

Statutes Amendment Bill (No 2)

Government Bill

As reported from the Government
Administration Committee

Commentary

Recommendation

The Government Administration Committee has examined the Statutes Amendment Bill (No 2) and recommends that it be passed with the amendments shown.

Introduction

This Statutes Amendment Bill (No 2) is an omnibus bill providing a legislative vehicle for minor, technical, and non-controversial amendments to existing statutes.

This bill seeks to amend 20 statutes, administered by eight different agencies.

Wills Act 2007

Clause 93

When the Wills Act 2007 was passed the main policy intention was that it carry forward, in plain language, the formalities for making a will contained in its predecessor, the Wills Act 1837 (UK). The only changes intended were that a will-maker should no longer be

required to sign at the “foot or end” of the will, and that the High Court should be able to declare a document to be a valid will, even if it does not meet the formal requirements, if it is shown that the will-maker intended the document to be his or her will.

However, section 11 of the Wills Act 2007 may have unintentionally imposed two new requirements. Section 11 does not say that a will-maker may first sign the will and subsequently, when the witnesses are present, acknowledge that the signature on the will is the will-maker’s own. Under the 1837 Act it was possible for a will-maker to acknowledge a pre-existing signature in front of the witnesses, but section 11 does not carry forward the wording in section 9 of the 1837 Act. In addition, section 11 could be interpreted to require the witnesses to make a statement, known as an attestation clause, on the will, rather than just sign it. An attestation clause was not required under the 1837 Act.

These unintended changes have caused uncertainty about the formal requirements for a document to be a valid will.

Some wills that would have been valid under the 1837 Act may not be valid under the 2007 Act. In particular, the 2007 Act may have retrospectively invalidated wills made before 1 November 2007, when the 2007 Act came into force. For example, a will may have been valid when it was made, but because it did not have an attestation clause the 2007 Act may have invalidated it.

We are aware of concern that the amendments in Part 20 of the bill, particularly those in clause 93, are too contentious for a Statutes Amendment Bill. However, we consider that they are suitable for such a bill because clause 93 simply carries forward the law on the formalities for making a will under the 1837 Act, correcting the unintended effects of the changes that have been made by the 2007 Act. There has been no change to the policy intent.

We also considered the possibility that the proposed changes might make it easier to coerce a will-maker into acknowledging a signature on a will that did not reflect their wishes. However, the amendments in clause 93 do no more than carry forward the law under the 1837 Act. There is no evidence that the proposed amendments would increase the risk of a person being coerced to execute a will that does not reflect their wishes. In addition, the existing law of undue influence addresses the problem of wills made under coercion. Wills may comply with all of the formal requirements for making a valid will

but nonetheless be invalid because they were made under coercion. Clause 93 would not affect the law of undue influence.

We are aware that there is some concern that the amendment would allow a will-maker to execute a will by acknowledging, in front of two witnesses, that another person signed the will at the will-maker's direction. We observe that this is already the current law. The proposed amendments are also consistent with the law in the United Kingdom and Australia. If section 11 of the 2007 Act is not amended, the law in New Zealand will be out of step with the law in those countries.

For the reasons outlined above we recommend that clause 93 stand without change.

Clause 94

We recommend that clause 94 be amended to extend the application of section 14 of the 2007 Act to the wills of people who die or have died after 1 November 2007, regardless of when those wills were made.

Section 14 of the 2007 Act allows the High Court to declare a document valid even though the document does not meet the formal requirements for a will, if it is satisfied that the document expresses the deceased's testamentary intentions. The High Court did not have this power under the 1837 Act. Under the current transitional provisions, section 14 does not apply to wills made before 1 November 2007, when the 2007 Act came into force. This means that section 14 cannot currently be used to validate a will that does not meet the requirements of the 2007 Act and was made before 1 November 2007.

Clause 94 in the bill as introduced would allow the High Court to validate a will of a person, regardless of when that will was made—but only if the person died after Part 20 of the bill came into force. It would therefore not allow validation if the person died on or after 1 November 2007 and before Part 20 of the bill came into force.

The change proposed would allow an estate of a person who had already died to benefit from the power in section 14 if no grant of administration had been made when the amendment came into force. The power is discretionary and the High Court could decline to validate a will if doing so would unfairly affect existing rights of beneficiaries.

We also recommend including in clause 94 the repeal of section 40(2)(i) of the 2007 Act, so that wills made before 1 November 2007 are not required to be signed at their foot or end. There would then be no such requirement for wills made either before or after 1 November 2007. Section 40(2)(i) unintentionally made the law more restrictive for wills made before 1 November 2007, which might have retrospectively invalidated some wills made before 1 November 2007 that were not signed at their foot or end, but satisfied the more liberal requirements in the Wills Act Amendment Act 1852 (UK).

Clause 95

We recommend that clause 95 be changed to amend proposed new section 40A to make it clear that the amendments to sections 11 and 40 (contained in clauses 93 and 94 of the bill) would not affect authorised payments made, or other actions taken, without administration and before the amendments came into force.

This change would protect people who have acted in reliance on the law as it currently stands. It would also protect further the existing rights of beneficiaries in the light of the change recommended to backdate the application of clause 94 to 1 November 2007.

Charities Act 2005

We recommend that clause 7(1) be deleted from the bill so that the original wording of section 5(2) of the Charities Act 2005 would be retained. This clause is intended to align the definition of charitable purpose with the Income Tax Act 2007. However, we consider that this could make it appear that those matters in section 5(2) should be considered additional categories of charitable purpose, which is not the case. The risk is increased because although the intention is to align it with the Income Tax Act 2007, this is not possible for technical drafting reasons. A court might be persuaded that the purpose of the amendment was to change the status of the exceptions to charitable purpose, when this was not the policy intent.

We also recommend that clause 7(2), which contains proposed section 5(2)(c), be deleted. Clause 7 should instead add a new subsection, (2A), to section 5.

