

New Zealand Symphony Orchestra Bill

Government Bill

Explanatory note

General policy statement

The primary purpose of this Bill is to change the status of the New Zealand Symphony Orchestra (the **Orchestra**) from that of a limited liability company established under the New Zealand Symphony Orchestra Act 1988 to a non-company Crown entity. This new structure is in accordance with the current reform of Crown entities. The New Zealand Symphony Orchestra Act 1988 will be repealed.

The New Zealand Symphony Orchestra Act 1988 does not prescribe the Orchestra's purpose and functions, nor government's expectations of it. As a limited liability company, the Orchestra operates within the requirements of the Companies Act 1993. Consequently, it is expected to carry out functions that are commercial in nature. This structure does not sit comfortably with, or reflect, the public policy objectives that the Crown has in its ownership and interest in the Orchestra. These objectives focus primarily on the presentation of orchestral music of excellence to New Zealand audiences. There is, therefore, little benefit in the Orchestra remaining under the Companies Act 1993.

The establishment of the Orchestra under new legislation clarifies its role by explicitly specifying its principal objectives and its functions as a national orchestra of New Zealand. In achieving its principal objectives and performing its functions, the Orchestra will be required to operate in a financially responsible manner.

In line with the Crown entity reforms, the Orchestra is reclassified as an autonomous Crown entity. As such, the Orchestra is required to have regard to government policy on matters of general administration. This requirement signals the degree of autonomy that the

Orchestra has, and its relationship to the responsible Minister and to government.

At the same time, in all artistic matters, the Orchestra will be empowered to operate independently and without ministerial direction. This requirement reflects the well established arm's length principle for funding cultural agencies that operates in New Zealand and internationally. This principle empowers cultural agencies to pursue their objectives and perform their functions, promoting and maintaining freedom of expression without direct political intervention.

The robust governance and accountability requirements of the proposed model for Crown entities are included in the Bill. The board will be accountable to the Government through the collective and individual duties imposed on members and through the reporting requirements under the Public Finance Act 1989.

Clause by clause analysis

Clause 1 is the Title clause.

Part 1

Preliminary provisions

Clause 2 is the commencement clause.

Clause 3 sets out the purpose of the Bill.

Clause 4 deals with the interpretation of terms used in the Bill.

Clause 5 provides that the Bill binds the Crown.

Part 2

Establishment, structure, and powers of Orchestra and related matters

Subpart 1—Key provisions about establishment of Orchestra

Establishment of Orchestra

Clause 6 establishes the Orchestra as a legal entity.

Clause 7 provides that the Orchestra is a Crown entity for the purposes of the Public Finance Act 1989.

Principal objectives and functions of Orchestra

Clause 8 sets out the principal objectives of the Orchestra.

Clause 9 provides for the functions of the Orchestra in relation to the activities of the Orchestra.

Clause 10 provides that, in achieving its principal objectives and performing its functions, the Orchestra must operate in a financially responsible manner and maintain its financial viability.

Powers of Orchestra

Clause 11 confers on the Orchestra the powers necessary to perform its functions.

Subpart 2—Key provisions about governance of Orchestra

Board is governing body of Orchestra

Clause 12 provides that the board, consisting of between 5 and 8 members (including the chairperson), is the governing body of the Orchestra. Members are appointed by the Minister.

Clause 13 provides that the board has the authority to exercise the powers and perform the functions of the Orchestra, all decisions on the operation of the Orchestra being made by or under the authority of the board. The powers necessary for fulfilling its role are conferred on the board by this clause.

Other provisions relating to governance of Orchestra

Clause 14 provides that the Minister may, in addition to any powers of review under any other enactment, review the operations of the Orchestra.

Clause 15 requires the Orchestra to have regard to government policy on matters of general administration communicated to the Orchestra by the Minister in writing, provided the policy is consistent with the principal objectives and the functions of the Orchestra. This clause, however, is subject to *clause 16*.

Clause 16 states that, in respect of all artistic matters, the Orchestra must act independently and is not subject to directions from the Minister.

Subpart 3—Key provisions about operation of board

Collective duties of board members

Clauses 17 and 18 set out, respectively, the duties of the board members acting collectively, and of board members acting individually.

Effect of breach of duties

Clause 19 states the effect of a breach of duties by the board or by any of its members and the limits to the liability of members.

Financial and accountability provisions

Clauses 20 to 23 set out the financial provisions applying to the Orchestra.

Reporting requirements

Clause 24 sets out reporting requirements for the Orchestra additional to those required under the Public Finance Act 1989.

Subpart 4—Provisions relating to interests in other bodies and subsidiaries of Orchestra

Limits on power of Orchestra to hold shares or other interests in other bodies or associations

Clauses 25 to 27 provide that the Orchestra may, with the prior written consent of the Minister, form or acquire interests in bodies corporate and other associations of persons, provided it does so only for the purpose of achieving its principal objectives and performing its functions under the Bill and in accordance with its statement of intent. Particular provisions relate to subsidiaries the Orchestra may establish.

Subpart 5—Protection of names

Clause 28 provides for the protection of a number of names associated with, or within the scope of the operations of, the Orchestra.

Subpart 6—Transitional provisions

Dissolution of New Zealand Symphony Orchestra Limited

Under *clause 29*, on and from commencement day (defined as the day on which the Bill comes into force), the limited liability company New Zealand Symphony Orchestra Limited is dissolved, the term of office of every director expires, and the property of the company vests in the Orchestra. A director is not entitled to compensation as a result of the expiry of the term of office under the Bill.

Any liabilities, contracts, engagements, rights, and authorities of the company transfer to the Orchestra, and proceedings taken by or against the company, may be continued or enforced by or against the Orchestra. The Registrar of Companies must remove the name of the New Zealand Symphony Orchestra Limited from the register of companies kept under the Companies Act 1993.

Clause 30 provides that, on and from the commencement day, any references to the New Zealand Symphony Orchestra Limited are to be read as references to the Orchestra.

Clause 31 ensures that the New Zealand Symphony Orchestra Limited and the Orchestra are considered the same person for the purposes of the revenue Acts, and that transactions entered into by the New Zealand Symphony Orchestra Limited are deemed to have been entered into by the Orchestra.

