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Human Rights Amendment Act 2001

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Contents

		Page
1	Title	10
2	Commencement	10
	Part 1	
	Amendments to principal Act	
	Amendment to preliminary provisions	
3	New section 2 substituted	10
	2 Interpretation	11

Note
Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered in the Ministry of Justice.

Amendments to Part 1

4 Continuation of Human Rights Commission 13
5 New sections 5 to 20H and headings substituted 13

Functions and powers of Commission

5 Functions and powers of Commission 13
6 Powers relating to declaratory judgments 15

Activities in performance of Commission's functions

7 Commission determines general nature of activities 16

Membership of Commission

8 Membership of Commission 16
9 Alternate Commissioners 17
10 Meetings of Commission 18

Criteria for appointment

11 Criteria for appointment 19
12 Further criteria for appointment of Chief Commissioner 20
13 Further criteria for appointment of Race Relations Commissioner 20
14 Further criteria for appointment of Equal Employment Opportunities Commissioner 20

Functions of commissioners

15 Functions of Chief Commissioner 21
16 Functions of Race Relations Commissioner 22
17 Functions of Equal Employment Opportunities Commissioner 22

General manager and staff of Commission

18 General manager and staff of Commission 23

Commissioners to act independently

19 Duty to act independently 24

Office of Human Rights Proceedings

20 Office of Human Rights Proceedings 24

Director of Human Rights Proceedings

20A Director of Human Rights Proceedings 24

20B Criteria and requirement for appointment 25

Appointment of Judge as Human Rights Commissioner

20C Appointment of Judge as Human Rights Commissioner 25

Provisions relating to office holders

20D Office holders to whom sections 20E to 20G apply 26
20E Service in office 26
20F Term of office 26
20G Vacation of office 27

Administrative provisions relating to Human Rights Commission and Office of Human Rights Proceedings

20H Administrative provisions set out in Schedules 1 and 2 27

6 New Part 1A inserted 27

Part 1A
Discrimination by Government, related persons and bodies, or persons or bodies acting with legal authority

20I Purpose of this Part 28
20J Acts or omissions in relation to which this Part applies 28
20K Purposes for which section 20L applies 28
20L Acts or omissions in breach of this Part 29

Amendments to Part 2

7 New headings and sections 21A and 21B inserted 29

Application of Part to persons and bodies referred to in section 3 of New Zealand Bill of Rights Act 1990

21A Application of this Part limited if section 3 of New Zealand Bill of Rights Act 1990 applies 29

Acts or omissions authorised or required by law

21B Relationship between this Part and other law 30

Prohibited grounds of discrimination.

8 Exceptions in relation to access by the public to places, vehicles, and facilities 30

New Part 3 substituted

9 New Part 3 substituted 30

Part III
Resolution of disputes about compliance with Part 1A and Part II

75 Object of this Part 31
76 Functions of Commission under this Part 31
77 Dispute resolution services 32
78 Method of providing services 32
79 How complaints received to be treated 33
80 Taking action or further action in relation to complaint 34
81 Commission to inform parties of process 35
82 Information gathering and disclosure by Commission 36
83 Settlement 36
84 Reference of complaint to Director or from Director or Tribunal 37
85 Confidentiality of information disclosed at dispute resolution meeting 37
86 Evidence as to dispute resolution meeting 38
87 Certain information not to be made available 38
88 Limits on effect of section 80(1) or sections 85 to 87 38
89 Enforcement of terms of settlement agreed by parties 39
90 Functions of Director of Human Rights Proceedings under this Part 39
91 Requirements for Director's decisions under section 90 40
92 Matters Director to have regard to in deciding whether to provide representation in proceedings before Tribunal or in related proceedings 41
92A Director to notify and report on decisions on representation 41

Proceedings

92B Civil proceedings arising from complaints 42
92C Representation in civil proceedings arising from complaints 44

92D Tribunal may refer complaint back to Commission, or adjourn proceedings to seek resolution by settlement 45
92E Civil proceedings arising from inquiry by Commission 45
92F Proof of justified limits and exceptions 46
92G Right of Attorney-General to appear in civil proceedings 46
92H Right of Commission to appear in civil proceedings 47

Remedies

92I Remedies 48
92J Remedy for enactments in breach of Part 1A 49
92K Effect of declaration 49
92L Costs 50
92M Damages 50
92N Directions as to payment of damages in certain cases 51
92O Tribunal may defer or modify remedies for breach of Part 1A or Part II or terms of settlement 52
92P Matters to be taken into account in exercising powers given by section 92O 52

Monetary limits on remedies Tribunal may grant

92Q Monetary limits on remedies Tribunal may grant 53

Granting of remedies by High Court on reference from Tribunal

92R Tribunal to refer granting of remedies to High Court 54
92S Further provisions on reference to High Court 54
92T High Court decides remedies on reference from Tribunal 55
92U High Court's decision on remedies to be included in, and given effect to as part of, Tribunal's determination 55

Abandonment or agreement to bring claim within Tribunal's jurisdiction

92V Abandonment to enable Tribunal to make award of damages 56

92W Extension of jurisdiction by agreement between parties 56

Amendments to Part 4

10 New heading to Part 4 substituted 57

Human Rights Review Tribunal.

11 Complaints Review Tribunal 57
12 Functions of Tribunal 57
13 Power to make interim order 57
14 New section 97 substituted 57

97 Power in respect of exception for genuine occupational qualification or genuine justification 58

15 New section 99A inserted 58

99A Criteria and requirement for appointment of Chairpersons 58

16 Appointment and term of office 58
17 Panel 59
18 New section 105 substituted 59

105 Substantial merits 59

19 Evidence in proceedings before Tribunal 59
20 Persons entitled to be heard 60
21 New sections 108A and 108B inserted 60

108A Tribunal to give notice of proceedings 60
108B Submissions in relation to remedies 60

22 Witness summons 60
23 Tribunal may dismiss trivial, etc, proceedings 61
24 New section 116 substituted 61

116 Reasons to be given 61

25 Enforcement 61
26 Stating case for High Court 62
27 New sections 122A and 122B inserted 62

122A Removal to High Court of proceedings or issue 62
122B Proceedings or issue removed to High Court 63

28 Appeals to High Court 64
29 Additional members of High Court for purposes of Act 64

Amendments to Part V

30 Amendment to heading to Part 5 64
31 New section 126A inserted 64

126A Evidence order 65

32 Evidence 65

33 Protection and privileges of witnesses, etc, 66
34 Disclosure of certain matters not to be required 66
35 Proceedings privileged 66

Amendments to Part VII

36 No adverse statement 66
37 New sections 139 and 140 substituted 66
139 Delegation of functions or powers by Commission 67
140 Delegation of powers by certain Commissioners 67
38 New section 141A inserted 68
141A Certain acts not to be questioned 68
39 Regulations 68
40 New headings and sections 148 to 148O substituted 68

Transitional provisions

148 Former office of Commissioner abolished 68
148A Certain former Commissioners to be transitional members of Commission 69

Race Relations Conciliator

148B Assets and liabilities vest in Commission 69
148C References to Race Relations Conciliator 70
148D Proceedings 70
148E Commission to arrange final audited accounts 70
148F All employees transferred to Commission 70

Proceedings Commissioner

148G Proceedings Commissioner 71
148H References to Proceedings Commissioner 71
148I Proceedings to which Proceedings Commissioner party 71
148J Complaints referred to Proceedings Commissioner for decision as to proceedings 72
148K Transfer of employees from Commission to Office 72

Complaints Division

148L Complaints Division abolished 73
148M Outstanding complaints to be dealt with by Commission under new procedure 73
148N Breaches of Part 1A 74
148O Complaints about breaches of Part 1A 74
41 Other enactments and actions not affected 74

42 Savings 74
43 New Schedules 1 and 2 substituted 75
44 Repeals 75

Part 2
Amendments to other enactments

Amendment to Alcoholism and Drug Addiction Act 1966

45 Power of District Court Judge to order detention and treatment on application of relative or other reputable person 75

Amendment to Births, Deaths, and Marriages Registration Act 1995

46 Marriage information to be sent to Registrar 75

Amendment to Crimes Act 1961

47 Discharge of jury *[Repealed]* 76

Amendments to Electoral Act 1993

48 Rules for determining place of residence within New Zealand 76
49 Disqualifications for registration 77
50 Removal of names from roll by Registrar 77
51 Dormant file 77

Amendments to Holidays Act 1981

52 Entitlement to special leave *[Repealed]* 77

Amendments to Human Tissue Act 1964 [Repealed]

53 Removal of human tissue for therapeutic purposes, etc *[Repealed]* 77
54 Anatomical examinations *[Repealed]* 78

Amendment to Immigration Act 1987

55 New sections 149C and 149D inserted 78
149C Purpose of section 149D 78
149D Relationship between this Act and Human Rights Act 1993 78

Amendment to Judicature Act 1908

56 Discharge of jury *[Repealed]* 78

Amendment to Land Transfer Act 1952

57 Particulars of marriage of female proprietor to be registered 79

Amendment to Life Insurance Act 1908

58 Wife may insure her own or her husband's life for her own benefit 79

Amendments to Marriage Act 1955

59 Place and form of marriage before marriage celebrant 79
60 New section 14A inserted 80
14A This Part not to limit sections 32 and 32A 80
61 New sections 32A to 32E inserted 80
32A Marriage in accordance with rules and procedures of exempt religious bodies 80
32B Application to become exempt religious body 81
32C Declaration of religious body as exempt religious body 82
32D Change in beliefs or objects of exempt religious bodies 83
32E List of exempt religious bodies 84

Amendments to Police Act 1958

62 Interpretation 85
63 Age of retirement 85
64 New section 53 substituted 86
53 Failing to help member of police 86

Amendment to Protection of Personal and Property Rights Act 1988

65 Interpretation 86

Amendment to Referenda (Postal Voting) Act 2000

66 Persons who, at commencement of voting period, are dead or disqualified or removed from roll 86

Amendments to Sale of Liquor Act 1989

67 Being on licensed premises outside licensing hours 87
68 Disqualification of members of Trust 87

Amendment to Summary Proceedings Act 1957

69 Mode of service of documents on defendant 87

Amendments relating to disability as a ground for removal from office

70 Amendments to ensure disability not a ground for removal 87

Consequential amendments

71 Consequential amendments 87

Schedule 1 88
New Schedules 1 and 2 substituted

Schedule 2 98
Amendments relating to disability as a ground for removal from office

Schedule 3 108
Consequential amendments to other enactments

The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the Human Rights Amendment Act 2001.

(2) In this Act, the Human Rights Act 1993 is called "the principal Act".

2 Commencement

(1) This Act comes into force on 1 January 2002.

(2) Despite subsection (1), sections 8(1)(c), 14, 15(1)(e), and 17 of the principal Act (as inserted by section 5 of this Act) and section 141A(2) of the principal Act (as inserted by section 38 of this Act) come into force on 1 July 2002.

Part 1
Amendments to principal Act

Amendment to preliminary provisions

3 New section 2 substituted

The principal Act is amended by repealing section 2, and substituting the following section:

"**2 Interpretation**

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

"**act** includes an activity, condition, enactment, policy, practice, or requirement

"**Chief Commissioner** means the Commissioner appointed as the Chief Human Rights Commissioner under section 8(1)(a)

"**Commission** means the Human Rights Commission continued by section 4

"**Commissioner** means a member of the Commission

"**Director of Human Rights Proceedings** or **Director** means the Director of Human Rights Proceedings or alternate Director of Human Rights Proceedings appointed under section 20A

"**dispose**, in sections 53 and 54, includes sell, assign, lease, let, sublease, sublet, license, or mortgage, and agree to dispose

"**dispute resolution meeting** means a meeting of the kind referred to in section 77(2)(c)

"**dispute resolution services** includes the provision of answers to questions by members of the public about discrimination and compliance with this Act

"**employer**, in Part II, includes—

"(a) the employer of an independent contractor; and

"(b) the person for whom work is done by contract workers under a contract between that person and the person who supplies those contract workers; and

"(c) the person for whom work is done by an unpaid worker

"**employment agreement** has the meaning given to that term by section 5 of the Employment Relations Act 2000

"**employment contract** has the meaning given to that term by section 2 of the Employment Contracts Act 1991

"**Equal Employment Opportunities Commissioner** means the Commissioner appointed as the Equal Employment Opportunities Commissioner under section 8(1)(c)

"**General manager** means the General manager of the Commission appointed by the Chief Commissioner under section 18; and includes any acting general manager of the Commission

"**Human Rights Review Tribunal** or **Tribunal** means the Tribunal continued by section 93

"**Minister** means the Minister of Justice

"**Office of Human Rights Proceedings** or **Office** means the office referred to in section 20

"**prohibited ground of discrimination** has the meaning given to it by section 21

"**Race Relations Commissioner** means the Commissioner appointed as the Race Relations Commissioner under section 8(1)(b)

"**relative**, in relation to any person, means any other person who—

"(a) is related to the person by blood, marriage, affinity, or adoption; or

"(b) is wholly or mainly dependent on the person; or

"(c) is a member of the person's household

"**residential accommodation**, in sections 53 and 54, includes accommodation in a dwellinghouse, flat, hotel, motel, boardinghouse, or camping ground

"**superannuation scheme** means any superannuation scheme, fund, or plan, or any provident fund, set up to confer, on its members or other persons, retirement or other benefits, such as accident, disability, sickness, or death benefits

"**trustees**, in relation to a superannuation scheme, includes the person or persons appointed to administer a superannuation scheme constituted under an Act of Parliament of New Zealand.

"(2) Unless the context otherwise requires, every reference in this Act to a complaint alleging a breach of 1 or more Parts of this Act includes a complaint that appears to allege or concern such a breach (whether or not it refers to the relevant Part in question).

"(3) Unless the context otherwise requires, every reference in this Act to a person against whom a complaint is made includes a body of any kind against whom a complaint is made.

"Compare: 1977 No 49 ss 2, 15(13), 25(5); 1983 No 56 s 4(4); 1992 No 16 s 2(3); 1993 No 35 s 3(3)"

Amendments to Part 1

4 Continuation of Human Rights Commission

Section 4 of the principal Act is amended by adding the following subsection:

"(4) The capacities, rights, and powers referred to in subsections (2) and (3) may be exercised only—

"(a) by persons authorised by or under this Act to perform functions of the Commission, for the purposes of performing those functions; or

"(b) by the Director of Human Rights Proceedings, his or her alternate, or the staff of the Office of Human Rights Proceedings (acting in accordance with directions issued by the Director or his or her alternate), for the purposes of exercising or performing a function, power, or duty of the Director under this Act."

5 New sections 5 to 20H and headings substituted

The principal Act is amended by repealing sections 5 to 20 and the headings before sections 5, 7, 10, 12, and 14, and substituting the following sections and headings:

"*Functions and powers of Commission*

"**5 Functions and powers of Commission**

"(1) The primary functions of the Commission are—

"(a) to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society; and

"(b) to encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society.

"(2) The Commission has, in order to carry out its primary functions under subsection (1), the following functions:

"(a) to be an advocate for human rights and to promote and protect, by education and publicity, respect for, and observance of, human rights:

"(b) to encourage and co-ordinate programmes and activities in the field of human rights:

"(c) to make public statements in relation to any matter affecting human rights, including statements promoting

an understanding of, and compliance with, this Act or the New Zealand Bill of Rights Act 1990 (for example, statements promoting understanding of measures to ensure equality, of indirect discrimination, or of institutions and procedures under this Act for dealing with complaints of unlawful discrimination):

"(d) to promote by research, education, and discussion a better understanding of the human rights dimensions of the Treaty of Waitangi and their relationship with domestic and international human rights law:

"(e) to prepare and publish, as the Commission considers appropriate, guidelines and voluntary codes of practice for the avoidance of acts or practices that may be inconsistent with, or contrary to, this Act:

"(f) to receive and invite representations from members of the public on any matter affecting human rights:

"(g) to consult and co-operate with other persons and bodies concerned with the protection of human rights:

"(h) to inquire generally into any matter, including any enactment or law, or any practice, or any procedure, whether governmental or non-governmental, if it appears to the Commission that the matter involves, or may involve, the infringement of human rights:

"(i) to appear in or bring proceedings, in accordance with section 6 or section 92B or section 92E or section 92H or section 97:

"(j) to apply to a court or tribunal, under rules of court or regulations specifying the tribunal's procedure, to be appointed as intervener or as counsel assisting the court or tribunal, or to take part in proceedings before the court or tribunal in another way permitted by those rules or regulations, if, in the Commission's opinion, taking part in the proceedings in that way will facilitate the performance of its functions stated in paragraph (a) of this subsection:

"(k) to report to the Prime Minister on—

"(i) any matter affecting human rights, including the desirability of legislative, administrative, or other action to give better protection to human

rights and to ensure better compliance with standards laid down in international instruments on human rights:

"(ii) the desirability of New Zealand becoming bound by any international instrument on human rights:

"(iii) the implications of any proposed legislation (including subordinate legislation) or proposed policy of the Government that the Commission considers may affect human rights:

"(l) to make public statements in relation to any group of persons in, or who may be coming to, New Zealand who are or may be subject to hostility, or who have been or may be brought into contempt, on the basis that that group consists of persons against whom discrimination is unlawful under this Act:

"(m) to develop a national plan of action, in consultation with interested parties, for the promotion and protection of human rights in New Zealand:

"(n) to do anything incidental or conducive to the performance of any of the functions set out in paragraphs (a) to (m):

"(o) to exercise or perform any other functions, powers, and duties conferred or imposed on it by or under this Act or any other enactment.

"(3) The Commission may, in the public interest or in the interests of a person, department, or organisation, publish reports relating generally to the exercise of its functions under this Act or to a particular inquiry by it under this Act, whether or not the matters to be dealt with in a report of that kind have been the subject of a report to the Minister or the Prime Minister.

"Compare: 1977 No 49 ss 5(1), (3), (5), 6(1), (2), 28A, 78(1), 86.

"6 Powers relating to declaratory judgments

"(1) If at any time the Commission considers that it may be desirable to obtain a declaratory judgment or order of the High Court in accordance with the Declaratory Judgments Act 1908, the Commission may, despite anything to the contrary in that Act or any other enactment or rule of law, institute proceedings under that Act.

"(2) The Commission may exercise the right in subsection (1) only if it considers that the exercise of the right will facilitate the performance of its functions stated in section 5(2)(a).

"(3) Subsection (1) does not limit the ability of the Commission to appear in or bring proceedings under section 92B or section 92E or section 92H or section 97.

