

INTERPRETATION BILL

EXPLANATORY NOTE

General Policy Statement

The general policy of this Bill is to replace the Acts Interpretation Act 1924 with an updated interpretation statute expressed in modern language and reflecting modern conditions.

The Interpretation Bill is substantially based upon the recommendations made by the Law Commission in its 1990 report "*A New Interpretation Act: To Avoid Prolivity and Tautology*".

In its report, the Law Commission noted that interpretation statutes in New Zealand have remained largely unchanged for over 100 years and concluded that there are cogent reasons for updating the law in this field.

The reasons the Commission referred to are the changes in the approaches of the courts to the interpretation of legislation, the role and potential of new technology, developments in the drafting and presentation of legislation in New Zealand and other countries, and the enactment of more modern interpretation statutes in several Australian States, in some Canadian provinces, and in the United Kingdom. Moreover, the Commission considered that reforming the law in this area would enhance the democratic process in this country through greater accessibility and comprehensibility of legislation. The Commission therefore expressed the view that major improvements can and should be made to the present Acts Interpretation Act 1924.

The Bill is longer and more detailed in a number of respects than the draft Bill recommended by the Law Commission.

The Bill is the product of discussion involving a number of Government agencies and, in particular, the Law Commission, the Parliamentary Counsel Office, and the Ministry of Justice.

Clause by Clause Analysis

Clause 1 states the Short Title of the Bill.

PART 1

PURPOSES, COMMENCEMENT, AND APPLICATION

Clause 2 states the purposes of the Bill. The purposes are:

- to state principles and rules for the interpretation of legislation:
- to shorten legislation:

- to promote consistency in the language and form of legislation.

These purposes are achieved in a number of ways. For example, basic principles applying to the interpretation of legislation are stated in *Part 2*. *Part 3* contains detailed rules and provisions dealing with recurring aspects of legislation such as commencement, the exercise of powers under legislation, and the effect of repeals, and *Part 5* lists standard definitions of terms and expressions commonly used in legislation.

Clause 3 states that the Bill comes into force on 1 October 1998.

Clause 4 relates to the application of the Bill. The Bill applies to enactments that are part of the law of New Zealand and it applies to existing enactments and enactments made or passed after the Bill comes into force.

The term “enactment” is central to the Bill. *Clause 28* defines “enactment” and the definition incorporates 2 other definitions; “Act” and “regulations”.

“Enactment” means the whole or a portion of an Act or regulations.

“Act” means an Act of the Parliament of New Zealand or of the General Assembly and includes an Imperial Act that is part of the law of New Zealand.

“Regulations” means—

- (a) Regulations, rules, or bylaws made under an Act by the Governor-General in Council or by a Minister of the Crown;
- (b) An instrument that revokes regulations, rules, or bylaws referred to in paragraph (a);
- (c) An Order in Council, Proclamation, notice, Warrant, or instrument made under an Act that varies or extends the scope or provisions of an enactment;
- (d) An instrument that revokes an Order in Council, Proclamation, notice, Warrant, or instrument referred to in paragraph (c);
- (e) An Order in Council that brings into force, repeals, or suspends an Act or the provisions of an Act;
- (f) Regulations, rules, or an instrument made under an Imperial Act or the Royal prerogative and having the force of law in New Zealand;
- (g) An instrument that is a regulation or required to be treated as a regulation for the purposes of the Regulations Act 1936, the Acts and Regulations Publication Act 1989, or the Regulations Disallowance Act 1989.

While the Bill refers throughout to enactments, in some places it distinguishes between Acts, regulations, and enactments; for example, in *clauses 8* and *9*. This is deliberate and is designed to clarify the way in which the Bill applies in particular cases.

Clause 4 also provides that the Bill applies unless the enactment provides otherwise or unless the context requires a different interpretation. Similar qualifications govern the application of the Acts Interpretation Act 1924. The difference between the Bill and that Act in this respect is that the qualifications appear in different provisions throughout the 1924 Act. In the Bill they are stated once only, in *clause 4*.

This means that the application of the Bill to other legislation is subject to express provisions in that other legislation or to the other legislation requiring an interpretation different from one that would result from the application of the Bill. In other words, just as legislation frequently overrides the Acts Interpretation Act 1924, it will always be open for legislation to override the Bill.

PART 2

PRINCIPLES OF INTERPRETATION

Clause 5 provides that the meaning of an enactment must be ascertained from its text and in the light of its purpose. This principle takes the place of that expressed in section 5 (j) of the Acts Interpretation Act 1924. Section 5 (j) requires legislation to be given such fair, large, and liberal interpretation as will best ensure the attainment of the object of the legislation according to its true intent, meaning, and spirit. As noted by the Law Commission (*see* para. 40 of the Commission's report), section 5 (j) is a statement by Parliament that the purpose in enacting a statute is central to the process of interpretation.

Clause 5 confirms the purposive approach to the interpretation of legislation inherent in section 5 (j) and adopted by the Courts in New Zealand. The importance of purpose is recognised by including *clause 5* as a separate clause in *Part 2* of the Bill.

The clause does not, however, adopt the Law Commission's recommendation that the clause also refer to the context of the legislation. There are 2 principal reasons for this. First, the term "context" is imprecise. Second, the discussion of the concept in the Law Commission's report (paras. 71 and 72) suggests a meaning that might well go beyond the approach of the Courts currently in interpreting legislation.

Clause 5 also provides that the matters that may be considered in interpreting legislation include the indications in the legislation itself such as preambles, headings to Parts, sections, and groups of sections, the analysis, diagrams, graphics, examples and explanatory material, and the organisation and format of the legislation. The relevance of these matters to interpretation is discussed in the Law Commission's report (*see* paras. 88 to 99). This will, for example, enable account to be taken of marginal notes, the term given to the headings to sections of Acts. Section 5 (g) of the Acts Interpretation Act 1924 provides that they do not form part of an Act.

