

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]
House of Representatives, 28 October 1964

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

Hon. Mr Hanan

PERPETUITIES

ANALYSIS

Title	<i>Miscellaneous Provisions Affecting Rule Against Perpetuities</i>
1. Short Title	13. Unborn husband or wife
2. Interpretation	14. Saving and acceleration of expectant interests
3. Act and rule against perpetuities to bind the Crown	15. Rule of remorseless construction abolished
4. Application of Act	16. Administrative powers of trustees
5. Powers of appointment	17. Options relating to property
6. Power to specify perpetuity period	18. Possibilities of reverter, conditions subsequent, exceptions, and reservations
7. Presumptions and evidence as to future parenthood	19. Rule against perpetuities not to apply to superannuation funds
8. Necessity to wait and see	20. Rule against inalienability
<i>Cy-pres Modifications of Dispositions</i>	<i>Accumulation of Income</i>
9. Reduction of age and exclusion of class members to avoid remoteness	21. Accumulation of income
10. <i>Cy-pres</i> modification in certain other cases	<i>Power to Apply to Court for Directions</i>
11. Restrictions on acceptance of resulting trust	22. Power to apply to Court for directions
12. Previous <i>cy-pres</i> resettlements	

A BILL INTITULED

An Act to effect reforms in the rule of law commonly known as the rule against perpetuities and to abolish the rule of law commonly known as the rule against accumulations

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

1. Short Title—This Act may be cited as the Perpetuities Act 1964.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Disposition” includes the conferring or exercise of a power of appointment or any other power or authority to dispose of an interest in or right over property, and any other disposition of an interest in or right over property; and references to the interest disposed of shall be construed accordingly: 5 10

“In being” means living or *en ventre sa mere*:

“Instrument” includes a will, and also includes an instrument, testamentary or otherwise, exercising a power of appointment, whether general or special; but does not include an Act of Parliament: 15

“Issue”, in relation to any person, means the children and other descendants of that person; and includes any person who bears any such relationship illegitimately:

“Power of appointment” includes any discretionary power to transfer or grant or create a beneficial interest in property without valuable consideration: 20

“Property” includes any interest in real or personal property and any thing in action:

“Will” includes a codicil. 25

(2) For the purposes of this Act a disposition contained in a will shall be deemed to be made at the death of the testator.

(3) For the purposes of this Act a person shall be treated as a member of a class if in his case all the conditions identifying a member of the class are satisfied, and shall be treated as a potential member if in his case only one or some of those conditions are satisfied but there is a possibility that the remainder will in time be satisfied. 30

Cf. Perpetuities and Accumulations Act 1964, s. 15 (2), (3) (U.K.); Law Reform (Property, Perpetuities and Succession Act 1962, s. 4 (W.A.)) 35

3. Act and rule against perpetuities to bind the Crown—This Act and the rule against perpetuities shall bind the Crown except in respect of dispositions of property made by the Crown. 40

Cf. U.K. Act, s. 15 (7); W.A. Act, s. 3 (2)

4. Application of Act—(1) Except where otherwise expressly provided in this Act, every provision of this Act,—

- (a) In so far as it applies to wills, shall apply only to the wills of testators who die after the commencement of this Act; and
- (b) In so far as it applies to instruments other than wills, shall apply only to instruments executed after the commencement of this Act.

Struck Out

(2) All other wills and instruments shall, except where otherwise expressly provided in this Act, be governed by the enactments and rules of law which would have applied to them if this Act had not been passed.

(3) Where a will or other instrument to which this subsection applies in accordance with subsection (1) of this section exercises a power of appointment, every provision of this Act shall apply in relation to that exercise, whether or not it applies to the will or other instrument creating the power.

New

(2) Where a provision of this Act so applies to a will or other instrument that exercises a power of appointment, that provision shall apply in relation to that exercise, whether or not it applies to the will or other instrument creating the power.

