

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 13 April 1982.

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

Hon. Mr McLay

LAW REFORM

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No. 107—2

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A BILL INTITULED

An Act to amend the law relating to nomination of accounts, identification parades, mortgagees' sales, trustees' powers, and other matters

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

1. Short Title—(1) This Act may be cited as the Law Reform Act (1981) 1982.

New

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(2) Section 17 (2) of this Act shall come into force on the 1st day of January 1983.

(3) Except as provided in subsection (2) of this section, this Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

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PART I

AMENDMENTS OF THE ADMINISTRATION ACT 1969, THE TRUSTEE SAVINGS BANKS ACT 1948, AND THE POST OFFICE ACT 1959

Administration Act 1969

5 **2. Sections to be read with Administration Act 1969—**
This section and the next succeeding section shall be read together with and deemed part of the Administration Act 1969* (in that section referred to as the principal Act).

10 **3. New Part (relating to nomination of accounts)**
inserted in principal Act—The principal Act is hereby amended by inserting, after Part I, the following Part:

“PART IA

“NOMINATIONS OF ACCOUNTS

15 **“68A. Interpretation—**In this Part of this Act, unless the context otherwise requires, the term ‘nomination’ means the nomination by any person (in this Part referred to as the nominator), pursuant to any enactment, of any person or persons (in this Part referred to as the nominee or nominees) to whom any amount standing to the credit of the nominator
20 in any account at the time of his death is to be paid on his death.

25 **“68B. Application of Part—**(1) Except as provided in subsection (2) of this section, this Part of this Act applies to every nomination whether made before or after the commencement of this Part.

“ (2) This Part of this Act does not apply to any nomination made before the commencement of this Part if the nominator died before that commencement.

30 “ (3) In the event of any conflict between any provision of this Part of this Act and any provision of any enactment under which any nomination is made, the provision of this Part shall prevail.

35 **“68C. Effect of nominations—**(1) No nomination, or nominations in the aggregate, shall have effect in respect of any sum in excess of \$4,000 in any account.

“ (2) Subject to subsection (3) of this section, every nomination shall have effect as if it were a specific legacy bequeathed by will.

*1969, No. 52

Amendments: 1970, No. 45; 1979, No. 38

“(3) All money in any account that is subject to a nomination at the death of the nominator shall, notwithstanding the nomination, form part of his estate, and shall devolve and be subject to all claims against that estate, whether arising under any enactment or contract or otherwise, in the same manner and to the same extent as if it were a specific legacy bequeathed by will. 5

“68D. **Revocation of nomination**—(1) Any instrument of nomination may be revoked in any manner by which a will or codicil may be revoked. 10

“(2) Every instrument of nomination shall be revoked by operation of law in any circumstances in which it would be so revoked if it were a will or codicil.

“(3) Without limiting subsection (1) or subsection (2) of this section,— 15

“(a) Every general revocation by a nominator of all former testamentary dispositions shall be deemed to include the revocation of the nomination, unless the nomination is expressly preserved:

“(b) Every general testamentary disposition of the 20 nominator’s whole estate, or of the whole of his residuary estate, made subsequent to the nomination shall be deemed to revoke the nomination, unless the nomination is expressly preserved.”

Trustee Savings Banks Act 1948 25

4. Sections to be read with Trustee Savings Banks Act 1948—This section and the next succeeding section shall be read together with and deemed part of the Trustee Savings Banks Act 1948* (in that section referred to as the principal Act). 30

5. Payment of deposits to nominated beneficiaries—

(1) Section 19A of the principal Act (as inserted by section 2 of the Trustee Savings Banks Amendment Act 1961) is hereby amended by inserting in subsection (1), after the words “any amount”, the words “, not exceeding \$4,000,”. 35

(2) Section 19A of the principal Act (as so inserted) is hereby further amended by repealing subsection (3), and substituting the following subsection:

*Reprinted 1973, Vol. 2, p. 1663

Amendments: 1975, No. 23; 1976, No. 27; 1977, No. 23; 1977, No. 180; 1978, No. 129; 1979, No. 30

“(3) Every such nomination shall be in writing, signed by the depositor in the presence of a Justice of the Peace, a solicitor of the High Court, or any other person authorised to take statutory declarations.”

5 (3) Section 19A of the principal Act (as so inserted) is hereby further amended by inserting in subsection (4), before the words “The making,”, the words “Subject to subsection (3) of this section and to Part IA of the Administration Act 1969,”.

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Post Office Act 1959

6. Sections to be read with Post Office Act 1959—This section and the next succeeding section shall be read together with and deemed part of the Post Office Act 1959* (in that section referred to as the principal Act).