Clause 6 provides that an enactment applies to circumstances as they arise. This restates the principle commonly referred to as the "dynamic" approach to interpretation currently contained in section 5 (d) of the Acts Interpretation Act 1924. It contrasts with the "historical" approach. As noted in the Law Commission's report (*see* para. 76), the historical approach requires the meaning of legislation to be governed by its meaning at the time of enactment rather than, in line with the dynamic approach, by reference to changing or new circumstances.

Clause 7 provides that enactments do not have retrospective effect. There is no equivalent to *clause 7* in the Acts Interpretation Act 1924. The presumption against the retrospective operation of legislation is a well established common law principle and the clause is a legislative statement of that basic principle. It is always open to Parliament to enact a statute that is retrospective in its operation but it will usually require clear words to have that effect.

The scheme of the Bill is that the provisions of the Bill apply unless the enactment in question provides otherwise or the particular context requires a different interpretation (*clause 4*). The clause does not prevent Parliament enacting retrospective legislation. Nor does it prevent the Executive making regulations that have retrospective effect where that is authorised by the statute under which the regulations are made.

PART 3

SPECIFIC PROVISIONS APPLYING TO LEGISLATION

Cluses 8 to 10 deal with the commencement of legislation.

Clause 8 provides that an Act or enactments in an Act come into force on the date stated or provided in the Act for their commencement. Section 10A of the Acts Interpretation Act 1924 states that an Act comes into force on the date of assent if no other date is provided.

The Law Commission recommended that all Acts should come into force 28 days after assent (*see paras. 262 to 274* of the Commission's report). In essence, the Commission considered that it is unsatisfactory for legislation to come into force on the date of assent or making because that does not allow sufficient time for the new law to become known.

In many cases, an Act will not make provision for commencement. In such cases, the Act comes into force on assent. In other cases, an Act will provide for commencement on assent or on a certain number of days after assent or after a certain period after assent. Some Acts provide for commencement on a date or dates appointed by the Governor-General by Order in Council. Some Acts use a combination of dates; for example, fixed commencement dates for some provisions and dates appointed by Order in Council for others. And other Acts provide for commencement on a date appointed by Order in Council but, if no date is appointed, then on a date specified in the Act itself.

The policy of *clause 8* is that every Act should state on its face when it comes into force. This will avoid users of the legislation having to work out the commencement date by reference to the date of assent. Readers of Acts of Parliament should be able to tell from looking at the Act itself when it comes into force.

This is preferable to requiring readers of an Act to be aware of a provision in other legislation relating to the commencement of legislation and then having to work out, with the possibility of miscalculation, what the commencement date of the Act is. As a default provision, *subclause (2)* provides that if no date is specified or provided for, the Act comes into force on the date of assent.

Clause 9, which adopts the same policy, provides that regulations come into force on the date stated or provided in them for their commencement. The Cabinet Office Manual currently requires regulations to come into force not less than 28 days after notification in the *Gazette* except in certain cases. For example, if a regulation confers benefits there may be no reason to delay commencement. And, on occasions, timing factors may require that period to be shortened. The result is that regulations invariably state a commencement date on their face. As with *clause 8*, *subclause (2)* provides that if no date is stated or provided for, the regulations come into force on the date on which they are made.

Clause 10 relates to the time, rather than the date, of commencement. *Subclause (1)* provides that an enactment comes into force on the beginning of the day on which it comes into force and re-enacts section 11 (1) of the Acts Interpretation Act 1924. In effect, it restates the common law rule. The restatement of the present law is intended to avoid possible uncertainty.

Subclause (2) provides that an Order in Council may provide for an enactment to come into force on the same day as the day on which the Order in Council is made. This provision is intended to avoid the uncertainty that exists whether, on rare occasions, an Act can be brought into force on the same day as the day on which the order that brings it into force is made or whether it has to be a subsequent day.

Clause 11 is, in essence, a restatement of section 12 of the Acts Interpretation Act 1924. It allows powers under an Act to be exercised before the Act itself comes into force where this is necessary or desirable to bring the Act into operation. This is an essential power, a common example of which is the making of regulations or rules that will be required for the operation of an Act on its commencement. Like section 12, the clause prevents the power being exercised if anything that results from its exercise takes effect before the Act comes into force unless that result is itself necessary or desirable to bring the Act into operation.

The Law Commission considered that express provision should be made in an Act if early action was necessary (*see* para. 277 of the Commission's report). However, it will not always be possible to foresee every case where the power may be required and it has accordingly been retained in the Bill.

Clause 12 re-enacts section 25 (f) of the Acts Interpretation Act 1924. It provides that the power to appoint to an office includes the power to remove, suspend, reinstate, and reappoint. It also includes the power to make an appointment if the current appointee has vacated office, died, or is absent or incapacitated. In restating section 25 (f), the clause is wider than that recommended by the Law Commission (*see* paras. 333 to 335 of the Commission's report). The powers conferred by section 25 (f) are frequently relied on in practice and they have been retained to avoid uncertainty.

Clause 13 enables a power to be exercised to correct an error in a previous exercise of the power even though the power is not generally capable of being exercised more than once. The clause restates section 25 (j) of the Acts Interpretation Act 1924. The Law Commission proposed that the power be confined to correcting clerical or technical errors (*see* paras. 336 to 339 of the Commission's report). The present provision does not appear to have caused problems in practice and accordingly it has been retained largely in its present form.

Clause 14 provides that a power conferred on an office-holder, other than a Minister of the Crown, may be exercised by a deputy or successor. It re-enacts section 25 (e) of the Acts Interpretation Act 1924. The Law Commission considered the provision to be unnecessary (*see* the Commission's report at page 206). It has, however, been retained to avoid any possible uncertainty in practice.

