

CRIMINAL RECORDS BILL

EXPLANATORY NOTE

THIS Bill, which is drafted as an amendment to the Human Rights Commission Act 1977, is based on the recommendations of the Penal Policy Review Committee 1981 on the expungement of criminal records, and on the proposals contained in the Department of Justice Discussion Paper "Living Down a Criminal Record: Problems and Proposals" (1985).

The main purpose of the Bill is to help people who at some time in their lives have been convicted of a criminal offence to overcome the problems that having a criminal record may cause. The Department of Justice's Discussion Paper states the problems in the following terms:

"A criminal conviction may mean the inability to follow or continue in a chosen career, or make it difficult to obtain a visa to travel or settle overseas. Some people who have overcome the immediate problems of a criminal record and who have rehabilitated themselves in the community live in fear that an old conviction will be revealed to unsuspecting family, friends, or business associates. Others simply feel that they have earned the right to have their offences officially forgotten."

The law at present provides no practical means of alleviating these problems. The royal prerogative of mercy can be used to grant a pardon to a convicted person, but this procedure is generally reserved for cases where there has been a miscarriage of justice.

The Bill aims to assist persons with a criminal record while at the same time ensuring that society is adequately protected from those who break the law. It seeks to do so in two main ways.

- (a) The Bill extends the Human Rights Commission Act 1977 to cover discrimination against a person with a criminal record in any of the areas at present covered by that Act (principally employment; access to land, housing, accommodation, and education; access and use of public facilities and services; the provision of goods and services), and in the area of disciplinary proceedings against members of a profession, trade, or calling. It will be unlawful to discriminate in any of those areas against anyone with a conviction unless it can be shown that there is a direct relationship between the conviction and the area in issue.

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The bar on discrimination will apply from the date of the conviction where the offender receives a non-custodial sentence, and from the date of release from custody where a custodial sentence is imposed.

How will the direct relationship test apply? The Bill specifies that there is a direct relationship between a conviction and a particular matter if the fact of the conviction means that the offender will be unreliable, untrustworthy, or otherwise unsatisfactory, or will commit a further offence. In determining those matters, the factors to be considered are the type and seriousness of the offence, the overall circumstances of the offence, how long ago the offence was committed, and the present personal attitudes and personal circumstances of the offender.

The Bill further provides that the direct relationship test ceases to apply after 10 years (5 years in the case of a person under the age of 17) if, during that period, the person has no further convictions (other than minor convictions). A further conviction extends the rehabilitation period for a further 10 (or 5) years.

The bar on discrimination against a person with a criminal record will be enforced under the existing procedures of the Human Rights Commission Act 1977. A person complaining of discrimination will be able to approach the Human Rights Commission, which will attempt to conciliate between the parties and try to reach a settlement. If that approach fails, a case may be taken to the Equal Opportunities Tribunal, which has power to award damages to a successful complainant.

The use of a conviction to disqualify a person from holding a particular office, or to deny a person a licence or permit, is also regulated by the Bill (see *clauses 9 and 12*).

(b) The Bill also imposes restrictions on the availability of information about a person's convictions.

(i) After a period of 5 years without further convictions (2 years in the case of a person under 17), it will be an offence to publish or broadcast any information that discloses, or is reasonably likely to disclose, that the person has a conviction. That period will begin to run from the date of the conviction where the offender receives a non-custodial sentence, and from the date of release from custody where a custodial sentence is imposed. Minor convictions within the period will not count.

The bar on publication will not apply after 1 year after the death of the offender, or where the publication is with the offender's consent.

(ii) After the relevant conviction-free period has expired, it will be an offence for an official to disclose to anyone that the offender has a conviction. There are certain exceptions to this prohibition, for example, where the information is to be used for the purposes of sentencing the offender for a later offence.

The Bill does not deal with the question of how long information about a person's previous convictions should be retained on the Wanganui Computer. Under section 4 (4) of the Wanganui Computer Centre Act 1976, the Wanganui Computer Centre Policy Committee is given power to determine the maximum periods for which information may be retained on the Computer. To date, no such periods have been set.

(iii) It will be an offence for a person to ask any person any question that cannot be answered without the other person disclosing the

existence of a conviction in respect of which the relevant conviction-free period has expired. That prohibition will only apply in those circumstances specified in the Human Rights Commission Act 1977 where it will be unlawful to discriminate on the ground of a conviction, and in the circumstances dealt with in *clauses 9 and 12* of the Bill. A question will not be prohibited if it seeks the disclosure of a conviction that would satisfy the direct relationship test outlined above, or where it is necessary to obtain information about a conviction for any purpose relating to the treatment of a person for a mental disorder.

A person will be entitled to refuse to answer a prohibited question, and may not be prejudiced for failing to answer any such question, or for failing to disclose a conviction in respect of which the relevant conviction-free period has expired. A person who is prejudiced in any of the areas covered by the Human Rights Commission Act 1977 for failing to disclose such a conviction will be able to invoke the remedies available under that Act.

(iv) The Bill imposes certain restrictions on the admissibility of previous convictions in court proceedings.

The protections in the Bill will also apply in respect of convictions entered in armed forces disciplinary proceedings, and in respect of findings of guilt in disciplinary proceedings relating to a person's profession, trade, or calling.

The following is a clause-by-clause explanation of the Bill:

Clause 1 relates to the Short Title and commencement of the Bill. The Bill is to come into force on 1 January 1989.

PART I

AMENDMENTS TO PRINCIPAL ACT

Part I contains amendments to the Human Rights Commission Act 1977 (the principal Act).

Clause 2 inserts a number of new definitions in section 2 of the principal Act.

Clause 3 amends section 15 of the principal Act, and makes it unlawful to discriminate in the area of employment on the ground of an irrelevant conviction (whether the conviction is that of the person concerned or of a relative or associate of that person).

However, this prohibition will not apply where a Government department or public body refuses a person employment, or otherwise discriminates against a person in the area of employment, on the ground that the person has not been given an unqualified recommendation for a security clearance by the New Zealand Security Intelligence Service because of a conviction.

Clause 4 amends section 19 of the principal Act, and makes it unlawful to discriminate in the area of partnerships on the ground of an irrelevant conviction (whether the conviction is that of the person concerned or of a relative or associate of that person).

Clause 5 amends section 20 of the principal Act, and makes it unlawful for industrial unions and professional and trade associations to discriminate on the ground of an irrelevant conviction (whether the conviction is that of the person concerned or of a relative or associate of that person).

Clause 6 amends section 21 of the principal Act, and makes it unlawful for bodies empowered to confer an approval, authorisation, or qualification that is needed for, or facilitates engagement in a profession, trade, or calling to

discriminate on the ground of an irrelevant conviction (whether the conviction is that of the person concerned or of a relative or associate of that person).

The *proposed new subsection (1A) of section 21* provides that this prohibition is to override any provision that is contained in any other enactment and that authorises or requires a conviction to be taken into account in any of the circumstances to which section 21 (1) applies. This means that the prohibition will apply not only where another enactment expressly requires or permits a conviction to be taken into account, but also where a conviction could be taken into account under provisions relating to the character or conduct of a person (eg., a requirement that an applicant be a fit and proper person).

Clause 7 inserts a *new section 21A* in the principal Act.

The *proposed new section 21A* makes it unlawful for any body that is empowered, under any enactment or law, or the rules of any body or association, to exercise disciplinary powers in respect of persons carrying on a profession, trade, or calling to exercise those powers in respect of any such person by reason of an irrelevant conviction.

The prohibition overrides any provision that is contained in any other enactment and that authorises or requires a conviction to be taken into account in the circumstances to which the *proposed new section 21A* applies.

Clause 8 amends section 22 of the principal Act, and makes it unlawful for vocational training bodies to discriminate on the ground of an irrelevant conviction (whether the conviction is that of the person concerned or of a relative or associate of that person).

Clause 9 inserts a *new section 22A* in the principal Act.

The *proposed new section 22A* provides that where any provision of any enactment requires, as a qualification for holding any office, that the appointee be a fit and proper person, or a person of good character and reputation, or a fit person to be appointed, or imposes any other qualification that relates to the character or conduct of the appointee, that provision does not disqualify any person from holding that office merely because that person, or any relative or associate of that person, has an irrelevant conviction.

The proposed new provision overrides any other enactment that would otherwise permit an irrelevant conviction to be taken into account in determining the eligibility of an applicant for appointment. However, it does not itself provide a ground for a complaint of unlawful discrimination under the principal Act. Remedies for a breach will have to be sought in other areas of the law, for example an application for judicial review on the ground that the decision-maker took into account an irrelevant consideration.

Clause 10 amends section 23 of the principal Act, and makes it unlawful to discriminate in the area of access by the public to places, vehicles, and facilities on the ground of an irrelevant conviction (whether the conviction is that of the person concerned or of a relative or associate of that person).

Clause 11 amends section 24 of the principal Act, and makes it unlawful to discriminate in the provision of goods, facilities, and services on the ground of an irrelevant conviction (whether the conviction is that of the person concerned or of a relative or associate of that person).

It is also made clear that the provision of facilities includes facilities for licences and permits.

The prohibition overrides any provision that is contained in any other enactment (other than the Immigration Act 1987) and that authorises or requires

a conviction to be taken into account in the circumstances to which section 24 applies.

Clause 12 inserts a *new section 24A* in the principal Act.

The *proposed new section 24A* provides that where any provision of any enactment provides for the grant, cancellation, revocation, renewal, or extension of any licence or permit, the fact that any person, or any relative or associate of any person, has an irrelevant conviction is not a ground, under that provision, for—

- (a) Refusing to grant a licence or permit to that person; or
- (b) Granting a licence or permit to that person on less favourable terms and conditions than would otherwise be imposed; or
- (c) Cancelling or revoking, or declining to renew or extend, a licence or permit held by that person.

The new provision overrides any other enactment (other than the Immigration Act 1987) that authorises or requires a conviction to be taken into account in the circumstances to which the new provision applies. However, it does not itself provide a ground for a complaint of unlawful discrimination under the principal Act. Remedies for a breach will have to be sought in other areas of the law, for example an application for judicial review on the ground that the decision-maker took into account an irrelevant consideration.

Clause 13 amends section 25 of the principal Act, and makes it unlawful to discriminate in the area of land, housing, and accommodation on the ground of an irrelevant conviction (whether the conviction is that of the person concerned or of a relative or associate of that person).

