

**LAW REFORM (MISCELLANEOUS PROVISIONS) BILL
(NO. 3)**

AS REPORTED FROM THE JUSTICE AND LAW REFORM COMMITTEE

PURSUANT to a power granted to it by the House, the Justice and Law Reform Committee divided the Law Reform (Miscellaneous Provisions) Bill (No. 3) into separate bills.

Clauses 2 to 16, 24 and 25, 36 to 46, 51 to 58, 63 to 69, 93 to 112 and the Second Schedule were divided from the bill to form a separate bill, the Law Reform (Miscellaneous Provisions) Bill (No. 4). Clauses 17 and 18 were divided from the bill to form a separate bill, the Criminal Justice Amendment Bill (No. 2). Both these bills were reported to the House on 6 December 1994.

This bill comprises the remaining clauses of, and the First Schedule to, the Law Reform (Miscellaneous Provisions) Bill (No. 3).

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 9 March 1995.

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 single rule, or with single rule before first line and after last line. Clauses that appear in other bills are indicated by points of ellipsis.

Hon. D. A. M. Graham

**LAW REFORM (MISCELLANEOUS PROVISIONS)
(NO. 3)**

ANALYSIS

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A BILL INTITULED

An Act to amend certain enactments

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

1. Short Title—This Act may be cited as the Law Reform (Miscellaneous Provisions) Act (No. 3) 1994. 5

Customs

19. Sections to be read with Customs Act 1966—This section and the next 2 succeeding sections shall be read together with and deemed part of the Customs Act 1966* (in those sections referred to as the principal Act). 10

*R.S. Vol. 2, p. 57

Amendments: 1979, No. 7; 1981, No. 20; 1982, No. 126; 1985, No. 131; 1986, No. 44; 1987, No. 63; 1987, No. 75; 1987, No. 89; 1987, No. 128; 1988, No. 17; 1988, No. 127; 1988, No. 182; 1989, No. 47; 1990, No. 89; 1990, No. 117; 1991, No. 73; 1991, No. 84; 1991, No. 130; 1992, No. 30; 1993, No. 83

Struck Out

20. New sections substituted—The principal Act is hereby amended by repealing section 154, and substituting the following sections:

15

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“154. **Duty to be a charge on certain goods**—(1) This section applies in relation to goods on which duty is payable, being goods—

5 “(a) The property in which is held by the person liable to pay the duty; and

“(b) That have not been incorporated into any other goods by any process.

10 “(2) Duty on goods to which this section applies constitutes a charge on the goods until it is paid in full.

“(3) If any duty that, by virtue of **subsection (2)** of this section, constitutes a charge on goods is due and unpaid, the Collector may take possession of the goods and sell them in satisfaction or part satisfaction of the charge.

15 “154A. **Ranking of duty in other cases**—(1) This section applies to duty that is payable in relation to goods—

“(a) The property in which has been transferred by the person liable to pay the duty; or

20 “(b) That have been incorporated into any other goods by any process; or

“(c) That have been lost or have ceased to exist.

25 “(2) If any duty to which this section applies is due and unpaid, the duty shall be paid out of the property of the person liable to pay the duty in accordance with the following provisions of this section.

“(3) In the case of an individual who is declared bankrupt, the amount of any duty to which this section applies shall be paid in accordance with the requirements of section 104 of the Insolvency Act 1967.

30 “(4) In the case of a company that is in liquidation, the amount of any duty to which this section applies shall be paid in accordance with the requirements of section 286 of, and Schedule 8c to, the Companies Act 1955, or section 312 of, and the Seventh Schedule to, the Companies Act 1993, as the case may be.

35 “(5) In the case of a company in respect of the property of which a receiver is appointed in circumstances to which section 30 of the Receiverships Act 1993 applies, the amount of duty to which this section applies shall be paid in
40 accordance with the requirements of section 30(2) of the Receiverships Act 1993.

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“(6) In the case of an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) that is put into liquidation, the amount of any duty to which this section applies shall be paid in accordance with section 17B of the Judicature Act 1908. 5

“(7) In the case of an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) in respect of the property of which a receiver is appointed by the High Court, the amount of duty to which this section applies shall be paid in accordance with the directions of the Court. 10

“(8) This section applies notwithstanding anything in any other Act.

“(9) Nothing in this section or in section 154 of this Act derogates from section 155 of this Act.” 15

(2) Sections 118N and 118O of the principal Act (as substituted by section 2 of the Company Law Reform (Transitional Provisions) Act 1994) are hereby repealed.

(3) The Company Law Reform (Transitional Provisions) Act 1994 is hereby consequentially amended by repealing so much of the First Schedule thereto as relates to the principal Act. 20

New

20. New sections substituted—(1) The principal Act is hereby amended by repealing section 154, and substituting the following sections: 25

“154. **Duty a charge on goods**—(1) Subject to subsection (3) of this section, the duty on any goods shall constitute a charge on those goods until fully paid.

