

WATERFRONT INDUSTRY AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes a number of amendments to the Waterfront Industry Act 1953.

Clause 2 amends section 4 so that the Chairman of the Waterfront Industry Tribunal may state a case for the opinion of the Court of Appeal on any question of law.

Clause 3 amends section 8 which deals with the functions of the Waterfront Industry Commission.

The amendments made by *subclauses (1) and (2)* of this clause deal with the determining of priorities in the allocation of labour. At present it is a function of the Commission to enforce rules which are made by Port Conciliation Committees for the purpose of determining these priorities. These rules will no longer be made and if the employers of waterside workers at a port cannot agree on the priorities they will be determined by the Commission.

Subclause (2) of this clause also adds two other new paragraphs to section 8. The new paragraph (g) gives the Commission the function of training or arranging for the training of waterside workers in first aid.

The new paragraph (h) gives the Commission specifically the function of making arrangements for facilitating the engagement of waterside workers, including arrangements that will avoid the unnecessary attendance of waterside workers at labour engagement bureaux.

Clause 4 amends section 9 which deals with the powers of the Commission. *Subclause (1)* extends the power to impose levies so that there is power to impose a levy to provide employers' contributions to group endowment assurance schemes, retirement schemes, and funds established for the benefit of waterside workers.

Subclause (2) authorises the Commission to establish such special funds and reserves as it deems necessary or expedient.

Clause 5 inserts a new section 9A in the principal Act. The new section empowers any Harbour Board to lease any land, premises, or wharves vested in it or controlled by it to the Commission by private treaty. It is retrospective in its effect.

Clause 6 amends section 11 which deals with the power of the Tribunal to make principal orders as to pay and conditions of work. At present no such order can apply with respect to any work of a kind which immediately before the commencement of the principal Act was not customarily performed by waterside workers. The section is amended so that an order can apply to work of that kind if the Tribunal is satisfied—

- (a) That any such waterside work is work that was not customarily performed at that time by workers other than waterside workers; or
- (b) That all the parties affected by the application agree to the order applying to any such waterside work.

Clause 7 amends section 20 so that the right to make appeals to the Tribunal against certain decisions and orders is extended. The right to appeal is given to the Commission on matters concerning its functions and powers and it is also given to any person whose name is removed from a bureau register. In this second case the right of appeal is a further right of appeal as such a person already has a right of appeal to the Port Conciliation Committee.

There are also two changes in procedure. At present an appeal must be lodged within 14 days. The Tribunal is now given power to extend this time.

At present the notice of appeal must be lodged with the Tribunal. Under the new procedure the notice will be lodged with the Port Conciliation Committee where the decision of such a Committee is being appealed against. In all other cases the notice will continue to be lodged with the Tribunal.

Clause 8 substitutes a new section 22 in the principal Act. The new section extends the classes of persons entitled to be represented before the Tribunal by an advocate.

The section has also been amended so that a barrister or solicitor may act as advocate, with the leave of the Tribunal, in any preliminary proceedings on an application made for the purpose of questioning the jurisdiction of the Tribunal on any matter if the application is lodged with the Tribunal at least seven days before the day appointed for the hearing of the matter.

Clause 9 inserts a new section 22A in the principal Act. The new section provides that in any proceedings before the Tribunal any organisation of employers or workers shall be entitled to appear and be heard as if it were a party to the proceedings if, in the opinion of the Tribunal, the organisation or the members thereof may in any manner be affected by the result of the proceedings. The new section is similar to section 164 of the Industrial Conciliation and Arbitration Act 1954.

Clause 10 enables the Port Conciliation Committee to extend the time within which a worker may appeal to it against the removal of his name from the bureau register.

Clause 11 amends section 29 which gives preference in obtaining waterside work to persons on the bureau register and to persons in permanent employment as waterside workers. The Tribunal may exempt any employer from the provisions of subsection (2) which gives persons in permanent employment a preference. The amendment allows the Tribunal to grant an exemption from any of the provisions of the section.

Clause 12: Subclause (1) abolishes the right of the General Manager of Railways to nominate an employers' representative to the Port Conciliation Committee at any railway port.

Subclause (2) enables any member of a Port Conciliation Committee to be removed from office by the Minister on certain grounds. At present only the Chairman of such a Committee can be removed from office.

Clause 13: Consequent on the amendments made by subclauses (1) and (2) of *clause 3* of this Bill *subclause (1)* of this clause deprives Port Conciliation Committees of the function of making rules to be followed in determining the priority of the allocation of labour.

