer or employee were Government service.

(3) Subject to the Government Superannuation Fund Act 1956, nothing in **subclause (2)** of this clause entitles any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with **subclause (2)** of this clause, to a person who is in the service of the Foundation as an officer or employee and is a contributor to the Government Superannuation Fund, the term "controlling authority", in relation to any such person who is in the service of the Foundation, means the Foundation.

14. Crown may provide services for Foundation—The Crown, acting through any department, may from time to time, at the request of the Foundation, execute any work or enter into any arrangements for the execution or provision by the department for the Foundation of any work or service, or for the supply to the Foundation of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

15. Application of certain Acts to members and employees—No person shall be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person's appointment as a member of the Foundation or by reason only of that person's employment under **clause 10** of this Schedule.

16. Funds of Foundation—The funds of the Foundation shall consist of—

FIRST SCHEDULE—*continued*

PROVISIONS APPLYING IN RESPECT OF FOUNDATION—*continued*

- (a) Any money appropriated by Parliament for the purposes of the Foundation and paid to the Foundation for the purposes of the Foundation:
- (b) All other money lawfully received by the Foundation for the purposes of the Foundation:
- (c) All accumulations of income derived from any such money.

17. Bank accounts—(1) The Foundation shall open at any bank or banks such accounts as are necessary for the exercise of its functions and powers.

(2) All money received by the Foundation, or by any employee of the Foundation, shall, as soon as practicable after it has been received, be paid into such bank accounts of the Foundation as the Foundation from time to time determines.

(3) The withdrawal or payment of money from any such account shall be authorised in such manner as the Foundation thinks fit.

18. Investment of money—Any money that belongs to the Foundation and that is not immediately required for expenditure by the Foundation may be invested pursuant to section 25 of the Public Finance Act 1989.

19. Seal—The common seal of the Foundation shall be judicially noticed in all Courts and for all purposes.

20. Exemption from income tax—The income of the Foundation shall be exempt from income tax.

21. Annual report—(1) The Foundation shall in each year furnish to the Minister a report with respect to the operation of this Act.

(2) The Foundation shall include in every annual report of the Foundation the financial statements prepared by the Foundation, in accordance with Part V of the Public Finance Act 1989, in respect of the financial year to which the report relates, together with the audit report and the management statement relating to those financial statements.

(3) A copy of every annual report of the Foundation shall be tabled in the House of Representatives in accordance with section 44 of the Public Finance Act 1989.

22. Statement of Foundation's goals—The Foundation shall in each year include in its report of its operations for that year—

- (a) A statement of its goals for the next 3 years and of the steps that it proposes to take for the purpose of meeting those goals; and
- (b) A statement of the extent to which it met its goals in the year to which the report relates.

23. Members not personally liable—No member of the Foundation shall be personally liable for any act of default done or made by the Foundation or by any member of the Foundation in good faith in the course of the operations of the Foundation.

Section 14

SECOND SCHEDULE

ENACTMENTS CONSEQUENTIALLY AMENDED

Enactment	Amendment
<p>1938, No. 9—The Carter Observatory Act 1938 (R.S. Vol. 1, p. 429)</p>	<p>By repealing the definition of the term “Minister” in section 2 (as substituted by section 2 of the Carter Observatory Amendment Act 1977), and substituting the following definition: “‘Minister’ means, subject to any enactment, the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act.”.</p>
<p>1950, No. 20—The Medical Research Council Act 1950 (R.S. Vol. 10, p. 75)</p>	<p>By repealing paragraph (b) of section 4 (1), and substituting the following paragraph: “(b) The chief executive of the Ministry of Research, Science, and Technology.”.</p>
<p>1959, No. 98—The Public Bodies Contracts Act 1959 (Reprinted 1975, Vol. 3, p. 2251)</p>	<p>By inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item: “Foundation for Research, Science, and Technology 1989, No. 00—The Foundation for Research, Science, and Technology Act 1989.”</p>
<p>1965, No. 38—The Royal Society of New Zealand Act 1965 (R.S. Vol. 18, p. 845)</p>	<p>By repealing the definition of the term “Minister” in section 2, and substituting the following definition: “‘Minister’ means, subject to any enactment, the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act.”.</p> <p>By omitting from section 9 the words “of Science”.</p>

SECOND SCHEDULE—*continued*ENACTMENTS CONSEQUENTIALLY AMENDED—*continued*

Enactment	Amendment
1972, No. 36—The Testing Laboratory Registration Act 1972 (R.S. Vol. 23, p. 847)	By repealing the definition of the term “Minister” in section 2, and substituting the following definition: “‘Minister’ means, subject to any enactment, the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being charged with the administration of this Act.”
1974, No. 6—The Scientific and Industrial Research Act 1974	By repealing the definition of the term “research association” in section 2. By repealing section 5 (f). By repealing section 5A (as inserted by section 87 of the State Sector Act 1988).
1975, No. 9 — The Ombudsmen Act 1975 (R.S. Vol. 21, p. 657)	By inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item: “The Foundation for Research, Science, and Technology.”
1978, No. 81—The Heavy Engineering Research Levy Act 1978	By repealing the definitions of the terms “Director-General” and “Minister” in section 2, and substituting the following definitions: “‘Chief executive’ means the chief executive of the Ministry of Research, Science, and Technology: “‘Minister’ means, subject to any enactment, the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act.”
1988, No. 20—The State Sector Act 1988	By omitting from section 15 (1) the words “Director-General”, and substituting the words “chief executive”. By repealing so much of the Fifth Schedule as relates to the Scientific and Industrial Research Act 1974.