

Mr Butcher

EMPLOYMENT PROTECTION

ANALYSIS

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No. 6—1

Price 65c

A BILL INTITULED

An Act to require employers to give adequate notice of the threat of closure and redundancy, to provide procedures whereby alternatives to severance of employment and redundancy may be considered and put into effect, and to make provision for employees made redundant 5

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be 10 cited as the Employment Protection Act 1981.

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

2. Interpretation—In this Act, unless the context otherwise requires,— 15

“Employee” means a person who is a worker in terms of the Industrial Relations Act 1973:

“Minister” means the Minister of Labour:

“Ordinary pay” has the meaning assigned to it by 20 section 2 of the Annual Holidays Act 1944:

“Employment Task Force” or “Task Force” means an Employment Task Force established under section 32 of the Act:

“Redundancy and Re-employment Board” or “Board” 25 means the Redundancy and Re-employment Board constituted under this Act:

“Employment Protection Fund” or “Fund” means the Employment Protection Fund established and maintained under section 18 of this Act: 30

“Redundant employee” means an employee whose employment is terminated by his employer if that action of the employer is attributable, wholly or mainly, to—

(a) The fact that the employer has ceased, or 35 intends to cease, to carry on the business for the purposes of which the employee was employed by the employer, or has ceased, or intends to cease, to carry on that business in the place where the employee was employed; or 40

- 5 (b) The fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminish,—
- and “redundant” and “redundancy” have corresponding meanings:
- 10 “Redundancy pay” means redundancy pay to which a redundant employee may become entitled under Part I of this Act:
- “Undertaking” has the meaning assigned to it by section 2 (1) of the Factories and Commercial Premises Act 1981.
- 15 “Central organisation of employers”, “central organisation of workers”, “Arbitration Court”, “employer”, and “worker” have the meanings assigned to them by the Industrial Relations Act 1973.

3. **Notice of redundancy situation to be given**—(1) As soon as practicable in the particular circumstances after an employer becomes aware that a redundancy situation is likely to develop in respect of some or all of his employees, and in every case at least 90 days before any employee is made redundant, he shall give notice of the situation to the District Superintendent or District Officer of the nearest office of the Department of Labour, and to those of his employees likely to be affected.

20 (2) The District Superintendent or District Officer, as the case may be, shall thereupon give notice of the situation to any union or association of workers or employers whose members may be directly affected, and to the Board.

35 (3) Any employee who receives a notice under subsection (1) of this section shall be entitled, during the currency of that notice, to be absent from his place of employment for reasonable periods during his normal working hours in order to find other employment, and no employee shall suffer, or be permitted to suffer, any loss or detriment by reason only of an exercise of the right conferred on him by this subsection.

40 (4) Subsection (1) of this section shall not apply where—

(a) By reason of circumstances beyond the employer's control, a full or partial closure of the undertaking will take effect immediately within 7 days of the circumstances giving rise to the closure occurring; and

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- (b) The Secretary of Labour, by writing under his hand, states that he is satisfied that the circumstances giving rise to the closure were beyond the employer's control.

PART I

SERVICE-RELATED REDUNDANCY PAY

4. Redundancy pay entitlement—(1) Notwithstanding anything in any enactment, award, industrial agreement, or contract of service, a redundant employee who has been in the continuous employment of his employer for a period of not less than 1 year shall, subject to this Part of this Act, be entitled to receive from his employer by way of redundancy pay not less than the appropriate amount calculated as follows:

Period of Continuous Employment	Minimum Amount of Redundancy Pay	
(i) One year or less	3 weeks' ordinary pay;	15
(ii) For each additional full year in excess of 1 year	1 week's ordinary pay in addition to the amount payable under (i) above.	

(2) For purposes of section 308 of the Companies Act 1955 and of section 104 of the Insolvency Act 1967, redundancy pay paid to any employee under this section shall be deemed to be wages in respect of services rendered to his employer during the 4 months next before the date of termination of his employment.

(3) Any payment made under subsection (2) of this section shall be recoverable by the employer from the Fund by writing addressed to the Board together with such information, relating to proof of payment, as the Board may require.

5. Computation of period of employment—(1) For the purposes of this Part of this Act, any period during which an employee is—

- (a) Incapable of work in consequence of sickness or injury; or
 - (b) Absent from work on account of a temporary cessation of work (not being on account of a strike in which the employee takes part); or
 - (c) Absent from work in circumstances such that, by any Act or arrangement or custom, he is regarded as continuing in the employment of his employer for all or any purposes, —
- shall count as a period of employment.

