

Families Commission Bill

Government Bill

Explanatory note

General policy statement

This Bill establishes a new Crown entity to be known as the Families Commission (the **Commission**). The Bill gives effect to the undertaking in the Agreement for Confidence and Supply between the Labour/Progressive Coalition Government and the United Future New Zealand Party to establish a Commission for the family.

The establishment of the Commission will provide an entity whose role is to act as an advocate for the interests of families. The Commission will promote the interests of the full range of families in New Zealand and promote better understanding of family issues and needs amongst government agencies and in the wider community. It will also promote, purchase, and disseminate research into family issues and contribute to policy development across the Government as a key stakeholder on family-related issues.

The Commission will take an inclusive approach to New Zealand families and will concern itself with the issues faced by all New Zealand families, as well as by specific types of families. The Commission will not, however, act as an advocate for individual families or their cases or issues.

Having this scope for the Commission will ensure that it encompasses the wide variety of family living arrangements in contemporary New Zealand.

The Commission will be an autonomous Crown entity. This ensures it has a degree of independence to carry out its functions effectively. The Commission needs to be able to comment on, and support, or in some cases be critical of, government policies that impact on families. Effective advocacy will rely on the Commission building and

maintaining constructive relationships with the Government, individuals, and agencies with expertise in and knowledge of family issues.

The Government also considers that issues for parents will most effectively be addressed within the context of the Commission's activities rather than through a separate Parenting Council (as had earlier been proposed). The Commission will fulfil the functions envisaged for a Parenting Council.

Summary of key measures

Commission's functions

A number of government agencies already play a significant role in the provision of family policy, services, and research. It is not intended that the Commission should replicate these functions.

The Commission's main function will be to act as an advocate for the interests of families generally.

The Commission will also have additional functions to assist it to perform its main function. These additional functions are—

- encouraging and facilitating informed debate on matters relating to the interests of families across sectors and involving the general public:
- increasing public awareness and promoting better understanding of matters relating to the interests of families, including the importance of stable family relationships, the importance of the parenting role, and the rights and responsibilities of parents:
- encouraging and facilitating the development and provision of policies designed to promote or serve the interests of families:
- considering any matters relating to the interests of families that are referred to it by any Minister of the Crown:
- stimulating and promoting research into any matter relating to the interests of families, for example,—
 - by collecting and disseminating information or research about families:
 - by advising on research priorities or gaps:
 - by contracting for research on families:

- undertaking any incidental functions related to its main function or any other of its additional functions.

Together, these functions will ensure that the Commission will be able to be an effective advocate for the interests of families.

Commission to have regard to range of matters

While it is important that the Commission has a degree of independence from the Government, the Bill sets out guidance to the Commission, in terms of both its scope and priorities, in the form of a set of matters to which the Commission must have regard.

First, in the exercise and performance of its powers and functions, the Commission must have regard to any government policy or statement of the Government's priorities that relates to the Commission's functions and is communicated to the Commission in writing by the Minister (these directions must be discussed with the Commission before they are given). This provision is in line with the framework approved by the Government and proposed for application to all Crown entities. This framework envisages that a responsible Minister may direct an autonomous Crown entity to have regard to a government policy that relates to the entity's functions.

Secondly, the Commission must have regard to the kinds and structures and diversity of New Zealand families and family groups.

Finally, the Commission must have regard to the needs, values, and beliefs of the following groups:

- Māori as tangata whenua; and
- Pacific Islands peoples of New Zealand; and
- other ethnic and cultural groups in New Zealand.

Obligation to obtain views of specified groups

It is important that the Commission is responsive to the broad range of families in New Zealand and their interests. The Commission will therefore be required to establish mechanisms to obtain the views of various communities of interest, including—

- Māori as tangata whenua; and
- Pacific Islands peoples of New Zealand; and
- other ethnic and cultural groups in New Zealand; and
- groups that represent families or family members, and groups that have a particular interest in families or in any 1 or more

matters related to the Commission's functions (for example, groups representing parents, mothers, fathers, children or young persons, men, women, social service providers, academics, researchers, family law specialists, employers, or workers).

Nature and membership of Commission, and board's role

The Bill establishes the Commission as a Crown entity for the purposes of the Public Finance Act 1989.

The Commission is to consist of at least 3 Commissioners, but not more than 7 Commissioners. The provision for multiple Commissioners is to ensure that the Commission will reflect the diversity of families in contemporary New Zealand. The board is the Commission's governing body with the authority to exercise and perform the Commission's powers and functions.

Other matters

The Bill also includes a range of operational and organisational provisions, which generally follow the Government's framework for Crown entities. These include provisions about—

- powers of delegation:
- appointment of committees by the board:
- appointment of a general manager by the board:
- good employer obligations:
- bribery and corrupt use of official information:
- protections from liability for members and employees:
- dealings with third parties:
- financial matters and required contents of the annual report:
- Ministerial powers of review of the Commission's operation and performance.

Clause by clause analysis

Clause 1 gives the Bill its Title.

Part 1

Families Commission

Preliminary matters

Clauses 2 to 5 deal with the following preliminary matters:

- commencement (*clause 2*);
- the purpose of the Bill (*clause 3*);
- interpretation (*clause 4*);
- the Bill binding the Crown (*clause 5*).

The Bill will come into force on **1 July 2004**. The purpose of the Bill is to establish the Commission, state its functions and powers, and require it to comply with certain obligations.

Establishment of Commission

Clause 6 establishes the Families Commission.

Commission's functions

Clause 7 states the Commission's main function – to act as an advocate for the interests of families generally.

Clause 8 states that, in order to perform its main function, the Commission has the following additional functions:

- to encourage and facilitate informed debate on matters relating to the interests of families;
- to increase public awareness and promote better understanding of matters relating to the interests of families;
- to encourage and facilitate the development and provision, by Ministers and the Executive Government, of policies designed to promote or serve the interests of families;
- to consider, and to report and make recommendations on, any matter (for example, a proposed government policy) relating to families that is referred to it by any Minister;
- to stimulate and promote research into any matter relating to the interests of families;

- to carry out any functions that are incidental and related to its main function or to any of those additional functions.

Matters to which Commission must have regard

Clauses 9 to 11 require the Commission to have regard, in the exercise and performance of its powers and functions,—

- to any government policy or statement of the Government's priorities that relates to the Commission's functions and is communicated to the Commission by written direction given and signed by the Minister (and published and presented as required by *clause 9(3)*):
- to the kinds, structures, and diversity of families and family groups:
- to the needs, values, and beliefs—
 - of Māori as tangata whenua:
 - of the Pacific Islands peoples of New Zealand:
 - of other ethnic and cultural groups in New Zealand.

Obligation to obtain views of specified groups

Clause 12 requires the Commission to maintain mechanisms to ensure there are at all times readily accessible to it the views—

- of Māori as tangata whenua:
- of the Pacific Islands peoples of New Zealand:
- of other ethnic and cultural groups in New Zealand:
- of groups that represent families or family members, or that have a particular interest in matters related to the Commission's functions.

Nature and membership of Commission, and board's role

Clause 13 provides that the Commission is a body corporate.

Clause 14 relates to the Commission's capacity and powers.

Clause 15 relates to financial reporting. It provides that the Commission is a Crown entity for the purposes of the Public Finance Act 1989, and that the relevant schedules of that Act are accordingly amended in the manner set out in *Schedule 4* (see *clause 60*).

