LAW·COMMISSION

Report No 17

A New Interpretation Act

To Avoid "Prolixity and Tautology"

Other Law Commission publications:

Report Series

NZLC R1	Imperial Legislation in Force in New Zealand (1987)
NZLC R2	Annual Reports for the years ended 31 March 1986 and 31 March 1987 (1987)
NZLC R3	The Accident Compensation Scheme (Interim Report on Aspects of Funding) (1987)
NZLC R4	Personal Injury: Prevention and Recovery (Report on the Accident Compensation Scheme) (1988)
NZLC R5	Annual Report 1988 (1988)
NZLC R6	Limitation Defences in Civil Proceedings (1988)
NZLC R7	The Structure of the Courts (1989)
NZLC R8	A Personal Properties Securities Act for New Zealand (1989)
NZLC R9	Company Law: Reform and Restatement (1989)
NZLC R10	Annual Report 1989 (1989)
NZLC R11	Legislation and its Interpretation: Statutory Publications Bill (1989)
NZLC R12	First Report on Emergencies: Use of the Armed Forces (1990)
NZLC R13	Intellectual Property: The Context for Reform (1990)
NZLC R14	Criminal Procedure: Part One Disclosure and Committal (1990)
NZLC R15	Annual Report 1990 (1990)
NZLC R16	Company Law Reform: Transition and Revision (1990)

Preliminary Paper Series

NZLC PP1	Legislation and its Interpretation: the Acts Interpretation Act 1924 and Related Legislation (discussion paper and questionnaire) (1987)
NZLC PP2	The Accident Compensation Scheme (discussion paper) (1987)
NZLC PP3	The Limitation Act 1950 (discussion paper) (1987)
NZLC PP4	The Structure of the Courts (discussion paper) (1987)
NZLC PP5	Company Law (discussion paper) (1987)
NZLC PP6	Reform of Personal Property Security Law (report by Prof JH Farrar and MA O'Regan) (1988)
NZLC PP7	Arbitration (discussion paper) (1988)
NZLC PP8	Legislation and its Interpretation (discussion and seminar papers) (1988)
NZLC PP9	The Treaty of Waitangi and Maori Fisheries—Mataitai: Nga Tikanga Maori me te Tiriti o Waitangi (background paper) (1989)
NZLC PP10	Hearsay Evidence (options paper) (1989)
NZLC PP11	"Unfair" Contracts (discussion paper) (1990)
NZLC PP12	The Prosecution of Offences (issues paper) (1990)

E 31L

LAW·COMMISSION

Report No 17

A New Interpretation Act

To Avoid "Prolixity and Tautology"

December 1990
Wellington, New Zealand

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

The Director of the Law Commission is Alison Quentin-Baxter. The office is at Fletcher Challenge House, 87–91 The Terrace, Wellington. Telephone: (04) 733 453. Facsimile: (04) 710 959. Postal address: PO Box 2590, Wellington, New Zealand.

Report/Law Commission Wellington 1990
ISSN 00113–2334
This Report may be cited as: NZLC R17
Also published as Parliamentary Paper E 31L

SUMMARY OF CONTENTS

CONTENTS

20 December 1990

Dear Minister

I am pleased to submit to you Report No 17 of the Law Commission, *A New Interpretation Act.*

The draft Act set out in chapter II of the Report is a direct response to paragraph 4 of the broad Ministerial reference on legislation given to the Commission. It follows reports on Imperial Legislation (1987) and the Statutory Publications Bill (1989) and is to be related to much other activity designed to improve New Zealand legislation and the legislative process.

The draft Act is also a response to the direction given to us by the Law Commission Act 1985 that we advise you on ways in which the law can be made as understandable and accessible as is practicable. Steps taken to that end can promote compliance with the law, enhance democracy, and lead to important savings of time and money. The Commission plans to take those purposes further, by reporting on the format of the statute book and preparing a manual on legislation.

The Report has a somewhat different character from other reports since it is also directed to the drafting of particular statutes and to the law and practice of the courts in dealing with statutes. It is not concerned only with proposing the new Interpretation Act. To facilitate consideration of the Report, we are also publishing a summary version.

We recommend the draft legislation for favourable consideration.

Yours sincerely

Owen Woodhouse
President

The Honourable D A M Graham
Minister of Justice
Parliament House
Wellington

TERMS OF REFERENCE

The reference given by the Minister of Justice to the Law Commission on legislation and its interpretation is as follows:

PURPOSES OF REFERENCE

1 To propose ways of making legislation as understandable and accessible as practicable and of ensuring that it is kept under review in a systematic way.

2 To ascertain what changes, if any, are necessary or desirable in the law relating to the interpretation of legislation.

REFERENCE

With these purposes in mind, the Commission is asked to examine and review

1 the language and structure of legislation

2 arrangements for the systematic monitoring and review of legislation

3 the law relating to the interpretation of legislation

4 the provisions of the Acts Interpretation Act 1924 and related legislation

and to recommend changes, as appropriate, to the relevant law and practice.

SUMMARY OF RECOMMENDATIONS

The Commission makes the following major recommendations:

1 The principal recommendation is the introduction and enactment of a new Interpretation Act as proposed (chs II and VI).

2 The changes in structure and style of the draft Bill should be adopted in general drafting practice. These include typographical and design changes and are illustrated by the draft Bill (see also paras 225–228).

3 The statutory direction or guide towards a purposive approach in the interpretation of legislation should be maintained in a somewhat different form (cl 9(1) and paras 33–74).

4 The substance of the doctrine that allows for the meaning or application of a term in legislation to develop over time, taking account of changing or new circumstances should be restated as indicated (cl 9(2) and paras 75–87).

5 In the interpretation of a statute, regard may be had to the various elements of the enactment as printed, including its organisation, its preamble, its divisions, the headings of those divisions, section headings, and schedules and appendices (cl 9(3) and paras 88–99).

6 The use of parliamentary material in the interpretation of legislation should not be regulated by a general statute (paras 100–126).

7 The general principle stated in the Acts Interpretation Act 1924 that enactments do not affect the rights of the Crown should be reversed. The new principle of the application of legislation to the Crown should apply to existing statutes and to criminal offence provisions. The Report indicates aspects of the application of legislation to the Crown which should be routinely addressed (such as the

defence forces, Crown land, and enforcement against the Crown) (cl 10 and ch IV).

8 The basic principle that enactments have prospective effect only should be expressly stated, and the detailed application of that principle should be set out in a more comprehensive, accessible and reasoned way. The Report sets out the matters that should be weighed in the preparation of repeal and savings provisions in particular enactments (cls 6–8 and ch V).

9 An Act when printed should provide a brief account of its parliamentary history (para 115).

10 Related changes to the Standing Orders of the House of Representatives and the House resolutions should be considered (paras 70 and 239).

Other recommendations are reflected in the draft Bill.

I

Introduction

1 Legislation is central to our legal system. It is the principal source of new law. It has an essential and pervasive role in our national life. It is accordingly not surprising that it has a central place in the Law Commission Act 1985 and in the work of the Law Commission. So the Commission has a statutory responsibility to advise on making the law as understandable and accessible as practicable and on making its expression and content as simple as practicable. And the Minister of Justice's reference to the Commission on legislation and its interpretation gives the matter further and particular emphasis.

2 The importance of legislation is of course reflected in many other developments. There is much public comment—some of it very critical—about the legislative process. Over recent years there have been some responses to such concerns. There are the changes to the procedures of the House of Representatives, in part designed to enhance the role of its committees in considering legislation. There are the recent Acts identifying the Imperial enactments which are part of the law of New Zealand, regulating the publication of Acts and regulations, and enhancing the powers of the House in respect of regulations, the developing role of the Legislation Advisory Committee, and other steps to improve the preparation of legislation within the executive.

3 Also prominent are the many cases decided by the courts involving statutory interpretation. A scan of 119 cases in recent consecutive parts of the New Zealand Law Reports shows that in only 27 of them

was legislation not relevant, in 17 it was of relatively minor importance, and in the remaining 75 it was central to the case (although in a number the issues are of application and the exercise of statutory discretions rather than of interpretation). The figures are closely comparable to Australian and English ones, eg, Pearce and Geddes *Statutory Interpretation in Australia* (3d ed 1988) para 1.1.

4 The cases on interpretation raise a great variety of questions, for instance about the relationship between the purpose, scheme and wording of the statute, the relevance of broad constitutional principle, the relevant common law, the history of the statute, the meaning of "the principles of the Treaty of Waitangi", the interpretation of legislation by reference to relevant international conventions, the use of Hansard, of departmental reports submitted to a select committee, of law reform reports and of the explanatory note to a Bill, the application of the principle that statutes are always speaking, as well as recurrent issues about liability under criminal statutes, the meaning of tax statutes, and limits on statutory powers in the administrative law area.

5 Such a heavy statutory component in the reported cases—and no doubt in the practice of many lawyers as well—is not surprising when the size and scope of the statute book is considered. Each year around 4000 new pages are added to the volumes of legislation—subordinate as well as primary. The figure about 10 years ago was similar, but 40 years ago it was 2250. Much of it does of course replace earlier legislation, but the bulk of the statute book has undoubtedly been increasing. The four volumes of the 1908 consolidation are to be compared with the 16 (smaller) volumes of the 1957 Reprint and the (to date) 24 volumes of the current rolling reprint with which another 40 or so annual volumes are to be read. The character of some legislation is also changing and reflects the increasing complexity of life in general and the growth in disputes and in litigation. There has been an increase too in the likelihood of controversy about the meaning and effect of relevant legislation.

6 Surveys of such litigation also indicate changes in judicial approaches to interpretation issues. Those or similar changes have been occurring as well in other common law jurisdictions, in some cases in association with changes in the legislation relating to interpretation. These developments make it plain that Interpretation Acts

can provide only some of the answers. As Justice Frankfurter indicated in his famous reflections on the reading of statutes, the important lessons in this area are gained by observing the Judges at work: "the answers to the problems of an art are in its exercise" (1947) 47 Columb L Rev 527.

7 Lord Wilberforce has made a related point: statutory interpretation is about life and human nature itself—too broad and deep and variegated to be encapsulated in any theory, Attorney-General's Department, Commonwealth of Australia, *Symposium on Statutory Interpretation* (1983) 6. One purpose of this Report is to reflect some of that variety. But much judicial and legislative practice shows that general interpretation statutes also have valuable roles.

REASONS FOR INTERPRETATION ACTS

In general

8 Interpretation statutes have been enacted in common law jurisdictions since at least the middle of the 19th century. The reasons for them are well established, and indeed some Interpretation Acts state them expressly. One of the first, Lord Brougham's Act of 1850, said it was "An Act for shortening the language used in Acts of Parliament". They shorten particular Acts by avoiding repetition in each of provisions of general application; so

- they provide standard or even extended definitions of commonly used words and terms;
- they provide standard sets of provisions regulating aspects of the operation of all enactments (such as commencement); and
- they imply powers additional to those expressly conferred in particular statutes.

9 The Interpretation Ordinance declared and enacted in 1851 by Sir George Grey as Governor in Chief of New Zealand with the advice and consent of the Legislative Council (including William Swainson as Attorney-General) went a further step. The Ordinance was not, it said, just for the shortening of language; it was also "to provide for the interpretation of Ordinances". Accordingly, while copying much of the 1850 United Kingdom Act, it added interestingly to it. So it said that

> the language of every Ordinance shall be construed according to its plain import, and where it is doubtful, according to the purpose thereof.

10 Those two purposes of shortening legislation and assisting its interpretation by the statement of approaches to interpretation have a further value. They help promote greater consistency in the form and language of the whole statute book. Accordingly the Interpretation Act 1888 mentioned in its title its concern with the *form* of statutes as well as with their shortening and their interpretation. The three purposes relate to the responsibility of the Law Commission to promote the accessibility and comprehensibility of the law.

11 There is a growing emphasis on accessibility and comprehensibility and on plain drafting. It is an emphasis that can be traced back to the very beginnings of the New Zealand legal system. On 5 December 1840 Queen Victoria was pleased to give Instructions to her trusty and well beloved William Hobson, her Governor and Commander in Chief in and over her colony of New Zealand. One was that all laws and ordinances which he was to enact with the advice and consent of the new Legislative Council were to "be drawn up in a simple and compendious form, avoiding as far as may be all prolixity and tautology", British Parliamentary Papers 1841 (311), vol XVII p 37.

12 David Mellinkoff in his outstanding study, the *Language of the Law* (1963) 191, refers to a rule of Court made by Francis Bacon as Chancellor. If a pleading "shall be found of immoderate length both the parties and the counsel under whose hand it passeth shall be fined". (Shortly before, a Chancellor faced with a grossly extended document had not only fined the litigant (although not the lawyer) but also ordered that the offending pleading have a hole cut in it and that the hapless litigant be paraded with the document about his shoulders before the bar of the three courts sitting in Westminster Hall!) The reasons for this emphasis on accessibility and comprehensibility are important. We briefly recall some of them.

13 First, economy and efficiency: better prepared and presented legislation is easier to read, to understand and to act on. That saves time and money—for the officials involved, the citizens who must comply with the law, and their professional advisers; some of the savings documented elsewhere are surprisingly large. Better preparation and presentation facilitates compliance with the law; a law which is difficult to understand is less likely to be honoured. And it enhances the democratic process.

14 That last point, the first in a chronological sense, is perhaps not as obvious as the others. If a statute does not clearly state its message, Ministers who have settled its terms and approved its introduction into the House, Members of Parliament who have to consider whether to endorse it, interested persons who wish to make submissions on it, and then those who would wish to have it changed are all handicapped in exercising their rights in relation both to the proposal and to the law if and when enacted. That should not be so. Democratic processes are being thwarted by that lack of clarity.

In New Zealand

15 Our present Acts Interpretation Act is substantially unchanged after 100 years. (The 1924 Act is only a little different from the Interpretation Act 1888.) Our own examination of it, the many responses we have had to our discussion papers, the extensive consultations based on them, a valuable series of Law Society seminars, changes in perception of the role of the state, changes in the approaches of the courts to legislation, the role and potential of new technology, and developments in the drafting and presentation of legislation here and elsewhere—all these indicate that major improvements can and should be made to the 1924 Act. The scope for revising it also appears from the interpretation statutes recently enacted in several Australian states, in Canadian provinces and in the United Kingdom, and from the model statute prepared in 1983 for the Commonwealth Secretariat by Mr G C Thornton and the Uniform Interpretation Act prepared in 1984 by the Uniform Law Conference of Canada. Some of those Acts are listed in appendix D and this Report makes frequent reference to them.

16 The preparation of a new Interpretation Act provides a further spur to the preparation of standard provisions to be used to handle recurring issues throughout the statute book. Its enactment should also serve as an effective reminder to those who use legislation of the provisions it contains. There is evidence of some neglect of the provisions of the 1924 Act both on the part of the drafters of legislation and on the part of those applying and interpreting legislation. Examples are given in appendix C. We are now, in cooperation with the Parliamentary Counsel Office, beginning the task of preparing a manual on legislation. We can draw on much relevant material including, in New Zealand, the report of the Legislation Advisory Committee on *Legislative Change: Guidelines on Process and Content*

(1987). Cabinet requires those proposing legislation to follow the principles stated in that report unless there is good reason to depart from them.

THE CHARACTER AND APPLICATION OF INTERPRETATION LEGISLATION

17 The Acts Interpretation Act 1924 applies to

- all 600 or more public general Acts in force including the Imperial Acts in force in New Zealand;
- 2000 or so public local Acts and private Acts;
- about 4000 current regulations (although to a varying and uncertain extent).[1]

Its provisions have also applied to all the other thousands of Acts and regulations that have been (but are no longer) in force as part of the law of New Zealand during the last 100 years. Those enactments cover an enormous range of the life and law of New Zealand and New Zealanders. They fill many volumes of the statute books and the statutory regulations series. The form, language and effect of that legislation varies greatly. Obviously an interpretation statute which applies across that vast area has to have a special character and to be carefully constructed if it is to be both an effective and a sensible statute. We are helped in respect of the content and wording of a new Act by the extensive New Zealand experience and the commentary on it, by the recent legislation enacted elsewhere, and by the valuable and detailed submissions and comments made to us.

18 We are also helped by the fact that most of the provisions of interpretation statutes are presumptive: by their express terms, the rules and principles they state do not apply if the particular statute being considered provides differently or if the context otherwise requires. As appears from the commentary to cl 3 of the proposed Bill, the 1924 Act makes that very clear, both in a general provision applying across the whole Act and in an enormous variety of formulas included in particular provisions. That relative, presumptive character also arises directly from the character of the lawmaking powers of successive parliaments and from the legal effect of the language

[1] These figures are based on the *1989 Tables of New Zealand Acts and Ordinances and Statutory Regulations in Force (1990)* and *Report of Regulations Review Committee, Inquiry into all Regulations in Force* as at 14 November 1988 AJHR 1988 I 16B.

used, eg, *Chorlton v Lings* (1868) LR 4CP 374, and *Shanmugan v Commissioner for Registration of Indian and Pakistani Residents* [1962] AC 515, 527.

19 This point must not however be taken too far. An interpretation statute must be generally effective. The fact that a provision suggested for inclusion in the general interpretation statute is likely to be frequently set aside either by specific provision or by context is a reason for not including it. That is especially so in the case of some provisions included in or proposed for the standard set of definitions in a general interpretation measure (s 4 of the present Act and cl 19 of the draft). There are however some provisions which do not state the general rule but are needed to deal with the residual cases: one good example is the power to remove office holders (the present s 25(f) and proposed cl 12). That matter will usually be regulated by the specific statute.

A NEW INTERPRETATION ACT

20 The principal recommendation in this report is the introduction and enactment of a new Interpretation Act as proposed in the next chapter. That text is repeated in ch VI with annotations.

21 The other chapters of the Report consider three major aspects of the legislation. These are:

- approaches to interpretation; the draft Bill continues the emphasis in the 1924 Act on the purpose of the enactment being interpreted; no provision about the use of material extrinsic to the text (including parliamentary debates) is included (ch III);
- the effect of legislation on the rights of the Crown; the draft proposes that the Crown should in general be subject to statutes (ch IV);
- the principle that legislation in general applies prospectively (ch V).

22 The appendices set out the Acts Interpretation Act 1924, explain the omission of some of the provisions of that Act, provide some historical and related background and reference material, and describe the process the Commission has followed.

II
Draft Interpretation Act

23 The proposed Interpretation Act has essentially the same scope as that of the 1924 Act and other similar statutes. It concerns

- the temporal operation of enactments, both their commencement as part of the law (part 2) and their prospective effect (part 3);
- the principles of interpretation (part 4);
- the implication of additional powers (part 5); and
- the standard definition of words and terms and some related matters (part 6).

Part 1 states the purposes of the Bill (discussed in ch I) and its area of application, and part 7 sets out the repeals and amendments.

24 In keeping with its task of reviewing the language and structure of legislation, the Commission continues to attempt to develop a style that is easier to understand and more accessible. Chapter VI indicates the details of the changes included in this draft (para 229). They include typographical and format changes on which we plan to report separately. We have noted already the beginning of work on a manual on legislation (para 16 above).

25 The text of the proposed Act follows. It is reprinted in ch VI, with annotations.

INTERPRETATION ACT 1991

Assented to on
Comes into force on 1 January 1992

CONTENTS

The Parliament of New Zealand enacts the
Interpretation Act 1991

PART 1
PURPOSES AND APPLICATION

Purposes of the Act

1 The purposes of this Act are

(a) to state principles and rules for the interpretation of legislation,

(b) to shorten legislation by avoiding the need for repetition, and

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

Commencement of the Act

2 This Act comes into force on 1 January 1992.

Application of the Act

3 The provisions of this Act apply to every enactment which is part of the law of New Zealand except to the extent that the enactment otherwise provides or the context otherwise requires.

PART 2
COMMENCEMENT OF ENACTMENTS

Time of commencement

4 (1) An enactment comes into force 28 days after the day on which, in the case of an Act, it is assented to, or, in the case of regulations, it is made.

(2) An enactment comes into force at the beginning of the day on which it is to come into force.

Anticipatory exercise of powers

5 A power conferred by an enactment may be exercised before the enactment comes into force, with effect from any time on or after it comes into force to the extent necessary or expedient to bring the enactment into operation.

PART 3
PROSPECTIVE APPLICATION OF NEW ENACTMENTS

Enactments, including repeals, have prospective effect only

6 (1) In principle an enactment has prospective effect only.

(2) In particular the coming into force of an enactment, including an enactment repealing or amending an earlier enactment, or the expiry of an enactment

(a) does not affect any accrued or established right, immunity, duty or liability including any liability in respect of an offence which arises under the earlier enactment;

(b) does not affect any proceeding or remedy in respect of any such right, immunity, duty or liability;

(c) does not affect the previous operation of the earlier enactment, including

(i) anything done or suffered under that enactment, or

(ii) any amendment made by that enactment to another enactment; and

(d) does not revive anything not then in force or existing, including any enactment or rule of law which the earlier enactment repealed or abrogated.

Exercise of power under earlier enactment continues under substituted enactment

7 Anything done in exercise of a power under an enactment for which a later enactment is substituted continues to have effect under the later enactment if that thing

(a) was in effect immediately before the coming into force of the later enactment, and

(b) can be done under the later enactment.

Reference to an enactment includes amendments and substitution

8 At any given time, a reference in an enactment to another enactment is a reference

(a) to that other enactment as amended, or

(b) to any enactment that has been substituted for that other enactment.

PART 4
PRINCIPLES OF INTERPRETATION

General principle

9 (1) The meaning of an enactment is to be ascertained from its text in the light of its purpose and in its context.

(2) An enactment applies to circumstances as they arise so far as its text, purpose and context permit.

(3) Among the matters that may be considered in ascertaining the meaning of an enactment are all the indications provided in the enactment as printed or published under the authority of the New Zealand Government.

Enactments bind the Crown

10 Every enactment binds the Crown unless it otherwise provides or the context otherwise requires.

Amending enactments

11 An amending enactment is to be read as part of the enactment which it amends.

PART 5
THE EXERCISE OF POWERS

Power of appointment includes power of removal

12 The power to appoint a person to an office includes the power to remove or suspend the person from that office.

Power to correct errors

13 A clerical or technical error or omission in anything done in an exercise of a power may be corrected although the power may not generally be capable of being exercised more than once.

Forms prescribed by enactments

14 A form which deviates from a form required by or under an enactment is valid if the deviation is not misleading and does not prejudice the purpose of the enactment.

Advice and consent of Executive Council in the absence of the Sovereign or the Governor-General

15 (1) If the Sovereign or the Governor-General may exercise or perform a power or duty on the advice and with the consent of the Executive Council, that advice and consent may be given at a duly convened meeting of the Executive Council, although neither the Sovereign nor the Governor-General is present.

(2) On the advice and consent being given in that way, the Sovereign or the Governor-General may exercise or perform the power or duty as if the Sovereign or the Governor-General (as the case may be) had been present at that meeting.

Administrator of the Government may exercise powers of the Governor-General

16 (1) Whenever the office of Governor-General is vacant or the holder of the office is for any reason unable to perform all or any of the functions of the office, the Administrator of the Government may exercise or perform all or any of the powers or duties of the Governor-General.

(2) No question may be raised whether the occasion has arisen authorising the Administrator of the Government to exercise or perform a power or duty.

Law officers of the Crown

17 (1) The Solicitor-General may exercise any function conferred on the holder of the office of the Attorney-General by enactment or otherwise.

(2) Whenever the office of Solicitor-General is vacant or the holder of the office is for any reason unable to perform the functions of the office, the Governor-General may appoint a barrister or solicitor of at least 7 years practice to act in place of or for the Solicitor-General during the period of that vacancy or inability.

(3) The performance of any function by a person appointed under subsection (2) is sufficient evidence of that person's authority to perform that function.

Judicial officers continue in office to complete proceedings

18 (1) A judicial officer whose term has expired or who has retired may continue in office for up to one month (or longer, with the consent of the Minister of Justice) for the purpose of determining or giving judgment in any proceedings which that officer has heard, whether alone or together with any other person.

(2) The fact that a person continues in office under subsection (1) does not affect any power to make an appointment to that office.

(3) A person continuing in office under subsection (1) shall be paid the remuneration and allowances to which that person would have been entitled but for the expiry of the term or the retirement from office.

(4) In this section "judicial officer" means any person (other than a Judge of the High Court) having authority to hear, receive and examine evidence.

PART 6
DICTIONARY

Definitions

19 (1) In an enactment:

Act means an Act of Parliament or of the General Assembly and includes an Imperial Act which is part of the law of New Zealand

For Imperial Acts in force in New Zealand see the Imperial Laws Application Act 1988

commencement in respect of an enactment means the time when that enactment comes into force

Commonwealth country or **part of the Commonwealth** means a country that is a member of the Commonwealth, and, when used as a territorial description, includes any territory for the international relations of which the member is responsible

See also the Commonwealth Countries Act 1977

consular officer means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions

This is the definition included in the Vienna Convention on Consular Relations, the English text of which is set out in the First Schedule to the Consular Privileges and Immunities Act 1971

enactment means the whole or a portion of

(a) an Act

(b) regulations, rules, or bylaws made under an Act by the Governor-General in Council or by a Minister of the Crown, or an instrument revoking such regulations, rules or bylaws

(c) an Order in Council, Proclamation, notice, Warrant or instrument of authority made under an Act by the Governor-General in Council or by a Minister of the Crown which extends or varies the scope or provisions of an Act, or an instrument revoking such an instrument

(d) an Order in Council bringing into force, or repealing, or suspending an Act or any provisions of an Act

(e) an instrument made under an Imperial Act and having effect as part of the law of New Zealand

(f) a resolution of the House of Representatives adopted under the *Regulations (Disallowance) Act 1989*

For the instruments within para (e) see the Imperial Laws Application Act 1988

Governor-General in Council or any similar expression means the Governor-General acting on the advice and with the consent of the Executive Council

Minister means the Minister of the Crown responsible for the administration of the enactment

month means a calendar month

New Zealand or other words or phrases referring to New Zealand, when used as a territorial description, comprises all the islands and territories within the Realm of New Zealand other than the self-governing state of the Cook Islands, the self-governing state of Niue, Tokelau, and the Ross Dependency

Order in Council means an order made by the Governor-General in Council

person or any term descriptive of a person includes the Crown, and any corporation sole or body corporate or politic

prescribed means prescribed by or under the enactment

Proclamation means a proclamation made and signed by the Governor-General under the Seal of New Zealand and gazetted

territorial limits of New Zealand, limits of New Zealand and other expressions indicating a territorial description mean the outer limits of the territorial sea of New Zealand

working day means any day of the week other than

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

(b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year

(c) the day observed as the anniversary of the province in which an act is to be done.

writing includes all modes of representing or reproducing words, figures or symbols in a visible form.

(2) In an enactment passed or made before the commencement of this Act:

constable includes a police officer of any rank

Governor means the Governor-General

land includes buildings and other structures and any estate or interest in land

person includes a corporation sole, and also a body of persons, whether corporate or unincorporate.

Parts of speech have corresponding meanings

20 Where a word or expression is defined in an enactment, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

Same meaning for word used in Act and in enactment

21 A word used in an enactment made under the authority of an Act has the same meaning as it has in that Act.

Gender

22 Words denoting a gender include each other gender.

Number

23 Words in the singular include the plural and words in the plural include the singular.

Computation of time

24 (1) A period of time described as beginning

(a) at, on or with a given day or act or event includes that day or the day of that act or event;

(b) from or after a given day or act or event does not include that day or the day of that act or event.

(2) A period of time described as ending

(a) by, on, at or with or continuing to or until a given day or act or event includes that day or the day of that act or event;

(b) before a given day or act or event does not include that day or the day of that act or event.

(3) For the purpose of calculating whether a period of a given number of days or clear days has elapsed between two events or the days on which the events happened, the days on which the events happened are not included in the period.

(4) If in accordance with provisions determining a period of time a thing is to be done on a day which is not a working day, it may be done on the next day which is a working day.

PART 7
REPEALS AND AMENDMENTS

Repeals

25 The following enactments are repealed:

(a) *Acts Interpretation Act 1924* (1 RS 7)

(b) *Statutes Amendment Act 1936* s 3 (1 RS 31)

(c) *Finance Act (No 2) 1952* s 27 (1 RS 32).

Amendments

26 The enactments listed in the schedule are consequentially amended as indicated.

(Chapter VI includes the schedule.)

III

Approaches to Interpretation

26 As long as there have been texts, their meaning has generated dispute. Since time immemorial, philosophers and poets, clerics and critics, as well as judges and jurists, have contended over the weight to be given to the word and the spirit, to the original meaning and the changing situation.

27 A *Discourse upon the Exposition and Understanding of Statutes* written in the reign of the first Elizabeth and thought to be the first distinct account of statutory interpretation in England both draws on that earlier learning and has a remarkably contemporary ring. For the anonymous writer "the further exposition of an estatute" called for the consideration of the words in question, the sentence in which they appear, their meaning—which might be construed strictly (according to the words and no further), or by equity stretched to like cases, or expounded against the words, or, where words are lacking, according to the common law. Aristotle and a near contemporary of the author, Justice Catlyn, are quoted in support; *Nicomachean Ethics*, book V, chapter 10 and *Stowel v Zouch* (1569) 1 Plowden 354, 375, 75 ER 536, 569–70.

28 In developing those basic ideas and methods the author draws on a range of additional material including older English sources such as Magna Carta, the statutes of Westminster the First and Fitzherbert. Other European writing of the same era drew on even broader sources, eg, Pufendorf, *De Iure Naturae et Gentium* 1688 ch XII (the Carnegie edition has a 45 page long table of authors cited from classical, biblical and contemporary sources). It is consistent

with those approaches that much recent writing on statutory interpretation emphasises the general lessons to be learned from literature.

29 The 16th century writer provided more detailed advice which is also contemporary, eg

- The Statute is to be read in historic context:

  > for without knowledge of the auncient lawe they shall neither knowe the statute nor expounde it well, but shall, as it were, followe theire noses and groape at yt in the darke. (141)

- The minds of the legislators are chiefly to be considered

  > although it varie in so muche that in maner so manie heads as there were so many wittes; so manie statute makers, so many myndes; yet, notwithstandinge, certen notes there are by which a man maie knowe what it was. (151)

- the statutes that remedy a mischief are to be taken by equity. (146)

30 The practices of judges and lawyers and the holdings of courts over the past 400 years have generated a vast range of material relevant to the interpretation of statutes. Much ink has been spilt on elaborating different principles and approaches—literal, golden and purposive for instance; and in relation to particular categories of statutes. Vast text books have been written. And the legislature has also contributed. We have already noted that as early as 1851 the New Zealand legislature directed that a purposive approach be adopted in the event of ambiguity; the matter was not to be left simply to the courts. This chapter is principally concerned with the questions whether legislation should continue to give such a direction and, if so, what it should say.

31 There is, though, danger in all this learning and experience. If we are not careful, it can get in the way of the interpreter's basic responsibility. We must begin with the proposition that the central task of those faced with legislation is to apply the legislation to the relevant situation. In many cases the process will be straightforward (once the facts are established). The meaning of the provision will be clear, and the result will follow from the facts and that meaning. A great Swiss lawyer writing 200 years ago warned that it is not permissible to interpret that which has no need of interpretation, Vattel, *Le Droit des Gens* (1758) Book II, ch XVII, para 263. That is as it should be.

The law must in general be given effect to as it is written. The law will not be effective, it will not govern behaviour, and it will not be the subject of proper scrutiny when it is being proposed or reviewed, if it is incomprehensible and inaccessible or if it is the subject of capricious methods of interpretation—or at least if large parts of it have those defects. The statute book must be reliable.

32 But to return to a statute governing the interpretation of legislation, where difficulties of interpretation do arise, do legislative directions about approaches to interpretation have a legitimate or useful role? Experience in New Zealand and elsewhere identifies a series of related questions:

- Should we have a direction to interpreters to give effect to the purpose of legislation along the lines of s 5(j) of the 1924 Act (quoted in the next paragraph)?
- If so, how should it be worded?
- Should provision continue to be made to the effect that legislation is "always speaking" as provided in s 5(d)?
- Should there continue to be particular provisions in respect of various parts of the enactment as printed (the preamble, headings . . .) and if so what?
- Should the Act regulate the use that can be made of material beyond the text of the enactment to assist its interpretation (along the lines of recently enacted Australian provisions)?

All these questions are put in terms of "should". The matter in general is not one of necessity. New Zealand and similar legal systems have at various times had none or some or all of the provisions. Each question has no one clearly right answer.

SHOULD WE HAVE A PURPOSIVE PROVISION?

33 Just over 100 years ago Parliament directed those interpreting legislation to adopt a purposive approach to their task:

> Every Act, and every provision or enactment thereof, shall be deemed remedial, whether its immediate purport is to direct the doing of anything which Parliament deems to be for the public good, or to prevent or punish the doing of anything which it deems contrary to the public good, and shall accordingly receive such fair, large, and liberal construction and interpretation as

will best ensure the attainment of the object of the Act and of such provision or enactment, according to its true intent, meaning, and spirit. (Interpretation Act 1888 s 5(7))

With the smallest of drafting changes—the deletion of "which" (twice) in 1908, and of the comma between "enactment" and "according" in 1924—this provision has been carried forward to the present. It is now of course s 5(j) of the Acts Interpretation Act 1924.

34 The 1888 provision had an interesting New Zealand predecessor enacted in 1851 and already quoted in para 9. That provision was not however carried forward in the Interpretation Act 1868, and in 1888 the legislature when reintroducing the emphasis on purpose turned to Canadian precedents. We can only speculate on the reasons for those decisions.

35 A provision like s 5(j) appeared as early as 1849 in legislation in Upper Canada and since then Canadian provincial legislatures and the Canadian Federal Parliament have consistently enacted similar provisions. The Uniform Law Conference of Canada at its 1984 Conference recommended for enactment the following provision:

> 10 Every enactment shall be construed as being remedial and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.
>
> Chaque texte est censé réparateur et s'interprète de la façon juste, large et libérale la plus propre à assurer la réalisation de son objet.
>
> (Uniform Interpretation Act, *Proceedings of the Sixty-Sixth Annual Meeting* 125)

36 A large number of United States jurisdictions have also long had related provisions. They make explicit the rejection of the presumption protecting the common law. The California Civil Code contains a typical provision:

> The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code, ... Its provisions are to be liberally construed with a view to effect its objects and to promote justice. (Civil Code s 4, first enacted in 1872)

There are similar provisions in the Code of Civil Procedure, the Evidence Code and the Penal Code. The last begins: "The rule of the

common law, that penal statutes are to be strictly construed, has no application to this Code". For other similar provisions see appendix D. The law reports indicate that the American provisions have often been used to rebut technical and narrow readings of statutes (for instance by reference to the earlier common law), and to give a purposive reading to statutes.

37 Of the Australian jurisdictions only South Australia appears to have had a provision similar to the Canadian and New Zealand ones; and it has since abandoned it in favour of the first part of the recent Australian model, first introduced by the Federal Parliament in 1981. That model generally has two parts—the first purposive, the second about "extrinsic" materials. We consider the second in a later section of this chapter (paras 106–126). The first part of the model, enacted originally in 1981 as s 15AA of the Commonwealth Acts Interpretation Act 1901, reads:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether the purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

It follows quite closely one of the provisions proposed by the Law Commissions in Britain in 1969, Law Commission and Scottish Law Commission, *The Interpretation of Statutes* (1969) 51. William Swainson and his colleagues of 1851 would be pleased.

38 Similar provisions were enacted in Victoria, Western Australia, South Australia, New South Wales and the Australian Capital Territory between 1984 and 1987. The second part of the model—concerning the use of supplementary material—refers as well to the "ascertainment of the meaning of the provision" as a central element in the process of interpretation. (The Victorian provision is worded differently and the South Australian Act does not include this element.) It is also relevant to recall the parallel debates and developments in the 1950s and 1960s in the international legal community which lead to the following "general rule of interpretation" stated in article 31(1) of the Vienna Convention on the Law of Treaties:

> A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

39 The above account of legislative activity in Canada, Australia, New Zealand, the United States and the international community may give the wrong impression. Some jurisdictions similar to ours do not have provisions like s 5(j) (nor, to anticipate, provisions dealing on a broad basis with the use of materials extrinsic to the Act). That was also the general position in Australia until recently and it is still the case for Queensland, Tasmania and the Northern Territory (whose Law Reform Committee has reported against the changes adopted elsewhere in Australia, Report No 12, *Report on Statutory Interpretation* (December 1987)). And it remains the case in the United Kingdom, notwithstanding the proposals of the Law Commissions there and the subsequent efforts of Lord Scarman and others (see para 37 above).

40 The main general reason for s 5(j) and provisions like it appear to be to avoid interpretations which read legislation narrowly to protect the law as it was before. In terms of the direction, legislation is not to be seen as a suspect interloper into the common law. As the Law Commission said in its 1989 annual report it is no longer realistic or sensible to see legislation as a gloss on the common law. For at least 100 years statutes have been a major source of legal development in New Zealand as elsewhere. They are to be seen as an integral part of an organic body of law. Against that background s 5(j) is to be seen as a statement by Parliament that its purpose in enacting a statute is central to the process of interpretation.

41 That basic idea has of course long been expressed. So, many have commented that provisions like s 5(j) give statutory effect to the unanimous resolution adopted 400 years ago by the Barons of Exchequer in *Heydon's case* (1584) 3 Co Rep 7a, 7b, 76 ER 637, 638 (at about the time our 16th century author was writing):

> For the sure and true Interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the Common Law) four things are to be discerned and considered
>
> (1) What was the Common Law before the making of the Act.
>
> (2) What was the Mischief and Defect for which the Common Law did not provide.
>
> (3) What Remedy the Parliament hath resolved and appointed to cure the Disease of the Commonwealth.

> And (4) The true Reason and Remedy; and then the Office of all the Judges is always to make such Construction as shall suppress the Mischief, and advance the Remedy, and to suppress subtle Inventions and Evasions for Continuance of the Mischief, and *pro privato commodo*, and to add Force and Life to the Cure and Remedy, according to the true Intent of the Makers of the Act, *pro bono publico*.

42 Directions like s 5(j) present a series of related questions. What do they leave out? Are they accurate statements of the law—or of what the law ought to be? Are they helpful (for even if they are accurate they might state the obvious)?

43 We cannot begin even to summarise the relevant experience, especially of the courts. Others have of course attempted to do that. Rather we draw on some of it to illuminate the answers to the questions.

44 We begin with an aspect of the question about omissions. We must state—even if we cannot resolve—a continuing conflict or tension in the role of a court interpreting legislation. Almost all the emphasis in the provisions—Canadian, American, New Zealand, Australian, international—is on giving effect to the meaning of the terms of the particular legal instrument *itself* in *its* context according to *its* purpose. The provisions do not refer to relevant values or principles which exist independently of the legislation and which might indeed contradict it. And yet of course a large part of the process of interpretation does refer to such external values and principles, and indeed "the context" can be given a broad understanding and application to include such material (eg, paras 72 and 261 below).

45 For instance, provisions creating criminal offences are generally read in the wider context of the principles about criminal liability. The interpreter might refer to that context because, for instance, a statute directly requires such a reference (as with the statutory reservation of common law defences in the Crimes Act 1961 s 20); or because the statute uses words which are drawn from the common law and continue to have a common law meaning (such as "wilfully"); or because the central question of liability cannot be resolved simply by looking at the words in question, even in their statutory context and by reference to their purpose. In that last case the general body of law about the factual and mental elements of a

crime has to be employed. Those who prepare and apply the statute assume the existence of that general body of non-statutory law (see eg, *Legislation and its Interpretation (discussion and seminar papers)* (1988) Preliminary Paper 8 pp 174–206).

46 Another way in which the relationship between particular statutes and the general law frequently arises is in respect of remedies. Consider a breach of a statutory requirement. Can a person aggrieved by that breach seek an injunction or damages although the legislation expressly provides only for criminal prosecution?

47 Sometimes the statute will provide an answer, but usually it will not, eg *Rickless v United Artists* [1988] QB 40 CA. Several, among them the Law Commissions in the United Kingdom, have proposed that Parliament should deal in a systematic way with that matter (see *Report*, para 37 above, paras 38, 78, 81(c) and draft cl 4, p 51). We will take up that matter in preparing the Manual on Legislation. Our 16th century author shows that this issue is not new:

> This matter is muche in use amonge our readers at this daie, and in maner their whole readinges consyste in shewinge who shall have the remedie, againste whome, in what courte, and all that geare ... (172)

48 Many other parts of the law also have their own developed body of approaches and understandings which might have a substantial impact on the apparent meaning of the enactment. Consider property law, taxation or family law. And the law of judicial review can in part be seen as an appendix—a sophisticated one—to the law of statutory interpretation. "Privative clauses" are a particular instance (see eg, Preliminary Paper 8, para 45 above, pp 16–18, 129). On their face they appear to be designed to prevent or at least to narrow the powers of the courts to review administrative decisions. And yet when the courts interpret the provisions the process of interpretation usually involves restraining, rather than giving effect to, the apparent meaning of the legislation in context in the light of its purpose. That practice of the courts is widely supported by professional commentary and indeed in recent times by legislative action, particularly now the general direction in the New Zealand Bill of Rights Act 1990 s 27(2).

49 That judicial practice was to be seen most notably 20 years ago in the leading House of Lords decision, in which in accordance with that established practice it read down the sole remaining privative

clause protecting a tribunal still to be found in the United Kingdom statute book, *Anisminic v Foreign Compensation Commission* [1969] 2 AC 147. That particular instance of reading down is not important for us here. What is important is that such conflicts between a particular statute and general legal or constitutional principle do arise in the interpretative process and that they will continue to arise. Can general legislation help to resolve them? A provision like s 5(j) pushes the matter in one direction, that of the legislation's purpose.

50 The practice of the courts shows that they might move in such a purposive direction and away say from an interpretation which prefers common law rights, *without* being given any legislative direction or encouragement. Thus Lord Scarman speaking in Melbourne in September 1980 said that while Australian Judges had hesitated to apply a purposive construction, "in London, no-one would *now* dare to choose the literal rather than a purposive construction of a statute: and 'legalism' is *currently* a term of abuse", (1980) 7 Monash U L Rev 1, 6 [emphasis added]. At that time the Australian legislative reform mentioned above in para 37 had not been introduced although judicial attitudes did appear to begin to change significantly just a few months later and shortly before the first reforms were enacted, see Preliminary Paper 8 (para 45 above) para 14 and the references there.

51 A provision like s 5(j) has moreover never been seen as generally precluding arguments of the kind that succeeded in *Anisminic*. For that reason (among others) such a provision is not a complete statement of approaches to legislation. For two leading observers of the English scene

> the judges seem to have in their minds an ideal constitution, comprising those fundamental rules of common law which seem essential to the liberties of the subject and the proper government of the country . . . they do not override the statute, but are treated, as it were, as implied terms of the statute. (Keir and Lawson *Cases in Constitutional Law* (5th ed 1967) 11)

That comment is made of course in a country without a provision like s 5(j). But the practice of the courts and the expert commentary in New Zealand do not suggest that in that respect the position is necessarily different for a country that does have a purposive direction. For centuries the judges have been willing in greater or lesser degree to protect the "ideal constitution". To quote Lord Wilberforce again "most judges in common law jurisdictions regard it as a vital

part of their role to stand between the state and the citizen and to maintain certain strong and historic principles—the liberty of the subject, access to the courts, no retroactivity and so on", para 7 above, 7. That emphasis also came through strongly in the processes followed by the Commission.

52 At bottom the matter is constitutional. Parliament, composed of the representatives of the people, has enacted the legislation in issue. It has done this usually on the proposal, and always with the agreement, of Cabinet which in turn has the confidence of the House of Representatives established by the electorate. Parliament has very large powers to make law. Democratic principle argues that its will is to be given effect to. The courts are not to stand in the way of that will. On the other side and in potential conflict with democratic principle, are enduring principles (or at least so they appear to the courts) which are not to be ignored unless Parliament has made itself very clear. The ideal constitution, the implicit Bill of Rights, can of course be made explicit, either in an entrenched form limiting the ordinary lawmaking power of Parliament or in an interpretative, presumptive form as in the recently enacted New Zealand Bill of Rights Act 1990.

53 Section 6 of that Act provides:

> Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other interpretation.

Such a direction in a Bill of Rights is not exhaustive, although Parliament's endorsement of a particular list of rights is of major significance. This direction concerns certain civil and political rights—a set of rights in large part related to New Zealand's treaty obligations, especially as set out in the International Covenant on Civil and Political Rights which New Zealand ratified in 1978, as well as to principles contained in Magna Carta and the Bill of Rights of 1688. See *A Bill of Rights for New Zealand*, 1985 AJHR A 6, paras 3.4, 4.21–23, 4.26, and the commentary to the draft Bill included in part 10, with its frequent references to the International Covenant.

54 The courts show an increasing willingness in interpreting legislation to have regard to such international obligations and even to documents which do not create obligations, in some cases although the legislation was not enacted to give effect to those obligations, see

eg, *Police* v *Hicks* [1974] NZLR 763, *Van Gorkom v Attorney-General*[1977] 1 NZLR 535, 542–543, [1978] 2 NZLR 387, 395, *King-Ansell v Police* [1979] 2 NZLR 531, 540, *Department of Labour v Latailakepa* [1982] 1 NZLR 632, 635–636, *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR 188; and *Commissioner of Inland Revenue v JFP Energy Incorporated* (1990) 12 NZTC 7, 176 (and the other tax cases mentioned there); cf the *Ellerman Lines* case, para 122 below. Many have yet to appreciate the great significance of this international element in our legal system. One survey suggests that about one quarter of the public statutes of general application are affected by international obligations and standards (Legislation Advisory Committee, *Legislative Guidelines* (1987) para 41 and appendix B). The proportion will grow, and the rules and practices relating to the interpretation of treaties will increasingly be relevant, eg, *Thiel v Federal Commissioner of Taxation* (1990) 94 ALR 647, 649, 653–654, 658–660, HCA.

55 This material suggests four possibilities:

(1) a direction along the lines of s 5(j) to interpreters to have regard to the purposes of the legislation;

(2) a direction to interpret legislation consistently with listed rights;

(3) both; or

(4) neither.

56 No one position is plainly correct. Courts can and have adopted either purposive or protective approaches (or both at the same time) without legislative direction; they are generally left to make the choice between conflicting approaches; and at times such legislative directions appear to have had little effect. Courts have also adapted their methods of interpretation over time without the legislative direction having altered. This can be seen in New Zealand from recent judgments such as *Northland Milk Vendors Assn v Northern Milk Ltd* [1988] 1 NZLR 530, HC and CA, and *Auckland City Council v Minister of Transport* [1990] 1 NZLR 264 CA, and over the years from the writings of judges and commentators (eg, Sir Robert Stout CJ (1905) 21 LQR 9 and Preliminary Paper 8 pp 125–145).

57 Furthermore, even if the courts are alert to such directions, the directions may not in fact be helpful in particular cases. So against the decisions of the Canadian Supreme Court using the purposive provision can be set another in which the provision was not helpful,

Re Trustees of St Peter's Evangelical Lutheran Church and the City of Ottawa (1983) 140 DLR (3d) 577; cf eg, *CNR v Canadian Human Rights Commission* (1987) 27 Adm LR 172, 191–192 and *Re British Columbia Development Corporation and Friedmann* (1984) 14 DLR (4th) 129. Very often the statute will indicate no purpose, or at least none that is sufficient to the task. The judges, it has been said, need a detailed guide rather than merely a general sense of direction. Further, protective directions are of course irrelevant in the wide range of legislation which does not trench on protected rights. And we return to an earlier warning. Too ready an adoption of "an approach" may also deny or diminish the significance of the particular statute in its specific context and the words used in it. The technique may get in the way of the basic task of reading the enactment.

58 And yet strong arguments can be made for directions or guides of both types. Those in the rights protection category are well rehearsed in the writing on bills of rights, and are the subject of the process leading to the recent enactment of the Bill of Rights. We need not take them up here. But the interrelationship between that direction and s 5(j) (or any replacement) must be addressed in the process of interpretation as well as in the drafting and enactment of such provisions.

59 The central argument for the s 5(j) type of direction is the democratic one already indicated. The courts are to give effect to the law enacted by Parliament. True, it is for the courts to determine the meaning of the words that Parliament writes. That is their constitutional role. Are directions or guides of the s 5(j) type needed or helpful in that context? Does experience show that they can in some situations provide a useful reminder of the need of the interpreter to pursue the purpose of the law maker? That reminder can emphasise for the interpreter the relevant statements of the law maker's purpose and meaning. Even if the proposition is well understood there is value in its declaratory statement. The law is more accessible. It can help rebut the unthinking use of presumptions which might be used to defeat parliamentary purpose. It can help emphasise the central position of statutes in our legal system; they are not merely a gloss on the common law. The direction can enhance the likelihood of an interpretation consistent with democratic theory. That is one important reason for the Commission's proposal that a variant of s 5(j) be continued.

60 A second reason is that an adverse inference might also be drawn from a repeal of such a broad direction after it has been on the statute book for 100 years. Its repeal might suggest that less weight could be given to the legislation written by Parliament and the purpose it expresses or implies.

61 Those two matters have also been emphasised in the recent discussions and in the submissions and comments made to us which almost without exception support the maintenance of such a provision. In brief, the view is that such a provision is useful although it is not essential, nor frequently expressly mentioned in judgments, nor always helpful. We might note that the comment that the provision is relatively rarely mentioned is misleading in two respects. Some earlier reviews did not adequately identify the extent of the actual reference, and we have it on good authority that the direction is considered fundamental and is often taken for granted in argument and judgments.

62 We would not however want to overemphasise the assistance such a direction provides. There is no substitute for the careful reading of the particular enactment in its context and with reference to its purpose. We have already recalled the sage advice of Justice Frankfurter that the important lessons in this area are gained by observing the Judges at work (para 6).

63 We mention here just one recent case and one broader development to illustrate that advice. (See also the cases mentioned in paras 101, 102 and 117–119 below.) In *Tainui Maori Trust Board v Attorney-General* [1989] 2 NZLR 513, the main issue was whether coal mining licences were "interests in land" within the meaning of 1988 amendments to the State-Owned Enterprises Act 1986. The five Court of Appeal Judges were unanimous that they were. The judgments mentioned

- the character of a contractual mining right at common law;
- the natural and ordinary meaning of the legislative words in their context;

- the history of the phrase in the mining legislation and especially the interpretation given to it at the turn of the century;
- the significance of the re-enactment of legislation so interpreted;
- the history, purpose and subject matter of the 1986 statute and the 1988 amendments as requiring a broad, unquibbling and practical interpretation which would facilitate that purpose.

64 The broader development mentioned at the beginning of the last paragraph is related to the *Tainui* case. It concerns the increasing attention being given by Parliament and by the courts to the Treaty of Waitangi and to the position in the law of Maori rights and interests. The courts may take up these matters in a variety of ways, especially where there is a legislative peg; interpreting a savings provision, giving meaning and effect to a reference to a Maori interest, and directly enforcing a Maori right. In one recent case a statute which makes no direct reference to Treaty or Maori issues was read to require such a reference, *Huakina* case para 54 above; see the special issue on the Treaty (1990) 14 NZULR 1.

