

HARBOURS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Harbours Act 1950.

The Bill contains new provisions relating to the financial and accounting procedures of Harbour Boards. It also empowers the Secretary to delegate certain of his powers relating to licences to take material from Crown land, and clarifies the position regarding:

- (a) The power of the Governor-General to make regulations governing a harbour where there is no Harbour Board; and
- (b) The inspection and design approval of containers and other equipment.

Clause 1 relates to the Short Title and commencement. The Bill is to come into force on the 1st day of October 1980.

Clause 2 repeals and replaces section 6 of the principal Act relating to the administration of harbours where there are no Harbour Boards. The present provision purports to give the Governor-General in Council powers to administer any such harbour, but doubts have arisen in respect of the extent and practical exercise of those powers. The new provision vests these powers in the Crown, but gives the Governor-General power to make regulations on matters usually dealt with by Harbour Boards in their bylaws.

Clause 3 inserts a new Part II in the principal Act, comprising *sections 46 to 60*.

PART II

FINANCE

Funds and Banking

Section 46 authorises the establishment of bank accounts by Harbour Boards.

Section 47 prescribes the manner in which such accounts are to be operated.

Section 48 authorises a Board to invest any money in any trustee investment. Previously money could only be invested in certain specified securities or such other securities as may be authorised by Order in Council.

Section 49 empowers a Board to borrow money for the purposes of harbour works.

Section 50 empowers a Board to give security over the proceeds and profits of certain Crown lands.

Remuneration and Expenses of Chairmen and Other Members

Section 51 relates to the setting of rates of remuneration for chairmen and members of Boards and persons on Board committees. The rates are to be set by the Minister with the concurrence of the Minister of Finance.

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Previously they were set by Order in Council. The limitations on the maximum amount that may be paid to any one person in a year are removed. Payment to non-members of a Board who are members of committees established by the Board is authorised for the first time.

Section 52 relates to the payment of travelling allowances and expenses to Board members and other persons who are members of Board committees. Payments to non-members of Boards who are members of committees established by the Board is authorised for the first time.

Expenditure

Section 53 specifies certain purposes for which the Board may expend money.

Section 54 imposes a limit on unauthorised expenditure of the lesser of \$10,000 or 1 percent of gross revenue of the Board in any year. Previously there was a scale of such expenditure based on the revenue of the Board. The maximum was \$10,000, except in the case of the Auckland and Wellington Boards where the maximum was \$12,000.

Section 55 requires the separate disclosure and identification of items of unauthorised expenditure, and certain other items of authorised expenditure, in the annual statement of accounts.

Accounting and Audit

Section 56 provides that the financial year for every Board shall end on the 30th day of September. In the case of the Greymouth Board, this involves a change from a year ending on the 31st day of March.

Section 57 is a new provision requiring a Board to prepare, consider, and approve annual estimates of expenditure. Where the Board has levied a land rate, the estimates must be made public.

Section 58 requires a Board to keep books and make them available for public inspection.

Section 59 requires a Board to file accounts and related information with the Audit Office within 3 months of the end of each financial year.

Section 60 requires a Board to produce its accounts at a meeting not later than the 31st day of March after the end of the financial year. The Board is required to adopt the accounts and Audit Office report and release the accounts to the public.

Clause 4 substitutes a new provision relating to the granting of licences to take material from certain lands vested in the Crown, Harbour Boards, and local authorities. The principal change lies in the fact that the Secretary is now empowered to delegate certain of his functions relating to the taking of material from Crown land to catchment authorities.

Clause 5 extends the power to make regulations prescribing fees for the inspection and testing of cargo containers and equipment used for loading ships to include fees for the design approval of such items. Previously there was some doubt whether design approval was included in the term "inspection and testing".

Clause 6 deals with consequential amendments.

