

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

*House of Representatives, 18 May 1978*

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted as shown in roman underlined with a double rule, or with double rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

*House of Representatives, 7 July 1978.*

Words inserted are shown in roman underlined with a triple rule, or with triple rule before first line and after last line.

*Hon. T. F. Gill*

## IMMIGRATION AMENDMENT (NO. 2)

### ANALYSIS

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### PART IV

#### DEPORTATION OF PERSONS COMMITTING OFFENCES OR THREATENING NATIONAL SECURITY

22. Grounds on which persons may be deported
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### A BILL INTITULED

#### An Act to amend the Immigration Act 1964

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

1. Short Title—(1) This Act may be cited as the Immigration Amendment Act ((No. 2) 1977) 1978, and shall be read together with and deemed part of the Immigration Act 1964\* (hereinafter referred to as the principal Act).

\*1964, No. 43

Amendments: 1965, No. 87; 1966, No. 65; 1968, No. 30; 1969, No. 83; 1976, No. 158

*New*

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

**2. Interpretation**—Section 2 (1) of the principal Act is hereby amended by adding the following definition: 5

“‘Tribunal’ means the Deportation Review Tribunal constituted under section 22B of this Act:”.

**3. Persons refused temporary permits may be detained pending departure**—Section 14 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection: 10

“(1A) Where an application for a temporary permit is refused, the person concerned may be detained by any member of the Police pending that person’s departure from New Zealand on the first available ship or aircraft.” 15

*New*

**3A. Detention of persons awaiting departure from New Zealand**—The principal Act is hereby amended by inserting, after section 14 (as amended by section 4(3) of the Immigration Amendment Act 1976), the following section: 20

“14A. (1) Notwithstanding anything in section 14 (1A) of this Act, where a person to whom that subsection applies is to be detained for more than 24 hours, a member of the Police shall apply to the Registrar (or, in his absence, the Deputy Registrar) of a Magistrate’s Court for a warrant authorising the detention of that person in a prison, and the Registrar (or Deputy Registrar) shall issue such a warrant in the form set out in the Third Schedule to this Act. 25

“(2) Every such warrant shall authorise the Superintendent of the prison to detain the person named in it until he is required by a member of the Police to deliver up that person in accordance with subsection (4) of this section. 30

“(3) Every person detained in a prison pursuant to a warrant issued under this section shall be treated for the purposes of the Penal Institutions Act 1954 as if he were an inmate awaiting trial. 35

“(4) As soon as a ship or aircraft becomes available to take the person from New Zealand, a member of the Police shall require the Superintendent, in writing, to deliver the person into the custody of the member, who shall escort the person or arrange for him to be escorted to the seaport or airport and ensure that the person is placed upon the ship or aircraft and detained there until the ship or aircraft leaves New Zealand. 40

*New*

“(5) If, for any reason, that ship or aircraft is delayed in New Zealand for more than 24 hours, the person shall be returned to the custody of the Superintendent of the prison, and for that purpose the warrant originally issued pursuant to subsection (1) of this section shall be deemed still to be of full force and effect.

“(6) Notwithstanding any of the other provisions of this Act, no person who is taken into New Zealand in custody for the purposes of detention under section 14 (1A) of this Act or this section shall be liable, in respect of that entry, to any penalty for entering New Zealand without a permit, so long as he remains in custody. If, however, he escapes from custody, he shall be deemed to have entered New Zealand without a permit and shall be liable accordingly.”

**3B. Revocation of exemption from Part II of principal Act**—Section 19 of the principal Act is hereby amended by adding the following subsection:

“(3) Notwithstanding any of the foregoing provisions of this section, the Minister or any Immigration Officer authorised by the Minister may, in respect of any person who is a member of a class that is for the time being exempt from this Part of this Act under this section, revoke that exemption if he has reason to believe that that person—

“(a) Is a person to whom any of paragraphs (a) to (d) of section 22 (3) of this Act applies, or would apply if that person were in New Zealand; or

“(b) Is likely to commit an offence against the Crimes Act 1961 or the Misuse of Drugs Act 1975 in New Zealand if he is permitted to enter.”

