

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

EXPLANATORY NOTE

THIS Bill makes various amendments to a number of different enactments. It is intended that it will be broken up into several different amendment Bills in the Committee of the Whole House.

Where this note does not state when a particular amendment comes into force, it comes into force on assent.

Clause 1 relates to the Bill's Short Title.

Citizens Initiated Referenda

Clauses 3 and 4, and 6 to 16, which come into force on 1 July 1995, amend the Citizens Initiated Referenda Act 1993 by omitting the references to provisions of the Electoral Act 1956, and substituting references to the appropriate provisions of the Electoral Act 1993. The repeal of the Electoral Act 1956 by the Electoral Act 1993 took effect on 1 July 1994.

Clause 5, which comes into force on the passing of this Bill, corrects an omission in the Citizens Initiated Referenda Act 1993 by making a minor amendment to section 17 (2) of that Act.

Criminal Justice

Clause 18 amends section 84 of the Criminal Justice Act 1985 by inserting new *subsection (2A)* which relates to the power of courts to order the confiscation of motor vehicles owned by persons convicted of certain offences against the Transport Act 1962. The new provision provides that, except in cases where extreme hardship to the offender or undue hardship to another person will result, the court is obliged to order confiscation where the owner of the vehicle has, within a 5-year period, committed a second specified offence against the Transport Act 1962.

The amendment applies where a person commits a second offence against any of the following provisions of the Transport Act 1962:

- (a) Section 34 or section 50 (which relate to applying for or obtaining a driver's licence while disqualified);
- (b) Section 35 (which relates to driving while disqualified or contrary to the terms of a limited licence);

- (c) Section 55 (1) (which relates to causing bodily injury or death through reckless or dangerous driving);
- (d) Section 55 (2) (which relates to causing bodily injury or death through driving while under the influence of drink or a drug or while the proportion of alcohol in the driver's breath or blood exceeds a specified amount);
- (e) Section 56 (1) (which relates to causing bodily injury or death through careless use of a motor vehicle);
- (f) Section 56 (1A) (which relates to causing bodily injury or death through careless driving in specified circumstances);
- (g) Section 57 (which relates to reckless or dangerous driving);
- (h) Paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) or paragraph (e) of section 58 (1) (which relate to driving while the proportion of alcohol in the driver's breath or blood exceeds a specified amount or while under the influence of drink or a drug);
- (i) Section 58E (which relates to refusing to supply a specimen of blood);
- (j) Section 65 (4) (which relates to the duties of a driver in the case of an accident where any other person is killed or injured);
- (k) Section 65 (5) (which relates to the duties of a driver in the case of an accident where no other person is killed or injured).

The second offence need not be an offence of the same kind as the first offence but must be one of the offences specified in *paragraphs (a) to (k)* of the new provision.

The provision applies only if the offender owns the motor vehicle or has an interest in it, and was, at the material time, driving it or in charge of it or (in the case of an offence described in paragraph (a) above) in possession of it.

Customs

Clause 20 substitutes new *sections 154 and 154A* for the present section 154 of the Customs Act 1966 ("the principal Act").

The existing section 154 of the principal Act provides that duty on goods constitutes a charge on the goods until fully paid. The new section 154 applies in relation to goods on which duty is payable, being goods—

- (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.

The new section provides that the duty on the goods constitutes a charge on the goods until it is paid in full. As with the existing section 154, the Collector has a power of sale in relation to the goods.

The new *section 154A* applies to goods—

- (a) The property in which has been transferred by the person liable to pay the duty; or
- (b) That have been incorporated into any other goods by any process; or
- (c) That have been lost or have ceased to exist.

This section establishes a new priority for unpaid customs duty in relation to those goods in the following cases:

- (a) Where a person is adjudged bankrupt;
- (b) Where a company is put into liquidation or where a receiver of property of a company is appointed in circumstances to which section 30 of the Receiverships Act 1993 applies;
- (c) In the case of an unincorporated body, upon the liquidation of that body or the appointment of a receiver on behalf of any person pursuant to an order by the Court.

In the case of excise duty, this new section replaces sections 118N and 118o of the principal Act.

Clause 21 amends the Companies Act 1955, the Insolvency Act 1967, and the Companies Act 1993, so as to add duty payable under the Customs Acts to the list of debts that have priority upon bankruptcy, insolvency, or receivership.

Disputes Tribunals

Clause 23 amends section 60 (2) of the Disputes Tribunals Act 1988, which sets out particular matters in respect of which rules may be made regulating the practice and procedure of Disputes Tribunals. The amendment inserts a new *paragraph (ga)*, authorising the making of rules providing for the giving of evidence to Disputes Tribunals, including the giving of evidence by means of video link or telephone conference.

District Courts

Clause 25 increases the maximum number of District Court Judges from 103 to 110. The number was last increased in 1992 from 98.

Forestry Rights Registration

Clause 28 amends section 2 of the Forestry Rights Registration Act 1983 by inserting a definition of the term “crop”. The purpose of the amendment is to make it clear that the term includes multiple crops planted in the same area especially where they have different harvest dates.

Forests

Clause 29 inserts into the Forests Act 1949 certain new definitions.

Subsection (1) repeals and replaces the definition of the term “Forestry Officer” in section 2 (1). The purpose of the amendment is to redefine the term so that it includes the Secretary of Forestry and persons within the Ministry who are in the senior executive service. At present, the term is confined to employees within the meaning of the State Sector Act 1988 and does not include the Secretary or members of the senior executive service.

The subclause also inserts into the Act a definition of the term “groundline” for the purposes of the new definition of the term “stump” in *subclause (3)*.

Subclause (2) inserts into section 2 (1) definitions of the terms “mineral” and “mining operation” (which is used in section 67D (1) (b) (ii) (D) of the Act). The purpose of the definitions is to widen the term to include operations in connection with any mineral rather than only Crown-owned minerals.

Subclause (3) clarifies the definitions of the term “salvaged timber” in section 2 (1).

Subclause (4) inserts into section 2 (1) a definition of the term “stump” and is perhaps the most significant change as it abrogates the effect of the relevant part of the judgment of McGechan J. in *Ancient Trees of New Zealand Limited v Attorney-General and another*. In that case, the Court held that the term “salvaged stump” includes swamp kauri which, at the time of salvage extraction, consists of a remnant of the trunk of a kauri tree, to which the root ball, or part of the root ball, is still attached, *regardless of the length of the trunk portion of the stump* (emphasis added). The definition being inserted by this clause confines the stump portion of a tree to the roots and so much of the trunk as extends from the groundline to a point equal to the maximum diameter of the trunk.

Accordingly, any salvaged indigenous timber having a trunk portion exceeding the specified measurement will constitute a log and be subject to the export controls in section 67c of the Act.

Subclause (5) corrects a drafting error in the definition of the term “registered” in section 2 (1) of the Forests Act 1949.

Subclause (6) effects a consequential amendment.

Clause 30 amends section 67c of the Forests Act 1949.

Subclause (1) clarifies a reference to salvaged roots.

Subclause (2) substitutes a more flexible definition of the terms “sawn beech” and “sawn rimu”. At present, the dimensions must not exceed 300 mm by 100 mm. The proposed new definition specifies that the maximum cross-sectional area is not to exceed 30,000 square millimetres without prescribing the actual dimensions.

Clause 31 amends section 67D of the Forests Act 1949.

Subclause (1) removes from subsection (1) (b) (ii) (B) a reference to the definition of the term “mining operation” in the Crown Minerals Act 1991. That reference is no longer needed as the term is to be defined in the Forests Act 1949 by *Clause 00*.

Subclause (2) repeals and replaces subsection (1) (b) (vii) of that section. The purpose of the amendment is to allow the milling of timber lawfully taken from 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.

Clause 32 amends section 67K of the Forests Act 1949.

Subclause (1) amends subsection (5) to provide for plans to be notified on the memorial schedule of the Title Binder in the Maori Land Court rather than on the Court’s Block file.

Subclause (2) adds a subsection (11) and provides for the registration of variations, cancellations, amendments, and renewals relating to sustainable forest management plans and sustainable forest management permits.

Clause 33 amends section 67M of the Forests Act 1949.

Subclause (1) does 2 things. First, it specifies a period of 10 years for the term of sustainable forest management permits. Secondly, it qualifies the expression “capable of being milled” to ensure that it refers to the physical possibility of milling timber rather than the quality of the timber.

Subclause (2) corrects a drafting omission in subsection (3).

Subclause (3) repeals and replaces subsection (7) principally in order to apply the consultation requirements of section 67F (2) in the case of sustainable forest management permits. This means that, before issuing a permit, the Secretary of Forestry is required to consult the Director-General of Conservation (in every case) and the chief executive of Te Puni Kokiri (if Maori land is involved).

Clause 34 amends section 67T (b) of the Forests Act 1949 by changing the offence of unlawful milling of indigenous logs to an offence of unlawful milling of indigenous timber.

Clause 35 repeals and replaces section 67V of the Forests Act 1949. The new section requires owners of landholdings to obtain any necessary resource consents under the Resource Management Act 1991 before commencing any forestry activity to which Part IIIA of the Forests Act 1949 applies. Section 67V presently contains a similar requirement but applies only to the cutting or felling of indigenous timber under a sustainable forest management plan.

Gaming and Lotteries

Clause 37 repeals section 17 of the Gaming and Lotteries Act 1977, and substitutes a new section 17 (which section defines the meaning of the term “illegal prize competition”).

