LEGISLATION NOTES

LABOUR RELATIONS ACT 1987

The Labour Relations Act 1987 came into force on 1 August 1987, and replaces the Industrial Relations Act 1973. In the preface to the Green Paper *Industrial Relations – A Framework for Review* the Minister of Labour, Stan Roger, stated that "[t]he Government hopes to move towards an industrial relations system where the roles, rights and obligations of the participants are clearly established. . . ."[1] As a reflection of this, one of the major purposes of the Act is to "provide procedures for the orderly conduct of relations between workers and employers."

It is proposed to examine the significance of one of the major institutions created by the Labour Relations Act: the Labour Court. The predecessor to the Labour Court was the Arbitration Court, which had exclusive jurisdiction in relation to industrial matters. Despite this jurisdiction and its position as a judicial authority in the industrial arena,[2] the Court's power was eroded by the increasing number of civil actions going to the High Court with which the Labour Court has overlapping jurisdiction. Resultant "forum-bashing" had caused uncertainty and unpredictability which was inconsistent with one of the objects of the Act: to provide orderly procedures.

Establishment of the Labour Court

Section 278 of the Act establishes the Labour Court. It comprises five judges and a panel of lay members (s 285). The panel members only sit where a dispute relates to demarcation or personal grievance issues (ss 108(6) and 217(2)). The Labour Court is no longer subject to review by the High Court, and any such reviews are referred directly to the Court of Appeal. It is obvious that the Legislature intended speedy resolution of disputes; hence the exclusion of panel members except in limited circumstances and the directness of the appeal provisions.[3]

Jurisdiction of the Labour Court

The Green Paper states that it is necessary "to allow the Arbitration Court

1 *Industrial Relations – A Framework for Review* (1986) Vol 2, 3.

2 *NZ Baking Trades Employees' Industrial Union v General Foods Corporation (NZ) Ltd* [1985] 2 NZLR 110.

3 The grounds for appeal are subject to special conditions.

(or any institution which may succeed it) to function as a 'Labour Court' with full jurisdiction over all employment-related matters."[4] However, this aim has not been realised; the Act does not cover all "employment-related matters". For example, common law remedies for breach of contract of employment must be pursued in the High Court.

The Act gives the Labour Court full and exclusive jurisdiction in respect of:

(i) torts resulting from strikes and lockouts – ss 230(f) and 242(1);
(ii) injunctions – s 243(1);
(iii) "in all matters before it" – s 279(4); and
(iv) judicial review – s 280(3).

Section 230(f) states that "the Labour Court has jurisdiction (to the exclusion of the High Court) to entertain certain civil actions in respect of strikes or lockouts." This section expressly recognises that the Labour Court has been given jurisdiction formerly exercised by the High Court to hear certain civil actions. This section also impliedly recognises, by the use of the word "certain", that the jurisdiction of the Labour Court is limited.

Section 242(1) gives the Labour Court full and exhaustive jurisdiction in respect of proceedings:

> Where a strike or lockout is occurring or has occurred and as a result proceedings are issued against any party to the strike or lockout and such proceedings are founded on any of the following torts, namely:
>
> (a) Conspiracy; or
> (b) Intimidation; or
> (c) Inducement of breach of contract; or
> (d) Interference by unlawful means with trade, business, or employment . . . .

However, the torts specified do not form an exhaustive list of all the possible causes of action arising from strikes and lockouts. For example, the tort of nuisance and the statutory torts created by ss 81 and 82 of the Commerce Act are not included. Of great significance is the exclusion of picketing from the jurisdiction conferred on the Labour Court under ss 242 and 243. It is, however, arguable that if picketing accompanies a strike or lockout and proceedings are issued founded on one of the named torts, any claim in respect of picketing arises "as a result" of the strike or lockout, as this expression is used in s 242(1). In this case the Labour Court would have jurisdiction. Section 242(2) specifically states that: "No Court other than the Labour Court shall have jurisdiction to hear and determine any action or proceedings founded on a tort specified in subsection (1) of this section. . . . " Presumably the Labour Court does not have exclusive jurisdiction over the unspecified torts.

Section 243 gives the Labour Court jurisdiction to issue injunctions in respect of strikes and lockouts. The Labour Court does not have expressly exclusive jurisdiction over injunctions founded on other causes of action.

4 Supra at note 1, at 245.

Section 279 defines in detail the Labour Court's jurisdiction. Section 279(4) of the Act states:

> In all matters before it (other than any matter before it under section 242 or section 243 or section 280 of this Act) the Labour Court shall have full and exclusive jurisdiction to determine them in such manner and to make such decisions or orders, not inconsistent with this or any other Act or with any award or agreement, as in equity and good conscience it thinks fit.

Subsection 48(4) of the Industrial Relations Act 1973 is the predecessor of s 279(4) of the new Act. The subsections are consistent in that both speak of jurisdiction "in all matters before it". It is arguable that s 279(4) does nothing more than confer upon the Labour Court exclusive jurisdiction where proceedings are commenced before it. Consequently, if the appropriate proceedings are commenced in another forum the Labour Court's jurisdiction would be ousted by the Court in which the proceedings are commenced.

However, this argument must now be doubted in light of the Court of Appeal decision in *NZ Labourers' Union v Fletcher Challenge*.[5] This was the first Court of Appeal case to consider the Labour Relations Act. The Court stated that while it recognised that the Labour Court and High Court had concurrent jurisdiction to determine whether a strike or lockout had occurred, serious and substantial questions of labour relations law should be tried in the Labour Court.[6]

High Court or Labour Court

There are three alternatives when deciding in which Court to take an action when the Act is silent as to jurisdiction. These are as follows. First, where it is not statutorily barred by any Act the High Court has jurisdiction to enforce the law as enacted and to ensure obedience to the law whenever it is just and equitable to do so: this includes labour relations law.

Second, the High Court and the Labour Court have contiguous jurisdiction where the Act is silent. This means the initiating party will choose the Court in which to found the action and the defendant will seek to argue that the plaintiff has chosen the wrong Court. An example of this is *NZ Labourers' Union v Fletcher Challenge Ltd*. The original action was brought by Fletcher Challenge Ltd in the High Court against the Labourers' Union seeking $10,000,000 special and general damages for alleged intimidation, conspiracy to cause damage, inducement of breach of contract and unjustifiable interference with the respondent's business. The Labourers' Union applied for a stay on grounds that the proceedings ought to have been issued in the Labour Court. Mr Justice Quilliam declined the application on the ground that the High Court had jurisdiction; the union appealed the decision. As discussed

5 [1988] 1 NZLR 520.

