

Serial Number 1948/188



**THE WATERFRONT INDUSTRY EMERGENCY REGULATIONS
1946, AMENDMENT NO. 5**

B. C. FREYBERG, Governor-General

By his Deputy,

H. F. O'LEARY

ORDER IN COUNCIL

At the Government House at Wellington, this 1st day of
December, 1948

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Emergency Regulations Continuance Act, 1947, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

REGULATIONS

1. These regulations may be cited as the Waterfront Industry Emergency Regulations 1946, Amendment No. 5, and shall be read together with and deemed part of the Waterfront Industry Emergency Regulations 1946* (hereinafter referred to as the principal regulations).

2. These regulations shall come into force on the 6th day of December, 1948.

3. Regulation 2 of the principal regulations is hereby amended by inserting, before the definition of the term "Branch Manager", the following definition:—

" ' Authority ' means the Waterfront Industry Authority constituted under these regulations : "

- * Statutory Regulations 1946, Serial number 1946/102, page 232.
- Amendment No. 1 : Statutory Regulations 1946, Serial number 1946/211, page 594.
- Amendment No. 2 : *Revoked*.
- Amendment No. 3 : Statutory Regulations 1947, Serial number 1947/164, page 572.
- Amendment No. 4 : Statutory Regulations 1948, Serial number 1948/99, page 307.

4. (1) Regulation 3 of the principal regulations is hereby amended by revoking subclauses (2) to (5), as enacted by Regulation 3 of the Waterfront Industry Emergency Regulations 1946, Amendment No. 3, and substituting the following subclauses:—

“(2) The Commission shall consist of three members to be appointed by the Governor-General on the recommendation of the Minister, of whom—

“(a) One member shall be appointed as Chairman of the Commission:

“(b) One member shall be appointed on the nomination of the New Zealand Waterside Employers’ Association Industrial Association of Employers:

“(c) One member shall be appointed on the nomination of the New Zealand Waterside Workers’ Industrial Union of Workers.

“(3) The Commission 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 acts and things as bodies corporate may lawfully do and suffer.

“(4) The powers of the Commission shall not be affected by any vacancy in the membership thereof.”

(2) The members of the Commission in office immediately before the commencement of these regulations shall be deemed to vacate office at the commencement of these regulations.

(3) Nothing in these regulations shall be deemed to affect the identity of the Commission, and the Commission as reconstituted by the foregoing provisions of this regulation shall be deemed for all purposes to be the same corporation as the body corporate constituted by the principal regulations and by the Waterfront Industry Emergency Regulations 1946, Amendment No. 3, and as the corporation sole constituted by the Waterfront Industry Emergency Regulations 1946, Amendment No. 2.

(4) Regulation 3 of the Waterfront Industry Emergency Regulations 1946, Amendment No. 3, is hereby revoked.

5. (1) The principal regulations are hereby further amended by revoking Regulations 4 and 5, as enacted by the Waterfront Industry Emergency Regulations 1946, Amendment No. 3, and substituting the following regulations:—

“4. (1) For the purposes of these regulations there shall be an Authority, to be called the Waterfront Industry Authority.

“(2) The Authority shall consist of five members to be appointed by the Governor-General on the recommendation of the Minister, of whom—

“(a) One member shall be appointed as Chairman of the Authority:

“(b) Two shall be appointed on the nomination of the New Zealand Waterside Employers’ Association Industrial Association of Employers:

“(c) Two shall be appointed on the nomination of the New Zealand Waterside Workers’ Industrial Union of Workers.

“(3) The powers of the Authority shall not be affected by any vacancy in the membership thereof.

“(4) The Authority shall, within the scope of its jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act, 1908, and, subject to the provisions of these regulations, the provisions of that Act shall apply accordingly.

“5. (1) Except as otherwise provided in these regulations, every member of the Commission and every member of the Authority shall be appointed for a term of two years, but may from time to time be reappointed.

“(2) Notwithstanding anything to the contrary in these regulations, every member of the Commission or of the Authority, unless he sooner vacates his office otherwise than by effluxion of time, shall continue to hold office until his successor comes into office.

“(3) Any member of the Commission or of the Authority may at any time be removed from office by the Governor-General for inefficiency, disability, insolvency, neglect of duty, or misconduct proved to the satisfaction of the Governor-General, or may at any time resign his office by writing addressed to the Minister.

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

“(5) In the case of an extraordinary vacancy, the Governor-General may appoint some qualified person to be a member of the Commission or of the Authority, as the case may be, for the residue of the term for which the vacating member was appointed. Every such appointment shall be made in the same manner as the appointment of the vacating member.

“6. (1) In any case in which the Governor-General is satisfied that any member of the Commission or of the Authority 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 that member was appointed, appoint a deputy to act for that member during his incapacity, and any such deputy shall, while he acts as such, be deemed to be a member of the Commission or of the Authority, as the case may be, and (if he is the deputy of the Chairman) to be the Chairman of the Commission or of the Authority, as the case may be.

“(2) No such appointment of a deputy and no acts done by a deputy as such, or by the Commission or the Authority 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.

“7. (1) Meetings of the Commission shall be held at such times and places as the Commission thinks fit. The Chairman may call a meeting at any time.

“(2) At all meetings of the Commission the Chairman and one other member shall form a quorum.

“(3) The Chairman shall preside at all meetings of the Commission.

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

“(5) At all meetings of the Commission the Chairman shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote.

“(6) Every order or decision of the Commission shall be signed by the Chairman.