The definition is widened to include any prize competition that is not authorised by or under the relevant provisions of sections 23, 24, 25, 26, and 69 of the Act. In its current form section 17 has proved to be deficient, in that a person who conducts a prize competition which is unlicensed but which is not

illegal may, without committing an offence, ignore many of the requirements of the Act relating to prize competitions.

This amendment brings the law with respect to prize competitions into line with that already applying with respect to lotteries.

Guardianship

Clause 38 repeals section 4 of the Guardianship Amendment Act 1991, and substitutes a new section 4. The new section, which defines the term “rights of custody”, is modelled more closely than the existing section on Articles 3 and 5 of the Convention on the Civil Aspects of International Child Abduction.

Human Rights

Clause 41 provides that the Race Relations Conciliator shall be a corporation sole.

Clause 42 corrects an error in section 75 (g) of the Human Rights Act 1993. That section, which relates to the functions of the Complaints Division, refers to the Human Rights Commission where it should refer to the Complaints Division. This clause corrects the error.

Juries

Clauses 44, 45, and 46 (1) effect amendments that are consequential on—

- (a) The replacement of the Mental Health Act 1969 by the Mental Health (Compulsory Assessment and Treatment) Act 1992; and
- (b) The replacement of the Electoral Act 1956 by the Electoral Act 1993.

Clause 46 (2) requires every jury list to show the postal address of each person included in the list. This requirement is to be in addition to the existing requirement to show in every jury list the residential address of each such person.

Land Transfer

Clause 48 amends the law relating to the obtaining of title to land by adverse possession (that is to say by occupying it for a long period without the authority of its owner).

Since 1963 it has been possible in some circumstances for an occupier of land who is not its registered proprietor under the Land Transfer Act 1954 to obtain legal title to that land. For example, where a farmer walked off a farm during the depression and other people have since occupied and farmed it without the authority of the farmer’s descendants, the occupiers may be able to defeat the rights of those descendants and obtain legal title to it themselves.

For technical legal reasons, however, it has not been possible for 1 of several joint owners to defeat the rights of another. (Thus, where the farmer who walked off was 1 of 2 joint owners and the descendants of the joint owner who remained still occupy the farm, the occupiers cannot defeat the rights of descendants of the joint owner who left.) This results in the paradox that occupiers with no legal rights are in a better position than some occupiers who share rights with others.

In July 1986 the Property Law and Equity Reform Committee recommended to the then Minister of Justice that this distinction between joint owners and other occupiers should be abolished.

The effect of this clause is to give occupiers of land they own jointly with 1 or more other people the rights (in relation to obtaining title to the whole of the land by adverse possession) that they would have if they were not joint owners.

The clause is not retroactive; but to the extent that periods of possession before its commencement are to have effect under the law in its amended form, it is retrospective.

Law Practitioners

Clause 50 inserts a new section 97A into the Law Practitioners Act 1982. The new section provides that where a District Law Society fails to take any action in consequence of any report or recommendation of a Lay Observer that it is required under section 97 (9) of the Act to consider, or where a complainant is not satisfied with the action taken, the complainant may request that the report or recommendation be referred to the New Zealand Law Society for review. Where the New Zealand Law Society does not agree with the action taken or the failure to take action in consequence of the report or recommendation, the New Zealand Law Society is required, under the new section, to refer the matter back to the District Law Society for further consideration.

The New Zealand Law Society must notify the Lay Observer, the complainant, and the District Law Society of its decision and of the New Zealand Law Society's reasons for its decision.

Marriage

Since at least 1847, one of the formal requirements for the solemnisation of a marriage in New Zealand has been that it should be effected "with open doors". This seems to have had 2 principal purposes. It helped protect people from being forced into marriage behind closed doors. And it enabled people who believed that they knew some "just cause or impediment" why a proposed marriage should not proceed to voice their concerns.

In recent years, however, there has been a widespread failure to comply with this requirement. In 1976 the power to solemnise marriages was extended from "officiating ministers" (who might be expected to solemnise marriages in churches or chapels) to lay "marriage celebrants" (who often solemnise marriages in premises that are effectively private). Also, some religious groups have beliefs that require their ceremonies, including marriages, to be conducted in private.

Section 22 of the Marriage Act 1955 provides that no marriage is void on account of an infringement of the procedural requirements of that Act; and while section 58 of that Act makes it an offence for any marriage celebrant to solemnise a marriage contrary to the provisions of that Act, no prosecutions have been instituted in respect of a failure to have open doors.

In effect then, these failures to solemnise marriages with open doors have had no consequences.

Clauses 52 and 53 amend the Marriage Act 1955 to remove the requirement that marriages should be solemnised with open doors. *Clause 52* amends provisions relating to marriages solemnised by marriage celebrants, and Quaker marriages. *Clause 53* amends the provision relating to marriages solemnised by Registrars.

Motor Vehicle Securities

Clauses 55 to 58, which come into force on 1 March 1995, amend the Motor Vehicle Securities Act 1989 so as to make provision for the use of vehicle identification numbers.

Amendments made in 1993 to the Traffic Regulations 1976 require any motor vehicle registered or re-registered in New Zealand after 1 April 1994 to have a vehicle identification number affixed to it. The proposed amendments provide that from 1 March 1995 people registering a security interest against a vehicle under the principal Act must specify its registration number (if any), and either its vehicle identification number or (if it has no vehicle identification number) its chassis number (if any); and people searching to see whether a vehicle has a

security interest registered against it must specify its registration number (if any), vehicle identification number (if any), and chassis number (if any).

Currently, only the registration number and chassis number must be specified.

Newspapers and Printers Act Repeal

Clases 60 to 62 of this Bill come into force 28 days after assent.

Clause 60 repeals the Newspapers and Printers Act 1955. The principal features of that Act are requirements that—

- (a) Newspapers must be registered, by lodging an affidavit with the High Court; and
- (b) The names and address of the printer and publisher must be printed on every newspaper; and
- (c) The printer's name and address must be marked on all documents printed for sale or distribution; and
- (d) Printers must keep copies and records of documents printed for other people.

Clause 61 amends the Films, Videos, and Publications Classification Act 1993 so as to extend to all newspapers the application of section 147, which requires any printed matter to be marked with the name and address of its publisher or (if it was published outside New Zealand) its wholesale distributor.

Clause 62 makes consequential amendments.

New Zealand Maori Arts and Crafts Institute

Clause 64 amends the New Zealand Maori Arts and Crafts Institute Act 1963 with respect to the membership of the Institute. The Institute currently comprises—

- (a) The Secretary of Commerce;
- (b) The chief executive of the Ministry of Maori Development;
- (c) Five people appointed by the Governor-General on the recommendation of the Minister of Tourism, after nomination by various bodies specified in the principal Act.

The proposed amendments provide that the Institute will instead now comprise not fewer than 5 and not more than 7 people appointed by the Governor-General on the recommendation of the Minister of Tourism. The requirement for nomination is omitted.

Passports

Clause 66 amends section 34 of the Passports Act 1992 so as to add to the powers of the Minister of Internal Affairs under that Act that may be delegated the power under section 42 to cancel the endorsement of the name of a child on the passport of a parent or guardian.

Clause 67 validates cancellations of such endorsements made by officers of the Department of Internal Affairs in the past.

Police

Clause 69 amends section 6 (4) of the Police Act 1958, which provides that certain statutory provisions referring to members of the Police are to be read as including references to non-sworn members of the Police, by adding section 24 of the Summary Offences Act 1981 to the provisions that are to be so read.

Section 24 of that Act makes it an offence (punishable by imprisonment for up to 3 months or a fine of up to \$1,000) to make a false allegation or report to a sworn member of the Police; and the effect of the amendment is to extend the offence to cover the making of a false allegation or report to a non-sworn member of the Police.

Private Investigators and Security Guards

Clauses 71 to 89 amend the Private Investigators and Security Guards Act 1974. The clauses have 6 principal effects:

- (a) Section 17 of the principal Act currently provides that the Registrar is not to grant applications for licences in certain cases unless special factors are present. Those cases include—
- (i) A case where the applicant for a private investigator's licence has been convicted within the previous 10 years of a crime involving dishonesty;
 - (ii) A case where the applicant for a security guard's licence has been detained within the previous 10 years in a penal institution pursuant to a conviction.
- The new section 17 (as substituted by *clause 71*) provides that the cases include, in respect of applicants for both private investigator's licences and security guard's licences,—
- (i) A case where the applicant has been convicted within the previous 5 years of any crime involving dishonesty or any specified offence (which includes crimes of violence against the person under the Crimes Act 1961 (such as homicide and assaults and injuries) and offences under the Summary Offences Act 1981 (such as disorderly behaviour, associating with convicted thieves, assault, possession of burglary tools, certain offences resembling forgery or fraud, and intimidation));
 - (ii) A case where the applicant has been detained within the previous 5 years in a penal institution pursuant to a conviction.
- Consequential amendments are made by *clause 71 (1)*, *clause 78* (to align the provisions relating to certificates of approval to be a responsible employee of a private investigator or security guard), *clauses 81, 82, 83* (to align the provisions relating to the disciplinary powers of the Registrar), and *clause 84* (to align the provisions relating to cancellation of licences and certificates of approval):
- (b) The provisions of the principal Act requiring private investigators to lodge a bond of \$10,000 with a surety and to maintain a trust account are repealed. (*Clauses 71 (1), 74, 77, 79, 86, 87, and 89*):
- (c) The principal Act currently provides, in respect of applicants for a private investigator's or security guard's licence, that—
- (i) The financial position of an applicant; and
 - (ii) The nature of all business that a corporate applicant carries on or intends to carry on,—
- are factors in determining whether or not the applicant is a proper person to be granted a licence. The proposed amendments repeal references to those factors. Personal character and fitness will still specifically be factors in determining whether or not the applicant is a proper person to be granted a licence. (*Clauses 75 and 76*):
- (d) Part VI of the principal Act currently provides that some appeals are to be heard in the High Court and some in the District Court. The proposed amendments provide that all appeals will be heard in the District Court (*Clause 85*):
- (e) The penalties set out in the principal Act are proposed to be reformed (*Clause 88* and the *First Schedule*) as follows:
- (i) Offences which currently attract fines of either \$500 or \$200 will now attract fines of \$2,000;
 - (ii) Imprisonment in respect of offences (currently up to 3 months for some offences) is abolished;
 - (iii) Daily fines in respect of continuing offences are abolished;

(iv) The fine that may be imposed by the Registrar on determination of a complaint against a licensee is increased from \$50 to \$500:

(v) The fine that may be imposed by the Registrar on determination of a complaint against a responsible employee is increased from \$20 to \$200:

(f) Copies of the register of private investigators and security guards are to be made available by the Registrar on payment of the prescribed fee (*Clause 72*).