There is uncertainty among sports organisations, community funding groups, and the legal community about the circumstances in which amateur sport may be considered charitable. As a result some charitable organisations are reluctant to fund sport because of doubt about its charitable status. This amendment would clarify the meaning of charitable purpose in relation to amateur sports, which is that amateur sport for its own sake is not charitable, but it may be charitable when it is the means to achieve one of the traditional four heads of charity, as set out in section 5(1) of the Charities Act 2005. It would also align the legislation with current case law.

Attaining charitable status has implications for an entity's tax status. The proposed amendment is consistent with the general practice of both the Charities Commission and the Inland Revenue Department and we do not consider that it would have any significant practical implications for New Zealand's tax system.

Public Finance Act 1989

We recommend that clause 82 be deleted from the bill. It did not receive full cross-party support before introduction, and should not have been included in the bill.

Commencement

We recommend that clause 2 be amended to provide that Part 4 of the bill, which amends the Civil Defence Emergency Management Act 2002, comes into force on the day that is 30 days after the date on which it receives the Royal assent.

This delayed commencement date would allow Civil Defence Emergency Management Groups and local authorities to change systems, republish the relevant parts of their manuals, and ensure that the correct processes are in place if and when it is necessary to declare a state of emergency.

Appendix

Committee process

The Statutes Amendment Bill (No 2) was referred to the committee on 12 April 2011. The closing date for submissions was 13 May 2011. We received and considered four submissions from interested groups and individuals. We heard three oral submissions.

We received advice from the Ministry of Justice, the Department of Internal Affairs, and the Ministry of Economic Development.

Committee membership

Hon David Parker (Chairperson)

Kanwaljit Singh Bakshi

John Hayes

Chris Hipkins

Sandra Goudie

Nikki Kaye

Lynne Pillay

Statutes Amendment Bill (No 2)

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Nathan Guy

Statutes Amendment Bill (No 2)

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Statutes Amendment Act (No 2) **2011**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

2 Commencement

- (1) **Part 4** comes into force 30 days after the date on which this Act receives the Royal assent. 5
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1**Antarctica (Environmental Protection) Act 1994**

10

3 Principal Act amended

This Part amends the Antarctica (Environmental Protection) Act 1994.

4 Respect for protected areas

15

Section 27(3) is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) in accordance with the written authorisation of the Minister,—

“(i) for the purpose of restoration or protection; or 20

“(ii) if the removal is consistent with any management plan that applies to the Historic Site or Historic Monument; or”.

Part 2**Charities Act 2005**

25

5 Principal Act amended

This Part amends the Charities Act 2005.

6 Interpretation

- (1) This section amends section 4(1).
- (2) Paragraph (b)(i) of the definition of **officer** is amended by omitting “; or” and substituting “; and”. 30

- (3) Paragraph (b)(ii) of the definition of **officer** is amended by omitting “in any other case,”.

7 Meaning of charitable purpose and effect of ancillary non-charitable purpose

- (1) Section 5(2) is amended by omitting “However” and substituting “In addition”.

- (2) Section 5(2) is amended by adding “; and” and also by adding the following paragraph:

“(e) the purpose of an entity that promotes sport is a charitable purpose if the purpose is expressed to be, and is in fact, the means by which a charitable purpose (such as the promotion of health or education) will be achieved.”

Section 5 is amended by inserting the following subsection after subsection (2):

- “(2A) The promotion of amateur sport may be a charitable purpose if it is the means by which a charitable purpose referred to in subsection (1) is pursued.”

8 Application for registration

- (1) Section 17(1) is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) be in the form prescribed by the Commission; and”.

- (2) Section 17(1)(b) is amended by omitting “prescribed form” and substituting “form prescribed by the Commission”.

- (3) Section 17(1)(d) is amended by omitting “prescribed fee” and substituting “fee prescribed by regulations”.

- (4) Section 17(1)(e) is amended by omitting “prescribed information or documentation” and substituting “information or documentation prescribed by the Commission”.

9 Contents of register

Section 24(2) is amended by omitting “prescribed information or documents” and substituting “information or documents prescribed by regulations”.

- 10 Search of register**
Section 27(2)(d) is amended by omitting “prescribed criteria” and substituting “criteria prescribed by regulations”.
- 11 Duty to notify changes to Commission**
- (1) Section 40(1) is amended by inserting the following paragraph after paragraph (c):
“(ca) a change that disqualifies an officer of the charitable entity from being an officer of the entity:” 5
- (2) Section 40(2)(a) is amended by omitting “prescribed form” and substituting “form prescribed by the Commission”. 10
- (3) Section 40(2)(b) is amended by omitting “prescribed information or documentation” and substituting “information or documentation prescribed by the Commission”.
- 12 Duty to prepare annual return**
- Section 41(2) is amended by inserting “by the Commission” after “prescribed”. 15
- 13 Regulations concerning content of annual returns**
- (1) The heading to section 42 is amended by omitting “**Regulations concerning**” and substituting “**Commission must prescribe**”. 20
- (2) Section 42(1) is amended by omitting “The Governor-General may, on the recommendation of the Minister, by Order in Council,” and substituting “The Commission must”.
- (3) Section 42(2) is amended by omitting “The order made under subsection (1)” and substituting “The Commission”. 25
- (4) Section 42 is amended by adding the following subsection:
“(3) **Section 72A(2) and (5) to (7)** apply to a form or requirement to be prescribed under this section.”
- 14 Commission may treat entity and affiliated or closely related entities as single entity** 30
- Section 44(3) is amended by omitting “prescribed form” and substituting “form prescribed by the Commission”.

15 Parent entity may request means of compliance with duties

Section 45(2) is amended by omitting “prescribed form” and substituting “form prescribed by the Commission”.