Clause 16(1) provides that the Commission consists of at least 3 Commissioners, but not more than 7 Commissioners. *Clause 16(2)*

provides that a Chief Commissioner must be appointed, and a Deputy Chief Commissioner may be appointed, under *clause 15 of Schedule 2*.

Clause 17 requires all decisions relating to the operation of the Commission to be made by or under the authority of the board. It also gives the board the authority, in the Commission's name, to exercise and perform the Commission's powers and functions.

Clause 18 relates to further provisions on the following matters (and that are set out in the following schedules):

- members' collective and individual duties (*Schedule 1*);
- membership of the Commission (*Schedule 2*);
- procedure of the board (*Schedule 3*).

Clause 19 relates to members' accountability to the Minister.

Minister's role

Clauses 20 and 21 relate to the Minister's role with respect to the Commission, and to his or her responsibility to the House of Representatives for the exercise and performance of powers and functions given to him or her in relation to the Commission.

Delegation by board

Clauses 22 to 25 enable the board to delegate to certain persons or bodies powers and functions of the Commission or of the board.

Committees of board

Clauses 26 to 28 enable the board to appoint committees for various purposes.

General manager of Commission

Clauses 29 to 31—

- require the board to appoint a general manager; and
- require the board to consult before agreeing to terms and conditions of employment for the general manager; and
- enable the general manager to delegate to Commission employees certain powers and functions delegated to him or her by the board.

Employees of Commission

Clause 32 requires the Commission, if it employs employees, to operate a personnel policy that complies with the principle of being a good employer.

Clause 33 relates to the Commission establishing superannuation schemes in accordance with sections 84A to 84D of the State Sector Act 1988.

Clause 34 provides that Commission members and employees are not to be treated as employees in the State Services.

Corruption and bribery, and corrupt use of official information

Clause 35 provides that Commission members and employees are officials for the purposes of provisions of the Crimes Act 1961 relating to these matters.

Protections from liability of members and employees

Clause 36 provides that Commission members and employees are not, just because of their appointment or employment, liable for liabilities of the Commission.

Clause 37 provides that Commission members and employees are not liable for an act or omission in the performance of the Commission's functions, unless the act or omission arises out of conduct that is not in good faith or that is criminal conduct.

Clause 38 relates to the Commission, in certain cases, indemnifying a member or employee for costs incurred in civil or criminal proceedings.

Clause 39 relates to the Commission effecting insurance cover—

- for liability and costs incurred in civil proceedings; and
- in relation to costs incurred in criminal proceedings.

Clause 40 ensures a Judge who is appointed as a member has the same immunities and limitations and protections from liability when acting as a member as he or she would have as a Judge.

Clause 41 relates to breaches of indemnity and insurance limits.

Clause 42 defines the terms **effect insurance**, **employee**, **indemnify**, and **member**, which are used in *clauses 36 to 41*.

Dealings with third parties by Commission

Clauses 43 to 46 relate to ways in which the Commission may enter into contracts and other enforceable obligations, and to dealings between the Commission and other persons.

Financial provisions

Clauses 47 to 53 (together with *clause 15*) ensure the Commission has the usual powers and duties in relation to financial matters, and that the Commission is exempt from taxation.

Annual report

Clause 54 imposes requirements (additional to those of section 411 of the Public Finance Act 1989) relating to the contents of the Commission's annual report.

Review of Commission's operations and performance

Clauses 55 to 57 empower the Minister to—

- review the operations and performance of the Commission at any time; and
- obtain information from the Commission for that purpose.

Application of Archives Act 1957

Clause 58 provides that the Commission is a Government office for the purposes of the Archives Act 1957.

Relationship with other enactments, functions, and powers

Clause 59 provides that the Bill does not affect certain other enactments, or certain specified functions and powers.

Part 2**Amendments to other Acts**

Clause 60 provides that the Acts listed in *Schedule 4* are amended in the manner set out in that schedule.

The amendments in *Schedule 4* ensure that the Commission—

- is a Crown entity for the purposes of the Public Finance Act 1989 (see *clause 15(2)*); and

- is subject to the Ombudsmen Act 1975 and to the Official Information Act 1982.
-

Hon Steve Maharey

Families Commission Bill

Government Bill

Contents

1	Title	21	Minister accountable to House of Representatives
	Part 1		
	Families Commission		
	<i>Preliminary matters</i>		
2	Commencement	22	Ability to delegate
3	Purpose of this Act	23	Effect of delegation
4	Interpretation	24	Delegate presumed to act in accordance with delegation
5	Act binds the Crown	25	Other matters relating to delegation
	<i>Establishment of Commission</i>		
6	Commission established		<i>Committees of board</i>
	<i>Commission's functions</i>	26	Board may appoint committees
7	Commission's main function	27	Membership of committee
8	Commission's additional functions	28	Committee to regulate own procedure
	<i>Matters to which Commission must have regard</i>		<i>General manager of Commission</i>
9	Government policy and priorities	29	Appointment of general manager
10	Diversity of New Zealand families and family groups	30	Terms and conditions of general manager's employment
11	Needs, values, and beliefs of particular groups	31	Delegation of powers or functions by general manager
	<i>Obligation to obtain views of specified groups</i>		<i>Employees of Commission</i>
12	Mechanisms for obtaining views of specified groups	32	Personnel policy: Commission to be good employer
	<i>Nature and membership of Commission, and board's role</i>	33	Establishment of superannuation schemes
13	Commission is body corporate	34	Employees not in service of the Crown
14	Capacity and powers		<i>Corruption and bribery, and corrupt use of official information</i>
15	Financial reporting: Commission to be Crown entity	35	Members and employees are officials
16	Membership of Commission		<i>Protections from liability of members and employees</i>
17	Board's role	36	Protections for members and employees from liabilities of Commission
18	Further provisions relating to members and board	37	Immunity of members and employees from civil liability to third parties
19	Accountability of members to Minister		
	<i>Minister's role</i>		
20	Minister's role		

38	Indemnity for members and employees for costs from civil and criminal proceedings		<i>Review of Commission's operations and performance</i>
39	Insurance for members and employees	55	Minister may conduct review
40	Saving of judicial protections from liability	56	Power to request information in connection with review
41	Breach of indemnity and insurance limits	57	Good reasons for refusing to supply requested information
42	Definitions for protections from liability		<i>Application of Archives Act 1957</i>
	<i>Dealings with third parties by Commission</i>	58	Archives Act 1957 to apply
43	Method of contracting		<i>Relationship with other enactments, functions, and powers</i>
44	Common seal	59	Certain enactments, functions, and powers not affected
45	Attorneys		Part 2
46	Dealings between Commission and other persons		Amendments to other Acts
	<i>Financial provisions</i>	60	Amendments set out in Schedule 4
47	Commission's funds		Schedule 1
48	Bank accounts		Members' duties
49	Restrictions on investments		Schedule 2
50	Restrictions on borrowing		Membership of Commission
51	Restrictions related to trusts and to forming or holding shares or interests in bodies corporate or associations		Schedule 3
52	Auditor-General to be auditor of Commission		Procedure of board
53	Tax status: Commission to be public authority		Schedule 4
	<i>Annual report</i>		Amendments to other Acts
54	Contents of annual report: requirements additional to those of section 4II of Public Finance Act 1989		

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Families Commission Act **2003**.

Part 1
Families Commission

5

Preliminary matters

2 Commencement

This Act comes into force on **1 July 2004**.