Clause 32 requires the Orchestra to make, as soon as practicable after commencement day, a final report of the New Zealand Symphony Orchestra Limited, which the Minister must subsequently present to the House of Representatives.

Clauses 33 provides for further transitional provisions in *Schedule 1*.

Subpart 7—Repeal and amendments

Clause 34 repeals the New Zealand Symphony Orchestra Act 1988.

Clause 35 provides for a schedule of Acts that are amended as a consequence of the Bill.

Schedule 1 sets out,—

- in *Part 1*, further provisions about membership of the board:
- in *Part 2*, provisions relating to the operation of the board, including the liability of board members:
- in *Part 3*, provisions relating to the procedures of the board:

- in *Part 4*, provisions relating to the employment of the chief executive and staff of the Orchestra, and provisions setting out the requirements of the personnel policy applying for staff:
- in *Part 5*, transitional provisions relevant to the transfer of employees, the continuity of employment, protection of their terms and conditions of employment, and superannuation arrangements.

Schedule 2 contains a list of the amendments to Acts required as a consequence of the Bill.

Rt Hon Helen Clark

New Zealand Symphony Orchestra Bill

Government Bill

Contents

1	Title	Subpart 3—Key provisions about operation of board
	Part 1	<i>Collective duties of board members</i>
	Preliminary provisions	17 Collective duties of board
2	Commencement	<i>Individual duties of board members</i>
3	Purpose of Act	18 Individual duties of board members
4	Interpretation	<i>Effect of breach of duties</i>
5	Act binds the Crown	19 Effect of breach of duties
	Part 2	<i>Financial and accountability provisions</i>
	Establishment, structure, and powers of Orchestra and related matters	20 Funds of Orchestra
	Subpart 1—Key provisions about establishment of Orchestra	21 Bank accounts
	<i>Establishment of Orchestra</i>	<i>Powers to invest and borrow</i>
6	Orchestra established	22 Restrictions on investments
7	Orchestra is Crown entity	23 Restrictions on borrowing
	<i>Principal objectives and functions of Orchestra</i>	<i>Reporting requirements</i>
8	Principal objectives of Orchestra	24 Annual report
9	Functions of Orchestra	Subpart 4—Provisions relating to interests in other bodies and subsidiaries of Orchestra
10	Limitation applying to principal objectives and functions	<i>Limits on power of Orchestra to hold shares or other interests in other bodies or associations</i>
	<i>Powers of Orchestra</i>	25 Shares in bodies corporate or interests in associations of persons
11	Capacity and powers of Orchestra	<i>Subsidiaries of Orchestra</i>
	Subpart 2—Key provisions about governance of Orchestra	26 Limits to functions and powers of subsidiaries
	<i>Board is governing body of Orchestra</i>	<i>Remuneration and allowances for directors of subsidiaries</i>
12	Board of Orchestra	27 Remuneration and allowances
13	Role of board	Subpart 5—Protection of names
	<i>Other provisions relating to governance of Orchestra</i>	28 Protection of names
14	Role of Minister	
15	Orchestra to have regard to government policy on matters of general administration	
16	Independence of Orchestra	

	Subpart 6—Transitional provisions		Subpart 7—Repeal and amendments
	<i>Dissolution of New Zealand Symphony Orchestra Limited</i>	34	New Zealand Symphony Orchestra Act 1988 repealed
29	Dissolution of New Zealand Symphony Orchestra Limited	35	Amendments to enactments
30	Reference to New Zealand Symphony Orchestra Limited is reference to Orchestra		
31	Taxes and duties		
32	Final report on New Zealand Symphony Orchestra Limited		
33	Further transitional provisions		

	Schedule 1
	Administrative provisions applying to board and further transitional provisions
	Schedule 2
	Amendments to other enactments

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the New Zealand Symphony Orchestra Act **2002**.

Part 1
Preliminary provisions

2 Commencement

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

3 Purpose of Act

The purpose of the Act is to—

- (a) establish the Orchestra as a body corporate under this Act and as a Crown entity for the purposes of the Public Finance Act 1989: 10
- (b) set out the principal objectives of the Orchestra and its functions and powers:
- (c) provide that the Orchestra must have regard to government policy on matters of general administration, subject to it being independent in all artistic matters: 15
- (d) provide for the governance of the Orchestra by a board, for the duties of the board and its members, and for administrative matters relating to the board and the employment of staff: 20
- (e) repeal the New Zealand Symphony Orchestra Act 1988 and provide that the New Zealand Symphony Orchestra Limited ceases to exist:
- (f) transfer the property, money, and liabilities of the New Zealand Symphony Orchestra Limited to the Orchestra. 25

4 Interpretation

In this Act, unless the context otherwise requires,—

board means the board of the Orchestra

board member and **member** mean a member of the board of the Orchestra

commencement day means the day on which this Act comes into force

fees framework means the framework determined by the Government from time to time for the classification and remuneration of board members of Crown entities

Minister means the Minister who, under the authority of any warrant, or with the authority of the Prime Minister, is responsible for the administration of this Act

New Zealand Symphony Orchestra Limited and **company** mean the company that, immediately before the commencement of this Act, was reregistered under that name under the Companies Act 1993

Orchestra means the New Zealand Symphony Orchestra established by **section 6**

statement of intent means a statement of intent prepared in accordance with Part V of the Public Finance Act 1989

subsidiary, in relation to the Orchestra, means a subsidiary as defined in section 2(1) of the Financial Reporting Act 1993.

5 Act binds the Crown

This Act binds the Crown.

Part 2**Establishment, structure, and powers of Orchestra and related matters**

Subpart 1—Key provisions about establishment of Orchestra

*Establishment of Orchestra***6 Orchestra established**

(1) This section establishes the Orchestra.

(2) The Orchestra is a legal entity that continues in existence until dissolved under an Act.