16 New section 72A inserted 5

The following section is inserted before section 73:

“72A Forms and requirements prescribed by Commission

- “(1) The Commission may do 1 or more of the following things:
- “(a) prescribe forms for the purposes of this Act:
 - “(b) prescribe requirements for— 10
 - “(i) specified information or documents to be included in or attached to forms:
 - “(ii) forms to be signed by specified persons:
 - “(c) prescribe requirements with which documents sent or delivered for registration must comply. 15
- “(2) The Commission may prescribe a form or requirement only for the purpose of collecting information or documentation required for the Commission to perform its functions and duties under this Act.
- “(3) However, a form prescribed under this section may require 20 information or documents to be included in or attached to the form for the purpose of assisting any person—
- “(a) in the exercise of the person’s powers in connection with subpart LD of the Income Tax Act 2007; or
 - “(b) in the performance of the person’s functions in connection with that subpart. 25
- “(4) **Subsection (3)** applies regardless of whether the information or documentation is collected for the purposes of this Act.
- “(5) In order to prescribe a form or requirement, the Commission— 30
- “(a) must publish it on its Internet site; and
 - “(b) may publish it in any other way.
- “(6) In developing a form or requirement to be prescribed, the Commission must consult persons or organisations that the Commission considers to be representative of the interests of charitable entities. 35
- “(7) A failure to comply with **subsection (6)** does not affect the validity of the prescribed form or requirement.”

17 Regulations

- (1) Section 73(1)(a) and (b) are repealed.
- (2) Section 73(2) is repealed.
- (3) Section 73(3) is amended by omitting “prescribed fee” and substituting “fee prescribed by regulations”. 5
- (4) Section 73(4) is amended by inserting “by regulations” after “prescribed”.

18 Transitional provision for officers

- (1) This section applies if a person becomes an officer of a charitable entity because of the amendments made to the definition of officer by **section 6**. 10
- (2) The charitable entity must ensure that it sends or delivers notice of the change to the Commission.
- (3) The notice must—
 - (a) be in the form prescribed by the Commission (if any); 15
and
 - (b) be accompanied by a document in the form prescribed by the Commission that is signed by, or on behalf of, the person who became an officer and that contains a certification that the person is not disqualified under section 16 of the principal Act from being an officer of the entity; and 20
 - (c) contain, or be accompanied by, any other information or documentation prescribed by the Commission; and
 - (d) specify the date of commencement of **this Part** as the effective date of the change; and 25
 - (e) be sent or delivered to the Commission together with, or as part of, the first annual return to be provided by the charitable entity under section 41 of the principal Act after the commencement of **this Part**. 30
- (4) This section overrides section 40(1)(c) of the principal Act and, until the notice is sent or delivered, section 24(1)(d) of that Act.
- (5) A term or expression that is used in this section and is defined in the principal Act has the meaning given by that Act. 35

- 19 Transitional provision for information or documentation received**
- (1) This section applies if, before the commencement of **this Part**, the Commission received any information or documentation that complied with the principal Act’s requirements when it was received. 5
- (2) The Commission must deal with the information or documentation as if the principal Act had not been amended by **this Part**.
- 20 Transitional provision for Commission prescribing form or requirement** 10
- The Commission may satisfy the requirement for consultation under **section 42(3) or 72A(6)** of the principal Act even if the consultation occurs before the commencement of **this Part**.
- 21 Consequential amendments to Charities (Fees, Forms, and Other Matters) Regulations 2006** 15
- (1) This section amends the Charities (Fees, Forms, and Other Matters) Regulations 2006.
- (2) After the commencement of this section,—
- (a) the Charities (Fees, Forms, and Other Matters) Regulations 2006 are called the Charities (Fees and Other Matters) Regulations 2006; and 20
- (b) a reference in another enactment or in a document to the Charities (Fees, Forms, and Other Matters) Regulations 2006 must be read as a reference to the Charities (Fees and Other Matters) Regulations 2006, unless the context requires otherwise. 25
- (3) Regulation 1 is amended by omitting “Fees, Forms,” and substituting “Fees”. 30
- (4) The heading above section 5 is revoked. 30
- (5) Regulations 5 to 7 are revoked.
- (6) The Schedule is revoked.

Part 3

Citizens Initiated Referenda Act 1993

- 22 Principal Act amended**
This Part amends the Citizens Initiated Referenda Act 1993.
- 23 Writ for indicative referendum conducted by postal voting** 5
 Section 26A is amended by repealing subsection (6) and substituting the following subsection:
 “(6) The latest day for the return of the writ is the 60th day after the issue of the writ.”
- 24 Endorsement and return of writ** 10
 (1) Section 39 is amended by inserting the following subsections after subsection (5):
 “(5A) If the voting period for an indicative referendum conducted by postal voting is extended under section 37 of the Referenda (Postal Voting) Act 2000, the Electoral Commission may postpone the return of the writ until as soon as practicable after noon on the fourth day after the last day of the extended voting period. 15
 “(5B) **Subsection (5A)** applies whether the voting period is extended in relation to the whole or any area or areas of New Zealand, or any or all of Tokelau, Campbell Island, Raoul Island, or the Ross Dependency.” 20
 (2) Section 39(6) is amended by omitting “and (5)” and substituting “to **(5B)**”.

Part 4

Civil Defence Emergency Management Act 2002

- 25 Principal Act amended**
This Part amends the Civil Defence Emergency Management Act 2002. 30

- 26 Local authorities to establish Civil Defence Emergency Management Groups**
Section 12(2) is amended by omitting “Clause 30(5)” and substituting “Clause 30(5) or (7)”.
- 27 Declaration of state of local emergency** 5
Section 68 is amended by inserting the following subsection after subsection (2):
“(2A) If an authorised person declares a state of local emergency for—
“(a) the whole area of a Civil Defence Emergency Management Group, then any other state of local emergency already in force for 1 or more districts or wards within the area ceases to have effect: 10
“(b) a district within the area of a Civil Defence Emergency Management Group, then any other state of local emergency already in force for 1 or more wards within the district ceases to have effect.” 15
- 28 Minister may declare state of local emergency in certain cases**
Section 69 is amended by inserting the following subsection after subsection (1): 20
“(1A) If the Minister declares a state of local emergency for—
“(a) the whole area of a Civil Defence Emergency Management Group, then any other state of local emergency already in force for 1 or more districts or wards within the area ceases to have effect: 25
“(b) a district within the area of a Civil Defence Emergency Management Group, then any other state of local emergency already in force for 1 or more wards within the district ceases to have effect.” 30
- 29 New section 70 substituted**
Section 70 is repealed and the following section substituted:
“**70 Commencement and duration of state of emergency**
“(1) A declaration of a state of emergency must specify the time and date on which the declaration is made. 35

- “(2) A state of emergency comes into force at the time and on the date that a declaration of the state of emergency is made.
- “(3) A state of emergency expires 7 days after the time and date on which the state of emergency comes into force.
- “(4) Nothing in this section prevents— 5
 “(a) the extension of a state of emergency under **section 71**;
 or
 “(b) the termination of a state of emergency under section 72.
- “(5) For the purposes of this section, **7 days after the time and date on which the state of emergency comes into force** means immediately after a period that— 10
 “(a) begins immediately after the time of the day on which the state of emergency comes into force; and
 “(b) ends immediately before the same time of the day on 15
 the date that is 7 days after the day on which the state of emergency comes into force.

