

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 5 August 1969

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Right Hon. Mr Marshall

HOTEL ASSOCIATION OF NEW ZEALAND

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A BILL INTITULED

An Act to constitute the Hotel Association of New Zealand and to provide for the assistance and control of its members

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

No. 9—2

1. Short Title and commencement—(1) This Act may be cited as the Hotel Association of New Zealand Act 1969.

(2) This Act shall come into force on the first day of January, nineteen hundred and seventy.

2. Interpretation—In this Act, unless the context otherwise requires— 5

“Association” means the Hotel Association of New Zealand established by this Act:

“Disciplinary Committee” means the Disciplinary Committee of the Association: 10

“Hotel industry” includes the business of licensed hotel-keeping, tourist-house keeping, or tavernkeeping, and any other business or activity which may lawfully be conducted in conjunction therewith:

“Hotelkeeper’s licence” includes a special hotelkeeper’s licence and an extended hotelkeeper’s licence: 15

“Minister” means the Minister of Justice.

Hotel Association of New Zealand

3. Constitution of Hotel Association of New Zealand—

(1) There shall be an Association to be called the Hotel Association of New Zealand. 20

(2) Subject to section 4 of this Act, every person (including a body corporate, but excluding any licensing trust and any employee of a licensing trust) holding a hotelkeeper’s, tourist-house keeper’s, or tavernkeeper’s licence, or a manager’s certificate (other than that of the manager of a restaurant), for the time being in force under the Sale of Liquor Act 1962 shall be a member of the Association, whether or not he applies for membership thereof. 25

(3) Every member of the Association who ceases to hold such a licence or manager’s certificate shall cease to be a member of the Association, unless he retains his membership in accordance with its rules. 30

(4) The Association shall be a body corporate with perpetual succession and a common seal, and with power to sue and be sued and to hold real and personal property and to do and suffer all that bodies corporate may do and suffer. 35

(5) The purposes of the Association shall be—

(a) To promote in any manner which the Association thinks fit the general advancement of the hotel industry and the interests of those engaged therein in New Zealand: 40

- 5 (b) To encourage, promote, or assist in any manner which the Association thinks fit improvements and developments in the hotel industry and in the provision of facilities and services for the public and overseas visitors in licensed hotels, tourist houses, and taverns in New Zealand:
- (c) To establish and enforce a code of ethics for regulating the business conduct of its members:
- 10 (d) To make representations to any authorities concerned directly or indirectly with the hotel industry:
- (e) To procure or assist in the dissemination, by a journal or otherwise, of information relating to the hotel industry:
- 15 (f) To grant pecuniary or other assistance to or to collaborate with any other person or body of persons (whether incorporated or not) in matters which the Association considers to affect in any way the interests of the Association or any of its members as such:
- 20 (g) To establish branches of the Association in such parts of New Zealand as it thinks fit and to provide for the constitution and powers of such branches.

4. **Right to elect against membership**—(1) Notwithstanding anything in section 3 of this Act, any holder of a hotel-
25 keeper's, tourist-house keeper's, or tavernkeeper's licence, or of a manager's certificate, may, by giving to the Association three months' notice in writing, elect to cease to be a member of the Association.

30 (2) A person who gives such a notice shall cease to be a member on the expiry of the three months, and shall not again become a member until he subsequently applies for membership and is accepted or elected as a member pursuant to the Association's rules.

5. **(Government) Administration of the Association**—(1)
35 The Association shall be *(governed)* administered by an Executive Council which shall be constituted as the Association's rules may from time to time provide.

40 (2) Notwithstanding anything in subsection (1) of this section, the Association's rules may provide for delegation to a Committee of Management, the President, or any other officer or committee of the Association, either generally or on specified occasions, of all or any of the powers of the Executive Council of the Association.

