

FINANCE BILL (NO. 4)

EXPLANATORY NOTE

Clause 1 relates to the Bill's Short Title and commencement. Except as otherwise provided, the provisions of the Bill come into force on the day on which it receives the Royal assent.

Clause 2 provides that the Bill binds the Crown.

PART I

SUBSTANTIVE PROVISIONS

Confirmation and Validation of Subordinate Legislation

Clauses 3 to 7 are to the same effect as *clauses 32 to 36* of the Finance Bill (No. 3) at present before the Commerce and Marketing Select Committee. They validate and confirm certain subordinate legislation that will lapse at the close of the present session of Parliament unless validated and confirmed by Act before that close.

Clause 3 relates to regulations under the Primary Products Marketing Act 1953.

Clause 4 relates to an order under the War Pensions Act 1954.

Clause 5 relates to an order under the Social Security Act 1964.

Clause 6 relates to orders under the Customs Act 1966.

Clause 7 relates to orders under the Tariff Act 1988.

Clause 8 relates to the Dairy Factory Supply Regulations 1989. These regulations are made under the Agriculture (Emergency Powers) Act 1934, and will therefore lapse unless confirmed before the end of the present session of Parliament.

It was originally proposed to confirm these regulations; and the Finance Bill (No. 3) contains a provision (*clause 31*) confirming them. Since that Bill was introduced, however, it has become apparent that the regulations may have an unintended result.

Briefly, the regulations were intended to revoke some very elderly regulations relating to dairy factory supply, but preserve for 3 years the effect of one provision of those regulations requiring dairy farmers to continue supplying a particular dairy factory in certain circumstances (in particular, where factories

have amalgamated). The new regulations use language that differs from that used in the old regulations; and it has been suggested that this different language may produce a different result, and thus alter the rights and obligations of the parties involved in certain recent amalgamations.

Accordingly, *clause 8* does not confirm the new regulations, but instead revokes both the old regulations and the new regulations and replaces them with provisions intended to return the matter of continuity of factory supply to the footing it was on before the old regulations were revoked.

Clause 9 consequentially repeals certain enactments, and saves a validation made by one of them.

Other Provisions

Clause 10 relates to the forms of infringement notice specified in the Transport (Infringement Offences Notices) Regulations 1987. Because the forms of notice prescribed by those regulations do not refer to the reminder notices required by the Summary Proceedings Act 1957 to be sent out before proceedings may be commenced under a notice, it is possible that the forms may be found to be unlawful.

Subclause (1) validates the forms and all notices issued in any of the forms.

Subclause (2) protects the rights of the parties to proceedings commenced under the Summary Proceedings Act 1957 before the date of coming into force of the Act and not finally disposed of before that date.

Clause 11 validates certain consents given to importers under section 53 of the Customs Act by employees of the Customs Department. Consents under that section can be given only by employees who are "Collectors" or have a formal delegation from a Collector; and in some cases there is doubt that employees who gave consents had the necessary formal delegation. The effect of the validation is that goods entered by importers under the doubtful consents were properly entered.

PART II

AMENDMENTS TO OTHER ENACTMENTS

Carriage by Air

Clause 13 puts back the commencement of the Carriage by Air Amendment Act 1990 from 1 September 1990 to a day to be appointed by Order in Council.

Customs

Clause 15 makes it clear that the repeal by section 18 of the Tariff Act 1988 of section 5 of the Customs Amendment Act 1981 did not affect the Ninth Schedule to the Customs Act 1966 (which was inserted by the repealed section).

Clause 16, which is deemed to have come into force on budget night, amends section 11 of the Customs Amendment Act 1990, which provides for refunds of duty on imported motor vehicles still in the possession of the importer or a licensed motor vehicle dealer as at 24 July 1990. That section provides for refunds only where the importer is a person approved under the deferred payments system, and the vehicle was imported and entered on or after 1 April 1990.

The amendment removes altogether the requirement for the importer to be approved under the deferred payments system, and provides for refunds for vehicles imported and entered on or after 1 April 1989.

Education

Clause 18 relates to the operation of colleges of education, and specialist institutions (all of which are now polytechnics), during the period (before 1 January 1991) when not all the provisions of Part XV of the Education Act 1989 are in force. The clause revives certain provisions of the Education Act 1964 (relating to teachers colleges and specialist institutions) repealed on 23 July 1990, and repeals them again with effect from 1 January 1991.

Harbours

Clause 20 extends by one year the period for which the existing members of the Marlborough Harbour Board are continued in office.

Section 5 of the Harbours Amendment Act 1989 provides that, unless those existing members sooner vacate office, they continue to hold office until the close of 30 September 1990.

That section, as amended by this clause, will provide that the extended term of those existing members will end with the close of 30 September 1991.

Port Companies

Clauses 22 to 31 reproduce, without amendment, *clauses 107 to 116* of the Finance Bill (No. 3).

Clause 22 defines the terms "local authority trading enterprise", "regional council", and "territorial authority". It also provides that a reference in the principal Act to a Harbour Board includes a reference to a regional council or territorial authority to which the property, rights, liabilities, functions, duties, and powers of a Harbour Board have been transferred.

Clause 23 inserts a new provision relating to the functions, duties, and powers of regional councils and territorial authorities under the principal Act in their capacities as successors to Harbour Boards.

The functions and powers are to be determined by agreement, and failing agreement then by the Local Government Commission. Duties are to be similarly allocated except that duties in respect of property rights or liabilities that are vested solely in one local authority are to be performed by that local authority.

Clause 24 repeals the present section 7 but effectively preserves the present section 7 (5) which empowers local authorities to hold equity securities in port companies. The repeal of section 7 removes the requirement that the articles of a port company must provide for a class of shares that carry 51 percent of the voting rights and can be held only by Harbour Boards and local authorities.

Clause 25 inserts a *new section 7A* into the principal Act. This requires port companies to arrange for the removal from their memorandum of association and articles of association of provisions that comply with the present section 7 and submit amendments to that effect to the Minister by 1 December 1990.

If a port company does not do so, the Minister may make the necessary amendments.

Clause 26 allows for the exclusion in relation to a port company of the special requirements of the principal Act as to approval of memorandum and articles, principal objectives, directorships, statements of corporate intent, reporting, non-commercial activities, and audit, and for the exclusion of section 20 in relation to related and associated companies where the Minister is satisfied that at least 50 percent of the equity securities of the port company are no longer held by or on behalf of local authorities.

