

FOREIGN AFFAIRS AND OVERSEAS SERVICE BILL

EXPLANATORY NOTE

THIS Bill consolidates and amends the Foreign Affairs Act 1943.

Clause 1 relates to the Short Title.

Clause 2 relates to interpretation.

PART I

MINISTRY OF FOREIGN AFFAIRS

Clause 3 establishes the Ministry of Foreign Affairs and provides that it is the same Ministry as that existing under that name immediately before the commencement of the Bill.

Clause 4 relates to the Minister of Foreign Affairs. The Ministry is to be under the control of the Minister, who is given express power to enter into certain kinds of contract both within and outside New Zealand. *Subclause (4)* provides that where the Minister enters into a contract with a person for the performance of any duties, or the undertaking of any tasks or projects, outside New Zealand, that person is employed under a contract for services and is neither a servant nor an agent of the Crown.

Clause 5 specifies the functions of the Ministry.

Clause 6 provides for the appointment of a Secretary of Foreign Affairs.

Clause 7 provides for the appointment of Deputy Secretaries of Foreign Affairs.

Clause 8 provides for the employment of other officers and employees of the Ministry. Because most officers of the Ministry are not appointed to specific positions, but rather have personal designations, *subclause (2)* provides that the general Public Service rules relating to appeals will apply to appointments to those designations, and to any grades within those designations, as if they were permanent positions in the Public Service.

Clause 9 authorises the Minister to delegate powers to the Secretary.

Clause 10 authorises the Secretary to delegate powers to other officers and employees of the Ministry.

PART II

OVERSEAS SERVICE

Clause 11 establishes an overseas service of New Zealand. The service comprises all those persons for the time being appointed to serve overseas as a head of mission, a head of post, or a person appointed under *clause 14 (3)* of the Bill.

Clause 12 provides that the Minister of Foreign Affairs is to have control of the overseas service and of all members of the overseas service.

Clause 13 provides that the Secretary for Foreign Affairs is to be the head of the overseas service and, subject to any directions of the Minister, is to be responsible for the administration of the overseas service.

Clause 14 relates to the appointment of members of the overseas service. The Secretary is from time to time to make recommendations to the Minister concerning appointments. High commissioners, ambassadors, heads of mission, and heads of post will be appointed by the Governor-General under the Royal Prerogative. However, *subclause (2)* provides for the Minister to recommend to the Governor-General appointments, reappointments, and terminations of appointment. *Subclause (3)* provides that the Minister will appoint other members of the overseas service.

Clause 15 empowers the Minister to promulgate a code of conduct for members of the overseas service, and requires members of the overseas service to comply with that code.

Clause 16 establishes the Overseas Service Committee. The Overseas Service Committee will comprise the Secretary of Foreign Affairs, the Secretary of Defence, the Chairman of the State Services Commission, the General Manager of the Tourist and Publicity Department, the Secretary of Trade and Industry, and the Secretary to the Treasury; but where any matter before the committee relates to some other department, the committee may co-opt the permanent head of that department for the purpose of dealing with that matter.

Clause 17 specifies the matters with which the Overseas Service Committee is charged.

Clause 18 relates to members of the overseas service who are State servants. *Subclauses (1) and (2)* make clear that the appointment of any person as a member of, or the service of any person in, the overseas service will not affect that person's membership of any Department of State.

Clause 19 makes clear that members of the overseas service who are servicemen continue to be bound by the legislation relating to servicemen in general.

Clause 20 provides that the conditions of employment of all members of the overseas service are to be fixed under the State Services Conditions of Employment Act 1977.

Clause 21 makes special provision for appeals against the promotion of members of the overseas service (other than certain officers of the Ministry of Foreign Affairs) who are public servants. Usually, where a public service appeal succeeds, the successful appellant takes up the position to which the provisional appointee was appointed, and the provisional appointee reverts to a position previously occupied. The effect of *clause 21* is that where the promotion appealed against is the promotion of a member of the overseas service, a successful appellant will not as a rule take up that member's position. Instead, the provisional appointee

will “lose” the promotion concerned, and the successful appellant will receive an equivalent promotion, personal to that appellant, but remain in the same position.

Clause 22 provides for members of the overseas service to be members of the Government Superannuation Fund.

Clause 23 relates to the employment, and conditions of employment, of locally engaged staff at overseas posts and missions.

Clause 24 provides for the establishment of superannuation schemes for locally engaged staff at overseas missions and posts.

PART III

GENERAL PROVISIONS

Clause 25 provides that nothing in the Bill affects the prerogative of the Crown; and, for the avoidance of doubt, provides that nothing in the Overseas Representatives Act 1942 or the Foreign Affairs Act 1943 affected the prerogative of the Crown.

Clause 26 requires the Secretary to furnish the Minister with a report each year on the operation of the Ministry and the overseas service, and requires the Minister to lay a copy of that report before Parliament.

Clause 27 provides for the making of regulations.

Clause 28 makes several amendments to the State Services Act 1962. *Subclause (3)* makes a breach by a public servant of a code of conduct promulgated under *clause 15* of the Bill an offence against the State Services Act 1962.