Property Law

Clauses 91 and 92 abolish 2 technical legal rules relating to damages. The abolition of these rules was recommended by the Law Commission in May 1991 in its report No. 19.

Clause 91 abolishes the rule known as the rule in *Bain v Fothergill*. This rule has the effect that where a contract for the sale and purchase of land does not proceed because the vendor cannot give good title to the land, the disappointed purchaser can recover as damages expenses directly incurred in respect of the contract, but cannot recover damages in respect of indirectly incurred expenses or the loss of the bargain.

The effect of the abolition of the rule is to allow a purchaser disappointed by the vendor's inability to provide good title to recover damages in respect of the vendor's breach of the term of the contract undertaking that good title will be provided, to the same extent as damages would be recoverable in respect of the breach of any other term of the contract.

The abolition does not apply to any contract entered into before the commencement of the clause unless the parties to it modify it after that commencement so as to exclude the rule.

Clause 92 abolishes the rule known as the rule in *Joyner v Weeks*. This rule has the effect that where a tenant fails to leave premises in good repair at the end of a lease containing a covenant requiring the tenant to do so, the landlord may sue the tenant for the full costs of putting the premises into good repair, even if those costs exceed the losses actually suffered by the landlord because of the breach of the covenant.

The effect of the abolition of the rule is to limit the amount of the damages available in such circumstances to the amount of the landlord's actual losses.

The abolition does not apply to any lease in respect of which proceedings were commenced before the commencement of the clause.

Securities

Clause 94 re-enacts section 58 of the Securities Act 1978. The present section replaced the original section 58. The original section made it an offence for a person to sign a prospectus that contained an untrue statement unless the person proved that the statement was immaterial or that he or she believed on reasonable grounds that the statement was true. The present section, which was enacted by the Securities Amendment Act 1982, applies to both advertisements and prospectuses. It makes it an offence for a person to sign a prospectus that contains an untrue statement. It also provides that where an advertisement that contains an untrue statement is distributed, the issuer, if he or she is an individual, or if the issuer is a body corporate, every director of the issuer, commits an offence. The present section 58 (3) provides that a person who commits an offence against the section is liable on conviction to the penalties specified unless he or she proves that the statement was immaterial or that he or she believed on reasonable grounds that the statement was true.

In *R v Rada Corporation* [1990] NZLR 438 Wylie J held that the effect of the present section was to create an offence of absolute liability by removing the statutory defences of immateriality and belief on reasonable grounds in the truth of the statement. The Judge held that those matters were relevant to penalty but not to conviction.

In his judgment in *R v Rada Corporation (No. 2)* [1990] 3 NZLR 453 Barker J noted that Holland J in *R v Reid* (Christchurch, T 66/89, 13 March 1990) and Roper J in *R v Dawson* (Christchurch, T 64/89, 16 May 1990) treated the present section 58 as providing affirmative defences. Barker J was not required in *R v Rada Corporation (No. 2)* to express any view on the matter but said, in his judgment, that Parliament should give a clear indication of its intention in regard to the section.

The new section 58 puts it beyond doubt that immateriality and belief on reasonable grounds in the truth of the statement are available as defences and are not relevant solely to penalty.

Statistics

Clause 96 amends the Statistics Act 1975 by changing the name of the Department of Statistics to Statistics New Zealand. It also makes consequential amendments to other Acts and requires references in other Acts, regulations, and documents to the Department of Statistics to be read as references to the Department under its new name.

Status of Children

Clause 98 adds a new subsection (4) to section 10 of the Status of Children Act 1969 (which relates to declarations of paternity).

There have been conflicting High Court judgments on the standard of proof that applies in relation to the making of a declaration of paternity under that section.

The new subsection, which is based on section 5 (2) of the Status of Children Act 1969 (as added by section 2 of the Status of Children Amendment Act 1983) makes it clear that the civil standard of proof will apply.

Summary Proceedings

Clause 100 amends section 15 of the Summary Proceedings Act 1957 (“the principal Act”), which prescribes the form of an information, by adding a new subsection (2). The amendment is consequential on the amendments effected by clause 97, and provides that an information is not invalid merely because it does not contain the date of birth of the defendant or does not correctly describe the defendant’s date of birth, and further provides that no amendment is required to remedy that omission or error before the hearing of the information.

Clause 101 inserts a new section 43A into the principal Act. The new section is intended to clarify the powers of a Court to amend an information where the particulars of the defendant as stated on the information are incorrect. In particular, the Court is empowered to amend the information by substituting, for all or any of the particulars of the defendant (including his or her name), any other particulars.

The new section is intended to cover not only cases where there is a minor error or omission in those particulars, but also cases where, for example, the wrong defendant or a non-existent defendant is named in the information. This may happen where a person apprehended for an offence gives a false name or the name of some other person. In such cases, the deceit may not be detected until the hearing, and a new information specifying the real defendant may not

be able to be laid because the 6 month limitation period specified in section 14 of the principal Act may have expired.

In order to avoid injustice, the power of amendment may not be exercised more than 12 months after the information was laid.

If an amendment to the information would prejudice any person, and it would be contrary to the interests of justice to require the person to suffer that prejudice, the Court may refuse to make the amendment or, if it has been made, dismiss the information. The Court is also empowered to adjourn the hearing if the defendant would be embarrassed in his or her defence by an amendment or proposed amendment to the information.

Clause 102 repeals section 69 of the principal Act and substitutes new *sections 69 and 69AA*.

At present, section 69 requires that where a defendant is convicted of an offence, and the defendant would be liable to a greater penalty if he or she has previously been convicted of any offence, then if the greater penalty to which he or she is then liable means that the defendant should have been given the right to elect to be tried by a jury, the conviction is vacated and the defendant is then tried again. This provision has particular application in the case of an offence against section 35 of the Transport Act 1962 (driving while disqualified or contrary to the terms of a limited licence). For a second or subsequent offence, the defendant is liable to imprisonment for up to 5 years.

The new *section 69* is intended to remove the need for a second trial in such cases. Where a defendant is charged with such an offence, and he or she has previous convictions, the information must disclose the existence of those convictions. The defendant is then given the right to elect to be tried by a jury. An information that does not disclose any previous convictions is not to be dismissed merely for that reason, but if it is not subsequently amended to show those convictions, the defendant will not be liable to the higher penalty.

If an information is subsequently amended to show previous convictions, the defendant is then to be given the right to elect to be tried by a jury.

New *section 69AA* makes further provision relating to offences to which the new *section 69* applies. It is made clear that, in cases where the defendant is dealt with summarily, the informant is not required to prove any previous conviction that would render the defendant liable to a greater penalty until the issue of penalty arises.

Special provision is also made for proving such previous convictions, in cases where the defendant is dealt with summarily. *Subsection (3)* provides that these may be proved by the production of a certificate signed by the Registrar or some other officer who has custody of the records of the Court where the offender was convicted. Such a certificate is sufficient evidence of the conviction without proof of the signature or official character of the person signing it, and, in the absence of proof to the contrary, prima facie evidence that the certificate relates to the defendant.

Clause 103 amends section 102 of the principal Act, which protects Court officials and other officers from personal liability in relation to the exercise of powers or functions under the principal Act relating to the seizure of property or its subsequent disposal. The amendment makes it clear that such protection extends to the exercise of powers to immobilise a vehicle.

Clause 104 amends section 115E of the principal Act, which sets out procedural provisions relating to appeals under section 115D of the principal Act against decisions relating to bail. The amendment adds a new *subsection (6)*, which provides that where, on an appeal by the informant against a decision to grant

the defendant bail, the defendant does not appear at the hearing of the appeal, the High Court may, if it thinks fit, issue a warrant for the arrest of the defendant.

Clause 105 amends section 145 of the principal Act, which (among other things) prescribes the form of an information where the defendant is to be proceeded against by indictment. The amendment adds a new *subsection (3)*. The amendment is consequential on the amendments effected by *clause 96*, and provides that an information is not invalid merely because it does not contain the date of birth of the defendant or does not correctly describe the defendant's date of birth, and further provides that no amendment is required to remedy that omission or error before the trial.