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7. Depositor may nominate beneficiary in event of death—(1) Section 124 of the principal Act is hereby amended by inserting in subsection (1), after the words “any amount”, the words “, not exceeding \$4,000,”.

(2) Section 124 of the principal Act is hereby further
20 amended by repealing subsection (3), and substituting the following subsection:

“(3) Every such nomination shall be in writing, signed by the depositor in the presence of a Justice of the Peace, a solicitor of the High Court, or any other person authorised to
25 take statutory declarations.”

(3) Section 124 of the principal Act is hereby further amended by inserting in subsection (4), before the words “The making,”, the words “Subject to subsection (3) of this section and to Part IA of the Administration Act 1969,”.

*Reprinted 1970, Vol. 3, p. 2155

Amendments: 1971, No. 120; 1972, No. 123; 1973, No. 2; 1973, No. 86; 1974, No. 64; 1975, No. 24; 1975, No. 98; 1977, No. 72; 1978, No. 24

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PART II

AMENDMENTS OF THE CRIMES ACT 1961, THE SUMMARY PROCEEDINGS ACT 1957, AND THE EVIDENCE ACT 1908

Crimes Act 1961

8. Sections to be read with Crimes Act 1961—This
35 section and the next succeeding section shall be read together with and deemed part of the Crimes Act 1961* (in that section referred to as the principal Act).

*R.S. Vol. 1, p. 635

Amendments: 1979, No. 5; 1979, No. 127; 1980, No. 44; 1980, No. 63; 1980, No. 85

9. Heading and 3 new sections (relating to identification evidence) inserted in principal Act—The principal Act is hereby amended by inserting, after section 344A (as inserted by section 3 (1) of the Crimes Amendment Act 1980), the following heading and sections:

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“Identification Evidence

“344B. Attendance at identification parade voluntary—

(1) No person charged with an offence shall be compelled to attend an identification parade.

“(2) If any person charged with an offence does attend an identification parade, he shall be entitled to have his solicitor present.

“(3) Where a person charged with an offence has refused to attend an identification parade, no comment adverse to the person charged shall be made thereon.

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“344C. Information relating to identification witness to be supplied to defendant—(1) In this section ‘identification witness’, in relation to the trial of a person accused of any offence, means a person who claims to have seen the offender in the circumstances of the offence.

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“(2) Subject to subsection (3) of this section, at any time after a person has been charged with an offence, the prosecutor shall, on request by or on behalf of that person, supply to that person—

“(a) The name and address of each identification witness known to the prosecutor, whether or not the prosecutor intends to call that witness to give evidence at the trial; and

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“(b) A statement of any description of the offender given by each such witness to the Police or the prosecutor; and

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“(c) A copy of any identikit picture or other drawing made by any such witness or from information supplied by him.

“(3) A Judge may, on the application of the prosecutor, make an order excusing the prosecutor from disclosing to the defendant any information referred to in subsection (2) (a) of this section if he is satisfied that such an order is necessary to protect the identification witness or any other person.

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“344D. Jury to be warned where principal evidence relates to identification—(1) Where in any proceedings before a jury the case against the accused depends wholly or substantially on the correctness of one or more visual

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identifications of him, the Judge shall warn the jury of the special need for caution before finding the accused guilty in reliance on the correctness of any such identification.

5 “(2) The warning need not be in any particular words but shall—

“(a) Include the reason for the warning; and

“(b) Alert the jury to the possibility that a mistaken witness may be convincing; and

10 “(c) Where there is more than one identification witness, advert to the possibility that all of them may be mistaken.”

Summary Proceedings Act 1957

10. Sections to be read with Summary Proceedings Act 1957—This section and the next succeeding section shall be read together with and deemed part of the Summary Proceedings Act 1957* (in that section referred to as the principal Act).

*Reprinted 1975, Vol. 4, p. 3107

Amendments: 1976, No. 169; 1978, No. 68; 1979, No. 126; 1980, No. 84

11. Identification evidence—The principal Act is hereby amended by inserting, after section 67, the following section:

20 “67A. Where any evidence of identity is given against the defendant and the defendant disputes that evidence, the Court shall bear in mind the need for caution before convicting the defendant in reliance on the correctness of any such identification and, in particular, the possibility that the

25 witness may be mistaken.”

Evidence Act 1908

12. Sections to be read with Evidence Act 1908—This section and the next succeeding section shall be read together with and deemed part of the Evidence Act 1908* (in that

30 section referred to as the principal Act).

