Reprint

as at 1 June 2010

Carter Observatory Act 1938

Public Act 1938 No 9
Date of assent 14 September 1938

Carter Observatory Act 1938: repealed, on 1 June 2010, by section 6 of the Carter Observatory Act Repeal Act 2010 (2010 No 34).

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Note
Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered in the Department of Scientific and Industrial Research

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An Act to provide for the establishment in the City of Wellington of an astronomical observatory, and for the application of certain money bequeathed for that purpose by the late Charles Rooking Carter, and for matters incidental thereto

Preamble

WHEREAS the late Charles Rooking Carter, who died in the year 1896, by his last will bequeathed certain money, being the residue of his estate, to the Board of Governors of the New Zealand Institute to form the nucleus of a fund for the establishment in or near Wellington of an astronomical observatory for the public use and benefit, and for the endowment of the staff thereof: And whereas the money comprised in the said bequest, together with the accumulated income thereof, were, by section 13 of the Royal Society of New Zealand Act 1933, vested in the Royal Society of New Zealand, and are now held by that society upon the trusts declared in respect thereof by the said will: And whereas

the Royal Society of New Zealand and the Wellington City Council have agreed that provision should be made as follows in respect of the matters aforesaid, and it is expedient that provision be made accordingly.

1 Short Title

This Act may be cited as the Carter Observatory Act 1938.

2 Interpretation

In this Act, unless the context otherwise requires,—

Board means the Carter Observatory Board constituted under this Act

Financial year means a year ending on the 31st day of March

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

Minister: this definition was substituted by section 2 Carter Observatory Amendment Act 1972.

Minister: this definition was substituted, as from 16 November 1977, by section 2 Carter Observatory Amendment Act 1977.

Minister: this definition was substituted, as from 2 August 1990, by section 14(1) Foundation for Research, Science, and Technology Act 1990 (1990 No 72).

Observatory means the Carter Observatory to be established under this Act.

3 Establishment of Carter Observatory

(1) There shall be established, in accordance with this Act, astronomical observatories, to be called the Carter Observatory.

(2) There shall be established in the City of Wellington an astronomical observatory, to be the headquarters and principal observatory of the Carter Observatory, which shall be the same observatory as that called the Carter Observatory before the commencement of the Carter Observatory Amendment Act 1977.

(3) There may be established by the Board at any place in New Zealand further astronomical observatories, to be out-stations of the Carter Observatory.

Section 3 was substituted, as from 16 November 1977, by section 3 Carter Observatory Amendment Act 1977 (1977 No 47).

3A Functions of Carter Observatory

(1) The Carter Observatory shall be the national astronomical observatory of New Zealand, and may promote or carry out such research or activity related to astronomy as the Board may see fit.

(2) The functions of the Observatory may be carried out in collaboration with any other body or person.

Section 3A was inserted, as from 16 November 1977, by section 4 Carter Observatory Amendment Act 1977 (1977 No 47).

4 Incorporation of Board

(1) There is hereby established for the purposes of this Act a Board, to be called the Carter Observatory Board.

(2) The Board shall be a body corporate, with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property, of suing and being sued, and of doing and suffering all that bodies corporate may do and suffer.

Subsection (2) was substituted, as from 21 September 1972, by section 3 Carter Observatory Amendment Act 1972 (1972 No 9).

5 Constitution of Board

(1) The Board shall consist of 7 persons to be appointed as follows:

(a) Four shall be appointed by the Minister:

(b) One shall be appointed by the Minister on the nomination of the Royal Astronomical Society of New Zealand:

(c) One shall be appointed by the Minister on the nomination of the Wellington Regional Council:

(d) One shall be appointed by the Minister on the nomination of the Wellington City Council.

(2) The members of the Board shall be appointed for a term not exceeding 5 years, but every member shall, unless sooner vacating office under section 5A of this Act, continue in office until a successor comes into office.

Subsection (1) was amended, as from 16 November 1977, by section 5(1)(a) Carter Observatory Amendment Act 1977 (1977 No 47) by substituting the expression "10" for the word "nine".

Subsection (1)(b) was amended, as from 16 November 1977, by section 5(1)(b) Carter Observatory Amendment Act 1977 (1977 No 47) by omitting the word "and".

Subsection (1)(c) was amended, as from 16 November 1977, by section 5(1)(c) Carter Observatory Amendment Act 1977 (1977 No 47) by adding the word "and".

Subsection (1)(d) was inserted by section 5(2) Carter Observatory Amendment Act 1977.

Subsection (2) was substituted by section 4 Carter Observatory Amendment Act 1972.

Section 5 was substituted, as from 1 April 1989, by section 2(1) Carter Observatory Amendment Act 1988 (1988 No 178).

