



LAW·COMMISSION

Report No 27

The Format of Legislation

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December 1993
Wellington, New Zealand

The Law Commission was established by the Law Commission Act 1985 to promote the systematic review, reform and development of the law of New Zealand. It is also to advise on ways in which the law can be made as understandable and accessible as practicable.

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20 December 1993

Dear Minister

I am pleased to submit to you Report No 27 of the Law Commission, *The Format of Legislation*.

In the Law Commission Act 1985 and in a subsequent broad Ministerial reference on legislation the Commission was given the task of advising on ways in which the law could be made as understandable and accessible as possible. In common with an increasing number of agencies, both in New Zealand and overseas, the Commission recognises that the physical appearance of legislation is an important—though not of course the only—factor affecting access to the law. This report recommends changes to the design and typography of legislation and presents a sample statute (the *Defamation Act 1992*) in the proposed new format.

The Commission has already published reports in the area of legislation, and this report belongs in that series. It includes our reports on Imperial Legislation (1987), the Statutory Publications Bill (1989), and A New Interpretation Act (1990). Work is also well advanced on a legislation manual for New Zealand, which will advise on process, structure and style, as well as providing forms for standard provisions. That manual will build on the report of the Legislation Advisory Committee, *Legislative Change: Guidelines on Process and Content* (revised ed, 1991). The recently tabled *Second Report of the Working Party on the Reorganisation of the Income Tax Act 1976* also includes relevant proposals.

We recommend the adoption of the proposed new format.

Yours sincerely

K J Keith
President

Hon Douglas Graham MP
Minister of Justice
Parliament House
WELLINGTON

*Typography may be defined
as the craft of rightly disposing printing material
in accordance with specific purpose;
of so arranging the letters, distributing the space and
controlling the type as to aid to the maximum
the reader's comprehension of the text.*

Stanley Morison

INTRODUCTION

1 One of the principal functions of the Law Commission under the Law Commission Act 1985 is to “advise the Minister of Justice on ways in which the law of New Zealand can be made as understandable and accessible as is practicable” (s 5(1)(d)). In doing so the Commission is to “have regard to the desirability of simplifying the expression and content of the law, as far as that is practicable” (s 5(2)). Those directions are also reflected in the broad reference on Legislation and its Interpretation received from the Minister of Justice. In order to improve access, the Commission recommends in this report changes to one aspect of legislation: its physical appearance arising from design and typography.

2 Good, functional typography and design are invisible. Good design allows readers to concentrate their energy on substance rather than be distracted by format. Good design can also facilitate the very drafting of legislation because it can make the task more logical. The nature of the message will of course influence the appearance of text: the design must be appropriate to the substance, and to the reader. But a bad design remains a bad design, even though it may be redeemed to some extent by familiarity.

3 In this sense legislation is like any other written matter—whether a novel, a newspaper or an advertisement. The way the matter appears on the printed page makes a great difference to its accessibility. Understanding of even the best drafted law may be hindered or helped by such factors as the typeface, type size, leading (the space between the lines of type), the length of line, the layout and ordering of provisions, the use of headings, the indentation of the text, the placing and content of notes in the text, and the use of aids such as

indexes, examples or flow charts. Even the size of the page and the feel, weight and tinting of the paper are important. Communication experts agree that a page which is well designed is not only more attractive but also aids understanding (see, for example, Charrow & Ehrhardt, *Clear and Effective Legal Writing* (Little, Brown & Co, Boston and Toronto, 1986), 178). As an approach to how to achieve this, the advice of one writer is instructive:

... the designer must know *what* is to be read, *why* it is to be read, *who* will read it, and *when* and *where* it will be read. ... To appraise the legibility of anything, therefore, we must know its purpose. (McLean, *The Thames and Hudson Manual of Typography* (Thames and Hudson, London, 1980), 42)

4 The Law Commission has concluded that improvements to the design of New Zealand legislation can help make it more accessible and more easily understood. Legislation is becoming increasingly complex and its volume is growing. That may be inevitable, given the nature of our society. At the same time the number of people making, administering, and, most important, seeking to understand the effect of legislation is growing.

5 Two issues arise in this context. First, the time devoted to such matters needs reducing. It must be beneficial if Members of Parliament spend more time dealing with policy questions in new legislation than trying to ascertain the meaning of the proposals put before them; if administrators can apply the law more efficiently; if lawyers can more readily find the law and so advise their clients; and if the public can more easily determine the rules which govern their personal or business transactions. The democratic, social and economic benefits of clearer, more accessible legislation and proposed legislation are obvious. In some contexts the financial savings have been quantified: they can be significant, and they continue to grow. For example, between 1982 and 1990 the British Government is said to have saved some £15 million by redesigning some of its forms (see Canadian Bar Association and Canadian Bankers' Association Joint Committee, *The Decline and Fall of Gobbledegook: Report on Plain Language Documentation* (Ottawa, 1990), 14).

6 Second is the right of people to know how the law affects them:

It is strange that free societies should thus arrive at a situation where their members are governed from cradle to grave by texts they cannot comprehend. (Bennion, *Statute Law* (2nd ed, Oyez Longman, London, 1983), 8)

The Law Commission, in its report on *Legislation and its Interpretation: Statutory Publications Bill* (NZLC R11, 1989), discussed the publication and physical availability of legislation. The Commission emphasised the importance of making the law available to those who are governed by it and who must comply with it. "We cannot have a moral obligation to obey a law which is actually withheld or kept secret from us." (Para 7) But availability is not sufficient: those who are expected to know, obey, apply and advise on the law must be helped so far as is practicable to understand it.

7 That understanding can be enhanced in a number of ways, with improvements to both the substance and the appearance of the text. This report considers the latter, and proposes a new format for enactments. As well, the Law Commission continues to support clearer and more straightforward legislative drafting: shorter sentences, use of the active voice, use of everyday language (see *A New Interpretation Act: To Avoid "Prolixity and Tautology"* (1990) NZLC R17, para 229). It recognises the efforts of Parliamentary Counsel in this direction, often under difficult conditions. Clearer drafting need not be at the expense of precision and certainty: indeed, a plainer drafting style may reveal anomalies. That has been the Commission's experience and also the experience of many others (see, for example, Law Reform Commission of Victoria Report No 9, *Plain English and the Law* (1987), 46-49; 56-57).

8 Clearer drafting is of course helped by the clear statement of the relevant policies and instructions to those drafting legislation, a matter emphasised by the Legislation Advisory Committee in its report *Legislative Change: Guidelines on Process and Content* (August 1987; revised edition, December 1991). That report sets out standards to be met in the preparation of Bills. Ministers in proposing Bills to Cabinet are to report on compliance with those standards (*Cabinet Office Manual* (1991), ch 5 and Appendices 1 and 2).

9 Standard rules for drafting common provisions not only speed the drafting process and reduce the chance that issues will fail to be

addressed, but make legislation easier to use. Certain structures become familiar; readers know where in an Act particular provisions are likely to be found; and the meaning and application of standard provisions will become more commonly known. Time is saved and dispute is less likely. These matters are being considered by the Law Commission in its preparation of the *Legislation Manual for New Zealand*.

FORMAT AND DESIGN

10 The main subject of the report, however, is the question of format and design, although there is inevitably some overlap with drafting matters. The utility of design and typography as tools to aid understanding has already been mentioned. That is as true of legislation as it is of any other form of communication. The text must be laid out to meet the needs of the reader.

11 The users of legislation seek information. They need specifically to *be able to locate particular information within the text*. Good organisation of the whole text is therefore important, requiring the headings to the Parts and other divisions to be conspicuous and logically ordered. Setting out sections so that the divisions between section, subsection, paragraph and subparagraph are clear allows the eye to pick out each level by simply glancing at the page. Notes, relevant dates, tables of contents, flow charts, indexes, and running heads may also help the reader find the provisions sought. The aim of the Commission throughout has been to consider the users. Aesthetics were a secondary consideration, but better design results in a more attractive page as well.

THE PROCESS OF IMPROVEMENT

12 A comparison of early New Zealand statutes with those of today shows that, over time, substantial change has been effected. The New Zealand “look” in statutes dates back to the 1908 Consolidated Statutes; but since then improvements have been incremental: some unnecessary punctuation gradually omitted, arabic numbers used rather than words, the enacting clause simplified. (Chan has usefully described this process in “Changes in form of New Zealand statutes” (1975–1977) 8 VUWLR 318.) These changes, as far as they go, have generally helped make the law more accessible. But the time has come to consider whether or not more substantial changes are needed. The

Law Commission believes that they are. That is also the view of many who have commented on the formats developed in its earlier reports.

13 The Law Commission has been experimenting for some time with the design of the draft Acts contained in its reports. For the purposes of this report it engaged consultants with experience in the field of design and typography to advise on how that earlier work could be extended and improved; and it acknowledges here with thanks the work of Daphne Brasell Associates and Margaret Cochran.

14 The Commission has drawn ideas from a broad range of other sources: aspects of current statute design in several jurisdictions; legislation produced by commercial publishers; the writing of specialists and the growing literature on plain statutory drafting. It has consulted and received comments on its draft proposals from a variety of those who prepare and use legislation, including lawyers, politicians, groups who regularly make submissions on Bills, publishers, and others with an interest in the legislative process. The responses have been almost without exception supportive and often enthusiastic. For example, one respondent commented that

Reading the proposed designs was an odd experience: it was as though they were very familiar, but it was not until I compared them to the original that I realised the proposed design was only what I expect of modern communications

Others noted that the page was more inviting, and that it was easier to locate information. Even those responses which disagreed on some details supported the aims and considered the new format an improvement on that presently used. The Commission incorporated many valuable suggestions but it notes that a final decision on the many matters where there are two (or more) equally valid ways to proceed can only be made on the basis of subjective preference. The Clerk of the House pointed out in his response that it is important that there be a consistent style. However, it will be sensible in some cases that consistency gives way to practicality, particularly in the case of schedules to Acts, which vary widely in content. It may be appropriate here to paraphrase George Orwell's famous dictum from his essay "Politics and the English Language": "Break any of these rules sooner than [do] anything outright barbarous."

COSTS AND BENEFITS

15 Some of the obvious benefits of better designed legislation have already been mentioned in paras 5–6. Most of these benefits are of course of a continuing character, and of advantage to all subsequent users. But the costs are mainly one-off.

16 The Commission had some initial concern that the proposed changes might raise the cost of legislation: first, because the proposals might increase the length (and so the printing cost) of enactments, and, secondly, because preparation would be more time-consuming. There is some foundation to the first concern, since the sample prepared for this report shows a small increase in length from the current format—32 pages as compared with 30. But the benefits would outweigh any modest increase in printing costs, which in this particular sample amounts to approximately 7 percent. The inclusion of more notes to sections, for instance, or allowing for more white space on the page greatly enhance both the usefulness and the accessibility of the proposed format.

17 The increase in length is kept to a minimum because of the size of the typeface used in the main text, which allows more words to appear in each line—but not at the expense of clarity. The type size is smaller than that presently used in the statutes, but the same as that in the statutory regulations series and the fourth edition of *Halsbury's Statutes*. These publications (and many textbooks also) attest to the fact that the smaller type size is acceptable in a wide range of uses. And the samples conform to the results of empirical research on line width, leading and type size for optimal legibility (see Tinker, *Legibility of Print* (Iowa State University, Ames, 1963)). Some of the other proposed drafting changes are also helpful in minimising length. For example, omitting “of this section”, “of this Part” or “of this Act”, where the reference is unnecessary (as it nearly always is), gives an estimated saving of one line on every page or about two pages in every hundred.

18 In relation to the second matter, the preparation of legislation, any extra costs should be more than offset by the improvements. Most of the proposals merely require changes to present typesetting practice; that is, of the codes which set up the specific format. After a transitional period the typesetter's job will not alter. GP Print Ltd—

the former Government Printing Office which has continued as a private firm to supply legislation typesetting and printing services to Parliament—has confirmed that any increase in the cost of printing legislation would relate only to a possible increase in the number of pages, if the new format were adopted. Some of the proposed changes would affect the drafting of enactments, but the difference in preparation time appears to be either minimal—such as between drafting a purpose section and a long title—or even reduced—such as where the references to “this Act” or “this section” are omitted. Others are more time-consuming: for example, the proposals relating to notes to sections. But the benefits both to the reader and the drafter (to whom the notes are useful as a reference point) outweigh this. And if extra information of the kind mentioned in paras 25–29 is to be included at all, the best time to do so is when the information is freshly available as a result of the policy formation and drafting process. Once again the costs are one-off, the savings cumulative.

A NEW FORMAT

Choice of sample statute

19 The substance of each statute dictates its form to a large extent; and although most statutes may contain standard features—such as a long title and an interpretation provision—they differ markedly from each other. The consequence is that it is not possible to find a sample statute for redesign purposes which covers all eventualities. For this reason, the statute which has been selected to illustrate the proposed format in Appendix A, the *Defamation Act 1992*, must be considered as indicative only. This proviso applies particularly to the schedules, amongst which there tends to be the widest variation from statute to statute.

20 The *Defamation Act 1992* provides a particularly suitable basis for a sample statute in the redesigned format.

- The Commission considered it desirable to reproduce a whole Act, for two reasons: to facilitate an accurate cost comparison with the current format, and to create maximum impact and authoritativeness. The *Defamation Act 1992* is of modest length (30 pages) and yet it contains most of the features which require illustration in a redesigned

format. These include multiple Parts; schedules; cross headings; an extensive interpretation section; complex provisions divided into paragraphs and subparagraphs; and references to origins which can be incorporated into notes.

- It is relatively unamended, which means that it is uncomplicated by matters which it is not appropriate to address in this report.
- It is drafted in a contemporary style, using gender-neutral language. This means that there will be minimal incompatibility between language and format in the redesigned version.

