



# Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990

No. 70 of 1990

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# Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990

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## An Act relating to closer economic relations between Australia and New Zealand

[Assented to 16 June 1990]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

### PART 1—PRELIMINARY

#### Short title

1. This Act may be cited as the *Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990*.

#### Commencement

2. (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within the period of 6 months commencing on the day on which it receives the

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Royal Assent, it commences on the first day after the end of that period.

**PART 2—AMENDMENTS OF THE TRADE PRACTICES ACT  
1974**

**Principal Act**

3. In this Part, “**Principal Act**” means the *Trade Practices Act 1974*<sup>1</sup>.

**Interpretation**

4. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“**‘authority’**, in relation to a State or Territory (including an external Territory), means:

- (a) a body corporate established for a purpose of the State or the Territory by or under a law of the State or Territory; or
- (b) an incorporated company in which the State or the Territory, or a body corporate referred to in paragraph (a), has a controlling interest;

**‘New Zealand Commerce Commission’** means the Commission established by section 8 of the Commerce Act 1986 of New Zealand;

**‘New Zealand Crown corporation’** means a body corporate that is an instrument of the Crown in respect of the Government of New Zealand;”.

**Market**

5. Section 4E of the Principal Act is amended by inserting “unless the contrary intention appears,” after “Act,”.

**Extended application of Parts IV and V**

6. Section 5 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) In addition to the extended operation that section 46A has by virtue of subsection (1), that section extends to the engaging in conduct outside Australia by:

- (a) New Zealand and New Zealand Crown corporations; or
- (b) bodies corporate carrying on business within New Zealand; or
- (c) persons ordinarily resident within New Zealand.”.

**Additional operation of Act**

7. Section 6 of the Principal Act is amended by inserting in paragraph (2) (b) “46A,” after “46,”.

8. After section 46 of the Principal Act the following sections are inserted:

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**Misuse of market power—corporation with substantial degree of power in trans-Tasman market**

“46A. (1) In this section:

**‘conduct’**, in relation to a market, means conduct in the market either as a supplier or acquirer of goods or services in the market;

**‘impact market’** means a market in Australia that is not a market exclusively for services;

**‘market power’**, in relation to a market, means market power in the market either as a supplier or acquirer of goods or services in the market;

**‘trans-Tasman market’** means a market in Australia, New Zealand or Australia and New Zealand for goods or services.

“(2) A corporation that has a substantial degree of market power in a trans-Tasman market must not take advantage of that power for the purpose of:

- (a) eliminating or substantially damaging a competitor of the corporation, or of a body corporate that is related to the corporation, in an impact market; or
- (b) preventing the entry of a person into an impact market; or
- (c) deterring or preventing a person from engaging in competitive conduct in an impact market.

“(3) If:

- (a) a body corporate that is related to a corporation has, or 2 or more bodies corporate each of which is related to the one corporation together have, a substantial degree of market power in a trans-Tasman market; or
- (b) a corporation and a body corporate that is, or a corporation and 2 or more bodies corporate each of which is, related to the corporation, together have a substantial degree of market power in a trans-Tasman market;

the corporation is taken, for the purposes of this section, to have a substantial degree of market power in the trans-Tasman market.

“(4) In determining for the purposes of this section the degree of market power that a body corporate or bodies corporate has or have in a trans-Tasman market, the Federal Court is to have regard to the extent to which the conduct of the body corporate or of any of those bodies corporate, in the trans-Tasman market is constrained by the conduct of:

- (a) competitors, or potential competitors, of the body corporate, or of any of those bodies corporate, in the trans-Tasman market; or
- (b) persons to whom or from whom the body corporate, or any of

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those bodies corporate, supplies or acquires goods or services in the trans-Tasman market.

“(5) Without extending by implication the meaning of subsection (2), a corporation is not taken to contravene that subsection merely because it acquires plant or equipment.

“(6) This section does not prevent a corporation from engaging in conduct that does not constitute a contravention of any of the following sections, namely, sections 45, 45B, 47 and 50, because an authorisation is in force or because of the operation of section 93.

“(7) Without limiting the manner in which the purpose of a person may be established for the purposes of any other provision of this Act, a corporation may be taken to have taken advantage of its market power for a purpose referred to in subsection (2) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the corporation or of any other person or from other relevant circumstances.

“(8) It is the intention of the Parliament that this section, and the provisions of Parts VI and XII so far as they relate to a contravention of this section, should apply to New Zealand and New Zealand Crown corporations to the same extent, and in the same way, as they respectively apply under section 2A to the Commonwealth and authorities of the Commonwealth.

“(9) Subsection (8) has effect despite section 9 of the *Foreign States Immunities Act 1985*.

**No immunity from jurisdiction in relation to certain New Zealand laws**

“46B. (1) It is hereby declared, for the avoidance of doubt, that the Commonwealth, the States, the Australian Capital Territory and the Northern Territory, and their authorities, are not immune, and may not claim immunity, from the jurisdiction of the courts of Australia and New Zealand in relation to matters arising under sections 36A, 98H and 99A of the Commerce Act 1986 of New Zealand.

“(2) This section applies in and outside Australia.”.

**Exceptions**

9. Section 51 of the Principal Act is amended:

- (a) by inserting in subsection (3) “, 46A” after “section 46”;
- (b) by adding at the end the following subsection:

“(5) In the application of subsection (2A) to section 46A, the reference in that subsection to trade or commerce includes trade or commerce within New Zealand.”.



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**Conduct by directors, servants or agents**

10. Section 84 of the Principal Act is amended by inserting in subsection (1) “or 46A” after “section 46”.

**Power to obtain information, documents and evidence**

11. Section 155 of the Principal Act is amended by adding at the end the following subsection:

“(8) Nothing in this section implies that notices may not be served under this section and section 155A in relation to the same conduct.”.