Clause 15 provides that the power to make a regulation, Order in Council, Proclamation, notice, rule, bylaw, Warrant, or other instrument includes the power to amend or revoke it or revoke it and replace it with another. The clause restates section 25 (h) of the Acts Interpretation Act 1924. Although the Law Commission considered an express power was unnecessary (*see* the Commission's report at page 206), it has nevertheless been retained to put the matter beyond doubt.

Clause 16 provides that powers, duties, and functions may be exercised or performed on more than one occasion. The clause re-enacts section 25 (g) of the Acts Interpretation Act 1924. Section 25 (g) operates unless the words used or the thing itself indicates a contrary intention. This qualification has not been carried over into the new clause. A basic principle of the Bill (expressed in *clause 4*) is that the provisions of the Bill apply in every case unless the particular enactment provides otherwise or the context requires a different interpretation. This avoids having to repeat qualifications of this type in every provision in the Bill.

As with *clause 15*, the power has been retained despite the Law Commission's view (*see* the Commission's report at page 206) that it was implicit, and therefore unnecessary, to put the matter beyond doubt.

Clauses 17 to 22 relate to repeals of enactments.

Clause 17 contains a number of provisions about the effect of repeals generally. For example, it provides that the repeal of an enactment does not affect—

- the validity, invalidity, effect, or consequences of anything already done or suffered:
- an existing right, interest, title, immunity, or duty:
- an existing status or capacity:
- an amendment made by the repealed enactment to another enactment:
- the previous operation of an enactment including things done under it.

The clause also provides that a repeal does not revive an enactment that has previously been repealed or anything not in force or existing at the time the repeal takes effect.

These provisions are similar to provisions contained in section 20 of the Acts Interpretation Act 1924.

Clause 18 provides that the repeal of an enactment does not affect the completion of a matter or thing or the bringing or completion of proceedings relating to an existing right, interest, title, immunity, or duty and that the enactment continues to have effect for those purposes as if it had not been repealed. The clause re-enacts, with modifications, section 20 (g) and (h) and section 22 of the Acts Interpretation Act 1924.

The Law Commission considered that the matters dealt with in paragraphs (g) and (h) would be better dealt with by having express transitional provisions in particular statutes (*see* para. 303 of the Commission's report). Clause 6 (2) (b), the continuity provision recommended by the Commission in its draft Bill, is more limited and would apply only to proceedings or remedies. *Clause 18* has been included in the Bill in view of the risks that transitional provisions may not always be adequate to cover all the situations that may arise on the repeal of an Act as well as to provide certainty. The provision should also avoid the need for express transitional provisions in particular Acts in many cases.

Clause 19 relates to the effect of a repeal on offences and penalties. It provides that the repeal of an enactment does not affect the liability to a penalty for an offence or for a breach of an enactment committed before the repeal and that the repealed enactment continues to have effect for the purpose of investigating the offence or breach, commencing or completing proceedings for the offence or breach, and imposing any penalty as if the enactment had not been repealed.

Clause 20 provides for the continuation of subordinate legislation despite the repeal of the enactment under which it was made. The clause continues the substance of sections 20 (d) and 20A of the Acts Interpretation Act 1924. The Law Commission recognised the value of these provisions (*see* paras. 312 to 317 of the Commission's report). Section 20 (d) and section 20A require the later enactment to be one that corresponds to the repealed enactment. The Law Commission recommended that the provision be narrowed so that it would apply only where the later enactment was substituted for the repealed one. As drafted, however, *clause 21* will apply where the later enactment replaces, or corresponds to, the repealed enactment. The term "corresponding" has been interpreted by the courts to mean similar to or answering in character and function (*see Winter v Ministry of Transport* [1972] NZLR 539 at 541 (CA)). The meaning of the term is well settled and it has been retained for that reason.

The clause makes it clear that subordinate legislation that is continued in force may also be amended or revoked.

Clause 21 is similar to *clause 20* and provides for the continuation of acts done under repealed enactments.

Clause 22 relates to references to repealed enactments in legislation that continues in force.

Subclause (1), which re-enacts section 20 (b) of the Acts Interpretation Act 1924, provides that the repeal of an enactment does not affect another enactment in which the repealed enactment is applied, incorporated, or referred to.

Subclause (2) provides that a reference in an unrepealed enactment to a repealed enactment is to be read as a reference to any enactment that replaces, or corresponds to, the repealed enactment. *Subclause (2)* re-enacts section 21 of the Acts Interpretation Act 1924 but extends its application to cases where the reference in the unrepealed enactment is to a repealed enactment rather than a repealed Act. In *Ministry of Transport v Hamilton* (HC, Wanganui, M 73/84, 4 April 1985) Eichelbaum J held that section 21 operates only where a whole Act is repealed, rather than a section of an Act. The section has been applied in a number of other cases but where an entire Act had been repealed: *Re Eskay Metalware Limited (in Liquidation)* [1978] NZLR 46 (CA); *United Cinema Enterprises Limited v Commissioner of Inland Revenue* [1984] 2 NZLR 391 (CA); *Barrycourt Motel & Tourist Flats Limited v Mitchell* [1996] 2 NZLR 676 (CA).

The expression “correspond” has been used in place of “substitution” which is the expression used in section 21. In *Re Eskay Metalware Limited (in Liquidation)*, the Court of Appeal held that the provision must be of the same character as its predecessor. It must have the same kind of function and the subject-matter must be essentially the same without necessarily being identical in scope. If the new provision is directed to the same end, there need not be precise correspondence in the manner of dealing with the subject-matter.

It is desirable that the terminology used in this clause and in *clause 20* is the same since the interpretation placed by the courts on the respective expressions is, in essence, the same.

Clause 23 provides that an enactment that amends another enactment is part of the enactment amended. The clause will avoid the need for amending Acts to state, as is current practice, that they are part of the Acts they amend.