Clause 14 amends section 26 of the principal Act, and makes it unlawful for educational establishments to discriminate on the ground of an irrelevant conviction (whether the conviction is that of the person concerned or of a relative or associate of that person).

Clause 15 amends section 27 of the principal Act, which prohibits discrimination by subterfuge, and extends it to cover discrimination on the grounds of an irrelevant conviction.

Clause 16 amends section 33 of the principal Act, which relates to the liability of employers and principals for acts and omissions of their employees or agents. The amendment extends that liability to cover breaches of the *proposed new sections 33M and 33Q*.

Clause 17 inserts a *new Part IIA* in the principal Act. The new Part relates to the disclosure of information about irrelevant convictions. The rehabilitation period (conviction-free period) under this new Part is 5 years (2 years in the case of a person under 17).

The *proposed new section 33A* is an interpretation provision.

The *proposed new section 33B* makes it an offence to—

- (a) Publish, in any newspaper or other document intended to be made available to the public; or
- (b) Broadcast, by radio or television or otherwise,—
any information where—
- (c) That information discloses, or is reasonably likely to disclose, the fact that any person has a conviction; and
- (d) The rehabilitation period applicable to that conviction has expired; and

- (e) The person who publishes or broadcasts that information knows, or has good reason to know, that the rehabilitation period applicable to that conviction has expired.

The offence is punishable on summary conviction,—

- (a) In the case of an individual, by imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000:
- (b) In the case of a body corporate, by a fine not exceeding \$10,000.

The *proposed new sections 33C and 33D* provide that the prohibition in the *proposed new section 33B* does not apply where information disclosing the existence of an irrelevant conviction is published not less than 1 year after the death of the person to whom it relates, or with the consent of that person.

The *proposed new section 33E* makes it an offence for an official to communicate to any other person any information where—

- (a) That information discloses, or is reasonably likely to disclose, the fact that any person has a conviction; and
- (b) The rehabilitation period applicable to that conviction has expired; and
- (c) The official who communicates the information knows, or has good reason to know, that the rehabilitation period applicable to the conviction has expired; and
- (d) The information that discloses, or is reasonably likely to disclose, the fact of that conviction came to the knowledge of that official in the course of his or her official duties.

The offence is punishable on summary conviction by imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000.

The *proposed new sections 33F to 33L* provide exceptions to the prohibition in the *proposed new section 33E*. The prohibition does not apply where the information that discloses the existence of an irrelevant conviction—

- (a) Is stored on the Wanganui Computer, and is communicated, in accordance with the Wanganui Computer Centre Act 1976, for official purposes between officials of Government departments that have access to the computer:
- (b) Is communicated in accordance with section 14, 16, 16A, 17, or 18 of the Wanganui Computer Act 1976 (which relate to access by persons to information held about them on the Wanganui Computer):
- (c) Is communicated for the purpose of vetting any person for security purposes:
- (d) Is communicated for the purpose of enabling the Parole Board or any District Prisons Board to carry out its functions:
- (e) Is communicated for sentencing purposes:
- (f) Is communicated for the purpose of determining whether a person is disqualified from serving on a jury:
- (g) Is communicated for the purpose of proving, in any criminal proceedings, that any person has been convicted of an offence:
- (h) Is communicated for any purpose related to the treatment of any person for any mental disorder:
- (i) Is communicated only to the person to whom the information relates, or after the death of that person, or with that person's consent.

The *proposed new section 33M* makes it an offence for a person to knowingly, recklessly, or negligently ask any person any question that cannot be answered without the other person disclosing the existence of a conviction in respect of which the relevant rehabilitation period has expired. The prohibition applies only in respect of questions asked in those circumstances specified in the Human Rights Commission Act 1977 where it will be unlawful to discriminate on the

ground of an irrelevant conviction, or where the *proposed new sections 22A and 24A* will apply.

The offence is punishable on summary conviction,—

(a) In the case of an individual, by imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000:

(b) In the case of a body corporate, by a fine not exceeding \$10,000.

The *proposed new section 33N* provides that a question will not be prohibited by the *proposed new section 33M* if it seeks only the disclosure of convictions the use of which is not unlawful under Part II of the principal Act or excluded under the *proposed new sections 22A and 24A*.

The *proposed new section 33O* provides that a question will not be prohibited by the *proposed new section 33M* if it seeks information that is necessary for any purpose relating to the treatment of any person for any mental disorder.

The *proposed new section 33P* provides that a person will be entitled to refuse to answer a question that is prohibited by the *proposed new section 33M*, and may not be subjected to any liability or otherwise prejudiced in law for refusing or failing to answer any such question.

The *proposed new section 33Q* provides that where any person fails to disclose to any other person any conviction the asking of a question about which is prohibited by the *proposed new section 33M*, it is unlawful for that other person to use the non-disclosure of that conviction as a ground for doing anything that would be in breach of Part II of the principal Act.

This prohibition applies notwithstanding the provisions of any other enactment or any rule of law to the contrary, and notwithstanding any obligation imposed on any person by any rule of law, or by the provisions of any agreement or arrangement, to disclose any information to any other person.

Clauses 18 to 23 make certain consequential amendments to the principal Act. One amendment of note is the repeal, by *clause 20 (b)*, of the proviso to section 40 (1) of the principal Act. That proviso puts a limit of \$2,000 on the amount of damages that may be awarded for humiliation, loss of dignity, and injury to feelings. These kinds of loss or injury are particularly likely to occur in the area of discrimination on the ground of a conviction, and this limit is no longer appropriate.

Clause 24 inserts a new *Part VIIA* in the principal Act. The new Part relates to the definition of an irrelevant conviction and the calculation of the rehabilitation period applicable to a conviction.

The *proposed new section 76A* is an interpretation provision.

The *proposed new section 76B* defines an “irrelevant conviction”. (The Bill will make it unlawful to discriminate against a person in any of the areas at present covered by the Human Rights Commission Act 1977 on the ground of an “irrelevant conviction”.) A conviction will be irrelevant if—

(a) There is no direct relationship (as defined in the *proposed new section 76C*) between that conviction and the particular matter in respect of which it is sought to take that conviction into account; or

(b) The rehabilitation period applicable to that conviction has expired. (“Rehabilitation period” is defined in the *proposed new section 76D*.)

The *proposed new section 76C* defines the term “direct relationship”. There is a direct relationship between a conviction and any matter in respect of which it is sought to take that conviction into account if the fact of that conviction means that there is a real likelihood that the person against whom that conviction was entered will, in relation to that matter,—

(a) Be unreliable, untrustworthy, or otherwise unsatisfactory; or

(b) Commit a further offence.

In determining whether there is a real likelihood that any of those matters will occur, the following matters are to be taken into consideration:

- (a) In relation to the offence for which the conviction in issue was entered,—
 - (i) The type and seriousness of that offence:
 - (ii) The overall circumstances of that offence:
 - (iii) The amount of time that has elapsed since that offence was committed:
- (b) In relation to the person in respect of whom that conviction was entered, the present personal attitudes and personal circumstances of that person.

The *proposed new section 76D* defines the term “rehabilitation period”.

For the purposes of Part II of the principal Act (which sets out the circumstances when discrimination is unlawful), the rehabilitation period applicable to a conviction is,—

- (a) In the case of a person who is under 17 at the date of the conviction, a period of 5 years without any further convictions:
- (b) In any other case, a period of 10 years without further convictions.

For the purposes of the *proposed new Part IIA* (which relates to the publication of information about a conviction), the rehabilitation period applicable to a conviction is,—

- (a) In the case of a person who is under 17 at the date of the conviction, a period of 2 years without any further convictions:
- (b) In any other case, a period of 5 years without any further convictions.

The *proposed new section 76E* sets out the commencement date of the rehabilitation period where a non-custodial sentence is imposed in respect of a conviction. The basic rule in this case is that the rehabilitation period commences on the date of the conviction. The rule is, however, subject to a number of exceptions, which are set out in the *proposed new sections 75F to 76J*.

The *proposed new section 76F* sets out the commencement date of the rehabilitation period applicable to a conviction in respect of which a non-custodial sentence is imposed where the offender is already detained pursuant to a full-time custodial sentence or is detained in a psychiatric institution.

Where the offender is already detained pursuant to a full-time custodial sentence, the rehabilitation period applicable to the conviction in respect of which the non-custodial sentence is imposed is to commence when the offender is no longer detained pursuant to any full-time custodial sentence.

Where the offender is detained in a hospital pursuant to an order made under section 115 (1) or (2) (a) of the Criminal Justice Act 1985 (which section relates to the detention of persons who are found in criminal proceedings to be under a disability or who are acquitted on the ground of insanity), the rehabilitation period applicable to the conviction in respect of which the non-custodial sentence is imposed is to commence on the date on which the offender ceases to be detained in the hospital.

However, where, on the date on which the offender ceases to be detained in that hospital, that offender is liable to be detained under any full-time custodial sentence, and is subsequently detained in a penal institution to serve the remainder of that sentence, the rehabilitation period applicable to the conviction in respect of which the non-custodial sentence is imposed commences on the date on which the offender ceases to be detained pursuant to any full-time custodial sentence.

Where the offender is detained in a psychiatric institution, or in an institution under the Alcoholism and Drug Addiction Act 1966, and is also subject to a full-time custodial sentence, the rehabilitation period applicable to the conviction in

respect of which the non-custodial sentence is imposed commences on the date on which the offender ceases to be subject to any full-time custodial sentence.

The *proposed new section 76G* deals with the situation where a non-custodial sentence is imposed in respect of a conviction, and, on the same occasion or in the same proceedings, a full-time custodial sentence is imposed on the offender in respect of another conviction. In this case the rehabilitation period applicable to the first conviction commences when the offender is no longer detained pursuant to any full-time custodial sentence.

The *proposed new section 76H* deals with the situation where an offender who has been ordered to come up for sentence when called upon (which is classed as a non-custodial sentence) is subsequently called up for sentence and is sentenced for the original offence.

If a non-custodial sentence is imposed, the commencement date of the rehabilitation period applicable to the original conviction is unaltered. It remains the date of the conviction.

If, however, a full-time custodial sentence is imposed, a new rehabilitation period will begin to run on the date of the offender's release from detention pursuant to that sentence.

The *proposed new section 76I* deals, in a similar way, with the parallel situation under the Children and Young Persons Act 1974.

