

New Zealand.



ANALYSIS.

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1933, No. 31.

Title.

AN ACT to amend the Harbours Act, 1923.

[18th December, 1933.]

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

Short Title and commencement.
See Reprint of Statutes, Vol. III, p. 568

1. (1) This Act may be cited as the Harbours Amendment Act, 1933, and shall be read together with and deemed part of the Harbours Act, 1923 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the first day of January, nineteen hundred and thirty-four.

Section 34 of principal Act (as to disqualification for membership of Boards) amended.

2. Section thirty-four of the principal Act is hereby amended by repealing paragraph (h) of subsection one, and substituting the following paragraph:—

Cf. 1920, No. 48, s. 40 (h), see Reprint of Statutes, Vol. V, p. 21

“(h) Any person who is concerned or interested (otherwise than as a member of an incorporated company in which there are more than twenty members and of which he is not the general manager or a local manager) in any contract made by the Board, if the payment made or to be made by or on behalf of the Board in respect of any such contract or contracts exceeds ten pounds in the case of any contract, or twenty-five pounds altogether in any financial year, except in special cases to be previously approved by the Audit Office on the application of the Board. In any such special case the Audit Office may authorize the payment and receipt, in respect of any such contract or contracts, of such amount as it thinks fit not exceeding in the aggregate fifty pounds in any financial year:

“Provided that an interest in any loan raised by the Board, whether on security or otherwise, or in any newspaper in which the Board inserts advertisements, or in any lease granted or agreed to be granted to or by the Board, shall not constitute a disqualification under this paragraph:

“Provided further that no person shall be disqualified from being elected or appointed

as a member of any Board by virtue of his being concerned or interested in any contract made before his election or appointment, if before such election or appointment his obligation under such contract has been performed and the amount to be paid by or on behalf of the Board has been fixed ; and any payment made thereafter by or on behalf of the Board pursuant to such contract shall not operate to disqualify such person from continuing to hold office or be taken into account for the purpose of computing the amount that may lawfully be paid to him as a member in the same financial year in respect of any contract or contracts."

3. (1) Notwithstanding anything to the contrary in the principal Act or in any rule of law, a Board may enter into an agreement in writing with any person whom it proposes to appoint, or who has been appointed, an officer or servant of the Board to the effect that such person shall not be removed from office, save as provided in the agreement or except for conduct justifying summary dismissal,—

Board may contract with officers and servants as to tenure of office.

Cf. 1928, No. 51, s. 7, see Reprint of Statutes, Vol. V, p. 163

(a) During such period (not exceeding three years from the date of his appointment or the date of the agreement, as the case may be) as is specified in the agreement ; or

(b) Except after such notice, not exceeding three months in any case, as may be specified in the agreement in that behalf.

(2) Any agreement to which paragraph (a) of the last preceding subsection relates may from time to time be renewed for any period not exceeding three years at any one time from the date of such renewal.

4. (1) Section forty-eight of the principal Act is hereby amended by adding the following proviso :—

Board may insure fidelity of officers.

"Provided that, in lieu of or in addition to taking security from any officer, the Board may provide against any losses that may arise in the event of his dishonesty by taking out a guarantee policy and paying the premiums thereon, or by creating a special fund for the purpose, or partly by one such method and partly by the other."

(2) Section ninety-six of the principal Act (empowering Harbour Boards to create special funds) is hereby

consequentially amended by inserting in subsection one, after paragraph (c), the following paragraph:—

“(cc) Losses which may arise in the event of the dishonesty of employees of the Board; and premiums payable on policies of insurance against such losses:”.

Extension of liability for dues payable for goods.

5. In addition to the persons mentioned in section sixty-six of the principal Act, the owner and the master of any ship shall be liable to pay the dues payable in respect of any goods carried in such ship within but not beyond the limits of a harbour.

Section 78 of principal Act (as to exemption from dues) amended.