Clause 24 provides that it is not necessary for subordinate legislation to state on its face any facts, circumstances, or preconditions necessary for making the subordinate legislation (*subclause (1)*). The clause also provides that an enactment is to be treated as validly made even though the enactment under which it is expressed to be made does not authorise its making as long as it is authorised by another enactment (*subclause (2)*).

Subclause (1) re-enacts section 24 of the Acts Interpretation Act 1924. *Subclause (2)*, which is new, will ensure that regulations and other legislative instruments remain valid despite containing an incorrect reference to the empowering provision.

Clause 25 provides that regulations that are amended or substituted by Act may subsequently be amended, replaced, or revoked by regulation. The clause is new and will avoid the need, in cases where regulations are amended by statute, to provide expressly that the amendment is to be treated as having been made by regulation in order to ensure that the regulations can later be amended.

Clause 26 re-enacts section 5 (i) of the Acts Interpretation Act 1924. It permits minor variations from prescribed forms as long as the variation is not misleading.

PART 4

APPLICATION OF LEGISLATION TO THE CROWN

Clause 27 provides that no enactment binds the Crown unless it expressly provides that the Crown is bound. The clause re-enacts section 5 (k) of the Acts Interpretation Act 1924. The Law Commission's recommendation to reverse the present statutory presumption (*see* Chapter IV of the Law Commission's report) has not been adopted in the Bill. The reason for this is that it has not been possible at this stage to quantify the precise effects (both fiscal and otherwise) of implementing the recommendation.

PART 5

MEANING OF TERMS AND EXPRESSIONS IN LEGISLATION

Clause 28 defines terms and expressions used in legislation. A number of the definitions in the Acts Interpretation Act 1924 have been omitted in line with the Law Commission's recommendations (*see* the Commission's report at pages 198–200). In essence, the Commission considered that the definitions of some terms in the 1924 Act should be omitted on the basis that the terms are no longer used, or are well understood, or are defined in other Acts, or the definitions are not strictly definitions but contain matters of substance.

Clause 29 defines terms used in Acts passed and regulations made before the commencement of the Bill. The Acts Interpretation Act 1924 defines certain terms the meaning of which has, or may have been, relied on in existing legislation. In line with the Law Commission's recommendations (*see* paras. 409 to 417 of the Commission's report) existing definitions of the terms "constable", "Governor", "land", and "person" have been retained. The 1924 Act defines the term "Act" to include rules and regulations made under an Act. It has been held in a number of cases that "Act" includes regulations (*see* *Burrows Statute Law in New Zealand*, p. 197). This definition has also been retained for the same reasons.

Clause 30 provides that parts of speech and grammatical forms of a word that is defined in an enactment have corresponding meanings in the same enactment. The clause follows the Law Commission's recommendation (*see* para. 420 of the Commission's report) that such a provision is worthwhile in light of the many statutes that specifically provide that grammatical forms of defined terms have corresponding meanings. Those provisions will no longer be necessary.

Clause 31 provides that words denoting a gender include each other gender and that words expressed in the singular include the plural and words expressed in the plural include the singular. The clause re-enacts the provision contained in section 4 of the Acts Interpretation Act 1924.

Clause 32 provides that a word or expression used in a regulation or other instrument made under an enactment has the same meaning as it has in the enactment. The clause re-enacts, with minor modification, section 7 of the Acts Interpretation Act 1924.

Clause 33 relates to the computation of time. The clause follows clause 24 of the Law Commission's draft Bill and re-enacts paragraphs (a) and (b) of section 25 of the Acts Interpretation Act 1924.

Clause 34 provides that a reference to a distance means a distance measured in a straight line on a horizontal plane. It re-enacts section 25 (c) of the Acts Interpretation Act 1924. The Law Commission considered that, despite the inclusion of similar provisions in some Australian interpretation statutes, the better course was for the measurement of distance to be expressly dealt with in

particular statutes (*see* page 205 of the Commission's report). The provision has been included in the Bill, however, on the basis that it may still be useful in appropriate cases and will avoid uncertainty about how distance is to be measured in statutes and regulations that refer to distances.

PART 6

AMENDMENTS AND REPEALS

Clause 35 amends the enactments listed in *Schedule 1*.

Clause 36 repeals the enactments listed in *Schedule 2*.

PART 7

AMENDMENTS TO CONSTITUTION ACT 1986

Clause 37 provides that *Part 7* is part of the Constitution Act 1986. *Part 7* will become a separate Bill at the conclusion of the committee of the whole House stage.

Clause 38 inserts new *sections 3A* and *3B* in the Constitution Act 1986 in line with the recommendations of the Law Commission (*see* para. 349 of the Commission's report) that provisions contained in the Acts Interpretation Act 1924 relating to the exercise of powers by the Governor-General and the Administrator might appropriately be relocated in the Constitution Act 1986.

New *section 3A* re-enacts section 23 of the Acts Interpretation Act 1924.

Subsection (1) provides that the Sovereign or the Governor-General may exercise a power on the advice and with the consent of the Executive Council even though not present at the meeting of the Executive Council at which that advice and consent are given.

Subsection (2), which repeats the substance of section 23 (3), provides that the exercise of the power takes effect from the date of the meeting. The Law Commission considered that section 23 (3) may permit the retrospective exercise of the power and that the provision should not be continued (*see* para. 347 of the Commission's report). The Law Commission's view was that if urgent action is required, the authorising enactment should expressly provide for it. That is not the case with existing Acts and the provision has been continued on the basis that occasions may arise where it is essential or at least desirable that urgent action be taken by the Executive with effect from the date of the meeting.

New *section 3B* provides that if the Administrator performs a function or duty imposed, or exercises a power conferred, on the Governor-General, the performance of the function or duty or the exercise of the power is conclusive evidence of the Administrator's authority to do so. The new section restates section 25E of the Acts Interpretation Act 1924.