- 3 Purpose of this Act**
 The purpose of this Act is to—
- (a) establish the Commission—
 - (i) as a body corporate under this Act; and
 - (ii) as a Crown entity for the purposes of the Public Finance Act 1989: 5
 - (b) state the Commission’s functions and powers:
 - (c) require the Commission—
 - (i) to have regard to certain matters; and
 - (ii) to comply with certain other obligations. 10
- 4 Interpretation**
 In this Act, unless the context otherwise requires,—
- board** means the persons who are Commissioners and, in relation to the transaction of business at a meeting, who number not less than the required quorum (*see clause 4 of Schedule 3*) acting together as a board 15
- Commission** means the Families Commission established by **section 6**
- Commissioner** means a member
- de facto partner** and **de facto relationship** have the same meanings as in section 2 of the Property (Relationships) Act 1976 20
- fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest 25
- member** means a member of the Commission
- Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act. 30
- 5 Act binds the Crown**
 This Act binds the Crown.
- Establishment of Commission*
- 6 Commission established** 35
 This section establishes the Families Commission.

*Commission's functions***7 Commission's main function**

- (1) The Commission's main function is to act as an advocate for the interests of families generally.
- (2) That function does not include acting as an advocate for the interests of a particular family or particular families in connection with a particular case or issue. 5

8 Commission's additional functions

In order to perform its main function stated in **section 7**, the Commission has the following additional functions: 10

- (a) to encourage and facilitate informed debate, by any of the following persons, on matters relating to the interests of families:
- (i) representatives of government, academic, and community sectors; and 15
- (ii) members of the public:
- (b) to increase public awareness and promote better understanding of matters relating to the interests of families (for example, the following matters:
- (i) the importance of stable family relationships (including those between parties to a marriage or a de facto relationship); and 20
- (ii) the importance of the parenting role; and
- (iii) the rights and responsibilities of parents):
- (c) to encourage and facilitate the development and provision, by Ministers of the Crown, departments of State, and other instruments of the Executive Government, of policies designed to promote or serve the interests of families: 25
- (d) to consider, and to report and make recommendations on, any matter (for example, a proposed government policy) relating to families that is referred to it by any Minister of the Crown: 30
- (e) to stimulate and promote research into any matter relating to the interests of families, for example,— 35
- (i) by collecting and disseminating information or research about families:
- (ii) by advising on areas where further research or information about families should be undertaken or collected: 40

- (iii) by entering into contracts or arrangements for research or information about families to be undertaken or collected:
- (f) to carry out any functions that are incidental and related to the performance of its main function stated in **section 7** or to the performance of any other of its additional functions stated in this section. 5

Matters to which Commission must have regard

- 9 Government policy and priorities**
- (1) In the exercise and performance of its powers and functions, the Commission must have regard to any government policy or statement of the Government's priorities that— 10
 - (a) relates to the Commission's functions; and
 - (b) is communicated to the Commission by written direction given and signed by the Minister. 15
 - (2) A direction under this section—
 - (a) must not be given unless the Minister has first consulted the Commission about the proposed terms of the direction; and
 - (b) may be amended, revoked, or replaced, at any time, in the same manner. 20
 - (3) After giving a direction under this section, the Minister must promptly—
 - (a) publish a copy in the *Gazette*; and
 - (b) present a copy to the House of Representatives. 25
- 10 Diversity of New Zealand families and family groups**
- (1) In the exercise and performance of its powers and functions, the Commission must have regard to the kinds, structures, and diversity of families and family groups.
 - (2) In this section, **family group** means a family group (for example, an extended family)— 30
 - (a) whose members have biological relationships or legal relationships with one another; or
 - (b) whose members have significant psychological attachments to one another; or 35
 - (c) that is a whānau or other culturally recognised family group.

11 Needs, values, and beliefs of particular groups

In the exercise and performance of its powers and functions, the Commission must have regard to the needs, values, and beliefs—

- (a) of Māori as tangata whenua: 5
- (b) of the Pacific Islands peoples of New Zealand:
- (c) of other ethnic and cultural groups in New Zealand.

*Obligation to obtain views of specified groups***12 Mechanisms for obtaining views of specified groups**

- (1) In the exercise and performance of its powers and functions, the Commission must maintain mechanisms (for example, by appointing advisory committees or forming consultation forums) to ensure that there are at all times readily accessible to it the views— 10
 - (a) of Māori as tangata whenua: 15
 - (b) of the Pacific Islands peoples of New Zealand:
 - (c) of other ethnic and cultural groups in New Zealand:
 - (d) of groups that represent families, or 1 or more kinds of family members, and of groups that have a particular interest in families or in any 1 or more matters related to the Commission's functions. 20
- (2) Examples of groups referred to in **subsection (1)(d)** are groups that represent the interests of any of the following:
 - (a) spouses and de facto partners:
 - (b) parents, fathers, and mothers: 25
 - (c) children and young persons (as defined in section 2(1) of the Children, Young Persons, and Their Families Act 1989), and older persons who are under the age of 18 years:
 - (d) grandparents and the elderly: 30
 - (e) caregivers:
 - (f) men and women:
 - (g) providers of social services:
 - (h) academics and researchers interested in matters relating to families: 35
 - (i) Family Court Judges and other family law specialists:
 - (j) employers and workers.

Nature and membership of Commission, and board's role

- 13 Commission is body corporate**
- The Commission—
- (a) is a body corporate; and
 - (b) is accordingly a legal entity separate from the board, Commissioners, and the Crown; and
 - (c) continues in existence until it is dissolved by an Act.
- 14 Capacity and powers**
- (1) Except as provided in this Act (for example, in **sections 49 to 51**) or any other Act or rule of law, the Commission—
 - (a) has the rights, powers, and privileges of a natural person of full age and capacity; and
 - (b) has the statutory powers conferred by this Act and any other Act.
 - (2) The Commission may exercise its powers only for the purpose of performing its functions.
- 15 Financial reporting: Commission to be Crown entity**
- (1) The Commission is a Crown entity for the purposes of the Public Finance Act 1989.
 - (2) The Fourth, Fifth, Sixth, and Seventh Schedules of that Act are accordingly amended in the manner set out in **Schedule 4** of this Act (*see section 60*).
 - (3) Nothing in this section limits **sections 47 to 54**.
- 16 Membership of Commission**
- (1) The Commission consists of at least 3 Commissioners, but not more than 7 Commissioners.
 - (2) A Chief Commissioner must be appointed, and a Deputy Chief Commissioner may be appointed, under **clause 15 of Schedule 2**.
- 17 Board's role**
- (1) The board is the Commission's governing body, with the authority, in the Commission's name, to exercise and perform the Commission's powers and functions.
 - (2) All decisions relating to the operation of the Commission must be made by or under the authority of the board in accordance with this Act.

