

FINANCE BILL (NO. 6)

EXPLANATORY NOTE

Clause 1 relates to the Short Title.

PART I

TOURIST AND PUBLICITY DEPARTMENT

Clause 2 provides that this clause and *clauses 3 and 4* are to be read together with and deemed part of the Tourist and Publicity Department Act 1963.

Clause 3 substitutes a new *section 7* in the principal Act. The functions of the Tourist and Publicity Department are stated in the existing *section 7* in mandatory terms. The new *section 7* restates those functions in permissive terms.

Clause 4 empowers the Minister of Tourism to sell or dispose of the whole or part of any business carried on by the Department and the whole or part of any property of the Department acquired or used in connection with its functions.

PART II

TOURIST HOTEL CORPORATION OF NEW ZEALAND

Clause 5 relates to the commencement of the provisions of Part II of the Bill. Except for *clauses 18 to 23 and clause 25, Part II* of the Bill comes into force on the date on which the Bill receives the Royal assent.

Clause 6 amends the Tourist Hotel Corporation Act 1974.

Subclause (1) inserts a new *section 7AA* into the principal Act. The new section enables the Tourist Hotel Corporation to sell or dispose of the whole or any part of its business or property.

Subclause (2) makes it clear that the power conferred by the new *section 7AA* is subject to *section 8* of the principal Act. *Section 8* requires the Corporation, in the exercise of its functions and powers, to give effect to the policy of the Government and to comply with any direction or request given or made in relation to those functions and powers.

Clause 7 amends the Land Settlement Promotion and Land Acquisition Act 1952. This clause exempts from the application of Part II of that Act (which relates to aggregation of farm land) and Part III of that Act (which relates to the foreign acquisition of land), transactions involving leasehold estates or interests in land where the estate or interest was held by the Corporation immediately before the commencement of the Bill.

Clauses 8 to 24 of the Bill are provisions enabling the Corporation to be constituted as a company under the Companies Act 1955.

No. 179—1

Price
incl. GST \$2.00

Clause 8 defines terms used in those clauses.

Clause 9 provides that *Part II* of the Bill binds the Crown.

Clause 10 authorises the Minister for State-Owned Enterprises and the Minister of Finance to form a public company under the Companies Act 1955 with the name Tourist Hotel Corporation of New Zealand Limited and subscribe for shares in that company.

Clause 11 relates to the Crown's shareholding in the company.

Clause 12 provides that on a date to be appointed by the Governor-General by Order in Council the undertaking of the Corporation shall vest in the company.

Clauses 13 to 17 are consequential provisions on the vesting of the undertaking of the Corporation in the company.

Clause 18 adds the name of the company to the bodies named in the Fourteenth Schedule to the Income Tax Act 1976 and relates to the grouping of tax losses.

Clause 19 provides for the removal of the name of the company from that Schedule. The clause is to come into force on a date to be appointed by the Governor-General by Order in Council. By virtue of *clause 5 (3)* of the Bill this clause may not be brought into force unless the Governor-General is satisfied that not all of the shares in the capital of the company are held on behalf of the Crown.

Clause 20 substitutes the name of the company for the name of the Corporation in the First Schedule to the Official Information Act 1982.

Clause 21 provides for the removal of the name of the company from that Schedule. This clause is to come into force on a date to be appointed by the Governor-General by Order in Council. By virtue of *clause 5 (4)* of the Bill this clause may not be brought into force unless the Governor-General is satisfied that at least 50 percent of the shares in the capital of the company are no longer held on behalf of the Crown.

Clause 22 substitutes the name of the company for the name of the Corporation in the First Schedule to the State-Owned Enterprises Act 1986.

Clause 23 provides for the removal of the name of the company from that Schedule. This clause is to come into force on a date to be appointed by the Governor-General by Order in Council. By virtue of *clause 5 (3)* of the Bill this clause may not be brought into force unless the Governor-General is satisfied that not all of the shares in the capital of the company are held on behalf of the Crown.