12. After section 155 of the Principal Act the following sections are inserted:

**Power to obtain information and documents in New Zealand relating to trans-Tasman markets**

“155A. (1) Where the Commission, the Chairman or the Deputy Chairman has reason to believe that a person is capable of furnishing information or producing documents relating to a matter that constitutes, or may constitute, a contravention of section 46A, a member of the Commission may, by written notice served on the person in New Zealand, require the person:

- (a) to furnish to the Commission, by writing signed by the person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any such information; or
- (b) to produce to the Commission, or to a person specified in the notice acting on behalf of the Commission, in accordance with the notice, any such documents.

“(2) The person may comply with the notice by providing the information or document to the New Zealand Commerce Commission for transmission to the Trade Practices Commission.

“(3) Nothing in this section implies that notices may not be served under this section and section 155 in relation to the same conduct.

“(4) This section binds the Crown in all its capacities.

**Trade Practices Commission may receive information and documents on behalf of New Zealand Commerce Commission**

“155B. (1) Where, by notice under section 98H of the Commerce Act 1986 of New Zealand, the New Zealand Commerce Commission requires a person to furnish any information or produce any document, the information or document may be provided to the Trade Practices Commission for transmission to the New Zealand Commerce Commission.

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“(2) As soon as practicable after the information or document is provided to the Trade Practices Commission, the Trade Practices Commission is to transmit it to the New Zealand Commerce Commission.

“(3) A person must not:

- (a) without reasonable excuse, contravene a notice under section 98H of the Commerce Act 1986 of New Zealand; or
- (b) in purported compliance with such a notice, knowingly furnish information that is false or misleading in a material particular.

Penalty:

- (a) in the case of a person other than a body corporate—\$2,000; and
- (b) in the case of a body corporate—\$10,000.

“(4) A person is not excused from furnishing information or producing a document under a notice under section 98H of the Commerce Act 1986 of New Zealand on the ground that the information, or the production of the document, may tend to incriminate the person, but:

- (a) any information furnished or document produced under such a notice; and
- (b) any information, document or thing obtained as a direct or indirect consequence of furnishing the information or producing the document;

is not admissible in evidence against the person in any criminal proceedings, other than proceedings for an offence against subsection (3).

“(5) This section binds the Crown in all its capacities, but nothing in this section permits the Crown in any of its capacities to be prosecuted for an offence.

“(6) This section applies in and outside Australia.”.

**Inspection of documents by Commission**

13. Section 156 of the Principal Act is amended by inserting in subsections (1) and (2) “or 155A” after “section 155”.

**Prosecutions**

14. Section 163 of the Principal Act is amended by omitting from subsection (5) “or 155” and substituting “, 155 or 155B”.

**Judicial notice**

15. Section 167 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) All courts must take judicial notice of:

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- (a) the official signature of a person who holds or has held the office of Chairman, Deputy Chairman, or member (including associate member) of the New Zealand Commerce Commission and of the fact that the person holds or has held the office; and
- (b) the imprint of the common seal of the New Zealand Commerce Commission;

if the signature or imprint purports to be attached or appended to an official document.”.

**PART 3—AMENDMENT OF THE ANTI-DUMPING  
AUTHORITY ACT 1988**

**Principal Act**

16. In this Part, “**Principal Act**” means the *Anti-Dumping Authority Act 1988*<sup>2</sup>.

17. (1) After section 3 of the Principal Act the following section is inserted in Part 1:

**Anti-dumping measures not to apply to goods of New Zealand origin**

“3A. (1) This Act, so far as it relates to duty that may become payable under section 8 or 9 of the Anti-Dumping Act, does not apply to goods that are the produce or manufacture of New Zealand.

“(2) Section 151 of the *Customs Act 1901* applies in determining the question whether goods are the produce or manufacture of New Zealand for the purposes of this Act in the same way that it applies in determining that question for the purposes of Part XVB of that Act.

“(3) In this section:

‘**goods**’ includes goods imported into Australia before the commencement of this section.”.

(2) If, immediately before the commencement of this Act, the Principal Act, so far as it relates to duty that may become payable under section 8 or 9 of the Anti-Dumping Act, applied to goods the produce or manufacture of New Zealand, that Act, so far as it so relates, ceases to apply to the goods.

(3) Section 151 of the *Customs Act 1901* applies in determining the question whether goods are the produce or manufacture of New Zealand for the purposes of subsection (2) of this section in the same way that it applies in determining that question for the purposes of Part XVB of that Act.

(4) Subsections (2) and (3) have effect despite anything in the Principal Act as amended by this Act.

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(5) Subsections (2), (3) and (4) do not limit by implication the operation of section 3A of the Principal Act as amended by this Act.

**PART 4—AMENDMENTS OF THE CUSTOMS ACT 1901**

**Principal Act**

**18.** In this Part, “Principal Act” means the *Customs Act 1901*<sup>3</sup>.

**When goods treated as the produce or manufacture of a country**

**19.** Section 151 of the Principal Act is amended:

- (a) by omitting from subsection (13) “section” and substituting “Act”;
- (b) by inserting after subsection (14) the following subsections:

“(14A) A determination under paragraph (7) (b) or subsection (13) may:

(a) make provision for the purposes of:

(i) Part XVB only; or

(ii) this Act (other than Part XVB); or

(b) make different provision for the purposes of Part XVB.

“(14B) Subsection (14A) does not limit by implication the application of subsection 33 (3A) of the *Acts Interpretation Act 1901* in relation to this section.”

**20. (1)** After section 269T of the Principal Act the following section is inserted:

**Anti-dumping measures not to apply to goods of New Zealand origin**

“269TAAA. (1) This Part, so far as it relates to duty that may become payable under section 8 or 9 of the Anti-Dumping Act, does not apply to goods that are the produce or manufacture of New Zealand.

“(2) In subsection (1):

‘goods’ includes goods imported into Australia before the commencement of this section.”

