

WATERFRONT INDUSTRY AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Waterfront Industry Act 1976.

Clause 1 relates to the Short Title.

Clause 2 inserts, in section 2 (1) of the principal Act, a definition, in relation to the Waterfront Industry Tribunal, of the term "appointed member". This definition is inserted for the purposes of the sections substituted by *clause 4* of this Bill as the Chairman of the Tribunal has been, since 1978, a Judge of the Arbitration Court.

Clause 3 inserts a new section 4A in the principal Act. The new section makes provision for the appointment of acting members of the Commission. Each acting member will act in the absence of the member of the Commission in respect of whom he is appointed. An acting member may not be appointed in respect of the Chairman. The provisions are based on section 42 of the Industrial Relations Act 1973 (as substituted in 1977) and on section 6A of the Aircrew Industrial Tribunal Act 1971 (as inserted in 1979).

Clause 4 substitutes new sections 6 to 8 in the principal Act.

Section 6 is new in that it deals with the term of office of acting members of the Commission. As with members of the Commission, acting members may be appointed for a term not exceeding 3 years. Provisions relating to removal from office and resignations are now to be found in *section 7*.

Section 6A is new. It deals with incapacity for appointment. This section is based on section 46 of the Industrial Relations Act 1973 (as substituted in 1977) and on section 8 of the Aircrew Industrial Tribunal Act 1971 (as substituted in 1979).

Section 7, dealing with extraordinary vacancies, is based on section 47 of the Industrial Relations Act 1973 (as substituted in 1977) and on section 9 of the Aircrew Industrial Tribunal Act 1971 (as substituted in 1979).

Section 8, dealing with deputies of appointed members of the Tribunal, formerly dealt also with deputies of members of the Commission. *Clause 3* of this Bill now makes provision, instead, for acting members of the Commission.

Clause 5 effects an amendment that is consequential on the provision made by *clause 3* for acting members.

Clause 6 enables the General Manager of the Commission to act as the Chairman of the Commission when the office is vacant or the Chairman is incapacitated by illness, absence, or other sufficient cause. Before the General Manager exercises the power conferred by this clause, he must first obtain, on each occasion, the written consent of the Minister of Labour.

Section 12 (5) of the principal Act requires the General Manager or an officer of the Commission appointed in that behalf by the General Manager to attend each meeting of the Commission. Where the General Manager is acting under this clause as Chairman of the Commission at any meeting of the Commission, no officer of the Commission is to attend that meeting by virtue of an appointment under section 12 (5) of the principal Act.

Clause 7 allows a union of employers of waterside workers (as well as a registered employer of waterside workers and an association of employers of waterside workers) to enter into an agreement with any waterside workers or with any union or association of waterside workers on conditions for employing waterside workers. The change effected by this clause is consequential on the changes effected by section 2 of the Waterfront Industry Amendment Act 1977.

Clause 8 substitutes a new section 54 in the principal Act.

The principal changes are that the new section—

- (a) Makes provision for the payment of fees and allowances to acting members of the Commission; and
- (b) Requires the allowances of the General Manager of the Commission to be fixed by the Minister of Labour.

The principal Act at present requires the allowances of the General Manager to be fixed by the Higher Salaries Commission. In the case of statutory officers, the jurisdiction of the Higher Salaries Commission is generally confined, with very few exceptions, to salaries.

Clause 9 effects consequential repeals.

Hon. Mr Bolger

WATERFRONT INDUSTRY AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Waterfront Industry Act 1976

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 1980, and shall be read together with and deemed part of the Waterfront Industry Act 1976* (hereinafter referred to as the principal Act).

10 2. Interpretation—Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “agreement”, the following definition:
“‘Appointed member’ means, in relation to the Tribunal, any member of the Tribunal (other than the
15 Chairman):”.

*1976, No. 72
Amendment: 1977, No. 105

3. Acting members of Commission—The principal Act is hereby amended by inserting, after section 4, the following section:

“4A. (1) The Governor-General may from time to time, on the recommendation of the Minister, appoint, in respect of any member of the Commission (other than the Chairman), a person to be an acting member of the Commission, to act in the absence of the member of the Commission in respect of whom the acting member is appointed. 5

“(2) An acting member shall be appointed in the same manner as the member in whose absence he is to act. 10

“(3) If at any time the office of any member of the Commission (other than the Chairman) is vacant, or if any member of the Commission (other than the Chairman) is not present at a meeting of the Commission, the Chairman may summon the appropriate acting member to attend the meeting of the Commission and to act in the place of the member in respect of whom the acting member is appointed. While so attending and acting the acting member shall have the powers, functions, and privileges, and shall perform the duties, of the member for whom he is acting. 15 20

“(4) When the member for whom the acting member is acting is again present at the meetings of the Commission, the acting member shall cease to act; but, if the acting member is then engaged in the consideration of any matter, the Chairman may require him to complete the consideration of that matter before ceasing to act. 25

“(5) No appointment of an acting member and no acts done by an acting member as such, and no acts done by the Commission while any acting member is acting as such, shall in any proceedings be questioned on the ground that the occasion for the appointment of the acting member had not arisen or had ceased.” 30

4. New sections substituted—The principal Act is hereby amended by repealing sections 6 to 8 (as amended by sections (3) to (5) of section 3 of the Waterfront Industry Amendment Act 1977), and substituting the following sections: 35

“6. **Term of office**—(1) Except as otherwise provided in this Act, every member or acting member of the Commission and every appointed member of the Tribunal shall be appointed for a term not exceeding 3 years, but may from time to time be reappointed. 40

“(2) Notwithstanding anything to the contrary in this Act, every member or acting member of the Commission and every appointed member of the Tribunal, unless he sooner vacates his office under section 7 of this Act, shall continue to hold
5 office until his successor comes into office.