Clause 39 inserts a new *section 9A* into the Constitution Act 1986 following the Law Commission's recommendation (*see* para. 349 of the Commission's report) that current section 25B of the Acts Interpretation Act 1924 be relocated in that Act.

New *section 9A* provides that the Solicitor-General may exercise the powers or duties of the Attorney-General. It also provides that the Governor-General may appoint a barrister or solicitor of at least 7 years' practice to act in place of the Solicitor-General if the office of Solicitor-General is vacant or if the Solicitor-General is absent from office or incapacitated. The definition of "Attorney-General" in section 4 of the Acts Interpretation Act 1924, in relation to the powers, duties, authorities, and functions of the Attorney-General, includes the Solicitor-General. Section 27 of the Finance Amendment Act (No. 2) 1952 is similar.

In line with the Law Commission's recommendation (*see* paras. 356 and 357 of the Commission's report), this clause avoids 2 overlapping provisions and, at least as regards section 4, a substantive provision contained in a definition.

PART 8

AMENDMENTS TO JUDICATURE ACT 1908

Clause 40 provides that *Part 8* is part of the Judicature Act 1908. *Part 8* will become a separate Bill at the conclusion of the committee of the whole House stage.

Clause 41 inserts new *section 88AA* into the Judicature Act 1908 in line with the Law Commission's recommendation (*see* para. 357 of the Commission's report). The new section re-enacts section 25A of the Acts Interpretation Act 1924. The new section allows a judicial officer whose term of office has expired or who has retired to continue in office to determine or give judgment in proceedings heard by the judicial officer. The term "judicial officer" means a person who has in New Zealand the authority under an enactment to hear, receive, and examine evidence.

The clause differs from that recommended by the Commission in that it requires that the judicial officer's powers are conferred by an enactment. This will preclude the provision from operating where a person is given the power to hear, receive, and examine evidence under a contract.

INTERPRETATION

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<p>3A. Advice and consent of Executive Council</p> <p>3B. Exercise of powers and duties by Administrator</p> <p>39. Law officers of the Crown</p> <p style="text-align: center;">PART 8</p> <p style="text-align: center;">AMENDMENTS TO JUDICATURE ACT 1908</p> <p>40. Part to be part of Judicature Act 1908</p> <p>41. New heading and section inserted</p> <p style="text-align: center;"><i>Continued Exercise of Powers by Judicial Officers</i></p>	<p>88A. Judicial officers to continue in office to complete <u>proceedings</u></p> <p style="text-align: center;">SCHEDULES</p> <p style="text-align: center;">Schedule 1</p> <p style="text-align: center;">Amendments to Other Acts</p> <p style="text-align: center;">Schedule 2</p> <p style="text-align: center;">Enactments Repealed</p>
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A BILL INTITULED

An Act relating to the interpretation, application, and effect of legislation

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

1. Short Title—This Act may be cited as the Interpretation Act 1997. 5

PART 1

PURPOSES, COMMENCEMENT, AND APPLICATION

2. Purposes of this Act—The purposes of this Act are—

(a) To state principles and rules for the interpretation of legislation; and 10

(b) To shorten legislation; and

(c) To promote consistency in the language and form of legislation.

3. Commencement—This Act comes into force on 1 October 1998. 15

4. Application—(1) This Act applies to an enactment that is part of the law of New Zealand and that is passed either before or after the commencement of this Act unless—

(a) The enactment provides otherwise; or 20

(b) The context of the enactment requires a different interpretation.

(2) The provisions of this Act also apply to the interpretation of this Act.

PART 2

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PRINCIPLES OF INTERPRETATION

5. Ascertaining meaning of legislation—(1) The meaning of an enactment must be ascertained from its text and in the light of its purpose.

(2) The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment as printed or published under the authority of the New Zealand Government.

5 (3) Examples of those indications are preambles, the analysis, headings to Parts, sections, and groups of sections, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment.

Cf. 1924, No. 11, s. 5 (j)

10 **6. Enactments apply to circumstances as they arise**—An enactment applies to circumstances as they arise.

Cf. 1924, No. 11, s. 5 (d)

7. Enactments do not have retrospective effect—An enactment does not have retrospective effect.

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PART 3

SPECIFIC PROVISIONS APPLYING TO LEGISLATION

Commencement of Legislation

20 **8. Date of commencement of Acts**—(1) An Act or enactments in an Act come into force on the date stated or provided in the Act for the commencement of the Act or for the commencement of the enactments.

(2) If an Act does not state or provide for the date on which the Act or enactments in the Act come into force, the Act comes into force on the date of assent.

25 Cf. 1924, No. 11, s. 10A; 1986, No. 115, s. 6

9. Date of commencement of regulations—

30 (1) Regulations or enactments in regulations come into force on the date stated or provided in the regulations for the commencement of the regulations or for the commencement of the enactments.

(2) If regulations do not state or provide for the date on which the regulations or enactments in the regulations come into force, the regulations come into force on the date on which they are made.

35 **10. Time of commencement of legislation**—(1) An enactment comes into force at the beginning of the day on which the enactment comes into force.

(2) An Order in Council may appoint a day for an enactment to come into force that is the same day as the day on which the

Order in Council is made, in which case the enactment comes into force at the beginning of that day.

Cf. 1924, No. 11, s. 10; 1986, No. 115, s. 6

Exercise of Powers Between Passing and Commencement of Legislation

5

11. Exercise of powers between passing and commencement of legislation—(1) A power conferred by an enactment may be exercised before the enactment comes into force to—

- (a) Make a regulation or rule or other instrument; or 10
- (b) Serve a notice or document; or
- (c) Appoint a person to an office or position; or
- (d) Establish a body of persons; or
- (e) Do any other act or thing for the purposes of an enactment. 15

(2) The power may be exercised only if it is necessary or desirable to bring, or in connection with bringing, an enactment into operation.