(3) All wills of testators who have died before the commencement of this Act, and all other instruments executed before the commencement of this Act, shall, except where otherwise expressly provided in this Act, be governed by the enactments and rules of law which would have applied to them if this Act had not been passed.

(4) This Act shall apply in relation to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument other than a will executed when the disposition was made.

Cf. U.K. Act, s. 15 (5), (6); W.A. Act, s. 3 (1)

5. Powers of appointment—For the purposes of the rule against perpetuities, a power of appointment shall be treated as a special power unless—

- (a) In the instrument creating the power it is expressed to be exercisable by one person only; and

(b) It could, at all times during its currency when that person is of full age and capacity, be exercised by him so as immediately to transfer to himself the whole of the interest governed by the power without the consent of any other person or compliance with any other condition, not being a formal condition relating only to the mode of exercise of the power: 5

Provided that, for the purpose of determining whether a disposition made under a power of appointment exercisable by will only is invalid as infringing the rule against perpetuities, the power shall be treated as a general power where it would have fallen to be so treated if exercisable by deed. 10

Cf. U.K. Act, s. 7; W.A. Act, s. 16

6. Power to specify perpetuity period—(1) Subject to sub-section (2) of this section, where the instrument by which any disposition is made so provides, the perpetuity period applicable to the disposition under the rule against perpetuities, instead of being of any other duration, shall be **(of)** such number of years not exceeding eighty as is specified in that behalf in the instrument. 15 20

Struck Out

(2) This section shall apply to an instrument creating a power of appointment and (subject to the terms of the power) to an instrument made in exercise of a power of appointment. 25

New

(2) The perpetuity period applicable to any power of appointment may be so specified under this section either in the instrument creating the power of appointment or (subject to the terms of the power) in the instrument made in exercise of the power of appointment. 30

(3) In the case of a disposition in an instrument made in exercise of a special power of appointment, the period specified as aforesaid, shall run from the date of the creation of the power, and in all other cases shall run from the time when the instrument comes into operation. 35

New

(4) The specification in an instrument by which a disposition is made of a date certain on which that disposition shall vest shall, for the purposes of this section, be deemed to be a specification of a number of years equal to the number of years from the date of the taking effect of the instrument to the specified vesting date.

Cf. U.K. Act, s. 1; W.A. Act, s. 5

7. Presumptions and evidence as to future parenthood—

(1) This section shall apply whenever it becomes relevant to inquire whether any person is or at any relevant date was or will be capable of having a child, if—

(a) The inquiry is necessary for the purpose of determining the rights of any person to put an end to a trust or accumulation (*under any will or instrument*) or to accelerate the vesting in possession of any interest, whether (in the case of a will) the testator has died or dies before or after the commencement of this Act or (in the case of any other instrument) it was made before or after the commencement of this Act; or

(b) In any other case where this paragraph applies in accordance with section 4 of this Act, the inquiry is necessary for the purpose of determining whether any disposition is invalid as infringing the rule against perpetuities, or arises generally in the management or administration of any trust, estate, or fund, or is necessary for any purpose relating to the disposition, transmission, or devolution of property.

(2) Where this section applies, there shall be a presumption, rebuttable by sufficient evidence to the contrary tendered at the time at which the matter falls for decision, but not subsequently, that—

(a) A woman who has attained the age of fifty-five years is incapable of having a child and will not subsequently have a child; and

(b) A male or female who has not attained the age of twelve years is incapable of having a child while under that age.

(3) Where this section applies, evidence that a male or female of any age is or at a relevant date was or will be incapable of having a child shall be admissible in proceedings in order to establish that incapacity, and the Court may

accept any such evidence of a high degree of improbability of having a child as it thinks proper as establishing the incapacity.