Clause 106 amends Part I of the First Schedule to the principal Act, which sets out those indictable offences in the Crimes Act 1961 that are triable summarily. The amendment omits the reference to section 105A (corrupt use of official information). That reference is unnecessary because the offence is listed in Part I of Schedule 1A to the District Courts Act 1947, which sets out those purely indictable offences that are triable in a District Court before a jury.

Clause 107 repeals the Second Schedule to the principal Act and substitutes a new *Second* Schedule. That Schedule sets out the forms of information to be used where a defendant is proceeded against summarily or by indictment. The new forms make provision for the date of birth of the defendant to be inserted. This is intended to assist in the identification of defendants. Sections 15 and 145 of the principal Act are consequentially amended by *clauses 98* and *103*, in the manner described above.

Superannuation Schemes

Clause 109 amends section 23 of the Superannuation Schemes Act 1989, which relates to objections to and appeals against decisions of the Government Actuary. The amendments have 3 effects.

First, subsection (4) (which was repealed by section 3 (4) of the Judicature Amendment Act 1991) is reinstated. That subsection required the Government Actuary to notify objectors of his or her decision within 28 days of receiving an objection (or of giving the objector a hearing if the objector asked for one).

Secondly, subsection (6) (which provides for appeals to be heard by the Administrative Division of the High Court) is repealed. The Administrative Division has been abolished.

Thirdly, subsection (11) (which provides that decisions of the High Court are final) is repealed. Further appeals to higher Courts will therefore be possible again.

Tariff

Clauses 111 and *112* come into force on a day to be appointed by Order in Council.

Clause 111 inserts a definition of the South Pacific Regional Trade and Economic Co-operation Agreement into section 2 of the Tariff Act 1988.

Clause 112 amends section 7 of the Tariff Act 1988, which deals with the application of the Tariff, with 2 principal effects. First, the preferential rate of duty currently afforded under the Tariff to the United Kingdom of Great Britain and Northern Ireland, the Isle of Man, the Channel Islands, and the Republic of Ireland will cease to be afforded to the Republic of Ireland. Second, the preferential rate of duty currently afforded under the Tariff to certain specific Pacific countries will instead be afforded to any country that is a party to the South Pacific Regional Trade and Economic Co-operation Agreement, provided

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

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A BILL INTITULED

An Act to amend certain enactments

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

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

Citizens Initiated Referenda

10 **2. Sections to be read with Citizens Initiated Referenda Act 1993**—(1) This section and the next 14 succeeding sections shall be read together with and deemed part of the Citizens Initiated Referenda Act 1993* (in those sections referred to as the principal Act).

(2) Except as provided in section 5 (2) of this Act, this section and the next 14 succeeding sections shall come into force on the 1st day of July 1995.

*1993, No. 101

15 **3. Interpretation**—(1) Section 2 of the principal Act is hereby amended by omitting from the definition of the term “Clerk of the Writs” the words “Electoral Act 1956”, and substituting the words “Electoral Act 1993”.

20 (2) The said section 2 is hereby further amended by omitting from the definition of the term “electoral district” the words “Electoral Act 1956”, and substituting the words “Electoral Act 1993”.

25 (3) The said section 2 is hereby further amended by omitting from the definition of the term “electoral poll” the words “Electoral Act 1956”, and substituting the words “Electoral Act 1993”.

30 (4) The said section 2 is hereby further amended by omitting from the definition of the term “electoral roll” the words “section 2 (1) of the Electoral Act 1956”, and substituting the words “section 3 (1) of the Electoral Act 1993”.

4. Prohibitions—Section 4 of the principal Act is hereby amended by omitting the words “Part VI of the Electoral Act 1956”, and substituting the words “Part VIII of the Electoral Act 1993”.

5. Duties of promoter in relation to defects in indicative referendum petition—(1) Section 17 (2) of the principal Act is hereby amended by inserting, after the words “indicative referendum”, the word “petition”.

(2) This section shall come into force on the day on which this Act receives the Royal assent. 5

6. Date of indicative referendum—Section 22 (4) (c) of the principal Act is hereby amended by omitting the words “section 71 of the Electoral Act 1956”, and substituting the words “section 126 of the Electoral Act 1993”. 10

7. Application of Electoral Act 1993—The principal Act is hereby amended by repealing section 24, and substituting the following section:

“24. (1) Subject to the provisions of this Act and of any regulations made under this Act,— 15

“(a) The provisions of the Electoral Act 1993 and of any regulations made under that Act shall, as far as they are applicable and with the necessary modifications, apply to the referendum as if the indicative referendum were an electoral poll; and 20

“(b) The indicative referendum shall be taken in the manner prescribed by the Electoral Act 1993 for the taking of an electoral poll.

“(2) Sections 4 to 15, 28 to 38, 41 to 45 (8), 46 to 59, 62 to 71, 113, 125 to 139, 143 to 154, 157 (3), 160 (1), (2) and (6), 165 (1) (b), 168 (1) to (3), 170 (6), 174 (1) (e), 178 (8), 179 (4), 180 (1) to (5), 180 (7) (e), 181, 183 (2) and (4), 185, 186, 191 to 193, 196 (g), 197 to 199, 206 to 214, 221, 229 to 231, 236 (3), 236 (8), 237 to 239, 243 to 246, 256 (1) (c), 256 (2), 256 (3), 258 to 262, 264, 267, 268, and 269 to 284 of the Electoral Act 1993 shall not apply to an indicative referendum.” 30

8. Electoral rolls—(1) Section 27 of the principal Act is hereby amended by omitting from subsection (1), and also from subsection (2) (a), the words “Electoral Act 1956”, and substituting in each case the words “Electoral Act 1993”. 35

(2) Section 27 (2) (b) of the principal Act is hereby amended by omitting the words “section 50 (2) of the Electoral Act 1956”, and substituting the words “section 88 (2) of the Electoral Act 1993”.

9. Voting paper—Section 28 of the principal Act is hereby amended by repealing paragraph (d), and substituting the following paragraph:

5 “(d) Have a counterfoil in form 13 in the Second Schedule to the Electoral Act 1993.”

10. Powers and rights of scrutineers—(1) Section 36 (1) of the principal Act is hereby amended—

10 (a) By omitting the expression “1956”, in both places where it appears, and substituting in each case the expression “1993”; and

(b) By omitting the expression “First”, and substituting the expression “Second”.

(2) Section 36 (2) of the principal Act is hereby amended—

15 (a) By omitting from paragraph (a) the words “section 110 of the Electoral Act 1956”, and substituting the words “section 172 of the Electoral Act 1993”; and

(b) By omitting from paragraph (b) the words “section 112 of the Electoral Act 1956”, and substituting the words “section 175 of the Electoral Act 1993”.

20 **11. Application to District Court Judge for recount**—

(1) Section 38 of the principal Act is hereby amended by omitting the words “section 116 (1) of the Electoral Act 1956”, and substituting the words “section 179 (1) of the Electoral Act 1993”.

25 (2) Section 38 of the principal Act is hereby further amended by repealing paragraph (d), and substituting the following paragraph:

30 “(d) Sections 180 (6), 180 (7) (a) to (d), 180 (8) to (11), 182, and 184 of the Electoral Act 1993, so far as they are applicable and with the necessary modifications, shall apply to the recount.”

12. Sections of Electoral Act 1993 applied—The principal Act is hereby amended by repealing section 47, and substituting the following section:

35 “47. (1) The sections of the Electoral Act 1993 described in subsection (2) of this section, as far as they are applicable and with the necessary modifications, shall apply to a petition for an inquiry under section 48 of this Act.

40 “(2) The sections of the Electoral Act 1993 referred to in subsection (1) of this section are sections 232 to 234, 235, 236 (1), (2), (4) to (7), 240, 241, 242, 247 to 255, 256 (1) (a) and (b), and 257.”

13. Petition for inquiry—Section 48 (1) of the principal Act is hereby amended by omitting the words “section 116 (1) of the Electoral Act 1956”, and substituting the words “section 179 (1) of the Electoral Act 1993”.

14. Interfering with or influencing voters—Section 52 (3) of the principal Act is hereby amended by omitting the words “Electoral Act 1956”, and substituting the words “Electoral Act 1993”.

15. Offences—Section 54 of the principal Act is hereby amended by omitting the words “Electoral Act 1956” in both places where they appear, and substituting in each case the words “Electoral Act 1993”.

16. Regulations—Section 58 (a) of the principal Act is hereby amended by omitting the words “Electoral Act 1956”, and substituting the words “Electoral Act 1993”.

Criminal Justice

17. Sections to be read with Criminal Justice Act 1985—This section and the next succeeding section shall be read together with and deemed part of the Criminal Justice Act 1985* (in that section referred to as the principal Act).