(3) Subject to the provisions of this Act and to the Association's rules, the Executive Council of the Association shall have the sole and entire management and superintendence of the affairs and property of the Association, and may exercise on its behalf all its powers and functions. 5

(4) The constitution or acts of the Executive Council or of any other committee of the Association shall not be invalidated or questioned on the ground that the number of members is incomplete, or because of any error or irregularity in the election or appointment of any member. 10

(5) The persons respectively holding office at the commencement of this Act as President, Vice-Presidents, Treasurer, members of the Executive Council, and members of the Committee of Management of the Hotel Association of New Zealand Industrial Association of Employers shall be deemed to have been also duly elected or appointed to corresponding offices in the Association established by this Act, and pending the making of rules under section 8 of this Act they may respectively exercise such powers and functions on behalf of the Association as the Executive Council may decide. 15 20

6. Powers of the Association—It shall be lawful for the Association—

- (a) To acquire and hold any freehold or leasehold land or other property reasonably required for offices or otherwise for the use of the Association or of any of its committees, officers, or servants in any place or places in New Zealand: 25
- (b) To sell, lease, exchange, or mortgage any real or personal property vested in it: 30
- (c) To borrow money, whether by way of bank overdraft or otherwise, for such of the purposes of the Association as the Executive Council of the Association may from time to time consider desirable:
- (d) To employ or engage, on such terms and conditions in all respects as the Executive Council of the Association thinks fit, officers (including a Chief Executive), servants, and agents: 35
- (e) To enter into contracts of insurance, on such terms as the Association thinks fit, for the purpose of providing insurance for members of the committees of the Association, officers and employees of the Association and other persons engaged in the Association's affairs, or the dependants of any such members, 40

officers, employees, or other persons, in the event of their sustaining accidental injury or death arising out of the performance of functions on behalf of the Association; and to pay the premiums payable in respect of such contracts:

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- (f) To do all things which are reasonably necessary or expedient to carry out the purposes of the Association.

7. Form of contracts—(1) Contracts on behalf of the Association may be made as follows:

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- (a) A contract which if made by private persons would by law be required to be by deed may be made on behalf of the Association in writing under its common seal attested in such manner as may be provided in its rules:
- 15 (b) A contract which if made between private persons would by law be required to be in writing signed by the parties to be charged therewith may be made on behalf of the Association in writing signed by any person acting under its authority, express or implied:
- 20 (c) A contract which if made by private persons would by law be valid although made orally, and not reduced into writing, may be made orally on behalf of the Association by any person acting under its authority, express or implied.

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(2) A contract made according to this section shall be effectual, and shall bind the Association and its successors and all other parties thereto.

8. Rules of the Association—(1) The Association in general meeting may from time to time make rules, not inconsistent with this Act, prescribing or providing for all or any of the following matters:

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- (a) The regulation and good government of the Association and of its members and affairs:
- 35 (b) The constitution of the Executive Council, a Committee of Management, and any other committees of the Association:
- (c) The election, appointment, resignation, or removal of the President, Vice-Presidents, and any other officers, servants or agents of the Association, and their respective powers, duties, and functions:
- 40 (d) The filling of extraordinary vacancies in any office in the Association:

- (e) The holding of meetings of the Association and of any committees thereof and the procedure and manner of voting at such meetings:
- (f) The use and custody of the common seal of the Association: 5
- (g) Life memberships, honorary memberships, and other special classes of membership of the Association, or other distinctions:
- (h) The fees or other payments, annual or otherwise, which shall be payable to the Association by the several classes of members: 10
- (i) The custody, investment, and expenditure of the funds and property of the Association:
- (j) The formation of branches of the Association in New Zealand, the powers of such branches, and the manner in which their constitutions or rules shall be established, made, or amended: 15
- (k) The admission to membership of persons who are not members by virtue of subsection (2) of section 3 of this Act, the retention of membership by persons who would otherwise cease to be members under subsection (3) of that section, and the admission to membership of persons who have ceased to be members under section 4 of this Act and who subsequently apply for membership: 25
- (l) A code of ethics for regulating the business conduct of members of the Association:
- (m) The procedure whereby rules may be made or amended:
- (n) Generally for carrying into full effect the purposes of the Association. 30
- (2) No rules made under paragraph (h), or paragraph (1) of subsection (1) of this section shall come into force until they have been approved by the Minister.
- (3) All sums payable pursuant to rules made under paragraph (h) of subsection (1) of this section shall be debts due from the member to the Association, and shall be recoverable accordingly. 35

Disciplinary Provisions

9. **Constitution of Disciplinary Committee**—(1) There shall be a Committee to be known as the Disciplinary Committee of the Hotel Association of New Zealand, to be appointed in accordance with this section and to exercise the powers and functions conferred on it by this Act.