“(2) Subject to the provisions of this section, if any duty charged on any goods under this section is due and unpaid, the Collector may, whether or not the property in the goods has passed to a third party, take possession of the goods, and sell them or any part of them in satisfaction or part satisfaction of the charge. 30 35

“(3) Subsection (1) of this section shall not apply as against a purchaser of the goods for valuable consideration and without knowledge that the duty was owing but had not been paid.

New

- “(4) For the purposes of this section, ‘purchaser’ means—
- 5 “(a) A person (other than a person liable to pay the duty) who acquired the goods from a person liable to pay the duty; or
- “(b) A subsequent purchaser of the goods.
- “(5) In any case where a person claims, at or before the taking of possession of the goods by the Collector, that he or she is a purchaser to whom **subsection (3)** of this section applies, and there is a dispute as to whether that subsection applies, the Collector may—
- 10 “(a) Where the goods are in the possession or control of the importer, take possession of the goods and, subject to **subsection (7)** of this section, retain possession of them:
- 15 “(b) Where the goods are in the possession or control of the purchaser, by notice in writing, direct the purchaser, subject to **subsection (7)** of this section, to retain the possession or control of the goods,—
- 20 pending the resolution of the dispute, and **subsections (7) to (12)** of this section shall apply.
- “(6) In any case where—
- “(a) Possession of the goods has been taken by the Collector but the goods have not been sold; and
- 25 “(b) A person notifies the Collector that he or she claims that he or she is a purchaser to whom **subsection (3)** of this section applies; and
- “(c) There is a dispute as to whether that subsection applies,—
- 30 the Collector shall, subject to **subsection (7)** of this section, retain possession of the goods pending the resolution of the dispute, and **subsections (7) to (10)** of this section shall apply.
- “(7) Where any goods that the Collector has taken possession of or has directed a purchaser to retain under this
- 35 section consist wholly or partly of any living creature or any thing which, in the opinion of the Collector, is of a perishable nature or which may otherwise lose its value if not sold as soon as possible, the Collector may, or the purchaser in possession or control of the goods may with the prior consent of the
- 40 Collector, sell the goods, and the net proceeds of such sale shall be deemed to be substituted for the thing so sold.

New

- “(8) The Collector or the purchaser of the goods may apply to the court for a declaration as to whether the goods were acquired by the purchaser for valuable consideration and without knowledge that the duty was owing and unpaid. 5
- “(9) In any proceeding under **subsection (8)** of this section, where the purchaser and a person liable to pay the duty are related within the meaning of **subsection (10)** of this section, the onus of proving that the goods were acquired by the purchaser for valuable consideration and without knowledge that the duty was owing but unpaid shall be on the purchaser. 10
- “(10) For the purposes of this section, one person is related to another person—
- “(a) Where the person is connected to the other person by blood relationship, marriage, or adoption or where the person is a trustee for the other person; and for the purposes of this paragraph— 15
- “(i) Persons are connected by blood relationship if within the fourth degree of relationship:
- “(ii) Persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other, or if one has a relationship in the nature of marriage with the other or with a person who is connected by blood relationship to the other: 20 25
- “(iii) Persons are connected by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other:
- “(b) If the other person is a company, where the person is a director or officer of the other person, or is related (within the meaning of **paragraph (a)** of this subsection) to a director or officer of the other person, or is directly or indirectly able to exercise control over the affairs of the other person: 30 35
- “(c) If the person is a company, where the other person is a director or officer of the person, or is related (within the meaning of **paragraph (a)** of this subsection) to a director or officer of the person, or is directly or indirectly able to exercise control over the affairs of the person: 40
- “(d) If the person and the other person are companies,—

New

5 “(i) Where the person is a holding company or a subsidiary of the other person within the meaning of section 158 of the Companies Act 1955 or section 5 of the Companies Act 1993, as the case may be; or

10 “(ii) Where the person owns or controls shares that in aggregate carry the right to exercise or control the exercise of 20 percent or more of the voting power at meetings of the other person or the other person owns or controls shares that in aggregate carry the right to exercise or control the exercise of 20 percent or more of the voting power at meetings of the person; or

15 “(iii) Where the person and the other person have the same holding company within the meaning of section 158 of the Companies Act 1955 or section 5 of the Companies Act 1993, or a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20 percent or more of the voting power at meetings of each of them.

20 “(11) Any purchaser who, except with the consent of the Collector, takes any action in contravention of a direction given by the Collector under **subsection (5)** of this section, commits an offence and is liable on conviction on indictment,—

25 “(a) In the case of an individual, to a fine not exceeding \$5,000;

30 “(b) In the case of a body corporate, to a fine not exceeding \$15,000.

35 “(12) Any purchaser who, knowingly and without the consent of the Collector, takes any action in contravention of a direction given by the Collector under **subsection (5)** of this section, commits an offence and is liable on conviction on indictment,—

“(a) In the case of an individual, to a fine not exceeding \$15,000; or

40 “(b) In the case of a body corporate, to a fine not exceeding \$50,000; or

“(c) In either case, to an amount not exceeding 3 times the value of the goods to which the offence relates.