Clause 29 makes several amendments to the State Services Conditions of Employment Act 1977. The effect of these is that where a member of the overseas service is not a member of the State services, all his or her conditions of employment will be determined by the Secretary of Foreign Affairs. But where a member of the overseas service is a member of the State services, only those conditions of employment relating specifically to his or her employment as a member of the overseas service will be determined by the Secretary of Foreign Affairs. All other conditions of employment will continue to be determined by the employing authority of that branch of the State services of which he or she is a member. *Subclause (3)* has the effect of excluding the application of Parts II to VIII of the State Services Conditions of Employment Act 1977 to the overseas service.

Clause 30 inserts into the Crimes Act 1961 a new *section 8A*, which gives the New Zealand Courts limited jurisdiction in respect of criminal offences committed overseas by persons who are members of the overseas service, members of the family of members of the overseas service, or locally engaged staff of an overseas mission or post, and who have immunity from criminal jurisdiction in the place where the alleged criminal action or omission concerned took place.

Clause 31 relates to consequential amendments, repeals, and savings. Included in the enactments repealed are 4 statutes, relating to treaties of peace concluded after the First and Second World Wars, that are in theory administered in the Ministry of Foreign Affairs but are in fact spent.

Clause 32 contains transitional provisions.

Hon. Mr Cooper

FOREIGN AFFAIRS AND OVERSEAS SERVICE

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A BILL INTITLED

5 **An Act to establish a Ministry of Foreign Affairs and an overseas service of New Zealand, and to provide for the administration of that service and make better provision for the conduct of the relations between New Zealand and foreign states generally**

No. 67—1

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

1. Short Title—This Act may be cited as the Foreign Affairs and Overseas Service Act 1983. 5

2. Interpretation—In this Act, unless the context otherwise requires,—

“Department of State” means any instrument of the Crown of New Zealand, whether a Department, a corporation, an agency, or some other instrument: 10

“Deputy Secretary” means a Deputy Secretary of Foreign Affairs appointed pursuant to **section 7 (1)** of this Act:

“Head of mission” means any person (not being a head of post) appointed under **section 14 (2)** of this Act:

“Head of post” means any person appointed under **section 14 (2) (e)** of this Act: 15

“Minister” means the Minister of Foreign Affairs:

“Ministry” means the Ministry of Foreign Affairs established by **section 3 (1)** of this Act:

“Overseas mission” means any office usually headed by a head of mission: 20

“Overseas post” means any office usually headed by a head of post:

“Overseas service” means the service referred to in **section 11** of this Act: 25

“Overseas Service Committee” means the committee established by **section 16 (1)** of this Act:

“Public service” has the same meaning as it has in the State Services Act 1962:

“Secretary” means the Secretary of Foreign Affairs appointed pursuant to **section 6** of this Act: 30

“State” means any state, country, or territory:

“State services” has the same meaning as it has in the State Services Act 1962.

Cf. 1943, No. 5, s. 2 35

PART I

MINISTRY OF FOREIGN AFFAIRS

3. Ministry of Foreign Affairs—(1) There is hereby established a Department of State to be known as the Ministry of Foreign Affairs. 40

(2) The Ministry is hereby declared to be the same Department of State as that existing immediately before the commencement of this Act and known as the Ministry of Foreign Affairs.

- 5 **4. Minister of Foreign Affairs**—(1) The Ministry shall be under the control of the Minister, who may from time to time, for the purpose of the performance, exercise, or carrying out of the functions, powers, or duties of the Ministry, give such directions as the Minister thinks fit to the Secretary.
- 10 (2) Notwithstanding any enactment or rule of law to the contrary, the Minister may, on behalf of Her Majesty the Queen, whether within or outside New Zealand, enter into such contracts as the Minister thinks necessary or desirable.
- 15 (3) Without limiting the generality of **subsection (2)** of this section, it is hereby declared that the Minister may under that subsection enter into contracts for—
- (a) The charter of aircraft, ships, or vehicles;
- (b) The performance or undertaking by any person (whether within or outside New Zealand) of any duties, tasks,
- 20 or projects;
- (c) The purchase or hire of any equipment outside New Zealand;
- (d) The purchase or lease of any real property (whether in the name of Her Majesty the Queen or in the name
- 25 of the New Zealand Government Property Corporation) outside New Zealand.
- (4) It is hereby declared that, where the Minister enters into a contract with any person (other than a person appointed under **section 14** or **section 23 (1)** of this Act) pursuant to which
- 30 that person is to perform any duties, or undertake any tasks or projects, outside New Zealand that person is—
- (a) Employed by the Government of New Zealand under a contract for services; and
- (b) Neither a servant nor an agent of the Crown.
- 35 **5. Functions of Ministry**—The functions of the Ministry shall be—
- (a) Subject to the directions (if any) of the Minister, all such functions as are necessary or desirable for the conduct of the foreign relations of New Zealand; and
- 40 (b) The administration of this Act and the enactments specified in the **First** Schedule to this Act.

6. Secretary of Foreign Affairs—There shall from time to time be appointed under the State Services Act 1962 a Secretary of Foreign Affairs who, subject to the directions (if any) of the Minister, shall be the administrative head of the Ministry.

Cf. 1943, No. 5, s. 5 (1)

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7. Deputy Secretaries of Foreign Affairs—(1) There shall from time to time be appointed under the State Services Act 1962 one or more Deputy Secretaries of Foreign Affairs, as may be necessary or desirable for the effective and efficient carrying out of the functions of the Ministry.