*New*

**3c. Deportation of prohibited immigrants**—Section 20 (1) of the principal Act is hereby amended by inserting, after the expression “Part II”, the words “(except sections 14 (2B) and 19A)”.

**4. New Part (relating to deportation) substituted in principal Act**—The principal Act is hereby amended by repealing Part IV, and substituting the following Part:

## "PART IV

"DEPORTATION OF PERSONS COMMITTING OFFENCES OR  
THREATENING NATIONAL SECURITY

"22. **Grounds on which persons may be deported**—(1) The Minister may, by order signed by him, order any person who is not a New Zealand citizen to leave New Zealand where— 5

"(a) That person is convicted in New Zealand of an offence committed (*within 2 years after his first arrival in New Zealand*) before he has resided in New Zealand for a period (whether or not continuous) of at least 2 years subsequent to his 16th birthday 10

or an offence committed outside New Zealand, being in either case an offence for which the Court has power to impose imprisonment:

"(b) That person is convicted in New Zealand of an offence committed (*within 5 years after his first arrival in New Zealand*) before he has resided in New Zealand for a period (whether or not continuous) of at least 5 years subsequent to his 16th birthday 15

or an offence committed outside New Zealand, and in either case is sentenced to imprisonment for a term of 12 months or more: 20

"(c) Any Court certifies to the Minister that that person has been convicted, either by that Court or by any inferior Court from which the case of that person has been referred for sentence or brought by way of appeal, of an offence committed (*within 5 years after his first arrival in New Zealand*) before he has resided in New Zealand for a period 25

(whether or not continuous) of at least 5 years subsequent to his 16th birthday or an offence 30

committed outside New Zealand, being in either case an offence for which the Court has power to impose imprisonment for a term of 12 months or more, and that the Court (*recommends that that person should be deported either in addition to or instead of sentence.*), in addition to sentencing or 35

otherwise dealing with the person, recommends that he be deported.

“ (2) Where the Minister certifies that the continued presence in New Zealand of any person named in the certificate (not being a New Zealand citizen) constitutes a threat to national security, the Governor-General may, by Order in Council, order that person to leave New Zealand.

“ (3) The Minister may, by order signed by him, order any person who is not a New Zealand citizen to leave New Zealand where—

10 “ (a) He has reason to believe that that person is a member of or adheres to any organisation or group of persons that has engaged in, or has claimed responsibility for, an act of terrorism in New Zealand; or

15 “ (b) He has reason to believe that that person has engaged in, or claimed responsibility for, an act of terrorism in New Zealand; or

“ (c) He has reason to believe that that person—

20 “ (i) Is a member of or adheres to any organisation or group of persons that has engaged in, or has claimed responsibility for, an act of terrorism outside New Zealand; or

25 “ (ii) Has engaged in, or claimed responsibility for, an act of terrorism outside New Zealand— and that, by reason thereof, or for any other reason, that person’s continued presence in New Zealand constitutes a threat to public safety; or

30 “ (d) He has reason to believe that the person will, if permitted to remain in New Zealand, engage in, or facilitate the commission of, any act of terrorism.

*Struck Out*

35 “ (4) For the purposes of subsection (1) of this section, a person first arrives in New Zealand when, having attained the age of 18 years, he arrives in New Zealand with the intention of residing permanently in New Zealand.

40 “ (5) Notwithstanding subsection (1) or subsection (2) of this section, no Commonwealth citizen shall be ordered to leave New Zealand under either of those subsections if, at the 1st day of January 1978 (being the date of the commencement of the Immigration Amendment Act 1977), he has resided permanently in New Zealand for a continuous period of at least 5 years.