"Compare: 1977 No 49 s 5A; 1983 No 56 s 3

"*Activities in performance of Commission's functions*

"**7 Commission determines general nature of activities**

"(1) The members of the Commission acting together determine the strategic direction and the general nature of activities undertaken in the performance of the Commission's functions.

"(2) The Chief Commissioner is responsible to the Commission for ensuring that activities undertaken in the performance of the Commission's functions are not inconsistent with determinations of the Commission.

"*Membership of Commission*

"**8 Membership of Commission**

"(1) The Commission consists of the following Human Rights Commissioners:

"(a) a Commissioner appointed as the Chief Commissioner, whose office is a full-time one:

"(b) a Commissioner appointed as the Race Relations Commissioner, whose office is also a full-time one:

"(c) a Commissioner appointed as the Equal Employment Opportunities Commissioner, whose office is also a full-time one:

"(d) No more than 5 other Commissioners, whose offices are each part-time ones.

"(2) Every Commissioner is appointed by the Governor-General on the recommendation of the Minister.

"(3) The powers and functions of the Commission are not affected by a vacancy in its membership.

"Compare: 1977 No 49 s 7(1)(a)(c), (ca), (d), (2); 1983 No 56 s 4(1), (2); 1991 No 132 s 3(1); 1993 No 35 s 2

"**9 Alternate Commissioners**

"(1) The Governor-General may, on the recommendation of the Minister, appoint as alternate Commissioners persons who may be designated as the alternate of a Commissioner by either the Minister under subsection (2) or the Chief Commissioner under subsection (3).

"(2) The Minister may designate a Commissioner or an alternate Commissioner to act as the Chief Commissioner—

"(a) during the period following the resignation of the Chief Commissioner and ending when the Chief Commissioner's successor comes into office; or

"(b) during the Chief Commissioner's incapacity or in respect of a particular function or activity of the Commission, as the case may be, if—

"(i) the Minister is satisfied that the Chief Commissioner is incapacitated by illness, absence, or other sufficient cause from performing the duties of his or her office; or

"(ii) the Chief Commissioner considers it is not proper or desirable that he or she should participate in the function or activity.

"(3) The Chief Commissioner may designate an alternate Commissioner to act as a Commissioner during the period the Chief Commissioner is acting as Chief Commissioner, or during the period of the Commissioner's incapacity, or in respect of a particular function or activity of the Commission, as the case may be, if—

"(a) the Chief Commissioner is a Commissioner acting as the Chief Commissioner under a designation under subsection (2); or

"(b) the Chief Commissioner is satisfied that any other Commissioner is incapacitated by illness, absence, or other sufficient cause from performing the duties of his or her office; or

"(c) a Judge who is for the time being holding office as a Commissioner declines to participate in, or withdraws from participation in, the particular function or activity of the Commission under section 20C(2); or

"(d) any other Commissioner considers it is not proper or desirable that he or she should participate in the function or activity of the Commission.

"(4) An alternate Commissioner designated under subsection (2) or subsection (3) must, while the alternate Commissioner acts as Chief Commissioner or as a Commissioner, be taken to be the Chief Commissioner or the Commissioner in whose place the alternate Commissioner acts.

"(5) No designation of an alternate Commissioner, and no act done by an alternate Commissioner, and no act done by the Commission while any alternate Commissioner is acting, may in any proceedings be questioned on the ground that the occasion for the alternate Commissioner's designation had not arisen or had ceased.

"Compare: 1977 No 49 s 7B; 1985 No 23 s 2

"**10 Meetings of Commission**

"(1) Meetings of the Commission are held at such times and places as the Commission or the Chief Commissioner may appoint.

"(2) The Chairperson, the Race Relations Commissioner, or any 4 Commissioners, may, at any time, call a special meeting of the Commission.

"(3) At a meeting of the Commission, the quorum necessary for the transaction of business is 4 Commissioners.

"(4) The Chief Commissioner must preside at all meetings of the Commission at which he or she is present, unless the members present, with the consent of the Chief Commissioner, appoint another member to preside at that meeting.

"(5) In the absence of the Chief Commissioner from a meeting, the Commissioners present must appoint 1 of their number to be the Chairperson for the purposes of that meeting.

"(6) At a meeting of the Commission, the presiding member has a deliberative vote and, in the case of an equality of votes, also has a casting vote.

"(7) A question arising at a meeting of the Commission must be decided by a majority of the valid votes recorded on the question.

"(8) Except as provided by or under this Act, the Commission may regulate its procedure in any manner it thinks fit.

"Compare: 1977 No 49 s 10

"Criteria for appointment

"**11 Criteria for appointment**

"(1) In recommending persons for appointment as Commissioners or alternate Commissioners, the Minister must have regard to the need for Commissioners and alternate Commissioners appointed to have among them—

"(a) knowledge of, or experience in,—

"(i) different aspects of matters likely to come before the Commission:

"(ii) New Zealand law, or the law of another country, or international law, on human rights:

"(iii) the Treaty of Waitangi and rights of indigenous peoples:

"(iv) current economic, employment, or social issues:

"(v) cultural issues and the needs and aspirations (including life experiences) of different communities of interest and population groups in New Zealand society:

"(b) skills in, or experience in,—

"(i) advocacy or public education:

"(ii) business, commerce, economics, industry, or financial or personnel management:

"(iii) community affairs:

"(iv) public administration, or the law relating to public administration:

"(2) Nothing in this section limits section 12 or section 13.

"Compare: 1977 No 49 s 7(3); 1985 No 23 s 3(1)

"**12 Further criteria for appointment of Chief Commissioner**

In recommending a person for appointment as Chief Commissioner, the Minister must have regard not only to the criteria stated in section 11 but also to the person's—

"(a) ability to provide leadership in relation to the performance of the functions of the Commission (for example, being an advocate for, and promoting, by education and publicity, respect for and observance of human rights):

"(b) ability to represent the Commission, and to create and maintain effective relationships between it and other persons or bodies:

"(c) knowledge of New Zealand law, the law of other countries, and international law, on human rights, and of New Zealand's obligations under international instruments on human rights:

"(d) appreciation of issues or trends in human rights arising in other countries or internationally, and of the relevance of those issues or trends for New Zealand:

"(e) ability to perform the functions stated in section 15.

"**13 Further criteria for appointment of Race Relations Commissioner**

In recommending a person for appointment as Race Relations Commissioner, the Minister must have regard not only to the criteria stated in section 11 but also to the person's—

"(a) understanding of current race relations in New Zealand, and of the origins and development of those relations:

"(b) appreciation of issues or trends in race relations arising in other countries or internationally, and of the relevance of those issues or trends for New Zealand:

"(c) ability to perform the functions stated in section 16.

"**14 Further criteria for appointment of Equal Employment Opportunities Commissioner**

In recommending a person for appointment as the Equal Employment Opportunities Commissioner, the Minister must have regard not only to the criteria stated in section 11 but also to the person's—

"(a) understanding of principles relating to equal employment opportunities:

"(b) appreciation of issues, trends, and developments in the promotion of equal employment opportunities in other countries and internationally, and the relevance of those issues, trends, or developments in New Zealand:

"(c) ability to perform the functions stated in section 17.

"*Functions of commissioners*

"**15 Functions of Chief Commissioner**

"(1) The Chief Commissioner has the following functions:

"(a) to chair the Commission, and lead discussions of the Commission (except when the Commission has discussions on matters of race relations):

"(b) to ensure that activities undertaken in the performance of the Commission's functions are consistent with the strategic direction and other determinations of the Commission under section 7:

"(c) to allocate spheres of responsibility among the Commissioners, and to determine the extent to which Commissioners engage in activities undertaken in the performance of the Commission's functions (except for those stated in section 76), but in each case only after consultation with the Minister:

"(d) to act jointly with the Race Relations Commissioner on matters of race relations arising in the course of activities undertaken in the performance of the Commission's functions and to carry out the functions conferred on the Chief Commissioner by section 16(c) and (d):

"(e) to act jointly with the Equal Employment Opportunities Commissioner on matters concerning equal employment opportunities arising in the course of activities undertaken in the performance of the Commission's functions, and to carry out the functions conferred on the Chief Commissioner by section 17(g):

"(f) to supervise and liaise with the General manager on matters of administration in relation to the Commission and on the activities undertaken in the performance of the Commission's functions:

"(g) any other functions, powers, or duties conferred or imposed on him or her by or under this Act or any other enactment.

"(2) Subsection (1)(d) and (e) is subject to section 7(2).

"Compare: 1977 No 49 s 7(1)(a), (5)

"**16 Functions of Race Relations Commissioner**

The Race Relations Commissioner has the following functions:

"(a) to lead discussions of the Commission in relation to matters of race relations:

"(b) to provide advice and leadership on matters of race relations arising in the course of activities undertaken in the performance of the Commission's functions, both when engaging in those activities and otherwise when consulted:

"(c) to ensure, acting jointly with the Chief Commissioner, that activities undertaken in the performance of the Commission's functions in matters of race relations are consistent with the strategic direction and other determinations of the Commission under section 7:

"(d) to supervise and liaise with the General manager, acting jointly with the Chief Commissioner, on the activities undertaken in the performance of the Commission's functions in matters of race relations:

"(e) any other functions, powers, or duties conferred or imposed on him or her by or under this Act or any other enactment.

"Compare: 1971 No 150 s 13; 1977 No 49 s 86

"**17 Functions of Equal Employment Opportunities Commissioner**

The Equal Employment Opportunities Commissioner has the following functions:

"(a) to lead discussions of the Commission about equal employment opportunities (including pay equity):

"(b) to provide advice and leadership on equal employment opportunities arising in the course of activities undertaken in the performance of the Commission's func-

tions, both when engaging in those activities and otherwise when consulted:

"(c) to evaluate, through the use of benchmarks developed by the Commissioner, the role that legislation, guidelines, and voluntary codes of practice play in facilitating and promoting best practice in equal employment opportunities:

"(d) to lead development of guidelines and voluntary codes of practice to facilitate and promote best practice in equal employment opportunities (including codes that identify related rights and obligations in legislation), in accordance with section 5(2)(e):

"(e) to monitor and analyse progress in improving equal employment opportunities in New Zealand, and to report to the Minister on the results of that monitoring and analysis:

"(f) to liaise with, and complement the work of, any trust or body that has as 1 of its purposes the promotion of equal employment opportunities (including pay equity):

"(g) to ensure, acting jointly with the Chief Commissioner, that activities undertaken in the performance of the Commission's functions in matters of equal employment opportunities are consistent with the strategic direction and other determinations of the Commission under section 7:

"(h) any other functions, powers, or duties conferred or imposed on him or her by or under this Act or any other enactment.

"*General manager and staff of Commission*

"**18 General manager and staff of Commission**

"(1) The General manager and staff of the Commission undertake activities required to perform the functions of the Commission in accordance with the strategic direction and other determinations of the Commission under section 7.

"(2) The General manager—

"(a) is responsible to the Chief Commissioner and reports to him or her; and

"(b) is appointed by the Chief Commissioner, in accordance with clause 1 of Schedule 1.

"(3) Employees of the Commission are responsible to the General manager and report to him or her.

"*Commissioners to act independently*

"**19 Duty to act independently**

Members of the Commission must act independently in the exercise or performance of functions of the Commission.

"*Office of Human Rights Proceedings*

"**20 Office of Human Rights Proceedings**

"(1) The Office of Human Rights Proceedings is part of the Commission and is headed by the Director of Human Rights Proceedings or his or her alternate.

"(2) The staff of the Office report to the Director or his or her alternate, and help him or her to exercise or perform the functions, powers, and duties of the Director under this Act.

"(3) In exercising or performing the functions, powers, and duties of the Director, the Director or his or her alternate and the staff of the Office must act independently from the Commission and Ministers of the Crown.

"(4) However, the Director or his or her alternate is responsible to the Chief Commissioner for the efficient, effective, and economical administration of the activities of the Office.

"*Director of Human Rights Proceedings*

"**20A Director of Human Rights Proceedings**

"(1) The Director of Human Rights Proceedings is appointed by the Governor-General on the recommendation of the Minister.

"(2) The Governor-General may, on the recommendation of the Minister, appoint as alternate Director of Human Rights Proceedings a person designated for appointment as alternate Director by the Minister.

"(3) The Minister must not designate a person for appointment as alternate Director of Human Rights Proceedings unless—

"(a) the Minister is satisfied that the Director is incapacitated by illness, absence, or other sufficient cause from performing the duties of his or her office; or

"(b) the Director considers it is not proper or desirable that the Director should perform any particular duty of his or her office.

"Compare: 1977 No 49 s 7B; 1985 No 23 s 2

"20B Criteria and requirement for appointment

"(1) In recommending a person for appointment as Director of Human Rights Proceedings or as his or her alternate, the Minister must have regard not only to the person's attributes but also to the person's—

"(a) knowledge of, or experience in,—

"(i) the different aspects of matters likely to come before the Human Rights Review Tribunal:

"(ii) New Zealand law, or the law of another country, or international law, on human rights:

"(iii) current economic, employment, or other social issues:

"(b) skills in, or experience in, the practice of public law (including the conduct of litigation), and financial and personnel management:

"(c) ability to exercise or perform, and to ensure the Office of Human Rights Proceedings helps the person to exercise or perform, efficiently and effectively, the functions, powers, and duties of the Director under this Act.

"(2) Every person appointed as Director of Human Rights Proceedings or as his or her alternate must be a barrister or solicitor of the High Court of not less than 5 years' legal experience.

"Compare: 1977 No 49 s 7(3); 1985 No 23 s 3(1)

"*Appointment of Judge as Human Rights Commissioner*

"20C Appointment of Judge as Human Rights Commissioner

"(1) The appointment of a Judge as a Commissioner or alternate Commissioner or service by a Judge as a Commissioner or alternate Commissioner does not affect his or her tenure of judicial office or his or her rank, title, status, precedence, salary,

annual or other allowances, or other rights or privileges as a Judge (including those in relation to superannuation), and, for all purposes, his or her service as a Commissioner or alternate Commissioner must be taken to be service as a Judge.

"(2) A Judge who is for the time being holding office as a Commissioner may, at any time, decline to participate in, or withdraw from participation in, any particular function or activity of the Commission if the Judge considers it incompatible with his or her judicial office.

"Compare: 1977 No 49 ss 7(5A), 7A; 1983 No 56 ss 4(3), 5; 1985 No 23 s 3(1)

"Provisions relating to office holders

"20D Office holders to whom sections 20E to 20G apply

"(1) Sections 20E to 20G each applies to a person (the **office holder**) who holds 1 of the following offices (the **office**):

"(a) Commissioner:

"(b) alternate Commissioner:

"(c) Director of Human Rights Proceedings:

"(d) alternate Director of Human Rights Proceedings.

"(2) However, section 20G(c) and (d) do not apply to a Commissioner or alternate Commissioner who is a Judge.

"(3) Nothing in subsection (2) limits the application of section 20G(c) or (d) to a Commissioner or alternate Commissioner who ceases to be a Judge during his or her term of office as a Commissioner or alternate Commissioner.

"Compare: 1983 No 56 s 6; 1985 No 23 s 3(1)

"20E Service in office

The office holder must not be treated as being employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 just because he or she is appointed to the office.

"Compare: 1971 No 150 s 34; 1977 No 49 s 7(4); 1985 No 23 s 3(1)

"20F Term of office

The office holder—

"(a) holds the office for the term (not longer than 5 years) the Governor-General, on the recommendation of the Minister, specifies in the person's appointment; and

"(b) may, from time to time, be reappointed; and

"(c) unless he or she sooner vacates or no longer holds or is removed from the office under section 20G, continues in it until his or her successor comes into it, even though the term for which he or she was appointed has expired.

"Compare: 1971 No 150 s 12(1), (2); 1977 No 49 s 8; 1985 No 23 s 3(1)

"**20G Vacation of office**

The office holder—

"(a) may resign from the office by delivering to the Minister a notice in writing to that effect and stating when the resignation takes effect:

"(b) ceases to hold office if he or she dies:

"(c) ceases to hold office if he or she is, under the Insolvency Act 1967, adjudged bankrupt:

"(d) may, at any time, be removed from the office by the Governor-General for incapacity affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

"Compare: 1971 No 150 s 12(3); 1977 No 49 s 9; 1985 No 23 s 3(1)

"*Administrative provisions relating to Human Rights Commission and Office of Human Rights Proceedings*

"**20H Administrative provisions set out in Schedules 1 and 2**

"(1) Schedule 1 applies in respect of the Commission.

"(2) Schedule 2 applies in respect of the Office."

6 New Part 1A inserted

The principal Act is amended by inserting, immediately before Part 2, the following Part:

"Part 1A
"Discrimination by Government, related persons and bodies, or persons or bodies acting with legal authority

"20I Purpose of this Part

The purpose of this Part is to provide that, in general, an act or omission that is inconsistent with the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990 is in breach of this Part if the act or omission is that of a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990.

"20J Acts or omissions in relation to which this Part applies

"(1) This Part applies only in relation to an act or omission of a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990, namely—

"(a) the legislative, executive, or judicial branch of the Government of New Zealand; or

"(b) a person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.

"(2) Despite subsection (1), this Part does not apply in relation to an act or omission that is unlawful under any of sections 22, 23, 61 to 63, and 66.

"(3) If this Part applies in relation to an act or omission, Part II does not apply to that act or omission.

"(4) Nothing in this Part affects the New Zealand Bill of Rights Act 1990.

"20K Purposes for which section 20L applies

Section 20L applies only for the purposes of—

"(a) any inquiry undertaken by the Commission under section 5(2)(h):

"(b) the assessment, consideration, mediation, or determination of a complaint under Part III:

"(c) any determination made by the Director under Part III concerning the provision of representation in proceedings before the Human Rights Review Tribunal:

"(d) any determination made in proceedings before the Human Rights Review Tribunal or in any proceedings in any court on an appeal from a decision of that Tribunal:

"(e) any determination made by any court or tribunal in proceedings brought under this Act by the Commission:

"(f) any other process or proceedings commenced or conducted under Part III:

"(g) any related matter.

"**20L Acts or omissions in breach of this Part**

"(1) An act or omission in relation to which this Part applies (including an enactment) is in breach of this Part if it is inconsistent with section 19 of the New Zealand Bill of Rights Act 1990.

"(2) For the purposes of subsection (1), an act or omission is inconsistent with section 19 of the New Zealand Bill of Rights Act 1990 if the act or omission—

"(a) limits the right to freedom from discrimination affirmed by that section; and

"(b) is not, under section 5 of the New Zealand Bill of Rights Act 1990, a justified limitation on that right.

"(3) To avoid doubt, subsections (1) and (2) apply in relation to an act or omission even if it is authorised or required by an enactment."