The two formats compared

21 The Commission proposes that the new format should be used in general for all legislation and all parts of it. In particular, Acts (including schedules) and subordinate legislation should be laid out in the same way. Uniformity and consistency aid understanding. The traditional justification for the different styles—that the material in schedules and regulations is of less significance than the provisions in the body of an Act—does not appear to be valid. In practical terms, the rules and procedures in those schedules and regulations may have greater day-to-day application than other provisions in the body of the Act. A new format for schedules can be seen at the end of Appendix A. In some contexts a clear distinction between important and less important material can be marked by different type sizes: for example, in the notes to sections.

22 Some small changes have been made to the language of the enactments, but these are limited to the enacting formula and the substitution of a purpose provision for the short title, as well as deletion of unnecessary references to “of this Act” and “of this section”. No attempt has been made to substantially restructure or redraft the Act, something which is outside the scope of this report.

23 Appendix B features selected pages from the present and proposed formats, set out side by side. Most of the changes proposed can be seen and appreciated simply by comparing them. Typeface, layout, changes in the position of certain information: such alterations need little or no explanation. Generally, information within legislation is placed where it is most helpful and where it will most easily be seen.

However, the following paragraphs (24–37) note all the changes, and explain them if it is considered necessary.

Typeface

24 The Law Commission proposes a change in typeface from the Baskerville presently used in New Zealand legislation to a Bembo typeface. Because it is a relatively condensed face Bembo makes efficient use of space. Its long ascenders (those parts of a letter which rise above the line, as in *b* and *d*) ensure that it is legible and pleasing to the eye even with minimum leading. Baskerville's wide characters take up more space and require a correspondingly greater number of pages. In the current format its setting is overly large and, perhaps to save space, insufficiently leaded: the ascenders and descenders (those parts of a letter which fall below the line, as in *p* and *q*) often overlap, and this is confusing to the reader.

Title and purpose section

25 The long title has been omitted entirely on the basis that it no longer serves any useful function. Acts are invariably referred to not by their long title, but by their short title, and the remaining function of the long title appears to be to explain the general purposes of the Act.

26 The Law Commission repeats the recommendations made in NZLC R17, para 229, namely that the long title should be omitted and the short title used (as it is in practice) to identify Acts. The short title should also be included in the enacting formula. And to achieve the “purpose” function, the Commission proposes that principal Acts should include a separate purpose section as the first provision in the Act (see Appendix A, s 1). It has followed this practice in the draft Acts included in its own reports, building on developing experience in existing legislation (see *Official Information Act* 1982 s 4; *Sale of Liquor Act* 1989 s 4; *Ozone Layer Protection Act* 1990 s 4; *Historic Places Act* 1993 s 4).

27 Purpose provisions will not be needed in all Acts. In particular, amending Acts might not generally include purpose sections, although in some instances they can be helpful, say in indicating a set of related changes to a number of Acts or a major change in a principal statute. Examples are the *Commerce Law Reform Bill* 1989, which might more usefully have been passed as a single Act instead of being

split into three separate enactments; the *Abolition of the Death Penalty Act 1989*; and the *Homosexual Law Reform Act 1986*. The guiding principle is that a purpose section should be included only if it will be genuinely helpful. It should not be a “manifesto”, but should facilitate parliamentary debate and add something to the body of the Act.

Definitions section

28 Most interpretation sections consist exclusively of a series of definitions, and for this reason the new format includes a specific definitions section. True interpretation provisions would, if necessary, be included in a separate section headed “Interpretation”. In general, the definitions should be collected in one section. However, if a defined word or phrase is confined to one section, then the definition should be included in that section; and, if appropriate, a footnote to the principal definitions section could refer the reader to sections which feature their own definitions. The location of the definitions section will vary, depending on the content and the extent of the Act.

29 In the proposed new definitions section itself, each word defined is highlighted, not by an initial capital and by being enclosed in inverted commas, but by being printed in bold type. Each definition is clearly separated from the others by increasing the space between the lines.

Notes to sections

30 It is an accepted practice that notes may follow each section of an Act. Brief notes of the Act’s legislative history generally appear in the original Bill and are retained in every printing of the Act. The Compiler of Statutes adds further notes to Acts included in the volumes of reprinted statutes. Generally, these notes explain any amendment to, repeal of, or substitution of, the section; but often other useful information is included. For example, the reprinted *Commissions of Inquiry Act 1908* includes after s 2 a three-page note of enactments establishing bodies with powers of Commissions of Inquiry; and the *Dangerous Goods Act 1974* notes after s 1 that the Act is administered by the Department of Labour (this note derives from the provision actually in the former Labour Department Act) and also refers the reader to ss 2 and 31(c)(i) of the *Environment Act 1986* regarding consents for environmental purposes. The Commission has proposed, however, that notes about the “administration” of Acts

should in general be discarded, because they can soon become out-dated and may be misleading (see NZLC R17, para 96). That information can be provided in a more up-to-date and convenient way in departmental publications (such as annual reports), the Official Year-book (as at times in the past) and in a notice by the Prime Minister (as in Australia and recommended by the Legislation Advisory Committee in its 1989 Report on *Departmental Statutes* (see para 58 and Appendix 3)).

31 A note has also been added to sections in the sample statute in Appendix A, referring the reader to the words used in it which are defined elsewhere in the Act or in the *Acts Interpretation Act 1924*. That seems the least obtrusive way of alerting the reader to the fact that some words are specifically defined. Even if that practice increases the drafting time, it should help drafters. Consider the practice of beginning definition provisions with the words “In this Act, unless the context otherwise requires . . .”. A drafter going through a draft Bill before introduction to note the defined words in each clause (a process facilitated by the search functions of new technology) will be able to check whether the word is used anywhere in the draft in a sense different from its definition. If it is, the drafter can change the word or make other appropriate adjustments. In either case, the effect will be an increase in certainty for those using the Act.

32 The sample statute also features internal cross-references, which refer the reader in this case from defences and remedies to procedure, and vice versa. But the potential for notes is even greater. While the text of the Act should certainly not be lost in a rash of textual aids, if a note is helpful there is no reason why it should not appear in an Act from its inception.

33 Cross-references to other Acts, to cases, or to reports of law reform or other relevant bodies on which legislation is based (possibly presented as a table) might all be useful. And sometimes material from the explanatory notes which usually accompany Bills might usefully be included in notes to the Act. Such material is of course commonly included in commercial publications of legislation and was included in *The Public Acts of New Zealand (Reprint) 1908–1931*. The Commission therefore agrees with the view of four members of the Renton Committee that “users of the Act should also have the opportunity of seeing whether such explanatory notes would be of assistance

to them” (The Renton Committee Report, *The Preparation of Legislation*, Cmnd 6053 (HMSO, 1975), note by Sir Basil Engholm, Mr Peter Henderson, Mr Kenneth Mackenzie and Sir Patrick Macrory, 159). Certainly, even if this practice were not adopted, explanatory memoranda could be expanded and made more useful (see further para 35).

34 The objection that the practice of including notes to clauses would adversely affect the legislative process by lengthening debate is not borne out by the experience with the explanatory notes to Bills, which have long been available to Members of Parliament.

35 In addition, the proposed practice would not have any effect on the interpretation of statutes. Whether or not extra material appears on the page is not the issue: the notes printed in the reprinted statutes published under the authority of the Government of New Zealand do not appear to have caused difficulty. Nor do the notes included in regulations: each finishes with an explanatory note which is stated to be “not part of the regulations, but is intended to indicate their general effect”. What is important is the significance (if any) to be given to such material, whether it appears in the printed text of the Act or not. And that is a matter for the courts, which will no doubt discount material which is not useful, as they do already.

Schedules

36 The information presented in schedules can be of equal or even greater importance to the user than that in the body of the Act. The schedules should therefore generally be printed in the same type size, with similar highlighting. Because of the great variation in the substance of schedules, the following comments on the changes brought about by the new format are restricted to those in the sample statute in Appendix A:

- Part 3 of Schedule 1 (*Interpretation*) has become *Definitions*, to be consistent with s 2.
- In Schedule 2, which lists consequential amendments, the information has been streamlined so that the essential elements are easier to find. Thus it is reduced to the name of the Act, its number, the relevant provisions, and a statement of the changes effected, with the nature of the change summarised in bold type (**Repeal**, **Delete**, **Substitute**).

- Schedule 3, which lists repeals, is likewise reduced to the name of the Act, its number, and the provision(s), Part(s) or schedule(s) repealed.

Miscellaneous changes

37 The following is a list of changes which require minimal or no discussion:

- the number, year, and dates of assent and commencement are clearly shown on the title page of the Act directly beneath a more prominent title;
- the contents pages are headed as “Contents” in conformity with ordinary usage, and not “Analysis”; but they continue to appear in double-column format because the proposed changes in typography provide a sufficient increase in clarity;
- the body of the Act begins with a prominent enacting provision;
- a Preliminary Part has been created—comprising preliminary provisions such as purpose, definitions and application—for the reason that preliminary provisions are not outside the Act and should be included in a numbered Part;
- the section headings are raised above the section text to make them more conspicuous;
- section numbers and Part headings have been added to the running head at the top of the page to make it easier to find the relevant section or Part;
- references to other enactments are italicised so that they stand out in the text;
- the punctuation has been modified in order to make it more consistent with ordinary usage: for example, each definition in the definitions section is concluded by a semi-colon, rather than a colon; and in paragraphed sections dashes are omitted where a line break performs the same function of separating the paragraphs and subparagraphs;
- as recommended in NZLC R17, para 115, a brief summary of the Act’s legislative history appears at the very end: it includes dates and references to *Hansard* as well as to any relevant law reform publications, and could also refer, if necessary, to an Act’s origin in a treaty.

OTHER LEGISLATIVE DOCUMENTS

Amending Acts

38 The structure of amending Acts is not directly addressed in this report, but some brief suggestions follow. The amending provisions could be removed from the main body of the Act and set out in tabular form in a schedule to the Act. Placing the amendments in schedules allows more direct instructions to be given than is appropriate in the body of an Act. The body of the Act would then contain only a purpose provision, commencement and transitional provisions, and the amending provision which simply provides that the principal Act is amended as set out in the schedule. This format seems neater, clearer and more economical than the present practice. A variety of ideas from Canadian and Australian legislation could also be adopted. For example, if several enactments are to be amended, each Act might sometimes be dealt with in a different schedule, or a list of the affected enactments could be set out in the table of contents. In other cases amendments to several Acts but relating to a single topic might usefully be included in a single schedule or provision. (See Appendix C, p 69, for an example taken from a Law Commission publication.)

39 A related matter is the use of more direct standard formulas for inserting or deleting words, or making other amendments. The Commission notes that the standard formulas must be compatible with any requirements for computerised annotation of an electronic database of New Zealand enactments.

Bills

40 Some of the Commission's recommendations will also require changes to Bills. They should be printed in the Bembo typeface and set out in the new format. But, in general, those existing features peculiar to Bills work very well as aids during the legislative process and should remain. Such features are the much larger margin (because Bills are printed on an A4 page rather than the 240 × 150 mm page size used for Acts); the numbering of lines; and printing references to other provisions in bold type. Certainly, the practice adopted of marking changes in the text, when the Bill is reported back from Select Committee or amended in the Committee of the Whole, is excellent (and was so considered by the Victorian Law Reform Commission in its report, No 33, *Access to the Law: the structure and format of*

legislation (May 1990), 14). The changes during the passage of a Bill to its table of contents should also be indicated. Some Bills as reported back are accompanied by written reports explaining the amendments. Amendments introduced by way of Supplementary Order Paper also usually have explanatory notes. It would be very desirable if these practices applied generally.

41 Other improvements can be made, notably in clarifying the history of a Bill and identifying which stage it is at in the legislative process. For example, dates of introduction as well as of reporting back and of committee consideration should be prominently shown; and it should be made clear whether the copy is a first or second reading copy. The present practice of giving the Bill number, followed by a figure and without a date, is not very clear, particularly to those unfamiliar with the material.

42 Explanatory notes (to return to the discussion in para 33) could be made more useful than at present. Many notes now do no more than paraphrase the Bill's clauses rather than explain their purpose and effect. If explanatory notes appeared after (or alongside) the clauses—as in some New South Wales Bills, reports of the English and Scottish Law Commissions, and the Commission's own reports—they would be easier to use. Mere paraphrases would be less likely to feature.

OTHER AIDS TO UNDERSTANDING

43 The use of devices to aid comprehension can be taken further than the changes recommended in this report. Other steps which would be useful in particular Acts include the following (see also Appendix C):

- The construction of flow charts. These are particularly effective in explaining complicated procedural matters; in showing the interrelationships between different elements in a statute; in answering specific questions, especially those which relate to entitlements and liabilities; in reducing the amount of information which a user must remember at any one time; and in giving a quick overview of a statute. (See Bullôt, "Legislation: Back to the Drawing Board!" (1993) 7 AULR 330, 337–341.)

- The use of formulas, pictures, maps or diagrams (instead of words) if that is the most straightforward way to explain a concept. This is occurring to some extent already: consider the formulas used for calculations in tax Acts; the symbols which are illustrated in the *New Zealand 1990 Commission Act 1988*, First Schedule, and the Schedule to the *Commonwealth Games Symbol Protection Act 1974*; and the (colour) representation of the New Zealand flag in the *Flags, Emblems, and Names Protection Act 1981*, First Schedule. A great deal more use could be made of such devices. One example of a failure to do so is the Schedule to the *Auckland Harbour Edge Bill* introduced in 1989: it describes in words part of the city of Auckland, but it would be more helpful to refer the reader as well to a map.
- Examples explaining the operation of the Act's provisions (pioneered by Sir James Fitzjames Stephen in his *Indian Evidence Act 1872*; see also the *Consumer Credit Act 1974* (UK) Schedule 2 and the *Human Rights Commission Act 1977* (NZ) s 15).
- A more direct statement of penalties than in the present substantive provisions. For example, if a fine is a penalty for an offence the provision creating the offence might finish with the words "Maximum penalty: \$X". The *Summary Proceedings Act 1957* could be amended to provide that this form of words indicates the maximum fine for anyone convicted of the offence. This form is used in some Australian jurisdictions and has several advantages: it stands out more clearly on the page than a substantive provision, is much simpler to draft, and facilitates reviews of penalties. It may also encourage more direct drafting of the provisions *creating* offences.
- Indexes to long or complicated statutes (see, for example, New South Wales legislation).

