

Industry New Zealand and Trade New Zealand Integration Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Industry New Zealand and Trade New Zealand Integration Bill and recommends that it be passed with the amendments shown.

Introduction

The Government has decided to create a new integrated business assistance agency. The purpose of the bill and the new agency is to support the development of internationally competitive New Zealand business. The bill aims to achieve this by creating a new integrated trade and economic development agency. Industry New Zealand and Trade New Zealand will be dissolved and this bill will bring together the organisations. The objective reflects the need for New Zealand business to be internationally competitive, whether markets are domestic, offshore or both. It also recognises that a strong focus on internationalisation and growing New Zealand export earnings is critical to improving New Zealand's overall economic performance.

The rationale behind the merger includes that the services and the client bases of the two agencies significantly overlap and the need for businesses to deal with multiple agencies and programmes has caused unnecessary costs and confusion. There are also efficiencies to be gained from merging the agencies.

New entity name

Since the drafting of the bill the Government has decided that the new crown entity integrating the services of Industry New Zealand and Trade New Zealand will be called New Zealand Trade and Enterprise.

We therefore recommend that the bill be amended to reflect the chosen name and that the bill be known as the New Zealand Trade and Enterprise Bill.

Financial management and accountability consistency

The Office of the Controller and Auditor-General submitted that a number of minor changes should be made to the bill to enhance the accountability and auditing processes. We are in agreement and therefore recommend that the:

- wording in clause 67(1)(a) be clarified, to ensure the report is produced in terms of the Public Finance Act 1989, by adding 'included in the relevant statement of intent in accordance with section 41D(1)(h) of the Public Finance Act 1989' after the words 'output objectives'
- words 'report on operations' be deleted from clause 70 of the bill to enhance the clarity of the role of the Auditor-General
- reference to 'management statement' be deleted from clause 80(2)(b)(ii) and replaced with 'statement of responsibility' to make the bill consistent with the role of the Auditor-General.

Inclusion of trade unions, representatives, and relevant stakeholders

The current wording of the bill, clause 9(1), does not mention trade unions in the listed organisations that New Zealand Trade and Enterprise will foster collaborative networks with. We consider that trade unions are relevant stakeholders and consequently recommend in clause 9(1)(a)(i) and (b) the words 'trade unions' should be inserted after the word 'industry'.

We also recommend omitting the words 'and relevant community groups' from clause 9(1)(b) and substituting the words 'regions, education and research organisations, potential investors, and individual enterprises', to ensure that all relevant stakeholders are included within the clause.

The absence of reference to union representation in clause 77(2)(a)¹ is at odds with the Employment Relations Act 2000. We recommend that this clause include a reference to employee representatives so that a representative is able to negotiate terms and conditions with New Zealand Trade and Enterprise on an employee's behalf.

Sustainable economic development

We consider that the terminology of the bill needs clarification in regards to clause 9(1)(a). We recommend that for consistency of terminology that the term 'sustainable economic growth' be replaced with 'sustainable economic development'.

Minority views

Green Party

The Green Party member believes that the purpose of this Act should be to support the development of New Zealand business that is not only internationally competitive but also ecologically and socially sustainable.

The bill provides the opportunity for the Government to give effect to its 'Sustainable Development for New Zealand - Programme of Action' and, in particular, the Minister's statement that 'sustainable development must be at the core of all government policy'. The Green Party therefore sought to replace the words 'sustainable economic growth' in the functions clause with the words 'sustainable development'.

While the Committee changed 'sustainable economic growth' to 'sustainable economic development' these words do not imply the same kinds of considerations as sustainable development. There remains the implication that economic interests will take clear primacy over social and environmental ones, rather than the three pillars of our societal advancement having equal standing. The adoption of sustainable development would have sent a consistent message that the Government is encouraging industry to reach higher environmental standards and take account of social needs and goals.

¹ Clause 77 concerns terms and conditions of employment for transferred employee.

This issue could also have been addressed by either incorporating sustainability principles in the bill, as is found in the Energy Efficiency and Conservation Act 2000, or by requiring the new entity to take a sustainable development approach in its statement of purpose, as required under the Local Government Act. In both cases those implementing the Act would have been required to take into account the health and safety of people and communities; their social, economic, and cultural well being; the need to maintain and enhance the quality of the environment; and the reasonable foreseeable needs of future generations.

A second concern is that the bill explicitly requires the new entity to contribute to increased exports from New Zealand, but makes no such requirement to contribute to increased import substitution. As the Council of Trade Unions noted in their submission 'we see a significant risk that the broader focus of economic development could be subsumed by an external trade emphasis'. The Green Party view is that the benefits of import substitution are at least as significant as exports and that it is vital for the new entity to take a balanced approach, which acknowledges that strengthening the domestic market is an important goal in its own right.

New Zealand First

New Zealand First's view is that it is not sufficient, in developing the Statement of Intent for the new organisation, to restrict the input to just the integrating organisations. Tourism, and the associated industries, represent a significant export sector and as such should be recognised as an integral industry for the purpose of this bill. Tourism, and tourism industries, have expanded as a result of enterprise and conversely industries have also developed as a result of tourism. Tourism industry should be party to the development of the strategies of the new agency.

Appendix

Committee process

The Industry New Zealand and Trade New Zealand Integration Bill was referred to the committee on 25 March 2003. The closing date for submissions was 10 April 2003. We received and considered 5 submissions from interested groups and individuals. We heard one submission. Hearing of evidence took 22 minutes and consideration took one hour and one minute.

We received advice from the Ministry of Economic Development and Ministry of Foreign Affairs and Trade.

Committee membership

Mark Peck (Chairperson)

Gerry Brownlee (Deputy Chairperson)

Brent Catchpole

Russell Fairbrother

Darren Hughes

Rodney Hide

H V Ross Robertson

Hon Maurice Williamson

Rod Donald was a non-voting member of the committee for this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon Jim Anderton

(Industry New Zealand and Trade New Zealand Integration Bill) New Zealand Trade and Enterprise Bill

Government Bill

Contents

1	Title		
	Part 1		
	Preliminary provisions		
2	Commencement		
3	Purpose		
4	Overview		
5	Interpretation		
6	Act binds the Crown		
	Part 2		
	New Zealand Trade and Enterprise		
	<i>Establishment of NZTE</i>		
7	Establishment		
8	Crown entity status		
9	Functions		
10	NZTE is body corporate		
11	Capacity and powers		
12	Compliance with Government policy		
13	Requirements for notices and Ministerial directions		
	<i>Membership, role, and accountability of board</i>		
14	Membership of board		
15	Board's role		
16	Accountability of members to Minister		
	<i>Minister's role</i>		
17	Minister's role		
18	Minister responsible to House of Representatives		
	<i>Special advisers</i>		
19	Special advisers		
	<i>Delegation by board</i>		
20	Persons to whom board may delegate functions, duties, and powers		
21	Certain powers must not be delegated		
22	Effect of delegation		
23	Presumption of acting in accordance with delegation		
24	Other matters relating to delegation		
		<i>Committees</i>	
25		Board may appoint committees	
26		Membership of committee	
27		Committee to regulate own procedure	
		<i>Chief executive of NZTE</i>	
28		Appointment of chief executive	
29		Terms and conditions of chief executive's employment	
30		Delegation of functions, duties, or powers by chief executive	
		<i>Employees of NZTE</i>	
31		Personnel policy	
32		Equal employment opportunities programme	
		<i>Superannuation</i>	
33		Establishment of superannuation schemes	
34		Government Superannuation Fund	
35		Employees not in service of the Crown	
		<i>Corruption and bribery, and corrupt use of official information</i>	
36		Members and employees are officials	
		<i>Protections from liability of members and employees</i>	
37		Protections for members and employees from liabilities of NZTE	
38		Immunity of members and employees from civil liability to third parties	
39		Indemnity for members and employees for costs from civil and criminal proceedings	
40		Insurance for members and employees	
41		Breach of indemnity and insurance limits	
42		Definitions for protections from liability	