Clause 24 provides that the company shall not, by virtue of anything contained in *Part II* of the Bill, be required to administer any public reserve or National Park land the control of which vests in the Corporation under section 20 of the Tourist Hotel Corporation Act 1974. The clause makes a similar provision in relation to land administered by the Corporation under section 10 of the National Parks Act 1980.

Clause 25 relates to repeals and consequential amendments.

PART III

PHOSPHATE COMMISSION OF NEW ZEALAND

Clauses 26 and 27 dissolve the Phosphate Commission of New Zealand and repeal the Phosphate Commission of New Zealand Act 1981 and its amendments.

Hon. David Caygill

FINANCE (NO. 6)

ANALYSIS

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A BILL INTITULED

An Act to make provision with respect to public finances and other matters

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

- 5 **1. Short Title**—This Act may be cited as the Finance Act (No. 6) 1989.

PART I

TOURIST AND PUBLICITY DEPARTMENT

2. Sections to be read with Tourist and Publicity Department Act 1963—This section and the next 2 succeeding sections shall be read together with and deemed part of the 5 Tourist and Publicity Department Act 1963* (in those sections referred to as the principal Act).

*R.S. Vol. 13, p. 753

3. Functions of Department—The principal Act is hereby amended by repealing section 7, and substituting the following section: 10

“7. (1) The Department, under the control of the Minister, may—

“(a) Encourage and develop the New Zealand tourist industry and tourist traffic to, within, and beyond New Zealand: 15

“(b) Establish, maintain, develop, and operate publicity, information, and public relations services and charge for those services where appropriate:

“(c) Establish, maintain, and operate a travel service for reward: 20

“(d) Act as agent for any person or organisation where the Minister considers it necessary or expedient for the operation of the travel service.

“(2) The Department, under the control of the Minister, shall administer the Tourist and Health Resorts Control Act 1908 25 and carry out the functions of the Department formerly known as the Department of Tourist and Health Resorts.”

4. Power to sell business and property—The principal Act is hereby amended by inserting, after section 8, the following section: 30

“8A. Notwithstanding sections 7 and 8 of this Act, any other provision of this Act, and any rule of law, the Minister may, at any time or times, sell or otherwise dispose of—

“(a) The whole or any part of any business carried on by the Department under this Act together with all 35 property, rights, and interests associated with it:

“(b) The whole or any part of the property, rights, and interests of the Department acquired or used in connection with the functions of the Department— 40 to such persons and on such terms and conditions as the Minister thinks fit.”

PART II

TOURIST HOTEL CORPORATION OF NEW ZEALAND

5 **5. Commencement**—(1) Except as provided in this section, this Part of this Act shall come into force on the date on which this Act receives the Royal assent.

(2) **Sections 18 to 23 and section 25** of this Act shall come into force on a date to be appointed for the commencement of those sections by the Governor-General by Order in Council; and one or more Orders in Council may be made bringing
10 different sections into force on different dates.

(3) In the case of **section 19 and section 23** of this Act, a date may be appointed only where the Governor-General in Council is satisfied, at the time of making the Order in Council appointing the date for the coming into force of those sections, that not all
15 the ordinary shares in the capital of Tourist Hotel Corporation of New Zealand Limited are held on behalf of Her Majesty the Queen.

(4) In the case of **section 21** of this Act, a date may be appointed only where the Governor-General in Council is
20 satisfied, at the time of making the Order in Council appointing the date for the coming into force of the section, that at least 50 percent of the ordinary shares in the capital of Tourist Hotel Corporation of New Zealand Limited are no longer held on behalf of Her Majesty the Queen.

25 *Provisions enabling Tourist Hotel Corporation to sell or dispose of business and property*

6. Amendments to Tourist Hotel Corporation Act 1974—(1) The Tourist Hotel Corporation Act 1974 is hereby amended by inserting, after section 7A, the following section:

30 “7AA. Notwithstanding section 6 or any other provision of this Act, or any rule of law, the Corporation may, at any time or times, sell or otherwise dispose of, the whole or any part of the property or business undertaking of the Corporation to such persons and on such terms and conditions as the
35 Corporation thinks fit.”