“6A. **Incapacity for appointment**—The following persons shall be incapable of being appointed or of holding office as a member or acting member of the Commission or as an appointed member of the Tribunal:

- 10 “(a) A bankrupt who has not been discharged, or whose order of discharge is suspended for a time not yet expired or is subject to conditions not yet fulfilled:
“(b) A mentally disordered person within the meaning of the Mental Health Act 1969:
15 “(c) An alien:
“(d) A person who has attained the age of 72 years.

“7. **Extraordinary vacancies**—(1) The Governor-General shall remove a member or acting member of the Commission or an appointed member of the Tribunal if that
20 member—

- “(a) Becomes incapable under section 6A of this Act; or
“(b) Is proved, to the satisfaction of the Governor-General, to be under a disability or to have been guilty of neglect of duty or misconduct; or
25 “(c) Is absent without the consent of the Chairman from 4 consecutive meetings of the Commission or from 4 consecutive sittings of the Tribunal, as the case may be.

“(2) A member or acting member of the Commission or
30 an appointed member of the Tribunal may resign his office by letter addressed to the Minister.

“(3) If a member or acting member of the Commission or an appointed member of the Tribunal dies, or resigns, or is removed from office, his office shall become vacant, and the
35 vacancy shall be deemed to be an extraordinary vacancy.

“(4) If an acting member of the Commission is appointed, under any provision of section 4 (2) of this Act, as a member of the Commission, an extraordinary vacancy shall be deemed to exist in the office of acting member.

40 “(5) Any extraordinary vacancy shall, as soon as practicable, be filled in the manner in which the appointment to the vacant office was originally made.

“(6) Every person appointed to fill an extraordinary vacancy shall be appointed for the residue of the term for which the vacating member was appointed.

“**8. Deputies of appointed members of Tribunal**—(1) In any case in which the Governor-General is satisfied that any appointed member of the Tribunal is incapacitated by illness, absence, 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. 5 10

“(2) Every such deputy shall, while he acts as such, be deemed to be a member of the Tribunal.

“(3) No such appointment of a deputy and no acts done by a deputy as such, or by the Tribunal while a deputy is acting as such, shall in any proceedings be questioned on the ground that the occasion for the appointment of the deputy had not arisen or had ceased.” 15

5. Powers of Commission—Section 11 (2) (a) (ix) of the principal Act is hereby amended by inserting, after the word “members”, the words “(including acting members)”. 20

6. Procedure of Commission—Section 12 of the principal Act is hereby amended by adding the following subsections:

“(7) If at any time the office of Chairman of the Commission is vacant or if the Chairman of the Commission is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the General Manager may, after first obtaining, on each occasion, the written consent of the Minister, act as the Chairman of the Commission. 25

“(8) Where the General Manager acts as the Chairman of the Commission at any meeting of the Commission, no officer of the Commission shall attend that meeting by virtue of an appointment under subsection (5) of this section.” 30

7. Register of employers for each port—Section 34 (3) of the principal Act is hereby amended by omitting the words “or an”, and substituting the words “or a union or”. 35

8. Remuneration and administrative expenses—The principal Act is hereby amended by repealing section 54 (as amended by section 33 (1) of the Higher Salaries Commission Act 1977), and substituting the following section:

5 “54. (1) There shall be paid to—

“(a) The members and acting members of the Commission; and

“(b) The appointed members of the Tribunal; and

“(c) The members of each Conciliation Council; and

10 “(d) The members of each Port Conciliation Committee; and

“(e) The members of each Port Amenities Committee,—remuneration by way of fees, salaries, or allowances and travelling allowances and expenses in accordance with the
15 Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if each of those bodies were a statutory Board within the meaning of that Act.

“(2) Notwithstanding section 53 (4) of this Act, the General Manager shall be paid such salary as is from time to
20 time fixed by the Higher Salaries Commission and such allowances as are from time to time fixed by the Minister.

“(3) The other officers and employees of the Commission shall be paid such salaries and allowances as are from time to time fixed by the Minister.

25 “(4) All such payments and the administrative expenses of the Commission shall be paid out of the funds of the Commission.

“(5) Subject to appropriation by Parliament, grants may from time to time be made to the Commission from the
30 Consolidated Account for the remuneration and travelling allowances and expenses of the appointed members of the Tribunal, the members of Port Conciliation Committees, and the members of Conciliation Councils.”

9. Repeals—(1) Section 3 of the Waterfront Industry
35 Amendment Act 1977 is hereby consequentially amended by repealing subsections (3) to (5).

(2) The Higher Salaries Commission Act 1977 is hereby consequentially amended by repealing so much of the Fifth Schedule as relates to the Waterfront Industry Act 1976.