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(2) Subject to the control of the Secretary, a Deputy Secretary shall have and may exercise and perform any of the powers, functions, and duties of the Secretary (including any powers delegated by the Minister under **section 9** of this Act), and shall perform such other duties as the Secretary thinks fit.

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(3) On the occurrence from any cause of a vacancy in the office of Secretary (whether by reason of death or resignation or otherwise) or in the absence (from whatever cause arising) of the Secretary, and for so long as that vacancy or absence continues,—

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(a) The Deputy Secretary if there is only one; or

(b) A Deputy Secretary authorised in writing in that behalf by the State Services Commission (before, on, or after the occurrence of that vacancy or absence) in every other case,—

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shall have and may exercise and perform all the powers, functions, and duties of the Secretary (including any powers delegated by the Minister under **section 9** of this Act).

(4) The fact that a Deputy Secretary exercises or performs any power, function, or duty of the Secretary shall be conclusive evidence of the authority of that Deputy Secretary to do so; and no authority given under **subsection (3) (b)** of this section, and no act done by a Deputy Secretary under any such authority or under **subsection (2)** or **subsection (3)** of this section shall in any proceedings be questioned on the ground that the occasion for the giving of that authority had not arisen or had ceased, or that that act was contrary to a direction of the Secretary.

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Cf. 1943, No. 5, s. 5 (2)

8. Other officers and employees of Ministry—(1) Subject to **subsection (2)** of this section, there shall from time to time be appointed under the State Services Act 1962 such other

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officers and employees of the Ministry as are necessary for the effective and efficient performance of the functions of the Ministry.

(2) For the purposes of sections 26, 28, and 32 to 35, and subsections (1) (a) and (5) of section 64, of the State Services Act 1962—

- (a) Subject to **paragraph (b)** of this subsection, each of the designations specified in the **Second Schedule** to this Act; and
- 10 (b) Where any such designation is divided into 2 or more grades, each of those grades,—
shall be deemed to be a permanent position in the public service; and that Act shall apply to appointments to, and appeals against appointments to, any of those designations or
15 grades accordingly.

Cf. 1943, No. 5, s. 5 (2)

9. Delegation of powers of Minister—(1) The Minister may from time to time, by writing under the Minister's hand, either generally or particularly, and either unconditionally or subject
20 to any conditions the Minister thinks fit, delegate to the Secretary all or any of the Minister's powers under this Part or **Part II** of this Act, or under any other enactment, other than—

- 25 (a) The power of delegation conferred on the Minister by this subsection:
- (b) The power to consent under **section 10 (2) (b)** of this Act.
- (2) Subject to—
 - (a) The conditions (if any) subject to which any power was delegated under **subsection (1)** of this section; and
 - 30 (b) Any general or special directions given by the Minister,—the Secretary may exercise that power in the same manner and with the same effect as if it had been conferred on the Secretary directly by this section and not by delegation.
- (3) Every delegation under **subsection (1)** of this section shall
35 be revocable at will, and until revoked shall continue in force according to its tenor; and
 - (a) If the Minister by whom it was made ceases to hold office, it shall continue to have effect as if made by the Minister for the time being;
 - 40 (b) Subject to **paragraph (c)** of this subsection, if the Secretary to whom it was made ceases to hold office, it shall continue to have effect as if made to the Secretary for the time being;

(c) If there is no Secretary for the time being, or if the Secretary is absent from duty, it shall continue to have effect as if made to the person for the time being directed under the State Services Act 1962 to act in place of the Secretary or to a Deputy Secretary (as the case requires). 5

(4) In the absence of proof to the contrary, where the Secretary, a Deputy Secretary, or any person directed under the State Services Act 1962 to act in place of the Secretary purports to act pursuant to a delegation under **subsection (1)** of this section, the action concerned shall be presumed to be in accordance with that delegation. 10

(5) No delegation under **subsection (1)** of this section shall affect or prevent the exercise of any power by the Minister.

10. Delegation of powers by Secretary—(1) Subject to **subsection (2)** of this section, the Secretary may from time to time, by writing under the Secretary's hand, either generally or particularly, and either unconditionally or subject to any conditions the Secretary thinks fit, delegate to such officer or officers or employee or employees of the Ministry as the Secretary thinks fit all or any of the powers exercisable by the Secretary under this Act or any other enactment, including any power delegated to the Secretary under this Act. 15 20

(2) The Secretary shall not—

(a) Delegate the power of delegation conferred on the Secretary by **subsection (1)** of this section; or 25

(b) Without the written consent of the Minister delegate any power delegated to the Secretary by the Minister; or

(c) Without the written consent of the State Services Commission, delegate any power delegated to the Secretary under the State Services Act 1962. 30

(3) Subject to—

(a) The conditions (if any) subject to which any power was delegated under **subsection (1)** of this section; and

(b) Any general or special directions given by the Secretary,— every person to whom any powers are delegated under **subsection (1)** of this section may exercise those powers in the same manner and with the same effect as if they had been conferred on that person directly and not by delegation. 35

(4) A delegation under this section may be made to— 40

(a) A specified officer or employee of the Ministry;