Struck Out

(4) Where this section applies in relation to any disposition and any question is decided by the Supreme Court or any higher Court under this section by treating a person 5

New

(4) Where there is an instrument to which this subsection applies in accordance with section 4 of this Act and any question is decided by the Supreme Court or any higher Court under this section in respect of any disposition made by that instrument by treating a person 10

as incapable of having or unlikely to have a child at a particular time, then (whether or not he or she does so) he or she shall be so treated for the purpose of any question which may arise (*where this section applies*) in relation to the same disposition in any subsequent proceedings; and no action shall lie against a trustee by reason of his having distributed any property in reliance on any such decision of the Court: 15 20

Provided that, if a disposition that is not itself invalid as infringing the rule against perpetuities confers upon a child who is born to a parent at a time when any such Court has treated the parent as unable or unlikely to have a child, or upon the husband or wife of such a child, or upon the child's issue or the husband or wife of any of the child's issue, a right to any property, that right (including any right to follow or trace the property) shall not be affected by the decision of the Court. 25 30

Struck Out

Provided also that this subsection shall not apply to any decision of any Court made in accordance with paragraph (a) of subsection (1) of this section in respect of any disposition made by a will or instrument to which this subsection does not apply in accordance with section 4 of this Act. 35

(5) In the foregoing provisions of this section references to having a child are references to begetting or giving birth to a child; but (except as provided in subsection (6) of this section) those provisions, except subsection (3), shall also
5 apply in relation to the possibility that a person may at any time have or have had a child by adoption, legitimation, or other means:

Provided that, in relation to that possibility subsection (2) of this section shall be read as if the words “rebuttable by
10 sufficient evidence to the contrary tendered at the time at which the matter falls for decision but not subsequently” were omitted.

(6) The foregoing provisions of this section, so far as they would otherwise apply in relation to the possibility that a person will at any future time have a child by legitimation, shall
15 not apply in the case of any person if it is established that the person has had an illegitimate child who has not been adopted by some other person and that the child and both its parents are living, unless the Court is satisfied that there is
20 a high degree of improbability that the child will be legitimated.

Cf. U.K. Act, ss. 2, 14; W.A. Act, s. 6

8. Necessity to wait and see—(1) Where, apart from the provisions of this section, a disposition would be invalid as
25 infringing the rule against perpetuities, the disposition shall be treated, until such time (if any) as it becomes certain that the vesting must occur, if at all after the end of the perpetuity period (*or that the vesting cannot occur*), as if the disposition were not invalid as infringing the rule against perpetuities;
30 and its becoming so certain shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income, or otherwise.

(2) Where, apart from the said provisions, a disposition
35 consisting of the conferring of a general power of appointment would be invalid as infringing the rule against perpetuities, the disposition shall be treated, until such time (if any) as it becomes certain that the power will not be exercisable within the perpetuity period, as if the disposition
40 were not invalid as infringing the rule against perpetuities.

(3) Where, apart from the said provisions, a disposition consisting of the conferring of any power, option, or other

right would be invalid as infringing the rule against perpetuities, the disposition shall be treated as regards any exercise of the right within the perpetuity period as if it were not so invalid and, subject to the said provisions, shall be treated as invalid as infringing the rule against perpetuities only if and so far as the right is not fully exercised within that period. 5

(4) Where any of the foregoing provisions of this section applies to a disposition and the duration of the perpetuity period is not determined by virtue of section 6 of this Act, it shall be determined as follows: 10

(a) Where any persons falling within subsection (5) of this section are individuals in being and ascertainable at the commencement of the perpetuity period, the perpetuity period shall be the period expiring twenty-one years after the death of the survivor of them, and no regard shall be had to any other lives, but so that the lives of any description of persons falling within paragraph (b) or paragraph (c) of that subsection shall be disregarded if the number of persons of that description is such as to render it impracticable to ascertain the date of death of the survivor: 15 20

(b) When there are no lives under paragraph (a) of this subsection, the period shall be twenty-one years. 25

(5) The said persons shall be as follows:

(a) The person by whom the disposition was made:

(b) A person to whom or in whose favour the disposition was made, that is to say—

