

Families Commission Bill

Government Bill

As reported from the committee of the whole House

Key to symbols used in reprinted bill

As reported from the committee of the whole House

Struck out

Subject to this Act,

Text struck out

New

Subject to this Act,

Text inserted

~~(Subject to this Act,)~~

Words struck out

~~(Subject to this Act,)~~

Words struck out

Subject to this Act,

Words inserted

Subject to this Act,

Words inserted

Hon Steve Maharey

Families Commission Bill

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The Parliament of New Zealand enacts as follows:

1 Title

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

Part 1
Families Commission

Preliminary matters

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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

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- (ii) as a Crown entity for the purposes of the Public Finance Act 1989:
- (b) state the Commission's functions and powers:
- (c) require the Commission—
- (i) to have regard to certain matters; and 5
- (ii) to comply with certain other obligations.
- 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 10
- Commission** means the Families Commission established by **section 6**
- Commissioner** means a member 15
- de facto partner** and **de facto relationship** have the same meanings as in section 2 of the Property (Relationships) Act 1976
- 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 20
- 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. 25
- 5 Act binds the Crown**
- This Act binds the Crown.
- Establishment of Commission* 30
- 6 Commission established**
- 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

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- (3) In performing that function, the Commission must identify and have regard to factors that help to maintain or enhance either or both of the following: 10
- (a) families' resilience;
- (b) families' strengths.

8 Commission's additional functions

In order to perform its main function stated in **section 7**, the Commission has the following additional functions: 15

- (a) to encourage and facilitate informed debate, by any of the following persons, on matters relating to the interests of families: 20
- (i) representatives of government, academic, and community sectors; and
- (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: 25
- (i) the importance of stable family relationships (including those between parties to a marriage or a de facto relationship); and
- (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: 30
- (d) to consider, and to report and make recommendations on, any matter (for example, a proposed government 35

policy) relating to families that is referred to it by any Minister of the Crown:

- (e) to stimulate and promote research into any matter relating to the interests of families, for example,—
 - (i) by collecting and disseminating information or research about families: 5
 - (ii) by advising on areas where further research or information about families should be undertaken or collected:
 - (iii) by entering into contracts or arrangements for research or information about families to be undertaken or collected: 10

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- (ea) to consult with, or to refer a matter to, any 1 or more other official bodies or statutory officers, if the Commission considers it necessary or desirable to do so for the proper performance of any or all of its other functions: 15

- (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. 20

~~(Matters)~~ Other 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— 25
 - (a) relates to the Commission's functions; and
 - (b) is communicated to the Commission by written direction given and signed by the Minister. 30
 - (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. 35

- (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.

10 Diversity of New Zealand families(*and family groups*) 5

- (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*).

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- (2) In this section, **family group** means a family group (for example, an extended family)— 10
- (a) whose members have biological relationships or legal relationships with one another; or
 - (b) whose members have significant psychological attachments to one another; or
 - (c) that is a whānau or other culturally recognised family group. 15

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- (2) In this section, **family** includes a group of people related by marriage, blood, or adoption, an extended family, 2 or more persons living together as a family, and a whānau or other culturally recognised family group. 20
- (3) However, persons are not members of a family for the purposes of this section solely because they have as their common objective or 1 of their common objectives the achievement of some outcome of a community, domestic, professional, recreational, social, vocational, or other nature 25 (for example, the commission of offences against any enactment, whether to obtain valuable consideration or not).
- (4) **Subsection (3)** is for the avoidance of doubt.

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.

New**11A Relevant international obligations**

In the exercise and performance of its powers and functions, the Commission must have regard to New Zealand's international obligations relevant to the interests of families. 10

*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— 15
 - (a) of Māori as tangata whenua:
 - (b) of the Pacific Islands peoples of New Zealand: 20
 - (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. 25
- (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:
 - (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: 30
 - (d) grandparents and the elderly:
 - (e) caregivers: 35
 - (f) men and women:

- (g) providers of social services:
- (h) academics and researchers interested in matters relating to families:
- (i) Family Court Judges and other family law specialists:
- (j) employers and workers. 5

New

Commission's power to refer communications to others

12A Referral to other official bodies or to statutory officers

- (1) The Commission may refer to another official body or to a statutory officer a communication the Commission has received from a person if, in the Commission's opinion,— 10
 - (a) the communication relates in whole or in part to a matter that is more properly within the scope of the functions of that body or officer; and
 - (b) it is in all the circumstances appropriate to do so.
- (2) The Commission must notify the person of the referral of the communication. 15
- (3) **Subsection (1)** overrides **section 14(2)**.

