

[AS REPORTED FROM THE COMMUNICATIONS AND ROAD SAFETY  
COMMITTEE]

*House of Representatives, 19 April 1988.*

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

*Hon. W. P. Jeffries*

## PORTS REFORM

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A BILL INTITULED

An Act to promote and improve efficiency, economy, and performance in the management and operation of the commercial aspects of ports and, to this end,—

- 5 (a) To provide for the formation of port companies to carry out port related commercial activities and control the ownership thereof; and
- (b) To establish requirements concerning the accountability and ownership of such
- 10 companies and the responsibilities of Harbour Boards; and
- (c) To repeal the New Zealand Ports Authority Act 1968; and
- (d) To amend the Waterfront Industry Commission
- 15 Act 1976; and
- (e) To amend the Harbours Act 1950 and to amend or repeal certain other enactments relating to ports and harbours

BE IT ENACTED by the Parliament of New Zealand as follows:

- 20 **1. Short Title and commencement**—(1) This Act may be cited as the Ports Reform Act 1987.

(2) Except as provided in (*section*) sections 41c (2), 85A (2), 85B (2), 85D (2), 91A (2), and 96 (2) of this Act, this Act shall come into force on the 1st day of (*April*) May 1988.

- 25 **2. Interpretation**—In this Act, unless the context otherwise requires,—

“Debt security” has the same meaning as in the Securities Act 1978:

- 30 “Directorate”, in relation to any port company, means the board of directors of the port company:

“Equity security” has the same meaning as in the Securities Act 1978:

- 35 “Harbour Board” means a Harbour Board specified in the First Schedule to this Act; and, in relation to any port company, means the Harbour Board in respect of whose port related commercial undertakings the port company is established:

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“Instrument” includes—

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(a) Any instrument (other than this Act) of any form or kind that creates, evidences, modifies or extinguishes rights, interests, or liabilities or would do so if it or a copy thereof were lodged, filed, or registered under any enactment; and 5

(b) Any judgment, order, or process of a court:

*New*

“Instrument”—

(a) Includes— 10

(i) Any instrument of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities, or would do so if it or a copy of it were lodged, filed, or registered under any Act; 15  
and

(ii) Any judgment, order, or process of a Court; but

(b) Does not include any Act of Parliament:

“Liabilities” means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere): 20

“Minister” means the Minister of Transport: 25

“Port company” means a port company referred to in section 4 of this Act:

“Port company plan” means a plan approved or determined by the Minister under section 22 of this Act: 30

“Port related commercial undertaking”, in relation to any Harbour Board,—

(a) Means the property and rights of the Harbour Board that—

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(i) Are conducive to the safety or convenience of ships or hovercraft (other than yachts,

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motor launches, speed boats, or other boats used exclusively for recreational purposes); or

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*New*

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(i) Relate to the activities of commercial ships and other commercial vessels, and commercial hovercraft and commercial aircraft, or to the operation of facilities on a commercial basis for ships, vessels, hovercraft, and aircraft of any kind; or

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(ii) Facilitate the shipping or unshipping of goods or passengers; and  
 (b) Without limiting the generality of **paragraph (a)** of this definition, includes—

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(i) The provision by a Harbour Board of any building or facility wherever situated for use in connection with the handling, packing, or unpacking of goods for shipping or unshipping through any port; and

25

(ii) Items such as breakwaters and dredges and other items that, although they may not themselves be revenue producing and may have a number of purposes or uses, are nevertheless related to the operation of the port on a commercial basis; but

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(c) Does not include any undertaking that is a statutory function or duty of the Harbour Board relating to safety or good navigation:

“Property”—

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(a) Means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal; and

(b) Without limiting the generality of **paragraph (a)** of this definition, includes—

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(i) Choses in action and money; and  
 (ii) Goodwill; and  
 (iii) Rights, interests, and claims of every kind in or to property, whether arising from,

accruing under, created or evidenced by, or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent, or prospective; and

- (iv) To the extent specified in the port company plan approved by the Minister under **section 22** of this Act, any right conferred by a designation under an operative district scheme applying to land transferred from the Harbour Board to the port company:

“Rights” means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective:

“Subsidiary” has the same meaning as in section 158 of the Companies Act 1955.

