

# Liquid Fuels Trust Act 1978

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**An Act to establish a Liquid Fuels Trust Board, to define its functions and powers, and to make provision for the funding of its activities by means of a levy on liquid fuels**

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

**1 Short Title**

This Act may be cited as the Liquid Fuels Trust Act 1978.

**2 Interpretation**

In this Act, unless the context otherwise requires,—

“Alternative indigenous fuel” means alcohol, liquefied petroleum gas, compressed natural gas, hydrogen, or synthetic gasolene, derived from resources indigenous to New Zealand:

“Alternative means of propulsion” means electricity, wind, or any other form or source of propulsion (other than petroleum), that may be used as a means of propulsion for transport purposes in New Zealand:

“Appointed member” means a member of the Board appointed under section 5(1)(a) of this Act:

“Aviation fuel” means motor spirits of a kind for the time being determined by the Minister of Customs under section 10(1)(a) of the Motor Spirits Duty Act 1961 (as substituted by section 8(1) of the Customs Acts Amendment Act 1975) to be aviation fuel:

“Board” means the Liquid Fuels Trust Board established by this Act:

“Chairman” means the Chairman of the Board appointed as such pursuant to this Act:

“Financial year” means a period of 12 consecutive months commencing with the 1st day of April:

“Levy” means a levy payable under this Act:

“Liquid fuels” means goods that, if imported, would be admissible for the time being under items 27.10.011, 27.10.021, 27.10.029, 27.10.031, 27.10.038, and 27.10.039 of the Customs Tariff and that part of item 27.10.051 of the Tariff which is automotive diesel; but does not include aviation fuel:

“Liquid Fuels Trust Account” or “Account” means the Liquid Fuels Trust Account established in accordance with this Act:

“Minister” means the Minister of Energy:

“Petroleum” has the same meaning as in the International Energy Agreement Act 1976:

“Wholesale distributor” means a person who, whether exclusively or not, engages in the sale of liquid fuels by wholesale or who, whether exclusively or not, sells liquid fuels to a retailer, or who, whether exclusively or not, manufactures or produces liquid fuels within New Zealand.

### *Liquid Fuels Trust Board*

#### **3 Liquid Fuels Trust Board**

- (1) There is hereby established a Board to be called the Liquid Fuels Trust 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 such acts and things as bodies corporate may do and suffer.
- (3) The common seal of the Board shall be judicially noticed in all Courts and for all purposes.

#### **4 Functions of Board**

- (1) The primary function of the Board shall be to promote, encourage, finance, undertake, and co-operate in any activity that has as its purpose, or one of its purposes, the reduction of the use of imported fuels for transport purposes in New Zealand.
- (2) Without limiting the Board’s primary function specified in subsection (1) of this section, the Board shall also have the following functions:
  - (a) To promote, encourage, finance, undertake, and cooperate in investigations, research, surveys, studies, and tests relating to—

- (i) The efficient and economical supply, processing, distribution, storage, and use for transport purposes of petroleum, alternative indigenous fuels, and alternative means of propulsion; and
  - (ii) Social and environmental factors associated with alternative indigenous fuels and alternative means of propulsion:
- (b) To promote, encourage, finance, undertake, and co-operate in the installation or improvement of plant and equipment in New Zealand for the efficient and economical supply, processing, distribution, storage, and use for transport purposes in New Zealand of petroleum, alternative indigenous fuels, and alternative means of propulsion:
  - (c) To make recommendations to the Minister with respect to any of the matters specified in this section.

## **5 Membership of Board**

- (1) The Board shall consist of—
  - (a) Not more than 3 persons to be appointed by the Governor-General, on the joint recommendation of the Minister of Energy, the Minister of Finance, and the Minister of Trade and Industry:
  - (b) The Secretary of Energy:
  - (c) The Secretary to the Treasury:
  - (d) The Secretary of Trade and Industry:
  - (e) The Director-General of the Department of Scientific and Industrial Research.
- (2) One of the appointed members of the Board shall be so appointed as Chairman of the Board.
- (3) The functions and powers of the Board shall not be affected by any vacancy in its membership.