(2) For the purposes of this Part of this Act, but subject to section 6 of this Act, any period during which an employee takes part in a strike shall not count as a period of employment.

5 **6. Continuity of employment**—For the purposes of this Part of this Act, the continuity of any period of employment is not broken by—

- (a) The transfer from one person to another of the trade, business, or undertaking of the employer; or
- 10 (b) The substitution, by or under any Act, of one body corporate for another as the employer; or
- (c) The death of the employer, if the employee is taken into the employment of the personal representatives or trustees of the deceased; or
- 15 (d) Any change in the partners, personal representatives, or trustees who employ any person; or
- (e) The taking of any person employed by a company into the employment of another company which is at that time a subsidiary or the holding company or a subsidiary of the holding company of the first-mentioned company. In this paragraph the terms “subsidiary” and “holding company” have the same meanings as in section 158 of the Companies Act 1955; or
- 20 (f) Any period which, under section 5 (2) of this Act, does not count as a period of employment.

7. Disentitlement to redundancy pay—(1) No employee shall be entitled to receive redundancy pay in accordance with this Part of this Act, if—

- 30 (a) His employment is terminated by his employer for a cause other than that of redundancy; or
- (b) He refuses to accept alternative employment suitable for him offered to him by his employer.

(2) For the purposes of paragraph (a) of subsection (1) of this section, it shall be for the employer to prove that an employee’s employment has been terminated for a cause other than that of redundancy.

8. Redundancy pay under other arrangements—If a redundant employee is entitled to receive redundancy pay
40 under any arrangement or instrument to which his employer

is a party or under any other Act, he may, by notice in writing to his employer, elect to receive redundancy pay either under that arrangement or instrument or Act or under this Part of this Act, and shall be bound by his election.

PART II

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THE REDUNDANCY AND RE-EMPLOYMENT BOARD AND THE
EMPLOYMENT PROTECTION FUND

Redundancy and Re-employment Board

9. Redundancy and Re-employment Board—(1) There is hereby established a board to be known as the Redundancy and Re-employment Board. 10

(2) The Board shall consist of 5 members appointed by the Governor-General on the recommendation of the Minister, of whom—

- (a) One shall be appointed as Chairman: 15
- (b) Two shall be appointed on the nomination of the central organisation of employers:
- (c) Two shall be appointed on the nomination of the central organisation of workers.

(3) The Board shall be a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property, and of suing and being sued, and of doing and suffering all such other acts and things as corporations may lawfully do and suffer. 20

(4) The First Schedule to the Local Authorities (Members' Interests) Act 1968 is hereby amended by inserting in Part II, after the item relating to the Rangitaiki Drainage Board, the following item: 25

“The Redundancy and Re-employment Board | 1981, No. 00—The Employment Protection Act 1981.” 30

10. Term of office—(1) Every member of the Board shall be appointed for such term, not exceeding 3 years, as is specified in his appointment, but may from time to time be reappointed.

(2) Every member of the Board, unless he sooner vacates his office under section 10 of this Act, shall continue to hold office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired. 35

11. Extraordinary vacancies—(1) Any member of the Board may be at any time removed from office by the Governor-General for inefficiency, disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the
5 Governor-General, or may at any time resign his office by writing addressed to the Minister.

(2) If any member of the Board dies, or resigns, or is removed from office, his office shall become vacant, and the vacancy shall be deemed to be an extraordinary vacancy.

10 (3) In the case of an extraordinary vacancy, the Governor-General may appoint some other fit person to be a member of the Board for the residue of the term for which the person vacating office was appointed. Every such appointment shall be made in the same manner as the appointment
15 of the person vacating office.

(4) The powers of the Board shall be affected by any vacancy in its membership.

12. Deputies—(1) If the Governor-General is satisfied that any member of the Board is incapacitated by illness, absence,
20 or other sufficient cause from performing the duties of his office, the Governor-General may, in the manner in which the member was appointed, appoint a fit person to act as deputy for the member during his incapacity.

25 (2) Every such deputy shall, while he acts as such, be deemed to be a member of the Board, and (if he is the deputy of the Chairman) to be the Chairman of the Board.