(2) Section 8 (1) of the Tourist Hotel Corporation Act 1974 is hereby amended by inserting, after the word “Act”, the words “(including its powers under **section 7AA** of this Act)”.

(3) Section 8 (2) of the Tourist Hotel Corporation Act 1974 is
40 hereby amended by inserting, after the word “powers”, the words “(including its powers under **section 7AA** of this Act)”.

(4) This section shall expire on the commencement of the date appointed under section 5 of this Act for the commencement of section 25 of this Act.

7. Amendment to Land Settlement Promotion and Land Acquisition Act 1952—Section 23 (3) of the Land Settlement Promotion and Land Acquisition Act 1952 is hereby amended by inserting, after paragraph (i), the following paragraph:

“(ia) Any contract or agreement for the sale or transfer of any leasehold estate or interest that, immediately before the commencement of the Finance Act (No. 6) 1989, was held by the Tourist Hotel Corporation of New Zealand:”.

Provisions enabling Tourist Hotel Corporation to be constituted as a company under Companies Act 1955 15

8. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Appointed day” means the date appointed by the Governor-General by Order in Council under section 12 of this Act as the date on which the undertaking of the Corporation shall vest in the company: 20

“Assets” means any real or personal property of any kind, whether or not subject to rights, and without limiting the generality of the foregoing, includes—

(a) Any estate or interest in any land, including all rights of occupation of land or buildings: 25

(b) All buildings, vehicles, plant, equipment, and machinery, and any rights therein:

(c) All livestock, products from livestock, and crops:

(d) All securities within the meaning of the Securities Act 1978: 30

(e) All rights of any kind, including rights under Acts, deeds, agreements, or licences, planning rights, water rights, clean air licences, and liquor licences, and all applications for and objections against applications for such rights: 35

(f) All patents, trade marks, designs, copyright, and other intellectual property rights whether enforceable by Act or rule of law:

(g) Goodwill, and any business undertaking: 40

“Company” means the company formed and registered under section 10 of this Act:

“Corporation” means the Tourist Hotel Corporation of New Zealand constituted under the Tourist Hotel Corporation Act 1974:

“Instrument” includes—

5 (a) Any instrument (other than this Act) of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy of it were lodged, filed, or registered under any enactment; and

10 (b) Any judgment, order, or process of a court:

“Land” has the meaning assigned to it in section 2 of the Land Transfer Act 1952:

15 “Liabilities” means liabilities, debts, charges, duties, and obligations of every description, whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere; and includes contingent liabilities:

“Ministers” means the Minister for State-Owned Enterprises and the Minister of Finance:

20 “Rights” includes powers, privileges, interests, licences, approvals, consents, benefits, and equities of any kind, whether actual, contingent, or prospective:

“Securities” has the meaning assigned to it by section 2 of the Securities Act 1978:

25 “Undertaking” means the assets, rights, and liabilities of the Corporation.

Cf. 1986, No. 129, s. 2; 1988, No. 141, s. 3

9. This Part to bind the Crown—This Part of this Act binds the Crown.

30 Cf. 1986, No. 129, s. 3

10. Incorporation of company—(1) Notwithstanding the Tourist Hotel Corporation Act 1974, any other enactment or rule of law, the Ministers may form and register, under the Companies Act 1955, a public company limited by shares
35 that—

(a) Has the name Tourist Hotel Corporation of New Zealand Limited; and

(b) Has a memorandum of association and articles of association in such form as the Ministers may
40 determine.

(2) All the shares in the capital of the company shall, on its incorporation, be subscribed for by the Ministers on behalf of the Crown equally.

(3) On the appointed day all the shares in the capital of the company subscribed for in accordance with **subsection (2)** of this section and any other shares in the capital of the company issued to the Ministers before the appointed day shall be deemed to have been allotted as fully paid up to each Minister 5 equally.

(4) Nothing in section 60 of the Companies Act 1955 (which relates to returns of allotments and prescribes the documents that must be delivered to the Registrar of Companies when shares are allotted for a consideration other than cash) shall 10 apply to shares which are deemed to have been allotted pursuant to **subsection (3)** of this section.