Hon. Mr McLachlan

HARBOURS AMENDMENT

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A BILL INTITULED

An Act to amend the Harbours Act 1950

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 and commencement—(1) This Act may be cited as the Harbours Amendment Act 1980, and shall be read together with and deemed part of the Harbours Act 1950* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of October 1980. 5

2. Powers may be exercised by Crown where no Harbour Board—The principal Act is hereby amended by repealing section 6, and substituting the following section:

“6. (1) In respect of any harbour where there is no Harbour Board, the Crown shall have all the powers, functions, duties, and authorities that are conferred by this Act on Harbour Boards in respect of harbours. 10

“(2) The Governor-General may, by Order in Council, exercise any power conferred upon the Crown that could be exercised by or under bylaws by a Harbour Board if a Harbour Board had jurisdiction over the harbour. 15

“(3) The power conferred upon the Governor-General under subsection (2) of this section may be exercised either generally in respect of harbours where there is no Harbour Board, or in respect of any one or more of those harbours. 20

“(4) Nothing in this section shall oblige the Crown to exercise or perform all or any of the powers, functions, duties, or authorities conferred or imposed upon it by this section.

“(5) Section 239 of this Act (relating to the penalty for a breach of bylaws) shall, with the necessary modifications, apply with respect to a breach of any regulations made under this section as if it were a breach of a bylaw made under this Act.” 25

3. New Part II of principal Act substituted—(1) The principal Act is hereby amended by repealing Part II, and substituting the following Part: 30

*Reprinted 1966, Vol. 3, p. 2395

Amendments: 1968, No. 139; 1969, No. 81; 1970, No. 68; 1971, No. 58; 1974, No. 87; 1975, No. 77; 1977, No. 80

“PART II

“FINANCE

“Funds and Banking

- 5 “46. **Harbour Fund and other bank accounts**—(1) Every Board shall maintain at a trading bank (as defined in section 2 of the Reserve Bank of New Zealand Act 1964) a principal bank account, to be known as the Harbour Fund, into which shall be paid all dues and other money, except loan money, received by the Board.
- 10 “(2) The Board may from time to time open with the bank at which its Harbour Fund is kept, or with any branch or agency of that bank, such subsidiary accounts as the Board considers necessary for the exercise of its functions and powers.
- 15 “(3) The Board may also from time to time establish such special funds or reserves as the Board considers necessary for the exercise of its functions and powers.
- Cf. 1950, No. 34, ss. 46, 49; 1959, No. 6, s. 2; 1977, No. 80, s. 13
- 20 “47. **Operation of bank accounts**—(1) Every withdrawal or transfer of any money from any account opened under section 46 of this Act shall be made only by cheque or other instrument of payment signed by any 2 officers of the Board from time to time authorised by the Board for that
- 25 purpose.
- “ (2) Where payment is made by cheque, it shall be sufficient compliance with subsection (1) of this section if, instead of any signature required by that subsection, the cheque bears a facsimile of that signature, and every cheque
- 30 bearing such a facsimile or facsimiles shall, in the absence of proof to the contrary, be deemed to have been duly authorised.
- “ (3) All money paid or purporting to be paid by the Board by promissory note or bill (not being a cheque) shall
- 35 be deemed to be money unlawfully expended or applied within the meaning of section 31 of the Public Finance Act 1977.

“(4) In this section, the expression ‘instrument of payment’ means a cheque, a cash withdrawal slip, or a document authorising a bank to arrange a debit in the Board’s account and to arrange a corresponding credit in the bank account of another party. 5

Cf. 1950, No. 34, ss. 50, 58; 1959, No. 6, s. 3; 1964, No. 56, ss. 3, 4; 1971, No. 58, s. 5; 1977, No. 65, s. 133 (2); 1977, No. 80, s. 14 (1)–(2)

“48. **Investment powers of Boards**—The Board may invest any money in any investment for the time being authorised as a trustee investment by or under section 4 of the Trustee Act 1956. 10

Cf. 1950, No. 34, s. 53; 1956, No. 63, s. 134; 1957, No. 53, s. 2

“49. **Borrowing powers of Boards**—Subject to this Act and to the New Zealand Ports Authority Act 1968, the Board may, in accordance with the Local Authorities Loans Act 1956, borrow money for the purposes of harbour works. 15

Cf. 1950, No. 34, s. 65; 1968, No. 140, s. 22 (1)

“50. **Proceeds of sale of endowments may be pledged**—In addition to any security authorised by the Local Authorities Loans Act 1956, the Board may from time to time pledge or otherwise give security over the proceeds and profits of Crown land set aside as endowments under section 136 or section 137 of this Act, in such manner as the Board thinks fit; and, in the event of the Board so doing, those proceeds and profits shall be paid by the Commissioner of Crown Lands to such trustees or other persons as may be agreed upon between the Board and the holder of the security. 20 25