**3. Act to bind Crown**—This Act shall bind the Crown.

## PART I

### PORT COMPANIES

**4. Incorporation of port companies**—(1) Notwithstanding any enactment or rule of law, every Harbour Board shall, not later than the 1st day of October 1988 or such later date as the Minister in any particular case may allow, form and register under the Companies Act 1955 in accordance with this section a public company limited by shares, which shall be a port company within the meaning of this Act.

(2) The memorandum of association and articles of association of every port company (*and every subsidiary company of a port company*) shall be (*in a form*) approved by the Minister before their adoption and no amendment shall be made to the memorandum or articles at any time without the prior written approval of the Minister.

(3) No Harbour Board shall form and register more than one port company; but nothing in this subsection shall prevent the formation and registration of subsidiary companies of a port company.

(4) The Harbour Board may subscribe for equity securities in the port company to be issued on its incorporation, and any other equity securities to be so issued shall be subscribed for by nominees of the Harbour Board.

(5) The Harbour Board may subscribe for or hold any other equity securities or any debt securities issued by a port company.

(6) Where any Harbour Board fails to comply with the requirements of this section, the Minister may form and register the company and is hereby empowered to do any thing that the Harbour Board is empowered or required to do in respect of the formation, registration, and operation of the port company.

10 (7) Where the Minister acts under subsection (6) of this section, the Minister shall be entitled to be reimbursed by the Harbour Board for any costs and expenses incurred in the taking of the action.

**5. Principal objective to be successful business**—The principal objective of every port company shall be to operate as a successful business.

**6. Directors of port companies**—(1) The articles of association of every port company shall provide—

20 (a) That there shall be no fewer than 6 directors of the port company; and

(b) That not more than 2 members or employees of the Harbour Board or any other Harbour Board, territorial authority, regional council or united council that holds any equity securities in the company of any class that confer rights to vote at any general meeting of the company may be directors of the port company.

25 (2) Subject to subsection (1) of this section, the directors of each port company shall be persons who, in the opinion of those appointing them, will assist the port company to achieve its principal objective.

(3) All decisions relating to the operation of the port company (*enterprise*) shall be made by or pursuant to the authority of the directorate of the company in accordance with 35 (any) the statement of corporate intent (if any).

*New*

(4) For the avoidance of doubt it is hereby declared that no director of a port company is, by virtue of holding that office, a

*New*

statutory officer within the meaning of the Local Government Official Information and Meetings Act 1987.

Cf. 1986, No. 124, s. 5

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**7. Restrictions on issue and transfer of equity securities**—(1) Equity securities in a port company may be issued, allotted, sold, or otherwise disposed of to any person or body so long as at any time not less than 51 percent of the voting rights at any general meeting of the company are held 10 by the Harbour Board.

(2) Nothing in subsection (1) of this section applies to redeemable preference shares that—

- (a) Are not convertible into shares of any other class; and
- (b) Do not confer any rights to vote at any general meeting of 15 the company.

(3) Notwithstanding subsection (1) of this section, equity securities in a port company, may, with the consent of the Minister, be issued, allotted, sold, or otherwise disposed of with the effect that less than 51 percent of the voting rights at any 20 general meeting of the company remain with the Harbour Board so long as at all times not less than 51 percent of the voting rights at any general meeting of the company are held by all or any of the Harbour Board, any other Harbour Board, and any territorial authority, regional council, or united council 25 within the meaning of the Local Government Act 1974.

(4) The articles of association of each port company shall provide for a class of shares that—

- (a) Shall carry 51 percent of the voting rights at any general 30 meeting of the company; and
- (b) May be held only by Harbour Boards or territorial authorities, regional councils, or united councils within the meaning of the Local Government Act 1974.



*New*

**7. Restrictions on issue and transfer of equity securities**—(1) The articles of association of each port company shall provide for a class of shares that—

5 (a) Shall carry 51 percent of the voting rights at any general meeting of the company; and

(b) May be held only by one or more of the following bodies:

(i) The Harbour Board; or

(ii) Any other Harbour Board; or

10 (iii) Any territorial authority within the meaning of the Local Government Act 1974; or

(iv) Any regional council within the meaning of the Local Government Act 1974; or

15 (v) Any united council within the meaning of the Local Government Act 1974.