New

- 154A. Rights and duties of Collector in recovery of duty**—(1) This section applies to the recovery of unpaid duty that is due in relation to goods by—
- “(a) An individual who is bankrupt; or 5
 - “(b) A company that is in liquidation; or
 - “(c) A company in respect of the property of which a receiver has been appointed in circumstances to which section 30 of the Receiverships Act 1993 applies; or 10
 - “(d) An unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) that is put into liquidation; or
 - “(e) An unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) in respect of the property of which a receiver is appointed by the High Court— 15
- where the unpaid duty is a charge on the goods.
- “(2) In any case to which this section applies, the provisions of section 279 of the Companies Act 1955, section 305 of the Companies Act 1993, and section 90 of the Insolvency Act 1967 shall not apply. 20
- “(3) The Collector shall notify the assignee in bankruptcy or the liquidator or the receiver, as the case may be, that the unpaid duty constitutes a charge on the goods in accordance with **section 154** of the Act. 25
- “(4) Every notice under **subsection (3)** of this section shall be given within 60 days after,—
- “(a) In the case of an individual, the date of the notice in the *Gazette* that the individual has been adjudicated bankrupt; or 30
 - “(b) In the case of a company, the date of the notice in the *Gazette* of the date of the commencement of the liquidation, or of the appointment of a receiver, as the case may be; or 35
 - “(c) In the case of an unincorporated body of persons described in **subsection (1) (d)** of this section, the date of the notice in the *Gazette* of the commencement of the liquidation; or
 - “(d) In the case of an unincorporated body of persons described in **subsection (1) (e)** of this section, the date of 40

New

- the notice in the *Gazette* of the appointment of a receiver—
- 5 or, if there is a dispute as to whether **section 154 (3)** of this Act applies, within 30 days after the dispute is resolved or determined.
- “(5) If any duty to which this section applies is due and unpaid, the Collector may—
- 10 “(a) Realise the property subject to the charge; or
“(b) Value the property subject to the charge and claim in the bankruptcy, liquidation, or receivership, as the case may be, in accordance with the provisions of **section 154B** of this Act, for the balance of the unpaid duty (if any); or
- 15 “(c) Realise the property subject to the charge and claim in the bankruptcy, liquidation, or receivership, as the case may be, in accordance with the provisions of **section 154B** of this Act for any balance of the unpaid duty after deducting the amount realised; or
- 20 “(d) Surrender the charge to the official assignee or the liquidator or the receiver, as the case may be, for the general benefit of creditors and claim in the bankruptcy, liquidation, or receivership, as the case may be, in accordance with the provisions of **section 154B** of this Act for the whole debt.
- 25 “(6) If the Collector values the property subject to the charge and claims for the balance of unpaid duty (if any) in accordance with **subsection (5) (b)** of this section, the valuation and claim must—
- 30 “(a) Contain full particulars of the valuation and claim; and
“(b) Contain full particulars of the charge; and
“(c) Identify any documents that substantiate the claim and the charge.
- “(7) The official assignee or the liquidator or the receiver, as
- 35 the case may be, may require production of any document referred to in **subsection (6)** of this section.
- “(8) Where the Collector realises the property subject to the charge, the provisions of section 223 of this Act shall apply.
- “(9) Where a claim is made by the Collector under
- 40 **subsection (6)** of this section, the official assignee, liquidator, or receiver, as the case may be, must—
- “(a) Accept the valuation and claim; or

New

- “(b) Reject the valuation and claim in whole or in part, but—
- “(i) Where a valuation and claim is rejected in whole or in part, the Collector may make a revised valuation and claim within 20 days of receiving notice of the rejection; and
- “(ii) The official assignee, liquidator, or receiver, as the case may be, may, if he or she subsequently considers that a valuation and claim was wrongly rejected in whole or in part, revoke or amend that decision.
- “(10) Where the official assignee, liquidator, or receiver, as the case may be,—
- “(a) Accepts a valuation and claim under **subsection (9) (a)** of this section; or
- “(b) Accepts a revised valuation and claim under **subsection (9) (b) (i)** of this section; or
- “(c) Accepts a valuation and claim on revoking or amending a decision to reject a claim under **subsection (9) (b) (ii)** of this section,—
- the official assignee, liquidator, or receiver, as the case may be, may, unless the Collector has realised the property, at any time, redeem the charge on payment of the assessed value.
- “(11) The official assignee, the liquidator, or the receiver, as the case may be, may at any time, by notice in writing, require the Collector, within 30 days after receipt of the notice, to—
- “(a) Elect which of the rights referred to in **subsection (5)** of this section the Collector wishes to exercise; and
- “(b) If the Collector elects to exercise the right referred to in **paragraph (b)** or **paragraph (c)** or **paragraph (d)** of **subsection (5)** of this section, exercise the right within that period.
- “(12) If—
- “(a) The Collector fails to give notice to the official assignee or the liquidator or the receiver, as the case may be, in accordance with **subsection (3)** of this section within the time specified in **subsection (4)** of this section; or
- “(b) Having been required to make an election in accordance with **subsection (11)** of this section, the Collector fails to do so within the time specified in that subsection,—
- the Collector shall be taken to have surrendered the charge to the official assignee, or liquidator, or receiver, as the case may be, under **subsection (5) (d)** of this section for the general benefit of

New

creditors and the Collector may claim in the bankruptcy, liquidation, or receivership, as the case may be, in accordance with the provisions of **section 154B** of this Act.