Subclause (2) of this clause adds a new subsection to section 32. The new subsection enables certain disputes to be referred to the Tribunal for decision where there is no Port Conciliation Committee for any port.

Clause 14 repeals the provisions which provide for the formation of Combined Committees.

Clause 15 substitutes a new section 37 in the principal Act. This section at present provides for the appointment of National Conciliation Committees to which specified applications relating to two or more ports may be referred. The new section provides for the appointment of one standing National Conciliation Committee. The composition of the Committee differs slightly from that of the existing Committees and the members of it will be appointed for a term not exceeding two years.

Clause 16: Subclause (1) reduces the number of members of the National Amenities Committee from eight to seven. Provision is no longer made for the appointment of a member on the nomination of the General Manager of Railways.

Subclauses (2) and (3) change the method of appointing the two members who represent industrial associations of waterside workers.

Clause 17 substitutes a new section 39 in the principal Act. This section sets out the functions of the National Amenities Committee. The main changes are as follows—

- (a) The Committee's authority to authorise the Commission to provide amenities at any port is at present limited to amenities costing not more than £1,000. This figure is increased to £5,000:
- (b) Paragraph (c) of subsection (1) of the section is altered. This paragraph deals with the way in which Harbour Boards are to be reimbursed by the Commission for the cost of new amenities provided by them. The alterations are largely verbal and the payments are no longer referred to as rent. The Committee is to fix the terms and conditions of payment and its approval will be required to any changes in them agreed to from time to time between the Commission and the Harbour Board concerned. The terms and conditions will not be affected by any change in the use of the amenities authorised under subsection (3) of the section:
- (c) It will no longer be a function of the Committee to arrange for the caretaking and cleaning of amenities and it will only be required to approve those costs of maintenance which are not costs of cleaning, heating, lighting, and caretaking:

(d) Disputes between the Committee and any Harbour Board as to the value of any amenities will now be settled by a single arbitrator in all cases.

Clause 18 inserts a new section 42A in the principal Act. It provides that every member of any Committee appointed under this Act, unless he sooner vacates office, shall continue to hold office until his successor comes into office.

Clause 19 substitutes a new section 44 in the principal Act. This section deals with the application of the Industrial Conciliation and Arbitration Act 1954 which is limited in its application to persons engaged in the waterfront industry. The provision has been redrafted and Part IV of that Act which deals with disputed elections in unions has been applied for the first time.

Clause 20 repeals section 46 of the principal Act. This is a spent section dealing with the distribution of certain money held at 31 March 1951.

Clause 21 inserts a new section 50A in the principal Act. It enables the Commission to pay a worker's wages into his bank account if the worker so requests. It also enables the Commission to pay wages by cheque (whether crossed or uncrossed) in any case where any worker's wages remain unpaid for more than eight days after the date on which they become due for payment.

Clause 22 gives the Commission the right to expend in any financial year, for purposes not otherwise authorised, a sum or sums not amounting in the whole to more than £500.

Hon. Mr Shand

WATERFRONT INDUSTRY AMENDMENT

ANALYSIS

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2. Chairman may state case for Court of Appeal	13. Functions of Port Conciliation Committees
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4. Powers of Commission	15. National Conciliation Committee
5. Leases from Harbour Boards	16. National Amenities Committee
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9. Organisations entitled to be heard in any proceedings	20. Repeal of spent provision
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A BILL INTITULED

An Act to amend the Waterfront Industry Act 1953

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

1. Short Title—This Act may be cited as the Waterfront Industry Amendment Act 1964, and shall be read together with and deemed part of the Waterfront Industry Act 1953* (hereinafter referred to as the principal Act).

*1957 Reprint, Vol. 16, p. 533
Amendment: 1958, No. 103

2. Chairman may state case for Court of Appeal—Section 4 of the principal Act is hereby amended by inserting, after subsection (6), the following subsection:

“**(6A)** The Chairman of the Tribunal may in any matter before the Tribunal state a case for the opinion of the Court of Appeal on any question of law arising in the matter.” 5

3. Functions of Commission—(1) Section 8 of the principal Act is hereby amended by omitting from paragraph (d) the words “the rules determining the priority of the allocation of labour and”. 10

(2) Section 8 of the principal Act is hereby further amended by adding the following paragraphs:

“(f) To allocate labour in accordance with such priorities as may from time to time be agreed to at a port by all employers of waterside workers at that port, and, failing agreement, as may be determined by the Commission: 15

“(g) To train or arrange for the training of waterside workers in first aid:

“(h) To make arrangements for facilitating the engagement of waterside workers, including arrangements that will avoid the unnecessary attendance of waterside workers at labour engagement bureaus.” 20