**(Industry New Zealand and Trade New
Zealand Integration) New Zealand Trade
and Enterprise**

<p><i>Dealings with third parties by NZTE</i></p> <p>43 Execution of documents</p> <p>44 Method of contracting</p> <p>45 Attorneys</p> <p>46 Dealings between NZTE and other persons</p> <p>47 Presumption of authority to execute document</p> <p style="text-align: center;"><i>Financial provisions</i></p> <p>48 Funds of NZTE</p> <p>49 Bank accounts</p> <p>50 Investment of money</p> <p>51 NZTE not to borrow without consent of Minister of Finance</p> <p>52 Auditor-General to be auditor of NZTE</p> <p>53 NZTE deemed to be public authority</p> <p style="text-align: center;"><i>Planning—Statement of intent</i></p> <p>54 Purpose of statement of intent</p> <p>55 Obligation to prepare statement of intent</p> <p>56 Form and content of statement of intent</p> <p>57 Ministerial involvement in statements of intent</p> <p>58 Process for providing statement of intent to Minister</p> <p>59 Application and term of statement of intent</p> <p>60 Amendments to statement of intent</p> <p>61 Optional amendments by NZTE</p> <p>62 Mandatory amendments</p> <p>63 Amendments to statement of intent by Minister</p> <p>64 Minister to present statement of intent and amendments to House of Representatives</p> <p style="text-align: center;"><i>Reporting—Annual report</i></p> <p>65 Obligation to prepare annual report</p> <p>66 Form and content of annual report</p> <p>67 Form and content of statement of service performance</p> <p>68 Form and content of annual financial statements</p>	<p>69 Statement of responsibility</p> <p>70 Audit</p> <p>71 Obligation to provide annual report to Minister</p> <p>72 Minister to present annual report to House of Representatives</p> <p style="text-align: center;"><i>Review of NZTE's operations and performance</i></p> <p>73 Review of NZTE's operations and performance</p> <p style="text-align: center;">Part 3 Miscellaneous provisions</p> <p style="text-align: center;"><i>Dissolution of former agencies</i></p> <p>74 Former agencies dissolved</p> <p style="text-align: center;"><i>Transitional provisions</i></p> <p>75 Assets and liabilities vest in NZTE</p> <p>76 Transfer of employees</p> <p>77 Terms and conditions of employment for transferred employee</p> <p>78 Continuity of employment</p> <p>79 No compensation for technical redundancy</p> <p>80 Final reports and accounts</p> <p>81 References to former agency</p> <p>82 Proceedings of former agency</p> <p style="text-align: center;"><i>Application of Archives Act 1957</i></p> <p>83 Archives Act 1957 to apply</p> <p style="text-align: center;"><i>Consequential amendments</i></p> <p>84 Consequential amendments</p> <p style="text-align: center;"><i>Repeals</i></p> <p>85 Repeals</p> <p style="text-align: center;">—————</p> <p style="text-align: center;">Schedule 1 Members' duties</p> <p style="text-align: center;">Schedule 2 Membership of board</p> <p style="text-align: center;">Schedule 3 Procedure of board</p> <p style="text-align: center;">Schedule 4 Acts amended</p>
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The Parliament of New Zealand enacts as follows:

1	Title	
	This Act is the <i>(Industry New Zealand and Trade New Zealand Integration Act 2003)</i> <u>New Zealand Trade and Enterprise Act 2003</u> .	
	Part 1	5
	Preliminary provisions	
2	Commencement	
	This Act comes into force on 1 July 2003 .	
3	Purpose	
(1)	The purpose of this Act is to support the development of internationally competitive New Zealand business by establishing <i>(Industry New Zealand/Trade New Zealand)</i> <u>New Zealand Trade and Enterprise</u> .	10
(2)	<i>(Industry New Zealand/Trade New Zealand)</i> <u>New Zealand Trade and Enterprise</u> is the Crown entity responsible for facilitating (in co-operation with industry, central and local government, and relevant community groups) the development and implementation of strategies, programmes, and activities for trade, industry, and regional development as directed by the Government.	15 20
4	Overview	
	In this Act,—	
(a)	this Part deals with preliminary matters, including the purpose of this Act, interpretation, and the application of this Act to the Crown:	25
(b)	Part 2 and Schedules 1 to 3 contain provisions regarding a new Crown entity called <i>(Industry New Zealand/Trade New Zealand)</i> <u>New Zealand Trade and Enterprise</u> and include—	
(i)	provisions relating to the establishment of <i>(INZ/TNZ)</i> <u>NZTE</u> (sections 7 to 13), the membership, role, and accountability of the board of <i>(INZ/TNZ)</i> <u>NZTE</u> (sections 14 to 16), the Minister's role (sections 17 and 18), special advisers to the board (section 19), and committees of the	30 35

	board (sections 25 to 27) and supplementary provisions regarding the board's and members' duties, membership of the board, and procedure of the board (Schedules 1 to 3 respectively):	
(ii)	provisions regarding the chief executive of <i>(INZ/TNZ) NZTE</i> , employees, superannuation, and the liability of members, and employees (sections 28 to 42):	5
(iii)	provisions regarding dealings with third parties by <i>(INZ/TNZ) NZTE</i> (sections 43 to 47), financial provisions (sections 48 to 53), provisions relating to the preparation of statements of intent (sections 54 to 64), and annual reporting provisions (sections 65 to 72):	10
(c)	Part 3 deals with the dissolution of the New Zealand Trade Development Board and of Industry New Zealand (section 74), transitional matters (sections 75 to 82), the application of the Archives Act 1957 (section 83), consequential amendments to other Acts (section 84 and Schedule 4), and repeals (section 85).	15 20
5	Interpretation	
	In this Act, unless the context otherwise requires,—	
	board means the board of <i>(INZ/TNZ) NZTE</i>	
	borrow —	
(a)	includes entering into hire purchase agreements; and	25
(b)	includes entering into financing lease arrangements; and	
(c)	includes accepting debt on assignment from other persons; but	
(d)	excludes the purchase of goods or services, or the obtaining of an advance, by the use of a credit card or by a supplier supplying credit for the purchase of goods or services, for a period of 90 days or less from the date the credit card is used or the credit is supplied	30
	chairperson means the chairperson of the board	35
	committee means a committee appointed under section 25	
	deputy chairperson means the deputy chairperson of the board	

enactment includes this Act

equal employment opportunities programme has the meaning set out in **section 32(2)**

fees framework means the framework determined by the Government from time to time for the classification and remuneration of members of statutory and other bodies in which the Crown has an interest, including statutory entities and their subsidiaries 5

former agency means either or both of the following (as the context requires): 10

- (a) Industry New Zealand:
- (b) Trade New Zealand

good employer has the meaning set out in **section 31(2)**

industry means a business, trade, manufacturing or commercial undertaking, profession, occupation, or undertaking relating to the supply or acquisition of goods or services 15

Industry New Zealand means the Crown entity established under section 7 of the Industry New Zealand Act 2000

Struck out (unanimous)

INZ/TNZ—

- (a) means Industry New Zealand/Trade New Zealand established under **section 7**; and
- (b) in **sections 9, 11, 51, 52**, in **Schedule 1** (which relates to members' duties), and in **Schedule 4** in respect of the items relating to the Official Information Act 1982 and the Ombudsmen Act 1975, includes a subsidiary of INZ/TNZ

member means a member of the board

Minister means the Minister or Ministers of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, are for the time being responsible for the administration of this Act 20

New (unanimous)

NZTE—

- (a) means New Zealand Trade and Enterprise established under **section 7**; and
- (b) in **sections 9, 11, 51, 52** and in **Schedule 1** (which relates to members' duties), includes a subsidiary of NZTE

subsidiary means a company that, under sections 5 to 8 of the Companies Act 1993, is a subsidiary of *(INZ/TNZ) NZTE*

Trade New Zealand means the New Zealand Trade Development Board established under section 3 of the New Zealand Trade Development Board Act 1988

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transferred employee means a person who,—

- (a) immediately before the commencement of this Act, is employed by a former agency; and
- (b) is transferred to *(INZ/TNZ) NZTE* under **section 76**.

6 Act binds the Crown

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This Act binds the Crown.

Part 2

*(Industry New Zealand/Trade New Zealand)***New Zealand Trade and Enterprise**

Establishment of (INZ/TNZ) NZTE

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7 Establishment

This section establishes *(Industry New Zealand/Trade New Zealand) New Zealand Trade and Enterprise*.

8 Crown entity status

(INZ/TNZ) NZTE is a Crown entity for the purposes of the Public Finance Act 1989.

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9 Functions

(1) The functions of *(INZ/TNZ) NZTE* are to—

- (a) contribute to a supportive environment for sustainable economic *(growth) development* by—

25

-
- (i) fostering collaborative networks and partnerships between central government, local government, industry, trade unions, regions, education and research organisations, potential investors, and individual enterprises; and 5
- (ii) encouraging the development and delivery of economic development services by the private and non-government sector; and
- (iii) co-ordinating the delivery of government economic development assistance to industry, regions, and individual businesses: 10
- (b) provide a conduit for input and advice from industry, trade unions, local government, *(and relevant community groups)* regions, education and research organisations, potential investors, and individual enterprises on programmes to implement the Government's policies for economic, industry, and regional development: 15
- (c) enhance industry and regional enterprise and entrepreneurial capabilities by—
- (i) providing information; and 20
- (ii) facilitating access to skills, expertise, and resources:
- (d) contribute to increased exports from, and investment in, New Zealand by—
- (i) strengthening global linkages through trade and investment promotion; and 25
- (ii) providing *(targeted)* appropriate business and *(international)* market development assistance:
- (e) carry out any other functions and duties in relation to trade, industry, and regional development that the Minister may prescribe by notice in writing signed by the Minister and given to *(INZ/TNZ)* NZTE: 30
- (f) carry out any functions that are incidental and related to, or consequential upon, its functions as set out in **paragraphs (a) to (e)**. 35
- (2) In performing its functions, *(INZ/TNZ)* NZTE must give effect to the purpose of this Act.
- (3) A prescribed notice under **subsection (1)(e)**—
- (a) is not a regulation for the purposes of the Acts and Regulations Publication Act 1989; and 40

- (b) may be amended, revoked, or replaced, at any time, in the same manner.

10 (INZ/TNZ) NZTE is body corporate

(INZ/TNZ) NZTE—

- (a) is a body corporate with perpetual succession; and 5
- (b) is accordingly a legal entity in its own right separate from its board, members, office holders, and the Crown; and
- (c) continues in existence until it is dissolved by an Act.