7 Orchestra is Crown entity

- (1) The Orchestra is a Crown entity for the purposes of the Public Finance Act 1989.
- (2) The Fourth, Fifth, Sixth, and Seventh Schedules of the Public Finance Act 1989 are amended in the manner provided for in **Schedule 2**. 5

*Principal objectives and functions of Orchestra***8 Principal objectives of Orchestra**

The principal objectives of the Orchestra are—

- (a) to provide the public of New Zealand with live and recorded performances of symphonic music performed to an international standard: 10
- (b) to provide an orchestra that—
- (i) is highly skilled and artistically imaginative; and
- (ii) has strong community support: 15
- (c) to be a leading New Zealand performing arts organisation with a role in the development of a distinctively New Zealand cultural environment:
- (d) to encourage New Zealand musical composition:
- (e) to provide performance opportunities for New Zealand musicians whether as members of the orchestra or as soloists. 20

9 Functions of Orchestra

The functions of the Orchestra are—

- (a) to ensure that the orchestra presents a broad repertoire of orchestral performance including New Zealand works and recent works: 25
- (b) to encourage the development of New Zealand musicians:
- (c) to encourage the development of New Zealanders' knowledge and appreciation of orchestral music: 30
- (d) to develop and expand the audience of the orchestra on a national basis:
- (e) to provide a touring orchestra (which may also include international performances): 35
- (f) to carry out any other functions consistent with its principal objectives, as agreed to by the Minister after consultation with the Orchestra:

- (g) to co-operate with other institutions and organisations having objectives similar to those of the Orchestra.

10 Limitation applying to principal objectives and functions

The Orchestra's principal objectives and its functions are subject to the Orchestra—

- (a) operating in a financially responsible manner; and
 (b) maintaining its financial viability.

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Powers of Orchestra

11 Capacity and powers of Orchestra

(1) For the purpose of achieving its principal objectives and performing its functions under this Act, the Orchestra has—

- (a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
 (b) for the purposes of **paragraph (a)**, full rights, powers, and privileges.

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(2) **Subsection (1)** applies subject to the provisions of this Act, any other enactment, and the general law.

Subpart 2—Key provisions about governance of Orchestra

Board is governing body of Orchestra

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12 Board of Orchestra

- (1) The board is the governing body of the Orchestra.
 (2) The board must consist of not fewer than 5 members and not more than 8 members (including the chairperson) appointed by the Minister.
 (3) **Parts 1 to 4 of Schedule 1** apply to the board and its members.

25

13 Role of board

- (1) The board has the authority, in the name of the Orchestra, to exercise the powers and perform the functions of the Orchestra.
 (2) All decisions relating to the operation of the Orchestra must be made by or under the authority of the board.
 (3) The board has all the powers necessary for carrying out its role.

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*Other provisions relating to governance of Orchestra***14 Role of Minister**

- (1) The Minister has the functions, powers, and duties given to him or her under this Act or any other enactment.
- (2) The Minister may review the operations of the Orchestra. 5
- (3) The power of review referred to in **subsection (2)** does not limit any other power of review under any enactment.

15 Orchestra to have regard to government policy on matters of general administration

- (1) In exercising its powers and performing its functions and duties under this Act, the Orchestra must have regard to government policies on matters of general administration that are— 10
- (a) communicated in writing to the Orchestra by the Minister; and 15
- (b) consistent with the principal objectives and the functions of the Orchestra.
- (2) **Subsection (1)** is subject to **section 16**.

16 Independence of Orchestra

- In all artistic matters, the Orchestra— 20
- (a) must act independently; and
- (b) is not subject to directions from the Minister.

Subpart 3—Key provisions about operation of board

*Collective duties of board members***17 Collective duties of board** 25

The board, acting collectively, must—

- (a) not contravene, or cause the Orchestra or any subsidiary to contravene, this Act and other enactments:
- (b) ensure that the Orchestra, and endeavour to ensure that any subsidiary, acts in a manner consistent with the principal objectives, functions, and powers of the Orchestra, and with the Orchestra's statement of intent: 30
- (c) ensure that the Orchestra, and endeavour to ensure that any subsidiary, performs its functions in a manner consistent with a spirit of service to the public: 35

- (d) ensure that the Orchestra, and endeavour to ensure that any subsidiary, operates in a financially responsible manner and, for this purpose, that it—
 - (i) endeavours to ensure that the total operating costs of the Orchestra do not exceed its total operating revenues; and 5
 - (ii) maintains the long-term financial viability of the Orchestra; and
 - (iii) acts as a successful going concern; and
 - (iv) prudently manages its assets and liabilities. 10

Individual duties of board members

18 Individual duties of board members

A board member must, when acting as a board member,—

- (a) not contravene, or agree to the Orchestra acting in a manner that contravenes, this Act; and 15
- (b) act in good faith and with honesty and integrity, and not pursue his or her own interests or act as a representative of other interests, at the expense of the interests of the Orchestra; and
- (c) act with the care, diligence, and skill that a reasonable member would exercise in the same circumstances, taking into account (without limitation)— 20
 - (i) the nature of the activities of the Orchestra; and
 - (ii) the nature of the action or decision taken by the member; and 25
 - (iii) the position of the member and the nature of the responsibilities he or she undertakes.

Effect of breach of duties

19 Effect of breach of duties

- (1) If the board does not comply with 1 or more of its collective duties, the board members may be removed from office. 30
- (2) However, **subsection (1)** does not apply to a board member if—
 - (a) he or she did not know and could not reasonably be expected to know that the duty was to be or was being breached; or 35
 - (b) he or she took all reasonable steps to prevent the duty being breached.

- (3) If a board member does not comply with his or her individual duties, the board member may be removed from office.
- (4) A board member is not liable for a breach of a duty under this Act, except for being removed from office as provided for in **subsection (1)** or **subsection (3)**. 5
- (5) This section does not prevent a board member being removed from office on any other ground.
- (6) In this Part,—
collective duties means the duties provided for in **section 17**
individual duties means the other duties provided for in this Act. 10

Financial and accountability provisions

20 Funds of Orchestra

The funds of the Orchestra consist of—

- (a) money appropriated by Parliament for the purposes of the Orchestra; and 15
- (b) money lawfully received by the Orchestra for its purposes; and
- (c) funds transferred to the Orchestra, or received by it, on establishment under this Act; and 20
- (d) accumulations of income derived from the money received under **paragraphs (a), (b) and (c)**.