(i) In the case of a disposition to a class of persons, any member or potential member of the class: 30

(ii) In the case of an individual disposition to a person taking only on certain conditions being satisfied, any person as to whom only one or some of the conditions are satisfied and the remainder may in time be satisfied: 35

(iii) In the case of a disposition conferring a special power of appointment exercisable in favour of members of a class, any member or potential member of the class: 40

(iv) In the case of a disposition conferring a special power of appointment exercisable in favour of one person only, that person or, where the object

of the power is ascertainable only on certain conditions being satisfied, any person as to whom only one or some of the conditions are satisfied and the remainder may in time be satisfied:

- 5 (v) In the case of any power, option, or other right, the person on whom the right is conferred:
- (c) A person having a child or grandchild who falls within subparagraphs (i) to (iv) of paragraph (b) of this subsection, or any of whose children or grandchildren, if subsequently born, would by virtue of his or her descent fall within those subparagraphs:
- 10 (d) Any person on the failure or determination of whose prior interest the disposition is limited to take effect.

15 Cf. U.K. Act, s. 3; W.A. Act, s. 7

Cy-pres Modifications of Dispositions

9. Reduction of age and exclusion of class members to avoid remoteness—(1) Where a disposition is limited by reference to the attainment by any person or persons of a specified age exceeding twenty-one years, and it is apparent at the time the disposition is made or becomes apparent at a subsequent time—

(a) That the disposition would, apart from this section, be invalid as infringing the rule against perpetuities, but

25 (b) That it would not be so invalid if the specified age had been twenty-one years,—

the disposition shall be treated for all purposes as if, instead of being limited by reference to the age in fact specified, it had been limited by reference to the age nearest to the specified age which would, if specified instead, have prevented the disposition from being so invalid.

(2) Where in the case of any disposition different ages exceeding twenty-one years are specified in relation to different persons,—

35 (a) The reference in paragraph (b) of subsection (1) of this section to the specified age shall be construed as a reference to all the specified ages; and

(b) That subsection shall operate to reduce each such age so far as is necessary to save the disposition from being invalid as infringing the rule against perpetuities.

(3) Where it is apparent at the time when any disposition is made or becomes apparent at any subsequent time that, apart from this subsection, the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, prevents the foregoing provisions of this section from operating to save a disposition from being invalid as infringing the rule against perpetuities, those persons shall thenceforth be deemed for all the purposes of the disposition to be excluded from the class, and the said provisions shall thenceforth have effect accordingly. 5 10

(4) Where, in the case of a disposition to which subsection (3) of this section does not apply, it is apparent at the time the disposition is made or becomes apparent at a subsequent time that, apart from this subsection, the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of a class, would cause the disposition to be treated as invalid is infringing the rule against perpetuities, those persons shall, unless their exclusion would exhaust the class, thenceforth be deemed for all the purposes of the disposition to be excluded from the class. 15 20

(5) Where this section has effect in relation to a disposition to which section 8 of this Act applies, the operation of this section shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income, or otherwise. 25

(6) Section 25 of the Property Law Act 1952 is hereby consequentially repealed:

Provided that the repeal of that section shall not restrict the operation of subsection (2) of section 4 of this Act. 30

Cf. U.K. Act, s. 4

10. Cy-pres modification in certain other cases—(1) Subject to the provisions of this section, where it has become apparent that, apart from the provisions of this section, any 35

Struck Out

disposition (whether made before or after the commencement of this Act) would be invalid solely on the ground that the property that is disposed of would not become vested until too remote a time, the disposition shall be reformed so as to take effect within the limits permitted under the rule against perpetuities and to give effect to the general intentions originally governing the disposition where those general 40

Struck Out

intentions can be ascertained from the instrument governing the disposition or (where there is no such instrument) from the terms and the scheme of the disposition.

