

EXCEPTIONAL SERVICE HONOUR (POSTHUMOUS RECOGNITION) BILL

EXPLANATORY NOTE

Due to the current convention that does not permit the granting of posthumous honours there are New Zealanders in our history who deserve recognition but have not received it.

This Bill is being introduced to enable the honouring of those New Zealanders who have shown exceptional service to their country but were not given due recognition for their achievements during their lifetime.

The Bill should be noted for the following:

1. It creates a new honour, one that can be given posthumously.
2. It creates a new process for conferment of the Honour. As will be known, honours are normally conferred by the Crown as a prerogative of the Crown using a process that is not as visible or as structured as the process outlined in this Bill. However, although this Bill does create an honour and admittedly an unusual one, the prerogative of the Crown is preserved as the Sovereign is still advised by the Prime Minister. As support to the Prime Minister the Bill creates a Council which considers the names of persons nominated for the Honour and makes recommendations to the Prime Minister, but this is a purely recommendatory role.
3. The Status of the honour is a combination of existing honours. It is a combination of the knighthood type status which leads to being included in an Order with a roll, and the mere conferment of a medal. The status therefore of the "Exceptional Service Honour" is between the two.
4. The Bill is controversial in that:
 - The Honour is created by Parliament rather than the Crown.
 - The inclusion of a Council to recommend who qualifies gives an input from a wider base and is more public than the largely hidden process used through the Crown.
 - The composition of the Council is the result of trying to ensure that wider interests are represented. However, any other proposals on the composition of the Council could be considered at the select committee stage.
5. The Bill is beneficial in that deceased persons deserving of recognition can now be honoured.

Jim Anderton

**EXCEPTIONAL SERVICE HONOUR (POSTHUMOUS
RECOGNITION)**

ANALYSIS

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A BILL INTITULED

An Act—

(a) To provide for the institution of an honour for exceptional service rendered to the Crown and people of New Zealand by persons not given such recognition during their lifetimes:

(b) To provide for the establishment of a Council for the Exceptional Service Honour to consider nominations for the Honour and to make recommendations thereon:

(c) To make provision for other matters relating to the said Honour 5

WHEREAS divers persons have not been honoured during their lifetime for exceptional services rendered to the Crown and people of New Zealand: And whereas it is desirable in the interests of justice and equity that those persons may be honoured: And whereas there is doubt as to the extent to which honours may be conferred posthumously: And whereas it is desirable to institute an honour for the purpose of recognising persons posthumously: 10

BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows: 15

1. Short Title—This Act may be cited as the Exceptional Service Honour (Posthumous Recognition) Act 1991.

2. Interpretation—In this Act, unless the context otherwise requires,— 20

“Council” means the Council for the Exceptional Service Honour constituted by **section 15** of this Act:

“Her Majesty” includes Her present Majesty, Her heirs and successors:

“Honour” means the Exceptional Service Honour created by **section 4** of this Act: 25

“Prime Minister” includes a Minister of the Crown deputising for the Prime Minister:

“Secretary and Registrar” means the Secretary and Registrar of the Honour appointed under **section 13** of this Act. 30

3. Act to bind Crown—This Act binds the Crown.

PART I

EXCEPTIONAL SERVICE HONOUR

Institution of Honour and Primary Provisions 35

4. Creation, style and designation of Honour—There is hereby instituted and created an honour, which shall be styled and designated “THE EXCEPTIONAL SERVICE HONOUR”.

5. Qualifications for conferral of Honour—(1) Deceased persons upon whom the Honour may be conferred, in accordance with this Act, shall—

- 5 (a) Have rendered exceptional service to the Crown and people of New Zealand in a civil or military capacity at a time since the 6th day of February 1840; and
(b) Not have been given recognition, by receiving another appropriate honour, during their lifetime.

10 (2) The Honour may only be conferred on a person posthumously, notwithstanding any law, practice, custom, or usage to the contrary relating to the conferral of honours.

Conferral of Honour

6. Names for conferral of Honour to be submitted by Prime Minister or Council's recommendation—(1) No
15 deceased person shall be eligible for conferral of the Honour upon him or her unless the name of that person—

- (a) Has come before the Council in accordance with **section 23** of this Act; and
20 (b) Has been recommended to the Prime Minister by the Council; and
(c) Has been laid before Her Majesty by the Prime Minister.

(2) Nothing in this section shall require the Prime Minister to submit any particular name to Her Majesty.

7. Conferrals to be made by warrant—Every conferral of
25 the Honour shall be made by warrant under the Regal Sign Manual, sealed with the Seal of New Zealand, and countersigned by the Prime Minister and the Secretary and Registrar.