RECOMMENDATION

44 The Law Commission recommends that its proposals for the format and design of legislation, as discussed in this report and set out in Appendices A and B, be adopted as the format for legislation in New Zealand.

APPENDIX A

New Act

Defamation Act 1992

(new format)



DEFAMATION ACT 1992

Public Act 105 of 1992
Royal assent: 26 November 1992
Comes into force: 1 February 1993

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The Parliament of New Zealand enacts the Defamation Act 1992

PART 1 PRELIMINARY

1 Purpose

The purpose of this Act is to amend the law relating to defamation and other malicious falsehoods.

1A Commencement

This Act comes into force on 1 February 1993.

2 Definitions

- (1) In this Act, unless the context otherwise requires,

broadcaster has the meaning given to it by section 2 of the *Broadcasting Act 1989*;

defamation includes libel and slander;

judge means,

- (a) in the case of any proceedings before the High Court, a judge of that court, and
- (b) in the case of any proceedings before a District Court, a judge of that court;

news medium means a medium for the dissemination, to the public or to a section of the public, of news, observations on news, or advertisements;

newspaper means a paper

- (a) containing news or observations on news, or
 - (b) consisting wholly or mainly of advertisements
- that is published, in New Zealand or elsewhere, periodically at intervals not exceeding 3 months;

working day means any day of the week other than

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
- (b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

- (2) The provisions of Schedule 1, Part 3 shall also have effect for the purposes of the interpretation of that schedule.

Definitions: **District Court, High Court, month, New Zealand, Acts Interpretation Act 1924 s 4**

3 Application

- (1) This Act binds the Crown.
- (2) This Act applies to proceedings commenced after this Act comes into force, whenever the cause of action arose.
- (3) This Act does not apply to proceedings commenced before this Act comes into force.

Origin: 1954/46 ss 3, 22A; 1958/63 s 2

PART 2 CAUSES OF ACTION

4 Defamation actionable without proof of special damage

In proceedings for defamation, it is not necessary to allege or prove special damage.

Definitions: **defamation**, s 2

Origin: 1954/46 s 4(1)

5 Malicious falsehood actionable without proof of special damage

In proceedings for slander of title, slander of goods, or other malicious falsehood, it is not necessary to allege or prove special damage if the publication of the matter that is the subject of the proceedings is likely to cause pecuniary loss to the plaintiff.

Origin: 1954/46 s 5(1)

6 Proceedings for defamation brought by body corporate

Proceedings for defamation brought by a body corporate shall fail unless the body corporate alleges and proves that the publication of the matter that is the subject of the proceedings

- (a) has caused pecuniary loss, or
 - (b) is likely to cause pecuniary loss
- to that body corporate.

Definitions: **defamation**, s 2

7 Single publication to constitute one cause of action

Proceedings for defamation based on a single publication constitute one cause of action, no matter how many imputations the published matter contains.

Definitions: **defamation**, s 2

PART 3 DEFENCES

Truth

8 Truth

- (1) In proceedings for defamation, the defence known before the commencement of this Act as the defence of justification shall, after the commencement, be known as the defence of truth.
- (2) In proceedings for defamation based on only some of the matter contained in a publication, the defendant may allege and prove any facts contained in the whole of the publication.
- (3) In proceedings for defamation, a defence of truth shall succeed if
 - (a) the defendant proves that the imputations contained in the matter that is the subject of the proceedings were true, or not materially different from the truth, or
 - (b) where the proceedings are based on all or any of the matter contained in a publication, the defendant proves that the publication

taken as a whole was in substance true, or was in substance not materially different from the truth.

Definitions: **defamation**, s 2; **commencement**, *Acts Interpretation Act 1924* s 4

For procedure, see ss 38, 40

Origin: 1954/46 s 7

Honest Opinion

9 Honest opinion

In proceedings for defamation, the defence known before the commencement of this Act as the defence of fair comment shall, after the commencement, be known as the defence of honest opinion.

Definitions: **defamation**, s 2; **commencement**, *Acts Interpretation Act 1924* s 4

10 Opinion must be genuine

- (1) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion by a defendant who is the author of the matter containing the opinion shall fail unless the defendant proves that the opinion expressed was the defendant's genuine opinion.
- (2) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion by a defendant who is not the author of the matter containing the opinion shall fail unless,
 - (a) where the author of the matter containing the opinion was, at the time of the publication of that matter, an employee or agent of the defendant, the defendant proves that
 - (i) the opinion, in its context and in the circumstances of the publication of the matter that is the subject of the proceedings, did not purport to be the opinion of the defendant, and
 - (ii) the defendant believed that the opinion was the genuine opinion of the author of the matter containing the opinion;
 - (b) where the author of the matter containing the opinion was not an employee or agent of the defendant at the time of the publication of that matter, the defendant proves that
 - (i) the opinion, in its context and in the circumstances of the publication of the matter that is the subject of the proceedings, did not purport to be the opinion of the defendant or of any employee or agent of the defendant, and
 - (ii) the defendant had no reasonable cause to believe that the opinion was not the genuine opinion of the author of the matter containing the opinion.

- (3) A defence of honest opinion shall not fail because the defendant was motivated by malice.

Definitions: **defamation**, s 2

11 Defendant not required to prove truth of every statement of fact

In proceedings for defamation in respect of matter that consists partly of statements of fact and partly of statements of opinion, a defence of honest opinion shall not fail merely because the defendant does not prove the truth of every statement of fact if the opinion is shown to be genuine opinion having regard to

- (a) those facts (being facts that are alleged or referred to in the publication containing the matter that is the subject of the proceedings) that are proved to be true, or not materially different from the truth, or
- (b) any other facts that were generally known at the time of the publication and are proved to be true.

Definitions: **defamation**, s 2

Origin: 1954/46 s 8

12 Honest opinion where corrupt motive attributed to plaintiff

In any proceedings for defamation in which the defendant relies on a defence of honest opinion, the fact that the matter that is the subject of the proceedings attributes a dishonourable, corrupt, or base motive to the plaintiff does not require the defendant to prove anything that the defendant would not be required to prove if the matter did not attribute any such motive.

Definitions: **defamation**, s 2

For procedure, see ss 39, 40

Absolute Privilege

13 Absolute privilege in relation to Parliamentary proceedings

- (1) Proceedings in the House of Representatives are protected by absolute privilege.
- (2) Any live broadcast, by any broadcaster, of proceedings in the House of Representatives is protected by absolute privilege.
- (3) The following publications are protected by absolute privilege:
 - (a) the publication, by or under the authority of the House of Representatives, of any document;
 - (b) the publication, to the House of Representatives, of any document,

either by presenting the document to, or laying the document before, the House of Representatives;

- (c) the publication, by or under the authority of the House of Representatives, or under the authority of any enactment, of an official or authorised record of the proceedings of the House of Representatives;
- (d) the publication of a correct copy of any document or record to which paragraph (a) or paragraph (c) applies.

Definitions: **broadcaster**, s 2

Origin: 1954/46 ss 18, 19

14 Absolute privilege in relation to judicial proceedings and other legal matters

- (1) Subject to any provision to the contrary in any other enactment, in any proceedings before
 - (a) a tribunal or authority that is established by or pursuant to any enactment and that has power to compel the attendance of witnesses, or
 - (b) a tribunal or authority that has a duty to act judicially, anything said, written, or done in those proceedings by a member of the tribunal or authority, or by a party, representative, or witness, is protected by absolute privilege.
- (2) A communication between any person (in this subsection referred to as the **client**) and a barrister or a solicitor for the purpose of enabling the client to seek or obtain legal advice, and a communication between that solicitor and any barrister for the purpose of enabling legal advice to be provided to the client, are protected by absolute privilege.

Definitions: **person**, **written**, *Acts Interpretation Act 1924* s 4

15 Other rules of law relating to absolute privilege not affected

Nothing in section 13 or section 14 limits any other rule of law that relates to absolute privilege.

Qualified Privilege

16 Qualified privilege

- (1) Subject to sections 17 and 19, the matters specified in Schedule 1, Part 1 are protected by qualified privilege.
- (2) Subject to sections 17 to 19, the publication of a report or other matter specified in Schedule 1, Part 2, is protected by qualified privilege.

- (3) Nothing in this section limits any other rule of law relating to qualified privilege.

Origin: 1954/46 s 17(1); 1974/82 s 2

17 Qualified privilege not to apply where publication prohibited

Nothing in subsection (1) or subsection (2) of section 16 protects the publication of any report or other matter where the publication of that report or matter is prohibited by law, or by a lawful order, in New Zealand or in a territory in which the subject-matter of the report or matter arose.

Definitions: **New Zealand**, *Acts Interpretation Act 1924* s 4

Origin: 1954/46 s 17(3)(a)

18 Restrictions on qualified privilege in relation to Schedule 1, Part 2

- (1) Nothing in section 16(2) protects the publication of a report or other matter specified in Schedule 1, Part 2 unless, at the time of that publication, the report or matter is a matter of public interest in any place in which that publication occurs.
- (2) In any proceedings for defamation in respect of the publication in any newspaper, or as part of a programme or service provided by a broadcaster, of a report or other matter specified in Schedule 1, Part 2, a defence of qualified privilege under section 16(2) shall fail if the plaintiff alleges and proves
- (a) that the plaintiff requested the defendant to publish, in the manner in which the original publication was made, a reasonable letter or statement by way of explanation or contradiction, and
 - (b) that the defendant has refused or failed to comply with that request, or has complied with that request in a manner that, having regard to all the circumstances, is not adequate or not reasonable.

Definitions: **broadcaster, defamation, newspaper**, s 2

Origin: 1954/46 s 17(2), (3)(b)

19 Rebuttal of qualified privilege

- (1) In any proceedings for defamation, a defence of qualified privilege shall fail if the plaintiff proves that, in publishing the matter that is the subject of the proceedings, the defendant was predominantly motivated by ill will towards the plaintiff, or otherwise took improper advantage of the occasion of publication.

- (2) Subject to subsection (1), a defence of qualified privilege shall not fail because the defendant was motivated by malice.

Definitions: **defamation**, s 2

For procedure, see s 41; for publications protected by qualified privilege, see Schedule 1

Origin: 1954/46 s 17(2)

General

20 Joint publishers

- (1) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion shall not fail merely because the opinion expressed by any person jointly responsible with the defendant for the publication of that matter was not that person's genuine opinion.
- (2) In proceedings for defamation, a defence of qualified privilege shall not fail merely because any person jointly responsible with the defendant for the publication of the matter in respect of which the proceedings are brought is proved, in publishing the matter, to have been motivated by ill will towards the plaintiff, or otherwise to have taken improper advantage of the occasion of publication.
- (3) Subsections (1) and (2) apply whether or not the person jointly responsible with the defendant for the publication of the matter is a defendant in the proceedings.
- (4) Nothing in this section affects the liability of a defendant in any proceedings for defamation for any act of the defendant's employee or agent.

Definitions: **defamation**, s 2; **person**, *Acts Interpretation Act 1924* s 4

21 Innocent dissemination

- (1) In any proceedings for defamation against any person who has published the matter that is the subject of the proceedings solely in the capacity of, or as the employee or agent of, a processor or a distributor, it is a defence if that person alleges and proves
- (a) that that person did not know that the matter contained the material that is alleged to be defamatory, and
 - (b) that that person did not know that the matter was of a character likely to contain material of a defamatory nature, and
 - (c) that that person's lack of knowledge was not due to any negligence on that person's part.
- (2) In this section, **processor** means a person who prints or reproduces, or plays a role in printing or reproducing, any matter.

- (3) In this section, **distributor** includes
- (a) a bookseller, and
 - (b) a librarian.

Definitions: **defamation**, s 2; **person**, *Acts Interpretation Act 1924* s 4

22 Consent to publication

It is a defence to proceedings for defamation if the defendant alleges and proves that the plaintiff consented to the publication of the matter that is the subject of the proceedings.

Definitions: **defamation**, s 2

23 Evidence of adequacy of redress

- (1) In proceedings for defamation, it is evidence of the reasonableness of a letter or statement by way of explanation or contradiction under section 18(2)(a), or of a retraction or statement of explanation or rebuttal, or of both explanation and rebuttal, under section 25, that the party by whom it was proposed has offered to have any issues as to its content or presentation determined, in chambers, by a judge.
- (2) In proceedings for defamation, it is evidence of the unreasonableness of any such statement, letter, or retraction that the party by whom it was proposed has refused an offer by any other party to have any issues as to its content or presentation determined, in chambers, by a judge.
- (3) Any issue as to the content or presentation of a letter or statement by way of explanation or contradiction under section 18(2)(a), or of a retraction or statement of explanation or rebuttal, or of both explanation and rebuttal, under section 25, may, on the application of any person, be determined, in chambers, by a judge.

Definitions: **defamation**, **judge**, s 2; **person**, *Acts Interpretation Act 1924* s 4

PART 4 REMEDIES

24 Declarations

- (1) In any proceedings for defamation, the plaintiff may seek a declaration that the defendant is liable to the plaintiff in defamation.
- (2) Where, in any proceedings for defamation,
- (a) the plaintiff seeks only a declaration and costs, and
 - (b) the court makes the declaration sought,

the plaintiff shall be awarded solicitor and client costs against the defendant in the proceedings, unless the court orders otherwise.