Cf. 1950, No. 34, s. 77; 1956, No. 63, s. 134

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“Remuneration and Expenses of Members

“51. **Remuneration of chairmen and members**—(1) The Minister of Transport may from time to time, with the concurrence of the Minister of Finance, by notice in the *Gazette*, fix— 35

“(a) The rate of the annual allowance for Board chairmen:

“(b) The rate of the annual allowance for Board deputy chairmen:

“(c) The rate of remuneration for Board members for attendance at Board meetings and Board committee meetings: 40

“(d) The rate of remuneration for any Board member who attends as chairman any meeting of any committee established by the Board:

5 “(e) The rate of remuneration for persons who are members of any committee established by a Board but who are not members of that Board, as if they were members of that Board.

“(2) The Minister may, from time to time, in the manner prescribed in subsection (1) of this section, alter the rates
10 of such allowances and remuneration, and may fix different rates for chairmen and members of different Boards or committees or for chairmen of specified committees of specified Boards.

15 Cf. 1950, No. 34, s. 51A; 1965, No. 6, s. 5 (1); 1977, No. 80, s. 15 (1)

“52. Travelling allowances and expenses—(1) The Board may pay to members of the Board travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply
20 accordingly.

“(2) Where any member of any committee of the Board who is not a member of the Board attends any meeting of that committee or, with the authority of the committee, travels in the service of the committee, he shall be entitled
25 to receive travelling allowances and expenses as if he were a member of the Board, and the provisions of the Fees and Travelling Allowances Act 1951 shall apply accordingly.

Cf. 1950, No. 34, s. 51; 1951, No. 79, s. 10 (1); 1965, No. 6, s. 5 (2)

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“Expenditure

“53. Miscellaneous expenditure—Without limiting the provisions of this Act or any other enactment or any other powers of the Board, the Board may, from time to time, as it thinks fit, expend money for all or any of the following
35 purposes:

“(a) The payment of premiums in respect of any contract of insurance entered into by the Board with any insurance company—

40 “(i) Insuring any members, officers, or employees of the Board, or members of any committee of the Board who are not members of the Board, against loss from personal accident arising

out of and in the course of the exercise of their powers and duties as such members, officers, or employees:

- “(ii) Insuring persons against loss of or damage to their property suffered while rendering assistance to, or performing any action under the control or authority of, any employee of the Board acting in the execution of his duty: 5
- “(b) The making of ex gratia payments to any person who suffers any loss of or damage to his property while rendering assistance to, or performing any action under the control or authority of, any member or employee of the Board acting in the execution of his duty if, in the opinion of the Board, compensation or restitution for that loss or damage is not reasonably recoverable from any other source: 10 15
- “(c) The payment of the annual subscription of the Board to the Harbours Association of New Zealand:
- “(d) The observance of Waitangi Day, the Sovereign’s Birthday, Anzac Day, and any other day of national significance: 20
- “(e) The celebration and commemoration of the centennial or any other significant anniversary of the founding of the Board or any other event of special local and public significance: 25
- “(f) The holding of conferences related to any activity of the Board:
- “(g) The payment of travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951 to any member of the Board, including the chairman or deputy chairman, who attends, as a representative of the Board, any conference of the Harbours Association of New Zealand, or any other conference whether in New Zealand or elsewhere: 30 35
- “(h) The provision of entertainment.

“54. **Unauthorised expenditure**—Any Harbour Board may, in every financial year, expend for purposes not authorised by any Act or law for the time being in force, any sum or sums amounting in the whole to 1 percent of the gross revenue of the Board for that year, or \$10,000, whichever is the less. 40

“55. **Matters to be disclosed separately in annual accounts—** Every amount expended under each of paragraphs (d) to (h) of section 53 of this Act, and every amount expended under section 54 of this Act, shall be separately disclosed
5 and identified in the income and expenditure account specified in section 59 (a) of this Act.

“Accounting and Audit

“56. **Financial year of Boards—**The financial year for every Board shall commence with the 1st day of October in every
10 year, and expire with the 30th day of September in the next succeeding year.