Example

If a state of emergency came into force at 9.35 am on 1 January, it would expire at 9.35 am on 8 January. If the state of emergency came into force at 9.35 am on a Friday, it would expire at 9.35 am on the following Friday. 20

30 New section 71 substituted

Section 71 is repealed and the following section substituted:

- “**71 Extension of duration of state of emergency** 25
- “(1) Before a state of national emergency expires, the Minister may, by declaration, extend the state of national emergency.
- “(2) Before a state of local emergency expires, a person authorised to declare a state of local emergency for an area may, by declaration, extend the state of local emergency. 30
- “(3) An extension of a state of emergency comes into force—
 “(a) immediately before the state of emergency would have expired under **section 70(3)**; or
 “(b) if the state of emergency was previously extended under this section, immediately before that extension would 35
 have expired under **subsection (4)**.

- “(4) An extension of a state of emergency expires 7 days after the time and date on which the extension of the state of emergency comes into force.
- “(5) Nothing in this section prevents—
- “(a) the further extension of a state of emergency that has been extended under this section; or
 - “(b) the termination of a state of emergency under section 72.
- “(6) For the purposes of this section, **7 days after the time and date on which the extension of the state of emergency comes into force** means a period that—
- “(a) begins immediately after the time of the day on which the extension comes into force; and
 - “(b) ends immediately before the same time of the day on the date that is 7 days after the day on which the extension comes into force.”

31 Termination of state of emergency

Section 72 is amended by repealing subsection (2) and substituting the following subsection:

- “(2) A declaration made under subsection (1)—
- “(a) must specify the time and date on which it is made; and
 - “(b) terminates the state of emergency when made.”

32 Schedule 1 amended

Clause 6 of Part A of Schedule 1 is amended by omitting “Lyttleton” and substituting “Lyttelton”.

33 Consequential amendments to Civil Defence Emergency Management Regulations 2003

- (1) This section amends the Civil Defence Emergency Management Regulations 2003.

Form 2 of Schedule 2

- (2) Form 2 of Schedule 2 is amended by omitting the second sentence and substituting the following sentence:

“The state of national emergency comes into force immediately on the making of this declaration.”

- (3) Form 2 of Schedule 2 is amended by omitting the third sentence and substituting the following sentence:
 “The state of national emergency expires 7 days after the time and date on which the state of emergency comes into force.”
- (4) Form 2 of Schedule 2 is amended by omitting note 3 and substituting the following note: 5
 “3 Calculating ‘7 days after the time and date on which the state of emergency comes into force’: If the state of emergency came into force at 9.35 am on 1 January, it would expire at 9.35 am on 8 January. If the state of emergency came into force at 9.35 10
 am on a Friday, it would expire at 9.35 am on the following Friday.”
- Form 3 of Schedule 2*
- (5) Form 3 of Schedule 2 is amended by omitting the second sentence and substituting the following sentence: 15
 “The state of national emergency is extended for 7 days immediately before the expiry of the original declaration/the last extension*.”
- (6) Form 3 of Schedule 2 is amended by omitting the first footnote after the designation and substituting the following footnote: 20
 †Include times and dates when any extensions took effect.
- (7) Form 3 of Schedule 2 is amended by omitting note 3 and substituting the following note:
 “3 Calculating the extension of ‘7 days’ for a declaration extending the state of emergency: If the extension came into force at 9.35 am on 1 January, it would expire at 9.35 am on 8 January. If the extension came into force at 9.35 am on a Friday, it would expire at 9.35 am on the following Friday.” 25
- (8) Form 3 of Schedule 2 is amended by omitting note 4 and substituting the following note:
 “4 If this is a second or subsequent extension of a state of emergency, specify the time and date when each previous extension took effect and the time and date when the state of emergency was first declared.” 30
- Form 4 of Schedule 2*
- (9) Form 4 of Schedule 2 is amended by omitting the second sentence and substituting the following sentence: 35

- “The termination of the state of national emergency takes effect from the time and date this declaration is made.”
- (10) Form 4 of Schedule 2 is amended by omitting the first footnote after the designation and substituting the following footnote:
 †Include times and dates when any extensions took effect.
- (11) Form 4 of Schedule 2 is amended by omitting note 2 and substituting the following note: 5
 “2 If any extension of the state of emergency was made, specify the time and date when each extension took effect, as well as the time and date when the state of emergency was first declared.” 10
- (12) Form 4 of Schedule 2 is amended by omitting note 3.
Form 5 of Schedule 2
- (13) Form 5 of Schedule 2 is amended by omitting the second sentence and substituting the following sentence: 15
 “The state of local emergency comes into force immediately on the making of this declaration.”
- (14) Form 5 of Schedule 2 is amended by omitting the third sentence and substituting the following sentence: 20
 “The state of local emergency expires 7 days after the time and date on which the state of emergency comes into force.”
- (15) Form 5 of Schedule 2 is amended by omitting note 2 and substituting the following note: 25
 “2 Calculating ‘7 days after the time and date on which the state of emergency comes into force’: If the state of emergency came into force at 9.35 am on 1 January, it would expire at 9.35 am on 8 January. If the state of emergency came into force at 9.35 am on a Friday, it would expire at 9.35 am on the following Friday.”
- Form 6 of Schedule 2*
- (16) Form 6 of Schedule 2 is amended by omitting the second sentence and substituting the following sentence: 30
 “The state of local emergency is extended for 7 days immediately before the expiry of the original declaration/the last extension*.”
- (17) Form 6 of Schedule 2 is amended by omitting the first footnote after the designation and substituting the following footnote: 35

† Include times and dates when any extensions took effect.