5

New

disposition (whether made before or after the commencement of this Act) would be invalid solely on the ground that it infringes the rule against perpetuities, and where the general intentions originally governing the disposition can be ascertained from the instrument governing the disposition or (where there is no such instrument) from the terms and scheme of the disposition, the disposition shall be reformed so as to give effect, if possible and as far as possible, to those general intentions within the limits permitted under the rule against perpetuities.

15

(2) No disposition of any property that was made before the commencement of this Act shall be so reformed—

- (a) If the disposition has been declared invalid before the commencement of this Act by any order or judgment made or given in any legal proceedings; or
- 20 (b) If any property comprised in the disposition has, before the commencement of this Act, been paid or transferred to, or applied for the benefit of, or set apart for, the persons entitled by reason of the invalidity of the disposition; or
- 25 (c) If the person who made the disposition of the property while living and of full capacity has, before the first day of January, nineteen hundred and sixty-seven, and whether before or after the commencement of this Act, elected in accordance with subsection (8) of this section to accept the property under a resulting trust in his favour; or
- 30 (d) So as to prejudice any person who has, before the commencement of this Act, reasonably so altered his position in reliance on the invalidity of the disposition that, in the opinion of the Supreme Court, having regard to all possible implications in respect of other persons, it is inequitable to reform the disposition wholly or in part.
- 35

- (3) Where it is possible that any disposition made after the commencement of this section would, apart from the provisions of this section, become invalid solely on the ground that *(the property that is disposed of would not become vested until too remote a time)* it infringes the rule against perpetuities, and where (if the disposition subsequently became invalid) it would have to be reformed in accordance with subsection (1) of this section, the disposition may be reformed under this section before that subsection applies to it, if—
- (a) The reformation would not prejudice any person who could possibly take under the disposition if it were not reformed and it proved to be valid; or
- (b) Every person who could possibly be prejudiced by the reformation consents to it.
- (4) In every case where the reformation of a disposition of any property is required or permitted under this section,—
- (a) If the disposition was made before the commencement of this Act, and it has become apparent that the person who made the disposition of the property has become entitled to it under a resulting trust, or that he or his personal representative will become so entitled to it,—
- (i) The reformation may be made by that person executing, before the first day of January, nineteen hundred and sixty-seven, a deed specifying such alterations to the disposition as are necessary to provide for its reformation in accordance with the provisions of this section; or
- (ii) The reformation may be made, on or after the last-mentioned date or before that date if the person has died or is for the time being of unsound mind, by the Supreme Court, by order specifying such alterations to the disposition as are necessary to provide for its reformation in accordance with the provisions of this section:
- (b) If paragraph (a) of this subsection does not apply to the disposition, the reformation may be made by the Supreme Court, by order specifying such alterations to the disposition as are necessary to provide for its reformation in accordance with the provisions of this section.

(5) Where a disposition made before the commencement of this Act is reformed under this section, in determining the validity of the reformed disposition, regard ~~(shall)~~ may be had to events and circumstances which have occurred or exist at
5 the date of the reformation.

Struck Out

(6) In any case where this section requires the reformation of any disposition, it shall be the duty of the trustees of property comprised in the disposition to take all reasonable
10 steps that may be necessary to secure the reformation of the disposition.

New

(6) In any case where the trustees of property comprised in any disposition have become aware that the disposition
15 requires to be reformed, it shall be their duty to take all reasonable steps that may be necessary to secure the reformation of the disposition.

(7) Where a disposition is reformed in accordance with this section,—

20 (a) The perpetuity period shall run from the date of the original disposition:

(b) Except as otherwise provided in this Act, the disposition as reformed shall be governed by the enactments and rules of law which would have applied
25 to it if the reformed disposition had been made at the time of the original one:

(c) Subject to the foregoing provisions of this section, the reformation shall be deemed to have had effect as from the making of the disposition; and all consequences (including revenue consequences) shall
30 follow as if the reformed disposition had been made at the time of and instead of the original one.