Nature and membership of Commission, and board's role

13 Commission is body corporate

- The Commission— 20
- (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 25

- (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. 30
- (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*). 5
- (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. 10
- (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. 15
- (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. 20
- 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— 25
- (a) the board's collective duties in **clauses 1 to 3 of Schedule 1**; and
- (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. 30

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*):
- (b) the giving of Ministerial directions to the Commission under **section 9**: 5
- (c) determining the remuneration of Commissioners under **clause 19 of Schedule 2**:
- (d) other matters in this Act or any other enactment.
- 21 Minister accountable to House of Representatives** 10
 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.
- Delegation by board*
- 22 Ability to delegate** 15
 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:
- (a) any of its members: 20
- (b) a committee appointed by resolution of the board that includes at least 1 member of the board:
- (c) the ~~((general manager))~~ chief executive:
- (d) any employee or employees of the Commission:
- (e) any other person or persons approved by the Minister. 25
- 23 Effect of delegation**
 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 30
- (b) may delegate the powers or functions only with the prior written consent of the board. 35

- 24 Delegate presumed to act in accordance with delegation**
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** 5
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
 - (b) continues in force according to its terms until it is revoked, despite any change in the membership of the board; and 10
 - (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. 15

Committees of board

- 26 Board may appoint committees**
- (1) The board may, by resolution, appoint 1 or more committees to— 20
 - (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;
 - (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**. 25
 - (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. 30
- 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** 35
Subject to the board’s direction, a committee may regulate its own procedure.

*((General manager)) Chief executive of Commission***29 Appointment of *((general manager))* chief executive**

- (1) The board must appoint a *((general manager))* chief executive.
- (2) The *((general manager))* chief executive must not be a member. 5
- (3) The *((general manager))* chief executive is responsible to the board for the efficient and effective administration of the affairs of the Commission, including the appointment of employees.

30 Terms and conditions of *((general manager's))* chief executive's employment 10

- (1) The *((general manager))* chief executive 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))* chief executive, or to an amendment of those terms and conditions, without— 15
- (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. 20
- (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. 25
- (4) A failure to comply with this section does not invalidate the acts of the *((general manager))* chief executive.

31 Delegation of powers or functions by *((general manager))* chief executive 30

- (1) The *((general manager))* chief executive may, by writing, either generally or specifically, delegate to an employee of the Commission any powers or functions delegated to the *((general manager))* chief executive by the board as long as the board has given its written consent to the delegation. 35
- (2) **Sections 23 to 25** apply (with all necessary modifications) to a delegation under **subsection (1)**.

*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 5
 - (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—
- (a) good and safe working conditions; and
 - (b) an equal employment opportunities programme; and 15
 - (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 20
 - (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 25
 - (g) recognition of the employment requirements of women; and
 - (h) recognition of the employment requirements of persons with disabilities. 30
- (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. 35

33 Establishment of superannuation schemes

The Commission may establish superannuation schemes in accordance with sections 84A to 84D of the State Sector Act 1988. 40

- 34 Employees not in service of the Crown**
 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. 5
- Corruption and bribery, and corrupt use of official information*
- 35 Members and employees are officials**
 Members and employees are officials for the purposes of the following sections of the Crimes Act 1961: 10
- (a) section 105 (which relates to corruption and bribery of officials):
 - (b) section 105A (which relates to corrupt use of official information). 15
- Protections from liability of members and employees*
- 36 Protections for members and employees from liabilities of Commission**
 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. 20
- 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. 25
 - (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. 30
 - (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**
The Commission may indemnify a member or employee for costs incurred in any civil or criminal proceedings against him or her if— 5
- (a) any of the following circumstances apply:
 - (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. 10
- 39 Insurance for members and employees**
The Commission may effect insurance cover for a member or employee of the Commission in relation to— 15
- (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
 - (b) costs incurred in any criminal proceedings against him or her if— 20
 - (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. 25
- 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. 30
- 41 Breach of indemnity and insurance limits**
(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. 35

- (2) The Commission may recover the amount as a debt due in a court of competent jurisdiction.