Clause 27 limits the cases where a local authority can require a port company to provide goods or services to those cases where the local authority is exercising the functions, duties, or powers of a former Harbour Board. The effect of the provision is to ensure that section 18 of the principal Act is not broadened in its effect by the recent local government reforms.

Clause 28 ensures that companies (such as airport companies or abattoirs) that have common shareholding with port companies are not subject to the provisions of the Port Companies Act 1988.

Clause 29 is a special provision affecting the Taranaki Harbours Board and its successor regional council and territorial authorities.

Ordinarily, a port company is required by the port company plan to issue debt securities to its Harbour Board (or successor local authorities) to enable the successor local authorities to meet the liabilities they have that relate to port-related commercial undertakings transferred to that port company. This is because, unless all parties (including creditors) agree otherwise, when a port-related commercial undertaking is transferred to a port company the related liabilities remain with the Harbour Board or its successors. In the case of Taranaki, the liabilities will be those of the successor local authorities, but the port company will not be obliged to create sufficient debt securities to meet the liabilities in full.

Clause 30 repeals a provision in the Harbours Act 1950 that empowers a Harbour Board to guarantee any debt or obligation of a port company. Now that local authorities have replaced Harbour Boards this change is proposed in order to create a similar situation to that which exists in respect of local authority trading enterprises. Section 594ZP of the Local Government Act 1974 prohibits local authorities from guaranteeing the obligations of a local authority trading enterprise.

Existing guarantees are not affected.

Clause 31 amends the Commerce Act 1986 in 2 respects.

The first amendment makes it clear that the exemption from Part II of the Commerce Act 1986 (relating to restrictive trade practices) in respect of carriage of goods by sea to or from New Zealand does not apply to practices relating to the carriage of goods to or from a ship or the loading or unloading of a ship.

The second amendment includes, in the First Schedule to the Commerce Act 1986, in the classes of mergers and takeovers requiring Commerce Commission approval, mergers or takeovers, by persons engaged in the provision of fixed facilities at any port, of any similar facilities at that or any other port. Pilotage, towage, stevedoring services, and the provision of readily moveable cargo handling equipment are excluded.

The First Schedule to the Commerce Act 1986 is repealed on 1 January 1991 by section 44 of the Commerce Amendment Act 1990. With effect from that date, the existing system requiring prior clearances or authorisations of merger or takeover proposals will be replaced with a system of voluntary notification.

Shipping and Seamen

Clauses 33 to 35, which come into force on 15 September 1990, amend the Shipping and Seamen Act 1952, and reproduce, with two amendments, *clauses 125 to 127* of the Finance Bill (No. 3). Those clauses were to have come into force on 1 September 1990 and did not contain, in relation to marine safety charges, an exemption for pleasure yachts.

The clauses repeal the provisions that impose liability for coastal light dues, and substitute provisions empowering the making of regulations imposing marine safety charges.

The principal changes are—

- (a) The power to impose the charges not only on ships entering any port in New Zealand but also on ships operating in New Zealand waters:
- (b) The wider range of services covered by the charges, which now include matters such as coastal distress radio:
- (c) The omission of the provisions of section 375 of the Shipping and Seamen Act 1952 which exempt certain ships and which impose restrictions on the distraint of cargo and the detention of certain ships.

Ships specifically exempted under section 375 of the Shipping and Seamen Act 1952 at present comprise—

- (a) Her Majesty's ships:
- (b) Ships of or in the service of the naval, military, or air forces of the Government of any Commonwealth country or foreign country:
- (c) Ships carrying mails under any contract made with the Postmaster-General, in any case where it is provided by the terms of the contract that those ships shall not be so liable:
- (d) Ships, not being factory or depot ships, engaged solely in whaling or sealing:
- (e) Missionary ships:
- (f) Pleasure yachts of less than 70 feet register length:
- (g) Ships employed solely for scientific, marine surveying, or exploration purposes:
- (h) Ships, other than tugs or pleasure yachts, when navigated wholly and *bona fide* in ballast, on which no freight is earned and no passenger is carried:
- (i) Ships putting in for any of the following reasons:
 - (i) To take on fuel, stores, provisions, or water solely for use on board; or
 - (ii) From stress of weather or for the purpose of repairing or because of damage.

With the exception of an exemption for pleasure yachts (which is the one amendment of the Finance Bill (No. 3) provisions) exemptions are, under the proposed new sections, to be specified in regulations and not in the Act.

Transit New Zealand

Clause 37 has 3 effects. First, it clarifies the provisions of section 20 of the principal Act specifying certain payments that may not be made after 30 June 1991.

Secondly, it extends from 30 June 1991 to 30 June 1994 the period during which payments may be made to a local authority trading enterprise in which a regional council holds equity or debt securities.

Thirdly, it requires standard fare systems and special group fare systems to be subject to the competitive pricing system.

Clause 38 requires district and regional councils to include in the list (in their land transport programmes) of priority projects all projects the programme recommends the Authority or the Secretary to undertake.

Clause 39 inserts a reference to the Public Works Act 1981 in the definition in section 43 (1) of the principal Act of the term "road".

Transport Services Licensing

Clause 40 exempts holders (on 31 December 1991) of relevant transport services licences from the requirement to have a certificate of knowledge of the laws and practices of transport operations.

Clause 41 has 2 effects. First, it empowers the Secretary to extend the currency of identification cards for up to 12 months to enable co-ordination of documentation relating to licences. Secondly, it empowers the Secretary to grant exemptions from the requirement to have an identification card.

Clause 42 excludes ambulance services from the definition of "passenger service", and specifies additional matters that may be included in a regional passenger transport plan.

Clause 43 extends the requirement to notify details of passenger services so as to apply to all operators, and provides that notices under section 56 of the principal Act given by operators of small passenger vehicle services are adequate notices for the purposes of section 48 of the principal Act.

Clause 44 rectifies a drafting error in section 49 (1) of the principal Act.

Clause 45 makes clear that the question of whether or not registration of a service will have a "material adverse effect" on the viability of another service is a matter for the judgment of the regional council concerned, and also makes clear that regional councils may enter into contracts for services included in their regional passenger transport plans.