*1985, No. 120

Amendments: 1986, No. 83; 1987, No. 25; 1987, No. 95; 1987, No. 168; 1989, No. 20; 1989, No. 91; 1993, No. 43; 1993, No. 93; 1994, No. 28

18. Court may order confiscation of motor vehicles—(1) Section 84 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:
“(2A) Where a person is convicted on or after the commencement of sections 17 and 18 of the Law Reform (Miscellaneous Provisions) Act (No. 3) 1994 of an offence (in this subsection referred to as the first offence) against any of the following provisions of the Transport Act 1962, namely,—

“(a) Section 34 or section 50 (which relate to applying for or obtaining a driver’s licence while disqualified); or

“(b) Section 35 (which relates to driving while disqualified or contrary to the terms of a limited licence); or

“(c) Section 55 (1) (which relates to causing bodily injury or death through reckless or dangerous driving); or

“(d) Section 55 (2) (which relates to causing bodily injury or death through driving while under the influence of drink or a drug or while the proportion of alcohol in the driver’s breath or blood exceeds a specified amount); or

- 5 “(e) Section 56 (1) (which relates to causing bodily injury or death through careless use of a motor vehicle); or
“(f) Section 56 (1A) (which relates to causing bodily injury or death through careless driving in specified
circumstances); or
“(g) Section 57 (which relates to reckless or dangerous driving); or
“(h) Paragraph (a) or paragraph (b) or paragraph (c) or
10 paragraph (d) or paragraph (e) of section 58 (1) (which relate to driving while the proportion of alcohol in the driver’s breath or blood exceeds a specified amount or while under the influence of drink or a drug); or
“(i) Section 58E (which relates to refusing to supply a
15 specimen of blood); or
“(j) Section 65 (4) (which relates to the duties of a driver in the case of an accident where any other person is killed or injured); or
“(k) Section 65 (5) (which relates to the duties of a driver in
20 the case of an accident where no other person is killed or injured),—

and, within 5 years after the date of the commission of that offence, commits a further offence (in this subsection referred to as the second offence) against any of the provisions specified
25 in any of paragraphs (a) to (k) of this subsection, whether or not the second offence is of the same kind as the first offence but being an offence that arises from a different incident than the one that gave rise to the first offence, then, the court by or before which the offender is convicted of the second offence, if
30 satisfied that any motor vehicle owned by the offender (whether solely or as joint tenant in common with any other person or persons) or in which the offender has any interest (whether pursuant to a hire purchase agreement, leasing agreement, or otherwise) was being driven by, or in the charge
35 of, or (in the case of a second offence against a provision specified in paragraph (a) of this subsection) in the possession of, the offender at the material time, shall order that the motor vehicle be confiscated unless the making of an order will result in extreme hardship to the offender or undue hardship to any
40 other person.”

(2) Section 84 (3) of the principal Act is hereby amended by inserting after the expression “subsection (2)”, the expression “or subsection (2A)”.

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). 5

*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

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

“154. Duty to be a charge on certain goods—(1) This section applies in relation to goods on which duty is payable, being goods— 10

“(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. 15

“(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. 20

“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 25

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

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

“(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. 30

“(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. 35

“(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 40

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.

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

25 (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.

30 **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—”.

40 (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:

“(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:

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

Disputes Tribunals

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:

“(ga) The giving of evidence to Tribunals, including the giving of evidence by video link or telephone conference:”.

District Courts

24. Sections to be read with District Courts Act 1947—This section and the next succeeding section shall be read together with and deemed part of the District Courts Act 1947† (in that section referred to as the principal Act).

†R.S. Vol. 28, p. 57

Amendment: 1992, No. 138

25. Number of Judges increased—(1) Section 5 (2) of the principal Act (as substituted by section 6 (1) of the District Courts Amendment Act 1979, and from time to time thereafter amended) is hereby amended by omitting the expression “103” (as substituted by section 2 (1) of the District Courts Amendment Act 1992), and substituting the expression “110”.

(2) Section 2 of the District Courts Amendment Act 1992 is hereby consequentially repealed.

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).

‡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—

5

“(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:”.

10

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).

*R.S. Vol. 23, p. 473

Amendments: 1993, No. 7; 1994, No. 33

15

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:

20

“ ‘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):

25

“(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:”.

30

(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:

35

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

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

40

(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:

“ ‘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: 5

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

“(d) Roots remaining from any timber felled before that date;— 10

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

(4) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “Secretary”, the following definition: 15

“ ‘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:”.

(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”. 25

(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. 30

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”. 35

(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 40

“(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”.

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

“(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

“(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

“(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.

(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”.

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

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—

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

(b) By omitting the words “that file”, and substituting the words “that schedule”.

(2) Section 67K of the principal Act (as so inserted) is hereby amended by adding the following subsection:

“(11) Where,—

“(a) The Secretary and an owner agree to vary or cancel any notification of a plan under this section; or

“(b) Pursuant to section 67I of this Act, the Secretary (with or without the agreement of the owner) amends or renews a sustainable forest management plan,—

the Secretary may issue a certificate to the appropriate District Land Registrar or District Registrar of the Maori Land Court, as the case may require, stating the effect of the agreement or amendment or renewal; and, upon receipt of the certificate, the appropriate District Land Registrar or District Registrar shall— 5

“(c) Record the certificate in accordance with this section as if it were a plan; and

“(d) Vary or cancel the notification to the extent necessary to give effect to the agreement or amendment or renewal stated in the certificate.” 10

33. Sustainable forest management permits—(1) Section 67M (2) of the principal Act (as inserted by section 3 of the Forests Amendment Act 1993) is hereby amended—

(a) By inserting, after the word “permit”, the words “shall have effect for a period of 10 years and”; 15

(b) By inserting, after the words “capable of being milled”, the words “, irrespective of its quality”.

(2) Section 67M (3) of the principal Act (as so inserted) is hereby amended—

(a) By inserting, before the word “timber” where it first occurs, the word “indigenous”; 20

(b) By inserting, after the words “capable of being milled”, the words “, irrespective of its quality”.

(3) Section 67M of the principal Act (as so inserted) is hereby amended by repealing subsection (7), and substituting the following subsection: 25

“(7) The provisions of sections 67F (2), 67I, 67K, and 67L of this Act, and the provisions and prescriptions set out in clauses 9 and 10 of the Second Schedule to this Act, with the necessary modifications,— 30

“(a) Shall apply to every proposal under this section as if it were a draft sustainable forest management plan; and

“(b) Shall apply to every permit under this section as if it were a sustainable forest management plan.” 35

34. Offences—Section 67T (b) of the principal Act (as inserted by section 3 of the Forests Amendment Act 1993) is hereby amended by omitting the word “logs”, and substituting the word “timber”.

35. Owners to obtain necessary resource consents under Resource Management Act 1991 before commencing forestry activities—The principal Act is 40

hereby amended by repealing section 67v (as inserted by section 3 of the Forests Amendment Act 1993), and substituting the following section:

5 “67v. Before commencing any activity to which this Part of this Act applies, an owner shall obtain the resource consents (if any) required under the Resource Management Act 1991 for that activity.”

Gaming and Lotteries

10 **36. Sections to be read with Gaming and Lotteries Act 1977**—This section and the next succeeding section shall be read together with and deemed part of the Gaming and Lotteries Act 1977* (in that section referred to as the principal Act).

*1977, No. 84

Amendments: 1979, No. 90; 1987, No. 76; 1987, No. 143; 1988, No. 186; 1989, No. 118, 1991, No. 89; 1991, No. 101; 1992, No. 120; 1994, No. 34

15 **37. Meaning of “illegal prize competition”**—(1) The principal Act is hereby amended by repealing section 17 (as amended by section 6 of the Gaming and Lotteries Amendment Act 1991), and substituting the following section:

“17. In this Part of this Act ‘illegal prize competition’ means a prize competition—

20 “(a) That is not authorised by or under section 23 or section 24 or section 25 or section 26 or section 69 of this Act; or

“(b) That, being authorised by or under section 23 or section 24 or section 25 or section 26 or section 69 of this Act, does not comply with—

25 “(i) All the provisions of the section by or under which it is authorised; or

“(ii) All the conditions or restrictions imposed under the section by or under which it is authorised; or

30 “(c) That is conducted wholly or partly by means of a gaming machine; or

“(d) That disposes of, or is intended to dispose of, any property or class of property specified in a notice for the time being in force under section 70 of this Act.”

35 (2) Section 6 of the Gaming and Lotteries Amendment Act 1991 is hereby consequentially repealed.

Guardianship

40 **38. Sections to be read with Guardianship Act 1968**—This section and the next succeeding section shall be read together with and deemed part of the Guardianship Act 1968.

39. Rights of custody—(1) The Guardianship Amendment Act 1991* is hereby amended by repealing section 4, and substituting the following section:

“4. For the purposes of this Part of this Act, the term ‘rights of custody’, in relation to a child, shall include rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence, attributed to a person, institution, or other body, either jointly or alone, under the law of the Contracting State in which the child was habitually resident immediately before the removal or retention of the child.”

(2) Section 2 of the Guardianship Amendment Act 1991 is hereby consequentially amended by omitting from the definition of the term “rights of custody” the expression “section 4 (1)”, and substituting the expression “section 4”.

*1991, No. 19

Human Rights

40. Sections to be read with Human Rights Act 1993—This section and the next 2 succeeding sections shall be read together with and deemed part of the Human Rights Act 1993† (in those sections referred to as the principal Act).

†1993, No. 82

41. Race Relations Conciliator—Section 7 of the principal Act is hereby amended by adding the following subsection:

“(3) The Race Relations Conciliator shall be a corporation sole with perpetual succession and a seal of office, and shall be capable of acquiring, holding, and disposing of real and personal property and of suing and being sued, and shall have the rights, powers, and privileges of a natural person.”

42. Functions of Complaints Division—Section 75 (g) of the principal Act is hereby amended by omitting the word “Commission’s”, and substituting the words “Complaints Division’s”.

Juries

43. Sections to be read with Juries Act 1981—This section and the next 3 succeeding sections shall be read together with and deemed part of the Juries Act 1981‡ (in those sections referred to as the principal Act).

