

NEW ZEALAND PORTS AUTHORITY AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the New Zealand Ports Authority Act 1968.

Clause 1 specifies the Short Title.

Clause 2 relates to interpretation.

The first amendment repeals the definition of "harbour works" in section 2 of the principal Act as the definition will now be contained in section 13 (see the amendments in *clause 6*).

The object of the second amendment is to make it clear that the national ports plan to be prepared under the principal Act need not be a single document, but may be presented as a series of proposals.

Clause 3 amends the principal Act to empower the Chairman, or a member or the chief executive officer of the Authority duly authorised by the Chairman, to issue summonses and undertake any other steps preliminary or incidental to proceedings by the Authority.

Clause 4 revises the obligation of the Authority to prepare a national ports plan. The object again is to make it clearer that the plan will be of an evolving nature for the progressive development of ports and harbours.

Clause 5 reviews the provisions in section 12 of the principal Act, which relate to consultation by the Authority before reaching a decision on any proposal relating to the national ports plan, and to appeals from its decisions.

The amendment widens the Authority's powers to enable it to undertake any consultations and investigations that it considers desirable, and to exercise any of its powers under section 15 of the principal Act.

In addition to serving notice of its decision on persons who appear to it to be directly affected, the Authority must also give public notice of its decision, and any person who has a material interest may appeal.

The time for giving notice of appeal is reduced from 2 months to 14 days, in order to expedite proceedings.

Clause 6 deals with the control of capital expenditure. At present, under section 13 of the principal Act, the consent of the Authority must be obtained where a harbour board seeks to incur capital expenditure on harbour works of an amount exceeding that prescribed by the section in respect of the harbour board.

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The amendment introduces the following additional principles.

- (a) Control will be extended to expenditure in respect of works relating to inland container terminals.
- (b) Control will apply to all capital expenditure above the prescribed limits, and not merely to expenditure of borrowed money.
- (c) Control will also be extended to require the consent of the Authority to the use of designated items of plant or equipment within harbour or wharf limits or inside inland container terminals. The Authority may designate such items by notice in the *Gazette* where it is satisfied that the item is intended primarily for such use, and that the nature of the item exceeds the amount prescribed in relation to the user, and that its use would have significant consequences for the national ports plan.
- (d) Control is extended so that it will not only apply to harbour boards, but also to other bodies and persons incurring capital expenditure within harbours or inland container terminals, or using designated items inside harbour or wharf limits or such terminals.

This clause also includes the Marlborough Harbour Board among those boards who require consent to expenditure exceeding \$150,000; and reduces the time for filing notice of appeal from 2 months to 14 days, in order to expedite proceedings.

Clause 7 introduces a new provision requiring a harbour board to obtain the consent of the Authority before leasing or consenting to the sub-leasing of any of its land lying within wharf limits. The sole criterion to be applied by the Authority in deciding whether to give its consent will be that of the desirability of ensuring freedom of access to facilities within wharf limits.

Hon. Mr McLachlan

NEW ZEALAND PORTS AUTHORITY AMENDMENT

ANALYSIS

Title	4. Functions of Authority
1. Short Title	5. The national ports plan
2. Interpretation	6. Control of capital expenditure
3. Authority to be Commission of Inquiry	7. Leasing of areas within wharf limits

A BILL INTITULED

An Act to amend the New Zealand Ports Authority Act 1968

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**—This Act may be cited as the New Zealand Ports Authority Amendment Act 1977, and shall be read together with and deemed part of the New Zealand Ports Authority Act 1968* (hereinafter referred to as the principal Act).

2. **Interpretation**—Section 2 of the principal Act (as amended by section 6 (1) of the Ministry of Transport Amendment Act 1972) is hereby further amended—

15 (a) By omitting from the definition of the terms “harbour”, “port”, “harbour board”, “harbour dues”, and “harbour works”, the words “harbour dues”, and “harbour works”, and substituting the words “and ‘harbour dues’”:

*1968, No. 140

Amendments: 1969, No. 100; 1970, No. 95

(b) By adding the following definition:

“‘Plan’ means a proposal or series of proposals (whether included in one or more documents or otherwise formulated) for the purpose of achieving an objective.”