## **6 Term of office of members of Board**

- (1) Subject to the succeeding provisions of this section, every appointed member of the Board shall hold office for such term as the Governor-General, on the joint recommendation of the Minister of Energy, the Minister of Finance, and the Minister of Trade and Industry, shall specify in his appointment, being a term not exceeding 3 years, but may from time to time be reappointed.
- (2) Any appointed member of the Board may be removed from office at any time by the Governor-General, on the recommendation of the Minister, for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister, or may at any time resign his office by writing addressed to the Minister.
- (3) Every appointed member of the Board, unless he sooner vacates his office under subsection (2) of this section, shall continue in office until his successor

comes into office, notwithstanding that the term for which he was appointed may have expired.

## **7 Deputy Chairman**

- (1) At its first meeting in each financial year, the members of the Board shall elect one of their number to be Deputy Chairman.
- (2) Any person elected as Deputy Chairman shall hold office as such for the financial year in which he is elected or until he sooner vacates office as a member of the Board.
- (3) At the first meeting of the Board after a vacancy occurs in the office of Deputy Chairman, the Board shall elect one of its members to be Deputy Chairman.
- (4) Subject to the provisions of this Act, the Deputy Chairman shall have and may exercise all the powers and duties of the Chairman during his absence or incapacity or while there is a vacancy in the office of Chairman.
- (5) No acts done by a Deputy Chairman acting as the Chairman shall in any proceedings be questioned on the ground that the occasion for his so acting had ceased or had not arisen.

## **8 Deputies of members**

- (1) In any case where the Minister is satisfied that any appointed member of the Board is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the Minister may appoint a person to act in the place of that member during his incapacity.
- (2) Any member of the Board specified in paragraphs (b) to (e) of section 5(1) of this Act may appoint any officer of his department to attend any meeting or meetings of the Board in his stead. The fact that any such officer so attends shall be sufficient evidence of his authority to do so.
- (3) Any person appointed under this section shall, while he acts as such, be deemed to be a member of the Board, and any person appointed in the place of the Chairman shall have all the powers of the Chairman.
- (4) No appointment of a person under this section and no acts done by him while acting as a member of the Board, and no acts done by the Board while any person is acting as such, shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

## **9 Meetings of Board**

- (1) The first meeting of the Board shall be held on a day to be fixed by the Chairman.
- (2) Subsequent meetings of the Board shall be held at such times and places as the Board or the Chairman from time to time decides.
- (3) The Chairman or any 2 members of the Board may at any time call a special meeting of the Board.

- (4) At any meeting of the Board, the quorum necessary for the transaction of business shall be—
  - (a) Five members, if the Board consists of 7 members at the time of the meeting; or
  - (b) Four members, in any other case.
- (5) All questions arising at any Board meeting shall be decided by a majority of the valid votes recorded by the members present and entitled to vote. Any member may demand a poll to decide any question, but otherwise voting shall be carried out by a show of hands.
- (6) A resolution in writing signed, or assented to by letter or telegram, by all the members of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted.
- (7) The Chairman shall preside at all meetings at which he is present.
- (8) In the absence from any meeting of the Chairman and the Deputy Chairman, the members present shall elect one of their number to act as chairman of that meeting.
- (9) At any meeting, the Chairman or the person acting as such shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.
- (10) The Chairman or person for the time being acting as such may adjourn any meeting until a specified time and to a specified place if he considers that deliberation on a question will be furthered by such a course of action.
- (11) Subject to the provisions of this Act, the Board may regulate its procedure in such manner as it thinks fit.

## **10 Powers of Board**

- (1) Without limiting subsection (2) of this section or any other provision of any Act, the Board shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions.
- (2) The Board may, for the purposes of carrying out its functions,—
  - (a) Make grants or advances to any person engaged in any activity with which the Board is concerned and on such terms and conditions as the Board thinks fit:
  - (b) Purchase, take on lease or hire, or otherwise acquire, or sell, lease, hire, or otherwise dispose of, or install, improve, manage, or develop, any land, buildings, plant, or equipment, or any other real or personal property:
  - (c) With the consent of the Minister of Finance, act as guarantor of, or give an indemnity to, any person engaged in any activity with which the Board is concerned and on such terms and conditions as the Board thinks fit.

**11 Board may appoint advisory and technical committees**

- (1) The Board may from time to time appoint advisory committees, technical committees, and committees to advise it on such matters as it may refer to them.
- (2) Every such committee may, in addition and on its own initiative, furnish to the Board reports on any matter in respect of which the members of the committee have special knowledge or experience.
- (3) Any person may be appointed to be a member of any such committee, notwithstanding that he is not a member of the Board.
- (4) Every such committee shall in all matters be subject to the control of the Board.
- (5) Subject to the provisions of this Act, every committee appointed under this section may regulate its procedure in such manner as it thinks fit.