(2) If, immediately before the commencement of this Act, Division 2 of Part XVB of the Principal Act, so far as it relates to duty that may become payable under section 8 or 9 of the Anti-Dumping Act, applies to goods the produce or manufacture of New Zealand, that Division, so far as it so relates, ceases to apply to the goods.

(3) The Comptroller must, as soon as reasonably practicable and, in any event, no later than 6 months after the commencement of this Act, return any securities taken under section 42 of the Principal Act

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in relation to goods the produce or manufacture of New Zealand in respect of any dumping duty that may become payable.

(4) If, immediately before the commencement of this Act, a declaration was in force under section 269TG or 269TH in relation to goods or like goods that are the produce or manufacture of New Zealand, the declaration ceases to be in force in relation to the goods.

(5) If, immediately before the commencement of this Act, an undertaking was in force under subsection 269TG (4) in relation to goods the produce or manufacture of New Zealand, the undertaking ceases to be in force in relation to the goods.

(6) Subsections (2), (3), (4) and (5) have effect despite anything in the Principal Act as amended by this Act.

(7) Subsections (2), (3), (4), (5) and (6) do not limit by implication the operation of section 269TAAA of the Principal Act as amended by this Act.

**PART 5—AMENDMENTS OF THE CUSTOMS TARIFF  
(ANTI-DUMPING) ACT 1975**

**Principal Act**

21. In this Part, “Principal Act” means the *Customs Tariff (Anti-Dumping) Act 1975*<sup>4</sup>.

**Dumping duties**

22. Section 8 of the Principal Act is amended by inserting before subsection (3) the following subsection:

- “(1) This section does not apply to goods that are:
- (a) the produce or manufacture of New Zealand; and
  - (b) imported into Australia after the commencement of this subsection.”.

**Third country dumping duties**

23. Section 9 of the Principal Act is amended by inserting before subsection (3) the following section:

- “(1) This section does not apply to goods that are:
- (a) the produce or manufacture of New Zealand; and
  - (b) imported into Australia after the commencement of this subsection.”.

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**PART 6—AMENDMENTS OF THE EVIDENCE ACT 1905**

**Principal Act**

24. In this Part, “Principal Act” means the *Evidence Act 1905*.

25. After Part V of the Principal Act the following Part is inserted:

**“PART VA—EVIDENCE OF CERTAIN NEW ZEALAND  
MATTERS**

*“Division 1—Preliminary*

**Interpretation**

“11A. In this Part, unless the contrary intention appears:

‘facsimile’, in relation to an instrument, document or thing, means a copy of the instrument, document or thing that has been reproduced by facsimile telegraphy;

‘New Zealand Act’ means an Act of the Parliament of New Zealand;

‘New Zealand Minister’ means a Minister of the Crown of New Zealand;

‘official instrument’ includes a proclamation, commission, appointment, warrant, order and regulation;

‘public document’ includes:

- (a) a record required by New Zealand law to be kept of a public document or proceeding; and
- (b) an entry in a public register or book; and
- (c) a certificate issued by a New Zealand officer under New Zealand law.

**Application of Part**

“11B. This Part applies only in relation to proceedings in which a matter for determination arises under:

- (a) section 46A, 155A or 155B of the *Trade Practices Act 1974*; or
- (b) a provision of Part VI or XII of the *Trade Practices Act 1974* so far as the provision relates to section 46A, 155A or 155B of that Act; or
- (c) Part IIIA of the *Federal Court of Australia Act 1976*.

**Facsimiles**

“11C. Subject to any Rules of Court made under the *Federal Court of Australia Act 1976*, this Part applies to a facsimile of an instrument, document or thing in the same way that it applies to the original of the instrument, document or thing (whether or not that original is itself a copy or extract of an instrument, document or thing).

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***“Division 2—Judicial notice of certain New Zealand matters***

**New Zealand Acts**

“11D. Judicial notice must be taken of all New Zealand Acts.

**Official New Zealand signatures, seals and stamps**

“11E. (1) Judicial notice must be taken of:

- (a) the official signature of a person who holds or has held the office of Judge, Master, Registrar or Deputy Registrar of the High Court of New Zealand; and
- (b) the official signature of a person who holds or has held an office in New Zealand to which the Governor-General, by *Gazette* notice, declares this section to apply; and
- (c) the imprint of the official seal or stamp of any of those persons; and
- (d) the fact that the person holds or has held the office concerned; and
- (e) the imprint of a seal of the High Court of New Zealand;

if the signature or imprint purports to be attached or appended to a judicial or other official document.

“(2) A declaration may be made under paragraph (1) (b) in relation to an office that has ceased to exist before the declaration is made.

“(3) A declaration under paragraph (1) (b) continues to apply to an office or a person who held the office even if the office ceases to exist after the declaration is made.

***“Division 3—Evidence of certain New Zealand instruments***

**Evidence of New Zealand official instruments**

“11F. (1) Evidence of an official instrument issued by the Governor-General of New Zealand, or by or under the authority of a New Zealand Minister, may be given by producing:

- (a) the *New Zealand Gazette* purporting to contain the instrument; or
- (b) a document purporting:
  - (i) to be a copy of the instrument; and
  - (ii) to have been printed under the authority of the New Zealand Government; or
- (c) if the instrument was made by the Governor-General in Council of New Zealand—a copy or extract of the instrument purporting to have been certified as a true copy or extract by the Clerk of the Executive Council of New Zealand; or
- (d) a copy or extract of the instrument purporting to have been certified as a true copy or extract by a New Zealand Minister.

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“(2) Evidence is not required of the handwriting or official position of a person who certifies an instrument under subsection (1).

**Evidence of New Zealand proclamations and other acts of state**

“11G. Evidence of a proclamation or other act of state of New Zealand may be given by producing a copy of it:

- (a) that is proved to be an examined copy; or
- (b) that purports to be sealed with the seal of New Zealand.