6. Section seventy-eight of the principal Act is hereby amended as follows:—

(a) By repealing the proviso to paragraph (a) of subsection one, and by inserting after the said subsection one the following subsection:—

“(1A) Any person claiming exemption under this section shall, if required by the Board or any officer of the Board, make a statutory declaration that he is entitled to such exemption, and in such declaration shall set out and declare to the truth of the facts on which he relies in support of his claim.”:

(b) By repealing subsection three, and substituting the following subsection:—

“(3) In this section the term ‘dues’ does not include charges for the use of a Board’s tugs, or for labour or material supplied by a Board, and, notwithstanding anything to the contrary in this or any other Act or in any rule of law, no exemption shall be allowed in respect of any such charge to any person or authority referred to in this section.”

7. (1) Section seventy-nine of the principal Act is hereby amended as follows:—

(a) By omitting from subsection one the words “Vessels engaged in the whale-fisheries”:

(b) By inserting, at the beginning of subsection two, the words “Vessels employed exclusively in one or more of the industries of fishing, sealing, and oyster-dredging, and not conveying goods for hire”; and by adding after the proviso to the same subsection the following additional proviso:—

Removing exemption of whaling-ships and limiting exemption of fishing-vessels from harbour dues.

“ Provided further that the maximum rate of dues for berthage payable by vessels employed exclusively in one or more of the industries of fishing, sealing, and oyster-dredging, and not conveying goods for hire, shall not exceed one penny per ton per day.”

(2) Paragraph (e) of subsection one of section seventy-eight of the principal Act is hereby consequentially repealed. Repeal.

8. (1) For the purposes of the principal Act the term “ special resolution ” means a resolution passed at a meeting of a Board and confirmed at a subsequent meeting held not earlier than six clear days after the day on which the resolution is passed. Definition of “ special resolution ”.
Cf. 1908, No. 240, s. 2, see Reprint of Statutes, Vol. IV, p. 1031

(2) Nothing in this section shall be construed to affect the validity of any resolution purporting to be a special resolution and passed by any Board before the commencement of this Act.

9. (1) No member of a Board other than the Chairman shall be paid any remuneration for his services as a member of such Board or in respect of his attendance at any meetings thereof. Travelling-allowances.
Cf. 1927, No. 22, s. 6, see Reprint of Statutes, Vol. V, p. 274

(2) A Board may make to each of its members, including the Chairman, a travelling-allowance, not exceeding such rate as may be prescribed in that behalf by the Governor-General in Council, to cover all charges in respect of his attendance at any meeting of the Board or of any committee thereof, or in respect of his attending to any business of the Board when authorized so to do by the Board.

(3) This section is in substitution for section ninety of the principal Act, and that section is hereby accordingly repealed. Repeal.

10. Notwithstanding anything to the contrary in subsection two of section ninety-four of the principal Act, a Board may annually transfer to its General Cash Account from any other account kept by it in respect of the proceeds of any special rates such sum as in the opinion of the Audit Office represents the proportionate part attributable to such other account of the office, clerical, legal, and other expenses of the Board of any nature whatsoever in respect of the levying, collecting, and recovery of such special rates. Transfers to General Cash Account from other accounts of proportion of expenses of special rates.

How moneys to be invested by Boards and Sinking Fund Commissioners.

11. (1) All moneys hereafter invested by a Board and all moneys hereafter invested (otherwise than in the purchase of debentures as mentioned in subsection two of section one hundred and sixteen of the principal Act) by any Sinking Fund Commissioners appointed by a Board shall be invested in the manner following, that is to say,—

- (a) In New Zealand Government securities ; or
- (b) On deposit in any bank lawfully carrying on the business of banking in New Zealand, or in the Post Office Savings-bank ; or
- (c) In the Common Fund of the Public Trust Office ; or
- (d) In any other securities that may from time to time be authorized by the Governor-General in Council :

Provided that where the Public Trustee is appointed by a Board to be the Commissioner of any sinking fund he shall invest the moneys of the sinking fund in the Common Fund of the Public Trust Office or in such other manner as may be specially authorized in that behalf by the Governor-General in Council.

(2) Subsection two of section ninety-six and paragraph (a) of subsection one of section one hundred and sixteen of the principal Act shall be read subject to the provisions of the last preceding subsection.