5 “(13) Where the Collector has surrendered a charge under **subsection (5) (d)** of this section or is taken as having surrendered a charge under **subsection (12)** of this section, the Collector may, with the leave of the Court or the official assignee or the liquidator or the receiver, as the case may be, and subject to
10 such terms and conditions as the Court or the official assignee or the liquidator or the receiver, as the case may be, thinks fit, at any time before the official assignee, liquidator, or receiver, as the case may be, has realised the property charged,—

“**(a)** Withdraw the surrender and rely on the charge; or

15 “**(b)** Submit a new claim under this section.

“**154B. Ranking of duty**—(1) This section applies to the recovery of unpaid duty—

“**(a)** That is owing by—

“**(i)** An individual who is bankrupt; or

20 “**(ii)** A company that is in liquidation; or

“**(iii)** A company in respect of the property of which a receiver has been appointed in circumstances to which section 30 of the Receiverships Act 1993 applies; or

25 “**(iv)** An unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) that is put into liquidation; or

30 “**(v)** An unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) in respect of the property of which a receiver is appointed by the High Court— that does not constitute a charge on goods; or

“**(b)** That the Collector is entitled to claim under this section pursuant to **section 154A** of this Act.

35 “(2) Unpaid duty to which this section applies shall be paid in accordance with the following provisions of this section.

40 “(3) In the case of an individual who is declared bankrupt, the amount of any duty to which this section applies shall be paid in accordance with the requirements of section 104 of the Insolvency Act 1967.

New

“(4) In the case of a company that is in liquidation, the amount of any duty to which this section applies shall be paid in accordance with the requirements of section 286 of, and Schedule 8c to, the Companies Act 1955, or section 312 of, and the Seventh Schedule to, the Companies Act 1993, as the case may be. 5

“(5) In the case of a company in respect of the property of which a receiver is appointed in circumstances to which section 30 of the Receiverships Act 1993 applies, the amount of duty to which this section applies shall be paid in accordance with the requirements of section 30 (2) of the Receiverships Act 1993. 10

“(6) In the case of an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) that is put into liquidation, the amount of any duty to which this section applies shall be paid in accordance with section 17B of the Judicature Act 1908. 15

“(7) In the case of an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) in respect of the property of which a receiver is appointed by the High Court, the amount of duty to which this section applies shall be paid in accordance with the directions of the Court. 20

“(8) This section applies notwithstanding anything in any other Act. 25

“(9) Nothing in this section or in **section 154** or **section 154A** of this Act derogates from section 155 of this Act.”

(2) Sections 118N and 118O of the principal Act (as substituted by section 2 of the Company Law Reform (Transitional Provisions) Act 1994) are hereby repealed. 30

(3) The Company Law Reform (Transitional Provisions) Act 1994 is hereby consequentially amended by repealing so much of the First Schedule thereto as relates to the principal Act.

21. Amendments to other Acts—(1) Schedule 8c to the Companies Act 1955 (as inserted by section 61 of the Companies Amendment Act 1993) is hereby amended by repealing paragraph (e) of clause 5, and substituting the following paragraph: 35

“(e) Duty payable by the company under any of the Customs Acts or under any regulations made under any of those Acts—”.

5 (2) Section 104 (1) (e) of the Insolvency Act 1967 (as substituted by section 6 of the Student Loans Scheme Amendment Act 1993) is hereby amended by adding the following subparagraph:

10 “(iv) Duty payable under any of the Customs Acts or under any regulations made under any of those Acts:”.

(3) The Seventh Schedule to the Companies Act 1993 is hereby amended by repealing paragraph (e) of clause 5, and substituting the following paragraph:

15 “(e) Duty payable by the company under any of the Customs Acts or under any regulations made under any of those Acts—”.

New

20 (4) Section 12 (4) (a) of the Goods and Services Tax Act 1985 is hereby amended by inserting, after the expression “154”, the expression “**154A, 154B,**”.

(5) Section 42 (2) of the Goods and Services Tax Act 1985 is hereby amended by omitting the words “section 12 or section 13 and”, and the words “, or, as the case may be, the Comptroller of Customs”.

25 (6) Section 7 of the Goods and Services Tax Amendment Act 1993 is hereby consequentially repealed.

Disputes Tribunals

30 **22. Sections to be read with Disputes Tribunals Act 1988**—This section and the next succeeding section shall be read together with and deemed part of the Disputes Tribunals Act 1988* (in that section referred to as the principal Act).

*1988, No. 110

23. Rules—Section 60 (2) of the principal Act is hereby amended by inserting, after paragraph (g), the following paragraph:

35 “(ga) The giving of evidence to Tribunals, including the giving of evidence (by video link or telephone conference) from a distance (for example by video link or telephone conference):”.

