

[AS REPORTED FROM THE LOCAL BILLS COMMITTEE]

*House of Representatives, 22 June 1978.*

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

*Hon. Mr McLachlan*

## NEW ZEALAND PORTS AUTHORITY AMENDMENT

### ANALYSIS

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### 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) 1978, 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

No. 154—2

(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)*.” 5

**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— 10

“(a) Issue summonses requiring the attendance of witnesses before the Authority, or the production of documents; and 15

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

*Struck Out*

**4. Functions of Authority**—Section 11 (1) of the principal Act is hereby amended by repealing paragraph (b) and substituting the following paragraph: 20

“(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— 25

“(i) Its export, import, and coastal trades; and 30

“(ii) Its transportation systems; and

“(iii) The distribution of its population; and

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

*New*

**4. Functions of Authority**—(1) The principal Act is hereby further amended by repealing section 11 (as amended by section 2 of the New Zealand Ports Authority Amendment Act 1970), and substituting the following section: 35

“11.—(1) The Authority shall have the following general functions: 40

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- “(a) To foster an efficient and integrated ports system for New Zealand:
- 5 “(b) For that purpose, to undertake the process of national ports planning by developing progressively and keeping under continuing review a national ports plan.
- “(2) In particular, but without limiting the generality of subsection (1) of this section, the Authority shall—
- 10 “(a) Foster ways of achieving a quicker turnround of ships, including the conducting or arranging of inquiries and investigations into cargo handling and the best use of equipment and plant; and
- 15 “(b) Keep acquainted with the evolution of new methods of cargo handling, port development, and the design and uses of shipping; and disseminate information on those matters in such manner as it thinks fit; and
- 20 “(c) Promote efficiency in the operation of ports; and
- “(d) Encourage the provision of training and education for persons who are or may be engaged in work associated with the loading and unloading of ships and the handling of cargo, and related waterfront work; and
- 25 “(e) Encourage the adoption by harbour boards of a uniform system of accounting and uniform methods of keeping statistical records.
- “(3) The Authority shall also have the following functions:
- 30 “(a) To promote research into any matters relating to any of its functions, either by itself or in association with Government departments, harbour boards, producer boards, and other organisations and agencies:
- 35 “(d) To negotiate with harbour boards and other bodies who in its opinion appear to be directly concerned with or otherwise to have a material interest, with a view to securing the implementation of any proposals made by the Authority in the performance of its functions; and failing agreement to report and make recommendations on such matters to the
- 40 Minister:
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*New*

- “(c) To inquire into and report to the Minister on such matters relating to the use and development of ports and harbours in New Zealand, or relating to harbour dues, as the Minister may from time to time refer to it: 5
- “(d) When requested by the Minister, to consider and report to him on the desirability or otherwise, in the public interest, of promoting legislation in relation to any matters referred to in this section: 10
- “(e) To undertake such other functions as may be required of it by the Minister pursuant to the policy of the Government in respect of ports and harbours, for the purposes of achieving greater port efficiency and economy and a quicker turnround of ships: 15
- “(f) When requested by the Minister, to review and make recommendations to him on the representation on harbour boards of areas or districts for the purposes of the election of members of boards under the Harbours Act 1950: 20
- “(g) Such other functions as may be conferred on it by any enactment.
- “(4) In the performance of its functions, the Authority shall have regard to the following matters:
- “(a) The export, import, and coastal trade of New Zealand and related matters: 25
- “(b) The distribution of the population of New Zealand:
- “(c) The transportation systems of New Zealand:
- “(d) The resources, industries, and commerce generally of New Zealand: 30
- “(e) National, regional, and local economic and transport planning:
- “(f) Ship design, cargo handling, and related matters:
- “(g) Such other considerations as the Authority considers to be relevant to the purposes of this Act.” 35
- (2) Section 2 of the New Zealand Ports Authority Amendment Act 1970 is hereby consequentially repealed.