Date of annual meeting.

12. Section one hundred of the principal Act (as amended by section five of the Harbours Amendment Act, 1925) is hereby further amended by omitting from subsection one the words “in March in each year”, and substituting the words “not later than the thirty-first day of March in each financial year of the Board”.

Application of section 114 of Local Bodies' Loans Act to Boards.

See Reprint of Statutes, Vol. V, p. 406

Repeal.

13. (1) For the purposes of section one hundred and fourteen of the Local Bodies' Loans Act, 1926, a Harbour Board and a harbour district shall be deemed to be, and at all times heretofore to have been, a local authority and a district respectively within the meaning of that Act.

(2) Section sixty-six of the Finance Act, 1932, is hereby repealed.

Power to borrow on terms requiring repayment by instalments.

Cf. 1926, No. 14, s. 32, see Reprint of Statutes, Vol. V, p. 377

14. (1) Where any Board has heretofore been or shall hereafter be authorized to raise a loan, whether pursuant to a poll of ratepayers or otherwise, and whether such loan has been raised in part or not, the Board may raise such loan or any part thereof upon terms of making the same together with interest thereon repayable by instalments extending over such period of years, whether in

excess of the period mentioned in the poll taken on the proposal for such loan or not, and payable at such times as may be fixed by the Board, and may permanently appropriate and pledge for the purpose of securing such instalments any special rate already made or hereafter to be made, or any part of such special rate.

(2) This section shall be deemed to confer on the Board authority to raise any loan or part of a loan upon terms providing for the repayment thereof by means of a sinking-fund policy issued under section twenty-three of the Finance Act, 1925. In any such case the interest upon the loan and the premium payable upon such sinking-fund policy shall together be deemed to constitute an instalment in terms of this section.

See Reprint
of Statutes,
Vol. IV, p. 59

(3) The authority conferred by this section shall extend to conversion loans authorized to be raised by Part V of the Local Bodies' Loans Act, 1926, and the provisions of that Part shall be read subject to this section.

(4) Nothing in this section shall be so construed as to affect the provisions of section one hundred and fourteen of the Local Bodies' Loans Act, 1926, or section eleven of the Local Government Loans Board Act, 1926.

15. (1) The Sinking Fund Commissioners appointed by a Board in respect of any loan (whether before or after the commencement of this Act) under section one hundred and fifteen of the principal Act, or under any other Act, if they have not already been constituted a body corporate, shall, under the name of "The [*Stating the name*] Harbour Board Sinking Fund Commissioners", or such other name as the Board may determine, be a body corporate, with perpetual succession and a common seal, with power to hold real and personal property and to do and suffer all such other acts and things as bodies corporate may lawfully do and suffer, and with authority for any two of such Commissioners to exercise the functions of the corporate body.

Incorporation of
Sinking Fund
Commissioners.
Cf. 1926, No. 14,
s. 41, see Reprint
of Statutes,
Vol. V, p. 380

(2) Where the same persons are acting as the Commissioners in respect of the sinking funds of two or more loans raised by a Board, the Commissioners shall be one body corporate as aforesaid, in which all the funds shall be deemed to be vested, and the Commissioners may, for the purposes of investment, deal with the funds as if they

constituted one fund. If in any such case the Commissioners have already been constituted a body corporate in respect of any of the funds such body corporate shall be deemed to be merged in the body corporate constituted under this section.

(3) All vacancies arising in the office of any Commissioner shall be filled as they arise by new appointments by the Board.

16. Section one hundred and fifteen of the principal Act is hereby amended as follows:—

(a) By omitting from subsection one the words “ and may from time to time remove and reappoint ” ; and

(b) By adding the following subsection:—

“(3) The Board may, in its discretion, remove or suspend any Commissioner appointed under this section, or under the corresponding provisions of any former Act, and reappoint or reinstate him, or appoint another in his stead, and may appoint another in the place of any deceased, absent, or otherwise incapacitated Commissioner:

“ Provided that nothing herein shall authorize the removal or suspension of the Public Trustee as Commissioner of the sinking fund in respect of any loan raised from any Department of the Government or guaranteed by the Government.”