(2) The Disciplinary Committee shall consist of—

(a) A barrister or solicitor of the Supreme Court, who shall be appointed by the Minister (on the recommendation of) after consultation with the Association and shall be Chairman:

(b) The President for the time being of the Association:

(c) Four members of the Association to be appointed by the Minister (on the recommendation of) after consultation with the Association, of whom two shall be resident in the North Island and two shall be resident in the South Island.

(3) The Minister may from time to time, on the request of the member concerned or on the recommendation of the Association or of his own motion, remove from office any member of the Disciplinary Committee, or fill any vacancy in its membership, or appoint any duly qualified person to act temporarily in the place of any member appointed under paragraph (a) or paragraph (c) of subsection (2) of this section.

(4) At all meetings or sittings of the Disciplinary Committee, four members, including the Chairman, shall constitute a quorum. The decisions of the Committee shall be in accordance with the votes of a majority of the members present; but in the case of an equality of votes the Chairman shall have a casting vote as well as his deliberative vote.

(5) The Association shall provide the Disciplinary Committee with such secretarial and other assistance as may be necessary.

(6) Except as otherwise provided by this Act, the Disciplinary Committee shall regulate its own procedure.

10. **Charges before Disciplinary Committee**—(1) Where a charge has been made to the Disciplinary Committee by any person that any member of the Association has failed to fulfil his responsibilities under any of the provisions of the Sale of Liquor Act 1962, or has committed any breach of the code of ethics or of any other rules in force under this Act, the Disciplinary Committee shall have power, whether or not since the making of the charge the member has given notice of his election to cease to be a member, and whether or not that notice has taken effect, to inquire into the charge.

(2) If, after inquiring into the charge, the Disciplinary Committee is satisfied that it is established, it may if it thinks fit do any one or more of the following things:

(a) Order the person charged to pay such sum by way of penalty, not exceeding one hundred dollars, as the Disciplinary Committee thinks fit: 5

(b) Censure him:

(c) Order him to pay such sum for costs or expenses as it thinks fit:

(d) Recommend that the Association apply under section 213 or section 214 of the Sale of Liquor Act 1962 for the cancellation or suspension of his licence or certificate. 10

(3) If the Disciplinary Committee makes any finding or order against which any person is entitled to appeal under section 12 of this Act, it shall state its reasons for the finding or order which shall, if so requested by that person, be delivered in writing. 15

(4) Any sum payable as a penalty or as costs or expenses pursuant to an order of the Disciplinary Committee under this section shall be a debt due to the Association from the person charged, and shall be recoverable accordingly. 20

(5) The Association may in its discretion use the whole or part of any sum recovered as a penalty under this section to reimburse or compensate any member of the public for expenditure, loss, or inconvenience occasioned to him as a result of the conduct of the person charged in the matter giving rise to the charge. 25

11. Right of person affected to be heard—The Disciplinary Committee shall not make any finding or order adverse to a person charged under section 10 of this Act without giving him a reasonable opportunity of being heard. 30

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12. Appeal from decision of Disciplinary Committee—

(1) Where under section 10 of this Act the Disciplinary Committee makes any finding or order adverse to the person charged, he may appeal to the Supreme Court against the finding or order. 35

(2) Every such appeal shall be heard and determined by the Administrative Division of the Supreme Court (in this section and in section 13 of this Act referred to as the Court). 40

Struck Out

(3) Every such appeal shall be by notice of appeal in writing, which, subject to rules of Court, shall be lodged with the Registrar of the Supreme Court at Wellington within
5 fourteen days after the date of the finding or order that is appealed against or, if the appellant resides in the Chatham Islands, within three months after that date.