8. Investitures—(1) The Governor-General may perform in
30 Her Majesty's name, and on Her Majesty's behalf, a ceremony of presenting the Badge of the Honour, prescribed pursuant to **section 11** of this Act, to the surviving spouse or a descendant or other relative or legal representative of the deceased person upon whom the Honour is conferred.

35 (2) The Governor-General may authorise some distinguished person to make the presentation specified in **subsection (1)** of this section, or to permit the presentation to be dispensed with.

9. Conferrals to be gazetted—The names of those
40 deceased persons upon whom the Honour is conferred shall be published in the *Gazette*.

10. Post-nominal letters—Wherever written reference is made to a deceased person upon whom the Honour has been conferred, such reference may add the letters “E.S.H.” after the names of the recipients.

11. Badge, etc.—The Badge for the Honour, and the ribbon of the Honour, shall be of such materials and fashion as may be prescribed by Her Majesty. 5

12. Cancellation of conferrals—(1) Her Majesty may, by Order signed by the Regal Hand and sealed with the Seal of New Zealand, on a recommendation by the Prime Minister, cancel and annul the conferral of the Honour on any deceased person, and thereupon the name of such person in the Register kept pursuant to **section 14** of this Act shall be erased. 10

(2) Nothing in **subsection (1)** of this section shall prevent the restoration of the Honour to any deceased person. 15

Administration of the Honour

13. Secretary and Registrar of Honour—(1) There shall be a Secretary and Registrar of the Honour who shall be the Clerk of the Executive Council of New Zealand or such other person appointed by Her Majesty. 20

(2) The said Secretary and Registrar shall hold office during pleasure.

14. Duties of Secretary and Registrar—The Secretary and Registrar shall—

- (a) Maintain a register of all the names of those deceased persons upon whom the Honour has been conferred: 25
- (b) Perform such duties as may be directed by Her Majesty.

PART II

COUNCIL FOR THE EXCEPTIONAL SERVICE HONOUR

Constitution, Functions, and Membership of Council and Related Matters 30

15. Constitution of Council—There is hereby constituted a Council to be called the Council for the Exceptional Service Honour.

16. Functions of Council—(1) The Council shall have the following functions: 35

- (a) To consider the names of deceased persons nominated for the Honour in accordance with **section 23** of this Act:

(b) To recommend to the Prime Minister the names of those deceased persons upon whom the Council considers the Honour should be conferred.

5 (2) In the performance of its functions the Council may conduct such research and carry out such investigations, and consult such persons, as it considers necessary or desirable.

17. Membership of Council—(1) The Council shall consist of—

- 10 (a) The Speaker of the House of Representatives;
(b) The Chief Human Rights Commissioner appointed under section 7 of the Human Rights Commission Act 1977;
(c) One person appointed by the Governor-General on the nomination of the Conference of Churches in Aotearoa New Zealand;
15 (d) One person appointed by the Governor-General on the nomination of the Chairperson of the Waitangi Tribunal appointed by section 4 (2) (a) of the Treaty of Waitangi Act 1975, to represent the Maori people;
20 (e) One person appointed by the Governor-General on the nomination of the New Zealand Vice-Chancellors Committee established by section 240 of the Education Act 1969 (as inserted by section 41 of the Education Amendment Act 1990).

25 (2) The Speaker of the House of Representatives shall be the Chairperson of the Council.

18. Term of office—(1) Every member of the Council appointed pursuant to any of paragraphs (c) to (e) of section 17 (1) of this Act shall be appointed for a term not exceeding 5 years, as the Governor-General may specify in that member's instrument of appointment, and may from time to time be reappointed.

30 (2) Any member of the Council may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct.

35 (3) Any member of the Council (not being a member specified in paragraph (a) or paragraph (b) of section 17 (1) of this Act) may at any time resign office by writing addressed to the Governor-General.

40 (4) If any member of the Council dies, resigns, or is removed from office, the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made, and the person so appointed shall be appointed for the

residue of the term for which the vacating member was appointed.

(5) Unless a member sooner dies, resigns, or is removed from office, every member of the Council shall continue in office until that member's successor comes into office, notwithstanding that the term for which that member was appointed may have expired. 5

(6) Notwithstanding section 13 of the Constitution Act 1986, the person who is in office as Speaker of the House of Representatives immediately before the dissolution or expiration of Parliament shall continue in office as a member of the Council, as if that person continues to be Speaker, until, after any general election of members of Parliament, the choice of Speaker by the House of Representatives has been confirmed by the Governor-General. 10 15

19. Personal liability—No member of the Council is personally liable for any act done or omitted by the member—

- (a) In good faith; and
- (b) In pursuance or intended pursuance of the Council's functions. 20

20. Annual report—(1) The Council shall, as soon as practicable after the end of each year ending with the 30th day of June, furnish to the Prime Minister a report of its proceedings and operations during that year.