Amendments to Part 2

7 New headings and sections 21A and 21B inserted

The principal Act is amended by inserting, after the heading to Part 2, the following headings and sections:

"*Application of Part to persons and bodies referred to in section 3 of New Zealand Bill of Rights Act 1990*

"**21A Application of this Part limited if section 3 of New Zealand Bill of Rights Act 1990 applies**

"(1) The only provisions of this Part that apply to an act or omission of a person or body described in subsection (2) are—

"(a) sections 21 to 35 (which relate to discrimination in employment matters), 61 to 64 (which relate to racial disharmony, and social and racial harassment) and 66 (which relates to victimisation); and

"(b) sections 65 and 67 to 74, but only to the extent that those sections relate to conduct that is unlawful under any of the provisions referred to in paragraph (a).

"(2) The persons and bodies referred to in subsection (1) are the ones referred to in section 3 of the New Zealand Bill of Rights Act 1990, namely—

"(a) the legislative, executive, and judicial branches of the Government of New Zealand; and

"(b) every person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.

"*Acts or omissions authorised or required by law*

"**21B Relationship between this Part and other law**

"(1) To avoid doubt, an act or omission of any person or body is not unlawful under this Part if that act or omission is authorised or required by an enactment or otherwise by law.

"(2) Nothing in this Part affects the New Zealand Bill of Rights Act 1990.

"*Prohibited grounds of discrimination.*"

8 Exceptions in relation to access by the public to places, vehicles, and facilities

Section 43 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

"(3) Nothing in subsection (2) limits section 47A of the Building Act 1991."

New Part 3 substituted

9 New Part 3 substituted

The principal Act is amended by repealing Part 3, and substituting the following Part:

"Part III
"Resolution of disputes about compliance with Part 1A and Part II

"75 Object of this Part

The object of this Part is to establish procedures that—

"(a) facilitate the provision of information to members of the public who have questions about discrimination; and

"(b) recognise that disputes about compliance with Part 1A or Part II are more likely to be successfully resolved if those disputes can be resolved promptly by the parties themselves; and

"(c) recognise that, if disputes about compliance with Part 1A or Part II are to be resolved promptly, expert problem-solving support, information, and assistance needs to be available to the parties to those disputes; and

"(d) recognise that the procedures for dispute resolution under this Part need to be flexible; and

"(e) recognise that judicial intervention at the lowest level needs to be that of a specialist decision-making body that is not inhibited by strict procedural requirements; and

"(f) recognise that difficult issues of law may need to be determined by higher courts.

"76 Functions of Commission under this Part

"(1) The primary functions of the Commission under this Part are—

"(a) to provide information to members of the public who have questions about discrimination; and

"(b) to facilitate the resolution of disputes about compliance with Part 1A or Part II, by the parties concerned, in the most efficient, informal, and cost-effective manner possible.

"(2) The Commission has, in order to carry out its function under subsection (1)(b), the following functions:

"(a) to receive and assess a complaint alleging that there has been a breach of Part 1A or Part II, or both:

"(b) to gather information in relation to a complaint of that kind (including one referred back to it by the Director under section 90(1)(b), or the Tribunal under section 92D) for the purposes of paragraphs (c) and (d):

"(c) to offer services designed to facilitate resolution of the complaint, including information, expert problem-solving support, mediation, and other assistance:

"(d) to take action or further action under this Part in relation to the complaint, if the complainant or aggrieved person wishes to proceed with it, unless section 80(2) or (3) applies:

"(e) to provide information gathered in relation to a complaint to the parties concerned.

"**77 Dispute resolution services**

"(1) The Commission must provide dispute resolution services for the purposes of carrying out its functions under section 76.

"(2) Services provided under this section may include—

"(a) the provision of general information about discrimination and legal obligations in relation to discrimination:

"(b) the provision of information about what services are available for persons who have disputes about compliance with Part 1A or Part II:

"(c) the provision of a venue for, and a mediator at, any dispute resolution meeting that—

"(i) is designed to enable each party to discuss and seek to resolve any complaint, without prejudice to his or her position; and

"(ii) is convened at the request, or with the agreement of, the parties or, if section 84(4) applies, by the Commission:

"(d) other services (of a type that can address a variety of circumstances) that assist persons to resolve, promptly and effectively, their disputes about compliance with Part 1A or Part II.

"**78 Method of providing services**

Services provided under section 77 may be provided in any manner, including—

"(a) by a telephone, facsimile, internet, or email service (whether as a means of explaining where information can be found or as a means of actually providing the information or of otherwise seeking to resolve the problem); or

"(b) by publishing pamphlets, brochures, booklets, or codes; or

"(c) by specialists who—

"(i) respond to requests or themselves identify how, where, and when their services can best support the object of this Part; or

"(ii) provide their services in the manner, and at the time and place that is, most likely to resolve the problem or dispute in question; or

"(iii) provide their services in all of the ways described in this paragraph.

"**79 How complaints received to be treated**

"(1) This section applies if the Commission receives, under section 76(2)(a), a complaint alleging that there has been a breach of Part 1A or Part II or both Parts.

"(2) If the complaint or part of it concerns an enactment, or an act or omission that is authorised or required by an enactment, the complaint or relevant part of it must be treated only as a complaint that the enactment is in breach of Part 1A.

"(3) Despite every other provision of this section, if the complaint or part of it concerns a judgment or other order of a court, or an act or omission of a court affecting the conduct of any proceedings, the Commission must take no further action in relation to the complaint or relevant part of it.

"(4) If the complaint or part of it concerns an act or omission by a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990, and neither subsection (2) nor subsection (3) applies, the complaint or relevant part of it—

"(a) must be treated only as a complaint that there is a breach of Part 1A, unless the act or omission complained of involves conduct that—

"(i) is unlawful under any of sections 22, 23, 61 to 63, and 66; or

"(ii) is unlawful under any of sections 65 and 67 to 74, but only to the extent that those sections relate to conduct that is unlawful under any provision referred to in subparagraph (i):

"(b) must be treated only as a complaint that there has been a breach of the relevant provision or provisions of Part II if the act or omission complained of involves conduct that is unlawful under any of sections 22, 23, 61 to 63, and 66.

"(5) If the complaint or relevant part of it concerns a breach of Part II, and none of subsections (2) to (4) applies to the complaint or relevant part of it, the complaint or relevant part of it must be treated only as a complaint that there has been a breach of the relevant provision or provisions of Part II.

"(6) Nothing in this section prevents the Commission from involving any person that it considers appropriate in information gathering and the resolution of disputes.

"**80 Taking action or further action in relation to complaint**

"(1) The Commission may only take action or further action under this Part in relation to a complaint if the complainant or person alleged to be aggrieved (if not the complainant) informs the Commission that he or she wishes to proceed with the complaint.

"(2) The Commission may decline to take action or further action under this Part in relation to a complaint if the complaint relates to a matter of which the complainant or the person alleged to be aggrieved (if not the complainant) has had knowledge for more than 12 months before the complaint is received by the Commission.

"(3) The Commission may also decline to take action or further action under this Part in relation to a complaint if, in the Commission's opinion,—

"(a) the subject matter of the complaint is trivial; or

"(b) the complaint is frivolous or vexatious or is not made in good faith; or

"(c) having regard to all the circumstances of the case, it is unnecessary to take further action in relation to the complaint; or

"(d) there is in all the circumstances an adequate remedy or right of appeal, other than the right to petition Parliament or to make a complaint to the Ombudsman, that it would be reasonable for the complainant or the person alleged to be aggrieved (if not the complainant) to exercise.

"(4) If the Commission decides to take no action or no further action in relation to a complaint, it must inform the complainant or the person alleged to be aggrieved (if not the complainant) and the person against whom the complaint is made—

"(a) of that decision; and

"(b) of the reasons for that decision; and

"(c) of his or her right, under section 92B, to bring proceedings before the Human Rights Review Tribunal.

"Compare: 1977 No 49 s 35; 1981 No 127 s 3

"**81 Commission to inform parties of process**

"(1) Before gathering information about a complaint, the Commission must comply with subsections (2) and (4).

"(2) The Commission must inform the following persons of the Commission's intention to gather information under section 82, and provide them with general information about the matters stated in subsection (3):

"(a) the complainant (if any); and

"(b) any person alleged to be aggrieved (if not the complainant); and

"(c) the person against whom the complaint is made; and

"(d) if the complaint alleges a breach of Part 1A, or alleges a breach of Part II by a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990, the Attorney-General:

"(e) any other person or body that the Commission considers relevant.

"(3) The matters referred to in subsection (2) are—

"(a) rights and obligations under this Act; and

"(b) processes that apply to complaints under this Act; and

"(c) other services that may help the parties to a complaint secure a settlement of the matter.

"(4) The Commission must also inform the person against whom the complaint was made and, if subsection (2)(d) applies, the Attorney-General—

"(a) of the details of the complaint (if any); and

"(b) of the right of that person and, if subsection (2)(d) applies, of the Attorney-General to submit to the Commission, within a reasonable time, information in response to the complaint.

"(5) A requirement under this section to inform a person is satisfied if all reasonable efforts have been made to inform the person.

"**82 Information gathering and disclosure by Commission**

"(1) When the Commission gathers information about a complaint under section 76(2)(b) for the purposes of section 76(2)(c) or (d)—

"(a) that process must be conducted in private:

"(b) the Commission may hear or obtain information from any persons it thinks fit:

"(c) except as provided in section 81(4)(b), no person is entitled as of right to be heard by the Commission.

"(2) The Commission must make all reasonable efforts to give all parties concerned all relevant information gathered (if any) by it in relation to a complaint promptly after the information is gathered.

"**83 Settlement**

"(1) This section applies if at any time it appears to the Commission from a complaint (including one referred back to the Commission by the Director, under section 90(1)(b), or the Tribunal, under section 92D), or from information gathered in relation to the complaint (including any response made under section 81(4)(b)), that it may be possible to reach a settlement.

"(2) The Commission must use its best endeavours to assist the parties to secure a settlement.

"(3) In this section, **settlement**—

"(a) means the agreement of the parties concerned on actions that settle the matter, which may include the payment of compensation or the tendering of an apology; and

"(b) includes a satisfactory assurance by the person to whom the complaint relates against the repetition of the conduct that was the subject matter of the complaint or against further conduct of a similar kind.

"**84 Reference of complaint to Director or from Director or Tribunal**

"(1) The complainant, aggrieved person, or party seeking to enforce a settlement may refer a complaint to the Director so that he or she may decide, under section 90(1)(a) or (c), whether to represent that person in proceedings before the Human Rights Tribunal.

"(2) The Commission must promptly inform all parties concerned of every reference of a complaint back to the Commission, whether the reference back is one by the Director, under section 90(1)(b), or one by the Tribunal, under section 92D.

"(3) A requirement under this section to inform a person is satisfied if all reasonable efforts have been made to inform the person.

"(4) If a complaint is referred back to the Commission by the Director, under section 90(1)(b), or by the Tribunal, under section 92D, the Commission may, without limiting its other powers, require the parties to attend a dispute resolution meeting or other form of mediation designed to facilitate resolution of the complaint.

"**85 Confidentiality of information disclosed at dispute resolution meeting**

"(1) Except with the consent of the parties or the relevant party, persons referred to in subsection (2) must keep confidential—

"(a) a statement, admission, or document created or made for the purposes of a dispute resolution meeting; and

"(b) information that is disclosed orally for the purposes of, and in the course of, a dispute resolution meeting.

"(2) Subsection (1) applies to every person who—

"(a) is a mediator for a dispute resolution meeting; or

"(b) attends a dispute resolution meeting; or

"(c) is a person employed or engaged by the Commission; or

"(d) is a person who assists either a mediator at a dispute resolution meeting or a person who attends a dispute resolution meeting.

"**86 Evidence as to dispute resolution meeting**

"(1) No mediator at a dispute resolution meeting may give evidence in any proceedings, whether under this Act or any other Act, about—

"(a) the meeting; or

"(b) anything related to the meeting that comes to his or her knowledge for the purposes of, or in the course of, the meeting.

"(2) No evidence is admissible in any court, or before any person acting judicially, of any statement, admission, document, or information that, under section 85(1), is required to be kept confidential.

"**87 Certain information not to be made available**

Any statement, admission, document, or information disclosed or made to the mediator at a dispute resolution meeting for the purposes of the dispute resolution meeting must not be made available under the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987 by a person to whom section 85(1) applies, except with the consent of the parties or the relevant party.

"**88 Limits on effect of section 80(1) or sections 85 to 87**

Nothing in section 80(1) or sections 85 to 87—

"(a) prevents the discovery or affects the admissibility of any evidence (being evidence that is otherwise discoverable or admissible and that existed independently of the mediation process) just because the evidence was presented for the purposes of, or in the course of, a dispute resolution meeting; or

"(b) prevents the gathering of information by the Commission for research or educational purposes so long as the parties and the specific matters in issue between them are not identifiable; or

"(c) prevents the disclosure by any person employed or engaged by the Commission to any other person employed or engaged by the Commission of matters that need to be disclosed for the purposes of giving effect to this Act; or

"(d) prevents the disclosure of information by any person, if that person has reasonable grounds to believe that disclosure is necessary to prevent, or minimise the danger of, injury to any person or damage to any property.

"**89 Enforcement of terms of settlement agreed by parties**

A settlement between parties to a complaint may be enforced by proceedings before the Tribunal brought under section 92B(4)—

"(a) by the complainant (if any) or the aggrieved person (if not the complainant); or

"(b) by the person against whom the complaint was made.

"**90 Functions of Director of Human Rights Proceedings under this Part**

"(1) The Director's functions under this Part include, in relation to a complaint,—

"(a) deciding, in accordance with sections 91(1) and 92, whether, and to what extent, to provide representation for a party who requests the Director to provide representation in proceedings before the Tribunal or in related proceedings seeking to enforce a settlement reached on a previous occasion (including a settlement secured at a dispute resolution meeting), and providing representation for the party accordingly:

"(b) deciding, in accordance with section 91(2), whether to refer the complaint back to the Commission:

"(c) deciding, in accordance with sections 91(3) and 92, whether, and to what extent, to provide representation for a complainant, aggrieved person (if not the complainant), or group of persons who requests, or who request, the Director to provide representation in proceedings before the Tribunal or in related proceedings against the person against whom the complaint was

made or the Attorney-General, and providing representation for the complainant, aggrieved person, or group of persons, accordingly.

"(2) The Director's functions under this Part include, in relation to a request from the Commission to provide representation in proceedings brought under section 92B, section 92E, or section 97 or in proceedings in which the Commission is entitled to appear and be heard under section 92H, deciding, in accordance with sections 91(3) and 92, whether, and to what extent, to provide representation for the Commission in proceedings before the Tribunal or in related proceedings.

"(3) In this section and in sections 92 and 92C, **related proceedings**, in relation to proceedings before the Tribunal, means—

"(a) any appeal to the High Court against a decision of the Tribunal:

"(b) any proceedings in the High Court arising out of the statement of a case under section 122 or the removal of proceedings or a matter at issue in them under section 122A:

"(c) any appeal to the Court of Appeal against a decision of the High Court made in proceedings referred to in paragraphs (a) or (b).

"**91 Requirements for Director's decisions under section 90**

"(1) The Director may make a decision under section 90(1)(a) if it appears to him or her that a party has failed to observe the terms of a settlement reached on a previous occasion.

"(2) The Director may make a decision under section 90(1)(b) if—

"(a) it appears to the Director that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation); or

"(b) it is unclear to the Director, from information available to him or her, in relation to the complaint, whether a party has failed to observe the terms of a settlement reached on a previous occasion.

"(3) The Director may make a decision under section 90(1)(c) or (2) if it appears to him or her that a settlement has not been reached and that no action or further action by the Commission is likely to facilitate a settlement.

"**92 Matters Director to have regard to in deciding whether to provide representation in proceedings before Tribunal or in related proceedings**

"(1) In deciding under section 90(1)(a) or (c) or section 90(2) whether, and to what extent, to provide representation for a complainant, aggrieved person, group of persons, party to a settlement of a complaint, or the Commission, the Director—

"(a) must have regard to the matters stated in subsection (2):

"(b) may have regard to any other matter that the Director considers relevant.

"(2) The matters referred to in subsection (1)(a) are—

"(a) whether the complaint raises a significant question of law:

"(b) whether resolution of the complaint would affect a large number of people (for example, because the proceedings would be brought by or affect a large group of persons):

"(c) the level of harm involved in the matters that are the subject of the complaint:

"(d) whether the proceedings in question are likely to be successful:

"(e) whether the remedies available through proceedings of that kind are likely to suit the particular case:

"(f) whether there is likely to be any conflict of interest in the provision by the Director of representation to any person described in subsection (1):

"(g) whether the provision of representation is an effective use of resources:

"(h) whether or not it would be in the public interest to provide representation.

"**92A Director to notify and report on decisions on representation**

"(1) Promptly after making a decision under section 90(1)(a) or (c), the Director must notify the complainant, aggrieved person, group of persons, or party seeking to enforce a settlement reached on a previous occasion—

"(a) of the terms of the decision; and

"(b) if the Director has decided not to provide representation for the complainant, aggrieved person, class of persons, or party seeking to enforce a settlement, of the reasons for the decision.

"(2) Promptly after making a decision under section 90(2), the Director must notify the Commission—

"(a) of the terms of the decision; and

"(b) of the reasons for the decision.

"(3) If the Director decides to provide representation to the Commission in proceedings in which the Commission is entitled to be heard under section 92H, but subsequently concludes that there is, or may be, a conflict of interest in the provision, or continued provision, of legal representation by the Director to both the complainant and the Commission, the Director must—

"(a) cease to provide representation to the Commission; and

"(b) promptly advise the Commission of the Director's decision.

"(4) The Director must report to the Minister, at least once each year and without referring to identifiable individuals concerned, on the Director's decisions under section 90(1)(a) and (c), and, as soon as practicable, the Minister must present a copy of the report to the House of Representatives.

"*Proceedings*

"**92B Civil proceedings arising from complaints**

"(1) If a complaint referred to in section 76(2)(a) has been made, the complainant, the person aggrieved (if not the complainant), or the Commission may bring civil proceedings before the Human Rights Review Tribunal—

"(a) for a breach of Part 1A (other than a breach of Part 1A that is an enactment, or an act or omission authorised or required by an enactment or otherwise by law), against the person or persons alleged to be responsible for the breach:

"(b) for a breach of Part 1A that is an enactment, or an act or omission authorised or required by an enactment or otherwise by law, against the Attorney-General, or

against a person or body referred to in section 3(b) of the New Zealand Bill of Rights Act 1990 alleged to be responsible for the breach:

"(c) for a breach of Part II, against the person or persons alleged to be responsible for the breach.