6 The Court of Appeal was following the philosophy stated in the *Baking Trades* case (supra at note 2).

earlier the Court of Appeal upheld the appeal, and after having moved through two Courts the parties were sent to a third Court to argue the substantive issues.

The third alternative is that all employment-related matters should be litigated in the Labour Court. This was stated as a guiding principle in the Green Paper. Cases decided under the Industrial Relations Act 1973 assert the need to have specialised areas of law determined in specialist Courts and the Court of Appeal has affirmed this stance under the new Act.

There is still a real possibility of bringing an action in the High Court where the main issues are labour relations law. These cases take advantage of inadequate drafting to defeat the overall object of the Act. Effect should be given to the need for the "orderly procedures" and to ensure that the substantive issues of an action are the primary focus of the litigation. In order to satisfy these necessities the Labour Court must be given "exclusive jurisdiction" over all "employment related matters". This in turn requires a consistent refusal by the High Court to exercise its residual power to hear these cases.

Conclusion

There is little doubt that the Legislature intended the Labour Court to be a "closed shop". The Green Paper spoke of the need for "exclusive jurisdiction" and the objects of the Act state the need for the "orderly conduct of procedures". The Act fails to provide this. While it clearly defines where the Labour Court has jurisdiction, and it fails to deal with areas of labour law outside that jurisdiction. If the wording of s 230 is given effect the jurisdiction of the Labour Court is limited. As a consequence the High Court still has reserve jurisdiction in labour law.

The aims of a labour law system should be certainty and enforceability. The system should channel disputes into an arena where there is a referee who will endeavour to prevent each contest becoming a trial by battle or ordeal. The Labour Court cannot fulfil either of these functions: the Act inhibits it.

– *Elizabeth Jeffs*

TE REO MAORI: THE MAORI LANGUAGE ACT 1987

Prior to the enactment of the Maori Language Act 1987 it was argued in *Mihaka v Police*[1] that the Maori language should be available for use in legal proceedings upon the request of any person of Maori descent, pursuant to the Treaty of Waitangi and s 77A Maori Affairs Act 1953. Section 77A provided

1 [1980] 1 NZLR 453.

for:

> [O]fficial recognition ... to the Maori Language of New Zealand in its various dialects and idioms as the ancestral tongue of that portion of the population of New Zealand of Maori Descent.

The Court of Appeal held that the Treaty of Waitangi did not apply and that s 77A of the Maori Affairs Act[2]

> is quite limited in its terms. There is no provision to that effect in that section or elsewhere in our laws and any extension of the official use of the Maori language is for the legislature and not for the Courts.

Their Honours added:[3]

> In its inherent jurisdiction any Court will, of course, satisfy itself that, where a party or a witness does not appear to be proficient in the English language, appropriate steps are taken by the use of interpreters or otherwise to ensure that he is not disadvantaged....

Their Honours' decision did not affect the powers of the Registrar to order a translated document be served on a litigant if that person is unable to read English.[4] The difficulty only arises where the litigant is able to read and understand English.

Enactment of the Maori Language Act

Section 3 of the Maori Language Act declares the Maori language to be an official language of New Zealand. Under s 4 all persons are given the right to speak Maori in legal proceedings regardless of whether they are able to understand or communicate in English. Section 5 provides that ss 3 and 4 do not affect any rights to receive or impart any communication in Maori.

The Act does not expressly provide that documents written in Maori can be filed in legal proceedings. Nevertheless, it is submitted that the courts might imply such a right having regard both to the scheme of the Act and the policy behind the Act.

It is submitted that s 3 can be read so as to establish the prima facie right to make use of the Maori language in either written or oral form anywhere in New Zealand. This right, moreover, is simply supplemented by s 4 in respect of the oral use of Maori.

Furthermore, s 18 empowers Te Komihana Mo Te Reo Maori ("the Commission", established by s 6), to:

> [E]ndorse any certificate of competency to the effect that the holder is competent to interpret the Maori language or (as the case may require) to translate the Maori language or both for the purposes of any legal proceedings....[5]

2 Ibid, 462 per Richardson J.

3 Ibid, 463 per Richardson J.

4 Rules 62-65 of the High Court Rules; see also Rule 346 of the District Court Rules; also ss 130, 151 of the Summary Proceedings Act 1957.

5 A "certificate of competency" means, under s 2, "a certificate of competency in the Maori language issued under and in accordance with this Act." See also s 15.

Before a person is issued with a certificate of competency in translation he or she must be sufficiently able to make such translations. "Translation" in relation to the Maori language, under s 2,

> means the written expression in English of words written in Maori and the written expression in Maori of words written in English.

It is submitted that the power given to the Commission in this section would be rendered in part otiose if the prima facie right in s 3 did not allow litigants to make use of the abilities of translators to use Maori in written form.

The Preamble

Further support is derived from the Preamble of the Act. Section 5(e) of the Acts Interpretation Act 1924 states that "the preamble of every Act shall be deemed to be part thereof, intended to assist in explaining the purport and object of the Act." It is clear from the Preamble of the Act that the Act is intended to confirm and guarantee one of the taonga of the Maori people, pursuant to the Treaty of Waitangi. The Preamble states:

> Whereas in the Treaty of Waitangi the Crown confirmed and guaranteed to the Maori people, among other things, all their taonga: And whereas the Maori language is one such taonga:

It is submitted that recourse to extrinsic aids may be made to assist the court in its interpretation of s 3, and in particular to assist the courts to ascertain what is the intended effect of declaring Maori an official language. These extrinsic sources include the relationship between the Act and the Treaty of Waitangi as well as determinations by the Waitangi Tribunal in interpreting the Treaty. As Chilwell J held in *Huakina Development Trust v Waikato Valley Authority and Bowman*, a case dealing with spiritual matters and the Water and Soil Conservation Act 1975,[6]

> There can be no doubt that the Treaty of Waitangi is part of the fabric of New Zealand society. It follows that it is part of the context in which legislation which impinges upon its principles is to be interpreted when it is proper, in accordance with the principles of statutory interpretations, to have resort to extrinsic materials.

This approach finds confirmation in *New Zealand Maori Council v A-G*, in which Cooke P accepted a submission that:[7]

> [T]he court will not ascribe to Parliament an intention to permit conduct inconsistent with the principles of the Treaty.

In the *Huakina* case, Cooke P found it necessary to resort to extrinsic aids because the Act did not of itself provide sufficient guidance to the determination of the question in issue.

6 [1987] 2 NZLR 188, 210.
7 [1987] 1 NZLR 641, 656.