(4) Copies of the notice of appeal shall be served by the appellant on the Association and on the person who made
10 the charge to which the finding or order relates.

(5) On an appeal under this section, the Court shall hear the appellant and the Association and such other persons as it may think fit to hear, and may confirm, reverse, or modify the Disciplinary Committee's decision or refer the matter
15 back to the Disciplinary Committee for further consideration, and may make such order as to costs or expenses as it thinks fit.

(6) If the appellant does not appear at the time appointed for hearing the appeal his appeal shall be dismissed.

20 (7) If the appellant does not prosecute his appeal with due diligence, the Association may apply to the Court for the dismissal of the appeal.

(8) Except as expressly provided in this section, and subject to rules of Court, the Court may regulate its procedure on an
25 appeal under this section as it thinks fit.

(9) No decision of the Disciplinary Committee shall take effect while the person to whom the decision relates remains entitled to appeal against it under this section or while any such appeal by him awaits determination by the Court.

30 (10) The Registrar of the Supreme Court shall transmit to the Disciplinary Committee a copy or memorandum of the decision of the Court on any appeal under this section, and such proceedings shall be had thereon as if the decision had been given by the Disciplinary Committee.

New

12. Appeal from decision of Disciplinary Committee—

(1) Where under section 10 of this Act the Disciplinary Committee makes any finding or order adverse to the person charged he may, within fourteen days after the date of the
40 finding or order or, if he resides in the Chatham Islands, within three months after that date, give notice of appeal, in writing, to the Chairman of the Disciplinary Committee.

(2) Copies of the notice of appeal shall be served by the appellant on the Association and on the person who made the
45 charge to which the finding or order that is appealed against relates.

New

(3) On receipt of the notice of appeal, the Chairman shall immediately inform the Minister, who shall thereupon appoint an appeal tribunal consisting of a Magistrate and two assessors, of whom one shall be nominated by the Association and one by the appellant. 5

(4) The appeal tribunal shall hear the appellant and the Association and such other persons as it may think fit to hear, and may confirm, reverse, or modify the Disciplinary Committee's decision or refer the matter back to the Disciplinary Committee for further consideration, and may make such order as to costs or expenses as it thinks fit. 10

(5) The decision of the Magistrate and at least one of the assessors shall be the decision of the appeal tribunal; but if neither of the assessors is in agreement with the Magistrate, the decision of the Magistrate shall be the decision of the appeal tribunal. The decision of the appeal tribunal shall be final and conclusive. 15

(6) If the appellant does not appear at the time appointed for hearing the appeal his appeal shall be dismissed. 20

(7) If the appellant does not prosecute his appeal with due diligence, the Association may apply to the appeal tribunal for the dismissal of the appeal.

(8) The appeal tribunal shall be deemed for the purposes of the appeal to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and the provisions of that Act, except sections 2 and 4A and 13 to 15, shall apply accordingly. 25

(9) Subject to the provisions of this section, the appeal tribunal may regulate its procedure on the appeal as it thinks fit. 30

(10) No decision of the Disciplinary Committee shall take effect while the person to whom the decision relates remains entitled to appeal against it under this section or while any such appeal by him awaits determination by the appeal tribunal. 35

(11) The appeal tribunal shall cause a copy or memorandum of its decision on the appeal to be transmitted to the Disciplinary Committee, and such proceedings shall be had on the decision as if it had been given by the Disciplinary Committee. 40

13. Publication of decisions in disciplinary proceedings—

(1) Unless otherwise directed under subsection (2) of this section, the Association shall cause particulars of any decision of *(the Court)* an appeal tribunal or of the Disciplinary Com-

5 mittee which has taken effect under this Act, and of the reasons for the decision, to be published in the *New Zealand Licensee* or such other publication concerned with the hotel industry as the Association considers appropriate.

(2) *(The Court)* An appeal tribunal or the Disciplinary
10 Committee, as the case may be, may direct, if in the circumstances it considers such publication unnecessary or undesirable, that there be no such publication in respect of a decision given by it or that the particulars to be so published be limited to any specified extent.