65 Parliament in a general interpretation statute cannot attempt to regulate in any detail such complex and varying processes of reading and interpretation as those mentioned in the last two paragraphs and elsewhere in this chapter. It can at best give a broad direction. For the two main reasons given, the Law Commission does think that such a direction is valuable. Accordingly, the Law Commission proposes that a general direction to interpreters to have regard among other things to the purpose of the legislation should be maintained in the Interpretation Act. As indicated, the direction in some cases will have to be read with that in the new Bill of Rights.

HOW SHOULD A PURPOSIVE PROVISION BE WORDED?

66 The various directions incorporate some or all of the following elements:

- the idea of interpretation (or construction);
- the meaning (or purport) (ordinary or natural or special or unadorned) of the terms of the text;
- the context of the terms or of the legislation; and
- the purpose (or object or spirit) of the legislation.

67 Drawing on those elements and on the earlier discussion, the Law Commission proposes the following statement of the general principle to appear at the beginning of part 4, *Principles of Interpretation*, as cl 9(1) of the draft Bill:

> The meaning of an enactment is to be ascertained from its text in the light of its purpose and in its context.

68 The idea of *interpretation* appears in the heading in the part (and indeed throughout the whole draft Bill) and *meaning, context* and *purpose* are expressly mentioned in the proposed clause. The prime task of the interpreter is ascertaining meaning—but that process cannot be an isolated one. The general context of language and society is inevitably part of the process of finding meaning. And the proposed text, like the other provisions, gives important emphasis to the purpose of the legislation. It is not however an unfettered reference to purpose. The preposition "in the light of" emphasises that. The interpreter is still engaged in discovering the meaning of the enactment.

69 The proposal, like all the other existing provisions, is cryptic or even elliptical in various ways. So it does not expressly mention the *scheme* or the structure of the legislation—a matter often used by the Court of Appeal in interpreting legislation. The scheme is often itself part of the text especially in the formal case of the actual organisation of the text; it is certainly part of the context in which a particular provision is to be seen (for instance when "the scheme" has a more abstract character). In either case it may help illuminate the purpose of the legislation. The draft also does not make express reference to the history of the legislation—before and since enactment. Again that is often used in practice, to help indicate purpose and to illuminate the meaning in the context of particular words. We discuss one specific aspect of the history of the legislation in a later section (paras 104–126).

70 The draft does not indicate, even in a broad way, how "the purpose" of the legislation is to be determined. The practice of including preambles, even if long established, is now unusual. Statutes do increasingly now include an express statement of purpose. We propose one for the present Bill and their regular enactment. The Clerk of the House similarly proposes that Standing Orders require that every principal Bill (that is Bills other than amending Bills) should contain a purpose clause. That would help both parliamentary consideration and the Bill's interpretation. There would be greater focus on Parliament's specific statements and less on material which is more general or less authoritative. We agree with that proposal and so recommend.

Many statutes however have neither a preamble nor a statement of purpose; and, in any event, an express statement may not provide assistance in hard cases. In such cases the purpose is to be discovered from a range of sources, within and outside the text. Once again there

is much relevant practice, aspects of which are considered in the following sections of this chapter.

71 Finally, the draft does not attempt to define the "context". The rest of the enactment is one obvious part of the context. So too is the particular area of law from which the legislation arises. That is so as well of the wider social and political context out of which the legislation arises. The 1988 conference papers bring together, from a myriad of possibilities, cases in which the courts examine the legislation in such a wide context—for instance regulatory offence provisions, the development of the rights of married women to matrimonial property, and the development of judicial and other controls over administrative action, para 45 above.

72 The courts sometimes invoke an even wider context. The context just mentioned—even when widely conceived—is the context out of which the particular statute arose. But, as already noted, sometimes the context is even wider and might be used not to expand but to restrain the apparent meaning of legislation (paras 44, 48–49, 54 above). An increasingly important element of the context is provided by New Zealand's extensive network of treaty obligations. In many cases the treaty will be part of the particular context out of which the legislation arises. Indeed the legislation will sometimes expressly refer to it and will have as a purpose, whether stated or not, the giving of effect to the treaty. But in other cases the legislation will not be designed to give effect to the treaty obligations; rather the treaty might provide a basis for reading the legislation narrowly and contrary to the apparent purposive meaning. In that way the treaty contributes to the wider public policy against which legislation is to be read; see eg, the *Van Gorkom* and *Huakina* cases cited in para 54. That is to say, the word "context", in the above draft, when broadly read, may include within itself the tension between the broad approaches of giving effect to the values underlying the particular statute and giving effect to the values of the wider society.

73 The proposed section does not include any reference to "intention". References to "the intention of the legislature" are problematical in fact (one senior Australian lawyer politician says it is "whimsical nonsense"); more importantly, the word does not add significantly to the other provisions; the terms of the enactment in context and by reference to purpose are designed to manifest that intent. The proposal also does not include the introductory preambular words of the present provision (Every Act ... shall be

deemed remedial, whether . . .). Not all statutes are remedial; some are declaratory or consolidating. Different types of statute already attract different approaches to interpretation in any event. Further, such an important provision should not be based on a fiction. And the emphasis on the purpose of the enactment (which is a consequence of the preamble in the present s 5(j)) is included in the proposed text in any event.

74 The proposed section also does not use the phrase "fair, large, and liberal". The words do not appear to have helped in practice, they do not add to the emphasis on purpose, and a purposive approach sometimes requires a narrower interpretation, constraining the apparent literal meaning, eg *Eyston v Studd* (1574) 2 Plowd 459, 466–467, 75 ER 688, 697–698 (Plowden's note again quoting Aristotle), *Mullan v O'Rourke* [1967] NZLR 295, 298 and *Holy Trinity Church v United States* 143 US 457 (1892).

SHOULD PROVISION BE MADE TO THE EFFECT THAT LEGISLATION IS "ALWAYS SPEAKING"?

75 Section 5(d) of the 1924 Act states that

> The law shall be considered as always speaking, and whenever any matter or thing is expressed in the present tense the same shall be applied to the circumstances as they arise, so that effect may be given to each Act and every part thereof according to its spirit, true intent, and meaning.

76 The discussion of this provision in the 1988 discussion paper contrasted what is sometimes referred to as the "dynamic" or "ambulatory" approach to interpretation with the "historical" or "static" approach. The latter holds that the meaning of a term in legislation should be governed by its meaning at the time of enactment, while the former approach allows for the meaning or application to develop over time, taking account of changing or even new circumstances and changing perception of existing circumstances.

77 A few examples quickly show the difference between these

approaches and the issues that they raise:

- Does a 19th century statute relating to "vehicles" apply to aircraft?
- Does tenancy legislation enacted in the 1920s to protect the "family" of a deceased leaseholder apply to a de facto spouse in the 1990s?
- How are phrases importing some kind of social standard such as "indecency" or "obscene behaviour" to be interpreted or applied over time?

78 The answer to at least the last of these is obvious and illustrates that the sensible answer frequently requires a dynamic or ambulatory interpretation or application.

79 In some cases the way in which the legislation is drafted will indicate the correct approach. So the enactment of a standard of indecency, or some other so-called "mobile phrase", clearly signals that it should be interpreted and applied in accordance with the current understanding of its meaning.

80 Where a number of clear categories are itemised however, as in the Family Protection Act 1955 where those who can claim against a deceased's estate are clearly identified in specific terms, it would be inappropriate to extend the categories without legislative action. Another example may be found in the specific list of characteristics in the Human Rights Commission Act 1977 by reference to which discrimination is forbidden. For a court to extend these would clearly be to usurp the role of the legislature. A similar policy lies behind the codification of the substantive criminal law.

81 There are many examples of each approach to be found in the case law. We mention later (para 261) the Privy Council's comparison of the Canadian Constitution to a living tree capable of growth and expansion within its natural limits: "there are statutes and statutes". The decision of Smellie J in *International Business Machines Corporation v Computer Imports Ltd* [1989] 2 NZLR 395 provides a recent New Zealand example of a dynamic interpretation of legislation. In that case it was held that the "source code" or original written programme of the silicon chip was in the nature of a literary work and that copyright could subsist in it. The phrase "literary work" in the Copyright Act 1962 has been used in copyright legislation since the early 18th century and clearly such an algebraic code

which forms a source code was not within the minds of those originally responsible for the legislation. Applying the wording even more broadly, Smellie J held that the "object code", the series of electronic impulses which the source code is converted into to be machine readable, although not a literary work, was a translation of the source code in terms of s 2 of the Act and so copyright could subsist in it also.

82 This decision, which arguably stretched the words of the enactment to their limit, can be contrasted with the approach taken in *McCulloch v Anderson* [1962] NZLR 130. In that case the question before the Court was whether an accountant was acting "as a conveyancer", in breach of the Law Practitioners Act 1955 when he prepared a tenancy agreement, obtained both parties' signatures on it, paid the stamp duty on the agreement and then rendered an account for the work done and the stamp duty. In interpreting the words "acts as a conveyancer" Hutchison J went back to the source of the phrase in New Zealand legislation, an Ordinance passed in 1842, and stated that it was "beyond doubt . . . that the key to the question before the Court is what they would have meant in 1842". He held that this meaning was the same as that in force in Imperial law for nearly 40 years at that time, namely preparing a deed or agreement under seal. As the tenancy agreement was neither of these the accountant was not guilty of acting as a conveyancer. Other examples of both approaches to interpretation appear in the 1988 discussion paper, paras 88–110.

83 In New Zealand the dynamic approach has commonly been favoured in the judicial interpretation of legislation, supported by s 5(d) as well as s 5(j) of the Acts Interpretation Act 1924. Indeed both were cited in the *IBM* case. It should be noted however that other jurisdictions have also moved towards a dynamic approach without the aid of any such legislative directions.

84 In the 1988 paper we expressed a tentative preference for removing the provision for a number of reasons. The provision is ambiguous (it is unclear from which date the law is speaking); the same results have been reached by the courts in New Zealand and elsewhere without the help of s 5(d) (which if it is referred to may appear to be cited as an afterthought to bolster the decision already made rather than as a basis for the decision); and the trend towards purposive interpretation of legislation covers much of the same ground so that it is unlikely that a historical interpretation will be used unless the context specifically requires it.

85 While this reasoning carries weight, the fact that the provision has been cited recently in several cases to give an appropriate contemporary meaning to legislation does support arguments for its retention in some form. And there is always the concern (which may be groundless) that the act of repeal may be misinterpreted as a legislative direction to adopt a different approach.

86 Thus, even if strictly unnecessary, a statutory statement of this principle may well be useful. It removes any doubt over the legitimacy of a court taking a dynamic view of legislation where that is appropriate. It would serve to clarify the law and its retention would also improve the accessibility of the law in that the principle would be explicitly stated. And a practical point with significance in the context of the legislation reference is the need, again where appropriate, to prevent statutory proliferation. One consequence of any move towards a static approach to interpretation is an increasing need for amendments to and updating of the statute book. There is thus the risk that the legislative machinery may be further clogged by miscellaneous small amendments, necessitated by the courts' perceived inability to take appropriate account of change when applying and interpreting the law.

87 These arguments have resulted in the proposal to state the substance of the doctrine more directly as part of cl 9:

> (2) An enactment applies to circumstances as they arise so far as its text, purpose and context permit.

WHAT REFERENCE, IF ANY, SHOULD THE INTERPRETATION ACT MAKE TO THE PARTS OF THE ENACTMENT AS PRINTED?

88 Section 5 of the 1924 Act contains provisions relating to:

- the preambles of Acts;
- divisions of Acts into parts, titles, divisions or subdivisions and the headings of those divisions;
- marginal notes to Acts; and
- schedules and appendices to Acts.

The provision deals with them in varying ways

- preambles, schedules and appendices are "deemed" to be part of the Act, and preambles are "intended to assist in explaining the purport and object of the Act" (ss 5(e) and (h));

- the divisions etc are "deemed" to be part of the Act "for the purposes of reference", and the headings are not to affect the interpretation of the Act (s 5(f));
- marginal notes "shall not be deemed to be part of such Act" (s 5(g)); since 1956 they have in fact been printed as shoulder notes; although the current practice was also used in the 1931 Reprint and in statutes reprinted in the annual volumes from 1948.

89 The fiction involved in each of the provisions is inaccurate and unnecessary: the elements are or are not part of the Act, and, if that is to be said, it should be said in a direct way. The possible implications of the provisions are also odd:

- Is it the case that a schedule or appendix, by contrast to a preamble, cannot be used to explain the purport or object of the Act? After all, they often create rights and obligations themselves.
- Can the divisions of an Act (as opposed to their headings) be used to interpret the Act? If so, what is the point of that distinction?
- And is the silence about the possibility of using marginal or shoulder notes to sections to aid interpretation an implied licence to do so (as the Court of Appeal appears to suggest in *Daganayasi v Minister of Immigration* [1980] 2 NZLR 130, 142)?

90 There can be no question about the relevance of preambles, schedules and appendices to interpretation. They are clearly part of the text as adopted by the House, assented to by the Governor-General and enacted by Parliament. As indicated, whether appendices and schedules in addition create legal obligations and rights depends on their terms and the terms of the statute to which they relate. That matter cannot be affected by a general provision of an Interpretation Act.

91 The organisation of the provisions of an enactment may quite properly be of assistance, for instance the inclusion of a provision within a part concerned with principles (eg, *New Zealand Maori Council v Attorney-General* [1987] 2 NZLR 641). The positioning may also provide an immediate context affecting the meaning of particular words in a provision (eg, *Victoria University of Wellington Students Association v Shearer* [1973] 2 NZLR 21, 24). And the

division may be critical for the scheme of an Act, to which the courts give weight. A recent judgment of the Supreme Court of Canada provides one more example of the value of headings as emphasising the context in which the particular provision is found: *Stoke-Graham v The Queen* (1985) 16 DLR (4th) 321, 331–332. Accordingly, there appears to be good reason why the courts should be able to have regard to the way in which an enactment is organised or to the headings to the various divisions or parts. And no reason why they should not.

92 The position of headings to sections (marginal notes) is not as clear. They are short indications of the subject matter of the provisions. They often do not even purport to summarise the provision. When they do, they should not be able to control the meaning of the substantive enactment. But it is difficult to challenge the view that in some cases they may appropriately help confirm the meaning of the substantive provisions. In any event, how is the interpreter to avoid reading particular headings and especially the collection of them at the beginning of the Act or set of regulations? For many coming to an enactment for the first time, or even later, it is that table of contents which provides the beginning of the understanding of the Act both as a whole and in detail.

93 Several other matters routinely printed with the texts of statutes and regulations remain for mention. The analysis at the beginning of the Act ("contents" in our proposed usage) is composed of the division headings and "marginal notes". Because we consider that the interpreter should be able to have regard to them when they appear in the body of the statute, that must also be so of the table at the beginning of the enactment.

94 The notes of the origin of a provision set out at its foot indicate one source of the drafter's assistance. No doubt these notes can be of assistance—as can other historical and comparative research undertaken by those interpreting legislation. Their precise status probably is of no significance for the process of interpretation. We know of no indication of such a significance.

95 The assent number is conveniently included in the printed copy but cannot affect interpretation, although the fact that several statutes are enacted as a package may be significant. That fact is better indicated by the dates of assent, also included in the published text, a matter considered later, paras 274 and 443.

96 In terms of the current practice relating to new Acts, the remaining element is the note indicating that the Act is administered in (or occasionally by) a named department. This note (also included in regulations) unlike the analysis and the notes of origin, does not appear in the Bill as introduced and debated. It is not the subject of any parliamentary notice or process. It is not included in the copy of the Bill to which the Governor-General assents. By contrast some statutes do expressly identify a named Minister or department as responsible, although compare the developing practice referred to in para 381. Parliament may expressly transfer responsibility from one department to another, as the Clerk of the House reminded us, instancing the Explosives Amendment Act 1978. He also referred to an incident of the note causing confusion by suggesting that a department of state was responsible for a statute in fact administered by an independent agency, *The Capital Letter* vol 9, no 45, 2 December 1986 (although compare in that particular case the Labour Department Act 1954 ss 3, 8–10 and First Schedule). Some of the notes are misleading in that some Acts are not "administered" in a department at all, and more than one department may have an interest in a statute. And the information can become outdated with changes in administrative arrangements. Moreover, the information is now to be included in departments' annual reports and it appears as well in the New Zealand Yearbook. (See also the proposal made by the Legislation Advisory Committee *Departmental Statutes* (Report No 4 1989) p 10 (recommendation 5) and para 58.) The note has been included in New Zealand statutes only since 1961 and is not included in any of the 14 other sets of Australian, Canadian and United Kingdom statutes we have examined. We accordingly recommend that the note should no longer be included in enactments as printed.

97 Finally, regulations (but not Acts) include an "explanatory note" preceded by this sentence: "This note is not part of the regulations, but is intended to indicate their general effect". Since that explanation is provided, it is for the interpreter to decide what if any significance to give to the statement, along with other indications of purpose given by the Minister or others, cf eg, *Carroll v Attorney-General* [1933] NZLR 1461, 1478, 1485 CA with *New Zealand Drivers Association v New Zealand Road Carriers* [1982] 1 NZLR 374, 376 CA.

98 Accordingly, and in conformity with the general view expressed to us, we have concluded that the interpreter should be able to have

regard to the various elements mentioned above of enactments as printed. We except only the note about the administering department which we do not think should be included in the printed text. One remaining question is whether the repeal of the presently restrictive provisions is sufficient to achieve that purpose. That was our first inclination. But the view has been pressed on us that the resulting silence could be misinterpreted and might revive the uncertainties of the common law in these areas; see also eg, Mr Justice Macrossan (1984) 58 ALJ 547, 565.

99 We agree with that concern. Accordingly, and adapting the language of recent Australian provisions which in turn drew on the drafts prepared by the English and Scottish Law Commissions, the Law Commission proposes the following subsection to follow the statements set out in paras 67 and 87 above:

> (3) Among the matters that may be considered in ascertaining the meaning of an enactment are all the indications provided in the enactment as printed or published under the authority of the New Zealand Government.

WHAT REFERENCE, IF ANY, SHOULD THE ACT MAKE TO THE USE OF MATERIAL BEYOND THE TEXT OF THE ENACTMENT TO ASSIST ITS INTERPRETATION?

100 Anyone reading any text must read it in context—even in the narrowest sense of the accepted understandings of the language including the meaning of the words used and the grammatical structure of the text. A legal text will also draw on much related law as appendix D reminds us. And the reader will also have broader societal and legal contexts in which to appreciate the particular statute or its type (criminal, tax, commercial ...). Like other texts, a statute cannot be entire in itself. Lord Mackay in recently endorsing Lord Donaldson's elegant phrase that judges are "finishers, refiners and polishers of legislation" has said that in interpreting legislation they may use all the material that is appropriate, (1989) 10 Stat L Rev 151, 162 citing *Corocraft Ltd v Pan American Airways Inc* [1968] 1 QB 616, 638.

101 The courts sometimes make such contextual elements explicit, for instance by using dictionaries to help determine the usual meaning of the words in issue or by setting out the history of the legislation. The previous part of this chapter mentions a recent New

Zealand case in which various aspects of the common law, historical and other contexts were used (para 63). We mention two other cases here to make the same point. In the first the Canadian Supreme Court used a very long historical reach in giving a broad interpretation to the powers of the British Columbia Ombudsman. In seeking the objects of Ombudsmen legislation in accordance with that province's equivalent of s 5 (j), it traced relevant historical developments starting with the Roman tribune and the control yuan of the dynastic Chinese. It then moved to the recent extensive growth of the office (referring in that context to a lecture given in Canada by Sir Guy Powles, the first New Zealand Ombudsman). That review enabled a general conclusion which emphasised the open scrutiny by the Ombudsman of the exercise of public power. And it was only after the Court had established that background and had set out its reading of the Act as a whole that it turned to the particular words of the section which the relevant agency wished to read narrowly, *Re British Columbia Development Corporation and Friedmann* (1984) 14 DLR (4th) 129.

102 Although the second case arose in a much more confined context, the House of Lords once again drew on a significant range of material extrinsic to the provision in dispute. Insider trading legislation makes it an offence for those who have knowingly "obtained" certain information then to deal in the relevant securities. The trial Judge held that a defendant who had simply received unsought information (and had then dealt in the securities) could not be convicted. The Court of Appeal and the House of Lords reversed that ruling, *Attorney-General's Reference (No 1 of 1988)* [1989] 1 AC 971. The dictionary did not help the House of Lords choose between the two meanings of "obtain": "To come into the possession ... of something by one's own effort, or by request; [and] hence, generally, to acquire, get". Nor did the principle that ambiguity in a penal statute should be resolved in favour of the defence: it is not enough that the word is ambiguous in the sense that it is capable of having two meanings; the court must first attempt to discover the intended meaning in the particular statute. The House discovered that wider meaning by seeing the dealing (with knowledge) by the defendant as the critical element in the offence; by examining the circumstances preceding the legislation, in particular the indication in the relevant white paper that the mischief was the improper *use* of the information which the defendant *had*; by recognising that that object of the legislation would be partly defeated by the narrow reading; and by

noting that the narrow meaning (but not the wider one) would require the drawing of fine distinctions.

103 For the most part there is no controversy about the possibility of using such material external to the words of the statute. It may be that some of the material is not considered in a particular case since it is not helpful or the meaning of the text is clear in any event. And there is a question whether reports such as those considered in the insider trading case can be used to indicate the remedy as well as the mischief, that is the meaning of the words as well as their object. The House of Lords has said, for instance in that case, that only the latter is allowed. But Lord Wilberforce (once one of those responsible for that limited view) has since recanted, mentioning that the line between mischief and remedy is illogical and sometimes cannot be drawn, Attorney-General's Department, *Symposium on Statutory Interpretation* (1983) 8–9. Indeed in the insider dealer case itself the remedy is probably clearly identified by the statement of the mischief; see similarly *NZEI v Director-General of Education* [1982] 1 NZLR 397, 414 and the direct statement in *Comdel Commodities Ltd v Siporex Trade SA* [1990] 2 All ER 552, 557 (HL) indicating that a law reform report is invaluable as an aid to construction; it can be used to resolve a real ambiguity although not to cut down a plain meaning.

104 But there is real dispute about any use at all of one category of information. That information records the parliamentary stages of the consideration of the particular statute, especially

- the Bill as introduced into the House and as amended in the course of its progress;
- the explanatory note to the Bill;
- speeches made in the course of parliamentary debate on the Bill (in particular of those with responsibility for the legislation including the Minister in charge of the Bill and the member who chaired a select committee which considered it); and
- decisions made in the course of the parliamentary process.

105 Courts in New Zealand and elsewhere have now indicated a greater willingness to consider that material, abandoning, with or without legislative support, a practice of not using parliamentary

debates. This change in practice and law presents a series of questions:

- should the courts be able to make use of that parliamentary material?
- if so, in what circumstances, and for what purposes?
- should the legislature state the rules regulating such use or should the matter be left to the courts?

Ability to use

106 Legislation on this point has recently been enacted in Australia at the Commonwealth level, in the States of New South Wales, Victoria and Western Australia and in the Australian Capital Territory. The relevant statutes supplement the purposive provision (quoted in para 37 above) with a section regulating the material that may be considered. There is a related provision in the Vienna Convention on the Law of Treaties 1969 discussed for instance in the *Thiel* case, para 54 above.

107 The Australian provision is lengthy. It is set out in appendix D. It permits those interpreting legislation to consider material, not forming part of an Act, which is capable of helping in ascertaining its meaning

- to confirm the meaning of the provision as conveyed by the text, its context and purpose;
- to determine the meaning where the provision is ambiguous or obscure; or
- to determine the meaning when the ordinary meaning is manifestly absurd or unreasonable.

108 The provision then provides a non-exhaustive list of eight categories of material (including parliamentary papers and debates) which can be considered. And it requires that regard be had, in any decision to consider such material or about the weight to be given to it, (i) to the desirability of people being able to rely on the ordinary meaning of the text, and (ii) to the need to avoid prolonging proceedings without compensating advantage.

109 The interpretation statutes in New South Wales, Western Australia and the Australian Capital Territory contain almost identical provisions to the federal section, and all borrow heavily from the Vienna Convention on the Law of Treaties 1969 article 32. The brief

provision in the Victorian Act differs, allowing reference to anything which is relevant and then giving a non-exhaustive list including reports of parliamentary proceedings, see para 123 below.

110 Courts in New Zealand and elsewhere have in fact long made use on a sporadic basis of such parliamentary material in interpreting legislation—although until recently practice largely conformed with the commonly stated view that such material is not to be used. That indeed is still the view stated in the United Kingdom although exceptions are to be found there as well, eg *Pickstone v Freemans Plc* [1989] AC 66. The principal arguments for a prohibition are the following:

- the text of the statute as enacted is the law; those affected by the statute should be able to rely on the text passed by the House, assented to by the Crown and appearing in the statute book;
- use of the material may involve an improper, even an unconstitutional examination of the proceedings of Parliament;
- the parliamentary material may be unreliable and indeed may be created to support a particular interpretation;
- the parliamentary material is not likely to help since the issue in dispute may not have been anticipated;
- the process may cause delay and increase the cost of litigation.

111 The Law Commission sees the force of each of these points. They do not however lead it to the conclusion that the material cannot or should not be used in appropriate cases. We comment on each of them in turn.

112 This Report and other work of the Commission have emphasised the need for the statute book to state the law in a clear and direct way so far as possible. We are concerned with the exceptional case where real controversy arises about the meaning of the text. While the interpreters should still be confined *by* the text it does not follow that they should be confined *to* it. And indeed the very nature of communication and much undisputed practice shows that they are not and indeed cannot be confined *to* that text. The dispute in fact arises about only one small part of the extrinsic material.

113 The purpose of using the parliamentary record is to help give better informed effect to the legislative outcome of parliamentary proceedings. For that reason that use might be thought not to involve

the impeaching or questioning of the proceedings in Parliament, to use the terms of Article 9 of the Bill of Rights 1688. This, presumably, is the view of those courts which have made use of that material. See for instance the valuable article by the Clerk of the House on *Rose v Edwards* [1990] 2 WLR 1280 (a case involving an examination of not only *what* happened in the House but *why*) McGee [1990] NZLJ 346, 347. The Standing Orders Committee has recently proposed a resolution to the House, based on United Kingdom and Australian precedent, to remove any technical impediment to court use of the records and reports of the proceedings of the House. The resolution would of course be without prejudice to the terms of the Bill of Rights, *Report of the Standing Orders Committee on the Review of the Operation of the New Standing Orders* 1990 AJHR 18B paras 4.4–4.5.

114 It is true that care must be taken in assessing parliamentary material. Greater weight should be given to the statements of those who are responsible for the legislation—the responsible Minister and the member who chaired the relevant select committee for instance. It is of course the case that in many situations the material will not help—but in that event it should not be presented to the court and, if it is, the court will discard it. But that is also true for much other material within the categories routinely used by courts in interpreting legislation—dictionaries, earlier and related legislation, decisions of other courts on related language .... Judgment is always called for in the choice and use of material which is said to bear on the meaning of legislation. And that judgment of course has consequences for the extent and cost of litigation.

115 A practical aspect of the use of legislative history is its accessibility. That can be facilitated in various ways. Courts can require proper notice to the parties, as in some Australian jurisdictions. Those responsible for legislation can help. So Australian and Victorian enactments now note the dates of the second reading speeches. That note could be extended to include the name of the Bill as introduced, the dates of the other parliamentary stages, the number of the Bill and its later versions and of any relevant supplementary order paper, and a reference to any printed report on the Bill. That does involve more work of course for those involved in putting the legislation into final form, but it should save the time of the users of the enactment. We recommend that that practice be adopted.

116 American publications indicate that it is possible to go further in reproducing the legislative history. In the absence of such publications there is of course the further practical problem of access to the actual texts, especially of some of them. This is however to be kept in perspective. It is the rare case that calls for a comprehensive reference to the legislative history. Much relatively obscure material is already used in disputes about interpretation. And technology should continue to help ease the process.

117 The main reason for the continued use of this material is that it does sometimes assist the interpreter in understanding the legislation. We mention just two cases among many, in part to emphasise again the range of material outside the legislative text which can properly be relevant to interpretation. Australian aircraft anti-hijacking legislation provided that the punishment for a particular offence "is imprisonment for life". Was that a mandatory penalty or only a maximum one? By a vote of 3–2, the High Court held that it was a maximum penalty, *Sillery v R* (1981) 35 ALR 227. Two of the majority judges began with the proposition that the words of the provisions are "not unambiguous", drew on the wording of penalty provisions enacted in six other jurisdictions (as well as in the Commonwealth), made a reference to the relevant treaty, and emphasised that the mandatory reading would lead to results that would be plainly unreasonable and unjust (Gibbs CJ with whom Aickin J agreed).

118 The other majority judge took the broader starting point that in modern times nearly every statutory criminal penalty is a maximum. That policy is so pervasive that very clear words would be necessary to displace the presumption. Moreover, the range of offences covered by the definition of hijacking could vary greatly in seriousness, and inflexible draconian penalties should be avoided. Furthermore, even if the legislation was regarded as ambiguous the Ministers in charge of the Bill had made it clear in the debate on the legislation that the penalty was a maximum one. (This judgment was given in 1981, three years before the enactment of the legislation, mentioned in paras 106–108 above, regulating the use of Hansard.) And, as well, the constitutional principle, reflected in the Bill of Rights 1688, rejecting cruel and unusual punishment, strengthened the presumption that the penalty was a maximum (Murphy J). The minority judges by contrast thought that, whatever Parliament may have intended, it had expressed its mind in such clear terms in favour of a

mandatory penalty that the Court had no option (Wilson and Brennan JJ).

119 In the second case, the record of the Constitutional Convention which prepared the Western Samoan Constitution made it clear that following a lengthy debate the Convention had expressly rejected a proposal to include in the Constitution the very proposition which one party to the litigation sought as a matter of interpretation. This decision of the Convention was seen as strongly supporting the conclusion which the Court had already reached on other material which once again extended far beyond the text of the particular provisions of the Constitution, *Attorney-General of Western Samoa v Saipa'ia Olomalu* (Western Samoan Court of Appeal, 26 August 1982) 14 VUWLR 275, 290, 292.

120 A further reason for allowing continued reference to the legislative material is the unquestioned and well-established practice, already mentioned, of using reports from which the statute arises. The Bill, the explanatory note or the speeches supporting the Bill might each mention departures from the original proposal and perhaps explain them. And, even if the Bill is introduced as proposed in the report, it might be amended in the course of the process. In both situations, if the court is not to be misled by the original proposal, it is sensible for it to be able to have regard to the later developments, cf *Wells v Police* [1987] 2 NZLR 560. And could a prohibition effectively control reference to such material at least for information purposes? We have it on good authority that Judges are infinitely curious, Sir Anthony Mason, Symposium, para 7 above, 83. After all, they will often be aware from their own professional and other experience of the background to particular pieces of legislation.

Circumstances and purposes of use

121 The interpreter is essentially concerned with ascertaining the meaning of the text. Reference to the extra material cannot be used to justify the writing of a new statute. The material is to be used to help the reading of the text as enacted. Some legislatures have attempted to regulate that process in the first place by setting a threshhold for use—ambiguity, obscurity, manifest absurdity, or unreasonableness. In general the material is not to be used unless one of those conditions is satisfied. Whatever courts may have said from time to time, practice demonstrates several difficulties with such a rule. It tends to assume a divided process of hearing and argument: that the Court

will settle on a meaning of the text or find that it is ambiguous or obscure before it knows about and gives significance to the parliamentary material. But in practice Judges may already know that material—at least in a general way. And they will often receive the relevant material in the course of the argument. The rules also assume that the Court can say that a meaning is manifestly absurd or unreasonable without having regard to that material.

122 Practice also shows that ambiguity can be a difficult concept to apply. Parallel to the Australian mandatory/maximum sentence case is one in the House of Lords in which both the majority and minority found that the legislation in issue was not ambiguous but gave it completely contradictory readings, *Ellerman Lines Ltd v Murray* [1931] AC 126, 131, 137, 147, 148. The minority's conclusion on the legislation adds to the complexity of the Australian threshholds by distinguishing obscurity from ambiguity:

> [the] truth [of the Act] lies at the bottom of the well. It is obscure, it remains oblique, but it is not in the result ambiguous. [1931] AC 126, 144.

123 In terms of the various legislative tests, once a relevant threshhold has been surmounted, the purpose of the reference is to find the meaning of the text—by confirming the meaning reached in other ways, by finding a meaning for an obscure or ambiguous text, or by finding a meaning of the text other than the unreasonable or absurd meaning reached in other ways. (The mischief-remedy distinction stated by some English judges makes no appearance at all.) Such an emphasis on the legislative text and on the discovery of its meaning by reference to purpose and in context is already to be found in existing law and practice, reflected as well in the proposed cl 9(1). Two members of the High Court of Australia have put that same emphasis on meaning in a case involving the Victorian provision about supplementary material. Unlike the other Australian enactments, that provision does not expressly state the purposes for which it is permissible to refer to the materials. It is clear, say the Judges, that the meaning attributed to the statute must be consistent with the statutory text. Extrinsic material cannot alter the plain meaning of the text, *Catlow v Accident Compensation Commission* (1989) 87 ALR 663, 668 (Brennan and Gaudron JJ dissenting but not on this issue); see further *Mills v Meeking* (1990) 91 ALR 16, 21, 32 HCA; the same point has been made in the New Zealand Court of Appeal, eg, *Real Estate House (Broadtop) Ltd v Real Estate Agency Licensing*

Board [1987] 2 NZLR 593, 596. The short point is that a legislative statement of the reasons for, or purposes of, the reference to the material appears to provide no additional help to the courts.

Should Parliament or the courts state the rules about use?

124 Any statutory rules could, on the model of the various Australian provisions, liberate the courts from any prohibitory or restrictive rule (or confirm that liberation), or, on the other side, (re)impose a prohibition. We have already indicated the value that can come from considering parliamentary material. A prohibition would not be appropriate. Some have suggested that a liberating provision (like the Victorian provision) would be helpful as a clear signal to the courts that they may refer to parliamentary material. But a prohibitory rule has never been clearly established in New Zealand, eg, *Re AB* (1905) 25 NZLR 299, *Monk v Mowlem* [1933] NZLR 1255, 1256–1257, *Police v Thomas* [1977] 1 NZLR 109, 119 CA, and *Levave v Immigration Department* [1979] 2 NZLR 74, 79 CA (also referring to relevant proceedings of the Imperial Conferences and the League of Nations); and in related jurisdictions the prohibitory rule is of relatively recent origin, Brazil (1961) 4 UQLJ 1, Thorne ed, *A Discourse*, para 27 above, 151, and for example the use of an unsuccessful Bill proposed by John Stuart Mill by the Privy Council in the *Edwards* case, para 261 below. Further, the signal that parliamentary material can be used has already been clearly given by the courts themselves, and it has been extensively discussed. The uncertainty which was a significant factor seven years ago in the Australian decisions to enact the liberating legislation has now been dispelled—to the extent that it existed here. Compare the views expressed at the 1983 Symposium in Canberra by the then Solicitor-General of the Commonwealth, the present Commonwealth Solicitor-General, a majority of the relevant group, and the present Chief Justice of Australia, para 7 above, 21–23, 28–38, 77, 82. Access to legislative history is now beyond doubt part of the law and practice of the interpretation of legislation in New Zealand. That has become even clearer in the course of the discussions in which the Commission has been involved over the past two to three years.

125 A permissive rule could also address the threshhold and purpose questions considered earlier (paras 121–123). But, as indicated,

the legislative answers do not appear to provide any significant assistance to the courts. Rather, the courts themselves have been developing and will no doubt continue to develop rules and practices about relevance and significance, eg *Attorney-General v Whangarei City Council* [1987] 2 NZLR 150, 152 CA, *Petrocorp Exploration Ltd v Butcher*, CA 240/89, judgment of 14 August 1990, and the other cases cited in paras 103, 119, 120, 123, 124 above. The practice appears to be developing in much the same way as in those Australian jurisdictions which do have legislation regulating the matter, eg, Brazil, Preliminary Paper 8, para 45, pp 151–162, and (1988) 62 ALJ 503, Pearce and Geddes, para 3 above, paras 3.17–3.21.

126 Accordingly, we do not propose the enactment of legislation regulating the use of parliamentary material. That was also the strong view of most of those who expressed views to us on this issue. We conclude with two cautionary remarks. We repeat that the user of the statute book should in general be able to place heavy reliance on it. Extended references to material beyond its text should not be common. The obverse of this point is the need to make statute law more accessible through drafting and related changes. The second caution is that experience shows that in many cases relevant parliamentary material does not exist, and we certainly do not wish to be seen as encouraging the presentation to the courts of unhelpful information. The Lord Chancellor has recently documented this point in an effective way, para 100 above. But practice in many jurisdictions shows that the parliamentary record will sometimes be useful.

IV
The Crown and Statutes

127 The Acts Interpretation Act 1924 s 5(k) appears to state a general principle that the Crown is not bound by statutes:

> No provision or enactment in any Act shall in any manner affect the rights of Her Majesty, her heirs or successors, unless it is expressly stated therein that Her Majesty shall be bound thereby; . . .

That provision was first included in the New Zealand statute book in 1888.

THE CROWN SHOULD IN GENERAL BE SUBJECT TO STATUTES

128 The Law Commission proposes that this principle be reversed. The Crown should in general be subject to the law, as are others. Accordingly cl 10 of the draft Bill provides:

> Every enactment binds the Crown unless it otherwise provides or the context otherwise requires.

129 The proposition that the Crown should be in the same legal position as its subjects would be subject to a very important practical gloss. A great number of statutes, probably a large majority, confer special powers, rights, and immunities (and sometimes impose special duties and liabilities) only on the Crown, its officers or agencies. Our proposal would make no difference to that practice. Rather the effect of the proposal would be that the special position of the Crown

would be established *only* by that particular provision in its context. Any such particular provision would no longer also be supplemented by a general, uncertain doctrine that statutes are not binding on the Crown.

130 The Law Commission has two reasons for this proposal:

- in principle, the Crown should be subject to the general law of the land, including the statute law; the rule of law and fairness require that; and
- the present law is unclear and confusing.

131 This chapter

- reviews the present state of the law and legislative practice,
- addresses relevant principle, and
- deals with some particular areas of difficulty (including the criminal liability of the Crown).

132 One matter which might be emphasised here is the relatively limited impact of the change. For reasons given later (paras 140–144), a very large number of statutes which contain no express positive provision do already bind the Crown notwithstanding the apparently broad negative effect of s 5(k).

THE PRESENT STATE OF THE LAW

133 The legal commentary suggests that at various times over the last 400 years statutes were considered to be generally applicable to the Crown. But by 1880 the Privy Council was able to say that the Canadian statutory provision of 1867, on which the first and present New Zealand provisions are based, was "substantially an affirmance of the general principle of law" it had set out earlier—"that the rights of the Crown can only be taken away by express words" in the relevant statute, *Cushing v Dupuy* (1880) 5 App Cas 409, 417, 420. What is the effect of s 5(k), read along with the common law?

"Act"

134 Section 5(k) states that provisions in any "Act" do not affect the rights of the Crown unless they so provide. The inclusion of regulations in the definition of "Act" in s 4 means that the principle of non-applicability probably extends to regulations as well. The Court of Appeal proceeded on that assumption in *Lower Hutt City v*

Attorney-General [1965] NZLR 65. As mentioned later (para 156), many (although a minority of) Acts do contain express provisions stating that they bind the Crown. But only a handful of regulations do. Now it may be that if a particular Act contains such a statement, then regulations made under it would be considered as also affecting the rights of the Crown, but that is not what s 5(k) actually says.

"Affect the rights"

135 Read literally these words could include statutes which augment and not merely those which prejudice the rights of the Crown. This interpretation would mean that statutes such as the Extradition Act 1965, the Incorporated Societies Act 1908 and the Indecent Publications Act 1963 would not augment the Crown's powers since they do not contain a statement that the Crown is bound. That view is generally rejected. Section 5(k) and the common law presumption it incorporates must be designed to give the Crown an advantage and not to *limit* its powers and rights. To recall the Privy Council's words, the provision is about taking away the rights of the Crown. This narrower interpretation is supported by the context of the provision including the word "bound" (unless it is expressly stated therein that Her Majesty shall be *bound* thereby), see eg, *In re Silver Bros* [1932] AC 514, 524 JC, *Peerless Bakery Ltd v Clinkard (No 3)* [1953] NZLR 796, 800–801, *Madras Electric Supply Corpn v Boarland* [1955] AC 667, 687, Hogg, *Liability of the Crown* (2d ed 1989) 214.

136 Also relevant in this context is s 29 of the Crown Proceedings Act 1950 which permits the Crown to take advantage of statutes which do not name it:

> **Application to the Crown of certain statutory provisions—**
>
> (1) This Act shall not prejudice the right of the Crown to take advantage of the provisions of an Act although not named therein; and it is hereby declared that in any civil proceedings against the Crown the provisions of any Act which could, if the proceedings were between subjects, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Crown.
>
> (2) Section 55 of the Judicature Act 1908 and section 109 of the District Courts Act 1947 (which empower the High Court or a District Court Judge in certain circumstances to order the

arrest of a defendant about to leave New Zealand) shall, with the necessary modifications, apply to civil proceedings by the Crown in the High Court or in a District Court, as the case may be.

137 Subsection (1) is in declaratory form and assumes a pre-existing common law rule that the Crown may take advantage of a statute notwithstanding that it is not bound by it, eg, 44 *Halsbury's Laws of England* (4th ed) para 931. It was applied in *Bunn v Attorney-General* [1975] 1 NZLR 718 and the doctrine has recently been considered (in the absence of a provision like s 29) by the Supreme Court of Canada, *Alberta Government Telephone v CRTC* (1989) 61 DLR (4th) 193. The express statutory provision was imported into New Zealand law in 1950 from the United Kingdom Crown Proceedings Act 1947 s 31. If the Crown is taking advantage of legislation it is obviously affected by any limits stated in the particular provision which it is invoking. To that extent it is bound by the legislation. But in other contexts that may not be so. Professor Hogg mentions a pair of cases in which the Ontario Court of Appeal held that the Crown could bring proceedings outside a limitation period but could invoke a limitation period in resisting a counterclaim, para 135 above, 216, referring to *Attorney-General of Ontario v Watkins* (1975) 58 DLR (3d) 481 and *Attorney-General of Ontario v Palmer* (1980) 108 DLR (3d) 349. This result is in breach of the general principle of equality before the law, as indeed the Court notes in the first case.

138 Subsection (2), following the United Kingdom provision, is a particular application of the principle stated in the first subsection, with the added oddity that the same Act separately provides that the District Courts Act 1947 is binding on the Crown in any event.

139 The phrase "*affects the rights*" is important in another sense. The standard statutory reversal of the principle stated by s 5(k) reads, of course, that "This Act binds the Crown". That is the form of words suggested by the final phrase of s 5(k) (except that "the Crown" rather than "Her Majesty" is used). The form of words is however misleading. What the provision is about is prejudicial effect on the rights of the Crown as they exist independently of and prior to legislation being enacted. If a statute confers *new* powers on the Crown, the Crown cannot exceed the statutory definition and statement of those powers. It must be *bound* by that definition and statement for it has no other authority to act. And of course a very large number of statutes do confer new powers on the Crown to affect the rights of

others (or continue, possibly with changes, powers conferred by earlier statutes).

Categories of statutes affecting the Crown

140 This point should be elaborated. It is a major reason for the view expressed earlier (para 132) that the present provision and the change we are proposing each has a narrower significance than at first appears. It is basic constitutional doctrine that the Crown cannot affect the rights of others without legal authority—almost always statutory authority, eg *Entick v Carrington* (1765) 19 St Tr 1030; *Payn v Ministry of Transport* [1977] 2 NZLR 50 CA. A great number of statutes do of course confer such authority. To take the subject matter of the cases just mentioned, about 100 New Zealand statutes authorise state officials to enter private premises—actions which would otherwise amount to trespass. The officials cannot of course act outside the scope of their powers. If they do, their actions are unlawful. So the fact that the Summary Proceedings Act 1957 does not say that it binds the Crown does not mean that a police officer acting under a search warrant issued under its terms is free from the restraints that that Act places on the search (contrast *Southland Acclimatisation Society v Anderson* [1978] 1 NZLR 838). And the fact that the Economic Stabilisation Act 1948, Education Acts 1915 and 1964, and National Development Act 1979 contained no express binding provisions did not stand in the way of review by the courts of the validity of regulations and decisions taken by public officials under them. What this means is that, for the vast range of provisions giving new powers to the Crown to act, s 5(k) or any replacement is completely irrelevant. That is, the statute law conferring and defining the power of the Government to govern, to regulate, to enforce, to decide, to administer . . . is not touched by any *general* rule either of application or non-application. The particular statute governs the matter. Just what powers does the particular statute confer?

141 Some statutes confer powers of decision only on the Crown but with a correlative right (rather than a liability) being held by an individual. Clear cases are provided by social welfare, war pensions and health benefits legislation under which those who are qualified have rights to the various payments. It is unnecessary for the statutes to say that they bind the Crown; the legislation would be completely frustrated, so far as it creates rights for individuals, if the Crown's earlier freedom under the law not to make those payments were not

abrogated. And in fact the Social Security Act 1964 and War Pensions Act 1954 do not contain general express provisions that the Crown is bound. But the Social Security Act 1964 does contain an interesting specific provision. When the liable parent scheme was established in 1980 Parliament made expressly binding on the Crown the provisions requiring employers to deduct payments from defaulting parents in their employ (ss 27Y-27ZF) (compare paras 145–150 below). The legislation was addressing the Crown as employer rather than as governor.

142 In a second category of case, the legislation confers powers on the Crown *overlapping* existing powers (usually common law). This is a more difficult case than the previous one, for the Crown in this case has two possible sources of power—the existing and the new. The question which has to be answered in the particular case is whether the existing power has survived the enactment of the new statute and can still be invoked—for instance the common law (including prerogative) powers of the Crown to dismiss public servants, to cease providing a railway service, to summon Parliament, to seek extradition, to create corporations, or to take over property in wartime, eg *Campbell v Holmes* [1949] NZLR 949 SC and CA, *Shand v Minister of Railways* [1970] NZLR 615 SC and CA, *Simpson v Attorney-General* [1955] NZLR 275 SC and CA, *Barton v Commonwealth* (1974) 131 CLR 477, *Peerless Bakery Ltd v Clinkard (No 3)* [1953] NZLR 796, and *Attorney-General v De Keyser's Royal Hotel* [1920] AC 508.

143 The New Zealand cases mentioned (with the exception of the last) appear to have been decided without reference to s 5(k); but, whether that provision is mentioned or not, the issue is still essentially the same—had Parliament manifested an intent to override the common law power (to the extent, that is, that that power runs beyond the statute)? The issues for those preparing or interpreting, say, defence legislation appear to be the same whether the statute is expressly "binding" on the Crown or not. Is it intended to abrogate and has the legislation abrogated the Crown's prerogative powers in such matters? It is all very well to say, as an express provision might, that it affects the rights of the Crown, but the real issue is *to what extent* does it do that? (See *National Emergencies: use of the armed forces* (NZLC R12 1990) paras 88–90 for a discussion of this point in respect of the 1989 Defence Bill; compare *Hoem v Law Society* [1985] 5 WWR 1 (BCCA) for an interesting reflection of the unchanged need to consider the special position of the Crown (or

really of a prosecutor) in a jurisdiction in which the principle has been reversed and the Crown is in general bound by statutes.)

144 The two categories of statutes just mentioned mainly concern the powers, rights and responsibilities of the Crown in its unique (or largely unique) role as governor, regulator, law enforcer ... . The statutes either confer powers on the Crown where none existed before (or replace such powers where for instance one statutory power of search is substituted for another), or they confer powers where such special powers had existed before and may continue. A third category of statutes might affect the Crown as they affect any other person or at least when the Crown is acting in the same capacity as other persons—for instance as a party to a contract (and as a creditor or debtor), a landowner or occupier, an employer, an operator of a business or a litigant. The legislation in this category is written in general terms; certain "contracts" are to be in writing, "creditors" have certain rights in an insolvency, "adjoining occupiers" have certain rights and duties in respect of fences, "occupiers" have to pay rates, "employers" are to have safe systems of work, those who wish to catch certain fish must have a licence, and "plaintiffs" must bring civil actions within fixed limitation periods. (We say "mainly" in the first sentence of this paragraph since, as noted in para 141, the statutes in the first and second categories sometimes contain provisions applying to the Crown as employer.)

145 It is this third category of statutory provisions—those of general impact—that present in practice the largest number of questions about their application or not to the Crown. It is this category of law that has become more significant as the activities of executive government have extended in recent times. That extension has caused problems for the application of a principle established in another country at another time. The reported cases almost all concern this category. Thus courts in New Zealand and elsewhere have held that the Crown is not bound by generally applicable legislation which

- makes certain cartels unlawful, *R v Eldorado Nuclear Ltd* (1983) 4 DLR (4th) 193 (SCC);
- requires the occupier of land adjoining a roadway to get the consent of the road authority to a temporary occupation of the road, *Lord Advocate v Dunbar District Council* [1989] 3 WLR 1346 (HL);

- empowers a local authority to grant planning permission to new buildings (actually being built for a third party, but on Crown land), *Wellington City Corporation v Victoria University of Wellington* [1975] 2 NZLR 301 (see similarly *Lower Hutt City v Attorney-General* [1965] NZLR 65 CA);
- establishes indefeasible land transfer titles, *Raven v Keane* [1920] GLR 168;
- regulates the creation of chattels securities, *In Re Buckingham* [1922] NZLR 771 (see also *Official Assignee v The King* [1922] NZLR 265);
- provides for the industrial protection of employees, *Bolwell v Australian Telecommunications* (1982) 42 ALR 235;
- provides for safety in factories, *Downs v Williams* (1971) 126 CLR 61;
- provides for arbitration, *Crown v Colonial Mutual Insurance Co* (1903) 5 WALR 46; and
- makes it an offence to discharge effluent in breach of a water permit, *Southland Acclimatisation Society v Anderson* [1978] 1 NZLR 838.

146 The legislature has also frequently addressed in a specific way the question of the application to the Crown of statutes of (apparently) general impact, in some cases to reverse judicial findings of non-application. (We consider legislative practice more broadly in paras 156–160). Thus in 1950 it expressly provided that 21 statutes essentially falling within this third category were binding on the Crown. The statutes concerned commercial law, the court system and aspects of personal law.

147 Other specific amendments of about that time, relating for instance to chattels security, charities, contributory negligence, defamation, quarries and scaffolding, and sales tax similarly showed a purpose to make the Crown as a contractor, potential tortfeasor, litigant . . . subject to the same law as everyone else in the particular areas mentioned.

148 This purpose was made express when the Minister of Fisheries in 1986 justified the inclusion for the first time in over 100 years in the Fisheries Act 1983 of a provision that the Crown is bound in this way: "it is fair and reasonable that the Crown should be bound by the

same rules as other fishers" 472 NZPD 2994. One reason for mentioning this statute is that most of its relevant provisions fall within the first category mentioned in paras 140–141. They give powers to the Crown and other public bodies (and not to others). In respect of those provisions a "binding" provision was not thought necessary. See similarly the Health Act 1956 ss 32 and 87A and the 1979 amendment to the Commerce Act 1975.