*Struck Out*

“(6) Notwithstanding paragraph (a) of subsection (1) of this section, no person shall be ordered to leave New Zealand under that paragraph in respect of an offence committed by him before the 14th day of December 1976 (being the date of the commencement of the Immigration Amendment Act 1976).”

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*New*

“(4) For the purposes of subsection (1) of this section,—

“(a) Where any person who is ordinarily resident in New Zealand is absent from New Zealand for any period or periods not exceeding in the aggregate 30 days in any year, he shall be deemed to be residing in New Zealand throughout the whole of that year:

10

15

“(b) Where any person who is ordinarily resident outside New Zealand is in New Zealand for any period or periods not exceeding in the aggregate 30 days in any year, he shall be deemed not to be residing in New Zealand during that period or those periods.

20

“(5) Notwithstanding paragraph (a) of subsection (1) of this section, no person shall be ordered to leave New Zealand under that paragraph in respect of an offence committed by him before the 14th day of December 1976 (being the date of the commencement of the Immigration Amendment Act 1976).

25

“(5A) Notwithstanding subsection (1) of this section, no Commonwealth citizen shall be ordered to leave New Zealand under that subsection in respect of an offence committed before the date of the commencement of the Immigration Amendment Act 1978 if, at the date of the commission of the offence, that person has been residing permanently in New Zealand for a continuous period of at least 5 years.

30

“(5B) Notwithstanding subsection (2) or subsection (3) of this section, no Commonwealth citizen shall be ordered to leave New Zealand under either of those subsections if, at the date of the commencement of the Immigration Amendment Act 1978, that person has been residing permanently in New Zealand for a continuous period of at least 5 years.”

35

*New*

“(6A) Where any case in which a Court has made a recommendation for deportation is brought by way of appeal against conviction or sentence before any higher Court, the recommendation shall be deemed to be suspended, and no order shall be made in reliance on that recommendation, pending the determination of the appeal. On the determination of the appeal, the higher Court may if it thinks fit, and notwithstanding that it dismisses the appeal, cancel the recommendation, and thereupon the recommendation shall be of no effect. Where a deportation order has already been made in reliance on the recommendation, that order shall be deemed likewise to be of no effect.”

“(7) No order may be made under subsection (1) of this section for the deportation of any person after 6 months from—

“(a) The date on which that person is released from detention under the sentence; or

“(b) Where he was not sentenced to any form of detention, the date on which he was convicted of the offence.

“(8) For the purposes of subsection (3) of this section, the term ‘act of terrorism’ means—

“(a) Any act that involves the taking of human life, or threatening to take human life, or the wilful or reckless endangering of human life, carried out for the purpose of furthering an ideological aim:

“(b) Any act involving any explosive or incendiary device causing or likely to cause the destruction of or serious damage to any premises, building, installation, vehicle, or vessel, or property of a kind referred to in any of sections 298 to 304, except subsection (3) of section 298, of the Crimes Act 1961, carried out for the purpose of furthering an ideological aim:

“(c) Any act that constitutes, or that would, if committed in New Zealand, constitute, an offence against any of the provisions of the Aviation Crimes Act 1972;—

and includes the planning of any such act.

## New

“(9) Every order for deportation made pursuant to any of the foregoing provisions of this section—

“(a) Shall state the provision pursuant to which it is made; and

“(b) Shall state the ground or grounds on which it is made; and

“(c) In any case where a right of appeal against the making of the order is conferred by this Act, shall include notice of that right of appeal and the manner in which it is to be exercised.”

“22A. **Enforcement of deportation orders**—(1) *(If)* Subject to section 22H of this Act, if any person in respect of whom an order for deportation is made under section 22 of this Act remains in New Zealand for 28 days after the day on which the order or a copy of the order is served on him, he commits an offence against this Act.