**12 Employees of Board**

- (1) Subject to the provisions of this section, the Board may from time to time appoint such officers and employees, including acting or temporary or casual officers and employees, as it thinks necessary for the efficient carrying out of its functions and powers.
- (2) The number of officers and employees who may be appointed under subsection (1) of this section, whether generally or in respect of any specified duties, shall from time to time be determined by the Minister.
- (3) Officers and employees appointed under subsection (1) of this section shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Board from time to time determines in agreement with the State Services Commission, or as the Minister from time to time determines in any case where the Board and the State Services Commission fail to agree.
- (4) Any determination under subsection (3) of this section shall take effect on such date (whether the date thereof or any earlier or later date) as may be specified therein. If no date is so specified the determination shall take effect on the date thereof.

**13 Employment of experts**

- (1) The Board may appoint any person, who in its opinion possesses expert knowledge or is otherwise able to assist it in connection with the exercise of its functions, to make such inquiries or to conduct such research or to make such reports as may be necessary for the efficient carrying out of any functions of the Board.
- (2) The Board shall pay persons appointed by it under this section for services rendered by them, fees and commission or either at such rates as it thinks

fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Board.

#### **14 Application of certain Acts to members and staff of Board**

No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or the Government Superannuation Fund Act 1956 by reason of his appointment as a member of the Board or a committee appointed by the Board, or an officer or employee of the Board, or a person appointed by the Board under section 13 of this Act.

#### **15 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 Board appointed under section 12 of this Act, 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 section.
- (2) Notwithstanding anything in this Act, any person who immediately before becoming an officer or employee of the Board is a contributor to the Government Superannuation Fund under Part II 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 he continues to be an officer or employee of the Board; and that Act shall apply to him in all respects as if his service as such an officer or employee were Government service.
- (3) Subject to the Government Superannuation Fund Act 1956, nothing in subsection (2) of this section shall entitle any such person to become a contributor to the Government Superannuation Fund after he has once ceased to be a contributor.
- (4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with subsection (2) of this section, to a person who is in the service of the Board, whether as an officer or an employee, and is a contributor to the Government Superannuation Fund, the term “controlling authority” in relation to any such person means the Board.

#### **16 Board to comply with directions**

In the exercise of its functions and powers under this Act the Board shall comply with any general or special directions given to it in writing signed by the Minister of Energy, the Minister of Finance, and the Minister of Trade and Industry. As soon as practicable after any such direction is given, the Minister of Energy shall publish in the *Gazette* and lay before Parliament a copy of the direction.

**17 Members of Board and staff to maintain secrecy**

- (1) Every member of the Board or a committee appointed by the Board, and every officer or employee of the Board, and every person appointed under section 13 of this Act shall be deemed for the purposes of the Official Secrets Act 1951 to be persons holding office under Her Majesty.
- (2) Every person specified in subsection (1) of this section shall maintain secrecy in respect of all matters that come to his knowledge in the exercise of his functions or powers under this Act and shall not communicate any such matter to any person except for the purpose of giving effect to this Act or for the purpose of complying with a requirement under the Inland Revenue Department Act 1974.

**18 Members of Board, etc., not personally liable**

Except in the case of proceedings for an offence against the Official Secrets Act 1951 or against section 17(2) of this Act, no member of the Board or of any committee appointed by the Board, and no officer or employee of the Board, and no person appointed under section 13 of this Act, who does any act in pursuance or intended pursuance of any provision of this Act, or omits to do any act required by any such provision, shall be under any criminal or civil liability as a result of that act or omission, whether on the ground of want of jurisdiction or mistake of law or fact, or on any other ground, unless the act was done or omitted in bad faith or without reasonable care.

**19 Fees and travelling allowances**

- (1) The Board is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.
- (2) There shall be paid to the members of the Board, and to every member of any committee appointed by the Board, remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951; and, in the case of any such committee, the provisions of that Act shall apply as if that committee were a statutory Board within the meaning of that Act.