21 Bank accounts

- (1) The Orchestra must open at any registered bank (within the meaning of the Reserve Bank of New Zealand Act 1989) the accounts that are necessary for the performance or exercise of its functions and duties and exercise of its powers. 25
- (2) All money received by the Orchestra or for or on its behalf by a member or employee for its purposes must, as soon as practicable after the money has been received, be paid into a bank account of the Orchestra. 30
- (3) The Orchestra must properly authorise the withdrawal or payment of money from its bank accounts.

*Powers to invest and borrow***22 Restrictions on investments**

Money that belongs to the Orchestra and that is not immediately required by the Orchestra may be invested only in accordance with section 25 of the Public Finance Act 1989.

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23 Restrictions on borrowing

The Orchestra must not borrow or contract to borrow money, or renew a loan, or amend the terms of a loan made to it, without the prior written consent of the Minister of Finance.

Reporting requirements

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24 Annual report

The annual report of the Orchestra prepared each financial year under Part V of the Public Finance Act 1989 must include, in addition to the requirements under that Act,—

- (a) a report on the total value of remuneration and other benefits received by each member of the board during the financial year; and 15
- (b) a report on compliance by the Orchestra with its policy of being a good employer, including a report on its equal employment opportunities programme; and 20
- (c) a report on the number of employees who, during the financial year, received remuneration and other benefits in their capacity as employees (other than compensation or other benefits referred to in **paragraph (d)**), the total value of which exceeds \$100,000 per year, and the number of those employees in brackets of \$10,000; and 25
- (d) the total value of compensation or other benefits received by persons who ceased to be employees during the financial year, in relation to the cessation of employment, and the number of persons who received a share of that total; and 30
- (e) any other information that the board considers necessary to enable an informed assessment of the performance of the Orchestra for that financial year.

Subpart 4—Provisions relating to interests in other bodies and subsidiaries of Orchestra

Limits on power of Orchestra to hold shares or other interests in other bodies or associations

- 25 Shares in bodies corporate or interests in associations of persons** 5
- (1) The Orchestra may, with the prior written consent of the Minister,—
- (a) hold shares or interests in a body corporate or in a partnership, joint venture, or other association of persons; or 10
- (b) settle, or be, or appoint a trustee of, a trust.
- (2) The Minister’s consent under **subsection (1)** may be given subject to any conditions the Minister specifies.
- (3) The Orchestra may exercise the power conferred by **subsection (1)** only— 15
- (a) for the purpose of achieving its principal objectives and performing its functions under this Act; and
- (b) in accordance with its statement of intent.

Subsidiaries of Orchestra

- 26 Limits to functions and powers of subsidiaries** 20
- (1) The board must ensure, to the extent of its powers, that a subsidiary does not do anything that is inconsistent with the principal objectives, and the functions and powers, of the Orchestra. 25
- (2) **Part 4 of Schedule 1** applies to a subsidiary as if every reference to the board or a board member were a reference to a subsidiary or a director of a subsidiary.

Remuneration and allowances for directors of subsidiaries

- 27 Remuneration and allowances** 30
- A director of a subsidiary is entitled to receive, from the funds of the subsidiary,—
- (a) remuneration and other benefits for services as a director of the subsidiary at a rate and of a kind determined by the board in accordance with the fees framework; 35
- and

- (b) reasonable and actual allowances for travelling and other expenses incurred in undertaking his or her duties and responsibilities as a director of the subsidiary.

Subpart 5—Protection of names

- 28 Protection of names** 5
- (1) No person may be incorporated or registered under any enactment or in any other manner using the following names:
- (a) New Zealand Symphony Orchestra:
 - (b) NZSO:
 - (c) NZSO Chamber Orchestra: 10
 - (d) NZSO Pops Orchestra:
 - (e) NZSO Ensemble:
 - (f) NZ Chamber Orchestra:
 - (g) Symphony New Zealand:
 - (h) NZSO National Youth Orchestra: 15
 - (i) National Youth Orchestra:
 - (j) NYO:
 - (k) National Orchestra:
 - (l) any other name that so resembles the names in **paragraphs (a) to (k)** as to be likely to mislead a person. 20
- (2) No person other than the Orchestra may, either alone or with another person, operate or carry on activities—
- (a) under a name in **subsection (1)**; or
 - (b) under a name, knowing that it so resembles a name listed in **subsection (1)** as to be likely to mislead a person. 25
- (3) A person who breaches **subsection (2)** commits an offence and is liable on summary conviction to a fine not exceeding \$2,500.

Subpart 6—Transitional provisions

Dissolution of New Zealand Symphony Orchestra Limited 30

29 Dissolution of New Zealand Symphony Orchestra Limited

- (1) On and from the commencement day,—
- (a) the New Zealand Symphony Orchestra Limited is dissolved; and 35
 - (b) the term of office of every director of the company expires; and

- (c) the property belonging to the company vests in the Orchestra; and
 - (d) money payable to or by the company becomes payable to or by the Orchestra; and
 - (e) the liabilities, contracts, engagements, rights, and authorities of the company become the liabilities, contracts, engagements, rights, and authorities of the Orchestra; and 5
 - (f) proceedings by or against the company may be continued, completed, or enforced by or against the Orchestra. 10
- (2) No director of the New Zealand Symphony Orchestra Limited is entitled to compensation as a result of the expiry under this section of his or her term of office.
- (3) The Registrar of Companies must remove the name of the New Zealand Symphony Orchestra Limited from the register of companies kept under section 360(1) of the Companies Act 1993. 15
- 30 Reference to New Zealand Symphony Orchestra Limited is reference to Orchestra** 20
- On and from the commencement day, a reference to the New Zealand Symphony Orchestra Limited (express or implied) in any enactment (other than this Act), or in any instrument, register, agreement, deed, lease, application, notice, or other document in force immediately before the commencement day, must, unless the context otherwise requires, be read as a reference to the Orchestra. 25
- 31 Taxes and duties**
- For the purposes of the Inland Revenue Acts and any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge,— 30
- (a) the New Zealand Symphony Orchestra Limited and the Orchestra are the same person; and
 - (b) a transaction entered into by, or an act of, the New Zealand Symphony Orchestra Limited is— 35
 - (i) entered into by, or an act of, the Orchestra; and
 - (ii) entered into, or performed by, the Orchestra at the time it was entered into, or performed by, the New Zealand Symphony Orchestra Limited.

