



## ANALYSIS

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1988, No. 131

**An Act to amend the Conservation Act 1987**

[30 July 1988]

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

**1. Short Title**—This Act may be cited as the Conservation Amendment Act 1988, and shall be read together with and deemed part of the Conservation Act 1987 (hereinafter referred to as the principal Act).

**2. Access to and use of conservation areas**—(1) The principal Act is hereby amended by repealing section 17, and substituting the following section:

“17. (1) Subject to this Act, the Director-General may from time to time, upon any terms and conditions the Director-General thinks appropriate, do all or any of the following things:

“(a) Authorise any person or body of persons (whether incorporated or not) to use any conservation area for any specified form of public recreation:

“(b) Authorise any person or department of State to use any conservation area as the site for a station for the transmission, emission, or reception, of any form of radio-electric or electronic communication:

“(c) Erect, or authorise any body or person (whether incorporated or not) to erect, in any conservation area ski-lifts, ski-tows, or other similar apparatus:

“(d) Carry out, construct, or erect, or authorise any body or person (whether incorporated or not) to carry out, construct, or erect, in any conservation area any works, building, or apparatus, designed to facilitate tourist traffic or the enjoyment of skiing or other sports:

“(e) Authorise any person to use any part of any conservation area for camping sites or for parking places for vehicles, for the convenience of persons using or visiting the area or any other conservation area:

“(f) Authorise any person to carry on any trade, business, or occupation in any conservation area.

“(2) Where any conservation area has a management plan, the Director-General shall not under subsection (1) of this section authorise any thing in respect of the area that is or would be contrary to the plan.

“(3) An authority under this section shall not have effect in respect of any part of a conservation area that is subject to a lease or licence without the written consent of the lessee or licensee (obtained before or after the authority was given).

“(4) It may be a condition of the Director-General’s authorising any thing under subsection (1) of this section that the person or body authorised should pay royalties, rent, fees, and other charges, or any of them, to the Director-General.

“(5) Subsection (4) of this section does not affect the generality of subsection (1) of this section.

“(6) The Director-General may charge for the use of facilities (other than paths and tracks) provided by the Director-General in or in respect of any conservation area.

“(7) The lessee or licensee of any part of a conservation area may, to the extent that the lease or licence so provides, charge for the use of facilities provided by the Director-General or the lessee or licensee in or in respect of that part of the area.

“(8) Any person who—

“(a) Has, with the authority of the Director-General, erected any apparatus in any conservation area; or

“(b) Has, with the authority of the Director-General, carried out in any conservation area any works designed to facilitate tourist traffic or the enjoyment of skiing or other sports; or

“(c) With the authority of the Director-General, uses any part of any conservation area for camping sites or for parking places for vehicles; or

“(d) With the authority of the Director-General, carries on any trade, business, or occupation in any conservation area,—  
may, subject to the area’s management plan (if any) and the terms and conditions (if any) subject to which the Director-General gave the authority concerned, charge for access to or use of the apparatus, works, sites, or places concerned or (as the case may be) for the carrying on or products of the trade, business, or occupation concerned.

“(9) Except as provided in this section and in section 38 (1) of this Act, public access to and use of conservation areas shall be free of charge.

“(10) Nothing in subsection (9) of this section authorises any person to do any thing on or in respect of any private land.”

(2) Section 39 (1) of the principal Act is hereby amended by inserting, after paragraph (g), the following paragraph:

“(ga) Carries on any trade, business, or occupation in any conservation area; or”.

(3) Section 61 (2) of the principal Act is hereby amended by omitting paragraph (d) and the words following it, and substituting the following paragraph and words:

“(d) Is vested in a State enterprise under the said section 24,—  
be deemed to be a conservation park.”

(4) Section 61 (4) of the principal Act is hereby amended by omitting paragraph (d) and the words following it, and substituting the following paragraph and words:

“(d) Is vested in a State enterprise under the said section 24,—  
be deemed to be a wilderness area.”

(5) Section 61 (6) of the principal Act is hereby amended by omitting paragraph (d) and the words following it, and substituting the following paragraph and words:

“(d) Is vested in a State enterprise under the said section 24,—  
be deemed to be an ecological area.”