5A Extraordinary vacancies

(1) Any member of the Board may at any time be removed from office by the Minister for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Minister, or may at any time resign his office by written notice to the Chairman of the Board.

(2) If any member dies or resigns, or is removed from office, his office shall become vacant, and the vacancy shall be deemed to be an extraordinary vacancy.

(3) An extraordinary vacancy shall be filled in the same manner in which the appointment to the vacant office was made.

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

Section 5A was inserted, as from 21 September 1972, by section 5 Carter Observatory Amendment Act 1972 (1972 No 9).

Subsection (1) was amended, as from 22 October 1981, by section 3 Carter Observatory Amendment Act 1981 (1981 No 60) by substituting the word "Minister" for the words "Governor-General".

Subsection (1) was amended, as from 1 January 2002, by section 70(1) Human Rights Amendment Act 2001 (2001 No 96), by substituting the words "inability to perform the functions of the office" for the word "disability".

6 Representation of absent members

(1) In the absence from any meeting of the Board of any member appointed on the nomination of any local authority or other

body that local authority or body may appoint any other person to attend the meeting in his stead.

(2) In the absence from any meeting of the Board of any other member, being an officer of the Public Service, the Minister may authorise any other officer of the Public Service to attend the meeting in his stead.

(3) While any person is attending any meeting of the Board pursuant to this section he shall be deemed for all purposes to be a member of the Board.

7 Meetings of Board

(1) The first meeting of the Board shall be held at a time and place to be fixed in that behalf by the Minister.

(2) Thereafter meetings of the Board shall be held at such times and places as the Board determines.

(3) At any meeting of the Board 4 members shall form a quorum.

(4) All questions before the Board shall be decided by a majority of the valid votes recorded thereon.

Subsection (3) was amended, as from 1 April 1989, by section 3 Carter Observatory Amendment Act 1988 (1988 No 178) by substituting the expression "4" for the expression "5".

8 Chairman and Deputy Chairman of Board

(1) At the first meeting of the Board in each financial year the Board shall elect one of its members to be the Chairman of the Board for that year. The retiring Chairman shall be eligible for re-election.

(2) Whenever there is a vacancy in the office of Chairman the Board may elect one of its members to be the Chairman for the residue of the term of office of the vacating Chairman.

(3) The Board may from time to time appoint one of its members to be Deputy Chairman of the Board. During any vacancy in the office of Chairman or whenever the Chairman is unable to act, whether by reason of absence or illness or otherwise, the Deputy Chairman shall have and may exercise and perform all the powers and duties of the Chairman.

(4) The Chairman shall preside at every meeting of the Board at which he is present. In the absence of the Chairman and the

Deputy Chairman from any meeting of the Board the members present shall select one of their number to be the Chairman for the purposes of that meeting.

(5) At any meeting of the Board the Chairman shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote.

9 Special meetings of Board

The Chairman may at any time, of his own motion, call a special meeting of the Board, and he shall call a special meeting on the requisition in writing of any 3 members. Not less than 7 days' previous notice in writing of the time and place of any special meeting shall be given to all members of the Board.

10 Committees

(1) The Board may from time to time appoint such committees as it thinks fit to assist it in the discharge of its functions under this Act, and may appoint as members of any committee, or authorise any committee to co-opt as members thereof, persons who are not members of the Board.

(2) The Board may at any time and from time to time discharge, alter, continue, or reconstitute any committee, or discharge any member of a committee, and, if it thinks fit, appoint another member in his stead.

(3) The Board may relegate to any committee any matters for consideration, inquiry, management, or regulation; and may with the approval of the Minister delegate to any committee any of the powers and duties of the Board.

11 Procedure of Board and committees

Subject to the provisions of this Act, the Board may regulate in such manner as it thinks fit the procedure of the Board and of any committee appointed by it under the last preceding section.

12 Travelling allowances and expenses

(1) The Board may pay travelling allowances and expenses to each of its members and to each member and co-opted member of any committee appointed by it; and, in respect of travel

in New Zealand, those allowances and expenses shall not exceed those payable in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

(2) In respect of travel in New Zealand the Board is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

Section 12 was substituted, as from 21 September 1972, by section 6 Carter Observatory Amendment Act 1972 (1972 No 9).

13 Contracts of Board

The Board is hereby declared to be a public body for the purposes of the Public Bodies Contracts Act 1959.

Section 13 was substituted, as from 21 September 1972, by section 7(1) Carter Observatory Amendment Act 1972 (1972 No 9).

14 Functions of Board

The functions of the Board shall be to establish and to maintain, operate, and control, the Carter Observatory, and the Board shall have all such powers, not inconsistent with this Act, as are reasonably necessary for the effective performance of its duties and functions.

Section 14 was amended, as from 16 November 1977, by section 6 Carter Observatory Amendment Act 1977 (1977 No 47) by omitting the words "on the site mentioned in the next succeeding section".