The *proposed new section 76J* sets out the commencement date of the rehabilitation period where the sentence imposed in respect of a conviction is suspended. (In New Zealand, the ordinary courts do not have power to suspend a sentence, but the power is available to courts-martial in military proceedings, and the power is available to some overseas courts.)

The basic rule in this case is that a suspended sentence is to be treated as a non-custodial sentence. The rehabilitation period applicable to the conviction in respect of which the suspended sentence is imposed commences on the date of the conviction.

However, where the suspended sentence is a full-time custodial sentence, and the suspension of that sentence is subsequently terminated, the rehabilitation period that had begun to run ceases, and a new rehabilitation period begins to run when the offender is released from detention.

The *proposed new section 76K* sets out the commencement date of the rehabilitation period where a full-time custodial sentence is imposed in respect of a conviction. The basic rule in this case is that the rehabilitation period commences on the date of the first occasion subsequent to the imposition of that sentence that the offender is no longer detained pursuant to any full-time custodial sentence.

The *proposed new section 76L* deals with the situation where an offender who has been given early release under section 91 of the Criminal Justice Act 1985, or who has been released on parole under section 106 of that Act, is subsequently recalled to continue to serve his or her sentence. If this occurs, and the rehabilitation period applicable to the original conviction has not expired before the offender is recalled, that rehabilitation period ceases to run, and a new rehabilitation period begins to run in respect of that conviction on the offender's release. (A new rehabilitation period does not begin to run on release if the original rehabilitation period has expired before the offender's recall.)

Any rehabilitation period running in respect of any other conviction when the offender is recalled also ceases to run on that recall, and a new rehabilitation period begins to run in respect of that conviction on the offender's release.

The *proposed new section 76M* defines the term "detained" for the purposes of the *proposed new sections 76F, 76G, 76J, 76K, 76L, and 76Q(6)*.

A person is still detained pursuant to a full-time custodial sentence even though that person—

- (a) Is temporarily released from custody pursuant to section 21 of the Penal Institutions Act 1954; or
- (b) Is unlawfully at large; or
- (c) Is removed from a penal institution pursuant to section 26 or section 27 or section 28 of the Penal Institutions Act 1954 (which provisions relate to the removal of an inmate for judicial, medical, educational, compassionate, and certain other purposes); or
- (d) Is granted bail pursuant to section 125 of the Summary Proceedings Act 1957 or section 397 (2) of the Crimes Act 1961; or
- (e) Is given permission, pursuant to section 21A (1) of the Criminal Justice Act 1985, to be released from a penal institution from day to day to engage in employment.

For the purposes of the *proposed new section 76F (2)*, a person is no longer detained in a psychiatric institution when that person is discharged or deemed to be discharged from that institution or when that person is first on leave from that institution, whichever occurs first.

The *proposed new section 76N* provides that where an offender who is subject to a sentence of imprisonment or a sentence of preventive detention is released from detention and deported, the rehabilitation period applicable to the relevant conviction does not begin to run until the earliest date, subsequent to that offender's deportation, on which that offender would not be liable to resume serving that sentence if the offender returned to New Zealand.

The *proposed new section 76O* provides that where a person is convicted of an offence, and the Court, instead of passing sentence, makes an order that the person be detained in a hospital as a committed patient, the rehabilitation period applicable to that conviction commences when that person ceases to be liable to detention as a committed patient or when he or she is first on leave from the institution in which he or she is detained, whichever occurs first.

The *proposed new section 76P* sets out when a rehabilitation period commences if an offender who is subject to a full-time custodial sentence is detained in a psychiatric institution or an institution under the Alcoholism and Drug Addiction Act 1966.

Where an offender who is subject to a full-time custodial sentence (other than a sentence of life imprisonment) is detained in a psychiatric institution or in an institution under the Alcoholism and Drug Addiction Act 1966, or is on leave from any such institution, on the date on which he or she becomes eligible for remission of sentence, the rehabilitation period applicable to the conviction in respect of which that sentence was imposed commences on that date.

Where the Parole Board directs the release on parole of an offender who is subject to a sentence of life imprisonment or of preventive detention, and, on the date set, pursuant to that direction, as the offender's release date, that offender is detained in a psychiatric institution, or is on leave from any such institution, the rehabilitation period applicable to the conviction in respect of which the sentence of life imprisonment or of preventive detention was imposed commences on that date.

The *proposed new section 76Q* deals with the effect on the commencement of a rehabilitation period of the variation or cancellation of a sentence of community service, periodic detention, supervision, or community care, or a supervision order made under the Children and Young Persons Act 1974. The general rule is that if a non-custodial sentence is substituted for the original sentence, the rehabilitation period applicable to the relevant conviction continues to run unaffected.

However, if a full-time custodial sentence is substituted, the original rehabilitation period ceases to run, and a new rehabilitation period begins to run on the offender's release.

The *proposed new section 76R* deals with the effect on a rehabilitation period where the offender is subsequently convicted of another offence.

If the offender is convicted of another offence before the rehabilitation period applicable to the earlier conviction has expired, the rehabilitation period applicable to the earlier conviction is not to expire until the rehabilitation period applicable to the later conviction expires.

If the rehabilitation period applicable to a conviction has expired, and the offender is convicted, in New Zealand or overseas, of an offence that was committed before that rehabilitation period expired, a new rehabilitation period begins to run in respect of the earlier conviction on the date on which the rehabilitation period applicable to the subsequent conviction commences. Until that rehabilitation period expires, the person may be treated as if the first rehabilitation period applicable to the earlier conviction had not expired. However, this does not affect anything done or omitted on the basis that the first rehabilitation period applicable to that conviction had expired.

It should be noted that a subsequent conviction does not extend a rehabilitation period, or cause a new rehabilitation period to begin to run, if it is a conviction for a minor offence (i.e., an offence that does not carry a penalty of imprisonment or a fine of more than \$500). A conviction entered in any civil disciplinary proceedings only affects a rehabilitation period if the earlier conviction was also a conviction entered in civil disciplinary proceedings.

The *proposed new section 76S* makes it clear that the *proposed new sections 76E to 76R* apply to convictions entered overseas in the same way that they apply to convictions entered in New Zealand. Where it is necessary to apply any of those provisions to a conviction entered overseas, the provision is to be applied as if the offender had been sentenced or otherwise dealt with under New Zealand law in respect of that conviction in the manner that most nearly corresponds to the manner in which that offender was sentenced or otherwise dealt with in respect of that conviction in the country in which the conviction was entered.

PART II

AMENDMENTS TO EVIDENCE ACT 1908

Part II is drafted so that it can be enacted as a separate Evidence Amendment Act.

Clauses 27 to 29 make certain amendments to the Evidence Act 1908. The amendments relate to the disclosure and admissibility of irrelevant convictions in court proceedings.

Clause 27 amends section 5 of the Evidence Act 1908 by inserting a *new subsection (4A)*.

Section 5 (4) of the Evidence Act 1908 provides that where any person who is charged with an offence is called as a witness at his or her trial, the Judge may, among other things, limit the cross-examination of that person in so far as the cross-examination relates to that person's previous convictions.

The *proposed new subsection (4A)* provides that in deciding whether or not to exercise his or her discretion pursuant to section 5 (4), the Judge shall have regard to the principle that, unless there is good reason for doing so, a person should not be cross-examined in relation to a previous conviction if the rehabilitation period applicable to that conviction for the purposes of Part II of the Human Rights Commission Act 1977 has expired in accordance with that Act.

Clause 28 repeals section 12 of the Evidence Act 1908, and substitutes a *new section 12*.

Subsection (1) of the proposed new section 12 re-enacts the existing section 12, which authorises a witness to be asked whether he or she has been convicted of an indictable offence, and authorises the proof of a conviction if the witness denies it or refuses to answer.

Subsections (2) and (3) of the proposed new section 12 are new, and confer a discretion on a Judge to prohibit the questioning of a witness as to any previous conviction for an indictable offence where the rehabilitation period applicable to the conviction has expired. In deciding whether or not to exercise the discretion, the Judge is to have regard to the principle that, unless there is good reason for doing so, a witness should not be cross-examined in relation to a previous conviction if the rehabilitation period applicable to that conviction for the purposes of Part II of the Human Rights Commission Act 1977 has expired in accordance with that Act.

Clause 29 inserts a *new section 14A* in the Evidence Act 1908. The *proposed new section 14A* provides that in any proceeding in which the character of any person is in issue, unless the Court decides otherwise, any previous conviction of that person shall be inadmissible as evidence in those proceedings if the rehabilitation period applicable to that conviction for the purposes of Part II of the Human Rights Commission Act 1977 has expired in accordance with that Act.

In deciding whether or not to exercise this discretion, the Court is to have regard to the principle that, unless there is good reason for doing so, the previous conviction of a person should not be admitted if the rehabilitation period applicable to that conviction has expired.

The *proposed new section 14A* does not affect the operation of any other provision of the Evidence Act 1908 or of any other enactment.

PART III

AMENDMENT TO JURIES ACT 1981

Part III is drafted so that it can be enacted as a separate Juries Amendment Act.

Clause 31 amends the Juries Act 1981 by repealing section 7, and substituting a *new section 7*. The existing section 7 disqualifies a person from serving on a jury if that person—

- (a) Has, at any time, been sentenced to imprisonment for life or for a term of 3 years or more, or to preventive detention;
- (b) Has, at any time within the preceding 5 years, been sentenced to imprisonment for a term of 3 months or more, or to borstal training.

The *proposed new section 7* repeats these grounds for disqualification (except that relating to borstal training, which has been abolished), but provides that a conviction does not disqualify a person from serving on a jury if the rehabilitation period applicable to that conviction for the purposes of Part II of the Human Rights Commission Act 1977 has expired in accordance with that Act.

PART IV

CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

Clause 32 and the Schedule make consequential amendments to several enactments.