(b) The holder for the time being of a specified office in the Ministry:

- (c) Officers or employees of the Ministry of any specified class or classes:
- (d) The holders for the time being of any specified offices, or class or classes of office, in the Ministry.
- 5 (5) Every delegation under **subsection (1)** of this section shall be revocable at will, and until revoked shall continue in force according to its tenor; and if the Secretary by whom it was made ceases to hold office, it shall continue to have effect as if made—
- 10 (a) By the Secretary for the time being; or
(b) If there is no Secretary for the time being, by the person for the time being acting under **section 7 (3)** of this Act.
- (6) In the absence of proof to the contrary, where any person
15 purports to act pursuant to a delegation under **subsection (1)** of this section, the action concerned shall be deemed to be presumed to be in accordance with that delegation.
- (7) No delegation under **subsection (1)** of this section shall affect or prevent the exercise of any power by the Secretary.
- 20 (8) This section shall apply to all members of the overseas service as if each were an officer of the Ministry holding a specified office in the Ministry.

PART II

OVERSEAS SERVICE

- 25 **11. Constitution of overseas service**—There shall be an overseas service of New Zealand, which shall comprise all those persons who are for the time being a head of mission, a head of post, or a person appointed under **section 14 (3)** of this Act to assist a head of mission or head of post.
- 30 **12. Minister to have control of overseas service**—The Minister shall have control of the overseas service, and all members of the overseas service.
- 13. Secretary to be head of overseas service**—The Secretary shall be head of the overseas service and shall be
35 deemed to be a member of the overseas service; and, subject to any directions of the Minister, and subject to and in accordance with this Act, the Secretary shall be responsible for the administration of the overseas service.
- 14. Appointment of members of overseas service**—
40 (1) The Secretary shall from time to time, after appropriate consultations have been made, make recommendations to the Minister concerning the appointment of members of the overseas service.

(2) The Minister shall from time to time recommend to the Governor-General the appointment or reappointment of any person to be, or the termination of the appointment of any person as,—

- (a) High commissioner for New Zealand in any Commonwealth country; or 5
- (b) Ambassador of New Zealand to any state that is not a Commonwealth country; or
- (c) Head of mission for New Zealand at any international organisation; or 10
- (d) Head of mission for New Zealand (not being a high commissioner or ambassador) to any state; or
- (e) Head of post at any office in any state.

(3) The Minister shall from time to time appoint, reappoint, and terminate the appointments of, such persons to assist heads of mission and heads of post as seems necessary or desirable. 15

Cf. 1943, No. 5, ss. 6-8

15. Code of conduct—The Minister may from time to time promulgate, by notice in the *Gazette*, a code of conduct for members of the overseas service; and every such member shall comply with the code of conduct (if any) for the time being in force. 20

16. Overseas Service Committee—(1) There is hereby established a committee to be called the Overseas Service Committee, which shall comprise: 25

- (a) The Secretary:
- (b) The Secretary of Defence:
- (c) The Chairman of the State Services Commission:
- (d) The General Manager of the Tourist and Publicity Department: 30
- (e) The Secretary of Trade and Industry:
- (f) The Secretary to the Treasury.

(2) The Secretary shall be the Chairman of the Overseas Service Committee.

(3) Where any matter before the Overseas Service Committee affects or involves any Department of State not otherwise represented on that committee, or any officer or employee of any such Department, that committee may co-opt the permanent head of that Department as a full member of that committee for the purposes of dealing with that matter. 40

(4) In the absence from any meeting of the Overseas Service Committee of any member of that committee, any employee of the Department of State concerned authorised by that member to do so may attend that meeting in that member's
5 stead, and while so attending shall be deemed to be a member of that committee.

17. Matters with which Overseas Service Committee charged—The Overseas Service Committee shall be responsible to the Minister, and shall be charged with—

- 10 (a) Considering the broad policy questions relating to the administration of the overseas service and the resource implications of executing foreign policy:
- (b) Reviewing the resource requirements of the overseas service and matters affecting its administration:
- 15 (c) Through its Chairman, making to the Minister any recommendations it thinks fit relating to the administration of the overseas service:
- (d) Carrying out such other specific functions relating to the administration of the overseas service as the Minister
20 from time to time directs.

18. Members of overseas service who are State servants—

(1) Any member of the overseas service who, immediately before last becoming a member of the overseas service, was an employee of a Department of State shall continue to be an
25 employee of that Department until that person—

- (a) Resigns or retires from that Department; or
(b) Becomes an employee of some other Department of State.

(2) Any member of the overseas service who ceases to be an employee of any Department of State by virtue of becoming
30 an employee of some other Department of State shall continue to be an employee of that other Department until that person—

- (a) Resigns or retires from that Department; or
(b) Becomes an employee of some other Department of State.

19. Members of overseas service who are servicemen—

35 No person shall cease to be a serviceman (within the meaning of section 2 of the Defence Act 1971) for the purposes of that Act or the Armed Forces Discipline Act 1971, by virtue only of being appointed, or being, a member of the overseas service.

20. Conditions of employment of members of overseas service—Notwithstanding that members of the overseas service may be outside New Zealand, their conditions of employment shall at all times be determined in accordance with the State Services Conditions of Employment Act 1977.