Determinations of the Waitangi Tribunal as an Extrinsic Aid

The Treaty of Waitangi Act 1975 gives the Waitangi Tribunal authority to determine the modern applicability of the Treaty and the principles it embodies. The Waitangi Tribunal "Te Reo Maori"[8] report makes a number of recommendations as to how the Maori language can be "confirmed and guaranteed" today. The Tribunal made three important findings:

(i) The Maori Language is a "taonga" as referred to in Article II of the (Maori version of the) Treaty of Waitangi;[9]
(ii) The Crown owed a duty to the Maori people to "actively protect their taonga";[10]
(iii) The Maori language should be allowed in legal proceedings in its oral and written form.[11]

Such an approach is consistent with the Act's recognition of the Maori language as a taonga. Moreover, members of the Court of Appeal approved the finding of the Tribunal that the Crown owes a duty to actively protect the taonga of the Maori people. The President, Sir Robin Cooke, stated in the *New Zealand Maori Council* case that:[12]

> Counsel were also right, in my opinion, in saying that the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable. There are passages in the Waitangi Tribunal's Te Atiawa, Manukau and Te Reo Maori reports which support that proposition and are undoubtedly well-founded.

It should be noted however, that there was no advertence in Parliament to the possibility of litigants being enabled to file documents in the Maori language in legal proceedings.[13]

On the basis of their Honour's decision in *New Zealand Maori Council v A-G* and the *Huakina* case it is submitted that the previous mentioned aids should take priority over any possible interpretation of this omission in Hansard when the integrity of the Treaty of Waitangi is in issue or where legislation impinges upon its objectives.

Conclusion

The procedures presently being undertaken by the Government indicate that it is of the opinion that the Act does not enable litigants the right to file documents in legal proceedings in the Maori language. If this view were to be adopted, then it is submitted that the the Preamble to the Act would be a

8 *Finding of the Waitangi Tribunal Relating to Te Reo Maori and a Claim Lodged* (1986).
9 Ibid, paras 4.2.3-4.2.4
10 Ibid, para 4.3.9. The closest English translation is probably a treasure.
11 Ibid, para 8.2.8.
12 Supra at note 7, at 664.
13 482 NZPD 10112-10113 (1987).

dead letter. However, if extrinsic aids such as the Treaty of Waitangi are used as an aid to the interpretation of the Act then it would be proper for the courts to imply a right to file documents in the Maori language. Such an interpretation is in keeping with the spirit of the Act and with ss 3 and 18.

This would ultimately mean that the Commission would have to have legal forms drawn up in the Maori language, and that the onus would be on the Crown to employ translators (as it currently is for interpreters). Such developments depend upon the willingness of the courts to use extrinsic aids in the process of statutory interpretation; and, in particular, which extrinsic aids the courts choose to utilise.

– *William Te Aho*

INCOME TAX AMENDMENT ACT (NO 5) 1988

Introduction

On 16 December 1988, Parliament enacted the Income Tax Amendment Act (No 5). The Act amends existing income tax rules in a number of areas:

(i) Accruals;
(ii) Trusts;
(iii) International Tax;
(iv) Imputation.

Each of the above is capable of extensive discussion; however the subject of this note will be restricted to the new system of imputation implemented by this Act.

Prior to Imputation

Traditionally New Zealand has had a system of double taxation of companies' distributed earnings. A company would be taxed on profits, and shareholders would be taxed on any distributed dividends received. Such a system was inconsistent with the objectives of the Government, set out in its consultative document of 17 December 1987:

> To ensure that, as far as possible, income earned through a company is taxed at the marginal tax rates of the shareholders of the company in accordance with the economic objective of taxing capital income at the tax rates of the owners of the capital.

To achieve this objective, only company profits should be taxed. The Consultative Committee Report on Full Imputation considered two ways of achieving this: either by exempting tax on dividends at shareholder level or by allowing credit for tax already paid.

The first option was viewed as the simplest to administer and so had strong support. However this option left open the possibility that some profits might escape taxation at both company and shareholder level. Furthermore, such a scheme would defeat the purpose of a capital gains tax, if one were to be introduced. Exemption would allow the taxpayer to ensure that no (or at least minimal) taxable capital gains would arise on shares, such gains being disbursed via exempt dividends. The option of exemption was therefore rejected.

These faults are not present in an imputation system, and although more difficult to administer it was accepted as the basis of the new regime.

What is Imputation?

Under the imputation system the company will continue to pay tax on profits but these payments will create "Imputation Credits". The company may allocate these to shareholders by attaching them to any dividends that it pays. The shareholders are then taxed on the full amount received from the company (including the credit) and the amount of tax payable is reduced by the amount of the credit.

For example:

'A' company earns profits of $100 it pays tax of $28 and distributes a dividend of $72 attaching a tax credit of $28. Shareholder individual tax rate is 33%.

	Imputation		Previous Classical System	
Company pays tax of: (100 x 28%)		28		28
Shareholder pays tax of:				
Dividend received	72		72	
Imputation credit	+ 28			
Total taxable income from shares	100		72	
Individual tax (33%)	33		23.76	
Imputation credit used	- 28	5		23.76
Total tax paid		33		51.76

It is evident from the above example that the shareholder will be better off under imputation.

Not only does imputation benefit shareholders and achieve the stated objective of the Government's consultative document, but in addition the problems with an exemption regime are not apparent in one based upon imputation. Under exemption, if the company managed to avoid paying tax on its profits, then since the shareholders' dividend would be exempt no tax would be collected at all. Under imputation, if no tax is paid by the company, then there are no credits to allocate and so the shareholder would have to pay tax on dividends at the full rate of personal tax. In this way the government is assured of collecting at least some tax on the company's profits.

The Imputation Credit Account

The Act requires that most companies keep an account of the imputation credits available for distribution. This account is not part of the double entry accounts of the company and is a separate record kept purely for tax purposes.

The chief credits to the Imputation Credit Account are for income tax paid and for tax credits received from other company dividends. The chief debits are any amounts of credits that have been allocated by the company to dividends together with any tax refunds received. A debit balance in the account at the end of the imputation tax year (31 March, which is intended to coincide with the individual's tax year) would indicate that the company has distributed more credits than it has earned. In that case the company is liable to the Inland Revenue Department to rectify this imbalance prior to the following 31 May by paying further income tax. This payment may be credited towards the provisional tax of the company for the following year. However, as a further disincentive the company is required to pay a penalty tax of 10% on the imbalance. The penalty tax attracts no imputation credits or other advantages.

Rules of Allocation

If imputation credits are greater than the tax payable they may be carried forward but not refunded. To ensure that companies do not attempt to stream dividends, by allocating more credits to those that can use them while allocating larger dividends to those that cannot or by allocating such credits at times most usable by shareholders, the Act employs two allocation rules.[1] The first rule states that there is a maximum allocatable amount, expressed as the ratio of:

company tax rate : (1 – company tax rate)

At present this ratio is 28:72.