15 (3) This section shall not affect any rights of publication otherwise existing.

14. Witnesses may be required to attend and give

evidence—(1) The Disciplinary Committee may, by notice in writing signed by its Chairman, require any person to
20 attend and give evidence before it at the hearing of any inquiry by it under this Act and to produce all books and documents in that person's custody or under his control relating to the subject-matter of any such inquiry.

(2) The Disciplinary Committee may require evidence to
25 be given on oath, and either orally or in writing, and for that purpose the Chairman of the Committee may administer an oath.

(3) Every person who without lawful justification refuses or fails to attend and give evidence when required to do so by
30 the Disciplinary Committee, or to answer truly and fully any question put to him by a member of the Disciplinary Committee, or to produce to the Disciplinary Committee any book or document required of him, commits an offence against this Act and shall be liable on summary conviction to a fine not
35 exceeding one hundred dollars.

15. Immunity of witnesses and counsel—Witnesses and counsel shall have the same privileges and immunities in relation to inquiries conducted by the Disciplinary Committee under this Act as if they were proceedings in a Court of law.

16. Witnesses' expenses—(1) Every witness giving evidence or attending to give evidence at any inquiry by the Disciplinary Committee under this Act shall be entitled to such sum for his expenses and loss of time as he would be entitled to if he were a witness in criminal proceedings in a Magistrate's Court. 5

(2) Subject to any order made by the Disciplinary Committee as to the payment of costs or expenses, all such witnesses' expenses shall be paid by the Association.

17. Fees, travelling expenses, and costs of proceedings— 10
(1) The Chairman of the Disciplinary Committee shall be entitled to reasonable fees and travelling expenses, and the other members of the Committee shall be entitled to reasonable travelling expenses, in connection with the performance of his or their functions under this Act. 15

(2) Subject to the provisions of this Act, all such fees and expenses and all other costs of proceedings of the Disciplinary Committee shall be defrayed by the Association.

General Provisions

18. Association may apply for cancellation or suspension of certain licences or certificates—The Association shall have the same rights as a member of the Police to apply under section 213 or section 214 of the Sale of Liquor Act 1962 for the cancellation or suspension of any hotelkeeper's, tourist-house keeper's, or tavernkeeper's licence or any manager's certificate (other than that of the manager of a restaurant), and shall be entitled to be heard and to call evidence in support of such an application, whether made by the Association or by a member of the Police. 20 25

19. Protection of Association and other bodies and persons— 30
Subject to section 15 of this Act, neither the Association nor any branch thereof nor any member, officer, or servant of the Association or of any branch thereof or of the Disciplinary Committee shall be under any criminal or civil liability whatsoever in respect of anything done or omitted to be done, or in respect of any words spoken or written, at or for the purposes of any inquiry or other proceedings under this Act, unless it is proved to the satisfaction of the Court before which any proceedings are taken that the defendant in those proceedings has acted in bad faith. 35 40

20. Jurisdiction of other authorities not to be limited—
Except as expressly provided in this Act, nothing herein shall be construed to limit the jurisdiction of any Court or of the Licensing Control Commission or any Licensing Committee,
5 or to limit the liability of any person to be prosecuted for any offence against the Sale of Liquor Act 1962 or any other enactment.

21. Consequential amendments and saving—(1) The Sale of Liquor Act 1962 is hereby amended by omitting from—
10 (a) Subsection (3) of section 103; and
(b) Paragraph (b) of subsection (1) of section 104; and
(c) Subsection (5A) of section 126 (as inserted by section 17 of the Sale of Liquor Amendment Act 1964); and
15 (d) Subsection (5) of section 177 (as added by section 18 of the Sale of Liquor Amendment Act 1964)—
the word “Incorporated”, and substituting in each case the words “established under the Hotel Association of New Zealand Act 1969”.
(2) Subject to subsection (1) of this section, nothing in
20 this Act shall affect the property, rights, powers, functions, or obligations of the Hotel Association of New Zealand Industrial Association of Employers.