(8) For the purposes of this section, a person who is entitled to elect to accept any property under a resulting trust
35 may—

(a) Declare his intention to do so by deed; or

(b) Manifest his intention to do so by—

(i) Accepting a transfer or payment of the property or any part thereof from the trustees of the property; or
40

(ii) Otherwise dealing with the property or any part thereof as his own property.

(9) No election which is not so declared or manifested before the first day of January, nineteen hundred and sixty-seven, shall have any effect for the purposes of paragraph (c) of subsection (2) of this section.

(10) On the reformation of a disposition under this section 5
the perpetuity period in respect of that disposition (*shall not be extended under section 6 of this Act or otherwise*) may be specified under section 6 of this Act.

11. Restrictions on acceptance of resulting trust—(1) In the case of any disposition made before the commencement of 10
this Act which is capable of reformation under section 10 of this Act, where any person other than a donor of property that was given to the trustee upon trust has sold other property to that trustee, or has assisted that trustee (by loan, guarantee, or otherwise) to acquire other property, the 15
Supreme Court may direct that the right of any such donor to elect after the commencement of this Act to accept under a resulting trust any property that is subject to the trust governing the disposition shall be restricted to so much of that property as was given by that donor or fairly attributable to 20
his gift.

(2) Upon any such direction being given by the Supreme Court, any election (whether made before or after the time of the direction) shall be restricted to such property as is 25
specified in the direction.

(3) At the time of giving any such direction or at any subsequent time the Supreme Court may make an order under section 10 of this Act reforming the disposition in respect of so much of the property comprised in the disposition as was not given to the trustee by any donor or fairly attributable to 30
any such gift; and the provisions of section 10 of this Act shall apply to that part of the property as if the donor thereof were dead.

(4) An application to the Supreme Court under this section in respect of the property comprised in any disposition may 35
be made by the trustee of that property, or by any vendor of property to that trustee, or by any person who assisted that trustee (by loan, guarantee, or otherwise) to acquire that property, or by any person who may be prejudiced by an election to accept a resulting trust in respect of any such 40
property.

12. **Previous cy-pres resettlements**—In any case where, before the commencement of this Act, it has become apparent that any disposition would be (*void*) invalid solely on the ground that (*the property that is disposed of would not become vested until too remote a time*) it infringes the rule against perpetuity, or doubts have arisen as to whether any disposition might be (*void*) invalid solely on that ground, if within six years before the commencement of this Act the property has been resettled to carry into effect the general intentions originally governing the disposition as those general intentions appeared from the instrument governing the disposition or (where there was no such instrument) from the terms and scheme of the disposition, the provisions of paragraph (c) of subsection (7) of section 10 of this Act, so far as it relates to revenue consequences, shall apply to the resettlement as if it were a reformation of the disposition.

Miscellaneous Provisions Affecting Rule Against Perpetuities

13. **Unborn husband or wife**—The widow or widower of a person who is a life in being for the purpose of the rule against perpetuities shall be deemed to be a life in being for the purpose of—

- (a) A disposition in favour of that widow or widower; and
- (b) A disposition in favour of a charity which attains, or of a person who attains, or of a class the members of which attain, according to the terms of the disposition, a vested interest on or after the death of the survivor of the said person who is a life in being and that widow or widower, or on or after the death of that widow or widower, or on or after the happening of any contingency during her or his lifetime.

Cf. W.A. Act, s. 12; U.K. Act, s. 5

14. **Saving and acceleration of expectant interests**—A disposition shall not be treated as (*void for remoteness*) invalid as infringing the rule against perpetuities by reason only that the interest disposed of is ulterior to and dependent upon an interest under a disposition which is so (*void*) invalid, and the vesting of an interest shall not be prevented from being accelerated on the failure of a prior interest by reason only that the failure arises because of remoteness.