Clause 46 closes a gap in section 55 of the principal Act that would have allowed registered services to be abandoned between 1 February 1991 and 1 July 1991 without the consent of regional councils. Consent will now be required.

Clause 47 excludes ambulance services from the requirement, in section 56 (1) of the principal Act, that operators of small passenger vehicle services notify details of their operations.

United Nations

Clause 50 increases the maximum fines that may be imposed for offences against regulations made under the United Nations Act 1946.

Regulations may be made under that Act to enable New Zealand to fulfil the obligations undertaken by it under Article 41 of the Charter of the United Nations.

The maximum fine that may be imposed on an individual is to be increased from \$200 to \$10,000 and the maximum fine that may be imposed on a company or other corporation is to be increased from \$2,000 to \$100,000.

The existing penalties were set when the principal Act was passed in 1946. Those penalties include, in the case of an individual, imprisonment for a term not exceeding 12 months.

Hon. Peter Neilson

FINANCE (NO. 4)

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A BILL INTITULED

An Act to make provision with respect to public finances and other matters

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

1. Short Title and commencement—(1) This Act may be cited as the Finance Act (No. 4) 1990. 5

(2) Except as provided in sections 8 (6), 16 (2) 18 (3), 18 (4), 31 (3), and 32 (2) of this Act, this Act shall come into force on the day on which it receives the Royal assent.

2. Act binds the Crown—This Act binds the Crown. 10

PART I

SUBSTANTIVE PROVISIONS

Confirmation and Validation of Subordinate Legislation

3. Regulations under Primary Products Marketing Act 1953—The Berryfruit Marketing Licensing Regulations 1983, Amendment No. 4 are hereby confirmed. 15

4. Order under War Pensions Act 1954—The War Pensions (Rates of Pensions and Allowances) Order 1990 is hereby validated and confirmed.

5. Order under Social Security Act 1964—The Social Security (Rates of Benefits) Order 1990 is hereby validated and confirmed. 20

6. Orders under Customs Act 1966—The following Orders in Council are hereby confirmed:

- (a) The Excise Duty (Alcoholic Beverages Indexation) Amendment Order 1989:
- 5 (b) The Excise Duty (Tobacco Products Indexation) Amendment Order 1990:
- (c) The Excise Duty (Alcoholic Beverages Indexation) Amendment Order 1990.

7. Orders under Tariff Act 1988—The following Orders in Council are hereby validated and confirmed:

- (a) The Tariff Concessions (Baggage and Effects Accompanying Passengers) Amendment Order 1989:
- (b) The Tariff (Alcoholic Beverages Indexation) Amendment Order 1989:
- 15 (c) The Tariff (Miscellaneous) Amendment Order (No. 4) 1989:
- (d) The Tariff (Tobacco Products Indexation) Amendment Order 1990:
- (e) The Tariff (Miscellaneous) Amendment Order 1990:
- 20 (f) The Tariff (Float Glass) Amendment Order 1990:
- (g) The Tariff (Alcoholic Beverages Indexation) Amendment Order 1990:
- (h) The Tariff (Miscellaneous) Amendment Order (No. 2) 1990.

8. Protection of dairy factory supply in certain cases—

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

“Manufacturing dairy” means premises—

- (a) Used or intended to be used for manufacture of milk, cream, butter, cheese, or any other product of milk or cream;
- 30 (b) Registered under the Dairy Industry Regulations 1977 as a dairy factory; and
- (c) In respect of which a licence under the Dairy Factories (Licensing) Regulations 1936 to use premises as a dairy factory is held:
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“Supplying dairy”, in relation to a manufacturing dairy, includes another manufacturing dairy that supplies milk or cream to the manufacturing dairy.

(2) Where at any time after the 31st day of December 1986 any person, being the occupier of a supply dairy, supplied milk or cream produced in the occupier’s dairy to the owner or manager of any manufacturing dairy, and the owner of that

manufacturing dairy, after the 31st day of December 1986 and before the 1st day of February 1990,—

- (a) Ceased to purchase milk or cream produced in supplying dairies by reason of having disposed of the business of that manufacturing dairy to the owner of any other manufacturing dairy, or to the owners of 2 or more manufacturing dairies; or 5
- (b) Refused to continue to purchase milk or cream produced by the said occupier in the occupier's dairy—
the provisions of subsection (3) of this section shall apply. 10
- (3) In any such case—
- (a) If the business aforesaid was acquired by the owner of 1 such manufacturing dairy, the said occupier shall not, at any time after receipt of a notice in writing signed by that owner and before the 1st day of July next following the expiration of 3 years from the date of the acquisition, supply any milk or cream produced in the said supplying dairy during the period aforesaid to the owner or manager of any manufacturing dairy other than the manufacturing dairy acquiring the business aforesaid: 15 20
- (b) If the business aforesaid was acquired by the owners of 2 or more such manufacturing dairies, the said occupier shall not, at any time after receipt of a notice in writing signed by those owners and before the 1st day of July next following the expiration of 3 years from the date of the acquisition, supply any milk or cream produced in the said supplying dairy during the period aforesaid to the owner or manager of any manufacturing dairy other than the manufacturing dairy specified in that behalf in the notice: 25 30
- (c) If in refusing to continue to purchase milk or cream produced by the said occupier in the occupier's dairy the owner of the manufacturing dairy was acting in pursuance of any order or determination of the New Zealand Dairy Board (established by section 3 (1) of the Dairy Board Act 1961) made under the Dairy Factory Supply Regulations 1936, or in pursuance of an agreement in writing in that behalf made with the owner of another manufacturing dairy, the said occupier shall not at any time after the receipt of a notice in writing signed by the said Board or (as the case may require) by 1 or other of those owners (being the parties to any such agreement), and before the 1st day of July next following the expiration of 3 35 40 45

5 years from the date on which the order, determination, or agreement is expressed to take effect, supply any milk or cream produced in the said supplying dairy during the period aforesaid to the owner or manager of any manufacturing dairy other than the manufacturing dairy specified in that behalf in the notice:

10 (d) No owner or manager of any manufacturing dairy, other than the owner or manager of the manufacturing dairy to whom the said occupier is entitled under paragraph (a), paragraph (b), or paragraph (c) of this subsection to supply milk or cream produced in the said supplying dairy, shall during the period aforesaid collect, receive, or purchase any milk or cream
15 produced by the said occupier in the said supplying dairy.