149 But the process of specific amendment is not comprehensive. It creates odd differences. So, to be compared with the statutes referred to in para 146 are statutes about marine insurance, innkeepers and partnership, the provisions in the Judicature Act 1908 concerning the High Court and Court of Appeal, and wills legislation; none expressly bind the Crown.

150 The point to be recapitulated here is that our concern is mainly with statutes in the third category discussed earlier—those which apparently have general impact and which are not solely or even principally concerned with the Crown. It is in that area that the proposed change is mainly relevant. We now return to the words of s 5(k).

151 The courts read the word "*rights*" broadly. It includes all rights known to the law; neither s 5(k) nor the parallel common law rule has been limited to prerogative rights: *Lower Hutt City v Attorney-General* [1965] NZLR 65, 74, and *Province of Bombay v Municipal Corporation of Bombay* [1947] AC 58 JC.

"The Crown"

152 This question of who is the Crown can be difficult to answer. The Queen's Ministers and departments of state certainly, but there has been litigation at times about various public bodies claiming to be entitled to the benefit of the provision. Sometimes legislation provides an express answer (although in varying terms), but often it does not: see eg, the conflicting provisions of the Education Amendment Act 1990. This is an added source of uncertainty for the operation of the presumption. The Commission will be considering this matter further in the course of its work on the liability of the Crown. A related issue is the examination of the proposed category of "Crown agencies" referred to in the Public Finance Act 1989, currently being undertaken by the Finance and Expenditure Committee.

"Unless it is expressly stated therein"

153 The common law principle can be displaced by necessary implication as well as by express provision. In its leading decision in 1946, the Privy Council made it difficult to satisfy the implication test; the Crown is bound only if the purpose would be wholly frustrated were the Crown not bound, *Province of Bombay v Municipal Corporation of Bombay* [1947] AC 58, 63. The statutory wording may appear to set an even higher standard and to require an express statutory provision. It has not however been interpreted in that way, eg, *Re Buckingham* [1922] NZLR 771, 773. There are good reasons why it should not be. First, other provisions of the 1924 Act—s 2 and the introductory words to s 5—indicate that the rules in the Act and the section can be set aside by implication. Second, the constitutional position of Parliament makes it clear that earlier legislation cannot require later Parliaments to use a particular form of words. And, third, long practice shows that Parliament does not think it has to use express words. The Crown Proceedings Act 1950 itself is a prime example. It is an Act "to amend the law relating to the civil liabilities and rights of the Crown". It does not expressly state that it binds the Crown. (Nor did its predecessors of 1910, 1908 and 1881.) Yet it clearly does affect the rights of the Crown. It contains a provision under which several other statutes (including the Acts Interpretation Act 1924 with its s 5(k)!) are (now) to bind the Crown.

154 The fact that the presumption of non-application can be upset by implication adds to the uncertainty about its operation. Just last year the House of Lords, when affirming a broad statement of the presumption, stressed the value of precise provisions in individual statutes:

> as the very nature of these appeals demonstrates, it is most desirable that Acts of Parliament should always state explicitly whether or not the Crown is intended to be bound by any, and if so which, of their provisions. *(Lord Advocate v Dunbar District Council* [1989] 3 WLR 1346, 1366)

155 The uncertainty is increased by the tension between the approach adopted in that case and a greater willingness recently demonstrated by the Supreme Court of Canada to find the presumption inapplicable and, even more, the attitude of the High Court of Australia to the common law presumption. In interpreting a provision in similar (but not identical) terms to s 5(k), the Canadian Court has applied a lesser test than that used by the House of Lords and by

the Privy Council in the *Bombay* case (both cases in which the matter was decided under the common law): what was involved, it said, was reading the specific provision of the statute not in isolation but in the context of the provisions in which it appears; *R v Ouellette* (1980) 111 DLR (3d) 216, 221, as explained in *Alberta Government Telephone v CRTC* (1989) 61 DLR (4th) 193, 229–233. The High Court of Australia has very recently gone further in the direction of abandoning the *Bombay* test. In the particular case, it asked whether there could be discerned in the Act a clear legislative intent that the relevant provisions should apply to the Crown. It held that that could be discerned, *Bropho v Western Australia* (1990) 93 ALR 207. The judgment has already led to comment about the resulting uncertainty, (1990) ALJ 374.

LEGISLATIVE PRACTICE

156 The uncertainty in the scope and operation of s 5(k) is increased by the legislative practice some of which we have already reviewed (paras 140–141, 146–149). A very large number of statutes do not contain express binding provisions. There are approximately 620 public statutes of general application currently in force in New Zealand. On our count, only about 200 or one third contain provisions which expressly state that they bind the Crown to a greater or lesser extent. There are clear variations both over time (express provisions have become more common in recent years) and between government departments. So the 1888 and 1893 statute books appear to contain no express provisions; and although the Education Act 1964 contains no express provision the Education Act 1989 does (until the latter Act was passed only the Private Schools Conditional Integration Act 1975 (as amended in 1977) of all the education statutes contained an express provision). Of the nine Acts administered in the Ministry of Defence only one (enacted this year) contains an express provision, compared with about half of those administered by the Department of Labour. (The Law Commission has distributed departmental schedules of statutes annotated by reference to provisions relating to the Crown.)

157 There are some surprising omissions from the list of those statutes which contain express provisions that the Crown is bound. Prominent are enactments of central constitutional importance, such as the Constitution Act 1986, the New Zealand Bill of Rights Act 1990, the Electoral Act 1956, the State Sector Act 1988 (compare the

State-Owned Enterprises Act 1986), the Customs Act 1966, the Income Tax Act 1976 (compare the Goods and Services Tax Act 1985), and the parts of the Judicature Act 1908 which establish the High Court and Court of Appeal and confer jurisdiction on them (compare the District Courts Act 1947 and the High Court and Court of Appeal rules and one (but not all) of the provisions relating to the rules). The two tax statutes help illustrate the point made in paras 140–150. It has been clear since at least the 17th century that the Crown cannot raise taxes without statutory authority. In the sense that the Income Tax Act 1976 authorises the Crown to raise taxes it might be said that it "affects the rights of the Crown". But the effect is much more real with the Goods and Services Tax Act 1985 because the binding provision in that Act means that it is obliged to pay GST. In that case *its* "right" not to pay tax has been prejudicially "affected", by the express binding provision indicating that it is obliged to pay those taxes as are others in the community.

158 Even within groups of statutes concerning the same subject matter Parliament has not addressed the question of whether to include an express provision on a consistent basis. One area is labour law (para 156 above). Another is personal law. Some Acts contain express provisions (Marriage Act 1955, Family Courts Act 1980, Family Proceedings Act 1980, Domestic Protection Act 1982) while others do not (Family Protection Act 1955, Domicile Act 1976, Guardianship Act 1968, Adoption Act 1955, Status of Children Act 1969). (See also paras 146–147 and 149.) It is difficult to see how the Crown can avoid the effect of legislation creating and regulating status whether it is named by the relevant Act or not. Legislation under which people become spouses or parent and child has pervasive effect throughout our legal system. As one Parliamentary Counsel said to us, the Crown must deal with such matters just as the citizenry does. That is so as well of the status of companies and other legal persons, the legislation for which also in general contains no express binding provision.

159 Notwithstanding the increase in express provisions there are also inconsistencies *within* the latest statutes. Conservation legislation enacted recently contains express provisions, but the New Zealand Walkways Act 1990 does not. The Maori Language Act 1987 and Treaty of Waitangi (State Enterprises) Act 1988 contain no express provision while the Treaty of Waitangi Act 1975 does. The Maori Affairs Restructuring Act 1989 contains an express provision

while the Ministry of Energy Abolition Act 1989 does not. But once again a reading of some of this legislation shows that the presence or the absence of the provisions is often of no consequence at all. Their absence can make no difference for instance to the Abolition of the Death Penalty Act 1989, the Crimes of Torture Act 1989 or the provisions of the Finance Act 1989 concerned with the transitional financial quarter year (resulting from changes made by the Public Finance Act 1989 which *does* have an express provision, as does the Crimes Act 1961—by contrast to the other two statutes just mentioned).

160 Many of the Acts which are silent on the matter clearly affect the rights of the Crown by necessary implication (even using the most difficult test). Otherwise their central purpose would be frustrated. The Crown Proceedings Act 1950, for example, was passed to confer greater rights on the citizen to sue the Crown and to remove some of the Crown's legal advantages. Parliament could not conceivably have intended the Crown to be at liberty to ignore its provisions. This must also be so of the constitutional legislation mentioned in para 157—so far, that is, as it places limits on pre-existing powers. So the common law (including the prerogative) powers of the Crown in respect of Judges, Ministers and Parliament must have been affected by the Constitution and Electoral Acts. There still however remain cases where there is doubt about whether that implication can be drawn.

SUBJECTING THE CROWN TO STATUTES

161 Clause 10, by reversing the presumption, will remove many of these uncertainties and the need for the application of the complex common law rules. If more statutes can be assumed to have general application, the statute book will be clearer and simpler to use. The reversed presumption (even with the limit provided for by its own terms) will also give a greater incentive to Ministers, departmental officials and Parliamentary Counsel to give adequate consideration to the position of the Crown. As we shall see, there may be good reasons for special provisions relating to the Crown in statutes of general application—but they are better specifically worked out in context by reference to principle rather than being absorbed in a general rule of non-application.

Uncertainty

162 Enough has been said to reject the proposition that only about one third of our statutes bind the Crown. First, all those provisions which confer powers and rights on the Crown plainly bind it; the Crown cannot act outside its legal powers. And, second, many other statutes which would limit the pre-existing rights and powers of the Crown may also be effective either because their purpose would be frustrated otherwise or because that application is necessarily implied. The extent of this second category is a matter of conjecture since it is not clear which of the broad and possibly varying standards of application would be used by the New Zealand courts.

163 To the uncertainties indicated in the last paragraph are also to be added the uncertainties about the extent to which a particular statute which does "bind" the Crown affects the rights of the Crown. Answers may have to be given in respect of particular provisions. It has been held for instance that although the Crown is bound by the substantive provisions of a regulatory statute it may not be subject to criminal liability (and accordingly prosecution) for breach of those provisions, *Southland Acclimatisation Society v Anderson* [1978] 1 NZLR 838 (see further paras 183–188).

164 The unsatisfactory character of the uncertainty which would otherwise result from the general position under s 5(k) is also demonstrated by the frequent inclusion in the statute book of particular provisions which regulate specific Crown interests—relations with local government (including planning and rates), Crown land, defence forces, taxation, and enforcement. We touch on those matters later.

165 The general position was well and shortly stated in the Supreme Court nearly 40 years ago:

> The construction of those words [of s 5(k)] has given rise to a good deal of difficulty. *(Peerless Bakery Ltd v Clinkard (No 3)* [1953] NZLR 796, 800)

Equality before the law

166 One major reason for a change in the law accordingly is to reduce its uncertainty. The other major reason relates to substantive principle. The Crown, the State, the Government should be subject to

the law, including legislation. It should not have some broad exemption from the law. Bracton made the point seven hundred years ago; the King is subject to God and the law, words repeated by Sir Edward Coke speaking to King James three hundred years later, *Case of Proclamations* (1611) 12 Co Rep 63, 77 ER 1352. The principle was applied at that time, for instance to general legislation affecting leases: *Case of Ecclesiastical Persons* (1601) 5 Co Rep 14a, 14b, 77 ER 69. In a much more mundane way the New Zealand Parliament said a similar thing in the Crown Suits Act 1881. Under that Act, petitions against the Crown were to

> be conducted in the same manner, and subject as nearly as may be to the same rules of practice, as an ordinary action between subject and subject (s 29)

and claims could be made under broadly stated causes of action "for which cause of action a remedy would lie if the person against whom the same could be enforced were a subject of Her Majesty" (s 37). That emphasis on subjecting the Queen and Her subjects to the same law was balanced by a provision reflecting the basic limit on that equal treatment mentioned at the outset of this chapter (para 129): nothing in the Act was to affect the powers, authorities or liabilities, or the exemptions from liabilities of Her Majesty, officers or servants under any enactment (s 42).

167 The Supreme Court of Canada has stated the equality argument clearly and forcibly in a recent case in which the statutory presumption led to the finding that two Crown corporations were not bound by cartel legislation (and the consequent abandonment of prosecutions against the other alleged conspirators on the ground that it was unfair to prosecute them and not the Crown):

> Why that presumption should be made is not clear. It seems to conflict with basic notions of equality before the law. The more active government becomes in activities that had once been the preserve of private persons, the less easy it is to understand why the Crown need be, or ought to be, in a position different from the subject. *(R v Eldorado Nuclear Ltd* (1983) 4 DLR (4th) 193, 200)

Sir Samuel Griffiths, Chief Justice of Australia, spoke similarly in

1911 (but in stating the law as then understood rather than proposing a policy):

> I am of opinion that, when the Government of New South Wales engages, either in its own name or through the agency of a corporation created for the purpose, in enterprises which in former times were only carried on by individuals, it is subject to the same liabilities, and is governed by the same laws to and by which individuals are subject and governed under the same circumstances, *(Sydney Harbour Trust Commissioners v Ryan* (1911) 13 CLR 358, 366–367)

Particular results of the presumption such as those mentioned in para 145 give emphasis to those general statements.

168 The Ontario Law Reform Commission has shown how the strong form of the principle of non-application developed—and also that the development has in general not been supported by a clear and understandable rationale; such a rule, it says, is an unstable thing, *Report on the Liability of the Crown* (1989) ch 7. That Commission outlines the varying ways in which the courts have partly limited the presumption presumably in part because of the lack of a general rationale. The High Court of Australia has also recently stressed that the historical considerations which gave rise to the presumption are largely inapplicable to conditions in Australia where the activities of the executive Government reach so broadly, *Bropho v Western Australia* (1990) 93 ALR 207. The role of the state is of course subject to major change in New Zealand at the moment. But even with any resulting reduction, the arguments of principle and uncertainty continue to apply to the extensive areas of activity which remain in the hands of the state.

169 Whatever the origins of the presumption of non-application its main justification must now be the policy of preserving for the public the efficient, unimpaired functions of the government, *Sutherland Statutory Construction* (4th ed 1986) para 62.01 referring to *Guaranty Trust Co v United States* (1937) 304 US 126, 132 and *Balthasar v Pacific Electric Ry Co* (1921) 202 P 37, 38–40 and many other cases; the two mentioned take the rule back to its English origins. The Law Commission understands that argument. The argument must prevail in some situations—indeed in many. But it should not provide the basis of a principle of non-application of uncertain and varying impact applying across the whole statute book. Its strength must be assessed in particular contexts. That assessment is made in the first

place by the legislature in enacting the particular statute; and, as we have said, Parliament has done exactly that in a great number of cases. And then it is a constitutional function of the courts to read those special empowering or exempting provisions carefully to ensure that the state is acting within the power conferred on it.

170 Early in 1989 the Law Commission widely distributed a paper analysing the present state of the law, reviewing the legislative practice, and proposing the reversal of the principle in s 5(k). We had presented the same suggestion in our 1987 discussion paper on the Acts Interpretation Act 1924 (paras 100–103). With only a handful of exceptions (all from government departments), the responses, including the large majority of those from government departments, supported the reversal of the presumption. (Several of the submissions did suggest that the change should apply only to legislation enacted in the future; and some referred to specific aspects, such as taxation and defence forces. We come back to those matters later in this chapter.) The reasons given for that support are principally the two already provided—equality before the law and greater certainty.

171 Two of the four departments which opposed the reversal of the presumption emphasised particular matters—taxation, Crown land, local government. As appears from the detail of the statute book (briefly summarised in para 189 below and more fully recorded in the schedules mentioned earlier, para 156), those matters are already the subject of much specific legislation. Parliament thereby indicates that the general presumption is not thought adequate to the purpose. In many of those cases particular provisions will continue to be required. The only change will be that they will be included in the context of the reversed presumption. The particular provision may not indeed even be different in its wording. The Transport Act 1962 contains one relevant example among many. Section 200(1) provides that the Act binds the Crown but subs (2) excludes from that proposition bylaws made by local authorities under the Act.

172 A third department did in fact recognise that particular provisions of the type just mentioned could be made, but it expressed concern about the effect of the new regime on prerogative powers. As this chapter has already indicated, a general presumption one way or the other does not appear to have any real consequence for those powers, rights and liabilities which are special to the Crown (para 142–143). The particular question will be whether the new statute, conferring powers or imposing limits on the powers of the Crown

does in law displace or limit the earlier power. The answer to that question turns on the particular situation. Two of the departments also emphasised the practical difficulties that would arise from the reversal. But those are difficulties that should be faced and dealt with through proper systems of consultation; what should be considered is whether there is a persuasive reason for the state in the particular case not to be subject to the same rules as others and to be entitled instead to a special regime. The issue should routinely be given appropriate attention when particular measures are being proposed and prepared.

173 The change gains support as well from the actions taken in other jurisdictions. In Canada, British Columbia and Prince Edward Island have made the change, the former on the basis of a report of the provincial law reform commission; and the Ontario Law Reform Commission in an impressively argued report has very recently proposed the same change. We are informed that the British Columbia change, made in 1974 and applicable from the outset to existing statutes as well as to future ones, has not given rise to any practical difficulties except in relation to Crown lands where the provision has been adjusted. See eg, *The Queen v City of Victoria* (1979) 99 DLR (3d) 667, *Stewart v Kimberley* (1986) 70 BCLR 183, and *Re Gidora and District of Surrey* (1988) 56 DLR (4th) 185 for the major cases. The South Australia Law Reform Committee has recommended the reversal of the presumption, *104th Report Proceedings by and against the Crown* (1987) 22–23 and appendix 4. And the High Court of Australia has substantially revised the common law presumption, referring to the changing role of the state and the lack of any principle supporting a broad, stringently stated presumption, *Bropho v Western Australia* (1990) 93 ALR 207.

174 For the foregoing reasons the Law Commission proposes that the presumption stated in s 5(k) should be reversed. The principle now should be that the Crown is subject to an enactment unless the enactment provides otherwise.

175 Three questions arise from that conclusion. How should the principle be stated? What, if any, general limits on the principle should be provided for? And what does our review of the relevant provisions in the statute book indicate about the particular matters which should be routinely considered by those preparing legislation which might affect the rights of the Crown?

THE NEW PROPOSAL: ITS WORDING

176 The principle in s 5(k) is to be reversed. How can the new interpretation statute best achieve that? We have considered three ways. Simple abolition of the presumption may not be the answer since the resulting silence might cause uncertainty. On the other hand particular enactments could be applied according to their terms, without reference to the old presumption; see also the express reference to the Crown in the definition of "person" and like phrases in cl 19(1). A second approach would be to generalise the 200 or more specific provisions and for the Interpretation Act to state that enactments bind the Crown. The Canadian provincial statutes referred to earlier so provide as does the Ontario draft Act (para 173 above and Ontario Law Reform Commission Report on *The Liability of the Crown* (1989) 135, proposed amendment to the Interpretation Act). For the reasons we have already given, such a statement is broader than is necessary, since under the present law the Crown is bound by a great number of statutes without any express statement. What is in issue is the effect of legislation on its rights existing independently of the particular enactment.

177 That analysis suggests a third approach to drafting the new provision: it should indicate that the rights (read broadly as at the moment) of the Crown, existing separately from the particular enactment, are in general capable of being prejudicially affected by statutes in the same way as the rights of others are affected. (There may then be a further question whether in a particular case specific rights of the Crown have been affected and, if so, to what extent. But that question cannot be resolved by a general provision (whatever its form) in an interpretation statute. It is a question for particular enactments and is taken up at the end of this chapter.) That third approach suggests a provision to the following effect:

> An enactment applies to the Crown and affects its rights in the same way it applies to and affects the rights of any other person.

An immediate reaction to such a provision is that the proposition it states cannot be so, since a great number of statutes by their own terms treat the Crown quite differently from other persons. Much legislation is drafted with exactly that purpose in mind. That point is of course covered as a matter of law by cl 3 of the present text, but the doubt remains.

178 The second approach—a simple statement that the Crown is bound—does not have that difficulty. It also has the advantage that it has been tested for 16 years in British Columbia and has not, we understand, caused difficulties. Further its only defect is that it is an over statement. Accordingly cl 10 takes the form already indicated:

> **Enactments bind the Crown**
> Every enactment binds the Crown unless it otherwise provides or the context otherwise requires.

In this case we have used the emphatic "every" to stress the general presumptive application of the new proposition to all enactments, existing and future. That needs to be balanced and accordingly we have repeated, just this once, the qualifying phrases from cl 3. We considered including an express abolition of the present presumption, but that is sufficiently achieved by the repeal of the 1924 Act and the enactment of this new presumption.

179 Like the many specific provisions already expressly stating that the Crown bound by legislation, this provision is not intended to affect the position of Her Majesty in her personal capacity, compare the Crown Proceedings Act 1950 s 35(1).

GENERAL LIMITS

180 Two general limits on the reversal of the principle have been suggested to us: the new presumption might apply only to statutes enacted in the future and not to existing statutes; and the Crown should not be subject to criminal sanctions. We do not include either limit in our draft for the reasons which follow.

Application to existing legislation

181 The proposed cl 10 should apply from the outset to existing statutes and not simply to statutes enacted in the future. We have mentioned that the British Columbia change had that general application and no major difficulty appears to have arisen from that. The Ontario proposal is to the same effect. And, in general, interpretation statutes enacted in New Zealand as elsewhere apply from their commencement to existing as well as future statutes (paras 252–255 below, annotation to cl 3).

182 Furthermore, having two opposing regimes operating at the same time would create unnecessary confusion—and that confusion

would last for a very long time. Between 10 and 30 new separate public general Acts are enacted each year—and, as noted, we have about 620 such statutes. Over 30 Acts beginning with the letter "A" were enacted more than 10 years ago. The uncertainty the change is designed to remove would continue for existing statutes—and perhaps even increase with the parallel operation of two different rules. And how would major amending Acts be treated? Some are effectively independent statutes. Finally, the careful examination which many departments have already undertaken since 1987 and especially during last year of each statute for which they have some responsibility and those which affect them indicate that they are fully able to make proposals to protect proper state interests. The existing particular regimes would in general continue unchanged and unaffected by the changed presumption. We touch on that at the end of this chapter.

Criminal liability

183 The Crimes Act 1961 provides expressly that it binds the Crown. The Summary Proceedings Act 1957 by contrast contains no such provision and it has been said *obiter* that the Crown accordingly cannot be prosecuted under it, *Southland Acclimatisation Society v Anderson* [1978] 1 NZLR 838, 843. As we note later, many statutes have specifically addressed particular aspects of the enforcement of legislation against the Crown, such as licensing and inspection, but there is no standard approach.

184 The issue of criminal liability is not one of general importance in practice—but two cases and two particular enactments indicate that the issue is a real one and what can be involved if criminal remedies are not available. The facts of one of the cases has already been mentioned—the immunity of the Canadian Government from being prosecuted as a party to an illegal cartel with the consequence that the other alleged parties were not prosecuted and an important public policy was not enforced, *Eldorado* case paras 145 and 167 above. In the *Southland Acclimatisation* case, a prosecution against the New Zealand Minister of Mines and the Mines Department for failing to comply with the conditions of their water rights fell at the first hurdle; although the relevant statute said that it bound the Crown the Court held that that wording was not sufficiently strong to enable the Crown to be prosecuted for breaching the Act's provisions (cf eg, *Saskatchewan v Fenwick* [1983] 3 WWR 153).

185 The liability of the Crown under cartel legislation was expressly addressed by the New Zealand Parliament in 1979 when the Commerce Act 1986 was amended to provide for court procedures against the Crown for breach—but by way of a declaration rather than by criminal prosecution. The overloading of Crown operated vehicles can be the subject of a fee payable by the relevant chief executive to the Secretary of Transport on the issuing of an infringement notice. An independent assessor is to resolve any dispute over the fee.

186 It appears to be the case that only the Crown, a Minister as such, the chief executive or the relevant Crown body can commit the principal offence in breach of the four provisions mentioned in the last two paragraphs. Similarly many regulatory offences can be committed only by the body who is the licensee, the owner, the occupier, the employer, the trader .... In such cases there may not be a specific minister or public servant who has the relevant obligations under such statutes and who could be prosecuted. The position is analogous to that disclosed in *Adams v Naylor* [1946] AC 543 which helped precipitate the Crown Proceedings Act 1947 (UK). By contrast most of the serious, traditional offences included in the Crimes Act 1961 are primarily committed by individual natural persons. It is relatively rarely that a legal person will be charged with those offences. In practice it is not those major crimes that are important for the Crown. But the regulatory offences can be. The cases and legislation just mentioned indicate that. So too do many offence provisions in the other enactments which come within the third, general category discussed earlier in this chapter.

187 Is there any reason why the Crown—already subject in a general way to the legislation and its substantive requirements—should not be subject to the penal provisions and to prosecution? One reason is the dignity of the Crown, but it is to be subject to the law, and effective enforcement in some cases, even if rare, may require prosecution; we have seen that it is not unknown. A second reason relates to penalty; in general only fines or monetary penalties are possible, and what is the point, it might be asked, of one part of the Government paying money to another part of the Government? Those preparing the transport overloading legislation must have thought it had point. Departments have legally separate appropriations. New public finance legislation and practices emphasise the responsibility of individual departments and facilitate interdepartmental payments. Such payments might have major budgetary significance. Moreover, many bodies with the privileges of the Crown are

legally distinct and have their own budgets. And the penalty makes formal the condemnation of the agency for its breach of the criminal law, and helps promote future compliance with the law—by others as well as by the Crown. Accordingly we do not provide for any general exemption from criminal liability. Specific different provision can of course be made.

188 Legislative practice shows that enforcement against the state can be handled in a variety of ways in particular statutes:

- a procedure leading to a declaration might replace the prosecution;
- administrative remedies might be available;
- some or all of the following enforcement methods might or might not be made applicable to the Crown:
  - — licensing and registration
  - — inspection and related powers
  - — requisition powers
  - — record keeping.

These matters will be developed in the proposed Manual on Legislation. Legislative practice is inconsistent. More principled and careful attention should be given to them and there should be adequate consultation.

AREAS FOR SPECIAL PROVISION

189 That is also the case with other areas in which special provision is often made for the Crown:

(1) *Armed forces*
Many Acts which are otherwise expressed to bind the Crown make exceptions for members of the Defence Forces and Defence Ministry employees engaged in the course of their duties (eg, Toxic Substances Act 1979 s 3, Noise Control Act 1982 s 3, Shipping and Seamen Act 1952 s 3). Similarly, Police and Customs officers are sometimes given total or partial immunity (eg Arms Act 1983 s 3, Dog Control and Hydatids Act 1982 s 3).

(2) *Local government*
The Crown is commonly exempted from compliance with local body bylaws, such as those made under s 72 of the Local Government Act 1974 (concerning the use of roads) and Harbour Board bylaws made under the Dangerous Goods Act 1974 s 4. Special provisions also exempt the Crown from paying rates on certain types of land (Rating Powers Act 1988 ss 4–5).

(3) *Taxation*
At common law the Crown need not pay tax. Thus if Parliament is to subject the Crown to any particular taxation measure, it must state that the measure is to bind the Crown (as the Crown's rights are being adversely affected). GST and customs duty provide recent examples. The special position of the Crown may still be recognised and provided for. For example, petroleum tax is payable by the Crown under the Local Government Act 1974 unless the Governor-General in Council decides otherwise.

(4) *Crown land*
Crown land is also sometimes given special treatment in the statute book. Examples include the Fencing Act 1978, which does not apply to National Parks, roads, railways land or Crown land reserved for sale; and s 272 of the Local Government Act 1974 which exempts the Crown from the statutory conditions imposed on others who wish to sell part of an unapproved subdivision.

(5) *Crown employment*
This area is now being increasingly subjected to the general law although special provisions are still to be found in the State Sector Act 1988 and other public sector legislation. Some relevant statutes, such as the Apprenticeship Act 1983, do not contain express binding provisions; if the principle were reversed, questions under (1) above would also arise, for instance in respect of rights of entry into defence establishments.

190 Another area of special legislation—falling within the third, generally applicable category of statutes identified earlier—concerns the enforcement of rights especially by execution of judgments. The Crown proceedings, reciprocal enforcement of judgments, and distress and replevin legislation all reflect the special position of the Crown. It is in general not subject to processes of execution and

accordingly it is not bound by such provisions; that position should be maintained. The Commission will be returning to that and related matters in its reference on the legal position of the Crown.

191 One general point to be repeated about these particular provisions is that they will usually not be affected by the proposed change in presumption. In this as in other areas the general disposition of an interpretation statute will not be adequate and will be made inapplicable in the particular case.

V
Prospective Application of New Enactments

INTRODUCTION

192 It is a general principle of jurisprudence that law should have prospective effect only. More than 200 years ago, the drafters of the New Hampshire Constitution "added a note of moral indignation" to justify their statement of principle that

> Retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offences. (Quoted by Lon L Fuller *Anatomy of the Law*, New American Library 1968, 101)

That is the principle. It is long established. It is frequently asserted. It also has its limits.

193 This chapter

- distinguishes between the date of the coming into force of legislation and the date from which it has effect;
- describes the unnecessary complexity of the present law;
- reviews relevant legislative practice;
- discusses principles relevant to the operation of the principle of non-retrospectivity; and
- outlines the proposed provisions in the draft Interpretation Act.

PARTS 2 AND 3 DISTINGUISHED

194 Part 2 of the draft Bill concerns the question: from what date does an enactment come into force, as part of the law of New Zealand? Is it the date of assent or making, or a later date, either specified by the particular enactment or to be fixed by the executive? The general answer provided by the draft is 28 days after assent, but the particular enactment could use either of the other two (or a combination for different parts). (The Constitution Act 1986 s 16 answers the logically prior question for Acts. It provides that a Bill passed by the House of Representatives "becomes law" when the Sovereign or Governor-General assents to it; see further paras 263–264 below, annotation to cl 4.)

195 Part 3 concerns a related but separate question: from what time does an enactment have effect? To what events, in time, does it apply? In particular does the new enactment apply to events which happened before it became part of the law, or does the old law (now no longer part of the law in the sense of part 2) continue to apply to those events?

196 The contrast between the two issues can be easily seen in the development of the law by the courts. Given the nature of litigation, the development or clarification of the law will almost always be provided by the courts at and from a time *after* the time of the events or situations to which that new law is then applied. The House of Lords expressly recognised this element of the retrospectivity of the judicial development of the law and the dangers involved in it when in 1966 through the then Lord Chancellor, Lord Gardiner, it announced its willingness to depart from its previous decisions when it appeared to be right to do so, [1966] 1 WLR 1234. More recently the present Lord Chancellor, Lord Mackay of Clashfern, has justified judicial reluctance in some cases to change the law, because, as he put it, in every case where the judge overrules or modifies an earlier decision this has retrospective effect, "Can Judges Change the Law?" (Maccabean Lecture on Jurisprudence) (1987) 73 Proc Br Ac 285, 302. The High Court of Australia recently addressed the same issues in the course of its judgment on the effect of statutes on the Crown, paras 155, 168 and 173 above.

197 Curative legislation, validating action taken earlier, is another clear example of legislation which comes into force on one date but which has its legal effect in relation to events which occurred earlier.

Such legislation—being specific and often applicable only to past events—has in fact more the characteristics of a judgment than of a legislative measure.

THE UNNECESSARY COMPLEXITY OF THE PRESENT LAW

198 The present law about the temporal application of legislation is complex: it includes general legislation (in the Acts Interpretation Act 1924 ss 18, 20, 20A, 21 and 22), much particular legislation (specific statutes frequently contain their own repeal, transitional and savings provisions), and the common law. Those sources may apply singly or in combination.

199 The complexity arising from this variety of possibly overlapping sources is increased by the difficulties presented by the varying scope of the general legislative provisions in the 1924 Act—some say they apply to the repeal of the *whole* Act and others to the repeal of *part* of an Act. Some, but not all, apply to *expiry* as well as to repeal. Others refer expressly to regulations and to other legal instruments as well as to Acts while others again refer only to Acts and may not have a wider application notwithstanding the general definition of Act as including regulation in s 4. Some of the statutory provisions appear to be different from still potentially applicable common law rules while others appear to be internally contradictory. And some of the particular rules are difficult to apply in concrete cases.

COMPREHENSIVE, ACCESSIBLE, AND PRINCIPLED PROVISIONS

200 Part 3 of the draft Bill is an attempt to present a more comprehensive and accessible set of provisions, based on broadly accepted principle. The basic principle, stated expressly, is that enactments have prospective effect only (cl 6(1)). Statements of principle are becoming more common in the New Zealand statute book. This does appear to be a case where such a statement is helpful. Interpretation statutes regularly include statements of principle as well as more detailed rules. And many general interpretation provisions in the United States provide precedents. The statement makes the law more accessible, even if it does not by itself resolve the hard cases.

201 The provisions in part 3 are more comprehensive than the present Act in the following ways:

- they cover the case of the effect (if any) on earlier events of a new statute where none has existed before;
- they apply generally to regulations as well as to Acts;
- they apply generally to amendments and repeals and revocations of parts of Acts and regulations as well as to their repeal and revocation as a whole; and
- they apply generally to the expiry of legislation as well as to its repeal or amendment.

202 The comprehensiveness is of course a relative matter. Clause 3 of the draft Bill reinforces the common law proposition that an interpretation statute is not inexorably applicable in all circumstances: the particular statute can by specific provision displace or modify any general rules; and the wider context might also have that effect. Practice demonstrates such displacement or modification. The majority of new complete statutes and many amendment Acts contain specific provisions regulating temporal application, transition and savings, and in other cases the context will indicate a different answer from that provided by the general rule. The specific provisions sometimes refer to the Acts Interpretation Act 1924 by stating that they are to apply notwithstanding that Act or in other cases that they are without prejudice to that Act.

LEGISLATIVE PRACTICE

203 Particular categories of statutes and random samples illustrate the practice of displacement or modification. More importantly for the present purpose, they also help indicate the principles to be applied. And they provide a basis for further developing standard provisions to be included in particular statutes. Accordingly we consider some of the practice here.

Tax legislation

204 With tax legislation the established practice appears to be to completely supplant the relevant general provisions of the Acts Interpretation Act 1924. Each recent Income Tax Amendment Act states that it applies as from a particular tax year or from a particular date. The technical matter of the effective date of operation is resolved.

The Inland Revenue Department indicated in its submission that the general provisions in an Interpretation Act are not appropriate for taxation legislation. Whether that is so or not, the particular practice does have the advantage of certainty.

205 Particular taxation practice does sometimes give rise to contentions of retrospectivity. The issue arises in two ways. Sometimes the taxation regime will apply to income received before the legislation is enacted (although in some of those cases the decision to change the law will have been announced earlier but possibly without the detail necessary to give proper notice). In other cases the argument will be a broader one: taxpayers who have entered into a particular long-term transaction expecting that a certain tax regime will continue into the future will now be thwarted in that expectation. We take no position on those controversies except to stress that there are relevant principles which can be—and indeed often are—used in relation to the fixing of the timing of such proposed changes. We mention the principles later in this chapter. They should also be reflected in the general provisions of an Interpretation Act.

Pending proceedings

206 Another category of particular statutory provisions consists of those regulating pending proceedings, especially legal proceedings. The Department of Justice provided a valuable analysis of several of the statutes for which it has responsibility. It divided 33 relevant statutes or provisions into three groups:

(1) *those which make no provision because*, it would seem, *of the subject matter of the statute*—either the statute is effectively new (such as the Race Relations Act 1971 and Adult Adoption Information Act 1985) or legal proceedings would not be relevant in any event (such as the Constitution Act 1986); the 1971 and 1985 Acts do however present two other aspects of retrospective application which are not expressly addressed in particular application or savings provisions: can the 1971 Act apply to alleged acts of discrimination occurring before the Act's commencement (no, because of the general common law principle of the non-retroactivity of the law, especially law imposing new obligations, and see also s 27(2)); and can the 1985 Act apply in respect of adoption orders made before its commencement (yes, because of the way it is written; indeed it would

otherwise not have had practical effect for 20 years). (There were six provisions in all in this category.)

(2) *those which make no provision even although there might be pending proceedings*—the matter was presumably left to the Acts Interpretation Act 1924 and, if appropriate, the common law (five provisions).

(3) *those which made specific provision* to the effect that the old law continued to apply (12), that the new applied (seven), or that there was a choice (three).

207 The Department makes three interesting comments on this legislation:

(1) where proceedings are likely to be pending—as with the major family law reforms—the new legislation generally makes detailed specific provision;

(2) the transitional provisions often go beyond the general provisions of the Acts Interpretation Act in both their scope and their detail; and

(3) some of the particular provisions appear to have been included because of uncertainty about the effect of the general provisions.

Contract statutes

208 A reading of the detail of some of the specific provisions also suggests a need for more consistent drafting approaches. Four of the contract statutes apply only to contracts concluded after their commencement. But each uses different wording to achieve that identical result:

> This Act shall apply only to contracts made . . . after the commencement of this Act. (Minors' Contracts Act 1969 s 15(2))
>
> This Act shall not apply to contracts entered into before the commencement of this Act. (Contractual Mistakes Act 1977 s 12)
>
> This Act shall not apply to any contract made before the commencement of this Act. (Contractual Remedies Act 1979 s 16)
>
> . . . this Act does not apply to any . . . contract . . . made before the commencement of this Act. (Contracts (Privity) Act 1982 s 15)

Note the varying use of the future or present, negative or positive, singular or plural, and "made" or "entered into". (The Contracts Enforcement Act 1956 ss 2(6), 4(2) and 5(1) are to the same effect and use yet another form of words.)

209 The marginal note for the last three quoted provisions is **Application of Act**. That positive wording suggests a form of words for the section itself like the following (if a provision is to be included):

> This Act applies only to contracts made after its commencement.

Other contracts statutes have been expressly retroactive, Illegal Contracts Act 1970 s 10 (but see s 11) and Credit Contracts Act 1981 s 53.

Judgments protected

210 The drafting point just made relates to form. But the application provisions in the two Acts last mentioned raise a substantive issue about retrospectivity. Both provide that they in general apply to contracts made before (as well as after) the commencement of the Act. Only the Illegal Contracts Act 1970 (in s 11(3)) addresses expressly the position of a contract which has already been the subject of a judgment:

> Nothing in this Act shall affect the rights of the parties under any judgment given in any Court before the commencement of this Act, or under any judgment given on appeal from any such judgment, whether the appeal is commenced before or after the commencement of this Act.

211 What is to be made of the silence in the Credit Contracts Act 1981? For the Court of Appeal it meant that a matter already the subject of a judgment under the law in force before that Act came into force was now to be decided under the new Act. It saw the express retrospective language—without any saving for judgments given—as requiring that result, however surprising it appeared, *Sharplin v Broadlands Finance* [1982] 2 NZLR 1, 8–9, 11, 12. The difference in respect of savings from the Illegal Contracts Act 1981 was noted. The position is hardly satisfactory. What if the time to appeal has expired? What if the relevant evidence has not been heard at first instance? But more basically what can the justification be for depriving the parties of their accrued rights as adjudicated under the substantive law in force not only at the time of the transaction but also at the time of the trial? Legislation with a general retrospective effect does sometimes expressly save judgments already given, see eg, Subordinate Legislation (Confirmation and Validation) Act 1989 s 7(2), Citizenship (Western Samoa) Act 1982 s 5, Customs Acts

Amendment Act 1939 s 11(2), Town and Country Planning Amendment Act 1971 s 3(6) proviso.

General

212 A reading of a mixed group of recently enacted statutes also indicates that the effect of repeal, transition and savings is frequently but not consistently addressed by particular provisions in particular statutes. Thus of the first 29 statutes enacted in 1989, 11 contain express provisions (although not all are comprehensive and the potential applicability of the Acts Interpretation Act 1924 is recognised in at least one of them). This general area is one to which those giving instructions for the preparation of legislation should give particular attention.

RELEVANT PRINCIPLE

213 Controversies down the years about particular statutes which are allegedly retrospective indicate the importance of principle in this area—principle which should be relevant to provisions included in particular statutes as well as to those included in a general interpretation statute and which appear to underlie the relevant common law. The legislative practice just reviewed suggests relevant principles. We now discuss them.

Effectiveness of the law

214 Much of the law works because the people subject to it know in advance what it requires of them and organise their actions in accordance with it. So it would not be sensible to have the whole body of the law relating to the use of roads determined after the event—speed limits, the right of way at intersections, licensing, the duty to drive on the left or the right side of the road. In such areas the law is not usefully or effectively made known unless it has been stated *before* the time when it needs to be known.

Justice

215 It may be unjust as well as ineffective to apply new law to past situations. Criminal liability is the easiest case. No one should be subject to criminal penalty for something that was not unlawful at the time of the alleged offence. Article 15 of the International Covenant

on Civil and Political Rights promulgates this principle for New Zealand and it has been carried over into the New Zealand Bill of Rights Act 1990 s 26(1) and particular provisions of the criminal law (see the commentary to cl 6, para 283 below). The certainty of the criminal law is a related principle, Crimes Act 1961 s 9 and the 1966 House of Lords statement on precedent para 196 above; see also *Legislation and its Interpretation: Statutory Publications Bill* (1989) NZLC R11 paras 13–24 and report of the Regulations Review Committee on *The Statutory Publications Bill* AJHR 1989 I 16.

216 The principle of justice is also relevant to the assessing of legislation which takes away a final judgment already delivered in a litigant's favour. It can often be said that the rights of that litigant to a fair trial have in effect been abrogated, after the event (compare chapter 29 of Magna Carta (1297 and later equivalents, *Imperial Legislation in force in New Zealand* (1987) NZLC R1 pp 39–40) and article 14(1) of the International Covenant on Civil and Political Rights). Concrete accrued rights are likely to have been destroyed. Specific statutes with retroactive effect do sometimes protect judgments already given—although as noted (para 211) that is not invariable.

217 But what of other rights or interests? Consider rights or interests

- under a contract
- in tort (say to damages for negligence or defamation)
- in respect of compensation (say under the Public Works Act 1981 or Accident Compensation Act 1982)
- within the family in respect of support, property, and dissolution of marriage
- as a shareholder or director or creditor of a company
- as the holder of a licence in a regulated industry
- under town planning legislation
- under taxation legislation.

218 The use of the word "rights" in respect of this list might be thought to beg the question especially towards the end of the list. "Interests" or "expectations" or even "hopes" might be more appropriate in some of the cases. These cases can also present a conflict between the reasonable expectations of those subject to the law and the responsibility of the Government in meeting the public interest to

review and promote policy and to promote the development and reform of the law.

Reasonable expectations

219 Individuals may enter into a contract (say for a tenancy) or make investments (say in oil exploration) on the basis that the tenancy law or taxation regime will have a particular impact on the arrangement. This consideration suggests that retroactive law making may be more objectionable in respect of conscious voluntary acts, such as contracts, rather than involuntary ones such as some tortious situations. So, in its 1966 precedent statement, the House of Lords stressed the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into, para 196 above.

Responsibilities for government

220 But Parliament may be of the view that the balance of the tenancy law or of the taxation system requires adjustment because of wider national interests. Family law, it might consider, has to be adjusted to give sole or primary weight to the breakdown of marriage and not to fault; to the welfare of the child; or to the equal rights of women. New procedures such as conciliation and mediation, or new courts such as the Family Court, might be established. Such changes, typically, apply to the whole community in the affected categories—in this case all families—and not simply to those who marry after the law is altered. The consequence is that the rights of spouses who married before the change in the law are altered without their consent. The change is retrospective.

Effective administration

221 Institutional and procedural changes, such as the establishment of new courts and new dispute settlement processes (as in the family law area just mentioned), may be impossible or difficult to introduce piecemeal with, for instance, one court still existing for older cases and the new court for newer ones. General law and particular practice do indeed distinguish between substantive rights and procedural matters. Legislation characterised as "procedural" is regularly made applicable by courts and legislatures to events occurring earlier.

THE OVERALL APPROACH OF PART 3

222 The 1924 Act, specific legislation, legislation elsewhere, the common law, relevant commentary, and submissions have led us to prepare provisions which have a more general scope, are easier to understand, and more firmly based on principle. We have already indicated their wider scope (para 201). The proposals will remove uncertainties. In those ways the law can be made more accessible.

223 The provisions of cls 6 to 8 state three propositions:

(1) new legislation in general has no effect on established rights and liabilities and other things which are established (including things which no longer exist or are no longer in force) (cl 6); [1]

(2) actions of a continuing character (such as regulations or appointments) done under a repealed enactment can continue in effect under new, substituted legislation (cl 7); and

(3) references in legislation to an enactment which has been amended or replaced are in general to be read as referring to the current enactment (cl 8).

224 The underlying principle is that positions established by or under the old law are left unaffected by the new law. Under (1) this is done completely, generally with the purpose and effect of protecting vested rights and enforcing accrued obligations. Under (2) and (3) the established positions are integrated into the developing body of law, to take account of the need to relate various continuing parts of the law to each other.

225 The commentary to cls 6–8 shows that the provisions may still present problems of interpretation and application in different cases. Thus what is meant by an "accrued or established right" in cl 6(2)(a)? And can the new enactment in issue be seen as being a "substituted" one in cls 7 and 8? Both issues arise under the present legislation and the former arises under the common law as well. Thus, in the first question, the phrase "established right" relates to the long established

[1] In the 1987 Discussion Paper we considered separately the impact of new legislation on things no longer in force and things which are established, paras 58–60, 65–79. We noted that the distinction between something being no longer in force and something being established is in practice not always a clear one. The principle of non-retrospectivity applies equally to both. Accordingly we have brought them together in the draft.

distinction found alike in the common law and in general interpretation statutes between substance and process: as we have noted, new procedural legislation is routinely made or considered applicable to situations arising before the legislation is enacted, consider, eg, *R v Cann* [1989] 1 NZLR 210 CA.

226 In many cases the matter is better addressed by those preparing the particular statute. The issues may often be important ones of policy. For instance how should those already operating in an industry be treated under new legislation which increases, reduces or removes the applicable regulatory regime? Should there be compensation or no relief, grandfathering, deferred or immediate application? The clear statement and answering of such questions can avoid litigation. Cf, eg, *Northland Milk Vendors Assn v Northern Milk Ltd* [1988] 1 NZLR 530, HC and CA and *Chebaro v Chebaro* [1987] Fam 127, 132.

227 Such particular provisions should of course be based on the relevant policy and on such matters as those listed in paras 213–221. On the one side is the principle—reflected in cl 6—that accrued rights not be upset and that legislation should accordingly apply only prospectively, and on the other the recognition that the relevant policy and law will change and that continuing situations will sometimes be adversely affected by that.

VI
Annotated Draft Interpretation Act

CONTENTS

PART 4
PRINCIPLES OF INTERPRETATION

PART 5
THE EXERCISE OF POWERS

PART 6
DICTIONARY

PART 7
REPEALS AND AMENDMENTS

ANNOTATIONS

228 The annotations in this chapter refer to related provisions in the Acts Interpretation Act 1924 (which is set out in appendix A) and in other Acts (listed in appendix D). The annotations explain the

additions to and some of the omissions from the 1924 measure; other omissions are separately discussed in appendix C. The tables in appendix B relate the 1924 provisions first to the draft provisions and to relevant passages of this Report; and second to earlier interpretation statutes. That material should facilitate comparisons between the proposed new Act and the present law.

PROPOSALS ABOUT THE STYLE AND DRAFTING OF LEGISLATION

229 One comparison relates to drafting style. We continue to attempt to develop a style which results in legislation which is easier to understand and more accessible. Accordingly we

- include a purpose provision (cl 1); this would replace the long title; cl 1 in many statutes, especially amending statutes, could not be a real purpose provision but would rather be a brief description of the contents of the legislation; the short title is included in the enacting provision (see paras 237–238 below);
- use different typography and different settings of the words on the page (for instance by lifting the so-called marginal note above the text of the clause, and by altering the left hand margins);
- remove capital letters which in the present statute book appear inappropriately in the middle of sentences (eg, at the beginning of the lettered paragraphs in draft cl 1);
- use arabic rather than roman numbers for parts of the Bill;
- remove unnecessary fictions;
- remove unnecessary qualifications on propositions, and, when qualifications are needed, place them at the end rather than the beginning of the sentence;
- try to present the material in a clear, logical order;
- write the provisions in the present tense;
- use basic rules for clear writing such as
  - — write in the active voice
  - — use short sentences
  - — use short words rather than long ones
  - — use words in common use instead of archaic ones.

The practices at the end of the list will sometimes invite the last of George Orwell's rules: break any of these rules sooner than say anything downright barbarous, "Politics and the English Language" (1946), *Collected Essays*, Secker & Warburg, London 1961.

230 The Commission proposes that all those changes be adopted in general drafting practice. As noted already, we will be reporting separately on the design of statutes.

231 Our work on the Manual on Legislation will also address some of those matters. One practical question which arises from these recommendations and that further work is the timing of the introduction of such changes. The proposed typographical changes and others of a relatively technical character could be introduced at once from an appropriate time—although a number of changes of that character have been introduced over a period, for instance in the 1950s and more recently (see Chan "Changes in Form of New Zealand Statutes" (1976) 8 VUWLR 318). Comparable changes are also being introduced gradually in Australia.

232 In all the respects mentioned, we follow practices to be found elsewhere, for instance in legislation enacted by the legislatures of Australia, New South Wales, Victoria, Western Australia, Canada, British Columbia, Ontario, the United Kingdom, and at times New Zealand. First Parliamentary Counsel in Canberra has in his most recent annual report summarised and emphasised them, Office of Parliamentary Counsel, *Annual Report and Financial Statements 1988–1989* (1989), 10–12. They parallel developments occurring in the preparation of legal documents generally. And the experts on good writing, such as Orwell and Strunk and White, also recommend several of the practices. The typographical proposals are based, in addition, on design advice which takes advantage of growing research and understanding about the effective presentation of the printed word. Those who have commented on those aspects of the drafts support them.

THE SHORT TITLE OF THE ACT

233 Practice here and elsewhere presents four possible short titles for the statute: Interpretation Act, Acts Interpretation Act, Interpretation of Legislation Act, and Interpretation and General Clauses Act.

234 The first title is probably the most popular. It was used in the early New Zealand enactments, in the two principal United Kingdom Acts (of 1889 and 1978), and in recent Australian and Canadian legislation. The third (used in Victoria) is more accurate than the second in indicating that the statute is not limited to Acts of Parliament (but it does not comprehend the common law including prerogative powers covered by some interpretation statutes). And the last is designed to infer that the Act is not simply about interpretation but also confers powers.

235 The Law Commission prefers *Interpretation Act* as the short title. It is well established in practice. It gives to those who use the statute book an immediate indication of its general scope, and the longer titles are probably not more informative.

THE SCOPE OF THE DRAFT

236 The scope of the draft appears from its table of contents set out at the beginning of this chapter. We have already noted that the draft has essentially the same scope as the 1924 Act and related enactments: the commencement of legislation, its essentially prospective effect, the principles of interpretation, the implication of additional powers, and standard definitions. The draft begins by stating its purpose and its area of application, and it ends with repeals and amendments.

INTERPRETATION ACT 1991

Assented to on
Comes into force on 1 January 1992.

The Parliament of New Zealand enacts the
Interpretation Act 1991

Enacting formula

237 New Zealand statutes have used the following enacting formula since the coming into force of the Constitution Act 1986 on 1 January 1987:

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

The preambular language used in Appropriation Acts and some other Acts (especially private and local Acts) causes small adjustments to that standard formula.