11 Capacity and powers

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- (1) Except as provided in this Act or any other Act or rule of law,

(INZ/TNZ) NZTE—

- (a) has all the rights, powers, and privileges of a natural person of full age and capacity; and
- (b) has the statutory powers conferred by this Act or any other Act. 15

- (2) (INZ/TNZ) NZTE may exercise its powers only for the purpose of performing its functions.

12 Compliance with Government policy

- (1) In the performance of its functions and duties, and in the exercise of its powers, (INZ/TNZ) NZTE must give effect to any policy of the Government that— 20

- (a) relates to (INZ/TNZ's) NZTE's functions; and
- (b) is communicated to (INZ/TNZ) NZTE by written direction given and signed by the Minister. 25

- (2) A Ministerial direction—

- (a) must not be given without the Minister consulting the board about the terms of the direction; and
- (b) may be amended, revoked, or replaced, at any time, in the same manner. 30

- (3) (Nothing in this section authorises the Minister to) No Minister, and no person acting by or on behalf of a Minister, may direct (INZ/TNZ) NZTE to allocate funds to, or for the benefit of, a particular person.

13 Requirements for notices and Ministerial directions

The Minister must, as soon as practicable after prescribing a notice under **section 9(1)(e)** or giving a Ministerial direction under **section 12** (as the case may be),—

- (a) publish a copy of it in the *Gazette*; and 5
- (b) present a copy of it to the House of Representatives.

Membership, role, and accountability of board

14 Membership of board

- (1) The board must have at least 3 members, but not more than 9 members. 10
- (2) **Schedules 1 to 3** apply to the board and its members.

15 Board's role

- (1) The board is the governing body of *(INZ/TNZ) NZTE*, with the authority, in *(INZ/TNZ's) NZTE's* name, to exercise the powers and perform the functions of *(INZ/TNZ) NZTE*. 15
- (2) All decisions relating to the operation of *(INZ/TNZ) NZTE* must be made by or under the authority of the board in accordance with this Act.
- (3) The board has all the powers necessary for carrying out its role. 20

16 Accountability of members to Minister

- (1) Members must comply with—
 - (a) the board's collective duties in **clauses 1 to 4 of Schedule 1**; and
 - (b) their individual duties as members in **clauses 5 to 9 of Schedule 1**; and 25
 - (c) any Ministerial directions given under **section 12**.
- (2) Members are accountable to the Minister, in accordance with this Act, for performing their duties as members.

Minister's role 30

17 Minister's role

The Minister's role with respect to *(INZ/TNZ) NZTE* includes functions, powers, and duties in relation to—

- (a) the appointment and removal of members:

- (b) the prescribing of a notice under **section 9(1)(e)**;
- (c) the giving of Ministerial directions to *(INZ/TNZ)* NZTE under **section 12**;
- (d) the appointment of special advisers under **section 19**;
- (e) the preparation and presentation of *(INZ/TNZ's)* NZTE's statement of intent in accordance with **sections 54 to 64**: 5
- (f) determining the remuneration of members under **clause 18 of Schedule 2**;
- (g) other matters in this Act or any other enactment. 10

18 Minister responsible to House of Representatives

The Minister is responsible, in accordance with this Act, to the House of Representatives for the exercise and performance of the functions, powers, and duties given to him or her in relation to *(INZ/TNZ)* NZTE. 15

Special advisers

19 Special advisers

- (1) The Minister may appoint the persons referred to in **subsection (2)** as special advisers to assist the board in aligning its strategy and activities with Government policy. 20
- (2) The persons are—
 - (a) the Secretary of Foreign Affairs and Trade; and
 - (b) the chief executive of the Ministry of Economic Development.
- (3) A special adviser is not a member, but may attend meetings of the board. 25
- (4) A special adviser may also attend meetings of any of the committees of the board, but is not to be regarded as a member of the committee.
- (5) For the purposes of **subsection (3) or subsection (4)**, each special adviser must be given reasonable notice of the time and place of every meeting of the board or of its committees (as the case may be) and any written material or document that relates to matters to be considered at the meeting by,— 30
 - (a) in the case of meetings of the board, the chairperson, the deputy chairperson, or the member or members calling the meeting; or 35

- (b) in the case of meetings of a committee, the member or members calling the meeting.

Delegation by board

- 20 Persons to whom board may delegate functions, duties, and powers** 5
- The board may, by writing, either generally or specifically, delegate any of its functions, duties, or powers to any of the following:
- (a) any of its members:
 - (b) a committee appointed by resolution of the board that includes at least 1 member of the board: 10
 - (c) the chief executive:
 - (d) any employee or employees of *(INZ/TNZ) NZTE*:
 - (e) any other person or persons approved by the Minister.
- 21 Certain powers must not be delegated** 15
- The board must not delegate any of the following powers:
- (a) the power to acquire or dispose of real property:
 - (b) the power to form and register a subsidiary:
 - (c) the power to borrow money:
 - (d) the power to appoint a chief executive. 20
- 22 Effect of delegation**
- Any person to whom any functions or powers are delegated under **section 20**—
- (a) may, unless the delegation provides otherwise, perform those functions or exercise those powers in the same manner, subject to the same restrictions, and with the same effect as if the person were the board; and 25
 - (b) may delegate the functions or powers only with the prior written consent of the board.
- 23 Presumption of acting in accordance with delegation** 30
- A person who appears to act under a delegation under **section 20** is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

24 Other matters relating to delegation

A delegation under **section 20**—

- (a) is revocable at will, but the revocation does not take effect until it is communicated, in writing, to the delegate; and 5
- (b) continues in force according to its terms until it is revoked, despite any change in the membership of the board; and
- (c) does not prevent the performance of a function or duty, or the exercise of a power, by the board; and 10
- (d) does not affect the responsibility of the board for the actions of any person acting under delegation.

Committees

25 Board may appoint committees

- (1) The board may, by resolution, appoint 1 or more committees to— 15
 - (a) inquire into, and report to the board on, any matters within the scope of the board's functions, duties, or powers that are referred to the committee by the board:
 - (b) perform any of the board's functions or duties, or exercise any of the board's powers, that are delegated to the committee under **section 20**. 20
- (2) The committee is subject in all things to the control of the board and may, at any time, be discharged, altered, or reconstituted by the board. 25

26 Membership of committee

A committee must consist of at least 1 member and may include any other persons that the board thinks fit.

27 Committee to regulate own procedure

Subject to the board's direction, a committee may regulate its own procedure. 30

Chief executive of (INZ/TNZ) NZTE

28 Appointment of chief executive

- (1) The board must appoint a chief executive.
- (2) The chief executive must not be a member. 35

- (3) The chief executive is responsible to the board for the efficient and effective administration of the affairs of (INZ/TNZ) NZTE.

29 Terms and conditions of chief executive’s employment

- (1) The chief executive must be appointed on terms and conditions agreed to by the board. 5
- (2) However, the board must not agree to any terms and conditions of employment for the chief executive, or to an amendment of those terms and conditions, without—
- (a) consulting the State Services Commissioner; and 10
 - (b) if the proposed terms and conditions or amendment do not comply with any guidance issued by the State Services Commissioner to (INZ/TNZ) NZTE or to a class of Crown entities to which (INZ/TNZ) NZTE belongs, consulting the Minister. 15
- (3) The board must have regard to any recommendations that the Commissioner and (if applicable) the Minister makes to it within a reasonable time of being consulted.
- (4) A failure to comply with this section does not invalidate the acts of the chief executive. 20

30 Delegation of functions, duties, or powers by chief executive

- (1) The chief executive may, by writing, either generally or specifically, delegate to an employee of (INZ/TNZ) NZTE any functions, duties, or powers delegated to the chief executive by the board as long as the board has given its written consent to the delegation. 25
- (2) **Sections 22 to 24** apply (with any necessary modifications) to a delegation under **subsection (1)**.

Employees of (INZ/TNZ) NZTE 30

31 Personnel policy

- (1) (INZ/TNZ) NZTE must—
- (a) operate a personnel policy that complies with the principle of being a good employer; and

- (b) report on its compliance with that policy (including its equal employment opportunities programme) in its annual report.
- (2) For the purposes of this section, a **good employer** is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—
- (a) good and safe working conditions; and
 - (b) an equal employment opportunities programme; and
 - (c) the impartial selection of suitably qualified persons for appointment; and
 - (d) recognition of—
 - (i) the aims and aspirations of Māori; and
 - (ii) the employment requirements of Māori; and
 - (iii) the need for involvement of Māori as employees of *(INZ/TNZ) NZTE*; and
 - (e) opportunities for the enhancement of the abilities of individual employees; and
 - (f) recognition of the aims and aspirations, and the cultural differences, of ethnic and minority groups; and
 - (g) recognition of the employment requirements of women; and
 - (h) recognition of the employment requirements of persons with disabilities.
- 32 Equal employment opportunities programme**
- (1) In each year, *(INZ/TNZ) NZTE* must—
- (a) develop and publish an equal employment opportunities programme for itself; and
 - (b) ensure that the programme for that year is complied with.
- (2) For the purposes of this section and **section 31**, an **equal employment opportunities programme** is a programme aimed at identifying and eliminating all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons.