17. (1) Except in cases of emergency, no contract for the construction of any works for a Board or the purchase of any materials or goods by a Board, for an amount exceeding two hundred and fifty pounds, shall be made except after tenders have been called for by public notice; but the Board shall not be bound to accept the lowest or any tender.

(2) This section is in substitution for section one hundred and twenty-eight of the principal Act, and that section is hereby accordingly repealed.

18. A Board may, with the consent of the Minister, undertake the planting and tending of trees and afforestation work generally on any lands vested in the Board, and may with the like consent sell or otherwise dispose of the products of growing or dead trees, shrubs, timber, or other vegetable growth on any such lands.

Section 115 of principal Act amended.

Cf. 1926, No. 14, s. 40 (2), see Reprint of Statutes, Vol. V, p. 380

Contracts exceeding £250 to be made only after public tender.

Repeal.

Afforestation by Boards.

19. Section one hundred and forty-seven of the principal Act is hereby amended by inserting, after subsection two, the following subsection :—

“(2A) If the land to be reclaimed is, in the opinion of the Board, so narrow or otherwise of such a configuration that it cannot be usefully occupied by any person other than the owner or owners of adjoining lands, such land may with the consent of the Governor-General in Council be sold or leased to the adjoining owner or owners, upon condition of the reclamation thereof, at such price and upon such terms and conditions as the Governor-General in Council may approve.”

Section 147 of principal Act (as to mud-flats vested in Boards) amended.

Cf. 1923, No. 40, s. 146 (9), see Reprint of Statutes, Vol. III, p. 618

20. Section one hundred and fifty-one of the principal Act is hereby amended by adding the following proviso :—

“Provided that no reclamation of any land (whether foreshore land or land below low-water mark) shall be made under this section without the consent of the Board or local authority in which the foreshore is vested.”

Board's consent required to reclamations by licensees.

21. Nothing in section one hundred and sixty-four of the principal Act shall be construed to give to any local authority jurisdiction over any reclaimed land that is within the limits and boundaries of any wharf, as defined under section one hundred and eighty-four of the principal Act.

Exclusion of certain reclaimed land from control of local authority.

22. Section one hundred and sixty-six of the principal Act is hereby amended as follows :—

Section 166 of principal Act (as to harbour-works) amended.

(a) By omitting from the first proviso to paragraph (f) the word “seven”, and substituting the word “fourteen” :

(b) By inserting in the second proviso to the said paragraph (f), after the words “lease or license”, the words “for a longer term than one year” :

(c) By omitting from paragraph (i) the words “fuel oil”, and substituting the words “oil of any description, including spirit produced from oil”.

23. In any case where the Governor-General has (whether before or after the commencement of this Act) by Order in Council under section one hundred and sixty-eight of the principal Act, or the corresponding provisions of any former Act, authorized any local authority or Harbour Board to reclaim any area not exceeding five acres in extent, the Governor-General

Vesting of reclamations authorized by Order in Council.

may, by the same or any subsequent Order in Council, vest such area in the corporation of such local authority or in the Board, as from a date to be specified in the Order.

Prevention of lights liable to be confused with harbour lights, &c.

Cf. 1908, No. 178, s. 292, see Reprint of Statutes, Vol. VIII, p. 398

24. (1) Where any fire, light, or sign is burnt or exhibited at such a place (whether within or outside the limits of a harbour) or in such a manner as to be liable to be mistaken for a harbour light, signal, buoy, beacon, or other sea-mark under the management of any Board, the Board may serve a notice on the owner of the place where the fire, light, or sign is burnt or exhibited, or on the person having charge of the fire, light, or sign, directing that owner or person within a reasonable time, to be specified in the notice, to take effectual means for extinguishing, removing, or screening the fire, light, or sign, and for preventing for the future any similar fire, light, or sign.

(2) The notice may be served either personally or by delivery at the place of abode of the person to be served, or by affixing it in some conspicuous spot near the fire, light, or sign to which the notice relates.