Forestry Rights Registration

26. Sections to be read with Forestry Rights Registration Act 1983—This section and the next succeeding section shall be read together with and deemed part of the Forestry Rights Registration Act 1983* (in that section referred to as the principal Act). 5

*1983, No. 42
Amendments: 1993, No. 76; 1994, No. 67

27. Interpretation—Section 2 of the principal Act is hereby amended by inserting, before the definition of the term “forestry covenant”, the following definition:

- “‘Crop’ means— 10
- “(a) A single crop of trees of 1 or more species:
 - “(b) Multiple crops of trees of 1 or more species:
 - “(c) Any planting of trees of 1 or more species having the same or different expected harvest dates.”. 15

Forests

28. Sections to be read with Forests Act 1949—This section and the next 7 succeeding sections shall be read together with and deemed part of the Forests Act 1949* (in those sections referred to as the principal Act). 20

*R.S. Vol. 23, p. 473
Amendments: 1993, No. 7; 1994, No. 33

29. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “Forestry officer” (as inserted by section 32 (1) of the State-Owned Enterprises Act 1986), and substituting the following definitions: 25

- “‘Forestry Officer’ means—
- “(a) The Secretary:
 - “(b) Any person employed in the Ministry who is a member of the senior executive service (within the meaning of the State Sector Act 1988): 30
 - “(c) Any person employed in the Ministry who is an officer (within the meaning of that Act):
- “‘Groundline’, in relation to any living or dead tree, means the point at the base of the tree where the tree, when standing, commenced or commences to be naturally in contact with the ground.”. 35

(2) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “landholding” (as inserted by section 2 (1) of the Forests Amendment Act 1993), the following definitions: 40

“ ‘Mineral’ has the same meaning as in section 2 (1) of the Crown Minerals Act 1991:

5 “ ‘Mining operation’ means any operation in connection with mining, exploring, or prospecting for any mineral:”.

(3) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “salvaged timber” (as inserted by section 2 (1) of the Forests Amendment Act 1993), and substituting the following definition:

10 “ ‘Salvaged timber’ means—

“(a) Timber from trees that have fallen naturally:

“(b) Timber from trees that were felled to waste before the 3rd day of July 1989:

15 “(c) Stumps remaining from any timber felled before that date:

“(d) Roots remaining from any timber felled before that date;—

and ‘salvaged stump’ and ‘salvaged root’ have corresponding meanings:”.

20 (4) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “Secretary”, the following definition:

25 “ ‘Stump’ means the basal part of a living or dead tree (whether rooted or uprooted) , being the roots and that part of the trunk that extends from the groundline to a point (up the trunk) equal to the maximum diameter of the trunk; and, for the purposes of this definition, any remnant of a tree shall be regarded as part of a complete tree:”.

30 (5) Section 2 (1) of the principal Act is hereby amended by inserting in the definition of the term “registered” (as inserted by section 2 (1) of the Forests Amendment Act 1993), after the word “sustainable” where it first occurs, the word “forest”.

35 (6) The Third Schedule to the State-Owned Enterprises Act 1986 is hereby consequentially amended by repealing the definition of the term “Forestry officer” set out in the second column of the Schedule in the item relating to the principal Act.

40 **30. Prohibition on export of certain indigenous forest produce**—(1) Section 67c(1)(e) of the principal Act (as inserted by section 3 of the Forests Amendment Act 1993) is hereby amended by inserting, before the word “root”, the word “salvaged”.

(2) Section 67c of the principal Act (as so inserted) is hereby amended by repealing subsection (4), and substituting the following subsection:

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

“(a) ‘Sawn beech’ means sawn beech timber; and 5

“(b) ‘Sawn rimu’ means sawn rimu timber—
of any length that has a cross-sectional area not exceeding
30,000 square millimetres.”

31. Prohibition on milling indigenous timber—

(1) Section 67D (1) (b) (ii) (b) of the principal Act (as inserted by section 3 of the Forests Amendment Act 1993) is hereby amended by omitting the words “as defined in the Crown Minerals Act 1991”. 10

(2) Section 67D (1) (b) of the principal Act is hereby amended by repealing subparagraph (vii), and substituting the following subparagraph: 15

“(vii) The Secretary has stated in writing that he or she is satisfied that the timber has been lawfully taken from—

“(A) Any West Coast indigenous production forest; or 20

“(B) Any land permanently reserved under the South Island Landless Natives Act 1906 and having the status of Maori land or General land owned by Maori under Te Ture Whenua Maori Act 1993; or 25

“(C) Any planted indigenous forest; or

“(D) Any land held, managed, or administered by the Crown under the Conservation Act 1987 or any of the Acts specified in the First Schedule to that Act. 30

(3) Section 67D (1) (b) (ix) of the principal Act is hereby amended by inserting, before the words “sustainable forest management permit”, the word “registered”. 35

(4) Section 3 of the Forests Amendment Act 1994 is hereby consequentially repealed. 35

32. Sustainable forest management plan to be recorded against certificate of title—(1) Section 67K (5) of the principal Act (as inserted by section 3 of the Forests Amendment Act 1993) is hereby amended— 40

(a) By omitting the words “Block file”, and substituting the words “memorial schedule of the Title Binder”:

“(5) In this section the term ‘complainant’ has the same meaning as in section 97 of this Act.”