“(2) Every such offender shall be held and dealt with in accordance with subsection (2) of section 20 of this Act, and that subsection and subsections (3) to (7) of that section, so far as they are applicable and with the necessary modifications, shall apply as if the offender had been convicted of an offence referred to in subsection (1) of that section.

“(3) Notwithstanding the foregoing provisions of this section, where any person has been ordered to leave New Zealand under section 22 of this Act, any Magistrate, on the *ex parte* application of the Minister and on such evidence as the Magistrate thinks fit, whether or not such evidence would be admissible in a Court of law, may direct, if he thinks such a course is necessary in the public interest and whether default has been made in obedience to the order or not, that the person shall be detained in such custody as the Magistrate shall order until that person can be placed on a ship or aircraft that is leaving New Zealand.

“(4) Where a Magistrate gives a direction under subsection (3) of this section, he shall issue a warrant for the arrest and detention of the person to whom the direction relates, and that person may thereupon be arrested by any constable, detained in custody as required by the direction, placed on board a ship or aircraft that is about to leave New Zealand, and detained there until the ship or aircraft has left New Zealand.



“(5) Every such warrant shall expire on the 28th day after the day on which the person to whom it relates was arrested or taken into custody pursuant to it.

5 “22B. **Deportation Review Tribunal**—(1) For the purposes of this Part of this Act, there shall be a tribunal to be called the **(Immigration Appeal) Deportation Review Tribunal**.

“(2) The Tribunal shall consist of—

10 “(a) One member who is a barrister or solicitor of the Supreme Court of not less than 5 years’ standing, who shall be appointed as Chairman of the Tribunal:

“(b) Two other members.

15 “(3) Every member of the Tribunal shall be appointed by the Governor-General on the recommendation of the Minister of Justice.

“(4) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or the Government Superannuation Fund Act 1956 by reason only of his being a member of the Tribunal.

20 “(5) The Secretary for Justice shall furnish such secretarial, recording, and other services as may be necessary to enable the Tribunal to exercise its functions and powers.

25 “(6) The provisions of the **(Third) Fourth Schedule** to this Act shall have effect as to the constitution and proceedings of the Tribunal and other matters relating to the Tribunal.

“22c. **Appeals to Tribunal against deportation orders**—

30 (1) Any person who is ordered to leave New Zealand under section 22 (1) of this Act may **(within 14 days after the day on which the order or a copy thereof is served on him)** appeal to the Tribunal for an order quashing the deportation order.

*New*

35 “(1A) Every such appeal shall be brought within 28 days after the day on which the order or a copy thereof or written notice of the making thereof (including the information required by section 22 (9) of this Act) is served on him (whichever is the first).

40 “(2) The provisions of the **(Fourth) Fifth Schedule** to this Act shall have effect with respect to the procedure to be followed on **(applications)** appeals under this section.

**“22D. Tribunal may quash deportation order—**(1) On an appeal under section 22c of this Act, the Tribunal may, by order, quash the deportation order if it is satisfied that it would be unduly harsh or unjust to deport the applicant from New Zealand, and that it would not be contrary to the public interest to allow the person concerned to remain in New Zealand. 5

“(2) In deciding whether or not it would be unduly harsh or unjust to deport the applicant from New Zealand, the Tribunal shall have regard to the following matters: 10

“(a) The applicant’s age:

“(b) The length of the period during which he has resided in New Zealand:

“(c) His personal and domestic circumstances:

“(d) His employment record: 15

“(e) The nature of the offence of which he has been convicted:

“(f) The nature of any other offences of which he has previously been convicted:

“(g) The interests of his family: 20

“(h) Such other matters as the Tribunal considers relevant.

**“22E. Stating case for Supreme Court—**(1) The Tribunal may at any time, on the application of the appellant or the Minister or of its own motion, state a case for the opinion of the Supreme Court on any question of law arising in respect of any application before the Tribunal. 25

“(2) The Supreme Court shall hear and determine the question, and shall remit the case with its opinion to the Tribunal.