"(2) If a complaint under section 76(2)(a) relates to a discriminatory practice alleged to be in breach of Part 1A or Part II and to affect a class of persons, proceedings under subsection (1) may be brought by the Commission on behalf of the class of persons affected.

"(3) A person against whom a complaint referred to in section 76(2)(a) has been made may bring civil proceedings before the Tribunal in relation to the complaint if no proceedings in relation to the complaint have been brought under subsection (1) by, or on behalf of, the complainant or person aggrieved or a class of persons.

"(4) If parties to a complaint under section 76(2)(a) have reached a settlement of the complaint (whether through mediation or otherwise) but one of them is failing to observe a term of the settlement, another of them may bring proceedings before the Tribunal to enforce the settlement.

"(5) The rights given by subsections (1), (3), and (4) are not limited or affected just because the Commission or a mediator at a dispute resolution meeting or the Director is taking any action in relation to the complaint concerned.

"(6) Despite subsection (2), the Commission may bring proceedings under subsection (1) only if—

"(a) the complainant or person aggrieved (if not the complainant) has not brought proceedings; and

"(b) the Commission has obtained the agreement of that person before bringing the proceedings; and

"(c) it considers that bringing the proceedings will facilitate the performance of its functions stated in section 5(2)(a).

"(7) Despite subsections (1) to (6), no proceedings may be brought under this section in respect of a complaint or relevant part of a complaint to which section 79(3) applies.

"**92C Representation in civil proceedings arising from complaints**

"(1) A party to proceedings before the Tribunal or related proceedings may appear and be heard—

"(a) in person, or by a barrister or solicitor provided by the person; or

"(b) by a barrister or solicitor provided by the Director if, and to the extent that, the Director has decided, under section 90(1)(a) or (c) or (2), to provide representation for the party in the proceedings.

"(2) The Tribunal may, on an application for the purpose by any person, give directions as to the representation, in proceedings before it, of a plaintiff of a kind referred to in section 92N(1) to (3) or of any other party to the proceedings who may be able to bring, take part in, or defend the proceedings, only through a representative.

"(3) The Office of Human Rights Proceedings must pay all costs of representation provided—

"(a) by the Director for a complainant, aggrieved person, group of persons, or party to a settlement of a complaint; and

"(b) in accordance with a decision of the Director under section 90(1)(a) or (c).

"(4) The Office of Human Rights Proceedings must pay any award of costs made against a person in proceedings for which representation is provided for that person by the Director.

"(5) Any award of costs made in favour of a person in proceedings for which representation is provided for that person by the Director must be paid to the Office of Human Rights Proceedings.

"(6) Nothing in this Act limits or affects the entitlement to legal aid (if any) of a party in respect of proceedings or intended proceedings (whether or not representation for the party in the proceedings may, or is to be, is being, or has been, provided in accordance with a decision of the Director under section 90(1)(a) or (c)).

"**92D Tribunal may refer complaint back to Commission, or adjourn proceedings to seek resolution by settlement**

"(1) When proceedings under section 92B are brought, the Tribunal—

"(a) must (whether through a member or officer) first consider whether an attempt has been made to resolve the complaint (whether through mediation or otherwise); and

"(b) must refer the complaint under section 76(2)(a) to which the proceedings relate back to the Commission unless the Tribunal is satisfied that attempts at resolution, or further attempts at resolution, of the complaint by the parties and the Commission—

"(i) will not contribute constructively to resolving the complaint; or

"(ii) will not, in the circumstances, be in the public interest; or

"(iii) will undermine the urgent or interim nature of the proceedings.

"(2) The Tribunal may, at any time before, during, or after the hearing of proceedings, refer a complaint under section 76(2)(a) back to the Commission if it appears to the Tribunal, from what is known to it about the complaint, that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation).

"(3) The Tribunal may, instead of exercising the power conferred by subsection (2), adjourn any proceedings relating to a complaint under section 76(2)(a) for a specified period if it appears to the Tribunal, from what is known about the complaint, that the complaint may yet be able to be resolved by the parties.

"**92E Civil proceedings arising from inquiry by Commission**

"(1) If the Commission considers that an inquiry by it under section 5(2)(h) has disclosed or may have disclosed a breach of a kind referred to in any of paragraphs (a) to (c), it may bring civil proceedings before the Tribunal,—

"(a) for a breach of Part 1A (other than a breach of Part 1A that is an enactment, or an act or omission authorised or required by an enactment or otherwise by law), against

the person or persons alleged to be responsible for the breach:

"(b) for a breach of Part 1A that is an enactment, or an act or omission authorised or required by an enactment or otherwise by law, against the Attorney-General, or against a person or body referred to in section 3(b) of the New Zealand Bill of Rights Act 1990 alleged to be responsible for the breach:

"(c) for a breach of Part II, against the person or persons alleged to be responsible for the breach.

"(2) The Commission may exercise the right in subsection (1) only if it considers that the exercise of the right will facilitate the performance of its functions stated in section 5(2)(a).

"(3) This section does not limit section 6 or section 92H or section 97.

"**92F Proof of justified limits and exceptions**

"(1) The onus of proving, in any proceedings under this Part, that an act or omission is, under section 5 of the New Zealand Bill of Rights Act 1990, a justified limit on the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990 lies on the defendant.

"(2) The onus of proving, in any proceedings under this Part, that conduct is, under any provision of Part II, excepted from conduct that is unlawful under any provision of Part II lies on the defendant.

"Compare: 1977 No 49 s 39

"**92G Right of Attorney-General to appear in civil proceedings**

"(1) The Attorney-General may appear and be heard, in person or by a barrister or solicitor,—

"(a) in proceedings before the Human Rights Review Tribunal alleging a breach of Part 1A, or alleging a breach of Part II by a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990:

"(b) in proceedings in any of the following courts in relation to proceedings of a kind referred to in paragraph (a) that are or have been before the Human Rights Review Tribunal:

"(i) a District Court:
"(ii) the High Court:
"(iii) the Court of Appeal.

"(2) The right to appear and be heard given by subsection (1) may be exercised whether or not the Attorney-General is or was a party to the proceedings before the Human Rights Review Tribunal.

"(3) If, under subsection (1), the Attorney-General appears in any proceedings of a kind described in that subsection, he or she has, unless those proceedings are by way of appeal, the right to adduce evidence and the right to cross-examine witnesses.

"Compare: 1977 No 49 s 38A; 1983 No 56 s 13; 1993 No 35 s 3(5)

"**92H Right of Commission to appear in civil proceedings**

"(1) The Commission may appear and be heard, in person or by a barrister or solicitor,—
"(a) in proceedings before the Human Rights Review Tribunal; and
"(b) in proceedings in any of the following courts in relation to proceedings that are or have been before the Human Rights Review Tribunal:
"(i) a District Court:
"(ii) the High Court:
"(iii) the Court of Appeal.

"(2) The right to appear and be heard given by subsection (1) may be exercised—
"(a) whether or not the Commission is or was a party to the proceedings before the Human Rights Review Tribunal; but
"(b) only if the Commission considers that the exercise of the right will facilitate the performance of its functions stated in section 5(2)(a).

"(3) If, under subsection (1), the Commission appears in any proceedings of a kind described in that subsection, it has, unless those proceedings are by way of appeal, the right to adduce evidence and the right to cross-examine witnesses.

"(4) This section is not limited by section 92B or section 92E or section 97.

"Compare: 1977 No 49 s 38A; 1983 No 56 s 13; 1993 No 35 s 3(5)

"*Remedies*

"**92I Remedies**

"(1) This section is subject to sections 92J and 92K (which relate to the only remedy that may be granted by the Tribunal if it finds that an enactment is in breach of Part 1A).

"(2) In proceedings before the Human Rights Review Tribunal brought under section 92B(1) or (4) or section 92E, the plaintiff may seek any of the remedies described in subsection (3) that the plaintiff thinks fit.

"(3) If, in proceedings referred to in subsection (2), the Tribunal is satisfied on the balance of probabilities that the defendant has committed a breach of Part 1A or Part II or the terms of a settlement of a complaint, the Tribunal may grant 1 or more of the following remedies:

"(a) a declaration that the defendant has committed a breach of Part 1A or Part II or the terms of a settlement of a complaint:

"(b) an order restraining the defendant from continuing or repeating the breach, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the breach, or conduct of any similar kind specified in the order:

"(c) damages in accordance with sections 92M to 92O:

"(d) an order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the complainant or, as the case may be, the aggrieved person as a result of the breach:

"(e) a declaration that any contract entered into or performed in contravention of any provision of Part 1A or Part II is an illegal contract:

"(f) an order that the defendant undertake any specified training or any other programme, or implement any specified policy or programme, in order to assist or enable the defendant to comply with the provisions of this Act:

"(g) relief in accordance with the Illegal Contracts Act 1970 in respect of any such contract to which the defendant and the complainant or, as the case may be, the aggrieved person are parties:

"(h) any other relief the Tribunal thinks fit.

"(4) It is no defence to proceedings referred to in subsection (2) or subsection (5) that the breach was unintentional or without negligence on the part of the party against whom the complaint was made, but, subject to section 92P, the Tribunal must take the conduct of the parties into account in deciding what, if any, remedy to grant.

"(5) In proceedings before the Human Rights Review Tribunal brought, under section 92B(3), by the person against whom a complaint was made, that person may seek a declaration that he or she has not committed a breach of Part 1A or Part II.

"Compare: 1977 No 49 s 38(5), (6), (8); 1983 No 56 s 12(3)

"**92J Remedy for enactments in breach of Part 1A**

"(1) If, in proceedings before the Human Rights Review Tribunal, the Tribunal finds that an enactment is in breach of Part 1A, the only remedy that the Tribunal may grant is the declaration referred to in subsection (2).

"(2) The declaration that may be granted by the Tribunal, if subsection (1) applies, is a declaration that the enactment that is the subject of the finding is inconsistent with the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990.

"(3) The Tribunal may not grant a declaration under subsection (2) unless that decision has the support of all or a majority of the members of the Tribunal.

"(4) Nothing in this section affects the New Zealand Bill of Rights Act 1990.

"**92K Effect of declaration**

"(1) A declaration under section 92J does not—

"(a) affect the validity, application, or enforcement of the enactment in respect of which it is given; or

"(b) prevent the continuation of the act, omission, policy, or activity that was the subject of the complaint.

"(2) If a declaration is made under section 92J and that declaration is not overturned on appeal or the time for lodging an appeal expires, the Minister for the time being responsible for the

administration of the enactment must present to the House of Representatives—

"(a) a report bringing the declaration to the attention of the House of Representatives; and

"(b) a report containing advice on the Government's response to the declaration.

"(3) The Minister referred to in subsection (2) must carry out the duties imposed on the Minister by that subsection within 120 days of the date of disposal of all appeals against the granting of the declaration or, if no appeal is lodged, the date when the time for lodging an appeal expires.

"**92L Costs**

"(1) In any proceedings under section 92B or section 92E or section 97, the Tribunal may make any award as to costs that it thinks fit, whether or not it grants any other remedy.

"(2) Without limiting the matters that the Tribunal may consider in determining whether to make an award of costs under this section, the Tribunal may take into account whether, and to what extent, any party to the proceedings—

"(a) has participated in good faith in the process of information gathering by the Commission:

"(b) has facilitated or obstructed that information-gathering process:

"(c) has acted in a manner that facilitated the resolution of the issues that were the subject of the proceedings.

"Compare: 1977 No 49 s 38(7); 1983 No 56 s 12(4)

"**92M Damages**

"(1) In any proceedings under section 92B(1) or (4) or section 92E, the Tribunal may award damages against the defendant for a breach of Part 1A or Part II or the terms of a settlement of a complaint in respect of any 1 or more of the following:

"(a) pecuniary loss suffered as a result of, and expenses reasonably incurred by the complainant or, as the case may be, the aggrieved person for the purpose of, the transaction or activity out of which the breach arose:

"(b) loss of any benefit, whether or not of a monetary kind, that the complainant or, as the case may be, the ag-

grieved person might reasonably have been expected to obtain but for the breach:

"(c) humiliation, loss of dignity, and injury to the feelings of the complainant or, as the case may be, the aggrieved person.

"(2) This section applies subject to sections 92J, 92N, and 92O.

"Compare: 1977 No 49 s 40(1)

"**92N Directions as to payment of damages in certain cases**

"(1) If the plaintiff is an unmarried minor, the Tribunal may, in its discretion, direct the defendant to pay damages awarded under section 92M to the Public Trustee or to a person or trustee corporation acting as the manager of any property of the plaintiff.

"(2) If the plaintiff is a mentally disordered person within the meaning of section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 whose property is not being managed under the Protection of Personal and Property Rights Act 1988, but who lacks, in the opinion of the Tribunal, the mental capacity to manage his or her own affairs in relation to his or her own property, the Tribunal may, in its discretion, direct the defendant to pay damages awarded under section 92M to the Public Trustee.

"(3) If the plaintiff is a person whose property is being managed under the Protection of Personal and Property Rights Act 1988, the Tribunal must ascertain whether the terms of the property order cover management of money received as damages and,—

"(a) if damages fall within the terms of the property order, the Tribunal must direct the defendant to pay damages awarded under section 92M to the person or trustee corporation acting as the property manager; or

"(b) if damages do not fall within the terms of the property order, the Tribunal may, in its discretion, direct the defendant to pay damages awarded under section 92M to the Public Trustee.

"(4) If money is paid to the Public Trustee under any of subsections (1) to (3),—

"(a) section 12 of the Minors' Contracts Act 1969 applies in the case of an unmarried minor; and

"(b) subsections (4) and (6) to (9) of section 66 of the Public Trust Office Act 1957 apply, with all necessary modifications, in the case of a person referred to in subsection (2) or subsection (3).

"Compare: 1977 No 49 s 40; 1983 No 56 s 14(2)

"92O Tribunal may defer or modify remedies for breach of Part 1A or Part II or terms of settlement

"(1) If, in any proceedings under this Part, the Tribunal determines that an act or omission is in breach of Part 1A or Part II or the terms of a settlement of a complaint, it may, on the application of any party to the proceedings, take 1 or more of the actions stated in subsection (2).

"(2) The actions are,—

"(a) instead of, or as well as, awarding damages or granting any other remedy,—

"(i) to specify a period during which the defendant must remedy the breach; and

"(ii) to adjourn the proceedings to a specified date to enable further consideration of the remedies or further remedies (if any) to be granted:

"(b) to refuse to grant any remedy that has retrospective effect:

"(c) to refuse to grant any remedy in respect of an act or omission that occurred before the bringing of proceedings or the date of the determination of the Tribunal or any other date specified by the Tribunal:

"(d) to provide that any remedy granted has effect only prospectively or only from a date specified by the Tribunal:

"(e) to provide that the retrospective effect of any remedy is limited in a way specified by the Tribunal.

"92P Matters to be taken into account in exercising powers given by section 92O

"(1) In determining whether to take 1 or more of the actions referred to in section 92O, the Tribunal must take account of the following matters:

"(a) whether or not the defendant in the proceedings has acted in good faith:

"(b) whether or not the interests of any person or body not represented in the proceedings would be adversely affected if 1 or more of the actions referred to in section 92O is, or is not, taken:

"(c) whether or not the proceedings involve a significant issue that has not previously been considered by the Tribunal:

"(d) the social and financial implications of granting any remedy sought by the plaintiff:

"(e) the significance of the loss or harm suffered by any person as a result of the breach of Part 1A or Part II or the terms of a settlement of a complaint:

"(f) the public interest generally:

"(g) any other matter that the Tribunal considers relevant.

"(2) If the Tribunal finds that an act or omission is in breach of Part 1A or that an act or omission by a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990 is in breach of Part II, in determining whether to take 1 or more of the actions referred to in section 92O, the Tribunal must, in addition to the matters specified in subsection (1), take account of—

"(a) the requirements of fair public administration; and

"(b) the obligation of the Government to balance competing demands for the expenditure of public money.

"*Monetary limits on remedies Tribunal may grant*

"**92Q Monetary limits on remedies Tribunal may grant**

"(1) Proceedings under section 92B or section 92E may be brought before the Human Rights Review Tribunal irrespective of the amount of damages claimed or the value of the property in respect of which any remedy is sought.

"(2) However, except as provided in sections 92R to 92V, the Tribunal must not award any damages or grant any remedy in any proceedings of that kind if the making of that award or the granting of that remedy would, because of the monetary limits

contained in sections 29 to 34 of the District Courts Act 1947, be beyond the jurisdiction of a District Court.

"(3) For the purposes of subsection (2), if civil proceedings under section 92B are brought on behalf of more than 1 complainant or, as the case may be, more than 1 aggrieved person, those proceedings must, for the purpose of applying any monetary limit under subsection (2), be treated as if each complainant or, as the case may be, each aggrieved person on whose behalf those proceedings are brought, were the plaintiff in a separate action against the defendant.

"Compare: 1977 No 49 s 41; 1983 No 56 s 15; 1993 No 5 s 3(6)

"*Granting of remedies by High Court on reference from Tribunal*

"**92R Tribunal to refer granting of remedies to High Court**

The Human Rights Review Tribunal must refer the granting of a remedy in any proceedings under section 92B or section 92E to the High Court if the Tribunal is satisfied on the balance of probabilities that a defendant in the proceedings has committed a breach of Part 1A or Part II or the terms of a settlement of a complaint, but that—

"(a) the granting of the appropriate remedy under section 92I would be outside the limits imposed by section 92Q; or

"(b) that the granting of a remedy in those proceedings would be better dealt with by the High Court.

"Compare: 1977 No 49 s 42(1)

"**92S Further provisions on reference to High Court**

"(1) A reference under section 92R is made by sending, to the Registrar of the High Court nearest to where the proceedings were commenced, a report on the proceedings that—

"(a) sets out the Tribunal's finding with regard to the breach of Part 1A or Part II or the terms of a settlement of a complaint; and

"(b) includes, or is accompanied by, a statement of the considerations to which the Tribunal has had regard in making the reference to that Court.

"(2) A copy of the report must be given or sent promptly to every party to the proceedings.

"(3) Except as provided in this Act, the procedure for a reference under section 92R is the same as the procedure prescribed by rules of court in respect of appeals, and those rules apply with all necessary modifications.

"Compare: 1977 No 49 s 42(4)-(6), (8)

"92T High Court decides remedies on reference from Tribunal

"(1) This section applies where the granting of a remedy in any proceedings under section 92B or section 92E is referred to the High Court under section 92R.

