



## ANALYSIS

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1960, No. 10

**An Act to amend the Inland Revenue Department Act 1952**  
 [16 September 1960]

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

**1. Short Title**—This Act may be cited as the Inland Revenue Department Amendment Act 1960, and shall be read together with and deemed part of the Inland Revenue Department Act 1952\* (hereinafter referred to as the principal Act).

**2. Interpretation**—In the Inland Revenue Acts (including this Act), unless the context otherwise requires, “Board of Review” or “Board” means a Board of Review established under this Act.

### *Boards of Review*

**3. Establishment of Boards of Review**—(1) For the purposes of the Inland Revenue Acts there shall be established one or more Boards of Review.

(2) If more than one, any Board may be given such distinctive designation as the Governor-General determines, and any such designation may from time to time be changed by the Governor-General.

(3) Every Board shall consist of—

(a) One person, being a barrister or solicitor of the Supreme Court of not less than seven years’ practice, who shall be appointed as Chairman:

(b) Two other persons.

(4) The members of a Board shall be appointed by the Governor-General.

(5) The powers of a Board shall not be affected by any vacancy in its membership.

(6) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the Public Service Act 1912 or the Superannuation Act 1956 by reason only of his being a member of a Board.

**4. Term of office of members of Board**—(1) Except as otherwise provided in this Act, every member of a Board shall be appointed for such term, not exceeding seven years, as the Governor-General thinks fit, and may from time to time be reappointed.

(2) Notwithstanding that the term of office of a member of a Board has expired, he shall, unless he sooner vacates office under section 7 of this Act, continue to hold office until his successor comes into office.

(3) Notwithstanding that the term of office of a member of a Board has expired or that a member of a Board has resigned his office, he shall be deemed to continue to be a member of the Board for the purpose of—

- (a) Deciding any objection that was wholly heard before the expiration of his term of office or before his resignation took effect, as the case may be:
- (b) Stating any case on appeal to the Supreme Court from a decision of the Board given while he was a member or while he was deemed to continue to be a member under the provisions of paragraph (a) of this subsection.

**5. Temporary Boards—**(1) The Governor-General may from time to time, whenever he considers it necessary or expedient so to do, establish one or more temporary Boards in addition to the Board or Boards established under section 3 of this Act.

(2) The members of a Board established under this section shall hold office during the pleasure of the Governor-General or during such period, not exceeding three years, as may be limited in the terms of appointment.

(3) Subject to this section, the provisions of this Act shall apply to a Board established under this section and to the members thereof as if the Board were established, and the members thereof were appointed, under section 3 of this Act.

**6. Oath to be taken by members of Board—**Before entering upon the exercise of the duties of their office, the members of a Board shall take and subscribe an oath before a Judge of the Supreme Court that they will faithfully and impartially perform the duties of their office.

**7. Extraordinary vacancies—**(1) Any member of a Board may at any time be suspended or removed from office by the Governor-General for engaging in any occupation for reward outside the duties of his office, or for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General, or may at any time resign his office by writing addressed to the Minister:

Provided that, where the terms of appointment of any member of a temporary Board or of any deputy for or in place of a member of any Board permit him to engage in any occupation for reward outside the duties of his office, he shall

not be liable to be suspended or removed from office under this subsection by reason of his so engaging in any occupation for reward so permitted.

(2) If any member of a Board dies or resigns or is removed from office, his office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.

(3) In the case of an extraordinary vacancy the Governor-General may appoint any person to fill the vacancy for the residue of any period for which the vacating member was appointed, or, if there was no such period, during the pleasure of the Governor-General.

**8. Deputies of members—**(1) In any case in which any member of a Board is suspended from office or the Governor-General is satisfied that any member of a Board is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the Governor-General may appoint any person to be a deputy to act for that member during his suspension or incapacity, or until the member dies or resigns or is removed from office, or until the deputy's appointment is sooner revoked or he resigns.

(2) If any member of a Board dies or resigns or is removed from office, the Governor-General may appoint any person to be a deputy to act in place of that member until that member's successor comes into office or the deputy's appointment is sooner revoked or he resigns.

(3) The deputy to be appointed for or in place of the Chairman may be one of the other members or a person who is not a member may be so appointed, and, if one of the other members is appointed to be the deputy of the Chairman, some other person may be appointed to act as deputy for that member.

(4) No person may be appointed to be the deputy for or in place of the Chairman, unless he is qualified for appointment as Chairman.

(5) Every deputy appointed under this section shall, while acting for or in place of a member, be deemed to be a member of the Board, and, in the case of a deputy for or in place of the Chairman, shall, while so acting, be the Chairman of the Board.

(6) No appointment of a deputy, and no acts done by a deputy as such, and no act or determination of the Board while any deputy is acting as such, shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

**9. Acting Chairman**—Where the Chairman of a Board is suspended from office or the Chairman is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, or where an extraordinary vacancy exists in the office of Chairman, one of the other members of the Board, whether or not he is qualified for appointment as Chairman, shall act as Chairman of the Board until a deputy for or in place of the Chairman is appointed or, as the case may be, the successor of the Chairman comes into office. The member who shall so act as Chairman shall be the one whose first appointment to the Board was the earlier or, if both such members were first appointed at the same time, then the elder in age of them shall so act as Chairman.