Definitions: **defamation**, s 2

25 Retraction or reply

- (1) Any person who claims to have been defamed by any matter published in a news medium may, not later than 5 working days after that person becomes aware of the publication of that matter in that news medium, request the person who was responsible for the publication of that matter to publish, in the same medium as the publication complained of, with substantially similar prominence, and without undue delay,
 - (a) a retraction of the matter in so far as it includes or consists of statements of fact, or
 - (b) a reasonable reply.
- (2) Where, in response to a request made under subsection (1), a person agrees to publish a retraction or a reply, that person shall also offer to pay to the person who made the request (in this subsection referred to as the **requester**),
 - (a) where it is agreed to publish a reply, the cost of publishing that reply, and
 - (b) the solicitor and client costs incurred by the requester in connection with the publication of the retraction or reply, and
 - (c) all other expenses reasonably incurred by the requester in connection with the publication complained of, and
 - (d) compensation for any pecuniary loss suffered by the requester as a direct result of the publication complained of.
- (3) In this section, **reply** means a statement of explanation or rebuttal, or of both explanation and rebuttal.

Definitions: **news medium**, **working day**, s 2; **person**, *Acts Interpretation Act 1924* s 4

26 Court may recommend correction

- (1) In any proceedings for defamation, the plaintiff may seek a recommendation from the court that the defendant publish or cause to be published a correction of the matter that is the subject of the proceedings, and the court may make such a recommendation.
- (2) Where, in any proceedings for defamation,
 - (a) the court recommends that the defendant publish or cause to be published a correction of the matter that is the subject of the proceedings, and

- (b) the defendant publishes or causes to be published a correction in accordance with the terms of that recommendation, then
 - (c) the plaintiff shall be awarded solicitor and client costs against the defendant in the proceedings, unless the court orders otherwise, and
 - (d) the plaintiff shall be entitled to no other relief or remedy against that defendant in those proceedings, and
 - (e) the proceedings, so far as they relate to that defendant, shall be deemed to be finally determined by virtue of this section.
- (3) Where, in any proceedings for defamation,
- (a) the court recommends that the defendant publish or cause to be published a correction of the matter that is the subject of the proceedings, and
 - (b) the defendant fails to publish or cause to be published a correction in accordance with the terms of that recommendation, then, if the court gives final judgment in favour of the plaintiff in those proceedings,
 - (c) that failure shall be taken into account in the assessment of any damages awarded against the defendant, and
 - (d) the plaintiff shall be awarded solicitor and client costs against the defendant in the proceedings, unless the court orders otherwise.

Definitions: **defamation**, s 2

27 Court may make recommendations as to content, etc, of correction

- (1) In recommending, pursuant to section 26(1), the publication of a correction, a court may include recommendations relating to
 - (a) the content of the correction;
 - (b) the time of publication of the correction;
 - (c) the prominence to be given to the correction in the particular medium in which it is published.
- (2) In making any recommendation under subsection (1), the court shall have regard
 - (a) to the context and circumstances in which the matter that is the subject of the proceedings was published, including the manner and extent of publication, and
 - (b) in the case of matter published in a periodical, or in the course of a regular activity or presentation (including a radio or television programme), to the proper interest of the defendant in maintaining the style and character of the periodical, activity, or presentation.

28 Punitive damages

In any proceedings for defamation, punitive damages may be awarded against a defendant only where that defendant has acted in flagrant disregard of the rights of the plaintiff.

Definitions: **defamation**, s 2

For procedure, see ss 43, 44

29 Matters to be taken into account in mitigation of damages

In assessing damages in any proceedings for defamation, the following matters shall be taken into account in mitigation of damages:

- (a) in respect of the publication of any correction, retraction, or apology published by the defendant, the nature, extent, form, manner, and time of that publication;
- (b) in respect of the publication, by the defendant, of any statement of explanation or rebuttal, or of both explanation and rebuttal, in relation to the matter that is the subject of the proceedings, the nature, extent, form, manner, and time of that publication;
- (c) the terms of any injunction or declaration that the court proposes to make or grant;
- (d) any delay between the publication of the matter in respect of which the proceedings are brought and the decision of the court in those proceedings, being delay for which the plaintiff was responsible.

Definitions: **defamation**, s 2

For procedure, see s 43

Origin: 1954/46 s 12

30 Misconduct of plaintiff in mitigation of damages

In any proceedings for defamation, the defendant may prove, in mitigation of damages, specific instances of misconduct by the plaintiff in order to establish that the plaintiff is a person whose reputation is generally bad in the aspect to which the proceedings relate.

Definitions: **defamation**, s 2; **person**, *Acts Interpretation Act 1924* s 4

For procedure, see s 43

31 Other evidence in mitigation of damages

In any proceedings for defamation, the defendant may prove, in mitigation of damages, that the plaintiff

- (a) has already recovered damages, or
- (b) has brought proceedings to recover damages, or

(c) has received or agreed to receive compensation in respect of any other publication by the defendant, or by any other person, of matter that is the same or substantially the same as the matter that is the subject of the proceedings.

Definitions: **defamation**, s 2; **person**, *Acts Interpretation Act 1924* s 4

For procedure, see s 43

Origin: 1954/46 s 13

32 Defendant's right to prove other matters in mitigation of damages not affected

Nothing in section 29 or section 30 or section 31 limits any other rule of law by virtue of which any matter is required or permitted to be taken into account, in assessing damages in any proceedings for defamation, in mitigation of damages.

Definitions: **defamation**, s 2

For procedure, see s 43

33 Review of damages

- (1) In any proceedings for defamation, where a verdict is set aside by the court by which the proceedings are tried, or by any court on appeal, on the ground that the damages awarded in the proceedings are excessive or are inadequate, the court by which the verdict is set aside may, with the consent of the plaintiff and of every defendant against whom the award was made, substitute its own award of damages in the proceedings.
- (2) Where a court substitutes its own award of damages under subsection (1), the award so substituted shall be final.

Definitions: **defamation**, s 2

For procedure, see s 43

34 Statements in open court

- (1) In any proceedings for defamation, a statement may be made by a party in open court only in one or more of the following circumstances:
 - (a) at any time before the final disposition of the proceedings, where
 - (i) the parties have agreed that such a statement may be made, and have agreed on the terms of the statement, and
 - (ii) the judge, in chambers, has granted leave to make the statement;
 - (b) where the proceedings have been settled, and the terms of the settlement permit the party to make the statement;

- (c) by the plaintiff, where the plaintiff has accepted, in full satisfaction of the plaintiff's claim, money paid into court by the defendant, unless the plaintiff has agreed not to make such a statement.
- (2) Where
- (a) any proceedings for defamation are settled, or the plaintiff in any proceedings for defamation accepts, in full satisfaction of the plaintiff's claim, money paid into court by the defendant, and
 - (b) any party to the proceedings wishes to make a statement in open court, but
 - (c) the parties to the proceedings cannot agree as to
 - (i) whether a statement should be made, or
 - (ii) the terms of the statement,
 any party may apply to the judge, in chambers, to determine the question.
- (3) On hearing an application under subsection (2), the judge may, if he or she thinks fit,
- (a) determine the terms of the statement, or
 - (b) direct that no statement be made.

Definitions: **defamation, judge**, s'2

PART 5 PROCEDURE

35 Powers of judge to call conference and give directions

- (1) For the purpose of ensuring the just, expeditious, and economical disposal of any proceedings for defamation, a judge may at any time, either on the application of any party or without such application, and on such terms as the judge thinks fit, direct the holding of a conference of parties or their counsel, presided over by a judge.
- (2) At any such conference, the judge presiding may
 - (a) identify the matters in issue between the parties, and ascertain whether those issues may be resolved, in whole or in part, by means (including the publication of a correction or a voluntary apology) acceptable to the parties, and, if the parties agree, the judge may make such order as is necessary to give effect to the agreement between the parties;
 - (b) with the consent of the parties, or on the application of the plaintiff, exercise the powers conferred on a court by sections 26 and 27;
 - (c) require any party to make admissions in respect of questions of fact, and if that party refuses to make an admission in respect of any such question, that party shall be liable to bear the costs of proving that question, unless the judge before whom the proceedings are

tried is satisfied that the party's refusal was reasonable in all the circumstances, and accordingly orders otherwise in respect of those costs;

- (d) require any party to make discovery of documents, or permit any party to administer interrogatories;
 - (e) fix the time within which any statement of defence shall be filed or any other step in the proceedings (including the filing of any document and the giving of any notice) shall or may be taken by any party;
 - (f) fix a time and place for the trial of the proceedings;
 - (g) give such consequential directions as may be necessary.
- (3) In this section **party**, in relation to any proceedings for defamation, includes any intended party to those proceedings.

Definitions: **defamation**, **judge**, s 2

36 Functions of judge and jury in relation to meaning of matter

Where any proceedings for defamation are tried before a judge and jury,

- (a) the submissions of the parties on whether the matter that is the subject of the proceedings is capable of a defamatory meaning, and
 - (b) the ruling of the judge on that issue,
- shall be made or given in the absence of the jury.

Definitions: **defamation**, **judge**, s 2

37 Particulars of defamatory meaning

- (1) In any proceedings for defamation, the plaintiff shall give particulars specifying every statement that the plaintiff alleges to be defamatory and untrue in the matter that is the subject of the proceedings.
- (2) Where the plaintiff alleges that the matter that is the subject of the proceedings is defamatory in its natural and ordinary meaning, the plaintiff shall give particulars of every meaning that the plaintiff alleges the matter bears, unless that meaning is evident from the matter itself.
- (3) Where the plaintiff alleges that the matter that is the subject of the proceedings was used in a defamatory sense other than its natural and ordinary meaning, the plaintiff shall give particulars specifying
 - (a) the persons or class of persons to whom the defamatory meaning is alleged to be known, and
 - (b) the other facts and circumstances on which the plaintiff relies in support of the plaintiff's allegations.

Definitions: **defamation**, s 2; **person**, *Acts Interpretation Act 1924* s 4

Origin: 1908/89, Schedule 2, r 188; 1985/112 s 10; SR 1992/109 reg 211

38 Particulars in defence of truth

In any proceedings for defamation, where the defendant alleges that, in so far as the matter that is the subject of the proceedings consists of statements of fact, it is true in substance and in fact, and, so far as it consists of an expression of opinion, it is honest opinion, the defendant shall give particulars specifying

- (a) the statements that the defendant alleges are statements of fact, and
- (b) the facts and circumstances on which the defendant relies in support of the allegation that those statements are true.

Definitions: **defamation**, s 2

Origin: 1908/89, Schedule 2, r 189; 1985/112 s 10; SR 1992/109 reg 212

39 Notice of allegation that opinion not genuinely held

- (1) In any proceedings for defamation, where
 - (a) the defendant relies on a defence of honest opinion, and
 - (b) the plaintiff intends to allege, in relation to any opinion contained in the matter that is the subject of the proceedings,
 - (i) where the opinion is that of the defendant, that the opinion was not the genuine opinion of the defendant, or
 - (ii) where the opinion is that of a person other than the defendant, that the defendant had reasonable cause to believe that the opinion was not the genuine opinion of that person,the plaintiff shall serve on the defendant a notice to that effect.
- (2) If the plaintiff intends to rely on any particular facts or circumstances in support of any allegation to which subsection (1)(b)(i) or (ii) applies, the notice required by that subsection shall include particulars specifying those facts and circumstances.
- (3) The notice required by subsection (1) shall be served on the defendant within 10 working days after the defendant's statement of defence is served on the plaintiff, or within such further time as the court may allow on application made to it for that purpose either before or after the expiration of those 10 working days.

Definitions: **defamation**, **working day**, s 2; **person**, *Acts Interpretation Act 1924* s 4

40 Truth and honest opinion to be pleaded separately

In any proceedings for defamation, where the defendant intends to

rely on a defence of truth and on a defence of honest opinion, the defendant shall plead each of those defences separately.

Definitions: **defamation**, s 2

41 Particulars of ill will

- (1) Where, in any proceedings for defamation,
 - (a) the defendant relies on a defence of qualified privilege, and
 - (b) the plaintiff intends to allege that the defendant was predominantly motivated by ill will towards the plaintiff, or otherwise took improper advantage of the occasion of publication,the plaintiff shall serve on the defendant a notice to that effect.
- (2) If the plaintiff intends to rely on any particular facts or circumstances in support of that allegation, the notice required by subsection (1) shall include particulars specifying those facts and circumstances.
- (3) The notice required by subsection (1) shall be served on the defendant within 10 working days after the defendant's statement of defence is served on the plaintiff, or within such further time as the court may allow on application made to it for that purpose either before or after the expiration of those 10 working days.

Definitions: **defamation**, **working day**, s 2

Origin: 1908/89, Schedule 2, r 190; 1985/112 s 10; SR 1992/109 reg 213

42 Notice of evidence of bad reputation

In any proceedings for defamation, where the defendant intends to adduce evidence of specific instances of misconduct by the plaintiff in order to establish that the plaintiff is a person whose reputation is generally bad in the aspect to which the proceedings relate, the defendant shall include in the defendant's statement of defence a statement that the defendant intends to adduce that evidence.

Definitions: **defamation**, s 2; **person**, *Acts Interpretation Act 1924* s 4

43 Claims for damages

- (1) In any proceedings for defamation in which a news medium is the defendant, the plaintiff shall not specify in the plaintiff's statement of claim the amount of any damages claimed by the plaintiff in the proceedings.
- (2) In any proceedings for defamation, where
 - (a) judgment is given in favour of the plaintiff, and
 - (b) the amount of damages awarded to the plaintiff is less than the amount claimed, and

- (c) in the opinion of the judge, the damages claimed are grossly excessive,
the court shall award the defendant by whom the damages are payable the solicitor and client costs of the defendant in the proceedings.