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- 32 Final report on New Zealand Symphony Orchestra Limited**
- (1) The Orchestra must make a final report of the New Zealand Symphony Orchestra Limited to the Minister as soon as reasonably practicable after the commencement day. 5
- (2) The Minister must present the report to the House of Representatives as soon as reasonably practicable after receiving it from the Orchestra under **subsection (1)**.
- (3) In this section, **final report** means—
- (a) a report setting out the information specified in section 41I of the Public Finance Act 1989 on the operations of the New Zealand Symphony Orchestra Limited for the period beginning on 1 July 2002 and ending with the close of the day immediately before the commencement day; and 10 15
- (b) the financial statements of the New Zealand Symphony Orchestra Limited for that period—
- (i) setting out the information specified in section 41 of the Public Finance Act 1989; and
- (ii) accompanied by an audit opinion prepared by the Auditor-General in accordance with section 43 of the Public Finance Act 1989. 20
- 33 Further transitional provisions**
- Part 5 of Schedule 1** applies to transitional arrangements for the New Zealand Symphony Orchestra Limited and its employees. 25
- Subpart 7—Repeal and amendments
- 34 New Zealand Symphony Orchestra Act 1988 repealed**
- The New Zealand Symphony Orchestra Act 1988 is repealed.
- 35 Amendments to enactments** 30
- The Acts listed in **Schedule 2** are amended in the manner indicated in that schedule.
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Schedule 1

Administrative provisions applying to board and further transitional provisions

Part 1

Further provisions about membership of board 5

Appointments

1 **Criteria for appointment of board members**

In making appointments to the board under **section 12**, the Minister must, in particular, have regard to the need for members to have, among them, an appropriate balance of governance and financial skills relevant to the role of the board. 10

Term of appointment

2 **Term of appointment**

A board member—

- (a) holds office for a term not exceeding 3 years, as specified by the Minister in the notice of appointment; and 15
- (b) may be reappointed; and
- (c) continues in office, unless the member resigns or is removed from office, despite the expiry of his or term of office until— 20
 - (i) the member is reappointed; or
 - (ii) the member's successor is appointed; or
 - (iii) the date specified in writing by the Minister that he or she is not to be reappointed.

Restrictions on appointment 25

3 **Disqualification**

A person is disqualified from being a board member who—

- (a) is an undischarged bankrupt;
- (b) is prohibited from being a member or promoter of, or being concerned or taking part in the management of, a company under section 382, section 383, or section 385 of the Companies Act 1993; 30
- (c) is subject to a property order made under section 10, section 11, section 12, section 30, or section 31 of the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act: 35

Part 1—*continued*

- (d) has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon or served the sentence or otherwise suffered the penalty imposed on the person: 5
- (e) has failed to disclose all interests as required by **clause 15**.

Resignation and removal of members

- 4 Resignation** 10
A board member may resign from office by giving written notice to the Minister.
- 5 Removal from office** 15
The Minister may, at any time and for any reason that, in the Minister's opinion, justifies the removal, remove a board member (including the chairperson) from office by written notice to that member.
- 6 No entitlement to compensation** 20
A board member is not entitled to compensation or other payment or benefit relating to his or her resignation or removal from office.

Vacancies in board membership

- 7 Vacancy on board**
- (1) If for any reason a board member ceases to hold office as a member, the Minister may appoint another person as a member. 25
- (2) A board member who is appointed under **subclause (1)** may be appointed either—
- (a) for the balance of the term for which the vacating member was appointed; or 30
- (b) for a new term, as provided for by **clause 2**.
- 8 Effect of vacancy**
- The functions and powers of the Orchestra and of the board are not affected by a vacancy in the membership of the board.

Part 1—*continued**Chairperson of board***9 Appointment of chairperson of board**

- (1) The Minister must, by written notice to the member, appoint 1
of the board members to be the chairperson of the board.
- (2) The chairperson holds that office— 5
- (a) on and from the date stated in the notice of
appointment:
- (b) for a period not exceeding 3 years as specified by the
Minister:
- (c) until he or she— 10
- (i) resigns from that office; or
- (ii) is removed from that office by the Minister by
written notice; or
- (iii) is reappointed.
- (3) If the chairperson ceases to hold office as chairperson, the 15
Minister may appoint to that office—
- (a) an existing member; or
- (b) a new board member.
- (4) A copy of the written notice given by the Minister under
subclause (1) or subclause 2(c)(ii) must be given to the board. 20

10 Resignation of chairperson

- (1) The chairperson may resign from office by written notice to
the Minister, stating the date on which the resignation takes
effect.
- (2) If the chairperson resigns from that office,— 25
- (a) he or she ceases to be a member of the board; but
- (b) the Minister may reappoint that person to be a member
of the board, subject to the provisions of **clause 2**.
- (3) A copy of the notice referred to in **subclause (1)** must be given
to the board. 30

**11 Chairperson's functions, duties, and powers during
vacancy**

- (1) If there is no chairperson, or while the chairperson is for any
reason unable to exercise his or her powers, or perform his or
her functions or duties, as chairperson, the board must elect a 35
member to be the acting chairperson.

Part 1—*continued*

- (2) The acting chairperson has and may exercise all the powers, or perform all the functions or duties, of the chairperson while acting as the chairperson.

Acts not to be called into question

- 12 Validity of members' acts** 5
- (1) No person may question certain matters in any proceedings on the grounds that—
- (a) the occasion for the appointment had not arisen; or
 - (b) the person's appointment was defective; or
 - (c) the person's term of office had expired; or 10
 - (d) the person was disqualified under **clause 3** from appointment.
- (2) The matters referred to in **subclause (1)** are—
- (a) an appointment of a member to act as chairperson or acting chairperson: 15
 - (b) an act done by that member while acting as chairperson or acting chairperson:
 - (c) an act done by the board while a member is acting as chairperson or acting chairperson:
 - (d) an act done by the board or a member while the member continues to hold office under **clause 2(1)(c)**. 20

Remuneration

- 13 Remuneration and allowances**
- A board member is entitled to receive, from the funds of the Orchestra,— 25
- (a) remuneration and other benefits for services as a board member at a rate and of a kind determined by the Minister in accordance with the fees framework; and
 - (b) in addition, actual and reasonable allowances for travelling and other expenses incurred in performing the functions and duties of a member. 30