(5) Except as provided in this section, the Companies Act 1955 shall apply to the company.

(6) In the application of the Companies Act 1955 to the 15 company, if the Ministers are the only persons who hold shares in the capital of the company, the following provisions of that Act shall be construed as if references to 7 members were references to 2 members:

(a) Section 41, as to carrying on business when the number of 20 members is reduced below the legal minimum:

(b) Section 217 (d), as to winding up by the court when the number of members is reduced below the legal minimum:

(c) Section 219 (1) (a) (i), as to the presentation of a winding- 25 up petition by a contributory when the number of members is reduced below the legal minimum.

(7) Nothing in this section prevents the name of the company being changed in accordance with the provisions of the Companies Act 1955. 30

Cf. 1986, No. 129, s. 4 (1)-(3), (5)

11. Crown shareholding—(1) Each Minister may, from time to time, on behalf of the Crown, subscribe for or otherwise acquire securities in the capital of the company in addition to the shares subscribed for under **section 10** of this Act. 35

(2) Any money required to be paid by a Minister to subscribe for or acquire securities issued by the company shall be paid out of the Crown Bank Account from money appropriated by Parliament for the purpose.

(3) Securities of the company in the name of a person 40 described as the Minister for State-Owned Enterprises or the Minister of Finance shall be held by the person for the time being holding the office of the Minister for State-Owned Enterprises or the Minister of Finance, as the case may be.

(4) Notwithstanding any other enactment or rule of law, it shall not be necessary to complete or register a transfer of securities issued by the company consequent upon a change in the person holding office as the Minister for State-Owned Enterprises or the Minister of Finance, as the case may be.

(5) Each Minister may exercise all the rights and powers attaching to securities issued by the company held by that Minister.

Cf. 1986, No. 129, s. 8; 1988, No. 141, s. 6

10 **12. Undertaking of Corporation to vest in company—**
On a date to be appointed by the Governor-General by Order in Council, the undertaking of the Corporation shall, by virtue of this Part of this Act, vest in the company.

Cf. 1986, No. 129, s. 5

15 **13. Consequential provisions on vesting of undertaking—**Without limiting the generality of section 12 of this Act, the following provisions shall have effect on and from the appointed day:

20 (a) A reference (express or implied) to the Corporation in any other Act, or in any regulation, order, or notice made or given under any enactment, or in any instrument, register, record, notice, security, document, or communication, made, given, passed, or executed before or after the appointed day, shall be read and construed as a reference to the company:

25 (b) All contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices (whether or not in writing) entered into by, made with, given to or by, or addressed to the Corporation (whether alone or with any other person) before the appointed day and subsisting immediately before the appointed day shall, to the extent that they were previously binding on and enforceable by, against, or in favour of the Corporation, be binding on and enforceable by, against, or in favour of the company as fully and effectually in every respect as if, instead of the Corporation, the company had been the person by whom they were entered into, with whom they were made or to or by whom they were given or addressed, as the case may be:

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40 (c) Any action, arbitration or proceedings or cause of action that, immediately before the appointed day, is pending or existing by, against, or in favour of the

Corporation or to which the Corporation is a party may be prosecuted, and without amendment of any writ, pleading or other document, continued and enforced by, against, or in favour of the company:

- (d) The control of any hotel vested in the Corporation pursuant to any enactment or any Order in Council made under any enactment before the appointed day that continues to vest in the corporation immediately before the appointed day and any property granted, transferred, or assigned to the Corporation pursuant to any enactment before the appointed day and that vests in or belongs to the Corporation immediately before the appointed day shall, on and after the appointed day, vest in or belong to the company, as the case may be.

Cf. 1986, No. 129, s. 6 (1), (b), (h); 1988, No. 141, s. 5

14. Certain matters not affected by vesting of undertaking—Nothing effected or authorised by this Part of this Act shall—

- (a) Be regarded as placing the Corporation, or the company, or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
- (b) Be regarded as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or
- (c) Be regarded as placing the Corporation, or the company, or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or
- (d) Release any surety wholly or in part from any obligation; or
- (e) Invalidate or discharge any contract or security.