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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:

5 “(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  
10 be directly concerned with the proposal.

“(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  
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—

20 “(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

25 “(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.

30 “(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.

35 “(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.

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“(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. 5

“(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. 10

“(4B) On hearing the appeal, the Minister may (without prejudice to subsection (5) of this section), confirm, modify, or reverse the decision appealed against.” 15

*New*

**5. New sections 12 and 12A substituted**—The principal Act is hereby further amended by repealing section 12, and substituting the following sections:

“**12. The national ports plan**—(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. 20 25

“(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. 30

“(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 35

*New*

5 “(b) Give public notice of the decision in daily newspapers circulating in Auckland, Wellington, Christchurch, and Dunedin, and in a daily newspaper circulating in the area in which the port is situated.

10 “(4) Any harbour board, Government department, body, or person to whom a copy of a decision is given under subsection (3) of this section may, within 14 days after the date on which the copy 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.

15 “(5) Within 14 days after the last date of publication of a public notice of a decision 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.

20 “(6) Notwithstanding subsection (5) 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.

“ (7) The Minister—

25 “(a) Shall cause a time and place to be appointed for the hearing of every appeal under this section; and  
“(b) Shall give public notice of the time and place so appointed so that the last date of publication is not less than 14 days before the date of the hearing, and otherwise in the same manner as is specified in subsection 3 (b) of this section.

30 “(8) On any appeal under this section, the Minister—

35 “(a) Shall consider any representations made by the appellant, and by any harbour boards, Government departments, bodies, and persons consulted under subsection (1) of this section, and by every person who in the opinion of the Minister is directly concerned with or otherwise has a material interest in the decision appealed against; and

40 “(b) Shall, if any such appellant, harbour board, Government department, body, or person so requires, give him or it an opportunity to be heard.

## New

“(9) On hearing the appeal the Minister may—

“(a) Confirm, modify, or reverse the decision appealed against; or

“(b) Refer the matter back to the Authority for reconsideration (in which case, following reconsideration by the Authority, the matter shall proceed again as if the decision were the initial decision of the Authority). 5

“(10) On any such appeal, the Minister’s decision shall be final. 10

“(11) Subject to the foregoing provisions of this section, on the adopting of any proposal as part of the national ports plan, the Authority shall submit it to the Minister for his approval. 15

“(12) Where the Minister approves any proposal submitted to him under subsection (11) of this section as part of the national ports plan, he shall cause it to be published in the *Gazette*, and may also cause it to be published in such other manner as he thinks fit. 20

“(13) Where public notice is to be given under this section of a decision of the Authority, or a proposal approved by the Minister is to be published in the *Gazette* under subsection (12) of this section, it shall be sufficient compliance if—

“(a) The proposal that is decided or approved is kept available for public inspection during ordinary working hours at the offices of the Authority; and 25

“(b) The public notice or the notice published in the *Gazette*, as the case may be, states that the decision or approval has been given, and that the proposal to which it relates is so available for public inspection. 30

“12A. **Variation of national ports plan**—(1) After any proposal is approved by the Minister as part of the national ports plan, the Authority may from time to time submit to the Minister for his approval any proposal for the variation or revocation of, or in substitution for, that part of the plan. 35

“(2) For the purposes of this section, the provisions of section 12 of this Act shall apply in all respects in the same way as it applies to other proposals to be included as part of the national ports plan.” 40

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:

- 5 “(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:  
10 “‘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:  
“‘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:  
15 “‘Inland container terminal’ has the same meaning as it has in section 2 (1) of the Waterfront Industry Act 1976:  
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- “‘Prescribed amount’ means—  
“‘(a) In relation to the Auckland and Wellington Harbour Boards, \$250,000:  
25 “‘(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:  
30 “‘(c) In relation to any other harbour board, \$50,000:  
“‘(d) In relation to any body or person that is not a harbour board, \$150,000:

*New*

- 35 “‘Prescribed amount’ means—  
“‘(a) In relation to the Auckland, Wellington, Lyttelton, and Otago Harbour Boards, \$500,000:  
“‘(b) In relation to the Northland, Bay of Plenty, Gisborne, Hawke’s Bay, Marlborough, Nelson,  
40 Timaru, and Southland Harbour Boards, and the Taranaki Harbours Board, \$300,000:

*New*

“(c) In relation to any other harbour board, \$100,000:

“(d) In relation to any body or person that is not a harbour board, in respect of any harbour over which a harbour board specified in any of paragraphs (a), (b), and (c) of this definition has jurisdiction, the amount specified in that paragraph in relation to that harbour board:

“(e) In every other case, \$100,000:

“‘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

“(b) Facilitates the shipping or unshipping of goods or passengers—

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 port.

“(2) Where—

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

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

or

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

“(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—

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.

“(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.

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“(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,—

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

15  
“(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.”

*Struck Out*

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“(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 occur, the words “or container works”.

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“(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”.

*New*

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“(2) Section 13 of the principal Act is hereby further amended by inserting in subsection (4), after the words “harbour works”, the words “or container works”.

“(3) Section 13 of the principal Act is hereby further amended by repealing subsection (7), and substituting the following subsection:

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“(7) The Authority shall not grant any consent under this section unless it is of the opinion that the proposals for the harbour works or container works are consistent with—

“(a) The relevant part of the approved national ports plan; or

40  
“(b) Where the relevant part of it has not yet been approved, the Authority’s views as to what that part should contain.”

*New*

(3A) Section 13 of the principal Act is hereby further amended by repealing subsections (9) and (10), and substituting the following subsections:

“(9) Where the Authority— 5

“(a) Refuses to grant its consent to an application under this section; or

“(b) Grants the application in part only or subject to conditions; or

“(c) Defers the application; or 10

“(d) Varies its consent by attaching or varying any conditions—

the applicant may, within 14 days after being notified by the Authority of its decision, appeal to the Minister against the decision on the ground that it was not consistent with the relevant part of the approved national ports plan or, where the relevant part of it has not yet been approved, that the decision was not in the national interest. 15

“(10) On hearing any appeal under this section, the Minister may— 20

“(a) Confirm, modify, or reverse the decision appealed against; or

“(b) Refer the matter back to the Authority for reconsideration (in which case, following reconsideration by the Authority, the matter shall proceed again as if the decision were the initial decision of the Authority). 25

“(10A) On any such appeal, the decision of the Minister shall be final.” 30

(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.”. 35

(5) Section 13 of the principal Act is hereby further amended by repealing subsection (12), and substituting the following subsection: 40

“(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  
5 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  
10 appropriate relief.”

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

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15 “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  
20 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  
25 should be available to persons seeking to use them.”

*New*

30 “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, to enter into any agreement with any person whereby there is conferred on any person, on a continuing basis, the sole right or a preferential right of user of—  
“ (a) A quayside berth at which ships load or discharge  
35 passengers or cargo; or  
“ (b) Any area that is adjacent to a quayside berth and is used for the aggregation of cargo.  
“ (2) The Authority, in granting or refusing its consent under this section, shall have regard solely to the desirability of ensuring that such berths and areas, whenever they are  
40 not fully utilised, are available to persons seeking to use them.”

*New*

“(3) Without prejudice to any other remedies available against any harbour board or its members, or against any other person, in respect of any contravention of subsection (1) of this section, the provisions of that subsection shall be enforceable by civil proceedings by the Attorney-General for an injunction or for any other appropriate relief.” 5

**7A. Extension of time limits**—The principal Act is hereby further amended by inserting, after section 22, the following new section: 10

“22A. Where in this Act, any time limit is prescribed for the bringing of an appeal to the Minister he may, if he thinks just to do so, extend the time within which the appeal may be brought.”