The second allocation rule states that in any one year the first dividend allocation will set the rate at which dividends may be allocated for the whole year. This rate is also expressed in relative terms:

imputation credit allocated to dividend : dividend

The rate may be varied if the company makes a declaration to the Commissioner that the objective of the variation is not to avoid tax. If no declaration is made all dividends will be treated as having been allocated credits at the highest dividend to imputation credit ratio. The effect of this will be to reduce the number of credits that the company has available to

1 Section 394G of the Income Tax Act 1976 (as inserted). There is an additional rule: tax credits must be allocated pro rata with dividends. Thus, for instance, although imputation credits derived in New Zealand cannot be utilised offshore, they must still be allocated to overseas shareholders.

allocate, and to increase the chances of the Imputation Credit Account being overdrawn and therefore incurring penalty tax.

Imputation and the International Tax Regime

The Act integrates imputation with a new international regime, and has created a system which allows a credit to New Zealand companies for withholding payments made on foreign dividends received. This system is administered in a similar manner to that of the imputation credit scheme. A company has the option of creating a separate record for the withholding payment credits (a Withholding Payment Account) or of incorporating them into the Imputation Credit Account. The Withholding Payment Account is operated in much the same fashion as the Imputation Credit Account, with one major exception: a refund is allowable for unused withholding payment credits.

This advantage is lost if the two accounts are merged. If two separate accounts are maintained, transfers may be made to the Imputation Credit Account from the Withholding Payment Account. As imputation credits are not indirectly refundable the reverse is not true.

Implications of Full Imputation

Given that the imputation system increases the workload for both the company in the maintenance of separate records, and for the department in regulating the system, on must consider whether the benefits of the change outweigh its disadvantages.

It should be remembered that, as with any possible system, what may be seen as a benefit to one entity may yet be a hindrance to another. An obvious benefit is that by avoiding double taxation the shareholder is in a better financial position. Nevertheless some may see the system as a means of manipulating capital available for investment, since it encourages investment in New Zealand based companies by providing that only on-shore companies can give their shareholders the benefits of imputation credits. It may also be said to benefit the economy, by discouraging companies going off-shore as they may lose a percentage of New Zealand investors to a company that can still offer imputation credits. Such an effect, however, has yet to be seen. While such a result might benefit the economy, it could hardly be seen to benefit companies as it would fetter plans to go off-shore.

Imputation ensures that, if there are any holes in the company tax net, at the very least distributed income will be taxed at the appropriate rate even if only in the hands of the shareholder. For this reason companies may be encouraged to incur at least sufficient tax to be able to distribute imputation credits to shareholders. This may assist the Treasury, but will of course not help the company. Finally, in view of recent events it may be seen as an advantage to the department that imputation is more flexible than exemption

for dealing with variations in tax rate: imputation promises to capture more revenue for the department as individual tax rates increase.

Conclusion

The Act introduces a comprehensive system which abolishes double taxation of distributed company income. Although in theory it creates a fairer taxation system, practical difficulties in its operation arise which may well limit the effectiveness of the reforms.

– *Simon Martin*

POLICE COMPLAINTS AUTHORITY ACT 1988

Introduction

The Police Complaints Authority Act emanated from Labour Party policy that a credible and impartial system for dealing with complaints against the Police was required to increase public confidence in the Police. The long title of the Act states its objectives: "to make better provision for the investigation and resolution of complaints against the Police by establishing an independent Police Complaints Authority." The Act effects major changes to the mode and investigation of such complaints. Although passed in 1988 the Act did not come into force until 1 April 1989, at which time Sir Peter Quilliam was appointed Police Complaints Authority ("the Authority").

The Establishment of the Police Complaints Authority

Section 4 establishes the "Police Complaints Authority", which is to consist of a barrister or solicitor of the High Court who must "possess suitable legal experience for the task" (a phrase left undefined). The Authority is to be appointed by the Governor-General on the recommendation of the House of Representatives, for a period of between two and five years.

Provision is made for the appointment in the same manner of a Deputy Police Complaints Authority (s 8(1)) and the appointment by the Authority of such officers and employees as may be necessary (s 10(1)). The Authority's power to appoint staff is limited by s 10(2), which provides that the number of staff shall be determined by the Minister of Justice. As at 16 May 1989, the Authority has two full time investigators, with the appointment of a deputy and a third investigator likely.[1]

The Reception of Complaints

Before the Act came into force complaints were usually made directly to

1 *The New Zealand Herald*, 16 May 1989.

the Police, but could also be made to Members of Parliament, the Minister of Police, an Ombudsman, the Commissioner of Police ('the Commissioner') or the Governor-General. All complaints received were forwarded to the Police.

One of the aims of the Act was to provide a greater variety of reception points for complaints. Under s 12(1)(a) the Authority may receive oral or written complaints relating either to the misconduct of any officer, or to any practice, policy or procedure of the Police. Oral or written complaints may also be made to any police officer or Ombudsman (s 14(3)). Written complaints can be made to any Registrar or Deputy Registrar of the District Court (s 14(3)). All complaints are to be forwarded to the Authority (s 14(4)).

The Authority and the Commissioner have a reciprocal duty under ss 15 and 16 to notify each other of every complaint they receive. The Commissioner is also required by s 13 to notify the Authority when any police officer has caused or appears to have caused the death or serious injury of any person, whether or not a complaint has been laid.

The Investigation of Complaints

Before the Act came into force, all complaint investigation was undertaken by the Police themselves. Occasionally an independent person was appointed to investigate an incident, such as Mr Colin Nicholson QC in the fatal shooting of Paul Chase. Such independent investigations were rare.

The Act gives the Authority wide powers of investigation. Generally, the Authority has the power to investigate:

(i) Any complaint, regardless of whether the Police have commenced investigation (s 17(1)(a));
(ii) Any incidents involving death or serious bodily harm caused or apparently caused by a police officer (s 12(1)(b);
(iii) Any relevant matters not specifically referred to in a complaint (s 12(2)).

Under s 22(1) the Commissioner is empowered to commence or continue a Police investigation even where the Authority is itself investigating. Under s 17(1)(c), the Authority may oversee a police investigation. Further, the Authority can at any time review the Police investigation, inquire direct to the Police, or order the Police to re-open their investigation under the Authority's supervision (s 19).

The Commission must upon request provide the Authority with information necessary for the Authority's investigation under s 21(1), or a progress report and any other relevant information where the Authority is overseeing a police investigation (s 21(2)).