- (18) Form 6 of Schedule 2 is amended by omitting note 2 and substituting the following note:

“2 Calculating the extension of ‘7 days’ for a declaration extending the state of emergency: If the extension came into force at 9.35 am on 1 January, it would expire at 9.35 am on 8 January. If the extension came into force at 9.35 am on a Friday, it would expire at 9.35 am on the following Friday.” 5

- (19) Form 6 of Schedule 2 is amended by omitting note 3 and substituting the following note:

“3 If this is a second or subsequent extension of a state of emergency, specify the time and date when each previous extension took effect and the time and date when the state of emergency was first declared.” 10

Form 7 of Schedule 2

- (20) Form 7 of Schedule 2 is amended by omitting the second sentence and substituting the following sentence: 15

“The termination of the state of local emergency takes effect from the time and date when this declaration is made.”

- (21) Form 7 of Schedule 2 is amended by omitting the first footnote after the designation and substituting the following footnote: 20

† Include times and dates when any extensions took effect.

- (22) Form 7 of Schedule 2 is amended by omitting note 2 and substituting the following note:

“2 If any extension of the state of emergency was made, specify the time and date when each extension took effect, as well as the time and date when the state of emergency was first declared.” 25

- (23) Form 7 of Schedule 2 is amended by omitting note 3.

Form 8 of Schedule 2

- (24) Form 8 of Schedule 2 is amended by omitting the second sentence and substituting the following sentence: 30

“The state of local emergency comes into force immediately on the making of this declaration.”

- (25) Form 8 of Schedule 2 is amended by omitting the third sentence and substituting the following sentence:

“The state of local emergency expires 7 days after the time and date on which the state of emergency comes into force.”

- (26) Form 8 of Schedule 2 is amended by omitting note 2 and substituting the following note:

“2 Calculating ‘7 days after the time and date on which the state of emergency comes into force’: If the state of emergency came into force at 9.35 am on 1 January, it would expire at 9.35 am on 8 January. If the state of emergency came into force at 9.35 am on a Friday, it would expire at 9.35 am on the following Friday.”

Form 9 of Schedule 2

- (27) Form 9 of Schedule 2 is amended by omitting the second sentence and substituting the following sentence:

“The state of local emergency is extended for 7 days immediately before the expiry of the original declaration/the last extension*.”

- (28) Form 9 of Schedule 2 is amended by omitting the first footnote after the second sentence and substituting the following footnote:

† Include times and dates when any extensions took effect.

- (29) Form 9 of Schedule 2 is amended by omitting note 2 and substituting the following note:

“2 Calculating the extension of ‘7 days’ for a declaration extending the state of emergency: If the extension came into force at 9.35 am on 1 January, it would expire at 9.35 am on 8 January. If the extension came into force at 9.35 am on a Friday, it would expire at 9.35 am on the following Friday.”

- (30) Form 9 of Schedule 2 is amended by omitting note 3 and substituting the following note:

“3 If this is a second or subsequent extension of a state of emergency, specify the time and date when each previous extension took effect and the time and date when the state of emergency was first declared.”

Form 10 of Schedule 2

- (31) Form 10 of Schedule 2 is amended by omitting the second sentence and substituting the following sentence:

- “The termination of the state of local emergency takes effect from the time and date when this declaration is made.”
- (32) Form 10 of Schedule 2 is amended by omitting the first footnote after the second sentence and substituting the following footnote: 5
- † Include times and dates when any extensions took effect.
- (33) Form 10 of Schedule 2 is amended by omitting note 2 and substituting the following note:
- “2 If any extension of the state of emergency was made, specify the time and date when each extension took effect, as well as the time and date when the state of emergency was first declared.” 10
- (34) Form 10 of Schedule 2 is amended by omitting note 3.

Part 5 Companies Act 1993

- 34 Principal Act amended** 15
This Part amends the Companies Act 1993.
- 35 Commencement of liquidation**
- (1) Section 241(2)(c) is amended by adding the following subparagraph:
- “(viii) in the case of a company that has been removed from the New Zealand register, the Registrar or a person who, immediately before the company was removed from the New Zealand register, was a person described in subparagraph (ii), (iii), (iv), or (vii); or” 20 25
- (2) Section 241 is amended by inserting the following subsection after subsection (2):
- “(2A) However, the court must not appoint a liquidator under **subsection (2)(c)(viii)** unless the company is restored to the New Zealand register under section 328 or 329.” 30
- 36 Registers**
- Section 360 is amended by repealing subsections (2) and (3).

- 37 **Section 361 repealed**
Section 361 is repealed.

Part 6 Crimes Act 1961

- 38 **Principal Act amended** 5
This Part amends the Crimes Act 1961.
- 39 **Short title, commencement, etc**
Section 1(3) is amended by,—
- (a) in the item relating to Part 5, omitting “98A” and substituting “98F”; and 10
 - (b) in the item relating to Part 8, omitting “210” and substituting “210A”; and
 - (c) in the item relating to Part 9A, omitting “216E” and substituting “216N”; and
 - (d) in the item relating to Part 12, omitting “378” and substituting “378F”; and 15
 - (e) in the item relating to Part 14, omitting “412” and substituting “415”.