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21. Appeals under State Services Act 1962 in respect of certain members of overseas service—(1) This section applies to any appeal under the State Services Act 1962 by any officer of the Public Service against the promotion (within the meaning of that Act) of any member of the overseas service otherwise than to a designation or grade deemed by **section 8 (2)** of this Act to be a permanent position in the public service.

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(2) Notwithstanding anything in the State Services Act 1962, unless the Minister directs that that Act is to prevail,—

(a) If an Appeal Board allows an appeal to which this section applies,—

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(i) The appointee shall retain the appointee's existing position, but shall revert to the classification and grading held immediately before appointment; and

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(ii) The appellant shall retain the appellant's existing position, but shall be promoted to the classification and grade that the appointee would have had if the appeal had not been allowed:

(b) If an Appeal Board holds, in respect of an appeal to which this section applies, that an appointment is not sustained,—

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(i) The appointee shall retain the appointee's existing position, but shall revert to the classification and grading held immediately before appointment; and

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(ii) The appellant shall retain the appellant's existing position, classification, and grade.

22. Application of Government Superannuation Fund Act 1956 to members of overseas service—(1) For the purposes of the Government Superannuation Fund Act 1956,—

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(a) Every overseas mission and overseas post is hereby declared to be, and every overseas mission overseas post, former overseas mission, and former overseas post is hereby deemed to have been, part of the Government service:

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(b) A person shall be deemed neither to be, nor to have been, employed in the Government service during any period during which that person is or was a member of the overseas service unless, immediately before the commencement of that period, that person was permanently employed in the Government service.

(2) For the purposes of **subsection (1)** of this section, "Government service" has the same meaning as in the Government Superannuation Fund Act 1956.

Cf. 1943, No. 5, s. 11

23. Locally engaged staff—(1) Subject to any direction of the Minister in that behalf, any head of mission or head of post may, on conditions determined by the Secretary, employ persons as members of the local staff of the overseas mission or overseas post concerned.

(2) Before issuing any determination under **subsection (1)** of this section, the Secretary shall submit it to the Overseas Service Committee; and—

(a) If that determination has the concurrence of all the members of the Overseas Service Committee, shall issue it; but

(b) If that determination does not have that concurrence, shall refer it to the Minister of Foreign Affairs, who shall direct how it is to be dealt with; and the Secretary shall not issue it unless the Minister so directs.

24. Superannuation schemes for locally engaged staff—

(1) The Minister may, with the concurrence of the Minister of Finance, determine the superannuation rights of persons employed under **section 23 (1)** of this Act.

(2) All contributions, retiring allowances, annuities, and other amounts payable by the Government of New Zealand pursuant to any determination under **subsection (1)** of this section shall be paid out of the Consolidated Revenue Account without further appropriation than this section.

PART III

GENERAL PROVISIONS

25. Prerogative of the Crown not affected—(1) Nothing in this Act shall extinguish any power or authority that, if this Act had not been passed, would be exercisable by virtue of the prerogative of the Crown.

(2) For the avoidance of doubt, it is hereby declared that nothing in the Overseas Representatives Act 1942 or the Foreign Affairs Act 1943 extinguished any power or authority that, if those Acts had not been passed, would have been exercisable by virtue of the prerogative of the Crown. 5

26. Annual report—(1) As soon as is practicable after the 31st day of March in every year the Secretary shall furnish to the Minister a report on the operation of the Ministry and the overseas service during the year that ended with that day.

(2) The Minister shall, within 16 sitting days of receiving a report under **subsection (1)** of this section, lay a copy of that report before Parliament. 10

27. Regulations—The Governor-General may from time to time, by Order in Council, make regulations—

(a) Fixing fees for any actions undertaken by members of the overseas service on behalf of members of the public; 15

(b) For any matters that are contemplated by or necessary for giving full effect to this Act, and for its due administration. 20

Cf. 1943, No. 5, s. 11A

28. Amendments to State Services Act 1962—(1) Section 2 of the State Services Act 1962 is hereby amended by inserting, after the definition of the term “officer”, the following definition: 25

“ ‘Overseas service’ has the same meaning as in **section 2** of the Foreign Affairs and Overseas Service Act **1983**.”

(2) The said Act is hereby amended by inserting, after section 46, the following section: 30

“46AA. Positions in overseas service—(1) No member of the overseas service shall be entitled to make application to the Commission under section 45 of this Act for a review of the grading of the position he occupies; and the Commission shall disregard any such application made by a member of the overseas service. 35

“(2) The Commission shall not refer to any Grading Committee appointed under section 46 of this Act any matter relating to the classification or grading of the overseas service, of any position or positions in the overseas service, or of any member or members of the overseas service.” 40

(3) Section 56 of the said Act is hereby amended by inserting, after paragraph (a), the following paragraph:

5 “(aa) Being a member of the overseas service, by any act or omission (whether occurring within or outside New Zealand), fails to comply with any requirement contained in a code of conduct promulgated under **section 15** of the Foreign Affairs and Overseas Service Act 1983.”