Newspapers and Printers Act Repeal

5 **59. Commencement**—This section and the next 3 succeeding sections shall come into force on the 28th day after the day on which this Act receives the Royal assent.

60. Newspapers and Printers Act 1955 repealed—The Newspapers and Printers Act 1955* is hereby repealed.

*R.S. Vol. 10, p. 503

10 **61. Amendment to Films, Videos, and Publications Classification Act 1993**—Section 2 of the Films, Videos, and Publications Classification Act 1993 is hereby amended by repealing the definition of the term “newspaper”, and substituting the following definition:

15 “‘Newspaper’ means any periodical publication published (whether in New Zealand or elsewhere) at intervals not exceeding 40 days, or any copy of, or part of any copy of, any such publication; and includes every publication that at any time accompanies and is distributed along with any newspaper.”

62. Consequential amendments—(1) Section 64 (7) of the Copyright Act 1962 is hereby consequentially amended by repealing the definition of the terms “printer” and “printing”, and substituting the following definitions:

25 “‘Printer’, in relation to any book, means the owner of the undertaking by which it was printed:

 “‘Printing’—

30 “(a) Includes the production of copies by any duplicating process, whether letterpress, lithographic, photographic, stencilling, xerographic, or otherwise; but

 “(b) Does not include typewriting;—

 and ‘printed’ has a corresponding meaning.”

35 (2) Section 2 of the Films, Videos, and Publications Classification Act 1993 is hereby consequentially amended by repealing the definition of the term “printed matter”, and substituting the following definition:

40 “‘Printed matter’ means any book, letterpress, lithograph, newspaper, pamphlet, paper, periodical, photograph, picture, print, or other reproduction;

but does not include any reproduction of a purely business, commercial, official, professional, religious, scholastic, social, or trading character:”.

New

(2A) Section 2 of the Private Investigators and Security Guards Act 1974 is hereby consequentially amended by omitting from paragraph (b) of the definition of the term “public record” the words “Newspapers and Printers Act 1955”, and substituting the words “Films, Videos, and Publications Classification Act 1993”.

(2B) Section 15 (3) of the Fair Trading Act 1986 is hereby consequentially amended by repealing paragraph (b), and substituting the following paragraphs:

“(b) ‘Newspaper’ has the meaning given to that term by section 2 of the Films, Videos, and Publications Classification Act 1993:

“(ba) ‘Publisher’, in relation to a newspaper, means its proprietor:”.

(3) Section 147 (3) (b) of the Films, Videos, and Publications Classification Act 1993 is hereby consequentially amended by inserting, after the word “magazine” in both places where it occurs, the word “, newspaper,”.

Private Investigators and Security Guards

70. Sections to be read with Private Investigators and Security Guards Act 1974—(1) This section, the next 19 succeeding sections, and the First Schedule to this Act shall be read together with and deemed part of the Private Investigators and Security Guards Act 1974* (in those sections and that Schedule referred to as the principal Act).

New

(2) This section, the next 20 succeeding sections, and the First Schedule to this Act shall come into force on the 1st day of July 1995.

*R.S. Vol. 24, p. 633

71. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definitions of the terms “bank” and “chartered accountant in public practice”.

5 (2) Section 2 (1) of the principal Act is hereby further amended by adding the following definition:

“ ‘Specified offence’ means an offence under—

“(a) Any of sections (158 to 181 or 188 to 204) 104, 105B, 158 to 181, 188 to 204, and 216B to 216D of the Crimes Act 1961; or

10 “(b) Any of sections 3, 5, 5A, 6, 9, 10, 14, 15, 18, 19, 20, or 21 of the Summary Offences Act 1981.”

72. Inspection of registers—Section 14 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

15 “(2) Any person may, on payment of the prescribed fee (if any), require the Registrar to provide a copy of a register, or any part of a register.”

73. Presumption against granting application in certain cases—(1) The principal Act is hereby amended by repealing section 17, and substituting the following section:

20 “17. (1) In any case where the applicant for a licence (or, if the applicant for a licence is a company, in any case where any officer of the company)—

“(a) Is under the age of 20 years; or

25 “(b) Has not had, in the period of 3 years immediately preceding the date of the application, at least 12 months’ experience as a licensee or responsible employee in the type of business to which the application relates; or

30 “(c) Has previously held a private investigator’s or security guard’s licence, or a certificate of approval to be a responsible employee of a private investigator or security guard, that has been cancelled in accordance with this Act at any time within the period of 5 years immediately preceding the date of the application,—

35 the Registrar shall not grant the application unless, having regard to all the circumstances of the case, the Registrar is satisfied that there are special factors that would justify the granting of the application.