Superannuation

- 33 Establishment of superannuation schemes**
(INZ/TNZ) NZTE may establish superannuation schemes in accordance with sections 84A to 84D of the State Sector Act 1988. 5
- 34 Government Superannuation Fund**
- (1) A person who, immediately before becoming an employee of (INZ/TNZ) NZTE, was a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 is, for the purposes of that Act, to be treated as if he or she were employed in the Government service as long as the person continues to be an employee of (INZ/TNZ) NZTE. 10
- (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of (INZ/TNZ) NZTE were Government service. 15
- (3) A person employed by (INZ/TNZ) NZTE who ceases to be a contributor to the Government Superannuation Fund is not subsequently entitled to become a contributor.
- (4) For the purposes of applying the Government Superannuation Fund Act 1956 in accordance with **subsection (2), controlling authority**, in relation to that employee, means (INZ/TNZ) NZTE. 20
- 35 Employees not in service of the Crown**
Except as otherwise provided in **section 34**, an employee of (INZ/TNZ) NZTE is to be treated as if he or she is not employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956. 25

Struck out (unanimous)

Members and employees are officials

- 36 Members and employees are officials**
Members and employees are officials for the purposes of sections 105 and 105A of the Crimes Act 1961.

New (unanimous)*Corruption and bribery, and corrupt use of official information***36 Members and employees are officials**

Members and employees are officials for the purposes of the following sections of the Crimes Act 1961:

- (a) section 105 (which relates to corruption and bribery of officials);
- (b) section 105A (which relates to corrupt use of official information).

*Protections from liability of members and employees***37 Protections for members and employees from liabilities of (INZ/TNZ) NZTE**

A member or employee of (INZ/TNZ) NZTE is not liable for any liability of (INZ/TNZ) NZTE by reason only of being a member or employee. 5

38 Immunity of members and employees from civil liability to third parties

- (1) A member or employee of (INZ/TNZ) NZTE is not liable to any person (other than to (INZ/TNZ) NZTE) for any act or omission by him or her, in the performance or intended performance of (INZ/TNZ's) NZTE's functions, unless the act or omission arises out of conduct that is not in good faith or that is criminal conduct. 10
- (2) (INZ/TNZ) NZTE is liable for any act or omission for which, but for this section, a member or employee would have been liable to a person. 15
- (3) To avoid doubt, this section does not affect the right of any person to apply for judicial review.

39 Indemnity for members and employees for costs from civil and criminal proceedings 20

(INZ/TNZ) NZTE may indemnify a member or employee for costs incurred in any civil or criminal proceedings against him or her if—

- (a) any of the following circumstances apply:
 - (i) judgment is given in his or her favour; or
 - (ii) he or she is acquitted; or
 - (iii) the proceedings are discontinued; and
- (b) the proceedings relate to an act or omission by him or her in the performance or intended performance of (INZ/TNZ's) NZTE's functions. 5

40 Insurance for members and employees

(INZ/TNZ) NZTE may effect insurance cover for a member or employee of (INZ/TNZ) NZTE in relation to— 10

- (a) liability and costs incurred in any civil proceedings against him or her if the proceedings relate to an act or omission by him or her in the performance or intended performance of (INZ/TNZ's) NZTE's functions; and
- (b) costs incurred in any criminal proceedings against him or her if— 15
 - (i) he or she is acquitted or the proceedings are discontinued; and
 - (ii) the proceedings relate to an act or omission by him or her in the performance or intended performance of (INZ/TNZ's) NZTE's functions. 20

41 Breach of indemnity and insurance limits

- (1) A member or employee who is indemnified or insured by (INZ/TNZ) NZTE in breach of this Act must repay to (INZ/TNZ) NZTE the cost of providing or effecting that indemnity or insurance cover to the extent that the indemnity or insurance cover exceeds that which could have been provided or effected under this Act. 25
- (2) (INZ/TNZ) NZTE may recover the amount as a debt due in a court of competent jurisdiction. 30

42 Definitions for protections from liability

In sections 37 to 41,—

effect insurance includes pay, whether directly or indirectly, the costs of insurance

employee includes an employee of a former agency 35

indemnify includes relieve or excuse from liability, whether before or after the liability arises

member includes a member of the board of a former agency.

Dealings with third parties by (INZ/TNZ) NZTE

- 43 Execution of documents** 5
(INZ/TNZ) NZTE may,—
- (a) in writing, authorise any 2 or more members or 1 or more attorneys appointed in accordance with **section 45** to execute any deed, instrument, contract, or other document on its behalf; and 10
 - (b) at any time, revoke the authority in the same manner.
- 44 Method of contracting**
- (1) A contract or other enforceable obligation may be entered into by (INZ/TNZ) NZTE, as stated in **subsections (2) to (5)**.
 - (2) An obligation that, if entered into by an individual, is required to be by deed may be entered into on behalf of (INZ/TNZ) NZTE in writing, signed under the name of (INZ/TNZ) NZTE by— 15
 - (a) 2 or more members; or
 - (b) 1 or more attorneys appointed in accordance with **section 45**. 20
 - (3) An obligation that, if entered into by an individual, is required to be in writing may be entered into on behalf of (INZ/TNZ) NZTE in writing by a person acting under (INZ/TNZ's) NZTE's express or implied authority. 25
 - (4) An obligation that, if entered into by an individual, is not required to be in writing may be entered into on behalf of (INZ/TNZ) NZTE in writing or orally by a person acting under (INZ/TNZ's) NZTE's express or implied authority.
 - (5) This section applies to a contract or other obligation— 30
 - (a) whether or not that contract or obligation was entered into in New Zealand; and
 - (b) whether or not the law governing the contract or obligation is the law of New Zealand.

45 Attorneys

- (1) *(INZ/TNZ) NZTE* may, by an instrument in writing, appoint a person as its attorney either generally or in relation to a specified matter.
- (2) An act of the attorney in accordance with the instrument binds *(INZ/TNZ) NZTE*. 5

46 Dealings between *(INZ/TNZ) NZTE* and other persons

- (1) *(INZ/TNZ) NZTE* may not assert against a person dealing with it or a person who has acquired property, rights, or interests from it that— 10
- (a) *(INZ/TNZ) NZTE* has exercised its powers for a purpose other than the purpose of performing its functions; or
- (b) this Act has not been complied with; or
- (c) a person held out by *(INZ/TNZ) NZTE* to be a member, chairperson, chief executive, employee, or agent of *(INZ/TNZ) NZTE* (as the case may be)— 15
- (i) has not been duly appointed in that capacity or has ceased to be appointed in that capacity; or
- (ii) does not have the authority to exercise a power that, given the nature of *(INZ/TNZ) NZTE*, a person appointed to that capacity would customarily exercise; or 20
- (iii) does not have the authority to exercise a power that *(INZ/TNZ) NZTE* holds him or her out as having; or 25
- (d) a document issued on behalf of *(INZ/TNZ) NZTE* by a member, chief executive, employee, or agent of *(INZ/TNZ) NZTE* with authority to issue the document is not valid or genuine. 30
- (2) **Subsection (1)** applies even though a person referred to in **subsection (1)(c)** acts fraudulently or forges a document that appears to have been signed on behalf of *(INZ/TNZ) NZTE*, unless the person dealing with *(INZ/TNZ) NZTE* or with a person who has acquired property, rights, or interests from *(INZ/TNZ) NZTE* has actual knowledge of the fraud or forgery. 35

47 Presumption of authority to execute document

A person purporting to execute any document on behalf of *(INZ/TNZ) NZTE* under any authority is, in the absence of proof to the contrary, presumed to be acting in accordance with the authority.

5

Financial provisions

48 Funds of *(INZ/TNZ) NZTE*

The funds of *(INZ/TNZ) NZTE* consist of—

- (a) all money appropriated by Parliament and paid to *(INZ/TNZ) NZTE*; and
- (b) all other money lawfully received by *(INZ/TNZ) NZTE* for its purposes; and
- (c) all accumulations of income derived from any of that money.

10

49 Bank accounts

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(1) *(INZ/TNZ) NZTE* must establish, maintain, and operate 1 or more bank accounts at 1 or more—

- (a) registered banks (within the meaning of the Reserve Bank of New Zealand Act 1989);
- (b) banks outside New Zealand approved by the Minister of Finance for the purpose.

20

(2) All money received by *(INZ/TNZ) NZTE* for its purposes must, as soon as practicable after it has been received, be paid into a bank account of *(INZ/TNZ) NZTE*.

(3) *(INZ/TNZ) NZTE* must properly authorise the withdrawal or payment of money from any of its accounts.

25

50 Investment of money

Any money that belongs to *(INZ/TNZ) NZTE* and that is not immediately required may be invested only in accordance with section 25 of the Public Finance Act 1989.

30

51 *(INZ/TNZ) NZTE* not to borrow without consent of Minister of Finance

Despite **section 11**, *(INZ/TNZ) NZTE* must not borrow or contract to borrow any money, or renew or amend the terms of

any loan made to (INZ/TNZ) NZTE, without the prior written consent of the Minister of Finance.