(4) Notwithstanding subsection (6) of this section, for the purpose only of ascertaining and giving effect to the relationship (if any) between this section and the Co-operative Dairy Companies Act 1949, this section and that Act shall be
20 interpreted as if this section were already in force when that Act came into force.

(5) The following regulations are hereby revoked:

- 25 (a) The Dairy Factory Supply Regulations 1936:
(b) The Dairy Factory Supply Regulations 1936, Amendment No. 1:
(c) The Dairy Factory Supply Regulations 1936, Amendment No. 2:
30 (d) The Dairy Factory Supply Regulations 1936, Amendment No. 3:
(e) The Dairy Factory Supply Regulations 1936, Amendment No. 4:
(f) The Dairy Factory Supply Regulations 1936, Amendment No. 5:
35 (g) The Dairy Factory Supply Regulations 1936, Amendment No. 6:
(h) The Dairy Factory Supply Regulations 1936, Amendment No. 7:
(i) The Dairy Factory Supply Regulations 1936, Amendment
40 No. 8:

(j) The Dairy Factory Supply Regulations 1989.

(6) Subsections (1) to (5) of this section shall be deemed to have come into force on the 1st day of February 1990.

9. Repeals and savings—(1) The following enactments are hereby repealed:

- (a) The Tariff Amendment Orders Confirmation Act 1989;
- (b) Part II of the Finance Act (No. 2) 1989;
- (c) The Subordinate Legislation (Confirmation and Validation) Act 1989.

(2) The repeal by **subsection (1)** of this section of section 7 of the Subordinate Legislation (Confirmation and Validation) Act 1989 does not affect—

- (a) The validity of the notices specified in the Schedule to that Act; or
- (b) The rights referred to in section 7 (2) of that Act.

Other Provisions

10. Transport infringement notices—(1) Subject to **subsection (2)** of this section,—

- (a) The forms of notice prescribed in the Schedules to the Transport (Infringement Offences Notices) Regulations 1987; and
- (b) All notices issued after the commencement of those regulations in, or in reasonable compliance with, any of those forms,—

are hereby deemed to be, and always to have been, as valid and effectual as they would be if they complied in all respects with the provisions of section 42A of the Transport Act 1962.

(2) The rights of the parties in any proceedings commenced under the Summary Proceedings Act 1957 before the date on which this Act comes into force and not finally determined before that date shall be determined and given effect to as if **subsection (1)** of this section had not been enacted.

11. Validity of consents of officers of Customs in relation to entry of certain goods—(1) This section applies to every consent purportedly given by any officer of Customs (within the meaning of the Customs Act 1966) under section 53 of that Act during the period commencing on the 1st day of October 1986 and ending with the close of the day before the day on which this Act receives the Royal assent.

(2) For the avoidance of doubt, it is hereby declared that every consent to which this section applies is, and always has been, as valid and effectual as if the power to give it had been lawfully delegated (under section 9 (2A) of the Customs Act 1966) to the officer who purported to give it.

PART II
AMENDMENTS TO OTHER ENACTMENTS

Carriage by Air

- 5 **12. Sections to be read with Carriage by Air Act 1967—**
This section and section 13 of this Act shall be read together with
and deemed part of the Carriage by Air Act 1967*.

*1990, No. 102

- 10 **13. Commencement of Carriage by Air Amendment
Act 1990—**Section 1 of the Carriage by Air Amendment Act
1990 is hereby amended by repealing subsection (2), and
substituting the following subsection:

“(2) This Act shall come into force on a date to be appointed
for the commencement thereof by the Governor-General by
Order in Council.”

Customs

- 15 **14. Sections to be read with Customs Act 1966—**This
section and sections 15 and 16 of this Act shall be read together
with and deemed part of the Customs Act 1966*.

*R.S. Vol. 2, p. 57

Amendments: 1979, No. 7; 1981, No. 20; 1982, No. 112; 1982, No. 126; 1985, No. 131;
1986, No. 44; 1987, No. 63; 1987, No. 75; 1987, No. 89, 1987, No. 128; 1988, No. 17;
1988, No. 127; 1988, No. 182; 1989, No. 47; 1990, No. 89

- 20 **15. Ninth Schedule to Customs Act 1966—**For the
avoidance of doubt, it is hereby declared that the repeal (by
section 18 (2) of the Tariff Act 1988) of subsection (3) of section
5 of the Customs Amendment Act 1981 did not repeal or affect
the Ninth Schedule to the Customs Act 1966 (as added by that
subsection).

- 25 **16. Refund of duty on imported motor vehicles—**
(1) Section 11 (1) of the Customs Amendment Act 1990 is
hereby amended—

- 30 (a) By omitting from paragraph (a) the expression “1st day of
April 1990”, and substituting the expression “1st day
of April 1989”;
(b) By repealing paragraph (b).
(2) **Subsection (1)** of this section shall be deemed to have come
into force on the 25th day of July 1990.

Education

17. Sections to be read with Education Act 1989—This section and **section 18** of this Act shall be read together with and deemed part of the Education Act 1989*.

*1989, No. 80

Amendments: 1989, No. 156; 1990, No. 60

18. Transitional operation of colleges of education and specialist institutions—(1) The Sixth Schedule to the Education Amendment Act 1990 is hereby amended— 5

- (a) By omitting from the item relating to the Education Act 1964 the expression “67A to 67S, 67T to 69A”; and
- (b) By omitting from the item relating to the Education Amendment Act (No. 2) 1974 the expression “9,”. 10

(2) The following enactments are hereby repealed:

- (a) Section 67A to 67S, and 67T to 69A, of the Education Act 1964:
- (b) Section 10 of the Education Amendment Act 1968: 15
- (c) Sections 2 (1) and 9 of the Education Amendment Act (No. 2) 1974:
- (d) Section 4 (2) of the Education Amendment Act 1975:
- (e) Section 9 of the Education Amendment Act 1976:
- (f) So much of Third Schedule to the Public Finance Act 1977 20 as relates to section 67O of the Education Act 1964:
- (g) Sections 2 and 3 of the Education Amendment Act 1981:
- (h) Sections 7 to 9 of the Education Amendment Act 1983:
- (i) Sections 6 and 7 of the Education Amendment Act (No. 2) 1987: 25
- (j) So much of the Ninth Schedule to the Education Act 1989 as relates to any of sections 67A, 67B (1), 67E (2), and 67N (2) of the Education Act 1964.