Right Hon. Geoffrey Palmer

CRIMINAL RECORDS

ANALYSIS

Title	
1. Short Title and commencement	
PART I	
AMENDMENTS TO PRINCIPAL ACT	
2. Interpretation	
3. Employment	
4. Partnerships	
5. Industrial unions and professional and trade associations	
6. Qualifying bodies	
7. New section inserted	
21A. Irrelevant conviction not a ground for disciplinary action	
8. Vocational training bodies	
9. New section inserted	
22A. Irrelevant conviction not to disqualify from holding office	
10. Access by the public to places, vehicles, and facilities	
11. Provision of goods and services	
12. New section inserted	
24A. Irrelevant conviction not a ground for refusal or revocation of licence or permit	
13. Land, housing, and other accommodation	
14. Educational establishments	
15. Discrimination by subterfuge	
16. Liability of employer and principals	
17. New Part IIA inserted	
PART IIA	
PROHIBITIONS ON DISCLOSURE OF, AND SEEKING OF INFORMATION ABOUT, IRRELEVANT CONVICTIONS	
33A. Interpretation	
	<i>Offence to Publish or Broadcast Irrelevant Conviction</i>
33B. Offence to publish information disclosing existence of conviction where rehabilitation period expired	
33C. Section 33B not to apply 1 year after death of offender	
33D. Defence to charge under section 33B	
	<i>Offence for Official to Disclose Existence of Irrelevant Conviction</i>
33E. Offence for official to disclose existence of conviction where rehabilitation period expired	
33F. Exception to section 33E where information stored on Wanganui Computer	
33G. Exception to section 33E where information used for vetting purposes	
33H. Exception to section 33E in respect of proceedings of Parole Board and District Prisons Boards	
33I. Exception to section 33E where information required for purposes of court proceedings	
33J. Exception to section 33E where information required for purposes of treatment for mental disorder	
33K. Section 33E not to apply after death of offender	
33L. Defence to charge under section 33E	
	<i>Offence to Seek Disclosure of Irrelevant Conviction</i>
33M. Offence to seek disclosure of conviction where	

rehabilitation period expired	offender called up for sentence under Children and Young Persons Act 1974
33N. Exception to section 33M where conviction relevant	76j. Commencement of rehabilitation period where sentence suspended
33O. Exception to section 33M where conviction relevant for purposes of treatment for mental disorder	76k. Commencement of rehabilitation period where custodial sentence imposed
33P. Person may refuse to answer question prohibited by section 33M	76L. Recall of offender to serve sentence
33Q. Person not to be prejudiced by failure to disclose irrelevant conviction	76M. Definition of 'detained' for purposes of sections 76F, 76G, 76j, 76k, 76L, and 76Q(6)
18. Functions of Commission	76N. Release from detention for purpose of deportation
19. Civil proceedings	76O. Commencement of rehabilitation period where offender committed instead of being sentenced
20. Damages	76P. Commencement of rehabilitation period where offender detained in psychiatric institution while subject to full-time custodial sentence
21. Granting of remedies by High Court on reference from the Tribunal	76Q. Effect of variation or cancellation of sentence
22. Extension of jurisdiction by agreement between the parties	76R. Subsequent conviction to extend rehabilitation period
23. Disclosure of certain matters not to be required.	76s. Convictions entered overseas
24. New Part VIIA inserted	25. Savings
PART VIIA	
PROVISIONS RELATING TO DEFINITION OF IRRELEVANT CONVICTION AND CALCULATION OF REHABILITATION PERIOD	
76A. Interpretation	
76B. Definition of irrelevant conviction	
76C. Definition of direct relationship	
76D. Definition of rehabilitation period	
76E. Commencement of rehabilitation period where non-custodial sentence imposed	
76F. Commencement of rehabilitation period applicable to non-custodial sentence where offender already detained	
76G. Commencement of rehabilitation period applicable to non-custodial sentence where full-time custodial sentence imposed in respect of another conviction	
76H. Commencement of rehabilitation period where offender called up for sentence under Criminal Justice Act 1985	
76I. Commencement of rehabilitation period where	
	PART II
	AMENDMENTS TO EVIDENCE ACT 1908
	26. This Part to be read with Evidence Act 1908
	27. Evidence of accused and spouse in criminal cases
	28. Proof of previous conviction of witness
	29. Admissibility of previous convictions in proceedings in which character in issue
	PART III
	AMENDMENT TO JURIES ACT 1981
	30. This Part to be read with Juries Act 1981
	31. Disqualification
	PART IV
	CONSEQUENTIAL AMENDMENTS TO OTHER ACTS
	32. Consequential amendments Schedule

A BILL INTITLED

An Act to assist persons who have been convicted of a criminal offence to live down the effect of their criminal record, and, for that purpose,—

- 5 (a) To extend the provisions of the Human Rights Commission Act 1977 to make it unlawful to discriminate against persons on the ground of an irrelevant conviction; and
- 10 (b) To prohibit, after a certain period without re-conviction, the disclosure of the existence of, and the asking of questions about, a conviction

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

1. Short Title and commencement—(1) This Act may be cited as the Criminal Records Act 1988, and shall be read together with and deemed part of the Human Rights Commission Act 1977* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of January 1989.

*R.S. Vol. 18, p. 227

PART I

20 AMENDMENTS TO PRINCIPAL ACT

2. Interpretation—Section 2 of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

25 “ ‘Conviction’ has the meaning given to it by section 76A of this Act:

“ ‘Government department’ includes a State enterprise within the meaning of section 2 of the State-Owned Enterprises Act 1986:

30 “ ‘Irrelevant conviction’ has the meaning given to it by section 76B of this Act:

“ ‘Rehabilitation period’, in relation to a conviction, has the meaning given to it by section 76D of this Act.”

3. Employment—(1) Section 15 of the principal Act is hereby amended by adding to subsection (1), and also to subsection (2), the words “, or by reason of an irrelevant conviction (whether of the person concerned or of any relative or associate of that person)”

(2) Section 15 of the principal Act is hereby further amended by inserting, after subsection (10), the following subsection:

“(10A) The prohibitions, in subsection (1) of this section, against discrimination on the grounds of an irrelevant conviction do not apply in respect of any act, omission, or practice done, omitted, or engaged in by any Government department or public body where— 5

“(a) That act, omission, or practice is based on the fact that a person has not been given an unqualified recommendation for a security clearance in a security vetting carried out by the New Zealand Security Intelligence Service at the request of that Government department or public body; and 10

“(b) An unqualified recommendation for a security clearance was not given to that person because that person, or any relative or associate of that person, has a conviction.” 15

4. Partnerships—(1) Section 19 of the principal Act is hereby amended by adding to subsection (1) the words “, or by reason of an irrelevant conviction (whether of the person concerned or of any relative or associate of that person)”.

(2) Section 19 of the principal Act is hereby further amended by adding to subsection (2) the words “, or by reason of an irrelevant conviction (whether of the partner concerned or of any relative or associate of that partner)”.

5. Industrial unions and professional and trade associations—(1) Section 20 (1) of the principal Act is hereby amended by adding the words “, or by reason of an irrelevant conviction (whether of the person concerned or of any relative or associate of that person)”.

(2) Section 20 of the principal Act is hereby further amended by adding the following subsection: 30

“(3) The prohibitions, in subsection (1) of this section, on discrimination against persons on the ground of an irrelevant conviction apply notwithstanding any provision that is contained in any other enactment and that authorises or requires a conviction to be taken into account in any of the circumstances to which that subsection applies (whether that authorisation or requirement relates to the existence or otherwise of a conviction or to the character or conduct of the person concerned), and any such provision shall be read subject to this section.” 35 40

6. Qualifying bodies—(1) Section 21 (1) of the principal Act is hereby amended by adding the words “, or by reason of an

irrelevant conviction (whether of the person concerned or of any relative or associate of that person)”.

(2) Section 21 of the principal Act is hereby further amended by inserting, after subsection (1), the following subsection:

- 5 “(1A) The prohibitions, in subsection (1) of this section, on discrimination against persons on the ground of an irrelevant conviction apply notwithstanding any provision that is contained in any other enactment and that authorises or requires a conviction to be taken into account in any of the
10 circumstances to which that subsection applies (whether that authorisation or requirement relates to the existence or otherwise of a conviction or to the character or conduct of the person concerned), and any such provision shall be read subject to this section.”

- 15 **7. New section inserted**—The principal Act is hereby amended by inserting, after section 21, the following section:

“**21A. Irrelevant conviction not a ground for disciplinary action**—(1) It shall be unlawful for an authority or body (being an authority or body empowered, under or by
20 virtue of any enactment or law, or the rules of any body or association, to exercise disciplinary powers in respect of persons carrying on a profession, trade, or calling) to exercise those powers in respect of any such person by reason of an irrelevant conviction.

- 25 “(2) **Subsection (1)** of this section applies notwithstanding any provision that is contained in any other enactment and that authorises or requires a conviction to be taken into account in any of the circumstances to which that subsection applies (whether that authorisation or requirement relates to the
30 existence or otherwise of a conviction or to the character or conduct of the person concerned), and any such provision shall be read subject to this section.”

- 8. Vocational training bodies**—Section 22 (1) of the principal Act is hereby amended by adding the words “; or by
35 reason of an irrelevant conviction (whether of the person concerned or of any relative or associate of that person)”.

9. New section inserted—The principal Act is hereby amended by inserting, after section 22, the following section:

- “**22A. Irrelevant conviction not to disqualify from holding office**—Where any provision of any enactment requires, as a qualification for holding any office, that the
40

appointee be a fit and proper person, or a person of good character and reputation, or a fit person to be appointed, or imposes any other qualification that relates to the character or conduct of the appointee, that provision shall not disqualify any person from holding that office merely because that person, or any relative or associate of that person, has a conviction (being a conviction that is an irrelevant conviction), and every such provision shall be read subject to this section.” 5

10. Access by the public to places, vehicles, and facilities—Section 23 (1) of the principal Act is hereby amended by adding the words “, or by reason of an irrelevant conviction (whether of the person concerned or of any relative or associate of that person)” 10

11. Provision of goods and services—(1) Section 24 of the principal Act is hereby amended— 15

(a) By adding to subsection (1) the words “, or by reason of an irrelevant conviction (whether of the person concerned or of any relative or associate of that person)”:

(b) By adding to subsection (2) the words “, and also includes facilities for licences or permits” 20

(c) By inserting in subsection (3), after the words “ethical belief of those members”, the words “, or by reason of an irrelevant conviction (whether of any of those members or of any relative or associate of any of those members)” 25

(2) Section 24 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsection:

“(2A) For the purposes of subsection (1) of this section, a refusal or failure to provide goods, facilities, or services includes a decision to cancel or revoke, or to decline to renew or extend, a licence or permit.” 30

(3) Section 24 of the principal Act is hereby further amended by inserting, after subsection (3), the following subsection:

“(3A) The prohibitions, in subsections (1) and (3) of this section, on discrimination against persons on the ground of an irrelevant conviction apply notwithstanding any provision that is contained in any other enactment (other than the Immigration Act 1987) and that authorises or requires a conviction to be taken into account in any of the circumstances to which those subsections apply (whether that authorisation or requirement relates to the existence or otherwise of a conviction or to the character or conduct of the person 40

concerned), and any such provision shall be read subject to this section.”