‡1981, No. 23

Amendments: 1982, No. 174; 1984, No. 181

44. Interpretation—(1) Section 2 of the principal Act is hereby amended by repealing the definitions of the terms

“Chief Registrar of Electors”, “General electoral district”, and “Maori electoral district”, and substituting the following definitions:

5 “ ‘Chief Registrar of Electors’ means the Chief Registrar of Electors holding office under section 21 of the Electoral Act 1993; and includes his or her deputy:

“ ‘General electoral district’ and ‘Maori electoral district’ have the same meaning as in section 3 (1) of the Electoral Act 1993.”

10 (2) Section 2 of the principal Act is hereby further amended by repealing the definition of the term “mentally disordered”, and substituting the following definition:

15 “ ‘Mentally disordered’ has the same meaning as in section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992.”

45. Qualification and liability—Section 6 (b) of the principal Act is hereby amended by omitting the expression “1956”, and substituting the expression “1993”.

20 **46. Preparation of jury lists**—(1) Section 9 (3) (c) of the principal Act is hereby amended by omitting the expression “section 62A of the Electoral Act 1956”, and substituting the expression “section 115 of the Electoral Act 1993”.

(2) Section 9 (4) of the principal Act is hereby amended by inserting, after the words “residential address,”, the words
25 “postal address”.

Land Transfer

47. Sections to be read with Land Transfer Act 1954—This section and the next succeeding section shall be read together with and deemed part of the Land Transfer Act 1954*.

*R.S. Vol. 22, p. 531

Amendments: 1991, No. 118; 1993, No. 124

30 **48. Application for certificate of title based on possession**—(1) Section 3 of the Land Transfer Amendment Act 1963 is hereby amended by adding the following subsection:

35 “(3) For the purposes of this Part of this Act, possession of any land by 1 or more joint tenants or tenants in common at any time (whether after or before the commencement of sections 47 and 48 of the Law Reform (Miscellaneous Provisions) Act 1994)—

“(a) Shall not of itself be (or be deemed to have been) possession of the land by the other tenant or tenants; and

“(b) Shall be (or be deemed to have been) capable of being adverse possession as against the other tenant or tenants.” 5

(2) Section 13 of the Limitation Act 1950 is hereby consequentially amended by adding the following subsection:

“(3) For the purposes of this section, 1 or more joint tenants or tenants in common of any land can take (and shall be deemed at all times before the commencement of **sections 47 and 48 of the Law Reform (Miscellaneous Provisions) Act 1994** to have been able to take) adverse possession of the land as against the other tenant or tenants.” 10

(3) No person has, by virtue of the enactment of this section, any right of action in respect of any matter arising before the commencement of **section 48 of this Act and this section** that the person (or some other person from whom the person derives the right) did not have immediately before that commencement. 15 20

Law Practitioners

49. Sections to be read with Law Practitioners Act 1982—This section and the next succeeding section shall be read together with and deemed part of the Law Practitioners Act 1982* (in that section referred to as the principal Act). 25

*1982, No. 123

Amendments: 1985, No. 26; 1985, No. 56; 1985, No. 182; 1987, No. 35; 1988, No. 140; 1991, No. 72; 1993, No. 20; 1994, No. 44

50. Power of complainant to request review by New Zealand Law Society—The principal Act is hereby amended by inserting, after section 97, the following section:

“97A. (1) Where—

(a) A District Law Society fails to take any action in consequence of any report or recommendation that it is required by section 97 (9) of this Act to consider; or 30

(b) A complainant is not satisfied with the action taken by a District Law Society in consequence of any report or recommendation that it is required by section 97 (9) of this Act to consider,— 35

the complainant may request that the report or recommendation be referred by the District Law Society to the New Zealand Law Society for review.

“(2) Where a report or recommendation of a Lay Observer is referred to the New Zealand Law Society for review under 40

subsection (1) of this section, the New Zealand Law Society shall review the consideration given by the District Law Society to the report or recommendation and the action, if any, taken by the District Law Society in consequence of it.

5 “(3) Where the New Zealand Law Society does not agree with—

(a) The failure of the District Law Society to take any action;
or

10 (b) The action taken by the District Law Society—
in consequence of the report or recommendation, the New Zealand Law Society shall refer the report or recommendation back to the District Law Society for further consideration.

15 “(4) The New Zealand Law Society shall notify the Lay Observer, the complainant, and the District Law Society of its decision under subsection (3) of this section and the reasons for its decision.

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

Marriage

20 **51. Sections to be read with Marriage Act 1955**—This section and the next 2 succeeding sections shall be read together with and deemed part of the Marriage Act 1955* (in those sections referred to as the principal Act).

*R.S. Vol. 10, p. 39

Amendments: 1982, No. 81; 1985, No. 27; 1986, No. 97; 1991, No. 129; 1993, No. 31

25 **52. Place and form of marriage before marriage celebrant**—(1) Section 31 (2) of the principal Act (as substituted by section 6 of the Marriage Amendment Act 1976) is hereby amended by omitting the words “with open doors”.

30 (2) Section 32 (1) of the principal Act is hereby consequentially amended by omitting from the second proviso (as substituted by section 5 (2) of the Marriage Amendment Act 1976) the words “with open doors”.

35 **53. Marriages before Registrar**—Section 33 (1) of the principal Act (as substituted by section 7 (1) of the Marriage Amendment Act 1976) is hereby amended by omitting the words “with open doors”.

Motor Vehicle Securities

54. Sections to be read with Motor Vehicle Securities Act 1989—(1) This section and the next 4 succeeding sections shall be read together with and deemed part of the Motor Vehicle

Securities Act 1989* (in those sections referred to as the principal Act).

(2) This section and the next 4 succeeding sections shall come into force on the 1st day of March 1995.

*1989, No. 14

Amendments: 1989, No. 125; 1994, No. 47

55. Interpretation—Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “Tribunal”, the following definition: 5

“‘Vehicle identification number’, in relation to a motor vehicle, means a unique identifying number for the time being assigned to it in accordance with regulations made under the Transport Act 1962:” 10

56. Application for registration—Section 6 (2) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph: 15

“(a) The registration number (if any) of the motor vehicle concerned and— 15

“(i) If it has a vehicle identification number, that number: 20

“(ii) If it has no vehicle identification number but has a chassis number, its chassis number:” 20

57. Enquiries—Section 10 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection: 25

“(2) Any person making an enquiry shall specify the registration number (if any), vehicle identification number (if any), and chassis number (if any) of the motor vehicle concerned.” 25

58. Certificate of entry in register—Section 11 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection: 30

“(2) Any person applying for a certificate shall specify the registration number (if any), vehicle identification number (if any), and chassis number (if any) of the motor vehicle concerned.” 30

Newspapers and Printers Act Repeal 35

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

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
5 repealing the definition of the term “newspaper”, and substituting the following definition:

10 “ ‘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
15 Copyright Act 1962 is hereby consequentially amended by repealing the definition of the terms “printer” and “printing”, and substituting the following definitions:

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

“ ‘Printing’—

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

25 “(b) Does not include typewriting;—
and ‘printed’ has a corresponding meaning.”

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

35 “ ‘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.”.

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

New Zealand Maori Arts and Crafts Institute

63. Part to be read with New Zealand Maori Arts and Crafts Institute Act 1963—This section and the next succeeding section shall be read together with and deemed part of the New Zealand Maori Arts and Crafts Institute Act 1963* (in that section referred to as the principal Act). 5

*R.S. Vol. 8, p. 835

64. Membership of Institute—(1) Section 5 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) The Institute shall comprise not fewer than 5 and not more than 7 members, appointed by the Governor-General on the recommendation of the Minister.” 10

(2) The principal Act is hereby consequentially amended—

(a) By repealing the definition in section 2 of the term “appointed member”: 15

(b) By omitting from sections 6 (1) (where it first occurs), 6 (2), 7 (1), 7 (2), and 10 (2) the word “appointed”:

(c) By omitting from section 8 (2) the words “if the Chairman is an appointed member,”.

(3) The following provisions are hereby consequentially repealed: 20

(a) Section 10 (1) of the principal Act:

(b) So much of the Second Schedule to the New Zealand Tourism Board Act 1991 as relates to section 5 of the principal Act: 25

(c) So much of the Schedule to the Ministry of Maori Development Act 1991 as relates to the principal Act.

Passports

65. Sections to be read with Passports Act 1992—This section and the next 2 succeeding sections shall be read together with and deemed part of the Passports Act 1992† (in those sections referred to as the principal Act). 30

†1992, No. 92

66. Minister may delegate powers—Section 34 (1) of the principal Act is hereby amended by inserting, after the expression “Part I”, the expression “or section 42”. 35

67. Validation of cancellation of endorsements—

(1) This section applies to the cancellation of the endorsement of the name of a child on the passport of a parent or guardian of the child if it was effected by an officer before the commencement of this Act. 40

(2) Every cancellation to which this section applies is hereby deemed to have been and to continue to be as valid and effectual as if, at the time it was effected,—

- 5 (a) The amendment to section 34 (1) of the principal Act effected by section 66 of this Act was in force; and
(b) There was in force under that section a delegation from the Minister to the officer who effected it of the Minister's powers under section 42 of the principal Act.

10

Police

68. Sections to be read with Police Act 1958—This section and the next succeeding section shall be read together with and deemed part of the Police Act 1958* (in that section referred to as the principal Act).