The Act also prescribes the procedure for an investigation by the Authority. Generally, the Authority may hear and obtain such information as it sees fit (s 23(3)(a)), but is not required to hold a hearing (s 23(3)(b)). No person

may be heard as of right (s 23(3)(c)), but the Authority cannot make adverse comment concerning any person to whom it has not afforded a reasonable opportunity of a hearing (s 31). The Authority can require people to furnish relevant information and documents (s 24(1)) or summon any person and examine them under oath (s 24(2)). Court privileges are provided in s 25(1).

Moreover, evidence and statements given to the Authority cannot be used in any subsequent Court hearing or other proceedings, such as a police disciplinary hearing, except in so far as they relate to s 37 of the Act. Under s 37 hindrance of the Authority, failure to comply with its requirements and the making of deliberately false or misleading statements are summary offences.

The Authority may decide to pursue a matter no further at any stage under s 18(1) for any one of a number of specified reasons,[2] and generally under s 18(2) if it appears that no action is appropriate or necessary. The complainant must be informed and given reasons for the decision.

The investigation sections are designed to allow maximum flexibility in the investigation of complaints against the Police. The Authority has very wide investigative powers, though in practice it is likely that it will itself conduct investigations only with regard to serious complaints, such as a fatal shooting. Investigation is essentially a local function, and the resources of the Authority are limited. Inquiries will still be carried out by the Police, with the Authority overseeing the investigation of more serous complaints and merely reviewing the Police investigation ex post-facto of the remainder.

The Outcome of the Investigation

Prior to the Act, the outcome was usually determined by the Police; either by the District Commander or the Internal Affairs Directorate. Under the new provisions, the Commission is ultimately responsible for the discipline of police officers. Regardless of which party investigated the complaint, the Authority must form an opinion as to whether the action complained about was illegal, unreasonable, unjustified, unfair or undesirable, and inform the Commissioner of its conclusions. The Authority may also make recommendations, including the commencement of disciplinary or criminal proceedings (ss 27(2) and 28(1)). The Commissioner makes the final decision and must inform the Authority of that decision (s 29(10)), providing reasons if the Authority's recommendations are not followed. If the Authority believes that appropriate action has not been taken, it can send a report of its opinions and recommendations to the Minister of Police and the Attorney-General, or transmit the report for tabling in the House of Representatives (s 29(2)(b)).

The Government clearly considered it desirable or essential that ultimate control over officers be left in the hands of the Commissioner, and therefore the Authority's decision is to be only of an advisory nature.

2 For example, if the complaint is vexatious.

The Authority's Overview

Despite the establishment by the Police in 1982 of a national register for all serious complaints, public access to information concerning complaints remained inadequate. Public confidence in the Police requires the availability of information concerning the investigation and outcome of complaints. The Authority will now receive all complaints, and may publish a wider range of statistics than has been hitherto available. In the past the Police have concentrated on the individual misconduct aspect of complaints and generally avoided assessing underlying policies and practices. The reception by the Authority of all complaints should facilitate a wider view of police policies and practices, which were sometimes at the root of complaints.

Conclusion

The Police previously had almost total control over the complaints procedure, and most complaints received no independent consideration. The Authority introduces an impartial element the reception and investigation of complaints, although the determination of the outcome of complaints remains within the Commissioner's control. The Authority is also able to take a wider view of complaints and look at trends in Police policies and practices. The public credibility of the new procedure will depend largely on the manner in which the Authority's role is performed, and on the Police reaction to its existence.

– *Nicola Bush*

SECURITIES AMENDMENT ACT 1988

The Securities Amendment Act 1988 arises out of a major reform of companies and securities legislation following the sharemarket crash of 1987 and the resulting criticism of business practices. This note will deal with Part I of the Act regulating insider trading.

The Act provides that an "insider" includes a company, its directors, employees and secretary or anyone who receives inside information from such persons. Under the Act, an insider who uses inside information to deal in securities of a company is required to account to the other contracting party and the company for any profit made or loss avoided. The insider is also liable to pay a penalty to the court of up to three times the benefit obtained as a result of the insider trading.

Instead of establishing a central enforcement body funded by the Government, the Act has created a civil regime of enforcement available to the affected company or its shareholders. To assist shareholder actions, any

shareholder suspecting insider trading may, with the approval of the Securities Commission, require the company to obtain a legal opinion as to whether any cause of action lies.[1]

The Position in New Zealand Prior to the Act

Prior to the Act insider trading was not regulated by statute. Indirect controls, which varied in their effectiveness, existed.[2] These included:

(i) The pressure of informed opinion and reputation of the Company
(ii) Codes of conduct, such as the rules of the New Zealand Stock Exchange and of associated organisations. These rules, though, did not have the force of a statutory sanction but found their authority on the basis of the contractual relationship between the Exchange and individual companies.
(iii) Related statutes such as s 195 of the Companies Act 1955 which requires disclosures by directors of their holdings and dealings in shares of companies in which they hold office. However this section did not prohibit such dealings, and prior to recent amendment did not apply to other members and employees of the company.
(iv) Fiduciary duties created by the courts as in *Coleman v Myers*,[3] where it was recognised that a director may owe a fiduciary duty to shareholders. The undermining of the rule in *Foss v Harbottle*,[4] by virtue of shareholder remedies in ss 209 and s 217(f) of the Companies Act make the enforcement of these duties possible. Whether such a duty is in fact owed is dependent upon proof of special circumstances, such as a relationship based on confidence between director and shareholder, the significance of the particular transaction and the extent of positive action by the director in promoting that transaction.

Prior to the enactment of the Securities Amendment Act the law lacked any clear procedures for those who had suffered loss as the result of insider trading and means by which to recover compensation. A statutory code was necessary to indicate a new regime, thereby encouraging investors who were disillusioned with the market to reinvest. The indirect controls mentioned above were insufficient to achieve such goals.

1 The Law Commission Report on *Company Law Reform and Restatement* (1989) recommends a Government enforcement body to supervise company and securities legislation. The Securities Amendment Act is inconsistent with this objective.
2 Patterson, "Insider Trading and the Director" in Farrar (ed), *Contemporary Issues in Company Law* (1987) 173.
3 [1977] 2 NZLR 225 (SC & CA).
4 (1843) 2 Hare 461; 67 ER 189.

The Definition of Insider

Difficulties arise in the definition of "insider" in s 2 of the Act. For while it may prohibit insider trading the ability of directors and other insiders to hold shares and deal in the sharemarket is significantly reduced. An aim behind securities legislation should be to allow insiders to deal in shares providing they comply with a procedure of the company that has the approval of the Securities Commission to ensure that the insider doesn't use inside information for personal gain. The effect of this provision is to recognise the advantage of directors holding shares, provided that they deal with them on an equal footing with other shareholders.