40 “(2) In any case where the applicant for a licence (or, if the applicant for a licence is a company, in any case where any officer of the company)—

“(a) Has been convicted, at any time within the period of 5 years immediately preceding the date of the application, of any crime involving dishonesty or of any specified offence; or

“(b) Has been detained, at any time within the period of 5 years immediately preceding the date of the application, in a penal institution pursuant to a conviction for any offence (not being a conviction in respect of which the sentence of detention has been quashed on appeal),—

the Registrar shall not grant the application unless, having regard to the nature and circumstances of the offence, the Registrar is satisfied that the application should be granted.”

(2) Section 32 (4) of the principal Act is hereby consequentially amended by omitting the words “subsection (4) of”.

74. Approved bond by private investigator—The principal Act is hereby amended by repealing sections 19 and 20.

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75. Objections by other persons—(1) Section 23 (2) (a) of the principal Act is hereby amended by omitting the words “, fitness, or financial position”, and substituting the words “and fitness”.

(2) Section 23 (2) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) Where the applicant is a company, that it is not a proper person to be the holder of the licence:”.

76. Registrar to require evidence as to suitability of applicant—(1) Section 27 (1) of the principal Act is hereby amended by omitting the words “, fitness, and financial position”, and substituting the words “and fitness”.

(2) Section 27 (2) of the principal Act is hereby amended by repealing paragraphs (a) and (c).

77. Renewal of licence—Section 33 (12) of the principal Act is hereby amended by omitting the words “and a bond that complies with section 19 of this Act is for the time being in effect in respect of the licence”.

78. Presumption against granting application in certain cases—The principal Act is hereby amended by repealing section 35, and substituting the following section:

5 “35. (1) In any case where an application for a certificate of approval is made in respect of any person who is under the age of 18 years, the Registrar shall not grant the application unless, having regard to all the circumstances of the case, the Registrar is satisfied that there are special factors that would justify the granting of the application.

10 (2) In any case where an application for a certificate of approval to be a responsible employee of a private investigator or security guard is made in respect of any person whose application, if he or she were to apply in his or her own right for a private investigator’s or security guard’s licence, would be required to be considered by the Registrar—

15 “(a) Under section 17 (1) (c) of this Act, the Registrar shall not grant the application unless, having regard to all the circumstances of the case, the Registrar is satisfied that there are special factors that would justify the granting of the application:

20 “(b) Under section 17 (2) of this Act, the Registrar shall not grant the application unless, having regard to the nature and circumstances of the offence, the Registrar is satisfied that the application should be granted.”

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79. Trust accounts, etc.—The principal Act is hereby amended by repealing sections 49 and 50.

80. Private investigator to render account to principal—Section 51 (3) of the principal Act is hereby amended by omitting the words “in the trust account of the licensee or firm”.

30

81. Complaints against licensee—Section 53 (4) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

35 “(a) That the licensee has been convicted of any crime involving dishonesty or of any specified offence.”

82. Grounds for cancellation of licence—(1) Section 58 (1) of the principal Act is hereby amended by repealing

Struck Out

paragraph (aa) (as inserted by section 11 of the Private Investigators and Security Guards Amendment Act 1978), and substituting the following paragraph:

New

paragraphs (a) and (aa) (as inserted by section 11 of the Private Investigators and Security Guards Amendment Act 1978), and substituting the following paragraphs:

“(a) Where any person specified in subsection (2) of this section has been convicted of—

“(i) An offence under any of the provisions specified in the Third Schedule to this Act; or

“(ii) Any drug-dealing offence within the meaning of section 10 (1) of the Misuse of Drugs Amendment Act 1978:

“(aa) Where any person specified in subsection (2) of this section has been convicted of any crime involving dishonesty or of any specified offence, and the Registrar is satisfied that the licensee is not a proper person to hold the licence:”.

(2) Section 11 of the Private Investigators and Security Guards Amendment Act 1978 is hereby consequentially repealed.

83. Disciplinary powers of Registrar in respect of responsible employees—Section 59 (4) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) That the holder of the certificate of approval has been convicted of any crime involving dishonesty or of any specified offence:”.

84. Registrar to cancel licences and certificates of approval in certain cases, unless special factors present—Section 60 of the principal Act is hereby amended by repealing subsections (2) and (3), and substituting the following subsections:

“(2) Where the holder of a licence, or of a certificate of approval is convicted of any crime involving dishonesty or of

any specified offence, the Registrar shall cancel the licence or certificate of approval unless, having regard to the nature and circumstances of the offence, he or she is satisfied that the interests of the public do not require the cancellation of the licence or certificate of approval.

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“(3) Where the holder of a licence, or of a certificate of approval, is detained in a penal institution pursuant to a conviction of any offence, and the time allowed for an appeal against the sentence of detention has expired, or, if an appeal against that sentence has been brought, it has been finally determined without that sentence having been quashed, the Registrar shall cancel the licence or certificate of approval unless, having regard to the nature and circumstances of the offence, he or she is satisfied that the interests of the public do not require the cancellation of the licence or certificate of approval.”