(3) No such appointment of a deputy and no acts done by a deputy as such, or by the Board while a deputy is acting as such, shall in any proceedings be questioned on the ground
30 that the occasion for the appointment of the deputy had not arisen or had ceased.

13. Meetings of Board—(1) Meetings of the Board shall be held at such times and places as the Board or the Chairman from time to time appoints.

35 (2) At all meetings of the Board the quorum necessary for the transaction of business shall be 3 members, including at least one of the members appointed under paragraph (b) of subsection (2) of section 9 of this Act and at least one of the members appointed under paragraph (c) of that subsection.

40 (3) The Chairman shall preside at all meetings of the Board at which he is present.

(4) In the absence of the Chairman from any meeting of the Board, the members present shall elect a member to preside at that meeting, and the member presiding shall have all the powers of the Chairman in respect of that meeting.

(5) All questions arising at any meeting of the Board shall be decided by a majority of the valid votes recorded thereon. 5

(6) At any meeting of the Board the Chairman shall have a deliberate vote. In the case of an equality of votes, the Chairman shall also have a casting vote.

(7) A resolution in writing signed, or assented to by letter or telegram, by all the members of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted. 10

(8) Subject to the provisions of this Act and of any regulations made under this Act, the Board may regulate its procedure in such manner as it thinks fit. 15

14. Secretary and officers of Board—There may from time to time be appointed under the State Services Act 1962, a Secretary of the Redundancy and Re-employment Board and such other officers, being officers of the Department of Labour, as may be required. 20

Functions and Powers of Board

15. Functions of Board—(1) The functions of the Board shall be—

(a) To administer the Employment Protection Fund established under this Act: 25

(b) To make recommendations to the Minister on the rates of levies to be paid by employers for the purposes of this Act:

(c) To make such payments to or for the benefit of any eligible person (as defined in subsection (2) of this section) as in its discretion it thinks fit for the purposes of all or any of the following matters: 30

(i) His retraining:

(ii) His relocation: 35

(iii) Generally assisting his satisfactory re-establishment in the work force of New Zealand:

(d) To exercise such other functions as are conferred on it by this Act or any other Act.

(2) For the purposes of this section the expression “eligible person” means— 40

- (a) A redundant employee within the meaning of Part I of this Act; and
- (b) Any other employee who in the opinion of the Board should be treated as an “eligible person”, according to criteria determined from time to time by the Minister.

16. **Powers of Board**—(1) The Board shall have all the powers and authorities reasonably necessary for the effective performance of its functions.

10 (2) Without prejudice to subsection (1) of this section, the Board may, for the purposes of this Act, act in combination or association with, or seek advice from, any other person or body, whether incorporated or not.

17. **Contracts of Board**—(1) Any contract which if made between private persons must be by deed shall, if made by the Board, be in writing under the seal of the Board.

(2) Any contract which if made between private persons must be in writing signed by the parties to be charged therewith shall, if made by the Board, be either under the seal of the Board or signed by an officer or employee of the Board acting by authority of the Board.

(3) Any contract which if made between private persons may be made orally may be made in the manner specified in subsection (1) of this section as in the case of a deed, or in the manner specified in subsection (2) of this section as in the case of a contract required to be in writing, or may be made orally by or on behalf of the Board by an officer or employee of the Board acting by authority of the Board, but no oral contract shall be made involving the payment by the Board of a sum exceeding \$800.

(4) The Board may by writing under its common seal empower any person, either generally or in respect of any specified matters, to execute instruments on its behalf in any place in or beyond New Zealand. Any instrument executed by such an attorney on behalf of the Board shall bind the Board, and if executed as a deed shall have the same effect as if it were under the common seal of the Board.

(5) Notwithstanding anything to the contrary in the foregoing provisions of this section, no contract made by or on behalf of the Board shall be invalid by reason only that it is

not made in the manner provided by this section, if it is made pursuant to a resolution of the Board or to give effect to a resolution of the Board in relation to contracts generally or in relation to that particular contract.

Employment Protection Fund

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18. Employment Protection Fund—(1) For the purposes of this Act there shall be a fund to be known as the Employment Protection Fund.