12. New section inserted—The principal Act is hereby amended by inserting, after section 24, the following section:

5 **“24A. Irrelevant conviction not a ground for refusal or revocation of licence or permit**—(1) Subject to subsection (3) of this section, where any provision of any enactment provides for the grant, cancellation, revocation, renewal, or extension of any licence or permit, the fact that any person, or any relative
10 or associate of any person, has a conviction (being a conviction that is an irrelevant conviction) shall not be a ground, under that provision, for—

 “(a) Refusing to grant a licence or permit to that person; or

15 “(b) Granting a licence or permit to that person on less favourable terms and conditions than would otherwise be imposed; or

 “(c) Cancelling or revoking, or declining to renew or extend, a licence or permit held by that person,—

and any such provision shall be read subject to this section.

20 “(2) Subject to subsection (3) of this section, subsection (1) of this section applies notwithstanding any provision that is contained in any other enactment and that authorises or requires a conviction to be taken into account in the circumstances to which subsection (1) of this section applies (whether that
25 authorisation or requirement relates to the existence or otherwise of a conviction or to the character or conduct of the person concerned).

 “(3) Nothing in this section applies in respect of the Immigration Act 1987.”

30 **13. Land, housing, and other accommodation**—Section 25 of the principal Act is hereby amended—

 (a) By adding to subsection (1) the words “, or by reason of an irrelevant conviction (whether of the person concerned or of any relative or associate of that
35 person)”:

 (b) By inserting in subsection (2), after the word “belief,”, the words “or by reference to the possession of a conviction (other than a conviction that is not an irrelevant conviction),”:

40 (c) By inserting in subsection (3), after the word “section”, the words “(other than the prohibitions, in subsections (1) and (2) of this section, on

discrimination against persons by reason of an irrelevant conviction)".

14. Educational establishments—Section 26 (1) of the principal Act is hereby amended by adding the words “, or by reason of an irrelevant conviction (whether of the person concerned or of any relative or associate of that person)”. 5

15. Discrimination by subterfuge—Section 27 of the principal Act is hereby amended by inserting, after the word “belief”, the words “, or to a person who does not have any convictions, or to a person whose relatives or associates do not have any convictions,”. 10

16. Liability of employer and principals—Section 33 of the principal Act is hereby amended by inserting in subsection (1), and also in subsection (2), after the word “Act”, the words “and sections 33m and 33a of this Act”. 15

17. New Part IIA inserted—The principal Act is hereby amended by inserting, after Part II, the following Part:

“PART IIA

“PROHIBITIONS ON DISCLOSURE OF, AND SEEKING OF INFORMATION ABOUT, IRRELEVANT CONVICTIONS 20

“33A. **Interpretation**—In this Part of this Act, unless the context otherwise requires,—

“‘Official’ means any person in the service of the Sovereign in right of New Zealand (whether that service is honorary or not, and whether it is within or outside New Zealand), or any member or employee of any local authority or public body, or any person employed in the Education service within the meaning of the Government Superannuation Fund Act 1956: 25 30

“‘Question’ means any communication that seeks the disclosure of information, whether or not that communication is formulated as a question.

“*Offence to Publish or Broadcast Irrelevant Conviction*

“33B. **Offence to publish information disclosing existence of conviction where rehabilitation period expired**—(1) Subject to sections 33c and 33d of this Act, no person shall— 35

“(a) Publish, in any newspaper or other document intended to be made available to the public; or

“(b) Broadcast, by radio or television or otherwise,—
any information where—

5 “(c) That information discloses, or is reasonably likely to disclose, the fact that any person has a conviction; and

“(d) The rehabilitation period applicable to that conviction has expired; and

10 “(e) The person who publishes or broadcasts that information knows, or has good reason to know, that the rehabilitation period applicable to that conviction has expired.

“(2) Every person who contravenes **subsection (1)** of this section
15 commits an offence and is liable on summary conviction,—

“(a) In the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000:

20 “(b) In the case of a body corporate, to a fine not exceeding \$10,000.

“**33C. Section 33B not to apply 1 year after death of offender**—Nothing in **section 33B** of this Act applies to the publication or broadcasting of any information that discloses, or is likely to disclose, the fact that a person has a conviction
25 where that publication or broadcasting occurs not less than 1 year after the date of the death of that person.

“**33D. Defence to charge under section 33B**—It is a defence to a charge under **section 33B** of this Act if the defendant proves that the publication or broadcasting of the
30 information that discloses, or is likely to disclose, the fact that a person has a conviction was done with the consent of that person.

“Offence for Official to Disclose Existence of Irrelevant Conviction

35 “**33E. Offence for official to disclose existence of conviction where rehabilitation period expired**—
(1) Notwithstanding anything in any other Act, but subject to **sections 33F to 33L** of this Act, no official shall communicate to any other person any information where—

40 “(a) That information discloses, or is reasonably likely to disclose, the fact that any person has a conviction; and

“(b) The rehabilitation period applicable to that conviction has expired; and

“(c) The official who communicates that information knows, or has good reason to know, that the rehabilitation period applicable to that conviction has expired; and

“(d) The information that discloses, or is reasonably likely to disclose, the fact of that conviction came to the knowledge of that official in the course of his or her official duties. 5

“(2) Every person who contravenes **subsection (1)** of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000. 10

“33F. Exception to section 33E where information stored on Wanganui Computer—(1) Nothing in **section 33E** of this Act applies in respect of the communication of any information by any officer or employee of any Government department to any other officer or employee of that Department or to any officer or employee of any other Government department where— 15

“(a) The information so communicated is information that is stored on the computer system established under section 3 (2) of the Wanganui Computer Centre Act 1976; and 20

“(b) Both the officer or employee who communicates the information and the officer or employee to whom the information is communicated are officers or employees of a Government department that has the use of the means of access to that computer system; and 25

“(c) The information is communicated, in accordance with that Act, for an official purpose. 30

“(2) Nothing in **section 33E** of this Act applies in respect of the communication of any information in accordance with section 14 or section 16 or section 16A or section 17 or section 18 of the Wanganui Computer Centre Act 1976.

“33G. Exception to section 33E where information used for vetting purposes—(1) Nothing in **section 33E** of this Act applies in respect of the communication of any information by any member of the Police to any officer of the New Zealand Security Intelligence Service, or to any officer or employee or member of a Government department or public body, where that information is communicated— 35 40

“(a) With the consent of the person to whom it relates; and

“(b) For the purpose of vetting that person for security purposes.

“(2) Where any information is communicated, in accordance with subsection (1) of this section, by a member of the Police to any person, nothing in section 33E of this Act applies in respect of the communication of that information by or between or to
5 officers of the New Zealand Security Intelligence Service or officers or employees or members of a Government department or public body—

- “(a) For the purpose of vetting, for security purposes, the person to whom the information relates; or
10 “(b) For the purpose of enabling any Government department or public body to determine the suitability or eligibility of the person to whom the information relates for employment, appointment to office, promotion in employment or office,
15 continuance in employment or office, or removal from employment or office.

“33H. Exception to section 33E in respect of proceedings of Parole Board and District Prisons Boards—(1) Nothing in section 33E of this Act applies in respect
20 of the communication of any information by any official to any member, or any deputy of any member, of—

- “(a) The Parole Board established by section 130 of the Criminal Justice Act 1985; or
“(b) Any District Prisons Board appointed under section 132
25 of that Act,—
where that information is communicated for the purpose of enabling the Parole Board or any District Prisons Board to carry out its functions.

“(2) Where any information is communicated, in accordance
30 with subsection (1) of this section, to any member, or any deputy of any member, of the Parole Board or any District Prisons Board, nothing in section 33E of this Act applies in respect of the communication of that information by any such member, or by any deputy of any such member, to any other person, where
35 that information is communicated for any purpose connected with the carrying out, by the Parole Board or any District Prisons Board, of its functions.

“33I. Exception to section 33E where information required for purposes of court proceedings—Nothing in
40 section 33E of this Act applies in respect of the communication, by any official, of any information where that information is communicated—

- (a) For the purpose of enabling any person who has been convicted of an offence to be sentenced or otherwise

- dealt with, in accordance with the provisions of any enactment, for that offence; or
- (b) For the purpose of determining whether any person is disqualified from serving on a jury by section 7 of the Juries Act 1981; or 5
- (c) For the purpose of proving, in any criminal proceedings, that any person has been convicted of an offence.

“33j. Exception to section 33E where information required for purposes of treatment for mental disorder— Nothing in section 33E of this Act applies in respect of the communication of any information by any official where that information is communicated for any purpose relating to the treatment of any person for any mental disorder. 10

“33k. Section 33E not to apply after death of offender— Nothing in section 33E of this Act applies in respect of the communication of any information where that communication occurs after the death of the person to whom it relates. 15

“33l. Defence to charge under section 33E—It is a defence to a charge under section 33E of this Act if the defendant proves— 20

- (a) That the information was communicated only to the person to whom it relates; or
- (b) That the information was communicated with the consent of the person to whom it relates.

“Offence to Seek Disclosure of Irrelevant Conviction 25

“33m. Offence to seek disclosure of conviction where rehabilitation period expired—(1) Notwithstanding the provisions of any other enactment or any rule of law to the contrary, but subject to subsection (2) of this section and to sections 33n and 33o of this Act, no person shall ask any other person any question that cannot be answered without that other person disclosing whether or not he or she, or any other person, has a conviction the rehabilitation period applicable to which has expired. 30

“(2) Subsection (1) of this section applies only in respect of questions asked in circumstances in which the use of irrelevant convictions is unlawful under Part II of this Act or in which section 22A or section 24A of this Act does not permit irrelevant convictions to be taken into account. 35

“(3) Every person commits an offence who knowingly, recklessly, or negligently contravenes subsection (1) of this section. 40

“(4) Every person who commits an offence against **subsection (3)** of this section is liable on summary conviction,—

5 “(a) In the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000:

“ (b) In the case of a body corporate, to a fine not exceeding \$10,000.