14A Grant to astronomers

The Board may from time to time, out of its annual income, make grants or pay subsidies to any person or body for the promotion or carrying out of any research or activity related to astronomy, subject to such terms and conditions as the Board may specify.

Section 14A was inserted, as from 16 November 1977, by section 7 Carter Observatory Amendment Act 1977 (1977 No 47).

15 Site of observatory

(1) The Wellington City Council is hereby authorised and directed to transfer to the Board the land specified in the next succeeding subsection for an estate in fee simple, free from the reservation now affecting it, in trust as a site for the observatory

and any other building and erections associated therewith, and generally for the purposes of the observatory.

(2) The land to be so transferred shall be such part of the Botanical Gardens at Kelburn, containing not more than 2 roods, as may be agreed upon by the Wellington City Council and the Board.

16 Wellington City telescope to be transferred to Board

The Wellington City Council is hereby authorised and directed to transfer to the Board the 9-inch telescope belonging to the Corporation of the City of Wellington, and any other apparatus, equipment, or chattels belonging to the Corporation that in the opinion of the Council may be of use to the Board.

17 Carter bequest to be vested in Board

(1) The money comprised in the hereinbefore-recited bequest by the said Charles Rooking Carter, together with the accumulated income thereof, the securities in which any such money is invested, and all rights of the Royal Society of New Zealand in relation thereto are hereby vested in the Board for the purpose of providing funds for the exercise of the Board's functions.

(2) The trusts declared in the will of the said Charles Rooking Carter in respect of the said money are hereby discharged.

18 Contributions to Board's funds

Any local authority within the meaning of the Local Government Act 2002, and any body of persons (whether incorporated or unincorporated) or other person may, unless expressly prohibited from doing so by any enactment or instrument of trust, make to the Board any donation or gift of money or real or personal property or any annual grants; and the Board may accept such donations, gifts, and grants.

Section 18 was substituted, as from 16 November 1977, by section 8 Carter Observatory Amendment Act 1977 (1977 No 47).

Section 18 was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words "within the meaning of the Local Government Act 2002" for the words "as defined in section 2 of the Local Authorities Loans Act 1956 for the purposes of Part 6 of that Act". *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

19 Annual grant to Board

The Minister of Finance shall in the financial year ending on the 31st day of March 1939, and in every financial year thereafter, pay to the Board, out of money appropriated by Parliament for the purpose, the sum of $1,500, or such other sum as the Minister of Finance may on the recommendation of the Board approve, for the purpose of providing funds for the exercise of the Board's functions.

The expression "$1,500" was substituted for the words "seven hundred and fifty pounds" by section 7 Decimal Currency Act 1964.

20 Officers of Board

(1) The Board may from time to time appoint such officers and servants as it deems necessary for the efficient exercise and performance of its functions and duties.

(2) The chief executive officer of the Board shall be paid such remuneration as is from time to time determined by the State Services Commission.

(3) The other officers and servants shall be paid such remuneration as the Board from time to time considers appropriate.

Subsections (2) and (3) were inserted, as from 1 April 1988, by section 87 State Sector Act 1988 (1988 No 20).

21 Power of Board to charge for admission, etc

The Board may from time to time—

(a) Make such charges for admission to the observatory or to any part thereof as it deems reasonable; and

(b) Grant the use of any part of the observatory to any person, body, or society (whether incorporated or not) for the purpose approved by the Board, upon such terms as the Board determines.

22 Exemption from rates and taxes

(1) All lands for the time being vested in the Board and held by it as the site of the observatory, or in conjunction with that site, are not rateable under the Local Government (Rating) Act 2002.

(2) The Board is declared to be exempt from the payment of income tax under the Income Tax Act 2007.

Subsection (1) was substituted, as from 1 July 2003, by section 137(1) Local Government (Rating) Act 2002 (2002 No 6).

Subsection (2) was substituted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 22(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

22A Members of Board not personally liable

No member of the Board shall be personally liable for any act or default done or made by the Board, or by any member of the Board in good faith in the course of the operations of the Board.

Section 22A was inserted, as from 21 September 1972, by section 8 Carter Observatory Amendment Act 1972 (1972 No 9).

23 Money received by Board

All money received by the Board shall forthwith be paid into an account in the Board's name at such bank as the Minister of Finance from time to time directs. No money shall be drawn out of the bank except by authority of the Board. All cheques and other instruments on the Board's account shall be signed by any 2 of such members of the Board nominated for the purpose by the Board or by one such member and the secretary. All negotiable and other instruments requiring endorsement shall be endorsed by such person or persons as may from time to time be authorised in that behalf by the Board.

Section 23 was substituted, as from 21 September 1972, by section 9 Carter Observatory Amendment Act 1972 (1972 No 9).