**Evidence of public documents admissible in New Zealand under New Zealand Acts**

“11H. (1) If, under a New Zealand Act, a public document is admissible in evidence, to any extent or for any purpose, the document is, without further proof, admissible in evidence to the same extent and for the same purpose if it purports to be sealed, stamped, signed, signed and sealed or signed and stamped in accordance with the New Zealand Act.

“(2) If a document is admissible in evidence under subsection (1), a certified copy of it, or a certified extract from it, is also admissible in evidence.

**Evidence of other New Zealand public documents**

“11J. If, under New Zealand law, a public document is admissible in evidence, to any extent or for any purpose, without proof of:

- (a) the seal, stamp or signature that authenticates it; or
- (b) the judicial or official character of the person who appears to have signed it;

the document is admissible in evidence to the same extent and for the same purpose without such proof.

**Evidence of New Zealand documents of a public nature**

“11K. If a New Zealand document is of such a public nature as to be admissible in evidence in New Zealand on its mere production from the proper custody, a copy of or extract from it is admissible in evidence if the copy or extract:

- (a) is proved to be an examined copy or extract; or
- (b) purports to be signed and certified as a true copy or extract by a New Zealand officer who certifies that he or she has custody of it.

**“Division 4—Evidence of other New Zealand matters**

***New Zealand Gazette***

“11L. The mere production of a document purporting to be the *New Zealand Gazette* is evidence:

- (a) that it is the *New Zealand Gazette*; and



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- (b) that it was published on the day shown on it as the day on which it was published.

**Evidence of printing under authority of New Zealand Government**

“11M. The mere production of a document purporting to be printed under the authority of the New Zealand Government is evidence that the document was so printed.

**Acts done by New Zealand Governor-General or Minister**

“11N. If, under New Zealand law, the Governor-General of New Zealand or a New Zealand Minister is authorised or required to do an act, production of the *New Zealand Gazette* purporting to contain a copy or notification of the act is evidence that the act was properly done.

**By-laws and regulations under New Zealand Acts**

“11P. If, under a New Zealand Act, power to make by-laws or regulations is conferred on a person or body, a document purporting:

- (a) to contain the terms of a by-law or regulation made by the person or body under the Act; and
- (b) to be printed under the authority of the New Zealand Government;

is evidence that the by-law or regulation:

- (c) was properly made in those terms; and
- (d) if it appears to have been approved of or confirmed by the Governor-General of New Zealand—was so approved or confirmed.

**“Division 5—Evidence relating to New Zealand judicial proceedings**

**Evidence of act or process of New Zealand court**

“11Q. Evidence of a judgment, decree, rule, order or other act or process of a New Zealand court, and of an affidavit, pleading or other legal document lodged with a New Zealand court, may be given by producing a copy of it:

- (a) that is proved to be an examined copy; or
- (b) that purports to be sealed with the seal of the court.

**“Division 6—Miscellaneous**

**Part not to derogate from existing Australian laws**

“11R. This Part is in addition to, and not in derogation of, any other law in force in Australia.”

**PART 7—AMENDMENTS OF THE FEDERAL COURT OF  
AUSTRALIA ACT 1976**

**Principal Act**

26. In this Part, “**Principal Act**” means the *Federal Court of Australia Act 1976*<sup>5</sup>.

**State Supreme Courts invested with jurisdiction in Chambers**

27. Section 32A of the Principal Act is amended by adding at the end the following subsection:

“(4) This section does not apply to a proceeding that is an Australian proceeding within the meaning of Part IIIA.”.

28. After Part III of the Principal Act the following Part is inserted:

**“PART IIIA—TRANS-TASMAN MARKET PROCEEDINGS**

**“Division 1—Preliminary**

**Interpretation**

“32B. In this Part, unless the contrary intention appears:

‘**Australian injunction**’ means an injunction, whether final or interlocutory, made in an Australian proceeding;

‘**Australian judgment**’ means a judgment made or given in an Australian proceeding;

‘**Australian proceeding**’ means a proceeding in which a matter for determination arises under:

- (a) section 46A, 155A or 155B of the *Trade Practices Act 1974*; or
- (b) a provision of Part VI or XII of the *Trade Practices Act 1974* so far as the provision relates to section 46A, 155A or 155B of that Act; or
- (c) this Part;

and includes a part of such a proceeding;

‘**Australian subpoena**’ means a subpoena issued in an Australian proceeding;

‘**High Court**’ means the High Court of New Zealand;

‘**judgment creditor**’, in relation to a New Zealand judgment, means the person in whose favour the judgment was made or given, and includes a person in whom the rights under the judgment have become vested by succession, assignment or otherwise;

‘**judgment debtor**’, in relation to a New Zealand judgment, means the person against whom the judgment was made or given, and includes a person against whom the judgment is enforceable under New Zealand law;

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**'New Zealand injunction'** means an injunction, whether final or interlocutory, made in a New Zealand proceeding;

**'New Zealand judgment'** means a judgment made or given in a New Zealand proceeding;

**'New Zealand proceeding'** means a proceeding in which a matter for determination arises under section 36A, 98H or 99A of the Commerce Act 1986 of New Zealand, and includes a part of such a proceeding;

**'New Zealand subpoena'** means a subpoena issued in a New Zealand proceeding;

**'person named'**, in relation to a subpoena, means the person to whom the subpoena is addressed;

**'registered'**, in relation to a New Zealand judgment, means registered under Division 5;

**'subpoena'** means a subpoena to give evidence, a subpoena for production or a subpoena for both evidence and production;

**'subpoena for production'** means an order requiring the person named to attend as directed by the order and produce a document or thing for the purpose of evidence;

**'subpoena to give evidence'** means an order requiring the person named to attend as directed by the order for the purpose of giving evidence.