- 52 Auditor-General to be auditor of (INZ/TNZ) NZTE**
(INZ/TNZ) NZTE is a public entity as defined in section 4 of the Public Audit Act 2001, and, in accordance with that Act, the Auditor-General is its auditor. 5
- 53 (INZ/TNZ) NZTE deemed to be public authority**
- (1) (INZ/TNZ) NZTE is deemed to be a public authority for the purposes of the Inland Revenue Acts.
- (2) In this section, **Inland Revenue Acts** has the same meaning as in section 3(1) of the Tax Administration Act 1994. 10

Planning—Statement of intent

- 54 Purpose of statement of intent**
The purpose of a statement of intent is to promote the public accountability of (INZ/TNZ) NZTE by— 15
- (a) setting out (INZ/TNZ's) NZTE's medium-term intentions and commitments:
- (b) enabling the Crown to participate in the process of setting those intentions and commitments:
- (c) providing to the House of Representatives contextual information about (INZ/TNZ) NZTE and information about the intentions and commitments that have been set: 20
- (d) providing a base against which (INZ/TNZ's) NZTE's actual performance can later be assessed. 25
- 55 Obligation to prepare statement of intent**
(INZ/TNZ) NZTE must prepare for each financial year a statement of intent that relates to at least that financial year and the 2 following financial years.
- 56 Form and content of statement of intent** 30
- (1) Each statement of intent must contain the following information:

- (a) an outline of key contextual information, such as the principal legislative functions and current organisational structure of *(INZ/TNZ) NZTE*;
- (b) the nature and scope of *(INZ/TNZ's) NZTE's* intended operations for the period to which the statement of intent applies: 5
- (c) the items of significance (if any) under each of the following headings for the period to which the statement of intent applies:
 - (i) the principal areas of *(INZ/TNZ's) NZTE's* activity within the scope of operations: 10
 - (ii) the expected features of *(INZ/TNZ's) NZTE's* operating environment, and the potential implications of those features:
 - (iii) the nature of *(INZ/TNZ's) NZTE's* long-term specific goals for its operations and principal areas of activity, and how those goals might link to goals referred to in a statement of government policy: 15
 - (iv) the proposed strategies for achieving goals, managing risks, and carrying out operations: 20
 - (v) the performance targets and other measures by which performance may be judged:
 - (vi) the matters on which *(INZ/TNZ) NZTE* will consult the Minister before making a decision, the matters on which it will report to the Minister, and the frequency of reporting: 25
 - (vii) any other proposed operating policies:
- (d) the following prospective financial information:
 - (i) a forecast statement of financial performance, statement of financial position, and statement of cash flows in respect of the first financial year to which the statement of intent relates: 30
 - (ii) a summary of those forecast financial statements in respect of the remainder of the period to which the statement of intent relates: 35
 - (iii) a statement of the principal assumptions on which the forecast financial statements are based:
 - (iv) a statement of all material accounting policies and any changes to them from the last statement of them: 40

- (e) an outline of the proposed strategy for managing any recently reported or anticipated material net deficit (as determined in accordance with generally accepted accounting practice):
 - (f) any other information necessary for understanding and assessing the information provided under **paragraphs (a) to (e)** or without which that information is false or misleading in a material particular. 5
- (2) Each final statement of intent must be in writing, be dated, and be signed on behalf of the board by 2 members. 10

57 Ministerial involvement in statements of intent

- (1) Ministers of the Crown may participate in determining the content of statements of intent as follows:
- (a) the Minister may agree with *(INZ/TNZ)* NZTE that information additional to that required by **section 56** be included in the statement of intent: 15
 - (b) the Minister of Finance may make rules—
 - (i) specifying particular information that must be disclosed under **section 56**:
 - (ii) specifying the particular form in which information under that section must be disclosed: 20
 - (c) the Minister may, by written notice to *(INZ/TNZ)* NZTE,—
 - (i) specify particular information that must be disclosed under **section 56**: 25
 - (ii) specify the particular form in which information under that section must be disclosed:
 - (d) the Minister may make comments on a draft statement of intent under **section 58** or on an amendment to a statement of intent proposed by *(INZ/TNZ)* NZTE under **section 61 or section 62**: 30
 - (e) the Minister may direct amendments to certain information in a statement of intent under **section 63**.
- (2) The Minister must ensure that a requirement under **subsection (1)(c)** is not incompatible with any rules made by the Minister of Finance under **subsection (1)(b)**. 35
- (3) *(INZ/TNZ)* NZTE must comply with any applicable rules and requirements in accordance with this Act.

- 58 Process for providing statement of intent to Minister**
- (1) **(INZ/TNZ) NZTE** must follow the following process in providing a statement of intent:
- (a) **(INZ/TNZ) NZTE** must provide a draft statement of intent to the Minister no later than 30 days before the commencement of each financial year; and 5
 - (b) the Minister must provide to **(INZ/TNZ) NZTE** any comments that he or she may have on the draft no later than 14 days before the commencement of the financial year; and 10
 - (c) **(INZ/TNZ) NZTE** must consider the comments (if any) on the draft and provide the final statement of intent to the Minister on or before the commencement of the financial year.
- (2) The Minister and the Minister of Finance may jointly grant an extension of time for any step in the process, but, if they do, they must ensure that there is a period of at least 14 days from the expiry of the period in which the Minister's comments must be provided and the date on which the final statement of intent must be provided to the Minister. 15 20
- 59 Application and term of statement of intent**
- A statement of intent applies in relation to **(INZ/TNZ) NZTE**—
- (a) from the date on which the final statement of intent is provided to the Minister under **section 58(1)(c)**; and 25
 - (b) until a new statement of intent takes effect in relation to **(INZ/TNZ) NZTE** (despite the end of any financial year to which the statement relates); and
 - (c) with any amendments that are made as described in **section 60**. 30
- 60 Amendments to statement of intent**
- A statement of intent may be amended only as follows:
- (a) if **(INZ/TNZ) NZTE** wishes to make an amendment, in accordance with **section 61**; or
 - (b) in the circumstances referred to in **section 62**; or 35
 - (c) if the Minister wishes to make an amendment, in accordance with **section 63**.

- 61 Optional amendments by (INZ/TNZ) NZTE**
- (1) If (INZ/TNZ) NZTE wishes to amend its statement of intent, the process that must be followed is as follows:
- (a) (INZ/TNZ) NZTE must provide a draft amendment to the Minister; and 5
 - (b) the Minister must provide to (INZ/TNZ) NZTE any comments that he or she may have on the draft no later than 14 days after receiving the draft; and
 - (c) (INZ/TNZ) NZTE must consider the comments (if any) on the draft. 10
- (2) The final amendment must be in writing, be dated, and be signed on behalf of the board by 2 members.
- (3) The final amendment to the statement of intent applies from the date on which the final amendment is provided to the Minister. 15
- 62 Mandatory amendments**
- (1) (INZ/TNZ) NZTE must amend its statement of intent if—
- (a) the Minister has given a direction to (INZ/TNZ) NZTE that has consequences that materially alter or affect the information contained in the statement of intent; or 20
 - (b) there are any changes to (INZ/TNZ's) NZTE's operating environment that significantly alter or affect the performance expectations set out in the statement of intent; or
 - (c) changes in the law materially alter or affect the information contained in the statement of intent; or 25
 - (d) the information contained in the statement of intent is false or misleading in a material particular, and was so at the time when the statement of intent first took effect.
- (2) (INZ/TNZ) NZTE must make the amendment as soon as practicable after the entity becomes aware of the facts that give rise to the obligation to amend under this section. 30
- (3) The process and other rules set out in **section 61** apply to an amendment under this section.
- 63 Amendments to statement of intent by Minister** 35
- (1) The Minister may amend any provision that is included in (INZ/TNZ's) NZTE's statement of intent under **section 56(1)(b)**,

- (c)(iii), (v), or (vi) (which relates to the scope of operations, specific goals, performance targets, and matters for consultation).
- (2) If the Minister intends to amend a statement of intent, the process that must be followed is as follows: 5
- (a) the Minister must give a direction to *(INZ/TNZ) NZTE* specifying the amendment that is required:
 - (b) the Minister must consult *(INZ/TNZ) NZTE* before giving the direction:
 - (c) **section 13** applies with any necessary modifications. 10
- (3) The amendment to the statement of intent, as specified by the Minister, applies from the effective date of the direction (which may not be earlier than the date on which the direction is presented to the House of Representatives under **section 13**).
- 64 Minister to present statement of intent and amendments to House of Representatives** 15
- The Minister must present a copy of the final statement of intent, and any amendments that are made to it, to the House of Representatives within 10 Parliamentary working days after the final statement of intent or amendment (as the case may be) is received by the Minister. 20

Reporting—Annual report

- 65 Obligation to prepare annual report** 25
- (INZ/TNZ) NZTE* must prepare an annual report on its affairs for each financial year.
- 66 Form and content of annual report**
- (1) An annual report must contain the following information and reports in respect of the financial year to which it relates:
- (a) a report on operations, including the information that is necessary to enable an informed assessment to be made of performance during the financial year against the statement of intent; and 30
 - (b) a statement of service performance prepared in accordance with **section 67**; and
 - (c) annual financial statements prepared in accordance with **section 68**; and 35