Cf. 1943, No. 5, s. 10

10 **29. Amendments to State Services Conditions of Employment Act 1977**—(1) Section 2 (1) of the State Services Conditions of Employment Act 1977 is hereby amended—

(a) By inserting in the definition of the term “employing authority”, after paragraph (a), the following

15 paragraph:
“(aa) In relation to members of the overseas service who are not employees of the State services, means the Secretary of Foreign Affairs:”

20 (b) By inserting, after the definition of the term “occupational class”, the following definitions:

“‘Overseas service’ has the same meaning as in **section 2** of the Foreign Affairs and Overseas Service Act 1983:

25 “‘Overseas Service Committee’ has the same meaning as in **section 2** of the Foreign Affairs and Overseas Service Act 1983.”

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

30 “(1A) Notwithstanding anything in the definition in subsection (1) of this section of the term ‘employing authority’, in respect of the matters referred to in **paragraphs (b) and (c) of section 7 (1A)** of this Act, the Secretary of Foreign Affairs shall be deemed to be the employing authority of all members of the overseas

35 service who are employees of the State services.”

(3) Section 4 (2) of the said Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Members of the overseas service:”

40 (4) Section 7 of the said Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Notwithstanding anything in subsection (1) of this section, the conditions of employment of any member of the overseas service who is an employee of the State services shall comprise—

“(a) Subject to **paragraph (b)** of this subsection, all the conditions of employment prescribed under this Act that would apply to that employee if that employee were—

“(i) Within New Zealand; and

“(ii) Not a member of the overseas service; and

“(b) Exemptions from, and modifications of, any of the conditions of employment referred to in **paragraph (a)** of this subsection, arising from that employee’s membership of the overseas service; and

“(c) Additional conditions of service (including conditions relating to overseas and other allowances, grants, gratuities, and other payments or services directly related to service overseas), arising from that employee’s membership of the overseas service.”

(5) Section 7 (2) of the said Act is hereby amended by inserting, after the word “pay”, the words “or conditions referred to in **paragraph (b) or paragraph (c) of section 7 (1A)** of this Act”.

(6) The said Act is hereby amended by inserting, after section 8, the following section:

“**8A. Determinations relating to overseas service**—(1) This section applies to all determinations issued in respect of—

“(a) The conditions of employment of members of the overseas service who are not employees of the State services; or

“(b) The conditions of employment (being conditions referred to in **paragraph (b) or paragraph (c) of section 7 (1A)** of this Act) of members of the overseas service who are employees of the State services.

“(2) Before issuing any determination to which this section applies, the Secretary of Foreign Affairs shall submit it to the Overseas Service Committee; and—

“(a) If that determination has the concurrence of all the members of the Overseas Service Committee, shall issue it; but

“(b) If that determination does not have that concurrence, shall refer it to the Minister of Foreign Affairs, who shall direct how it is to be dealt with; and the Secretary shall not issue it unless the Minister so directs.

“**(3)** Where a determination to which this section applies establishes a mechanism for the adjustment or ascertaining of any condition of employment, that condition may, from time to time, notwithstanding any provision of this Act, be
5 ascertained or adjusted by the application of that mechanism; but that part of that determination relating to that mechanism shall not be amended more than once in any period of 12 months.”

30. Jurisdiction in respect of certain persons with diplomatic or consular immunity—The Crimes Act 1961 is hereby amended by inserting, after section 8, the following
10 section:

“**8A.** (1) This section applies to every person who is—

15 “(a) A member of the overseas service (within the meaning of **section 2** of the Foreign Affairs and Overseas Service Act **1983**); or

“(b) A New Zealand citizen, ordinarily resident in New Zealand, and either—

20 “(i) A member of the family of such a member; or

“**(ii)** A person employed under **section 23 (1)** of that Act.

“**(2)** Where—

25 “(a) Any person to whom this section applies does, or omits to do, any act outside New Zealand (whether or not the act or omission concerned constitutes an offence under the laws in force in the place where it took place) that, if done or omitted within New Zealand would constitute an offence punishable by
30 imprisonment for one year or more; and

“**(b)** That person has immunity from criminal jurisdiction in the place where that act or omission took place; and

35 “**(c)** That immunity has not been waived (otherwise than to any extent necessary to enable the extradition of that person),—

that act or omission shall be deemed to have taken place within New Zealand.

40 “**(3)** No information shall be laid against any person over whom jurisdiction is claimed by virtue of **subsection (2)** of this section without the leave of the Attorney-General.

“**(4)** **Subsection (5)** of this section applies to any offence to the laying of an information in respect of which the consent of the Attorney-General is required by **subsection (3)** of this section.

“(5) Where any person is alleged to have committed an offence to which this subsection applies,—

“(a) He may be arrested; or

“(b) A warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General has not been obtained to the laying of an information in respect of that offence; but no further proceedings shall be taken until that consent has been obtained.” 5

31. Consequential amendments, repeals, and savings— 10

(1) The enactments specified in the **Third** Schedule to this Act are hereby consequentially amended in the manner indicated in that Schedule.