"(2) The High Court may direct the Tribunal to amplify any report made under section 92S(1).

"(3) Every person who, under section 92S(2), is given or sent a copy of a report under section 92S(1) is entitled to be heard and to tender in the High Court evidence as to the remedy (if any) to be granted on the basis of the Tribunal's finding that the defendant has committed a breach of Part 1A or Part II or the terms of a settlement of a complaint.

"(4) However, no person referred to in subsection (3) may, on the reference under section 92R, challenge the finding of the Tribunal referred to in subsection (3).

"(5) The High Court must decide, on the basis of the Tribunal's finding that the defendant has committed a breach of Part 1A or Part II, whether 1 or more of the remedies set out in section 92I or the remedy set out in section 92J is to be granted.

"Compare: 1977 No 49 s 42(2), (5), (6)

"92U High Court's decision on remedies to be included in, and given effect to as part of, Tribunal's determination

"(1) Every decision of the High Court under section 92T(5)—

"(a) must be remitted to the Tribunal for inclusion in its determination with regard to the proceedings; and

"(b) has effect as part of that determination despite the limits imposed by section 92Q.

"(2) Nothing in subsection (1)—

"(a) limits sections 123 to 125; or

"(b) prevents the making of an appeal in accordance with section 123 in respect of a determination of the Tribunal in which a decision of the High Court is included in accordance with subsection (1)(a).

"Compare: 1977 No 49 s 42(3), (9)

"Abandonment or agreement to bring claim within Tribunal's jurisdiction

"92V Abandonment to enable Tribunal to make award of damages

"(1) This section applies where the Tribunal would have jurisdiction in any proceedings under section 92B or section 92E to make an award of damages in accordance with section 92M if the amount of the award were within the limit for the time being fixed by section 29(1) of the District Courts Act 1947 (as applied by section 92Q(2)).

"(2) The Tribunal may make an award within that limit if the plaintiff abandons the excess.

"(3) An award of damages in those proceedings in accordance with section 92M operates to discharge from liability in respect of the amount abandoned in that way any person against whom the proceedings are brought and the subsequent award is made.

"(4) This section overrides sections 92Q to 92U.

"Compare: 1977 No 49 s 43

"92W Extension of jurisdiction by agreement between parties

"(1) If, in any proceedings under section 92B or section 92E, only section 92Q prevents the Tribunal from granting any 1 or more of the remedies stated in section 92I, and the parties to the proceedings, by memorandum signed by them or their respective solicitors or agents, agree that the Tribunal is to have jurisdiction to grant any 1 or more of those remedies irrespective of section 92Q, the Tribunal has jurisdiction to grant 1 or more of those remedies accordingly.

"(2) This section overrides sections 92Q to 92U.

"Compare: 1977 No 49 s 44(1)"

Amendments to Part 4

10 New heading to Part 4 substituted

The principal Act is amended by repealing the heading to Part 4, and substituting the following heading:

"

"**Human Rights Review Tribunal.**"

11 Complaints Review Tribunal

Section 93 of the principal Act is amended by—

(a) omitting from the heading to that section the word "Complaints", and substituting the words "Human Rights"; and

(b) inserting, after the word "and", the words ", immediately before 1 January 2002 (being the date of the commencement of the Human Rights Amendment Act 2001),"; and

(c) adding the words ", and, on and after 1 January 2002, is called the Human Rights Review Tribunal".

12 Functions of Tribunal

Section 94(a) of the principal Act is amended by omitting the expression "sections 83, 95, and 97 of this Act", and substituting the expression "sections 92B, 92E, 95, and 97".

13 Power to make interim order

Section 95 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) An application for an interim order may be made,—

"(a) in the case of proceedings under section 92B(1), (2), (3), or (4), by the person or body bringing the proceedings; and

"(b) in the case of proceedings under section 92E, by the Commission."

14 New section 97 substituted

The principal Act is amended by repealing section 97, and substituting the following section:

"**97 Power in respect of exception for genuine occupational qualification or genuine justification**

"(1) The Tribunal may exercise the power referred to in subsection (2), but only—

"(a) in respect of a matter in which it has jurisdiction under this Act to make a final determination; and

"(b) on an application by the Commission, a person or persons against whom a complaint under section 76(2)(a) has been made, or a person who is the subject of an inquiry under section 5(2)(h).

"(2) The power is to declare that an act, omission, practice, requirement, or condition that would otherwise be unlawful under Part II is not unlawful because it constitutes either or both—

"(a) a genuine occupational qualification, in respect of sections 22 to 41:

"(b) a genuine justification, in respect of sections 42 to 60."

15 New section 99A inserted

The principal Act is amended by inserting, after section 99, the following section:

"**99A Criteria and requirement for appointment of Chairpersons**

"(1) In recommending a person for appointment as a Chairperson of the Tribunal, the Minister must have regard not only to the matters stated in section 101(2) but also to the person's—

"(a) experience in dispute resolution:

"(b) experience as a Chairperson and in other leadership roles:

"(c) ability to perform the functions of a Chairperson of the Tribunal.

"(2) Every person appointed as a Chairperson of the Tribunal must be a barrister or solicitor of the High Court of not less than 5 years' practice."

16 Appointment and term of office

Section 100(1) of the principal Act is repealed.

17 Panel

Section 101 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

"(2) In considering the suitability of persons for inclusion on the Panel, the Minister must have regard to the need for persons included on the Panel to have between them knowledge of, or experience in,—

"(a) different aspects of matters likely to come before the Tribunal:

"(b) New Zealand law, or the law of another country, or international law, on human rights:

"(c) public administration, or the law relating to public administration:

"(d) current economic, employment, or social issues:

"(e) cultural issues and the needs and aspirations (including life experiences) of different communities of interest and population groups in New Zealand society.

"(2A) At least 3 members of the panel must be barristers or solicitors of the High Court of not less than 5 years' practice."

18 New section 105 substituted

The principal Act is amended by repealing section 105, and substituting the following section:

"**105 Substantial merits**

"(1) The Tribunal must act according to the substantial merits of the case, without regard to technicalities.

"(2) In exercising its powers and functions, the Tribunal must act—

"(a) in accordance with the principles of natural justice; and

"(b) in a manner that is fair and reasonable; and

"(c) according to equity and good conscience."

19 Evidence in proceedings before Tribunal

Section 106 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

"(1) The Tribunal may—

"(a) call for evidence and information from the parties or any other person:

"(b) request or require the parties or any other person to attend the proceedings to give evidence:

"(c) fully examine any witness:

"(d) receive as evidence any statement, document, information, or matter that may, in its opinion, assist to deal effectively with the matter before it, whether or not it would be admissible in a court of law."

20 Persons entitled to be heard

Section 108 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) If any person who is not a party to the proceedings before the Tribunal wishes to appear, the person must give notice to the Tribunal and to every party before appearing."

21 New sections 108A and 108B inserted

The principal Act is amended by inserting, after section 108, the following sections:

"**108A Tribunal to give notice of proceedings**

The Tribunal must notify the Attorney-General promptly of the bringing of proceedings before the Tribunal alleging a breach of Part 1A, or alleging a breach of Part II by a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990, if the Attorney-General is not a party to the proceedings.

"**108B Submissions in relation to remedies**

"(1) Before the Tribunal grants any remedy under Part III, it must give the parties to the proceedings and, if the remedy under consideration is a declaration under section 92J, the Attorney-General, an opportunity to make submissions on—

"(a) the implications of granting that remedy; and

"(b) the appropriateness of that remedy.

"(2) Subsection (1) does not limit any provision in Part III or section 108."

22 Witness summons

Section 109(1) of the principal Act is amended by inserting, after the words "The Tribunal may", the words ", if it considers it necessary,".

23 Tribunal may dismiss trivial, etc, proceedings

Section 115 of the principal Act is amended by omitting the words "section 83", and substituting the words "section 92B or section 92E".

24 New section 116 substituted

The principal Act is amended by repealing section 116, and substituting the following section:

"**116 Reasons to be given**

"(1) This section applies to the following decisions of the Tribunal:

"(a) a decision to grant 1 or more of the remedies described in section 92I or the remedy described in section 92J or an order under section 95:

"(b) a decision to make a declaration under section 97:

"(c) a decision to dismiss proceedings brought under section 92B or section 92E or section 95 or section 97.

"(2) Every decision to which this section applies must be in writing and must show the Tribunal's reasons for the decision, including—

"(a) relevant findings of fact; and

"(b) explanations and findings on relevant issues of law; and

"(c) conclusions on matters or issues it considers require determination in order to dispose of the matter.

"(3) The Tribunal must notify the parties, the Attorney-General, and the Human Rights Commission of every decision of the Tribunal."

25 Enforcement

(1) Section 121 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

"(1) The following orders made by the Tribunal may, on registration of a certified copy in the District Court, be enforced in all respects as if they were an order of that Court:

"(a) an order for the award of costs under section 92L; and

"(b) an order for the award of damages under section 92M; and

"(c) an interim order under section 95."

(2) Section 121(2) of the principal Act is amended by omitting the words "section 86 of this Act", and substituting the words "section 92I or an interim order of the Tribunal made under section 95".

26 Stating case for High Court

Section 122 of the principal Act is amended by inserting, after subsection (1), the following subsection:

"(1A) If, in any proceedings before the Tribunal, the validity of any regulation is questioned, the Tribunal must, unless it considers that there is no arguable case in support of the contention that the regulation is invalid, either—

"(a) state a case for the opinion of the High Court on the relevant question or questions of law; or

"(b) if the leave of the High Court is obtained, order, under section 122A(1), that the proceedings before it or the relevant matter or matters at issue be removed to the High Court for determination."

27 New sections 122A and 122B inserted

The principal Act is amended by inserting, after section 122, the following sections:

"**122A Removal to High Court of proceedings or issue**

"(1) The Tribunal may, with the leave of the High Court, order that proceedings before it under this Act, or a matter at issue in them, be removed to the High Court for determination.

"(2) The Tribunal may make an order under this section, with the leave of the High Court, before or during the hearing, and either on the application of a party to the proceedings or on its own initiative, but only if—

"(a) an important question of law is likely to arise in the proceedings or matter other than incidentally; or

"(b) the validity of any regulation is questioned in proceedings before the Tribunal (whether on the ground that it authorises or requires unjustifiable discrimination in circumstances where the statutory provision purportedly empowering the making of the regulation does not authorise the making of a regulation authorising or requiring unjustified discrimination, or otherwise); or

"(c) the nature and the urgency of the proceedings or matter mean that it is in the public interest that they or it be removed immediately to the High Court; or

"(d) the High Court already has before it other proceedings, or other matters, that are between the same parties and involve issues that are the same as, or similar or related to, those raised by the proceedings or matter; or

"(e) the Tribunal is of the opinion that, in all the circumstances, the High Court should determine the proceedings or matter.

"(3) Despite subsection (2), if the validity of any regulation is questioned in proceedings before the Tribunal and the leave of the High Court is obtained for the making of an order under this section, the Tribunal must make an order under this section.

"(4) If the Tribunal declines to remove proceedings, or a matter at issue in them, to the High Court (whether as a result of the refusal of the High Court to grant leave or otherwise), the party applying for the removal may seek the special leave of the High Court for an order of the High Court that the proceedings or matter be removed to the High Court and, in determining whether to grant an order of that kind, the High Court must apply the criteria stated in subsection (2)(a) to (d).

"(5) An order for removal to the High Court under this section may be made subject to any conditions the Tribunal or the High Court, as the case may be, thinks fit.

"(6) Nothing in this section limits section 122.

"**122B Proceedings or issue removed to High Court**

"(1) If the Tribunal, acting under section 122A, orders the removal of proceedings, or a matter at issue in them, to the High Court, unless section 122A(2)(b) applies the High Court may, if it considers that the proceedings or matter ought instead to be determined by the Tribunal, order that the Tribunal determine the matter.

"(2) If the Tribunal, under section 122A, orders that proceedings, or a matter at issue in them, be removed to the High Court, and the High Court makes no order under subsection (1),—

"(a) the High Court must determine the proceedings or matter and may exercise any power that the Tribunal could have exercised in, or in relation to, the proceedings or matter; and

"(b) a party to the proceedings may, under section 124, appeal to the Court of Appeal against the determination of the High Court on a question of law arising in the proceedings."

28 Appeals to High Court

Section 123 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) If a party to proceedings under section 92B or section 92E is dissatisfied with a decision of the Tribunal dismissing those proceedings or granting 1 or more of the remedies described in section 92I or the remedy described in section 92J or constituting a final determination of the Tribunal in those proceedings, that party may appeal to the High Court against all or any part of that decision."

29 Additional members of High Court for purposes of Act

Section 126(1) of the principal Act is amended—

(a) by omitting from paragraph (a) the words "section 90 of this Act", and substituting the expression "section 92T"; and

(b) by omitting from paragraph (b) the words "sections 123 to 125 of this Act", and substituting the expression "section 123".

Amendments to Part V

30 Amendment to heading to Part 5

The heading to Part 5 of the principal Act is amended by omitting the word "Investigations", and substituting the word "Inquiries".

31 New section 126A inserted

The principal Act is amended by inserting, after the heading to Part 5, the following section:

"**126A Evidence order**

"(1) Any District Court Judge who is satisfied, on an application made by the Commission in accordance with subsection (3), that any person can provide information, documents, or things, or give evidence, that will or may be relevant to a specified inquiry, may make an order—

"(a) requiring that person to produce to the Commission any information, or documents, or things specified in the order; or

"(b) requiring that person to give evidence to the Commission about matters that, in the opinion of the District Court Judge, are relevant to the inquiry.

"(2) If an order is made under subsection (1)(a), the District Court Judge may, as a condition of the order, require the Commission to reimburse the person who is the subject of the order for the actual and reasonable expenses incurred by that person in complying with the order or in producing any specified class of information, documents, or things.

"(3) An application by the Commission for an order under subsection (1) must be in writing and must—

"(a) set out the reasons why the order is sought; and

"(b) if an order is sought under subsection (1)(a), set out the information, documents, or things in respect of which the order is sought; and

"(c) explain why the information, documents, things, or evidence in question will or may be relevant to the inquiry.

"(4) In this section, **specified inquiry** means an inquiry by the Commission under section 5(2)(h) into the contravention or possible contravention by any person of New Zealand law relating to human rights."

32 Evidence

Section 127 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:

"(1) The Commission may, by notice in writing, require any person who is the subject of an order under section 126A(1)(a) to provide any information, and to produce any documents or things in the possession of or under the control of that person, that are specified in the order.

"(2) The Commission may summon before it, and examine on oath, any person who is subject to an order under section 126A(1)(b), in accordance with the terms of the order, and a Commissioner may for that purpose administer an oath to the person summoned."

3Section 127(3) of the principal Act is amended by omitting the word "Commissioner", and substituting the word "Commission".

33 Protection and privileges of witnesses, etc,

Section 128 of the principal Act is amended by omitting the word "Commissioner" in each place where it appears, and substituting in each case the word "Commission".

34 Disclosure of certain matters not to be required

Section 129 of the principal Act is amended by omitting the word "Commissioner" in both places where it appears, and substituting the word "Commission".

35 Proceedings privileged

Section 130 of the principal Act is amended—

(a) by adding to subsection (1) the words "and the Director of Human Rights Proceedings"; and

(b) by omitting from subsection (4) the words "or investigation" in both places where they appear.

Amendments to Part VII

36 No adverse statement

Section 138 of the principal Act is amended by omitting the words "Neither the Commission nor the Complaints Division shall", and substituting the words "The Commission must not".

37 New sections 139 and 140 substituted

The principal Act is amended by repealing sections 139 and 140, and substituting the following sections:

"**139 Delegation of functions or powers by Commission**

"(1) After consulting with the Minister, the Commission may, by writing signed by the Chief Commissioner, delegate to a Commissioner any function or power of the Commission under this Act, except those stated in sections 7 and 76 and this power of delegation.

"(2) Delegations under this section are revocable at will and, until revoked, continue in force according to their tenor.

"(3) The delegation of a function or power under this section does not prevent the Commission from performing or exercising the function or power.

"(4) If a function or power is delegated under this section, the performance or exercise of the function or power must not be inconsistent with determinations of the Commission under section 7.

"Compare: 1977 No 49 s 79

"**140 Delegation of powers by certain Commissioners**

"(1) The Chief Human Rights Commissioner or the Race Relations Commissioner may, in writing signed by him or her, delegate to an officer or employee of the Commission any of the Commissioner's functions or powers under this Act, except this power of delegation and the power to make a report under this Act.

"(2) A delegation under this section—

"(a) may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class; and

"(b) may be made subject to any restrictions or conditions the Commissioner thinks fit; and

"(c) may be made either generally or in relation to any particular case or class of cases; and

"(d) is revocable at will and, until revoked, continues in force according to its tenor.

"(3) If a function or power is delegated under this section, the performance or exercise of the function or power must not be inconsistent with determinations of the Commission under section 7.

"(4) If a function or power is delegated under this section and the Commissioner by whom it was made ceases to hold office, the delegation continues to have effect as if it were made by his or her successor.

"(5) A person purporting to exercise a function or power of a Commissioner by virtue of a delegation under this section must, when required to do so, produce evidence of the person's authority to exercise the power.

"Compare: 1977 No 49 s 80"

38 New section 141A inserted

The principal Act is amended by inserting, after section 141, the following section:

"**141A Certain acts not to be questioned**

"(1) No action of the Chief Commissioner or the Race Relations Commissioner that is required by this Act to be undertaken jointly with the other may be questioned in any proceedings on the ground that it was not undertaken jointly.

"(2) No action of the Chief Commissioner or the Equal Employment Opportunities Commissioner that is required by this Act to be undertaken jointly with the other may be questioned in any proceedings on the ground that it was not undertaken jointly."

39 Regulations

Section 144(a) of the principal Act is amended by omitting the words "or the Complaints Division".

40 New headings and sections 148 to 148O substituted

The principal Act is amended by repealing sections 145 to 148 and the heading above section 148, and substituting the following heading and sections:

"*Transitional provisions*

"**148 Former office of Commissioner abolished**

"(1) The office of Commissioner under section 7(1) of the principal Act (as it read immediately before the commencement of this section) is abolished.

"(2) No person is entitled to compensation for loss of office as a Commissioner under subsection (1).

"**148A Certain former Commissioners to be transitional members of Commission**

"(1) The person who, immediately before the commencement of this section, held office as Chief Commissioner under section 7(1)(a) (as it read immediately before the commencement of this section) is taken to have been appointed to the office of Chief Commissioner under section 8(1)(a) (as substituted by section 5 of the Human Rights Amendment Act 2001).