Definitions: **defamation, judge, news medium**, s 2

44 Particulars in support of claim for punitive damages

In any proceedings for defamation, where the plaintiff claims punitive damages, the plaintiff shall give particulars specifying the facts or circumstances that the plaintiff alleges would justify an award of punitive damages against the defendant.

Definitions: **defamation**, s 2

45 Proceedings deemed to be vexatious if no intention to proceed to trial

The commencement of proceedings to recover damages for defamation shall be deemed to be a vexatious proceeding if, when those proceedings are commenced, the plaintiff has no intention of proceeding to trial.

Definitions: **defamation**, s 2

46 Proceedings in respect of publication in different media of same matter

- (1) In this section **publication** means the publication of any matter
- (a) in any newspaper, or
 - (b) by a broadcaster, or
 - (c) by any cinematographic film in any cinema that is open to the public (whether free or on payment of a charge).
- (2) Where any proceedings for defamation have been commenced by any person in respect of the publication of any matter, no other proceedings for defamation may be commenced by that person in respect of any other publication, at any time before the commencement of the first proceedings, of the same or substantially the same matter, unless those other proceedings are commenced
- (a) not later than 28 working days after the commencement of the first proceedings, or
 - (b) within such longer period as the court in which it is sought to commence the later proceedings may allow, being in no case later than the date on which a date is fixed for the trial of the first proceedings.

- (3) Where any proceedings are commenced in breach of subsection (2), a defendant may adduce evidence of that fact by way of defence at the trial of the proceedings, whether or not the defendant has pleaded that fact by way of defence.
- (4) For the purposes of this section, matter in a newspaper shall be deemed to have been published on the date of issue of that newspaper, and at no subsequent time.

Definitions: **broadcaster**, **defamation**, **newspaper**, **working day**, s 2; **person**, *Acts Interpretation Act 1924* s 4

Origin: 1954/46 s 9

47 Notice of multiple actions

- (1) Where 2 or more proceedings for defamation have been commenced by the same person in respect of the publication of the same or substantially the same matter, the plaintiff shall as soon as practicable give to every defendant in each of the proceedings such notice of the existence of the other proceedings as is reasonably sufficient to enable each defendant to apply for the consolidation of the proceedings under section 48.
- (2) Where the plaintiff fails to give the notice required by subsection (1) to any defendant, that defendant may apply to the court to dismiss or stay the proceedings, and the court may dismiss or stay the proceedings accordingly.
- (3) In this section **publication** has the same meaning as in section 46.

Definitions: **defamation**, s 2; **person**, *Acts Interpretation Act 1924* s 4

Origin: 1954/46 s 10

48 Consolidation of actions on application of defendants

- (1) The High Court, on the application of the defendants in any 2 or more proceedings for defamation commenced in that court or in a District Court by the same person in respect of the publication of the same or substantially the same matter, may make an order for the consolidation of those proceedings so that they may be tried together.
- (2) Where any order is made under subsection (1) in respect of any proceedings for defamation, any defendant in any other proceedings for defamation commenced in respect of the same or substantially the same matter shall be entitled, at any time before the trial of the consolidated proceedings, on making a joint application with the defendants in those proceedings, to be joined in common proceedings with those defendants.

- (3) Proceedings that are consolidated under this section shall be tried in the High Court, and shall be tried at such time and place as the High Court may order.
- (4) Where any of the proceedings that are consolidated under this section have been commenced in a District Court, the order consolidating the proceedings shall be deemed to be also an order for their removal into the High Court.
- (5) In any proceedings that have been consolidated under this section, the following provisions shall apply:
 - (a) the judge or jury shall assess in one sum the whole amount of any damages that may be awarded;
 - (b) notwithstanding paragraph (a), a separate verdict shall be given for or against each defendant in the same way as if the proceedings consolidated had been tried separately;
 - (c) if a verdict is given against the defendants in more than one of the proceedings consolidated, the judge or jury shall apportion, between and against those defendants, the amount of damages so awarded;
 - (d) if the judge at the trial awards to the plaintiff the costs of the proceedings, the judge shall make such order as the judge deems just for the apportionment of those costs between and against those defendants.
- (6) This section applies to proceedings for slander of title, slander of goods, and other malicious falsehoods as it applies to proceedings for defamation; and references in this section to the same or substantially the same matter shall be construed accordingly.

Definitions: **defamation**, **judge**, s 2; **District Court**, **High Court**, **person**, *Acts Interpretation Act 1924* s 4

Origin: 1954/46 s 11

49 Limitation on subsequent actions

- (1) Where any proceedings for defamation have been determined by settlement, judgment, final order, or discontinuance, the plaintiff in those proceedings may not, except by the leave of the court, commence or continue any other proceedings for defamation against any defendant in the first proceedings in relation to the same publication or to any other publication of the matter in respect of which the first proceedings were commenced.
- (2) Notice of an application for leave under subsection (1) to commence or continue any proceedings for defamation shall be given by the applicant to every person against whom the proceedings are to be commenced or continued.

- (3) In this section **court** means the court in which it is sought to commence or continue the proceedings for defamation.

Definitions: **defamation**, s 2; **person**, *Acts Interpretation Act 1924* s 4

50 Striking out for want of prosecution

- (1) In any proceedings for defamation, unless the court in its discretion orders otherwise, the court shall, on the application of the defendant, order the proceedings to be struck out for want of prosecution if
- (a) no date has been fixed for the trial of the proceedings, and
 - (b) no other step has been taken in the proceedings within the period of 12 months immediately preceding the date of the defendant's application.
- (2) Where any proceedings are struck out under subsection (1), no further proceedings may be commenced by the plaintiff against any defendant in the proceedings in respect of the same or substantially the same cause of action, except by the leave of the court in which it is sought to commence those proceedings.
- (3) Notice of an application for leave under subsection (2) to commence any proceedings for defamation shall be given by the applicant to every person against whom the proceedings are to be commenced.
- (4) Nothing in this section limits any other power of a court to order any proceedings to be struck out for want of prosecution.

Definitions: **defamation**, s 2; **month**, **person**, *Acts Interpretation Act 1924* s 4

51 Evidence as to publisher or printer

Where, in any proceedings for defamation in respect of the publication of any matter in a book or printed document, or in a number or part of a newspaper or other periodical, that book, document, number, or part contains or bears a statement that it is published or printed by the defendant, that statement may be received as sufficient evidence of the fact so stated unless the contrary is proved.

Definitions: **defamation**, **newspaper**, s 2

Origin: 1954/46 s 21

52 General verdict by jury

- (1) Where any proceedings for defamation are tried before a jury,
- (a) the jury may give a general verdict for or against a defendant upon the whole matter put in issue, and
 - (b) the jury shall not be required or directed by the judge to give a

verdict against a defendant merely on proof of the publication by that defendant of the matter that is the subject of the proceedings and on proof of the meaning ascribed to it in the statement of claim.

- (2) Nothing in subsection (1)
- (a) limits the discretion of the judge to give the judge's opinion and directions to the jury on any issue between the parties, in the same manner as in other cases, or
 - (b) limits the powers of the jury to return a special verdict, as in other cases, or
 - (c) prevents a defendant in respect of whom a verdict is given from applying to set aside judgment on such grounds and in such manner as if this section had not been enacted.

Definitions: **defamation**, **judge**, s 2

Origin: 1954/46 s 22

PART 6 MISCELLANEOUS PROVISIONS

53 Agreements to indemnify against liability for defamation

- (1) Subject to subsection (2), an agreement is not unlawful merely because it indemnifies a person against civil liability for defamation in respect of the publication of any matter.
- (2) Nothing in subsection (1) applies where, at the time of the publication, the person indemnified
- (a) knows that the matter is defamatory, and
 - (b) does not reasonably believe that there is a good defence to any proceedings brought upon that matter.

Definitions: **defamation**, s 2; **person**, *Acts Interpretation Act 1924* s 4

Origin: 1954/46 s 14

54 Act not to derogate from Parliamentary privilege, etc

Nothing in this Act derogates from any of the powers, privileges, and immunities that, immediately before the commencement of this Act, were enjoyed by

- (a) the House of Representatives;
- (b) Members of Parliament;
- (c) any committee or subcommittee of the House of Representatives.

Definitions: **commencement**, **Member of Parliament**, **Parliament**, *Acts Interpretation Act 1924* s 4

55 Amendment to *Limitation Act 1950*

The *Limitation Act 1950* is amended by inserting in section 4, after subsection (6), the following subsections:

- “(6A) Subject to subsection (6B), a defamation action shall not be brought after the expiration of 2 years from the date on which the cause of action accrued.
- “(6B) Notwithstanding anything in subsection (6A), any person may apply to the court, after notice to the intended defendant, for leave to bring a defamation action at any time within 6 years from the date on which the cause of action accrued; and the court may, if it thinks it just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks it just to impose, where it considers that the delay in bringing the action was occasioned by mistake of fact or mistake of any matter of law (other than the provisions of subsection (6A)), or by any other reasonable cause.”

Definitions: **defamation**, s 2; **person**, *Acts Interpretation Act 1924* s 4

56 Repeals, revocations and consequential amendments

- (1) The enactments specified in Schedule 2 are amended in the manner indicated in that Schedule.
- (2) The enactments specified in Schedule 3 are repealed.
- (3) The High Court Rules set out in Schedule 2 to the *Judicature Act 1908* are amended by revoking rules 188 to 190 and the heading after rule 187.
- (4) The District Courts Rules 1992 (SR 1992/109) are amended by revoking rules 211 to 213 and the heading above rule 211.

Definitions: **District Court**, **High Court**, *Acts Interpretation Act 1924* s 4

SCHEDULE 1
PUBLICATIONS PROTECTED BY
QUALIFIED PRIVILEGE

Sections 16, 17, 18, 19

Part 1: Publications Not Subject to Restrictions in Section 18

- 1 Any delayed broadcast, by any broadcaster, of proceedings in the House of Representatives.
- 2 The publication of a fair and accurate report of proceedings in the House of Representatives or in any Committee of the House of Representatives.
- 3 The publication of a fair and accurate extract from, or summary of, any document or record to which section 13(3)(a) or (c) applies.
- 4 Subject to any provision to the contrary in any other enactment, the publication, in any proceedings before a tribunal or authority established by or pursuant to any enactment (other than proceedings to which section 14(1) applies), of any matter by a member of the tribunal or authority, or by a party, representative, or witness in those proceedings.
- 5 The publication of a fair and accurate report of the pleadings of the parties in any proceedings before any court in New Zealand, at any time after,
 - (a) in the case of proceedings before the High Court, a praecipe has been filed in those proceedings;
 - (b) in the case of proceedings before a District Court, the filing of an application for a fixture for the hearing of those proceedings.
- 6 The publication of a fair and accurate report of the proceedings of any court in New Zealand (whether those proceedings are preliminary, interlocutory, or final, and whether in open court or not), or of the result of those proceedings.
- 7 The publication of a fair and accurate translation of words from one language to another, where the publication
 - (a) is by the person who made the translation, and
 - (b) is by that person in his or her capacity as translator of those words.

Definitions: **broadcaster**, s 2; **District Court**, **High Court**, **New Zealand**, **person**, *Acts Interpretation Act 1924* s 4

Part 2: Publications Subject to Restrictions in Section 18

- 1 A fair and accurate report of the proceedings of a legislature of a territory outside New Zealand or of a committee of any such legislature.

- 2 A fair and accurate report of the proceedings of a court outside New Zealand (whether those proceedings are preliminary, interlocutory, or final, and whether in open court or not), or of the result of those proceedings.
- 3 A fair and accurate report of the proceedings in an inquiry held under the authority of
 - (a) the Government or Parliament of New Zealand, or
 - (b) the government or legislature of a territory outside New Zealand, or a true copy of, or a fair and accurate extract from or summary of, any official report made by the person by whom the inquiry was held.
- 4 A fair and accurate report of the proceedings of
 - (a) an international organisation of
 - (i) countries or representatives of countries, or
 - (ii) legislatures or representatives of legislatures, or
 - (iii) governments or representatives of governments, or
 - (b) an international conference at which governments of any countries are represented.
- 5 A fair and accurate report of the proceedings at a meeting or sitting in any part of New Zealand of
 - (a) a local authority or committee of a local authority or local authorities, or
 - (b) a person or body appointed or constituted by or under, and exercising functions under, any Act (not being a court or a person holding an inquiry to which clause 3 applies),not being proceedings from which the public or members of the news media or both were excluded.
- 6 A fair and accurate report of the proceedings, or of the result of the proceedings, in an inquiry held in accordance with the rules of an association formed for the purpose of
 - (a) promoting or safeguarding the interests of any game, sport, or pastime to the playing or exercise of which members of the public are invited or admitted, or
 - (b) promoting or safeguarding the interests of any trade, business, industry, or profession, or of the persons carrying on or engaged in any trade, business, industry, or profession, or
 - (c) promoting or encouraging the exercise of, or an interest in, any art, science, religion, or learning,being an inquiry relating to a person who is a member of the association, or is subject by virtue of a contract to the control of the association.
- 7 A fair and accurate report of the proceedings, or of the result of the proceedings, in an inquiry held in accordance with the rules of any association formed for the purpose of promoting and safeguarding the standards of the New Zealand press.

