

Forests Amendment Act 2004

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Forests Amendment Act 2004.
- (2) In this Act, the Forests Act 1949 is called “the principal Act”.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to principal Act

3 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing the definition of the term **landholding**, and substituting the following definition:

“**landholding** means an estate, right, title, or interest of any kind in or over an area of land by or under which indigenous timber may be harvested; but does not include an interest by way of charge or security”.

(2) Section 2(1) of the principal Act is amended by inserting in the definition of the term **planted indigenous forest**, after the words “means any indigenous”, the word “timber”.

(3) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **Secretary**, the following definition:

“**specified Maori land** means land having the status of Maori land or General land owned by Maori, as defined in section 4 of Te Ture Whenua Maori Act 1993, and originally reserved or granted under—

“(a) the South Island Landless Maori Act 1906; or

“(b) section 12 of the Maori Land Amendment Act 1914; or

“(c) section 88 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1916; or

“(d) section 110 of the Maori Purposes Act 1931”.

(4) Section 2(1) of the principal Act is amended by repealing the definition of the term **timber**, and substituting the following definition:

“**timber**—

“(a) means—

“(i) trees (excluding cuttings, suckers, and shoots); and

“(ii) woody plants able to be milled; and

“(b) includes branches, roots, and stumps of trees and other woody plants able to be milled, logs, woodchips, wood products, veneer, tree ferns, and tree fern fibre”.

(5) Section 2(1) of the principal Act is amended by repealing the definition of the term **West Coast indigenous production forest**.

(6) Section 2(2) of the Forests Amendment Act 1993 is consequentially repealed.

4 New sections 67A and 67AB substituted

(1) The principal Act is amended by repealing section 67A, and substituting the following sections:

“67A Part binds the Crown

This Part binds the Crown.

“67AB Part does not permit felling or harvesting other than in accordance with relevant enactment

In the case of land held, managed, or administered by the Crown under the Conservation Act 1987 or any Act listed in Schedule 1 of that Act, this Part does not permit the felling or harvesting of timber other than in accordance with the provisions of the Act under which the land on which the timber is growing is held, managed, or administered.”

- (2) Section 2 of the Forests Amendment Act (No 2) 1996 is consequentially repealed.

5 Prohibition on export of certain indigenous forest produce

- (1) Section 67C(1) of the principal Act is amended by adding the following paragraph:

“(g) any indigenous timber—

“(i) from a planted indigenous forest, if that timber is, or is from, a shrub, bush, seedling, or sapling; or

“(ii) other than indigenous timber to which subparagraph (i) applies, if the Secretary has stated in writing that he or she is satisfied that the timber has been harvested from a planted indigenous forest.”

- (2) Section 67C of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(3) No indigenous timber (other than personal effects and any finished or manufactured indigenous timber products) may be exported from New Zealand—

“(a) unless—

“(i) a notice of intention to export has been given to the Secretary in a form approved by the Secretary; and

“(ii) the notice of intention includes or is accompanied by a statement of the source of the timber; and

“(iii) the timber has been presented to a Forestry Officer for inspection and he or she has inspected and approved it, and

“(b) until the expiry of a period (if any) specified for the purposes of this paragraph in the notice of intention.”

- (3) The Forests (Notice of Intention to Export Indigenous Timber) Regulations 2003 (SR 2003/75) are consequentially revoked.

- (4) Despite subsection (3), the Forests (Notice of Intention to Export Indigenous Timber) Regulations 2003 continue in force until the Secretary approves a form under section 67C(3)(a) of the principal Act.

6 Prohibition on milling indigenous timber

- (1) Section 67D of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:

“(1) No person may mill any indigenous timber at a sawmill unless the sawmill is registered in accordance with regulations made under section 72, and at least 1 of the following paragraphs applies to the harvesting of the timber:

“(a) the timber has been harvested from an area of land subject to, and managed in accordance with, a registered sustainable forest management plan or a registered sustainable forest management permit and the harvest is in accordance with an annual logging plan approved under section 67H:

“(b) the Secretary has stated in writing that he or she is satisfied that—

“(i) the timber has been or will be harvested from—

“(A) specified Maori land that is not land on which a forest specified in an Order in Council made under section 67DA is situated; or