Cf. U.K. Act, s. 6; W.A. Act, s. 13

15. Rule of remorseless construction abolished—Where a Court is construing a will or other instrument, whether made before or after the commencement of this Act, and the will or instrument makes a disposition of any property, the Court
 5 may have regard to the fact that, while under one possible construction the disposition would or might be void as infringing the rule against perpetuities, under another possible construction it would or might be valid; and, in considering which of those constructions is to be preferred, the Court may
 10 take into account that the maker thereof would probably have intended the construction under which the disposition would be valid.

16. Administrative powers of trustees—(1) The rule against perpetuities shall not operate, and shall be deemed
 15 never to have operated, to invalidate a power conferred on trustees or other persons to sell, lease, exchange, or otherwise dispose of any property for valuable consideration, or to do any other act in the administration (as distinct from the distribution) of any property, and shall not prevent, and shall be
 20 deemed never to have prevented, the payment to trustees or other persons of reasonable remuneration for their services.

(2) Subsection (1) of this section shall not—

- (a) Render any trustee or other person liable for any acts
 25 done before the commencement of this Act for which the trustee or person would not have been liable if this Act had not been passed; or
 (b) Enable any trustee or person to recover any money distributed or paid under any trust, if he could not
 30 have recovered that money had that subsection not been enacted.

Cf. U.K. Act, s. 8

17. Options relating to property—(1) The rule against perpetuities shall not apply to a disposition consisting of the conferring of an option to acquire for valuable consideration
 35 an interest reversionary (whether directly or indirectly) on the term of a lease if—

- (a) The option is exercisable only by the lessee or its or his successors in title; and
 (b) It ceases to be exercisable at or before the expiration
 40 of one year following the determination of the lease.

(2) Subsection (1) of this section shall apply in relation to an agreement for a lease as it applies in relation to a lease, and the term “lessee” shall be construed accordingly.

(3) The rule against perpetuities shall not apply to a disposition consisting of the conferring of an option to acquire any property for valuable consideration, if the option is exercised within twenty-one years after the date on which the instrument conferring the option takes effect, or if—

- (a) The option is conferred by *(a will or other)* an instrument which provides for the settlement upon trust of assets comprising or including the property; and
- 10 (b) The option is exercised at or before the expiration of one year after the first point of time when—
- (i) In accordance with the settlement, all interests in remainder in the property that vest within the perpetuity period have vested and all prior interests in the property have terminated; and
- 15 (ii) The persons entitled in remainder to the property in accordance with the settlement have all attained the age of twenty-one years or sooner died.

(4) In the case of a disposition to which the foregoing provisions of this section do not apply and which consists of

20 the conferring of an option to acquire for valuable consideration any interest in land, the rule against perpetuities shall not apply, but that option shall become void on the expiry of twenty-one years from the date of its grant as between the original parties to that grant and all persons claiming through

25 them; and no remedy shall lie in contract or otherwise for giving effect to it or making restitution for its lack of effect.

Cf. U.K. Act, ss. 9, 10; W.A. Act, s. 14

18. Possibilities of reverter, conditions subsequent, exceptions, and reservations—(1) *(Subject to the provisions of section 8 of this Act,)* the rule against perpetuities as modified

30 by this Act shall apply—

- (a) To a possibility of reverter in land on the determination of a determinable fee simple; *(and so that)* in which case, if the fee simple does not determine within the
- 35 perpetuity period, it shall thereafter continue as a fee simple absolute:
- (b) To a possibility of a resulting trust on the determination of any other determinable interest in property; *(and so that)* in which case, if the prior interest created by
- 40 the trust does not determine within the perpetuity period, the interest it creates shall thereafter continue as an absolute interest:

(c) To a right of entry for condition broken the exercise of which may determine a fee simple subject to a condition subsequent, and to an equivalent right in the case of property other than land; *(and so that)* in which case, if the right of entry or other right is not exercised within the perpetuity period, the fee simple shall thereafter continue as an absolute interest, and any such other interest in property shall thereafter continue free from the condition. 5

(2) This section shall apply, whether the determinable or conditional disposition is charitable or not, except that the rule against perpetuities shall not apply to a gift over from one charity to another. 10