(6) The said section 61 is hereby further amended by adding the following subsections:

“(9) Until it is—

“(a) Declared to be held for conservation purposes under section 7 (1) of this Act; or

“(b) Vested in a State enterprise under section 24 of the State-Owned Enterprises Act 1986,—  
all land that is deemed by this section to be a conservation park, a wilderness area, or an ecological area shall be deemed

to be held under this Act for conservation purposes; but neither it nor any interest in it shall be disposed of except by vesting as aforesaid.

“(10) Nothing in subsection (9) of this section restricts or prevents the granting under this Act of a lease, licence, or easement over any land.”

(7) Section 62 of the principal Act is hereby amended by omitting the words after paragraph (d), and substituting the words “shall, until it is declared under section 7 (1) of this Act to be held for conservation purposes, be deemed to be held under this Act for conservation purposes; but neither it nor any interest in it shall be disposed of”.

(8) The said section 62 is hereby further amended by adding, as subsection (2), the following subsection:

“(2) Nothing in subsection (1) of this section restricts or prevents the granting under this Act of a lease, licence, or easement over any land.”

(9) It is hereby declared that the amendments effected by subsections (3) to (8) of this section are for the avoidance of doubt.

**3. New sections inserted**—The principal Act is hereby amended by inserting, after section 60, the following sections:

**“60A. Persons in respect of whose actions Director-General may recover costs, require royalties, etc.**—This section applies to the Minister, the Director-General, the holder of any office under any enactment administered by the Department, and every employee of the Department.

**“60B. Director-General may recover certain costs**—  
(1) The Director-General, after—

“(a) Any person to whom section 60A of this Act applies, has—

“(i) Considered whether or not to give, grant, issue, make, or reach any approval, authority, concurrence, consent, decision, licence, permission, permit, or waiver, or to take or undertake any similar action (whether or not the consideration has been concluded); or

“(ii) Given, granted, issued, made, or reached any approval, authority, concurrence, consent, decision, licence, permission, permit, or waiver, or taken or undertaken any similar action; or

“(iii) Refused to give, grant, issue, make, or reach any approval, authority, concurrence, consent,

decision, licence, permission, permit, or waiver, or to take or undertake any similar action; or

“(b) The Minister has considered whether or not to recommend to the Governor-General the making of any Order in Council (whether or not the consideration has been concluded),—

(whether under this Act or any other enactment, or otherwise howsoever) may require any person who applied for or otherwise requested the approval, authority, concurrence, consent, decision, licence, order, permission, permit, waiver, or action concerned, or who applied for or otherwise requested any thing for which it was necessary, to pay to the Director-General all or any part the Director-General thinks fit of the direct and indirect costs to the Department of dealing with it (or, as the case requires, dealing with as much of it as has then been dealt with); and in that case—

“(c) That latter person shall, within 28 days of receiving from the Director-General a written demand in that behalf, pay those costs or that part accordingly; and

“(d) The Director-General may, on behalf of the Minister, recover those costs or that part as a debt due to the Crown by that latter person.

“(2) Subsection (1) of this section shall have effect whether or not any person was under a duty imposed by any enactment or by law to take or undertake the action concerned.

“(3) The Director-General may, in the Director-General’s absolute discretion, refund or waive payment of all or any part of any sum paid or required to be paid pursuant to this section.

“(4) Where any person applies to a person to whom section 60A of this Act applies for, or otherwise requests from any such person,—

“(a) Any approval, authority, concurrence, consent, decision, licence, order, permission, permit, waiver, or other action, in respect of which the Director-General is empowered by subsection (1) of this section to recover any costs; or

“(b) Any thing for which any such action is necessary,— the person to whom the section applies shall take all reasonable steps to ensure that—

“(c) The other person is informed of the general effect of the subsection in relation to the action or thing applied for or requested; and

“(d) Until the other person has been so informed, no further costs to the Department are incurred other than the cost of so informing the other person.