“(B) land held, managed, or administered by the Crown under the Conservation Act 1987 or any Act listed in Schedule 1 of that Act; or

“(C) a planted indigenous forest; or

“(ii) the timber has been or will be felled—

“(A) for a public work as defined in the Public Works Act 1981; or

“(B) with the approval of the owner, for a mining operation; or

“(C) for construction or maintenance of an access way or water impoundment, or for a

- purpose directly necessary or desirable for scientific research; or
- “(iii) the timber was first milled before 1 July 1993; or
 - “(iv) the timber is salvaged timber that has been or will be harvested from an area of land that is not indigenous forest land; or
 - “(v) the timber has been or will be harvested from windthrown trees or trees (whether standing or not) that have died from natural causes on land that is not subject to either a registered sustainable forest management plan or a registered sustainable forest management permit, and that he or she is satisfied that the forest’s natural values will be maintained:
- “(c) the timber is a tree fern trunk, or is from a tree fern trunk, and the Secretary has stated in writing that he or she is satisfied that the timber has been or will be harvested from an area of land that is not indigenous forest land:
 - “(d) the timber is a tree fern trunk, or is from a tree fern trunk, and has been or will be harvested, with the prior written approval of the Secretary, from an area of land that is not subject to either a registered sustainable forest management plan or a registered sustainable forest management permit:
 - “(e) the timber has been seized under section 67R and sold, released, or disposed of under section 67S and the Secretary has stated in writing that the person to whom the timber is sold, released, or disposed was not involved in the felling and harvesting of the timber in contravention of this Part.
- “(2) Before giving an approval under subsection (1)(d), the Secretary must be satisfied that the area concerned can continue to supply an annual or periodic non-diminishing yield of tree fern trunks in perpetuity, and that yield must include the harvesting of windthrown ferns or dead ferns as they become available.”
- (2) Section 67D(3) of the principal Act is amended by inserting, after the word “plan”, the words “or a sustainable forest management permit”.
- (3) The following provisions are consequentially repealed:

- (a) section 4 of the Forests Amendment Act 1995:
- (b) section 3 of the Forests Amendment Act (No 2) 1996.

7 New sections 67DA and 67DB and heading inserted

The principal Act is amended by inserting, after section 67D, the following sections and heading:

“67DA Forests on specified Maori land to which sawmill controls apply

- “(1) The Governor-General may from time to time, by Order in Council, specify forests on specified Maori land to which section 67D(1)(b)(i)(A) does not apply.
- “(2) The Governor-General may make an Order in Council under subsection (1) in relation to a forest only if he or she is satisfied that the owner of the forest has agreed with the Minister to—
 - “(a) surrender the right to mill indigenous timber harvested from the forest; or
 - “(b) surrender the right to mill indigenous timber harvested from the forest other than in accordance with a registered sustainable forest management plan or a registered sustainable forest management permit.

“Felling controls

“67DB Prohibition on felling indigenous timber

Where any land is specified in a registered sustainable forest management plan or a registered sustainable forest management permit as land to which that plan or permit applies, no person may fell indigenous timber on that land except in accordance with that plan or permit.”

8 Sustainable forest management plans

Section 67E of the principal Act is amended by repealing subsections (2) and (3), and substituting the following subsections:

- “(2) A sustainable forest management plan applies to the area or areas of indigenous forest land specified in that plan.
- “(3) A sustainable forest management plan applies to the land specified in that plan,—

- “(a) in the case of a landholding having a term of less than 50 years, for the balance of that term; or
- “(b) in any other case, for the period specified in the plan, which period—
 - “(i) must not be less than 50 years; and
 - “(ii) may be renewed from time to time in accordance with section 67I.”

9 Procedure for approval of sustainable forest management plans

- (1) Section 67F of the principal Act is amended by repealing subsection (1), and substituting the following subsections:
 - “(1) The owner of a landholding for an area of indigenous forest land may apply to the Secretary for approval of a draft sustainable forest management plan for all or part of that area.
 - “(1A) An application may be made by lodging the draft plan at a Ministry office.”
- (2) Section 67F(2) of the principal Act is amended by omitting the words “land concerned”, and substituting the words “area of indigenous forest land specified in the plan as the area of land to which the plan applies”.

10 Notice requirements

Section 67G of the principal Act is amended by inserting, after the words “forest management plan,”, the words “and that approval, amendment, or exemption enables beech to be harvested in coupes of more than 0.5 hectares,”.