“57. **Annual financial estimates—**(1) The Board shall, in respect of the financial year commencing with the 1st day of October 1980 and every subsequent financial year, cause
15 estimates to be prepared showing the estimated receipts and payments in respect of the undertakings, services, and activities of the Board for that financial year.

“(2) Such estimates shall be presented to the Board for consideration and approval no later than the 31st day of
20 December in the financial year to which they relate.

“(3) In the case of any board levying a land rate under section 121 of this Act, the annual financial estimates shall be made available for public inspection during office hours at the principal office of the Board; and public notice of their
25 availability for such inspection shall be given in at least 1 newspaper circulating in the Board’s rating area as soon as practicable after the estimates have been approved by the Board.

“58. **Inspection of documents by electors and others—**
30 (1) Any member or authorised officer of the Board may inspect the accounting documents, and make copies of any part of any such document, at all reasonable times.

“(2) Any elector or creditor of the Board, and any person holding any security charged upon the property of the Board,
35 may inspect any accounts and financial statements issued by the Board or any committee of the Board, or presented by an officer of the Board to the Board or any committee of the Board, and make copies of any such statement, at all reasonable times:

“Provided that nothing in this subsection shall apply with respect to any accounts or financial statements so presented at any meeting from which the public has been lawfully excluded under section 4 of the Public Bodies Meetings Act 1962, unless those accounts or financial statements have subsequently been issued by the Board or a committee of the Board. 5

“(3) Every person commits an offence against this Act who refuses to allow or obstructs the inspection or copying of any such accounting document, account, or financial statement in his custody or control by any person entitled to inspect or copy the document, account, or statement. 10

“(4) In this section—

“‘Accounting documents’ means documents that are prime entries into the financial records; and includes ledger accounts: 15

“‘Authorised officer’, in relation to any Board, means any officer of the Board authorised by the Board for the purposes of this section, either by name or as the holder for the time being of any specified office. 20

Cf. 1950, No. 34, s. 54

“59. **Annual statement and audit of accounts**—Within 3 months after the close of each financial year, the Board shall cause to be prepared and submitted to the Audit Office for audit by that Office a statement of accounts, including,— 25

“(a) A revenue and appropriation statement:

“(b) A balance sheet:

“(c) A summary of all sinking fund accounts:

“(d) Such other statements as may be required by the Audit Office,— 30

showing fully the financial position of the Board as at the close of the financial year.

“60. **Accounts to be produced at meeting of Board**—

(1) The statement of accounts, together with any report received from the Audit Office, shall be produced at a meeting of the Board to be held not later than the 31st day of March following the close of the financial year to which the statement relates. 35

“(2) The Board shall consider the statement of accounts and the report of the Audit Office and shall, by resolution made not later than 2 months after the Board has been notified of the completion of the audit, adopt the statement of accounts. 40

“(3) The Chairman shall, forthwith upon such adoption, sign the statement of accounts and ensure that 3 copies are sent to the Secretary for Transport.

“(4) The statement of accounts and the report of the Audit Office shall be made public as soon as practicable after the making of the resolution referred to in subsection (2) of this section, as follows:

“(a) A copy of each shall be furnished free of charge, upon request, to any elector of the Board and to any holder of any debenture issued by the Board or any creditor of the Board; and

“(b) Sufficient copies of each shall be available for public inspection, free of charge, during normal office hours at the principal office of the Board; and

“(c) The fact that copies are so available shall be notified by advertisement in a newspaper or newspapers circulating in every district of a local authority whose electors are electors of the Board.”

(2) Sections 36 and 44 of the principal Act are hereby repealed.

Cf. 1950, No. 34, s. 64; 1977, No. 80, s. 17 (1)

4. Licences to take stone, etc.—The principal Act is hereby amended by repealing section 146A (as substituted by section 7 (1) of the Harbours Amendment Act 1965), and substituting the following section:

“(1) Where a portion of the foreshore, or the bed of a harbour, navigable lake, navigable river, or the sea is vested in the Crown, a Harbour Board, or a local authority, the Secretary or, as the case may be, the Board or local authority, may issue licences authorising the licensees to remove stone, shingle, sand, boulders, silt, mud, shell, or other material from that foreshore, harbour, lake, river bed, or sea bed.