24 Power to borrow on overdraft

(1) The Board may, in anticipation of its revenue, from time to time, borrow money from its bankers by way of overdraft, or from any person or persons.

(2) It shall not be lawful for the Board—

(a) To borrow money under the power conferred by this section to such an extent that there shall be owing by the Board at any time upon its account a sum exceeding three-fourths of its revenue for the preceding 12 months properly payable into that account:

(b) To owe under the authority of this section at the end of any year on its account any sum greater than such part of the revenue of the year then ended as remains outstanding and unpaid, and properly payable into that account.

(3) For the purposes of this section,—

(a) Money borrowed otherwise than by way of bank overdraft shall be deemed to be money owing upon the bank account into which it was paid:

(b) The amount of any cheque drawn on a bank account but not presented at the end of the year shall be deemed to be money owing upon that account at the end of that year:

(c) Money in a bank account at the end of a year which is properly payable into another bank account shall be deemed to be money owing at the end of that year upon the bank account in which it is held.

(4) So long as the money borrowed by the Board under this section does not exceed the limit prescribed by subsection (2)(a) of this section, the lenders shall not be liable in any manner in respect of the failure of the Board to comply with or provide for compliance with the provisions of this section; and nothing in this section shall be interpreted to affect the right of the lenders to be repaid, out of the assets of the Board.

Section 24 was substituted, as from 21 September 1972, by section 10 Carter Observatory Amendment Act 1972 (1972 No 9).

Section 24 was substituted, as from 1 July 1998, by section 16(1) Local Government Amendment Act (No 3) 1996 (1996 No 83).

25 Investment of money

Subject to the terms of any trust or endowment, any money belonging to the Board that is not immediately required for expenditure by the Board may be invested in any manner in which trustees are for the time being authorised to invest trust funds.

25A Unauthorised expenditure

The Board may in each financial year, out of money not appropriated or held in trust for any special purpose, expend for

purposes not authorised by this or any other Act for the time being in force any sum or sums not amounting in the aggregate to more than 1 percent of the annual income of the Board for that financial year.

Section 25A was inserted, as from 21 September 1972, by section 11 Carter Observatory Amendment Act 1972 (1972 No 9).

Section 25A was substituted, as from 16 November 1977, by section 9(1) Carter Observatory Amendment Act 1977 (1977 No 47).

26 Audit of Board's accounts

(1) The Board must keep full and correct accounts of all money received and expended by it.

(2) The Board shall, as soon as practicable after the end of every financial year, cause the accounts of the Board for that financial year to be balanced and prepare a statement of financial position of the Board as at the end of the financial year, together with an account of income and expenditure showing the financial transactions for that year.

(3) The Board is a public entity as defined in section 4 of the Public Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.

Section 26 was substituted, as from 21 September 1972, by section 12 Carter Observatory Amendment Act 1972 (1972 No 9).

Subsection (1) was substituted, as from 1 July 2001, by section 53 Public Audit Act 2001 (2001 No 10).

Subsection (2) was amended, as from 1 October 1997, pursuant to 6(1) Financial Reporting Amendment Act 1997 (1997 No 17) by substituting the words "statement of financial position" for the words "balance sheet".

Subsection (3) was inserted, as from 1 July 2001, by section 53 Public Audit Act 2001 (2001 No 10).

27 Board to furnish annual report

(1) The Board shall, within 3 months after the end of each financial year, or within such extended period as the Minister may allow, provide the Minister with a report of its proceedings and activities during the last financial year.

(2) The annual report shall contain the statement of financial position of the Board as at the end of the financial year, together with an account of income and expenditure showing the finan-

cial transactions for that year, and shall also contain the report of the Audit Office on that balance sheet and account.

(3) The Minister shall lay a copy of the annual report before Parliament within 28 days after the date of his receiving the report if Parliament is then in session, and, if not, shall lay it before Parliament within 28 days after the date of the commencement of the next ensuing session.

Section 27 was substituted, as from 21 September 1972, by section 13 Carter Observatory Amendment Act 1972 (1972 No 9).

Subsection (2) was amended, as from 1 October 1997, pursuant to 6(1) Financial Reporting Amendment Act 1997 (1997 No 17) by substituting the words "statement of financial position" for the words "balance sheet".

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Notes

1 General

This is an eprint of the Carter Observatory Act 1938. The eprint incorporates all the amendments to the Act as at 1 June 2010. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the eprint are also included, after the principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about eprints and officialisation, please *see* http://www.pco.parliament.govt.nz/eprints/.

3 List of amendments incorporated in this eprint (most recent first)

Carter Observatory Act Repeal Act 2010 (2010 No 34): section 6
Income Tax Act 2007 (2007 No 97): section ZA 2(1)