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

Amendments: 1980, No. 6; 1980, No. 27

13. Admissibility of previous description by identification witness—The principal Act is hereby amended by inserting, before section 23, the following section:

35 “22A. Notwithstanding the rule against the admissibility of previous consistent statements, where a witness for the prosecution gives evidence identifying the accused as a person

whom he saw in the circumstances of the offence, any description of the offender given to the Police or the prosecutor by the witness before the witness's first identification of the accused shall be admissible as evidence tending to show that the witness's identification of the accused is consistent with his previous description of the offender."

PART III

AMENDMENTS OF THE PROPERTY LAW ACT 1952, THE LAND TRANSFER ACT 1952, AND THE MATRIMONIAL PROPERTY ACT 1976

Property Law Act 1952

14. Sections to be read with Property Law Act 1952—

This section and the next 6 succeeding sections shall be read together with and deemed part of the Property Law Act 1952* (in those sections referred to as the principal Act).

Struck Out

15. Certain instruments to be in writing—(1) Section 49A of the principal Act (as inserted by section 2 of the Property Law Amendment Act 1980) is hereby amended by omitting from subsection (1) the words "in writing".

(2) Section 49A of the principal Act (as so inserted) is hereby further amended by inserting in subsection (5), after paragraph (a), the following paragraph:

"(aa) Affect the creation of oral leases of land for terms of 3 years or less; or"

(3) Section 49A of the principal Act (as so inserted) is hereby further amended by inserting in subsection (6), after the words "for sections", the words "1 to 3 and".

New

15. Certain instruments to be in writing—(1) Section 49A of the principal Act (as inserted by section 2 of the Property Law Amendment Act 1980) is hereby amended by inserting in subsection (1), before the word "interest", the word "legal".

(2) The said section 49A (as so inserted) is hereby further amended by inserting in subsection (5), after paragraph (a), the following paragraph:

*Reprinted 1970, Vol. 3, p. 2287

Amendments: 1971, No. 121; 1975, No. 36; 1976, No. 144

New

“(aa) Affect the creation of any lease—

“(i) Of land subject to the Land Transfer Act 1952, for a term of less than 3 years; or

5 “(ii) Of any other land, for a term not exceeding 1 year; or”.

(3) The said section 49A (as so inserted) is hereby further amended by inserting in subsection (6), after the words “for sections”, the words “1 to 3 and”.

10 **16. Right of mortgagor to bring proceedings against mortgagee**—The principal Act is hereby amended by inserting, after section 80A (as inserted by section 2 of the Property Law Amendment Act 1959 and amended by section 2 of the Property Law Amendment Act 1975), the following
15 section:

“80B. (1) The rule of law whereby the mortgagor is barred for instituting any proceedings in relation to the mortgage against the mortgagee unless he has first offered to redeem the mortgaged land is hereby abolished.

20 “(2) Notwithstanding any provision to the contrary in the instrument of mortgage, the mortgagor may institute any proceedings against the mortgagee notwithstanding that he has not first offered to redeem the mortgaged land.”

25 **17. Mortgagee’s notice of intention to exercise rights**—(1) Section 92 of the principal Act is hereby amended by omitting from subsection (1) the words “specifying the default complained of and a date on which the power will become exercisable or the moneys will become payable, as the case may be, and requiring the owner to
30 remedy the default, and the owner fails to remedy the default before the date so specified”, and substituting the words “that complies with the requirements of this section, and (in any case where the default complained of is capable of remedy) the owner fails to remedy the default before the date specified
35 in the notice”.

(2) The said section 92 is hereby further amended by inserting, after subsection (1) (as so amended), the following subsection:

40 “(1A) Every notice shall be in the form prescribed by regulations made under this Act; but no notice shall (*be held in any proceedings to*) be void by reason of any variation from the

prescribed form *(if the Court is satisfied that the notice adequately informs)* unless the notice does not adequately inform the

mortgagor of—

“(a) The nature and extent of the default complained of; and 5

“(b) The date (being a date that complies with the provisions of subsection (2) of this section) by which he is required to remedy the default (if it is capable of remedy); and

“(c) The rights that the mortgagee will be entitled to 10 exercise if the default is not remedied within the specified period,—

and *(that the variation does not materially prejudice)* the variation materially prejudices the interests of the mortgagor.”

Struck Out

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(3) The said section 92 is hereby further amended by omitting from subsection (2) the words “1 month”, and substituting the words “4 weeks, in the case of personal service, or 5 weeks, in the case of postal service,”.

New

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(3) The said section 92 is hereby further amended by omitting from subsection (2) the words “1 month”, and substituting the words “4 weeks”.

