



ANALYSIS

<p>Title</p> <p>1. Short Title</p> <p>2. Interpretation</p> <p>3. Strikes and lockouts in essential services</p> <p>4. New sections inserted</p> <p style="padding-left: 2em;">68A. Power of Minister to refer to mediator or other person existing or threatened strike or lockout affecting essential service or export slaughterhouse</p>	<p>68B. Power of Minister to refer to Tribunal existing or threatened strike or lockout affecting essential service or export slaughterhouse</p> <p>68C. Penalties</p> <p>5. Employer not liable for wages during lockout</p> <p>6. Enforcement of penalties</p> <p>7. Consequential amendments</p> <p>8. Essential services</p>
--	--

1981, No. 132

An Act to amend the State Services Conditions of Employment Act 1977
[23 October 1981]

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 State Services Conditions of Employment Amendment Act 1981, and shall be read together with and deemed part of the State Services Conditions of Employment Act 1977 (hereinafter referred to as the principal Act).

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “employing authority”, the following definition:

“ ‘Essential service’ means a service specified in the First Schedule to this Act:”.

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

“(3) The Governor-General may from time to time, by Order in Council, amend the description of any service specified in the First Schedule to this Act or add to or omit from that Schedule the description of any service.”

3. Strikes and lockouts in essential services—(1) Section 67 of the principal Act is hereby amended by omitting from subsection (1), and also from subsection (3), the words “of the services to which this section applies” in each place where they appear, and substituting in each case the words “essential service”.

(2) Section 67 of the principal Act is hereby further amended by repealing subsection (4).

4. New sections inserted—The principal Act is hereby amended by inserting, after section 68, the following sections:

“68A. Power of Minister to refer to mediator or other person existing or threatened strike or lockout affecting essential service or export slaughterhouse—(1) Where the Minister is of the opinion,—

“(a) That a strike or lockout exists or is threatened in an essential service or an export slaughterhouse; and

“(b) That the strike or lockout substantially affects or will substantially affect the public interest,—

he may request a mediator or some other person appointed by the Minister to inquire into the matter of the dispute.

“(2) The mediator or other person to whom the matter of a dispute is referred under subsection (1) of this section shall be requested—

“(a) To—

“(i) Inquire into the facts of the dispute; or

“(ii) Both inquire into the facts of the dispute and endeavour to secure a settlement of the dispute; and

“(b) To report to the Minister.

“(3) There shall be paid, out of money appropriated by Parliament for the purpose, to every person appointed under subsection (1) of this section (not being a mediator) remuneration by way of fees or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

“(4) Nothing in this section affects any other power of the Minister to use a mediator or any other person in relation to a dispute (including a dispute to which this section applies).

“68B. **Power of Minister to refer to Tribunal existing or threatened strike or lockout affecting essential service or export slaughterhouse**—(1) Where the Minister receives a report under section 68A (2) (b) of this Act, he may, if the dispute has not been settled or if a strike or lockout exists in respect of the dispute, refer the matter of the dispute to the Public Sector Tribunal for settlement.

“(2) Where the matter of a dispute is referred to the Tribunal under subsection (1) of this section, the Tribunal shall set a date for the hearing of the dispute as a matter of urgency.

“(3) The hearing shall be dealt with in accordance with the practice of the Tribunal and in accordance with any rules or regulations governing the procedure of the Tribunal.

“(4) If, after inquiring into the dispute, the Tribunal is satisfied that the strike or lockout or the threatened strike or lockout substantially affects or will substantially affect the public interest, the Tribunal shall make an order—

“(a) Settling the dispute; or

“(b) Prescribing the procedure to be followed in settling the dispute.

“(5) The order of the Tribunal shall be final and binding on the parties.

“(6) If, notwithstanding an order under subsection (4) of this section, full work or the operation of any undertaking is not resumed, the Tribunal shall, on the application of any of the parties or the Minister, order a resumption of full work or, as the case may require, of the operation of that undertaking, unless the Tribunal determines that there is good reason not to make an order under this subsection.

“68c. **Penalties**—(1) Every employer or employee who fails to comply with an order made under section 68B (6) of this Act for the resumption of work or the operation of an undertaking shall be liable—

“(a) In the case of an employer, to a penalty not exceeding \$3,000 and to a further penalty not exceeding \$100 for every day during which the failure to comply with the order continues:

“(b) In the case of an employee, to a penalty not exceeding \$300 and to a further penalty not exceeding \$10 for every day during which the failure to comply with the order continues.