(2) The Board shall open at the Bank of New Zealand, or at any branch or agency of that bank, an account to be known as the Employment Protection Fund Account, and may open at that bank or any branch or agency thereof such other accounts (including imprest and subsidiary accounts) as it considers necessary or desirable for the exercise of its functions and powers. 10

(3) Every account under this section shall be operated on only by cheque or other instrument (not being a promissory note) signed by such person or persons as the Board appoints from time to time for that purpose: 15

Provided that it shall be lawful, with the prior consent in writing of the Audit Office and subject to such conditions as the Audit Office prescribes, for any money to be paid by the Board by cheque bearing a facsimile of the signatures of the persons authorised pursuant to the provisions of this section to sign cheques, and every such cheque shall be deemed to have been duly signed in accordance with the provisions of this section. 20 25

19. Levies payable by employers—(1) Subject to section 20 of this Act, for the purpose of providing for the liabilities and expenses of the Board and for the benefits payable under this Part of this Act every employer shall, in each year, pay into the Fund an annual levy, being a percentage of an amount equal to the total annual earnings of his employees received from that employer, as fixed from time to time by regulations made in accordance with section 20 of this Act. 30

(2) Any levy paid under this section shall be paid and collected in such manner and at such times as may be prescribed by regulations made under this Act. 35

(3) For the purposes of this section the term “earnings”, in relation to any employee, means all his earnings as an employee as determined in accordance with section 103 of the Accident Compensation Act 1972. 40

20. **Rates of levies**—The Governor-General may from time to time, by Order in Council made on the advice of the Minister given after considering the recommendations of the Board, make regulations fixing the levies to be paid by
5 employers for the purposes of this Part of the Act.

21. **Expenses not met from levy**—There shall be paid without any further appropriation than this section such an amount as may be necessary to provide for such and expenses of the Board and such benefits payable under
10 this Part of this Act as are not provided for by the amount of levy paid under section 18 of this Act.

22. **Money payable into and out of the Fund**—(1) There shall be credited to the Fund—

- (a) All levies payable under section 19 of this Act:
- 15 (b) All interest, profits, and other earnings arising from the investment of the Fund:

- (c) The proceeds of all investments of the Fund:
- (d) All other money lawfully payable into the Fund.
- (2) The Board shall from time to time out of the Fund

20 pay—

- (a) All money payable by the Board:
- (b) All money payable to members of the Board pursuant to section 26 of this Act:
- 25 (c) All costs, charges, and expenses whatsoever incurred by the Board in the performance of its functions and the exercise of its powers and authorities.

Miscellaneous Financial Provisions

23. **Investment of money**—The Board may invest any part of the Fund, or any other money available for investment,
30 in the following manner:

- (a) In New Zealand Government Securities:
- (b) On deposit in the Bank of New Zealand or in the Post Office Savings Bank:
- 35 (c) In any manner, or in any securities, that may from time to time be authorised by the Minister of Finance.

24. **Borrowing powers of Board**—With the prior consent of the Minister of Finance, the Board may from time to time borrow money (whether by way of overdraft or other-
40 wise) and mortgage or charge any of its property or rights.

25. Loans and grants to Board—(1) The Minister of Finance may from time to time, out of money appropriated by Parliament for the purpose, advance money to the Board by way of loan or grant.

(2) The Minister of Finance may from time to time, on behalf of the Crown, give in respect of any advances made to the Board by any other person any guarantee, indemnity, or security.

(3) Every such guarantee, indemnity, or security shall be given, and every such advance by way of loan made by the Minister of Finance shall be made, subject to such terms and conditions as that Minister thinks fit.

(4) All advances and grants made under subsection (1) of this section shall be paid into the Fund.

26. Remuneration and travelling expenses—(1) The Board is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There shall be paid to the members of the Board remuneration by way of salaries, fees, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and that Act shall apply accordingly.

27. Unauthorised expenditure—The Board may, for purposes not authorised by this Act or by any other Act, in any financial year expend out of the Fund any sum or sums not amounting in the whole to more than \$1,000.

28. Accounts and audit—The Board shall keep full and correct accounts of all money received and expended by the Board, and the accounts shall be audited by the Audit Office, which for that purpose shall have and may exercise all such powers as it has under the Public Finance Act 1977, in respect of public money and stores and persons dealing therewith.

29. Annual report—(1) The Board shall, as soon as practicable after the expiration of every financial year, furnish to the Minister a report of its proceedings and operations for that year together with a copy of its audited accounts for that year and a copy of the report of the Audit Office on those accounts.

(2) A copy of the report and accounts, together with a copy of the report of the auditor on the accounts, shall be laid before Parliament as soon as practicable after their receipt by the Minister.