Cf. 1986, No. 129, s. 6 (g)

15. Books and documents to remain evidence—(1) Any document, matter, or thing, which, if this Act had not been passed, would have been admissible in evidence in respect of any matter for or against the Corporation shall, on and after the appointed day, be admissible in evidence in respect of the same matter for or against the company.

(2) In this section “document” has the same meaning as in section 2 (1) of the Evidence Amendment Act (No. 2) 1980.

Cf. 1986, No. 129, s. 10

16. Registers—(1) No Registrar of Deeds or District Land Registrar or any other person charged with the keeping of any books or registers shall be obliged solely by reason of the foregoing provisions of this Part of this Act to change the name of the Corporation to that of the company in those books or registers or in any document.

(2) The presentation to any registrar or other person of any instrument, whether or not comprising an instrument of transfer by the company,—

- (a) Executed or purporting to be executed by the company; and
- (b) Relating to any property held immediately before the appointed day by the Corporation; and
- (c) Containing a recital that that property has become vested in the company by virtue of the provisions of this Part of this Act—

shall, in the absence of evidence to the contrary, be sufficient proof that the property is vested in the company.

Cf. 1986, No. 129, s. 11

17. Taxes and duties—(1) For the purposes of the Inland Revenue Acts, and any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge—

- (a) The Corporation and the company shall be deemed to be the same person with effect at and from the appointed day; and
- (b) In respect of the liability for and the assessment, determination, or imposition of taxes, duties, levies, or other charges accruing as from the appointed day under any such enactment, all transactions entered into by, and acts of, the Corporation before the appointed day shall be deemed to have been entered into by, or to be those of, the company and to have been entered into or performed by the company at the time when they were entered into or performed by the Corporation.

(2) For the purposes of the Goods and Services Tax Act 1985 the company is not a public authority as defined in section 2 of that Act.

(3) For the purposes of **subsection (1)** of this section, the expression “Inland Revenue Acts” means the Acts specified in the First Schedule to the Inland Revenue Department Act 1974.

(4) For the purposes of section 188 of the Income Tax Act 1976 (which relates to the carrying forward of losses) any loss 5 incurred by the Corporation in any income year before the appointed day shall, so far as it has not been deducted from or set off against its assessable income in any subsequent income year, be deemed to have been incurred by the company and as if at all times during the period commencing with the 10 beginning of the first income year in which any such loss was incurred and ending immediately before the appointed day, shares in the company carrying—

- (a) The right to exercise not less than 40 percent of the voting power in the company; and 15
 - (b) The right to receive not less than 40 percent of the profits that may be distributed by the company; and
 - (c) The right to receive not less than 40 percent of any distribution of the paid-up capital of the company,— 20
- were held directly by the Ministers.

Cf. 1986, No. 129, s. 17

18. Amendment to Income Tax Act 1976—The Fourteenth Schedule to the Income Tax Act 1976 (as substituted by section 23 of the State Services Conditions of Employment Amendment Act 1987) is hereby amended by 25 adding the name “Tourist Hotel Corporation of New Zealand Limited”.

19. Further amendment to Income Tax Act 1976—

(1) The Fourteenth Schedule to the Income Tax Act 1976 (as substituted by section 23 of the State Services Conditions of 30 Employment Amendment Act 1987 and amended by **section 18** of this Act) is hereby amended by omitting the name “Tourist Hotel Corporation of New Zealand Limited”.

(2) **Section 18** of this Act is hereby consequentially repealed.

20. Amendment to Official Information Act 1982—The 35 Official Information Act 1982 is hereby amended by omitting from the First Schedule (as substituted by section 23 (1) of the Official Information Amendment Act 1987) the name “Tourist Hotel Corporation of New Zealand”, and substituting the name “Tourist Hotel Corporation of New Zealand Limited”. 40

21. Further amendment to Official Information Act 1982—(1) The Official Information Act 1982 is hereby amended by omitting from the First Schedule (as substituted by section 23 (1) of the Official Information Amendment Act 1987 and amended by section 20 of this Act) the name “Tourist Hotel Corporation of New Zealand Limited”.