238 The verb form is anachronistic. It avoids a direct active statement that Parliament is exercising its law making powers, compare Constitution Act 1986 s 15. And the practice of some Australian and Canadian legislatures suggests a more direct formula:

> The Parliament of New Zealand enacts as follows:

or simply

> The Parliament of New Zealand enacts (the Act).

The Australian Parliament has just adopted a version of the latter formula. As indicated above, the Law Commission proposes that this be adopted and that in addition what has been the short title to the Bill be included in the enacting formula.

239 The 1987 formula was introduced by a resolution of the House of Representatives adopted on 4 February 1987, 477 NZPD 6781. If the formula proposed above is adopted, the House, we recommend, should also be asked to approve it, and to make any related changes to Standing Orders. This particular proposal is not intended to affect in any way the proceedings of the House. We have earlier endorsed a proposal made to us by the Clerk of the House to enhance the debate on the policy and principle of Bills presented to the House, by way of making it a requirement of Standing Orders that principal Bills include a purpose clause, para 70. That would permit a debate at the

committee stage—such as that which occurs at the moment on the short title—on the policy of the measure. An amending Bill might also include a statement of purpose, but even if it does not the indication in its first clause that it is to amend named Acts would appear to provide exactly the same opportunity as is currently provided by a provision that says just that and also mentions the short title. The proposed change may require alterations to the references to Title and Short Title in SO 200, 216, 220(1), 226(2), 262(2), and the Schedules to Part XXIX.

240 We propose that the printed form of the statute should expressly state that the date already set out at the beginning is the date of assent (as is clear on the actual assent and "green" copies of an Act but is not clear on those generally published). We propose as well that, if possible, the legislation indicate the date or dates it comes into force. If the date is to be fixed by the Governor-General in Council it will not be known at the time of assent and original printing. It may also be that in some cases the information will be very complex and that it might more conveniently appear as well or instead, as a note, with the provisions to which it immediately relates, cf, eg, Education Amendment Act 1990 s 1.

PART 1
PURPOSES AND APPLICATION

Purposes of the Act

1 The purposes of this Act are

(a) to state principles and rules for the interpretation of legislation,

(b) to shorten legislation by avoiding the need for repetition, and

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

241 See paras 8–14.

242 Statements of the *principles* of interpretation in an Interpretation Act can at best give only a general sense of direction—a sense which may of course be decisive in some cases, as with the emphasis in cl 9 on the purpose of legislation. *Rules* usually have more immediate concrete results since words and expressions commonly used throughout the statute book can be given a standard meaning which

is more or less automatically applied: month means calendar month; the singular includes the plural etc. (That standard meaning might of course be displaced by particular words or by the context as cl 3 recognises.)

243 Such standard definitions (to be found in the dictionary in part 6 of the draft) are one way in which an Interpretation Act shortens other enactments. That is also achieved by provisions which deal with recurring aspects of the operation of statutes—such as their commencement (part 2), their temporal application (part 3), their impact on the Crown (cl 10), and implied additional powers (part 5).

244 Such provisions help produce consistency and coherence in the whole statute book. In that way they help make the law more accessible and help those who are subject to it and are to comply with it, to advise on its application, or actually to apply it. The provisions also help those who prepare legislation. As already mentioned (paras 10–14), those values of consistency, coherence and accessibility are critical for the health of the law in a free and democratic society.

Commencement of the Act

2 This Act comes into force on 1 January 1992.

245 A delayed start is probably appropriate given the need for those affected by the legislation to have regard to it. See the commentary to cl 4.

Application of the Act

3 The provisions of this Act apply to every enactment which is part of the law of New Zealand except to the extent that the enactment otherwise provides or the context otherwise requires.

246 See 1924 Act ss 2, 3, 28; 1936 s 2; Preliminary Paper 1 paras 7–14.

247 This provision presents positive and negative questions:

- To which categories of legislation should the Interpretation Act apply (paras 248–255)?
- How, within that general scope, might any limits on its application in specific cases be stated (paras 256–261)?

We now consider the two questions in turn.

"Enactment"

248 In terms of the definition of "enactment" and "Act" in the dictionary in cl 19, the answer to the first question is broad: the Act would apply in general to

- Acts,
- Regulations, and
- Imperial Acts and subordinate legislation in force in New Zealand.

The inclusion of regulations in the meaning of enactment makes express what the Court of Appeal recently said was implicit in the 1924 Act (at least in s 20(h)), *Black v Fulcher* [1988] 1 NZLR 417, 418–419. The Court also made the point that there appeared to be no sensible reason for a restricted reading to be given in the context of that provision (on the effect of repeal and expiry). The definition of "enactment" in cl 19 also includes *portions* of an Act or regulations as well as the whole Act or regulations. Some provisions of the 1924 Act apply only to the whole text while others apply to part as well. There appears to be no good reason for such distinctions which continue to cause difficulties (see Preliminary Paper 1, paras 19, 51, 55, 68 and 92; see also paras 199–201 above). The definition is based on that in the Canadian model statute.

Acts and regulations

249 The draft Bill in general applies equally to Acts and regulations. The present Act does not, but makes distinctions which it is difficult to understand; thus one of the main provisions dealing with the effect of repeal expressly extends beyond Acts to the revocation of bylaws, rules and regulations whereas the other provisions in that set which overlap with it or at least deal with closely comparable situations are limited to "Acts" (or to add to the difficulty—"enactments") (compare s 20(e) with the other paras of that section). It is arguable that because of its limited introductory words (and notwithstanding the definition of "Act" in s 4 as including regulations) s 5 applies as a whole only to Acts and not to regulations. There appears to be no good reason for that as a general proposition. (Some of the provisions of that section—paras (a) and (l) for example—are by their very terms capable of applying only to Acts; these provisions are not carried forward in the present draft.)

Subordinate legislation other than regulations

250 Should the Act apply to subordinate legislative instruments other than regulations such as local government bylaws and Ministerial notices? In general, other interpretation statutes suggest caution about such a further extension. We have already called attention to the very wide range of legislation to which an interpretation statute is to apply (para 17). On the model of the 1924 Act and other interpretation statutes, we propose that it cover regulations as well. For the rest we think that, so far as those instruments are concerned, the matters addressed in this statute are best handled in the relevant particular context, such as local government legislation (including the Bylaws Act 1910) or the particular substantive statute (such as Town and Country Planning Act 1977). The comments we received were divided but tended to favour the application of the Act to bylaws and notices and so on. Those who did not favour that wider application noted practical difficulties and the fact that such material is often drafted without any intention that its provisions be subject to strict legal interpretation. Parliamentary Counsel in New South Wales took the view that there were varying classes of instruments to which different provisions of interpretation law should apply. We agree with this approach and accordingly the scope of application is in general limited to Acts and regulations. The detail is further considered in the note to "enactment" in paras 377–378 below.

Imperial legislation

251 The Imperial Laws Application Act 1988 s 3(4) already provides that the Acts Interpretation Act 1924 applies to imperial enactments which are part of the law of New Zealand, so far as applicable and with the necessary modifications; see also s 4(4). The imperial enactments which remain part of the law of New Zealand vary widely of course—Magna Carta and Habeas Corpus, Quia Emptores and Distress for Rent Act 1737, Privy Council legislation and the Naval Prize Act 1864, and Set-Off and the New Calendar statutes. That variety is also to be seen in United Kingdom legislation which has been adopted into New Zealand law by separate enactment, such as the Sale of Goods Act 1908 and the Crown Proceedings Act 1950, and which is directly subject to the 1924 New Zealand Act. Those interpreting such legislation will of course have regard to those diverse origins. See *Imperial Legislation in Force in New Zealand*

(1987) NZLC R1 para 34. A large proportion of those who commented on this matter (before the 1988 Act was passed) saw no reason why the Act should not apply to imperial legislation and Parliament later acted on that view. It is probably more appropriate for that decision to be recorded in the Interpretation Act and our draft so provides.

Existing legislation

252 The drafting of cl 3 shows that the Act is intended to apply to existing statutes (as well as to future ones)—that is, to those which are in force when the interpretation statute is enacted. For instance, unless other provision is made, the definitions included in the dictionary will apply to that legislation. The provisions about the effect of amendment and repeal will also apply. Existing statutes will now affect the rights of the Crown, although they may not have done so in the past. That last phrase and the use of the future tense in the last three sentences all indicate a limit to the application of the proposed Act to statutes enacted earlier. New statutes in general do not operate retroactively to affect existing rights and duties (see ch V, cl 6–8 of the draft Bill and the related commentary). So the proposed new general rule about the delayed commencement of Acts (cl 4) could not be applied to statutes already in force, nor could the rules about temporal effect to the extent that they differ from the law in force on the date in the past that the relevant statute came into force. Similarly, if a statute did not affect the rights of the Crown last year the change proposed in cl 10 would not affect the decision on a case being heard in the future but with reference to last year's facts.

253 The matter is not quite as clear as just suggested in all areas of interpretation. Consider the principles and practices governing the approach to interpretation. If a court decides to adopt a more purposive or a more literal approach to interpretation or to use Hansard to attempt to determine the mischief, it does not apply that approach only to future statutes. Indeed by the very nature of litigation it cannot be so applied (in the absence at least of a system of prospective overruling), eg, para 196 above. Accordingly, British, New Zealand and Australian Ministers who would have been confidently advised when they made speeches on Bills in the House of Lords in 1895, the New Zealand Parliament in 1929 and the Australian Parliament in 1930 and 1963 that no court would ever look at those speeches in interpreting the resulting legislation would, as it has

turned out, have been wrongly advised, *Wacando v Commonwealth* (1981) 148 CLR 1, 25–27, *Florence v New Zealand Law Society* [1989] 1 NZLR 132, 136–137 CA, *Federal Commissioner of Taxation v Whitfords Beach Pty Ltd* (1982) 150 CLR 355, 373–375, and *R v Bolton, ex parte Beane* (1987) 70 ALR 225, 227–228 (where one relevant Minister was also the Attorney-General).

254 The approach in cl 3 is the same as that of the past and present New Zealand Interpretation Acts. From their enactment they have all applied in general to the existing body of legislation as well as to that to be enacted.

255 We consider and reject one possible exception to this general application in ch IV relating to the Crown and Statutes. We do propose that some definitions apply only to *existing* statutes on the basis that the general definitions of those expressions should not apply indiscriminately in future statutes, cl 19(2).

Limits to application

256 The 1924 Act uses throughout its provisions a great variety of negative or limiting formulas (Preliminary Paper 1 paras 11–14). The Report has already called attention to the relative, presumptive character of interpretation legislation (paras 17–19). Indeed, even without express limitation provisions, the courts, in application of basic ideas about the lawmaking powers of successive Parliaments, sometimes hold general interpretation provisions inapplicable. For that reason some of those who commented on this matter did not think that an express reference to limits should be included. We see the force of the argument that such provisions are not strictly necessary. But we think that it is better to be explicit: if the Act were drafted as if it had an apparently absolute effect it might give the wrong impression.

257 We do agree with the overwhelming view that such indications of limits could be much fewer than they are in the present Act, and accordingly with one exception we have confined them to this single general provision. One example makes the point sufficiently; we have not even included qualifications in those provisions which will commonly be subject to express exceptions or qualifications such as the commencement provisions (cl 4). The exception is in cl 10, dealing with the Crown and statutes, para 178 above.

258 Interpretation statutes and the general law indicate the two means by which the general provisions of the interpretation statutes

may be put to one side: (i) provisions of the particular Act or (ii) the context.

259 Some particular provisions will expressly exclude or qualify the application of relevant provisions of an Interpretation Act. Others will give a definition of a word or expression which differs from that in the Interpretation Act. Still others will make specific provisions, for instance about the effect of repeal, which differ from the general rules. Since that practice often does not *expressly* exclude the general rule, cl 3 states simply that the Act is to apply, except to the extent that the specific enactment "otherwise provides". (In this context the word "expressly" has of course been read as including implication, eg, para 153 above.)

260 The context which might exclude the operation of the principles and rules set out in the proposed interpretation statute may be found either in the particular statute in issue or in the wider legal system. It was the particular statutory context that was decisive in the holding of the Victorian Full Supreme Court that the power of a labour commission to "determine ... the units of officers or employees of the teaching service" did not allow the commission to decide there would just be one unit, *Fordham v Brideson* [1986] VR 587. This was a case in which the plural did not include the singular. In context, the plural indicated that the commission was to make a real decision (see further cl 23).

261 The wider context was read as limiting apparently broad interpretative statements of equality in cases relating to the political and other rights of women (eg, *Chorlton v Lings*, para 18 above). But in 1929 the Privy Council did apply the standard Interpretation Act definition to the word "person" as used in the British North America Act 1867 with the consequence that women could be named as members of the Canadian Senate, *Edwards v Attorney-General for Canada* [1930] AC 124. It referred as well to other indications within the 1867 Act and to a range of other material extrinsic to the text which led it to that conclusion. And it stressed the special character of constitutional legislation.

> The British North America Act planted in Canada a living tree capable of growth and expansion within its natural limits ... "Like all written constitutions it has been subject to development through usage and convention."... "[T]here are statutes and statutes; and the strict construction deemed proper in the case, for example, of a penal or taxing statute ...

would often be subversive of Parliament's real intent if applied to an Act passed to ensure the peace, order and good government of a British colony" (136–137; sources omitted).

PART 2
COMMENCEMENT OF ENACTMENTS

Time of commencement

4 (1) An enactment comes into force 28 days after the day on which, in the case of an Act, it is assented to, or, in the case of regulations, it is made.

(2) An enactment comes into force at the beginning of the day on which it is to come into force.

262 See 1924 Act ss 10, 10A, 11; Preliminary Paper 1 paras 15–25.

263 Chapter V notes the distinction between the time an enactment

- becomes law,
- comes into force, and
- has effect (paras 194–197).

264 An Act *becomes law* when the Sovereign or Governor-General assents to the Bill passed by the House; and a regulation, it appears, is similarly law from the moment of the Governor-General's signature. An enactment *comes into force* at a time or times it states (which in principle can only be after it has become law and exists) or provides for (by authorising someone else to fix the time) or according to a general default provision. In the case of Acts and probably regulations that default time at present is the beginning of the day on which the Bill is assented to or the regulation is made. Enactments may *have effect* in respect of events occurring in an earlier period of time; so an Act might validate actions taken earlier, or impose taxes on income earned before it became law and came into force.

265 Clause 4 is about the second issue—the time of coming into force—and cls 6–8 about the third—the time from which the enactment takes effect. The first issue—the time an Act becomes law—is regulated by the Constitution Act 1986 s 16 for Acts and by the general law for regulations. The difference between this and the time the Act comes into force is significant. So cl 5 (like the present s 12) indicates that certain powers conferred by an enactment which has

become law but is not yet in force can be used; and such an enactment will come into force in accordance with the terms which it states. As with any other Act it can be amended or repealed as law, although not yet in force, see eg, the Legislative Council Act 1914, amended by the Legislative Council Amendment Act 1920 and repealed by the Legislative Council Abolition Act 1950; and the Carriage by Air Amendment Act 1990 amended by the Carriage by Air Amendment Act (No 2) 1990. Although not yet in force, it may also be relevant to the interpretation and application of other legislation which is in force, eg, *R v O'Brien* [1976] 1 NZLR 513, 517 CA.

266 We now return to the subject matter of cl 4—the time of commencement or coming into force of legislation. If there is no express provision for commencement, an Act comes into force on the date of assent: Acts Interpretation Act 1924 s 10A. There is no corresponding provision for regulations; it appears that, in the absence of specific mention, subordinate legislation comes into force the day it is made (see the New Zealand Commentary to *Halsbury's Laws of England*, 4th ed, *Statutes* ch 149 C 917, 1003, by Prof J Burrows).

267 We propose, in cl 4, that the usual date of commencement should be 28 days after the date of assent or making. Basic principle provides the main reason for that delay. In our Report on the Statutory Publications Bill we quoted Sir Richard Wild CJ: "People must be told what Parliament is doing and must be able to read the letter of the law", *Victoria University of Wellington Students' Association v Shearer* [1973] 2 NZLR 21. The Commission went on to say that "We cannot have a moral obligation to obey a law which is actually withheld or kept secret from us. The State must make the law available" (NZLC R 11 1989 para 7).

268 An important practical element of that obligation is often the allowing of sufficient time for the knowledge of the new law and of its actual text to spread throughout New Zealand—especially to those most affected. Accordingly, it is not surprising that the large majority of those who commented on this matter in response to our questionnaire agreed to such a delay as the general rule. That response squares exactly with the acceptance by the Government of the recommendation made by the Regulations Review Committee for a 28 day delay for regulations, *Regulation Making Powers in Legislation* AJHR 1986 I 16 A. The same rule had also been proposed for both Acts and Regulations in the *Marketing Plan for Legislation* (December 1985) prepared for the Government Printing Office. The recently enacted

Victorian and Western Australian interpretation statutes also contain the 28 day rule.

269 We do have to note however that practice, especially in the case of Acts, does not closely conform to the rule proposed. An analysis of the first 59 Acts of 1990 shows 24 Acts with no commencement provision. They would have come into force on the day of assent. (Of these, 20 were amendment Acts.) Those with commencement provisions relied generally on the date of assent (left unidentified), or a named day one or two days after the date of assent (21). Others came into force on the 14th or 28th day after assent (3), or the first day of the month following assent (2). Four required further action by the Governor-General in Council and two were retrospective. For the latter the phrase "deemed to have come into force" was used, although as indicated already it is more appropriate that such retrospectivity be achieved by way of an *application* provision rather than a commencement one. An Act cannot have come into force before it existed, but once made it can apply to events which happened before its existence. The deeming formula is an unnecessary fiction.

270 The practice in respect of regulations adheres somewhat more closely to the 28 day rule promulgated by the Government. Of 169 recent regulations, nine had no date, fifty-one commenced on the day after their notification in the Gazette, four on the 4th day, seven on the 7th day, twenty-six on the 28th day, thirty-two on the first day of the following month, eight one month later, and twenty on a particular named day. Twelve were retrospective in application.

271 That varying practice does not however lead us to the conclusion that we should not propose a 28 day rule. There has to be a general (or residual) rule which applies in the absence of an express provision. There is no single rule clearly preferred. The present residual rule probably involves the anomalous and unprincipled consequence that according to law much legislation comes into force at the beginning of the day it is signed; that is some hours before it is law. For the reasons given we think that the general period of notice of a new law should be 28 days.

272 Subsection (2), on the model of s 11(1) of the 1924 Act and the common law, provides the general rule that the commencement is from the beginning of the day in question. In some cases it will of course be appropriate to fix a particular time, eg, Western Samoa Act

1961 s 2(1), and Companies Special Investigations Order 1988 cl 1(2).

273 The Acts and Regulations Publication Act 1989 is not consistent in requiring the insertion of dates in the published forms of Acts and regulations. Section 7 contains a general power for the Attorney-General to give directions about the form of publication of enactments. This does not specifically mention dates. Section 8 contains special requirements for the printing of regulations which includes a requirement that there be printed references to the date on which the regulations were made and the date (if any) on which they come into force. The current provision in the Acts Interpretation Act 1924 (s 10) places an obligation on the Clerk of the House to insert the date of assent in every Act assented to by the Governor-General. That obligation does not expressly extend to published copies.

274 A more general provision in the Acts and Regulations Publication Act 1989 requiring the published form of both Acts and regulations to include the date of assent or making and the date on which the enactment comes into force would be preferable. It does not appear to be necessary to place the obligation specifically on particular officers. We accordingly recommend a redrafting of s 8 of the Acts and Regulations Publication Act 1989. A draft clause appears in the schedule to the draft, para 443.

Anticipatory exercise of powers

5 A power conferred by an enactment may be exercised before the enactment comes into force, with effect from any time on or after it comes into force to the extent necessary or expedient to bring the enactment into operation.

275 See 1924 Act s 12, Preliminary Paper 1 para 198.

276 Such provisions have been found convenient in many jurisdictions. They enable the making of regulations which are to support from the outset the principal statute; and they permit the appointment of officials who are to implement the legislation. Those actions cannot take legal effect until the Act itself comes into force, and accordingly are consistent with Parliament's decision in fixing or authorising the fixing of the date of commencement. Indeed they can help give fuller effect to the primary legislation by making necessary ancillary provision right from its commencement. The legislation

itself must of course have been passed and become law. We did consider emphasising that by including after the word "exercised" the phrase "after the enactment has been assented to or made and". But such words are not needed as a matter of law; the enactment does not exist until that time.

277 The draft is narrower than the present s 12 in that at the moment the ancillary action can be effective even *before* the Act is in force. This is so in two circumstances —(1) that intention appears in the particular Act, or (2) that action is necessary for bringing the Act into operation. If the intention does appear in the particular Act, then the general provision is not required. If early action is necessary to bring the particular enactment into operation we consider that that enactment should so provide and it should not be a matter for general legislation. One case is the establishment of the administering body some months before a major policy change is introduced, as with the original accident compensation legislation. Two recent situations have been mentioned to us where the earlier power might have been useful. In neither was the present power in fact used; and in each, if there was a real need for earlier application, it could have been specifically provided for in the particular Act.

278 The draft may be wider than the present law in that it applies to "enactments" including regulations rather than to "Acts" as does the present s 12. It also applies to Acts the commencement of only part of which is delayed. It is not clear whether the present law would extend to amendments as well as to complete Acts as the draft would. Most Australian provisions make that wider scope express. The wide definition of "enactment" in cl 19(1) (including parts of Acts) achieves the same result. Similarly the provision would also cover an amendment widening an existing power. There is no need to state that expressly.

279 As with cl 7 we see no value in indicating, even by a non-exhaustive list, the powers to which the provision extends. The usual ones in practice are the powers to make subordinate legislation and to make appointments (see para 316).

280 The draft also has an added flexibility compared with the present s 12—that the action can be effective after (as well as on) the commencement of the legislation. So an appointment made before commencement could be effective a week or two after commencement if that was convenient.

PART 3
PROSPECTIVE APPLICATION OF NEW ENACTMENTS

Enactments including repeals have prospective effect only

6 (1) In principle an enactment has prospective effect only.

(2) In particular the coming into force of an enactment, including an enactment repealing or amending an earlier enactment, or the expiry of an enactment

(a) does not affect any accrued or established right, immunity, duty or liability including any liability in respect of an offence which arises under the earlier enactment;

(b) does not affect any proceeding or remedy in respect of any such right, immunity, duty or liability;

(c) does not affect the previous operation of the earlier enactment, including

(i) anything done or suffered under that enactment, or

(ii) any amendment made by that enactment to another enactment; and

(d) does not revive anything not then in force or existing, including any enactment or rule of law which the earlier enactment repealed or abrogated.

281 Chapter V of the Report, on the temporal scope of law, explains the principles underlying this and the following two clauses.

282 This provision states the basic principle that legislation does not have retrospective effect. That principle means that new legislation does not in general disturb substantive positions already established under the law. The actual scope and application of the principle is to be determined in particular cases, as partly indicated in subcl (2). And it may be superseded in a particular situation by particular provisions or by an inference to be drawn from the context, cf cl 3, paras 256–261 above. The express identification of a statement of law in a statute as a "principle" is at first surprising. We have found that to be so in our consultations. And yet judicial statements and texts and commentaries commonly refer to the principle of non-retrospectivity. Parliament increasingly refers to "principles", eg, Official Information Act 1982 ss 4 and 5, and Education Act 1989 s 161 and has long incorporated principles in legislation without necessarily expressly so identifying them, eg, Resident Magistrates

Act 1867 s 47 ("equity and good conscience" jurisdiction), Testator's Family Maintenance Act 1900 and Matrimonial Property Act 1976.

283 The principle already appears in a concrete form in the particular context of the criminal law. The New Zealand Bill of Rights Act 1990 provides:

> No one shall be liable to conviction of any offence on account of any act or omission which did not constitute an offence by such person under the law of New Zealand at the time it occurred. (s 26(1))

The Crimes Act 1961 s 10A is to similar effect and the Criminal Justice Act 1985 s 4(1) has a related provision on sentences:

> **Penal enactments not to have retrospective effect to disadvantage of offender**—Notwithstanding any other enactment or rule of law to the contrary, where the maximum term of imprisonment or the maximum fine that may be imposed under any enactment on an offender for a particular offence is altered between the time when the offender commits the offence and the time when sentence is to be passed, the maximum term of imprisonment or the maximum fine that may be imposed on the offender for the offence shall be either—
>
> (a) The maximum term or the maximum fine that could have been imposed at the time of the offence, where that maximum has subsequently been increased; or
>
> (b) The maximum term or the maximum fine that can be imposed on the day on which sentence is to be passed, where that maximum is less than that prescribed at the time of the offence.

284 This particular manifestation of the principle has been long recognised and, as mentioned (ch V para 215), also appears in the International Covenant on Civil and Political Rights by which New Zealand became bound in 1978. Given that that legislation is already on the statute book, it does not appear to be necessary to expressly and separately include the substance of the principle relating to criminal liability in the above provision. We considered whether caution might suggest the repetition of the proposition that defendants can have the retrospective benefit of a relaxation in penalties subsequent to the date of the offence. But the express reference is not necessary given the more specific character of the 1985 provisions and the terms of cl 3.

285 The Criminal Justice Act 1985 further reflects possible limits on the principle of non-retrospectivity. Subject to the provisions of s 4 quoted above, that Act applies to offences committed *before* as well as after the commencement of the Act (s 3(3); see similarly the predecessor provision, Criminal Justice Act 1954 s 2(4)). That is to say the sentencing procedures and powers of the courts laid down in the new Act apply to offences committed before the Act came into force but not yet disposed of by them. The provisions recognise that procedural and institutional provisions can properly have retrospective effect, and that the principle of non-retrospectivity applies to substance rather than to process, see eg, paras 221, 225.

286 The explicit character of the provision as a principle indicates that greater precision is to be found elsewhere—in part in subcl (2) and in part in the interpretation and application of the principle itself, especially in the development of the line between substance and process.

287 The substance of subcl (2) of the provision is intended to spell out some of the detail of the principle stated in subcl (1). It covers:

- the essence of the provisions of ss 20(a), (e), (f), (g) and (h) and 22 of the 1924 Act—which are aimed to protect positions established under earlier legislation; and
- the essence of the common law rules on the impact (or essentially the lack of impact) of new legislation on positions established under the common law.

288 As indicated in ch V, we propose the inclusion of the second area since there is no difference in principle between the effect of new legislation on those existing rights and interests which are recognised by the common law and those existing rights and interests which are governed or created by earlier legislation. In both cases the governing principle is that a new enactment has prospective (and not retrospective) effect with the consequence that rights already established are usually unaffected. That widened scope explains the introductory phrase to cl 6(2)—the rules stated there concern the effect on existing situations of the coming into force of a completely new enactment as well as of a repeal.

289 To repeat, the essence of the provision is in its negative statement. The new legislation does not in general disturb existing situations, as described in the paragraphs of the draft subcl (2). We now consider the paragraphs.

Paragraph (a)

290 This is the most important of the paragraphs. It relates to the present s 20(e)(ii), (iii) (first part), (iv), (v) and (vii) (first part). With one exception, it proposes the consolidation of those provisions and in addition incorporates the common law principle as mentioned in para 287 above. It follows the model of Can s 43(c), Ont s 14(1)(c), NSW s 30(1)(b), UK s 16(1)(c), Vic s 14(2)(e) for instance in its fairly standard list of legal relationships. (There is no completely common list. Ours borrows from statutory usage and to some extent from Hohfeld.) The substantive departure from the 1924 provisions is that the draft paragraph does not include the reference to "affect[ing] . . . any existing status or capacity". That phrase appears to be very wide in its potential impact. It is not to be found in comparable provisions included in the statutes just mentioned. They instead focus directly and more narrowly on protecting accrued rights and duties (which in some cases will result from a status or capacity). They do not prevent new legislation from affecting the status or capacity itself. So a company formed in the 1870s continues to have a legal status as a legal person originally recognised by the earliest companies legislation which has often since been amended and consolidated. The later legislation has no doubt "affected" that status and especially the capacities arising from it. And can it really have been otherwise? Can companies have different legal entitlements depending on when they were formed? Or spouses depending on when they were married? A presumption against legislation "affecting" their marital status and the capacities arising from that status would have that stultifying and impractical consequence.

291 The comment so far is on the scope of the nouns such as "status and capacity" and "right" and "duty". Also important are the limiting adjectives, for instance that the rights or duties are to be "accrued or established" by the time of the new enactment. The significance of the nouns and especially of the limiting adjectives can be illustrated by cases decided under both the common law and interpretation statutes. The cases also demonstrate that general legislation, like the general presumptions of the common law, will not give easy answers to marginal questions. They show the need for those preparing statutes to consider carefully the inclusion of transitional and savings provisions. They also suggest on the other side that some matters are best left to the judgment of courts to be made in the particular circumstances of the relevant legislation and facts.

292 In the first case, the maximum amount payable by an insurance company to a person insured against liability for personal injury caused by a motor vehicle accident was increased by an amendment to the statute made *after* the accident in issue. Was the insured entitled only to the original amount or did the insurer's liability now extend to the higher amount, *Chaplin v Holden* [1971] NZLR 374? The Court of Appeal considered that in terms of s 20(e)(iii) there were between the parties "rights . . . already acquired" at the date of the accident. Accordingly, the repeal had no effect. (The Court does not expressly consider whether the repeal and substitution of a subsection was the "repeal of *an Act*" in terms of s 20(e)(iii); when that particular matter was considered in the apparently identical context of s 21 the High Court ruled that the repeal has to be of the *whole* statute with the consequence that the statutory rules were inapplicable, para 248 above.)

293 The Court of Appeal did not consider that the common law authorities on the (lack of) retrospective operation of *new* statutory provisions were in point. Rather, for it, the question was whether *in terms of the 1924 Act* the *old* statute continued to govern. On the view underlying the above draft provision, those two questions are the same in essence and would produce the same result. They should indeed be combined in a single question: is the old law or the new to apply? It must be the one *or* the other. The above draft says that the new law does not affect the rights and duties established under the old law. That is, the old law continues to apply.

294 A recent decision of the Supreme Court of Canada on similar facts does use the alternative approach of the (non) retrospective effect of the *new* statute. And it also uses the common law presumption rather than the apparently relevant Interpretation Act. Following that doubly different route, the Canadian Court reaches the same conclusion as the New Zealand one. In the common law context, it also addresses an important limit, mentioned earlier, to the non-retrospectivity principle, *Angus v Hart* (1988) 52 DLR (4th) 193. The relevant legislation in force at the time a wife was injured by her husband's negligent driving provided that spouses could not sue one another in tort. Further, the insurer was not liable under a motor vehicle liability policy to the spouse of the person insured. Both provisions were repealed after the accident, and in addition it was expressly enacted that spouses have the like right of action in tort against the other as if they were not married. The question argued

was whether the new law applied retrospectively to eliminate the defences based on the old statute. The Court began with

> the presumption that statutes do not operate with retrospective effect. "Procedural" provisions, however, are not subject to the presumption. To the contrary, they are presumed to operate retrospectively.

295 The essence of the process/substance distinction for the Court in this area was whether the legislation affected substantive rights. Since in the view of the Court it did—it affected the "vested rights" of the defendant spouse and the insurer—it would not be given retrospective effect. Such a serious deprivation of an acquired right of the husband should not be lightly assumed to be the intention of the legislation. The Court also emphasised the reliance that insurance companies place on their knowledge of their risks: they would have known that the risk of a tort action by the wife was precluded. The Supreme Court, like the lower courts, decided this case by reference to the common law. The same result would appear to follow from the relevant provision of the Interpretation Act of Ontario which is in similar terms to the New Zealand provision discussed by the Court of Appeal. The repeal of an Act does not

> affect any right . . . acquired [or] accrued . . . under the Act . . . so repealed

296 In terms of the New Zealand Court's analysis, the husband had "accrued" or "acquired rights" at the time of the accident and the repeal would not affect that or the insurance company's right to take advantage of that. (The technical argument that the provision does not apply since this is not a case of the repeal of the whole Act presumably explains the lack of reference to the interpretation statute in the Canadian judgments, para 248 above.)

297 The draft we propose maintains the underlying sense of the distinction made in the cases and other legislation: that rights once vested or liability once incurred will generally not be altered by later legislation. The legal position on the date of the two accidents was clear and went to substance; in the first the insurance company was liable only up to the amount of damages clearly fixed by law; and in the second neither the husband nor the company was liable. Later legislation should not affect those positions.

298 In the two cases discussed the rights under the old law were already vested, accrued or established to use the statutory and common law adjectives. A new law would not affect the rights unless it was clearly intended to do that (as was held to be the case in *Sharplin v Broadlands Finance Ltd* [1982] 2 NZLR 1 CA discussed in ch V para 211). That result followed under both the interpretation legislation and the common law presumption. (For a similar case concerning the non-retroactive application of a new (longer) limitation period decided "having regard to the normal canons of construction and the relevant provisions of any interpretation statute" see *Yew Bon Tew v Kenderaan Bas Mara* [1983] AC 553, 589 JC; see similarly *Arnold v GECB* [1988] 1 AC 228, 265–266; also Pearce and Geddes, *Statutory Interpretation in Australia* (3d ed 1988) 10.21.)

299 In other cases, by contrast, courts have held that no rights or duties or other legal interests in issue had accrued or become established (in terms of the interpretation legislation, the common law, or both) at the time of the enactment of the new legislation. In a leading Privy Council case, tenancy legislation was amended after a Crown lessee had taken the initial steps to get permission to rebuild, *Director of Public Works v Ho Po Sang* [1961] AC 901. Under the earlier law once a rebuilding certificate was granted the lessee could call on those in occupation to quit. The Director of Public Works notified the lessee of his intention to grant such a certificate, and the tenants appealed in terms of the legislation to the Governor in Council. The legislation empowering the granting of rebuilding certificates was repealed before the Governor in Council had made any decision, but the Governor nevertheless directed that a rebuilding certificate be granted and the Director granted the certificate. The Privy Council held that at the time of the repeal the lessee had no *accrued right* to vacant possession of the premises. He had no more than a *hope* that the Governor in Council would give a favourable decision.

300 Nor could the lessee depend on the provision of the Hong Kong interpretation legislation saving "any investigation, proceeding or remedy in respect of any *such* right" since, for the reasons already given, no right had accrued or been acquired at the relevant time.

301 The New South Wales Court of Appeal has recently distinguished that case, again in a situation involving an ongoing process, *New South Wales Aboriginal Land Council v Minister* (1988) 14 NSWLR 685. In 1984 the Council applied to the Minister for the transfer to it of claimable Crown lands. At that time the law provided

that the transfer was to be of an estate in fee simple. In 1986 when the application was the subject of an appeal the law was changed to provide for the transfer to be of a lease in perpetuity. The Court held that under the legislation the Council had a right to a decision in its favour if the statutory conditions were satisfied. (The Hong Kong case by contrast involved a discretion.) Accordingly at the time of the application in 1984 the Council did not merely have the right to have its claim *considered.* It also had the right to have it *granted* (assuming again that the statutory conditions were satisfied). The Council was not exercising a mere right (if it is that) existing in members of the community or in a class of them *to take advantage* of an enactment. Rather it has a right which was to be *preserved* even though the right could be implemented only by a non-discretionary decision of an official or a court—so long, that is, as the Council had set the statutory machinery in train for obtaining the decision before the repeal.

302 Paragraph (a) does not deal separately with matters mentioned in subparagraphs (iv), (v) and (vii) (first part) of the present s 20(e). In our view these provisions fall within the scope of the list in the proposed paragraph (a). So a release or discharge from a debt, penalty, claim or demand creates rights and duties; an indemnity states rights and duties; and rights to revenue, duties, taxes and the like are rights. (In any event, as we have noticed, tax legislation generally deals specifically with temporal application issues.)

Paragraph (b)

303 The present subparagraphs (iii) and (vii) of s 20(e) also save remedies and proceedings in respect of the rights and interests protected. Since the law recognises that the rights and interests continue unaffected an appropriate procedure and remedy will generally be available under other (unaffected) parts of the law. But notwithstanding that, other Interpretation Acts also provide for the continuity of process (although in a much less complex way than does the 1924 Act); further, in some situations the significant processes and remedies may be inextricably entwined with the rights and repealed with them. Accordingly we have included *para (b)* to provide for continuity. This provision does not however extend as far as s 20(g) and (h). They have a wider scope than parallel provisions elsewhere. They deal with matters usually and better addressed in transitional provisions in particular statutes.

304 Not included in the draft is the present subpara(vi) which provides that repeal is not to affect "the proof of any past act or thing". Such a provision is generally not included in other interpretation statutes (cf NSW). It is contrary to the usual rule already mentioned a number of times that changes in procedural law apply to situations arising earlier (including of course court made changes in the common law rules of evidence or procedure). And it is contrary to many specific procedural and evidentiary statutes which apply to existing and not merely to prospective proceedings, eg, Judicature Amendment Act (No 2) 1985 s 13, Evidence Amendment Act (No 2) 1980 s 1(3), and other amendments to the Evidence Act which appear to operate from the outset (and accordingly in respect of events happening earlier). It is contrary as well to the law relating to the court reforms introduced in the early 1980s to give effect to the Report of the Royal Commission on the Courts. Those new courts or jurisdictions with their new procedures and powers dealt with matters which had arisen earlier. Specific legislation will often deal of course in detail with proceedings which had already begun (ch V paras 206–207).

Paragraph (c)

305 This paragraph covers part of the existing s 20(e)(i). The present provision appears to be too broad. It is not for instance tied, at least expressly, to actions under the repealed enactment. The proposed provision closely follows BC s 35(b), NSW s 30(1)(a), UK s 16(1)(b), Vic s 14(2)(d).

306 One instance of the "previous operation" of many statutes which are later repealed is the amendments made by them to other statutes. In terms of the rule stated these changes are in general unaffected by the repeal. Subparagraph (ii) mentioning amendments reinforces that point. That provision is not necessary as a matter of law, but its inclusion would make the point clearer and it should help avoid the enactment of unnecessary savings provisions when statutes which made such amendments are repealed. For recent examples see Broadcasting Act 1989 s 89(2), Children, Young Persons and Their Families Act 1989 s 456(2), External Relations Act 1988 s 14(3), Rating Powers Act 1988 s 209(2), State Sector Act 1988 s 112.

307 In some cases the general rule would not apply; rather the context or specific provision would indicate that the repeal (or expiry) of the Act would also involve the repeal (or expiry) of the

amendment, eg, the additions of names of bodies to a schedule to the Ombudsmen Act 1975 by the Victims of Offences Act 1987 s 15 and the New Zealand 1990 Commission Act 1988 s 15, bodies which are to expire (along with the associated principal legislation) on a specified future date.

308 Clause 8 deals with a related matter. It provides for the updating of references to repealed (or amended) statutes and in some circumstances will operate as an exception to para (c).

Paragraph (d)

309 This covers s 20(f) and the second part of s 20(a) (concerned with enactments already repealed) of the 1924 Act. The final phrase is perhaps not needed, but is included for greater clarity. The paragraph is closely based on BC s 25(a), NSW s 28, UK ss 15 and 16(1)(g), Vic s 14(1) and (2)(c), CS ss 31, 34(1)(a).

310 The draft does not include the substance of s 20(c) which provides that when provisions are repealed and others substituted in their place the repealed provisions stay in force until the substituted provisions come into operation. The universal practice so far as we can observe it is for the new statute so to provide itself; it comes into force and the old enactment is repealed at the same moment. The general provision is not required.

Exercise of power under earlier enactment continues under substituted enactment

7 Anything done in exercise of a power under an enactment for which a later enactment is substituted continues to have effect under the later enactment if that thing

(a) was in effect immediately before the coming into force of the later enactment, and

(b) can be done under the later enactment.

311 See 1924 Act ss 20(d) and 20A, Preliminary Paper 1 paras 67–69.

312 Section 20A was enacted in 1960 to widen the scope of s 20(d) and was amended in 1962 by the addition of a subsection to make it clear the provision was retrospective. Similar provisions ensuring the carrying forward of continuing actions under the new Act are common in other interpretation legislation, eg, Ont s 15, UK s 17. And

the large proportion of those responding to our questionnaire proposed that such a provision be maintained. It is seen as a valuable reversal of the common law presumption that subordinate legislation (presumably along with other continuing action taken under a repealed enactment) ceases on the repeal of the empowering provision under which it was made.

313 The comments also recognised that very often specific provision is made in the new statute; to that extent the general provision is not needed. In a survey of the repeal and revocation provisions in the Acts contained in the Reprinted Statutes vols 13 and 15, specific reference was found in 13 out of 17 Acts in vol 13 and in all eight Acts in vol 15. Volume 13 was a reprint in 1983 of various Acts passed between 1956 and 1976; the Acts contained in vol 15 spanned the years between 1924 and 1978. Notwithstanding the predominance of specific provisions in new statutes, we agree with the responses received that the general provision should be maintained as the basic premise. For one thing the particular provisions are more commonly to be found in complete new statutes rather than in amending statutes. The latter are in practice much the more common.

314 The new provision should have the following features:

- it should apply to full or partial repeal (including an amendment);
- it should extend to exercises of power under regulations as well as under statutes (although the practical situations arising under regulations appear to be fewer);
- by the very nature of the provision the new legislation must at least contain an empowering provision which is comparable to the repealed provision and the exercise of the power must be compatible with the new legislation; and
- it should generally extend to all continuing exercises of statutory power, and not be limited, say, to regulations made under the repealed enactment.

It is only the third of the elements that appears to involve a real choice; should there be a requirement that the action could have been taken under the new Act (as under s 20A), or is it enough that the new provision substantially corresponds to the old (as under s 20(d))? There was discussion of these provisions in Preliminary Paper 1 at paras 67–69. Section 20(d) is anomalous in that provisions which

could not be made under the new Act can nevertheless be carried forward under it. Accordingly we have included the more stringent requirement, which is also clearer than "substantially corresponding".

315 The provision also includes the requirement that the new Act be "substituted" for the old. This element is to be found in s 18 of the present Act (see the discussion in para 321 of the notes to cl 8) and is to be related to the reference to "consolidation" statutes in s 20(d) and the "corresponding" provisions in s 20A. It appears to be appropriate to require some broad equivalence between the old and new enactments if arrangements are to be carried forward, and we have preferred to introduce the concept of substitution in this provision and to retain it in the next provision (which is a parallel situation) rather than repeat the distinct words and concepts used at present. It can of course give rise to difficulties in practice. Again specific provisions are often to be preferred.

316 The provision—like cl 5 concerned with the anticipatory exercise of power—does not itemise, even by way of a non-exhaustive list, the powers which might be covered by it. The powers would include constituting districts or offices, appointments and elections, the making or issuing of proclamations, orders and regulations, and the beginning of proceedings. The scope of the provision is tolerably clear, and a list could not in any event be exhaustive.

317 This provision like the next allows only one substitution. That is also the case with the existing provisions. (The compilers of the reprints sometimes suggest s 21 has a wider impact, eg, 1 RS 2, 11, 12, 13, 253.)

Reference to an enactment includes amendments and substitution

8 At any given time, a reference in an enactment to another enactment is a reference

(a) to that other enactment as amended, or

(b) to any enactment that has been substituted for that other enactment.

318 See 1924 Act ss 18, 20(b) and 21, Preliminary Paper 1 paras 53–57.

319 As noted in the discussion paper, ss 18 and 21 overlap substantially. It is possible to combine them in a single section which provides for substitution of the new enactment for the old.

320 In one sense the scope of the draft is wider than that of ss 18 and 21 since like the other two provisions in this set it extends to the replacement of particular provisions (and is not limited to the complete replacement of an Act); the proposal fills the gap identified in *Ministry of Transport v Hamilton* (M73/84, Preliminary Paper 1, para 19).

321 The application of the proposed provision is not always going to be a straightforward matter. Thus there may be a dispute whether the new enactment was passed "in substitution" for the old. That issue also arises under the present provisions, similar provisions elsewhere and under cl 7. For a recent discussion see *United Cinema Enterprises v CIR* [1984] 2 NZLR 390, 392. That case also raises a second point about the provision—whether the context manifests that the general rule should not apply. As indicated earlier, a qualification to that effect is not separately included in the particular draft set out above, since the general provision to that effect in cl 3 covers the matter sufficiently.

322 It is in the nature of general provisions that they will not always avoid difficulties of the kind just mentioned. Often the better answer will be to include particular provisions in the specific statute. In others the courts will be left to make the judgment whether the new enactment can appropriately replace the old in the particular context in accordance with the general provisions set out above.

323 Section 18 of the 1924 Act, by contrast to s 21, does not limit its scope to references (or citations) *in other Acts*. On its face its scope appears to be general and to apply for instance to references in other documents such as contracts. That capacious reading might however be constrained first by the basic scope of the 1924 Act—it is about the interpretation of Acts and regulations and not of other documents—and second by the specific wording to that effect of s 2—the Act applies to Acts (including regulations): other documents are not mentioned.

324 In any event it does appear to be a hazardous matter to provide in a completely general way for such external amendments to private law documents. Accordingly the above draft is limited to references in other enactments. (For the reason mentioned at the end of the

preceding paragraph, the express limitation in the draft may not as a matter of drafting be needed.) The matter of amendments to other instruments can of course be the subject of particular legislation, as in the Maori Purposes Act 1947 Part I, Labour Relations Act 1987 s 359, Waterfront Industry Reform Act 1989 ss 38, 39.

325 The draft does not include the substance of s 20(b) which provides that

> The repeal of any enactment shall not affect any Act in which such enactment has been applied, incorporated, or referred to.

326 This provision contradicts the substitution which is to be made in terms of ss 18 and 21 (and also in the proposed draft), in the case in which there is a new Act substituted for the repealed statute. In the case in which the statute is simply repealed and is not replaced, the rule would often be an impracticable one. Consider for instance a statute which by reference to the relevant (now repealed) statute confers (1) jurisdiction on a now non-existent court or tribunal, or (2) power to make regulations under a now non-existent regulation making power. It appears to us that this is a situation in which the consequence of repeal (if there is to be some continuity of related provisions) must be worked out in the specific contexts. We have already noted above that the substitution provided for in ss 18 and 21 (and included in cl 8 above) will sometimes operate as an exception to the continuity generally provided for in s 20 (and cl 6 above), para 308.

327 Canadian interpretation legislation suggests a possible limited provision:

> Where there is no provision in the new enactment relating to the same subject matter, the former enactment shall be construed as being unrepealed so far as is necessary to give effect to the unrepealed enactment (Interpretation Act RSBC 1979 Ch 206 s 36(l)(f); see also Interpretation Act RSO 1980 Ch 219 s 15(b)).

328 This provision however has a narrow scope: it applies only where there is a substituted enactment, and not where there is either a simple repeal or substantially different legislation. And, even within that scope, it may still be impracticable for want of the relevant body or power. Such a provision does not appear to have been included in interpretation statutes outside Canada.

PART 4
PRINCIPLES OF INTERPRETATION

General principle

9 (1) The meaning of an enactment is to be ascertained from its text in the light of its purpose and in its context.

(2) An enactment applies to circumstances as they arise so far as its text, purpose and context permit.

(3) Among the matters that may be considered in ascertaining the meaning of an enactment are all the indications provided in the enactment as printed or published under the authority of the New Zealand Government.

329 See ch III of the Report.

Enactments bind the Crown

10 Every enactment binds the Crown unless it otherwise provides or the context otherwise requires.

330 See ch IV of the Report. One practical problem with prosecutions can be to know whom to name as a defendant. Sometimes the employer or owner, for example, who is responsible under a regulatory statute will be the Crown in right of New Zealand. To avoid any technical problem we propose that a provision on the model of s 14(2) of the Crown Proceedings Act 1950 should be included in the Summary Proceedings Act 1957, para 451 below.

Amending enactments

11 An amending enactment is to be read as part of the enactment which it amends.

331 See 1924 Act s 5(c), Preliminary Paper 1 para 96 and para 439 below.

PART 5
THE EXERCISE OF POWERS

Power of appointment includes power of removal

12 The power to appoint a person to an office includes the power to remove or suspend the person from that office.

332 See 1924 Act s 25(f), Preliminary Paper 1 paras 204–205.

333 The present provision (which dates back to 1878) confers additional powers—the powers of appointment (in place of the person removed or other former holders) and of reappointment. This grant of those appointment powers is legally unnecessary, since the specific statutory power of appointment can operate quite independently of any such general power.

334 The power of removal from office—conferred in completely general terms—parallels the Crown's power under the common law, eg, Hogg, *Liability of the Crown* (2d ed 1989) 174–175. The power in s 25(f) is available more widely since it applies to other public appointments, made under statute, so long of course as the matter of removal is not separately regulated. The Court of Appeal has held that the statutory power cannot be limited by contract, *Mansfield v Blenheim Borough Council* [1923] NZLR 842. For the Court this was a power in the nature of a duty whenever the public interest called for its exercise. It is not clear whether the same is true of the Crown's common law power.

335 Against that power and its supporting policy are to be weighed the limits which Parliament very often imposes in particular statutes on power of removal from office. Many statutes in recognition of the importance of the independence of public officers, provide for appointment for lengthy terms and permit removal only for cause (frequently "disability, bankruptcy, neglect of duty, or misconduct"). Such provisions of course supersede the general power of removal conferred by the present s 25(f). Those provisions, together with the very widely applicable provisions about wrongful dismissal in the Labour Relations Act 1987, do raise the question whether the general, residual power of removal should be retained. But in that residual form, the provision does reflect the long established principle and policy that the State should be free to replace certain office holders. Parliament must be taken to have recognised that possibility if it does not regulate tenure and the power of removal, eg, Transit New Zealand Act 1989 s 4. Further, a significant number of departments indicated a regular use of the power. Whether there should be a restriction on the residual power is a matter to be routinely considered when legislation is being prepared. Accordingly the principal element of s 25(f) is maintained in the above provisions.

Power to correct errors

13 A clerical or technical error or omission in anything done in an exercise of a power may be corrected although the power may not generally be capable of being exercised more than once.

336 See 1924 Act s 25(j), Preliminary Paper 1 paras 207, 209.

337 This provision is carried over from s 25(j) of the 1924 Act as inserted by the Statutes Amendment Act 1936. We have been unable to find such a provision, described as a "handy face-saver" by one commentator, in other interpretation statutes other than that of Western Australia. The present provision is broadly drafted and appears to allow (and we received at least one submission to the effect that it does allow) the re-exercise of a power (or the revocation of an earlier exercise) in reliance on grounds that are, at the least, uncertain and discretionary—for example that the people exercising the power "had changed their minds". It is unlikely that this was ever intended. Rather the purpose of the provision must be to allow minor corrections in order to prevent an exercise of power being technically invalid. And s 25(j) has been applied in that narrow manner—see *West Coast Province of Federated Farmers of New Zealand Inc v Minister of Energy* CA 25/82, *Triton Textiles v Minister of Trade and Industry* (1986) 6 NZAR 261, 269.

338 The majority of submissions support the view that a power of this type is useful—mistakes can occur even in supposedly final actions, dates may be omitted, typographical and numerical errors occur and so on. But such a power should be drafted to restrict the mistakes which may be corrected to those which *are* of a merely clerical or technical nature. Any potential for the broader application of the present provision should be excluded.