"(2) The person who, immediately before the commencement of this section, held office as the Race Relations Conciliator is taken to have been appointed to the office of Race Relations Commissioner under section 8(1)(b) (as substituted by section 5 of the Human Rights Amendment Act 2001).

"(3) Every person who, immediately before the commencement of this section, held office as Commissioner under section 7(1)(e) (as it read immediately before the commencement of this section) is taken to have been appointed to the office of Commissioner under section 8(1)(d) (as substituted by section 5 of the Human Rights Amendment Act 2001).

"(4) The Privacy Commissioner appointed under the Privacy Act 1993 and the Commissioner appointed to be Proceedings Commissioner under section 7(1)(d) (as it read before the commencement of the Human Rights Amendment Act 2001) cease to be Human Rights Commissioners on the commencement of this section.

"(5) Every person who is taken to have been appointed to the office of Commissioner under this section is appointed on the same terms and conditions and for the remainder of the term for which the person was appointed under section 7(1) (as it read immediately before the commencement of this section).

"*Race Relations Conciliator*

"**148B Assets and liabilities vest in Commission**

On the commencement of this section, the assets and liabilities of the Race Relations Conciliator vest in the Commission.

"**148C References to Race Relations Conciliator**

"(1) From the commencement of this section, unless the context otherwise requires, every reference to the Race Relations Conciliator in any instrument, document, or notice is to be read as a reference to the Race Relations Commissioner.

"(2) Despite subsection (1), every reference to the Race Relations Conciliator in any contract or other instrument, document, or notice that creates, or is evidence of, an asset or liability, must be read as a reference to the Commission.

"**148D Proceedings**

Any proceedings to which the Race Relations Conciliator was a party or that he or she was considering bringing, before the commencement of this section, may be brought, continued, completed, and enforced by or against the Commission.

"**148E Commission to arrange final audited accounts**

The Commission must perform the duties that the Race Relations Conciliator would have had to perform under section 41 of the Public Finance Act 1989 if the Human Rights Amendment Act 2001 had not been enacted, for the period beginning on 1 July 2001 and ending with the close of 31 December 2001.

"**148F All employees transferred to Commission**

"(1) Every person employed by the Race Relations Conciliator immediately before the commencement of this section is, on and from that date, an employee of the Commission on the same terms and conditions that applied to the employee immediately before that date.

"(2) For the purposes of every enactment, law, contract, and agreement relating to the employment of the employee,—

"(a) the contract of employment of that employee is taken to be unbroken; and

"(b) the employee's period of service with the Race Relations Conciliator and every other period of service of that employee that is recognised by the Race Relations Conciliator as continuous service is taken to have been a period of service with the Commission.

"(3) A person to whom subsection (1) applies is not entitled to any compensation just because the person has ceased to be an employee of the Race Relations Conciliator.

"Proceedings Commissioner

"148G Proceedings Commissioner

"(1) The person who, immediately before the commencement of this section, held office as the Proceedings Commissioner under section 7(1)(d) (as it read immediately before the commencement of this section) is taken to have been appointed to the office of Director of Human Rights Proceedings under section 20A (as substituted by section 5 of the Human Rights Amendment Act 2001).

"(2) The Director of Human Rights Proceedings is appointed on the same terms and conditions and for the remainder of the term for which he or she was appointed Proceedings Commissioner.

"148H References to Proceedings Commissioner

From the commencement of this section, unless the context otherwise requires, every reference to the Proceedings Commissioner in any instrument, document, or notice is to be read as a reference to the Director.

"148I Proceedings to which Proceedings Commissioner party

"(1) Proceedings to which the Proceedings Commissioner was a party or that he or she was considering bringing, before the commencement of this section—

"(a) must be brought, continued, completed, and enforced by the Director; and

"(b) may be brought, continued, completed, and enforced against the Director.

"(2) Sections 86 to 92, 95, and 97 (as they read immediately before the commencement of this section) apply (with any necessary modifications) to any proceedings to which the Proceedings Commissioner was a party before the commencement of this section as if—

"(a) the Director were the Proceedings Commissioner; and

"(b) the Office of Human Rights Proceedings were the Commission; and

"(c) the Human Rights Review Tribunal were the Complaints Review Tribunal.

"148J Complaints referred to Proceedings Commissioner for decision as to proceedings

"(1) Subsection (2) applies—

"(a) if a complaint is referred to the Proceedings Commissioner under section 75(g) (as it read immediately before the commencement of this section), but no proceedings have been instituted by the Proceedings Commissioner; or

"(b) if the Proceedings Commissioner was required to decide whether to institute proceedings against a party to a settlement under section 82(1)(c) (as it read immediately before the commencement of this section), but no proceedings were instituted by the Proceedings Commissioner before the commencement of this section.

"(2) If this subsection applies,—

"(a) if the Commissioner has not made a decision on whether to institute proceedings, the Director must decide, under section 90(1)(c), whether to provide representation in relation to the complaint:

"(b) if the Commissioner has made a decision to institute proceedings, the Director must provide representation for the complainant or aggrieved party (as the case may be) in the proceedings:

"(c) if the Commissioner has made a decision not to institute proceedings, that decision is deemed to have been made by the Director.

"148K Transfer of employees from Commission to Office

"(1) The Commission and the Office of Human Rights Proceedings may, after consulting the employee concerned, agree to the transfer of an employee from the Commission to the Office of Human Rights Proceedings on the same terms and conditions that applied to the employee immediately before the date of transfer.

"(2) For the purposes of every enactment, law, contract, and agreement relating to the employment of the employee,—

"(a) the contract of employment of that employee is taken to have been unbroken; and

"(b) the employee's period of service with the Commission, and every other period of service of that employee that is recognised by the Commission as continuous service, is taken to have been a period of service with the Office of Human Rights Proceedings.

"(3) An employee of the Commission who is transferred to the Office of Human Rights Proceedings under subsection (1) is not entitled to any compensation just because—

"(a) the position held by the employee with the Commission has ceased to exist; or

"(b) the person has ceased (as a result of the transfer) to be an employee of the Commission.

"*Complaints Division*

"148L Complaints Division abolished

The Complaints Division of the Commission is abolished.

"148M Outstanding complaints to be dealt with by Commission under new procedure

"(1) A complaint lodged with the Complaints Division before the commencement of this Act must be dealt with by the Commission under Part III (as substituted by section 9 of the Human Rights Amendment Act 2001) as if the complaint were made to the Commission under section 76(2)(a).

"(2) For the purposes of subsection (1),—

"(a) if the Complaints Division has called a conciliation conference under section 80(1) (as it read immediately before the commencement of this section) but the conference has not taken place, the Commission must instead offer to convene a dispute resolution meeting; and

"(b) if section 79(2) applies to the complaint, the Commission must inform the Attorney-General of the details of the complaint as soon as practicable.

"(3) Despite subsection (1), if, in relation to a complaint, the Complaints Division has decided not to investigate the complaint further under section 76(1) or section 77(1)(a) (as they read immediately before the commencement of this section), the Commission must take no action or further action in relation to the complaint.

"**148N Breaches of Part 1A**

No act or omission that occurred before 1 January 2002 is capable of being in breach of Part 1A unless—

"(a) the act or omission continues on or after 1 January 2002; or

"(b) in the case of an enactment, the enactment is in force on or after 1 January 2002.

"**148O Complaints about breaches of Part 1A**

"(1) Despite section 76, the Commission is not under a duty to receive or assess any complaint alleging a breach of Part 1A that is made to the Commission before 1 April 2002.

"(2) The Commission is not under a duty to receive or assess any complaint alleging that an act or omission that occurred before 1 January 2002 and that ceased to continue or to be in force before 1 January 2002 is in breach of Part 1A."

41 Other enactments and actions not affected

Sections 151 and 152 of the principal Act are repealed.

42 Savings

(1) Section 153(1) of the principal Act is amended by—

(a) omitting the words "shall affect", and substituting the word "affects"; and

(b) omitting the words "which might have been brought if this Act had not been passed", and substituting the words "that may be brought other than under this Act"; and

(c) omitting the word "shall", and substituting the word "must".

(2) Section 153 of the principal Act is amended by repealing subsections (3)(a) and (4).

43 New Schedules 1 and 2 substituted

The principal Act is amended by repealing Schedules 1, 2, and 3, and substituting Schedule 1 and Schedule 2 set out in Schedule 1.

44 Repeals

The Human Rights Amendment Act (No 2) 1994 (1994 No 151) is repealed.

Part 2
Amendments to other enactments

Amendment to Alcoholism and Drug Addiction Act 1966

45 Power of District Court Judge to order detention and treatment on application of relative or other reputable person

Section 9(8) of the Alcoholism and Drug Addiction Act 1966 (1966 No 97) is amended by inserting, after the word "spouse,", the words "de facto partner of the same or different sex,".

Amendment to Births, Deaths, and Marriages Registration Act 1995

46 Marriage information to be sent to Registrar

Section 55 of the Births, Deaths, and Marriages Registration Act 1995 (1995 No 16) is amended by repealing subsection (2), and substituting the following subsections:

"(2) If a marriage has been solemnised in accordance with the marriage regulations of the religious Society of Friends (commonly called Quakers) or, as the case may require, in accordance with the rules and procedures of an exempt religious body,—

"(a) the husband and wife must, immediately after the solemnisation,—

"(i) enter on both forms provided under section 24 of the Marriage Act 1955 with the licence for the marriage the prescribed information relating to the marriage; and

"(ii) ensure that both forms are signed by the husband, the wife, and 2 witnesses to the solemnisation; and

"(iii) ensure that 1 form is given, sent, or posted to the registering officer of the Society of Friends or, as the case may require, the registering officer of the exempt religious body; and

"(b) as soon as is practicable after receiving a form under paragraph (a)(iii) or subsection (4), the registering officer of the Society of Friends or, as the case may require, the registering officer of the exempt religious body must give, send, or post it to a Registrar.

"(2A) In subsection (2), **exempt religious body** has the same meaning as in section 32A(5) of the Marriage Act 1955."

Amendment to Crimes Act 1961

47 Discharge of jury

[Repealed]

Section 47: repealed, on 25 December 2008, by section 16(3)(c) of the Juries Amendment Act 2008 (2008 No 40).

Amendments to Electoral Act 1993

48 Rules for determining place of residence within New Zealand

(1) Section 72(6) of the Electoral Act 1993 (1993 No 87) is amended by inserting in paragraphs (b), (c), and (d), after the word "spouse", the words "or de facto partner of the same or different sex".

(2) Section 72(10) of the Electoral Act 1993 is amended by inserting, after the word "spouse", the words "or de facto partner of the same or different sex".

49 Disqualifications for registration

Section 80(3)(b) of the Electoral Act 1993 is amended by repealing subparagraph (ii), and substituting the following subparagraph:

"(ii) is the spouse, de facto partner (whether of the same or different sex), or the child of the person referred to in subparagraph (i), or the child of the spouse or de facto partner (whether of the same or different sex) of that person."

50 Removal of names from roll by Registrar

Section 98(1)(b) of the Electoral Act 1993 is amended by inserting in subparagraph (ii), after the word "spouse", the words "or de facto partner of the same or different sex".

51 Dormant file

Section 109(2)(b) of the Electoral Act 1993 is amended by omitting from subparagraph (ii) the words "or spouse", and substituting the words "spouse, or de facto partner of the same or different sex".

Amendments to Holidays Act 1981

This heading was repealed, as from 1 April 2004, by section 91(1) Holidays Act 2003 (2003 No 129).

52 Entitlement to special leave

[Repealed]

Section 52 was repealed, as from 1 April 2004, by section 91(1) Holidays Act 2003 (2003 No 129).

Amendments to Human Tissue Act 1964
[Repealed]

Heading: repealed, on 1 November 2008, by section 92 of the Human Tissue Act 2008 (2008 No 28).

53 Removal of human tissue for therapeutic purposes, etc

[Repealed]

Section 53: repealed, on 1 November 2008, by section 92 of the Human Tissue Act 2008 (2008 No 28).

54 Anatomical examinations

[Repealed]

Section 54: repealed, on 1 November 2008, by section 92 of the Human Tissue Act 2008 (2008 No 28).

Amendment to Immigration Act 1987

55 New sections 149C and 149D inserted

The Immigration Act 1987 (1987 No 74) is amended by inserting, after section 149B, the following sections:

"**149C Purpose of section 149D**

Section 149D recognises that immigration matters inherently involve different treatment on the basis of personal characteristics.

"**149D Relationship between this Act and Human Rights Act 1993**

"(1) Despite anything in the Human Rights Act 1993, no complaint may be made under that Act in respect of—

"(a) the content or application of this Act or any regulations made under this Act; or

"(b) the content or application of any policy made in accordance with section 13A and section 13B.

"(2) The Human Rights Commission may, subject to subsection (3), perform, in relation to immigration matters, any function conferred on the Commission under section 5 of the Human Rights Act 1993.

"(3) The Commission may not, in relation to any matter referred to in subsection (1),—

"(a) bring any proceedings of a kind referred to in section 5(2)(i) of the Human Rights Act 1993; or

"(b) exercise the powers conferred by section 5(2)(j) of that Act in relation to any proceedings."

Amendment to Judicature Act 1908

56 Discharge of jury

[Repealed]

Section 56: repealed, on 25 December 2008, by section 16(3)(c) of the Juries Amendment Act 2008 (2008 No 40).

Amendment to Land Transfer Act 1952

57 Particulars of marriage of female proprietor to be registered

Section 127 of the Land Transfer Act 1952 (1952 No 52) is repealed.

Amendment to Life Insurance Act 1908

58 Wife may insure her own or her husband's life for her own benefit

Section 75A(2) of the Life Insurance Act 1908 (1908 No 105) is amended by omitting the words "man on his own life, and expressed to be for the benefit of his wife or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband or of her children, or of her husband and children, or any of them", and substituting the words "person on his or her own life, and expressed to be for the benefit of his or her spouse, de facto partner (whether of the same or different sex), or his or her children, or his or her spouse or de facto partner (whether of the same or different sex) and his or her children, or any of them".

Amendments to Marriage Act 1955

59 Place and form of marriage before marriage celebrant

Section 31 of the Marriage Act 1955 (1955 No 92) is amended by repealing subsection (3), and substituting the following subsections:

"(3) During the solemnisation of every such marriage each party must say to the other—

"(a) 'I AB, take you CD, to be my legal wife or husband'; or

"(b) words to similar effect; or

"(c) in the case of the solemnisation of a marriage in accordance with the rules and procedures of a specified body that require different words to be used as a marriage vow than those set out in paragraph (a), those words.

"(4) The solemnisation of a marriage may not be conducted in accordance with subsection (3)(c) unless the specified body in question first—

"(a) informs the Registrar of the words that are intended to be used in place of the words set out in subsection (3)(a) and satisfies the Registrar that the use of those words is in accordance with the rules and procedures of that body; and

"(b) notifies the Registrar of the safeguards to be adopted by that body to ensure that—

"(i) there is a clear identification of the parties to the marriage; and

"(ii) that the parties freely consent to the marriage; and

"(iii) the witnesses understand the ceremony and can verify the matters referred to in subparagraphs (i) and (ii).

"(5) In this section, **specified body** means—

"(a) a religious body described in the First Schedule or the subject of an exemption under section 32C:

"(b) an organisation approved under section 9 as an organisation that may nominate marriage celebrants."

60 New section 14A inserted

The Marriage Act 1955 is amended by inserting, after section 14, the following section:

"**14A This Part not to limit sections 32 and 32A**

Nothing in this Part limits sections 32 and 32A (which exempt the Quakers and certain other religious bodies from observing requirements in Part V relating to the solemnisation of marriage in the presence of marriage celebrants)."

61 New sections 32A to 32E inserted

The Marriage Act 1955 is amended by inserting, after section 32, the following sections:

"**32A Marriage in accordance with rules and procedures of exempt religious bodies**

"(1) The provisions of this Part relating to the solemnisation of marriage in the presence of a marriage celebrant do not extend to marriages conducted in accordance with the rules and procedures of an exempt religious body.

"(2) Despite subsection (1), a marriage to which that subsection applies—

"(a) must not be solemnised unless a marriage licence has been issued:

"(b) must be solemnised at a place stated in the marriage licence.

"(3) Every marriage to which subsection (1) applies is as valid as if solemnised under this Act before a marriage celebrant.

"(4) This section does not limit the provisions of section 22 relating to the validity of marriages.

"(5) In this section and in sections 32B to 32E, an **exempt religious body** is a body that is exempted by the Registrar-General under section 32C from observing the requirements of this Part relating to the solemnisation of marriages in the presence of a marriage celebrant.

"**32B Application to become exempt religious body**

"(1) A religious body (other than the religious body to which section 32 applies) may apply to the Registrar-General for an exemption from observing the requirements of this Part relating to the solemnisation of marriages in the presence of a marriage celebrant.

"(2) An application made under subsection (1) must be accompanied by—

"(a) a statement signed by the chief office bearer and 10 members of the religious body setting out—

"(i) the beliefs and objects of the organisation; and

"(ii) the number or, if this cannot be accurately ascertained, the approximate number of members of the organisation of or over 18 years; and

"(b) a statement explaining why the objects and beliefs of the religious body are inconsistent with those provisions of this Part relating to the solemnisation of marriages in the presence of a marriage celebrant; and

"(c) a statement containing a description of the rules and procedures by which the body proposes to solemnise marriages.

"(3) In the case of a religious body whose rules and procedures or tenets do not recognise any chief office bearer, the statement referred to in subsection (2)(a) need only be signed by 10 members of the body.

"(4) The statement referred to in subsection 2(a) (whether signed by the persons referred to in that subsection or the persons referred to in subsection (3)) is invalid unless—

"(a) each signatory is of or over 18 years and includes in the statement his or her age and address; and

"(b) the signatures of the signatories are attested by another person who must, by statutory declaration attached to the statement, verify the signatures as the genuine signatures of the persons whose signatures they purport to be.

"**32C Declaration of religious body as exempt religious body**

"(1) The Registrar-General may, on receiving an application under section 32B, grant the exemption sought by declaring the religious body to be an exempt religious body if the Registrar-General is satisfied—

"(a) that the body is a bona fide religious body; and

"(b) that the beliefs of that body are genuinely and sincerely held by its members; and

"(c) that the beliefs or objects of that body are inconsistent with the fulfilment of the requirements of this Part relating to the solemnisation of marriage in the presence of a marriage celebrant; and

"(d) that the rules and procedures under which that body proposes to solemnise marriage are—

"(i) consistent with the requirements of this Act (other than those referred to in paragraph (c)); and

"(ii) otherwise satisfactory.