***"Division 2—Exercise in New Zealand of jurisdiction by Federal Court***

**Federal Court sittings in New Zealand etc.**

"32C. (1) If the Federal Court is satisfied, at any stage of an Australian proceeding, that the proceeding could be more conveniently or fairly conducted or continued in New Zealand, the Federal Court may direct that the proceeding be conducted or continued at a place in New Zealand specified in the order.

"(2) A direction may be subject to such conditions (if any) as are specified in the order.

"(3) Without limiting subsection (1), judgment may be given in New Zealand in an Australian proceeding.

"(4) The Federal Court may, for the purposes of an Australian proceeding, take evidence or receive submissions, by video link or telephone, from a person in New Zealand.

"(5) The Federal Court may, for the purposes of an Australian proceeding, exercise in New Zealand any of the powers that the Federal Court is permitted, under New Zealand law, to exercise in New Zealand.

**New Zealand counsel entitled to practise in Federal Court in New Zealand etc.**

"32D. A person who is entitled to practise as a barrister, solicitor or both before the High Court of New Zealand is entitled to practise as a barrister, solicitor or both:

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- (a) in an Australian proceeding before the Federal Court sitting in New Zealand; or
- (b) in relation to the examination, cross-examination or re-examination of a witness in New Zealand whose evidence is taken by video link or telephone in an Australian proceeding before the Federal Court sitting in Australia; or
- (c) in relation to the making of submissions by video link or telephone from New Zealand in an Australian proceeding before the Federal Court sitting in Australia.

**Australian injunction may be made in relation to New Zealand conduct etc.**

“32E. (1) The Federal Court may, in an Australian proceeding, make an order or grant an injunction restraining a person from engaging in conduct, or requiring a person to do an act or thing, in New Zealand.

“(2) A subpoena may be issued in an Australian proceeding requiring a person in New Zealand to attend before the Federal Court sitting in Australia or New Zealand.

“(3) This section does not limit by implication any power that the Federal Court has apart from this section to make an order, grant an injunction or issue a subpoena.

**Service of injunction in New Zealand etc.**

“32F. Subject to the Rules of Court, an Australian injunction or other Australian judgment, and an Australian subpoena, may be served in New Zealand.

**Subpoena for service in New Zealand not to be issued without leave of Judge**

“32G. A subpoena in an Australian proceeding for service in New Zealand must not be issued without the leave of a Judge of the Federal Court.

**Subpoena for production must permit production at certain registries of High Court of New Zealand**

“32H. An Australian subpoena issued for service in New Zealand that is a subpoena for production, and is not also a subpoena to give evidence, must permit the person named to comply with the subpoena by producing the document or thing concerned to the High Court of New Zealand at a registry of the High Court prescribed by the Rules of Court.

**Effective service of subpoena**

“32J. An Australian subpoena issued for service in New Zealand is of no effect unless:

- (a) it is accompanied by a statement in the form prescribed by the

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Rules of Court setting out the rights and obligations in relation to the subpoena of the person named, and including information about the way in which an application to have the subpoena set aside may be made to the Federal Court; and

- (b) at the time of service or at some other reasonable time before the person named is required to comply with it, allowances and travelling expenses or vouchers sufficient to meet the person's reasonable expenses of complying with the subpoena are paid or tendered to the person.

**Application to set subpoena aside**

“32K. (1) The person named in an Australian subpoena issued for service in New Zealand may apply to the Federal Court for the subpoena to be set aside.

“(2) An application may be made *ex parte*.

“(3) An application must be made by affidavit.

“(4) An affidavit must:

- (a) be sworn or affirmed by the applicant; and
- (b) set out the facts on which the applicant relies; and
- (c) be lodged with the Registrar.

“(5) The Registrar must cause a copy of the affidavit to be served on the solicitor on the record for the party to the proceedings who applied for the subpoena to be issued or, if there is no solicitor on the record, on the party.

“(6) This section is in addition to, and not in derogation of, any Rules of Court.

**Grounds for setting aside subpoena**

“32L. (1) The Federal Court may set aside, in whole or part, an Australian subpoena issued for service in New Zealand.

“(2) Without limiting the grounds on which a subpoena may be set aside, the Federal Court may set it aside on any of the following grounds:

- (a) that the person named does not have and cannot reasonably be expected to obtain necessary travel documents;
- (b) that the person named is liable to be detained for the purpose of serving a sentence;
- (c) that the person named is liable to prosecution or is being prosecuted for an offence;
- (d) that the person named is liable to the imposition of a penalty in civil proceedings (other than proceedings under the *Trade Practices Act 1974*);

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- (e) that the evidence to be given by the person named could be obtained by other means without significantly greater expense;
- (f) that compliance with the subpoena would cause the person named hardship or serious inconvenience;
- (g) in the case of a subpoena for production—that the Federal Court is satisfied:
  - (i) that the document or thing should not be taken out of New Zealand; and
  - (ii) that evidence of the contents of the document, or that evidence of the thing, can be given by other means.

***“Division 3—Exercise in Australia of jurisdiction by High Court of New Zealand***

**High Court of New Zealand sittings in Australia etc.**

“32M. (1) The High Court of New Zealand may conduct or continue a New Zealand proceeding in Australia.

“(2) Without limiting subsection (1), judgment may be given in Australia in a New Zealand proceeding.

“(3) The High Court of New Zealand may, for the purposes of a New Zealand proceeding, take evidence or receive submissions, by video link or telephone, from a person in Australia.

“(4) The High Court of New Zealand may, for the purposes of a New Zealand proceeding, exercise in Australia all of the powers it has when sitting in New Zealand, except its powers:

- (a) to punish for contempt; and
- (b) to enforce or execute its judgments or process.