4. Powers of Commission—(1) Section 9 of the principal Act is hereby amended by inserting in paragraph (a) of subsection (2), after subparagraph (v), the following subparagraphs: 25

“(vi) Providing for employers’ contributions to any group endowment assurance scheme or other retirement scheme for waterside workers: 30

“(vii) Providing for contributions agreed between the employers’ and the workers’ organisations, or prescribed by order of the Tribunal, to be paid on behalf of employers to the trustees of any fund established for the benefit of waterside workers.” 35

(2) Section 9 of the principal Act is hereby further amended by inserting in subsection (2), after paragraph (h), the following paragraph:

“(hh) Establish such special funds or reserves as it deems necessary or expedient.” 40

5. Leases from Harbour Boards—The principal Act is hereby amended by inserting, after section 9, the following section:

5 “9A. (1) Notwithstanding anything to the contrary in the Public Bodies’ Leases Act 1908 or in any other Act, every Harbour Board is hereby empowered, and shall be deemed always to have been empowered, to let or lease by private treaty any land, premises, or wharves vested in it or controlled by it to the Commission for the purpose of enabling the Commission to use such land, premises, or wharves in carrying out its functions.

10 “(2) Every such lease shall be for such term, and at such rent, and upon or subject to such conditions as may be agreed upon between the Harbour Board and the Commission, and if any Board and the Commission are unable to agree upon the terms of any such lease the matters in dispute shall be referred to arbitration under the Arbitration Act 1908.

15 “(3) For the purposes of the Rating Act 1925 the land, premises, or wharves comprised in any such lease shall be deemed to be harbour works under the control and management of a Harbour Board.”

6. Principal orders as to pay and conditions of work—Section 11 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

25 “(2) No principal order shall apply with respect to waterside work which immediately before the commencement of this Act was not customarily performed by waterside workers unless the Tribunal is satisfied—

30 “(a) That any such waterside work is work that was not customarily performed at that time by workers other than waterside workers; or

“ (b) That all the parties affected by the application agree to the order applying to any such waterside work.”

7. Appeals to Tribunal—(1) Section 20 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

35 “(1) Any employer or any organisation of employers or workers affected by any decision or order to which this section relates, or the Commission on matters concerning its functions or powers, or any person whose name is removed from a bureau register and whose appeal against that removal is

declined by the Port Conciliation Committee may, within fourteen days after the date of the decision or order, or within such further time as the Tribunal may in any case allow, appeal against it to the Tribunal by lodging with the Port Conciliation Committee (in respect of a decision of such a Committee) or with the Tribunal (in respect of any other decision or order) a notice of appeal in the prescribed form.” 5

(2) Section 20 of the principal Act is hereby further amended by repealing subparagraph (i) of paragraph (a) of subsection (2). 10

8. Advocates—The principal Act is hereby amended by repealing section 22, and substituting the following section:

“22. (1) In any proceedings before the Tribunal every party to the proceedings and every organisation allowed to be heard under section 22A of this Act and the Commission, on matters concerning its functions or powers, may be represented by an advocate or advocates. 15

“(2) No person shall be an advocate unless he is an officer or servant of a party to the proceedings or of an organisation allowed to be heard under section 22A of this Act or of the Commission, and is not a barrister or solicitor: 20

“Provided that a barrister or solicitor may act as advocate—

“(a) On an application for an order under paragraph (c) of section 12 of this Act; or 25

“(b) With the leave of the Tribunal, in any preliminary proceedings on an application made for the purpose of questioning the jurisdiction of the Tribunal on any matter if the application is lodged with the Tribunal at least seven days before the day appointed for the hearing of the matter; or 30

“(c) With the consent of all the parties in any other case.”

9. Organisations entitled to be heard in any proceedings—The principal Act is hereby amended by inserting, after section 22 (as substituted by section 8 of this Act) the following section: 35

“22A. In any proceedings before the Tribunal any organisation of employers or workers shall be entitled to appear and be heard in every respect as if it were a party to the proceedings if, in the opinion of the Tribunal, the organisation or the members thereof may in any manner be affected by the result of the proceedings.” 40

10. Time for appeal against removal of name from bureau register—Section 28 of the principal Act is hereby amended by inserting in the proviso to subsection (2), after the word “him”, the words “or within such further time as the Port
5 Conciliation Committee may in any case allow”.

11. Exemption from provision giving preference for workers on bureau register and for permanent workers—(1) Section 29 of the principal Act is hereby amended by repealing the proviso to subsection (2).