(2) The enactments specified in the **Fourth** Schedule to this Act are hereby repealed. 15

(3) The following regulations are hereby consequentially revoked:

(a) The Treaty of Peace (Finland) Regulations 1947*:

(b) The Treaties of Peace Regulations 1948†:

(c) The Treaty of Peace (Japan) Regulations 1952‡. 20

(4) The repeal by **subsection (2)** of this section of the Treaties of Peace (Italy, Roumania, Bulgaria, Hungary, and Finland) Act 1947 and the Treaty of Peace (Japan) Act 1951, and the revocation by **subsection (3)** of this section of the regulations specified in it, shall neither extinguish or affect any right that was in existence immediately before the commencement of this Act nor revive any right that was not then in existence. 25

(5) Every contract entered into by the Minister before the commencement of this Act is hereby deemed to be as valid and effectual as if this Act were in force at the time. 30

32. Transitional provisions—(1) This Act shall apply to every person who, at any time before its commencement, was a person appointed or employed—

(a) As high commissioner for New Zealand in any Commonwealth country; or 35

(b) As ambassador of New Zealand to any state that is not a Commonwealth country; or

(c) As head of mission for New Zealand at any international organisation; or

(d) As head of mission for New Zealand (not being an ambassador or high commissioner) to any state; or 40

(e) As head of post in any state; or

*S.R. 1947/187

†S.R. 1948/162

‡S.R. 1952/80

(f) To assist any such high commissioner, ambassador, head of mission, or head of post; or

(g) As a member of the local staff of any New Zealand office overseas headed by any such high commissioner, ambassador, head of mission, or head of post,—
5 as if this Act had been in force at the time that person was so appointed or employed.

(2) Every decision at any time before the commencement of this Act made by the Minister, and every amendment or
10 revocation of any decision so made, concerning the terms and conditions of employment of—

(a) Persons appointed to be overseas representatives (within the meaning of the Foreign Affairs Act 1943) is hereby deemed to be as valid and effectual as if it were a
15 determination validly made on that commencement under the State Services Conditions of Employment Act 1977; or

(b) Persons appointed under section 8 (2) of that first-mentioned Act is hereby deemed to be as valid and effectual as if it were a determination validly made
20 on that commencement under **section 23 (1)** of this Act,—

and may be amended or revoked accordingly.

(3) Unless the context otherwise requires, every reference in
25 any enactment or document passed or made before the 23rd day of October 1969—

(a) To the Department of External Affairs or Ministry of External Affairs shall continue to be read as a reference to the Ministry of Foreign Affairs:

30 (b) To the Minister of External Affairs shall continue to be read as a reference to the Minister of Foreign Affairs:

(c) To the Secretary of External Affairs shall continue to be read as a reference to the Secretary of Foreign Affairs.

(4) Every employee of the State Services shall have the same
35 right of appeal against any appointment or promotion of any other employee of the State Services as that first-mentioned member would have if this Act had come into force on the 1st day of April 1983, notwithstanding that the appointment or promotion concerned may have been made or notified, or
40 may have been expressed to take effect, before that day.

(5) The reference in **section 19** of this Act to the Armed Forces Discipline Act 1971 shall be read as if that section formed part of the Defence Act 1971; and section 89 (13) of that Act shall apply accordingly.

SCHEDULES**Section 5 (b)****FIRST SCHEDULE****OTHER ENACTMENTS ADMINISTERED IN MINISTRY OF FOREIGN AFFAIRS**

The Antarctica Act 1960
 The Antarctic Marine Living Resources Act 1981
 The Commonwealth Countries Act 1977
 The Consular Privileges and Immunities Act 1971
 The Continental Shelf Act 1964
 The Cook Islands Act 1915
 The Cook Islands Constitution Act 1964
 The Diplomatic Privileges and Immunities Act 1968
 The Geneva Conventions Act 1958
 The Kermadec Islands Act 1887
 The New Zealand Government Property Corporation Act 1953
 The Niue Act 1966
 The Niue Constitution Act 1974
 The Statute of Westminster Adoption Act 1947
 The Territorial Sea and Exclusive Economic Zone Act 1977
 The Tokelau Act 1948
 The Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977
 The United Nations Act 1946
 The Visiting Forces Act 1939
 The Western Samoa Act 1961

Section 8 (2)**SECOND SCHEDULE****DESIGNATIONS WITHIN MINISTRY**

Ambassador	Third Secretary
Minister	Administration Assistant
Counsellor	Typist
First Secretary	Communications Officer
Second Secretary	

THIRD SCHEDULE

Section 31 (1)

ENACTMENTS AMENDED

Enactment	Amendment
<p>1956, No. 47—The Government Superannuation Fund Act 1956 (Reprinted R.S. Vol. 13, p. 97)</p>	<p>By repealing section 22B (as inserted by section 3 of the Government Superannuation Fund Amendment Act 1967 and amended by section 2 (1) of the Government Superannuation Fund Amendment Act 1978), and substituting the following section:</p> <p>“22B. Staff of New Zealand High Commission Office, London—(1) Notwithstanding anything to the contrary in section 22 of this Act, every person first employed, or to whom the Foreign Affairs and Overseas Service Act 1983 applies as if that person were first employed, after the 31st day of March 1968 under section 25 (1) of that Act to assist the high commissioner for New Zealand to the United Kingdom shall become a contributor to the Fund subject to this section—</p> <p>“(a) Upon appointment; or</p> <p>“(b) Upon attaining the age of 17 years,—whichever is the later; and shall thereafter, so long as the employment continues, continue to be a contributor to the Fund subject to this section.</p> <p>“(2) Subject to section 22 of this Act, any person first employed, or to whom the Foreign Affairs and Overseas Service Act 1983 applies as if that person were first employed, before the 1st day of April 1968 to assist the said high commissioner may, if not already a contributor to the Fund, elect to become a contributor to the Fund; and that person shall thereupon become a contributor subject to this section.</p> <p>“(3) Any person employed, or to whom the Foreign Affairs and Overseas Service Act 1983 applies as if that person were employed, before the 1st day of March 1968 who is a contributor to the Fund otherwise than subject to this section may at any time elect to become a contributor to the Fund subject to this section; and that person shall thereupon become a contributor subject to this section.</p> <p>“(4) Neither section 28 nor section 41 of this Act shall apply to any person who is a contributor subject to this section.</p>