- 8 A fair and accurate report of the proceedings at a meeting held in New Zealand that
- (a) is bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, and
 - (b) is open to the public, whether with or without restriction.
- 9(1) A fair and accurate report of
- (a) the proceedings at a general meeting of a body to which this clause applies (not being a meeting from which the public or members of the news media or both were excluded);
 - (b) a report or other document circulated to shareholders or members by the board of directors or other governing body of a body to which this clause applies (not being a report or document circulated on a confidential basis);
 - (c) a document circulated to shareholders or members by an auditor of a body to which this clause applies (not being a document circulated on a confidential basis).
- (2) This clause applies to
- (a) any company or association constituted or registered under any Act,
 - (b) any society registered under the *Incorporated Societies Act 1908*,
 - (c) any other body corporate operating in New Zealand,
- but does not apply to any private company within the meaning of the *Companies Act 1955*.
- 10 A fair and accurate report of the proceedings at a press conference given by or on behalf of any body or person (being a body or person in respect of whose proceedings the publication of any fair and accurate report is, by virtue of section 16(2), protected by qualified privilege).
- 11 A fair and accurate report of a publication issued under the authority of a government or legislature of a foreign state.
- 12 A fair and accurate copy of or extract from a register that is kept in pursuance of any Act and that is open to inspection by the public, or of any other document that is required by the law of New Zealand to be open to inspection by the public.
- 13 A notice or advertisement published by or under the authority of a court, whether within or outside New Zealand, or a judge or officer of any court.
- 14 A notice or advertisement published for the purpose of complying with a New Zealand Act; but not including a notice of an application to a court or tribunal, or to any other statutory office or statutory body, unless the application has been filed before the publication of the notice.

- 15 A copy or a fair and accurate report or summary of a statement, notice, or other matter issued for the information of the public by or on behalf of the Government or any department or departmental officer, or any local authority or officer of the authority.

Definitions: **judge, news medium**, s 2; **association, company, New Zealand, Parliament, person**, *Acts Interpretation Act 1924* s 4; **court, government, legislature, local authority**, see Part 3 below

Part 3: Definitions

In this Schedule, unless the context otherwise requires,

court includes the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between States, and also includes a court martial;

government, in relation to a territory outside New Zealand that is subject to a central and a local government, means either of those governments;

legislature, in relation to a territory outside New Zealand that is subject to a central and local legislature, means either of those legislatures;

local authority means a local body or public body named or specified in Schedule 1 or Schedule 2 to the *Local Government Official Information and Meetings Act 1987*.

SCHEDULE 2 ENACTMENTS AMENDED

See section 56(1)

Race Relations Act 1971 (1971/150)

section 20

Repeal subsection (3)

Substitute:

- “(3) For the purposes of clause 3 of Schedule 1, Part 2 to the *Defamation Act 1992*, any report made by the Conciliator or the Deputy Conciliator under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”

Ombudsmen Act 1975 (1975/9)

section 26

Repeal subsection (4)

Substitute:

- “(4) For the purposes of clause 3 of Schedule 1, Part 2 to the *Defamation Act 1992*, any report made by an Ombudsman under this

Act, or under the *Official Information Act 1982*, or under the *Local Government Official Information and Meetings Act 1987*, shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand."

Wanganui Computer Centre Act 1976 (1976/19)

section 18B

Repeal the whole section

Substitute:

"18B **Qualified privilege**

For the purposes of clause 3 of Schedule 1, Part 2 to the *Defamation Act 1992*, any report made under this Act by the Commissioner or the deputy of the Commissioner shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand."

Human Rights Commission Act 1977 (1977/49)

section 76

Repeal subsection (3)

Substitute:

"(3) For the purposes of clause 3 of Schedule 1, Part 2 to the *Defamation Act 1992*, any report made by the Commission under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand."

Securities Act 1978 (1978/103)

section 28

Repeal subsection (7)

Substitute:

"(7) For the purposes of clause 3 of Schedule 1, Part 2 to the *Defamation Act 1992*, any report or comment made by the Commission in the course of the exercise or intended exercise of its functions shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand."

Law Commission Act 1985 (1985/151)

Schedule 1, clause 14

Repeal subclause (5)

Substitute:

"(5) For the purposes of clause 3 of Schedule 1, Part 2 to the *Defamation Act 1992*, any report made by the Commission in the course of the exercise or intended exercise of its functions shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand."

Commerce Act 1986 (1986/5)

section 106

Repeal subsection (10)

Substitute:

“(10) For the purposes of clause 3 of Schedule 1, Part 2 to the *Defamation Act 1992*, any statement, document, determination, clearance, authorisation, or decision made by the Commission in the exercise or intended exercise of any of its functions or powers shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”

Local Government Official Information and Meetings Act 1987 (1987/174)
section 52

Delete: “the publication is proved to be made with malice”

Substitute: “, in any proceedings for defamation in respect of that publication, the plaintiff proves that, in publishing the matter, the defendant was predominantly motivated by ill will towards the plaintiff, or otherwise took improper advantage of the occasion of publication”

section 53(1)

Delete: “the statement is proved to be made with malice”

Substitute: “, in any proceedings for defamation in respect of the statement, the plaintiff proves that, in making the statement, the defendant was predominantly motivated by ill will towards the plaintiff, or otherwise took improper advantage of the occasion of publication”

Police Complaints Authority Act 1988 (1988/2)
section 33(4)

Delete: “clause 5 of Schedule 1 to the *Defamation Act 1954*”

Substitute: “clause 3 of Schedule 1, Part 2 to the *Defamation Act 1992*”

Coroners Act 1988 (1988/111)
section 29(3)

Delete: “or broadcasting station within the meaning of the *Defamation Act 1954*”

Substitute: “within the meaning of the *Defamation Act 1992*, or by means other than by broadcasting within the meaning of the *Broadcasting Act 1989*”

Children, Young Persons, and Their Families Act 1989 (1989/24)
section 420

Repeal subsection (4)

Substitute:

“(4) For the purposes of clause 3 of Schedule 1, Part 2 to the *Defamation Act 1992*, any report made by the Commissioner under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”

Broadcasting Act 1989 (1989/25)

section 13

Repeal subsection (4)

Substitute:

“(4) Every statement published pursuant to an order made under subsection (1) shall be deemed for the purposes of clause 13 of Schedule 1, Part 2 to the *Defamation Act 1992* to be a notice published on the authority of a court.”

section 15

Repeal subsection (3)

Substitute:

“(3) Every notice published under subsection (1) shall be deemed for the purposes of clause 6 of Schedule 1, Part 1 to the *Defamation Act 1992* to be a fair and accurate report of the proceedings of a court in New Zealand.”

Schedule 2

Repeal so much as relates to the *Defamation Act 1954*.

Privacy Commissioner Act 1991 (1991/126)

section 29

Repeal subsection (5)

Substitute:

“(5) For the purposes of clause 3 of Schedule 1, Part 2 to the *Defamation Act 1992*, any report made under this Act by the Commissioner shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”

SCHEDULE 3 ENACTMENTS REPEALED

See section 56(2)

Defamation Act 1954 (1954/46)

the whole Act

Electoral Act 1956 (1956/107)

section 128

Defamation Amendment Act 1958 (1958/63)

the whole Act

Crimes Act 1961 (1961/43)

Part 9, s 357(5), and so much of Schedule 3 as relates to the *Defamation Act 1954*

Defamation Amendment Act 1974 (1974/82)

the whole Act

Local Elections and Polls Act 1976 (1976/144)

section 55

Wanganui Computer Centre Amendment Act 1980 (1980/52)

section 6

Electoral Amendment Act 1981 (1981/120)

so much of the Schedule as relates to s 128 of the *Electoral Act 1956*

LEGISLATIVE HISTORY

Introduction, first reading and referral to Justice and Law Reform Select Committee (Bill 72-1) 25 August 1988: 491 NZPD 6369-6375.

Reported back from Justice and Law Reform Select Committee (Bill 72-2) 3 October 1989: 502 NZPD 12893-12903.

Carried forward 12 December 1989: 504 NZPD 14741-14742; 6 September 1990: 510 NZPD 4360-4361.

Second reading 10 November 1992; 12 November 1992: 531 NZPD 12144-12150; 12257-12263.

In committee 17 November 1992: 531 NZPD 12329-12330.

Divided into Defamation Bill (cls 2-47; Schedules 1, 2, 3) and Legislature Amendment Bill (Part 4) 17 November 1992: 531 NZPD 12330.

Third reading 17 November 1992: 531 NZPD 12331-12334.

The *Defamation Act 1992* implements in part the recommendations contained in the Report of the Committee on Defamation (1977).

APPENDIX B

Comparison of Current and Proposed New Format

(sample pages)



DEFAMATION ACT 1992

Public Act 105 of 1992

Royal assent: 26 November 1992

Comes into force: 1 February 1993

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Honest Opinion

9. Honest opinion
10. Opinion must be genuine
11. Defendant not required to prove truth of every statement of fact
12. Honest opinion where corrupt motive attributed to plaintiff

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13. Absolute privilege in relation to Parliamentary proceedings
14. Absolute privilege in relation to judicial proceedings and other legal matters
15. Other rules of law relating to absolute privilege not affected

Qualified Privilege

16. Qualified privilege
17. Qualified privilege not to apply where publication prohibited

18. Restrictions on qualified privilege in relation to Part II of First Schedule
19. Rebuttal of qualified privilege

General

20. Joint publishers
21. Innocent dissemination
22. Consent to publication
23. Evidence of adequacy of redress

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REMEDIES

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25. Retraction or reply
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43. Claims for damages

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- 42 Notice of evidence of bad reputation
- 43 Claims for damages
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- 53 Agreements to indemnify against liability for defamation
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- 56 Repeals, revocations, and consequential amendments

Schedule 1 Publications Protected by Qualified Privilege

Part 1: Publications Not Subject to Restrictions in Section 18

Part 2: Publications Subject to Restrictions in Section 18

Part 3: Definitions

Schedule 2 Enactments Amended

Schedule 3 Enactments Repealed

The Parliament of New Zealand enacts the Defamation Act 1992

PART 1 PRELIMINARY

1 Purpose

The purpose of this Act is to amend the law relating to defamation and other malicious falsehoods.

1A Commencement

This Act comes into force on 1 February 1993.

2 Definitions

- (1) In this Act, unless the context otherwise requires,

broadcaster has the meaning given to it by section 2 of the *Broadcasting Act 1989*;

defamation includes libel and slander;

44. Particulars in support of claim for punitive damages
45. Proceedings deemed to be vexatious if no intention to proceed to trial
46. Proceedings in respect of publication in different media of same matter
47. Notice of multiple actions
48. Consolidation of actions on application of defendants
49. Limitation on subsequent actions
50. Striking out for want of prosecution
51. Evidence as to publisher or printer
52. General verdict by jury

PART V

MISCELLANEOUS PROVISIONS

53. Agreements to indemnify against liability for defamation
 54. Act not to derogate from Parliamentary privilege, etc.
 55. Amendment to Limitation Act 1950
 56. Repeals, revocations, and consequential amendments
- Schedules

1992, No. 105

An Act to amend the law relating to defamation and other malicious falsehoods [26 November 1992]

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

1. Short Title and commencement—(1) This Act may be cited as the Defamation Act 1992.

(2) This Act shall come into force on the 1st day of February 1993.

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

“Broadcaster” has the meaning given to it by section 2 of the Broadcasting Act 1989:

“Defamation” includes libel and slander:

“Distributor” includes—

(a) A bookseller; and

(b) A librarian:

“Judge”, in Parts II, III, and IV of this Act, means,—

(a) In the case of any proceedings before the High Court, a Judge of that Court:

(b) In the case of any proceedings before a District Court, a Judge of that Court:

“News medium” means a medium for the dissemination, to the public or to a section of the public, of news, or observations on news, or advertisements:

“Newspaper” means a paper—

(a) Containing news or observations on news; or

(b) Consisting wholly or mainly of advertisements—

that is published, in New Zealand or elsewhere, periodically at intervals not exceeding 3 months:

“Processor” means a person who prints or reproduces, or plays a role in printing or reproducing, any matter:

“Working day” means any day of the week other than—

judge means,

- (a) in the case of any proceedings before the High Court, a judge of that court, and
- (b) in the case of any proceedings before a District Court, a judge of that court;

news medium means a medium for the dissemination, to the public or to a section of the public, of news, observations on news, or advertisements;

newspaper means a paper

- (a) containing news or observations on news, or
 - (b) consisting wholly or mainly of advertisements
- that is published, in New Zealand or elsewhere, periodically at intervals not exceeding 3 months;

working day means any day of the week other than

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
- (b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

- (2) The provisions of Schedule 1, Part 3 shall also have effect for the purposes of the interpretation of that schedule.

Definitions: **District Court, High Court, month, New Zealand**, *Acts Interpretation Act 1924* s 4

3 Application

- (1) This Act binds the Crown.
- (2) This Act applies to proceedings commenced after this Act comes into force, whenever the cause of action arose.
- (3) This Act does not apply to proceedings commenced before this Act comes into force.

Origin: 1954/46 ss 3, 22A; 1958/63 s 2

PART 2 CAUSES OF ACTION

4 Defamation actionable without proof of special damage

In proceedings for defamation, it is not necessary to allege or prove special damage.

Definitions: **defamation**, s 2

Origin: 1954/46 s 4(1)

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

(b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year.

(2) The provisions of Part III of the First Schedule to this Act shall also have effect for the purposes of the interpretation of that Schedule.

3. Application—(1) This Act binds the Crown.

(2) This Act applies to proceedings commenced after this Act comes into force, whenever the cause of action arose.

(3) This Act does not apply to proceedings commenced before this Act comes into force.

Cf. 1954, No. 46, ss. 3, 22A; 1958, No. 63, s. 2

PART I

CAUSES OF ACTION

4. Defamation actionable without proof of special damage—In proceedings for defamation, it is not necessary to allege or prove special damage.