(3) **Subsection (1)** of this section shall be deemed to have come into force on the commencement of section 50 (5) of the principal Act. 30

(4) **Subsection (2)** of this section shall come into force on the 1st day of January 1991.

Harbours

19. Sections to be read with Harbours Act 1950—This section and **section 20** of this Act shall be read together with and deemed part of the Harbours Act 1950*. 35

*R.S. Vol. 2, p. 551

Amendments: 1980, No. 54; 1981, No. 72; 1983, No. 6; 1988, No. 63; 1988, No. 92; 1988, No. 102; 1988, No. 132; 1988, No. 188; 1989, No. 71

20. Continuation in office of existing members of Marlborough Harbour Board—The Harbours Amendment

Act 1989 is hereby amended by omitting the expression “1990” wherever it appears in sections 3, 5, and 6 (1), and substituting in each case the expression “1991”.

Port Companies

5 **21. Sections to be read with Port Companies Act 1988**—This section and sections 22 to 31 of this Act shall be read together with and deemed part of the Port Companies Act 1988* (in those sections referred to as the principal Act).

*1988, No. 91

10 **22. Interpretation**—(1) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “liabilities”, the following definition:

“‘Local authority trading enterprise’ means a local authority trading enterprise within the meaning of section 594B of the Local Government Act 1974.”

15 (2) Section 2 of the principal Act is hereby further amended by inserting, after the definition of the term “property”, the following definition:

“‘Regional council’ means a regional council within the meaning of the Local Government Act 1974.”

20 (3) Section 2 of the principal Act is hereby further amended by adding the following definition:

“‘Territorial authority’ means a territorial authority within the meaning of the Local Government Act 1974.”

25 (4) Section 2 of the principal Act is hereby further amended by adding, as subsection (2), the following subsection:

30 “(2) Every reference in this Act to the expression ‘Harbour Board’ shall be construed as including a reference to a regional council or a territorial authority to which any property, rights, liabilities, functions, duties, or powers of a Harbour Board have been transferred pursuant to any Order in Council made under section 36 of the Local Government Act 1974.”

35 **23. Special provisions where more than one regional council or territorial authority succeeds Harbour Board**—The principal Act is hereby amended by inserting, after section 2, the following section:

40 “2A. (1) Where any functions and powers of a Harbour Board have been transferred to more than one regional council or territorial authority pursuant to an Order in Council made under section 36 of the Local Government Act 1974, the regional councils and territorial authorities shall determine by

agreement between them which of them is to have the functions and powers of the Harbour Board under this Act.

“(2) Where any duties of a Harbour Board have been transferred to more than one regional council or territorial authority pursuant to an Order in Council made under section 36 of the Local Government Act 1974, then, except as provided in subsection (3) of this section, every duty of a Harbour Board under this Act shall be the duty of each of the regional councils and territorial authorities; but the regional councils and territorial authorities may determine by agreement between them which of them is to perform the duty.”

“(3) Where any property, rights, or liabilities of a Harbour Board are vested in a regional council or territorial authority (or any combination of them) pursuant to any Order in Council made under section 36 of the Local Government Act 1974, every duty of the Harbour Board under this Act in respect of that property, right, or liability shall be the duty of the regional council or territorial authority (or combination of them) concerned.”

“(4) Where regional councils and territorial authorities are unable to reach any agreement pursuant to subsection (1) or subsection (2) of this section, any of them may refer the matter to the Local Government Commission for determination.”

24. Shareholding of port companies—The principal Act is hereby amended by repealing section 7, and substituting the following section:

“7. (1) Harbour Boards, regional councils, and territorial authorities are hereby authorised to subscribe for, otherwise acquire, hold, or dispose of, equity securities in port companies.

“(2) Nothing in subsection (1) of this section limits or prevents any other person from subscribing for, otherwise acquiring, holding, or disposing of, equity securities in port companies.”

25. Removal of restrictions on holding of equity securities—The principal Act is hereby amended by inserting, after section 7 (as substituted by section 24 of this Act), the following section:

“7A. (1) Every port company that has in its memorandum of association or articles of association any provision providing for the class of shares referred to in subsection (1) of section 7 of this Act (as repealed by section 24 of the Finance Act (No. 4) 1990), or any provisions permitted by subsection (2) of that section (as so repealed), shall ensure that those provisions and all related provisions are removed from the memorandum of

association or articles of association and submit alterations to that effect to the Minister before the 1st day of December 1990 for approval before their adoption.

5 “(2) Where a port company does not comply with **subsection (1)** of this section, the Minister may, in accordance with this section, make such alterations to the memorandum of association and articles of association of the port company as the Minister considers appropriate in order to achieve the purpose of **subsection (1)** of this section.

10 “(3) The Minister shall give notice of all alterations to the port company and to every holder of equity securities in the company at the address of that person as shown in the share register of the company or otherwise known to the Minister.

15 “(4) The Minister shall specify a date, which shall be not earlier than 14 days after the sending of the last of the notices referred to in **subsection (3)** of this section, on which those alterations shall take effect.

20 “(5) Every alteration shall have effect as if it was an alteration to the memorandum of association or articles of association made in accordance with the Companies Act 1955 and, for the purposes of that Act, the notice of the alteration given to the port company by the Minister under **subsection (3)** of this section shall be deemed to be a special resolution of the port company concerned made on the date on which the last of the notices was sent under that subsection.

25 “(6) The Minister may decline to act under **subsection (2)** of this section if the Minister is satisfied that the memorandum of association or articles of association of the port company are likely to be altered within a reasonable time so as to achieve the purpose of **subsection (1)** of this section.”

26. Power of Minister to direct certain provisions not to apply—The principal Act is hereby amended by repealing section 14, and substituting the following section:

35 “14. (1) In any case where the Minister is satisfied that, on and from a specified date, at least 50 percent of the equity securities of the port company that confer rights to vote at a general meeting of the company will be held or beneficially owned by persons other than Harbour Boards, regional councils, territorial authorities, or local authority trading enterprises, or a combination of them, the Minister may, by notice in the *Gazette*, direct that—

40 “(a) Unless the port company otherwise elects, all of sections 4 (2), 5, 6, 8 to 12, 16, 18, and 19 of this Act are not

to apply in respect of that port company from that date; and

“(b) Unless the company concerned otherwise elects, section 20 of this Act shall not apply to—

“(i) A company that is a related company to the port company; or

“(ii) A company that consists substantially of the same shareholders as the port company, or is under the control of the same persons,—

and any such direction may contain such transitional provisions as the Minister thinks fit.