339 It has been suggested that the new provision should indicate that any exercise of the power must be subject to the same restraints as it was originally (as well as those stated in the proposed provision). But that is self-evident and accordingly omitted. And indeed the action will usually be less than a "re-exercise"—it will be merely a correction.

Forms prescribed by enactments

14 A form which deviates from a form required by or under an enactment is valid if the deviation is not misleading and does not prejudice the purpose of the enactment.

340 See 1924 Act s 5(i).

341 The law employs a range of devices to ensure that a deviation from its requirements does not inexorably involve the invalidity of all that follows. A procedural requirement might be said to be directory rather than mandatory with the consequence that exact compliance or even any compliance is not required. Rules of court and related procedural provisions excuse certain failures to comply with their terms, but sometimes enable the court or tribunal to make orders including orders as to costs. The legislature might similarly provide that decisions cannot be challenged for want of form. Sometimes the existence of the grounds for the making of an appointment cannot be called in question, eg, cl 16(2). Nor whether a particular procedure of consultation has been followed. Privative or ouster clauses or limits on the right to sue bodies or their members might also have the effect of protecting irregularity.

342 Since 1888 the New Zealand legislation has included a provision safeguarding forms which do not exactly follow the statutory form. Consistently with the rules and legislative practices touched on, this provision too excuses failure to comply in an exact way with the prescription.

343 "Form" in the present provision has been broadly interpreted. It extends beyond printed forms, for instance to statutory requirements for keeping registers and books (*Ministry of Transport v Picton Carriers Limited* [1973] 1 NZLR 353, but not the layout of a wooden sign), for an application for consent to a land transfer (*Ryan v Evans* [1946] NZLR 75), and for the taking of a statutory declaration (*R v Habgood* [1934] NZLR 73). It seems that a deviation which is the provision of something additional to the legislative requirement will generally be accepted under this provision (but note *J v Registrar-General of Births and Deaths* [1989] 1 NZLR 673).

344 The proposal includes some changes in drafting. The requirement that the deviation be "slight" is omitted as unhelpful—and in fact the judgments suggest it is the effect on the *substance* and not the error which must be slight (*J v Registrar-General of Births and Deaths*

[1989] 1 NZLR 673). So the question asked is not the magnitude of the deviation but its nature or effect: will it mislead those to whom it is directed? Does it conflict with the purpose of the legislation? They are of course distinct limits on the provision. Another change to the text is to omit "prescribed": the forms referred to are not prescribed under the Interpretation Act but under other enactments.

Advice and consent of Executive Council in the absence of the Sovereign or the Governor-General

15 (1) If the Sovereign or the Governor-General may exercise or perform a power or duty on the advice and with the consent of the Executive Council, that advice and consent may be given at a duly convened meeting of the Executive Council, although neither the Sovereign nor the Governor-General is present.

(2) On the advice and consent being given in that way, the Sovereign or the Governor-General may exercise or perform the power or duty as if the Sovereign or the Governor-General (as the case may be) had been present at that meeting.

345 See 1924 Act s 23, Preliminary Paper 1 paras 10 and 199.

346 A version of this provision appeared in the 1888 Act, and has an obvious practical significance, although it may be unnecessary that the Sovereign or the Governor-General actually be present at the meeting of the Executive Council, not being a member in fact. It is however the practice that that person will chair the meeting when that is possible, see Letters Patent SR 1983/225 cls VIII, IX. Many things are to be done by the Sovereign or Governor-General "in Council"—that is with the advice and consent of the Executive Council. (See the present s 4 and the proposed cl 19(1).) Most important are the making of regulations and Orders. The thrust of this provision is to make it clear, perhaps out of an abundance of caution, that non-attendance by the Governor-General does not affect the giving of that advice and consent. There may of course be a delay before the Governor-General performs the function.

347 One aspect of the present wording which has caused us concern relates to the temporal application of acts done under this provision. The present law provides that when the authority is exercised, it takes effect from the date of the *meeting* (s 23(3)) at which the advice and consent was given, not the date of the *exercise*—so that the exercise may often be effective retrospectively. The extraordinary result is

that things or actions may be lawful or unlawful before the necessary legal steps have been taken. This may contradict the principle of non-retrospectivity discussed in ch V and could lead to a confused legal position. In some situations retrospectivity might be justifiable. But that should be provided for in the empowering statute. It should not arise simply from the accident of the non-attendance of the Governor-General. And retrospective regulations are in fact most unusual. Furthermore, if urgent prospective action is required, the particular enactment might provide that the decision takes effect from the date of the meeting or (preferably) confer the power on Ministers (see, eg, the Civil Defence Act 1983 s 47(1)), or the Administrator of the Government might take the action instead of the Governor-General: see cl 16. Accordingly the draft does not include s 23(3) of the 1924 Act.

348 We have also omitted from the draft the express requirement that the Governor-General is prevented from attending the meeting "by some necessary or reasonable cause" (s 23(1)); s 23(4) removes any sanction from that requirement by providing that an exercise of authority may not be called into question on the ground that the non-attendance was not by such cause. The draft proceeds on the assumption that the absence will be for good reason. That should be a matter of practice and convention, not a statutory requirement with the difficulties that raises, as is illustrated by the perceived need for subs (4).

349 This provision and the next might more appropriately be included in the Constitution Act 1986.

Administrator of the Government may exercise powers of the Governor-General

16 (1) Whenever the office of Governor-General is vacant or the holder of the office is for any reason unable to perform all or any of the functions of the office, the Administrator of the Government may exercise or perform all or any of the powers or duties of the Governor-General.

(2) No question may be raised whether the occasion has arisen authorising the Administrator of the Government to exercise or perform a power or duty.

350 See 1924 Act ss 4 ("Administrator of the Government", "Governor-General"), 25D and 25E.

351 Clause XI of the Letters Patent of 28 October 1983 (SR 1983/225) constituting the Office of Governor-General authorises the Chief Justice (or if not available, the President or Senior Judge of the Court of Appeal) to act as Administrator of the Government in the circumstances set out in cl 16. The significance of the functions vested in the Governor-General—both under the Letters Patent and statute—make it essential that someone can always act in place of the Governor-General if the holder of the office is unavailable. Since the Letters Patent may be adequate to confer only the *prerogative* and not the statutory powers of the Governor-General on the Administrator, a provision to the above effect is at least desirable.

352 At present, this authority is conferred indirectly by defining "Governor-General" in s 4 (as amended in 1983) to include the Administrator. As we discuss below (see cl 19 and commentary, also cl 17), it is inappropriate to deal with substantive matters such as this by way of a definition provision. The purpose is better achieved in a direct way. That direct approach was taken in the Deputy Governor's Powers Act 1912 s 3 to achieve a similar purpose.

> During the temporary absence of the Governor-General from the seat of Government or from New Zealand all the powers and authorities conferred on or vested in the Governor-General ... shall and may be exercised by the person appointed by the Governor-General to be his Deputy during such absence ...

The same provision was made in respect of the Deputy of the Lieutenant-Governor and the Administrator (s 4 of the Act). We follow that precedent.

353 The proposed section makes explicit the important limit that the powers cannot be exercised concurrently—the Administrator can exercise the Governor-General's functions *only* to the extent that the Governor-General is unavailable to do so. Since the office of Administrator exists only to the extent that the Governor-General is unable to act, arguably that part of the draft is unnecessary, but we include it for the sake of clarity and accessibility.

354 Subclause 2 of the provision carries over the present s 25E. Section 25E itself arose from a recommendation in the 1980 Review of the Letters Patent that the fact of exercise by the Administrator of a function of the Governor-General should be conclusive evidence of the Administrator's authority and that it would be convenient to

provide for this. Originally enacted as s 3 of the Administrator's Powers Act 1983, on that Act's repeal in 1986 it was inserted in its present position.

355 The other provisions of the Act in respect of the Administrator and Governor-General which fall to be considered here are ss 25C and 25D, clarifying the position of the offices in respect of Imperial enactments (to which of course the general provisions of the 1924 Act do not apply). So those two sections provided that references to the Governor in Imperial Acts are be read as references to the Governor-General and as including the Administrator. Since (1) the present draft applies to Imperial enactments (cls 3 and 19(1)), (2) "Governor" means Governor-General (cl 19(2)), and (3) the Administrator can exercise the powers of the Governor-General (cl 16), no further provision is required.

Law officers of the Crown

17 (1) The Solicitor-General may exercise any function conferred on the holder of the office of the Attorney-General, by enactment or otherwise.

(2) Whenever the office of Solicitor-General is vacant or the holder of the office is for any reason unable to perform the functions of the office, the Governor-General may appoint a barrister or solicitor of at least 7 years' practice to act in place of or for the Solicitor-General during the period of that vacancy or inability.

(3) The performance of any function by a person appointed under subsection (2) is sufficient evidence of that person's authority to perform that function.

356 The Attorney-General and the Solicitor-General are the principal law officers of the Crown. Both are appointed under the prerogative and during pleasure (although the Constitution Act 1986 and the State Sector Act 1988 affect the offices). Each office has its own particular incidents although in practice most of those which belong to the Attorney-General—which may be summed up as the representation of the public interest and the enforcement of the criminal law—are in fact undertaken by the Solicitor-General on a day to day basis. This common practice is recognised and provided for in s 4 of the 1924 Act and s 27 of the Finance Amendment Act (No 2) 1952,

which are largely overlapping provisions. Section 4 defines "Attorney-General" as follows:

> "Attorney-General" in respect of any power, duty, authority, or function imposed upon or vested in him in virtue of his office as Attorney-General, includes the Solicitor-General.

Like the definition of Governor-General considered above, this is not a definition at all, but a device to confer indirectly co-extensive powers on the Solicitor-General. It can be traced back to the Interpretation Act 1878. Section 27 is more extensive, since it is not limited (as is s 4) to powers conferred by statute:

> **27. Functions of Attorney-General may be performed by Solicitor-General**—Notwithstanding any Act, rule, or law to the contrary, any power, duty, authority, or function imposed upon or vested in the Attorney-General by virtue of his office may be exercised and performed either by the person holding the office of Attorney-General or by the person holding the office of Solicitor-General.

This provision is preferable to s 4 in the sense that the conferral of powers is explicit. On the other hand it does not recognise that another enactment or the context may require a different reading. Indeed its strong introductory words suggest its supremacy over all other statutes, but cf, eg, Statutes Drafting and Compilation Act 1920 s 2(2), which makes clear one limit on the exercise by the Solicitor-General of the functions of the Attorney-General.

357 The two provisions do not of course operate in reverse allowing the Attorney-General to exercise the statutory powers of the Solicitor-General, eg the power to appeal against a sentence thought to be inadequate is confined to the Solicitor-General, Crimes Act 1961 s 383(2). Clause 17 carries the basic provisions forward. It will be overtaken by particular statutory provisions, such as the Crown Proceedings Act 1950 ss 2, 14 (civil proceedings by or against the Crown may be brought in the *name* of the Attorney-General); Criminal Justice Act 1985 s 116(8) and Armed Forces Discipline Act 1971 s 192(5), (6) and (8) (power to reclassify special patients); Statutes Drafting and Compilation Act 1920 s 2(2) and note Acts Interpretation Act 1924 s 25B(9) (where there is no Attorney-General, the Prime Minister controls the Parliamentary Counsel Office); and probably also the Acts and Regulations Publication Act 1989 ss 4(1), 6, 7, 9, 10(1), 14, and 15(3) (Attorney-General's duties in respect of the publication and availability of legislation). The provision made by cl 17 might better be included (in the absence of an Attorney-General Act) in the Constitution Act 1986 and the following in courts legislation.

Judicial officers continue in office to complete proceedings

18 (1) A judicial officer whose term has expired or who has retired may continue in office for up to one month (or longer, with the consent of the Minister of Justice) for the purpose of determining or giving judgment in any proceedings which that officer has heard, whether alone or together with any other person.

(2) The fact that a person continues in office under subsection (1) does not affect any power to make an appointment to that office.

(3) A person continuing in office under subsection (1) shall be paid the remuneration and allowances to which that officer would have been entitled but for the expiry of the term or the retirement from office.

(4) In this section "judicial officer" means any person (other than a Judge of the High Court) having authority to hear, receive and examine evidence.

358 See 1924 Act s 25A (as inserted in 1973) Preliminary Paper 1 para 210.

359 Again this provision is continued on the basis of its apparent practical value. The alternative may well be the inconvenience, cost and other disadvantages of a rehearing of the action, although a temporary appointment may also be available.

360 Some concern had been expressed to us in respect of the present s 25A(2), providing that the Minister of Justice must consent if the continuance is to last more than one month. This requirement probably results from a fear that the power, useful as it is, might be abused. But no examples of such abuse or attempted abuse have come to our attention.

361 High Court Judges (and therefore Court of Appeal Judges) were excluded from the present provision, apparently at the request of the then Chief Justice (see (1973) 388 NZPD 5232). Special provision is made in respect of an aspect of this matter in the High Court Rules (r 543). But the present section may be unclear in respect of Judges of the District, Family, Youth, Labour and Maori Land Courts. As "judges" they appear at first to be excluded by s 25A(6)(b). But the reference in subpara (a) to "Magistrate" is presumably to be read to include District Court Judges (and hence Family and Youth Court Judges). The Labour Court had not been constituted in its present form when this section was enacted, and it is unclear whether the

position of Maori Land Court Judges was considered. (This matter is not provided for in the Acts relating to the two courts.) The Judges of both those courts would appear to be excluded by s 25A(6)(b). Yet the second reading speech refers only to High Court Judges as a special case. The new provision clarifies the exception—it is restricted to "Judges of the High Court" (including Court of Appeal Judges). It may be that that exception should be removed and the provision given general application. We understand that some practical difficulties have arisen in respect of matters pending at the time of a resignation, but the timing of a resignation should ordinarily allow for such matters and in other cases the extra period would appear to be inappropriate. Accordingly we do not propose the extension of the provisions to include resignations.

PART 6
DICTIONARY

Introduction

362 We have already noted that one purpose of Interpretation Acts is to shorten statutes by providing standard definitions of words and phrases commonly used. That purpose can be seen as far back as Lord Brougham's Act of 1850, to take the best known early interpretation statute, and continues to be prominent today. The practice can help produce a better understood, more coherent and more principled statute book.

363 The *characteristics* of definition provisions in interpretation statutes are that

- they give standard meanings to words or phrases that are frequently used throughout the statute book;
- they do in fact generally apply wherever those words or phrases are used (and are not subject to frequent exclusion by context or special definition);
- in general, they provide a meaning which is common in ordinary usage or close to it (we say *in general* since some definitions which extend the meaning of a word beyond its accepted meaning—such as the singular including the plural—are well known and well accepted by users of the statute book); if the meaning is obvious we must of course ask whether the provision is required at all.

364 Those characteristics also apply to interpretation sections included in particular statutes, although in that case the third characteristic is not as important. It is possible for a particular word or phrase to be used in an unusual or extended way in a particular statute on the basis that the users of that statute will be aware of the device. Such interpretation provisions sometimes have rather more the character of application provisions or of substantive enactments which extend the ordinary meaning of a term. Thus a "harmful substance" under the Toxic Substances Act 1979 is defined in s 2(1) as a substance declared by the Minister under the Act to be a harmful substance—with consequences of course for its control; and "coal" under the Coal Mines Act 1979 s 291 includes peat. It may be that such provisions are better included in separate *application* provisions or in the substantive sections of the statute. It can be misleading to include them in a definition section. We have made a related comment about the current definitions of Administrator and Attorney-General, paras 350–357.

365 It must also be remembered that some *particular* statutes define words (or establish or redefine statuses) not simply for the purposes of that Act, but with effect throughout the statute book. The Time Act 1974 and the Decimal Currency Act 1964 provide good examples of this practice. (See appendix D.) Where an individual statute deals comprehensively with a particular matter, it will often be sensible to place the standard definition there rather than in an interpretation statute. In other cases, definitions in particular Acts which are originally unintended to have this pervasive effect may acquire it through common usage—later statutes invoking the particular Act. For example we see that advantage is seldom taken of the standard definition of "local authority" provided in the Acts Interpretation Act 1924. Instead, individual statutes using the concept often define it by reference to the Local Authority Loans Act 1956 (for example Securities Act 1978 s 2, Recreation and Sport Act 1987 s 24) or the Local Government Act 1974.

366 Our own review of the dictionary in s 4 (including possible additions to it) falls into place in the light of those characteristics and purposes:

- The 1924 list requires *updating* by deletion, addition, and rewriting against the characteristics of frequent use, lack of clarity of the word or phrase, and a common general meaning.

Definitions which carry forward constitutive or status provisions should not in general be included. Nor should those which state the obvious.

- The list needs to be *prominent* in the minds of those who write and read statutes; there is considerable evidence of neglect of the definitions and as a result the purposes of having a single definition are lost. One means of helping the reader is to adopt a device used elsewhere of a footnote to indicate the fact that a word or phrase is a defined term. We propose that that be done in the New Zealand statute book. (See for instance the suggestion about a footnote to the definition of "consular officer".)
- The definition should not be by *reference* to another statute since that adds an unnecessary step for the user of the statutes.
- The answer in some cases is not a provision in the general set of interpretation paragraphs but standard *drafting practices* arising from principle and practice. We make such a suggestion about "document", para 408.
- In other cases provisions presently found in the interpretation statute would be better placed elsewhere and, conversely, provisions presently in other Acts or undefined anywhere should be included in the dictionary.

Definitions

367 Just as we use the word "definition" in the heading to cl 19, we propose its use for the definitions (or "meanings") of words and expressions included routinely in statutes. The first reason is that the statements *define* the words or expressions for the purpose of the legislation in question. That is the most appropriate word for the function (cf, eg, *Will v Michigan Dept of State Police* 105 L Ed 2d 45, 56–57, 59 (1989) referring to the parallel United States provisions as the Dictionary Act). The second reason is that the major alternative word—"interpretation" —has a wider meaning, as is shown indeed by the title to the present report and to the proposed statute. That wider meaning also appears from the occasional separate inclusion in the introductory parts of statutes of provisions which do have that wide interpretative significance. The following provision is divided into two subsections. The second applies only to existing provisions. The definitions there in our view should apply only to existing statutes; some have not been used in new enactments for many years.

19 (1) In an enactment:

Act means an Act of Parliament or of the General Assembly and includes an Imperial Act which is part of the law of New Zealand

For Imperial Acts in force in New Zealand see the Imperial Laws Application Act 1988

368 The present definition gives a surprising meaning to the word "Act". It includes all rules and regulations made under Acts of Parliament (and the General Assembly).

369 We have given the word its ordinary meaning to avoid one important practical consequence of the present wide meaning for the relationship between Acts and subordinate legislation. An Act (properly so-called) which says it is subject to the provisions of "other Acts" might as a consequence of the present definition be subject to the provisions of regulations and might accordingly be repealed or amended by regulations. That is contrary to the basic constitutional relationship between Acts made by Parliament and subordinate legislation made under its authority by the Executive. The Court of Appeal has given the provision that wide effect in *NZ Shop Employees Industrial Assn of Workers v Attorney-General* [1976] 2 NZLR 521, 526, 534. That broad consequence worried the Statutes Revision Select Committee. In its review of the New Zealand Forest Products Remuneration Regulations 1980 it expressed the opinion that:

> . . . no amendment or alteration of an Act of Parliament should be effected by simple act of the Executive unless Parliament has made a conscious choice that such a course is appropriate in all the circumstances.

It accordingly recommended that consideration be given to amending the Acts Interpretation Act 1924 "to ensure that in future it will be necessary for Parliament to make a conscious decision in any particular case where it intends to make over its powers to the Executive, rather than merely allowing such powers to be transferred by default" (AJHR 1980 I 5, pp 9, 12).

370 Parliament does of course sometimes expressly allow regulations to affect Acts—but it makes that decision deliberately in a particular context for what it perceives to be good reason. It does that rarely and as an exception to the usual relationship.

371 Moreover it is notable that other interpretation statutes which do define the word "Act" give it its ordinary meaning. It can be said

with force that a definition in those terms is obvious and accordingly unnecessary. But we think that there is reason to include the definition since we wish to make clear the exclusion of subordinate legislation. Further we wish to include those Imperial Acts which are part of the law of New Zealand. (We have not included the definitions of "Imperial Act" and "Imperial Parliament" since they are obvious, and we now have an authoritative list of Imperial legislation (secondary as well as primary) in the Imperial Laws Application Act 1988; the texts of almost all of them appear in *Imperial Legislation in Force in New Zealand* (NZLC R1 1987).)

372 It remains useful however to have an omnibus term to describe the combination of primary and secondary legislation. We have employed "enactment" for that purpose.

373 The last group of legislative instruments which it might be thought useful to include in the definition of "Act" are the remaining provincial Acts and ordinances passed by provincial legislatures before the abolition of the provinces (with their extensive powers) in 1875 and still in force. They were included within the definition of "enactment" from 1868 to 1888. According to *Tables of New Zealand Acts and Ordinances and Statutory Regulations in Force*, there were 49 such enactments as at 1 January 1990. The present provisions relating to them are mentioned in appendix C in the context of the proposed repeal of the Second Schedule of the 1924 Act. We are not aware of any difficulties in the period since 1875, either in the administration or the amendment or repeal of provincial Acts and ordinances. The Department of Internal Affairs does not consider it necessary to retain the existing provisions relating to the provinces. Accordingly we have not extended the definition.

commencement in respect of an enactment means the time when that enactment comes into force

374 We retain this provision, subject only to standardisation of terminology—"enactment" for "Act" and "comes into force" (the phrase routinely used in particular enactments since 1924) for "comes into operation". See also cl 4.

Commonwealth country or part of the Commonwealth means a country that is a member of the Commonwealth, and, when used as a territorial description, includes any territory for the international relations of which the member is responsible

See also the Commonwealth Countries Act 1977

375 This is an adapted revision of the present definition. Of 17 statutes which use the expression "Commonwealth" or "Commonwealth country", 15 define the expression to include territories for the international relations of which the country is responsible. Those separate extended definitions make the present definition redundant. In practice it has been found to be too narrow. It is more convenient to include the expanded definition just once in the interpretation statute. Those extended definitions do not of course say that such a territory is a "Commonwealth country" or "member of the Commonwealth". Rather a reference to say an order made by a Commonwealth Court will include courts in Hong Kong. The particular provisions could be repealed as convenient. In practice it relates to countries outside the realm of New Zealand and accordingly does not have any real effect in respect of the other parts of it. We note elsewhere that the law deals separately with the Cook Islands and Niue and with Tokelau and the Ross Dependency.

consular officer means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions

This is the definition included in the Vienna Convention on Consular Relations, the English text of which is set out in the First Schedule to the Consular Privileges and Immunities Act 1971

376 This definition updates the present (more limited) one to accord with the Vienna Convention—which holds the central place in the law of consular relations. The substance of the Convention definition is repeated here to avoid the inconvenience, mentioned earlier, of definition by reference. Rather the governing statute is mentioned in the note to the definition. Again outdated and incomplete definitions in particular enactments could be repealed as the opportunity offers.

enactment means the whole or a portion of

(a) an Act

(b) regulations, rules, or bylaws made under an Act by the Governor-General in Council or by a Minister of the Crown, or an instrument revoking such regulations, rules or bylaws

(c) an Order in Council, Proclamation, notice, Warrant or instrument of authority made under an Act by the Governor-General in Council or by a Minister of the Crown which extends or varies the scope or provisions of an Act, or an instrument revoking such an instrument

(d) an Order in Council bringing into force, or repealing or suspending an Act or any provisions of an Act

(e) an instrument made under an Imperial Act and having effect as part of the law of New Zealand

(f) a resolution of the House of Representatives adopted under the *Regulations (Disallowance) Act 1989*

For the instruments within para (e) see the Imperial Laws Application Act 1988

377 This is a new definition. The statute book, like the present draft, distinguishes between Acts, regulations and enactments. As indicated in the commentary to "Act" above, the proposed definition limits that word to its ordinary meaning. "Enactment" is used as the comprehensive term, consisting of Acts plus subordinate instruments. It is defined for the first time. The Court of Appeal gave the word (as used in one provision of the 1924 Act) that meaning in *Black v Fulcher* [1988] 1 NZLR 417, 419. And it also is an appropriate and convenient way to refer to parts of a particular Act or set of regulations, as well as to the complete text.

378 The paragraphs of the definition relating to regulations are drawn from the definition in the Regulations (Disallowance) Act 1989 s 2. Some changes are proposed. The drafting changes to paras (b) and (e) are mostly explained in the Commission's report on the *Statutory Publications Bill* (NZLC R11 1989) appendix B para 4. (If accepted here they would also be included in the 1989 Act.) And para (f) has been added from the definition in the Acts and Regulations Publication Act 1989 s 2; those resolutions have the same significance and effect as regulations made in the usual way. They should be subject to the same interpretation law.

Governor-General in Council or any similar expression means the Governor-General acting on the advice and with the consent of the Executive Council

379 We have already noted that definition provisions should not repeat obvious meanings or be used to bestow powers or status on

persons or offices. The definition of "Governor-General" is not retained because it is in part obvious and because the proposition that the Administrator may exercise the Governor-General's statutory powers is better stated in a separate substantive provision (see cl 16 above).

380 The remainder of the definition, carried forward from the present Act, in respect of the Governor-General in Council does not suffer from either difficulty. It is not constitutive of the Governor-General's obligation to take certain actions *only* with the advice and consent of Ministers. But it recognises that obligation and provides a useful shorthand expression in respect of it.

Minister means the Minister of the Crown responsible for the administration of the enactment

381 This new provision reflects a recommendation of the Legislation Advisory Committee (*Departmental Statutes* April 1989, Report No 4), accepted by the Government and recent legislative practice. The manner in which the Executive arranges its own responsibilities is in general a matter for it and not for Parliament. Accordingly, Parliament's concern is more to ensure that functions and mechanisms exist, rather than to assign those functions to particular Ministers. The Legislation Advisory Committee therefore recommended (para 55) that "legislation should in general confer powers and responsibilities on Ministers in non-specific terms—"a Minister of the Crown" . . . ". This approach has been adopted in some specific recent cases, eg, Trade and Industry Act Repeal Act 1988 s 2 ("the responsible Minister of the Crown"), School Trustees Act 1989 s 2 ("the Minister of the Crown for the time being responsible for the administration of this Act"), Ministry of Energy (Abolition) Act 1989 ss 2, 12. The proposed general definition of "Minister" reflects this practice and removes the need to provide a specific definition in every case. It also removes the need for very extensive amendments to the statute book when the name of a Ministry or Minister is altered. See further para 96 above.

month means a calendar month

382 This provision is carried forward from the present Act. The calendar month remains a common measurement for periods of time—for example in relation to bills of exchange, registration periods and prison sentences. The advantage of using the calendar

month lies in its simplicity—the period is relatively easy to calculate; see further 45 *Halsbury's Laws of England* (4th ed) paras 1107–1111.

New Zealand or other words or phrases referring to New Zealand, when used as a territorial description, comprises all the islands and territories within the Realm of New Zealand other than the self-governing state of the Cook Islands, the self-governing state of Niue, Tokelau, and the Ross Dependency

383 This definition updates the definition of "the colony", "this colony", "the Dominion" and "New Zealand" when used as a territorial description in legislation. The two matters just mentioned are critical. Some references to New Zealand do not have a territorial significance or only a territorial significance; consider references to institutions (such as Her Majesty the Queen in right of New Zealand, or the New Zealand Government Property Corporation) or to such matters as the security or defence of New Zealand (as in the Official Information Act 1982 s 6).

384 The second point about the definition is that it is a presumptive definition of the territorial term or reference when it appears in a statute. It helps determine the *meaning* of the statutory terms. It assumes the existence of earlier, distinct acts of State which constitute the various elements of the Realm. The definition has no direct impact on those constitutional and international matters. Rather it follows them. Accordingly the latter part of the provision draws on the wording of the 1983 Letters Patent constituting the Office of Governor-General of New Zealand, SR 1983/225.

385 If Parliament or some other lawmaker has made a law, two different questions relating to territorial scope or definition can arise:

(1) in what places is that law in force, that is as part of the law of that place?

(2) in respect of what places, or events in what places, does that law have effect?

The distinction parallels that made earlier relating to the temporal scope of law; between a law being in force at a particular time (part 2 of the draft Act) and a law having effect in respect of a particular time (especially the events occurring then) (part 3).

386 One example illustrates the difference. The Crimes Act 1961 makes it an offence to commit piracy. Under that law in force *in* New

Zealand (and no where else) and enforced by New Zealand institutions, including the courts, piracy is an offence—that is the answer to question (1) above. But in the sense of question (2) that law of New Zealand has effect only in respect of actions taken *outside* New Zealand —in essence only on the high seas (Convention on the High Seas 1958 article 15). That is, in this case, there is a complete lack of coincidence between the two answers. Usually there will be a much closer correlation.

387 In a particular case the answer to question (1)—the extent of legislative power—is determined in the first instance by the basic constitutional documents, often as read in the context of the relevant rules of international law. Those documents and rules determine the areas over which the New Zealand Parliament has the power to make law. So in respect of Western Samoa the New Zealand Parliament in 1961 said, in conformity with the decisions being taken at the United Nations to end the trusteeship over Western Samoa, that after that country became independent the New Zealand Parliament would no longer have legislative power. That, in terms of the constitution of the Cook Islands, is also the position of that associated state. For Niue, New Zealand will pass legislation only at Niue's request and consent. And legislation is not to be in force in Tokelau unless the particular enactment expressly so provides although that provision in the Tokelau Act 1948 s 6 would not prevent an enactment being in force by clear implication, eg, paras 18, 153 and 261 above. In practice this question does not arise very often. In almost all cases, the law enacted by Parliament is in force as part of the law of the principal islands of New Zealand and not for the three areas just mentioned nor for the Ross Dependency. But sometimes it will be given a wider or different scope—usually by specific express enactment (eg, Citizenship Act 1977 s 29), and by contrast many subordinate lawmakers can make law only for certain geographic areas.

388 In general, interpretation legislation and the definitions contained in particular statutes do not bear on that constitutional issue of the places where the law is in force. Rather, on the basis that the law *is* in force in the place for the courts or other bodies and persons charged with applying and enforcing the law, they answer the separate question does that law extend in its application to persons or events in a certain place? The particular statute will sometimes answer that question in its substantive provisions: for instance with crimes or contracts having transnational characteristics. Our work on

choice of law suggests that the attention given to that matter is not always consistent. But interpretation provisions in the interpretation statute or the particular statute will sometimes be decisive—in giving a meaning to particular territorial terms. Many other statutes do not address the matter directly and apply, in accordance with general principles of interpretation, only to events and persons within New Zealand, eg Pearce and Geddes, *Statutory Interpretation in Australia* (3d ed 1988) 97–100. The basic territorial definition provided in the Act conforms with the general presumption of interpretation—that statutes apply within the territory for which the law is in force. We have seen already that that coincidence is not inevitable (para 386). Another example can make the point. Legislation relating to inland fisheries might apply only to fishing in Lake Taupo. It is however part of the law of New Zealand and can be enforced by courts throughout the country.

389 The usual coincidence of the place where the law is in force and the extent of its territorial application also explains the express exclusion by the 1924 definition of the Cook Islands, Niue and Tokelau (the last two being added in 1966 and 1948 respectively). The general exclusion, as a matter of interpretation, of events in the Ross Dependency is also understood. This can of course be reversed by express provision. So the reversal in the Citizenship Act 1977 which provides an extension of the usual meaning to include those four areas has as one consequence that a person born in any of them is a New Zealand citizen by birth. This is also a case, as noted already (para 387), where the Act is in force as part of the law of the Cook Islands, Niue and Tokelau. For other instances of changes in the standard meaning of "New Zealand" as a territorial description, see, eg, Territorial Sea and Exclusive Economic Zone Act 1977, the Citizenship (Western Samoa) Act 1982 s 2, the Immigration Act 1987, the Conservation Act 1987 s 6(c), and the Electoral Act 1956 (as amended in 1985).

390 A standard definition along those lines (that is excluding those states and territories) is probably useful—if not strictly necessary. We say not strictly necessary since there is a very large number of statutes which operate effectively within those general territorial limits without any express exclusionary or defining provision. A better analysis is required of the statutory practices. But consider, eg, legislation regulating employment—including safety at work. Much of it will apply only within "New Zealand" as so understood. But the law relating to the contract might apply to events outside New Zealand

(for instance in terms of salary and obligations of confidentiality), or that on safety might extend to (New Zealand) ships or aircraft outside New Zealand.

391 Either "Colony" or "Dominion" in relation specifically to New Zealand is of course anachronistic. We have not found any instances of the use of those words with a territorial application (cf, eg, the Australasian "colonies" reference in the Privy Council legislation).

392 A final question, relating to the phrases "territorial limits" and "limits of New Zealand" in the 1924 Act, is whether "New Zealand" when used as a territorial reference includes or might include its territorial sea as well. In some situations that can be justified (as with the scope of the Crimes Act 1961 for instance, see s 2 of that Act), but in others it might not be appropriate (as with Customs Act 1966 offences for instance, given the right of innocent passage by foreign vessels through the territorial sea, and the requirement that an offence is committed only if a person has the relevant intent and does the criminal act actually *at* or even *inside* the land border). Consider for instance the importing offences in the Animal Remedies Act 1967 (see s 2(1) ("imported")), Animals Act 1967 Part II (and see the definition of "place" in s 2(1)), Plants Act 1970 Part I, Health Act 1956 s 96 (quarantine), Toxic Substances Act 1979 Part V; see also Carriage of Goods Act 1979 s 2 (international carriage). On this issue, we require a better understanding of statutory usage. In the meantime we propose that a definition of the limits of New Zealand and the inclusion within them of the territorial sea be maintained. See para 405 below.

Order in Council means an order made by the Governor-General in Council

393 See the earlier definition of "Governor-General in Council". Combined with this provision, there is implicit recognition of the process underlying the making of Orders in Council.

person or any term descriptive of a person includes the Crown, and any corporation sole or body corporate or politic

394 This provision is both wider and narrower than the present definition. The present definition is confined to "person". Accordingly, it does not give its extended meaning to other commonly used words such as "everyone" or "no one". (Section 6, dealing with the

criminal liability of companies suffers from the same limitation, as noted later, paras 400–402.) The proposed definition has wider application. The definition also makes explicit the inclusion of the Crown within the scope of person, *Madras Electric Supply Corporation v Boarland* [1955] AC 667, *Ellis v Frape* [1954] NZLR 341, 348. In other drafting respects it draws on Australian and Canadian provisions, and on the second part of s 5(k).

395 The proposed definition is narrower than the 1924 Act in that it does not include the reference to unincorporated bodies, first included in 1908. That reference is not found in earlier statutes and is uncommon in other interpretation measures. While the extension does not appear to have caused any difficulty, it does not appear to make sense or to have any real effect.

396 Indeed it is very difficult to see how it can operate in most practical situations. Consider the provisions of the Sale of Liquor Act 1989 which permit a "person" to apply for a liquor licence, the testing of that "person's" suitability, the obligations of that "person" as a licensee, the manner in which the "person" as licensee conducts the sale of liquor under it, the rights to be heard and to appeal of that "person", and the "person's" potential criminal liability. How is the "person" consisting of an unincorporated body to make the various decisions and meet the various obligations when it does not exist in any identifiable form, has no identifiable powers and funds, and has no recognised methods of decision making? How would the "person" defend a prosecution and be the subject of enforcement for non-payment of a fine? It will of course be the case in some contexts that a small group of persons will have a clear identity and can have to some extent a distinct personality and be the subject of legal rights and obligations; the law of partnerships makes the point and see, eg, *New Zealand Federated Labourers v Tyndall* [1964] NZLR 408, 412, 413, 416 (a joint venture, although not a legal entity at common law nor a partnership, was a "person" under the wider definition in the Industrial Conciliation and Arbitration Act 1954).

397 The Sale of Liquor Act 1989 helps make another point about this definition in its present or proposed form. It is plain from the context that some of the references to "person" can apply only to human beings; consider the offences of being on unlicensed premises or under-age drinking; for more difficult cases see *Real Estate House (Broadtop) Ltd v Real Estate Agents Licensing Board* [1987] 2 NZLR 593 and *R v Murray Wright Ltd* [1970] NZLR 476.

398 Another point can be made about this definition. It is one provision which has suffered from disuse. That is apparent in two ways—it is common to find first, an exact repetition of the standard definition in particular Acts or the enactment of one to similar effect (eg, Commerce Act 1986 s 2), and, second, frequent unnecessary references, for example, to "person *or body*" (eg, Films Act 1983 s 11(1), Maori Language Act 1987 s 17).

399 For the future we accordingly propose the above definition. So as not to disturb any present understandings we have maintained the present definition in subcl (2). Since the generally applicable definition proposed in subcl (1) is narrower than that for existing statutes proposed in subcl (2), we do not see any problems arising from having the two definitions.

400 It is convenient to consider in this context s 6 of the 1924 Act. That section provides that "person" in penal Acts includes bodies corporate, and that fines payable to "parties aggrieved" can be paid to bodies corporate. When originally enacted in 1903 the application of the criminal law to companies was still unclear for a number of procedural and substantive reasons (originally it had been thought that a company could not be prosecuted at all). The common law has now recognised that it is possible for a company to be criminally responsible for a full range of offences. (See the line of cases culminating in *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153.)

401 Thus the courts now recognise that a company can have the requisite mens rea and can also perform the actus reus of an offence. And the procedural problems associated with indicting or sentencing a company have been dealt with by particular legislation. In this situation it is now inconceivable that a court would refuse, as a general rule, to find that companies were subject to the criminal law simply because the statute was drafted in terms of "persons". In any event the provisions of s 6 are too narrow to catch the many offence provisions which do not use the word "person".

402 There will always be offences which cannot apply to companies (bigamy is a frequently cited example) but the general law has developed to a point where a specific provision such as s 6 is no longer needed to create a presumption that companies are covered. The general definition of "person" above which implies that all laws will apply to companies unless the context renders that undesirable

and the body of common law on this point are sufficient. Accordingly s 6 is discarded in this draft.

prescribed means prescribed by or under the enactment

403 This is a definition in s 4 which is often repeated in particular enactments. There is no need for a particular definition unless it is intended to vary it, for instance to cover prescribing under *another* enactment as in the Defence Act 1990.

Proclamation means a proclamation made and signed by the Governor-General under the Seal of New Zealand and gazetted

404 This provision is carried forward with drafting amendments and an omission from the present definition. It omits the reference to proclamations summoning, proroguing and dissolving Parliament, a matter fully regulated by the Constitution Act 1986.

territorial limits of New Zealand, limits of New Zealand and other expressions indicating a territorial description mean the outer limits of the territorial sea of New Zealand

405 See para 392 above. This provision is essentially carried forward from the present definition.

working day means any day of the week other than

- **(a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day**
- **(b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year**
- **(c) the day observed as the anniversary of the province in which an act is to be done**

406 This definition, new in the present context, has appeared increasingly in recent statutes as the converse of "holiday". As well as Saturday and Sunday and the usual public holidays, a period of days over the Christmas break is excluded as "working days"—taking account of the closure of the courts and many offices, registries and businesses over this time. The period is longer than that found in some standard contract and related forms. It can of course be shortened in particular enactments. Similar provision (although over a

shorter period) was made in respect of the offices of District Registrars of Companies at least as early as 1957—see Companies Regulations 1956, Amendment No 1 (SR 1957/256) and Industrial and Provident Societies Regulations 1952, Amendment No 1 (SR 1957/257). Finally the definition includes a day observed as a provincial holiday when that is relevant. Of course this has the effect that there will on occasions be a holiday in part of the country and not the rest, but in practice, people are well aware of this and arrange their affairs in consequence. The relevant place will of course be that where papers are to be filed or a court is to sit—there should not be any difficulty with this in practice. If papers are to be filed on a certain day in Christchurch, the fact that it is Anniversary Day in Auckland is of no relevance whatever.

407 The concept of the "working day" is used increasingly in recent legislation, particularly in relation to official matters—periods of working days are prescribed for the filing of documents, making of objections etc. These generally are matters that can *only* be attended to on working days. The definition above (or a substantially similar one) was included in 8 separate statutes in 1989—a general provision will be useful in avoiding repetition. Consequential amendments by way of deletion could be made to those and related provisions.

writing includes all modes of representing or reproducing words, figures or symbols in a visible form.

408 This definition has been adopted from the Victorian Act s 38 which is a more modern formula than any comparable provision. We have retained a definition of "writing" because it remains in use in a wide range of statutory contexts where one principal literal meaning (handwriting) could cause difficulty. Examples include some documents which must be in writing such as wills (Wills Act 1837 (UK) s 9) and certain contracts (for example if remedies are to be invoked under the Contracts Enforcement Act 1956); many powers must be exercised or authorised in writing (one of the primary examples being the powers of delegation under ss 28 and 41 of the State Sector Act 1988); and notice—of resignation, requiring information, powers of entry—must often be given in writing. The examples are numerous and very varied. The wider meaning given to "writing" might be thought necessary since these actions will often not be hand-written and also may not be limited to words: company seals may be

stamped, contracts will commonly be printed or typed, documents may be photocopied, faxed or telexed.

A related point (made in several submissions to us) is the impact of computer and other technology. It was suggested by some that this element should be incorporated into a definition of "writing". The context seems to negate that: where something is to be done "in writing" as in the statutes mentioned above, the main requirement is a visible form. Rather, the instances where technological advances need to be catered for are provisions which are directed at *information* in a much wider sense—generally in the context of the gathering and admissibility of evidence. That context is addressed in a standard definition of "document" which has become common in statutes. An early example is in the Crimes Amendment Act 1973 replacing a definition of "document" for forgery offences in s 263. In an updated form it has been used in a large number of statutes since 1980 (eg, Commissions of Inquiry Amendment Act 1980, Official Information Act 1982, Evidence Amendment (No 2) Act 1980, Commerce Act 1986 . . .). To the extent that the definition is directed at information in a broad sense the word "document" is somewhat misleading. However the term has gained that wide meaning through usage and an alternative is not immediately obvious. A standard formula has been developed. With changes appropriate to the particular context it should continue to be used in specific statutes. In the interest of clarity we propose some minor changes in the standard form:

document includes

(a) any writing on any material

(b) any label, marking or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means

(c) any book, map, plan, graph or drawing

(d) any photograph, film, negative, tape, chip or other device in which one or more images are embodied so as to be capable of (with or without the aid of some other equipment) being reproduced

(e) any information recorded or stored by means of any recording device, computer, or other device; and any material subsequently derived from information so recorded or stored.

(2) In an enactment passed or made before the commencement of this Act:

constable includes a police officer of any rank

409 See Preliminary Paper 1, paras 135–136. The word "constable" has two distinct meanings in the statute book. It refers to the *office* of constable which is held by every sworn member of the police and it is in that sense that the word is used in this definition carried forward from the 1924 Act. "Constable" is also a junior rank in the police force. The first is the important statutory usage—power to arrest or search, for example, will generally be conferred only on sworn members of the police—those holding the office of constable. The definition allows the short word "constable" to convey that sense of being sworn. However, legislative practice is now to use the term "member of the police" for this purpose, reflecting the provisions of the Police Act 1958 (as amended in 1989), eg, Misuse of Drugs Amendment Act 1987, Coroners Act 1988, Tariff Act 1988, Trade in Endangered Species Act 1989 . . . . And some recent defence legislation has included provisions replacing references to "constable" with "member of the police", Armed Forces Discipline and Defence Amendment Acts 1988.

410 If "constable" is no longer to be used in new legislation it appears unnecessary to include it in the general definition provision. Comments received from the police support this conclusion. But for the meantime we retain the 1924 definition of "constable" in this part of the dictionary. The word is still frequently found in legislation, particularly transport statutes and any other Act which refers to those provisions of the Summary Proceedings Act 1957 that regulate search warrants and arrest.

411 The change in terminology does not of course affect the constitutional position of sworn members of the police who continue to retain the "office of constable" with its original authority.

Governor means the Governor-General

412 There are now very few references to "Governor" (the pre-1917 term) remaining in legislation still in force. When they are replaced this provision will become unnecessary.

land includes buildings and other structures and any estate or interest in land

413 The present definition of land suffers in part from its archaic language—the meaning of such terms as "messuages" and "hereditaments" may not now be clear. The definition has for that reason been reworded. We propose that it be limited to existing enactments. The reasons for that are outlined below.

414 The definition presents difficulties in that it comprehends two quite different concepts. It is trite law that land includes things that are closely connected to it—buildings, plants and trees and the airspace above and subsoil below it. That is the physical sense of land. But as well, there is a legal sense of land—land as a "bundle of rights"—including such rights as hereditaments. The 1924 definition makes it clear that references to land in enactments may mean land in either or both senses. References to "land" in the statute book are very common of course—consider the references in Acts regulating ownership and transfer of land, taking of land by the Crown or its agents, taxing, valuation, rating, land as security, powers of entry, cultivation and other uses of land (including the airspace and subsoil), building, planning, conservation, Maori land and so on.

415 But usually a statute will use "land" in only one of the two senses discussed above—transfer of land is about legal rights in land, but entry on to land refers to the physical piece of land. And where land is to have a legal rather than a physical connotation, specific primary statutes provide particular definitions, eg, Land Transfer Act 1952, Property Law Act 1952 and Public Works Act 1981. Others are found in the Administration Act 1969 ("real estate" rather than "land"), Trustee Act 1956, Land Tax Act 1976 and Crown Forest Assets Act 1989 ("Land", whether or not used as part of any other defined term, includes any interest in land, but does not include a Crown forestry licence). Some Acts define certain types of land or interests in land —so, "land owned" in the Income Tax Act 1976 and "Crown land", "Maori land" and "pastoral land" in the Land Act 1948. The general definition has been often displaced. The drafter has not always relied on it, nor it appears have counsel and the courts; the recent judgments in *Tainui Maori Trust Board v Attorney-General* [1989] 2 NZLR 513, do not mention the definition in an extensive discussion of the meaning of the crucial expression "land or interests in land".

416 This appears to be the correct approach. Where a statute is to affect legal rights in land, that fact and the exact nature of the relevant rights should be given due consideration in drafting, and the results made clear in the statute. The definition of "land" in the Crown Forest Assets Act 1989 provides an example. The distinction can of course be made other than by a definition. So the Land Settlement Promotion and Land Acquisition Act 1952 does not give a definition of "land" (although it does define "Crown land" and "farm land"); rather it sets out in Part I the sorts of interests in land which may be affected by the acquisition of land for farming purposes.

417 A definition of "land" is retained for the purposes of Acts which may rely on it to give land an extended meaning. But in the future, where particular rights or interests in land are to be affected by statute, practice suggests that that should be made clear on the Act's face.

> **person includes a corporation sole, and also a body of persons, whether corporate or unincorporate.**

418 See the discussion in paras 394–402.

419 A number of definitions in the Acts Interpretation Act 1924 have been omitted for one or more of the reasons indicated in paras 362–366. They are discussed further in appendix C.

Parts of speech have corresponding meanings

20 Where a word or expression is defined in an enactment, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

420 This new provision relates back to a question asked in Preliminary Paper 1 (para 128). In light of definitions such as "*Gazette*" and "gazetted", and "writing", "written", or "any term of like import", and many provisions in particular statutes which indicate that adjectives or verbs are to have the same meaning as the corresponding (defined) noun, it seemed clear that such a provision is worthwhile and we include it accordingly.

Same meaning for word used in Act and in enactment

21 A word used in an enactment made under the authority of an Act has the same meaning as it has in that Act.

421 This clause carries forward the substance of s 7 of the 1924 Act.

Gender

22 Words denoting a gender include each other gender.

422 The related provision in the Acts Interpretation Act 1924 s 4 can be traced back to Lord Brougham's Act. Its wording has been unchanged since 1850.

423 Compared to similar provisions elsewhere the New Zealand version is both inelegant and limited. Other recent provisions provide for at least a two-way rule, ie, that the feminine can also include the masculine. Some also specifically refer to corporations or recognise the existence of the third neuter gender (eg, NSW 1987, Commonwealth of Australia 1984, Canada, BC 1986).

424 In relation to words of the feminine gender, we have not discovered any legislation of general application which is drafted in the feminine, either in New Zealand or elsewhere. Feminine pronouns as far as we can tell appear in the statute book only where the application of the provision is specifically intended to be limited to women. (See for example, the Crimes Act 1961 ss 128, 131–139, 149, 194, 208, 248.) So although principle would suggest a reciprocal provision, there is no real practical need for the reverse of the current provision to be stated in legislation.

425 The present statement that words importing the masculine gender include females can be seen as supporting the traditional view that it is acceptable for women to be subsumed within men linguistically, at least. The arguments in favour of gender neutral language and in particular for rejecting this assumption or practice are canvassed thoroughly elsewhere and it is sufficient to say that the validity of those arguments is accepted as evidenced by current drafting practice. And although the current provision continues to be necessary because of the way that much of the existing statute book is still written, it is objectionable in that it can be seen as supporting an aspect of the subordination of women. To add the reverse proposition would address these political overtones. It would emphasise that

male and female should be presumed to be equal in language as well as elsewhere, see, eg, Victorian Legal and Constitutional Committee *Report on Interpretation Bill 1982* (October 1983) and Scutt "Sexism and Legal Language" (1983) 59 ALJ 163.

426 Current drafting practice has for some years required legislation to be written in a gender neutral style and an increasing proportion of the existing statute book accordingly does not use the masculine pronoun. When this usage has been eliminated entirely, the present and the proposed provision will be rendered redundant so far as the male and female genders are concerned.

427 The second point concerns bodies of the neuter gender: the Crown (other than Her Majesty in her personal capacity), corporations and other bodies. And in a grammatical context this point certainly logically follows: if "he" includes "she", it should also include "it". In the past the same point has been covered in part by the definition of "person" in the Acts Interpretation Act 1924, applied by analogy when the statute is drafted in terms that are descriptive of a person but do not use that word. Other specific provisions include s 6 of the Acts Interpretation Act 1924 and the definition of "person" in the Crimes Act 1961, in relation to criminal liability, and the statutory and common law rules relating to companies and natural persons generally.

428 Thus the presumption at present is that bodies corporate and unincorporate and the Crown are included wherever the word "person" is used. The substance of this definition is carried forward with some amendment in cl 19. To provide that words importing the masculine gender include other genders is the natural grammatical extension of this. Consider for example this provision from the Food Act 1981 s 9(2).

> (2) If a person sells an article to a purchaser in response to a request for a food of a kind for which a standard is prescribed, *he* shall be deemed to sell a food of that kind and under such description as is specified in subsection (1) of this section unless *he* clearly notifies the purchaser at the time of sale that the article is not of that kind.

429 Clearly this provision should be able to apply to corporations and this might be in consequence of the use of "person" (as defined in s 4). It may not be necessary to state that this is the case, as courts can

and have worked their way to sensible interpretations of such provisions in particular cases (eg, *O F Nelson & Co Ltd v Police* [1932] NZLR 337). But if part of this point is to be stated in the definition of "person" and if a provision on the words importing a particular gender is to be included, it seems sensible to incorporate the point there generally also. And in other cases the argument by way of "person" is not available. So the Occupiers Liability Act 1962 provides in s 4:

> An *occupier* of premises owes the same duty (in this Act referred to as the common duty of care) to all his visitors, except so far as *he* is free to and does extend, restrict, modify or exclude *his* duty to any visitor or visitors by agreement or otherwise.