**10. Remuneration and travelling expenses**—There shall be paid out of money appropriated by Parliament for the purpose to the members of a Board remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the Board were a statutory Board within the meaning of that Act.

**11. Members of Board not personally liable**—No member of a Board shall be personally liable for any act done or omitted to be done by the Board or by any member thereof in good faith in pursuance or intended pursuance of the powers and authorities of the Board.

**12. Employees of Crown appointed to Board**—If any employee of the Crown is appointed a member of a Board, his service as member shall, for the purpose of determining his existing and accruing rights under the Public Service Act 1912, or, as the case may require, the Government Railways Act 1949 or the Post Office Act 1959, or under the Superannuation Act 1956, be deemed to be Government service in New Zealand.

**13. Registrars and other officers of Board**—(1) There shall from time to time be appointed under the Public Service Act 1912 such Registrars, Deputy Registrars, clerks, and other officers of a Board as may be required, and one person may be appointed Registrar or Deputy Registrar or clerk or officer of two or more Boards.

(2) The office of Registrar or Deputy Registrar or any other office may be held either separately or in conjunction with any other office in the Public Service.

**14. Officers to maintain secrecy**—Every person (other than a member of a Board) engaged or employed in connection with the work of any Board who is not also an officer of the Department, shall, for the purposes of section 12 of the principal Act, be deemed to be an officer of the Department, and shall take and subscribe the oath of fidelity and secrecy referred to in that section, and that section shall in every respect apply to that person as if he were an officer of the Department.

**15. Functions of Board**—The functions of a Board shall be to sit as a judicial authority for hearing and determining such objections to assessments of tax or duty or to decisions or determinations of the Commissioner as are authorised by the Inland Revenue Acts.

**16. Seal**—Every Board shall have a seal which shall be judicially noticed in all Courts.

**17. Board to be a Commission of Inquiry**—(1) Every Board shall, within the scope of its jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of this Act and of any regulations made under this Act, all the provisions of that Act, except sections 11 and 12 (which relate to costs), shall apply accordingly.

(2) The Chairman of a Board or any other member, or the Registrar or Deputy Registrar purporting to act by direction or with the authority of the Chairman, may issue summonses requiring the attendance of witnesses before the Board or the production of any book or document, or may do any other act preliminary or incidental to the hearing of any matter by the Board.

#### *Proceedings*

**18. Hearing of objections by Board**—(1) The procedure for the institution, hearing, and determination of any proceedings before a Board on an objection shall, subject to the provisions of the Act authorising the hearing and determination of the objection by a Board, be in accordance with this Act

and with any regulations relating to those proceedings, and, subject thereto, the Board may determine its own procedure.

(2) For the purpose of hearing and determining any objection, a Board shall have all the powers, duties, functions, and discretions of the Commissioner in making the determination.

(3) In respect of any proceedings before a Board—

(a) The objector and the Commissioner shall each be entitled to appear personally or be represented by a barrister or solicitor of the Supreme Court or by any other person:

(b) No costs shall be awarded to or against the objector or the Commissioner.

(4) The hearing of an objection before a Board shall not be open to the public.

**19. Evidence in proceedings before Board—**(1) A Board may receive as evidence any statement, document, information, or matter that in the opinion of the Board may assist it to deal effectually with the proceedings before it, whether or not the same would be otherwise admissible in a Court of law.

(2) Without limiting the generality of subsection (1) of this section, a Board may receive, without formal proof—

(a) A copy, duly certified as correct by any responsible officer of a bank or of a public company or cooperative company, of any person's account with that bank or company, and may take into consideration any entry or particular contained therein:

(b) A copy, duly certified as correct by any responsible officer of a local authority or public authority, as defined in section 2 of the Land and Income Tax Act 1954, of any document in the possession of that authority, and may take into consideration any statement or particular contained therein.

(3) Subject to the foregoing provisions of this section, the Evidence Act 1908 shall apply to a Board and to the members thereof, and to all proceedings before the Board, as if the Board were a Court within the meaning of that Act.

(4) In this section—

“Cooperative company” means a cooperative company registered as such under the Cooperative Companies Act 1956 or the corresponding provisions of any former Act, or a cooperative dairy company within the meaning of the Cooperative Dairy Companies Act 1949:

REFER 196.  
No. 2.

“Public company” means a company within the meaning of the Companies Act 1955, not being a private company within the meaning of that Act.

**20. Grounds of objection and burden of proof**—On the hearing and determination of any objection, the objector shall be limited to the grounds stated in his objection, and, subject to the provisions of subsection (2) of section 234 of the Land and Income Tax Act 1954, the burden of proof shall be on the objector.

**21. Sittings of Board**—(1) Sittings of a Board shall be held at such times and places as the Board or the Chairman from time to time appoints.