**20 Contracts of Board**

- (1) Any contract that, if made between private persons, must be by deed shall, when made by the Board, be in writing signed by 2 members of the Board.
- (2) Any contract that, if made between private persons, must be in writing signed by the parties to be charged therewith may, when made by the Board, be in writing signed by any person acting on behalf of and under the express or implied authority of the Board.
- (3) Any contract that, if made between private persons, may be made orally may, when made by the Board, be made orally by any person acting on behalf of and

under the express or implied authority of the Board, but no oral contract shall be made for any sum exceeding \$50.

## **21 Crown may provide services for Board**

- (1) The Crown, acting through any department of State, may from time to time, at the request of the Board, execute any work or enter into arrangements for the execution or provision by the department for the Board of any work or service, or for the supply to the Board of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.
- (2) In addition to any amount that may be payable to the Crown pursuant to subsection (1) of this section, the Crown shall be entitled in every financial year to recover from the Board out of the Liquid Fuels Trust Account such sum in respect of the costs incurred by the Crown in administering this Act, or providing other administrative services for the Board, as may be determined by the Minister of Finance after consultation with the Board.

### *Financial Provisions*

## **22 Liquid Fuels Trust Account**

- (1) There shall be an account within the Trust Account of the Public Account to be called the Liquid Fuels Trust Account.
- (2) There shall be credited to the Account—
  - (a) Subject to section 28(2) of this Act, all levies paid under this Act; and
  - (b) All money received by the Board from the repayment of any advances made by it, the sale or other disposition of any of its property, or any other source; and
  - (c) Any other money lawfully payable into the Account.
- (3) All grants, advances, fees, salaries, allowances, and other expenditure payable or incurred by the Board or under, or in the administration of, this Act shall be payable out of the Account.

## **23 Authorisation of expenditure**

- (1) Every withdrawal or payment of money made by the Board from its funds shall be authorised by a prior resolution of the Board or shall be submitted to it for authorisation at its next ordinary meeting after the date of payment.
- (2) In any financial year the Board may spend for purposes not otherwise authorised by this or any other Act any sum or sums not amounting in the aggregate to more than \$1,000.

## **24 Investment of money in Account**

Any money in the Liquid Fuels Trust Account and available for investment may from time to time be invested by, and in the name of, the Board in the

same manner as the Treasury may invest money under section 50(1) of the Public Finance Act 1977.

### *Imposition and Collection of Levy*

#### **25 Levy on liquid fuels**

- (1) There is hereby imposed and shall be paid in accordance with this Act a levy on all liquid fuels that are sold, used, or otherwise disposed of by a wholesale distributor on or after the 1st day of November 1978.
- (2) Subject to section 26 of this Act, the rate of levy shall be 0.1 of a cent per litre of liquid fuel.
- (3) The person liable to pay the levy payable on any liquid fuel shall be the wholesale distributor who sold, used, or otherwise disposed of the liquid fuel.
- (4) Notwithstanding subsection (1) of this section, no levy shall be payable in respect of any transaction whereby—
  - (a) Any liquid fuel is sold or agreed to be sold or disposed of by a wholesale distributor to another wholesale distributor; or
  - (b) Any liquid fuel is exported by a wholesale distributor, or is sold or agreed to be sold or disposed of by him for exportation, and is loaded upon the exporting ship or aircraft.

#### **26 Rate of levy may be altered by Order in Council**

- (1) The Governor-General may from time to time, by Order in Council, reduce or increase the rate of levy specified in section 25(2) of this Act.
- (2) Every Order in Council made under this section shall—
  - (a) Where the Order in Council is made on or before the 30th day of June in any calendar year, expire on the close of the 31st day of December in that calendar year, except so far as it is expressly validated or confirmed by an Act of the General Assembly passed during any session held in that calendar year; and
  - (b) Where the Order in Council is made on or after the 1st day of July in any calendar year, expire on the close of the 31st day of December in the following calendar year, except so far as it is expressly validated or confirmed by an Act of the General Assembly passed during any session held in that calendar year or in the preceding calendar year.
- (3) If any Order in Council expires by virtue of subsection (2) of this section, the rate of levy shall, from the expiry of that Order in Council and until the rate is again altered, be the same as it was immediately before that Order in Council came into force.