**“22F. Appeals to Supreme Court on questions of law only—** 30

(1) Where any party to any proceedings before the Tribunal is dissatisfied with any determination of the Tribunal as being erroneous in point of law, he may appeal to the Supreme Court by way of case stated for the opinion of the Court on a question of law only. 35

“(2) Every such appeal shall be heard and determined by the Administrative Division of the Supreme Court.

“(3) Within 14 days after the date of the determination the appellant shall lodge a notice of appeal with the Secretary of Labour. The appellant shall forthwith deliver or post a copy of the notice to the other party. 40

“(4) Within 14 days after the lodging of the notice of appeal, or within such further time as the Chairman of the Tribunal may in his discretion allow, the appellant shall state

in writing and lodge with the Secretary of Labour a case setting out the facts and the grounds of the determination and specifying the question of law on which the appeal is made.

5 The appellant shall forthwith deliver or post a copy of the case to the other party to the proceedings.

“(5) As soon as practicable after the lodging of the case, the Secretary of Labour shall submit it to the Chairman of the Tribunal.

10 “(6) The Chairman shall, as soon as practicable, and after hearing the parties if he considers it necessary to do so, settle the case, sign it, send it to the Registrar of the Supreme Court at Wellington, and make a copy available to each party.

15 “(7) The settling and signing of the case by the Chairman shall be deemed to be the statement of the case by the Tribunal.

20 “(8) If, within 14 days after the lodging of the notice of appeal, or within such further time as may be allowed, the appellant does not lodge a case pursuant to subsection (4) of this section, the Chairman of the Tribunal may certify that the appeal has not been prosecuted.

25 “(9) The Court or a Judge thereof may in its or his discretion, on the application of the appellant or intending appellant, extend any time prescribed or allowed under this section for the lodging of a notice of appeal or the stating of any case.

30 “(10) On the hearing of the appeal the Supreme Court may, if it thinks fit, cause the case so stated to be sent back to the Tribunal for amendment, and thereupon the case shall be amended accordingly, and the Court shall thereupon proceed to hear and determine the questions so submitted.

“ (11) In respect of any proceedings before the Supreme Court on an appeal from a determination of a Tribunal, the Court may award such costs to or against either party as it thinks just.

35 “(12) Subject to the provisions of this section, the case shall be dealt with in accordance with rules of Court.

“22G. Appeals to Supreme Court against deportation orders—(1) Any person who is ordered to leave New Zealand under section 22 (3) of this Act may (*within 14 days after the day on which the order or a copy thereof is served on him,*) appeal to the Supreme Court against the making of the order.

## New

“(1A) Every such appeal shall be brought within 28 days after the day on which the order or a copy thereof or written notice of the making thereof (including the information required by section 22 (9) of this Act) is served on him (whichever is the first). 5

“(2) The Supreme Court shall hear and determine the appeal as if the deportation order had been made in the exercise of a discretion. 6

“(3) On any appeal under subsection (1) of this section the Supreme Court may confirm or quash the order, as it thinks fit. 10

“(4) Every appeal under this section shall be heard and determined by the Administrative Division of the Supreme Court. 15

“(5) The decision of the Supreme Court on any appeal under this section shall be final and conclusive.

“(6) Except as expressly provided in this section or in regulations made under this Act, the Supreme Court may regulate its procedure on any appeal under this section in such manner as it thinks fit. 20

## New

“**22H. Deportation orders suspended pending determination of appeals—**(1) Where an appeal against any order for deportation is made under section 22C or section 22G of this Act, the order shall be suspended until the final determination of the appeal. 25

“(2) Where the appeal is dismissed, the order shall take effect as from the date on which the appellant is given written notice of the decision, and the period of 28 days referred to in section 22A (1) of this Act shall be deemed to commence with the day after that date. 30

“(3) At any time, and from time to time, while any deportation order is suspended under subsection (1) of this section, any Magistrate, on the *ex parte* application of the Minister and on such evidence as the Magistrate thinks fit, whether or not such evidence would be admissible in a Court of law, may direct, if he thinks such a course is necessary in the public interest, that the person to whom the order relates shall be detained in such custody as the Magistrate shall order pending the final determination of the appeal. 35 40

*New*

“(4) Where a Magistrate gives a direction under subsection (3) of this section, he shall issue a warrant for the arrest and detention of the person to whom the direction relates, and  
5 that person may thereupon be arrested by any constable and detained in custody as required by the direction.