- (d) a statement of responsibility for the financial statements in accordance with **section 69**; and
- (e) the auditor's report in accordance with **section 70**; and
- (f) any Ministerial direction given under **section 12** during that financial year; and 5
- (g) an assessment of the reasons for, and the implications of, any material reported net deficit (as determined in accordance with generally accepted accounting practice) incurred during the financial year; and
- (h) any matter on which the statement of intent for that financial year required the annual report to report; and 10
- (i) for each member, the total value of the remuneration and other benefits (other than compensation and other benefits referred to in **paragraph (m)**) received by the member from *(INZ/TNZ) NZTE* during that financial year; and 15
- (j) for each member of a board committee, the total value of the remuneration and other benefits received by the member from *(INZ/TNZ) NZTE* during that financial year (except that this paragraph does not apply to members whose remuneration is disclosed under **paragraph (i)**); and 20
- (k) a report on compliance with its policy of being a good employer (including its equal employment opportunities programme); and 25
- (l) the number of employees who, during the financial year, received remuneration and any other benefits (other than compensation and other benefits referred to in **paragraph (m)**) in their capacity as employees, the total value of which is or exceeds \$100,000 per annum, and the number of those employees in brackets of \$10,000; and 30
- (m) the total value of any compensation or other benefits received by persons who ceased to be employees or members during the financial year in relation to ceasing employment or ceasing to be members and the number of persons who received part of that total; and 35
- (n) details of any indemnity provided by *(INZ/TNZ) NZTE* during the financial year to any member or employee; and 40

- (o) details of any insurance cover effected by *(INZ/TNZ) NZTE* during the financial year in respect of the liability or costs of any member or employee; and
 - (p) any other information that is necessary to enable an informed assessment to be made of performance for that financial year. 5
- (2) An annual report must be in writing, be dated, and be signed on behalf of the board by 2 members.
- (3) In **subsection (1), member and employee** include a person who was a member or employee at any time after the commencement of this Act, but who is no longer a member or employee. 10

- 67 Form and content of statement of service performance**
- (1) A statement of service performance must—
 - (a) report on the classes of outputs produced during the financial year as compared with the classes of outputs described at the beginning of the financial year in the relevant statement of output objectives included in the relevant statement of intent in accordance with section 41D(1)(h) of the Public Finance Act 1989; and 15
 - (b) be prepared in accordance with generally accepted accounting practice. 20
- (2) A statement of service performance must be in writing, be dated, and be signed on behalf of the board by 2 members.

- 68 Form and content of annual financial statements**
- (1) The annual financial statements of *(INZ/TNZ) NZTE* must be prepared with respect to the affairs of *(INZ/TNZ) NZTE* for the financial year to which they relate. 25
- (2) The annual financial statements must—
 - (a) contain the actual financial information for *(INZ/TNZ) NZTE* as compared with the forecast financial statements contained in the statement of intent or, if the forecast financial statements in the statement of intent have been amended, as compared with the original forecast figures and the amended forecast figures; and 30
 - (b) be prepared in accordance with generally accepted accounting practice. 35

69 Statement of responsibility

The statement of responsibility for the financial statements must—

- (a) be dated and signed on behalf of the board by 2 members; and 5
- (b) contain a statement of the signatories' responsibility for the preparation of the annual financial statements and the judgments in them; and
- (c) contain a statement of the signatories' responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting; and 10
- (d) contain a statement that, in the opinion of the signatories, the annual financial statements for the financial year fairly reflect the financial position and operations of *(INZ/TNZ) NZTE*. 15

70 Audit

- (1) *(INZ/TNZ) NZTE* must, within 90 days after the end of each financial year, submit to the Auditor-General for audit (*the report on operations,*) the statement of service performance and the annual financial statements required under **section 66(1)(a) to (c)**. 20
- (2) The Auditor-General must audit those documents, and provide an audit report on them to *(INZ/TNZ) NZTE* within 30 days after receiving them. 25

71 Obligation to provide annual report to Minister

(INZ/TNZ) NZTE must provide the annual report to the Minister as soon as practicable after receiving the audit report.

72 Minister to present annual report to House of Representatives

The Minister must present a copy of *(INZ/TNZ's) NZTE's* annual report to the House of Representatives within 10 Parliamentary working days after the date on which they are received by the Minister. 30

Review of (INZ/TNZ's) NZTE's operations and performance

73 Review of (INZ/TNZ's) NZTE's operations and performance

- (1) The Minister may review the operations and performance of (INZ/TNZ) NZTE at any time. 5
- (2) This section does not limit powers of review in the State Sector Act 1988 or the Public Audit Act 2001 or under any other Act.

Part 3

Miscellaneous provisions 10

Dissolution of former agencies

74 Former agencies dissolved

The former agencies are dissolved.

Transitional provisions

75 Assets and liabilities vest in (INZ/TNZ) NZTE 15

All rights, assets, liabilities, and debts that a former agency had immediately before the commencement of this Act must be treated as the rights, assets, liabilities, and debts of (INZ/TNZ) NZTE on that commencement.

76 Transfer of employees 20

(INZ/TNZ) NZTE may, after consulting the employee concerned, transfer a person who is employed by a former agency immediately before the commencement of this Act to (INZ/TNZ) NZTE.

77 Terms and conditions of employment for transferred employee 25

- (1) The employment of a transferred employee must be on terms and conditions no less favourable to the transferred employee than those applying to the employee immediately before the date of the person's transfer to (INZ/TNZ) NZTE. 30

(2) **Subsection (1)—**

- (a) continues to apply to the terms and conditions of employment of a transferred employee until those terms and conditions are varied by agreement between the

transferred employee or their representative and
(INZ/TNZ) NZTE; but

- (b) does not apply to a transferred employee who receives any subsequent employment with (INZ/TNZ) NZTE.

78 Continuity of employment

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- (1) Every transferred employee becomes an employee of (INZ/TNZ) NZTE on the date of transfer.

- (2) However, for the purposes of every enactment, law, determination, contract, and agreement relating to the employment of the employee,—

10

- (a) the contract of employment of that employee must be treated as unbroken; and

- (b) the employee's period of service with a former agency, and every other period of service of that employee that is recognised by a former agency as continuous service, must be treated as a period of service with (INZ/TNZ) NZTE.

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79 No compensation for technical redundancy

A transferred employee is not entitled to receive any payment or any other benefit solely on the ground that—

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- (a) the position held by the person in a former agency has ceased to exist; or

- (b) the person has ceased (as a result of the transfer to (INZ/TNZ) NZTE) to be an employee of a former agency.

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80 Final reports and accounts

- (1) As soon as is practicable after the commencement of this Act, (INZ/TNZ) NZTE must arrange for the final report of each former agency to be delivered to the Minister.

- (2) The report must—

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- (a) describe the former agency's operations for the period beginning on 1 July 2002 and ending with the close of 30 June 2003; and

- (b) include—

- (i) financial statements of that agency prepared, in accordance with Part V of the Public Finance Act 1989, for that period; and

35

- (ii) an audit report prepared by the Auditor-General and a *(management statement) statement of responsibility* relating to those financial statements.
- (3) The Minister must present a copy of every report under this section to the House of Representatives under section 44A of the Public Finance Act 1989. 5
- 81 References to former agency** 10
Unless the context otherwise requires, every reference to a former agency in any enactment, agreement, deed, instrument, application, notice, or in any other document in force immediately before the commencement of this Act must, on or after that commencement, be read as a reference to *(INZ/TNZ) NZTE*.
- 82 Proceedings of former agency** 15
(1) Any proceedings to which a former agency is a party before the commencement of this Act may be continued, completed, and enforced by or against *(INZ/TNZ) NZTE*.
(2) This section is for the avoidance of doubt.
- Application of Archives Act 1957* 20
- 83 Archives Act 1957 to apply**
(INZ/TNZ) NZTE is a Government office for the purposes of the Archives Act 1957.
- Consequential amendments*
- 84 Consequential amendments** 25
The Acts specified in **Schedule 4** are amended in the manner indicated in that schedule.
- Repeals*
- 85 Repeals** 30
The New Zealand Trade Development Board Act 1988 (1988 No 160) and the Industry New Zealand Act 2000 (2000 No 27) are repealed.
-

Schedule 1 Members' duties

s 14(2)

Collective duties of members

- 1 Must give effect to purpose of Act, etc** 5
The board must ensure that (INZ/TNZ) NZTE acts in a manner—
 - (a) that gives effect to the purpose of this Act; and
 - (b) that is consistent with (INZ/TNZ's) NZTE's functions and with its current statement of intent.

- 2 Functions must be performed efficiently, effectively, and consistently with spirit of service to public** 10
The board must ensure that (INZ/TNZ) NZTE performs its functions efficiently and effectively and in a manner consistent with the spirit of service to the public.

- 3 Operation must be in financially responsible manner** 15
The board must ensure that (INZ/TNZ) NZTE operates in a financially responsible manner and, for this purpose, that it prudently manages its assets and liabilities.