10 (2) Section 29 of the principal Act is hereby further amended by adding the following subsection:

“(3) The Tribunal may from time to time exempt any employer from any of the provisions of this section.”

12. Port Conciliation Committees—(1) Section 31 of the
15 principal Act is hereby amended by repealing the proviso to subsection (2), and substituting the following proviso:

“Provided that at any port where a Harbour Board acts as wharfinger the Harbour Board shall be entitled to nominate an employers’ representative.”

20 (2) Section 31 of the principal Act is hereby further amended by inserting in subsection (5), after the word “Chairman”, the words “and any other member”.

13. Functions of Port Conciliation Committee—(1) Section 32 of the principal Act is hereby amended by omitting
25 from paragraph (c) of subsection (1) the words “make rules to be followed in determining the priority of the allocation of labour;”.

(2) Section 32 of the principal Act is hereby further amended by adding the following subsection:

30 “(3) Where there is no Port Conciliation Committee for any port, any union or association or the New Zealand Port Employers’ Association Incorporated or any employer of waterside workers may at any time refer to the Tribunal for decision any dispute that arises in relation to waterside work
35 or any question in relation to any matter that is a function of Port Conciliation Committees by virtue of the provisions of subsection (1) of this section.”

14. Abolition of Combined Committees—(1) The principal Act is hereby amended by repealing sections 34 to 36.

(2) The principal Act is hereby consequentially amended—

(a) By omitting from paragraph (a) of subsection (2) of section 20 the words “and Combined Committees”: 5

(b) By omitting from paragraph (b) of subsection (1) of section 32 the words “Except where there is a Combined Committee for the port”:

(c) By omitting from subsection (1) of section 42 the words “(including a Combined Committee)”: 10

(d) By omitting from subsection (1) of section 43 the words “including a Combined Committee”.

15. National Conciliation Committee—(1) The principal Act is hereby amended by repealing section 37, and substituting the following section: 15

“37. (1) For the purpose of conciliation proceedings under section 18 of this Act in respect of every application relating to two or more ports, the Minister shall appoint a National Conciliation Committee consisting of seventeen members of whom— 20

“(a) One shall be appointed as Chairman:

“(b) Seven shall be appointed on the nomination of the New Zealand Port Employers’ Association Incorporated:

“(c) One shall be appointed on the nomination of the Harbours Association of New Zealand: 25

“(d) Eight shall be appointed on the nomination of associations.

“(2) The Chairman of the National Conciliation Committee shall be appointed on the unanimous nomination of the other members of the Committee: 30

“Provided that where those members are unable to agree on a unanimous nomination the Chairman shall be selected by the Minister.

“(3) Where the associations are unable to agree on the persons to be nominated by them for appointment pursuant to paragraph (d) of subsection (1) of this section the Minister shall decide the number of persons to be nominated by each association. 35

“(4) The members of the National Conciliation Committee shall be appointed for a term not exceeding two years.” 40

(2) Notwithstanding the provisions of subsection (1) of this section, any National Conciliation Committee which is in existence immediately before the commencement of this Act shall discharge its duties in the conciliation proceedings
5 for the purpose of which it was appointed.

16. National Amenities Committee—(1) Section 38 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the word “eight”, and substituting the word “seven”:

10 (b) By repealing paragraph (c) of subsection (1).

(2) Section 38 of the principal Act is hereby further amended by repealing paragraphs (e) and (f) of subsection (1), and substituting the following paragraph:

15 “(e) Two shall be appointed on the nomination of associations.”

(3) Section 38 of the principal Act is hereby further amended by inserting, after subsection (1), the following subsection:

20 “(1A) Where the associations are unable to agree on the persons to be nominated by them for appointment pursuant to paragraph (e) of subsection (1) of this section the Minister shall decide the number of persons to be nominated by each association.”

(4) The members of the National Amenities Committee who are in office immediately before the commencement of
25 this Act and who have been appointed under paragraph (e) or paragraph (f) of subsection (1) of section 38 of the principal Act, as originally enacted, shall be deemed to have been appointed under paragraph (e) of that subsection as substituted by subsection (2) of this section.

30 (5) The term of office of every person deemed by subsection (4) of this section to have been appointed to the National Amenities Committee shall expire on the date on which, but for the passing of this Act, his term would have expired under the provisions of the principal Act.