(2) Notwithstanding anything in **subsection (1)** of this section, the articles of association of a port company may provide that—

20 (a) A territorial authority within the meaning of the Local Government Act 1974 or a regional council within the meaning of that Act may hold shares that belong to the class provided for in **subsection (1)** of this section only if some or all of the electors of the territorial authority or regional council are also electors of the Harbour Board; and

25 (b) A united council within the meaning of the Local Government Act 1974 may hold shares that belong to the class provided for in **subsection (1)** of this section only if electors of some or all of the constituent authorities within the region of the united council are also electors of the Harbour Board.

30 (3) Nothing in **subsection (1)** of this section applies to redeemable preference shares that—

(a) Are not convertible into shares of any other class; and

35 (b) Do not confer any rights to vote at any general meeting of the company.

(4) Equity securities in a port company may be issued, allotted, sold, or otherwise disposed of to any person or body so long as at all times any provisions included in the articles of association of the port company pursuant to **subsection (1)** or **subsection (2)** of this section are complied with.

(5) Harbour Boards, territorial authorities, regional councils, and united councils are hereby authorised to subscribe for, otherwise acquire, hold, and dispose of any equity securities in port companies.

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**8. Statement of corporate intent**—The directorate of every port company—

- (a) Shall deliver to its shareholders; and
- (b) Make available to the public,—

a draft statement of corporate intent not later than 1 month after the commencement of each financial year of the port company.

Cf. 1986, No. 124, s. 14 (1)

**9. Contents of statement of corporate intent**—Each statement of corporate intent shall specify for the group comprising the port company and its subsidiaries (if any), and in respect of the financial year in which it is delivered and each of the immediately following 2 financial years, the following information:

- (a) The objectives of the group: 20
- (b) The nature and scope of the activities to be undertaken:
- (c) The ratio of consolidated shareholders' funds to total assets, and definitions of those terms:
- (d) The accounting policies:
- (e) The performance targets and other measures by which the performance of the group may be judged in relation to its objectives: 25
- (f) An estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the shareholders: 30
- (g) The kind of information to be provided to the shareholders by the port company during the course of those financial years, including the information to be included in each half-yearly report:
- (h) The procedures to be followed before any member of the group subscribes for, purchases, or otherwise acquires shares in any company or other organisation: 35
- (i) Any activities for which the directorate seeks compensation from the Harbour Board (whether or

not the Harbour Board has agreed to provide such compensation):

- 5 (j) The directorate's estimate of the commercial value of the shareholders' investment in the group and the manner in which, and the times at which, this value is to be reassessed:
- (k) Such other matters as are agreed by the shareholders and the directorate.

Cf. 1986, No. 124, s. 14 (2)

- 10 **10. Completion of statement of corporate intent**—The directorate shall consider any comments on the draft statement of corporate intent that are made to it within 2 months of the commencement of the financial year by the shareholders or any of them, and shall deliver the completed statement of
- 15 corporate intent to the shareholders within 3 months of the commencement of the financial year.

Cf. 1986, No. 124, s. 14 (3)

**11. Modifications of statement of corporate intent**—

- (1) A statement of corporate intent for a port company may be
- 20 modified at any time by written notice from the directorate of the port company, so long as the directorate has first—
- (a) Given written notice to the shareholders of the proposed modification; and
- (b) Considered any comments made on the proposed
- 25 modification by the shareholders or any of them within—
- (i) One month after the date on which the notice under paragraph (a) of this subsection was given; or
- (ii) Such shorter period as the shareholders may
- 30 agree.
- (2) Notwithstanding any other provision of this Act or of the memorandum of association or articles of association of any port company, but subject to **section 14** of this Act, the shareholders may from time to time, by resolution, require the
- 35 directorate of the port company to modify the statement of corporate intent for that company by including or omitting any provision or provisions of a kind referred to in **paragraphs (a) to (h) of section 9** of this Act; and any directorate to whom such a notice is given shall comply with the notice.
- 40 (3) Before giving any notice under **subsection (2)** of this section, the shareholders shall—
- (a) Have regard to **sections 5 and 16** of this Act; and

(b) Consult the directorate concerned as to the matters to be referred to in the notice.