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(2) Section 20 of this Act is hereby consequentially repealed.

22. Amendment to State-Owned Enterprises Act 1986—The State-Owned Enterprises Act 1986 is hereby amended by omitting from the First Schedule the name “Tourist Hotel Corporation of New Zealand”, and substituting the name “Tourist Hotel Corporation of New Zealand Limited”.

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23. Further amendment to State-Owned Enterprises Act 1986—(1) The State-Owned Enterprises Act 1986 is hereby amended by omitting from the First Schedule (as amended by section 22 of this Act) the name “Tourist Hotel Corporation of New Zealand Limited”.

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(2) Section 22 of this Act is hereby consequentially repealed.

24. Provisions relating to public reserves and National Park land administered by Corporation—(1) Where, immediately before the appointed day, land comprised in a public reserve or a National Park was being administered by the Corporation pursuant to an Order in Council made under section 20 of the Tourist Hotel Corporation Act 1974, the company shall not, by virtue of any provision contained in this Part of this Act, continue to administer that land, and, without limiting the generality of the foregoing,—

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(a) The company shall not be the administering body of any public reserve land; and

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(b) The company shall not be entitled to the representation on any National Park Board to which the Corporation was entitled.

(2) Where, immediately before the appointed day, any land that is part of a National Park is being administered under the Tourist Hotel Corporation Act 1974 by virtue of section 10 of the National Parks Act 1980, or an order made under that section, the company shall not, by virtue of any provision contained in this Part of this Act, administer that land.

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25. Repeals and consequential amendments—(1) The enactments specified in the First Schedule to this Act are hereby repealed.

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(2) The enactments specified in the **Second** Schedule to this Act are hereby amended in the manner indicated in that Schedule.

PART III

PHOSPHATE COMMISSION OF NEW ZEALAND

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26. Object—The object of this Part of this Act is to dissolve the Phosphate Commission of New Zealand.

27. Dissolving Phosphate Commission of New Zealand—(1) The Phosphate Commission of New Zealand is hereby dissolved; and all rights, assets, liabilities, and debts that the Commission had immediately before the commencement of this Act shall, on that commencement, become rights, assets, liabilities, and debts of the Minister of Agriculture. 10

(2) The following enactments are hereby repealed:

(a) The Phosphate Commission of New Zealand Act 1981: 15

(b) The Phosphate Commission of New Zealand Amendment Act 1982:

(c) The Phosphate Commission of New Zealand Amendment Act 1986.

(3) The Schedule to the Ministry of Agriculture and Fisheries Act 1953 is hereby consequentially amended by omitting the item “The Phosphate Commission of New Zealand Act 1981”. 20

SCHEDULES

FIRST SCHEDULE

Section 25 (1)

ENACTMENTS REPEALED

- 1974, No. 59—The Tourist Hotel Corporation Act 1974. (R.S. Vol. 23, p. 869.)
 1976, No. 31—The Tourist Hotel Corporation Amendment Act 1976. (R.S. Vol. 23, p. 887.)
 1978, No. 69—The Tourist Hotel Corporation Amendment Act 1978. (R.S. Vol. 23, p. 888.)
 1982, No. 127—The Tourist Hotel Corporation Amendment Act 1982. (R.S. Vol. 23, p. 889.)

SECOND SCHEDULE

Section 25 (2)

ENACTMENTS AMENDED

Enactment	Amendment
1980, No. 66—The National Parks Act 1980	By omitting from section 10 (1) the words “or the Tourist Hotel Corporation Act 1974”. By omitting from section 10 (2) the words “or the Tourist Hotel Corporation Act 1974”. By omitting from section 10 (2) the words “either of those Acts”, and substituting the words “the Act”. By omitting from section 10 (3) the words “or the Tourist Hotel Corporation Act 1974”. By omitting from section 10 (4) (a) and (b) the words “or the Tourist Hotel Corporation Act 1974”.