- 18 Further provisions relating to members and board**
Schedules 1 to 3 apply to members and the board.
- 19 Accountability of members to Minister**
- (1) Members must comply with—
- (a) the board’s collective duties in **clauses 1 to 3 of Schedule 1**; and 5
- (b) their individual duties as members in **clauses 4 to 8 of Schedule 1**.
- (2) Members are accountable to the Minister, in accordance with this Act, for performing their duties as members. 10

Minister’s role

- 20 Minister’s role**
The Minister’s role with respect to the Commission includes powers and functions in relation to—
- (a) the appointment and removal of Commissioners, a Chief Commissioner, and a Deputy Chief Commissioner (*see section 18 and Schedule 2*); 15
- (b) the giving of Ministerial directions to the Commission under **section 9**;
- (c) determining the remuneration of Commissioners under **clause 19 of Schedule 2**; 20
- (d) other matters in this Act or any other enactment.
- 21 Minister accountable to House of Representatives**
The Minister is responsible, in accordance with this Act, to the House of Representatives for the exercise and performance of the powers and functions given to him or her in relation to the Commission. 25

Delegation by board

- 22 Ability to delegate**
The board may delegate any of the powers or functions of the Commission or of the board, either generally or specifically, to any of the following persons by resolution and written notice to the person or persons: 30
- (a) any of its members;
- (b) a committee appointed by resolution of the board that includes at least 1 member of the board: 35

- (c) the general manager:
 - (d) any employee or employees of the Commission:
 - (e) any other person or persons approved by the Minister.
- 23 Effect of delegation** 5
 Any person to whom any powers or functions are delegated under **section 22**,—
- (a) may, unless the delegation provides otherwise, exercise or perform those powers or functions in the same manner, subject to the same restrictions, and with the same effect as if the person were the Commission or the board; and 10
 - (b) may delegate the powers or functions only with the prior written consent of the board.
- 24 Delegate presumed to act in accordance with delegation** 15
 A person who appears to act under a delegation under **section 22** is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- 25 Other matters relating to delegation**
 A delegation under **section 22**—
- (a) is revocable at will, but the revocation does not take effect until it is communicated, in writing, to the delegate; and 20
 - (b) continues in force according to its terms until it is revoked, despite any change in the membership of the board; and 25
 - (c) does not prevent the exercise or performance of a power or function by the board; and
 - (d) does not affect the responsibility of the board for the actions of any person acting under delegation.
- Committees of board* 30
- 26 Board may appoint committees**
- (1) The board may, by resolution, appoint 1 or more committees to—
 - (a) inquire into, and report to the board on, any matters within the scope of the Commission's or the board's powers or functions that are referred to the committee by the board: 35

- (b) exercise or perform any of the Commission's or the board's powers or functions that are delegated to the committee under **section 22**.
- (2) The committee is subject in all things to the control of the board and may, at any time, be discharged, altered, or reconstituted by the board. 5

27 Membership of committee

A committee must consist of at least 1 member and may include any other persons that the board thinks fit.

- 28 Committee to regulate own procedure** 10
- Subject to the board's direction, a committee may regulate its own procedure.

General manager of Commission

29 Appointment of general manager

- (1) The board must appoint a general manager. 15
- (2) The general manager must not be a member.
- (3) The general manager is responsible to the board for the efficient and effective administration of the affairs of the Commission.

30 Terms and conditions of general manager's employment 20

- (1) The general manager must be appointed on terms and conditions agreed to by the board.
- (2) However, the board must not agree to any terms and conditions of employment for the general manager, or to an amendment of those terms and conditions, without— 25
- (a) consulting the State Services Commissioner; and
- (b) if the proposed terms and conditions or amendment do not comply with any guidance issued by the State Services Commissioner to the Commission or to a class of Crown entities to which the Commission belongs, consulting the Minister. 30
- (3) The board must have regard to any recommendations that the State Services Commissioner and (if applicable) the Minister makes to it within a reasonable time of being consulted.

- (4) A failure to comply with this section does not invalidate the acts of the general manager.

31 Delegation of powers or functions by general manager

- (1) The general manager may, by writing, either generally or specifically, delegate to an employee of the Commission any powers or functions delegated to the general manager by the board as long as the board has given its written consent to the delegation. 5
- (2) **Sections 23 to 25** apply (with all necessary modifications) to a delegation under **subsection (1)**. 10

Employees of Commission

32 Personnel policy: Commission to be good employer

- (1) The Commission must, if it employs employees,—
- (a) operate a personnel policy that complies with the principle of being a good employer; and 15
- (b) report on its compliance with that policy (including its equal employment opportunities programme) in its annual report (*see section 54(2)(e)*).
- (2) For the purposes of this section, a **good employer** is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring— 20
- (a) good and safe working conditions; and
- (b) an equal employment opportunities programme; and 25
- (c) the impartial selection of suitably qualified persons for appointment; and
- (d) recognition of—
- (i) the aims and aspirations of Māori; and
- (ii) the employment requirements of Māori; and 30
- (iii) the need for involvement of Māori as employees of the Commission; and
- (e) opportunities for the enhancement of the abilities of individual employees; and
- (f) recognition of the aims and aspirations, and the cultural differences, of ethnic and minority groups; and 35
- (g) recognition of the employment requirements of women; and

- (h) recognition of the employment requirements of persons with disabilities.
- (3) For the purposes of this section, an **equal employment opportunities programme** means a programme aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons. 5
- 33 Establishment of superannuation schemes** 10
The Commission may establish superannuation schemes in accordance with sections 84A to 84D of the State Sector Act 1988.
- 34 Employees not in service of the Crown** 15
No person is, just because of the person's appointment as a member or employment by the Commission, to be treated as an employee of the Crown, or as an employee in any part of the State Services, for the purposes of the State Sector Act 1988.
- Corruption and bribery, and corrupt use of official information* 20
- 35 Members and employees are officials**
Members and employees are officials for the purposes of the following sections of the Crimes Act 1961: 25
- (a) section 105 (which relates to corruption and bribery of officials);
- (b) section 105A (which relates to corrupt use of official information).
- Protections from liability of members and employees*
- 36 Protections for members and employees from liabilities of Commission** 30
A member or employee of the Commission is not liable for any liability of the Commission by reason only of being a member or employee.

- 37 Immunity of members and employees from civil liability to third parties**
- (1) A member or employee of the Commission is not liable to any person (other than to the Commission) for any act or omission by him or her, in the performance or intended performance of the Commission's functions, unless the act or omission arises out of conduct that is not in good faith or that is criminal conduct. 5
- (2) The Commission is liable for any act or omission for which, but for this section, a member or employee would have been liable to a person. 10
- (3) To avoid doubt, this section does not affect the right of any person to apply for judicial review.
- 38 Indemnity for members and employees for costs from civil and criminal proceedings** 15
- The Commission may indemnify a member or employee for costs incurred in any civil or criminal proceedings against him or her if—
- (a) any of the following circumstances apply: 20
- (i) judgment is given in his or her favour; or
- (ii) he or she is acquitted; or
- (iii) the proceedings are discontinued; and
- (b) the proceedings relate to an act or omission by him or her in the performance or intended performance of the Commission's functions. 25
- 39 Insurance for members and employees**
- The Commission may effect insurance cover for a member or employee of the Commission in relation to—
- (a) liability and costs incurred in any civil proceedings against him or her if the proceedings relate to an act or omission by him or her in the performance or intended performance of the Commission's functions; and 30
- (b) costs incurred in any criminal proceedings against him or her if— 35
- (i) he or she is acquitted or the proceedings are discontinued; and
- (ii) the proceedings relate to an act or omission by him or her in the performance or intended performance of the Commission's functions.