(3) The power may not be exercised if anything that results from exercising the power comes into force or takes effect before the enactment itself comes into force unless it is necessary or desirable to bring, or in connection with bringing, the enactment into operation. 20

(4) **Subsection (1)** applies as if the enactment under which the power is exercised and any other enactment that is not in force when the power is exercised were in force when the power is exercised. 25

Cf. 1924, No. 11, s. 12

Exercise of Powers in Legislation Generally

12. Power to appoint to an office—The power to appoint a person to an office includes the power to— 30

- (a) Remove or suspend a person from the office:
- (b) Reappoint or reinstate a person to the office:
- (b) Appoint another person in place of a person who has vacated the office or who has died or who is absent or incapacitated. 35

Cf. 1924, No. 11, s. 25 (f)

13. Power to correct errors—The power to make an appointment or do any other act or thing may be exercised to correct an error or omission in a previous exercise of the power 40

even though the power is not generally capable of being exercised more than once.

Cf. 1924, No. 11, s. 25 (j); 1936, No. 58, s. 2

5 **14. Exercise of powers by deputies and successors**—A power conferred on the holder of an office, other than a Minister of the Crown, may be exercised by a deputy of, or successor to, the holder of the office.

Cf. 1924, No. 11, s. 25 (e); 1986, No. 115, s. 7

10 **15. Power to amend or revoke**—The power to make or issue a regulation, Order in Council, Proclamation, notice, rule, bylaw, Warrant, or other instrument includes the power to—

- (a) Amend or revoke it:
- (b) Revoke it and replace it with another.

Cf. 1924, No. 11, s. 25 (h)

15 **16. Exercise of powers and duties more than once**—
(1) A power conferred by an enactment may be exercised from time to time.

(2) A duty or function imposed by an enactment may be performed from time to time.

20 Cf. 1924, No. 11, s. 25 (g)

Repeals

17. Effect of repeal generally—(1) The repeal of an enactment does not affect—

- 25 (a) The validity, invalidity, effect, or consequences of anything done or suffered:
- (b) An existing right, interest, title, immunity, or duty:
- (c) An existing status or capacity:
- (d) An amendment made by the enactment to another enactment:
- 30 (e) The previous operation of the enactment or anything done or suffered under it.

(2) The repeal of an enactment does not revive—

- (a) An enactment that has been repealed or a rule of law that has been abolished:
- 35 (b) Any other thing that is not in force or existing at the time the repeal takes effect.

Cf. 1924, No. 11, s. 20 (a), (e), (f)

18. Effect of repeal on enforcement of existing rights—
(1) The repeal of an enactment does not affect the completion

of a matter or thing or the bringing or completion of proceedings that relate to an existing right, interest, title, immunity, or duty.

(2) A repealed enactment continues to have effect as if it had not been repealed for the purpose of completing the matter or thing or bringing or completing the proceedings that relate to the existing right, interest, title, immunity, or duty. 5

Cf. 1924, No. 11, ss. 20 (g), (h), 22

19. Effect of repeal on prior offences and breaches of enactments—(1) The repeal of an enactment does not affect a liability to a penalty for an offence or for a breach of an enactment committed before the repeal. 10

(2) A repealed enactment continues to have effect as if it had not been repealed for the purpose of—

(a) Investigating the offence or breach: 15

(b) Commencing or completing proceedings for the offence or breach:

(c) Imposing a penalty for the offence or breach.

Cf. 1924, No. 11, s. 20 (h)

20. Enactments made under repealed legislation to have continuing effect—(1) An enactment made under a repealed enactment, and that is in force immediately before that repeal, continues in force as if it had been made under any other enactment— 20

(a) That, with or without modification, replaces, or that corresponds to, the enactment repealed; and 25

(b) Under which it could be made.

(2) An enactment that continues in force may be amended or revoked as if it had been made under the enactment that replaces, or that corresponds to, the repealed enactment. 30

Cf. 1924, No. 11, ss. 20 (d), 20A; 1960, No. 50, s. 2

21. Powers exercised under repealed legislation to have continuing effect—Anything done in the exercise of a power under a repealed enactment, and that is in effect immediately before that repeal, continues to have effect as if it had been exercised under any other enactment— 35

(a) That, with or without modification, replaces, or that corresponds to, the enactment repealed; and

(b) Under which the power could be exercised.

Cf. 1924, No. 11, ss. 20 (d), 20A; 1960, No. 50, s. 2 40

22. References to repealed enactment—(1) The repeal of an enactment does not affect an enactment in which the repealed enactment is applied, incorporated, or referred to.

5 (2) A reference in an enactment to a repealed enactment is a reference to an enactment that, with or without modification, replaces, or that corresponds to, the enactment repealed.

(3) **Subsection (1)** is subject to **subsection (2)**.

Cf. 1924, No. 11, ss. 20 (b), 21

Amending Legislation

10 **23. Amending enactment part of enactment amended**—An amending enactment is part of the enactment that it amends.

Authority to Make Certain Enactments

15 **24. Authority to make certain enactments**—(1) It is not necessary for an enactment made under another enactment to refer to any facts, circumstances, or preconditions that must exist or be satisfied before the enactment can be made.

20 (2) An enactment must be treated as having been made under the authority of any enactment that authorises its making even though it is expressed to have been made under an enactment that does not authorise its making.

Cf. 1924, No. 11, s. 24

25 **25. Amendment and revocation of regulations made by Act**—Regulations amended or substituted by an Act may be amended, replaced, or revoked by subsequent regulations as if they had been made by regulation.

Forms

30 **26. Use of prescribed forms**—A form is valid even though it contains minor differences from a form prescribed by an enactment as long as the form still has the same effect and is not misleading.