“(5) Every such warrant shall expire on the 28th day after the day on which the person to whom it relates was arrested or taken into custody pursuant to it.

10 “(6) Nothing in subsections (3) to (5) of this section shall limit or affect the provisions of subsections (3) and (4) of section 22A of this Act.

“22i. **Publication of proceedings in breach of Tribunal’s order**—Every person who publishes a report of any proceedings before the Tribunal in contravention of an order made under clause 6 (2) of the Fifth Schedule to this Act commits an offence and is liable to a fine not exceeding \$500.”

**5. Provisions relating to arrest**—The principal Act is hereby amended by inserting, after section 33A (as inserted by section  
20 5 of the Immigration Amendment Act 1968), the following section:

“33B. (1) No member of the Police who, having been called to the assistance of any person whom he believes to be an Immigration Officer, arrests any person without warrant  
25 in accordance with section 33A (3) of this Act shall, by reason of that arrest, be guilty of an offence or liable to any civil proceeding. Instead, in respect of any such arrest that is wrongful, the person who called the member of the Police to his assistance shall be liable in the same manner as he  
30 would have been if he had personally arrested the person.”

“(2) Where any member of the Police is called to assist any person whom he believes to be an Immigration Officer exercising his powers under section 33A of this Act, he may, without warrant, enter any building, aircraft, ship, carriage,  
35 vehicle, premises, or place, by force where necessary, in order to render that assistance.

“(3) Nothing in section 33A of this Act shall limit or affect the powers of arrest conferred on members of the Police by section 315 of the Crimes Act 1961.”

40 **6. Aliens Act 1948 repealed**—The following enactments are hereby repealed:

(a) The Aliens Act 1948:

(b) The Aliens Amendment Act 1965:

(c) *The Aliens Amendment Act 1967.*

7. Consequential repeals and amendment—(1) The following enactments are hereby consequentially repealed:

(a) ~~Section 2 (1) of~~ The Immigration Amendment Act 1966:

(b) Section 4 of the Immigration Amendment Act 1968: 5

(c) Section 5 of the Immigration Amendment Act 1976.

*New*

(1A) Section 20 (1) of the principal Act is hereby consequentially amended by omitting the words “subsection (5) of section 22”.

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(1B) Section 20 (6) of the principal Act is hereby consequentially amended by omitting the words “or to section 22 of this Act” (as added by section 2 (2) of the Immigration Amendment Act 1966), and substituting the words “or to section 22A of this Act”.

15

(1C) Section 20A of the principal Act (as inserted by section 6 of the Immigration Amendment Act 1977) is hereby consequentially amended by omitting from subsection (1) the words “subsection (5) of section 22”, and substituting the words “subsection (1) of section 22A”.

20

(2) Section 33A of the principal Act (as inserted by section 5 of the Immigration Amendment Act 1968) is hereby consequentially amended by omitting from subsection (1) the words “subsection (5) of section 22”, and substituting the words “subsection (1) of section 22A”.

25

8. New Third and Fourth Schedules added to principal Act—The principal Act is hereby amended by adding the (Third and Fourth Schedules) Third, Fourth and Fifth Schedules set out in the Schedule to this Act.

Section 8

**SCHEDULE**

NEW (THIRD AND FOURTH) SCHEDULES ADDED TO PRINCIPAL ACT

*New*

“THIRD SCHEDULE

Section 14A (1)

WARRANT FOR DETENTION

To: The Superintendent ..... Prison.