- 40 Saving of judicial protections from liability**
A Judge who is appointed as a member has the same immunities and limitations and other protections from liability when acting as a member as he or she would have as a Judge.
- 41 Breach of indemnity and insurance limits** 5
(1) A member or employee who is indemnified or insured by the Commission in breach of this Act must repay to the Commission the cost of providing or effecting that indemnity or insurance cover to the extent that the indemnity or insurance cover exceeds that which could have been provided or effected under this Act. 10
(2) The Commission may recover the amount as a debt due in a court of competent jurisdiction.
- 42 Definitions for protections from liability** 15
In **sections 36 to 41**,—
effect insurance includes pay, whether directly or indirectly, the costs of insurance
employee includes a person who was an employee at any time after the commencement of this Act but who is no longer an employee 20
indemnify includes relieve or excuse from liability, whether before or after the liability arises
member includes a person who was a member at any time after the commencement of this Act but who is no longer a member. 25
- Dealings with third parties by Commission*
- 43 Method of contracting**
(1) A contract or other enforceable obligation may be entered into by the Commission as provided in this section.
(2) An obligation that, if entered into by an individual, is required to be by deed may be entered into on behalf of the Commission in writing, signed under the name of the Commission by— 30
(a) 2 or more members; or
(b) 1 or more attorneys appointed in accordance with **section 45.** 35

-
- (3) An obligation that, if entered into by an individual, is required to be in writing may be entered into on behalf of the Commission in writing by a person acting under the Commission's express or implied authority.
- (4) An obligation that, if entered into by an individual, is not required to be in writing may be entered into on behalf of the Commission in writing or orally by a person acting under the Commission's express or implied authority. 5
- (5) This section applies to a contract or other obligation—
- (a) whether or not that contract or obligation was entered into in New Zealand; and 10
- (b) whether or not the law governing the contract or obligation is the law of New Zealand.
- 44 Common seal**
- (1) The Commission may have a common seal if the board adopts one. 15
- (2) The common seal of the Commission (if it has one) must be judicially noticed in all courts and for all purposes.
- 45 Attorneys**
- (1) The Commission may, by an instrument in writing executed in accordance with **section 43(2)**, appoint a person as an attorney either generally or in relation to a specified matter. 20
- (2) An act of the attorney in accordance with the instrument binds the Commission.
- 46 Dealings between Commission and other persons** 25
- (1) The Commission may not assert against a person dealing with it or a person who has acquired property, rights, or interests from it that—
- (a) this Act has not been complied with; or
- (b) a person held out by the Commission to be a member, chairperson, general manager, employee, or agent of the Commission (as the case may be)— 30
- (i) has not been duly appointed in that capacity or has ceased to be appointed in that capacity; or
- (ii) does not have the authority to exercise a power which, given the nature of the Commission, a 35

- person appointed to that capacity would customarily exercise; or
- (iii) does not have the authority to exercise a power that the Commission holds him or her out as having; or 5
- (c) a document issued on behalf of the Commission by a member, general manager, employee, or agent of the Commission with authority to issue the document is not valid or genuine.
- (2) A person purporting to act on behalf of the Commission under any authority is, in the absence of proof to the contrary, presumed to be acting in accordance with the authority unless the person has, or ought to have, by reason of his or her position with or relationship to the Commission, knowledge of any of the matters referred to in **subsection (1)**. 10 15

Financial provisions

47 Commission's funds

The Commission's funds consist of—

- (a) all money appropriated by Parliament and paid to the Commission; and 20
- (b) all other money lawfully received by the Commission for its purposes; and
- (c) all accumulations of income derived from any of that money.

48 Bank accounts

- (1) The Commission must establish, maintain, and operate 1 or more bank accounts at 1 or more— 25
- (a) registered banks in New Zealand;
- (b) banks outside New Zealand approved by the Minister of Finance for the purpose. 30
- (2) All money received by the Commission for its purposes must, as soon as practicable after it has been received, be paid into a bank account of the Commission.
- (3) The Commission must properly authorise the withdrawal or payment of money from any of its accounts. 35

- 49 Restrictions on investments**
Any money that belongs to the Commission and that is not immediately required may be invested only in accordance with section 25 of the Public Finance Act 1989.
- 50 Restrictions on borrowing** 5
The Commission may do any of the following only with the prior written consent of the Minister of Finance:
(a) borrow (or contract to borrow) any money;
(b) renew or amend the terms of any loan made to the Commission. 10
- 51 Restrictions related to trusts and to forming or holding shares or interests in bodies corporate or associations**
(1) This section applies to the board if the Commission is to—
(a) form or hold any shares or interests in any body corporate, or in a partnership, joint venture, or other association of persons; or 15
(b) settle, or be or appoint a trustee of, a trust.
(2) The board must ensure that the Commission does that action only—
(a) with the consent of the Minister; and 20
(b) for the purpose of performing its functions.
- 52 Auditor-General to be auditor of Commission**
The Commission is a public entity as defined in section 4 of the Public Audit Act 2001, and, in accordance with that Act, the Auditor-General is its auditor. 25
- 53 Tax status: Commission to be public authority**
(1) The Commission is deemed to be a public authority for the purposes of the Inland Revenue Acts.
(2) In this section, **Inland Revenue Acts** has the same meaning as in section 3(1) of the Tax Administration Act 1994. 30
- Annual report*
- 54 Contents of annual report: requirements additional to those of section 41I of Public Finance Act 1989**
(1) Without limiting section 41I of the Public Finance Act 1989, the annual report that, under that section, the Commission 35

- must, as soon as practicable after the end of each financial year, deliver to its Responsible Minister must contain—
- (a) a report on its operations for that year:
 - (b) the statements and reports in **subsection (2)**:
 - (c) reports on any other matters (being matters affecting the interests of families) the Commission thinks fit. 5
- (2) The statements and reports in **subsection (1)(b)** are—
- (a) a statement, for each member, of the total value of the remuneration and other benefits received by the member from the Commission in the financial year: 10
 - (b) a statement of the number of employees who (in their capacity as employees) received during the financial year remuneration and other benefits the total value of which exceeded \$100,000, and showing the number of those employees in brackets of \$10,000: 15
 - (c) a statement, for each member of a committee of the board who is neither a member nor an employee of the Commission, of the total value of the remuneration and other benefits received by the committee member from the Commission in the financial year: 20
 - (d) a statement of the number of former members, former members of a committee of the board, or former employees of the Commission who, during the financial year, received any compensation or other benefits on termination, and showing the total value of the compensation or other benefits: 25
 - (e) a report on the Commission's compliance with its personnel policy (including its equal employment opportunities programme) in the financial year, as required by **section 32(1)(b)**. 30
- (3) The Responsible Minister must present a copy of the report to the House of Representatives in accordance with section 44A of the Public Finance Act 1989.

Review of Commission's operations and performance

- 55 Minister may conduct review** 35
- (1) The Minister may review the operations and performance of the Commission at any time.
 - (2) Nothing in this section limits powers of review in any other Act (for example, in the following Acts):
 - (a) Public Audit Act 2001: 40

(b) State Sector Act 1988).