Cf. 1954, No. 46, s. 4 (1)

5. Malicious falsehood actionable without proof of special damage—In proceedings for slander of title, slander of goods, or other malicious falsehood, it is not necessary to allege or prove special damage if the publication of the matter that is the subject of the proceedings is likely to cause pecuniary loss to the plaintiff.

Cf. 1954, No. 46, s. 5 (1)

6. Proceedings for defamation brought by body corporate—Proceedings for defamation brought by a body corporate shall fail unless the body corporate alleges and proves that the publication of the matter that is the subject of the proceedings—

(a) Has caused pecuniary loss; or

(b) Is likely to cause pecuniary loss—
to that body corporate.

7. Single publication to constitute one cause of action—Proceedings for defamation based on a single publication constitute one cause of action, no matter how many imputations the published matter contains.

taken as a whole was in substance true, or was in substance not materially different from the truth.

Definitions: **defamation**, s 2; **commencement**, *Acts Interpretation Act 1924* s 4

For procedure, see ss 38, 40

Origin: 1954/46 s 7

Honest Opinion

9 Honest opinion

In proceedings for defamation, the defence known before the commencement of this Act as the defence of fair comment shall, after the commencement, be known as the defence of honest opinion.

Definitions: **defamation**, s 2; **commencement**, *Acts Interpretation Act 1924* s 4

10 Opinion must be genuine

- (1) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion by a defendant who is the author of the matter containing the opinion shall fail unless the defendant proves that the opinion expressed was the defendant's genuine opinion.
- (2) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion by a defendant who is not the author of the matter containing the opinion shall fail unless,
 - (a) where the author of the matter containing the opinion was, at the time of the publication of that matter, an employee or agent of the defendant, the defendant proves that
 - (i) the opinion, in its context and in the circumstances of the publication of the matter that is the subject of the proceedings, did not purport to be the opinion of the defendant, and
 - (ii) the defendant believed that the opinion was the genuine opinion of the author of the matter containing the opinion;
 - (b) where the author of the matter containing the opinion was not an employee or agent of the defendant at the time of the publication of that matter, the defendant proves that
 - (i) the opinion, in its context and in the circumstances of the publication of the matter that is the subject of the proceedings, did not purport to be the opinion of the defendant or of any employee or agent of the defendant, and
 - (ii) the defendant had no reasonable cause to believe that the opinion was not the genuine opinion of the author of the matter containing the opinion.

PART II

DEFENCES

Truth

8. Truth—(1) In proceedings for defamation, the defence known before the commencement of this Act as the defence of justification shall, after the commencement of this Act, be known as the defence of truth.

(2) In proceedings for defamation based on only some of the matter contained in a publication, the defendant may allege and prove any facts contained in the whole of the publication.

(3) In proceedings for defamation, a defence of truth shall succeed if—

- (a) The defendant proves that the imputations contained in the matter that is the subject of the proceedings were true, or not materially different from the truth; or
- (b) Where the proceedings are based on all or any of the matter contained in a publication, the defendant proves that the publication taken as a whole was in substance true, or was in substance not materially different from the truth.

Cf. 1954, No. 46, s. 7

Honest Opinion

9. Honest opinion—In proceedings for defamation, the defence known before the commencement of this Act as the defence of fair comment shall, after the commencement of this Act, be known as the defence of honest opinion.

10. Opinion must be genuine—(1) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion by a defendant who is the author of the matter containing the opinion shall fail unless the defendant proves that the opinion expressed was the defendant's genuine opinion.

(2) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion by a defendant who is not the author of the matter containing the opinion shall fail unless,—

- (a) Where the author of the matter containing the opinion was, at the time of the publication of that matter, an employee or agent of the defendant, the defendant proves that—
 - (i) The opinion, in its context and in the circumstances of the publication of the matter that is

SCHEDULE 1
PUBLICATIONS PROTECTED BY
QUALIFIED PRIVILEGE

Sections 16, 17, 18, 19

Part 1: Publications Not Subject to Restrictions in Section 18

- 1 Any delayed broadcast, by any broadcaster, of proceedings in the House of Representatives.
- 2 The publication of a fair and accurate report of proceedings in the House of Representatives or in any Committee of the House of Representatives.
- 3 The publication of a fair and accurate extract from, or summary of, any document or record to which section 13(3)(a) or (c) applies.
- 4 Subject to any provision to the contrary in any other enactment, the publication, in any proceedings before a tribunal or authority established by or pursuant to any enactment (other than proceedings to which section 14(1) applies), of any matter by a member of the tribunal or authority, or by a party, representative, or witness in those proceedings.
- 5 The publication of a fair and accurate report of the pleadings of the parties in any proceedings before any court in New Zealand, at any time after,
 - (a) in the case of proceedings before the High Court, a praecipe has been filed in those proceedings;
 - (b) in the case of proceedings before a District Court, the filing of an application for a fixture for the hearing of those proceedings.
- 6 The publication of a fair and accurate report of the proceedings of any court in New Zealand (whether those proceedings are preliminary, interlocutory, or final, and whether in open court or not), or of the result of those proceedings.
- 7 The publication of a fair and accurate translation of words from one language to another, where the publication
 - (a) is by the person who made the translation, and
 - (b) is by that person in his or her capacity as translator of those words.

Definitions: **broadcaster**, s 2; **District Court**, **High Court**, **New Zealand**, **person**, *Acts Interpretation Act 1924* s 4

Part 2: Publications Subject to Restrictions in Section 18

- 1 A fair and accurate report of the proceedings of a legislature of a territory outside New Zealand or of a committee of any such legislature.

SCHEDULES

FIRST SCHEDULE

Sections 16, 17, 18, and 19

PUBLICATIONS PROTECTED BY QUALIFIED PRIVILEGE

PART I

Publications Not Subject to Restrictions in Section 18

1. Any delayed broadcast, by any broadcaster, of proceedings in the House of Representatives.

2. The publication of a fair and accurate report of proceedings in the House of Representatives or in any Committee of the House of Representatives.

3. The publication of a fair and accurate extract from, or summary of, any document or record to which section 13 (3) (a) or (c) of this Act applies.

4. Subject to any provision to the contrary in any other enactment, the publication, in any proceedings before a tribunal or authority established by or pursuant to any enactment (other than proceedings to which section 14 (1) of this Act applies), of any matter by a member of the tribunal or authority, or by a party, representative, or witness in those proceedings.

5. The publication of a fair and accurate report of the pleadings of the parties in any proceedings before any Court in New Zealand, at any time after,—

(a) In the case of proceedings before the High Court, a praecipe has been filed in those proceedings;

(b) In the case of proceedings before a District Court, the filing of an application for a fixture for the hearing of those proceedings.

6. The publication of a fair and accurate report of the proceedings of any Court in New Zealand (whether those proceedings are preliminary, interlocutory, or final, and whether in open Court or not), or of the result of those proceedings.

7. The publication of a fair and accurate translation of words from one language to another, where the publication—

(a) Is by the person who made the translation; and

(b) Is by that person in his or her capacity as translator of those words.

PART II

Publications Subject to Restrictions in Section 18

1. A fair and accurate report of the proceedings of a legislature of a territory outside New Zealand or of a committee of any such legislature.

2. A fair and accurate report of the proceedings of a Court outside New Zealand (whether those proceedings are preliminary, interlocutory, or final, and whether in open Court or not), or of the result of those proceedings.

3. A fair and accurate report of the proceedings in an inquiry held under the authority of—

(a) The Government or Parliament of New Zealand; or

(b) The Government or legislature of a territory outside New Zealand,—or a true copy of, or a fair and accurate extract from or summary of, any official report made by the person by whom the inquiry was held.

4. A fair and accurate report of the proceedings of—

(a) An international organisation of—

(i) Countries or representatives of countries; or

(ii) Legislatures or representatives of legislatures; or

(iii) Governments or representatives of governments; or

- 15 A copy or a fair and accurate report or summary of a statement, notice, or other matter issued for the information of the public by or on behalf of the Government or any department or departmental officer, or any local authority or officer of the authority.

Definitions: **judge, news medium**, s 2; **association, company, New Zealand, Parliament, person**, *Acts Interpretation Act 1924* s 4; **court, government, legislature, local authority**, see Part 3 below

Part 3: Definitions

In this Schedule, unless the context otherwise requires,

court includes the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between States, and also includes a court martial;

government, in relation to a territory outside New Zealand that is subject to a central and a local government, means either of those governments;

legislature, in relation to a territory outside New Zealand that is subject to a central and local legislature, means either of those legislatures;

local authority means a local body or public body named or specified in Schedule 1 or Schedule 2 to the *Local Government Official Information and Meetings Act 1987*.

SCHEDULE 2 ENACTMENTS AMENDED

See section 56(1)

Race Relations Act 1971 (1971/150)

section 20

Repeal subsection (3)

Substitute:

- “(3) For the purposes of clause 3 of Schedule 1, Part 2 to the *Defamation Act 1992*, any report made by the Conciliator or the Deputy Conciliator under this Act shall be deemed to be an official report made by the person holding an inquiry under the authority of the Parliament of New Zealand.”

Ombudsmen Act 1975 (1975/9)

section 26

Repeal subsection (4)

Substitute:

- “(4) For the purposes of clause 3 of Schedule 1, Part 2 to the *Defamation Act 1992*, any report made by an Ombudsman under this

Section 56 (1)

SECOND SCHEDULE
ENACTMENTS AMENDED

Enactment	Amendment
1971, No. 150—The Race Relations Act 1971 (R.S. Vol. 14, p. 479)	By repealing section 20 (3), and substituting the following subsection: “(3) For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any report made by the Conciliator or the Deputy Conciliator under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”
1975, No. 9—The Ombudsmen Act 1975 (R.S. Vol. 21, p. 657)	By repealing section 26 (4) (as substituted by section 5 of the Ombudsmen Amendment Act (No. 2) 1982, and amended by section 57 (1) of the Local Government Official Information and Meetings Act 1987), and substituting the following subsection: “(4) For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any report made by an Ombudsman under this Act, or under the Official Information Act 1982, or under the Local Government Official Information and Meetings Act 1987, shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”
1976, No. 19—The Wanganui Computer Centre Act 1976	By repealing section 18B (as inserted by section 6 of the Wanganui Computer Centre Amendment Act 1980), and substituting the following section: “18B. Qualified privilege —For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any report made under this Act by the Commissioner or the deputy of the Commissioner shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”
1977, No. 49—The Human Rights Commission Act 1977 (R.S. Vol. 18, p. 227)	By repealing section 76 (3), and substituting the following subsection: “(3) For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any report made by the Commission under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”

Broadcasting Act 1989 (1989/25)

section 13

Repeal subsection (4)

Substitute:

“(4) Every statement published pursuant to an order made under subsection (1) shall be deemed for the purposes of clause 13 of Schedule 1, Part 2 to the *Defamation Act 1992* to be a notice published on the authority of a court.”

section 15

Repeal subsection (3)

Substitute:

“(3) Every notice published under subsection (1) shall be deemed for the purposes of clause 6 of Schedule 1, Part 1 to the *Defamation Act 1992* to be a fair and accurate report of the proceedings of a court in New Zealand.”

Schedule 2

Repeal so much as relates to the *Defamation Act 1954*.

Privacy Commissioner Act 1991 (1991/126)

section 29

Repeal subsection (5)

Substitute:

“(5) For the purposes of clause 3 of Schedule 1, Part 2 to the *Defamation Act 1992*, any report made under this Act by the Commissioner shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.”

SCHEDULE 3 ENACTMENTS REPEALED

See section 56(2)

Defamation Act 1954 (1954/46)

the whole Act

Electoral Act 1956 (1956/107)

section 128

Defamation Amendment Act 1958 (1958/63)

the whole Act

Crimes Act 1961 (1961/43)

Part 9, s 357(5), and so much of Schedule 3 as relates to the *Defamation Act 1954*

Section 56 (2)

THIRD SCHEDULE

ENACTMENTS REPEALED

- 1954, No. 46—The Defamation Act 1954. (R.S. Vol. 2, p. 307.)
1956, No. 107—The Electoral Act 1956: section 128. (R.S. Vol. 26, p. 173.)
1958, No. 63—The Defamation Amendment Act 1958. (R.S. Vol. 2, p. 321.)
1961, No. 43—The Crimes Act 1961: Part IX, section 357 (5), and so much of the Third Schedule as relates to the Defamation Act 1954. (R.S. Vol. 1, p. 635.)
1974, No. 82—The Defamation Amendment Act 1974. (R.S. Vol. 2, p. 322.)
1976, No. 144—The Local Elections and Polls Act 1976: section 55. (R.S. Vol. 28, p. 683.)
1980, No. 52—The Wanganui Computer Centre Amendment Act 1980: section 6.
1981, No. 120—The Electoral Amendment Act 1981: so much of the Schedule as relates to section 128 of the Electoral Act 1956. (R.S. Vol. 26, p. 346.)
-

This Act is administered in the Department of Justice.

APPENDIX C

Some Other Aids to Understanding

Amending Act

from *A (Draft) Publication of Legislation Bill* (NZLC R11)

10 Disestablishment of Government Printing Office

- (1) The following enactments (relating to the Government Printing Office) are amended:
 - (a) the Acts Interpretation Act 1924: the definition of "Government Printer" in section 4 is repealed;
 - (b) the Electoral Act 1956: section 20A(4) is repealed;
 - (c) the Films Act 1983: the words "The Government Printing Office" in Part I of the Schedule are omitted;
 - (d) the Ombudsmen Act 1975: the words "The Government Printing Office" in Part I of the First Schedule are omitted;
 - (e) the State Sector Act 1988: the words "Government Printing Office" in the First Schedule are omitted.
- (2) Although the Government Printing Office ceases to be a department of State under the State Sector Act 1988 on the coming into force of this section, both the agreement covering the employees of the Government Printing Office registered with the Arbitration Commission and the union coverage arrangement, in force and prevailing immediately before that date, continue to apply for 12 months to persons employed on work that was previously covered by that agreement or by that union coverage arrangement.
- (3) This section comes into force on a date to be appointed by the Governor-General by Order in Council.