430 The draft incorporates the essence of the Commonwealth of Australia provision.

Number

23 Words in the singular include the plural and words in the plural include the singular.

431 See Acts Interpretation Act 1924 s 4. The statutory usage of singular or plural may clearly preclude application of the presumption (as in the Victorian case cited in para 260). In other cases, the plural will be distributive—the function of a tribunal may be to consider applications—in which case there is no difficulty; as a matter of ordinary usage it is clear the tribunal can consider a particular application. It is likely, although not conclusive, that the rule will be applied to the same word in the same manner throughout an Act (see *Bank of Montreal v Gratton* (1988) 45 DLR (4th) 290). And the application of the provision must be considered separately in respect of each different word in a section or statute—because one word in the singular includes the plural (or vice versa), it does not follow the same is true of the other words in the Act. Where the matter is open, the courts may give greater or lesser weight to the provision (compare *Blue Metal Industries Ltd v Dilley* [1970] AC 827, *Sin Poh Amalgamated (HK) Ltd v Attorney-General* [1965] 1 WLR 62).

Computation of time

24 (1) A period of time described as beginning

(a) at, on or with a given day or act or event includes that day or the day of that act or event;

(b) from or after a given day or act or event does not include that day or the day of that act or event.

(2) A period of time described as ending

(a) by, on, at or with or continuing to or until a given day or act or event includes that day or the day of that act or event;

(b) before a given day or act or event does not include that day or the day of that act or event.

(3) For the purpose of calculating whether a period of a given number of days or clear days has elapsed between two events or the days on which the events happened, the days on which the events happened are not included in the period.

(4) If in accordance with provisions determining a period of time a thing is to be done on a day which is not a working day, it may be done on the next day which is a working day.

432 In part at least, the matters in this clause overlap with provisions of the proposed Manual on Legislation, and that is true also of cls 20–23. These clauses deal however with substantive effect while the Manual guides the manner in which particular provisions should be drafted. The points may seem small but are of great practical importance—consider time limits set down in statutes for the filing of appeals and documents, for registration of various matters and for the doing of many acts and things.

433 Present drafting practice is inconsistent in references to time and the limits imposed. Some statutes are detailed and specific:

- decisions on requests are to be given not later than 20 working days after the day on which the request is received (Official Information Act 1982 s 15);
- the landlord shall within 15 working days after the payment is made, forward the amount received to the Corporation (Residential Tenancies Act 1986 s 19);

- the Registrar shall within the first 10 days of each of the months of January, April, July and October in each year transmit all entries of births and deaths made in the register books in his office during the 3 months then last past (Births and Deaths Registration Act 1951 s 8);
- an employee shall not be entitled to parental leave if less than 12 months have elapsed since the day after the date on which the most recent period of leave ended (Parental Leave and Employment Protection Act 1987 s 6).

434 Other statutes (Limitation Act 1950, Unclaimed Money Act 1971) have the appearance of being less precise, although much has to do with the subject matter of the statute.

435 It is where the same issue is addressed with different terminology that confusion can arise. Enactments often use their own particular expressions: the High Court Rules use "within x days from" or "within x days after". The Electoral Act 1956 uses these and also the phrases "not later than x days after", and "not later than x days before". See also the examples above from the Official Information Act 1982 and the Residential Tenancies Act 1986. The Patents Act 1953 refers to "expiration". The Residential Tenancies Act 1986 provides that no order shall have effect after the expiry of a period of 12 months commencing with the date of the commencement of the Act (s 35). These differences may be minor, but there appears to be an unnecessary multiplicity of expressions.

436 The Commission proposes that the Manual on Legislation take a standard approach so that in general certain expressions can be treated as formulas for the purposes of calculation. There should be little difficulty in this. There are usually three situations where provisions about time occur:

- where consequences are to arise at a particular point in time;
- where consequences arise during a period of time certain at each end; and
- where consequences arise during a period of time of which the beginning or the end but not both is fixed.

(Thornton, *Legislative Drafting* p 95)

The statutory expressions used to convey time limits in these three situations should be limited, and should be precise and clear.

437 Subclauses (1), (2), and (3) of the draft set out general rules for the interpretation of expressions of time. These rules clarify and extend the limited help provided by s 25(b) of the present Act.

438 Clause 24(4) carries over the effect of the present s 25(a)—that generally actions are to be done on working days rather than holidays. The provision takes account of the fact that persons should not be prejudiced in carrying out prescribed acts merely because offices, registries and courts are not always open. The new provision is identical in effect to the old except that it is now worded in terms of "working days" rather than "holidays" (appropriate in this context and consistent with the approach taken in cl 19) and the provision in relation to further changes of time has been omitted as unnecessary. This provision may be displaced by specific enactments where it is felt that that is appropriate.

PART 7
REPEALS AND AMENDMENTS

Repeals

25 The following enactments are repealed:

(a) *Acts Interpretation Act 1924* (1 RS 7)

(b) *Statutes Amendment Act 1936 s 3* (1 RS 31)

(c) *Finance Act (No 2) 1952 s 27* (1 RS 32).

439 The amendments to the 1924 Act effected by the Statutes Amendment Act 1942 s 2 and 1945 s 2 and the Acts Interpretation Amendment Acts of 1960, 1962, 1973, 1979, 1979 (No 2), 1983, 1986 and 1988 are not separately listed for repeal since both by their express terms and under s 5(c) of the 1924 Act (repeated in cl 11 above) they constitute part of the 1924 Act. They do not stand alone and fall with the principal Act when it is repealed. In not expressly providing for their separate repeal, we follow the practice of many other jurisdictions. These amendments would of course be considered by those responsible for the preparation of the new measure. It may be convenient for them to be mentioned in the Bill and they often appear in the notes of origin to particular sections. But there is no reason for them to be separately repealed.

440 Many other Acts have made particular amendments to the 1924 Act, especially to the definitions in s 4, eg, the other statutes listed in 1 RS 7. We do not propose consequential amendments to

those Acts to delete those alterations to the 1924 Act since by their very character they too cannot stand once the foundation of the 1924 Act is removed. Once again, we follow the practice usually found elsewhere.

Amendments

26 The enactments listed in the schedule are consequentially amended as indicated.

441 The proposed s 10 will reverse the rule about the Crown and statutes with the consequence that the Crown will now in general be affected by statutes as other persons are. That reverses the general presumption of non application. As a consequence about 200 provisions, stating that the Crown is bound by the particular statute, could be repealed as unnecessary. Other provisions make special provision for the position of the Crown, as indicated in para 189 above. As also mentioned, some may require specific amendment. We do not include those repeals and amendments in this Report. They can be made as convenient.

442 The schedule proposes miscellaneous amendments as a consequence of other provisions of the draft Bill.

SCHEDULE
CONSEQUENTIAL AMENDMENTS TO OTHER ENACTMENTS

1 *Acts and Regulations Publication Act 1989* (1989/42)

1.1 Section 8 is repealed and the following substituted:

Form of publication

8 (1) The published form of every Act and of every reprint of an Act shall include the date on which it was assented to and, if practicable, the date on which it comes into force.

(2) The published form of all regulations and of every reprint of regulations shall include the date on which they were made and, if practicable, the date on which they come into force, and shall refer to the Act or authority under which they were made.

443 See Report paras 273–274.

1.2 Section 16 is repealed.

444 See appendix C.

1.3 Section 17 is repealed.

445 *Legislation and its Interpretation, Statutory Publications Bill* (NZLC R11 1989) pp 14–15.

2 *Crown Proceedings Act 1950* (1950/54:2 RS 23)

2.1 Section 29 is repealed.

446 See paras 136–138. Section 29 (quoted in para 136) provides that nothing in the 1950 Act prejudices the right of the Crown to take advantage of statutes. It reflects—rather than establishes—an existing common law freedom. It had not been included in earlier Crown suits legislation and is not common in other Crown proceedings statutes. The proposed s 10 appears to remove any remaining justification for the provision: in general the Crown is bound by statutes. Express provision should be made for any special position in particular enactments.

3 *Imperial Laws Application Act 1988* (1988/112)

3.1 Section 3(4) is repealed.

447 See para 251.

4 *Regulations (Disallowance) Act 1989* (1989/113)

4.1 In section 2, the definition of "regulations" is repealed and the following substituted [see paras (b)–(f) of "enactment" in cl 19(1) and paras 377–378].

5 *Summary Proceedings Act 1957* (1957/87:9 RS 583)

5.1 In section 2, the definition of "committal for trial" is repealed and the following inserted after subsection (1):

> (1A) In an enactment,
> "committed for trial" means committed in custody or on bail by a District Court under section 168 or section 172 with a view to trial before a judge and jury:
>
> "summary conviction" means a conviction by a District Court Judge or by one or more Justices of the Peace in accordance with Part II.

448 At present "committed for trial" is defined in the Acts Interpretation Act and "committal for trial" in the Summary Proceedings Act 1957. The definitions, while both technically correct, are different. The first provides a useful but slightly outdated statement of the practical significance of committal while the second simply acts as a signpost to the relevant section of the Summary Proceedings Act.

449 As the meaning of the phrase is not immediately apparent from its words a definition is useful. However it is more sensibly placed in the appropriate criminal statute. Nonetheless it should still be of general application as the phrase is used without definition in other statutes, notably the Crimes Act 1961. Thus the Commission recommends that the two current definitions be replaced by a single and updated version in the form given above.

450 The phrase "summary conviction" is frequently used in offence provisions and is not defined other than in the current Acts Interpretation Act 1924. Although it simply refers users to the Summary Proceedings Act 1957 and so is not helpful in any final way, and also duplicates some of the information already contained in the Summary Proceedings Act 1957, the phrase is so common that it still should be specifically defined. Again, the most logical place would seem to be the Summary Proceedings Act 1957 itself.

5.2 After section 18, the following section is inserted:

Method of prosecuting the Crown

18A (1) Proceedings against the Crown under this Act may be instituted against

(a) the appropriate Minister; or

(b) the appropriate Chief Executive; or

(c) the Attorney-General, if there is no appropriate Minister or Chief Executive or if the person instituting the proceedings has any doubt whether any and, if so, which Minister or Chief Executive is appropriate.

(2) If proceedings are instituted against the Attorney-General under subsection (1) the Court may, at any time and on such conditions as it thinks fit, substitute a Minister or Chief Executive against whom proceedings could have been instituted under subsection (1).

5.3 In section 146 the following is inserted:

(da) Section 18A (which provides methods for prosecuting the Crown):

451 See para 330.

APPENDIX A

THE ACTS INTERPRETATION ACT 1924

ANALYSIS

THE STATUTES AMENDMENT ACT 1936

THE STATUTES AMENDMENT ACT 1942

THE STATUTES AMENDMENT ACT 1945

THE FINANCE ACT (No. 2) 1952

THE ACTS INTERPRETATION ACT 1924, No. 11

An Act to consolidate and amend the law relating to the interpretation of legislative enactments

[*29 September 1924*

1. Short Title—This Act may be cited as the Acts Interpretation Act 1924.

This Act binds the Crown; see s. 5 (2) of the Crown Proceedings Act 1950.

2. Act to apply to all Acts of General Assembly—This Act, and every provision hereof, shall extend and apply to every Act of the General Assembly of New Zealand or of the Parliament of New Zealand heretofore or that may hereafter be passed, except in so far as any provision hereof is inconsistent with the intent and object of any such Act, or the interpretation that any provision hereof would give to any word, expression, or section in any such Act is inconsistent with the context, and except in so far as any provision hereof is inconsistent with any particular definition or interpretation contained in any such Act.

Cf. 1908, No. 1, s. 2

As to the interpretation of regulations, etc. (including regulations made under Imperial Acts), see s. 7 of this Act, and s. 3 of the Statutes Amendment Act 1936.

The reference to the Parliament of New Zealand was inserted by s. 2 of the Acts Interpretation Amendment Act 1986.

3. Declaration that Act applies unnecessary—It shall not be necessary to insert in any Act a declaration that this Act applies thereto in order to make it so apply.

Cf. 1908, No. 1, s. 4

This Act applies to the Wills Act 1937 (U.K.) and the Wills Act Amendment Act 1852 (U.K.), see s. 2 (2) of the Wills Amendment Act 1955 (reprinted 1984, R.S. Vol. 15, p. 835).

Interpretation of Terms

4. General interpretation of terms—In every Act of the General Assembly or of the Parliament of New Zealand if not

inconsistent with the context thereof respectively, and unless there are words to exclude or to restrict such meaning, the words and phrases following shall severally have the meanings hereinafter stated, that is to say:

"Act" means an Act of the General Assembly or of the Parliament of New Zealand and includes all rules and regulations made thereunder:

"Administrator of the Government" means the Administrator of the Government authorised by law to perform all or any of the functions of the Governor-General whenever the office of the Governor-General is vacant or the holder of the office of Governor-General is for any reason unable to perform all or any of the functions of the office of Governor-General:

"Attorney-General", in respect of any power, duty, authority, or function imposed upon or vested in him in virtue of his office as Attorney-General, includes the Solicitor-General:

"Audit Office" means the Controller and Auditor-General; and includes any person for the time being authorised to exercise or perform any of the powers, duties, or functions of the Controller and Auditor-General:

"Australasian Colonies" means the Commonwealth of Australia as now or hereafter constituted, together with New Zealand and Fiji:

"Australian Colonies" includes every State now or hereafter forming part of the Commonwealth of Australia:

"Borough" includes city:

"Commencement" when used in reference to an Act means the time at which the Act referred to comes into operation:

"Committed for trial" means committed to prison with the view of being tried before a Judge and jury, or admitted to bail upon a recognisance or other security to appear and be so tried:

"Commonwealth citizen" means a person who is recognised by the law of a Commonwealth country as being a citizen of that country:

"Commonwealth country" means a country that is an independent sovereign member of the Commonwealth:

"Company" or "association", where used in reference to a corporation, includes the successors and assigns of such company or association:

"Constable" includes a police officer of any rank:

"Consular officer" means a Consul-General, Consul, Vice-Consul, Consular Agent, and any person for the time being authorised to discharge the duties of Consul-General, Consul, or Vice-Consul:

"Cook Islands" means the islands and territories forming part of Her Majesty's dominions and situated within the boundaries set forth in the First Schedule to the Cook Islands Act 1915:

"District Court" means a District Court constituted by section 3 of the District Courts Act 1947; and "Chief District Court Judge" and "District Court Judge" have corresponding meanings:

"Family Court" means the division of a District Court known, in accordance with section 4 of the Family Courts Act 1980, as a Family Court; and "Principal Family Court Judge" and "Family Court Judge" have corresponding meanings:

"Financial year" means, as respects any matters relating to the Public Account, or to money provided by Parliament, or to public taxes or finance, the period of 12 months ending on the expiration of the 31st day of March:

"*Gazette*", "Government *Gazette*", and "*New Zealand Gazette*" means the "*Gazette*" published or purporting to be published by or under the authority of the Government of New Zealand, and includes any supplement thereof published as aforesaid in any place:

"Gazetted" means published in the aforesaid *Gazette*:

"Governor-General" or "Governor" means the Governor-General of New Zealand; and includes the Administrator of the Government:

"Governor-General in Council" or "Governor in Council" or any other like expression, means the Governor-General acting by and with the advice and consent of the Executive Council of New Zealand:

"High Court" means the High Court of New Zealand:

"Holiday" includes Sundays, Christmas Day, New Year's Day, Good Friday, and any day declared by any Act to be a public holiday, or proclaimed by the

Governor-General as set apart for a public fast or thanksgiving or as a public holiday:

"Imperial Act" means an Act made and passed by the Imperial Parliament:

"Imperial Parliament" means the Parliament of the United Kingdom:

"Information" means an information laid in accordance with the Summary Proceedings Act 1957 in respect of an offence punishable on summary conviction:

"Justice" means a Justice of the Peace having jurisdiction in New Zealand:

"*Kahiti* or "*Maori gazette*" means a *Gazette* published in the Maori language by or under the authority of the Government, containing such notices and matters as are required by any Act to be published in the Maori language, or are directed by the Government to be inserted therein:

"Land" includes messuages, tenements, hereditaments, houses, and buildings, unless there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure:

"Local authority" means any Council, Board, Trustees, Commissioners, or other persons, by whatever name designated, entrusted under any Act with the administration of the local affairs of any city, town, place, borough, country, or district, and having power to make and levy rates:

"Magistrate" means any Stipendiary Magistrate appointed under the Magistrates' Courts Act 1947:

"Member of Parliament" means a member of the House of Representatives:

"Minor" means any person under the age of 20 years:

"Month" means calendar month:

"North Island" means the island commonly known as the "North Island", and includes all islands adjacent thereto lying north of Cook Strait; and "South Island" means the island commonly known as the "South Island" or "Middle Island", and includes all islands adjacent thereto lying south of Cook Strait:

"Oath" and "affidavit" include affirmation and statutory declaration; "swear" includes "affirm" and "declare" in the case of persons allowed by law to affirm or declare instead of swearing, or in any case of voluntary and other declarations authorised or required by law:

"Order in Council" means an Order made by the Governor-General in Council:

"Parliament" means the Parliament of New Zealand:

"Person" includes a corporation sole, and also a body of persons, whether corporate or unincorporate:

"Prescribed" means prescribed by the Act in which that term is used, or by regulations made under the authority of that Act:

"Proclamation" means a Proclamation made by the Governor-General under the Governor-General's hand and the Seal of New Zealand and—

(a) Gazetted; or

(b) In the case of a Proclamation summoning, proroguing, or dissolving Parliament, publicly read in accordance with section 18 (3) (b) of the Constitution Act 1986:

"Province" or "provincial district" means any of the former Provinces of Auckland, Taranaki, Hawke's Bay, Wellington, Nelson, Marlborough, Canterbury, Otago, or Westland:

"Provincial Ordinance" means an Act or Ordinance passed by the Superintendent of any former province, with the advice and consent of the Provincial Council thereof:

"Public notification" or "public notice", in relation to any matter not specifically required by law to be published *in extenso*, means a notice published in the *Gazette*, or in one or more newspapers, circulating in the place or district to which the act, matter, or thing required to be publicly notified relates or refers, or in which it arises:

"Regulations" has the meaning given to that term by section 2 of the Acts and Regulations Publication Act 1989:

"Samoa" or "Western Samoa" means the Independent State of Western Samoa:

"Seal of New Zealand" means the seal known by that name and referred to in the Seal of New Zealand Act 1977:

"Statutory declaration", if made—

(i) In New Zealand, means a declaration made under the Oaths and Declarations Act 1957;

(ii) In the United Kingdom or any British possession other than New Zealand, means a declaration made before a Justice of the Peace,

notary public, or other person having authority therein to take or receive a declaration under any law for the time being in force;

(iii) In any foreign country, means a like declaration made before a British Consul or Vice-Consul, or before any person having authority to take or receive such a declaration under any Act of the Imperial Parliament or the General Assembly or the Parliament of New Zealand for the time being in force authorising the taking or receiving thereof:

"Summary conviction" means a conviction by a Magistrate or one or more Justices of the Peace in accordance with the Summary Proceedings Act 1957:

"Territorial limits of New Zealand" and "limits of New Zealand" and analogous expressions mean the outer limits of the territorial sea of New Zealand:

"Territorial sea of New Zealand" has the same meaning as in section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977; and in all Acts passed before the commencement of this definition, unless the context otherwise requires, the expressions "Territorial waters of New Zealand", "New Zealand waters" and analogous expressions have the same meaning as the expression "Territorial sea of New Zealand":

"The colony", "this colony", "the Dominion", and "New Zealand", when used as a territorial description, mean the Dominion of New Zealand, comprising all islands and territories within the limits thereof for the time being other than the Cook Islands, and do not include Tokelau or Niue:

"Writing", "written", or any term of like import, includes words printed, typewritten, painted, engraved, lithographed, or otherwise traced or copied:

Words importing the singular number include the plural number, and words importing the plural number include the singular number, and words importing the masculine gender include females:

Words referring to any country, locality, district, place, body, corporation, society, officer, office, functionary, person, party, or thing shall be construed distributively as referring to each country, locality, district, place, body, corporation, society, officer, office, functionary, person, party, or thing to whom or to which the provision is applicable:

The name commonly applied to any country, locality, district, place, body, corporation, society, officer, office, functionary, person, party, or thing means such country, locality, district, place, body, corporation, society, officer, office, functionary, person, party, or thing, although such name is not the formal and extended designation thereof.

Cf. 1908, No. 1, s. 5; 1908, No. 242, ss. 2, 10, 11

The words "or of the Parliament of New Zealand" were inserted after the words "General Assembly" by the Acts Interpretation Amendment Act 1986.

"Act": The words "or of the Parliament of New Zealand" were inserted after the words "General Assembly" by the Acts Interpretation Amendment Act 1986.

"Administrator of the Government": This definition was inserted by the Acts Interpretation Amendment Act 1983.

"Attorney-General": See also s. 27 of the Finance Act (No. 2) 1952.

"Audit Office": This definition was substituted for the original definition by s. 120 (4) of the Public Revenues Act 1953. See ss. 14, 163 (2) (a) of the Public Finance Act 1977, see ss. 2, 30 of the Public Finance Act 1989.

"Commonwealth citizen" and "Commonwealth country": These definitions were inserted by s. 6 (1) of the Commonwealth Countries Act 1977.

"Constitution Act": This definition was repealed by s. 3 of the Acts Interpretation Amendment Act 1986.

"Cook Islands": The reference to Her Majesty has been updated from a reference to His Majesty. As to the application of this Act to the laws of the Cook Islands, see s. 622 (4) of the Cook Islands Act 1915 (reprinted 1976, Vol. 4).

"District Court": This definition was inserted by s. 2 of the Acts Interpretation Amendment Act (No. 2) 1979.

"Family Court": This definition was inserted by s. 17 of the Family Courts Act 1980.

"Gazetted": A notice in the *Gazette* of the making of any regulations and of the place where copies can be purchased is equivalent to gazetting the regulations; see the Acts and Regulations Publication Act 1989.

"General Assembly": This definition was repealed by s. 3 of the Acts Interpretation Amendment Act 1986.

"Government Printer": This definition was repealed by s. 18 of the Acts and Regulations Publication Act 1989.

"Governor-General" and "Governor-General in Council": These definitions were substituted by the Acts Interpretation Amendment Act 1983.

"High Court": This definition was inserted by s. 2 of the Acts Interpretation Amendment Act (No. 2) 1979.

"Holiday": See also the Public Holidays Act 1955, the Anzac Day 1966, and the Waitangi Day Act 1976.

"Information": The Summary Proceedings Act 1957, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Justices of the Peace Act 1908.

"*Kahiti*": The *Kahiti* is no longer published. Publication in the *Gazette* is now equivalent to publication in the *Kahiti*; see s. 47 of the Finance Act 1931 (No. 2) (reprinted with the Maori Affairs Act 1953 in 1981, R.S. Vol. 18, p. 13).

"Magistrate": With the enactment of the Acts Interpretation Amendment Act (No. 2) 1979, this provision is spent: see the definition of "District Court" set out above.

"Member of Parliament": This definition was inserted by s. 3 of the Acts Interpretation Amendment Act 1986.

"Minor": The expression "20" was substituted for the word "twenty-one" by s. 6 of the Age of Majority Act 1970.

"Month": Cf. s. 13 of the Property Law Act 1952; as to the meaning of "month" in deeds, contracts, wills, orders, and other instruments executed or made on or after 5 December 1944. As to contracts for the sale of goods, see s. 12 (3) of the Sale of Goods Act 1908.

"Order in Council": The words "Governor-General in Council" in this definition include Her Majesty the Queen acting by and with the advice and consent of the Executive Council of New Zealand; see the Constitution Act 1986.

"Parliament": This definition was substituted by s. 3 of the Acts Interpretation Amendment Act 1986.

"Proclamation": This definition was substituted by s. 3 of the Acts Interpretation Act 1986.

"Regulations": This definition was substituted by s. 18 of the Acts and Regulations Publication Act 1989.

"Samoa" or "Western Samoa": This definition was substituted for the original definition by s. 9 of the Western Samoa Act 1961.

"Seal of New Zealand": The definition of this term was inserted by s. 8 of the Seal of New Zealand Act 1977.

"Statutory declaration": The Oaths and Declarations Act 1957, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Justice of the Peace Act 1908. The words "or the Parliament of New Zealand" were inserted in subs. (iii) by s. 2 of the Acts Interpretation Amendment Act 1986.

"Summary conviction": The Summary Proceedings Act 1957, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Justices of the Peace Act 1908.

"Supreme Court": This definition was repealed by s. 2 of the Acts Interpretation Amendment Act (No. 2) 1979.

"Territorial limits of New Zealand" and "Territorial sea of New Zealand": These definitions were inserted by s. 11 of the Territorial Sea and Fishing Zone Act 1965. In the reference to the Territorial Sea and Exclusive Economic Zone Act 1977 the words "and Exclusive Economic Zone Act 1977" were substituted for the words "and Fishing Zone Act 1965" by s. 33 (1) of the Territorial Sea and Exclusive Economic Zone Act 1977.

"The colony", etc.: The words "and do not include Tokelau or Niue" were added by s. 8 (3) of the Tokelau Act 1948; see also s. 8 (2) of that Act, and s. 622 (2) of the Cook Islands Act 1915 (reprinted 1976, Vol. 4). The reference to Tokelau was substituted for a reference to the Tokelau Islands by s. 3 (8) of the Tokelau Amendment Act 1976. The word "Tokelau" was added by s. 735 (1) of the Niue Act 1966. This Act is in force in Niue; see s. 679 of the Niue Act 1966 (reprinted 1976, Vol. 5).

4A. Requirement to lay instruments before Parliament—Any requirement imposed by or under any enactment to lay before or table in Parliament any Order in Council, regulation, notice, report, accounts, or other instrument shall be deemed to be a requirement to lay such Order in Council, regulation, notice, report, accounts, or other instrument before the House of Representatives.

This section was inserted by s. 4 of the Acts Interpretation Amendment Act 1986.

Construction of Acts, etc.

5. General rules of construction—The following provisions shall have effect in relation to every Act of the General Assembly or the Parliament of New Zealand except in cases where it is otherwise specially provided:

(a) Every Act shall be deemed to be a public Act unless by express provision it is declared to be a private Act:

(b) Every Act shall be divided into sections if there are more enactments than one, which sections shall be deemed to be substantive enactments, without any introductory words:

(c) Every Act passed in amendment or extension of a former Act shall be read and construed according to the

definitions and interpretations contained in such former Act; and the provisions of the said former Act (except so far as the same are altered by or inconsistent with the amending Act or Acts) shall extend and apply to the cases provided for by the amending Act or Acts, in the same way as if the amending Act or Acts had been incorporated with and formed part of the former Act:

(d) The law shall be considered as always speaking, and whenever any matter or thing is expressed in the present tense the same shall be applied to the circumstances as they arise, so that effect may be given to each Act and every part thereof according to its spirit, true intent, and meaning:

(e) The preamble of every Act shall be deemed to be part thereof, intended to assist in explaining the purport and object of the Act:

(f) The division of any Act into parts, titles, divisions, or subdivisions, and the headings of any such parts, titles, divisions, or subdivisions, shall be deemed for the purpose of reference to be part of the Act, but the said headings shall not affect the interpretation of the Act:

(g) Marginal notes to an Act shall not be deemed to be part of such Act:

(h) Every Schedule or Appendix to an Act shall be deemed to be part of such Act:

(i) Wherever forms are prescribed, slight deviations therefrom, but to the same effect and not calculated to mislead, shall not vitiate them:

(j) Every Act, and every provision or enactment thereof, shall be deemed remedial, whether its immediate purport is to direct the doing of anything Parliament deems to be for the public good, or to prevent or punish the doing of anything it deems contrary to the public good, and shall accordingly receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment according to its true intent, meaning, and spirit:

(k) No provision or enactment in any Act shall in any manner affect the rights of Her Majesty, her heirs or successors, unless it is expressly stated therein that Her Majesty shall be bound thereby; nor, if such Act is of the nature of a private Act, shall it affect the

rights of any person or of any body politic or corporate except only as is therein expressly mentioned:

(l) Every Act may be altered, amended, or repealed in the same session of the General Assembly or the Parliament of New Zealand in which it is passed.

Cf. 1908, No. 1, s. 6; 1908, No. 242, s. 4

In the third line of the section and in para (l) the words "or the Parliament of New Zealand" were inserted by s. 2 of the Acts Interpretation Amendment Act 1986.

Para. (a): See also s. 28 of the Evidence Act 1908 (reprinted 1979, R.S. Vol. 2, p. 339).

Para. (k): The reference to Her Majesty has been updated from a reference to His Majesty. See also s. 5 of the Crown Proceedings Act 1950 (reprinted 1979, R.S. Vol. 2, p. 23).

6. Application of penal Acts to bodies corporate—(1) In the construction of every enactment relating to an offence punishable on indictment, or on summary conviction, the expression "person" shall, unless the contrary intention appears, include a body corporate.

(2) Where under any legislative enactment any fine or forfeiture is payable to a party aggrieved, the same shall be payable to a body corporate where such body is the party aggrieved.

Cf. 1908, No. 1, s. 7

As to the procedure on a charge of an offence against a corporation, see s. 172 of the Summary Proceedings Act 1957 (reprinted 1982, R.S. Vol. 9, p. 583).

7. Interpretation of regulations, etc.—Where an Act confers a power to make rules, regulations, or bylaws, expressions used in any such rules, regulations, or bylaws shall, unless the contrary intention appears, have the same meanings as in the Act conferring the power.

Cf. 1908, No. 1, s. 8

As to regulations under Imperial Acts, see s. 3 of the Statutes Amendment Act 1936.

Commencement of Acts

8. *Repealed by s. 5 of the Acts Interpretation Amendment Act 1986.*

9. *Repealed by s. 5 of the Acts Interpretation Amendment Act 1986.*

10. Insertion in Acts of Parliament of day of assent—(1) The Clerk of the House of Representatives shall insert in every Act of Parliament, immediately after the title thereof, the day, month, and year when the Act was assented to by the Sovereign or by the Governor-General.

(2) Every date inserted in an Act of Parliament pursuant to subsection (1) of this section shall be taken to be a part of the Act.

10A. Date of commencement—(1) The date of assent, as inserted in an Act of Parliament pursuant to section 10 (1) of this Act, shall be the date of the commencement of the Act, if no other date of commencement is therein provided.

(2) Where an Act contains a provision that the Act or any portion thereof is to come into force on a day later than the date of assent to the Act, such provision shall be deemed to have come into force on the date of assent to the Act.

(3) Where an Act provides that certain provisions thereof are to come or shall be deemed to have come into force on a day other than the date of assent to the Act, the remaining provisions of the Act shall be deemed to have come into force on the date of assent to the Act.

Section 10 was repealed and sections 10 and 10A substituted by s. 6 of the Acts Interpretation Amendment Act 1986.

11. Time of commencement—(1) Where in an Act, or in any Order in Council, order, warrant, scheme, rules, regulations, or bylaws made or issued under a power conferred by any Act, it is expressly provided that the same shall come into operation on a particular day, then the same shall be deemed to come into operation immediately on the expiration of the previous day.

(2) When any Act or any provision of an Act is expressed to take effect "from" a certain day, it shall, unless a contrary intention appears, take effect immediately on the commencement of the next succeeding day.

Cf. 1908, No. 1, s. 12; 1908, No. 242, s. 9

12. Exercise of statutory powers between passing and commencement of an Act—Where an Act that is not to come into operation immediately on the passing thereof confers power to make any appointment, to make or issue any instrument (that is to say, any Proclamation, Order in Council, order, warrant, scheme, rules, regulations, or bylaws), to give notices, to prescribe forms, or do anything for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction: that any instrument made under the

power shall not, unless the contrary intention appears in the Act or the contrary is necessary for bringing the Act into operation, itself come into operation until the Act comes into operation.

Cf. 1908, No. 1, s. 13

13. *Repealed by s. 19 of the Acts and Regulations Publication Act 1989.*

Citation of Acts

14. Citation of Imperial Acts—(1) In any Act, instrument, or document an Imperial Act may be referred to by its Short Title with or without the term "Imperial" prefixed or added thereto.

(2) This section shall apply to all Imperial Acts which are in force in New Zealand whether they are in force in the United Kingdom or not, and to all Short Titles conferred by an Imperial Act whether that Act is in force in New Zealand or not.

Cf. 1908, No. 242, s. 5

15. Acts, etc., may be cited by Short Titles—Every Act and every Provincial Ordinance having a Short Title may for all purposes be cited by such Short Title.

Cf. 1908, No. 1, s. 15

16. Citation of Acts, etc., not having Short Title—In citing or making reference to any Act or Provincial Ordinance not having a Short Title it shall not be necessary to recite the title of the Act or Provincial Ordinance, nor the provision of any section referred to, but it shall be sufficient for all purposes of such citation or reference,—

(a) In the case of Imperial Acts,—

(i) If such Act was made before the seventh year of Henry the Seventh, to cite the year of the King's reign in which it was made, and where there are more statutes than one in the same year, the statute, and where there are more chapters than one, the chapter;

(ii) If such Act was made after the fourth year of Henry the Seventh, to cite the year of the reign, and where there are more statutes and sessions than one in the same year, the statute or the session (as the case may require), and where there are more chapters, numbers, or sections than one, the chapter,

number, or section, or chapter or number and section (as the case may require):

(b) In the case of Ordinances of the Governor, Governor-in-Chief, or Lieutenant-Governor, and Legislative Council of New Zealand, to cite the session in which such Ordinance was made, together with the number of the Ordinance:

(c) In the case of Acts of the General Assembly or of the Parliament of New Zealand, to cite the year in which the Act was made and the number of the Act:

(d) In the case of Provincial Ordinances, to cite the name of the province wherein the Ordinance was made, together with the session in which the same was made, and the number of the Ordinance:

Cf. 1908, No. 1, s. 16

In para. (c), the words "or of the Parliament of New Zealand" were inserted by s. 2 of the Acts Interpretation Amendment Act 1986.

17. Reference to be made to copies printed by authority—The reference to any Act or Ordinance shall in all cases be made,—

(a) In the case of Imperial Acts,—

(i) According to the copies of such Acts published or purporting to be published by the Government Printer or under the authority of the Government of New Zealand for the time being, in any case where any such copies have been so published:

(ii) In accordance with sections 34 and 39 of the Evidence Act 1908, in any other case:

(b) In the case of Acts and Ordinances of New Zealand, according to the copies of such Acts and Ordinances published or purporting to be published by the Government Printer or under the authority of the Government of New Zealand for the time being:

(c) In the case of Provincial Ordinances, according to the copies of such Ordinances printed or purporting to be printed under the authority of the Government of the particular province wherein such Ordinance was made.

Cf. 1908, No. 1, s. 17

Para. (a) was substituted by s. 2 of the Acts Interpretation Amendment Act 1988.

18. Citation of Act includes citation of amendments—A reference to or citation of any Act includes therein the citation of all subsequent enactments passed in amendment or

substitution of the Act so referred to or cited, unless it is otherwise manifested by the context.

Cf. 1908, No. 1, s. 18

19. Citation of portion of Act includes first and last words—A description or citation of a portion of an Act is inclusive of the first and last words, section, or other portion of the Act so described or cited.

Cf. 1908, No. 1, s. 19

Repeal and Expiration of Acts

20. General provisions as to repeals—The provisions following shall have general application in respect to the repeals of Acts, except where the context manifests that a different construction is intended, that is to say:

(a) The repeal of an Act wholly or in part shall not prevent the effect of any saving clause therein, and shall not revive any enactment previously repealed, unless words be added reviving such last-mentioned enactment:

(b) The repeal of any enactment shall not affect any Act in which such enactment has been applied, incorporated, or referred to:

(c) Whenever any provisions of an Act are repealed, and other provisions are substituted in their place, the provisions so repealed remain in force until the substituted provisions come into operation:

(d) Where an Act consolidating the law on any subject repeals any Act relating to that subject, and contains provisions substantially corresponding to those of the repealed Act for the constitution of districts or offices, the appointment of officers, the making or issuing of Proclamations, orders, warrants, certificates, rules, regulations, bylaws, or for other similar exercise of statutory powers, all such powers duly exercised under the repealed Acts and in force at the time of the repeal shall, in so far as they are not inconsistent with the repealing Act, continue with the like operation and effect as if they had been exercised under the corresponding provisions of the repealing Act:

(e) The repeal of an Act or the revocation of a bylaw, rule, or regulation at any time shall not affect—

(i) The validity, invalidity, effect, or consequences of anything already done or suffered; or

(ii) Any existing status or capacity; or

(iii) Any right, interest, or title already acquired, accrued, or established, or any remedy or proceeding in respect thereof; or

(iv) Any release or discharge of or from any debt, penalty, claim, or demand; or

(v) Any indemnity; or

(vi) The proof of any past act or thing; or

(vii) Any right to any of Her Majesty's revenues of the Crown; or affect any charges thereupon, or any duties, taxes, fees, fines, penalties, or forfeitures, or prevent any such Act, bylaw, or regulation from being put in force for the collection or recovery of any such revenues, charges, duties, taxes, fees, fines, penalties, or forfeitures, or otherwise in relation thereto:

(f) The repeal of an Act shall not revive anything not in force or existing at the time when the repeal takes effect:

(g) Any enactment, notwithstanding the repeal thereof, shall continue and be in force for the purpose of continuing and perfecting under such repealed enactment any act, matter, or thing, or any proceedings commenced or in progress thereunder, if there be no substituted enactments adapted to the completion thereof:

(h) Notwithstanding the repeal or expiry of any enactment, every power and act which may be necessary to complete, carry out, or compel the performance of any subsisting contract or agreement lawfully made, entered into, or commenced under such enactment may be exercised and performed in all respects as if the said enactment continued in force; and all offences committed, or penalties or forfeitures incurred, before such repeal or expiry may be prosecuted, punished, and enforced as if such enactment had not been repealed or had not expired.

Cf. 1908, No. 1, s. 20

In para. (e) (vii) the reference to Her Majesty has been updated from a reference to His Majesty.

As to the application of this section to the Naval Discipline Act 1957, see s. 207 (3) of the Armed Forces Discipline Act 1971.

As to the application of this section to Tokelau, see s. 26 (2) of the Tokelau Amendment Act 1967 and s. 12 (2) of the Tokelau Amendment Act 1970.

20A. Savings—(1) Without limiting any other provision of this Act, it is hereby declared that the repeal or revocation of any provision by any Act, Order in Council, notice, regulations, or rules shall not affect any document made or any thing whatsoever done under the provision so repealed or revoked or under any corresponding former provision, and every such document or thing, so far as it is substituting or in force at the time of the repeal or revocation and could have been made or done under that Act, Order in Council, or notice, or under those regulations or rules, shall continue and have effect as if it had been made or done under the corresponding provision of that Act, Order in Council, or notice, or of those regulations or rules, and as if that provision had been in force when the document was made or the thing was done.

(2) Where before the commencement of this section any provision has been repealed or revoked by any Act, Order in Council, notice, regulations, or rules, any document made or any thing whatsoever done under the provision so repealed or revoked or under any corresponding former provision that would have continued and had effect if this section had been in force at the time of the repeal or revocation shall be deemed to have so continued and had effect:

Provided that nothing in this subsection shall affect the rights of the parties under any judgment given in any Court before the commencement of this subsection, or under any judgment given on appeal from any such judgment, whether the appeal is commenced before or after the commencement of this subsection.

This section was inserted by s. 2 of the Acts Interpretation Amendment Act 1960.

Subs. (2) was added by s. 2 of the Acts Interpretation Amendment Act 1962.

As to the application of this section to the Naval Discipline Act 1957, see s. 207 (3) of the Armed Forces Discipline Act 1971.

As to the application of this section to Tokelau, see s. 26 (2) of the Tokelau Amendment Act 1967 and s. 12 (2) of the Tokelau Amendment Act 1970.

21. Reference to repealed Act in unrepealed Act—(1) In every unrepealed Act in which reference is made to any repealed Act such reference shall be construed as referring to any subsequent enactment passed in substitution for such repealed Act, unless it is otherwise manifested by the context.

(2) All the provisions of such subsequent enactment, and of any enactment amending the same, shall, as regards any subsequent transaction, matter, or thing, be deemed to have been applied, incorporated, or referred to in the unrepealed Act.

Cf. 1908, No. 1, s. 21

As to the application of this section to the Naval Discipline Act 1957, see s. 207 (3) of the Armed Forces Discipline Act 1971.

As to the application of this section to Tokelau, see s. 26 (2) of the Tokelau Amendment Act 1967 and s. 12 (2) of the Tokelau Amendment Act 1970.

22. Pending judicial proceedings not affected by expiration of Act—The expiration of an Act shall not affect any judicial proceedings previously commenced under that Act, but all such proceedings may be continued and everything in relation thereto be done in all respects as if the Act continued in force.

Cf. 1908, No. 242, s. 6

General Provisions

23. Orders in Council, etc., how advice and consent of Executive Council signified—(1) Where in any Act any act, power, function, or duty is required to be done, exercised, or performed by the Governor-General in Council, or where in any such Act any other like expression is used in relation either to the Governor-General or to Her Majesty the Queen, or where Her Majesty or the Governor-General, in exercising any other power or authority belonging to the Crown, whether prerogative or statutory, does so on the advice and with the consent of the Executive Council of New Zealand (in this section called an exercise of authority) it shall be sufficient, and shall be deemed always to have been sufficient, if the advice and consent of the Executive Council to such exercise of authority is signified at a meeting of the Council, although Her Majesty or, as the case may require, the Governor-General is prevented from attending or presiding thereat by some necessary or reasonable cause, if such meeting is duly convened and held in accordance with any law relating thereto for the time being in force.

(2) On the advice and consent of the Executive Council being signified in manner aforesaid, Her Majesty the Queen or the Governor-General may exercise the authority in like manner as if Her Majesty had herself, or the Governor-General had himself, been present at the meeting at which such advice and consent were signified.

(3) Every authority exercised in the above manner shall take effect from the date of the aforesaid meeting, unless some other time is named or fixed or is expressly provided by law for the taking effect thereof.

(4) No authority exercised in manner aforesaid by Her Majesty the Queen or the Governor-General shall be called in question in any Court on the ground that Her Majesty or, as

the case may require, the Governor-General was not prevented by any necessary or reasonable cause from attending any such meeting of the Executive Council as aforesaid.

This section was substituted by s. 3 of the Acts Interpretation Amendment Act 1983.

24. Citation of authority under which Orders in Council, etc., made—Where by any Act the Governor-General, or any officer or person named therein, is empowered to make or issue any Proclamation, Order in Council, warrant, or other instrument, it shall be sufficient to cite therein the particular Act authorising the making or issuing of the same; and it shall not be necessary to recite or set forth therein any facts or circumstances or the performance of any conditions precedent upon which such power depends or may be exercised.

Cf. 1908, No. 1, s. 23

As to the exercise of royal powers by Her Majesty the Queen or the Governor-General, see the Constitution Act 1986.

25. Provisions as to time, distances, appointments, powers, etc.—In every Act, unless the context otherwise requires,—

(a) If the time limited by any Act for any proceeding, or the doing of any thing under its provisions, expires or falls upon a holiday, the time so limited shall be extended to and such thing may be done on the day next following which is not a holiday; and all further changes of time rendered necessary by any such alteration may also lawfully be made:

(b) If in any Act any period of time dating from a given day, act, or event is prescribed or allowed for any purpose, the time shall, unless a contrary intention appears, be reckoned as exclusive of that day or of the day of that act or event:

(c) In the measurement of any distance for the purposes of any Act that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane:

(d) If anything is directed to be done by or before a Magistrate or a Justice of the Peace, or other public functionary or officer, it shall be done by or before one whose jurisdiction or powers extend to the place where such thing is to be done:

(e) Words directing or empowering the holder of any public office, other than a Minister of the Crown, to do any

act or thing, or otherwise applying to that person by that person's name of office, include that person's successors in such office, and that person's or those persons' lawful deputy:

(f) Words authorising the appointment of any public officer or functionary, or any deputy, include the power to remove or suspend him, or reappoint or reinstate him, or appoint another in his stead, in the discretion of the authority in whom the power of appointment is vested; and in like manner to appoint another in the place of any deceased, absent, or otherwise incapacitated holder of such appointment:

(g) Power given to do any act or thing, or submit to any matter or thing, or to make any appointment, is capable of being exercised from time to time, as occasion may require, unless the nature of the words used or the thing itself indicates a contrary intention:

(h) Power given to make bylaws, rules, orders, or regulations includes the power from time to time to revoke the same absolutely, in whole or in part, or revoke and vary the same in part or in whole and substitute others, unless the terms or the nature and object of the power indicate that it is intended to be exercised either finally in the first instance, or only under certain restrictions, and also includes the power to prescribe a fine or penalty not exceeding $10 for the breach of any such bylaws, rules, orders, or regulations:

(i) *Repealed by s. 412 (2) of the Crimes Act 1961.*

(j) Power given to do any act or thing, or to make any appointment, is capable of being exercised as often as is necessary to correct any error or omission in any previous exercise of the power, notwithstanding that the power is not in general capable of being exercised from time to time.

Cf. 1908, No. 1, s. 24; 1908, No. 242, ss. 7 and 8; 1920, No. 9, s. 2; 1922, No. 51, s. 45

Para. (e) was substituted by s. 7 of the Acts Interpretation Amendment Act 1986.

In para. (h) the sum of $10 was substituted for £5 by s. 7 of the Decimal Currency Act 1964.

Para. (j) was added by s. 2 of the Statutes Amendment Act 1936.

As to the term "holiday" in para. (a) and the opening of certain public offices, see S.R. 1981/259, S.R. 1957/256, S.R. 1957/257, S.R. 1957/258, S.R. 1966/25.

25A. Judicial officers to continue in office to complete proceedings—(1) Any judicial officer whose term of office has

expired or who has retired from his office shall, whether or not his successor has come into office, continue in office for the purpose of giving judgment in or otherwise determining, or of joining in the giving of judgment in or the determining of, any proceedings heard by him, or by any Court or tribunal of which he was a member, before the expiry of his term of office or his retirement.

(2) Except with the consent of the Minister of Justice, a judicial officer shall not continue in office under subsection (1) of this section for more than one month.

(3) Every judicial officer shall, while he continues in office under subsection (1) of this section, be paid the remuneration and allowances to which he would have been entitled if his term of office had not expired or he had not retired.

(4) No judicial officer who continues in office pursuant to this section shall be taken into account for the purposes of any enactment limiting the number of persons who may for the time being hold any specified judicial office.

(5) Nothing in this section shall derogate from the provisions of any enactment under which the holder of any office is to continue in office until his successor comes into office.

(6) In this section the term "judicial officer" means—

(a) A Magistrate:

(b) Any other person (not being a Judge of any Court) having in New Zealand by law authority to hear, receive, and examine evidence.

This section was inserted by s. 2 (1) of the Acts Interpretation Amendment Act 1973.

25B. Law officers' powers—(1) Where the Governor-General is satisfied that the Solicitor-General is or will be absent from New Zealand or is incapacitated by illness or other sufficient cause from performing the duties of the office of Solicitor-General, the Governor-General may appoint a barrister or solicitor, who is of not less than 7 years' practice and who holds office as a Crown Counsel, to act for the Solicitor-General during the absence or incapacity of the Solicitor-General.

(2) Where a vacancy occurs in the office of Solicitor-General, the Governor-General may appoint a barrister or solicitor, who is of not less than 7 years' practice and who holds office as a Crown Counsel, to act in the place of the Solicitor-General until the vacancy is filled.

(3) A person appointed under subsection (1) or subsection (2) of this section may, for the duration of the absence or incapacity or vacancy in respect of which the person is

appointed, exercise or perform any power, duty, authority, or function imposed upon, or vested solely in, the Solicitor-General as Solicitor-General.

(4) Notwithstanding any Act, rule, or law to the contrary, but subject to subsection (9) of this section, the Attorney-General may from time to time, by writing under the hand of the Attorney-General, delegate to a person appointed under subsection (1) or subsection (2) of this section the exercise and performance of any power, duty, authority, or function imposed upon or vested in the Attorney-General as Attorney-General.

(5) Every delegation under subsection (4) of this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Attorney-General.

(6) Any such delegation may be made subject to such restrictions and conditions as the Attorney-General thinks fit, and may be made either generally or in relation to any particular case.

(7) The fact that a person, purporting to act pursuant to an appointment under subsection (1) or subsection (2) of this section or pursuant to both such an appointment and a delegation under subsection (4) of this section, exercises or performs any power, duty, authority, or function imposed upon or vested in the Solicitor-General as Solicitor-General or the Attorney-General as Attorney-General, shall, in the absence of proof to the contrary, be sufficient evidence that the person has been authorised to do so by such a delegation.

(8) Where the signature of a person appointed under subsection (1) or subsection (2) of this section is attached or appended to an official document, all Courts and persons acting judicially shall take judicial notice of that signature.

(9) No delegation under subsection (4) of this section shall relate to any power, duty, authority, or function imposed on or vested in the Attorney-General by the Statutes Drafting and Compilation Act 1920.

This section was inserted by s. 2 of the Acts Interpretation Amendment Act 1979.

25C. Governor-General may act under certain Imperial Acts—In any Imperial Act which is in force in New Zealand any reference to the Governor of New Zealand or of the colony shall be read as a reference to the Governor-General.

25D. Administrator of the Government may act under certain Imperial Acts—In any Imperial Act which is in force in New Zealand any reference to the Governor-General or

Governor of New Zealand or of the colony shall be read as including a reference to the Administrator of the Government.

Sections 25C and 25D were inserted by s. 4 of the Acts Interpretation Amendment Act 1983 and were renumbered by s. 8 of the Acts Interpretation Amendment Act 1986. These sections apply not only in respect of any Imperial Act which is in force in New Zealand, but also in respect of any Imperial Act which is in force in Tokelau: s. 6 of the Acts Interpretation Amendment Act 1983 and s. 3 of the Imperial Laws Application Act 1988.

25E. Administrator's authority not to be questioned—The fact that the Administrator of the Government exercises or performs any function, duty, or power that may be exercised or performed by the Governor-General shall be conclusive evidence of the authority of the Administrator of the Government to do so, and no person shall be concerned to inquire whether the occasion requiring or authorising the Administrator to do so has arisen or has ceased.

This section was inserted by s. 9 of the Acts Interpretation Amendment Act 1986.

26. Rules of Court—(1) In any Act the expression "rules of Court", when used in relation to any Court, means, unless a contrary intention appears, rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of that Court.

(2) The power of the said authority to make rules of Court shall, unless the contrary intention appears, include a power to make rules of Court for the purpose of any Act which directs or authorises anything to be done by rules of Court.

Cf. 1908, No. 242, s. 3

As to the general power to make rules of the Supreme Court and Court of Appeal, see the Judicature Act 1908 (reprinted 1988, R.S. Vol. 22, p. 107).

As to the power to make rules for District Courts, see s. 122 District Courts Act 1947 (reprinted 1980, R.S. Vol. 5, p. 1).

27. *Repealed by s. 56 of the Criminal Justice Act 1954; see s. 44 of that Act.*

28. Foregoing rules to apply to this Act—The provisions of this Act shall apply to the construction hereof, and to the words and expressions used herein.

