



ANALYSIS

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1963, No. 65

An Act to make provision for the protection of the employment rights of employees of local authorities

[23 October 1963]

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 Local Authorities (Employment Protection) Act 1963.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“District” means the district of a local authority; and, in relation to any local authority in respect of which there is no district, means the area under its jurisdiction:

“Local authority” means—

(a) Any local authority or public body of any of the classes for the time being specified in Part I of the First Schedule to this Act:

(b) Every local authority or public body for the time being referred to in Part II of the First Schedule to this Act.

“Minister” means the Minister of Internal Affairs:

“Permanent employee”, in relation to any local authority, means any officer or servant or employee of the local authority who has been in the full-time employment of that local authority or of that local authority and any one or more other local authorities for a continuous period of not less than five years immediately preceding the date on which, pursuant to the provisions of this Act, he is deemed to have been transferred to the service of any local authority.

(2) The Governor-General may from time to time, by Order in Council, amend the First Schedule to this Act by including therein the name of any class of local authorities or public bodies or the name of any specified local authority or public body.

3. Transfer of employees on union or merger of districts—

(1) The provisions of subsection (2) of this section shall apply in every case where—

- (a) A new district is constituted by the union of two or more districts, whether districts of the same kind or not; or
- (b) The whole of a district is merged or included in another district, whether a district of the same kind or not; or
- (c) A local authority is abolished or dissolved and the whole of its undertaking or functions is transferred to the local authority of another district, whether of the same kind or not.

(2) In every such case every person who immediately before the date of the constitution of the new district or, as the case may be, of the merger or inclusion or transfer was a permanent employee of the local authority of any of the uniting districts or, as the case may be, of the district so merged or included in another district or of the local authority abolished or dissolved shall on that date—

- (a) Be deemed to have been transferred to the service of the local authority of the new or other district; and
- (b) Become an employee of the local authority of the new or other district; and

- (c) Be paid salary or wages at a rate not less than the rate at which he was employed immediately before that date until that salary or those wages are altered by the local authority of the new or other district:

Provided that that salary or those wages shall not be reduced for a period of at least two years from the date of transfer; and

- (d) Be deemed to have been appointed and employed by the local authority of the new or other district under the provisions of the Act by or pursuant to which that local authority was constituted.

(3) Subject to the provisions of sections 6 and 8 of this Act, every contract of service in writing made by a person so transferred with the local authority of which he was an employee immediately before the date of the transfer and in force on that date shall continue in force after the transfer as if it had been made with the local authority to the service of which he was so transferred:

Provided that nothing in this subsection shall require the last-mentioned local authority to employ any such person in the same capacity as that in which he was employed by the local authority with which the contract was made, but the local authority shall as far as practicable employ him on duties similar to those which he was performing while in the service of the local authority with which the contract was made.

(4) Every person so transferred shall perform such duties and hold such office as are directed from time to time by the local authority of the new or other district.

(5) Subject to the provisions of paragraph (c) of subsection (2) of this section, where any condition of employment of any person so transferred to the local authority of the new or other district is at the date of his transfer regulated by an award of the Court of Arbitration or by an industrial agreement or by an order made by the Court of Arbitration under section 13 of the Apprentices Act 1948, that condition shall continue to be so regulated until an award or order regulating that condition and binding the local authority of the new or other district is made by that Court, or that condition is regulated by an industrial agreement to which that local authority is a party.

(6) The period of continuous service with one or more local authorities immediately preceding the date of transfer of any person so transferred shall upon that transfer be counted as service with the local authority of the new or other district

for the purposes of any Act or of any regulation or bylaw or of the terms and conditions of any staff agreement or of any award or industrial agreement or of any contract of apprenticeship.

(7) In this section the term "industrial agreement" means an industrial agreement entered into under the Industrial Conciliation and Arbitration Act 1954; and includes an agreement filed with the Clerk of Awards under the Labour Disputes Investigation Act 1913.

4. Transfer of employees when local authority abolished—

(1) Where any local authority is abolished or dissolved, and—

- (a) Its district is constituted as two or more new districts, whether of the same kind or not; or
- (b) Its district is as to any part or parts thereof constituted as one or more new districts, and as to the remainder thereof added to one or more other districts, whether of the same kind or not; or
- (c) Its district is added to two or more other districts, whether of the same kind or not; or
- (d) Its undertaking or functions are transferred to the local authorities of two or more other districts, whether of the same kind or not,—

every person who immediately before the date of the abolition or dissolution of the first-mentioned local authority was a permanent employee of that local authority shall on that date be deemed to have been transferred to the service of the local authority of such of the new or other districts as is agreed upon by the local authorities of the new or other districts by an agreement made before or within one month after that date.

(2) If no such agreement is made before or within one month after that date, that employee shall be deemed to have been transferred on that date to the service of the local authority of such of the new or other districts as the Minister, after consultation with the Minister charged with the administration of the Act under which the local authorities or any of them are constituted and after making such other inquiries as he thinks fit, determines by notice in writing to those local authorities.