However, the Act falls short of achieving this objective. The Act includes a broad definition of "insider" that consists of the company itself, its directors, company secretary and other employees or substantial security holders or others who have inside information. It also includes persons who receive such inside information in confidence from an insider.

Two potential groups of insiders have been ignored by the Act. The first are ex-employees of a company, who may have obtained inside information during their employment, but who have not been included within the definition of "employees". The second group consists of privately listed companies. Private companies such as Australia Mutual Provident often hold large volumes of shares and their exclusion from the Act provides a loophole which potentially could be exploited.

Further, the inclusion of "substantial security holders" but not all shareholders recognises the distinction between the close association and access to inside information of a large shareholder against the information available to a minority shareholder. The definition of "substantial" as a holding of five per cent or more of the voting rights of the company is to provide for consistency with Part II of the Act on disclosure of interests.[5]

Enforcement

The statutory prohibition of insider trading can in theory be accompanied by a criminal or civil sanction or both. Adopting a regime based upon criminal liability has a deterrent effect. To a large degree this is tempered by the high standard of proof required for a conviction and the availability of the right to silence for an accused. Additionally, extensive government funding is required to finance an enforcement authority if the criminal sanction is to be effective in regulating insider trading.

On the other hand, civil liability has the advantage of "self enforcement", allowing the aggrieved private investor to pursue his or her own remedy (if the aggrieved private investor is in fact identifiable). Difficulties in the crimi-

5 However, the basis upon which this five percent figure was selected appears to be arbitrary.

nal sanction as to the level of proof required are ameliorated. However, court proceedings are expensive and the rules of civil procedure limit the rights of an individual to obtain evidence to assist their case. A further criticism of a regime based on civil liability is that it is often difficult to identify the victim of insider trading. The party dealing with the insider, obviously intended to deal with someone and would have bought or sold for the same price whether they dealt with the insider or a third party. The question of whether compensation should go to that party, who by chance dealt with the insider, or all persons who dealt with the company's shares at that time (thereby recognising the effect of the insider on the market price of shares in general rather than just on the shares that he personally dealt with) arise. While sharing compensation between all affected investors may be more equitable, it is not practical in a self regulatory system unless class actions are provided for.

A two-pronged approach based upon both and civil and criminal sanction has been preferred in other jurisdictions, most notably several states of the United States and Australia.[6] In practice, though, there have been only two successful criminal prosecutions for insider trading in the United States, and none in Australia, despite the existence of such a sanction for 14 years. Most actions are taken within the civil sphere.

A problem with adoption of the two-pronged approach in New Zealand would have been that since *Taranaki Dairy Co Ltd v Rowe*[7] the "right to silence rule" has prohibited compulsory discovery of evidence in civil cases where the matter may also be subject to criminal proceedings. Although the rule was qualified in *Busby v Thorne*[8] to compel compliance with an Anton Piller order, further judicial or statutory modification of the rule is needed before a dual civil/criminal regime could work efficiently.

The issue of deterrence is addressed in s 7 by conferring a discretion on the Court to award punitive damages up to three times the amount of the benefit gained, and, by disqualification of the insider from holding office in a company for up to five years. A discretion is also conferred upon the Court as to who is to benefit from a successful action. It can direct the money recovered be paid to other parties or potential parties, the company or charitable organisations.

Although criminal sanctions may be little used in practice, it is submitted that imposing only civil liability derogates from the impact of the Act and the resulting confidence of investors. The policy decision that inside traders "be stopped rather than punished" may be seen to reflect a bias towards the rich and powerful when similar acts in other circumstances are considered to give

6 Supra at note 1, at 37.

7 *Taranaki Dairy Co v Rowe* [1970] NZLR 895.

8 *Busby v Thorne* [1984] 1 NZLR 461: compliance with an Anton Piller order was compelled but protection from criminal proceedings was provided by ruling that evidence obtained under the Anton Piller order was inadmissible in any related criminal case.

rise to criminal penalties.[9] To restore confidence in the sharemarket, justice must be seen to be done. The Act should be amended to create both civil and criminal liability.

Conclusion

While the objective of the Act was to enhance fairness in the sharemarket by bringing about a climate in which the abuse of inside information will not occur,[10] it has been criticised as being "too little, too late". This criticism is based on the limitation of the provisions of the Act to publicly listed companies. In effect, the potential abuse of the large volume of sharemarket trading by private companies and company insiders is ignored.

Moreover, a regime based upon civil liability has minimal deterrent effect and is expensive for individuals seeking redress, although the latter has been mitigated to some degree by requiring the company to meet the costs of obtaining a legal opinion as to whether a cause of action exists.

The main benefit of the Act is that it lays down a clear policy against insider trading, and puts in place procedures for injured shareholders to recover compensation from inside traders should they wish to do so. The Act succeeds as far as it goes and at least begins to put New Zealand in line with its major trading partners. However, even accepting that it is only a part of the reform of company law, by failing to provide criminal sanctions it has fallen short of public expectations.

– *Sue Huynen*

PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988

The enactment of the Protection of Personal and Property Rights Act 1988 reflects changing attitudes toward persons who are incapacitated, and exemplifies the global movement to de-institutionalise and integrate people suffering from certain mental and other disabilities into the community.[1] The Act follows publication of various research and discussion papers[2] which have in general embraced the progressive principles enunciated in the 1971 United Nations Declaration on the Rights of Mentally Retarded Persons.[3]

9 For example, under the fraud provisions.

10 Supra at note 1, at 5.

1 See for instance the Developmentally Disabled Assistance and Bill of Rights Act of 1975 in the United States.

2 See Singh and Wilton (eds), *Mental Retardation in New Zealand: Provisions, Services and Research* (1985); Sleek, "The Rights of Mentally Disordered Children in New Zealand" (1980) VUWLR 321.

3 The text of which is incorporated into Schedule J of the Human Rights Commission Act 1981. Refer also to the 1975 United Nations Declaration of the Rights of Disabled People, and in particular to paragraph 3.

The Long Title to the Act states that it is "to provide for the protection and promotion of the personal and property rights of persons who are not fully able to manage their own affairs." The protection and promotion of the rights of incapacitated persons, rather than the diminution of those rights, is the primary aim of the Act. Intervention is solely a last resort. Even if the Court (the Family Court, by virtue of s 2(1)) has jurisdiction to intervene in a case under ss 6 or 25, it must have regard to the objectives in ss 8 and 25 before making an order. Those objectives are to intervene in the least restrictive manner possible and to encourage the person to exercise his or her own capacities to the greatest extent possible.