- 56 Power to request information in connection with review**
- (1) The Commission must supply to the Minister any information reasonably required by the Minister, and requested by the Minister, in connection with the exercise of his or her powers under **section 55**. 5
- (2) This section is subject to **section 57**, and does not limit section 45B of the Public Finance Act 1989.
- 57 Good reasons for refusing to supply requested information** 10
- (1) A request for information under **section 56** may be refused if—
- (a) the withholding of the information is necessary to protect the privacy of a person (whether or not a natural person or a deceased person); or
- (b) the supply of the information would limit the Commission's ability to act independently in— 15
- (i) making decisions about a particular person; or
- (ii) carrying out the Commission's statutorily independent functions.
- (2) The reason in **subsection (1)(a)** applies only if it is not outweighed by the Minister's need to have the information in order to discharge the Minister's ministerial duties. 20
- (3) Information may not be withheld under this section if it could not properly be withheld under the Official Information Act 1982. 25
- Compare: 1989 No 44 s 45B(2)

Application of Archives Act 1957

- 58 Archives Act 1957 to apply**
- The Commission is a Government office for the purposes of the Archives Act 1957. 30

Relationship with other enactments, functions, and powers

- 59 Certain enactments, functions, and powers not affected**
- Nothing in this Act affects the following:
- (a) Part IX of the Children, Young Persons, and Their Families Act 1989 (which relates to the Commissioner for Children); 35

- (b) the functions or powers of any department of State (for example, the Ministry of Youth Affairs) or of any other instrument of the Executive Government (for example, the Law Commission).

Part 2

5

Amendments to other Acts

60 Amendments set out in Schedule 4

The Acts listed in **Schedule 4** are amended in the manner set out in that schedule.

Schedule 1 Members' duties

s 18

Contents

<p><i>Collective duties of members</i></p> <p>1 Commission must act consistently with functions and statement of intent</p> <p>2 Functions must be performed efficiently and effectively and in manner consistent with spirit of service to public</p> <p>3 Commission must operate in financially responsible manner</p> <p><i>Individual duties of members</i></p> <p>4 Duty to comply with this Act</p> <p>5 Duty to act with honesty and integrity</p> <p>6 Duty to act in good faith and not at expense of Commission's interests</p> <p>7 Duty to act with reasonable care, diligence, and skill</p> <p>8 Duty not to disclose information</p>	<p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p>	<p><i>Effect of non-compliance with duties</i></p> <p>Accountability for collective board duties</p> <p>Accountability for individual duties</p> <p>Court actions requiring or restraining actions of board or members</p> <p><i>Reliance on information and advice</i></p> <p>When members may rely on certain information and advice</p> <p><i>Disclosure of interest</i></p> <p>Meaning of interested</p> <p>Obligation to disclose interest</p> <p>Method of disclosure of interest</p> <p>Consequences of interest</p> <p>Conflict of interest provisions do not apply to certain remuneration, indemnity, and insurance decisions</p>
--	--	---

Collective duties of members

- 1 Commission must act consistently with functions and statement of intent**
- The board must ensure that the Commission acts in a manner that is consistent with—
- 5
- (a) the Commission's functions; and
- (b) its current completed statement of intent delivered under section 41E of the Public Finance Act 1989.
- 2 Functions must be performed efficiently and effectively and in manner consistent with spirit of service to public**
- The board must ensure that the Commission performs its functions—
- 10
- (a) efficiently and effectively; and
- (b) in a manner consistent with the spirit of service to the public.
- 15

- 3 Commission must operate in financially responsible manner**
 The board must ensure that the Commission operates in a financially responsible manner and, for this purpose, that it prudently manages its assets and liabilities. 5
- Individual duties of members*
- 4 Duty to comply with this Act**
 A member must not contravene, or cause the Commission to contravene, or agree to the Commission contravening, this Act. 10
- 5 Duty to act with honesty and integrity**
 A member must, when acting as a member, act with honesty and integrity.
- 6 Duty to act in good faith and not at expense of Commission's interests** 15
 A member must, when acting as a member, act in good faith and not pursue his or her own interests at the expense of the Commission's interests.
- 7 Duty to act with reasonable care, diligence, and skill** 20
 A member must, when acting as a member, exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account (without limitation)—
- (a) the nature of the Commission; and
 - (b) the nature of the action; and 25
 - (c) the position of the member and the nature of the responsibilities undertaken by him or her.
- 8 Duty not to disclose information**
- (1) A member who has information in his or her capacity as a member that would not otherwise be available to him or her must not disclose that information to any person, or make use of, or act on, that information, except— 30
- (a) for the purposes of the Commission; or
 - (b) as required or permitted by law; or
 - (c) in accordance with **subclause (2)**; or 35

- (d) in complying with the requirements for members to disclose interests.
- (2) A member may disclose, make use of, or act on, the information if—
 - (a) the member is first authorised to do so by the board; and 5
 - (b) the disclosure, use, or act in question will not, or will not be likely to, prejudice the Commission.

Effect of non-compliance with duties

- 9 Accountability for collective board duties** 10
- (1) The duties of the board and members under **clauses 1 to 3** (collective duties) are duties owed to the Minister. 10
 - (2) If a board does not comply with any of its collective duties, all or any of the members may be removed from office.
 - (3) However, **subclause (2)** does not apply to a member if— 15
 - (a) he or she did not know and could not reasonably be expected to know that the duty was to be or was being breached; or
 - (b) he or she took all reasonable steps in the circumstances to prevent the duty being breached.
 - (4) A member is not liable for a breach of a collective duty under this Act, except for being removed from office as provided for in **subclause (2)**. 20
 - (5) This section does not limit any other ground for removing a member from office.
 - (6) **Subclause (4)** does not limit— 25
 - (a) anything else for which the member may be liable under any other Act or rule of law arising from the act or omission that constitutes the breach; or
 - (b) the right to apply for a court order under **clause 11**.
- 10 Accountability for individual duties** 30
- (1) The duties of members under **clauses 4 to 8** (individual duties) are duties owed to the Minister and the Commission.
 - (2) If a member does not comply with his or her individual duties, that member may be removed from office.
 - (3) The Commission may bring an action against a member for breach of any individual duty. 35

- (4) A member is not liable for a breach of an individual duty under this Act, except for being removed from office as provided for in **subclause (2)** or in an action brought under **subclause (3)**.
- (5) This section does not limit any other ground for removing a member from office. 5
- 11 Court actions requiring or restraining actions of board or members**
- (1) The Minister or a member may apply to a court for an order— 10
- (a) requiring the board to take any action that is required to be taken by members under this Act:
 - (b) restraining the board or a member from engaging in conduct that would contravene this Act:
 - (c) granting any consequential relief.
- (2) The court may make an order on the application, subject to the following rules: 15
- (a) an order may be made only if the court is satisfied that it is just and equitable to do so; and
 - (b) no order may be made in respect of conduct that has been completed. 20
- (3) The court may, at any time before the final determination of an application under this section, make as an interim order any order that it is empowered to make as a final order.

Reliance on information or advice

- 12 When members may rely on certain information and advice** 25
- (1) A member, when acting as a member, may rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the following persons: 30
- (a) an employee of the Commission whom the member believes on reasonable grounds to be reliable and competent in relation to the matters concerned:
 - (b) a professional adviser or expert in relation to matters that the member believes on reasonable grounds to be within the person's professional or expert competence: 35

- (c) any other member or a committee of the board on which the member did not serve in relation to matters within the member's or committee's designated authority.
- (2) A member, when acting as a member, may rely on reports, statements, financial data, and other information supplied by the Crown. 5
- (3) **Subclauses (1) and (2)** apply to a member only if the member—
- (a) acts in good faith; and
- (b) makes proper inquiry if the need for inquiry is indicated by the circumstances; and 10
- (c) has no knowledge that the reliance is unwarranted.