10 “**33N. Exception to section 33M where conviction relevant**—Nothing in **section 33M** of this Act prohibits the asking of any question that seeks only the disclosure of, or information about, any conviction the use of which, in the circumstances of the particular case, would not be in breach of Part II of this Act or excluded by **section 22A** or **section 24A** of this Act.

15 “**33O. Exception to section 33M where conviction relevant for purposes of treatment for mental disorder**—Nothing in **section 33M** of this Act prohibits the asking of any question that seeks the disclosure of, or information about, any conviction where it is necessary to obtain information about that conviction for any purpose relating to the treatment of any
20 person for any mental disorder.

“**33P. Person may refuse to answer question prohibited by section 33M**—(1) No person is required to answer any question that is prohibited by **section 33M** of this Act.

25 “(2) No person shall be subjected to any liability or otherwise prejudiced in law by reason of any refusal or failure to answer any question that is prohibited by **section 33M** of this Act.

30 “(3) **Subsections (1) and (2)** of this section apply notwithstanding the provisions of any other enactment or any rule of law to the contrary, and notwithstanding any obligation imposed on any person by any rule of law, or by the provisions of any agreement or arrangement, to disclose any information to any other person.

35 “**33Q. Person not to be prejudiced by failure to disclose irrelevant conviction**—(1) Where any person fails to disclose to any other person any conviction (being a conviction the asking of a question about which is prohibited by **section 33M** of this Act), it shall be unlawful for that other person to use the non-disclosure of that conviction as a ground for doing any act, or omitting to do any act, or engaging in any practice, (being an
40 act or omission or practice referred to in any of the provisions of sections 15 (1), 15 (2), 18 (1), 19 (1), 19 (2), 20 (1), 21 (1), **21A** (1), 22 (1), 23 (1), 24 (1), 24 (3), 25 (1), 25 (2), 26 (1), and 27 of this Act).

“(2) **Subsection (1)** of this section applies notwithstanding the provisions of any other enactment or any rule of law to the contrary, and notwithstanding any obligation imposed on any person by any rule of law, or by the provisions of any agreement or arrangement, to disclose any information to any other person.” 5

18. Functions of Commission—Section 34 (1) (a) of the principal Act is hereby amended by adding the words “or of section 33a of this Act”.

19. Civil proceedings—Section 38 of the principal Act is hereby amended— 10

(a) By adding to subsection (1) the words “or of section 33a of this Act”:

(b) By inserting in subsection (2), after the expression “Part II”, the expression “or section 33a”: 15

(c) By inserting in subsection (6), after the expression “Part II of this Act” in both places where it occurs, the expression “or of section 33a of this Act”.

20. Damages—Section 40 (1) of the principal Act is hereby amended— 20

(a) By inserting, after the expression “Part II of this Act”, the expression “or of section 33a of this Act”:

(b) By repealing the proviso to that subsection.

21. Granting of remedies by High Court on reference from the Tribunal—Section 42 of the principal Act is hereby amended by inserting in subsection (1), and also in subsections (2), (4), and (6), after the expression “Part II”, the expression “or section 33a”. 25

22. Extension of jurisdiction by agreement between the parties—Section 44 of the principal Act is hereby amended by repealing subsection (2). 30

23. Disclosure of certain matters not to be required—Section 74 (1) (b) (i) of the principal Act is hereby amended by inserting, after the word “of”, the word “criminal”. 35

24. New Part VIIA inserted—The principal Act is hereby amended by inserting, after Part VII, the following Part:

“PART VIIA

“PROVISIONS RELATING TO DEFINITION OF IRRELEVANT
CONVICTION AND CALCULATION OF REHABILITATION PERIOD

“76A. **Interpretation**—(1) In this Act, unless the context
5 otherwise requires,—

“ ‘Civil disciplinary proceedings’ means any proceedings
(other than criminal proceedings or service
disciplinary proceedings) conducted (whether in New
Zealand or outside New Zealand) under any
10 enactment or law, or under the rules of any body or
association, relating to the discipline of persons
carrying on any profession, trade, or calling:

“ ‘Conviction’—

15 “(a) Means any conviction for any offence entered
(whether before or after the commencement of this
Part of this Act)—

“(i) By or before a court in New Zealand; or

“(ii) By or before a court outside New Zealand; or

20 “(iii) By or before any body or person exercising
judicial functions outside New Zealand;
and

25 “(b) Includes a finding (whether made before or
after the commencement of this Part of this Act), by a
Children and Young Persons Court, that a charge
against a young person is proved; and

“ ‘(c) Includes’ a finding (whether made before or
after the commencement of this Part of this Act), in
any service disciplinary proceedings, that a person is
30 guilty of an offence:

“ ‘Full-time custodial sentence’—

“(a) Means a full-time custodial sentence within the
meaning of section 2 (1) of the Criminal Justice Act
1985; and

35 “(b) Includes imprisonment imposed, whether by
committal, sentence, or order, for—

“(i) Non-payment of a sum of money; or

“(ii) Disobedience of a court order; or

“(iii) Contempt of court; and

40 “(c) Includes, in respect of any person who is found
guilty of an offence in any service disciplinary
proceedings, a sentence of detention:

“ ‘Minor offence’—

“(a) Means any summary offence for which the defendant is not liable on conviction to a sentence of imprisonment or to a fine exceeding \$500; and

“(b) Includes—

“(i) Any offence against any of the provisions of 5
Parts II to V of the Transport Act 1962, or
against any regulation or bylaw made
under any other enactment and relating to
the use of vehicles or parking places or
transport stations, that is punishable on 10
summary conviction by a fine of an
amount not exceeding \$500 and that is
not punishable by imprisonment:

“(ii) Any offence (being an offence under the law 15
of a country other than New Zealand)
relating to any act or omission that, if it
occurred in New Zealand, would be a
minor offence within the meaning of
paragraph (a) or paragraph (b) (i) of this
definition: 20

“‘Non-custodial sentence’ means any sentence that is not
a full-time custodial sentence; and includes—

“(a) A discharge under section 20 of the Criminal
Justice Act 1985:

“(b) An order, pursuant to section 21 of the 25
Criminal Justice Act 1985, to appear for sentence if
called upon:

“(c) The exercise, by a Children and Young Persons
Court, of any of the powers conferred on it by
paragraphs (a) to (ia) of section 36 (1) of the Children 30
and Young Persons Act 1974:

“‘Offence’ includes any act or omission that may be the
subject of civil disciplinary proceedings:

“‘Offender’ includes a child or young person dealt with,
under the Children and Young Persons Act 1974 or 35
any other Act, for any offence:

“‘Sentence’ includes—

“(a) To discharge an offender under section 20 of
the Criminal Justice Act 1985:

“(b) To make an order, pursuant to section 21 of 40
the Criminal Justice Act 1985, that an offender
appear for sentence if called upon:

“(c) To exercise any of the powers conferred on a
Children and Young Persons Court by paragraphs (a)

to (ia) of section 36 (1) of the Children and Young Persons Act 1974:

5 “ ‘Service disciplinary proceedings’ means any proceedings conducted (whether in New Zealand or outside New Zealand) under any enactment or law relating to the discipline of members of the armed forces of any country.

10 “(2) For the purposes of this Act, a finding, in any civil disciplinary proceedings, that a person is guilty of any act or omission that was the subject of those proceedings shall be treated as a conviction for an offence, and any punishment imposed in those proceedings in respect of that finding shall be treated as a sentence.

15 “(3) For the purposes of this Act, every reference in this Part of this Act to a provision of the Criminal Justice Act 1985 shall, in the case of a conviction that was entered in New Zealand before the 1st day of October 1985 (being the date of commencement of that Act) and to which that Act does not apply, be read as if it were a reference to the corresponding
20 provision of the Criminal Justice Act 1954.

“76B. **Definition of irrelevant conviction**—For the purposes of this Act, a conviction is irrelevant if—

25 “(a) There is no direct relationship between that conviction and the particular matter in respect of which it is sought to take that conviction into account; or

“ (b) The rehabilitation period applicable to that conviction has expired.

30 “76c. **Definition of direct relationship**—(1) For the purposes of section 76B (a) of this Act, there is a direct relationship between a conviction and any matter in respect of which it is sought to take that conviction into account if the fact of that conviction means that there is a real likelihood that the person against whom that conviction was entered will, in relation to that matter,—

35 “(a) Be unreliable, untrustworthy, or otherwise unsatisfactory; or

“ (b) Commit a further offence.

40 “(2) In determining, for the purposes of subsection (1) of this section, whether there is a real likelihood that any of the matters specified in paragraph (a) or paragraph (b) of that subsection will occur, the following matters shall be taken into consideration:

“ (a) In relation to the offence for which the conviction in issue was entered,—

“(i) The type and seriousness of that offence:

“(ii) The overall circumstances of that offence:

“(iii) The amount of time that has elapsed since that offence was committed:

“(b) In relation to the person convicted, the present personal attitudes and personal circumstances of that person. 5

“76D. **Definition of rehabilitation period**—(1) Subject to this Part of this Act, for the purposes of Part II of this Act, the rehabilitation period applicable to a conviction is,—

“(a) In the case of a person who is under the age of 17 years at the date of the conviction, a period of 5 years; or 10

“(b) In any other case, a period of 10 years,— beginning on the date determined in accordance with this Part of this Act as the commencement date of the rehabilitation period applicable to that conviction. 15

“(2) Subject to this Part of this Act, for the purposes of Part IIa of this Act, the rehabilitation period applicable to a conviction is,—

“(a) In the case of a person who is under the age of 17 years at the date of the conviction, a period of 2 years; or 20

“(b) In any other case, a period of 5 years,— beginning on the date determined in accordance with this Part of this Act as the commencement date of the rehabilitation period applicable to that conviction.

“76E. **Commencement of rehabilitation period where non-custodial sentence imposed**—For the purposes of section 76D of this Act, the rehabilitation period applicable to a conviction in respect of which a non-custodial sentence is imposed shall, subject to sections 76F to 76J of this Act, commence on the date of that conviction. 25 30

“76F. **Commencement of rehabilitation period applicable to non-custodial sentence where offender already detained**—(1) Where,—

“(a) In respect of any conviction, a non-custodial sentence is imposed on the offender; and 35

“(b) At the time when that sentence is imposed, the offender is detained in a penal institution pursuant to a full-time custodial sentence,— the rehabilitation period applicable to that conviction shall commence when the offender is no longer detained pursuant to any full-time custodial sentence. 40

“(2) Where,—

“(a) In respect of any conviction, a non-custodial sentence is imposed on the offender; and

“(b) At the time when that sentence is imposed, the offender is detained in a hospital pursuant to an order made under subsection (1) or subsection (2) (a) of section 115 of the Criminal Justice Act 1985,—

5 subject to **subsection (3)** of this section, the rehabilitation period applicable to that conviction shall commence when the offender ceases to be detained in a hospital pursuant to that order.