“(5) Without limiting subsection (4), the High Court of New Zealand may in a New Zealand proceeding, by order:

- (a) direct that the proceeding be conducted or continued in private; or
- (b) require a person to leave the court; or
- (c) prohibit or restrict the publication of evidence given in the proceeding or of the name of a party to, or a witness in, the proceeding.

“(6) Without limiting subsection (4), the High Court of New Zealand may, for the purposes of a New Zealand proceeding, exercise any of its powers in relation to a person in Australia who is taking part in the proceeding by video link or telephone, except its powers:

- (a) to punish for contempt; and
- (b) to enforce or execute its judgments or process.

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“(7) Without limiting subsections (1) to (6) (inclusive), the Judicature Act 1908 of New Zealand and the High Court Rules made by or under that Act that apply to New Zealand proceedings generally also apply, by force of this subsection, to the practice and procedure of the High Court of New Zealand in a proceeding that is a New Zealand proceeding for the purposes of this Part so far as:

- (a) the proceeding is conducted or continued in Australia; or
- (b) the High Court takes evidence or receives submissions in New Zealand for the purposes of the proceeding, by video link or telephone, from a person in Australia.

“(8) An order under subsection (5) must be complied with.

“(9) Subject to the Rules of Court, an order under subsection (5) may be enforced by a Judge of the Federal Court who, for that purpose, may exercise the powers that a Judge may exercise to enforce like orders made by the Federal Court.

“(10) Without limiting subsection (9), a person who contravenes an order under subsection (5) is in contempt of the Federal Court, and is punishable accordingly, unless the person establishes that the contravention should be excused.

**Privileges, protection and immunity of participants in New Zealand proceedings**

“32N. (1) A Judge of the High Court of New Zealand has:

- (a) at a sitting in Australia of the High Court in a New Zealand proceeding; or
- (b) in taking evidence or receiving submissions in a New Zealand proceeding, by video link or telephone, from a person in Australia;

the same privileges, protection and immunity as a Judge of the Federal Court.

“(2) A person appearing as a barrister, solicitor or both in a New Zealand proceeding:

- (a) at a sitting in Australia of the High Court of New Zealand; or
- (b) by video link or telephone from Australia at a sitting in New Zealand of the High Court of New Zealand;

has the same protection and immunity as a barrister has in appearing for a party in a proceeding before the Federal Court.

“(3) A person appearing as a witness in a New Zealand proceeding:

- (a) at a sitting in Australia of the High Court of New Zealand; or
- (b) by video link or telephone from Australia at a sitting in New Zealand of the High Court of New Zealand;

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has the same protection as a witness in a proceeding in the Federal Court.

**High Court of New Zealand may administer oath in Australia etc.**

“32P. (1) The High Court of New Zealand may:

- (a) at a sitting in Australia of the High Court in a New Zealand proceeding; or
- (b) for the purpose of obtaining the testimony in a New Zealand proceeding, by video link or telephone, of a person in Australia; administer an oath or affirmation in accordance with the practice and procedure of the High Court.

“(2) Evidence given by a person on oath or affirmation administered by the High Court of New Zealand under subsection (1) is, for the purposes of section 35 of the *Crimes Act 1914*, testimony given in a judicial proceeding.

**Service of New Zealand injunctions in Australia etc.**

“32Q. A New Zealand injunction or other New Zealand judgment, and a New Zealand subpoena, may be served in Australia.

**Service of New Zealand subpoena in Australia**

“32R. (1) A New Zealand subpoena issued with the leave of a Judge of the High Court of New Zealand may be served on the person named by leaving a sealed copy of the subpoena with the person personally together with a statement setting out the person’s rights and obligations in relation to the subpoena, and including information about the way in which an application may be made to the High Court to have the subpoena set aside.

“(2) The person named is not bound to comply with the subpoena unless, at the time of service or at some other reasonable time before the person named is required to comply with it, allowances and travelling expenses or vouchers sufficient to meet the person’s reasonable expenses of complying with the subpoena are paid or tendered to the person.

**Documents to be transmitted to High Court of New Zealand etc.**

“32S. If a document or thing is lodged with the Federal Court under a New Zealand subpoena served in Australia, the Registrar of the Federal Court must transmit it to the High Court of New Zealand.

**“Division 4—Taking of evidence by Federal Court for High Court of  
New Zealand**

**Taking of evidence by Federal Court**

“32T. (1) The High Court of New Zealand may request the Federal Court to obtain evidence in Australia for the High Court for the purposes of a New Zealand proceeding.



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“(2) The Federal Court may, by order, make any provision it considers appropriate for the purpose of obtaining the evidence.

“(3) An order may require a specified person to take any steps the Federal Court considers appropriate for that purpose.

“(4) Without limiting subsections (2) and (3), an order may, in particular, make provision:

- (a) for the examination of witnesses, either orally or in writing; or
- (b) for the production of documents or things; or
- (c) for the inspection, photographing, preservation, custody or detention of any property; or
- (d) for taking samples of any property and carrying out any experiments on or with any property.

“(5) Subsection (4) does not prevent the Federal Court from making an order requiring a person to give testimony (either orally or in writing) otherwise than on oath or affirmation if the High Court of New Zealand requests it to do so.

“(6) A person who is required by an order to attend at any place is entitled to the same amount of conduct money and payment for expenses and loss of time as the person would be entitled on attendance as a witness before the Federal Court.

**Privilege of witnesses**

“32U. (1) An order under section 32T must not compel a person to give evidence that the person could not be compelled to give in the New Zealand proceeding concerned.

“(2) In subsection (1):

‘give evidence’ includes:

- (a) answer a question; and
- (b) produce a document or thing.

**Division not to derogate from existing Australian laws**

“32V. This Division is in addition to, and not in derogation of, any other law in force in Australia.

**“Division 5—Enforcement of judgments of High Court of New Zealand**

**Registration of judgment in Federal Court**

“32W. (1) A judgment creditor under a New Zealand judgment may apply to the Federal Court to have the judgment registered in the Federal Court.