"(2) If, on receiving an application under section 32B, the Registrar-General fails or refuses to declare the religious body to be an exempt religious body, the Registrar-General must, if required to do so by the religious body, refer the application to the Minister.

"(3) If the Minister considers that the requirements of subsection (1)(a) to (d) are satisfied, the Minister may direct the Registrar-General to declare the religious body to be an exempt religious body and, in that case, the Registrar-General must do so immediately.

"(4) A declaration under this section that a religious body is an exempt religious body must be made by way of notice in the *Gazette*.

"**32D Change in beliefs or objects of exempt religious bodies**

"(1) If an exempt religious body changes its name or any of its beliefs or objects, it must immediately give the Registrar-General notice in writing, signed in the manner required by section 32B(2)(a),—

"(a) of its former and new names; and

"(b) of whether its beliefs and objects remain unchanged since it last stated them to the Registrar-General under section 32B; and

"(c) if those beliefs and objects do not remain unchanged, stating its present beliefs and objects; and

"(d) stating whether its present beliefs and objects continue to be inconsistent with the provisions of this Part relating to the solemnisation of marriages in the presence of a marriage celebrant.

"(2) If the Registrar-General is satisfied that an exempt religious body has changed its name, the Registrar must notify the change by notice in the *Gazette* specifying that body's former and new names.

"(3) Subsection (4) applies if the Registrar-General—

"(a) has been notified under subsection (1) that the beliefs or objects of an exempt religious body have changed; or

"(b) is satisfied that any of the beliefs or objects of an exempt religious body have changed since that organisation last stated its beliefs and objects to the Registrar-General under section 32B.

"(4) If subsection (3) applies, the Registrar-General must recommend to the Minister either—

"(a) that that exempt religious body should continue to be an exempt religious body; or

"(b) that the Minister must cancel the exemption of that body from observing the requirements of this Part relating to the solemnisation of marriages in the presence of a marriage celebrant.

"(5) The Registrar-General must not recommend, under subsection (4), that an organisation should continue to be an exempt religious body unless the Registrar-General is satisfied that the objects and beliefs of the body continue to be inconsistent with the provisions of this Part relating to the solemnisation of marriages in the presence of a marriage celebrant.

"(6) The Minister may exercise the power conferred by subsection (7) if, at any time, the Minister—

"(a) becomes satisfied that, in the light of information not available to the Minister or Registrar-General (as the case may be) when an exempt religious body was granted an exemption, or as a consequence of a change in the circumstances of an exempt religious body, that the body should not continue to be an exempt religious body; or

"(b) is not satisfied (whether or not as a result of a recommendation under subsection (4)) that the beliefs and objects of the religious body are no longer inconsistent with the provisions of the Part relating to the solemnisation of marriage in the presence of a marriage celebrant.

"(7) If subsection (6) applies, the Minister may, by notice in the *Gazette*, cancel the exemption of the religious body referred to in subsection (6), and on the date of the publication of that notice that body ceases to be an exempt religious body.

"**32E List of exempt religious bodies**

"(1) The Registrar-General must, in each year,—

"(a) prepare a list of exempt religious bodies (in this section referred to as the **list**); and

"(b) ensure that the list is published in the *Gazette*.

"(2) The list must contain the name of every exempt religious body and must be corrected or added to as often as is necessary to maintain its accuracy.

"(3) The Registrar-General must ensure that each correction of, or addition to, the list is published in the *Gazette*.

"(4) The Registrar-General must specify in each list published in the *Gazette* a date on which the list comes into force, and on that date all previous lists and all corrections and additions to any previous list are cancelled and of no effect."

Amendments to Police Act 1958

62 Interpretation

(1) Section 2 of the Police Act 1958 (1958 No 109) is amended by inserting, before the definition of **Minister**, the following definition:

"**member of the Government Superannuation Fund Police Sub-Scheme** means a member of the police who is a member of the Government Superannuation Fund subject to Part VIA of the Government Superannuation Fund Act 1956.".

(2) Sections 28B and 67(7) of the Police Act 1958 are each consequentially amended by omitting the words "(as defined in section 27(9) of this Act)".

63 Age of retirement

(1) Section 27 of the Police Act 1958 is repealed.

(2) Section 88B of the Government Superannuation Fund Act 1956 is consequentially amended by repealing subsections (2)(a) and (4)(a), and substituting in each case the following paragraph:

"(a) a member of the police who was or is appointed by reason of special qualifications to perform duties of a specialised nature and who, throughout the member's entire police career, holds a specially designated rank:".

(3) The following enactments are consequentially repealed:

(a) section 8 of the Human Rights Amendment Act 1999:

(b) section 2 of the Police Amendment Act 1985:

(c) section 12(1) of the Police Amendment Act (No 2) 1992:

(d) section 4 of the Police Amendment Act 1992.

64 New section 53 substituted

The Police Act 1958 is amended by repealing section 53, and substituting the following section:

"**53 Failing to help member of police**

"(1) A member of the police in the lawful execution of his or her duty may ask any person who is 18 years old or older to help the member of the police do either or both of the following:

"(a) apprehend or secure any person:

"(b) convey any person in the charge of the member of the police to a police station or other place.

"(2) The member of the police may ask the person for help of that kind only if it is, in the circumstances, a reasonable necessity.

"(3) Every person who, when so asked, fails to give help of that kind to any member of the police commits an offence and is liable on summary conviction to a fine not exceeding $500.

"(4) However, a failure of that kind before the commencement of the Human Rights Amendment Act 2001, and by a person who is not a male, is not an offence under subsection (3)."

Amendment to Protection of Personal and Property Rights Act 1988

65 Interpretation

Section 2 of the Protection of Personal and Property Rights Act 1988 (1988 No 4) is amended by omitting from paragraph (a) of the definition of **relative** the words "or any other person with whom that person has a relationship in the nature of marriage", and substituting the words "or the de facto partner of the same or different sex of that person".

Amendment to Referenda (Postal Voting) Act 2000

66 Persons who, at commencement of voting period, are dead or disqualified or removed from roll

Section 26(2)(b)(ii) of the Referenda (Postal Voting) Act 2000 (2000 No 48) is amended by omitting the words "or spouse", and substituting the words "spouse, or de facto partner (whether of the same or different sex)".

Amendments to Sale of Liquor Act 1989

67 Being on licensed premises outside licensing hours

Section 170(2)(a) of the Sale of Liquor Act 1989 (1989 No 63) is amended by inserting, after the word "spouse", the words "or de facto partner (whether of the same or different sex)".

68 Disqualification of members of Trust

Section 200(1) of the Sale of Liquor Act 1989 is amended by inserting in paragraphs (c) and (d), after the words "husband or wife", the words "or de facto partner (whether of the same or different sex)".

Amendment to Summary Proceedings Act 1957

69 Mode of service of documents on defendant

Section 24(2) of the Summary Proceedings Act 1957 (1957 No 87) is amended by inserting, after the word "husband," the words "de facto partner of the same or different sex,".

Amendments relating to disability as a ground for removal from office

70 Amendments to ensure disability not a ground for removal

(1) The Acts specified in Part 1 of Schedule 2 are amended in the manner indicated in that Part.

(2) The regulations specified in Part 2 of Schedule 2 are amended in the manner indicated in that Part.

Consequential amendments

71 Consequential amendments

(1) The Acts specified in Part 1 of Schedule 3 are amended in the manner indicated in that Part.

(2) The regulations specified in Part 2 of Schedule 3 are amended in the manner indicated in that Part.

Schedule 1

s 43

New Schedules 1 and 2 substituted

Schedule 1

s 20H(1)

Administrative provisions applying in respect of Commission

1 General manager: appointment, term of office, and conditions

(1) The General manager—

(a) is appointed by the Chief Human Rights Commissioner, after consultation with the Commission, under section 18, and his or her office is a full-time one; and

(b) holds the office for the term (not longer than 5 years) and under the conditions specified in his or her appointment; and

(c) may, from time to time, be reappointed; and

(d) unless he or she sooner vacates or no longer holds or is removed from the office, continues in it until his or her successor comes into it, even though the term for which he or she was appointed has expired.

(2) Before agreeing to any terms and conditions of employment for the General manager, or any changes to those terms and conditions, the Chief Human Rights Commissioner must consult with the State Services Commissioner and have regard to any recommendations he or she makes to the Chief Human Rights Commissioner about those terms and conditions.

(3) In the case of absence from duty of the General manager (for any reason) or on the occurrence of a vacancy in that position (for any reason) and while the absence or vacancy continues, all or any of the powers and duties of the General manager may be exercised and performed by any other employee of the Commission for the time being directed by the Chief Commissioner (after consultation by the Chief Commissioner with the Commission) to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.

(4) No direction given under subclause (3) and no acts done by any employee of the Commission acting under that direction may in any proceedings be questioned on the ground that—

(a) the occasion for the direction had not arisen or had ceased; or

(b) that the employee has not been appointed to the position of General manager.

2 Staff

(1) The General manager may, with the agreement of the Chief Commissioner and in accordance with this clause, appoint any employees (including acting or temporary or casual employees) that he or she considers necessary for the efficient carrying out of the functions, powers, and duties of the Commission under this Act.

(2) The number of persons the General manager may appoint under this clause, whether generally or in respect of any specified duties or class of duties, is determined by the Commission.

(3) Employees appointed under this clause are employed on any terms and conditions of employment the General manager determines.

(4) A Commissioner may not be appointed under this clause as an employee.

(5) However, the General manager must,—

(a) before entering into a collective agreement in relation to all or any of the employees of the Commission appointed under this clause, consult with the Chief Commissioner and the State Services Commissioner with respect to the terms and conditions of employment to be included in the collective agreement; and

(b) from time to time, consult with the Chief Commissioner and the State Services Commissioner in relation to the terms and conditions of employment applying to those employees appointed under this clause who are not covered by a collective agreement.

3 Employment principles

The Commission must operate a personnel policy that complies with the principle of being a good employer, which policy must contain provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions meeting the requirements of section 56(2)(a) to (d)(ii) and (e) to (h) of the State Sector Act 1988.

4 Appointment of experts

(1) The Commission may, as and when the need arises, appoint any person (other than a Commissioner) who, in the Commission's opinion, possesses expert knowledge or is otherwise able to assist in connection with the exercise of the functions of the Commission to make such inquiries or to conduct such research or to make such reports or to render such other services as may be necessary for the efficient performance by the Commission of the functions of the Commission.

(2) The Commission must pay persons appointed under this clause, for services rendered by them, fees or commission or both at such rates as the Commission thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Commission.

5 Salaries and allowances

(1) There must be paid to the Commissioners and alternate Commissioners such remuneration by way of fees, salary, wages, or allowances as may from time to time be fixed, either generally or in respect of any particular Commissioner or Commissioners or alternate Commissioner or alternate Commissioners, by the Higher Salaries Commission.

(2) Subject to the Higher Salaries Commission Act 1977, any determination made under subclause (1) may be made so as to come into force on a date to be specified for that purpose in the determination, being the date of the making of the determination, or any other date, whether before or after the date of the making of the determination.

(3) Every determination made under subclause (1) in respect of which no date is specified as provided in subclause (2) comes into force on the date of the making of the determination.

(4) There must also be paid to the Commissioners and alternate Commissioners, in respect of time spent in travelling in the exercise of their functions, travelling allowances and travelling expenses in accordance with the Fees and Travelling Allowances Act 1951, and that Act applies accordingly as if the Commissioners and alternate Commissioners were members of a statutory Board and the travelling were in the service of the statutory Board.

6 Superannuation or retiring allowances

(1) For the purpose of providing superannuation or retiring allowances for the Commissioners and for the General manager and for any of the employees of the Commission, the Commission may, out of the funds of the Commission, make payments to or subsidise any superannuation scheme that is registered under the Superannuation Schemes Act 1989.

(2) Despite anything in this Act, any person who, immediately before being appointed as a Commissioner or the General manager or, as the case may be, becoming an employee of the Commission, is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 is deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to hold office as a Commissioner or the General manager or, as the case may be, to be an employee of the Commission, and that Act applies to that person in all respects as if that person's service as a Commissioner or the General manager or, as the case may be, as an employee of that kind were Government service.

(3) For the purpose of applying the Government Superannuation Fund Act 1956, in accordance with subclause (2), to a person who holds office as a Commissioner or the General manager or, as the case may be, is in the service of the Commission as an employee and (in any such case) is a contributor to the Government Superannuation Fund, **controlling authority**, in relation to the person, means the Commission.

7 Certain Acts do not apply to staff of Commission

No person may be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 just because the person is appointed under clause 1 or clause 2 or clause 4.

8 Services for Commission

The Crown, acting through any department, may, at the request of the Commission, execute any work or enter into any arrangements for the execution or provision by the department for the Commission of any work or service, or for the supply to the Commission of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

9 Funds of Commission

The funds of the Commission consist of—

(a) any money appropriated by Parliament for the purposes of the Commission and paid to the Commission for those purposes (except any money of that kind appropriated to the Office of Human Rights Proceedings as a part of the Commission, and that must, when paid to the Commission, be paid by the Commission to the Office):

(b) all other money lawfully received by the Commission for the purposes of the Commission:

(c) all accumulations of income derived from any money of that kind.

10 Bank accounts

(1) The Commission must operate at any bank or banks any accounts that are necessary for the exercise or performance of its functions, powers, and duties.

(2) All money received by, or on behalf of, the Commission must, as soon as practicable after it has been received, be paid into any bank accounts of the Commission that the Commission from time to time determines.

(3) Withdrawals or payments of money from any account of that kind must be authorised in any manner the Commission thinks fit.

11 Investment of money

Any money that belongs to the Commission and is not immediately required for expenditure by the Commission may be invested under section 25 of the Public Finance Act 1989.

12 Borrowing

(1) The Commission must not borrow or contract to borrow any money, or renew any loan made to the Commission, without the prior written consent of the Minister of Finance.

(2) Subclause (1) limits section 4.

13 Seal

The seal of the Commission must be judicially noticed in all courts and for all purposes.

14 Tax status

(1) For the purposes of the Inland Revenue Acts, the Commission (including the Office of Human Rights Proceedings) is a public authority.

(2) In this clause, **Inland Revenue Acts** has the same meaning as in section 3(1) of the Tax Administration Act 1994.

15 Crown entity

The Commission (including the Office of Human Rights Proceedings) is a Crown entity for the purposes of the Public Finance Act 1989.

16 Auditor

The Commission (including the Office of Human Rights Proceedings) is a public entity as defined in section 4 of the Public Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.

Schedule 2

s 20H(2)

Administrative provisions applying in respect of Office of Human Rights Proceedings

1 Interpretation

In this schedule, unless the context otherwise requires,—

Director means the Director of Human Rights Proceedings, or alternate Director of Human Rights Proceedings, appointed under section 20A

functions include powers or duties

Office means the Office of Human Rights Proceedings referred to in section 20.

2 Staff

(1) The Director may, in accordance with this clause, appoint any employees (including acting or temporary or casual employees) that he or she considers necessary for the efficient carrying out of the functions of the Director.

(2) Employees appointed under this clause are employed on any terms and conditions of employment the Director determines.

(3) However, the Director must,—

(a) before entering into a collective agreement in relation to all or any of the employees of the Office appointed under this clause, consult with the State Services Commissioner with respect to the terms and conditions of employment to be included in the collective agreement; and

(b) from time to time, consult with the State Services Commissioner in relation to the terms and conditions of employment applying to those employees appointed under this clause who are not covered by a collective agreement.

(4) A Commissioner may not be appointed under this clause as an employee.

3 Employment principles

The Office must operate a personnel policy that complies with the principle of being a good employer, which policy must contain provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions meeting the requirements of section 56(2)(a) to (d)(ii) and (e) to (h) of the State Sector Act 1988.

4 Appointment of experts

(1) The Director may, as and when the need arises, appoint any person (other than a Commissioner) who, in the Director's opinion, possesses expert knowledge or is otherwise able to assist in connection with the exercise or performance of the functions of the Director to make such inquiries or to conduct such research or to make such reports or to render such other services as may be necessary for the efficient exercise or performance by the Office of the functions of the Director.

(2) The Office must pay persons appointed under this clause, for services rendered by them, fees or commission or both at such rates as the Director thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Office.

5 Salaries and allowances

(1) There must be paid to the Director such remuneration by way of fees, salary, wages, or allowances as may from time to time be fixed, either generally or in respect of any particular Director, by the Higher Salaries Commission.

(2) Subject to the Higher Salaries Commission Act 1977, any determination made under subclause (1) may be made so as to come into force on a date to be specified for that purpose in the determination, being the date of the making of the determination, or any other date, whether before or after the date of the making of the determination.

(3) Every determination made under subclause (1) in respect of which no date is specified as provided in subclause (2) comes into force on the date of the making of the determination.

(4) There must also be paid to the Director, in respect of time spent in travelling in the exercise of his or her functions, travelling allowances and travelling expenses in accordance with the Fees and Travelling Allowances Act 1951, and that Act applies accordingly as if the Director were a member of a statutory Board and the travelling were in the service of the statutory Board.

6 Superannuation or retiring allowances

(1) For the purpose of providing superannuation or retiring allowances for the Director and for any of the employees of the Office, the Office may, out of the funds of the Office, make payments to or subsidise any superannuation scheme that is registered under the Superannuation Schemes Act 1989.

(2) Despite anything in this Act, any person who, immediately before being appointed as the Director or, as the case may be, becoming an employee of the Office, is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 is deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to hold office as the Director or, as the case may be, to be an employee of the Office, and that Act applies to that person in all respects as if that person's service as the Director or, as the case may be, as an employee of that kind were Government service.

(3) For the purpose of applying the Government Superannuation Fund Act 1956, in accordance with subclause (2), to a person who holds office as the Director or, as the case may be, is in the service of the Office as an employee and (in any such case) is a contributor to the Government Superannuation Fund, **controlling authority**, in relation to the person, means the Office.

7 Certain Acts do not apply to staff of Office

No person may be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 just because the person is appointed under clause 2 or clause 4.

8 Services for Office

The Crown, acting through any department, may, at the request of the Office, execute any work or enter into any arrangements for the execution or provision by the department for the Office of any work or service, or for the supply to the Office of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

9 Funds of Office

The funds of the Office consist of—

(a) any money appropriated by Parliament for the purposes of the Office as a part of the Commission and paid by the Commission to the Office for those purposes:

(b) all other money lawfully received by the Office for the purposes of the Office:

(c) all accumulations of income derived from any money of that kind.

10 Bank accounts

(1) The Office must operate at any bank or banks any accounts that are necessary for the performance of the Director's functions.