35 **17. Functions of National Amenities Committee**—(1) The principal Act is hereby amended by repealing section 39, and substituting the following section:

“39. (1) The functions of the National Amenities Committee shall be—

40 “(a) To authorise the Commission to provide amenities for waterside workers (including waiting rooms, restaurants, canteens, and first aid rooms) at any port at a cost not exceeding five thousand pounds for each such amenity:

“(b) Subject to the Harbours Act 1950, to approve schemes for the provision by Harbour Boards of necessary amenities for waterside workers:

“(c) To fix the terms and conditions under which the Commission shall reimburse any Harbour Board for the costs incurred or to be incurred by that Board in providing, after the seventeenth day of March, nineteen hundred and fifty-three, new amenities for waterside workers, and to approve any variations in those terms and conditions from time to time agreed between the Commission and that Board: 5 10

“(d) To approve expenditure for maintenance costs (other than costs of cleaning, heating, lighting, and care-taking) of amenities provided for waterside workers, whether provided before or after the seventeenth day of March, nineteen hundred and fifty-three. 15

“(2) Any terms and conditions fixed pursuant to paragraph (c) of subsection (1) of this section shall not be affected by any change in the use of the amenities authorised under subsection (3) of this section. 20

“(3) No amenities provided for waterside workers before or after the seventeenth day of March, nineteen hundred and fifty-three, whether provided by a Harbour Board or otherwise, shall be used for any other purpose without the approval of the Minister. Where amenities provided by a Harbour Board after that date or provided and paid for by the Commission before or after that date are on land vested in a Harbour Board or are on any wharf owned by or under the control of a Harbour Board and are approved by the Minister to be used for other purposes, the value of those amenities at the time when they cease to be used for waterside workers shall be deducted from the total cost of new amenities provided by a Harbour Board in place thereof for the purpose of fixing the amount payable to the Board for the new amenities under paragraph (c) of subsection (1) of this section, or, where no new amenities are provided by the Harbour Board, shall be paid to the Commission by the Harbour Board. 25 30 35 40

“(4) If any dispute arises between the National Amenities Committee and any Harbour Board as to the value of any amenities for the purposes of this section, the dispute shall be referred to arbitration under the Arbitration Act 1908.”

(2) The passing of this Act shall not affect the liability of the Commission to pay to any Harbour Board any rent fixed to be paid to that Harbour Board under paragraph (c) of subsection (1) of section 39 of the principal Act as originally enacted. Any rent so fixed to be paid shall, for the purposes of section 39 of the principal Act (as substituted by subsection (1) of this section), be deemed to be a term fixed under paragraph (c) of subsection (1) of that section (as so substituted).

10 **18. Term of office**—The principal Act is hereby amended by inserting, after section 42, the following section:

“42A. Notwithstanding anything to the contrary in this Act, every member of any Committee appointed under this Act, unless he sooner vacates his office otherwise than by effluxion of time, shall continue to hold office until his successor comes into office.”

19. Limited application of Industrial Conciliation and Arbitration Act 1954—The principal Act is hereby amended by repealing section 44, and substituting the following section:

20 “44. (1) Except as otherwise provided in this section, the provisions of the Industrial Conciliation and Arbitration Act 1954 and the provisions of the Labour Disputes Investigation Act 1913 shall not apply to any employer or waterside worker who is bound by a principal order or other order or to any organisation of employers or waterside workers which is so bound.

25 “(2) The provisions of Part III (except section 57 and paragraph (k) of section 66), Part IV, Part X, and Part XI of the Industrial Conciliation and Arbitration Act 1954 shall apply to every employer and waterside worker who is bound by a principal order or other order and to every industrial union or industrial association of employers or waterside workers which is so bound and, so far as those provisions relate to officers and members of any such union or association, to those officers and members. For the purposes of this subsection every such order shall be deemed to be an award or industrial agreement within the meaning of that Act.”

20. Repeal of spent provision—The principal Act is hereby amended by repealing section 46.

21. Payment of wages into bank accounts and by cheque—The principal Act is hereby amended by inserting, after section 50, the following section: 5

“50A. Notwithstanding anything to the contrary in sections 8 and 9 of the Wages Protection and Contractors’ Liens Act 1939, the Commission may—

“(a) On a written request by a waterside worker arrange for wages earned by or payable to him to be paid into his account at any bank within the meaning of the Trustee Act 1956: 10

“(b) Make payment of wages by cheque (whether crossed or uncrossed) in any case where wages earned by or payable to any waterside worker remain unpaid for more than eight days after the date on which the wages became due for payment.” 15

22. Unauthorised expenditure—The principal Act is hereby amended by inserting, after section 50A (as inserted by section 21 of this Act), the following section: 20

“50B. The Commission may, for purposes not authorised by this Act or by any other Act, in any financial year expend any sum or sums not amounting in the whole to more than five hundred pounds.”