11 Secretary’s power to require amendments to plans

- (1) Section 67H(1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:
 - “(a) to correct the description of the area or areas specified in the plan as the area or areas to which the plan applies:”.
- (2) Section 67H of the principal Act is amended by inserting, after subsection (1), the following subsection:
 - “(1A) Work for the harvesting of timber (including, but not limited to, the felling of timber and the construction of roads, tracks, or landings) must not be carried out on an area of land specified

in a registered sustainable forest management plan unless that work is carried out in accordance with an annual logging plan approved by the Secretary.”

12 Other provisions relating to review and amendment of sustainable forest management plans

Section 67I(1)(b)(ii) of the principal Act is amended by omitting the word “removal”, and substituting the word “harvesting”.

13 Sustainable forest management plan to be recorded against certificate of title

Section 67K of the principal Act is amended—

- (a) by omitting from subsection (1) the words “to which a sustainable forest management plan relates”, and substituting the words “specified in a sustainable forest management plan”;
- (b) by omitting from subsection (4) the words “to which that plan relates”, and substituting the words “specified in that plan”;
- (c) by omitting from subsection (6) the words “to which it relates”, and substituting the words “specified in the plan”.

14 New section 67M substituted

- (1) The principal Act is amended by repealing section 67M, and substituting the following section:

“67M Sustainable forest management permits

- “(1) An owner of a landholding for an area of indigenous forest land may apply to the Secretary for a sustainable forest management permit for all or part of that area to allow the harvesting and milling of indigenous timber.
- “(2) A sustainable forest management permit has effect for 10 years from the date that permit is registered and—
- “(a) authorises the harvesting and milling of indigenous timber in accordance with the permit from an area within the area of land specified in the permit; and
 - “(b) specifies the area of land to which the permit applies; and

- “(c) specifies the quantity of timber fixed by the Secretary (being timber capable of being milled irrespective of its quality) that may be harvested and milled in accordance with the permit.
- “(3) A sustainable forest management permit must not authorise the harvesting and milling—
- “(a) of more than 10%—
 - “(i) of the quantity of indigenous timber (excluding roots) capable of being milled standing on the area of land specified in the permit; and
 - “(ii) of the quantity of each species of indigenous timber (excluding roots) capable of being milled standing on the area of land specified in the permit; and
 - “(b) of more than the following volumes of indigenous timber:—
 - “(i) 250 cubic metres of podocarp or kauri or shade-tolerant, exposure-sensitive, broadleaved hardwood species; and
 - “(ii) 500 cubic metres of beech or other light-demanding hardwood species.
- “(4) A second or subsequent sustainable forest management permit must not be issued in respect of any indigenous timber unless and until the Secretary is satisfied that the quantity of each species of indigenous timber (being timber capable of being milled, irrespective of its quality, but excluding roots) standing in the area to which the permit will apply is at least equivalent to the quantity of each species standing in the area at the date of the grant of the previous permit.
- “(5) A sustainable forest management permit expires 18 months after the date of issue of the permit unless it is registered before the close of that period.
- “(6) The Secretary must not grant a permit for an area of indigenous forest land that is specified—
- “(a) in a sustainable forest management plan as an area of land to which that plan applies; or
 - “(b) in a permit, issued within the previous 18 months, as an area to which that permit applies; or

- “(c) in a permit, registered within the previous 10 years, as an area to which the permit applies.
- “(7) The provisions of sections 67F(2), 67H(1A), (2), and (3), 67I, 67K, and 67L and the provisions and prescriptions set out in clauses 8, 9, and 10 of Schedule 2, with the necessary modifications, apply—
- “(a) to every proposal under this section as if it were a draft sustainable forest management plan; and
- “(b) to every permit under this section as if it were a sustainable forest management plan.”
- (2) Section 6 of the Forests Amendment Act 1995 is consequentially repealed.

15 Records

- (1) Section 67Q(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:
- “(ab) timber harvested from areas of land subject to a sustainable forest management permit; and”.
- (2) Section 67Q(2) of the principal Act is amended by adding the words “or permit”.

16 Powers of entry and seizure

Section 67R(e) of the principal Act is amended by omitting the words “is being or about to be removed”, and substituting the words “is about to be, is being, or has been milled or exported, or has been felled or harvested,”.