Part 2

Provisions relating to operation of board and its members

Conflict of interest provisions

- 14 Interest of board members**
- (1) A board member is **interested** in a transaction of, or other matter relating to, the Orchestra if the member— 5
- (a) is a party to, or will derive a material financial benefit from, the transaction or matter; or
 - (b) has a material financial interest in another party to the transaction, or in a person to whom the matter relates; 10
or
 - (c) is a member, officer, director, or trustee of another party to, or a person who will or may derive a material financial benefit from, the transaction or matter; or
 - (d) is the parent, child, spouse, or partner of another party to, or a person who will or may derive a material financial benefit from, the transaction or matter; or 15
 - (e) is otherwise directly or indirectly materially interested in the transaction or matter.
- (2) The transactions or matters relevant to **subclause (1)** include— 20
- (a) the performance of a function or exercise of a power by the Orchestra;
 - (b) a negotiation, arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by the Orchestra. 25
- (3) A person is not interested under this section merely because—
- (a) that person is a board member, officer, or director of a wholly-owned subsidiary of the Orchestra; or
 - (b) that person has an interest in a transaction or matter undertaken in the course of business of the wholly-owned subsidiary and it is not a matter on which the board of the wholly-owned subsidiary would ordinarily make a decision. 30
- 15 Obligation to disclose interest**
- (1) A board member who is interested in a transaction or proposed transaction of, or other matter relating to, the Orchestra must disclose the nature of the interest in accordance with 35

Part 2—*continued*

- clause 16** as soon as practicable after the member becomes aware, or should have been aware, that he or she is interested.
- (2) For the purposes of **subclause (1)**, it is sufficient disclosure of an interest in a matter relating to the Orchestra to enter a general notice in the interests register of the Orchestra in accordance with **clause 16**. 5
- (3) A general notice given under **subclause (2)** ceases to have effect if the nature, monetary value, or extent of the interest materially increases above that disclosed in the general notice.
- 16 Method of disclosure** 10
- (1) A board member to whom **clause 15** applies must disclose the information required under **subclause (2)** in an interests register kept by the Orchestra and to—
- (a) the chairperson of the board (or the acting chairperson if there is no chairperson); or 15
- (b) if there is no acting chairperson, or if the member interested is the chairperson or acting chairperson, the Minister.
- (2) The information required under **subclause (1)** is—
- (a) the nature of the interest and the monetary value (if any); or 20
- (b) the nature and extent of the interest, if the monetary value cannot be quantified.
- 17 Consequences of interest**
- (1) A board member who is interested in a matter relating to the Orchestra— 25
- (a) must not vote or take part in any deliberation or decision of the board relating to the matter; and
- (b) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the board during which deliberation occurs or a decision is made relating to the matter. 30
- (2) However, the Minister may,—
- (a) by written notice to the board, permit a board member to do anything otherwise prohibited by this clause, provided that the board discloses the interest in its annual report, together with the fact of the permission and any 35

Part 2—*continued*

conditions or amendments to, or revocation of, the permission:

- (b) specify any conditions of his or her permission:
- (c) amend or revoke the permission by written notice to the board.

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18 Effect of non-compliance with disclosure obligation

(1) If a member fails to comply with the obligation under **clause 15**, the validity of the transaction entered into by the board is not affected.

(2) The chairperson of the board must, as soon as practicable after becoming aware of a failure, report to the Minister any failure by members (including that of the chairperson) to disclose interests in accordance with this Act.

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*Use of information***19 Restrictions on use or disclosure of information**

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A member who, in his or her capacity as a member, has confidential information that would not otherwise be available to the member must not disclose that information to any person, or make use of, or act on, that information, except—

- (a) for the purposes of the Orchestra; or
- (b) as required or permitted by law; or
- (c) in complying with the requirement for members to disclose interests; or
- (d) if the member is required or authorised to disclose, use, or act on the information by the Orchestra.

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20 When members may rely on information and advice

(1) A board member, when acting as a board member, may rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

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- (a) an employee of the Orchestra whom the board member believes on reasonable grounds to be reliable and competent in relation to the matters concerned:
- (b) a professional adviser or expert in relation to matters that the board member believes on reasonable grounds to be within the person's professional or expert competence:

35

Part 2—*continued*

- (c) any other board member:
- (d) the Crown.
- (2) **Subclause (1)** applies to a member only if the member—
 - (a) acts in good faith; and
 - (b) makes proper inquiry if the need for inquiry is indicated by the circumstances; and 5
 - (c) has no knowledge that the reliance is unwarranted.

Contracting

- 21 Method of contracting**
- (1) The Orchestra may enter into a contract or other enforceable obligation as follows: 10
 - (a) an obligation required to be in writing may be entered into on behalf of the Orchestra, in writing, by a person acting under the express or implied authority of the Orchestra: 15
 - (b) an obligation that may be entered into otherwise than in writing may be entered into on behalf of the Orchestra, in writing or orally, by a person acting under the express or implied authority of the Orchestra:
 - (c) an obligation that is required to be entered into by deed must be in writing and signed under the name of the Orchestra by— 20
 - (i) 2 or more members of the board; or
 - (ii) 1 or more attorneys appointed by the Orchestra under this clause. 25
 - (2) The Orchestra may, by instrument in writing executed as a deed, appoint a person as its attorney, either generally or in relation to a specified matter.
 - (3) An act of the attorney in accordance with the instrument binds the Orchestra. 30
 - (4) This clause applies to a contract or other obligation, whether or not—
 - (a) that obligation was entered into in New Zealand; and
 - (b) the law governing the obligation is the law of New Zealand; and 35
 - (c) there is a defect in the appointment of a member.

Part 2—*continued**Validity of transactions***22 Validity of transactions**

- (1) Subject to **clause 21**, the validity or enforceability of any deed, agreement, right, or obligation entered into, conferred on, or incurred by, the Orchestra is not affected by a failure of the Crown, the responsible Minister, the Orchestra, or its board to comply with any provision of this Act. 5
- (2) A person purporting to execute any documentation on behalf of the Orchestra under any authority is, in the absence of proof to the contrary, presumed to be acting in accordance with that authority. 10

*Liability of board members and employees***23 Definitions for protections from liability**

In **clauses 24 to 26**,—

board member includes a former board member 15

employee includes a former employee

indemnity includes relief of, or excuse from, liability, whether before or after the liability arises.