*R.S. Vol. 6, p. 669

Amendments: 1991, No. 29; 1992, No. 63; 1992, No. 68

- 15 **69. Non-sworn members of the Police**—(1) Section 6 of the principal Act (as substituted by section 3 of the Police Amendment Act 1989) is hereby amended by inserting in subsection (4), after paragraph (a), the following paragraph:

“(aa) In section 24 of the Summary Offences Act 1981; and”.

- 20 (2) Section 24 of the Summary Offences Act 1981 shall have effect in respect of statements made to the Police before the commencement of this Act as if subsection (1) of this section had not been passed.

Private Investigators and Security Guards

- 25 **70. Section to be read with Private Investigators and Security Guards Act 1974**—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
30 the principal Act).

†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”.

- 35 (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 of the Crimes Act 1961; or

- 40 “(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:

“(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.” 5

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

“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)— 10

“(a) Is under the age of 20 years; or

“(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 15

“(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,— 20 25

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.

“(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)— 30

“(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 35

“(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),— 40

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.”

5 (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.

10 **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”.

15 (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.”.

20 **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).

25 **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”.

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

35 “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.

40 (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—

“(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: 5

“(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.” 10

79. Trust accounts, etc.—The principal Act is hereby amended by repealing sections 49 and 50. 15

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”.

81. Complaints against licensee—Section 53 (4) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph: 20

“(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 paragraph (aa) (as inserted by section 11 of the Private Investigators and Security Guards Amendment Act 1978), and substituting the following paragraph: 25

“(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:” 30

(2) Section 11 of the Private Investigators and Security Guards Amendment Act 1978 is hereby consequentially repealed. 35

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:

5 “(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—

10 Section 60 of the principal Act is hereby amended by repealing subsections (2) and (3), and substituting the following subsections:

15 “(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.

20 “(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.”

30 **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:

“PART VI

“APPEALS

35 **“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:

40 “(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

“(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

“(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.

“(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; 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 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 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 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 amended by repealing the First Schedule.

Property Law

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

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* (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

(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.

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

“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.”

(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.

(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.

Securities

93. Sections to be read with Securities Act 1978—This section and the next succeeding section shall be read together with

and deemed part of the Securities Act 1978* (in that section referred to as the principal Act).

*R. S. Vol. 15, p.533

Amendments: 1986, No. 109; 1988, No. 234; 1993, No. 120; 1994, No. 15

94. Criminal liability for misstatement in advertisement or registered prospectus—(1) The principal Act is hereby amended by repealing section 58 (as substituted by section 30 of the Securities Amendment Act 1982), and substituting the following section: 5

“58. (1) Subject to **subsection (2)** of this section, where an advertisement that includes any untrue statement is distributed— 10

“(a) The issuer of the securities referred to in the advertisement, if an individual; or

“(b) If the issuer of the securities is a body, every director thereof at the time the advertisement is distributed— 15

commits an offence.

“(2) No person shall be convicted of an offence under **subsection (1)** of this section if the person proves either that the statement was immaterial or that he or she had reasonable grounds to believe, and did, up to the time of the distribution of the advertisement, believe that the statement was true. 20

“(3) Subject to **subsection (4)** of this section, where a registered prospectus that includes an untrue statement is distributed, every person who signed the prospectus, or on whose behalf the registered prospectus was signed for the purposes of section 41 (1) (b) of this Act, commits an offence. 25

“(4) No person shall be convicted of an offence under **subsection (3)** of this section if the person proves either that the statement was immaterial or that he or she had reasonable grounds to believe, and did, up to the time of the distribution of the prospectus, believe that the statement was true. 30

“(5) Every person who commits an offence against this section is liable—

“(a) On conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$25,000; or 35

“(b) On summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$15,000.”

(2) Any proceedings for an offence against section 58 of the principal Act (as in force before the commencement of this section) commenced but not completed before the commencement of this section, shall be heard and determined 40

in accordance with section 58 of the principal Act (as enacted by **subsection (1)** of this section).

(3) Section 30 of the Securities Amendment Act 1982 is hereby consequentially repealed.

5

Statistics

95. Sections to be read with Statistics Act 1975—This section and the next succeeding section shall be read together with and deemed part of the Statistics Act 1975* (in that section referred to as the principal Act).

*R.S. Vol. 26, p. 791

10 **96. Altering name of Department**—(1) The principal Act is hereby amended by omitting from the Title the words “the Department of Statistics”, and substituting the words “a Department having the name Statistics New Zealand”.

15 (2) Section 2 of the principal Act is hereby amended by repealing the definition of the term “the Department”, and substituting the following definition:

“The Department” means the Department referred to in **section 12** of this Act.”

20 (3) The principal Act is hereby amended by repealing section 12 and the heading above that section, and substituting the following heading and section:

“DEPARTMENT AND GOVERNMENT STATISTICIAN

“12. (1) There shall be a Department of State to be called Statistics New Zealand.

25 “(2) The Department is the same Department as that existing immediately before the coming into force of **sections 95 and 96 of the Law Reform (Miscellaneous Provisions) Act (No. 3) 1994** and known as the Department of Statistics.”

(4) The principal Act is hereby further amended by—

30 (a) Omitting from section 9 (1) (including the proviso thereto) and from section 13 the words “of Statistics”;

(b) Omitting from the form of statutory declaration set out in section 21 (1) the words “the Department of Statistics”, and substituting the words “Statistics New Zealand”.

35 (5) The First Schedule to the Ombudsmen Act 1975 is hereby amended by omitting the words “The Department of Statistics”, and substituting the words “Statistics New Zealand”.

40 (6) The First Schedule to the State Sector Act 1988 (as substituted by section 28 (1) of the State Sector Amendment Act (No. 2) 1989) is hereby amended by omitting the words

“Department of Statistics”, and substituting the words “Statistics New Zealand”.

(7) Unless the context otherwise requires, every reference in any enactment or in any regulation, rule, order, form, notice, or other document to the Department of Statistics shall be read as a reference to the Department within the meaning of section 12 of the principal Act (as amended by **subsection (2)** of this section). 5

Status of Children

97. Sections to be read with Status of Children Act 1969—This section and the next succeeding section shall be read together with and deemed part of the Status of Children Act 1969* (in that section referred to as the principal Act). 10

*R.S. Vol. 4, p. 893

Amendments: 1983, No. 95; 1987, No. 185; 1990, No. 15

98. Declaration as to paternity—Section 10 of the principal Act is hereby amended by adding the following subsection: 15

“(4) Every question of fact that arises in applying subsection (1) or subsection (2) of this section shall be decided on a balance of probabilities.”

Summary Proceedings

99. Sections to be read with Summary Proceedings Act 1957—This section, the next 8 succeeding sections, and the Second Schedule to this Act shall be read together with and deemed part of the Summary Proceedings Act 1957† (in those sections referred to as the principal Act). 20 25

†R.S. Vol. 9, p. 583

Amendments: 1982, Nos. 47, 131, 158; 1985, Nos. 51, 55, 162, 191; 1986, Nos. 73, 76; 1987, Nos. 165, 172; 1989, Nos. 21, 105; 1991, Nos. 62, 105; 1992, No. 82; 1993, No. 47

100. Information to be in prescribed form and upon oath—Section 15 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) Without limiting any other provision of this Act or any other enactment, no information shall be invalid by reason only that it does not contain the date of birth of the defendant or does not correctly describe the defendant’s date of birth, and no amendment shall be required to remedy that omission or error before the hearing of the information.” 30

101. Amendment of information to correct particulars of defendant—(1) The principal Act is hereby amended by inserting, after section 43, the following section: 35

“43A. (1) Without limiting section 43 of this Act, if at any time during the hearing, and whether or not the defendant appears to answer the charge, the Court is satisfied that the particulars of the defendant as they appear on the information are incorrect, whether—

5

“(a) Because of any mistake or omission in those particulars; or

10

“(b) Because the name, address, or any other particulars of the defendant as stated on the information do not correctly identify the person by whom the offence stated in the information is alleged to have been committed, whether because the person identified on the information does not exist or is some other person or for any other reason,—

15

the Court may, subject to **subsections (3) to (6)** of this section, make such amendments to the information as are necessary to correct the mistake or omission or, as the case may be, to ensure that the information correctly identifies that person.

20

“(2) Without limiting the generality of the powers conferred by **subsection (1)** of this section, it is hereby declared that those powers include the power to amend the information by substituting, for all or any of the particulars of the defendant (including his or her name) as stated on the information, any other particulars.

25

“(3) No power conferred by **subsection (1)** of this section shall be exercised after the expiry of the period of 12 months from the date on which the information is laid.

30

“(4) The Court may, if it is of opinion that any person would be prejudiced by any amendment made or proposed to be made pursuant to this section, and that it would be contrary to the interests of justice to require that person to suffer that prejudice,—

35

“(a) Refuse to make the amendment; or

“(b) If the amendment has already been made, dismiss the information, but any such dismissal shall not operate as a bar to any other proceedings in the same matter.

40

“(5) The Court may, at the request of the defendant, if it is of opinion that the defendant would be embarrassed in the defendant’s defence by reason of an amendment made or proposed to be made pursuant to this section, adjourn the hearing of the case.