“(3) Where, on the date on which any offender to whom
10 **subsection (2)** of this section applies ceases to be detained in a hospital pursuant to an order made under subsection (1) or subsection (2) (a) of section 115 of the Criminal Justice Act 1985, that offender is liable to be detained under any full-time custodial sentence, and is subsequently detained in a penal
15 institution to serve the remainder of that sentence, the rehabilitation period applicable to the conviction referred to in **paragraph (a)** of **subsection (2)** of this section shall commence when the offender is no longer detained pursuant to any full-time custodial sentence.

20 “(4) Where,—

“(a) In respect of any conviction, a non-custodial sentence is imposed on the offender; and

“(b) At the time when that sentence is imposed, the offender
25 is subject to a full-time custodial sentence but is detained in a psychiatric institution, or in an institution under the Alcoholism and Drug Addiction Act 1966,—

the rehabilitation period applicable to that conviction shall commence when the offender ceases to be subject to any full-
30 time custodial sentence.

“76G. Commencement of rehabilitation period applicable to non-custodial sentence where full-time custodial sentence imposed in respect of another conviction—Where,—

35 “(a) In respect of any conviction, a non-custodial sentence is imposed on the offender; and

“(b) On the same occasion or in the same proceedings, a full-time custodial sentence is imposed on the offender in respect of any other conviction,—

40 the rehabilitation period applicable to the first-mentioned conviction shall commence when the offender is no longer detained pursuant to any full-time custodial sentence.

“76H. Commencement of rehabilitation period where offender called up for sentence under Criminal Justice Act 1985—(1) This section applies to any conviction in respect of which—

“(a) An order is made under section 21 of the Criminal Justice Act 1985; and 5

“(b) The offender subsequently appears before a court under that section and is sentenced for the original offence.

“(2) Where this section applies to any conviction, the date of commencement of the rehabilitation period applicable to that conviction shall,— 10

“(a) If a non-custodial sentence is imposed in respect of that conviction, be the date of the conviction:

“(b) If a full-time custodial sentence is imposed in respect of that conviction, be determined in accordance with section 76k of this Act, and any part of the rehabilitation period applicable to that conviction that has run between the date of that conviction and the imposition of the full-time custodial sentence shall be disregarded. 15 20

“76I. Commencement of rehabilitation period where offender called up for sentence under Children and Young Persons Act 1974—(1) This section applies to any conviction in respect of which—

“(a) An order is made under paragraph (h) of subsection (1) of section 36 of the Children and Young Persons Act 1974; and 25

“(b) The young person in respect of whom that order was made subsequently appears before a Children and Young Persons Court under subsection (3) of that section; and 30

“(c) The Court exercises in respect of that conviction any of the powers conferred on it by paragraphs (a) to (j) of subsection (1) of that section.

“(2) Where this section applies to any conviction, the date of commencement of the rehabilitation period applicable to that conviction shall,— 35

“(a) If the Court exercises in respect of that conviction any of the powers conferred on it by paragraphs (a) to (ia) of subsection (1) of section 36 of the Children and Young Persons Act 1974, be the date of the conviction: 40

“(b) If the Court makes an order, under paragraph (j) of subsection (1) of that section, that the young person be brought before a District Court for sentence or decision, be determined, in accordance with this 45

Part of this Act, according to the sentence or decision imposed or made by that District Court in respect of that conviction.

“76j. **Commencement of rehabilitation period where sentence suspended**—(1) Where, in respect of any conviction, a non-custodial sentence is imposed on the offender, and that sentence is suspended, the rehabilitation period applicable to that conviction shall commence on the date of that conviction.

“(2) Where, in respect of any conviction, a full-time custodial sentence is imposed on the offender, and that sentence is suspended, the rehabilitation period applicable to that conviction shall, subject to subsection (3) of this section, commence on the date of that conviction.

“(3) Where, in respect of any conviction,—

“(a) A full-time custodial sentence is imposed on the offender; and

“(b) That sentence is suspended; and

“(c) Before the rehabilitation period applicable to that conviction has expired, the suspension of that sentence is terminated,—

that rehabilitation period shall cease to run, and a new rehabilitation period shall commence in respect of that conviction on the date of the first occasion subsequent to the termination of the suspension of that sentence that the offender is no longer detained pursuant to any full-time custodial sentence.

“76k. **Commencement of rehabilitation period where custodial sentence imposed**—(1) For the purposes of section 76d of this Act, the rehabilitation period applicable to a conviction in respect of which a full-time custodial sentence is imposed on the offender shall, subject to this Part of this Act, commence on the date of the first occasion subsequent to the imposition of that sentence that the offender is no longer detained pursuant to any full-time custodial sentence.

“(2) Subsection (1) of this section applies whether the sentence pursuant to which the offender ceases to be detained is the sentence imposed in respect of the conviction to which the rehabilitation period is applicable or some other full-time custodial sentence, and, in the latter case,—

“(a) Whether that other sentence is imposed before, or after, or at the same time as, the first-mentioned sentence; and

“(b) If that other sentence is imposed after, or at the same time as, the first-mentioned sentence, whether it is—

“(i) Directed to be served in substitution for the first-mentioned sentence; or 5

“(ii) Directed to be cumulative on the first-mentioned sentence; or

“(iii) Directed to be served concurrently with the first-mentioned sentence.

“(3) **Subsection (1)** of this section applies whether or not, in 10 addition to a full-time custodial sentence, any other sentence is imposed on the offender in respect of a conviction.

“76L. **Recall of offender to serve sentence**—(1) Where,—

“(a) Pursuant to a direction given under subsection (5) of section 91 of the Criminal Justice Act 1985, an 15 offender who has been released under subsection (1) of that section is returned to or otherwise detained in any institution to continue to serve his or her sentence; or

“(b) Pursuant to a direction given under subsection (1) or 20 subsection (2) or subsection (4) of section 106 of the Criminal Justice Act 1985, an offender who has been released on parole is detained for the purpose of continuing to serve his or her sentence,—

any rehabilitation period that is still running in respect of any 25 conviction of that offender when the offender is recalled shall cease to run.

“(2) Where, pursuant to **subsection (1)** of this section, any rehabilitation period applicable to any conviction ceases to run on the recall of an offender to continue to serve his or her 30 sentence, a new rehabilitation period shall commence in respect of that conviction on the date of the first occasion subsequent to that recall that the offender is no longer detained pursuant to any full-time custodial sentence.

“76M. **Definition of ‘detained’ for purposes of sections 35 76F, 76G, 76J, 76K, 76L, and 76Q (6)**—(1) For the purposes of sections 76F, 76G, 76J, 76K, 76L, and 76Q (6) of this Act, an offender shall be deemed to be detained pursuant to a full-time custodial sentence notwithstanding that the offender—

“(a) Is temporarily released from custody pursuant to section 40 21 of the Penal Institutions Act 1954; or

“(b) Is unlawfully at large; or

“(c) Is removed from a penal institution pursuant to section 26 or section 27 or section 28 of the Penal Institutions Act 1954; or

5 “(d) Is granted bail pursuant to section 125 of the Summary Proceedings Act 1957 or section 397 (2) of the Crimes Act 1961; or

10 “(e) Is directed to be released from a penal institution under section 21A (1) of the Penal Institutions Act 1954 (which permits an inmate to be released from a penal institution from day to day to engage in employment).

“(2) For the purposes of section 76F (2) of this Act, a person shall be deemed to be no longer detained in a hospital pursuant to an order made under section 115 (1) or (2) (a) of the Criminal
15 Justice Act 1985 when that person is discharged or deemed to be discharged from that hospital or when that person is first on leave from that hospital, whichever occurs first.

“76N. **Release from detention for purpose of deportation**—Where, pursuant to section 92 of the Criminal
20 Justice Act 1985, an offender who is subject to a sentence of imprisonment or a sentence of preventive detention is released from detention and deported, the rehabilitation period applicable to the conviction in respect of which that sentence of imprisonment or that sentence of preventive detention, as the
25 case may be, was imposed shall not begin to run until the earliest date, subsequent to that offender’s deportation, on which that offender would not be liable to resume serving that sentence if the offender returned to New Zealand.

“76O. **Commencement of rehabilitation period where offender committed instead of being sentenced**—
30 Where—

“(a) A person is convicted of an offence; and

“(b) Pursuant to section 118 of the Criminal Justice Act 1985,
35 the Court, instead of passing sentence, makes an order that the person be detained in a hospital as a committed patient,—

the rehabilitation period applicable to that conviction shall commence on the date, subsequent to the making of that order, on which that person ceases to be liable to detention as a
40 committed patient or on which the offender is first on leave from the institution in which he or she is detained, whichever occurs first.

“76P. Commencement of rehabilitation period where offender detained in psychiatric institution while subject to full-time custodial sentence—(1) Where an offender who is subject to a full-time custodial sentence (other than a sentence of imprisonment for life) is detained in a psychiatric institution or in an institution under the Alcoholism and Drug Addiction Act 1966, or is on leave from any such institution, on the date on which he or she becomes eligible for remission of sentence, the rehabilitation period applicable to the conviction in respect of which that sentence was imposed shall commence on that date.

“(2) Where,—

“(a) Pursuant to section 94 of the Criminal Justice Act 1985, the Parole Board directs the release on parole of an offender who is subject to a sentence of imprisonment for life, or to a sentence of preventive detention; and

“(b) On the date set, pursuant to that direction, as the offender’s release date, that offender is detained in a psychiatric institution, or is on leave from any such institution,—

the rehabilitation period applicable to the conviction in respect of which the sentence of imprisonment for life or the sentence of preventive detention, as the case may require, was imposed shall commence on that date.

“76Q. Effect of variation or cancellation of sentence—

(1) Where, on an application made under section 35 or section 44 or section 51 or section 57 or section 64 of the Criminal Justice Act 1985, a sentence of community service or of periodic detention or of supervision or of community care is cancelled by a court, and no other sentence is substituted for that sentence, the rehabilitation period applicable to the conviction in respect of which that sentence was imposed shall, subject to this Part of this Act, continue to run as if that sentence had not been cancelled.