- 4 Subsidiaries** 20
The board must ensure, to the extent of its powers, that each subsidiary of (INZ/TNZ) NZTE—
 - (a) does not do anything that (INZ/TNZ) NZTE does not have power to do; and
 - (b) acts consistently with the purpose of this Act (to the extent that the purpose of this Act relates to the subsidiary); and 25
 - (c) exercises its powers only for the purpose of performing, or assisting (INZ/TNZ) NZTE to perform, (INZ/TNZ's) NZTE's functions; and
 - (d) in doing anything, acts consistently with the obligations and restrictions that would apply to (INZ/TNZ) NZTE in doing that thing; and 30
 - (e) does not contravene this Act, the Companies Act 1993, or the company's constitution (if applicable); and
 - (f) acts consistently with (INZ/TNZ's) NZTE's current statement of intent under **section 55**; and 35

- (g) complies with a Ministerial direction given under **section 12** (to the extent that it relates to the subsidiary); and
- (h) does not pay directors of the subsidiary any compensation or other payment or benefit, on any basis for ceasing for any reason to hold office. 5
- Individual duties of members*
- 5 Duty to comply with this Act**
A member must not contravene, or cause or agree to *(INZ/TNZ)* NZTE contravening, this Act. 10
- 6 Duty to act with honesty and integrity**
A member must, when acting as a member, act with honesty and integrity.
- 7 Duty to act in good faith and not at expense of entity's interests** 15
A member must, when acting as a member, act in good faith and not pursue his or her own interests at the expense of *(INZ/TNZ's)* NZTE's interests.
- 8 Duty to act with reasonable care, diligence, and skill** 20
A member must, when acting as a member, exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account (without limitation)—
- (a) the nature of *(INZ/TNZ)* NZTE; and
- (b) the nature of the action; and 25
- (c) the position of the member and the nature of the responsibilities undertaken by him or her.
- 9 Duty not to disclose information**
- (1) A member who has information in his or her capacity as a member that would not otherwise be available to him or her must not disclose that information to any person, or make use of, or act on, that information, except— 30
- (a) for the purposes of *(INZ/TNZ)* NZTE; or
- (b) as required or permitted by law; or

- (c) in accordance with **subclause (2)**; or
 - (d) in complying with the requirements for members to disclose interests.
- (2) A member may disclose, make use of, or act on, the information if— 5
- (a) the member is first authorised to do so by the board; and
 - (b) the disclosure, use, or act in question will not, or will not be likely to, prejudice *(INZ/TNZ) NZTE*.

Effect of non-compliance with duties

10 Accountability for collective board duties 10

- (1) The duties of the board and members under **clauses 1 to 4** (collective duties) are duties owed to the Minister.
- (2) If a board does not comply with any of its collective duties, all or any of the members may be removed from office.
- (3) However, **subclause (2)** does not apply to a member if— 15
- (a) he or she did not know and could not reasonably be expected to know that the duty was to be or was being breached; or
 - (b) he or she took all reasonable steps in the circumstances to prevent the duty being breached. 20
- (4) A member is not liable for a breach of a collective duty under this Act, except for being removed from office as provided for in **subclause (2)**.
- (5) This section does not limit any other ground for removing a member from office. 25
- (6) **Subclause (4)** does not limit—
- (a) anything else for which the member may be liable under any other Act or rule of law arising from the act or omission that constitutes the breach; or
 - (b) the right to apply for a court order under **clause 12**. 30

11 Accountability for individual duties

- (1) The duties of members under **clauses 5 to 9** (individual duties) are duties owed to the Minister and *(INZ/TNZ) NZTE*.
- (2) If a member does not comply with his or her individual duties, that member may be removed from office. 35

- (3) *(INZ/TNZ) NZTE* may bring an action against a member for breach of any individual duty.
- (4) A member is not liable for a breach of an individual duty under this Act, except for being removed from office as provided for in **subclause (2)** or in an action brought under **subclause (3)**. 5
- (5) This section does not limit any other ground for removing a member from office.

12 Court actions requiring or restraining board or members 10

- (1) The Minister or a member may apply to a court for an order—
- (a) requiring the board to take any action that is required to be taken by members under this Act:
 - (b) restraining the board or a member from engaging in conduct that would contravene this Act: 15
 - (c) granting any consequential relief.
- (2) The court may make an order on the application, subject to the following rules:
- (a) an order may be made only if the court is satisfied that it is just and equitable to do so; and 20
 - (b) no order may be made in respect of conduct that has been completed.
- (3) The court may, at any time before the final determination of an application under this section, make as an interim order any order that it is empowered to make as a final order. 25

Reliance on information and advice

13 When members may rely on certain information and advice

- (1) A member, when acting as a member, may rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the following persons: 30
- (a) an employee of *(INZ/TNZ) NZTE* whom the member believes on reasonable grounds to be reliable and competent in relation to the matters concerned: 35

- (b) a professional adviser or expert in relation to matters that the member believes on reasonable grounds to be within the person's professional or expert competence:
 - (c) any other member or a committee of the board on which the member did not serve in relation to matters within the member's or committee's delegated authority. 5
- (2) A member, when acting as a member, may rely on reports, statements, financial data, and other information supplied by the Crown.
- (3) **Subclauses (1) and (2)** apply to a member only if the member— 10
 - (a) acts in good faith; and
 - (b) makes proper inquiry if the need for inquiry is indicated by the circumstances; and
 - (c) has no knowledge that the reliance is unwarranted.

Disclosure of interest 15

14 Obligation to disclose interest

- (1) A member who (otherwise than as a member) has a direct or indirect interest in any of the matters listed in **subclause (2)** must, as soon as practicable after the member knows about the relevant facts, disclose the nature of the interest in accordance with **clause 15**. 20
- (2) The matters are as follows:
 - (a) *(INZ/TNZ's) NZTE's* performance of a function or exercise of a power:
 - (b) an arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by *(INZ/TNZ) NZTE*. 25

15 Disclosure to Minister or chairperson

- A member who is required to disclose the nature of an interest must disclose it— 30
- (a) to the Minister if the person is the chairperson or if the positions of chairperson and deputy chairperson are vacant; or
 - (b) to the chairperson in any other case.

16 Consequences of disclosure

A member who discloses his or her interest under **clause 15**—

- (a) must not take part in any deliberation or decision of the board relating to the matter; and
- (b) is to be disregarded for the purpose of forming a quorum for a meeting of the board during which a deliberation or decision relating to the matter occurs or is made. 5

17 Effect of non-compliance

If a member fails to comply with the disclosure requirements in **clause 15**, the validity of the arrangement, agreement, or contract made or entered into by *(INZ/TNZ)* NZTE is not affected. 10

Schedule 2 Membership of board

s 14(2)

Members' appointments

- 1 Criteria for appointments**
- (1) The Minister must appoint members in accordance with any criteria for members and any process for appointment set out in this Act. 5
- (2) Subject to **subsection (1)**, the Minister—
- (a) may only appoint a person who, in the Minister's opinion, has appropriate skills and experience to assist **(INZ/TNZ) NZTE** to perform its functions; and 10
- (b) in appointing a person, must take into account the desirability of promoting diversity in the membership of Crown entities.
- 2 Qualifications of members** 15
- (1) A natural person who is not disqualified by **subclause (2)** may be a member.
- (2) The following persons are disqualified from being a member:
- (a) a person who is an undischarged bankrupt: 20
- (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, section 383, or section 385 of the Companies Act 1993:
- (c) a person who is subject to a property order made under section 10, section 11, section 12, section 30, or section 31 of the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act: 25
- (d) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon or served the sentence or otherwise suffered the penalty imposed on the person: 30
- (e) a person who has failed to disclose his or her interests and potential interests as required by **clause 3**. 35

3 Requirements before appointment

- (1) Before a person is appointed as a member, the person must—
- (a) consent in writing to being a member; and
 - (b) certify in writing that he or she is not disqualified from being a member; and 5
 - (c) disclose to the Minister the nature and extent (including monetary value if quantifiable) of all interests or potential interests that the person has at that time in matters relating to *(INZ/TNZ) NZTE*.
- (2) A person is **interested** in a transaction of, or other matter relating to, *(INZ/TNZ) NZTE* if he or she has an interest in a transaction of, or other matter relating to, a person who is likely to be materially affected by decisions of *(INZ/TNZ) NZTE* or is likely to have material dealings with *(INZ/TNZ) NZTE*. 10
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4 Method of appointment

- (1) A member is appointed by written notice to the member (with a copy to *(INZ/TNZ) NZTE*).
- (2) The notice of appointment must—
- (a) state the date on which the appointment takes effect; and 20
 - (b) be published by the Minister in the *Gazette* as soon as practicable after being given.

5 Term of appointment

- (1) A member— 25
- (a) holds office for 3 years or any shorter term stated in the notice of appointment; but
 - (b) continues in office despite the expiry of his or her term of office until—
- (i) the member is reappointed; or 30
 - (ii) the member's successor is appointed; or
 - (iii) the Minister informs the member by written notice (with a copy to *(INZ/TNZ) NZTE*) that the member is not to be reappointed and no successor is to be appointed at that time. 35
- (2) **Subclause (1)** does not apply if the member ceases to hold office under this Act or any other enactment.