Part 7 Criminal Proceeds (Recovery) Act 2009 20

- 40 **Principal Act amended**
This Part amends the Criminal Proceeds (Recovery) Act 2009.
- 41 **Interpretation** 25
Section 5(1) is amended by repealing the definition of **lawyer** and substituting the following definition:
“**lawyer** means a lawyer within the meaning of section 6 of the Lawyers and Conveyancers Act 2006”.
- 42 **Applying for further orders** 30
Section 33 is amended by repealing subsection (2) and substituting the following subsection:

- “(2) The applicant for the further order must serve a copy of the application on—
- “(a) every person, or every other person (if the applicant is a party), who is a party to the proceeding in which—
- “(i) the making of the associated restraining order is to be considered; or
- “(ii) the associated restraining order was made; and
- “(b) the Official Assignee.”
- 43 Costs recoverable by Official Assignee** 10
Section 87(1)(a) is amended by inserting “foreign restraining order registered in New Zealand,” after “restraining order.”
- 44 Interpretation**
Section 91 is amended by omitting “functions and powers” and substituting “powers, functions, or duties”.
- 45 Heading above section 96 amended** 15
The heading above section 96 is amended by omitting “*functions or powers*” and substituting “*powers, functions, or duties*”.
- 46 Section 96 substituted** 20
Section 96 is repealed and the following section substituted:
- “96 Delegation of powers, functions, or duties of Commissioner of Police**
The provisions of the Policing Act 2008 relating to the delegation of powers, functions, or duties of the Commissioner apply in all respects to the powers, functions, or duties of the Commissioner under this Act.” 25
- 47 Court may make production order**
Section 105(1) is amended by omitting “or any member of the police” in each place where it appears.
- 48 New heading inserted** 30
The following heading is inserted above section 106:

“Examination orders”.

- 49 Heading above section 107 repealed**
The heading above section 107 is repealed.
- 50 Power to require attendance before Commissioner, production of documents, etc** 5
(1) Section 107(3)(c) is amended by omitting “notice” and substituting “order”.
(2) Section 107(3)(d) is amended by omitting “notice” and substituting “order”.
- 51 Form and content of search warrant** 10
Section 116(2)(b) is amended by omitting “and every member of the police”.
- 52 Additional matters relating to extension of registration of foreign restraining order** 15
Section 138(1) is amended by omitting “section 135” and substituting “section 137”.
- 53 Duties as to confidentiality generally overridden**
Section 159(3) is amended by omitting “sections 160 and 162” and substituting “sections 160 to 162”.
- 54 Legal professional privilege** 20
(1) Section 160(4)(a) is amended by omitting “section 2 of the Law Practitioners Act 1982” and substituting “section 6 of the Lawyers and Conveyancers Act 2006.”
(2) Section 160(7) is amended by omitting “the term **lawyer** means a barrister or solicitor of the High Court, and”. 25
- 55 Application of Part 4A**
Section 207 is amended by omitting “Rule 458D(1)(a)(xvii)” and substituting “Rule 19.2(r)”.

Part 8 Domestic Violence Act 1995

- 56 Principal Act amended**
This Part amends the Domestic Violence Act 1995.
- 57 Interpretation** 5
- (1) Section 124A is amended by inserting the following definition in its appropriate alphabetical order:
“**District Court** includes a Justice or Justices, or a Community Magistrate or Community Magistrates, presiding over a District Court; but does not include a Registrar”. 10
- (2) Section 124A is amended by adding the following definition:
“**Registrar** means any Registrar of a District Court; and includes a Deputy Registrar”.
- 58 Contravention of Police safety order** 15
Section 124L(1) is amended by omitting “against whom an order is issued” and substituting “who has been served with an order”.
- 59 Issue of summons where person cannot be brought before District Court within 24 hours** 20
Section 124M(3) is amended by omitting “the District Court” and substituting “a District Court or Registrar”.
- 60 Issue of warrant to arrest person who contravenes Police safety order or fails to attend adjourned proceedings** 25
Section 124O(2) is amended by omitting “The District Court” and substituting “A District Court or Registrar”.
- 61 Consequential amendments to Domestic Violence (General) Regulations 1996**
- (1) This section amends the Domestic Violence (General) Regulations 1996.
- (2) Form 2 of the Schedule is amended by inserting “/Registrar/Deputy Registrar” after “Community Magistrate(s)”.

- (3) Form 5 of the Schedule is amended by inserting “/Registrar/Deputy Registrar” after “Community Magistrate(s)”.
- (4) Form 6 of the Schedule is amended by inserting “Registrar/Deputy Registrar” after “Community Magistrate(s)”.

Part 9

5

Judicature Act 1908

62 Principal Act amended

This Part amends the Judicature Act 1908.

63 Associate Judge may exercise certain powers of the court

- (1) Section 26I(1) is amended by repealing paragraph (b). 10
- (2) Section 26I(2)(e) is amended by omitting “and Part 16” and substituting “Part 16, and section 329”.

Part 10

Limited Partnerships Act 2008

64 Principal Act amended

15

This Part amends the Limited Partnerships Act 2008.

65 Interpretation

- (1) The definition of **Deputy Registrar** in section 4 is repealed.
- (2) Section 4 is amended by repealing the definition of **Registrar** and substituting the following definition: 20
- “**Registrar** means the Registrar of Companies holding office under the Companies Act 1993 and includes a Deputy Registrar acting in accordance with section 357(2) of that Act”.

66 Disclosure of information and reports

Section 79(2) is amended by omitting “or a Deputy Registrar when directed to do so by any person holding either of those offices” and substituting “when directed to do so by a person holding that office”. 25

Part 11 Marriage Act 1955

- 67 Principal Act amended**
This Part amends the Marriage Act 1955.
- 68 New section 41 substituted** 5
Section 41 is repealed and the following section substituted:
- “41 Certificate of no impediment to person intending foreign marriage**
- “(1) A person who intends to marry outside New Zealand in accordance with the law of another country or jurisdiction may apply to the Registrar-General for a certificate of no impediment. 10
- “(2) An application must—
- “(a) be made in the prescribed form; and
- “(b) contain the prescribed information; and 15
- “(c) be accompanied by the prescribed fee.
- “(3) On receipt of an application, the Registrar-General must make whatever searches and inquiries he or she considers appropriate.
- “(4) The provisions of sections 25(1) to (3) and 26 apply in respect of intended marriages to which this section relates in the same way as they apply to marriages intended to be solemnised in New Zealand. 20
- “(5) The Registrar-General may issue a certificate of no impediment to the applicant if— 25
- “(a) any caveat lodged within 14 days of the Registrar-General receiving an application under **subsection (1)** is withdrawn by the caveator or discharged under section 26; and
- “(b) the Registrar-General is satisfied that no lawful impediment to the intended marriage has been shown to exist.” 30
- 69 Consequential amendments to Marriage (Forms) Regulations 1995**
- (1) This section amends the Marriage (Forms) Regulations 1995.
- (2) Regulation 3 is amended by revoking paragraph (e) and substituting the following paragraph: 35

- “(e) for an application under **section 41** by a person who intends to marry outside New Zealand for a certificate of no impediment, **form 5**.”.
- (3) Regulation 3 is amended by revoking paragraph (f).
- (4) The Schedule is amended by— 5
- (a) revoking form 5 and substituting the form 5 set out in the **Schedule** of this Act; and
- (b) revoking form 6.