Note: See Statutory Publications Bill cls 29(3) and (4), 35, 43, 47, 48.

Flow chart

from *Patents Act 1990* (Australia)

Patents No. 83, 1990

5

TABLE 2—GETTING AND MAINTAINING A PETTY PATENT

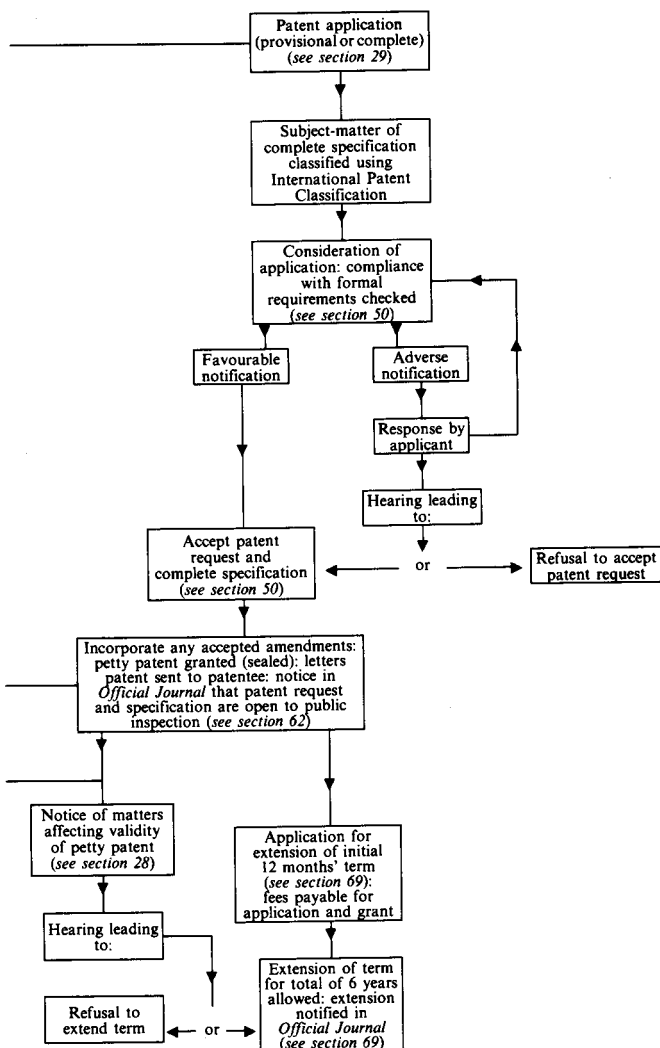
Fee payable.

A complete application must be associated with a provisional application within the prescribed period.

Provisionals which lapse at this stage are not published.

Initial term is 12 months (see section 68).

Petty patents may be subject to revocation (see section 138) and re-examination (see section 97).



Formulas

from *Income Tax Amendment Act (No. 2) 1989* (NZ)

“327c. Deduction of resident withholding tax—

(1) Subject to this section, where a person makes a payment which consists in whole or in part of resident withholding income, that person shall, at the time of making the payment, make a deduction of tax (in this Act referred to as resident withholding tax) therefrom—

“(a) To the extent to which that payment consists of interest, of an amount calculated in accordance with the following formula:

$$(a \times (b + c)) - c$$

where—

- a is the rate of resident withholding tax, expressed as a percentage, specified in clause 1 of the Nineteenth Schedule to this Act; and
- b is the amount of interest paid (before the deduction of resident withholding tax); and
- c is the amount of foreign withholding tax paid or payable in respect of that amount of interest paid; and

“(b) To the extent to which that payment consists of dividends, of an amount calculated in accordance with the following formula:

$$(a \times (b + c)) - c$$

where—

- a is the rate of resident withholding tax, expressed as a percentage, specified in clause 2 of the Nineteenth Schedule to this Act; and
- b is the amount of dividend paid (before the deduction of resident withholding tax) or, in the case of dividends being a taxable bonus issue, inclusive of the deduction of resident withholding tax; and

c is—

“(i) In the case of any dividend paid in relation to shares issued by a company that is at the time of payment not resident in New Zealand, the amount of foreign withholding tax paid or payable in respect of that amount of dividend paid; or

“(ii) In the case of any other dividend, the aggregate of the amounts of—

“(A) Any imputation credit attached to the dividend; and

“(B) Any dividend withholding payment credit attached to the dividend:

Formulas

from *Statutory Rules 1990* (Australia): AUSTUDY Regulations

AUSTUDY 1990 No. 443

41

Chapter 4

Part 1—The kinds of living allowance and their value

What is the living allowance?

unemployment benefit under Part XIII of the *Social Security Act 1947*; and

- (d) the spouse does not get assistance from the Commonwealth for his or her studies.

(2) The living allowance at the independent rate is increased for a period by the amount calculated by using the following formula:

$$\$2,226.50 \times \frac{\text{the number of days in the period}}{\text{the number of days in the year}}$$

if:

- (a) in that period:

(i) the student has a dependent spouse¹ but no dependent children; and

(ii) the spouse does not get a payment listed in Schedule 1; and

(iii) the spouse does not get job search allowance, sickness benefit, special benefit or unemployment benefit under Part XIII of the *Social Security Act 1947*; and

(iv) the spouse does not get assistance from the Commonwealth for his or her studies; and

- (b) the student got a dependent spouse allowance for 31 December 1990 under subregulation 41 (5) of the Student Assistance Regulations and has remained qualified to get a dependent spouse allowance after that date.

(3) The allowance for a spouse is reduced by \$1 for every \$2 by which the spouse's income is more than the amount calculated using the following formula:

$$\$1,560 \times \frac{\text{the number of days in the period}}{\text{the number of days in the year}}$$

Note to regulation 64

1 "Spouse" is defined in subregulation 93 (2).

65
Only one amount
of living allowance
can be paid

65. A student can get only the greatest amount that would be payable if the student could get living allowance under several provisions.

Examples of how the law applies

from *Statutory Rules 1990* (Australia): AUSTUDY Regulations

2

AUSTUDY 1990 No. 443

Chapter 2

Who can get AUSTUDY?

3

Summary of requirements

3. To get AUSTUDY a student must meet the requirements set out in this chapter as follows:

- (a) secondary student (general or adult): Parts 1 and 2;
- (b) tertiary student: Parts 1 and 3.

Part 1—General requirements for all students

4

Citizenship

4. (1) To get AUSTUDY, a student must:

- (a) be an Australian citizen; or
- (b) be a New Zealand citizen who has permanently settled in Australia and who:
 - (i) has lived in Australia for the last 6 months¹; or
 - (ii) has lived in Australia for the last 12 months, with no more than 2 months' absence from Australia in that period²;
- or
- (c) in any other case—be a permanent resident within the meaning of subsection 58 (2) of the *Migration Act 1958*.

(2) A person who comes within paragraph (1) (b) or (c) comes within the definition of "permanent resident of Australia" in subsection 3 (1) of the *Student Assistance Act 1973*.

Notes to regulation 4

1 For example, Roger is a New Zealand citizen. He came to Australia on 12 November of last year. He will qualify for AUSTUDY on 12 May of the current year, under paragraph 4 (1) (b) (i).

2 For example, Barbara is a New Zealand citizen. She has lived in Australia for the last 10 years, but travelled outside Australia for 2 weeks in February this year. She qualifies for AUSTUDY from 1 January this year, under paragraph 4 (1) (b) (ii).

Statement of penalty
from *Crimes (Aviation) Act 1991* (Australia)

Acts of violence at certain airports

- 15 **26.(1)** A person who:
- (a) without lawful excuse, uses a substance or thing to commit an act of violence against anyone at a prescribed airport, being an act that:
 - (i) causes or is likely to cause serious injury or death; and
 - 20 (ii) endangers, or is likely to endanger the safe operation of the airport or the safety of anyone at the airport; or
 - (b) attempts to do anything covered by paragraph (a); or
 - (c) is an accomplice of anyone who does or attempts to do any such thing;
- 25 is guilty of an offence if the Montreal Convention, when read together with the Protocol, requires Australia to make the act punishable and Article 5 of that Convention, when so read, requires Australia to establish its jurisdiction over the offence.

Penalty: Imprisonment for 15 years.

Symbol

from *New Zealand 1990 Commission Act 1988*

6

New Zealand 1990 Commission

1988, No. 168

SCHEDULES

Section 2

FIRST SCHEDULE

THE OFFICIAL EMBLEM OF THE NEW ZEALAND 1990 COMMISSION



New Zealand
1990

APPENDIX D

Select Bibliography

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APPENDIX E

Other Initiatives

Although the Law Commission has broad responsibilities in respect of legislation, other bodies also have important functions in the same and related areas. Some initiatives outside New Zealand are mentioned in the report and the bibliography (Appendix D). Relevant initiatives in New Zealand include:

- the adoption by Cabinet in 1987 and December 1990 of the Report of the Legislation Advisory Committee, *Legislative Change: Guidelines on Process and Content* (August 1987), setting out standards which are to be met in the preparation of Bills;
- the enactment in July 1988 of the *Imperial Laws Application Act 1988* and related legislation providing a definitive list of English and Imperial legislation which continues to be part of the law of New Zealand; the Law Commission's first report, *Imperial Legislation in Force in New Zealand* (1987) NZLC R1, printed among other things the texts of the relevant legislation;
- the further development of the legislative work of Parliamentary Select Committees (in part following the change in Standing Orders in 1985), including the Regulations Review Committee;
- the valuable seminars on the Interpretation of Statutes presented by Professor John Burrows, organised by the New Zealand Law Society, and the subsequent publication of his book *Statute Law in New Zealand* (Butterworths, Wellington, 1992);
- the preparation by the Legislation Advisory Committee of a report, endorsed by Cabinet and accepted by parliamentary practice, on *Departmental Statutes* (1989);

- the report by B J Cameron and C J Thompson, presented to Cabinet in 1989, *Review of the Parliamentary Counsel Office* (September 1989), with recommendations relating to the structure of the Parliamentary Counsel Office;
- the enactment in December 1989 of the *Regulations (Disallowance) Act 1989* and the *Acts and Regulations Publication Act 1989*; these Acts provided for the disallowance of regulations by the House of Representatives, and for the printing, publication and continuing availability of copies of legislation (see the report of the Law Commission, *Legislation and its Interpretation: Statutory Publications Bill* (1989) NZLC R11);
- the papers and discussion at the Commonwealth Law Conference held in Auckland in April 1990 on the drafting of legal documents and the interpretation of statutes;
- the papers and discussions on plain drafting at the Commonwealth Law Ministers' Conference held in Christchurch in April 1990;
- the publication by the Commission of *A New Interpretation Act: To Avoid "Prolivity and Tautology"* NZLC R17 (and a Summary Version) in January 1991—after wide consultation and discussion (see NZLC PP1, *Legislation and its Interpretation: The Acts Interpretation Act 1924 and Related Legislation* (discussion paper and questionnaire); seminar on legislation and its interpretation in March 1988, proceedings published as NZLC PP8, *Legislation and its Interpretation: Discussion and Seminar Papers*; distribution in 1989 of a paper on the Crown and statutes);
- the production of a new Cabinet Office Manual (November 1991) which requires Ministers to certify compliance with the Legislation Advisory Committee's guidelines on the preparation of legislation contained in the report *Legislative Change: Guidelines on Process and Content* (revised ed, 1991);
- the work of the Commission, assisted by others, on the preparation of the *Legislation Manual for New Zealand*, which will set out standards to be followed in the drafting of legislation and help ensure consistency. Parts 1–3 will be published soon;
- the publication of a second report by the Working Party on the Reorganisation of the Income Tax Act 1976 in September 1993. The report recommends the reordering and rewriting of income tax legislation and provides detailed drafting guidelines drawing on work done by the Law Commission and the Legislation Advisory Committee.

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Other Law Commission Publications:

Preliminary Paper series

- NZLC PP1 Legislation and its Interpretation: The Acts Interpretation Act 1924 and Related Legislation (discussion paper and questionnaire) (1987)
- NZLC PP2 The Accident Compensation Scheme (discussion paper) (1987)
- NZLC PP3 The Limitation Act 1950 (discussion paper) (1987)
- NZLC PP4 The Structure of the Courts (discussion paper) (1987)
- NZLC PP5 Company Law (discussion paper) (1987)
- NZLC PP6 Reform of Personal Property Security Law (report by Prof J H Farrar and M A O'Regan) (1988)
- NZLC PP7 Arbitration (discussion paper) (1988)
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- NZLC PP9 The Treaty of Waitangi and Maori Fisheries – Mataitai: Nga Tikanga Maori me te Tiriti o Waitangi (background paper) (1989)
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- NZLC PP12 The Prosecution of Offences (issues paper) (1990)
- NZLC PP13 Evidence Law: Principles for Reform (discussion paper) (1991)
- NZLC PP14 Evidence Law: Codification (discussion paper) (1991)
- NZLC PP15 Evidence Law: Hearsay (discussion paper) (1991)
- NZLC PP16 The Property Law Act 1952 (discussion paper) (1991)
- NZLC PP17 Aspects of Damages: Interest on Debt and Damages (discussion paper) (1991)
- NZLC PP18 Evidence Law: Expert Evidence and Opinion Evidence (discussion paper) (1991)
- NZLC PP19 Apportionment of Civil Liability (discussion paper) (1992)
- NZLC PP20 Tenure and Estates in Land (discussion paper) (1992)
- NZLC PP21 Criminal Evidence: Police Questioning (discussion paper) (1992)

Report series

See inside front cover