Disclosure of interest

13 Meaning of interested

- (1) A person (**A**) is interested in a transaction of, or other matter relating to, another person (**B**) if A— 15
- (a) is a party to, or a person who will or may derive a financial benefit from, the transaction or matter; or
- (b) has a financial interest in another party to the transaction or in a person to whom the matter relates; or
- (c) is a director, officer, board member, or trustee of another party to, or a person who will or may derive a financial benefit from, the transaction or matter; or 20
- (d) is the parent, child, spouse, or de facto partner of another party to, or a person who will or may derive a financial benefit from, the transaction or matter; or 25
- (e) is otherwise directly or indirectly interested in the transaction or matter.
- (2) However, A is not interested in the transaction or matter—
- (a) merely because he or she is a board member, director, or an officer of a wholly-owned subsidiary of B; or 30
- (b) if his or her interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence him or her in carrying out his or her duties and responsibilities as a member.

14 Obligation to disclose interest

- (1) A member who is interested in a matter relating to the Commission must disclose the nature of the interest in accordance 35

with **clause 15** as soon as practicable after the member becomes aware that he or she is interested.

- (2) A general notice of an interest in a matter relating to the Commission, or in a matter that may in future relate to the Commission, that is disclosed in accordance with **clause 15** is a standing disclosure of that interest for the purposes of this section. 5
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases. 10

15 Method of disclosure of interest

- (1) The member must disclose details of the interest in an interests register kept by the Commission and to—
- (a) the chairperson or, if there is no chairperson, the deputy chairperson; or 15
 - (b) if there is no person holding an office referred to in **paragraph (a)**, the Minister; or
 - (c) if the person holding the office referred to in **paragraph (a)** is interested in the matter, the Minister.
- (2) The details that must be disclosed are— 20
- (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
 - (b) the nature and extent of the interest (if the monetary value cannot be quantified).

16 Consequences of interest 25

- (1) A member who is interested in a transaction or matter relating to the Commission—
- (a) must not vote or take part in any deliberation or decision of the board or of any board committee relating to the transaction or matter, or otherwise participate in any activity of the entity that relates to the transaction or matter; and 30
 - (b) must not sign any document relating to the entry into the transaction or the initiation of the matter; and
 - (c) is to be disregarded for the purpose of forming a quorum for that part of the meeting of the board or board committee during which a deliberation or decision relating to the transaction or matter occurs or is made. 35

-
- (2) However, the Minister may, by prior written notice to the board, permit 1 or more members, or members with a specified class of interest, to do anything otherwise prohibited by this clause, if the Minister is satisfied that it is in the public interest. 5
- (3) The permission may state conditions that the member or the Commission must comply with.
- (4) The Minister may amend or revoke the permission in the same way as it may be given.
- 17 Conflict of interest provisions do not apply to certain remuneration, indemnity, and insurance decisions 10**
- Clauses 14 to 16 do not apply to—**
- (a) remuneration or expenses given to a member in accordance with this Act; or
- (b) an indemnity given or insurance effected in accordance with **section 38 or section 39.** 15
-

Schedule 2 Membership of Commission

Contents

<p><i>Commissioners' appointments</i></p> <p>1 Criteria for appointments</p> <p>2 Qualifications of Commissioners</p> <p>3 Requirements before appointment</p> <p>4 Method of appointment</p> <p>5 Term of appointment</p> <p>6 Validity of members' acts</p> <p>7 Position where concurrent office</p> <p><i>Removal and resignation of members</i></p> <p>8 Removal from office</p> <p>9 No compensation for removal from office</p> <p>10 Judges serving as members</p> <p>11 Resignation</p> <p>12 Members ceasing to hold office</p>		<p><i>Vacancies in membership of Commission</i></p> <p>13 Position where vacancy in membership</p> <p>14 Effect of vacancy in membership</p> <p style="text-align: center;"><i>Chief Commissioner and Deputy Chief Commissioner</i></p> <p>15 Appointment</p> <p>16 Term of appointment</p> <p>17 Resignation</p> <p>18 Removal</p> <p style="text-align: center;"><i>Remuneration and expenses</i></p> <p>19 Remuneration of Commissioners</p> <p>20 Expenses of Commissioners</p>
---	--	---

Commissioners' appointments

1 Criteria for appointments

- (1) The Minister must appoint Commissioners in accordance with any criteria for Commissioners, and any process for appointment, set out in this Act. 5
- (2) Subject to **subclause (1)**, the Minister,—
- (a) before appointing a person, must notify a vacancy in a manner that enables suitably qualified individuals to apply for appointment; and
- (b) may only appoint a person who, in the Minister's opinion, has appropriate skills and experience to assist the Commission to perform its functions; and 10
- (c) in appointing a person, must take into account the need for Commissioners to have among them a breadth of experience and expertise, and knowledge of, or experience in,— 15
- (i) different aspects of matters likely to come before the Commission; and
- (ii) the needs and aspirations (including life experiences) of different communities of interest and population groups in New Zealand society; and 20
- (d) in appointing a person, must take into account the desirability of promoting diversity in the membership of Crown entities.

2 Qualifications of Commissioners

- (1) A natural person who is not disqualified by this clause may be a Commissioner.
- (2) The following persons are disqualified from being a Commissioner: 5
- (a) a person who is an undischarged bankrupt;
 - (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, section 383, or section 385 of the Companies Act 1993: 10
 - (c) a person who is subject to a property order made under section 10, section 11, section 12, section 30, or section 31 of the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act: 15
 - (d) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon or served the sentence or otherwise suffered the penalty imposed on the person: 20
 - (e) a person who has failed to disclose his or her interests and potential interests under **clause 3(c)**.

3 Requirements before appointment

- Before a person is appointed as a Commissioner, the person must— 25
- (a) consent in writing to being a Commissioner; and
 - (b) certify in writing that he or she is not disqualified from being a Commissioner; and
 - (c) disclose to the Minister the nature and extent (including monetary value, if quantifiable) of all interests or potential interests that the person has at that time, or is likely to have, in matters relating to the Commission. 30

4 Method of appointment

- (1) A Commissioner is appointed by written notice to the Commissioner (with a copy to the Commission). 35
- (2) The notice of appointment must—
- (a) state the date on which the appointment takes effect; and

- (b) be published by the Minister in the *Gazette* as soon as practicable after being given.

5 Term of appointment

- (1) A member holds office for 3 years or any shorter term stated in the notice of appointment. 5
- (2) A member may be reappointed.
- (3) A member continues in office despite the expiry of his or her term of office until—
- (a) the member is reappointed; or
- (b) the member's successor is appointed; or 10
- (c) the Minister informs the member by written notice (with a copy to the Commission) that the member is not to be reappointed and no successor is to be appointed at that time.
- (4) This clause is subject to **clause 12**. 15

6 Validity of members' acts

The acts of a person as a member are valid even if—

- (a) the person's appointment was defective; or
- (b) the person is not qualified to be a member.