“(2) Where an order for the resumption of work or the operation of an undertaking made by the Tribunal under section 68B (6) of this Act is not complied with by any employees or employers—

“(a) Every service organisation to which the employees belong, and every organisation of employers to which the employers belong, shall be liable to a penalty not exceeding \$3,000 and to a further penalty not exceeding \$100 for every day during which the failure to comply with the order continues if it is proved that any officer or member of the committee of management of the service organisation, or of the organisation of employers—

“(i) Advocated or suggested or connived at non-compliance with the order; or

“(ii) Wilfully failed to inform any employee or employer who was bound by that order that he would be liable to a penalty if he failed to comply with the order; or

“(iii) Incited, instigated, aided, or abetted any employee to comply with the order; and

“(b) Every person, being an officer or member of the committee of management of any service organisation to which the employees belong or of any organisation of employers to which the employers belong, shall be liable to a penalty not exceeding \$1,500 and to a further penalty not exceeding \$40 for every day during which the failure to comply with the order continues if it is proved that he committed any act mentioned in subparagraphs (i) to (iii) of paragraph (a) of this subsection.”

5. Employer not liable for wages during lockout—The principal Act is hereby amended by inserting, after section 72, the following section:

“72A. (1) Where any employees are locked out by their employer, those employees shall not be entitled to any remuneration by way of salary, wages, allowances, or other

emoluments in respect of the period of the lockout, unless the lockout is expressly prohibited by a provision of this Act or of Part IV_A of the Commerce Act 1975.

“(2) On the resumption of the employees’ employment their service shall be deemed to have been continuous for the purpose of any rights and benefits that are conditional on continuous service, notwithstanding the period of the lockout.”

6. Enforcement of penalties—(1) The principal Act is hereby amended by repealing section 73 (as substituted by section 3 of the State Services Conditions of Employment Amendment Act 1978), and substituting the following section:

“73. (1) District Courts shall have jurisdiction to hear and determine any action for the recovery of any penalty provided for in this Act; and sections 151 to 157 of the Industrial Relations Act 1973 (except subsections (1), (5), and (6) of section 151) shall apply accordingly with all necessary modifications.

“(2) Any action for the recovery of a penalty provided for in section 67 or section 68 or section 68c or section 70 of this Act may be brought—

“(a) In the case of an alleged breach of section 67 or section 68 of this Act (being a breach alleged to have been committed by an employee or, in the case of a breach of section 67 (5) or section 68 (4) of this Act, in relation to an alleged strike by an employee), only at the suit of the employing authority for the branch of the State services to which the employee belongs:

“(b) In the case of an alleged breach of section 67 or section 68 of this Act (being a breach alleged to have been committed by an employer or, in the case of a breach of section 67 (5) or section 68 (4) of this Act in relation to an alleged lockout by an employer), only at the suit of the service organisation in relation to the branch of the State services to which the employee alleged to have been locked out belongs:

“(c) Where the non-compliance with an order made under section 68B (6) of this Act is alleged to be that of an employee, only at the suit of the employing authority for the branch of the State services to which the employee belongs:

“(d) Where the non-compliance with an order made under section 68B (6) of this Act is alleged to be that of an employer, only at the suit of the service organisation in relation to the branch of the State services to which the employer’s employees belong:

“(e) In the case of an alleged breach of section 70 of this Act, only at the suit of a service organisation or an employing authority.

“(3) If any penalty adjudged to be paid by any service organisation in respect of any contravention of this Act is not paid in full within one month after the date when it was adjudged to be paid or within such further time as may be allowed or fixed for the payment thereof, all persons who were members of that service organisation at the time when the contravention occurred and who belonged to the group or class of employees involved in the contravention shall be jointly and severally liable to pay the penalty as if it had been adjudged to be payable by them personally (except that no person shall be liable under this subsection for a larger sum than \$50 on account of any such penalty).

“(4) For the purposes of subsection (3) of this section, a certificate under the hand of the Registrar of a District Court stating the amount of any penalty remaining unpaid by any service organisation and the names of any persons who are jointly and severally liable to pay that amount by virtue of subsection (3) of this section may be filed in the office of a District Court and every such certificate shall, unless a District Court Judge otherwise directs, be conclusive evidence of the liability of the persons so named as being jointly and severally liable.”

(2) Section 3 of the State Services Conditions of Employment Amendment Act 1978 is hereby consequentially repealed.

7. Consequential amendments—(1) Section 43 (1) of the principal Act is hereby amended by adding the words “and to exercise the powers conferred on it by section 68B of this Act.”

(2) Section 74 of the principal Act is hereby amended by inserting, after the words “section 68”, the words “section 68c,”.

(3) Section 75 of the principal Act is hereby amended by inserting, after the words “section 68” in both places where they appear, the words “section 68c,”.

8. Essential services—(1) The First Schedule to the principal Act is hereby amended by inserting in clause 4, after the words "South Island", the words "or between the South Island and Stewart Island".

(2) The said First Schedule is hereby further amended by adding the following item:

"11. The sale, production, processing, or distribution of coal."

This Act is administered in the State Services Commission.