(2) All money received by, or on behalf of, the Office must, as soon as practicable after it has been received, be paid into any bank accounts of the Office that the Director from time to time determines.

(3) Withdrawals or payments of money from any account of that kind must be authorised in any manner the Director thinks fit.

11 Investment of money

Any money that belongs to the Office and is not immediately required for expenditure by the Office may be invested under section 25 of the Public Finance Act 1989.

12 Address for service

The address for service of the Director and of the Office is the address of the main premises of the Office.

Schedule 2

s 70

Amendments relating to disability as a ground for removal from office

1

Amendments to acts

Agriculture (Emergency Powers) Act 1934 (1934 No 34)

Omit from section 3(2) the word "disability" and substitute the words "inability to perform the functions of the office".

Alcohol Advisory Council Act 1976 (1976 No 143)

Omit from section 4(3) the word "disability" and substitute the words "inability to perform the functions of the office".

Broadcasting Act 1989 (1989 No 25)

Omit from clause 1(1) of Schedule 1 the word "disability" and substitute the words "inability to perform the functions of the office".

Carter Observatory Act 1938 (1938 No 9)

Omit from section 5A(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Casino Control Act 1990 (1990 No 62)

Omit from clause 1(4) of Schedule 1 the word "disability" and substitute the words "inability to perform the functions of the office".

Clerk of the House of Representatives Act 1988 (1988 No 126)

Omit from sections 6(2) and 11(2) and (3) the word "disability" and substitute in each case the words "inability to perform the functions of the office".

Commerce Act 1986 (1986 No 5)

Omit from sections 13(1) and (2) and 77(5) the word "disability" and substitute in each case the words "inability to perform the functions of the office".

1—*continued*

Conservation Act 1987 (1987 No 65)

Omit from sections 6F(2), 6R(2), and 26ZA(2) the word "disability" and substitute in each case the words "inability to perform the functions of the office".

Contraception, Sterilisation, and Abortion Act 1977 (1977 No 112)

Omit from section 11(3) the word "disability" and substitute the words "inability to perform the functions of the office".

Corporations (Investigation and Management) Act 1989 (1989 No 11)

Omit from sections 57(1) and 60(6) the word "disability" and substitute in each case the words "inability to perform the functions of the office".

Customs and Excise Act 1996 (1996 No 27)

Omit from section 245(2) the word "disability" and substitute the words "inability to perform the functions of the office".

Dairy Board Act 1961 (1961 No 5)

Omit from section 7(1)(a) the word "disability" and substitute the words "inability to perform the functions of the office".

Dental Act 1988 (1988 No 150)

[Repealed]

Dental Act 1988: this item was repealed, as from 18 September 2004, by section 175(4) Health Practitioners Competence Assurance Act 2003 (2003 No 48). *See* sections 178 to 227 of that Act as to the transitional provisions.

Earthquake Commission Act 1993 (1993 No 84)

Omit from clause 3(3) of Schedule 1 the word "disability" and substitute the words "inability to perform the functions of the office".

1—*continued*

Electricity Act 1992 (1992 no 122

Omit from section 155(3)(b) and clause 4(1) of Schedule 2 the word "disability" and substitute in each case the words "inability to perform the functions of the office".

Energy Companies Act 1992 (1992 No 56)

Omit from section 7 the word "disability" and substitute the words "inability to perform the functions of the office".

Engineering Associates Act 1961 (1961 No 70)

Omit from section 10(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Engineers Registration Act 1924 (1924 No 16)

Omit from section 3(4) the word "disability" and substitute the words "inability to perform the functions of the office".

Environment Act 1986 (1986 No 127)

Omit from section 7(1) and (2) the word "disability" and substitute in each case the words "inability to perform the functions of the office".

Fire Service Act 1975 (1975 No 42)

Omit from section 8(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Fisheries Act 1996 (1996 No 88)

Omit from section 285(2) the word "disability" and substitute the words "inability to perform the functions of the office".

Forest and Rural Fires Act 1977 (1977 No 52)

Omit from section 64(4)(b) the word "disability" and substitute the words "inability to perform the functions of the office".

1—*continued*

Foundation for Research, Science, and Technology Act 1990 (1990 No 72)

Omit from clause 3(1) of Schedule 1 the word "disability" and substitute the words "inability to perform the functions of the office".

Gaming and Lotteries Act 1977 (1977 No 84)

Omit from sections 76(1), 116C(1), and 116M(1) the word "disability" and substitute in each case the words "inability to perform the functions of the office".

Higher Salaries Commission Act 1977 (1977 No 110)

Omit from section 7(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Historic Places Act 1993 (1993 No 38)

Omit from sections 45(2) and 88(2) the word "disability" and substitute in each case the words "inability to perform the functions of the office".

Howard Estate Act 1978 (1978 No 74)

Omit from section 22(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Immigration Act 1987 (1987 No 74)

Omit from clauses 2(1) of Schedule 2, 1(2) of Schedule 3A, and 1(2) of Schedule 3B the word "disability" and substitute in each case the words "inability to perform the functions of the office".

Land Valuation Proceedings Act 1948 (1948 No 50)

Omit from sections 3(4) and 19(4)(b) the word "disability" and substitute in each case the words "inability to perform the functions of the office".

1—*continued*

Law Commission Act 1985 (1985 No 151)

Omit from section 12(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Local Government Act 1974 (1974 No 66)

Omit from section 692B(3) and clause 1(1) of Schedule 3A the word "disability" and substitute in each case the words "inability to perform the functions of the office".

Maori Community Development Act 1962 (1962 No 133)

Omit from section 22(a) the words "disability" and substitute the words "inability to perform the functions of the office".

Maori Fisheries Act 1989 (1989 No 159)

[Repealed]

The item relating to the Maori Fisheries Act 1989 was repealed, as from 29 November 2004, by section 214 Maori Fisheries Act 2004 (2004 No 78). *See* clause 3 Maori Fisheries (Appointed Day) Order 2004 (SR 2004/401).

Maori Language Act 1987 (1987 No 176)

Omit from clause 1(3) of Schedule 2 the word "disability" and substitute the words "inability to perform the functions of the office".

Maori Soldiers Trust Act 1957 (1957 No 29)

Omit from section 8(4B) the word "disability" and substitute the words "inability to perform the functions of the office".

Maori Trust Board Act 1955 (1955 No 37)

Omit from section 16(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46)

Omit from section 106(3) the word "disability" and substitute the words "inability to perform the functions of the office".

1—*continued*

Motor Vehicle Dealers Act 1975 (1975 No 127)

Omit from sections 6A(7) and 63(4) the word "disability" and substitute in each case the words "inability to perform the functions of the office".

Music Teachers Act 1981 (1981 No 3)

Omit from section 14(5) the word "disability" and substitute the words "inability to perform the functions of the office".

National Library Act 1965 (1965 No 136)

Omit from section 10(1) the word "disability" and substitute the words "inability to perform the functions of the office".

New Zealand Film Commission Act 1978 (1978 No 61)

Omit from section 5(2) the word "disability" and substitute the words "inability to perform the functions of the office".

New Zealand Geographic Board Act 1946 (1946 No 3)

Omit from section 3(3) the word "disability" and substitute the words "inability to perform the functions of office".

New Zealand Horticulture Export Authority Act 1987 (1987 No 93)

Omit from section 12(1) the word "disability" and substitute the words "inability to perform the functions of the office".

New Zealand Maori Arts and Crafts Institute Act 1963 (1963 No 51)

Omit from section 7(1) the word "disability" and substitute the words "inability to perform the functions of the office".

New Zealand Railways Corporation Act 1981 (1981 No 119)

Omit from section 4(6) the word "disability" and substitute the words "inability to perform the functions of the office".

1—*continued*

New Zealand Trade Development Board Act 1988 (1988 No 160)

Omit from clause 3(1) of Schedule 1 the word "disability" and substitute the words "inability to perform the functions of the office".

Ombudsmen Act 1975 (1975 No 9)

Omit from section 6(1) and (2) the word "disability" and substitute in each case the words "inability to perform the functions of the office".

Pesticides Act 1979 (1979 No 26)

Omit from section 14(3) the word "disability" and substitute the words "inability to perform the functions of the office".

Police Complaints Authority Act 1988 (1988 No 2)

Omit from section 6 the word "disability" and substitute the words "inability to perform the functions of the office".

Queen Elizabeth the Second National Trust Act 1977 (1977 No 102)

Omit from section 7(2) the word "disability" and substitute the words "inability to perform the functions of the office".

Radiation Protection Act 1965 (1965 No 23)

Omit from section 5B(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Real Estate Agents Act 1976 (1976 No 9)

Omit from section 4(6) the word "disability" and substitute the words "inability to perform the functions of the office".

Reserve Bank of New Zealand Act 1989 (1989 No 157)

Omit from sections 119(6), 141(1), and 154(4) the word "disability" and substitute in each case the words "inability to perform the functions of the office".

1—*continued*

Residential Tenancies Act 1986 (1986 No 120)

Omit from section 68(3) the word "disability" and substitute the words "inability to perform the functions of the office".

Sale of Liquor Act 1989 (1989 No 63)

Omit from section 87(2) the word "disability" and substitute the words "inability to perform the functions of the office".

Securities Act 1978 (1978 No 103)

Omit from section 13(3) the word "disability" and substitute the words "inability to perform the functions of the office".

Social Security Act 1964 (1964 No 136)

Omit from section 12C(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Social Welfare (Transitional Provisions) Act 1990 (1990 No 26)

Omit from clause 3(1) of Schedule 3 the word "disability" and substitute the words "inability to perform the functions of the office".

Sport, Fitness, and Leisure Act 1987 (1987 No 13)

Omit from section 6(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Standards Act 1988 (1988 No 5)

Omit from section 6(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Survey Act 1986 (1986 No 123)

Omit from section 16(1) the word "disability" and substitute the words "inability to perform the functions of the office".

1—*continued*

Taratahi Agriculture Training Centre (Wairarapa) Act 1969 (1969 No 138)

Omit from section 4(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Taxation Review Authorities Act 1994 (1994 No 165)

Omit from section 6(3) the word "disability" and substitute the words "inability to perform the functions of the office".

Temporary Safeguards Authorities Act 1987 (1987 No 88)

Omit from section 3(2) the word "disability" and substitute the words "inability to perform the functions of the office".

Testing Laboratory Registration Act 1972 (1972 No 36)

Omit from section 6(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Toxic Substances Act 1979 (1979 No 27)

Omit from section 13(2) the word "disability" and substitute the words "inability to perform the functions of the office".

Transit New Zealand Act 1989 (1989 No 75)

Omit from clause 6 of Schedule 1 the word "disability" and substitute the words "inability to perform the functions of the office".

Transport Accident Investigation Commissions Act 1990 (1990 No 99)

Omit from clause 5 of the Schedule the word "disability" and substitute the words "inability to perform the functions of the office".

Treaty of Waitangi Act 1975 (1975 No 114)

Omit from clause 2(3) of Schedule 2 the word "disability" and substitute the words "inability to perform the functions of the office".

1—*continued*

Veterinarians Act 1994 (1994 No 107)

Omit from section 49(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Waterfront Industry Reform Act 1989 (1989 No 6)

Omit from section 23(3) the word "disability" and substitute the words "inability to perform the functions of the office".

Wildlife Act 1953 (1953 No 31)

Omit from section 44G(2) the word "disability" and substitute the words "inability to perform the functions of the office".

Winston Churchill Memorial Trust Act 1965 (1965 No 39)

Omit from section 6(1) the word "disability" and substitute the words "inability to perform the functions of the office"

2
Amendments to regulations

Berryfruit Marketing Licensing Regulations 1983 (SR 1983/135)

Omit from regulation 4(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Game Industry Board Regulations 1985 (SR 1985/154)

Omit from regulation 4(1) the word "disability" and substitute the words "inability to perform the functions of the office".

Trees (Electric Lines) Regulations 1986 (SR 1986/315)

Omit from regulation 4(3) the word "disability" and substitute the words "inability to perform the functions of the office".

Schedule 3
s 71

Consequential amendments to other enactments

1
Acts amended

Accident Insurance Act 1998 (1998 No 114)

Omit from section 394(3)(b) the words "section 83 or section 90" and substitute the words "section 92B or section 92E or section 92R".

Broadcasting Act 1989 (1989 No 25)

Add to clause 7 of Schedule 1, as subclause (2), the following subclause:

"(2) For the purposes of subclause (1)(b), an employee makes a complaint when proceedings in relation to that complaint are commenced by the complainant or the Human Rights Commission."

Employment Relations Act 2000 (2000 No 24)

Repeal section 112(2) and substitute:

"(2) For the purposes of subsection (1)(b), an employee makes a complaint when proceedings in relation to that complaint are commenced by the complainant or the Commission."

Health and Disability Commissioner Act 1994 (1994 No 88)

Repeal the definition of **Complaints Review Tribunal** or **Tribunal** in section 2.

Insert in section 2, in its appropriate alphabetical order:

"**Human Rights Review Tribunal** or **Tribunal** means the Human Rights Review Tribunal continued by section 93 of the Human Rights Act 1993.".

Omit from sections 14(2)(b) and 23(b) the words "the Race Relations Conciliator,".

Omit from the heading before section 50, the heading to section 50 , section 50(2), the heading to section 54, and 55(1)(a) the word "Complaints" and substitute in each case the words "Human Rights".

1—*continued*

Omit from section 58 the words "Sections 89 to 92" and substitute the words "Sections 92Q to 92W".

Omit from section 58 the expression "83" and substitute the expression "92E".

Higher Salaries Commission Act 1977 (1977 No 110)

Omit from Schedule 4 the item relating to the members of the Human Rights Commission and substitute: "The members and alternate members of the Human Rights Commission and the Director of Human Rights Proceedings or his or her alternate.".

Omit from Schedule 4 the item relating to the Race Relations Conciliator.

Judicature Act 1908 (1908 No 89)

Omit from section 68(1)(a) the expression "90(1)" and substitute the expression "92R(1)".

New Zealand Symphony Orchestra Act 1988 (1988 No 163)

Add to section 10, as subsection (2), the following subsection:

"(2) For the purposes of subsection (1)(b), an employee makes a complaint when proceedings in relation to that complaint are commenced by the complainant or the Commission."

Penal Institutions Act 1954 (1954 No 51)

[Repealed]

The item relating to the Penal Institutions Act 1954 was repealed, as from 1 June 2005, by section 208(1) Corrections Act 2004 (2004 No 50). *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Police Act 1958 (1958 No 109)

Repeal section 95(2) and substitute:

"(2) For the purposes of subsection (1)(b), a member makes a complaint when proceedings in relation to that complaint are commenced by the complainant or the Commission."

1—*continued*

Privacy Act 1993 (1993 No 28)

Repeal the definitions of **Complaints Review Tribunal** or **Tribunal** and **Proceedings Commissioner** in section 2(1).

Insert in section 2(1), in their appropriate alphabetical order:

"**Human Rights Review Tribunal** or **Tribunal** means the Human Rights Review Tribunal continued by section 93 of the Human Rights Act 1993

"**Director of Human Rights Proceedings** means the Director of Human Rights Proceedings or alternate Director of Human Rights Proceedings appointed under section 20A of the Human Rights Act 1993."

Omit from section 15(3) the words "(other than the function of being a member of the Human Rights Commission)".

Omit from the heading preceding section 82 the word "Complaints" and substitute the words "Human Rights".

Omit from the headings to section 82, section 83, section 85, and section 86 the word "Complaints" and substitute the words "Human Rights".

Omit from sections 82(2), 83, and 86 the word "Complaints" in each place where they appear and substitute in each case the words "Human Rights".

Omit from sections 82, 83, 85(3), 86, and 88(2) the words "Proceedings Commissioner" in each place where they appear and substitute in each case the words "Director of Human Rights Proceedings".

Omit from section 84 the words "Complaints Review Tribunal, the Proceedings Commissioner" and substitute the words "Human Rights Review Tribunal, the Director of Human Rights Proceedings".

Omit from section 89 the words "sections 89 to 92" and substitute the words "92Q to 92W".

Omit from section 89 the words "section 83 of that Act" and substitute the words "section 92B, or section 92E, or section 92H of that Act".

1—*continued*

Public Finance Act 1989 (1989 No 44)

Omit from Schedules 4, 5, and 7 the item relating to Race Relations Conciliator in each place where it occurs.

Residential Tenancies Act 1986 (1986 No 120)

Repeal section 12A(2) and substitute:

"(2) For the purposes of subsection (1)(b), a person makes a complaint when proceedings in relation to that complaint are commenced by the complainant or the Commission."

State-Owned Enterprises Amendment Act (No 4) 1988 (1988 No 162)

Add to section 6, as subsection (2), the following subsection:

"(2) For the purposes of subsection (1)(b), an employee makes a complaint when proceedings in relation to that complaint are commenced by the complainant or the Commission."

2
Regulations amended

Children, Young Persons, and Their Families (Residential Care) Regulations 1996 (SR 1996/354)

Omit from regulation 10(1)(l) the words "Race Relations Conciliator,".

Human Rights Regulations 1993 (SR 1993/394)

Omit from the definition of **Chief Commissioner** in regulation 2(1) the expression "7(1)(a)" and substitute the expression "8(1)(a)".

Omit from the definition of **Tribunal** in regulation 2(1) the word "Complaints" and substitute the word "Human Rights".

2—*continued*

Privacy Regulations 1993 (SR 1993/149)

Revoke the definition of **Tribunal** in regulation 2(1) and substitute the following:

"**Tribunal** means the Human Rights Review Tribunal continued by section 93 of the Human Rights Act 1993."

Juries Amendment Act 2008

Public Act	2008 No 40
Date of assent	
Commencement	see section 2

1 Title

This Act is the Juries Amendment Act 2008.

2 Commencement

(1) This Act (except sections 4, 11, 12, and 19) comes into force on the day that is 6 months after the date on which this Act receives the Royal assent.

(2) Sections 4, 11, 12, and 19 come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions.

15 New sections 22 to 22C substituted

(1) *Amendment incorporated in the principal Act*

(2) This section and 16 (amendments and repeals consequential on new sections 22 to 22C substituted) apply only to any trial for which a jury is constituted on or after the date on which this section comes into force.

Contents

1 General
2 About this eprint
3 List of amendments incorporated in this eprint (most recent first)

Notes

1 General

This is an eprint of the Human Rights Amendment Act 2001. It incorporates all the amendments to the Act as at 25 December 2008. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

3 List of amendments incorporated in this eprint (most recent first)

Juries Amendment Act 2008 (2008 No 40): section 16(3)(c)
Human Tissue Act 2008 (2008 No 28): section 92