Cf. 1924, No. 11, s. 5 (i)

PART 4

APPLICATION OF LEGISLATION TO THE CROWN

35 **27. Enactments not binding on the Crown**—No enactment binds the Crown unless the enactment expressly provides that the Crown is bound by the enactment.

Cf. 1924, s. 5 (k)

PART 5

MEANING OF TERMS AND EXPRESSIONS IN LEGISLATION

28. Definitions—In an enactment,—

- “Act” means an Act of the Parliament of New Zealand or of the General Assembly; and includes an Imperial Act that is part of the law of New Zealand: 5
- “Commencement”, in relation to an enactment, means the time when the enactment comes into force:
- “Committed for trial” means committed to the High Court or a District Court under the Summary Proceedings Act 1957: 10
- “Commonwealth country” and “part of the Commonwealth” mean a country that is a member of the Commonwealth; and include a territory for the international relations of which the member is responsible: 15
- “Consular officer” means a person who has authority to exercise consular functions:
- “Enactment” means the whole or a portion of an Act or regulations: 20
- “*Gazette*” means the New Zealand Gazette published or purporting to be published under the authority of the New Zealand Government; and includes a supplement:
- “Governor-General in Council” or a similar expression means the Governor-General acting on the advice and with the consent of the Executive Council: 25
- “Minister”, in relation to an enactment, means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of an enactment: 30
- “Month” means a calendar month:
- “New Zealand” or similar words referring to New Zealand, when used as a territorial description, mean the islands and territories within the Realm of New Zealand; but do not include the self-governing state of the Cook Islands, the self-governing state of Niue, Tokelau, or the Ross Dependency: 35
- “North Island” means the island commonly known as the “North Island”; and includes the islands adjacent to it north of Cook Strait: 40
- “Order in Council” means an order made by the Governor-General in Council:

“Person” includes a corporation sole, a body corporate, and an unincorporated body:

“Prescribed” means prescribed by or under an enactment:

5 “Proclamation” means a proclamation made and signed by the Governor-General under the Seal of New Zealand and published in the *Gazette*:

“Public notification”, “public notice”, or a similar expression in relation to an act, matter, or thing, means a notice published in—

10 (a) The *Gazette*; or

(b) One or more newspapers circulating in the place or district to which the act, matter, or thing relates or in which it arises:

“Regulations” means—

15 (a) Regulations, rules, or bylaws made under an Act by the Governor-General in Council or by a Minister of the Crown:

(b) An instrument that revokes regulations, rules, or bylaws referred to in **paragraph (a)**:

20 (c) An Order in Council, Proclamation, notice, Warrant, or instrument made under an enactment that varies or extends the scope or provisions of an enactment:

25 (d) An instrument that revokes an Order in Council, Proclamation, notice, Warrant, or instrument referred to in **paragraph (c)**:

(e) An Order in Council that brings into force, repeals, or suspends an Act or the enactments in an Act:

30 (f) Regulations, rules, or an instrument made under an Imperial Act or the Royal prerogative and having the force of law in New Zealand:

35 (g) An instrument that is a regulation or that is required to be treated as a regulation for the purposes of the Regulations Act 1936 or the Acts and Regulations Publication Act 1989 or the Regulations (Disallowance) Act 1989:

“Repeal”, in relation to an enactment, includes expiry and replacement:

40 “Rules of Court”, in relation to a court, means rules regulating the practice and procedure of the court:

“South Island” means the island commonly known as the “South Island”; and includes the islands adjacent to it south of Cook Strait:

- “Summary conviction” means a conviction by a District Court Judge or by 1 or more Justices of the Peace in accordance with the Summary Proceedings Act 1957:
- “Territorial limits of New Zealand”, “limits of New Zealand”, or a similar expression, when used as a territorial description, means the outer limits of the territorial sea of New Zealand: 5
- “Working day” means a day of the week other than—
- (a) A Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, and Labour Day; and 10
- (b) A day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) If 1 January falls on a Friday, the following Monday; and 15
- (d) If 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday:
- “Writing” includes representing or reproducing words, figures, or symbols— 20
- (a) In a visible and tangible form by any means and in any medium:
- (b) In a visible form in any medium by electronic means that enables them to be stored in permanent form and be retrieved and read. 25
- Cf. 1924, No. 11, s. 4

29. Definitions in enactments passed or made before commencement of this Act—In an enactment passed or made before the commencement of this Act,—

- “Act” includes rules and regulations made under the Act: 30
- “Constable” includes a police officer of any rank:
- “Governor” means the Governor-General:
- “Land” includes—
- (a) A building or structure that forms part of land; and 35
- (b) An estate or interest in land:
- “Person” includes a corporation sole, and also a body of persons, whether corporate or unincorporate.
- Cf. 1924, No. 11, s. 4

30. Parts of speech and grammatical forms—Parts of speech and grammatical forms of a word that is defined in an enactment have corresponding meanings in the same enactment. 40

31. Gender and number—(1) Words that denote a gender include each other gender.

(2) Words in the singular include the plural and words in the plural include the singular.

5 Cf. 1924, No. 11, s. 4

32. Meaning of words and expressions used in regulations and other instruments—A word or expression used in a regulation, Order in Council, Proclamation, notice, rule, bylaw, Warrant, or other instrument made under an
10 enactment has the same meaning as it has in the enactment under which it is made.

Cf. 1924, No. 11, s. 7

33. Time—(1) A period of time described as beginning at, on, or with a specified day, act, or event includes that day or
15 the day of the act or event.

(2) A period of time described as beginning from or after a specified day, act, or event does not include that day or the day of the act or event.

(3) A period of time described as ending by, on, at, or with, or as continuing to or until, a specified day, act, or event
20 includes that day or the day of the act or event.