- 6 Validity of acts**
The acts of a person as a member are valid even if—
(a) the person's appointment was defective; or
(b) the person is not qualified to be a member.
- 7 Position where concurrent office** 5
A member may hold that office concurrently with any other office.
- Resignation and removal of members*
- 8 Resignation** 10
A member may, at any time, resign from office by written notice given to the Minister.
- 9 Removal from office**
- (1) The Minister may, at any time and entirely at his or her discretion, remove a member from office by written notice to the member (with a copy to *(INZ/TNZ) NZTE*). 15
- (2) Before removing a member from office, the Minister—
- (a) must give the member a reasonable opportunity to make written submissions or to be heard on the proposal to remove him or her; and
- (b) must otherwise comply with the principles of natural justice. 20
- 10 No compensation for removal from office**
A member is not entitled to any compensation or other payment or benefit, on any basis, for removal from office.
- Vacancies in board's membership* 25
- 11 Position where vacancy in membership**
- (1) If a member, for any reason, ceases to hold office as a member, the Minister may appoint another person to act as a member.
- (2) A member who is appointed under **subclause (1)** is appointed for the residue of the term for which the vacating member was appointed. 30

- 12 Effect of vacancy in membership**
The functions, duties, and powers of *(INZ/TNZ) NZTE* and of the board are not affected by any vacancy in the board's membership.
- Chairperson and deputy chairperson* 5
- 13 Appointment**
- (1) The Minister may appoint 1 of the members as the chairperson and another member as the deputy chairperson.
- (2) However, no person may, at the same time, hold the office both of chairperson and of deputy chairperson. 10
- 14 Term of office**
Every person appointed as chairperson or deputy chairperson holds that office until the person—
- (a) dies or resigns from that office; or
(b) is removed from it by the Minister; or 15
(c) ceases to be a member.
- 15 Resignation**
A chairperson or deputy chairperson may, without resigning as a member, resign from that office by written notice given to the Minister. 20
- 16 Appointment of new chairperson or deputy chairperson**
If the chairperson or deputy chairperson ceases to be the chairperson or deputy chairperson, the Minister may appoint an existing member or a new member as the chairperson or deputy chairperson. 25
- 17 Performance and exercise of chairperson's functions, duties, and powers during vacancy**
- (1) During a vacancy in the office of chairperson, or while the chairperson is for any reason unable to perform and exercise the functions, duties, and powers of the chairperson, the deputy chairperson has and may perform and exercise all of the functions, duties, and powers of the chairperson. 30
- (2) No acts done by the deputy chairperson acting as the chairperson may, in any proceedings, be questioned on the grounds

that the occasion for the deputy chairperson so acting had not arisen or had ceased.

Remuneration and expenses

18 Board members' remuneration and expenses

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|-----|---|----|
| (1) | A member is entitled to receive, from the funds of <i>(INZ/TNZ)</i> <u>NZTE</u> , remuneration for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework. | 5 |
| (2) | A member is entitled to be paid out of the funds of <i>(INZ/TNZ)</i> <u>NZTE</u> actual and reasonable travelling and other expenses relating to the performance of his or her duties and responsibilities as a member in accordance with the fees framework. | 10 |
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s 14(2)

Schedule 3 Procedure of board

General

1 Procedure generally

Except as otherwise provided in this Act, the board may regulate its own procedure. 5

Meetings

2 Times and places of meetings

- (1) The board or the chairperson must appoint the times and places for meetings of the board, and give notice of those meetings to each member and each special adviser not present when the appointment is made. 10
- (2) The chairperson, or any 2 members, may, at any time, call a special meeting of the board by giving not less than 7 days' notice of the special meeting, and of the business to be transacted at the meeting, to each member of the board and each special adviser for the time being in New Zealand. 15
- (3) No business other than that specified in a notice of special meeting may be transacted at that meeting.
- (4) Notice of a meeting— 20
 - (a) must be written, and state the time and place of the meeting; and
 - (b) may be given by post, delivery, or electronic communication; and
 - (c) must be sent to the member's or special adviser's last known address in New Zealand. 25
- (5) An irregularity in a notice of a meeting is waived if all members entitled to receive the notice attend the meeting without protesting about the irregularity or agree to the waiver.

3 Methods of holding meetings 30

A meeting of the board may be held—

- (a) by a quorum of the members being assembled together at the time and place appointed for the meeting; and

- (b) by means of audio, audio and visual, or electronic communications by which a quorum of members can simultaneously communicate with each other throughout the meeting.

- 4 Quorum** 5
- (1) A quorum for a meeting of the board is—
 - (a) half the number of members (if the board has an even number of members); or
 - (b) a majority of the members (if the board has an odd number of members). 10
 - (2) However, a quorum for a meeting of the board is not fewer than 3 members.
 - (3) No business may be transacted at a meeting of the board if a quorum is not present.
- 5 Who presides at meetings?** 15
- (1) At all meetings of the board, the chairperson presides if he or she is present.
 - (2) If the chairperson is not present, or if there is no chairperson, the deputy chairperson, if present, must preside.
 - (3) The members present must appoint 1 of their number to be the chairperson for the meeting if— 20
 - (a) the chairperson and the deputy chairperson are not present; or
 - (b) there is no chairperson and no deputy chairperson.
 - (4) The elected person has and may perform and exercise all the powers, duties, and functions of the chairperson for the purposes of the meeting. 25
- 6 Voting at meetings**
- (1) Each member has 1 vote.
 - (2) In addition to his or her general vote, the chairperson at a meeting has a casting vote. 30
 - (3) A resolution of the board is passed if it is agreed to by all members present without dissent or if a majority of the votes cast on it are in favour of it.

- (4) A member present at a meeting of the board is presumed to have agreed to, and to have voted in favour of, a resolution of the board unless he or she expressly dissents from, or votes against, the resolution at the meeting.

7 Resolutions

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- (1) A resolution in writing signed or assented to by letter, telegram, telex, fax message, or electronic message by all members of the board is as valid and effectual as if it had been passed at a meeting of the board duly called and constituted.

- (2) The resolution may consist of several documents in the same form, each signed or appearing to have been sent by 1 or more members.

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Schedule 4
Acts amended

s 84

Citizenship Act 1977 (1977 No 61)

Repeal section 6(4)(b)(iii) and substitute:

“(iii) an officer or employee of *(Industry New Zealand/Trade New Zealand) New Zealand Trade and Enterprise* (as established by the *(Industry New Zealand and Trade New Zealand Integration Act 2003)New Zealand Trade and Enterprise Act 2003*) on service overseas; or”.

Repeal section 8A(3)(a)(iii) and substitute:

“(iii) an officer or employee of *(Industry New Zealand/Trade New Zealand) New Zealand Trade and Enterprise* (as established by the *(Industry New Zealand and Trade New Zealand Integration Act 2003) New Zealand Trade and Enterprise Act 2003*) on service overseas; or”.

Crimes Act 1961 (1961 No 43)

Omit from section 8A(1)(c)(iii) the words “the New Zealand Trade Development Board (as established by the New Zealand Trade Development Board Act 1988)” and substitute the words “*(Industry New Zealand/Trade New Zealand) New Zealand Trade and Enterprise* (as established by the *(Industry New Zealand and Trade New Zealand Integration Act 2003) New Zealand Trade and Enterprise Act 2003*)”.

Electoral Act 1993 (1993 No 87)

Omit from section 80(3)(a)(iii) the words “the New Zealand Trade Development Board established by the New Zealand Trade Development Board Act 1988” and substitute the words “*(Industry New Zealand/Trade New Zealand) New Zealand Trade and Enterprise* established by the *(Industry New Zealand and Trade New Zealand Integration Act 2003) New Zealand Trade and Enterprise Act 2003*”.

Foreign Affairs Act 1988 (1988 No 159)

Omit from section 6(1)(c) the words “the New Zealand Trade Development Board (as established by the New Zealand Trade Development Board Act 1988)” and substitute the words “*(Industry New Zealand/Trade New Zealand) New Zealand Trade and*

Foreign Affairs Act 1988 (1988 No 159)—continued

Enterprise (as established by the *(Industry New Zealand and Trade New Zealand Integration Act 2003)* New Zealand Trade and Enterprise Act 2003)”.

Official Information Act 1982 (1982 No 156)

Omit from the First Schedule the following items:

5

Industry New Zealand

New Zealand Trade Development Board.

Struck out (unanimous)

Insert, in the First Schedule, in its appropriate alphabetical order, the following item:

Industry New Zealand/Trade New Zealand.

Ombudsmen Act 1975 (1975 No 9)

Omit from Part II of the First Schedule the following items:

Industry New Zealand.

10

The New Zealand Trade Development Board.

Insert in Part II of the First Schedule, in its appropriate alphabetical order, the following item:

*(Industry New Zealand/Trade New Zealand)*New Zealand Trade and Enterprise and any subsidiary of New Zealand Trade and Enterprise.

15

Public Finance Act 1989 (1989 No 44)

Omit from the Fourth, Fifth, Sixth, and Seventh Schedules the following items:

Industry New Zealand.

20

New Zealand Trade Development Board.

Insert in the Fourth, Fifth, Sixth, and Seventh Schedules, in each case in their appropriate alphabetical order, the following item:

*(Industry New Zealand/Trade New Zealand)*New Zealand Trade and Enterprise.

25

Legislative history

5 March 2003

Introduction (Bill 35–1)

25 March 2003

First reading and referral to Commerce Committee