Any person who may be subject to proceedings under the Act is presumed to be competent (ss 5 and 24). This is an important principle consistent with the philosophy behind the Act. Other areas of the law, such as mental health law, have conclusively presumed that once a person is declared to be legally incompetent, for example by being committed to a psychiatric hospital, then that person is also unable to make decisions concerning his or her personal or property affairs. Similar changes in mental health law may result if the current Mental Health Bill is passed by Parliament.[4]

The Act deliberately avoids labelling any kind of incapacity which may fall within its operation. Labels such as "intellectually handicapped" are often misleading and can inhibit the integration of incapacitated people into communities.

Part I – Personal Rights

The Act distinguishes between "personal rights" and "property rights". The former refer to a person's personal care and welfare and can be defined, more precisely, by reference to the kind of orders that may be made under Part I and to the decisions welfare guardians are permitted to make according to Part II.

A Court will have jurisdiction to make orders regarding a person's personal rights if either of the tests in s 6(1) are met. Section 6(1)(a) refers to the person's partial or total lack of understanding of the nature and foreseeable consequences of his or her decisions. Section 6(1)(b) refers to the person's total inability to communicate these decisions. The more significant test is s 6(1)(a) which promotes the right to self-determination. It does not seek to interfere with a person's right to make personal decisions on the basis of either the way in which the decision was reached or the nature of the decision itself. Section 6(3) reinforces this by recognising that a person is entitled to take into account certain personal considerations when making a decision irrespective of whether doing so causes that decision to seem "irrational" or "incompetent":

4 The Act revises the Mental Health Act 1969 to the extent that it relates to property.

> The fact that the person in respect of whom the application is made for the exercise of the Court's jurisdiction has made ... any decision that a person exercising ordinary prudence would not have made or would not have made given the same circumstances is not in itself sufficient ground for the exercise of that jurisdiction by the Court.

The test in s 6(1)(a) is a subjective one which may pose difficulties for a Court with respect to questions of proof. The Court can, however, ask for medical, psychiatric and psychological reports (s 76). Another potential problem is that the Court may impose its own value judgments as to what constitutes understanding. One solution would be to apply the somewhat ubiquitous "ordinary person" standard.

Implicit in the scheme of the Act is a realisation that the issue of competency or capacity to make certain decisions may not be clear-cut. The Act recognises that competency is a continuum, and must be determined in the context of the particular decision sought. Section 15 provides that a person with respect to whom appointment of a guardian is sought must understand the nature and foresee the consequences of the guardianship order and consent to it. This requirement must be met whether or not that person can understand the nature and effect of decisions relating to his or her personal care and welfare. However, the Court can make a range of orders to fit particular incapacities or persons to deal with their own welfare in a specific area, where it decides upon hearing from legal representatives and experts that they are incompetent in that specific area.

Part III – Property Rights

Part III of the Act relates to property rights. It revises both the Aged and Infirm Persons Protection Act 1912 and Part VII of the Mental Health Act 1969. This Part of the Act is similar in structure to Part I. The Family Court has a wider jurisdiction with respect to property rights than with respect to personal rights. Section 25 provides that a Court will have jurisdiction if the person:

> in the opinion of the Court lacks wholly or partly the competence to manage his or her own affairs in relation to his or her property.

There is no test of a person's capacity to understand or communicate decisions. The provision is more open than s 6, and may have the effect of bringing people within the Court's jurisdiction who are perfectly able to understand the nature and probable effect of their decisions. A possible qualification of s 6 arises from the words "in the opinion of the Court". These words imply that, while the Court may undertake its own investigations under s 25 into a person's competence, under s 6 some kind of expert evidence may have to be adduced.

Procedure

The Act ensures that the correct legal procedures are followed when any application is brought before a Court. The person must be represented by a barrister or solicitor (s 65), and must be present throughout the hearing, unless by reason of his or her mental incapacity the Court waives this requirement (s 74). The person has the right to be heard in Court, either in person or through his or her barrister or solicitor (s 75).

An application may be made in respect of a person's property, without recourse to the Courts, under ss 32 and 33. These sections relate to applications in writing to a trustee corporation. Section 32 allows for voluntary applications by patients themselves. Section 33, in respect of small estates only, permits an involuntary application – that is, one made by someone other than the patient. Both sections require two medical certificates, including one from an independent psychiatrist as to the patient's incompetence to manage his or her own affairs; together with a statutory declaration that the person has understood various matters including the nature and effect of the application. The latter is not required when the two medical practitioners certify that the person is incapable of understanding. Copies of the application must be filed at a Court within thirty days. These provisions are open to powerful criticism. The application process is not open to judicial scrutiny, the rights of the person are fundamentally altered by an administrative act of a trustee corporation, and there are no requirements for officers of trustee corporations to have suitable training in order to ensure that applications are evaluated according to the law. The provisions offend the principles of the 1971 United Nations Declaration and are contrary to the underlying principles of the Act itself.

Part IX – Enduring Powers of Attorney

Part IX, governing enduring powers of attorney, was added to the Bill while in Select Committee. An enduring power of attorney is a flexible instrument by which a person may make arrangements concerning personal care and welfare and/or property without recourse to the Courts. The enduring power of attorney may be stated to take immediate effect or to become effective only upon the donor becoming mentally incapable. The instrument creating an enduring power of attorney must be in the form specified in the third schedule to the Act, signed by the donor and attorney and independently witnessed.

Enduring powers of attorney are subject to judicial review. A Court may determine whether or not a person is mentally incapable (s 102(1)), may – on the application of the donor or another – review the attorney's decisions (s 103), and may revoke the appointment of attorney if satisfied that the attorney has not acted in the donor's best interests (s 105).

The above is only a brief overview of the Act and its more important provisions. It is a significant Act in the field of human rights legislation, and one that has expanded the Family Court's jurisdiction considerably.

– *Susan Potter*

OTHER RECENT LEGISLATION

This summary is of legislation in the period covered by this Volume of the *Law Review* and up to 1 June 1989. It is introduced for the first time in this Number to outline important legislative developments which, due to space requirements, cannot be noted more fully. It is hoped that subscribers without ready access to the New Zealand Statutes will find it of benefit.

1987 Statutes

Conservation Act

The aim of the Act is to preserve New Zealand's natural and historic resources. A Department of Conservation is established to advise the Minister of Conservation, advocate conservation, and distribute educational and promotional material. The Department is also to administer land acquired and held by the Crown for conservation purposes.[1] The Act is to be read subject to the Treaty of Waitangi (s 4).

Economic Stabilisation Act Repeal Act

The Economic Stabilisation Act 1948 is repealed by this legislation. The former Act conferred upon the Governor-General in Council the power to make regulations required for the economic stability of New Zealand. This power was used in 1979 to introduce a wage and price freeze. The Public Safety Conservation Act 1932 has also been repealed by a separate enactment.