(4) A period of time described as ending before a specified day, act, or event does not include that day or the day of the act or event.

(5) A reference to a number of days between 2 events does not include the days on which the events happened.

(6) A thing that is required to be done on a day that is not a working day may be done on the next working day.

25 Cf. 1924, No. 11, s. 25 (a), (b)

34. Distance—A reference to a distance means a distance measured in a straight line on a horizontal plane.

Cf. 1924, No. 11, s. 25 (c)

PART 6

AMENDMENTS AND REPEALS

35 **35. Amendments to other Acts**—The enactments specified in **Schedule 1** are amended in the manner indicated in that schedule.

36. Repeals—The enactments specified in **Schedule 2** are repealed.

PART 7

AMENDMENTS TO CONSTITUTION ACT 1986

37. Part to be part of Constitution Act 1986—This Part is part of the Constitution Act 1986* (in this Part referred to as the principal Act).

5

*1986, No. 114
Amendment: 1987, No. 134

38. New sections inserted—The principal Act is amended by inserting, after section 3, the following sections:

“3A. Advice and consent of Executive Council—(1) The Sovereign or the Governor-General may perform a function or duty, or exercise a power, on the advice and with the consent of the Executive Council if that advice and consent are given at a meeting of the Executive Council even though neither the Sovereign nor the Governor-General is present at the meeting.

10

“(2) The function, duty, or the power takes effect from the date of the meeting unless another time is specified for the function, duty, or power to take effect.

15

Cf. 1924, No. 11, s. 23; 1983, No. 22, s. 3

“3B. Exercise of powers and duties by Administrator—The performance or exercise by the Administrator of the Government of a function or duty imposed, or a power conferred, on the Governor-General is conclusive evidence of the authority of the Administrator to perform the function or duty or exercise the power.

20

Cf. 1924, No. 11, s. 25E; 1986, No. 115, s. 9”

39. Law officers of the Crown—The principal Act is amended by inserting, after section 9, the following section:

25

“9A. (1) The Solicitor-General may perform a function or duty imposed, or exercise a power conferred, on the holder of the office of Attorney-General.

“(2) The Governor-General may appoint a barrister or solicitor of at least 7 years’ practice to act in place of, or for, the Solicitor-General during the absence from office or incapacity of the Solicitor-General.

30

“(3) The performance of a function or duty or the exercise of a power by a person appointed under **subsection (2)** is conclusive evidence of the authority of that person to do so.

35

Cf. 1924, No. 11, ss.4, 25B; 1979, No. 71, s. 2”

PART 8

AMENDMENTS TO JUDICATURE ACT 1908

5 **40. Part to be part of Judicature Act 1908**—This Part is part of the Judicature Act 1908* (in this Part referred to as the principal Act).

*R.S. Vol. 22, p. 107

Amendments: 1990, No. 44; 1991, No. 60; 1993, No. 117; 1994, No. 42; 1995, No. 70; 1997, No. 10

41. New heading and section inserted—The principal Act is amended by inserting, after section 88, the following heading and section:

“Continued Exercise of Powers by Judicial Officers

10 **“88A. Judicial officers to continue in office to complete proceedings**—(1) A judicial officer whose term of office has expired or who has retired may continue in office for the purpose of determining, or giving judgment in, proceedings that the judicial officer has heard either alone or with others.

15 **“(2) A judicial officer must not continue in office under subsection (1) for longer than a month without the consent of the Minister of Justice.**

“(3) The fact that a judicial officer continues in office does not affect the power to appoint another person to that office.

20 **“(4) A judicial officer who continues in office is entitled to be paid the remuneration and allowances to which the officer would have been entitled if the term of office had not expired or the officer had not retired.**

25 **“(5) In this section, ‘judicial officer’ means a person who has in New Zealand authority under an enactment to hear, receive, and examine evidence.**

Cf. 1924, No. 11, s. 25A; 1973, No. 46, s. 2; 1994, No. 22, s. 3”

SCHEDULES

Section 35

SCHEDULE 1

AMENDMENTS TO OTHER ACTS

Enactment	Amendment
<p>1988, No. 112—The Imperial Laws Application Act 1988 (R.S. Vol. 30, p.1)</p> <p>1989, No. 143—The Regulations (Disallowance) Act 1989</p>	<p>By repealing section 3 (4).</p> <p>By repealing the definition of the term “regulations” in section 2, and substituting the following definition:</p> <p>“ ‘Regulations’ means—</p> <p>“ (a) Regulations, rules, or bylaws made under an Act by the Governor-General in Council or by a Minister of the Crown:</p> <p>“ (b) An instrument that revokes regulations, rules, or bylaws referred to in paragraph (a):</p> <p>“ (c) An Order in Council, Proclamation, notice, Warrant, or instrument made under an Act that varies or extends the scope or provisions of an Act:</p> <p>“ (d) An instrument that revokes an Order in Council, Proclamation, notice, Warrant, or instrument referred to in paragraph (c):</p> <p>“ (e) An Order in Council that brings into force, repeals, or suspends an Act or the provisions of an Act:</p> <p>“ (f) Regulations, rules, or an instrument made under an Imperial Act or the Royal prerogative and having the force of law in New Zealand:</p> <p>“ (g) An instrument that is a regulation or required to be treated as a regulation for the purposes of the Regulations Act 1936 or Acts and Regulations Publication Act 1989 or this Act.”</p>

SCHEDULE 2

Section 36

ENACTMENTS REPEALED

- 1924, No. 11—The Acts Interpretation Act 1924. (R.S. Vol. 31, p. 1.)
1936, No. 58—The Statutes Amendment Act 1936: Section 3. (R.S. Vol. 31, p. 30.)
1952, No. 81—The Finance Act (No. 2) 1952: Section 27. (R.S. Vol. 31, p. 31.)