(3) Every owner or person on whom a notice is served under this section who fails without reasonable cause to comply with the directions contained in the notice is guilty of a common nuisance, and, in addition to any other penalties or liabilities he may incur, is liable for each offence to a fine not exceeding one hundred pounds.

(4) If any owner or person on whom a notice under this section is served neglects for a period of seven days to extinguish, remove, or effectually screen the fire, light, or sign mentioned in the notice, the Board may, by its servants or workmen, enter upon the place where the fire, light, or sign is and forthwith extinguish, remove, or screen it, doing no unnecessary damage; and may recover the expenses incurred in so doing from the owner or person on whom the notice has been served as a debt due to the Board.

25. Section two hundred and one of the principal Act is hereby amended as follows:—

(a) By omitting from subsection one the words “in such a way as to tend to the injury of navigation”; and

(b) By repealing subsection three.

Section 201 of principal Act (as to removal of wreck) amended.

26. Section two hundred and twenty-six of the principal Act is hereby amended as follows:—

Section 226 of principal Act (as to by-laws) amended.

- (a) By inserting, after the word “Harbourmaster” in paragraph five, the words “or of a pilot”:
- (b) By adding to paragraph six the words “and exempt vessels so laid up from port charges”:
- (c) By inserting, after the word “ash-ejector” in paragraph seven, the words “and garbage-chute”:
- (d) By inserting, after the words “other small craft” in paragraph thirty-five B, the words “or for aircraft”:
- (e) By inserting, after paragraph thirty-five B, the following paragraphs:—
 - “(35C) Regulate the mode and place of the landing and mooring of aircraft within the limits of the harbour, and their navigation, position, and control on the harbour, and their unmooring and departure from the harbour:
 - “(35D) Regulate in respect of aircraft the times, places, order, and mode of the shipping, unshipping, landing, warehousing, stowing, and depositing of goods (with special regulations and restrictions in the case of dangerous goods), and of the landing and embarking of passengers:
 - “(35E) Fix and authorize the levying of dues, tolls, and charges to be paid for labour supplied or services rendered in connection with aircraft, or on goods and passengers unshipped or landed from or shipped or embarked on aircraft within the limits of the harbour:
 - “(35F) Apply to aircraft, with such modifications as may be necessary, any by-laws made by the Board under this Act in respect of ships:
 - “(35G) Regulate and control the speed, use, and management of motor-launches and out-board-motor boats, and prohibit nuisances arising therefrom:
 - “(35H) Prescribe conditions relating to the use of the Board’s tugs, and fix a scale of charges therefor:

“(35I) Regulate and control the speed and navigation of ships within the limits of the harbour:”:

(f) By adding, after paragraph forty-eight, the following paragraph:—

“(49) Prohibit masters of ships from receiving any goods on board their ships unless such goods are accompanied by a bill of lading, manifest, account, or other document, and by the prescribed evidence (whether stamped on such document or otherwise) that such document has been produced to the Board and that the shipment of such goods has been authorized by the Board.”

Liability of master and owner for damage to lights, buoys, or beacons.

27. Section two hundred and thirty-nine of the principal Act is hereby amended by inserting, after subsection two, the following subsections:—

“(2A) If any such offence is committed by any person on or from or in respect of any vessel, then, in addition to such person, the master and the owner of such vessel shall each be liable to the penalties provided by, and also be liable to pay the expenses mentioned in, subsection two hereof; but neither the Board nor any other person shall be entitled by virtue hereof to recover the same expenses twice.

“(2B) Where any person pays any fine or expenses by reason of any such offence committed by any other person, he shall be entitled to recover the money so paid, with costs, from such other person.”

Board may advertise and publish handbooks, &c.
Cf. 1923, No. 43, s. 4, see Reprint of Statutes, Vol. V, p. 160

28. A Harbour Board may from time to time advertise in newspapers or otherwise, and prepare and publish handbooks, abstracts, and other publications containing information and matters of interest relative to the history, administration, or affairs of the Board, and make and exhibit or cause to be made and exhibited cinematograph films relating to the harbour and harbour-works.