(2) The Council shall include in every annual report of the Council the financial statements prepared by the Council, in accordance with Part V of the Public Finance Act 1989, in respect of the financial year to which the report relates, together with the audit report and the management statement relating to those financial statements. 25 30

(3) A copy of every annual report of the Council shall be tabled in the House of Representatives in accordance with section 44 of the Public Finance Act 1989.

21. Exemption from income tax—The income of the Council shall be exempt from income tax. 35

22. Other provisions applying to Council—The Schedule to this Act applies to the Council.

Consideration of Nominations

23. Nominations that may be considered by Council—

The Council shall consider, and only consider, the names of deceased persons nominated for the Honour by—

- 5 (a) A member of Parliament:
(b) A petition presented to the Council in accordance with **section 24** of this Act, or referred to the Council pursuant to **section 25** of this Act.

10 **24. Petitions—**(1) Subject to this section, petitions nominating the names of persons for the Honour may be presented to the Council.

(2) Every petition referred to in **subsection (1)** of this section shall be signed by 5000 or more petitioners.

15 (3) Every petition referred to in **subsection (1)** of this section shall—

- (a) Identify the principal petitioner, and means of communication with that person:
(b) Contain the signature, name and residential address of each petitioner:
20 (c) Be in such form (if any) as may from time to time be prescribed by the Council.

25. Petitions referred to Council—Notwithstanding **section 24** of this Act, the Council shall consider any petition that otherwise qualifies for consideration but that is addressed to—

- 25 (a) Her Majesty; or
(b) The Governor-General; or
(c) The House of Representatives or a committee thereof; or
(d) A Minister of the Crown; or
(e) A member of Parliament; or
30 (f) Any member of the Council in another capacity—
where the person or body concerned refers the petition to the Council for consideration.

26. Council may hold hearings—(1) For the purpose of considering the names of persons nominated for the Honour the Council may—

- 35 (a) Call for submissions from individuals and organisations, generally or in any particular case:
(b) Conduct hearings.
(2) For the purposes of this section, the Council may exercise
40 the powers of a commission of inquiry as if it had been appointed under the Commissions of Inquiry Act 1908, except

sections 11, 12 and 14 of that Act (which relate to the award of costs).

27. Consideration of names—In considering the names of persons nominated under this Act, the Council shall have regard to— 5

- (a) The nature and value of any service rendered by the person: 5
- (b) Any reasons (if ascertainable) why any other honour was not proposed or recommended for the person: 10
- (c) Whether there is or was any element of injustice to the person, or whether the absence of any honour constitutes a serious lack of appreciation of or gratitude for the services of that person: 10
- (d) Such other matters as the Council considers relevant. 10

28. Recommendations to Prime Minister—(1) Where the Council determines that a person should receive the Honour, the Council shall make a recommendation to the Prime Minister accordingly. 15

(2) Every recommendation made under **subsection (1)** of this section shall include for the person proposed to be honoured an appropriate citation. 20

29. Recommendations by Council to be gazetted—Every recommendation made by the Council to the Prime Minister pursuant to **section 28** of this Act shall be published in the *Gazette*. 25

Offences

30. Corruption and bribery of member of Council—(1) Every member of the Council commits an offence and is liable on conviction to imprisonment for a term not exceeding five years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for that member or any other person in respect of any act done or omitted, or to be done or omitted, by that member in his or her capacity as a member of the Council. 30

(2) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding \$10,000, or to both, who corruptly gives, or offers or agrees to give, any bribe to any person with intent to influence any member of the Council in respect of any 35

act or omission by that member in his or her capacity as a member of the Council.

5 (3) In addition to any penalty provided for the commission of any offence under **subsection (1)** or **subsection (2)** of this section, the Court may make an order for the forfeiture to Her Majesty of the bribe given or offered.

10 (4) No member of the Council shall be prosecuted for any offence against **subsection (1)** of this section without the leave of the Attorney-General, who before giving leave may make such inquiries as the Attorney-General thinks fit.

(5) For the purposes of this section, “bribe” means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect.

15 Cf. 1961, No. 43, ss. 2, 105, 106; 1956, No. 107 (R.S. Vol. 26), s. 150; Honours (Prevention of Abuses) Act, 1925, s. 1 (U.K.)

Consequential Amendment

20 **31. Consequential amendment to Official Information Act 1982**—The Official Information Act 1982 is hereby amended by inserting in the First Schedule (as substituted by section 23 (1) of the Official Information Amendment Act 1987), in its appropriate alphabetical order, the item “Council for the Exceptional Service Honour”.