42 Definitions for protections from liability

In **sections 36 to 41**,—

effect insurance includes pay, whether directly or indirectly, the costs of insurance 5

employee includes a person who was an employee at any time after the commencement of this Act but who is no longer an employee

indemnify includes relieve or excuse from liability, whether before or after the liability arises 10

member includes a person who was a member at any time after the commencement of this Act but who is no longer a member.

Dealings with third parties by Commission 15

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— 20

(a) 2 or more members; or

(b) 1 or more attorneys appointed in accordance with **section 45**. 25

- (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. 30

- (5) This section applies to a contract or other obligation— 35
- (a) whether or not that contract or obligation was entered into in New Zealand; and

- (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. 5
- (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. 10
- (2) An act of the attorney in accordance with the instrument binds the Commission.

46 Dealings between Commission and other persons

- (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— 15
- (a) this Act has not been complied with; or
- (b) a person held out by the Commission to be a member, chairperson, ~~((general manager))~~ chief executive, employee, or agent of the Commission (as the case may be)— 20
- (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 person appointed to that capacity would customarily exercise; or 25
- (iii) does not have the authority to exercise a power that the Commission holds him or her out as having; or 30
- (c) a document issued on behalf of the Commission by a member, ~~((general manager))~~ chief executive, employee, or agent of the Commission with authority to issue the document is not valid or genuine. 35
- (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)**.

Financial provisions

- 47 Commission's funds** 5
- The Commission's funds consist of—
- (a) all money appropriated by Parliament and paid to the Commission; and
 - (b) all other money lawfully received by the Commission for its purposes; and 10
 - (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— 15
 - (a) registered banks in New Zealand:
 - (b) banks outside New Zealand approved by the Minister of Finance for the purpose.
 - (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. 20
 - (3) The Commission must properly authorise the withdrawal or payment of money from any of its accounts.
- 49 Restrictions on investments** 25
- 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** 30
- 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.

- 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 5
 - (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 10
 - (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. 15
- 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. 20

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 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: 25
 - (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. 30
- (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: 35
 - (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:
- (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: 5
- (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: 10
- (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)**. 15
- (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. 20

Review of Commission's operations and performance

55 Minister may conduct review

- (1) The Minister may review the operations and performance of the Commission at any time. 25
- (2) Nothing in this section limits powers of review in any other Act (for example, in the following Acts:
- (a) Public Audit Act 2001:
- (b) State Sector Act 1988).

56 Power to request information in connection with review 30

- (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**.
- (2) This section is subject to **section 57**, and does not limit section 45B of the Public Finance Act 1989. 35

- 57 Good reasons for refusing to supply requested information**
- (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 5
 - (b) the supply of the information would limit the Commission's ability to act independently in—
 - (i) making decisions about a particular person; or
 - (ii) carrying out the Commission's statutorily independent functions. 10
- (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.
- (3) Information may not be withheld under this section if it could not properly be withheld under the Official Information Act 1982. 15

Compare: 1989 No 44 s 45B(2)

Application of Archives Act 1957

- 58 Archives Act 1957 to apply** 20
- The Commission is a Government office for the purposes of the Archives Act 1957.

Relationship with other enactments, functions, and powers

- 59 ~~((Certain))~~Other enactments, functions, and powers not affected** 25

Struck out

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);
- (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). 30

New

Nothing in this Act affects functions or powers conferred on any person by any other enactment.

Part 2
Amendments to other Acts

60 Amendments set out in Schedule 4

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

**Schedule 1
Members' duties**

s 18

Contents

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

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—
 - (a) the Commission's functions; and 5
 - (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.

- 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**
- (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—
 - (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 15
 - (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

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- (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
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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>
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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.
- (2) Subject to **subclause (1)**, the Minister,— 5
- (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.

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- 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** 25
- Before a person is appointed as a Commissioner, the person must—
- (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.

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Vacancies in membership of Commission

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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.

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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.

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*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.

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(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.

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(4) The Chief Commissioner is the chairperson of the board.

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~~) removal 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
			6	Voting at meetings
			7	Unanimous written resolutions
	<i>Meetings</i>			
2	Notice of meetings			
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

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- (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
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Schedule 4 Amendments to other Acts

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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: 10

“Families Commission.”

Legislative history

30 April 2003	Introduction (Bill 45–1)
13 May 2003	First reading and referral to Social Services Committee
12 November 2003	Discharged from Social Services Committee
20 November 2003	Second reading
2 December 2003	Committee of the whole House (Bill 45–2)