7 Position where concurrent office

- (1) A member may hold that office concurrently with any other office. 20
- (2) The appointment of a Judge as a member or service by a Judge as a member does not affect his or her tenure of judicial office or his or her rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges as a Judge (including those in relation to superannuation), and, for all purposes, the Judge's service as a member is service as a Judge. 25
- (3) A Judge who is for the time being holding office as a member may, at any time, decline to participate in, or withdraw from participation in, any particular function or activity of the Commission if the Judge considers it incompatible with his or her judicial office. 30

Removal and resignation of members

- 8 Removal from office**
- (1) The Minister may, at any time and for any reason that in the Minister's opinion justifies the removal, remove a member from office by written notice to the member (with a copy to the Commission). 5
- (2) The Minister may remove a member with as little formality and technicality, and as much expedition, as is permitted by—
- (a) the principles of natural justice; and
 - (b) a proper consideration of the matter; and 10
 - (c) the requirements of this Act.
- 9 No compensation for removal from office**
- A member is not entitled to any compensation or other payment or benefit relating to his or her ceasing for any reason to hold office as a member. 15
- 10 Judges serving as members**
- (1) This section applies to a Judge who is a member.
- (2) The Judge may be removed as a member in accordance with the removal provisions of this Act for a breach of the board's collective duties, but only if all the other members are being removed for the same breach at the same time. 20
- (3) The removal does not affect his or her tenure as a Judge.
- (4) The Judge may not be removed as a member in accordance with any other removal provisions of this Act.
- (5) The Judge may be removed as a member at any time in accordance with section 23 of the Constitution Act 1986, as if service as a member were service as a Judge of the High Court. 25
- 11 Resignation**
- (1) A member may resign from office by written notice to the Minister (with a copy to the Commission) signed by the member. 30
- (2) The resignation is effective on receipt by the Minister of the notice, or at any later time stated in the notice.

- 12 Members ceasing to hold office**
 A member ceases to hold office if he or she—
- (a) resigns in accordance with **clause 11**; or
 - (b) is removed from office in accordance with **clause 8** or any other enactment; or
 - (c) becomes disqualified from being a Commissioner under any of **paragraphs (a) to (d)** of **clause 2(2)**; or
 - (d) otherwise ceases to hold office in accordance with any enactment.
- 5
- Vacancies in membership of Commission*
- 10
- 13 Position where vacancy in membership**
- (1) If a member, for any reason, ceases to hold office as a member, the Minister may appoint another person to act as a member.
 - (2) A member who is appointed under **subclause (1)** is appointed for the residue of the term for which the vacating member was appointed.
- 15
- 14 Effect of vacancy in membership**
 The powers and functions of the Commission and of the board are not affected by any vacancy in the membership of the Commission.
- 20
- Chief Commissioner and Deputy Chief Commissioner*
- 15 Appointment**
- (1) The Minister must appoint 1 of the Commissioners as the Chief Commissioner, and may appoint another Commissioner as the Deputy Chief Commissioner.
 - (2) The appointment must be made by written notice to the Commissioner (with a copy to the board).
 - (3) The notice of appointment must state the date on which the appointment takes effect.
 - (4) The Chief Commissioner is the chairperson of the board.
- 25
30
- 16 Term of appointment**
 The Chief Commissioner and the Deputy Chief Commissioner each hold that office until he or she—
- (a) resigns from that office; or
 - (b) is removed from that office by the Minister; or
- 35

(c) ceases to hold office as a member.

17 Resignation

- (1) A Chief Commissioner or Deputy Chief Commissioner may, without resigning as a member, resign from that office by written notice given to the Minister (with a copy to the board). 5
- (2) The notice of resignation must state the date on which the resignation takes effect.

18 Removal

- (1) The Minister may remove a Chief Commissioner or Deputy Chief Commissioner from that office by written notice to the person (with a copy to the board). 10
- (2) The notice of removal must state the date on which the resignation takes effect.

Remuneration and expenses

19 Remuneration of Commissioners 15

- (1) A Commissioner is entitled to receive, from the funds of the Commission, remuneration not within **clause 20** for services as a Commissioner at a rate and of a kind determined by the Minister, in accordance with the fees framework.
- (2) A Judge is not entitled to any remuneration for services as a Commissioner in addition to his or her remuneration as a Judge. 20

20 Expenses of Commissioners

A Commissioner is entitled, in accordance with the fees framework, to be reimbursed, out of the funds of the Commission, for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a Commissioner. 25

Schedule 3 Procedure of board

Contents

	<i>General</i>			
1	Procedure generally	4		Quorum
		5		Presiding at meetings
	<i>Meetings</i>	6		Voting at meetings
2	Notice of meetings	7		Unanimous written resolutions
3	Methods of holding meetings			

General

1 Procedure generally

Except as otherwise provided in this Act, the board may regulate its own procedure.

Meetings

2 Notice of meetings

- | | | | |
|-----|--|----|--|
| | | | |
| (1) | The board must appoint the times and places of ordinary meetings of the board, and give notice of those meetings to each member not present when the appointment is made. | | |
| (2) | The Chief Commissioner, the Deputy Chief Commissioner (if there is one), or any 2 members, may, at any time, call a special meeting of the board by giving at least 7 days' notice of the special meeting, and the business to be transacted at the meeting, to each member for the time being in New Zealand. | 10 | |
| (3) | Only the business stated in the notice of special meeting may be transacted at the special meeting. | 15 | |
| (4) | Notice of a meeting— | | |
| | (a) must be written, and state the time and place of the meeting; and | | |
| | (b) may be given by post, delivery, or electronic communication; and | 20 | |
| | (c) must be sent to the member's last known address in New Zealand. | | |
| (5) | An irregularity in a notice of a meeting is waived if all members entitled to receive the notice either— | 25 | |
| | (a) attend the meeting without protesting about the irregularity; or | | |
| | (b) do not attend the meeting, but agree before the meeting is held to the waiver of the irregularity. | | |

- 3 Methods of holding meetings**
 A meeting of the board may be held—
- (a) by a quorum of the members being assembled together at the time and place appointed for the meeting; and
 - (b) by means of audio, audio and visual, or electronic communication by which a quorum of members can simultaneously communicate with each other throughout the meeting. 5
- 4 Quorum**
- (1) A quorum for a meeting of the board is 3 members or, if greater, the number that is— 10
 - (a) half the number of members (if the board has an even number of members); or
 - (b) a majority of the members (if the board has an odd number of members). 15
 - (2) No business may be transacted at a meeting of the board if a quorum is not present.
- 5 Presiding at meetings**
- (1) At a meeting of the board, the following person presides: 20
 - (a) the Chief Commissioner, if he or she is present; or
 - (b) if the Chief Commissioner is not present, the Deputy Chief Commissioner, if there is one and he or she is present; or
 - (c) in any other case, a member chosen by the members present to be the chairperson of the meeting. 25
 - (2) The person chosen under **subclause (1)(c)** may exercise and perform all the powers and functions of the chairperson for the purposes of the meeting.
- 6 Voting at meetings**
- (1) Each member has 1 vote. 30
 - (2) In addition to his or her general vote, the chairperson at a meeting has a casting vote.
 - (3) A resolution of the board is passed if it is agreed to by all members present without dissent or if a majority of the votes cast on it are in favour of it. 35
 - (4) A member present at a meeting of the board is presumed to have agreed to, and to have voted in favour of, a resolution of

the board unless he or she expressly dissents from, or votes against, the resolution at the meeting.

7 Unanimous written resolutions

- (1) A resolution signed or assented to in writing (whether sent by post, delivery, or electronic communication) by all members is as valid and effectual as if it had been passed at a meeting of the board duly called and constituted. 5
- (2) The resolution may consist of several documents containing the same resolution, each signed or assented to in writing by 1 or more members. 10
-

Schedule 4
Amendments to other Acts

s 60

Ombudsmen Act 1975 (1975 No 9)

Insert in Part II of the First Schedule, in its appropriate alphabetical order, the following item:

5

“Families Commission.”

Public Finance Act 1989 (1989 No 44)

Insert in the Fourth, Fifth, Sixth, and Seventh Schedules, in each case in its appropriate alphabetical order, the following item:

“Families Commission.”

10