Section 22

SCHEDULE

OTHER PROVISIONS APPLYING TO COUNCIL

1. Meetings—(1) The first meeting of the Council shall be held before the 15th day of February 1992 on a date to be appointed by the Prime Minister.

(2) Subject to subclauses (1) and (3) of this clause, meetings of the Council shall be held at such times and places as the Council or its Chairperson from time to time appoints, but the Council shall meet at least once in each financial year.

(3) The Chairperson, or any 3 members, may at any time call a special meeting.

(4) The quorum necessary for the transaction of business at any meeting of the Council shall be 4 members.

(5) At all meetings of the Council its Chairperson shall preside if he or she is present. If the Chairperson and the Deputy Chairperson are absent, the members present shall appoint one of their number to be chairperson of that meeting.

(6) All questions arising at any meeting of the Council shall be decided by a majority of the valid votes recorded thereon.

(7) At any meeting of the Council the Chairperson or other person presiding shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(8) A resolution in writing signed, or assented to by letter, telegram, telex, or facsimile transmission, by all the members of the Council shall be as valid and effectual as if it had been passed at a meeting of the Council duly called and constituted.

2. Procedure—Except as provided in this Act, the Council may regulate its own procedures.

3. Remuneration and travelling allowances of members—(1) The Council is a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) Every member is entitled to receive, out of the Council's funds,—

- (a) Remuneration by way of fees, salary, or allowances, for the member's services as a member:
- (b) Payment of travelling allowances or expenses in respect of time spent travelling in the service of the Council.

4. Council to appoint chief executive—(1) Subject to subclause (2) of this clause, the Council may from time to time appoint a chief executive of the Council, on terms and conditions agreed by the Council and the person appointed.

(2) The Council shall not agree any terms and conditions of appointment for a chief executive without—

- (a) Consulting the State Services Commission; and
- (b) Having regard to all recommendations the Commission makes about them within a reasonable time of being consulted.

5. Employment of other employees—(1) The chief executive of the Council may from time to time appoint any employees necessary or desirable to enable the Council to perform its functions.

SCHEDULE—*continued*

OTHER PROVISIONS APPLYING TO COUNCIL—*continued*

(2) Subject to **subclause (3)** of this clause, for the purposes of **subclause (1)** of this clause, Parts V and VI of the State Sector Act 1988 shall have effect as if—

- (a) The Council is a Department specified in the First Schedule to that Act; and
- (b) Every reference in those Parts to the chief executive of a Department is a reference to the chief executive of the Council; and
- (c) Every reference in those Parts to the State Services Commission is a reference to the Council.

(3) The following provisions apply to negotiations under Part VI of the State Sector Act 1988 in respect of the conditions of employment of the employees (or prospective future employees) of the Council:

- (a) before entering the negotiations, the Council shall consult the State Services Commission on the conditions to be negotiated;
- (b) At any time before or during the negotiations, the Commission may tell the Council that it wants to participate in the negotiations; and in that case, the Council shall allow the Commission to do so.

6. Crown may provide services for Council—The Crown, acting through any Government department, may from time to time, at the request of the Council, provide any staff, or execute any work or enter into any arrangements for the execution or provision by the Government department for the Council of any work or service, or for the supply to the Council of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

7. Application of certain Acts to members of Council excluded—No person shall be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person's appointment as a member of the Council.

8. Council to be Crown agency for purposes of Public Finance Act 1989—The Council shall be a Crown agency for the purposes of the Public Finance Act 1989.

9. Money to be appropriated by Parliament for purposes of this Act—All fees, salaries, allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of public money to be appropriated by Parliament for the purpose.

10. Funds of Council—The funds of the Council shall consist of—

- (a) All money appropriated by Parliament for the purposes of the Council and paid to the Council for the purposes of the Council;
- (b) All other money lawfully received by the Council for the purposes of the Council;
- (c) All accumulations of income derived from any such money.

11. Bank accounts—(1) The Council shall open at any bank or banks such accounts as are necessary for the exercise of its functions and powers.

SCHEDULE—*continued*OTHER PROVISIONS APPLYING TO COUNCIL—*continued*

(2) All money received by the Council, or by any employee of the Council shall, as soon as practicable after it has been received, be paid into such bank accounts of the Council as the Council from time to time determines.

(3) The withdrawal or payment of money from any such accounts shall be authorised in such manner as the Council thinks fit.

(4) The withdrawal or payment of money from any such accounts shall be by cheque signed by such person or persons as the Council from time to time authorises.

12. Unauthorised expenditure—The Council may, in any financial year, expend for purposes not authorised by this Act or any other enactment any sum or sums not amounting in the aggregate to more than \$2,000.

13. Investment of money—Any money held by the Council which is not immediately required for expenditure by the Council may be invested pursuant to section 25 of the Public Finance Act 1989.