“(2) Where, pursuant to section 57 or section 66 of the Criminal Justice Act 1985, a sentence of community service or of periodic detention or of supervision or of community care is cancelled, and a non-custodial sentence is substituted for that sentence, the rehabilitation period applicable to the conviction in respect of which that substituted sentence is imposed shall, subject to this Part of this Act, continue to run as if the original sentence had not been cancelled.

“(3) Where, pursuant to section 57 or section 66 of the Criminal Justice Act 1985, a sentence of community service or of periodic detention or of supervision or of community care is

cancelled, and a full-time custodial sentence is substituted for that sentence, the rehabilitation period applicable to the conviction in respect of which the original sentence was imposed shall cease to run.

5 “(4) Where, pursuant to section 48 (2) of the Children and Young Persons Act 1974, a supervision order made under section 36 (1) (i) of that Act is cancelled, and in substitution for that order the court exercises any of the powers conferred on it by paragraphs (a) to (ia) of section 36 (1) of that Act, the
10 rehabilitation period applicable to the conviction in respect of which that supervision order was imposed shall, subject to this Part of this Act, continue to run as if that order had not been cancelled.

“(5) Where, pursuant to section 48 (2) of the Children and
15 Young Persons Act 1974, a supervision order made under section 36 (1) (i) of that Act is cancelled, and the Court makes an order under paragraph (j) of section 36 (1) of that Act that the young person be brought before a District Court for sentence or decision, the rehabilitation period applicable to the
20 conviction in respect of which the cancelled supervision order was imposed shall,—

“*(a)* If the District Court imposes a non-custodial sentence on that young person in respect of that conviction, subject to this Part of this Act, continue to run as if
25 the supervision order had not been cancelled:

“*(b)* If the District Court imposes a full-time custodial sentence on that young person in respect of that conviction, cease to run.

“*(6)* Where, pursuant to **subsection (3) or subsection (5) (b)** of this
30 section, the rehabilitation period applicable to a conviction ceases to run on the substitution of a full-time custodial sentence for any other sentence (or, where **subsection (5) (b)** of this section applies, for any supervision order), a new rehabilitation period shall commence in respect of that
35 conviction on the date of the first occasion subsequent to the substitution of that sentence or order that the offender or young person is no longer detained pursuant to any full-time custodial sentence.

“**76R. Subsequent conviction to extend rehabilitation period**—(1) Subject to **subsection (4)** of this section, where—

“*(a)* Any person is convicted of an offence; and

“*(b)* Before the rehabilitation period applicable to that conviction has expired, that person is convicted, in New Zealand or overseas, of another offence,—

the rehabilitation period applicable to the first conviction shall not expire until the rehabilitation period applicable to the later conviction expires.

“(2) Subject to **subsection (4)** of this section, where—

“(a) Any person is convicted of an offence; and 5

“(b) After the rehabilitation period applicable to that conviction has expired, that person is convicted, in New Zealand or overseas, of an offence that was committed before that rehabilitation period expired,— 10

a new rehabilitation period shall begin to run in respect of the first-mentioned conviction on the date on which the rehabilitation period applicable to the later conviction commences, and, until that new rehabilitation period expires, that person may, subject to **subsection (3)** of this section, be treated as if the first rehabilitation period applicable to the first-mentioned conviction had not expired. 15

“(3) Where, pursuant to **subsection (2)** of this section, a new rehabilitation period is made to run in respect of any conviction, nothing in that subsection shall affect anything done or omitted on the basis that the first rehabilitation period applicable to that conviction had expired. 20

“(4) Notwithstanding anything in **subsection (1)** or **subsection (2)** of this section, where any person is convicted of an offence, a later conviction for— 25

“(a) A minor offence; or

“(b) Except where the first conviction is a conviction entered in any civil disciplinary proceedings, a conviction entered in any such proceedings—

shall not extend the rehabilitation period applicable to the first-mentioned conviction or, if the rehabilitation period applicable to the first-mentioned conviction has expired, cause a new rehabilitation period to run in respect of that conviction. 30

“76s. **Convictions entered overseas**—**Sections 76E to 76R** of this Act shall apply to convictions entered overseas in the same manner and to the same extent as they apply to convictions entered in New Zealand, and, where it is necessary to apply any of those provisions to a conviction entered overseas, that provision shall be applied as if the offender had been sentenced or otherwise dealt with under New Zealand law in respect of that conviction in the manner that most nearly corresponds to the manner in which that offender was sentenced or otherwise dealt with in respect of that conviction in the country in which the conviction was entered.” 35 40

25. Savings—Section 93 (2) of the principal Act is hereby amended by inserting, after the expression “Part II”, the words “or section 33a”.

PART II

5 AMENDMENTS TO EVIDENCE ACT 1908

26. This Part to be read with Evidence Act 1908—

(1) This Part shall be read together with and deemed part of the Evidence Act 1908* (in this Part referred to as the principal Act).

10 (2) This Part shall come into force on the 1st day of January 1989.

*R.S. Vol. 2, p. 339

Amendments: 1980, No. 6; 1980, No. 27; 1982, No. 48; 1985, No. 54; 1985, No. 161; 1986, No. 74; 1986, No. 87; 1987, No. 138

27. Evidence of accused and spouse in criminal cases—

Section 5 of the principal Act (as substituted by section 2 (1) of the Evidence Amendment Act 1987) is hereby amended by
15 inserting, after subsection (4), the following subsection:

“(4A) In deciding whether to exercise its discretion, pursuant to subsection (4) (b) of this section, to limit the cross-examination of a person in so far as that cross-examination relates to any previous conviction of that person, the Court
20 shall have regard to the principle that, unless there is good reason for doing so, a person should not be cross-examined in relation to a previous conviction if the rehabilitation period applicable to that conviction for the purposes of Part II of the Human Rights Commission Act 1977 has expired in accordance
25 with that Act.”

28. Proof of previous conviction of witness—The principal Act is hereby amended by repealing section 12, and substituting the following section:

30 “12. (1) Subject to subsection (2) of this section and to section 5 (4) (b) of this Act, a witness may be asked whether he or she has been convicted of an indictable offence, and, on being so asked, if he or she either denies or does not admit the fact, or refuses to answer, the cross-examining party may prove such conviction.

35 “(2) Notwithstanding anything in subsection (1) of this section, but subject to section 13A of this Act and to sections 23 and 24 of the Evidence Amendment Act (No. 2) 1980, the Court may, if it thinks fit, prohibit the questioning of a witness as to any previous conviction if the question relates to a conviction of

that witness for an indictable offence and the rehabilitation period applicable to that conviction for the purposes of Part II of the Human Rights Commission Act 1977 has expired in accordance with that Act.

“(3) In deciding whether to exercise its discretion, pursuant to **subsection (2)** of this section, to prohibit any question about the previous conviction of any witness, the Court shall have regard to the principle that, unless there is good reason for doing so, a witness should not be cross-examined in relation to a previous conviction if the rehabilitation period applicable to that conviction for the purposes of Part II of the Human Rights Commission Act 1977 has expired in accordance with that Act.”

29. Admissibility of previous convictions in proceedings in which character in issue—The principal Act is hereby amended by inserting, after section 14, the following section:

“14A. (1) In any proceeding in which the character of any person is in issue, unless the Court decides otherwise, any previous conviction of that person shall be inadmissible as evidence in that proceeding if the rehabilitation period applicable to that conviction for the purposes of Part II of the Human Rights Commission Act 1977 has expired in accordance with that Act.

“(2) In deciding whether to exercise its discretion, pursuant to **subsection (1)** of this section, to admit evidence of the previous conviction of any person, the Court shall have regard to the principle that, unless there is good reason for doing so, the previous conviction of a person should not be admitted in proceedings to which that subsection applies if the rehabilitation period applicable to that conviction for the purposes of Part II of the Human Rights Commission Act 1977 has expired in accordance with that Act.

“(3) The provisions of this section shall not affect the operation of any other provision of this Act or of any other enactment.”

PART III

AMENDMENT TO JURIES ACT 1981

30. This Part to be read with Juries Act 1981—(1) This Part shall be read together with and deemed part of the Juries Act 1981* (in this Part referred to as the principal Act).

*1981, No. 23

Amendments: 1982, No. 174; 1985, No. 181

(2) This Part shall come into force on the 1st day of January 1989.

31. Disqualification—The principal Act is hereby amended by repealing section 7, and substituting the following section:

5 “7. (1) Subject to subsection (2) of this section, the following persons are not qualified to serve on a jury in any Court on any occasion:

10 “(a) Any person who, in respect of any conviction, has been sentenced to imprisonment for life or for a term of 3 years or more, or to preventive detention:

“(b) Any person who, at any time within the preceding 5 years, has been sentenced to imprisonment for a term of 3 months or more in respect of any conviction.

15 “(2) A conviction shall not disqualify a person from serving on a jury if the rehabilitation period applicable to that conviction for the purposes of Part II of the Human Rights Commission Act 1977 has expired in accordance with that Act.”

20

PART IV

CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

32. Consequential amendments—The Acts specified in the Schedule to this Act are hereby amended in the manner indicated in that Schedule.

Section 32

SCHEDULE

ACTS AMENDED

Title of Act	Amendment
1974, No. 48—The Private Investigators and Security Guards Act 1974	<p>By inserting in section 17 (2) (a), after the word "dishonesty", the words "(unless that conviction is an irrelevant conviction for the purposes of Part II of the Human Rights Commission Act 1977)".</p> <p>By inserting in section 17 (3) (a), after the word "appeal", the words ", or an irrelevant conviction for the purposes of Part II of the Human Rights Commission Act 1977".</p>
1977, No. 84—The Gaming and Lotteries Act 1977	By inserting in section 39 (2) (b), after the expression "1971", the words ", unless that conviction is an irrelevant conviction for the purposes of Part II of the Human Rights Commission Act 1977".
1978, No. 13—The Massage Parlours Act 1978	<p>By inserting in section 6 (2) (a), after the expression "1975", the words ", unless that conviction is an irrelevant conviction for the purposes of Part II of the Human Rights Commission Act 1977".</p> <p>By inserting in section 18 (1) (b), after the expression "1975", the words ", unless that conviction is an irrelevant conviction for the purposes of Part II of the Human Rights Commission Act 1977".</p>