“(2) In any case where not more than 49 percent of the equity securities of a port company that confer rights to vote at a general meeting of the port company are held or beneficially owned by persons other than Harbour Boards, regional councils, territorial authorities, or local authority trading enterprises, or a combination of them, the Minister may, by notice in the *Gazette*,—

“(a) Direct that the port company need not prepare a statement of corporate intent under sections 8 and 9 of this Act; and

“(b) Inform the company that it may regard its current statement of corporate intent as ceasing to be of continuing effect.

“(3) Any direction under this section may be revoked at any time by the Minister, by notice in the *Gazette*, if the Minister is satisfied that the circumstances that led to the giving of the direction no longer exist.”

27. Non-commercial activities—Section 18 of the principal Act is hereby amended by adding the following subsection:

“(3) This section applies to a Harbour Board that is a regional council or a territorial authority only in relation to statutory functions, duties, or powers transferred from a Harbour Board specified in the First Schedule to this Act to that regional council or territorial authority pursuant to an Order in Council made under section 36 of the Local Government Act 1974.”

28. Application of principal Act to related and associated companies—The principal Act is hereby amended by repealing section 20, and substituting the following section:

“20. (1) Subject to subsection (2) of this section, sections 4 (except subsections (1), (3), (6), and (7)), 5, 6, 7, 15, and 18 of this Act shall apply to every company that is—

“(a) A related company (as defined in section 2 (5) of the Companies Act 1955) to a port company; or

5 “(b) A company that consists substantially of the same shareholders as the port company, or is under the control of the same persons—

as if that company were a port company within the meaning of this Act.

10 “(2) Nothing in subsection (1) of this section applies in relation to a company that the Minister notifies in writing is exempt from the provisions of that subsection.

15 “(3) The Minister shall not exempt a company from the application of subsection (1) of this section unless the Minister is satisfied that the company does not carry on activities that if carried on by a Harbour Board would constitute a port-related commercial undertaking or would otherwise be likely to be carried on by a port company.”

29. Liabilities in respect of port-related commercial undertakings—Section 29 of the principal Act is hereby amended by adding the following subsection:

20 “(5) The Minister may, by notice in the *Gazette*, direct that the port company plan of the Taranaki Harbours Board, or the Taranaki Regional Council or any territorial authority as the successor to the obligations of that Board, as the case may be, to the extent specified in the notice, is not required to comply
25 with the requirements of subsection (4) of this section. Any such direction shall have effect according to its tenor.”

30. Amendment to Harbours Act 1950—(1) Section 49A of the Harbours Act 1950 (as substituted by section 4 of the Harbours Amendment Act (No. 2) 1988) is hereby amended by
30 repealing subsection (2).

(2) The repeal of section 49A (2) of the Harbours Act 1950 by subsection (1) of this section does not affect the validity of, or the rights or obligations of any person under or in respect of, any guarantee entered into before the coming into force of this Act.

35 **31. Amendments to Commerce Act 1986**—(1) Section 44 of the Commerce Act 1986 is hereby amended by adding the following subsection:

40 “(3) For the purposes of subsection (2) of this section, a provision of a contract, arrangement, or understanding is not a provision exclusively for the carriage of goods by sea if it relates to the carriage of goods to or from a ship or the loading or unloading of a ship.”

(2) The First Schedule to the Commerce Act 1986 (as amended by section 83 of the Broadcasting Act 1989) is hereby amended by adding to Class B the following item:

<p>“The provision at any port of facilities for the navigation, berthing, protection, loading, or unloading of ships engaged in coastal or international trade but not including pilotage, towage, cargo-handling plant that is readily capable of being moved to another port, or stevedoring services.</p>	<p>“The provision at any port of facilities for the navigation, berthing, protection, loading, or unloading of ships engaged in coastal or international trade but not including pilotage, towage, cargo-handling plant that is readily capable of being moved to another port, or stevedoring services.”</p>	<p>5 10</p>
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(3) **Subsection (2)** of this section shall expire with the close of the 31st day of December 1990. 15

Shipping and Seamen

32. Sections to be read with Shipping and Seamen Act 1952—(1) This section and sections 33 to 35 of this Act shall be read together with and deemed part of the Shipping and Seamen Act 1952* (in those sections referred to as the principal Act). 20

(2) This section and sections 33 to 35 of this Act shall come into force on the 15th day of September 1990.

**R.S. Vol. 4, p. 275

Amendments: 1985, No. 49; 1987, No. 184; 1988, No. 118; 1988, No. 211

33. New sections substituted—The principal Act is hereby amended by repealing sections 375 to 378 and the heading above section 375, and substituting the following heading and sections: 25

“Marine Safety Charges

“375. **Marine safety charges**—(1) The Governor-General may from time to time, by Order in Council, make regulations providing for the payment of marine safety charges in respect of ships entering any port in New Zealand or operating in New Zealand waters and prescribing the amounts of those charges. 30

“(2) The purpose of marine safety charges is to provide funding to enable the provision of— 35

“(a) Lighthouses and buoys, beacons, and other shore-based aids to marine navigation to which section 113 of the Harbours Act 1950 does not apply; and

“(b) Coastal distress radio; and

“(c) Other services related to the safety of shipping. 40

“(3) Any such regulations may—

5 “(a) Specify the persons by whom the marine safety charges are payable including (without limitation) all or any of the master, owner, charterer, person responsible for the management of the ship, or any agent of any of those persons who by law or by contract is liable to pay any other charge on account of the ship:

10 “(b) Prescribe different marine safety charges for different classes of ship based on length, tonnage, equipment available for use on board the ship, or such other criteria as may be specified in the regulations:

15 “(c) Provide for the refund or waiver of any marine safety charge in whole or in part, in any specified case or class of cases:

20 “(d) Provide that the marine safety charges are payable on an annual or other regular basis in advance or otherwise, or on a per voyage basis at the option of either the Secretary or the person liable to pay the marine safety charges; provide for the changing of those options, and for the making of adjustments where an option is changed.

“(4) Nothing in this section limits the provisions of section 504 of this Act.