“(7) Subject to the provisions of these regulations, the Commission may regulate its procedure in such manner as it thinks fit.

“8. (1) Meetings of the Authority shall be held at such times and places as the Authority thinks fit. The Chairman may call a meeting at any time.

“(2) At all meetings of the Authority the Chairman and one employers’ representative and one workers’ representative shall form a quorum.

“(3) The Chairman shall preside at all meetings of the Authority.

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

“(5) At all meetings of the Authority the Chairman shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote.

“(6) The decision of the Authority on any matter shall be pronounced by the Chairman, and no separate pronouncement shall be made by any other member of the Authority with respect to any decision of the Authority. If any decision is not unanimous the Chairman shall if requested so to do by any member who has dissented indicate, when announcing the decision, that that member has so dissented.

“(7) Every order or decision of the Authority shall be signed by the Chairman.

“(8) Subject to the provisions of these regulations, the Authority may regulate its procedure in such manner as it thinks fit.”

(2) Regulation 4 of the *Waterfront Industry Emergency Regulations 1946, Amendment No. 3*, and the *Waterfront Industry Emergency Regulations 1946, Amendment No. 4*, are hereby consequentially revoked.

6. The principal regulations are hereby further amended by inserting, after Regulation 10, the following new regulations:—

“10A. (1) The functions of the Authority shall be—

“(a) To decide from time to time the conditions upon or subject to which any persons may be employed (whether by the Commission or otherwise) for waterside work, and for any other work connected therewith:

“(b) To decide from time to time the terms of any such employment (whether as to remuneration or otherwise), including, if the Authority thinks fit, provision for holidays and provision for a guaranteed minimum payment:

“(c) To determine appeals from any decisions or orders of the Commission in relation to the conditions and terms of employment for waterside work or any other work connected therewith:

“(d) To determine appeals from any decisions or orders of the Commission fixing rates for waterside work on a tonnage or unit or other basis or imposing levies on the owners, agents, or masters of ships, or on any other employers of waterside labour; and, in any case where the matter is referred by the Commission to the Authority pursuant to subclause (3) of this regulation, to fix such rates or to determine the amount of such levies:

“(e) To decide any disputes that arise in relation to waterside work, and to determine appeals from any decisions or orders of the Commission in respect of any such disputes :

“(f) To determine appeals from any decisions, orders, or actions of the Commission in relation to any other matters in respect of which the Authority is of opinion that it is equitable that there should be a right of appeal.

“(2) Notwithstanding anything in subclause (1) of this regulation, it shall be lawful for the Commission to prescribe conditions and terms of employment for waterside work or any other work in connection therewith pursuant to paragraph (e) of subclause (2) of Regulation 10 hereof, and to decide disputes pursuant to paragraph (m) of the said subclause, subject, however, to a right of appeal to the Authority :

“Provided that the Commission shall not issue or amend any order prescribing any such conditions or terms of employment which are of general application except pursuant to a decision or direction of the Authority or pursuant to a unanimous resolution of the Commission.

“(3) The Commission may at any time, whether before or after it has heard any interested parties in relation thereto, refer to the Authority for decision by it any appeal duly made to the Commission from a decision of a Port Committee or any application made to the Commission concerning any dispute in relation to waterside work or concerning the conditions and terms of employment for waterside work or any other work connected therewith, or any question before the Commission in relation to rates to be fixed for waterside work on a tonnage or unit or other basis or in relation to the amount of any levy to be imposed on the owners, agents, or masters of ships or on other employers of waterside labour.

“10b. (1) Any employer or any organization of employers or of workers affected by any decision, order, determination, or action of the Commission from which there is a right of appeal may, within fourteen days after the date of the decision, order, determination, or action, by written notice to the Commission, appeal to the Authority against the decision, order, determination, or action.

“(2) On the hearing of the appeal the Authority may confirm, modify, or reverse the decision, order, determination, or action appealed against, or make such other decision or issue such direction in connection therewith as it thinks fit.

“10c. (1) The decisions of the Authority shall be final and binding on all persons affected thereby, and shall not be affected by reason of any omission to notify or hear any person claiming to be concerned or interested therein or by reason of any matter of form or procedure.

“(2) The Authority may, for the purposes of any of its decisions, give all such directions as are reasonably proper for carrying the decision into effect.

“(3) Every person who fails to comply in any respect with any decision or direction given by the Authority commits an offence against these regulations.

“10d. Any order, direction, or decision of the Commission or of the Authority may, with the approval of the Authority and if the Authority in its discretion thinks fit, direct that any provision thereof

relating to remuneration, guaranteed minimum payments, or rates for waterside work shall have effect as from such date before the date of the order, direction, or decision as the Authority thinks fit.”

7. Regulation 15 of the principal regulations is hereby amended by adding the following subclause:—

“(6) Section 3 of the Unclaimed Moneys Act, 1908, and section 28 of the Finance Act, 1932, shall not apply with respect to the Commission. Section 30 of the Finance Act, 1932, in its application to the Commission, shall be read as if the unclaimed moneys required by that section to be paid into the Public Account to the credit of the Consolidated Fund were required to be paid as aforesaid not later than the 31st day of October in the financial year of the Commission following that in which the moneys first became unclaimed moneys within the meaning of the Unclaimed Moneys Act, 1908.”

8. Regulation 16 of the principal regulations is hereby amended by inserting, after the word “Commission” in subclause (1), the words “and to the members of the Authority”.

T. J. SHERRARD,
Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.

Date of notification in *Gazette* : 2nd day of December, 1948.

These regulations are administered in the Department of Labour and Employment.