(3) The provisions of paragraphs (b) to (d) of subsection (2) and subsections (3) to (6) of section 3 of this Act shall apply with respect to every employee transferred to the service of another local authority under this section as if he had been so transferred under the said section 3.

5. Transfer of employees when undertaking or function transferred—(1) Where any undertaking or function of any local authority is transferred to another local authority otherwise than on the abolition or dissolution of the first-mentioned local authority, whether that other local authority is of the same kind or not, such of the persons who immediately before the date of the transfer were permanent employees of the first-mentioned local authority and were engaged wholly or principally on work connected with that undertaking or function as are specified in an agreement between the local authorities made before or within one month after the date of the transfer of that undertaking or function shall on that date be deemed to have been transferred to the service of that other local authority.

(2) If no such agreement is made before or within one month after that date, such of those employees as the Minister, after consultation with the Minister charged with the administration of the Act under which the local authorities or any of them are constituted and after making such other inquiries as he thinks fit, determines by notice in writing to the local authorities shall be deemed to have been transferred to the service of the local authority to which the undertaking or function was transferred, and the other permanent employees engaged wholly or principally on work connected with that undertaking or function shall continue to be employed by the local authority from which the undertaking or function was transferred.

(3) The provisions of paragraphs (b) to (d) of subsection (2) and subsections (3) to (6) of section 3 of this Act, with the necessary modifications, shall apply—

(a) With respect to every employee transferred to the service of another local authority under this section as if he had been so transferred under the said section 3:

(b) With respect to every employee who pursuant to subsection (2) of this section continues to be employed by the local authority from which the undertaking or function was transferred, as if he had been transferred to the service of that local authority on the date of the transfer of that function or undertaking.

6. Compensation to employees dismissed within two years of transfer—(1) Subject to the provisions of subsection (3) of this section, where the employment of any person transferred or deemed to have been transferred to the service of

any local authority pursuant to section 3 or section 4 or section 5 of this Act is terminated by that local authority, otherwise than for conduct justifying dismissal, within a period of two years from the date of his transfer, the local authority shall pay to him an amount equal to the total amount that he would have received by way of salary or wages, at the rate to which he was entitled immediately before the date on which his dismissal takes effect, during the period commencing on that date and ending with the expiration of the said period of two years or the date fixed for his retirement, whichever is the earlier.

(2) In subsection (1) of this section the expression "date fixed for his retirement", in relation to any person, means the date on which he would be required to retire under the general conditions of employment of the local authority to which he is transferred or deemed to have been transferred, or, in any case where he is a contributor to a superannuation scheme, the date on which, pursuant to an election by him, a retiring allowance under the scheme would commence to be payable to him.

(3) Where a person who is transferred or deemed to have been transferred to the service of any local authority pursuant to section 3 or section 4 or section 5 of this Act was engaged by the local authority of which he was an employee immediately before the date of the transfer under a subsisting contract of service which provides for compensation in the event of the termination of his employment, and the employment of that person is, within two years after the date of the transfer and before the expiration of the period of the contract, terminated by the local authority to the service of which he was so transferred otherwise than in accordance with the terms of the contract, the last-mentioned local authority shall pay to him either the amount payable under this section or the amount of compensation payable under the contract, whichever amount is the greater.

(4) Any amount to which an employee is entitled under this section shall be paid in addition to any gratuity or other payment to which the employee is entitled under any other enactment.

(5) Any amount to which an employee is entitled under this section shall constitute a debt owing to him by the local authority, and shall be recoverable accordingly.

7. Notice of intention to terminate employment to be given—Where any person is transferred or deemed to have been transferred to the service of any local authority pursuant to section 3 or section 4 or section 5 of this Act, and the local authority does not intend to continue to employ him after the expiration of the period of two years from the date of his transfer, the local authority shall give to him notice in writing at least three months before the expiration of that period that it does not intend to continue to employ him.

8. Contracts of service by employees with local authority to which transferred—The provisions of sections 3 to 6 of this Act shall be read subject to the provisions of any contract of service for a period of more than two years entered into by the employee and the local authority to the service of which he was transferred or deemed to have been transferred pursuant to section 3 or section 4 or section 5 of this Act.

9. Local authorities may contract with employees as to tenure of office—(1) Notwithstanding anything to the contrary in any enactment or rule of law, a local authority may enter into an agreement in writing with any person whom it proposes to appoint, or has appointed, an officer or servant of the local authority to the effect that he shall not be removed from office save as provided in the agreement or except for conduct justifying summary dismissal—

(a) During such period (not exceeding five 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) as is specified in the agreement in that behalf.

(2) Any agreement to which paragraph (a) of subsection (1) of this section relates may from time to time be renewed for any period not exceeding five years at any one time from the date of the renewal.

(3) In this section the term “local authority” includes the Auckland Harbour Bridge Authority, the Christchurch-Lyttelton Road Tunnel Authority, and the Waikato Valley Authority.