17 Offences

- Section 67T of the principal Act is amended by repealing paragraph (f), and substituting the following paragraphs:
- “(f) carries out work for the harvesting of timber (including, but not limited to, the felling of timber and the construction of roads, tracks, or landings) on an area of land subject to a registered sustainable forest management plan, or a registered sustainable forest management permit, other than in accordance with an annual logging plan approved under section 67H; or
- “(fa) transports, mills (other than under section 67D(1)(e)), chips, cuts for firewood, or pulps any timber harvested from an indi-

genous forest, knowing that the timber is about to be, is being, or has been felled, harvested, milled, or exported in contravention of this Part; or

“(fb) fells any indigenous timber on land subject to a registered sustainable forest management plan, or a registered sustainable forest management permit, other than in accordance with that plan or permit; or

“(fc) harvests or mills indigenous timber that is subject to an approval under section 67D(3) other than in accordance with the approval; or”.

18 New section 67V substituted

(1) The principal Act is amended by repealing section 67V, and substituting the following section:

“**67V Relationship of Part with Resource Management Act 1991**
Nothing in this Part derogates from any provision of the Resource Management Act 1991.”

(2) Section 8 of the Forests Amendment Act 1995 is consequentially repealed.

Part 2

Miscellaneous provisions

19 Compensation

(1) No person is entitled to compensation from the Crown in respect of any diminution, by reason of the enactment of this Act, in—

(a) the rights, or value of the rights, of that person under a contract relating to indigenous timber on any specified Maori land; or

(b) the value of indigenous timber on any specified Maori land; or

(c) the value of any specified Maori land.

(2) This section is subject to section 20.

20 Power to specify criteria and method of assessment in relation to payment of assistance

(1) The Governor-General may, by Order in Council, specify the criteria and methods of assessment that must be applied by the

Crown in determining any claim for financial losses suffered in relation to a specified contract as a direct result of the enactment of section 4.

- (2) In this section, **specified contract** means a written contract that—
- (a) relates to the export of indigenous timber harvested from specified Maori land; and
 - (b) was entered into before 13 July 1999, being the date on which this Act was introduced as a Bill into the House of Representatives.

21 Power to specify payment of money in relation to conservation covenant not gross income of recipient

- (1) The Governor-General may, by Order in Council, made in accordance with a recommendation of the Minister of Finance, specify that a payment of money made in consideration of the entering into of a conservation covenant over specified Maori land is not gross income of the recipient.
- (2) An Order in Council under this section may relate to a payment of money that is made in any income year, beginning with the 2002-03 income year.
- (3) In this section **gross income** has the same meaning as in section BD 1 of the Income Tax Act 1994.

22 Certain payments of money under deed of settlement relating to Waitutu Block not assessable income or gross income

- (1) This section applies to payments of money made—
- (a) in any of the 1995-96 to 1999-2000 income years; and
 - (b) to the Proprietors of Waitutu Incorporated under the deed of settlement in relation to that portion of the Waitutu Block that is specified Maori land.
- (2) A payment of money made in the 1995-96 or 1996-97 income year is not assessable income of the Proprietors of Waitutu Incorporated.
- (3) A payment of money made in any of the 1997-98 to 1999-2000 income years is not gross income of the Proprietors of Waitutu Incorporated.

- (4) In this section,—
- assessable income** has the same meaning as in the Income Tax Act 1994 as in force immediately before the commencement of the 1997-98 income year
- deed of settlement** has the same meaning as in the Waitutu Block Settlement Act 1997
- gross income** has the same meaning as in the Income Tax Act 1994 as in force at the commencement of the 1997-98 income year
- payment of money** includes the provision of consideration in kind
- Proprietors of Waitutu Incorporated** has the same meaning as in the Waitutu Block Settlement Act 1997
- Waitutu Block** has the same meaning as in the Waitutu Block Settlement Act 1997.

Legislative history

13 July 1999	Introduction, first reading, second reading and referral to Transport and Environment Committee (Bill 311-1)
29 August 2003	Reported from Local Government and Environment Committee (Bill 311-2)
11 May 2004	Consideration of report
12 May 2004	Committee of the whole House (Bill 311-3)
13 May 2004	Third reading