“(2) Subject to this section, the Federal Court must order the judgment to be registered.

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“(3) A New Zealand judgment must not be registered if on the day on which the application is made:

- (a) the judgment has been wholly satisfied; or
- (b) the judgment could not be enforced in New Zealand.

“(4) Subject to sections 32X, 32Y and 32Z:

- (a) a registered judgment is, for the purposes of enforcement, of the same force and effect; and
- (b) proceedings may be brought on the judgment; and
- (c) the amount (if any) for which the judgment is registered carries interest; and
- (d) the Federal Court has the same control over the enforcement in Australia of the judgment;

as if the judgment had been a judgment originally made or given by the Federal Court acting within its jurisdiction and entered on the day of registration.

“(5) If the amount payable under a New Zealand judgment that is to be registered is expressed in New Zealand currency, the judgment is to be registered as if it were a judgment for such an amount in Australian currency as, on the basis of the exchange rate prevailing on the day of the judgment, is equivalent to the amount payable under the judgment.

“(6) If, on the day of application for registration of a New Zealand judgment under which an amount is payable, the judgment has been partly satisfied, the judgment must not be registered for the whole amount payable under the judgment, but only for the balance remaining payable on that day.

“(7) In addition to any amount payable under a New Zealand judgment (including any interest that under New Zealand law is due under the judgment up to the time of registration), the judgment is to be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the High Court of New Zealand.

**Variation of registered judgment**

“32X. (1) Every judgment of the High Court of New Zealand that varies a registered New Zealand judgment must be registered in the Federal Court and, on registration, this Division applies to the judgment as varied.

“(2) A registered New Zealand judgment that has been varied by a judgment of the High Court of New Zealand may not be executed, and proceedings may not be taken to enforce such a registered judgment, without the leave of the Federal Court until the varying judgment is registered in the Federal Court.

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**Cases in which registration must be set aside**

“32Y. The Federal Court must set aside the registration of a judgment, on the application of the judgment debtor, if the Federal Court is satisfied:

- (a) that the judgment has been discharged or can no longer be enforced in New Zealand; or
- (b) that the judgment has been wholly satisfied; or
- (c) that the judgment was not registrable under this Division or was not properly registered; or
- (d) that the judgment has been reversed on appeal or otherwise set aside; or
- (e) that the judgment relates to a claim for relief for a contravention, or 2 or more contraventions, of section 36A of the Commerce Act 1986 of New Zealand (whether or not it also relates to other claims for relief) and the claim for relief for the contravention has been, or all of those contraventions have been, finally dismissed.

**Stay of enforcement of registered judgment**

“32Z. (1) If the Federal Court is satisfied that a judgment debtor under a registered New Zealand judgment:

- (a) has applied, or intends to apply, to have the judgment set aside; or

- (b) has appealed, or intends to appeal, against the judgment;

the Federal Court may order that enforcement of the judgment in Australia be stayed pending the final determination of the application or appeal, until a specified day or for a specified period.

“(2) If the Federal Court makes an order on the ground:

- (a) that a person intends to apply to have a judgment set aside; or
- (b) that a person intends to appeal against a judgment;

the Federal Court must require the person, as a condition of the order, to make the application or bring the appeal by a specified day or within a specified period.

“(3) Every order is to be made on the condition that the judgment debtor pursues the application or appeal in an expeditious manner.

“(4) An order may be made on such other conditions, including conditions relating to giving security, as the Federal Court thinks fit.

**New Zealand judgment not enforceable otherwise than under Division**

“32ZA. A New Zealand judgment may not be enforced in Australia otherwise than under this Division.

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**Application of rules of private international law**

“32ZB. This Division has effect in relation to the execution and enforcement of judgments despite any rule of law relating to the jurisdiction of the courts of foreign countries or to public policy.

**“Division 6—Miscellaneous**

**Jurisdiction of Federal Court under Part**

“32ZC. (1) Jurisdiction is conferred on the Federal Court in any matter arising under this Part.

“(2) Without limiting subsection (1), jurisdiction is conferred on the Federal Court to hear and determine prosecutions for offences against this Part.

“(3) The jurisdiction conferred on the Federal Court by this section is exclusive of the jurisdiction of any other court.

“(4) Without limiting subsection (3), prosecutions for offences against this Part may be brought only in the Federal Court.

“(5) This section has effect subject to section 75 of the Constitution.

“(6) This section has effect despite anything in any other law of the Commonwealth.

**Non-compliance with New Zealand subpoena**

“32ZD. (1) A person served in Australia with a New Zealand subpoena must comply with the subpoena.

“(2) A person who contravenes a New Zealand subpoena is in contempt of the Federal Court, and is punishable accordingly, unless the person establishes that the contravention should be excused.

“(3) In determining whether a person’s contravention of a New Zealand subpoena should be excused, the Federal Court may have regard to:

- (a) any matters that have not been brought to the attention of the High Court of New Zealand, if the Federal Court is satisfied that:
  - (i) the High Court would have been likely to have set aside the subpoena if the matters had been brought to its attention; and
  - (ii) the failure to bring the matters to the attention of the High Court was not the person’s fault, or was the result of an omission by the person that should be excused; and
- (b) any other matters, being matters to which the Federal Court would have regard if it had issued the subpoena.

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“(4) A certificate under a seal of the High Court of New Zealand to the effect that a person named in the certificate has contravened a New Zealand subpoena is evidence of the person’s contravention of the subpoena unless the person establishes to the satisfaction of the Federal Court that the person did not in fact contravene the subpoena.

“(5) Findings of fact made by the High Court of New Zealand on an application to the High Court to set aside the subpoena cannot be challenged by a person alleged to have contravened it unless the High Court was deliberately misled in making those findings of fact.