(3) Where a disposition is subject to any provision that causes an interest to which paragraph (a) or paragraph (b) of subsection (1) of this section applies to be determinable, or to any condition subsequent giving rise, on breach thereof, to a right of re-entry or an equivalent right in the case of property other than land, or to any exception or reservation, the disposition shall be treated for the purposes of this Act as including a separate disposition of any rights arising by virtue of the provision, condition subsequent, exception, or reservation. 15 20

Cf. U.K. Act, s. 12; W.A. Act, s. 15

19. Rule against perpetuities not to apply to superannuation funds—(1) The rule against perpetuities shall not apply and shall be deemed never to have applied to the trusts of any fund of which the main purpose or one of the main purposes is the provision of retiring allowances or pensions on retirement to persons employed in the undertaking or combination of undertakings in connection with which the fund is established, if the fund is a superannuation fund within the meaning of the Land and Income Tax Act 1954, or if the fund is such that the Commissioner of Inland Revenue allows deductions to be made under section 128 of that Act of the whole or any part of the amounts set aside or paid by the employer as or to the fund. 25 30 35

(2) Section 24 of the Property Law Act 1952 is hereby consequentially repealed.

Struck Out

20. **Rule against inalienability**—Nothing in this Act shall affect the operation of the rule of law rendering invalid as infringing the rule against perpetuities certain dispositions under which property is limited to be applied for purposes other than the benefit of any person or class of persons in cases where the property may be so applied after the end of the perpetuity period:

5
10 Provided that, if any such disposition is not otherwise invalid, the provisions of section 8 of this Act shall apply to it, and the property may be applied for the purposes during the perpetuity period but not thereafter.

New

20. **Rule against inalienability**—(1) Except as provided in subsection (2) of this section, nothing in this Act shall affect the operation of the rule of law rendering non-charitable purpose trusts void for remoteness in cases where the trust property may be applied for the purposes of the trusts after the end of the perpetuity period.

20 (2) If any such trust is not otherwise void, the provisions of section 8 of this Act shall apply to it, and the property subject to the trust may be applied for the purposes of the trust during the perpetuity period, but not thereafter.

Cf. U.K. Act, s. 15 (4)

25

Accumulation of Income

21. **Accumulation of income**—(1) Where property is settled or disposed of in such manner that the income thereof may or shall be accumulated wholly or in part, the power or direction to accumulate that income shall be valid if the disposition of the accumulated income is, or may be, valid, and not otherwise.

30
35 (2) Nothing in this section shall affect the power of any person or persons to terminate an accumulation that is for his or their benefit, or any jurisdiction or power of the Court to maintain or advance out of accumulations, or any powers of a trustee under the Trustee Act 1956 or under any other Act or law or under any instrument creating a trust or making a disposition.

(3) The following enactments are hereby repealed:
 (a) Sections 41 and 42 of the Property Law Act 1952;
 (b) Section 2 of the Property Law Amendment Act 1963.
 (4) The enactments repealed by subsection (3) of this section, and the corresponding provisions of any former enactment, shall be deemed, in connection with the law of New Zealand, never to have applied to any power to accumulate:

Provided that this subsection shall not—

- (a) Render any trustee or other person liable for any acts done before the commencement of this Act for which the trustee or person would not have been liable if this Act had not been passed; or
 (b) Enable any trustee or person to recover any money or other property distributed or paid under any trust, if he could not have recovered that money or property had this subsection not been passed.
 (5) Except as provided in subsection (4) of this section, this section shall have effect only as provided in section 4 of this Act.

Cf. W.A. Act, s. 17

Power to Apply to Court for Directions

22. Power to apply to Court for directions—Any person who is a trustee of or beneficially interested in or a donor or settlor of any property comprised in a disposition may apply to the Supreme Court for directions in any case where doubt or difficulty arises in respect of the application of any provision of this Act in respect of that disposition.