**27 Collection of levy**

Sections 3, 4, and 13 to 23 of the Motor Spirits Duty Act 1961 (as amended by section 82(1)(b) of the Sales Tax Act 1974, section 9 of the Customs Acts Amendment Act 1975, and sections 32 and 33 of the Customs Acts Amendment Act (No. 2) 1976) shall, as far as they are applicable and with the necessary modifications, apply in respect of a levy payable under this Act as if the levy were motor spirits duty and as if—

- (a) All references in those provisions to motor spirits duty were references to the levy; and
- (b) All references in those provisions to a licensee or a wholesale distributor under that Act, were references to a wholesale distributor under this Act; and
- (c) All references in those provisions to motor spirits were references to liquid fuels; and
- (d) The reference in section 14(3) of that Act to subsection (1) of section 10 of that Act were a reference to section 25 of this Act.

**28 Levies to be paid to Liquid Fuels Trust Account**

- (1) Subject to subsection (2) of this section, all levies paid under this Act shall be paid into the Public Account and credited to the Liquid Fuels Trust Account.
- (2) For the purpose of reimbursing the Crown for any expenses incurred by the Collector of Customs in collecting any levies under this Act, the Collector may retain such percentage (not exceeding 5 percent) of every levy collected by him as may be determined by the Minister of Finance after consultation with the Board.

**29 Effect on agreements of imposition or alteration of levy**

For the purposes of this Act, section 159 of the Customs Act 1966, so far as it is applicable and with all necessary modifications, shall apply to agreements for the sale of liquid fuels as if the levy were duty within the meaning of that Act, and as if the imposition or alteration of the levy were an alteration to which that section applies.

*Miscellaneous Provisions***30 Exemptions from taxation**

- (1) The Board shall be exempt from land tax and income tax.
- (2) The Stamp and Cheque Duties Act 1971 is hereby amended by inserting in sections 13(1) and 14(1), after paragraph (d) in each case, the following paragraph:

“(da) The Liquid Fuels Trust Board established by the Liquid Fuels Trust Act 1978; or”.

**31 Annual report and accounts**

- (1) As soon as practicable after the end of each financial year the Board shall prepare—
  - (a) A report of its activities and operations for that year; and
  - (b) A balance sheet and statement of accounts of the Liquid Fuels Trust Account for that year.
- (2) Every balance sheet and statement of accounts prepared under this section shall be in such form and contain such particulars as the Minister of Finance specifies, and shall be audited and reported on by the Audit Office.
- (3) Within 10 days after the completion of the audit of the accounts by the Audit Office, the Board shall submit its report, together with the statement of accounts and balance sheet of the Liquid Fuels Trust Account for that year and the Audit Office report thereon, to the Minister. The Minister shall lay a copy of the report, statement of accounts, balance sheet, and Audit Office report before Parliament not later than the 16th sitting day of Parliament after the day he received them.

**32 Power of Comptroller of Customs to prescribe forms**

- (1) For the purposes of sections 25 and 27 of this Act, the Comptroller of Customs may from time to time prescribe any forms that are not otherwise specifically prescribed.
- (2) The production of any document under the hand of a Collector of Customs purporting to be a prescribed form or an extract from a prescribed form or a copy of any such form or extract shall in all Courts and in all proceedings be sufficient evidence of the fact that the form was prescribed; and all Courts shall in all proceedings take judicial notice of the signature of the Collector either to the prescribed form or to any such extract or copy.

**33 Repeals, consequential amendments, and transitional provisions**

- (1) The following enactments are hereby repealed:
  - (a) The Kapuni Petroleum Act 1970:
  - (b) The Kapuni Petroleum Amendment Act 1976:
  - (c) So much of the First Schedule to the Ministry of Energy Act 1977 as relates to the Kapuni Petroleum Act 1970:
  - (d) So much of Part VIII of the Second Schedule to the Ministry of Energy Act 1977 as relates to the Kapuni Petroleum Act 1970.
- (2) Section 5(1) of the Motor Spirits (Regulation of Prices) Act 1933(as amended by section 7 of the Kapuni Petroleum Act 1970) is hereby further amended by omitting the words “the amount from time to time payable by wholesalers under section 4 of the Kapuni Petroleum Act 1970,”, and substituting the words “the levy payable under the Liquid Fuels Trust Act 1978,”.

- (3) The Kapuni Petroleum Account established by section 3 of the Kapuni Petroleum Act 1970 is hereby abolished. All money, including investments, standing to the credit of the Kapuni Petroleum Account on the date of commencement of this Act shall be transferred to and deemed part of the Liquid Fuels Trust Account.

This Act is administered in the Ministry of Energy.