“(5) Subject to subsection (6) of this section, on application in that behalf, any person to whom section 60A of this Act applies shall give to the applicant the person’s best estimate of the costs likely to be required under this section to be paid by the applicant in respect of any specified matter.

“(6) A person to whom section 60A of this Act applies may refuse to give an estimate under subsection (5) of this section unless paid the reasonable costs to the Department of causing it to be prepared.

“(7) No person shall be bound by an estimate given under subsection (5) of this section.

“60c. **Indirect applications**—Where—

“(a) Any person (in this section referred to as the beneficiary) applies to a person (being a person to whom section 60A of this section does not apply) for, or otherwise requests from any such person, any action, decision, or thing; and

“(b) By virtue of this Act or any other enactment, the action, decision, or thing may not be done, given, granted, issued, reached, taken, or undertaken, except—

“(i) With the approval, authority, concurrence, consent, licence, permission, or permit of a person to whom section 60A of this Act applies; or

“(ii) After any such person has made a decision, or taken or undertaken an action, of a specified kind or description; or

“(iii) By an Order in Council made on the recommendation of the Minister, or the Minister and one or more other Ministers jointly, or made under an Act administered by the Department; or

“(iv) With an approval, authority, concurrence, consent, licence, permission, or permit given, granted, or issued by such an Order in Council; and

“(c) As a consequence of the beneficiary’s application or request, an application or other request is made by any person—

“(i) To a person to whom section 60A of this Act applies for the approval, authority, concurrence, consent, decision, licence, permission, permit, or action concerned; or

“(ii) To the Minister to recommend the making of the order concerned,—

section 60b of this Act shall have effect as if the beneficiary had made the latter application or request directly to the person to

whom section 60A of this Act applies or, as the case may be, to the Minister.

**“60D. Royalties, etc., may be required in certain circumstances—(1) Where—**

**“(a) Either—**

**“(i) Any person to whom section 60A of this Act applies (in this section referred to as the grantor) is empowered by any enactment (other than this Act) or by law to give, grant, issue, make, or reach any approval, authority, concurrence, consent, decision, licence, permission, permit, or waiver, or to take or undertake any similar action; or**

**“(ii) The Governor-General is empowered by any such enactment to make an Order in Council; and**

**“(b) An effect in any particular case of the person’s doing so (or, in the case of the making of an Order in Council, an effect of the order) would be that any other person (in this section referred to as the beneficiary)—**

**“(i) Would be able, or would be able more easily, to carry on any trade, business, or occupation; or**

**“(ii) Would be able, or would be able more easily, to make a profit or a larger profit, or derive an income or a larger income, or avoid a loss or a larger loss, on or in respect of any action, transaction, or group of actions or transactions; or—**

**“(iii) Would acquire or be able to acquire an asset; or**

**“(iv) Would be the owner of an asset that had increased in value; or**

**“(v) Would acquire or be able to acquire any special or exclusive rights or privileges in relation to any activity or thing that, but for the various rights and privileges of the beneficiary (and, where any other persons have special or exclusive rights or privileges, the rights and privileges of those persons) would be in the public domain; or**

**“(vi) Would acquire or be able to acquire increased or additional special or exclusive rights or privileges in relation to any activity or thing that, but for the various rights and privileges of the beneficiary (and, where any other persons have special or exclusive rights or privileges, the rights**

and privileges of those persons) would be in the public domain,—

the grantor may refuse to take or undertake the action (or, as the case requires, the Minister may refuse to recommend to the Governor-General the making of the order) in that case unless there have been entered into arrangements satisfactory to the Director-General for the payment to the Director-General of royalties, rent, fees, and other charges, or any of them.

“(2) Subsection (1) of this section shall have effect whether or not the grantor is under a duty imposed by any enactment or by law to take or undertake the action concerned or the Minister is under any such duty to recommend the making of the order concerned.

“(3) There shall be deemed to have been consideration for any person’s entering into any arrangement with the Director-General under subsection (1) of this section.

“60E. **Payments**—All money paid to the Director-General under section 60B of this Act or under any arrangement under section 60D of this Act shall be deemed to have been paid under this Act.”

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This Act is administered in the Department of Conservation.

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