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3. Authority to be Commission of Inquiry—Section 8 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) The Chairman of the Authority, or any other member or the chief executive officer purporting in either case to act by the direction or with the authority of the Chairman, may—

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“(a) Issue summonses requiring the attendance of witnesses before the Authority, or the production of documents; and

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“(b) Do any other act preliminary or incidental to the investigation or consideration of any matter by the Authority.”

4. Functions of Authority—Section 11 (1) of the principal Act is hereby amended by repealing paragraph (b) and substituting the following paragraph:

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“(b) For that purpose, to prepare and keep under review, in accordance with section 12 of this Act, a plan (to be called the national ports plan) for the progressive development of ports and harbours in New Zealand, in order to promote and advance the interests of New Zealand in relation to—

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“(i) Its export, import, and coastal trades; and

“(ii) Its transportation systems; and

“(iii) The distribution of its population; and

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“(iv) Its resources, industries, and commerce generally.”

5. The national ports plan—Section 12 of the principal Act is hereby amended by repealing subsections (1), (2), (3), and (4), and substituting the following subsections:

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“(1) Before adopting as part of the national ports plan any proposal that directly affects any port, the Authority shall consult with the harbour board responsible for the port, and with all Government departments and other bodies and persons who in the opinion of the Authority appear to be directly concerned with the proposal.

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“(2) After consultation in accordance with subsection (1) of this section and any other consultations or investigations that the Authority may consider desirable (including any exercise by the Authority of its powers under section 15 of this Act), the Authority may adopt the proposal in whole or in part or in a modified form, or may reject the proposal.

“(3) The Authority shall—

“(a) Give a written copy of its decision on the proposal to every harbour board, Government department, body, and person consulted under subsection (1) of this section; and

“(b) Give public notice of the terms of the decision, by causing those terms to be published twice, at an interval of not less than 7 days, in a daily newspaper circulating in the area in which the port is situated.

“(3A) Any harbour board, Government department, body, or person to whom notice is given under subsection (3) of this section may, within 14 days after the date on which the notice is served on it or him, appeal in writing to the Minister against the decision on the ground that it was not in the national interest.

“(3B) Within 14 days after public notice of the terms of any decision is given under subsection (3) of this section, any person may appeal in writing to the Minister against the decision on the ground that it was not in the national interest.

“(4) On any appeal under this section, the Minister shall consider any representations made by the appellant, and by any harbour board, Government department, body, or person consulted under subsection (1) of this section; and shall if the appellant, board, department, body, or person so requires, give him or it an opportunity to be heard.

“(4A) Notwithstanding subsection (4) of this section, the Minister shall not entertain any appeal under that subsection unless in his opinion the appellant is directly concerned with or otherwise has a material interest in the decision appealed against.

“(4B) On hearing the appeal, the Minister may (without prejudice to subsection (5) of this section), confirm, modify, or reverse the decision appealed against.”

6. Control of capital expenditure—(1) Section 13 of the principal Act is hereby amended by repealing subsections (1), (2), and (3), and substituting the following subsections:

“(1) In this section—

- “‘Container works’ means any works for the improvement, protection, management, or development of an inland container terminal, except works for the purposes of routine maintenance or routine repair:
- “‘Designated item’ means any item of plant or equipment for the time being declared under subsection (2) of this section to be a designated item for the purposes of this section: 5
- “‘Harbour works’ means any harbour works, as defined in section 2 (1) of the Harbours Act 1950, that are used or are intended to be used for shipping purposes, except works for the purposes of routine maintenance or routine repair: 10
- “‘Inland container terminal’ has the same meaning as it has in section 2 (1) of the Waterfront Industry Act 1976: 15
- “‘Prescribed amount’ means—
- “(a) In relation to the Auckland and Wellington Harbour Boards, \$250,000:
- “(b) In relation to the Northland, Bay of Plenty, Gisborne, Hawke’s Bay, Marlborough, Nelson, Lyttelton, Timaru, Otago, and Southland Harbour Boards, and the Taranaki Harbours Board, \$150,000: 20
- “(c) In relation to any other harbour board, \$50,000: 25
- “(d) In relation to any body or person that is not a harbour board, \$150,000:
- “‘Shipping purposes’ means any purpose that—
- “(a) Conduces to the safety or convenience of ships (other than yachts, motor launches, speed boats, or other boats used exclusively for recreational purposes); or 30
- “(b) Facilitates the shipping or unshipping of goods or passengers— 35
- and without limiting the general import of the expression, includes the provision of any building, wherever situated, by a harbour board for use in connection with the handling, packing, or unpacking of goods for shipping or unshipping through any 40
- port.

“(2) Where—

“(a) Any item of plant or equipment is in the opinion of the Authority intended primarily for use—

5 “(i) Within the limits of a harbour or wharf;
or

“(ii) Within the boundaries of an inland container terminal; and

10 “(b) The value of the item exceeds the prescribed amount in relation to the harbour board, body, or person responsible for that harbour, wharf, or inland container terminal; and

“(c) In the opinion of the Authority, the use of the item would have significant consequences in relation to the national ports plan—

15 the Authority may by notice in the *Gazette* declare that item to be a designated item for the purposes of this section in relation to that harbour, wharf, or inland container terminal.

20 “(2A) Notwithstanding any other provision in any enactment or rule of law, it shall not be lawful for any harbour board, body, or person, except with the prior consent of the Authority, to use within the limits of any harbour, wharf, or inland container terminal any designated item of plant or equipment in relation to that harbour, wharf, or inland container terminal.

25 “(3) Notwithstanding any other provision in any enactment or rule of law, it shall not be lawful for any harbour board, body, or person, except with the prior consent of the Authority, to expend in the undertaking of any harbour works or container works,—

30 “(a) Any capital sum in excess of the prescribed amount in relation to the harbour board, body, or person;
or

35 “(b) Any lesser capital sum, where the works form part of a project, or one of a series of projects, whose total cost will exceed the prescribed amount in relation to the harbour board, body, or person.”

(2) Section 13 of the principal Act is hereby further amended by inserting in subsections (4) and (7) respectively, after the words “harbour works” in each place where they
40 occur, the words “or container works”.

(3) Section 13 of the principal Act is hereby further amended by omitting from subsection (9) the words “the board may, within 2 months”, and substituting the words “the applicant may, within 14 days”.

(4) Section 13 of the principal Act is hereby further amended by inserting in subsection (11), after paragraph (c), the following paragraph:

“(cc) Before proceeding to deal with the application under this section, the Authority may deal with the application as a proposal for adoption as part of the national ports plan pursuant to section 12 of this Act, and the provisions of that section shall apply accordingly.”

(5) Section 13 of the principal Act is hereby further amended by repealing subsection (12), and substituting the following subsection:

“(12) Without prejudice to any other remedies available against any harbour board or its members, or against any other body or person in respect of any contravention of subsection (2A) or subsection (3) of this section, or in respect of any failure to comply with any condition to which any consent under this section is for the time being subject, the provisions of subsections (2A) and (3) of this section and of that condition shall be enforceable by civil proceedings by the Attorney-General for an injunction or for any other appropriate relief.”

7. Leasing of areas within wharf limits—The principal Act is hereby further amended by inserting, after section 13, the following section:

“13A. (1) Notwithstanding any other provision in any enactment, it shall not be lawful for any harbour board, without the prior consent of the Authority—

“(a) To enter into any lease of any area vested in the board and lying within the limits of any wharf; or

“(b) To consent to the sub-letting of any such area.

“(2) The Authority, in granting or refusing its consent under this section, shall have regard solely to the desirability of ensuring that facilities within the limits of any wharf should be available to persons seeking to use them.”