25 “376. **Exemptions from marine safety charges**—(1) All pleasure yachts are totally exempt from liability in respect of marine safety charges.

“(2) Regulations made under this Act may—

30 “(a) Exempt any ship or class or description of ship or any ship used for a purpose specified in the regulations from liability in respect of marine safety charges, either totally or partially, and subject to such conditions as may be imposed in the regulations:

“(b) Specify circumstances in which any ship or class or description of ship is exempt from liability in respect of marine safety charges, either totally or partially.

35 “377. **Power to appoint agents to collect marine safety charges**—(1) The Secretary may appoint any person or the holder for the time being of any office (whether or not within the Public Service) to be the agent of the Secretary for the purpose of collecting marine safety charges or any class of marine safety charges.

40 “(2) Any appointment under subsection (1) of this section may—

“(a) Provide for the payment of a fee by the Secretary for the collection of marine safety charges; or

“(b) Permit the agent to retain a specified proportion of the marine safety charges as a collection fee; or

“(c) Both.

“378. **Power of agent of ship, etc., to retain marine safety charges out of other money**—Any agent who by any regulations made under this Act is liable for the payment of marine safety charges in respect of any ship may, out of the money received by the agent on account of that ship or belonging to the owner thereof, retain the amount of all such charges paid by the agent, together with any reasonable expenses incurred by reason of the payment of the charges or the agent’s liability to pay the charges.

Cf. 1952, No. 49, s. 376 (1), (2)

“378A. **Recovery in certain cases where marine safety charges not paid**—(1) This section shall apply only where a marine safety charge is payable to the Secretary or the Collector of Customs at any port, and not where the charge is payable to any other person or any agent of the Secretary.

“(2) If the person liable to pay any marine safety charge in respect of any ship fails to do so on demand, and the charge is not paid by any other person, the Secretary or the Collector may, in addition to any other remedy, enter on the ship and distrain the cargo and any other property belonging to or on board the ship, and may detain that distress until that charge is paid.

“(3) If payment of that charge is not made within the period of 3 days next following the distress, the Secretary or the Collector may at any time during the continuance of the non-payment sell the cargo and other property distrained, and apply the proceeds in payment of that charge, together with all reasonable expenses incurred by the Secretary or the Collector under this section, paying the surplus (if any), on demand, to the owner or other person for the time being responsible for the management of the ship, or to the master of the ship.

Cf. 1952, No. 49, s. 377

“378B. **Obligation to issue receipt for marine safety charge**—Every person who receives any marine safety charge shall issue to the person paying the charge a receipt showing clearly the ship in respect of which the charge is paid and the period to which the charge relates.

Cf. 1952, No. 49, s. 378 (1); 1964, No. 127, s. 12

“378C. **Detention of ship where marine safety charges not paid or receipt not produced**—(1) Where, on demand

being made by any person for the payment of any marine safety charge,—

“(a) The charge is not paid; or

5 “(b) A receipt for the earlier payment of the charge is not produced,—

the Secretary or any Collector of Customs may detain the ship concerned until the charge is paid or the receipt is produced.

10 “(2) Where a ship is detained under **subsection (1)** of this section, the Crown, the Secretary, and the Collector of Customs or any person acting under their direction or authority under this section shall not be liable for any loss or damage arising directly or indirectly from the detention of the ship unless it is proved to the satisfaction of a Court that the person acted in bad faith.”

15 Cf. 1952, No. 49, s. 378 (2); 1964, No. 127, s. 12

34. Savings and transitional provisions—(1) Notwithstanding the repeal of sections 375 to 378 of the principal Act by **section 33** of this Act, the Coastal Light Dues Order 1988 (S.R. 1988/56) shall, subject to the exemptions specified in section 20 375 (2) of the principal Act, continue in force as if those sections had not been repealed; and may be revoked by regulations made under section 375 of the principal Act (as substituted by **section 33** of this Act).

25 (2) Until the Coastal Light Dues Order 1988 is revoked, coastal light dues shall continue to be payable under that order and sections 375 to 378 of the principal Act as if this Act had not been passed.

30 (3) Any dues paid in advance under clause 5 of the Coastal Light Dues Order 1988 for any ship in respect of any period commencing on or after the 1st day of April 1990 shall be deemed to be marine safety charges paid under regulations made under section 375 of the principal Act (as substituted by **section 33** of this Act) and the liability to pay marine safety charges in respect of that ship shall be adjusted accordingly.

35 **35. Consequential repeals**—The following enactments are hereby consequentially repealed:

(a) Section 64 of the Shipping and Seamen Amendment Act 1959:

40 (b) Sections 9 to 12 of the Shipping and Seamen Amendment Act 1964:

(c) Section 19 of the Shipping and Seamen Amendment Act 1968:

(d) Section 19 of the Shipping and Seamen Amendment Act 1987.

Transit New Zealand

36. Sections to be read with Transit New Zealand Act 1989—This section and sections 37 to 39 of this Act shall be read together with and deemed part of the Transit New Zealand Act 1989* (in those sections referred to as the principal Act).

*1989, No. 75

37. Expenditure subject to competitive pricing procedure—(1) Section 20 (2) of the principal Act is hereby amended by omitting the word “After”, and substituting the words “Notwithstanding subsection (1) of this section, after”.

(2) Section 20 (3) (b) of the principal Act is hereby amended by omitting the word “No”, and substituting the words “In the case of payments made or to be made after the 30th day of June 1994, no”.

(3) Section 20 (5) of the principal Act is hereby amended by repealing paragraphs (b) and (c).

38. Content of land transport programmes—Section 26 (1) of the principal Act is hereby amended by repealing paragraph (e), and substituting the following paragraph:

“(e) Include a single list of all projects—

“(i) That the Authority or the Secretary is recommended to undertake; or

“(ii) For which financial assistance is sought from the Authority,—
in order of the priority that the territorial authority, regional council or committee, submitting the programme thinks should be given to those projects:”.

39. Interpretation—Section 43 (1) of the principal Act is hereby amended by inserting in paragraph (c) of the definition of the term “road”, after the words “this Act”, the words “, the Public Works Act 1981,”.

Transport Services Licensing

40. Sections to be read with Transport Services Licensing Act 1989—This section and sections 41 to 48 of this Act shall be read together with and deemed part of the Transport Services Licensing Act 1989* (in those sections referred to as the principal Act).