Cf. 1908, No. 1, s. 25

Repeals

29. Repeals and saving—(1) The enactments mentioned in the First Schedule hereto are hereby repealed.

(2) Section 26 of the Acts Interpretation Act 1908, as set forth in the Second Schedule to this Act, shall continue in force notwithstanding the repeal of that Act.

SCHEDULES

Section 29 (1)

FIRST SCHEDULE

ENACTMENTS REPEALED

1908, No. 1—The Acts Interpretation Act 1908.
1908, No. 242—The Acts Interpretation Amendment Act 1908.
1920, No. 9—The Acts Interpretation Amendment Act 1920.
1922, No. 51—The Finance Act 1922: Section 45.

SECOND SCHEDULE

Section 29 (2)

THE ACTS INTERPRETATION ACT 1908: SECTION 26

26. Subject to the provisions of any Act passed after the abolition of the provinces by the Abolition of Provinces Act 1875, the following provisions shall be deemed to have had effect from the date of such abolition:

(a) The portion of New Zealand included within any province abolished as aforesaid shall be called a provincial district, and bear the same name as the abolished province which it comprised.

(b) Within the district included within any such province all laws in force therein at the date of the abolition of the province shall, except so far as the same were expressly or impliedly altered or repealed by the aforesaid Act, and so far as the same are applicable, continue in force in such district until altered or repealed by the General Assembly.

(c) All powers, duties, and functions which immediately before the date of the abolition as aforesaid of any province were, under or by virtue of any law not expressly or impliedly repealed or altered by the aforesaid Act, vested in or to be exercised or performed by the Superintendent of such abolished province, either alone or with the advice and consent of or on the recommendation of the Executive or Provincial Council of such province, or which by virtue of the Public Reserves Act 1854, or any Act amending the same, or by virtue of any Waste Lands Act or any regulations made thereunder, or otherwise howsoever, would but for the passing of the aforesaid Act have been exercised only under an Ordinance of such abolished province, shall, for the purposes of the district included within such abolished province, vest in and be exercised and performed by the Governor.

(d) Such powers, duties, and functions may be exercised or performed by the Governor as regards the district with respect to which they may be exercised or performed, whether the Governor is for the time being within such district or not.

(e) All powers, duties, and functions which immediately before the date of the abolition of any province were, under or by virtue of any law not expressly or impliedly repealed by the aforesaid Act, vested in or to be exercised or performed by the Provincial Treasurer, Provincial Secretary, or other public officer of such abolished province shall, for the purpose of the district included

within such abolished province, vest in and be exercised or performed by any person or persons from time to time appointed for the purpose by the Governor.

(f) Except as hereinafter provided, all lands, tenements, goods, chattels, money, and things in action, and all real and personal property whatever, and all rights and interests therein which immediately before the date of the abolition of any province were vested in or belonged to the Superintendent of any province as such Superintendent shall, on the date of the abolition thereof, vest in the Crown for the same purposes and objects, and subject to the same powers and conditions, as those for and subject to which they were held by the Superintendent.

(g) All revenues and money, and all securities for such money, which on the date of the abolition of any province were the property of or invested on behalf of such province shall, on the date of the abolition thereof, vest in the Crown:

Provided that if at the date of the abolition of any province any money or revenues of such province were specifically set apart and available for public works or other purposes within such province, or any district thereof, such money or revenues shall be applicable to such purposes accordingly.

(h) For the purposes of the last preceding paragraph "public works" means and includes branch railways, tramways, main roads, public bridges, and ferries on main roads, docks, quays, piers, wharves, and harbour works, reclamation of land from the sea, protection of land from encroachment or destruction by sea or river.

(i) All contracts existing immediately before the date of the abolition of any province, and all actions, proceedings, and things begun and not completed at the date of such abolition, of, by, or against the Superintendent of such abolished province, as such, shall belong and attach to and be enforced by and against the Crown.

(j) In every Act of the General Assembly, except such as relate to the election of Superintendents and Provincial Councils, and to legislation by such Councils and the appointment of Deputy Superintendents, and to audit of provincial accounts, and matters of a like kind, and in every Act or Ordinance of the Legislature of an abolished province, the words and expressions following shall, with regard to any provincial district, include the meanings hereafter attached to them, that is to say:

(i) The word "province" shall include "provincial district", and when the name of any abolished province is used, or any province is otherwise expressly referred to, the enactment shall be deemed to mean and apply to the provincial district of that name.

(ii) The word "Superintendent" shall, with respect to such provincial district, mean the Governor, or any person or persons whom the Governor may from time to time appoint to perform those duties and exercise those powers which might, if such duties and powers had to be performed within a province, be exercised or performed by the Superintendent thereof.

(iii) The expression "Provincial *Gazette*", or "Provincial Government *Gazette*" or other similar expressions shall be deemed to mean the *New Zealand Gazette*, or such newspaper as from time to time may be appointed by the Governor for the purpose of inserting therein notifications of any kind relating to the government of New Zealand or the administration of government within any provincial district.

THE STATUTES AMENDMENT ACT 1936

1936, No. 58

An Act to amend certain Acts of the General Assembly of New Zealand [*31 October 1936*

1. Short Title—This Act may be cited as the Statutes Amendment Act 1936.

Acts Interpretation

2. *This section added para. (j) to s. 25 of the principal Act.*

3. Act to apply to regulations, etc., made under authority of Imperial Acts—The Acts Interpretation Act 1924 shall apply to all rules, regulations, bylaws, and other acts of authority made or done by the Governor-General or by any other person in New Zealand under any Imperial Act or under any rule or order of Her Majesty in Council in the same way as it applies to rules, regulations, bylaws, and other acts of authority made or done under an Act of the General Assembly of New Zealand or of the Parliament of New Zealand.

The reference to Her Majesty has been updated from a reference to His Majesty.

The words "or of the Parliament of New Zealand" were added by s. 27 of the Constitution Act 1986.

. . . . .

THE STATUTES AMENDMENT ACT 1942

1942, No. 18

An Act to amend certain enactments of the General Assembly of New Zealand [*26 October 1942*

1. Short Title—This Act may be cited as the Statutes Amendment Act 1942.

Acts Interpretation

2. Citation of regulations includes citation of amendments—(1) This section shall be read together with and deemed part of the Acts Interpretation Act 1924.

(2) It is hereby declared that in any Act or regulations, unless the context otherwise requires, references to any regulations cited by their title include references to all subsequent regulations made in amendment thereof or in substitution therefor and for the time being in force.

. . . . . .

THE STATUTES AMENDMENT ACT 1945

1945, No. 40

An Act to amend certain enactments of the General Assembly of New Zealand [*7 December 1945*

1. Short Title—This Act may be cited as the Statutes Amendment Act 1945.

Acts Interpretation

2. Regulations not invalid because of discretionary authority—(1) This section shall be read together with and deemed part of the Acts Interpretation Act 1924.

(2) No regulation shall be deemed to be invalid on the ground that it delegates to or confers on the Governor-General or on any Minister of the Crown or on any other person or body any discretionary authority.

. . . . . .

THE FINANCE ACT (No. 2) 1952

1952, No. 81

An Act to make provision with respect to public finance and other matters [*24 October 1952*

1. Short Title—This Act may be cited as the Finance Act (No. 2) 1952.

. . . . . .

PART IV

MISCELLANEOUS

27. Functions of Attorney-General may be performed by Solicitor-General—Notwithstanding any Act, rule, or law to the contrary, any power, duty, authority, or function imposed upon or vested in the Attorney-General by virtue of his office may be exercised and performed either by the person holding the office of Attorney-General or by the person holding the office of Solicitor-General.

. . . . .

APPENDIX B

History and Tables of Corresponding Provisions

TABLE 1: This table relates the draft Bill to the relevant paras of the Report and the 1924 Act

Clause		*Report*	*1924 Act*
1	Purposes of the Act	233,241–44	
2	Commencement of the Act	245	
3	Application of the Act	161,179–81, 202,241, 246–61	2, 3, 28
4(1)	Commencement, 1 month after assent	252,262–74	10, 10A, 11
4(2)	Commencement, beginning of the day	272	11(1)
5	Anticipatory exercise of powers	215,252,265, 275–80	12
6(1)	Prospective effect	200,223–27, 281–86	11(2)
6(2)	Effect of enactments	225,287–310	20(a), (e) to (h), 22
7	Substituted enactments	223–27,252, 279,311–17	20(d), 20A
8	Reference to amended enactment	223–27,252, 318–28	18, 20(b), 21
9(1)	General principle of interpretation	26–74,329	5(e), 5(j)
9(2)	Application to circumstances	75–87	5(d), 5(g)
9(3)	Indications in the text	88–126	5(f)
10	Crown	127–191, 242,252,257	5(k)
11	Amending enactments	331	5(c)
12	Powers of appointment	19,332–35	25(f)
13	Correction of errors	336–39	25(j)
14	Deviations from prescribed form	340–44	5(i)
15(1)	Executive Council, advice	345–49	23(1)
15(2)	Exercise of power after advice	345–49	23(2)
16(1)	Administrator	350–55	4,25B,25D
16(2)	Administrator's authority	350–55	25E

Clause		*Report*	*1924 Act*
17	Solicitor-General	356–57	25B
18	Judicial officers	358–61	25A
19	Interpretation	19,362–67	
19(1)	Act	247,368–73	4
	commencement	374	4
	Commonwealth country	375	4
	consular officer	376	4
	enactment	277,377–78	new
	Governor-General in Council	379–80	4
	Minister	381	new
	month	266,382	new
	New Zealand	383–92	new
	Order in Council	393	4
	person	394–402	4
	prescribed	403	4
	Proclamation	404	4
	territorial limits	392,405	4
	working day	406–407	new
	writing	408	4
19(2)	Application	253	new
	constable	409–11	4
	Governor	412	4
	land	413–17	4
	person	394–402,419	4
20	Parts of speech	420	new
21	Word used in instrument	421	7
22	Gender	422–30	4
23	Number	260,431	4
24	Computation of time	432–38	25(a), (b)
25	Repeals	439–40	
26	Amendments	441–42	

TABLE 2: This table traces the history of the provisions of the 1924 Act

Provision		*Preliminary Paper 1*	*1851**	*1868*	*1878*	*1888*	*1908*	*Commonwealth Secretariat*
s 1	Short Title	90			1	1	1	1
s 2	Applicability	7–14 54 67 101 106			23	2	2	3
s 3	Applicability	7				2	4	
s 4	General terms	106 108–111	5		3	4	5	5
	Act	7 10 15 50 112–115 139			2	4	5	5
	Administrator	132 139 140						
	Attorney-General	10 133 211			3	4	5	
	Audit Office	134 160					5(AIAA s2)	
	Australasian Colonies	183			3	4	5	
	Australian Colonies	183				4	5	
	Borough	184					5(AIAA s2)	
	Commencement	15–25 167			3	4	AIAA s10	5
	Committed for trial	130 168 176			4		5(AIAA s2)	
	Commonwealth citizen	154 155 185						5
	Commonwealth country	154 185 186						5
	Company	156 159			3	4	5	12
	Constable	135 136				(1903 s2)	5	
	Consular officer	137 160					5(AIAA s2)	
	Cook Islands	188						
	Distributive construction	195					5	
	District Court	152 153						
	Family Court							
	Financial year	177					5(AIAA s2)	
	Formality	196						
	Gazette	127 173			3	4	5	5
	Gazetted	128			3	4	5	
	Gender	164	5(4)		3	4		9
	Government Printer	138				4	5	5
	Governor-General in Council	123 141 142				4	5	
	Governor-General	132 139 140 160	6		3	4	5	5
	High Court	153						
	Holiday	178–180			(22)	4	5	5
	Imperial Act	122				4	5	5
	Imperial Parliament	122 143				4	5	
	Information	130 168 176				(1903 s2)	5(AIAA s2)	
	Justice	144					5	5
	Kahiti (see Maori Gazette)							
	Land	12 189	5(4)		3	4	5	
	Local authority	145–149 184				(1903 s2)	5	
	Magistrate							
	Maori Gazette	129						
	Member of Parliament	151						
	Minor	157 158 160					5(AIAA s2)	
	Month	182	5(4)		3	4	5	5
	North Island, South Island	190					5	
	Oath, Affidavit	169	5(4)		3	4	5	5
	Order in Council	123				4	5	
	Parliament	139 150				4	5	
	Person	159–163 214			3	4	5	5
	Prescribed	172					5(AIAA s2)	5
	Proclamation	124				4	5	5
	Province	191			3	4	5	
	Provincial Ordinance	126			3	4	5	
	Public notification	127 173–175				4	5	

Provision		*Preliminary Paper 1*	*1851**	*1868*	*1878*	*1888*	*1908*	*Commonwealth Secretariat*
Regulations	10 54 116–118					5(AIAA s2)	5	
	Samoa	192						
	Seal of New Zealand	86 125						
	Singular and plural	165–166 195	5(4)		3	4	5	9
	Statutory declaration	160 169			3	4	5	9
	Summary conviction	130 176					5(AIAA s2)	5
	Territorial sea	12 193						
	Territorial limits	193						
	This Colony, Dominion N.Z.	193		3	4		5(AIAA s11)	
	Writing	131				4	5	5
s 5	Construction rules	59						
s 5(a)	Public/private Acts	80 97	9(7)		8	15	6(a)	25
s 5(b)	Enacting words	92 98	2(2)		9	5(1)	6(b)	26
s 5(c)	Amending Acts	56 67 96			15	5(2)	6(c)	
s 5(d)	Always speaking	99				5(3)	6(d)	7
s 5(e)	Preamble	90				5(4)	6(e)	28
s 5(f)	Division	93						
s 5(g)	Marginal notes	94				5(6)	6(f)	29
s 5(h)	Schedule	95				5(5)	6(g)	28
s 5(i)	Forms	172				5(5)	6(h)	
s 5(j)	Intent	99(PP 8 9–48 125–236)	3			5(7)	6(i)	
s 5(k)	Effect on rights	13 97 100–103 161				5(8)	6(j)	
s 5(l)	Alteration	100	1(1)		14	5(9)	6(k)	27
s 6	Penal matters	12 161 213–218				(1903, s6)	7	
s 7	Interpretation of regulations	7 12 106				(1903, s8)	8	41
s 8	Assent	93						
s 9	Reserved Acts	93						
s 10	Assent inserted	19 81 93			12	8	11	
s 10A	Date of commencement	16 19						18
s 11	Time of commencement	16 17 19 93				(1903, s3)	12	
s 12	Power before commencement	12 16 19 93 198 201				(1903, s4)	13	22
s 13	Gazetting; availability	23 83 93			13	9	14	
s 14	Citation of Imperial Acts	54 86–89						
s 15	Short Titles	54 86–89			6	10	15	
s 16	In absence of Short Titles	54 86–89			7	11	16	
s 17	Authoritative copies	54 81 86–89						
s 17(b)		81						
s 18	Citation of amendments	12 53 54 56 89			16(2)	12	18	15
s 19	Citation of portions	86 88 89				13	19	
s 20	Repeal provisions	12 19 25 50 51 58 65			16	21	20	
s 20(a)		51 59 65 66	7(5)		16(4)	21(1)	20(a)	31
s 20(b)		51 57			16(1)	21(2)	20(b)	
s 20(c)		25 51	8(6)		16(3)	21(3)	20(c)	32
s 20(d)		51 65 67 68 69				(1903 s5)	20(d)	33
s 20(e)		50 51 65 66 68			16(5), (7)	21(4)	20(e)	34
	(i)	58 73 76 77						
	(ii)	73 75						
	(iii)	61 64 73 76–78						
	(iv)	58 76 77						
	(v)	73 76 77						
	(vi)	73 74 76 77						
	(vii)	65 70 73 76 77						
s 20(f)		51 58 60 92				(1906 s7)	20(f)	
s 20(g)		51 61 62–64			16(8)	21(5)	20(g)	
s 20(h)		51 61–64 70			16(6), (7)	21(6)	20(h)	

Provision		*Preliminary Paper 1*	*1851**	*1868*	*1878*	*1888*	*1908*	*Commonwealth Secretariat*
s 20A	Savings	19 50 51 65 67 68 201						35
s 21	References to repealed Act	19 53–57				14	21	
s 21(1)		12 51						
s 22	Pending proceedings	50 51 61–64					(AIAA s6)	
s 23	Advice and consent	199			4	22		
s 24	Authority for Orders	200 201			5	23	23	
s 25	Time, distance, powers	12 181				24	24	
s 25(a)	Holidays	178 181				24(1)	24(a)	
s 25(b)	Exclusion of day	12 181					(AIAA s8)	
s 25(c)	Distance measurement	12 194					(AIAA s7)	
s 25(d)	Place of officer	202						
s 25(e)	Successors in office	160 203			17	24(3)	24(c)	
s 25(f)	Removal of officers	204 205			18	24(4)	24(d)	
s 25(g)	From time to time	206 207 209			19	24(5)	24(e)	
s 25(h)	Revocation of rules	12 201 208 209			20	24(6)	24(f)	
s 25(j)	Correcting errors	206–207 209						
s 25A	Completion of proceedings	160 210						
s 25B	Law Officers powers	10 88 160 211						
s 25C	Imperial Acts	219						
s 25D	Imperial Acts	219						
s 25E	Administrator's authority	219						
s 26	Rules of Court	12 119–121					(AIAA s3)	
s 28	Application to 1924 Act	7 50 101				25	25	
s 29	Repeals Savings 1924 Act	86						
STATUTES AMENDMENT ACT 1936								
s 3	Imperial regulations	7 10						
STATUTES AMENDMENT ACT 1942								
s 2(2)	Citation of regulations	54						
STATUTES AMENDMENT ACT 1945								
s 2(2)	Discretion valid Regulations	212						
FINANCE ACT (NO. 2) 1952								
s 27	Attorney-General Functions	10 160 211						
ACTS INTERPRETATION AMENDMENT ACT 1986								
s 8	Renumbering sections	88						
	Causing prohibited act				4			

*The number in brackets after the section of the 1851 Ordinance is the corresponding section of Lord Brougham's Act enacted the previous year (13 & 14 Vic ch 21)

TABLE 3: This table relates the 1924 Act to the relevant paras in Preliminary Paper 1, the Report and the clause in the Bill

Provision		*Preliminary Paper 1*	*Report*	*Draft Bill*
s 1	Short Title	90	AppC	omitted, but see cl 1
s 2	Applicability	7–14 54 67 101 106	153,248–55	clause 3
s 3	Applicability	7	257–61	clause 3
s 4	General terms	106 108–111	19,368	Part 6
	Act	7 10 15 50 112–115 139	134,199,368–73	clause 19
	Administrator	132 139 140	350–55,AppC	omitted, but see cl 16
	Attorney-General	10 133 211	356–58,AppC	omitted, but see cl 17
	Audit Office	134 160	AppC	omitted
	Australasian Colonies	183	AppC	omitted
	Australian Colonies	183	AppC	omitted
	Borough	184	AppC	omitted
	Commencement	15–26 167	262–74,374	clause 19
	Committed for trial	130 168 176	448–50	omitted, but see sch
	Commonwealth citizen	154 155 185	AppC	omitted
	Commonwealth country	154 185 186	375	clause 19
	Company	156 159	AppC	omitted
	Constable	135 136	408–11	clause 19
	Consular officer	137 160	376	clause 19
	Cook Islands	188	AppC	omitted
	Distributive construction	195	AppC	omitted
	District Court	152 153	AppC	omitted
	Family Court		AppC	omitted
	Financial year	177	AppC	omitted
	Formality	196	AppC	omitted
	Gazette	127 173	AppC	omitted
	Gazetted	128	AppC	omitted
	Gender	164	422–30	clause 22
	(Government Printer	138 repealed)		
	Governor-General in Council	123 141 142	379–80	clause 19
	Governor-General	132 139 140 160	379	omitted
	High Court	153	AppC	omitted
	Holiday	178–180	AppC	omitted
	Imperial Act	122	AppC	omitted
	Imperial Parliament	122 143	AppC	omitted
	Information	130 168 176	AppC	omitted
	Justice	144	AppC	omitted
	Land	12 189	413–17	clause 19
	Local authority	145–149 184	AppC	omitted
	Magistrate		AppC	omitted
	Maori Gazette	129	AppC	omitted
	Member of Parliament	151	AppC	omitted
	Minor	157 158 160	AppC	omitted
	Month	182	382	clause 19
	North Island, South Island	190	383–92,AppC	omitted
	Oath, Affidavit	169	AppC	omitted
	Order in Council	123	393	clause 19
	Parliament	139 150	AppC	omitted
	Person	159–163 214	394–402,418	clause 19
	Prescribed	172	403	clause 19
	Proclamation	124	404	clause 19
	Province	191	AppC	omitted
	Provincial Ordinance	126	AppC	omitted
	Public notification	127 173–175	AppC	omitted
	Regulations	10 54 116–118	AppC	omitted
	Samoa	192	AppC	omitted
	Seal of New Zealand	86 125	AppC	omitted
	Singular and plural	165–166 195	431	clause 23

Provision		*Preliminary Paper 1*	*Report*	*Draft Bill*
	Statutory declaration	160 169	AppC	omitted
	Summary conviction	130 176	451	omitted, but see sch
	Territorial limits	193	392,405	clause 19
	Territorial sea	12,193	392,405	clause 9
	This Colony, Dominion N.Z.	193	383–92	clause 19
	Writing	131	408	clause 19
s 5	Introduction		153	clause 3
s 5(a)	Public/private Acts	80 97	AppC	omitted
s 5(b)	Enacting words	92 98	237–40	omitted
s 5(c)	Amending Acts	56 67 96	331,434	clause 11
s 5(d)	Always speaking	99 (PP8 88–110)	75–87	clause 9
s 5(e)	Preamble	90 (PP8 64–72)	88–99	omitted, but see cl 9
s 5(f)	Division	93 (PP8 73–77)	88–122	clause 9
s 5(g)	Marginal notes	94 (PP8 78–84)	88–122	clause 9
s 5(h)	Schedule	95 (PP8 85–97)	88–99	omitted, but see cl 9
s 5(i)	Forms	172	340–44	clause 14
s 5(j)	Intent	99(PP8 9–48 125–236)	26–74	clause 9
s 5(k)	Effect on rights	13 97 100–103 161	134–90	clause 10
s 5(l)	Alteration	100	AppC	omitted
s 6	Penal matters	12 161 213–218	448–51	omitted
s 7	Interpretation of regulations	7 12 106	421	clause 21
s 8	Assent	93	95	omitted
s 9	Reserved Acts	93	95	omitted
s 10	Assent inserted	19 81 93	273	clause 4
s 10A	Date of commencement	19	266	clause 4
s 11	Time of commencement	16 17 19 93	273	clause 4
s 12	Power before commencement	12 16 19 93 198 201	265,275–80	clause 5
s 13	Gazetting; availability	23 83 93	AppC	s17 ARP Act
s 14	Citation of Imperial Acts	54 86–89	AppC	omitted
s 15	Short Titles	54 86–89	AppC	omitted
s 16	In absence of Short Titles	54 86–89	AppC	omitted
s 17	Authoritative copies	54 81 86–89	AppC	omitted
s 18	Citation of amendments	12 53 54 56 89	311–17	clause 7
s 19	Citation of portions	86 88 89	AppC	omitted
s 20	Repeal provisions	12 19 25 50 51 58 65	197	
s 20(a)		51 59 65 66	287–310	clause 6(2)
s 20(b)		51 57	325	clause 8
s 20(c)		25 51	311–17	clause 7
s 20(d)		51 65 67 68 69	311–17	clause 7
s 20(e)		50 51 58 61–68 73 75 76–78	287–307	clause 6(2)
s 20(f)		51 58 60 92	308–10	clause 6(2)
s 20(g)		51 61 62–64		clause 6(2)
s 20(h)		51 61–64 70		clause 6(2)
s 20A	Savings	19 50 51 65 67 68 201	312	clause 7
s 21	References to repealed Act	19 53–57	319–28	clause 8
s 22	Pending proceedings	50 51 61–64	198	clause 6(2)
s 23	Advice and consent	199	346–49	clause 15
s 24	Authority for Orders	200 201	AppC	omitted
s 25	Time, distance, powers	12 181	432–38,AppC	clause 24
s 25(a)	Holidays	181	438	clause 24
s 25(b)	Exclusion of day	12 181	436	clause 24
s 25(c)	Distance measurement	12 194	AppC	omitted
s 25(d)	Place of officer	202	AppC	omitted
s 25(e)	Successors in office	160 203	AppC	omitted
s 25(f)	Removal of officers	204 205	332–35	clause 12
s 25(g)	From time to time	206 207 209	AppC	omitted
s 25(h)	Revocation of rules	12 201 208 209	AppC	omitted

Provision		*Preliminary Paper 1*	*Report*	*Draft Bill*
s 25(j)	Correcting errors	206–207 209	336–39	clause 13
s 25A	Completion of proceedings	160 210	358–61	clause 18
s 25B	Powers, Imperial Acts	10 88 160 211	345–55	clauses 16 and 17
s 25C	Governor-General may act	219	379	clause 19
s 25D	Administrator may act	219	350–55	clause 16
s 25E	Authority	219	350–55	clause 16
s 26	Rules of Court	12 119–121	AppC	omitted
s 28	Application to 1924 Act	7 50 101		clause 3
s 29	Repeals Savings 1924 Act	86	AppC	omitted
STATUTES AMENDMENT ACT 1936				
s 3	Imperial regulations	7 10		clause 3
STATUTES AMENDMENT ACT 1942				
s 2(2)	Citation of regulations	54		clause 8
STATUTES AMENDMENT ACT 1945				
s 2(2)	Discretion	212	AppC	omitted
FINANCE ACT (No 2) 1952				
s 27	Attorney-General's functions	10 160 211		clause 17

APPENDIX C

Limited Use of the Provisions of the 1924 Act: Comment on Those Which Have Not Been Carried Forward

THE 1924 PROVISIONS: INSTANCES OF NEGLECT

This Report suggests that a new Interpretation Act—and indeed the process of enacting it—should give it a greater significance in the development and use of the New Zealand statute book. In our work we have certainly found many indications that the present Act has been neglected by counsel, the courts and those responsible for preparing legislation.

The point has been made before, for instance by members of the Law Drafting Office, Ward (1955) 31 NZLJ 248 and (1957) 2 VUWLR 155, by academics, eg, Aikman (1958) 3 VUWLR 69 and by practitioners, eg, [1963] NZLJ 293–302.

The Act may now be better known and more frequently cited (or even taken for granted). That is the clear impression in respect of the purposive direction in s 5(j) for instance (a matter earlier emphasised by Ward). But over the years legislation and litigation which does not depend on it is common. We give a few examples.

So far as the standard definitions in s 4 are concerned, a very large number of statutes have

- repeated and usually extended the definition of **Commonwealth country**;
- repeated the definition of **financial year**;
- replaced the definition of **local authority**;

- given effect to the substance of the definition of **person** by including "body" as well;
- repeated the substance of **prescribed**;
- repeated the definition of **territorial sea of New Zealand**;

See also para 417.

Section 5(c) provides that an amendment to an Act is to be read and construed according to the definitions and interpretations in that Act, and that the provisions of that Act are to extend and apply to the amendment as if it had been incorporated with and formed part of that Act. At present the amendment provisions in particular Acts also provide that the amendment is to be read with and deemed part of the principal Act.

We have mentioned cases in which s 5(k) on the effect of legislation on the Crown, was apparently ignored, para 143, and Ward has called attention to cases on the retrospective effect of legislation which had not been cited s 20. And there are the cases mentioned later in this appendix, in which s 2(2) of the Statutes Amendment Act 1945 was not invoked.

OMITTED PROVISIONS

Section 1: Short Title

As a result of proposals to improve the design of legislation (outlined in paras 229–232) this section has become obsolete. The Short Title is now contained in the enacting formula.

Section 4: Definitions

The following omissions from the definitions were in large part foreshadowed in Preliminary Paper 1 (paras 105–193) and there has been no strong argument to the contrary. The reason is in a general failure to meet the requirements set out in the introductory note to cl 19 (see paras 362–366). Many of the definitions presently contained in the 1924 Act fail more than one of the criteria discussed.

- Several define words or concepts no longer (or only rarely) found in Acts. (In the latter case, a definition is better placed in the particular Act.) So we omit **Australasian and Australian colonies, Imperial Parliament, Kahiti, Magistrate, North Island and South Island, province, provincial district and Provincial**

Ordinance. If necessary the Bills of Exchange Act 1908 (which so far as we can discover is the only provision which uses "Australasian colonies") could be amended to include the substance of that definition. The definition of Imperial Parliament is in any case incorrect. The Department of Internal Affairs confirms that the definitions of "province", "provincial district" and "provincial ordinance" are no longer needed.

- In three cases, provisions that purport to be definitions in fact confer a status or power on a person or office. That approach conflicts with principle (see the discussion in paras 351–352, 356) and accordingly the matters are dealt with in substantive provisions elsewhere. In this context fall definitions of **Administrator of the Government** (see cl 16), **Attorney-General** (see cl 17), **Governor-General** and the **Audit Office**. The Audit Office has agreed that this last definition should be repealed and the matter (if there is any doubt) be dealt with in a substantive manner in the proposed Audit Office Act. Depending on the timing of the legislation an interim definition may be needed. The definition of **company** extends the meaning of that word in enactments to include successors and assigns. This very broad provision seems inappropriate as a general rule and is therefore omitted. The word is not so defined in other interpretation statutes.

- Several of the present definitions deal with matters more comprehensively covered (and more readily found) in other Acts, for example the definitions of the **District, Family** and **High Courts** and (in part) the judges of those courts. Further the definitions are obvious. The gaps in them confirm that the definitions themselves are unnecessary. Others are **information** (Summary Proceedings Act 1957), **financial year** (Public Finance Act 1989), **Imperial Act** (Imperial Laws Application Act 1988), **Justice** (Justices of the Peace Act 1957), **holiday** (Holidays Act 1981), **minor** (Age of Majority Act 1970), **Member of Parliament, Parliament** (Constitution Act 1986), **oath, affidavit, statutory declaration** (Oaths and Declarations Act 1957), **Seal of New Zealand** (Seal of New Zealand Act 1977), **territorial sea** (Territorial Sea and Exclusive Economic Zone Act 1977). The definitions of **summary conviction** and **committed for trial** should be placed in the Summary Proceedings Act 1957 for reasons already given, para 448–450.

- Some of the definitions, even though relevant, are often neglected, the words or phrases concerned generally being redefined for the purposes of particular Acts. **Land, local authority, public notification** and **borough** fall into this category and are accordingly omitted (but see the special considerations in respect of **land** in the existing statutes in paras 413–417). **Prescribed** and **person** are similarly often redefined in particular Acts but we retain those definitions because they appear still to be useful—a new Act may help draw attention to them.

- There appears to be no doubt about the meaning of a number of the expressions. What else could **Cook Islands, Samoa, Commonwealth citizen, North Island and South Island, Governor-General, Gazette** and the various references to Courts and Judges mean? The word **regulations** appears often in legislation, an extended definition appears to be unnecessary except for the purposes of particular enactments such as the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989. In general, where an Act uses the word "regulations", it means exactly that. Consider the standard regulations empowering provision. The present wider definition is usually inaccurate.

- The final three entries in s 4 have a more general character than the rest. We have retained provisions about gender and singular and plural constructions which are often relied on by drafters (see cls 22 and 23), but the provisions about distributive construction and formality have been omitted as unnecessary. The first is common sense: if a tribunal is established to consider "applications", obviously it can consider a single application. The provision merely reinforces the sensible conclusion—it is unnecessary to state it in this way (and see *R v Jackson* [1919] NZLR 607). As to formality, it seems unlikely that legislation would be drafted in terms of a name other than the formal one (at least without some reference in the particular statute). And even if this were the case, it seems unlikely that it would be interpreted to exclude the intended person or thing for lack of formal designation if the name used was one "commonly applied". We have received no indication from any source that the provisions remain useful and accordingly propose their omission.

Section 5(a) and (k): Public and private Acts

Section 5(a) provides that

> **Every Act shall be deemed to be a public Act unless by express provision it is declared to be a private Act:**

The submissions on Preliminary Paper 1 strongly supported the idea that there be no distinction made in legislation between public and private Acts. This view was also adopted in the Acts and Regulations Publication Act 1989. That Act amended ss 28 and 29 of the Evidence Act 1908 and in doing so removed the distinction, based on the difference between public Acts and private Acts, which those sections had contained. (See Preliminary Paper 1 paras 80–82, Report 11 appendix A, Acts and Regulations Publication Act 1989 s 23.)

We have identified two remaining areas where the classification of Acts into different categories has significance: the manner in which a Bill is introduced and passed through the House, and its later interpretation by the courts.

The first of these is governed by the Standing Orders of the House of Representatives. Standing Orders 261–282 set out a separate procedure for private Bills, described as "designed for the particular interest or benefit of a person or body of persons, whether incorporated or not" (SO 3). Standing Order 261(1) requires that such a Bill contain an express provision declaring it to be a private Act. Under current practice private Acts are also published in a separate part of the statute book. Other categories of Bills recognised and accorded differing procedures by the Standing Orders include private members' public Bills, government Bills, local Bills, local legislation Bills and Imprest Supply and Appropriation Bills. It is clear that the different categories for the purpose of House proceedings do not require statutory recognition. Those procedures can be, and often are, regulated comprehensively by Standing Orders. It is also interesting that the numbering system for statutes and the annual volumes for the statute book include a further category of Acts—local Acts—not separately identified in the 1924 Act. Removing a reference in s 5(a) to the difference between public and private Acts would not have any effect on the procedures of the House or prevent Parliament from identifying different categories of statutes.

For the purposes of interpretation, the courts recognise several different categories of legislation, such as penal Acts and tax statutes, as well as public, private and local Acts. That differing approach does

not turn on any technical classification by the legislature in an Interpretation Act or in particular enactments. To the extent that the first part of s 5(j) may have been intended to suggest that exactly the same interpretative approach should be adopted for all categories of statutes it obviously has not succeeded. Nor should it. But it is not obvious that that was its purpose.

Courts have long accepted that different types of statutes require different approaches to interpretation. So while ordinary approaches of interpretation in general apply to private Acts, where there is doubt about the meaning of a provision which purports to confer a benefit, it will be strictly construed. For example, a duty to pay compensation will be implied where a power to take property is conferred unless the Act provides to the contrary in the clearest possible terms: *Allen v Gulf Oil Ltd* [1981]AC 1001, 1015.

(See also *Clarke v Karika* [1985] LRC (Const) 732; *Altrincham Union Assessment Committee v Cheshire Lines Committee* (1885) 15 QBD 597, 603; *Duncan v Beauchamp* (1915) 17 GLR 537.) That approach does not turn on the form of the statute; rather the courts look to the substance.

The interpretation of private Acts is also dealt with in the second part of s 5(k) of the 1924 Act:

> **... nor, if such Act is in the nature of a private Act, shall it affect the rights of any person or of any body politic or corporate except as is therein expressly mentioned;**

This provision is misleading. In many cases a private Bill will affect the rights of people not expressly mentioned in the Bill, a fact which is recognised in the procedures for their passage through the House (see SO 262, 269). An Act which changes the status or powers of a person or body will inevitably have some effect on others connected with that person or body, even if only indirectly. For example, the variation by private Act of the terms of a trust deed may affect the potential beneficiaries under the trust, the trustees, others dealing with the trustees and government and local authorities in respect of taxation and rating matters. Another example is an Act which provides for or regulates an adoption. The change in status of the individual involved has an effect on all those who deal with that person and changes a whole set of family relationships.

Some private Acts are passed which have a very wide direct application. Only some of these contain application sections specifically

overriding the second part of s 5(k). (Compare the Westpac Banking Corporation Act 1982 and the New Zealand Guardian Trust Act 1982 with the Automobile Association (Central) Act 1980.) The lack of such a section does not appear to prevent the wider application.

Section 5(b): Division into sections

> **Every Act shall be divided into sections if there are more enactments than one, which sections shall be deemed to be substantive enactments, without any introductory words.**

This provision relates to past developments in the format of statutes. Acts used to be passed as a single "enactment" without paragraphing or even separate sentences. When Acts began to be divided into separate sections for greater comprehensibility each section was introduced by a separate enacting formula. Section 5(b) was obviously intended to put a stop to that practice. There is no need for a legislative statement of this kind however. Parliament enacts the words of the statute and the form in which it chooses to set out those words does not affect the validity of the enactment in any way. It is inconceivable that without this provision statutes passed in their current form would be found to be invalid and accordingly we do not retain the provision in the new draft Act.

Section 5(l): Amendments and repeals

> **Every Act may be altered, amended, or repealed in the same session of the General Assembly or the Parliament of New Zealand in which it is passed.**

It would be incompatible with the constitutional theory of the supremacy of Parliament if Parliament could not amend an enactment at any time. This provision does not confer the power to amend but merely states that it exists. (It also sits uneasily with the general introductory words of s 5, which imply that Parliament could provide otherwise and *prevent* a repeal in the course of the session.) Such a provision is unnecessary and potentially misleading and it is not carried forward in the draft legislation.

Sections 14–16: Citation

Most Acts currently say that they may be cited by what is their short title but even without this practice, if the Interpretation Act did not

contain these provisions, it is hard to believe that there would ever be a problem. It may be useful to have a clear statement of how enactments should be cited and how to interpret citations, but it is not necessary that this be contained in legislation.

Section 17: Copies printed by authority

This section states that reference to an Act or Ordinance shall be made to a copy printed by authority. There are two reasons for omitting this provision. First, the section does not relate to the interpretation of enactments but rather operates as a general (and unenforceable) exhortation to use the official statutes. Second, the more significant issue of authoritative copies of legislation is adequately covered by the combination of s 4(2) of the Acts and Regulations Publication Act 1989 (copies of Acts, regulations and reprints printed under s 4 to state that they are published under the authority of the New Zealand Government) and s 29 of the Evidence Act 1908 (copies of Acts and regulations printed under the authority of the New Zealand Government are deemed to be correct copies). All that is required is that there be a legislative statement somewhere about what can be relied upon as an authoritative and correct copy of an enactment and those provisions achieve this.

Section 19: First and last words

Would a problem ever arise without this section? It is hard to envisage a situation where there could be confusion. We can see no reason to retain a statutory statement of something so obvious.

Section 24: Citation of authority under which Orders in Council etc made

Section 24 provides that where regulations are made, it is sufficient to cite the Act authorising the making, and goes on to provide that it is not necessary to recite or set out any circumstances or conditions precedent to the exercise of the power. Both parts of the provision are omitted in the draft.

In respect of the second matter—that conditions precedent need not be recited—there is not in any event any such obligation in the absence of statute. That part of the provision is accordingly omitted as unnecessary. And of course, many of the relevant decision makers are subject to official information legislation and so can be required

to give reasons for decisions affecting individuals—a more practical provision. Particular statutes might also require that.

The question whether instruments should be required to cite the authority under which they are made is more problematic. Certainly it is useful that there be a direct reference to the source of the power. That should generally be encouraged. Section 8(a) of the Acts and Regulations Publications Act 1989 does in fact contain that obligation for regulations (see para 443). That provision does not extend to other instruments made under authority. But in general the proposed Act does not extend beyond Acts and regulations (para 250). There is moreover the question of the consequence of failure to comply with the directions they contain. Will the instrument be held invalid? The answer is probably that there will be no need to enforce the discretion to cite the authority—the requirement is a formal one anyway and non-compliance is unlikely. The Regulations Review Committee can now also provide an extra check.

Also relevant are the related provisions of s 46 of the Evidence Act 1908 which make notice in a Gazette of the exercise of public powers prima facie evidence of their lawful exercise. That provision has in the past been included in the interpretation legislation: 1888 s 20.

Section 25(c): Distances

This provision is included in several Australian interpretation statutes but does not appear in the Canadian equivalents. Nor have there been any reported cases which discuss it. Although a considerable number of statutes do call for distances to be measured, we have been unable to find any examples where this provision would be of any real assistance in measuring that distance. Either the statute specifically provides how the distance is to be measured (eg, the Transport Act 1962, High Court and District Court Rules) or the s 25(c) formula in context provides no practical help (eg, Traffic Regulations, Territorial Sea and Exclusive Economic Zone Act and Continental Shelf Act 1964). There may well be situations where this formula will be the appropriate one, but it seems that they would be the exception rather than the rule. It seems better then that the matter be dealt with in individual statutes where appropriate or left to the common sense of the users and interpreters of the statute book.

Section 25(d): Jurisdiction extending to place where thing done

This provision is meaningless, in relation to District Court Judges and Justices of the Peace at least, as there is no geographical limit to their jurisdiction. There are some public offices which do have territorial classifications but these may not always affect the ability of the officer to exercise powers outside of that area. The only situation where ambiguity could arise is where a new function, without any express limitation, is conferred on an office with a jurisdiction limited as to territory. This sort of problem should not arise if new legislation is drafted with sufficient care. On the rare occasion when there may be a problem it seems likely that a court would be able to take an appropriately narrow view of the subsequent powers without the aid of s 25(d).

Section 25(e) and (g): Words empowering or directing

All of these provisions purport to state powers which would exist without explicit statutory recognition. As such they are unnecessary and do not need to be repeated.

Section 25(h): Power to make regulations includes power to repeal or amend

The basic power to make regulations and other subordinate legislation must include the power to revoke them. That is certainly the power which the great bulk of revocations recite. To that extent s 25(h) is not useful.

The special case of empowering the Governor-General to revoke Imperial Orders in Council which are part of New Zealand law is now covered by the Imperial Laws Application Act 1988 s 6(1)(b) so far as statutory powers are concerned. (In addition the Letters Patent confer full power on the Governor-General to revoke prerogative instruments which are part of our law—but that is not covered by s 6(1)(b), nor is it necessary that it does.)

The Acts and Regulations Publications Act 1989 s 16 deals with similar issues, giving the Governor-General in Council the power to revoke any regulations or declare that they shall cease to have effect if "the Governor-General in Council is satisfied that they have ceased

to have effect or are no longer required". The basic concept—apparently to provide for the "cleaning up" of the statute book periodically—is entirely sensible and to this extent the provision is useful assuming that is, that it is necessary. But s 16 is drafted a great deal more broadly than is appropriate for that purpose. To that extent it is objectionable and we propose its repeal.

To begin with, the power of revocation is worded in terms of the subjective opinion of the Governor-General in Council. That is a departure from the standard formula used since 1961. Our concern about the scope of the power is increased by the extended definition of "regulations" in s 16(3). It includes all kinds of statutory instruments, and so enables as well the cancellation of decisions with specific rather than general effect. It is at least arguable that the Governor-General in Council might find that customs or immigration notices, proclamations taking land, warrants of appointment, determinations of all kinds, or any of the vast array of similar instruments to be no longer required and revoke them without more consideration. Such matters should of course be dealt with in particular statutes. But even where the matter *is* considered in particular statutes, s 16(2) (which provides that the section is "in addition" to provisions in other enactments governing the revocation of regulations) apparently allows s 16 to operate despite the matter being covered by specific provisions in other statutes. On its face s 16 can bypass eg, s 23 of the Constitution Act 1986 (protecting Judges of the High Court from removal from office) by the simple device of revoking the warrant appointing a Judge—although it must be extremely unlikely that the section would be so interpreted or applied.

Section 25(h) also includes the power to prescribe a fine not exceeding $10 for the breach of the rules. As a matter of principle, that should be governed by the particular empowering provision, not an interpretation statute. In particular Parliament should decide *whether* offences can be created in the particular area by subordinate instrument and if so what the maximum fine should be.

Section 26: Rules of Court

The meaning of the phrase "rules of Court" and the power to make such rules are both topics which are dealt with in the particular enactments governing procedure in the various courts of New Zealand. Accordingly it is unnecessary to repeat this general provision.

Section 29(2): Acts Interpretation Act 1908 s 26 to continue in force

These provisions relate to the abolition of the provinces, s 29(2) carrying forward (in the Second Schedule) s 26 of the Acts Interpretation Act 1908. That Act had carried forward the relevant interpretative provisions of the Abolition of the Provinces Act 1875. The provisions are now all either spent or obsolete and the Department of Internal Affairs agrees that they need not be carried forward. We do not provide here the detail of the reasoning that led us to that conclusion.

Statutes Amendment Act 1945 s 2(2): Regulations not invalid because of discretionary authority

> **No regulation shall be deemed to be invalid on the ground that it delegates to or confers on the Governor-General or on any Minister of the Crown or on any other person or body any discretionary authority.**

We propose that this provision not be continued since its purpose and effect are unclear, it has often been ignored by the legislature, and when used in litigation—where it has also been neglected—it has had no effect.

The provision in a broad sense is designed to protect regulations from attacks on their validity. They cannot be struck down on the basis that they delegate or confer "any discretionary authority". On first reading three problems arise. The first is that for some reason the provision contemplates *delegation to or conferral on* the Governor-General but only *conferral on* the others named. That is a small matter, as is the second: the unnecessary fiction involved in the provision. The Court of Appeal criticised that aspect of the provision in *Hawke's Bay Raw Milk Producers' Cooperation Co Ltd v New Zealand Milk Board* [1961] NZLR 218, 224.

The third problem is a larger one. There is no general principle that regulations are invalid simply because they confer power (whether referred to as "discretionary authority" or not). Courts have long held that subordinate legislation—bylaws as well as regulations—can confer or delegate powers on or to others, and can do that without the support of a provision like s 2(2), eg *Geraghty v Porter* [1917] NZLR 554, *Godkin v Newman* [1928] NZLR 593, *Mackay v Adams* [1926] NZLR 518, *Ideal Laundry Ltd v Petone Borough* [1957] NZLR 1038 CA and *Hookings v Director of Civil Aviation* [1957] NZLR 929 (in

the last two cases, relating to subordinate legislation enacted after 1945, s 2(2) was not cited although it was apparently relevant). Rather a basic reason for invalidity must be that the subordinate lawmaker has not done that which Parliament has authorised—to "regulate" or "make provision" or to "make bylaws" or to "fix" or "prescribe" prices. The conferral of a wide, uncontrolled power on someone else is *not* a "regulation" or the making of provisions or of "laws", or the "fixing" of a price. It is that failure rather than the conferral of power on someone else which is fatal.

As just indicated, counsel have not always cited the provision in cases in which it might have helped. Moreover in the two major reported cases in which it has been argued, it has not saved the regulation, *Hawke's Bay* case cited above and *Attorney-General v Mt Roskill Borough* [1971] NZLR 1030. It appears to have had no real impact.

The general 1945 provision appears also to have been neglected by the legislature. At least it has quite frequently enacted a provision to the same effect in specific statutes, eg, Aikman (1960) 3 VUWLR 69, 96 n 34. Again there is no record of those provisions having a significant effect.

Finally, the provision can be contrasted with the parallel one in the Bylaws Act 1910 s 13. That section, drafted in different terms and subject to the restraint that the discretion conferred be not so great as to be unreasonable, has been invoked successfully on a number of occasions to uphold the validity of bylaws which confer power on council officers, eg, *Hazeldon v McAra* [1948] NZLR 1087 FC. (See also Local Government Act 1974 s 682.) This experience might suggest a recasting of s 2(2) rather than its repeal. That is not the satisfactory course. If Parliament intends that its delegate should be able to further delegate the powers then Parliament should address that in the particular context and make appropriate provision. It can take that particular decision knowing that the recently strengthened safeguards ordinarily applying to the making of secondary legislation will be avoided as a consequence. It has that opportunity whenever a regulation-making power is contemplated.

When appropriate, particular statutes can contain specific provisions allowing for the variation of the application of regulations by decision of the relevant Minister or other official, eg, Clean Air Act 1972 s 55(3) and (6), Dangerous Goods Act 1974 s 36, Construction Act 1959 s 30(g), Forest and Rural Fires Act 1977 s 67(1) proviso, (2)(d)

and (i), Marine Farming Act 1971 s 48(ja), Health Act 1956 s 122, Mental Health Act 1969 s 127, Milk Act 1967 s 69(2), Poultry Act 1968 s 18(3).

APPENDIX D

Interpretation Acts and other Related Legislation

1 INTERPRETATION ACTS REFERRED TO

AUSTRALIA

Commonwealth
Interpretation Act 1901

Australian Capital Territory
Interpretation Ordinance 1967

New South Wales
Interpretation Act 1987

Northern Territory
Interpretation Act 1978

South Australia
Acts Interpretation Act 1915

Victoria
Interpretation of Legislation Act 1984

Queensland
Acts Interpretation Act 1954–1985

Western Australia
Interpretation Act 1984

Tasmania
Acts Interpretation Act 1931

CANADA

Canada
Interpretation Act RSC 1985 cI-21

Alberta
Interpretation Act RSA 1980 cI-7

British Columbia
Interpretation Act RSBC 1986 c206

Ontario
Acts Interpretation Act RSO 1980 c219

Prince Edward Island
Interpretation Act SPEI 1981 c18

NEW ZEALAND

1851 Interpretation Ordinance

1858 Interpretation Act

1868 Interpretation Act

1878 Interpretation Act

1888 Interpretation Act

1908 Acts Interpretation Act

1924 Acts Interpretation Act

UNITED KINGDOM

1850 An Act for shortening the language used in Acts of Parliament (Lord Brougham's Act)

1889 Interpretation Act

1978 Interpretation Act

UNITED STATES

Many United States jurisdictions have provisions like those quoted in para 36. The basic text on legislation says that about one third of the States have such provisions and refers to Arizona, Arkansas, California, Idaho, Iowa, Kansas, Kentucky, Montana, Pennsylvania,

South Carolina, South Dakota and Utah, Sutherland Statutory Construction (4th ed) para 61.05. Fordham and Leach suggest a longer list, "Interpretation of Statutes in derogation of the Common Law" (1950) 3 Vand LR 438, 448–453.

See also eg, Missouri Revised Statutes 1986 s 1.01: ". . . all acts of the general assembly, or laws, shall be liberally construed, so as to effectuate the true intent and spirit thereof".

The Uniform Commercial Code 1963 (now adopted by all the States) includes a parallel provision: it is to be liberally construed to promote its underlying purposes and policies; and it then sets out those purposes and policies. It appears to be a common practice for such provisions to be included in particular statutes, with the consequential abrogation of the general proposition relating to statutes in derogation of common law in that particular case, eg, *Grayson v Town of Huntington* 545 NYS 2d 633, 636–637 (1989) relating to public housing law.

OTHERS

Uniform Interpretation Act (Uniform Law Conference of Canada, Proceedings of the Sixty-sixth Annual Meeting held at Calgary, Alberta, August 1984)

Commonwealth Secretariat draft Interpretation Bill (prepared by G C Thornton, April 1983)

Vienna Convention on the Law of Treaties 1969

The 1984 amendment to the Australian Act (Commonwealth), relating to the use of extrinsic material, is as follows:

Use of extrinsic material in the interpretation of an Act

15AB (1) Subject to subsection (3), in the interpretation of a provision of an Act, if any material not forming part of the Act is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material—

(a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; or

(b) to determine the meaning of the provision when—

(i) the provision is ambiguous or obscure; or

(ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act leads to a result that is manifestly absurd or is unreasonable.