“(2) No licence, permit, or other authority shall be granted under any other enactment, except the Petroleum Act 1937 or the Iron and Steel Industry Act 1959, for the removal of any material specified in subsection (1) of this section from any of the areas specified in that subsection without the consent of the Minister, who, in granting his consent, may impose such terms and conditions as he thinks necessary for the protection of any land from erosion or other damage, or for the preservation of aquatic life.

“(3) No licence shall be issued under this section for the removal of any material in any case where a licence, permit, or other authority is required for the removal of that material under any other enactment.

“(4) Where any licence is issued under subsection (1) of this section, the Secretary, Board, or local authority, as the case may be, shall determine the area to which the licence relates, the term of the licence, and the conditions upon which the licence shall be held. 5

“(5) Notwithstanding subsections (1) and (4) of this section, where any land to which this section applies is vested in the Crown, the Secretary may delegate his power to—

“(a) Issue licences under subsection (1) of this section; 10
and

“(b) Determine the matters specified in subsection (4) of this section,—

to any catchment authority (as defined in section 2 (1) of the Town and Country Planning Act 1977).

“(6) The Secretary may at any time revoke, in whole or 15
in part, any delegation under subsection (5) of this section, but that revocation shall not affect in any way anything done under the delegated authority before the revocation.

“(7) The annual fee to be charged and the royalties to be paid under any licence issued under this section shall be 20
determined by—

“(a) The Minister, where the licence is issued by the Secretary; and

“(b) The Minister, after consultation with the Minister of Works and Development, where the licence is 25
issued by a catchment authority; and

“(c) The Board or local authority, as the case may be, where the licence is issued by that Board or local authority.

“(8) The Minister, after consultation with the Minister of 30
Works and Development, shall determine the proportion of the annual fee and royalties that may be retained by any catchment authority that issues a licence.”

5. General Harbour Regulations—(1) Section 241 (1) (b) of the principal Act is hereby amended by omitting the word 35
“inspection” where it first occurs, and substituting the words “design approval, inspection,”

(2) Section 241 (1) (bb) of the principal Act (as inserted by section 18 of the Harbours Amendment Act 1968) is hereby amended by omitting the word “inspection”, and sub- 40
stituting the words “design approval, inspection,”.

6. Consequential amendments and repeal—(1) The enactments specified in the first column of the Schedule to this Act are hereby consequentially amended in the manner indicated in the second column of that Schedule.

5 (2) The Harbours Amendment Act 1957 is hereby consequentially repealed.

SCHEDULE

Section 6

ENACTMENTS AMENDED

Title of Act	Amendment
1952, No. 78—The Harbours Amendment Act 1952 (R.S. Vol. 2, p. 728)	By repealing section 3.
1956, No. 63—The Local Authorities Loans Act 1956 (Reprinted 1974, Vol. 3, p. 2304)	By repealing so much of the Second Schedule and the Third Schedule as relates to the Harbours Act 1950.
1959, No. 6—The Harbours Amendment Act 1957 (R.S. Vol. 2, p. 731)	By repealing section 3.
1961, No. 114—The Harbours Amendment Act 1961 (R.S. Vol. 2, p. 734)	By repealing section 4.
1963, No. 90—The Harbours Amendment Act 1963 (R.S. Vol. 2, p. 735)	By repealing section 3.
1964, No. 56—The Harbours Amendment Act 1964 (R.S. Vol. 2, p. 736)	By repealing sections 3, 4, and 5.
1965, No. 6—The Harbours Amendment Act 1965	By repealing section 3, subsections (2) and (3) of section 5, and section 7 (1).
1971, No. 58—The Harbours Amendment Act (No. 2) 1971 (R.S. Vol. 2, p. 743)	By repealing sections 5 and 7.
1972, No. 4—The Ministry of Transport Amendment Act 1972 (Reprinted 1972, Vol. 2, p. 2601)	By repealing so much of the First Schedule as relates to section 146A of the principal Act.
1977, No. 65—The Public Finance Act 1977	By repealing section 133.
1977, No. 80—The Harbours Amendment Act 1977 (R.S. Vol. 2, p. 746)	By repealing section 4, Part II, and section 27.