Evidence Amendment Act

This Act deals with the competence and compellability of witnesses. Section 5(6) of the principal Act now provides that a spouse is competent to give evidence against an accused although not compellable. A co-accused is now both competent and compellable.

1 Section 8 empowers the Crown to acquire the land for such purposes.

Immigration Act

Persons who are in New Zealand unlawfully are no longer dealt with by way of criminal prosecution. Rights of appeal against a removal order are conferred upon the overstayer, in contrast with the traditional position at common law which recognised at best a right to natural justice.

New Zealand Nuclear Free Zone, Disarmament and Arms Control Act

New Zealand territorial waters are to be a nuclear free zone. No warship or aircraft may enter New Zealand's waters without the permission of the Prime Minister, which shall be granted only if he or she is convinced that there are no nuclear weapons on board that ship or aircraft. Nuclear powered propulsion is also prohibited. The Act also establishes the Public Advisory Committee on Disarmament and Arms Control.

Town and Country Planning Amendment Act

Existing procedure by which regional planning schemes are to be implemented is replaced. This legislation codifies the paramountcy of regional planning schemes in relation to district schemes.

Parental Leave and Employment Protection Act

This Act prescribes minimum entitlements to parental leave in both the private and public sectors. "Parental" leave replaces "maternity" leave and is available for either parent. The Act protects the right of employees who have taken leave to return to their previous employment within a set period.

Status of Children Amendment Act

Where a child is born by means of donated semen or of a donated ovum the donor is not a parent if the donee couple are in a relation "in the nature of marriage" (thereby including de facto relationships). The donee couple shall be the parents.

Video Recordings Act

This provides for the classification of video recordings offered for sale or hire and allows for the determination of questions relating to indecency of video recordings. These powers are vested in the Video Recordings Authority rather than the Chief Censor.

Crimes Amendment Acts

Amendment (No 1) abolishes the requirement that the Riot Act be read, and widens the definition of "riot". Amendment (No 2) includes a knife within

the definition of an offensive weapon for the purposes of s 202(a) of the Crimes Act 1961. It also establishes rules relating to the obtaining of evidence by listening devices.

1988 Statutes

Area Health Boards Amendment Act (No 3)

Area Health Board Districts are established. Each is controlled by an Area Health Board which is to be comprised of elected members. The Act places restraints upon the collection and use of personal information about patients.

Companies Amendment Act

This Act prohibits certain persons from managing companies. In addition, it restructures existing provisions requiring that officers disclose their shareholdings (s 105 of the Companies Act 1955) and that a register of those shareholdings be kept by the Company (s 105A of the Companies Act 1955).

Disputes Tribunals Act

Disputes Tribunals are to replace the Small Claims Court, with an extended jurisdiction and an extended maximum sum for claims. The Act envisages greater flexibility in the operation of the tribunal by not requiring parties to attend in person to put their case.

Earthquake and War Damage Amendment Act

The Earthquake and War Damage Commission is reconstituted and is to be both a State Owned Enterprise and a company within the meaning of the State Owned Enterprises Act 1986.

Imperial Laws Application Act

The Act specifies the extent to which Imperial enactments, Imperial subordinate legislation, and the common law of England are part of the law of New Zealand. It repeals the English Laws Act 1908.

Judicature Amendment Act

Section 16A is inserted into the principal Act. It provides that where a court has jurisdiction to determine an application for an injunction or specific performance, damages may be awarded in lieu of or in addition to such relief.

Petroleum Sector Reform Act

This Act allows the Government to assume responsibility for loans raised

in order to finance the Marsden Point Refinery. It removes regulatory controls on the motor spirits distribution industry, abolishing the Motor Spirits Licensing Authority and the Motor Spirits Licensing Appeal Authority.

State Sector Act

This legislation is designed to promote greater efficiency in state services. It establishes Permanent Heads of Department employed on five year contracts, together with new procedures for appointment to and dismissal from the public service. Different state employee groups are empowered to renegotiate their own terms and conditions of employment.

Treaty of Waitangi Amendment Act

Questions of fact may, with the consent of the Waitangi Tribunal, be referred to the Maori Appellate Court for determination (s 4). The Tribunal may by s 5 defer its consideration of, or inquiry into, a claim for such period as it things fit.

Treaty of Waitangi (State Enterprises) Act

Following the Court of Appeal decision in *New Zealand Maori Council v A-G*[2] on the effect of s 9 of the State Enterprises Act, this Act was enacted to give effect to the agreement entered into between the New Zealand Maori Council and the Crown. The Waitangi Tribunal is vested with the power to make recommendations in respect of land transferred or vested in State Owned Enterprises. By virtue of s 14 legal aid is available for proceedings before the Waitangi Tribunal.

Trustee Amendment Act

This legislation removes the restrictions upon investments that a trustee may make. Allowable investments are now those that a reasonable business person would make. Settlors can restrict a trustee's discretion by means of the trust instrument.

1989 Acts

Corporations Investigation and Management Act

The Act confers power upon the Registrar of Companies to investigate the affairs of "a body of persons, whether incorporated or not, and whether incorporated or established in New Zealand or elsewhere" and to obtain information and documents from it. The Registrar is also empowered by s 33 to give

2 [1987] 1 NZLR 641.

directions to a corporation declared to be at risk. Provision for the appointment of a Statutory Manager is made (s 39). The corporation is not entitled to be consulted about the exercise of the Registrar's powers (s 64) and the expenses of statutory management are to be met from the property of the corporation in priority to all other claims (s 65).

Criminal Justice Amendment Act

Where an offender is convicted of an imprisonable offence the Court as well as passing sentence may make a non-association order prohibiting the offender from associating with any person or any person of any class specified in the order. The maximum duration is twelve months.

Income Tax Amendment Act

The Act provides for the taxation of employer contributions to superannuation funds.

Local Government Amendment Act

The Act provides for the appointment of Transitional Committees to implement draft schemes or final reorganisation schemes determined by the Local Government Commission.

Motor Vehicle Securities Act

The Act provides for the registration of security interests in motor vehicles. It also amends, in certain respects, the law relating to the disposition and creation of interests in motor vehicles subject to security interests.

School Trustees Act

Reforms proposed in the Picot Report ("Tomorrow's Schools") are implemented by establishing an individual board of trustees for each state school. The boards are empowered to appoint staff and are responsible for the running of their school.

Wanganui Computer Centre Amendment Act

The Wanganui Computer Centre Policy Committee is constituted to determine policy on the release of information having regard to privacy and the protection of individual rights.