24 Protection from liability for members and employees

A board member or employee of the Orchestra is not, by reason only of being a board member or employee of the Orchestra, personally liable— 20

- (a) for any liability of the Orchestra; or
- (b) for any act or omission in the exercise of its powers or the performance of its functions or duties by the Orchestra or by any person acting under a delegation, unless done in bad faith. 25

25 Immunity of board members and employees

- (1) A board member or employee of the Orchestra is not liable to any person for any act or omission by him or her, in the performance or intended performance of the Orchestra's functions, unless done in bad faith. 30
- (2) The Orchestra is liable for an act or omission for which, but for this section, a board member or employee would have been liable to a person. 35

Part 2—*continued*

- 26 Indemnity for board members and employees**
The Orchestra may indemnify a board member or employee for costs incurred by that person in a proceeding—
- (a) that relates to acts or omissions by that person in good faith in the performance or intended performance of the functions of the Orchestra; and 5
 - (b) in which judgment is given in that person's favour, in which he or she is acquitted, or that is discontinued.
- 27 Insurance for board members and employees**
The Orchestra may effect insurance (including paying, directly or indirectly, the costs of the insurance) for a board member or employee in relation to—
- (a) liability (other than criminal liability) for any act or omission in the performance or intended performance of the functions of the Orchestra; and 10
 - (b) costs incurred in any proceeding relating to that liability or in any criminal proceedings. 15

Part 3

Procedures of board

- 28 Procedure generally** 20
Except as otherwise provided in this Act, the board may regulate its own procedure.
- 29 Quorum**
- (1) A quorum for a meeting of the board is—
 - (a) 4 members if the board has 8 members; or 25
 - (b) 3 members if the board has fewer than 8 members.
 - (2) No business may be transacted at a meeting of the board if a quorum is not present.
- 30 Methods of holding meetings** 30
A meeting of the board may be held—
- (a) by a quorum of the board members being assembled together at the appointed time and place; or

Part 3—*continued*

- (b) by means of audio, audio and visual, or electronic communication that reasonably allows all the members participating and constituting a quorum simultaneously to engage in the meeting.
- 31 Notice requirements** 5
- (1) A notice of a meeting—
- (a) must be in writing; and
- (b) may be given by post, hand delivery, or electronic communication; and
- (c) must be sent to the board member's last known address in New Zealand. 10
- (2) An irregularity in a notice of a meeting is waived if all board members entitled to receive the notice attend the meeting without objecting to the irregularity or agree to the waiver.
- 32 Times and places of general and special meetings** 15
- (1) The board or the chairperson must appoint the times and places for ordinary meetings of the board, and give notice of those meetings to each board member not present when the appointment is made.
- (2) The chairperson or any 2 board members may call a special meeting. 20
- (3) At least 7 days' notice must be given to each board member present in New Zealand of a special meeting convened under **subclause (2)**, and of the business to be transacted at the meeting. 25
- (4) Only the business specified in the notice of a special meeting may be transacted at that meeting.
- 33 Who presides at meetings**
- (1) At a meeting of the board,—
- (a) the chairperson must preside; or 30
- (b) if there is no chairperson, or if he or she is not present, an acting chairperson must be elected to preside by the board members present at the meeting.
- (2) The acting chairperson has and may perform all the functions and duties and exercise all the powers of the chairperson for the purposes of the meeting. 35

Part 3—*continued***34 Voting at meetings**

- (1) Each board member has 1 vote.
- (2) In addition to his or her general vote, the chairperson at a meeting has a casting vote.
- (3) A resolution of the board is passed if— 5
 - (a) it is agreed to unanimously by the board members present; or
 - (b) a majority of the votes cast are in favour of it.
- (4) A member present at a board meeting is presumed to have agreed to, and to have voted in favour of, a resolution of the board unless he or she expressly dissents from, or votes against, the resolution at the meeting. 10

35 Unanimous written resolutions

- (1) A resolution in writing, signed or assented to in writing by letter, fax, or electronic message by all board members, is as valid and effectual as if it had been passed at a meeting of the board duly called and constituted. 15
- (2) The resolution may consist of several documents containing the same resolution, each signed, or appearing to have been sent, by 1 or more members. 20

*Delegations***36 Delegation by board of its functions, duties, or powers**

- The board may delegate any of the functions and powers of the Orchestra or the board, either generally or specifically, by written notice to any of the following persons: 25
- (a) a board member;
 - (b) the chief executive of the Orchestra;
 - (c) an employee of the Orchestra.

37 Powers that must not be delegated

- The board must not delegate the power— 30
- (a) to delegate conferred by **clause 36**;
 - (b) to appoint a chief executive;
 - (c) to acquire or dispose of real property;
 - (d) to form and register a subsidiary;

Part 3—*continued*

- (e) to form, or hold shares or interests in, or settle or be or appoint a trustee in relation to, a body corporate or other association of persons under **section 25**;
- (f) to borrow money;
- (g) to appoint an attorney.

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38 Effect of delegation

- (1) If any function or power of the Orchestra or its board is delegated, the delegate—
 - (a) may, unless the delegation provides otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect, as if the delegate were the Orchestra or the board; and 10
 - (b) must, for the purpose of performing the delegated function or power, act in accordance with the duties of the board as if the delegate were a member of the board. 15
- (2) A delegation—
 - (a) may be revoked at will by resolution of the board and written notice to the delegate; and
 - (b) continues in force according to the terms of the delegation until it is revoked; but 20
 - (c) does not prevent the board from performing the function or exercising the power.
- (3) A person who appears to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation. 25

Part 4

Employment provisions

Chief executive of Orchestra

- 39 Appointment of chief executive** 30
 - (1) The board may appoint a chief executive of the Orchestra.
 - (2) The chief executive must not be a member of the board.
 - (3) The chief executive is responsible to the board for—
 - (a) ensuring the efficient and effective administration of the affairs of the Orchestra; and 35

Part 4—*continued*

- (b) acting in accordance with the lawful policies and directions given to the chief executive by the board.