**Contempt of High Court of New Zealand**

“32ZE. A person must not, at a sitting of the High Court of New Zealand in Australia:

- (a) assault, threaten, intimidate or wilfully insult:
  - (i) a Judge of the High Court; or
  - (ii) a Master, Registrar, Deputy Registrar or another officer of the High Court; or
  - (iii) a person appearing as a barrister, a solicitor or both; or
  - (iv) a witness in the proceedings; or
- (b) wilfully interrupt or obstruct the proceedings; or
- (c) wilfully and without lawful excuse disobey an order or direction of the High Court.

Penalty: Imprisonment for 3 months.

**Reciprocal arrangements for use of court facilities**

“32ZF. (1) The Chief Judge of the Federal Court may make arrangements with the Chief Justice of New Zealand for the purposes of giving effect to this Part.

- “(2) Without limiting subsection (1), arrangements may be made:
- (a) to enable the Federal Court to sit in New Zealand, for the purposes of Australian proceedings, in court rooms of the High Court of New Zealand or in other places in New Zealand; or
  - (b) to enable the High Court of New Zealand to sit in Australia, for the purposes of New Zealand proceedings, in court rooms of the Federal Court or in other places in Australia; or
  - (c) to enable evidence to be taken and submissions received, by video link or telephone, in Australian proceedings or New Zealand proceedings; or
  - (d) to provide registry facilities and court staff for the purposes of Australian proceedings or New Zealand proceedings.”.

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**Rules of Court**

29. Section 59 of the Principal Act is amended:

- (a) by adding at the end of paragraphs (2) (a) to (r) (inclusive) “and”;
- (b) by adding at the end of subsection (2) the following word and paragraphs:
  - “; and (u) the reception, for the purposes of Part IIIA of this Act and Part VA of the *Evidence Act 1905*, of copies of instruments, documents and things reproduced by facsimile telegraphy; and
  - (v) the reception, for the purposes of Part IIIA of this Act and Part VA of the *Evidence Act 1905*, of evidence or submissions by video link or telephone; and
  - (w) issuing subpoenas for service in New Zealand for the purposes of Part IIIA and the service of such subpoenas; and
  - (x) the form to accompany a subpoena for service in New Zealand for the purposes of Part IIIA; and
  - (y) the Court’s sittings in New Zealand under Part IIIA; and
  - (z) applications under section 32K; and
  - (za) the enforcement of orders under subsection 32M (5); and
  - (zb) the registration and enforcement, and the setting aside of the registration, of judgments under Part IIIA; and
  - (zc) the transmission of documents to the High Court of New Zealand under section 32S; and
  - (zd) taking evidence under section 32T; and
  - (ze) the exercise in Chambers of the Court’s jurisdiction under Part IIIA.”.

**PART 8—AMENDMENT OF THE JURISDICTION OF COURTS  
(CROSS-VESTING) ACT 1987**

**Principal Act**

30. In this Part, “Principal Act” means the *Jurisdiction of Courts (Cross-vesting) Act 1987*.

**Additional jurisdiction of certain courts**

31. Section 4 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

“(4) This section does not apply to a matter arising under:

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- (a) the *Conciliation and Arbitration Act 1904*; or
  - (b) the *Industrial Relations Act 1988*; or
  - (c) section 45D, 45E, 46A, 155A or 155B of the *Trade Practices Act 1974*; or
  - (d) a provision of Part VI or XII of the *Trade Practices Act 1974* so far as the provision relates to section 46A, 155A or 155B of that Act.”.
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**NOTES**

1. No. 51, 1974, as amended. For previous amendments, see Nos. 56 and 63, 1975; Nos. 88 and 157, 1976; Nos. 81, 111 and 151, 1977; Nos. 206 and 207, 1978; No. 73, 1980; Nos. 61 and 176, 1981; No. 80, 1982; No. 39, 1983; Nos. 63, 73 and 165, 1984; No. 65, 1985; Nos. 8, 17 and 168, 1986; Nos. 23 and 141, 1987; Nos. 8 and 20, 1988; and No. 34, 1989.
2. No. 72, 1988, as amended. For previous amendments, see No. 174, 1989.
3. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 92, 116, 177 and 180, 1979; Nos. 13, 15 and 110, 1980; Nos. 45, 64, 67, 152 and 157, 1981; Nos. 48, 51, 80, 108, 115 and 137, 1982; No. 81, 1982 (as amended by No. 39, 1983); Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39, 40 and 175, 1985; Nos. 10, 34 and 149, 1986; Nos. 51, 76, 81, 104 and 141, 1987; Nos. 63, 66 and 76, 1988; Nos. 23, 24, 78, 108 and 174, 1989; and Nos. 5, 6 and 11, 1990.
4. No. 76, 1975, as amended. For previous amendments, see No. 66, 1981; Nos. 53, 68, 114 and 136, 1982; Nos. 20 and 91, 1983; No. 1, 1984; No. 39, 1985; No. 76, 1987; No. 69, 1988; and No. 173, 1989.
5. No. 4, 1905, as amended. For previous amendments, see No. 43, 1934; No. 80, 1950; No. 48, 1956; No. 28, 1963; No. 53, 1964; Nos. 80 and 216, 1973; No. 31, 1974; No. 14, 1978; No. 139, 1979; Nos. 39 and 177, 1981; No. 91, 1983; No. 198, 1985; and No. 87, 1988.
6. No. 156, 1976, as amended. For previous amendments, see Nos. 19 and 87, 1979; No. 61, 1981; No. 26, 1982; No. 91, 1983; Nos. 11, 72 and 165, 1984; Nos. 65 and 193, 1985; No. 76, 1986; No. 141, 1987; Nos. 8 and 99, 1988; No. 157, 1989 and No. 11, 1990.
7. No. 24, 1987, as amended. For previous amendment, see No. 87, 1988.

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*[Minister's second reading speech made in—  
House of Representatives on 17 May  
Senate on 30 May 1990]*