5 **30. Exemption from taxation**—The Board shall be exempt from land tax and income tax.

PART III

Employment Task Forces

10 **31. Application of this Part**—Except with the written consent of the Minister, this Part of this Act shall not apply to any undertaking having less than 75 employees.

15 **32. Employment Task Force**—Subject to section 31 of this Act, the said District Superintendent or District Officer shall, if requested by the Board to deal with any situation notified under section 3 of this Act, and may if requested by any interested party, establish an Employment Task Force, which shall consist of—

- (a) An officer of the Department of Labour, who shall be the Chairman; and
- 20 (b) One or more representatives of the employer; and
- (c) One or more representatives of the employees likely to be affected; and
- (d) An officer of the Department of Trade and Industry; and
- 25 (e) An officer of the Department of Social Welfare; and
- (f) An officer of the Development Finance Corporation; and
- (g) One or more representatives of local authorities whose locality is affected by the situation; and
- 30 (h) Such other persons as the Task Force invites to participate.

33. Functions of Task Forces—(1) The functions of each Task Force in respect of a redundancy situation shall be—

- (a) To consider alternatives to redundancy;
- 35 (b) To plan the gradual and orderly run-down of undertakings where it is considered that these cannot efficiently continue in operation;

- (c) To plan the continued operation of undertakings or parts of undertakings wherever feasible with assistance from the Development Finance Corporation if necessary:
 - (d) To investigate alternative employment opportunities in the vicinity of the undertaking in question: 5
 - (e) To survey and activate temporary employment projects:
 - (f) To ensure that all employees affected receive advice designed to assist them to adjust to the situation. 10
- (2) For the purposes of carrying out its functions under subsection (1) of this section a Task Force may require an employer involved in a redundancy situation to provide such relevant information as it considers necessary.
- (3) Section 5 (2) of the Development Finance Corporation Act 1973 is hereby amended by adding the following paragraph: 15
- “(e) To lend money, with or without security and on such terms and conditions as the Board thinks fit, to assist in the restructuring or reorganisation of undertakings involved in a redundancy situation within the meaning of the Employment Protection Act 1981, or to assist in the re-employment of employees made redundant by the closure of such an undertaking.” 25

34. Recommendations to Redundancy and Re-employment Board—A Task Force may advise the Board on the assistance under Part II of this Act needed by individual employees and on any other assistance available to such employees.

PART IV

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Miscellaneous Provisions

35. Determination of questions by Arbitration Court—

(1) Where any question arises as to the interpretation of this Act, or as to the entitlement of any employee to any benefit under Part I of this Act, it shall be determined by the Arbitration Court. 35

(2) The procedure for the determination of any question to which this section applies shall be the same as that for the interpretation of an award under section 118 of the Industrial Relations Act 1973, and the provisions of that section shall, 5 with the necessary modifications, apply accordingly.

(3) No procedure before the Arbitration Court under this section shall be held bad for want of form. No appeal shall lie from any determination of the Arbitration Court under this section, and, except on the ground of lack of jurisdiction, 10 no proceeding or determination of the Arbitration Court under this section shall be liable to be challenged, reviewed, quashed, or called in question in any Court.

36. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any 15 of the following purposes:

- (a) Regulating the procedure of the Board:
- (b) Providing for and regulating the collection, receipt, and payment of levies imposed on employers by this Act:
- 20 (c) Requiring statements, returns, and certificates to be given, furnished, or made for the purposes of this Act:
- (d) Prescribing forms for the purposes of this Act or authorising the Board to prescribe or approve such forms, and requiring the use of such forms:
- 25 (e) Exempting or providing for exemptions from any specified provision of any regulations made under this Act:
- (f) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and the amounts of fines, not exceeding \$2,000, that may be imposed in respect of any such offences:
- 30 (g) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
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37. Crown may provide services for Board—The Crown, acting through any department of State, may from time to time, at the request of the Board, execute any work or enter 40 into arrangements for the execution or provision by the department for the Board of any work or service, or for the supply to the Board of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

38. Act to be administered in Department of Labour—

(1) This Act shall be administered in the Department of Labour.

(2) The First Schedule to the Labour Department Act 1954 (as substituted by section 3 (1) of the Labour Department Amendment Act 1970 and amended by section 32 (2) of the Rent Appeal Act 1973) is hereby amended by inserting, before the reference to the Rent Appeal Act 1973, the words "The Employment Protection Act 1981".

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