Whereas [*Name of person detained*], being a person detained under section 14 (1A) of the Immigration Act 1964, is likely to be detained for a period exceeding 24 hours, this is to authorise you to receive the abovenamed and detain him under the terms of section 14A of the Act.

.....  
(Deputy) Registrar.

SCHEDULE—*continued*

“(THIRD) FOURTH SCHEDULE Section 22b (6)

PROVISIONS RELATING TO (IMMIGRATION APPEAL) DEPORTATION REVIEW  
TRIBUNAL

**1. Term of office**—(1) Except as otherwise provided in this Act, every member of the Tribunal shall hold office for a term of 3 years, but any such member may from time to time be reappointed.

(2) Notwithstanding that the term of office of a member of the Tribunal has expired or that a member of the Tribunal has resigned his office, he shall, unless he sooner vacates office under clause 2 of this Schedule, continue to hold office until his successor comes into office.

(3) Notwithstanding that the term of office of a member of the Tribunal has expired or that a member of the Tribunal has resigned his office, he shall be deemed to continue a member of the Tribunal for the purpose of—

- (a) Deciding any application that was wholly heard before the expiration of his term of office or before his resignation took effect, as the case may be;
- (b) Stating any case on appeal to the Supreme Court from a decision of the Tribunal given while he was a member or while he was deemed to continue to be a member under the provisions of paragraph (a) of this subclause.

**2. Extraordinary vacancies**—(1) Any member of the Tribunal may at any time be removed from office by the Minister of Justice for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister, or may at any time resign his office by writing addressed to the Minister.

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

(3) In the case of an extraordinary vacancy, the Minister may appoint any person to fill the vacancy for the residue of any period for which the vacating member was appointed.

**3. Fees and allowances**—There shall be paid out of money appropriated by Parliament for the purpose to the members of the Tribunal remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the Tribunal were a statutory Board within the meaning of that Act.

**4. Deputies**—(1) The Minister of Justice may from time to time appoint any person to be the deputy of any member of the Tribunal. The deputy of any member shall have authority to act as a member of the Tribunal in the event of the absence from any meeting of the member whose deputy he is, and while so acting shall be deemed to be a member of the Tribunal. Every such deputy shall hold office during the pleasure of the Minister.

(2) A deputy of the member who is Chairman of the Tribunal shall be a person who is qualified to be appointed as Chairman.

SCHEDULE—*continued*

**5. Sickness or incapacity**—(1) In the event of the sickness or other incapacity of any member of the Tribunal, the Minister of Justice may appoint any person to act in the place of that member during his incapacity.

(2) Any person appointed under this clause to act in the place of a member who is Chairman shall not be Chairman by reason only of his appointment under this clause.

**6. Tribunal to have seal**—The Tribunal shall have a seal which shall be judicially noticed in all Courts and for all purposes.

**7. Tribunal to be a Commission of Inquiry**—The Tribunal shall, within the scope of its jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of this Act and of any regulations made under this Act, all the provisions of that Act, except sections 11 and 12 (which relate to costs) shall apply accordingly.

**8. Sittings of Tribunal**—(1) Sittings of the Tribunal shall be held at such times and places as the Tribunal or the Chairman from time to time appoints.

(2) Any sitting of the Tribunal may be adjourned from time to time and from place to place by the Tribunal or the Chairman.

(3) No sitting of the Tribunal shall take place unless all the members are present, but the decision of a majority of the members shall be the decision of the Tribunal.

*Struck Out*

(4) If at any sitting of the Tribunal the Chairman is not present, the members shall appoint 1 of their number to be the Chairman of the Tribunal for the purposes of that sitting.

**9. Members of Tribunal not personally liable**—No member of the Tribunal shall be personally liable for any act done or omitted to be done by the Tribunal or by any member thereof in good faith in pursuance or intended pursuance of the powers and authorities of the Tribunal.