(4) The enactments specified in the Second Schedule to this Act are hereby repealed.

SCHEDULES

FIRST SCHEDULE

Section 2 (1)

LOCAL AUTHORITIES OR PUBLIC BODIES TO WHICH THIS ACT APPLIES

Part I—Classes of Local Authorities or Public Bodies

Class of Local Authorities or Public Bodies	Enactment Under Which Constituted
Borough Councils	1954, No. 76—The Municipal Corporations Act 1954. (1957 Reprint, Vol. 10, p. 377.)
Catchment Boards } Catchment Commissions }	1941, No. 12—The Soil Conservation and Rivers Control Act 1941. (1957 Reprint, Vol. 14, p. 637.)
City Councils	1954, No. 76—The Municipal Corporations Act 1954. (1957 Reprint, Vol. 10, p. 377.)
County Councils ..	1956, No. 64—The Counties Act 1956. (1957 Reprint, Vol. 3, p. 1.)
District Milk Boards ..	1944, No. 30—The Milk Act 1944. (1957 Reprint, Vol. 9, p. 757.)
Drainage Boards	1908, No. 96—The Land Drainage Act 1908. (1957 Reprint, Vol. 7, p. 471.)
Electric Power Boards	1925, No. 38—The Electric Power Boards Act 1925. (1957 Reprint, Vol. 4, p. 441.)
Harbour Boards	1950, No. 34—The Harbours Act 1950. (1957 Reprint, Vol. 5, p. 813.)
Metropolitan Milk Boards	1944, No. 30—The Milk Act 1944. (1957 Reprint, Vol. 9, p. 757.)
Nassella Tussock Boards	1946, No. 2—The Nassella Tussock Act 1946. (1957 Reprint, Vol. 10, p. 643.)
Rabbit Boards	1955, No. 28—The Rabbits Act 1955. (1957 Reprint, Vol. 13, p. 33.)
River Boards	1908, No. 165—The River Boards Act 1908. (1957 Reprint, Vol. 13, p. 397.)
Road Boards	1956, No. 64—The Counties Act 1956. (1957 Reprint, Vol. 3, p. 1.)
Town Councils	1954, No. 76—The Municipal Corporations Act 1954. (1957 Reprint, Vol. 10, p. 377.)
Underground Water Authorities	1953, No. 56—The Underground Water Act 1953. (1957 Reprint, Vol. 16, p. 295.)
Urban Fire Authorities	1949, No. 18—The Fire Services Act 1949. (1957 Reprint, Vol. 5, p. 179.)

FIRST SCHEDULE—*continued**Part II—Particular Local Authorities or Public Bodies*

Name of Local Authority or Public Body	Enactment by Which Constituted
The Auckland Electric Power Board	1921, No. 17 (Local)—The Auckland Electric Power Board Act 1921.
The Auckland Metropolitan Drainage Board	1960, No. 15 (Local)—The Auckland Metropolitan Drainage Act 1960.
The Auckland Transport Board	1928, No. 44—The Auckland Transport Board Act 1928.
The Christchurch Drainage Board	1951, No. 21 (Local)—The Christchurch District Drainage Act 1951.
The Christchurch Transport Board	1920, No. 15 (Local)—The Christchurch Tramway District Act 1920.
The Dunedin Drainage and Sewerage Board	1900, No. 25 (Local)—The Dunedin District Drainage and Sewerage Act 1900.
The Hutt Valley Drainage Board	1948, No. 11 (Local)—The Hutt Valley Drainage Act 1948.
The North Shore Drainage Board	1963, No. 15 (Local)—The North Shore Drainage Act 1963.
The Ohai Railway Board	1932, No. 2 (Local)—The Ohai Railway Board Act 1932.
The Waimakariri-Ashley Water Supply Board	1961, No. 131—The Counties Amendment Act 1961.
The Wellington City and Suburban Water Supply Board	1927 No. 24 (Local)—The Wellington City and Suburban Water Supply Act 1927.

Section 9 (4)

SECOND SCHEDULE

ENACTMENTS REPEALED

- 1941, No. 12—The Soil Conservation and Rivers Control Act 1941: Section 81. (1957 Reprint, Vol. 14, p. 686.)
- 1944, No. 30—The Milk Act 1944: Section 80. (1957 Reprint, Vol. 9, p. 807.)
- 1946, No. 2—The Nassella Tussock Act 1946: Section 32. (1957 Reprint, Vol. 10, p. 658.)
- 1950, No. 34—The Harbours Act 1950: Section 43. (1957 Reprint, Vol. 5, p. 838.)
- 1954, No. 76—The Municipal Corporations Act 1954: Section 83. (1957 Reprint, Vol. 10, p. 428.)
- 1956, No. 64—The Counties Act 1956: Section 95. (1957 Reprint, Vol. 3, p. 48.)

This Act is administered in the Department of Internal Affairs.