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85. Appeals—(1) The principal Act is hereby amended by repealing Part VI (as amended by section 3 (4) of the Judicature Amendment Act 1991), and substituting the following Part:

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“PART VI

“APPEALS

“64. **Appeals to District Court**—(1) The following persons shall have a right of appeal to a District Court against a decision of the Registrar under this Act:

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“(a) Where an application is refused (whether in whole or in part), the applicant; and

“(b) Where a licence is suspended or cancelled, the licensee; and

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“(c) Where a certificate of approval is suspended or cancelled, the person whose certificate of approval is suspended or cancelled; and

“(d) Where the employment of an officer of a company that is a licensee is terminated, the officer; and

35

“(e) Where a licensee or person holding a certificate of approval is fined, the licensee or person.

“(2) An appeal under this section shall be brought within 28 days after the date on which the appellant was notified in writing by the Registrar of the decision appealed against, or within such further period as the Court may allow.

40

“(3) The appeal shall be made by way of originating application in accordance with the District Courts Rules 1992, and shall be filed in the office of the Court nearest to the

registered office of the licensee or to the place of employment of the holder of the certificate of approval, as the case may require.

“(4) On hearing the appeal, the Court may—

“(a) Confirm, vary, or reverse the decision appealed against; 5
or

“(b) In the case of an order suspending a licence or certificate of approval, vary the period of the suspension; or

“(c) Refer the matter back to the Registrar with directions to 10
him or her to reconsider the whole or any specified part of the matter.

“(5) The decision of the Court on the appeal shall be final.”

(2) The Judicature Amendment Act 1991 is hereby 15
consequentially amended by repealing so much of this Schedule as relates to the principal Act.

86. Voluntary surrender of licence or certificate of approval—Section 68 (3) of the principal Act is hereby amended by repealing paragraph (b).

87. Regulations—Section 71 (1) of the principal Act is 20
hereby amended by repealing paragraphs (c) to (g).

88. Penalties—The principal Act is hereby amended in the manner indicated in the **First** Schedule to this Act.

89. First Schedule repealed—The principal Act is hereby 25
amended by repealing the First Schedule.

Property Law

90. Sections to be read with Property Law Act 1952— 30
This section and the next 2 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).

*R.S. Vol. 22, p. 773
Amendment: 1993, No. 23

91. Rule in *Bain v Fothergill* abolished—(1) The principal Act is hereby amended by inserting, after section 62, the following section:

“62A. The rule of law known as the rule in *Bain v Fothergill* 35
(limiting the damages recoverable in respect of a breach of a contract for the sale and purchase of land where the breach arises out of the vendor’s inability to provide good title to the land) is hereby abolished.”

(2) The general law of New Zealand shall have effect in relation to every contract—

- (a) Entered into before the commencement of **sections 90 and 92 of this Act and this section**; and
- 5 (b) Not amended after that commencement so as to provide expressly that the rule should not apply to it,—
as if **subsection (1)** of this section had never been enacted.

Struck Out

10 **92. Rule in *Joyner v Weeks* abolished**—(1) The principal Act is hereby amended by inserting, after section 115, the following section:

15 “115A. The rule of law known as the rule in *Joyner v Weeks* (governing the calculation of the damages payable to a lessee by a lessor for a breach of a covenant in a lease requiring the demised premises to be left in good repair when the lease is determined) is hereby abolished.”

20 (2) Except as provided in **subsection (3)** of this section, **section 115A** of the principal Act (as enacted by **subsection (1)** of this section) shall have effect in relation to all leases, whether entered into before or after the commencement of **sections 90 and 91 of this Act and this section**, and whether determined before or after that commencement.

25 (3) The general law of New Zealand shall have effect in relation to proceedings commenced before the commencement of **sections 90 and 91 of this Act and this section** as if **subsection (1)** of this section had never been enacted.

SCHEDULES

Section 88

FIRST SCHEDULE

AMENDMENTS TO PRINCIPAL ACT RELATING TO PENALTIES

Provision	Amendment
Section 16 	By repealing subsection (3), and substituting the following subsection: “(3) Every person who contravenes subsection (1) or subsection (2) of this section commits an offence against this Act.”
Section 32 	By adding to subsection (5), and to subsection (6), the words “against this Act”.
Section 34 (3) 	By repealing subsection (7). By omitting the words “and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine of \$500 or to both”, and substituting the words “against this Act”.
Section 52 	By omitting from subsection (1) the words “and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$500 or to both”, and substituting the words “against this Act”.
Section 57 (1) 	By omitting from paragraph (c) the figure “\$50”, and substituting the figure “\$500”.
Section 59 (8) 	By omitting from paragraph (c) the figure “\$20”, and substituting the figure “\$200”.
Section 66 	By repealing subsection (3), and substituting the following subsection: “(3) Every person who contravenes subsection (2) of this section commits an offence against this Act.”
Section 70 	By repealing subsection (2), and substituting the following subsection: “(2) Every person who commits an offence against this Act, or against any regulations made under this Act, for which no penalty is otherwise provided by this Act or by such regulations, shall be liable on summary conviction to a fine not exceeding \$2,000.”