THIRD SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Enactment	Amendment
<p>1956, No. 47—The Government Superannuation Fund Act 1956 (Reprinted R.S. Vol. 13, p. 97)—<i>continued</i></p>	<p>“(5) Notwithstanding anything to the contrary in section 42 of this Act, there shall be deducted from any refund of contributions and interest (if any) payable pursuant to that section to any contributor subject to this section such amount as would have been deductible under subsection (2) of section 378 of the Income Tax Act 1952 of the Parliament of the United Kingdom or any subsequent enactment passed in amendment of or substitution for that Act or any such enactment if that section or enactment applied to that contributor.</p> <p>“(6) Any contributor subject to this section may at any time elect to contribute to the Fund on the basis of 60 percent of that person’s standard rate of contribution.</p> <p>“(7) An election under subsection (6) of this section shall take effect—</p> <p>“(a) On the date the person concerned became a contributor if that person made that election at the time that person became a contributor; and</p> <p>“(b) Upon such date as the Board in its discretion approves, in every other case.”</p>
<p>1956, No. 107—The Electoral Act 1956 (Reprinted R.S. Vol. 7, p. 161)</p>	<p>By inserting in section 2 (1), after the definition of the term “ordinarily resident in New Zealand”, the following definition:</p> <p>“‘Overseas service’ has the same meaning as in section 2 of the Foreign Affairs and Overseas Service Act 1983.”</p> <p>By inserting in the definition in section 2 of the term “public servant”, after the words “subsection (2)”, the words “or subsection (2A)”.</p> <p>By inserting in section 2, after subsection (2), the following subsection:</p> <p>“(2A) No person shall, by reason only of being a member of the overseas service, be deemed to be a State servant within the meaning of section 30 (1) of this Act or a public servant, whether or not he receives any salary, allowances, or expenses.”</p> <p>By inserting in section 32 (1) (a), after the word “If”, the words “, otherwise than by virtue of being a member of the overseas service”.</p>

THIRD SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1956, No. 107—The Electoral Act 1956 (Reprinted R.S. Vol. 7, p. 161)— <i>continued</i>	By inserting in section 42 (3) (as substituted by section 13 (1) of the Electoral Amendment Act 1980), after the word “servant”, wherever it appears, the words “or member of the overseas service”. By omitting from paragraph (b) (i) of the said section 42 (3) the words “the public servants”, and substituting the word “his”.
1964, No. 1—The United Nations (Police) Act 1964 (Reprinted R.S. Vol. 11, p. 721) 1979, No. 33—The Civil List Act 1979	By adding the following section: “8. Act to be administered in Police Department —This Act shall be administered in the Police Department.” By inserting, after section 21, the following section: “21A. Members of overseas service not to be paid under this Part —Notwithstanding anything in this Act, no payment shall be made under this Part of this Act to any person in respect of any period in respect of which he receives a salary as a member of the overseas service within the meaning of section 2 of the Foreign Affairs and Overseas Service Act 1983.”

Section 31 (2)**FOURTH SCHEDULE****ENACTMENTS REPEALED**

- 1919, No. 20—The Treaties of Peace Act 1919 (1931 Reprint, Vol. 1, p. 1034).
- 1921, No. 7—The Treaties of Peace Extension Act 1921 (1931 Reprint, Vol. 1, p. 1035).
- 1942, No. 1—The Overseas Representatives Act 1942 (R.S. Vol. 10, p. 539).
- 1943, No. 5—The Foreign Affairs Act 1943 (Reprinted 1969, Vol. 2, p. 1447).
- 1947, No. 33—The Treaties of Peace (Italy, Roumania, Bulgaria, Hungary, and Finland) Act 1947.
- 1948, No. 77—The Statutes Amendment Act 1948: Sections 13 and 14 (Reprinted 1976, Vol. 5, p. 4483).
- 1951, No. 58—The Treaty of Peace (Japan) Act 1951.
- 1961, No. 68—The Western Samoa Act 1961: So much of the Second Schedule as relates to the Treaties of Peace (Italy, Roumania, Bulgaria, Hungary, and Finland) Act 1947 or the Treaty of Peace (Japan) Act 1951 (Reprinted 1976, Vol. 5, p. 4527).
- 1967, No. 141—The Government Superannuation Fund Amendment Act 1967: Section 3 (Reprinted 1975, Vol. 4, p. 3263).
- 1969, No. 78—The Foreign Affairs Amendment Act 1969.
- 1978, No. 95—The Government Superannuation Fund Amendment Act 1978: Section 2 (1).