**10. Procedure**—(1) The procedure of the Tribunal shall, subject to this Act and to any regulations made under this Act, be such as the Tribunal thinks fit.

(2) No appointment under clause 4 or clause (6) 5 of this Schedule and no act done by any person by virtue of any such appointment and no act done by the Tribunal while any person is acting as a deputy, or in the place, of a member of the Tribunal by virtue of any such appointment shall in any proceedings be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

(3) Proceedings before the Tribunal shall not be held bad for want of form.



SCHEDULE—*continued*

**11. Inquiries and evidence**—(1) For the purposes of any appeal under section 22c of this Act and notwithstanding anything in the Fourth Schedule to this Act, the Tribunal may make such inquiries and obtain such reports (if any) as it considers necessary and shall not be bound by any rules of evidence but may inform itself in such manner as it thinks fit.

(2) Subject to the provisions of subclause (1) of this clause, the Evidence Act 1908 shall apply to the Tribunal in the same manner as if the Tribunal were a Court within the meaning of that Act.

“(FOURTH) FIFTH SCHEDULE”

Section 22c (3) (2)

PROCEDURAL PROVISIONS

**1. Place for filing**—Every appeal under section 22c of this Act shall be made on a form to be provided by the Secretary for Justice, and shall be filed in the office of the Tribunals Division of the Department of Justice in Wellington.

**2. Appeals to be referred to Tribunal**—As soon as practicable after an appeal under section 22c of this Act is filed, the officer of the Department of Justice who is for the time being acting as Secretary of the Tribunal shall refer it to the Tribunal for determination.

**3. Copy to be forwarded to Minister**—The Tribunal shall forward to the Minister a copy of the appeal together with a notice informing him of the appeal and specifying a period of not less than 7 days from the service of the notice during which the Minister may notify the Tribunal of his wish to make representations to the Tribunal in respect of the appeal.

**4. Appellant or Minister may be required to supply information**—The Tribunal may, by notice in writing served on the appellant or the Minister, require him to give to the Tribunal, within such period of not less than 14 days from the service of the notice as may be specified in the notice, such information as it may reasonably require regarding the case as may be specified in the notice.

**5. Hearing**—(1) As soon as the Tribunal considers the appeal ready for hearing, it shall fix a time and place for the hearing of the appeal, and shall serve a notice on the appellant and the Minister informing them of the time and place so fixed.

(2) At the hearing the appellant, and the Minister, may call evidence and shall be given an opportunity to be heard either in person or by a person authorised by him in that behalf, whether or not that person is of counsel or a solicitor.

(3) If the appellant or the Minister or both fail to appear before the Tribunal at the time and place appointed, the Tribunal may nevertheless, upon proof of service of the notice of the hearing, proceed to determine the appeal.

SCHEDULE—*continued*

**6. Hearing to be open to public—**(1) Every such hearing shall be open to the public:

Provided that the Tribunal may receive any particular evidence in private, or deliberate in private as to its decision on the application or as to any question arising in the course of the proceedings.

(2) The Tribunal may make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings in respect of any application before the Tribunal:

Provided that no such order shall be made prohibiting the publication of the names and descriptions of the parties to the application.

**7. Decisions—**(1) Every decision of the Tribunal shall be given in writing, with a statement of the Tribunal's reasons for the decision.

(2) A copy of the decision shall be given to the appellant and to the Minister.

**8. Costs—**No party to any proceedings on any application under section 22c of this Act (other than proceedings in the Supreme Court) shall be liable to pay the costs of any other party to the proceedings unless the Tribunal makes an order for the payment of any such costs on the ground that it is desirable for special reasons to make such an order.

**9. Tribunal may dismiss frivolous or vexatious applications—**(A) The Tribunal may at any time dismiss any application under section 22c of this Act, if it is satisfied that the application is frivolous or vexatious."