40 Employment of chief executive

- (1) The chief executive's terms and conditions of employment must be determined by the board. 5
- (2) The board must, before it agrees to terms and conditions of employment for the chief executive,—
- (a) consult the State Services Commissioner; and
- (b) have regard to every recommendation that the State Services Commissioner makes to the board about those terms and conditions within a reasonable time of being consulted; and 10
- (c) consult the Minister if the board does not adopt the recommendations of the Commissioner.
- (3) A failure to comply with this section does not invalidate the acts of a chief executive of the Orchestra. 15

*Employees of Orchestra***41 Employment of staff**

The chief executive may—

- (a) appoint employees of the Orchestra (including employees on secondment from other organisations) that he or she thinks necessary or desirable to enable the Orchestra to achieve its principal objectives and perform its functions; and 20
- (b) negotiate the terms and conditions of employment of those employees; and 25
- (c) subject to those terms and conditions of employment, terminate or suspend the employment of an employee of the Orchestra.

42 Personnel policy 30

- (1) The Orchestra must operate a personnel policy that complies with the principle of being a good employer.
- (2) For the purposes of this clause, a **good employer** is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper 35

Part 4—*continued*

- treatment of employees in all aspects of their employment, including provisions requiring—
- (a) good and safe working conditions; and
 - (b) an equal employment opportunities programme; and
 - (c) the impartial selection of suitably qualified persons for appointment; and 5
 - (d) recognition of—
 - (i) the aims and aspirations of Māori; and
 - (ii) the employment requirements of Māori; and
 - (iii) the need for involvement of Māori as employees of the Orchestra; and 10
 - (e) opportunities for the enhancement of the abilities of individual employees; and
 - (f) recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and 15
 - (g) recognition of the employment requirements of women; and
 - (h) recognition of the employment requirements of persons with disabilities.
- (3) For the purposes of this section, an **equal employment opportunities programme** means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons. 25
- 43 Employees not in service of the Crown**
- A person is not to be treated as an employee of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 only because the person is an employee of the Orchestra. 30
- 44 Board members and employees are officials**
- Board members and employees of the Orchestra are officials for the purposes of sections 105 and 105A of the Crimes Act 1961.

Part 4—*continued***45 Superannuation and retiring allowances**

The Orchestra may subsidise or contribute to any registered superannuation scheme for the purpose of providing benefits for its employees.

Part 5

Further transitional provisions

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*Transfer of employees***46 Transfer of employees to Orchestra**

(1) On the commencement day, every person employed by the New Zealand Symphony Orchestra Limited immediately before the commencement of this Act becomes an employee of the Orchestra. 10

(2) The transfer of an employee by this section is subject to any relevant transfer provisions in the employment agreement or contract applying to that employee. 15

47 Continuity of employment

(1) For the purposes of every enactment, law, determination, agreement, or contract relating to the employment of a transferred employee, the transfer of the employee to the Orchestra from the New Zealand Symphony Orchestra Limited does not, of itself, break the employment of that person and the period of his or her service with the New Zealand Symphony Orchestra Limited is to be regarded as a period of service with the Orchestra. 20

(2) A transferred employee is not entitled to receive payment or other benefit solely on the ground that, as a result of the transfer of the employee under this Act, the person has ceased to be an employee of the New Zealand Symphony Orchestra Limited. 25

48 Protection of terms and conditions of employment 30

(1) The terms and conditions on which a transferred employee is employed must be no less favourable to the transferred employee than those applying to the employee immediately before the commencement date.

(2) **Subclause (1)**— 35

Part 5—*continued*

- (a) continues to apply to the terms and conditions of employment of a transferred employee until they are varied by agreement between the transferred employee and the Orchestra; but
- (b) does not apply to a transferred employee who, after the transfer, receives any subsequent employment within the Orchestra. 5

Superannuation

- 49 Existing members of Government Superannuation Fund**
- (1) Despite **clause 43**, a person who, immediately before becoming an employee of the Orchestra, was a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 is, for the purpose of that Act, to be treated as if he or she were employed in the Government service so long as that person continues to be an employee of the Orchestra. 10 15
 - (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of the Orchestra were Government service.
 - (3) Nothing in **subclause (1)** entitles a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor. 20
 - (4) For the purpose of applying the Government Superannuation Fund Act 1956 under **subclause (1)**, **controlling authority** means the board. 25
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Schedule 2

Amendments to other enactments

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- Archives, Culture, and Heritage Reform Act 2000**
(2000 No 32) 5
Omit from the Schedule the item that relates to the New Zealand Symphony Orchestra Act 1988.
- Broadcasting Act 1989** (1989 No 25)
Repeal section 97.
- Human Rights Act 1993** (1993 No 82) 10
Omit from Part 1 of Schedule 3 the item that relates to the New Zealand Symphony Orchestra Act 1988.
- Income Tax Act 1994** (1994 No 164)
Omit from Schedule 18 the item “New Zealand Symphony Orchestra Limited”. 15
- Official Information Act 1982** (1982 No 156)
Omit from the First Schedule the words “New Zealand Symphony Orchestra Limited” and substitute the words “New Zealand Symphony Orchestra and any subsidiary of the New Zealand Symphony Orchestra”. 20
- Ombudsmen Act 1975** (1975 No 9)
Omit from Part II of the First Schedule the words “New Zealand Symphony Orchestra Limited” and substitute the words “New Zealand Symphony Orchestra and any subsidiary of the New Zealand Symphony Orchestra”. 25
- Public Audit Act 2001** (2001 No 10)
Omit from Part 1 of Schedule 4 the item that relates to the New Zealand Symphony Orchestra Act 1988.
- Public Finance Act 1989** (1989 No 44)
Omit from the Fourth, Fifth, and Sixth Schedules the item “New Zealand Symphony Orchestra Limited” and substitute in each case the item “New Zealand Symphony Orchestra and any subsidiary of the New Zealand Symphony Orchestra”. 30
Insert in the Seventh Schedule, in its appropriate alphabetical order, the item “New Zealand Symphony Orchestra and any subsidiary of the New Zealand Symphony Orchestra”. 35