“(6) Where the Court amends an information pursuant to this section,—

“(a) The Court may direct that a summons or, as the case requires, a further summons be issued to the defendant:

“(b) Subject to **paragraph (a)** of this subsection and to **subsection (5)** of this section, the hearing shall proceed in all respects as if the information had been originally framed as amended.” 5

(2) **Section 43A** of the principal Act (as inserted by **subsection (1)** of this section) shall apply in respect of any information, whether laid before or after the commencement of this section. 10

102. New sections substituted—(1) The principal Act is hereby amended by repealing section 69, and substituting the following sections:

“**69. Procedure where defendant liable to greater penalty because of previous convictions**—(1) This section applies where— 15

“(a) A defendant is charged with an offence for which the penalty is greater if the defendant has previously been convicted of that offence or of some other offence; and 20

“(b) By reason of that greater penalty, the defendant is entitled, under section 66 of this Act, to elect to be tried by a jury.

“(2) Where this section applies,—

“(a) The information shall disclose the existence of the previous conviction or convictions which, if proved against the defendant or admitted by him or her, would make the defendant liable to the greater penalty; and 25

“(b) Subject to **subsection (4)** of this section, where the information discloses such conviction or convictions, the provisions of section 66 of this Act shall apply in the ordinary way. 30

“(3) No information shall be dismissed by reason only that it does not comply with the requirements of **subsection (2) (a)** of this section, but if any such information is not subsequently amended so as to comply with those requirements, then, notwithstanding any other enactment, the defendant shall be liable to the penalty to which he or she would be liable but for any previous convictions. 35 40

“(4) Where, pursuant to section 43 of this Act, an information for an offence is amended to disclose a previous conviction to which **subsection (2)** of this section applies, then,

5 unless the defendant has already been given the right, under section 66 of this Act, to elect to be tried by a jury for that offence, the defendant shall then be given that right, and the provisions of section 66 of this Act, as far as they are applicable and with the necessary modifications, shall apply.

“(5) Nothing in this section shall affect the right of the Court, when sentencing the defendant, to take any previous convictions into account.

10 “(6) Nothing in this section limits section 341 of the Crimes Act 1961.

“**69AA. Further provisions relating to previous convictions**—(1) For the avoidance of doubt, it is hereby declared that in any case where—

“(a) Section 69 of this Act applies; and

15 “(b) The defendant elects, under section 66 of this Act, not to be tried by a jury,—

it shall not be necessary for the informant to prove any previous conviction to which subsection (2) (a) of that section applies, where that conviction is not admitted by the defendant, until the issue of penalty for the offence arises.

20 “(2) Nothing in subsection (1) of this section limits or affects any other enactment or rule of law that prohibits or regulates the admission of evidence relating to the previous convictions of the defendant.

25 “(3) For the purpose of proving any previous conviction to which section 69 (2) (a) of this Act applies in any proceedings in which the defendant is dealt with summarily, the production of a certificate containing the substance of the conviction for the offence, purporting to be signed by the Registrar or other officer having the custody of the records of the Court by or before which the offender was convicted, shall—

“(a) Be sufficient evidence of the conviction without proof of the signature or official character of the person appearing to have signed the certificate; and

35 “(b) In the absence of evidence to the contrary, if the name of the offender stated in the certificate is the name of the defendant, constitute prima facie evidence that the offender so stated is the defendant.

40 “(4) The mode of proving a previous conviction authorised by this section shall be in addition to, and not in exclusion of, any other mode authorised by law.”

(2) The principal Act shall apply, in respect of proceedings commenced before the commencement of this section, as if subsection (1) of this section had not been enacted.

103. Protection of Registrar, Bailiff, etc.—Section 102 of the principal Act (as substituted by section 14 of the Summary Proceedings Amendment Act 1987) is hereby amended by inserting, after the words “relating to”, the words “the immobilisation of any vehicle or to”.

5

104. Procedural provisions relating to appeals under section 115D—Section 115E of the principal Act (as inserted by section 11 of the Summary Proceedings Amendment Act (No. 2) 1991) is hereby amended by adding, as subsection (6), the following subsection:

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“(6) Where, in the case of an appeal under section 115D (2) of this Act, the defendant does not appear at the hearing of the appeal, the High Court may, if it thinks fit, issue a warrant for the arrest of the defendant.”

105. Proceedings under Part V—Section 145 of the principal Act is hereby amended by adding, as subsection (3), the following subsection:

15

“(3) Without limiting any other provision of this Act or any other enactment, no information shall be invalid by reason only that it does not contain the date of birth of the defendant or does not correctly describe the defendant’s date of birth, and no amendment shall be required to remedy that omission or error before the trial.”

20

106. First Schedule amended—Part I of the First Schedule to the principal Act is hereby amended by repealing the item relating to section 105A of the Crimes Act 1961.

25

107. New Second Schedule substituted—The principal Act is hereby amended by repealing the Second Schedule, and substituting the Second Schedule set out in the **Second Schedule** to this Act.

30

Superannuation Schemes

108. Sections to be read with Superannuation Schemes Act 1989—This section and the next succeeding section shall be read together with and deemed part of the Superannuation Schemes Act 1989* (in that section referred to as the principal Act).

35

*1989, No. 10

Amendments: 1990, No. 67; 1990, No. 80; 1992, No. 131

109. Objections and appeals against decisions of Government Actuary—(1) Section 23 of the principal Act (as

amended by section 3 (4) of the Judicature Amendment Act 1991 and section 89 of the Income Tax Amendment Act (No. 2) 1993) is hereby further amended by inserting, in place of the former subsection (4), the following subsection:

5 “(4) The Government Actuary shall, within 28 days after receiving the objection or holding any hearing requested under subsection (3) of this section, give notice in writing of his or her decision to the person who made the objection.”

10 (2) The said section 23 is hereby further amended by repealing subsections (6) and (11).

(3) So much of the Schedule to the Judicature Amendment Act 1991 as relates to the principal Act is hereby consequentially repealed.

Tariff

15 **110. Sections to be read with Tariff Act 1988**—(1) This section and the next 2 succeeding sections shall be read together with and deemed part of the Tariff Act 1988* (in those sections referred to as the principal Act).

20 (2) This section and the next 2 succeeding sections shall come into force on a date to be appointed by the Governor-General by Order in Council.

*1988, No. 155

Amendments: 1989, No. 48; 1990, No. 88; 1991, No. 74

111. Interpretation—Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “Shipment”, the following definition:

25 “‘South Pacific Regional Trade and Economic Co-operation Agreement’ means the agreement of that name done at Tarawa on the 14th day of July 1980; and includes any modification or amendment of it made after that day:”.

30 **112. Application of Tariff**—(1) Section 7 (1) (d) of the principal Act is hereby amended by repealing subparagraph (i), and substituting the following subparagraph:

35 “(i) Being the produce or manufacture of the United Kingdom of Great Britain and Northern Ireland, the Isle of Man, or the Channel Islands; and”.

(2) Section 7 (1) (e) of the principal Act is hereby amended by repealing subparagraph (i), and substituting the following subparagraph:

40 “(i) Being the produce or manufacture of any country (other than New Zealand or Australia) in

relation to which, at the time of the importation or entry of the goods into New Zealand, the South Pacific Regional Trade and Economic Co-operation Agreement is in force; and”.

(3) Section 7 of the principal Act is hereby further amended 5
by inserting, after subsection (1), the following subsections:

“(1A) For the purposes of **subsection (1) (e) (i)** of this section, any certificate given by the Secretary of Foreign Affairs and Trade to the effect that any country is or is not one in relation to which, at the time of the importation or entry of the goods into 10
New Zealand, the South Pacific Regional Trade and Economic Co-operation Agreement was in force shall be conclusive evidence of that fact.

“(1B) Any Court or any person acting judicially to which or to whom, in any proceeding, any certificate under **subsection (1A)** of 15
this section is produced shall take judicial notice of the signature on it of the Secretary of Foreign Affairs and Trade.

“(1C) For the purposes of **subsection (1B)** of this section, the terms “Court”, “person acting judicially”, and “proceeding” 20
have the meanings assigned to them by the Evidence Act 1908.”

SCHEDULES

FIRST SCHEDULE

Section 88

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.”

Section 107

SECOND SCHEDULE

NEW SECOND SCHEDULE TO SUMMARY PROCEEDINGS ACT 1957

“SECOND SCHEDULE

FORMS OF INFORMATION

Section 15

Form 1

INFORMATION OR COMPLAINT WHERE DEFENDANT IS TO BE PROCEEDED AGAINST SUMMARILY

I, [Full Name], of [Address, occupation], say on oath that (*I have just cause to suspect, and do suspect, that) (*within the previous (6) months, namely) on the day of 19 , at , [Full Name], of [Address, occupation,], *who was born on the day of 19 , [Here set out the substance of the offence or matter of complaint] (*being an offence punishable summarily). [Here add section and statute applicable.]

.....
[Signature of Informant or Complainant]

Sworn before me at this day of 19

.....
District Court Judge, Justice of the Peace, Registrar (not being a constable).

*Delete if inapplicable

SECOND SCHEDULE—continued

NEW SECOND SCHEDULE TO SUMMARY PROCEEDINGS ACT 1957—continued

“SECOND SCHEDULE—continued

FORMS OF INFORMATION—continued

Form 2

Section 145(2)

INFORMATION WHERE DEFENDANT IS TO BE PROCEEDED AGAINST BY
INDICTMENT

I, [Full Name], of [Address, occupation], say on oath that I have just cause to suspect, and do suspect that at on [Full Name], of [Address, occupation,], *who was born on the day of 19, [Here set out the nature of the offence], being an indictable offence. [Here add section and statute applicable.]

.....
[Signature of Informant]

Sworn before me at this day of 19

.....
District Court Judge, Justice of the Peace, Registrar (not being a constable).

*Delete if inapplicable.”