*1989, No. 74

41. Certificate of knowledge of law and practice required for transport service operations—(1) Section 18 (1) of the principal Act is hereby amended by—

- 5 (a) Omitting the words “no person shall, on or after)); and
 (b) Repealing paragraphs (a) and (b),—
 and substituting the words “after the 31st day of December 1991, no person shall”.

(2) Section 18 (2) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

- 10 “(ab) On the 31st day of December 1991 the holder of the licence was the holder of a relevant transport service licence; or”.

42. Drivers of small passenger vehicles and vehicle recovery services to hold photographic identification card—(1) Section 19 (1) of the principal Act is hereby amended by omitting the word “No”, and substituting the words “Except in accordance with an exemption under subsection (2B) of this section, no”.

- 20 (2) Section 19 (2) (e) of the principal Act is hereby amended by omitting the word “Shall”, and substituting the words “subject to subsection (2A) of this section, shall”.

(3) Section 19 of the principal Act is hereby amended by inserting, after subsection (2), the following subsections:

- 25 “(2A) To enable the co-ordination of the documentation relating to the licence concerned, the Secretary may extend the currency of any driver identification card for any period (not exceeding 12 months) the Secretary thinks fit.

- 30 “(2B) Having regard to the nature of the service operated, the Secretary may exempt any driver, or drivers of any class or description, from the requirements of this section, unconditionally, or subject to any conditions the Secretary thinks fit.”

43. Interpretation—(1) Section 47 of the principal Act is hereby amended by repealing the definitions of the terms
 35 “passenger service” and “regional passenger transport plan”, and substituting the following definitions:

“ ‘Passenger service’,—

“(a) Subject to paragraph (b) of this definition, means—

- 40 “(i) Any passenger service within the meaning of section 2 (1) of this Act; and
 “(ii) Except in section 57 of this Act (other than to the extent specified in subsection (3) of

that section), any harbour ferry service, passenger rail service, cable car, hovercraft, monorail, tramway, or other form of public transport (other than air transport) that is available to the public generally: but

“(b) Does not include an ambulance service:

“‘Regional passenger transport plan’ means a plan (identified as a regional passenger transport plan)—

“(a) Prepared by a regional council in consultation with the territorial authorities of the districts in its region; and

“(b) Made available to the public; and

“(c) Specifying the passenger services the regional council proposes to be provided in its region, both generally and in respect of the transport disadvantaged.”.

(2) Section 47 of the principal Act is hereby amended by adding, as **subsection (2)**, the following subsection:

“(2) In addition to the matters described in **paragraph (b)** of the definition (in **subsection (1)** of this section) of the term “regional passenger transport plan, such a plan—

“(a) May specify the conditions of the services the regional council concerned proposes to be provided in its region; and

“(b) Without limiting the generality of **paragraph (a)** of this subsection, may specify all or any of the following matters:

“(i) Routes, capacity, frequency of service, and fare structure:

“(ii) Any special provisions for users of a specified class or description of the services or any of them; and

“(c) May specify any other matters the regional council thinks fit.”

44. Passenger services operated on or after 1 July 1991 to be notified to regional council—(1) Section 48 (1) of the principal Act is hereby amended by omitting the words “holder of a passenger service licence”, and substituting the word “person”.

(2) Section 48 of the principal Act is hereby amended by repealing subsections (2) and (3), and substituting the following subsections:

“(2) Except in the case of notices to which **section 56 (3A)** of this Act applies, no notice under this section shall be given before the 1st day of December 1990.

5 “(3) With the consent of the regional council concerned, any notice required by this section to be given by any person may—

“(a) Be given by an organisation on behalf of the person; and

“(b) Relate to any number of services.”

10 (3) Section 48 of the principal Act is hereby amended by adding the following subsection:

“(5) Notwithstanding **subsection (2)** of this section, any notice under section 56 of this Act is a sufficient compliance with subsection (1) of this section in respect of the service to which the notice relates; but

15 “(a) Section 49 (1) of this Act shall apply to such a notice given to the regional council concerned before the 1st day of October 1990 as if, for the words ‘within 21 days of receiving the notice’, there were substituted the words ‘not later than the 21st day of October 1990’; and

20 “(b) Nothing in section 54 or section 55 of this Act shall apply in respect of the service concerned if it is a small passenger service being operated under a passenger service licence and is not involved in a scheduled service over a specified route or between or through specified locations.”

45. Registration of notified service—Section 49 (1) of the principal Act is hereby amended by omitting the word “notification”, and substituting the words “notice concerned”.

30 **46. Restrictions on registration and variation of services between 1 February 1991 and 31 October 1991**—

(1) Section 54 of the principal Act is hereby amended by inserting, after the word “where”, the words “, in the regional council’s opinion,”.

35 (2) Section 54 of the principal Act is hereby amended by adding, as **subsection (2)**, the following subsection:

40 “(2) Nothing in subsection (1) of this section prevents a regional council from entering into a contract for the provision of a service that is specified in a regional passenger transport plan the regional council has adopted.”

47. Abandonment or variation of service registered before 1 February 1991—(1) Section 55 (1) of the principal

Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) Where the service is still a registered service on the 1st day of February 1991—

“(i) Before the 1st day of July 1991, its operation may not be abandoned or varied, and its registration may not be withdrawn; and

“(ii) After the 30th day of June 1991 and before the 1st day of February 1992, its operation may not be abandoned or varied,—
without the consent of the appropriate regional council under subsection (2) of this section:”.

(2) Section 55 (2) of the principal Act is hereby amended by omitting the word “July”, and substituting the word “February”.

48. Small passenger vehicle services to be notified to regional council—Section 56 (1) of the principal Act is hereby amended by inserting, after the word “licence” where it first appears, the words “(other than a licence relating to an ambulance service)”.

United Nations

49. Sections to be read with United Nations Act 1946—This section and section 50 of this Act shall be read together with and deemed part of the United Nations Act 1946* (in that section referred to as the principal Act).

*R.S. Vol. 11, p. 717

50. Liability for breach of regulations—Section 3 (1) of the principal Act (as amended by section 7 of the Decimal Currency Act 1964) is hereby amended—

(a) By omitting the expression “\$200”, and substituting the expression “\$10,000”; and

(b) By omitting the expression “\$2,000”, and substituting the expression “\$100,000”.