(4) Section 92 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection: 25

“(4A) Where, in the case of land subject to the Land Transfer Act 1952, a caveat in form N in the Second Schedule to that Act has been lodged (otherwise than by the District Land Registrar) subsequent to the registration of the mortgage, the provisions of subsection (4) of this section shall 30 apply as if the caveat were a subsequent mortgage.”

18. Term “estimate of value” replaced by “redemption price”—(1) Section 99 of the principal Act is hereby amended by omitting from subsection (1) the words “the value at which he estimates the land to be sold”, and 35 substituting the words “the price (in this section and sections 100 and 101 of this Act termed the redemption price) at which the mortgagor may redeem the land to be sold”.

(2) The said section 99 is hereby further amended by inserting in subsection (1A) (as inserted by section 3 (1) of the Property Law Amendment Act 1975), after the words "name and address" where they first occur, the words "(or, where
5 they are unknown to the applicant, the last known place of residence or business)".

(3) The said section 99 is hereby further amended by omitting from paragraph (b) of subsection (2) (as substituted by section 3 (2) of the Property Law Amendment Act 1975),
10 the words "value at which the applicant has estimated", and substituting the words "redemption price of".

(4) Section 100 of the principal Act is hereby amended—

(a) By omitting the words "value of the land, as estimated by the mortgagee," and substituting the words
15 "redemption price of the land":

(b) By omitting the words "estimated the value thereof as aforesaid", and substituting the words "fixed the redemption price in his application for sale".

(5) Section 101 of the principal Act is hereby amended by
20 omitting from subsection (3) the words "value of the land as estimated by the mortgagee as aforesaid", and substituting the words "redemption price of the land".

19. Regulations—The principal Act is hereby amended by inserting, after section 104, the following heading and
25 section:

“Regulations

“104A. The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

30 “(a) Prescribing the form of notice required by section 92 of this Act to be given by the mortgagee before the mortgagee exercises his rights on default:

“(b) Prescribing the form and manner of advertising of sales to be conducted by Registrars under section
35 99 of this Act:

“(c) Prescribing conditions of sale to apply in respect of sales under that section, and providing for the variation of any such conditions by the Registrar, whether on the application of the mortgagee or of
40 his own motion:

“(d) Providing for such other matters as are contemplated by or necessary for giving full effect to this Part of this Act and for its due administration.”

20. Service of notices—*Struck Out*

(1) Section 152 of the principal Act is hereby amended by inserting in subsection (1), after the words “A notice so posted shall”, the words “, in the absence of proof to the contrary,”. 5

New

(1) Section 152 of the principal Act is hereby amended by adding to subsection (1) the words “, unless the intended recipient of the notice proves that, otherwise than through 10 any fault on his own part, it was not received at that time”.

(2) The said section 152 is hereby further amended by inserting, after subsection (6), the following subsection:

“(6A) Without limiting the generality of the foregoing provisions of this section, this section applies to every notice 15 to be served for the purposes of section 92 or section 118 of this Act, notwithstanding anything in the instrument of mortgage or lease.”

(3) The said section 152 is hereby further amended by omitting from subsection (7) the word “This”, and 20 substituting the words “Except as provided by subsection (6A) of this section, this”.

[Clauses 21 to 24 will form part of a separate Bill, and are still before the Statutes Revision Committee]

PART IV

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AMENDMENTS OF THE TRUSTEE ACT 1956

25. Sections to be read with Trustee Act 1956—This section and the next succeeding section shall be read together with and deemed part of the Trustee Act 1956* (in that section referred to as the principal Act). 30

*Reprinted 1977, Vol. 4, p. 3607

26. New heading and sections (relating to trustees' powers) inserted—The principal Act is hereby amended by inserting in Part III, after section 42, the following heading and sections:

“Special Powers in Respect of Businesses

“42A. **Power to set aside reserves out of income or profits of business**—(1) Where any property settled by way of succession is employed in a business that the trustee is
5 empowered or authorised to carry on, and the trustee considers that in the interests of the persons entitled to the income or capital of the property, and in accordance with good business practice, it is expedient to set aside and retain as a capital reserve part of the income or profits arising
10 therefrom in any period, then, notwithstanding any rule of law to the contrary, and without in any way affecting any other power conferred on him by this Act or any other enactment (including, without limiting the generality of the foregoing, the power to set up a depreciation or replacement
15 fund under section 15 (2) of this Act), or by the instrument creating the trust, it shall be lawful for but not obligatory upon the trustee to direct that such part of the income or profits arising from the property in that period as he determines shall cease to be income and shall become a
20 capital reserve of the business.