Part 12
Mutual Assistance in Criminal Matters 10
Act 1992

- 70 Principal Act amended**
This Part amends the Mutual Assistance in Criminal Matters Act 1992.
- 71 Cancelling registration of foreign orders in New Zealand** 15
Section 58(2)(d) is repealed.

Part 13
New Zealand Railways Corporation Act
1981

- 72 Principal Act amended** 20
This Part amends the New Zealand Railways Corporation Act 1981.
- 73 New Zealand Railways Corporation**
Section 4(2) is amended by omitting “7” and substituting “9”.

Part 14 25
New Zealand Superannuation and
Retirement Income Act 2001

- 74 Principal Act amended**
This Part amends the New Zealand Superannuation and Retirement Income Act 2001. 30

75 Periods of absence that are not counted

Section 9 is amended by adding the following subsection:

- “(3) The reference in subsection (1)(d) to ‘Volunteer Service Abroad Incorporated’ must for all purposes relating to the operation of subsection (1)(d) on or after its commencement on 12 October 2001, and despite any later changes to that body’s name, be read as a reference to the body incorporated under the Incorporated Societies Act 1908 on 8 April 1963 as ‘Volunteer Service Abroad Inc’.”

76 New section 79A inserted

The following section is inserted after section 79:

“79A References to Volunteer Service Abroad Incorporated

The references in the following provisions to ‘Volunteer Service Abroad Incorporated’ must for all purposes relating to the operation of those provisions be read as references to the body incorporated under the Incorporated Societies Act 1908 on 8 April 1963 as ‘Volunteer Service Abroad Inc’:

- “(a) section 14(2)(e) of the Social Security Act 1964 (as inserted on 29 September 1969 by section 4 of the Social Security Amendment Act 1969, and repealed on 1 April 1990 by section 14(18) of the Social Welfare (Transitional Provisions) Act 1990):
- “(b) section 4(2)(d) of the Social Welfare (Transitional Provisions) Act 1990 (which commenced on 1 April 1990, and was repealed by section 77 of this Act on 12 October 2001).”

Part 15**Public Finance Act 1989****77 Principal Act amended**

This Part amends the Public Finance Act 1989.

78 Estimates and other supporting information must be presented with first Appropriation Bill

Section 13(1) is amended by adding “, or at any time prior to that time on the same day”.

- 79 Fiscal strategy report**
Section 26I(2) is amended by adding “, or at any time prior to that time on the same day”.
- 80 Economic and fiscal update**
Section 26O(2) is amended by adding “, or at any time prior to that time on the same day”.
- 81 Obligation to present and publish information on future operating intentions**
Section 39(1) is amended by adding “, or at any time prior to that time on the same day”.
- 82 Minister may exercise powers relating to *bona vacantia***
(1) Section 75(3) is amended by omitting “in this section shall derogate” and substituting “in subsection (1) or (2) derogates”.
(2) Section 75 is amended by adding the following subsection:
“(4) If the Minister or a department performs an act under subsection (1) that involves—
“(a) the transfer or disposal of property or a right, that transfer or disposal may be made without further appropriation than this section:
“(b) the spending of public money; that money may be paid out of a Crown Bank Account without further appropriation than this section.”

Part 16

Social Security Act 1964

- 83 Principal Act amended**
This Part amends the Social Security Act 1964.
- 84 Persons unlawfully resident or present in New Zealand**
Section 74A(1A) (as substituted by section 406(1) and Schedule 3 of the Immigration Act 2009) is repealed and the following subsections are substituted:

- “(1A) Despite subsection (1), the chief executive may take either or both of the actions specified in **subsection (1B)** if the chief executive is satisfied that the person is—
- “(a) a person lawfully present in New Zealand who is awaiting the outcome of his or her claim for recognition as a refugee or a protected person; or 5
 - “(b) a person who is recognised as a refugee or a protected person; or
 - “(c) a person applying for a residence class visa under the Immigration Act 2009 who is compelled to remain in New Zealand because of unforeseen circumstances. 10
- “(1B) The actions referred to in **subsection (1A)** are—
- “(a) grant the person an emergency benefit under section 61: 15
 - “(b) grant the person temporary additional support under section 61G or, as the case requires, continue, under section 23 of the Social Security (Working for Families) Amendment Act 2004, a special benefit already granted to the person.”

Part 17

Sugar Loaf Islands Marine Protected Area Act 1991 20

85 Principal Act amended

This Part amends the Sugar Loaf Islands Marine Protected Area Act 1991.

86 Protected Area to be conservation area 25

Section 7(2) is amended by omitting “Saddlebank Island” and substituting “Saddleback Island”.

Part 18

Trade Marks Act 2002

87 Principal Act amended 30

This Part amends the Trade Marks Act 2002.

88 Abandonment of application

Section 44(1) is amended by omitting “the applicant has not responded” and substituting “the Commissioner does not receive a response from the applicant”.

Part 19

5

Wild Animal Control Act 1977**89 Principal Act amended**

This Part amends the Wild Animal Control Act 1977.

90 Interpretation

Paragraph (a)(ii) of the definition of **wild animal** in section 2(1) is amended by omitting “thar” and substituting “tahr”.

91 Keeping of specified wild animals in captivity

Section 12(5)(a) is amended by omitting “thar” and substituting “tahr”.