(2) Without limiting the generality of subsection (1), the material that may be considered in accordance with that subsection in the interpretation of a provision of an Act includes—

(a) all matters not forming part of the Act that are set out in the document containing the text of the Act as printed by the Government Printer;

(b) any relevant report of a Royal Commission, Law Reform Commission, committee of inquiry or other similar body that was laid before either House of the Parliament before the time when the provision was enacted;

(c) any relevant report of a committee of the Parliament or of either House of the Parliament that was made to the Parliament or that House of the Parliament before the time when the provision was enacted;

(d) any treaty or other international agreement that is referred to in the Act;

(e) any explanatory memorandum relating to the Bill containing the provision, or any other relevant document, that was laid before, or furnished to the members of, either House of the Parliament by a Minister before the time when the provision was enacted;

(f) the speech made to a House of the Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in that House;

(g) any document (whether or not a document to which a preceding paragraph applies) that is declared by the Act to be a relevant document for the purposes of this section; and

(h) any relevant material in the Journals of the Senate, in the Votes and Proceedings of the House of Representatives or in any official record of debates in the Parliament or either House of the Parliament.

(3) In determining whether consideration should be given to any material in accordance with subsection (1), or in considering the

weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to—

(a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; and

(b) the need to avoid prolonging legal or other proceedings without compensating advantage.

(Acts Interpretation Act 1901 s 15 AB (as enacted in 1984); see also Interpretation Act 1987 (NSW) s 34, Interpretation of Legislation Act 1984 (Vic) s 35B, Interpretation Act 1984 (WA) s 19, and Interpretation Ordinance 1967 (ACT) s 11B; and the Vienna Convention on the Law of Treaties 1969 article 32.)

(See paras 100–126.)

2 OTHER RELATED LEGISLATION

Executive and Parliamentary Government

The following statutes relate to basic questions about the establishment of our government, in part through Parliament, and the methods of exercise of central powers of government:

Constitution Act 1986
Electoral Act 1956
Oaths and Declarations Act 1957
Official Appointments and Documents Act 1919
Royal Titles Act 1974
Seal of New Zealand Act 1977

General administration

Those provisions regulate in a variety of ways the operation of the general administration of government eg, the rules about the appointment of various public officers, salary and related matters and methods of control of public power:

Acts and Regulations Publication Act 1989
Archives Act 1957
Civil List Act 1979
Commonwealth Countries Act 1977
Fees and Travelling Allowances Act 1951
Higher Salaries Commission Act 1977

Official Information Act 1982
Ombudsmen Act 1975
Public Finance Act 1977 and 1989
Public Works Act 1981
State Sector Act 1988

Courts

The following provisions establish courts or regulate their actions in a variety of ways which may affect the operation of, if not all, almost all other statutes:

Crimes Act 1961
Criminal Justice Act 1985
Declaratory Judgments Act 1908
District Courts Act 1947
Inferior Courts Procedure Act 1909
Judicature Act 1908
Judicature Amendment Act 1972
Judicial Committee Acts 1833 and later
Oaths and Declarations Act 1957
Summary Proceedings Act 1957

Tribunals

Some of the following statutes are not generally applicable of their own force. Rather they become applicable, in some cases at least, because they are specifically adopted by the particular statute:

Arbitration Act 1908
Commissions of Inquiry Act 1908
(see eg, the list under s 2 of the reprint)
Evidence Act 1908
Oaths and Declarations Act 1957

Local Government

The scope of "local authority" is defined or determined in a variety of ways in the following legislation:

Bylaws Act 1910
Local Authorities Loans Act 1956
Local Authorities (Members' Interests) Act 1968
Local Elections and Polls Act 1976

Local Government Act 1974
Local Government Official Information and Meetings Act 1987
Ombudsmen Act 1975
Public Bodies Contracts Act 1959
Public Bodies Leases Act 1969
Public Finance Act 1977 and 1989
Rating Powers Act 1988

Personal and legal status and relationships

The following important statutes determine status, capacities, rights and duties, and relationships for the purposes generally of the law (not just statutory):

Adoption Act 1955
Age of Majority Act 1970
Citizenship Act 1977
Companies Act 1955 (and other legislation about legal persons)
Consular Privileges and Immunities Act 1971
Diplomatic Privileges and Immunities Act 1968
Family Proceedings Act 1980
Marriage Act 1955
Mental Health Act 1969
Protection of Personal and Property Rights Act 1988
Status of Children Act 1969

Legislation relating to doctors, dentists and architects also expressly has a wider impact. The word "Maori" is sometimes defined by reference to the definition in the Maori Affairs Act 1953.

Territorial scope

"Territorial scope" is ambiguous. Legislation might apply to activities in a place without being in force as part of the law there. The Crimes Act 1961 provides good examples. Most of the crimes defined there are crimes only if their constituent elements occur in New Zealand, as defined in the Acts Interpretation Act 1924. Some acts are, however, crimes under New Zealand law wherever they occur; see for example treason and spying. The acts might not be crimes according to the law of the particular place they occur. In other cases the law is actually in force as part of the law of the place. That is so, to take just one example, of the Acts Interpretation Act 1924 in Tokelau law. In general New Zealand statutes are in force in Tokelau

only if express provision is made to that effect. Express provision is made for the Acts Interpretation Act 1924. The legislation listed below relates primarily to the second case, that is the content of the law in force in places beyond the land territory of the main islands of New Zealand.

Antarctica Act 1960
Constitution Act 1986
Continental Shelf Act 1964
Cook Islands Act 1915
Cook Islands Constitution Act 1964
Kermadec Islands Act 1887
Niue Act 1966
Niue Constitution Act 1974
Territorial Sea and Exclusive Economic Zone Act 1977
Tokelau Act 1948
Western Samoa Act 1961

There is a much larger group of statutes which have effects of the former kind, that is, they apply New Zealand law to events occurring in places outside New Zealand without making it part of the law of that place.

Measurements

The following statutes deal with the determination of dates, time, the currency, weights and measures:

Calendar (New Style) Act 1750
Decimal Currency Act 1964
Time Act 1974
Weights and Measures Act 1987

APPENDIX E

Table of Cases Cited

References are to paragraph numbers of the Report or to an appendix

APPENDIX F

Bibliography on Drafting and Legislation

This is a select bibliography; for further reference, see:

Bibliography of Materials on Legislative and other Legal Drafting and the Interpretation of Statutes, (3rd rev ed Commonwealth Secretariat, Marlborough House, London, 1985)

Bibliographie sur la Redaction et l'Interpretation des Textes Legislatifs (Ministry of Justice, Quebec, 1980)

Sutherland Statutory Construction (4th ed, Callaghan & Co, Illinois, Vols 2A and 4)

Articles in (1949–1950) 3 Vanderbilt Law Review
Articles in (1985) 58 Southern California Law Review

Papers on *Legislation and its Interpretation: Discussion and Seminar Papers* (1988) NZLC PP8 and the references there.

DRAFTING

Reports

Commonwealth Law Ministers, Proceedings of Meeting, Winnipeg Manitoba, Canada, 1977, NZ memo, (Commonwealth Secretariat, London, 1977)

Commonwealth Law Ministers, Proceedings of Meeting, Christchurch, New Zealand, 1990, Papers (Commonwealth Secretariat, London, 1990)

Conference of Commissioners on Uniformity of Legislation in Canada (1949, 1954, 1965, 1981, 1989), *Rules of Drafting*

Department of the Prime Minister and Cabinet, *Legislation Handbook*, Australian (Government Publishing Service, Canberra 1980)

Select Committee on Delegated Legislation (UK), Report (HMSO, London, 1953)

Select Committee on Procedure, *Second Report on the Process of Legislation*, Session 1970–71, HL 538 (1972)

South Australia Law Reform Committee, *Ninth Report to the Attorney-General: Law Relating to the Construction of Statutes* (Government Printer, Adelaide, 1970)

Statute Law Society, *Statute Law Deficiencies*, Report of the Committee appointed by the Society to examine the failings of the present Statute Law System (Sweet & Maxwell, London, 1970)

Statute Law Society, *Statute Law: The Key to Clarity*, First Report of the Committee appointed to propose solutions to the deficiencies of the Statute Law System in the United Kingdom (Sweet & Maxwell, London, 1972)

The Preparation of Legislation (Government of Canada Privy Council Office, 1981)

Uniform Acts of the Uniform Law Conference of Canada (1978), *Canadian Legislative Drafting Conventions*

Texts

Bowers, *Linguistic Aspects of Legislative Expression* (University of British Columbia Press, Vancouver, 1989)

Dale, *Legislative Drafting: A New Approach* (Butterworth & Co, London, 1977)

Driedger, *A Manual of Instructions for Legislative and Legal Writing* 6 volumes (Canadian Government Publishing Centre, J2–37/1982–1E)

Flesch, *The Art of Plain Talk* (Harper, New York, 1946)

Flesch, *How to Write Plain English* (Harper & Row, New York 1979)

Hoyt, *Bill Drafting Manual* (Fredericton, NB, Queen's Printer, 1965)

Kelly (ed), *Essays on Legislative Drafting in Honour of J Q Ewens* (Adelaide Law Review Association, Adelaide, 1988)

McGee, *Parliamentary Practice in New Zealand* (Government Printer, Wellington, 1985)

Mellinkoff, *The Language of the Law* (Little Brown, Boston, 1983)

Mellinkoff, *Legal Writing: Sense and Nonsense* (West Publishing Co, 1982)

Thornton, *Legislative Drafting* (3rd ed, Butterworth & Co, London, 1987)

Yale Legislative Services, *Handbook of Legislative Drafting* (Newhaven, Yale Law School, 1977)

Articles

Allen, Engholm, "Normalised Legal Drafting and the Query Method" (1978) JLE 380

Allen, Engholm, "The Need for Clear Structure in 'Plain English' Drafting" (1980) 13 Journal of Law Reform 455

Bowers, "Victorian Reforms in Legislative Drafting" (1980) 48 Legal History Review 329

Chan, "Changes in Form of New Zealand Statutes" (1976) 8 VUWLR 318

Coode, "Report from the Select Committee to Consider ... the Adoption of Means to Improve the Manner and Language of Current Legislation" PP 1857 (99 Session 1) 11 773

Dale, "Principles, Purposes, and Rules" 1988 St L Rev 125

Dickerson, "Disease of Legislative Language" (1964) 1 Harvard Journal on Legislation 5

Jamieson, "Towards a Systematic Statute Law" (1976) 3 Otago ULR 543

Jamieson, "The Tradition of Free Expression in Australian Legislative Drafting" (1980) 9 NZULR 1

Mansell, "The Use of Standards in New Zealand Law" (1980) 10 VUWLR 333

Megarry, "Copulative and Punctuation in Statutes" (1959) 75 LQR 29

Orwell, "Politics and the English Language" *Collected Essays* (Secker & Warburg, London, 1961)

Scutt, "Sexism and Legal Language" (1985) 59 ALJ 163

Thring, "Simplification of the Law" (1874) Quarterly Review 55

Ward, "The Preparation of Acts of Parliament" (1968) 1 Otago ULR 294

INTERPRETATION

Reports

British Columbia Law Commission, *Report on the Legal Position of the Crown* (1972)

Law Commission (UK), *The Interpretation of Statutes* Report (21) by the Law Commission and the Scottish Law Commission (HMSO, London, 1989)

New South Wales Law Reform Commission, *Report on Proceedings by and against the Crown* (1975)

Northern Territory Law Reform Committee, *Report on Statutory Interpretation* (Report No 12, December 1987)

Ontario Law Reform Commission, *Report on the Liability of the Crown* (1989)

Texts

Atiyah, Summers, *Form and Substance in Anglo-American Law* (Clarendon Press, Oxford, 1987)

[Australian] Attorney-General's Department *Symposium on Statutory Interpretation* (AGPS, Canberra, 1983)

Bennion, *Statutory Interpretation* (Butterworth & Co, London, 1984)

Commonwealth Law Conference 1990 (9th) *Conference Papers* (Commerce Clearing House New Zealand Ltd, Auckland, 1990)

Coté, *The Interpretation of Legislation in Canada* (Les Editions Yvon Blais Inc, Quebec, 1984)

Craies, *Statute Law* (7th ed by SGC Edgar, Sweet & Maxwell, London, 1971)

Eskridge, Frickey, *Cases and Materials on Legislation: Statutes and the Creation of Public Policy* (American Casebook Series, West Publishing Co, St Paul Minnesota, 1988)

Evans, *Statutory Interpretation: Problems of Communication* (Oxford University Press, Auckland, 1988)

Gifford, *Statutory Interpretation* (Law Book Co Ltd, Sydney, 1990)

Hogg, *Liability of the Crown* (2nd ed, Law Book Co, 1989)

McDougal, Lasswell, Miller, *The Interpretation of Agreements and World Public Order* (Yale University Press, New Haven and London, 1967)

McNairn, *Governmental and Intergovernmental Immunity in Australia and Canada* (Canberra, Australian National University Press, 1977)

Maxwell, *Interpretation of Statutes* (12th ed, Sweet & Maxwell, London, 1969)

Pearce, Geddes, *Statutory Interpretation in Australia* (3rd ed, Butterworths, Sydney, 1988)

Street, *Governmental Liability* (Cambridge University Press, 1953)

Thorne (ed), *A Discourse upon the Exposicion & Understandinge of Statutes*, from manuscripts in the Huntington Library (Anderson & Ritchie: The Ward Ritchie Press, Los Angeles, 1942)

Articles

Barwick, "Divining the Legislative Intent" (1961) 35 ALJ 197

Brazil, "Legislative History and the Sure and True Interpretation of Statutes in General and the Constitution in Particular" (1961) 4 U Queens L Rev 1

Burrows, "Cardinal Rule of Statutory Construction in New Zealand" (1969) 3 NZULR 253

Burrows, "The Retrospective Effect of Changes in the Law" [1976] NZLJ 343

Burrows, "The Interrelation between Common Law and Statute" (1976) Otago ULR 583

Burrows, "Statutory Interpretation in New Zealand" (1984) 11 NZULR 1

Burrows, "Tensions in Statutory Interpretation" (1989) 4 Canta LR 1

Burrows, "Interpretation of Legislation: A New Zealand Perspective" 1990 Commonwealth Law Conference Papers 285

Cox, "Judge Learned Hand and the Interpretation of Statutes" (1947) 60 Harv L Rev 370

Eskridge, "Gadamer/Statutory Interpretation" (1990) 90 Columbia Law Review 609

Eskridge, Frickey, "Statutory Interpretation as Practical Reasoning" 42 Stanford Law Review 321

Fordham, Leach, "Interpretation of Statutes in Derogation of the Common Law" (1950) 3 Vand LR 438

Frank, "Words and Music: Some Remarks on Statutory Interpretation" (1947) 47 Colum L Rev 1259

Frankfurter, "Some Reflections on the Reading of Statutes" (1947) 47 Colum L Rev 527

Frankfurter, "Foreword to a Symposium on Statutory Construction" (1949–1950) 3 Vand L Rev 365

Freund, "Interpretation of Statutes" (1917) 65 UPaL Rev 207

Glover, "The Statutes' Statute" (1986) 3 Canterbury LR 61

Gutteridge, "A Comparative View of the Interpretation of Statute Law" (1933) 8 Tul L Rev 1

Hutton, "The Awful Statute Book of Great Britain" (1975) 2 Notre Dame Law School Journal of Legislation

Hwang, "Plain English in Commercial Contracts" (presented at the 9th Commonwealth Law Conference 1990 at Auckland)

Kaplow, "An Economic Analysis of Legal Transitions" (1986) 99 Harv L Rev 509

Keith, "A Lawyer Looks at Parliament" *The Reform of Parliament*, Papers presented in memory of Dr Alan Robinson (NZ Institute of Public Administration, Sir John Marshall ed, Wellington, 1978)

Keith, "Treaties and Legislation" (1970) 19 ICLQ 127

Kelly, "The Osmond Case: Common Law and Statute Law" (1986) 60 ALJ 513

Landis, "A Note on Statutory Interpretation" 43 Harv L Rev 888

Landis, "Statutes and the Sources of Law" (1934) Harv Legal Essays 214

Llewellyn, "Remarks on the Theory of Appellate Decision and the Rules or Canons about how Statutes are to be Construed" (1949–1950) 3 Vand L Rev 395

Macrossan, "Judicial Interpretation" (1984) 58 ALJ 547

Mackay of Clashfern, "Can Judges Change the Law?" (Maccabean Lecture on Jurisprudence) (1987) 73 Proc Br Ac 285

Mackay of Clashfern, "Finishers, Refiners and Polishers: the Judicial Role in the Interpretation of Statutes" (1989) 10 Stat L Rev 151

Marston and Skegg, "The Boundaries of New Zealand in Constitutional Law" (1988) 13 NZULR 1.

Paterson, "Effect of s 5(k), Acts Interpretation Act 1924" (LLM thesis, Victoria University of Wellington, 1961)

Pearce, "The Interpretation of Interpretation Acts and Clauses" (1971) 2 Australian Current Law Review 114

Posner, "Economics, Politics and the Reading of Statutes and the Constitution (1982) 49 U Chi L Rev 263

Posner "Statutory Interpretation—in the Classroom and in the Courtroom" (1983) 50 U Chi L Rev 800

Pound, "Common Law and Legislation" (1907–8) 21 Harv L Rev 383

Price, "Crown Immunity on Trial—the Desirability and Practicality of Enforcing Statute Law against the Crown" (1990) 20 VUWLR 213

Radcliffe, "Some Reflections on Law and Lawyers" (1950) 10 Cambridge Law Journal 361

Radin, "Statutory Interpretation" (1930) 43 Harv L Rev 863

Radin, "A Short Way with Statutes" (1942) 56 Harv L Rev 388

Rodriguez, "The Substance of the New Legal Process" Review Essay (1989) California Law Review 919

Street, "The Effect of Statutes upon the Rights and Liabilities of the Crown" (1948) 7 UTLJ 357

Sunstein, "Interpreting Statutes in the Regulatory State" (1989) 102 Harvard Law Review 405

Tucker, "The Gospel of Statutory Rules requiring Liberal Interpretation according to St Peter" (1985) 35 UTLJ 113

Wald, "The Sizzling Sleeper: The Use of Legislative History in Construing Statutes in the 1988–89 Term of the United States Supreme Court" (1990) 39 American University Law Review 227

Ward, "Trends in the Interpretation of Statutes" (1957) 2 VUW Law Rev 155

Ward, "A Criticism of the Interpretation of Statutes in New Zealand" [1963] NZLJ 293

Willis, "Statute Interpretation in a Nutshell" (1938) 16 Can B Rev 1.

Wilson, "Statutory Interpretation—the Use of Extrinsic Aids" (unpublished paper, 9th Commonwealth Law Conference, Auckland, 1990)

APPENDIX G

Process and Acknowledgements

As the letter of transmittal and ch I of the Report recall, the Law Commission has broad responsibilities in respect of legislation. Other bodies also have important charges in the same and related areas. And there are developments elsewhere. Those affecting the reform of the law in New Zealand include

- the discussion paper and questionnaire on *The Acts Interpretation Act 1924 and Related Legislation* (June 1987) NZLC PP1 issued by the Law Commission; the Commission had a number of valuable responses and these have been most helpful in the preparation of this Report and earlier documents;
- the adoption by Cabinet of the Report of the Legislation Advisory Committee, *Legislative Change: Guidelines on Process and Content* (August 1987), setting out standards which are to be met in the preparation of Bills;
- the enactment in July 1988 of the *Imperial Laws Application Act 1988* and related legislation; that Act provides a definitive list of English and Imperial legislation which continues to be part of the law of New Zealand; the Law Commission's first report, *Imperial Legislation in Force in New Zealand* (1987) NZLC R1 among other things printed the texts of the relevant legislation;
- the further development of the legislative work of *Parliamentary select committees* (in part following the change in standing orders in 1985), including the *Regulations Review Committee*;

- the Commission's seminar on legislation and interpretation in March 1988 and the subsequent publication of its papers and related proposals about *methods of interpretation*, see *Legislation and its Interpretation: Discussion and Seminar Papers* (December 1988) NZLC PP8; again we have had very helpful responses to those proposals;
- the valuable related seminars on the *Interpretation of statutes* presented by Professor John Burrows organised by the New Zealand Law Society;
- the distribution in 1989 by the Commission of a paper relating to the *Crown and statutes* (s 5(k) of the Acts Interpretation Act 1924); again the many responses are most helpful;
- the preparation by the Legislation Advisory Committee of a Report, endorsed by Cabinet and accepted by parliamentary practice, on *Departmental Statutes* (1989);
- the Report by BJ Cameron and CJ Thompson, presented to Cabinet in 1989: *Review of the Parliamentary Counsel Office* (September 1989) with recommendations relating to the structure of Parliamentary Counsel Office;
- the enactment in December 1989 of the *Regulations (Disallowance) Act 1989* and the *Acts and Regulations Publication Act 1989*; those Acts provided for the disallowance of regulations by the House of Representatives, and for the printing, publication and continuing availability of copies of legislation; the Law Commission in its report *Legislation and its Interpretation: Statutory Publications Bill* (September 1989) NZLC R11 proposed that the material then before the House as a single Statutory Publications Bill be divided into two separate Bills (this recommendation was accepted), proposed a number of substantive changes (many of which were accepted) and included a draft *Publication of Legislation Bill* presenting the material more directly;
- the papers and discussions at the Commonwealth Law Conference held in Auckland in April 1990 on the drafting of legal documents and the interpretation of statutes;
- the papers and discussions on plain drafting at the Commonwealth Law Ministers' Conference held in Christchurch in April 1990.

The Commission is presently considering the way in which the design and layout of the statute book can aid accessibility to legislation. Another major project is the preparation of a Manual on Legislation, building on the work included in the Legislation Advisory Committee's report *Legislative Change: Guidelines on Process and Content.* The manual should provide valuable assistance to all those involved in preparing legislation.

We have had a great deal of help in the work completed so far. Those who have made written submissions in response to the two discussion papers and the paper on the Crown and statutes mentioned above are:

Accident Compensation Corporation
Air New Zealand Limited
Barry Allen
Professor A H Angelo Victoria University
R M Beaupré Legislative Counsel (Ottawa)
Francis Bennion
Judge B E Buckton
Cabinet Office
G A Calcutt Acting Parliamentary Counsel (Western Australia)
Canterbury District Law Society
P Carroll
R S Chambers
J C D Corry
Crown Law Office
Customs Department
Sir William Dale University of London
K Davenport
Department of Conservation
Department of Education
Department of Justice
Department of Labour
Department of Lands
Department of Prime Minister and Cabinet
Department of Scientific and Industrial Research
Department of Statistics
Department of Trade and Industry
Sir Henry de Waal QC Office of the Parliamentary Counsel, Whitehall, London
Disabled Persons Assembly (NZ) Inc

Earthquake and War Damage Commission
A J Edwards Law Librarian, University of Otago
Dr PJ Evans Law Faculty, University of Auckland
Federated Mountain Clubs of NZ (Inc)
R T Fenton
J G Fogarty QC
A Frame
Sylvia R L Fraser
R Glover University of Canterbury
Government Life
Government Printing Office
B M Grierson
Rt Hon Mr Justice Hardie Boys
E J Haughey
Professor Peter Hogg QC
Hon Mr Justice Holland
Housing Corporation
Human Rights Commission
Information Authority
Inland Revenue Department
P J H Jenkin QC
Professor G Kennedy VUW Linguistics Department
J S Kos
W A Laxon
G S MacAskill
A D McKenzie
Dr D G Mather
D L Mathieson QC
D McGee Clerk of the House of Representatives
D M M McPhail
Ministry for the Environment
Ministry of Agriculture and Fisheries
Ministry of Commerce
Ministry of Defence
Ministry of Energy
Ministry of External Relations and Trade
Ministry of Forestry
Ministry of Transport
Ministry of Works and Development
Dennis Murphy QC Parliamentary Counsel (NSW)
NZ Law Society Legislation Committee

NZ Municipalities Association
New Zealand Police
New Zealand Security and Intelligence Service
New Zealand Tourist and Publicity Department
Office of the Coordinator Domestic and External Security
Office of the Prime Minister
Reserve Bank of New Zealand
C L Riddet
Dennis Rose Attorney-General's Department, Canberra
Royal Federation of NZ Justices Assn (Inc)
State Insurance
The Treasury
C J Thompson
Herbert Thornton Legislative Counsel (British Columbia)
Tourist Hotel Corporation of New Zealand
Valuation New Zealand
Dr David Williams University of Auckland
P W Williams

We have consulted further with many of those listed.

Others whom we have consulted include Rt Hon Sir Ivor Richardson, Walter Iles QC, Chief Parliamentary Counsel and his colleagues (although over the last year or more the "overwhelming pressure" to which the Parliamentary Counsel Office has been subject has meant that it has not considered itself able to comment on drafts of the proposed report), Professor Robert Eagleson of the University of Sydney, Garth Thornton QC, Professor John Burrows, Professor William Eskridge, Professor Philip Frickey, Richard Clarke, David Goddard, John Bickley of Victoria University, members of the Legislation Advisory Committee (chaired by Sir George Laking) and the Law Society's Legislation Committee (chaired by John Fogarty QC).

Index

References are to paragraphs, draft clauses (c), appendices (App) and the summary of recommendations (R) set out on p x.

References are to paragraphs, draft clauses (c), appendices (App) and the summary of recommendations (R) set out on p x.

References are to paragraphs, draft clauses (c), appendices (App) and the summary of recommendations (R) set out on p x.

References are to paragraphs, draft clauses (c), appendices (App) and the summary of recommendations (R) set out on p x.

References are to paragraphs, draft clauses (c), appendices (App) and the summary of recommendations (R) set out on p x.

References are to paragraphs, draft clauses (c), appendices (App) and the summary of recommendations (R) set out on p x.

References are to paragraphs, draft clauses (c), appendices (App) and the summary of recommendations (R) set out on p x.

GP PRINT LIMITED, WELLINGTON, NEW ZEALAND—1990

22001B—90B

LAW·COMMISSION

Report No 17(S)

A New Interpretation Act

To Avoid "Prolixity and Tautology"

SUMMARY VERSION

Other Law Commission publications:

Report Series

NZLC R1	Imperial Legislation in Force in New Zealand (1987)
NZLC R2	Annual Reports for the years ended 31 March 1986 and 31 March 1987 (1987)
NZLC R3	The Accident Compensation Scheme (Interim Report on Aspects of Funding) (1987)
NZLC R4	Personal Injury: Prevention and Recovery (Report on the Accident Compensation Scheme) (1988)
NZLC R5	Annual Report 1988 (1988)
NZLC R6	Limitation Defences in Civil Proceedings (1988)
NZLC R7	The Structure of the Courts (1989)
NZLC R8	A Personal Properties Securities Act for New Zealand (1989)
NZLC R9	Company Law: Reform and Restatement (1989)
NZLC R10	Annual Report 1989 (1989)
NZLC R11	Legislation and its Interpretation: Statutory Publications Bill (1989)
NZLC R12	First Report on Emergencies: Use of the Armed Forces (1990)
NZLC R13	Intellectual Property: The Context for Reform (1990)
NZLC R14	Criminal Procedure: Part One Disclosure and Committal (1990)
NZLC R15	Annual Report 1990 (1990)
NZLC R16	Company Law Reform: Transition and Revision (1990)

Preliminary Paper Series

NZLC PP1	Legislation and its Interpretation: the Acts Interpretation Act 1924 and Related Legislation (discussion paper and questionnaire) (1987)
NZLC PP2	The Accident Compensation Scheme (discussion paper) (1987)
NZLC PP3	The Limitation Act 1950 (discussion paper) (1987)
NZLC PP4	The Structure of the Courts (discussion paper) (1987)
NZLC PP5	Company Law (discussion paper) (1987)
NZLC PP6	Reform of Personal Property Security Law (report by Prof JH Farrar and MA O'Regan) (1988)
NZLC PP7	Arbitration (discussion paper) (1988)
NZLC PP8	Legislation and its Interpretation (discussion and seminar papers) (1988)
NZLC PP9	The Treaty of Waitangi and Maori Fisheries—Mataitai: Nga Tikanga Maori me te Tiriti o Waitangi (background paper) (1989)
NZLC PP10	Hearsay Evidence (options paper) (1989)
NZLC PP11	"Unfair" Contracts (discussion paper) (1990)
NZLC PP12	The Prosecution of Offences (issues paper) (1990)

E 31L

LAW·COMMISSION

Report No 17(S)

A New Interpretation Act
To Avoid "Prolixity and Tautology"

SUMMARY VERSION

December 1990
Wellington, New Zealand

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

The Commissioners are:

The Rt Hon Sir Owen Woodhouse KBE, DSC—President
Peter Blanchard
Jack Hodder
Sir Kenneth Keith KBE
The Hon Mr Justice Wallace

The Director of the Law Commission is Alison Quentin-Baxter. The office is at Fletcher Challenge House, 87–91 The Terrace, Wellington. Telephone: (04) 733 453. Facsimile: (04) 710 959. Postal address: PO Box 2590, Wellington, New Zealand.

Report/Law Commission Wellington 1990
ISSN 00113–2334
This Report may be cited as: NZLC R17(*S*)
Also published as Parliamentary Paper E 31L

The full Report on a New Interpretation Act is published as NZLC R17 and is available on request from the Law Commission.

CONTENTS

Report on a New Interpretation Act: Summary

1 Legislation is central to our legal system. It is the principal source of new law and plays an essential and pervasive role in our national life. It is accordingly not surprising that it has a central place in the Law Commission Act 1985 and in the work of the Law Commission. It is the Commission's statutory responsibility to advise on making the law as understandable and accessible as practicable and its expression and content as simple as practicable. As part of the exercise of this responsibility and in response to a Ministerial reference, the Commission has examined the Acts Interpretation Act 1924 and prepared the Report on a New Interpretation Act. This summary outlines the Commission's approach, briefly discusses three main issues addressed in the Report and sets out the principal recommendations. It concludes with the text of the draft Interpretation Act, the central recommendation of the Report.

THE COMMISSION'S APPROACH

2 Surveys of the law reports indicate both the heavy statutory component in the cases and the changes in judicial approaches to interpretation. These or similar changes have been occurring in other common law jurisdictions, sometimes in association with reforms to the legislation relating to interpretation. These changes make it plain that while Interpretation Acts provide some of the answers, they cannot provide all of them. As Justice Frankfurter indicated in his reflections on the reading of statutes, the important lessons in this

area are gained by observing the judges at work: "the answers to the problems of an art are in its exercise" (1947) 47 Columb L Rev 527.

3 Interpretation statutes have been enacted in common law jurisdictions since at least the middle of the nineteenth century. The reasons for them are well established, and often stated expressly. One of the first, Lord Brougham's Act of 1850, said it was "An Act for shortening the language used in Acts of Parliament". They shorten a particular Act by avoiding repetition; so

- they provide standard or extended definitions of commonly used words and terms;
- they provide standard sets of provisions regulating aspects of the operation of all enactments (such as commencement); and
- they imply powers additional to those expressly conferred in particular statutes.

4 The Interpretation Ordinance declared and enacted in 1851 by Sir George Grey as Governor in Chief of New Zealand was not, it said, just for the shortening of language; it was also "to provide for the interpretation of Ordinances". Accordingly, while copying much of the 1850 United Kingdom Act, it added interestingly to it. So it said that

> the language of every Ordinance shall be construed according to its plain import, and where it is doubtful, according to the purpose thereof.

5 Those two purposes of shortening legislation and assisting its interpretation by the statement of approaches to interpretation also have value in promoting greater consistency in the form and language of the whole statute book.

6 There is a growing emphasis on accessibility and comprehensibility and on plain drafting. It is an emphasis that can be traced back to the very beginnings of the New Zealand legal system when Queen Victoria instructed Governor Hobson to draw up legislation in a simple and compendious form avoiding prolixity and tautology as far as may be. It is based on economy and efficiency: better prepared and presented legislation is easier to read, to understand and to act on; the time and money of those using and subject to the legislation are saved. That preparation and presentation facilitates compliance with the law. And it enhances the democratic process.

7 If the law does not clearly state its message, Ministers who have settled its terms and approved its introduction into the House, Members of Parliament who have to consider whether to endorse it, interested persons who wish to make submissions on it, and then those who would wish to have it changed are all handicapped in exercising their rights in relation both to the proposal and to the law. That should not be so.

8 The Commission's examination of the Acts Interpretation Act 1924, the many responses we have had to our discussion papers and in consultations based on them, the changes in perception of the role of the state, changes in the approaches of the courts to legislation, new technology, and developments in the drafting and presentation of legislation here and elsewhere—all these indicate that major improvements can and should be made to the Acts Interpretation Act 1924.

9 An Interpretation Act is an Act of very wide application. In New Zealand it applies to

- all 600 or more public general Acts in force including the Imperial Acts in force in New Zealand;
- 2000 or so public local Acts and private Acts;
- as many as 4000 current regulations (although to a varying and uncertain extent).

Its provisions have also applied to all the other thousands of Acts and regulations that have been (but are no longer) in force as part of the law of New Zealand during the last 100 years. Those enactments cover the range of the life and law of New Zealand and New Zealanders. They fill many volumes of the statute book and the statutory regulations series. The form, language and effect of that legislation varies greatly. An interpretation statute which applies across that area has to have a special character and to be carefully constructed if it is to be both an effective and a sensible statute.

10 Most of the provisions of interpretation statutes are presumptive: by their express terms, the rules and principles they state do not apply if the particular statute being considered provides differently or if the context otherwise requires. The 1924 Act makes that very clear, both in a general provision applying across the whole Act and in an enormous variety of formulas included in particular provisions. We

would not however wish to concede that relativity predominates. An interpretation statute must be generally effective. The fact that a provision suggested for inclusion in the general interpretation statute is likely to be frequently set aside either by specific provision or by context is a reason for excluding it.

11 The preparation of a new Interpretation Act also provides a spur to the preparation of standard provisions to be used to handle recurring issues throughout the statute book. The Commission has begun work on a Manual on Legislation which will incorporate such provisions. A new Act should also serve as a more effective reminder to those who use legislation of the provisions the Act contains.

12 The principal recommendation in the Report is the introduction and enactment of a new Interpretation Act. The text of that Act is set out at the end of this summary.

13 The proposed Act has essentially the same scope as the 1924 Act and other Interpretation Acts. It concerns

- the temporal operation of enactments, both their commencement as part of the law (part 2) and their prospective effect (part 3);
- the principles of interpretation (part 4);
- the implication of additional powers (part 5); and
- the standard definition of words and terms and some related matters (part 6).

The draft begins by stating its purpose and its area of application (part 1), and it ends with repeals and amendments (part 7).

14 In keeping with the Commission's task of reviewing the language and structure of legislation, we continue to attempt to develop a style and format that is easier to understand and more accessible. The draft Bill uses this style. The Law Commission proposes that these changes be adopted in general drafting practice.

15 The Report considers three major aspects of the legislation: approaches to interpretation, the effect of legislation on the rights of the Crown, and the rules and presumptions about the prospective application of legislation. This summary sets out the main elements of those three chapters. The Report also provides an annotation to the draft Bill.

APPROACHES TO INTERPRETATION

16 The examination of the approaches to interpretation starts with the question: do legislative directions about approaches to interpretation have a legitimate or useful role? Experience in New Zealand and elsewhere identifies a series of related questions:

- Should we have a direction to interpreters to give effect to the purpose of legislation along the lines of s 5(j) of the 1924 Act?
- If so, how should it be worded?
- Should provision continue to be made to the effect that legislation is "always speaking" as provided in s 5(d)?
- Should the Act continue to make particular provision in respect of various parts of the enactment as printed (the preamble, headings . . .) and if so what?
- Should the Act regulate the use that can be made of material beyond the text of the enactment to assist its interpretation?

17 All these questions are put in terms of "should". The matter is not one of necessity. New Zealand and similar legal systems have at various times had none or some or all of the provisions. Each question has no one clearly right answer.

18 The Commission recommends that a direction or guide of the type represented by s 5(j) be retained as a reminder of the need of the interpreter to pursue the purpose of the law maker. Even if the proposition is well understood, there is value in its declaratory statement. A second reason is that an adverse inference might be drawn from a repeal of such a broad direction which has been on the statute book for 100 years and had been included even earlier.

19 The proposed Act should also include a statutory statement of the principle that a word is to be applied in accordance with the current understanding of its meaning where that is appropriate. In such cases, a provision to that effect removes any doubt over the legitimacy of a court taking that changing view of the effect of legislation, improves the accessibility of the law and in a practical way prevents statutory proliferation.

20 The Commission concludes on the fourth question stated in para 16 that the interpreter should be able to have regard to the various elements of the enactment as printed, such as preambles, divisions,

headings, and schedules and appendices. Under the 1924 Act, these elements are dealt with in various ways; the fictions involved in these provisions are inaccurate and unnecessary; and the express variations in the legal significance of the different elements should be removed.

21 As to material beyond the text of the enactment, the Report looks at the practice of the courts in the use of dictionaries and the like and more particularly in the use of parliamentary debates. Courts in New Zealand and elsewhere have now indicated a greater willingness to consider the latter, abandoning previous practices to the contrary. The need for the statute book to state the law in a clear and direct way is emphasised. Making use for the purposes of interpretation of the parliamentary record, including the speeches of members, does not involve the questioning of the proceedings in the House. The object is to help give better informed effect to the legislation which has resulted from those proceedings.

22 The Report concludes that practice shows there is sometimes value in considering parliamentary material. Accordingly a prohibitory rule is inappropriate. And while a permissive rule could address the questions outlined in the Report, the legislative answers given elsewhere do not appear to provide any significant assistance to the courts. Rather the courts themselves have been developing and will continue to develop rules and practices about relevance and significance. Accordingly, the Commission does not propose the enactment of legislation regulating the use of parliamentary material.

23 To give effect to these conclusions, the draft statute sets out the following general principle:

> 9 (1) The meaning of an enactment is to be ascertained from its text in the light of its purpose and in its context.
>
> (2) An enactment applies to circumstances as they arise so far as its text, purpose and context permit.
>
> (3) Among the matters that may be considered in ascertaining the meaning of an enactment are all the indications provided in the enactment as printed or published under the authority of the New Zealand Government.

THE CROWN AND STATUTES

24 The Acts Interpretation Act 1924 s 5(k) appears to state a general principle that the Crown is not bound by statutes:

> No provision or enactment in any Act shall in any manner affect the rights of Her Majesty, her heirs or successors, unless it is expressly stated therein that Her Majesty shall be bound thereby;
> . . .

That provision was first included in the New Zealand statute book in 1888. The Law Commission proposes that this principle be reversed. The Crown should in general be subject to the law as are others. Accordingly cl 10 of the draft Bill provides:

> **Enactments bind the Crown**
>
> 10 Every enactment binds the Crown unless it otherwise provides or the context otherwise requires.

25 That proposition would be subject to a very important practical gloss. A great number of statutes, probably a large majority, confer special powers, rights, and immunities (and sometimes impose special duties and liabilities) only on the Crown, its officers or agencies. Our proposal would make no difference to that practice. Rather the effect of the proposal would be that the special position of the Crown would generally be established *only* by that particular provision. Any such particular position would no longer also be supplemented by a general, uncertain doctrine of the non-applicability of statutes.

26 The Law Commission has two reasons for this proposal: first, in principle, the Crown should be subject to the general law of the land, including the statute law; the rule of law and fairness require that; and secondly, the present law is unclear and confusing.

NON-RETROSPECTIVITY OF LEGISLATION

27 It is a general principle of our legal system that new legislation should have prospective effect only. Retrospective laws are seen as oppressive and unjust. They are often ineffective. They may unfairly upset the reasonable expectations of those who plan or act in accordance with the law in force at a particular time.

28 The principle does however have its limits. For instance legislation changing rules of procedure and evidence, and setting up new institutions often applies to earlier events. Retrospective legislation with generally benign effects—such as increases in benefits or validating irregular actions—is generally excepted from the standard criticism. And changing perceptions of public policy might lead to legislative modification of existing rights and interests under the law. Changes in family law provide a major example.

29 The law about the impact of legislation on existing rights and duties is to be found at the moment in the common law, in general provisions of the 1924 Act, and in countless specific statutory provisions. The Report makes some proposals about the inclusion and drafting of those specific particular provisions. It proposes a set of general provisions for inclusion in the new Interpretation Act which the Commission considers are more comprehensive, accessible and principled. The main draft provision restates the principle that legislation has prospective effect only. In particular, new legislation

- does not affect any accrued or established right, immunity, duty or liability, and proceedings and remedies relating to them;
- does not affect anything done under or by legislation repealed or amended by the earlier enactment, including amendments made by it;
- does not revive anything not in force or not existing, including any enactment or rule of law repealed or abrogated by an earlier enactment which the new enactment repeals (cl 6).

Summary of Recommendations

The Commission makes the following major recommendations:

1 The principal recommendation is the introduction and enactment of a new Interpretation Act as proposed.

2 The changes in structure and style of the draft Bill should be adopted in general drafting practice. These include typographical and design changes and are illustrated by the attached draft Bill.

3 The statutory direction or guide towards a purposive approach in the interpretation of legislation should be maintained in a somewhat different form.

4 The substance of the doctrine that allows for the meaning or application of a term in legislation to develop over time, taking account of changing or new circumstances should be restated as indicated.

5 In the interpretation of a statute, regard may be had to the various elements of the enactment as printed, including its organisation, preamble, divisions, the headings of those divisions, section headings, and schedules and appendices.

6 The use of parliamentary material in the interpretation of legislation should not be regulated by a general statute.

7 The general principle stated in the Acts Interpretation Act 1924 that enactments do not affect the rights of the Crown should be reversed. The new principle of the application of legislation to the Crown should apply to existing statutes and to criminal offence provisions. The Report indicates aspects of the application of legislation to the Crown which should be routinely addressed (such as the defence forces, Crown land, and enforcement against the Crown).

8 The basic principle that enactments have prospective effect only should be expressly stated, and the detailed application of that principle should be set out in a more comprehensive, accessible and principled way. The Report sets out the matters that should be weighed in the preparation of repeal and savings provisions in particular enactments.

9 An Act when printed should provide a brief account of its parliamentary history.

10 Related changes to the Standing Orders of the House of Representatives and to House resolutions should be considered.

Other recommendations are reflected in the draft Bill.

DRAFT INTERPRETATION ACT 1991

Assented to on
Comes into force on 1 January 1992

CONTENTS

The Parliament of New Zealand enacts the
Interpretation Act 1991

PART 1
PURPOSES AND APPLICATION

Purposes of the Act

1 The purposes of this Act are

(a) to state principles and rules for the interpretation of legislation,

(b) to shorten legislation by avoiding the need for repetition, and

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

Commencement of the Act

2 This Act comes into force on 1 January 1992.

Application of the Act

3 The provisions of this Act apply to every enactment which is part of the law of New Zealand except to the extent that the enactment otherwise provides or the context otherwise requires.

PART 2
COMMENCEMENT OF ENACTMENTS

Time of commencement

4 (1) An enactment comes into force 28 days after the day on which, in the case of an Act, it is assented to, or, in the case of regulations, it is made.

(2) An enactment comes into force at the beginning of the day on which it is to come into force.

Anticipatory exercise of powers

5 A power conferred by an enactment may be exercised before the enactment comes into force, with effect from any time on or after it comes into force to the extent necessary or expedient to bring the enactment into operation.

PART 3
PROSPECTIVE APPLICATION OF NEW ENACTMENTS

Enactments, including repeals, have prospective effect only

6 (1) In principle an enactment has prospective effect only.

(2) In particular the coming into force of an enactment, including an enactment repealing or amending an earlier enactment, or the expiry of an enactment

(a) does not affect any accrued or established right, immunity, duty or liability including any liability in respect of an offence which arises under the earlier enactment;

(b) does not affect any proceeding or remedy in respect of any such right, immunity, duty or liability;

(c) does not affect the previous operation of the earlier enactment, including

(i) anything done or suffered under that enactment, or

(ii) any amendment made by that enactment to another enactment; and

(d) does not revive anything not then in force or existing, including any enactment or rule of law which the earlier enactment repealed or abrogated.

Exercise of power under earlier enactment continues under substituted enactment

7 Anything done in exercise of a power under an enactment for which a later enactment is substituted continues to have effect under the later enactment if that thing

(a) was in effect immediately before the coming into force of the later enactment, and

(b) can be done under the later enactment.

Reference to an enactment includes amendments and substitution

8 At any given time, a reference in an enactment to another enactment is a reference

(a) to that other enactment as amended, or

(b) to any enactment that has been substituted for that other enactment.

PART 4
PRINCIPLES OF INTERPRETATION

General principle

9 (1) The meaning of an enactment is to be ascertained from its text in the light of its purpose and in its context.

(2) An enactment applies to circumstances as they arise so far as its text, purpose and context permit.

(3) Among the matters that may be considered in ascertaining the meaning of an enactment are all the indications provided in the enactment as printed or published under the authority of the New Zealand Government.

Enactments bind the Crown

10 Every enactment binds the Crown unless it otherwise provides or the context otherwise requires.

Amending enactments

11 An amending enactment is to be read as part of the enactment which it amends.

PART 5
THE EXERCISE OF POWERS

Power of appointment includes power of removal

12 The power to appoint a person to an office includes the power to remove or suspend the person from that office.

Power to correct errors

13 A clerical or technical error or omission in anything done in an exercise of a power may be corrected although the power may not generally be capable of being exercised more than once.

Forms prescribed by enactments

14 A form which deviates from a form required by or under an enactment is valid if the deviation is not misleading and does not prejudice the purpose of the enactment.

Advice and consent of Executive Council in the absence of the Sovereign or the Governor-General

15 (1) If the Sovereign or the Governor-General may exercise or perform a power or duty on the advice and with the consent of the Executive Council, that advice and consent may be given at a duly convened meeting of the Executive Council, although neither the Sovereign nor the Governor-General is present.

(2) On the advice and consent being given in that way, the Sovereign or the Governor-General may exercise or perform the power or duty as if the Sovereign or the Governor-General (as the case may be) had been present at that meeting.

Administrator of the Government may exercise powers of the Governor-General

16 (1) Whenever the office of Governor-General is vacant or the holder of the office is for any reason unable to perform all or any of the functions of the office, the Administrator of the Government may exercise or perform all or any of the powers or duties of the Governor-General.

(2) No question may be raised whether the occasion has arisen authorising the Administrator of the Government to exercise or perform a power or duty.

Law officers of the Crown

17 (1) The Solicitor-General may exercise any function conferred on the holder of the office of the Attorney-General, by enactment or otherwise.

(2) Whenever the office of Solicitor-General is vacant or the holder of the office is for any reason unable to perform the functions of the office, the Governor-General may appoint a barrister or solicitor of at least 7 years practice to act in place of or for the Solicitor-General during the period of that vacancy or inability.

(3) The performance of any function by a person appointed under subsection (2) is sufficient evidence of that person's authority to perform that function.

Judicial officers continue in office to complete proceedings

18 (1) A judicial officer whose term has expired or who has retired may continue in office for up to one month (or longer, with the consent of the Minister of Justice) for the purpose of determining or giving judgment in any proceedings which that officer has heard, whether alone or together with any other person.

(2) The fact that a person continues in office under sub-section (1) does not affect any power to make an appointment to that office.

(3) A person continuing in office under subsection (1) shall be paid the remuneration and allowances to which that person would have been entitled but for the expiry of the term or the retirement from office.

(4) In this section "judicial officer" means any person (other than a Judge of the High Court) having authority to hear, receive and examine evidence.

PART 6
DICTIONARY

Definitions

19 (1) In an enactment:

Act means an Act of Parliament or of the General Assembly and includes an Imperial Act which is part of the law of New Zealand

For Imperial Acts in force in New Zealand see the Imperial Laws Application Act 1988

commencement in respect of an enactment means the time when that enactment comes into force

Commonwealth country or **part of the Commonwealth** means a country that is a member of the Commonwealth, and, when used as a territorial description, includes any territory for the international relations of which the member is responsible

See also the Commonwealth Countries Act 1977

consular officer means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions

This is the definition included in the Vienna Convention on Consular Relations, the English text of which is set out in the First Schedule to the Consular Privileges and Immunities Act 1971

enactment means the whole or a portion of

(a) an Act

(b) regulations, rules, or bylaws made under an Act by the Governor-General in Council or by a Minister of the Crown, or an instrument revoking such regulations, rules or bylaws

(c) an Order in Council, Proclamation, notice, Warrant or instrument of authority made under an Act by the Governor-General in Council or by a Minister of the Crown which extends or varies the scope or provisions of an Act, or an instrument revoking such an instrument

(d) an Order in Council bringing into force, or repealing, or suspending an Act or any provisions of an Act

(e) an instrument made under an Imperial Act and having effect as part of the law of New Zealand

(f) a resolution of the House of Representatives adopted under the *Regulations (Disallowance) Act 1989*

For the instruments within para (e) see the Imperial Laws Application Act 1988

Governor-General in Council or any similar expression means the Governor-General acting on the advice and with the consent of the Executive Council

Minister means the Minister of the Crown responsible for the administration of the enactment

month means a calendar month

New Zealand or other words or phrases referring to New Zealand, when used as a territorial description, comprises all the islands and territories within the Realm of New Zealand other than the self-governing state of the Cook Islands, the self-governing state of Niue, Tokelau, and the Ross Dependency

Order in Council means an order made by the Governor-General in Council

person or any term descriptive of a person includes the Crown, and any corporation sole or body corporate or politic

prescribed means prescribed by or under the enactment

Proclamation means a proclamation made and signed by the Governor-General under the Seal of New Zealand and gazetted

territorial limits of New Zealand, limits of New Zealand and other expressions indicating a territorial description mean the outer limits of the territorial sea of New Zealand

working day means any day of the week other than

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

(b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year

(c) the day observed as the anniversary of the province in which an act is to be done

writing includes all modes of representing or reproducing words, figures or symbols in a visible form.

(2) In an enactment passed or made before the commencement of this Act:

constable includes a police officer of any rank

Governor means the Governor-General

land includes buildings and other structures and any estate or interest in land

person includes a corporation sole, and also a body of persons, whether corporate or unincorporate.

Parts of speech have corresponding meanings

20 Where a word or expression is defined in an enactment, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

Same meaning for word used in Act and in enactment

21 A word used in an enactment made under the authority of an Act has the same meaning as it has in that Act.

Gender

22 Words denoting a gender include each other gender.

Number

23 Words in the singular include the plural and words in the plural include the singular.

Computation of time

24 (1) A period of time described as beginning

(a) at, on or with a given day or act or event includes that day or the day of that act or event;

(b) from or after a given day or act or event does not include that day or the day of that act or event.

(2) A period of time described as ending

(a) by, on, at or with or continuing to or until a given day or act or event includes that day or the day of that act or event;

(b) before a given day or act or event does not include that day or the day of that act or event.

(3) For the purpose of calculating whether a period of a given number of days or clear days has elapsed between two events or the days on which the events happened, the days on which the events happened are not included in the period.

(4) If in accordance with provisions determining a period of time a thing is to be done on a day which is not a working day, it may be done on the next day which is a working day.

PART 7
REPEALS AND AMENDMENTS

Repeals

25 The following enactments are repealed:

(a) *Acts Interpretation Act 1924* (1 RS 7)

(b) *Statutes Amendment Act 1936 s 3* (1 RS 31)

(c) *Finance Act (No 2) 1952 s 27* (1 RS 32).

Amendments

26 The enactments listed in the schedule are consequentially amended as indicated.

(The schedule is set out in the full Report.)

GP PRINT LIMITED, WELLINGTON, NEW ZEALAND—1990

22001B—90B

NZLC R17