“(2) Any income or profits reserved by the trustee under this section may be applied by him in his discretion either immediately or at any time or times thereafter in, for, or towards all or any of the following purposes:

25 “(a) The payment or discharge of any debts or liabilities of the business that are properly payable out of capital:

30 “(b) The improvement or development of any of the assets of the business, including the acquisition of trading stock or livestock:

35 “(c) The replacement, repair, maintenance, upkeep, or renovation of any of the assets of the trust used in the business, whether the cost of such replacement, repair, maintenance, upkeep, or renovation would otherwise have to be paid out of capital or out of income or partly out of capital and partly out of income:

40 “(d) The acquisition by purchase or otherwise of property or assets of like nature to any of the assets used in the business or that may advantageously be employed in conjunction therewith:

“(e) The provision of additional capital for the more efficient working of the business and a fund to enable the business to be developed:

“(f) Meeting any losses notwithstanding that under any rule of law or enactment or provision in the trust instrument to the contrary such losses should be borne or partly borne by income:

“(g) Any purpose or other purpose to which or for which in 5
the exercise of any power, trust, or authority conferred upon him by this Act or any other enactment, or rule of law or by the trust instrument creating the trust, or Court order the trustee may pay or apply the income or capital of the property 10
or of any other assets held by him upon the same trusts.

“(3) All income or profits reserved by the trustee under this section shall, subject to the provisions of this section, follow the destination of the capital of the property and shall be 15
subject to all the trusts, powers, and provisions applicable thereto.

“**42B. Power to apply capital of business for maintenance**—(1) Where any property settled by way of succession is employed in a business that the trustee is 20
empowered or authorised to carry on, and the trustee considers in any period that the income arising from the business and available for distribution to the person entitled to receive it (in this section referred to as the income beneficiary) is insufficient for the proper maintenance of the 25
income beneficiary, having regard to any other income received or to be received during that period by the income beneficiary from whatever source and to all the other circumstances of the case, then, notwithstanding any rule of law to the contrary, and without in any way affecting any 30
other power conferred on him by this Act or any other enactment (including, without limiting the generality of the foregoing, the power to make advances out of income and capital under sections 40 and 41 of this Act) or by the instrument creating the trust, it shall be lawful for but not 35
obligatory upon the trustee to pay or apply any capital money or other capital asset subject to the trust and employed in the business (including any money for the time being standing to the credit of any fund established by the trustee under section 15 (2) or section 42A of this Act) for the maintenance or 40
benefit, in such manner as he may in his absolute discretion think fit, of the income beneficiary.

“(2) If, in any such case, the trustee pays or applies any capital money or capital asset for the maintenance or benefit of the income beneficiary in accordance with subsection (1) of 45

this section, and, in any subsequent period, the trustee considers that the income available from the business for distribution to the income beneficiary is more than sufficient for the proper maintenance of the income beneficiary, having
5 regard to any other income received or to be received during that subsequent period by the income beneficiary from whatever source and to all the other circumstances of the case, then the trustee may recoup the whole or such part as he thinks fit of the sum so paid (or of a sum equivalent to the
10 value of the capital asset so applied) from the income arising from the business during that period and available for distribution to the income beneficiary.

“42C. Matters to be taken into consideration when exercising powers—In considering whether or not to
15 exercise, or in what manner he should exercise, any power conferred on him by section 42A or section 42B of this Act, the trustee shall have regard to the desirability of ensuring both—

“(a) The proper maintenance and support of the beneficiary entitled to the income arising from the
20 business; and

“(b) The preservation and improvement of the business enterprise in the interests of the beneficiaries entitled to the capital thereof.

“42D. Apportionment of income—Where any property
25 settled by way of succession is employed in a business that the trustee is empowered or authorised to carry on, and the trustee considers that, in order better to determine the net income of the business that is available in any period for appropriation and distribution to the person or persons
30 entitled under the trust to the income therefrom, it is expedient to do so, he may—

“(a) Instead of commencing the accounting period to determine such income with the date of the commencement of the trust, adopt the accounting
35 period employed in respect of the business immediately before the commencement of the trust, continue the accounting period so employed and current immediately before the commencement of the trust, and apportion the income so
40 determined on such basis as if it had accrued evenly during that accounting period:

“(b) Instead of preparing final accounts, in respect of any interest in the whole or any part of the income arising from the business, as at the date of the termination of that interest, prepare such accounts at the end of the accounting period employed in respect of the business immediately before the date of the termination of the interest and current at that date, and apportion the income so determined on such basis as if it had accrued evenly during that accounting period.”

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