Part 20

15

Wills Act 2007**92 Principal Act amended**

This Part amends the Wills Act 2007.

93 Requirements for validity of wills

Section 11 is amended by repealing subsections (3) and (4) as from their commencement, on 1 November 2007, and substituting, as from that commencement, the following subsections:

“(3) The will-maker must—

“(a) sign the document; or

25

“(b) direct another person to sign the document on his or her behalf in his or her presence.

“(4) At least 2 witnesses must—

“(a) be together in the will-maker’s presence when the will-maker—

30

“(i) complies with **subsection (3)**; or

“(ii) acknowledges that—

- “(A) he or she signed the document earlier and that the signature on the document is his or her own; or
- “(B) another person directed by him or her signed the document earlier on his or her behalf in his or her presence; and 5
- “(b) each sign the document in the will-maker’s presence.
- “(5) As evidence of compliance with **subsection (4)**, at least 2 witnesses may each state on the document, in the will-maker’s presence, the following: 10
- “(a) that he or she was present with the other witnesses when the will-maker—
- “(i) signed the document; or
- “(ii) acknowledged that he or she signed the document earlier and that the signature on the document is his or her own; or 15
- “(iii) directed another person whose signature appears on the document to sign the document on his or her behalf in his or her presence; or
- “(iv) acknowledged that another person directed by him or her signed the document earlier on his or her behalf in his or her presence; and 20
- “(b) that he or she signed the document in the will-maker’s presence.
- “(6) No particular form of words is required for the purposes of **subsection (5)**.” 25

94 Wills made before 1 November 2007

- (1) Section 40(2) is amended by repealing paragraphs (k) and (l) and substituting the following paragraphs: 30
- “(k) section 14 does not apply unless they are wills of persons who die after the commencement of the **Part 20 of the Statutes Amendment Act 2011**; and
- “(l) section 15(d) does not apply unless they are wills of persons who die after the commencement of the **Part 20 of the Statutes Amendment Act 2011**; and” 35
- (2) Section 40(2) is amended by repealing paragraph (n) and substituting the following paragraph:

~~“(n) section 16(g) and (h) do not apply unless they are wills of persons who die after the commencement of the **Part 20 of the Statutes Amendment Act 2011**; in which case section 16(h) (but not section 16(g)) applies; and”.~~

5

Section 40(2) is amended by repealing paragraphs (i), (k), and (l) as from their commencement, on 1 November 2007, and by repealing paragraph (n) as from its commencement, on 1 November 2007, and substituting, as from that commencement, the following paragraph:

10

“(n) section 16(g) does not apply; and”.

95 New section 40A inserted

The following section is inserted after section 40:

“40A Application of Wills (Validity) Amendment Act 2011

“(1) ~~The enactments substituted Sections 11 and 40 as amended~~ by the **Part 20 of the Statutes Amendment Act 2011** apply (instead of ~~the enactments repealed those sections as in force before they were amended~~ by that **Part**) in making after the commencement of that **Part** (in this section called the **commencement**) a determination whether a document is, or can and is to be declared by order of the High Court to be, a valid will.

15

20

“(2) **Subsection (1)** applies whether or not the determination—

“(a) is made by the High Court, a Judge of the High Court, a Registrar or Senior Deputy Registrar of the High Court, a personal representative (as defined in section 6) of a person who has died, or any other court or person:

25

“(b) arises from, or without, an application for administration (whether without notice, or in solemn form) made before or after the commencement (including, without limitation, one in solemn form made before or after the commencement and following one without notice made unsuccessfully before the commencement):

30

“(c) arises from an application made before or after the commencement for a review by the High Court or a Judge of the High Court of a determination made by a Registrar or Senior Deputy Registrar of the High Court made before or after the commencement.

35

~~“(3) But nothing in, or in an enactment substituted or inserted by, **Part 20 of the Statutes Amendment Act 2011** affects the validity or consequences of a grant of administration (as defined in section 2(1) of the Administration Act 1969) made before the commencement.~~

5

“(3) But this section and sections 11 and 40 (as amended by the **Part 20 of the Statutes Amendment Act 2011**) do not affect the validity or consequences of the following to the extent (if any) that they are based on sections 11 and 40 (as in force before they were amended by that **Part**):

10

“(a) a grant of administration (as defined in section 2(1) of the Administration Act 1969) made before the commencement:

“(b) a payment made or other action taken before the commencement and that an enactment authorised without a grant of administration (as so defined).”

15

Schedule **s 69(4)(a)**
**New Form 5 substituted in Schedule of
 Marriage (Forms) Regulations 1995**

Form 5 r 3(e)
 Application for certificate of no impediment
Section 41, Marriage Act 1955 5

To the Registrar-General

- 1 I, [*full name*], at present residing at [*place*], intend to marry [*full name*], a national or citizen of [*country of nationality of partner*], in [*country of intended marriage*].
- 2 I apply for a certificate of no impediment to my intended marriage. 10
- 3 My details are—
- Name at birth (if different from above):
- Date of birth:
- Place of birth: 15
- Father's full name:
- Father's full name at birth:
- Mother's full name:
- Mother's full name at birth:
- Select any of paragraphs 4 to 6 that apply.* 20
- 4 I have previously been married—
- Date of previous marriage:
- Place of previous marriage:
- How marriage ended:
- Date and place of dissolution (if applicable): 25
- 5 I have previously been in a civil union—
- Date of previous civil union:
- Place of previous civil union:
- How civil union ended:
- Date and place of dissolution (if applicable): 30
- 6 *For this paragraph select the statement that applies.*
- Statement A*
- My mother/father/parents* live in New Zealand.

Statutes Amendment Bill (No 2)

Form 5—*continued*

My mother's/father's/parents'* address is:

*Select one.

Statement B

Neither of my parents live in New Zealand.

The name and address of a relative/friend* in New Zealand
who has known me over a period of time is:

5

*Select one.

Date:

Signature of applicant:

Legislative history

22 February 2011
12 April 2011

Introduction (Bill 271–1)
First reading and referral to Government
Administration Committee