(2) Any sitting of a Board may be adjourned from time to time and from place to place in the following manner:

(a) By the Board or the Chairman at any sitting thereof, or, if only one member is present, then by that member, or, if no member is present, then by the Registrar; or

(b) By the Board or the Chairman before the time fixed for the sitting.

**22. Quorum and decision of Board**—(1) The presence of any two members shall be necessary to constitute a sitting of a Board.

(2) The Chairman at any sitting shall have a deliberative vote but not a casting vote.

(3) The decision of a majority of the members present at a sitting of a Board shall be the decision of the Board, and if, in the case of two members constituting a sitting of a Board, the members present are equally divided in opinion, the objection shall be reheard and be determined at a sitting of that or another Board at which three members are present.

**23. Power to proceed if either party fails to attend**—(1) If either the objector or the Commissioner fails to appear or be represented at the hearing of an objection, the Board may in its discretion either adjourn the hearing or determine the objection in the absence of the party so failing to appear or be represented.

(2) Where under this section the Board determines any objection in the absence of any party, the Board on the application of that party may, if the Board thinks fit, grant a rehearing of the objection. When such a rehearing is

granted, the determination of the Board made on the hearing shall immediately cease to have effect.

**24. Board may dismiss frivolous or vexatious objections—**A Board may at any time dismiss any objection, if it is satisfied that the objection is frivolous or vexatious or is made solely for the purpose of delay.

**25. Proceedings not to abate by reason of death of objector—**Proceedings before a Board shall not abate by reason of the death of the objector, and the legal personal representative of the deceased objector shall be substituted in his stead.

**26. Stating case for Supreme Court—**(1) A Board may at any time, before or during the hearing or before delivering its decision, on the application of either the objector or the Commissioner or of its own motion, state a case for the opinion of the Supreme Court on any question of law arising in any proceedings before the Board.

(2) The Supreme Court may order the removal into the Court of Appeal of any case stated for the opinion of the Supreme Court under this section.

(3) The Supreme Court or the Court of Appeal, as the case may be, shall hear and determine the question, and shall remit the case with its opinion to the Board.

**27. Decision of Board—**(1) On the determination of any objection the Board shall give a decision in writing.

(2) Upon the request of the objector or the Commissioner made at the hearing or at the time when the decision is given, the Board shall state in writing its findings of fact and any reasons in law for the decision.

### *Appeals*

**28. Appeals to Supreme Court—**The determination of a Board on any objection shall be subject to appeal to the Supreme Court on any question of law, but shall be final and conclusive as to any question of fact.

**29. Notice of appeal to Supreme Court—**In the case of such an appeal the appellant shall, within thirty days after the determination appealed from, file with the Board a notice of appeal specifying the registry of the Supreme Court in

which he intends to file the case on appeal, and, in the case of an appeal by an objector, shall give security for the costs of the appeal to such amount and in such form as may be approved by the Board.

**30. Board to state case on appeal**—The Board whose determination is appealed from shall thereupon state and sign a case setting forth the facts and the questions of law arising for the determination of the Supreme Court, and shall deliver the case so signed to the appellant.

**31. Appellant to transmit case to Registrar of Supreme Court**—The appellant shall, within fourteen days after receiving the case, transmit it to the Registrar of the Supreme Court in the registry specified in the notice of appeal, and the Registrar shall thereupon enter the appeal for hearing at the first practicable sitting of the Court.

**32. Amendment of case stated**—On the hearing of the appeal the Supreme Court may, if it thinks fit, cause the case so stated to be sent back to the Board for amendment, and thereupon the case shall be amended accordingly, and the Court shall thereupon proceed to hear and determine the questions so submitted.

**33. Removal of appeal to Court of Appeal**—The Supreme Court may order the removal into the Court of Appeal of any case on appeal stated for the opinion of the Supreme Court under this Act.

**34. Appeal to Court of Appeal**—The decision of the Supreme Court on any case on appeal or on any case stated for its opinion under section 26 of this Act shall be subject to appeal to the Court of Appeal.

**35. Costs on appeal**—(1) In respect of any proceedings before the Supreme Court or Court of Appeal on an appeal from a determination of a Board or on any case stated for the opinion of the Court under section 26 of this Act, the Court may award such costs to or against either party as it thinks just.

(2) The Commissioner shall not be required to give security in any such proceedings before the Supreme Court or Court of Appeal.

(3) All costs awarded against the Commissioner by the Supreme Court or Court of Appeal shall be payable out of money appropriated by Parliament, and not otherwise.

### *Regulations*

**36. Regulations**—Without limiting the general power to make regulations conferred by section 19 of the principal Act, regulations may be made under that section for all or any of the following purposes:

- (a) Prescribing the procedure for the making of objections and the practice and procedure of Boards of Review in relation thereto:
  - (b) Making any provision which may be necessary or desirable to enable any Board to exercise its functions or to publish its decisions and determinations:
  - (c) Prescribing the practice and procedure in respect of appeals from decisions and determinations of any Board.
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