Cf. 1986, No. 124, s. 14 (4)

**12. Obligation to make statement of corporate intent available**—Every completed statement of corporate intent and every modification that is adopted to a statement of corporate intent shall be made available to the public by the directorate of the port company within 1 month after the date on which it is delivered to the shareholders or adopted, as the case may be. 5

**13. Circumstances in which statement of corporate intent not required**—Upon the listing of the shares of a port company on the New Zealand Stock Exchange the port company shall no longer be required to comply with sections 8 to 12 of this Act and the current statement of corporate intent shall cease to be of continuing effect. 10 15

**14. Power of Minister to dispense with statement of corporate intent**—(1) In any case where equity securities of a port company that confer rights to vote at a general meeting of the port company are held by persons other than the Harbour Board and its nominees the Minister may, by notice in the *Gazette*,— 20

(a) Direct that the port company need not prepare a statement of corporate intent under sections 8 and 9 of this Act; and

(b) Inform the company that it may regard its current statement of corporate intent as ceasing to be of continuing effect. 25

(2) Any direction under subsection (1) of this section may be revoked at any time by the Minister by notice in the *Gazette*.

**15. Saving of certain transactions**—A failure by a port company to comply with— 30

(a) Any provision of sections 5 to 12 of this Act; or

(b) Any provision contained in any statement of corporate intent,—

shall not affect the validity or enforceability of any deed, agreement, right, or obligation entered into, obtained, or incurred by a port company (or any subsidiary of a port company). 35

Cf. 1986, No. 124, s. 21

**16. Reports and accounts**—(1) Within 2 months after the end of the first half of each financial year of a port company, 40

the directorate of the port company shall deliver to the shareholders and the Minister a report of its operations during that half-year.

(2) Each report required by subsection (1) of this section shall include the information required by the statement of corporate intent to be included therein.

(3) Within 3 months after the end of each financial year of a port company or such longer period as the Minister may allow, the directorate of the port company shall deliver to the shareholders and the Minister—

(a) A report of the operations of the port company and those of its subsidiaries during that financial year; and

(b) Audited consolidated financial statements for that financial year consisting of—

(i) Statements of financial position, profit and loss, and changes in financial position; and

(ii) Such other statements as may be necessary to show the financial position of the port company and its subsidiaries and the financial results of their operations during that financial year; and

(c) The auditor's report on those financial statements.

(4) Every report under subsection (3) (a) of this section shall—

(a) Contain such information as is necessary to enable an informed assessment of the operations of the port company and its subsidiaries, including a comparison of the performance of the port company and subsidiaries with any relevant statement of corporate intent; and

(b) State the maximum dividend (if any) recommended to be payable by the port company in respect of its equity securities (other than fixed interest securities) for the financial year to which the report relates.

Cf. 1986, No. 124, ss. 15, 16

**17. Protection from disclosure of sensitive information**—Nothing in this Act shall be construed as requiring the inclusion in any statement of corporate intent, annual report, financial statement, or half-yearly report required to be produced under this Act of any information that could be properly withheld if the Local Government Official Information and Meetings Act 1987 applied to port companies and a request for that information were made under *(the Local Government Official Information and Meetings Act 1987 to the*

*Harbour Board to which the information would otherwise be given.)*  
that Act.

Cf. 1986, No. 124, s. 20

**18. Non-commercial activities**—(1) Where the Harbour Board wishes the port company(—)

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| <ul style="list-style-type: none"> <li>(a) To provide or make available goods or services to the Harbour Board or any other person; or</li> <li>(b) To assist the Harbour Board in the exercise of any statutory function, duty, or power,—</li> </ul> | 10 |
|--|----|

*New*

<p>to provide or make available goods or services to assist the Harbour Board in the exercise of any statutory function, duty, or power,</p>
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the Harbour Board and the port company shall enter into an agreement under which the port company will provide or make available the goods or services in return for the payment by the Harbour Board of the whole or part of the price thereof.

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(2) Where—

- (a) The Harbour Board wishes the port company to provide or make available goods or services to assist the Harbour Board in the exercise of any statutory function, duty, or power; and
- (b) The Harbour Board and the port company cannot agree as to—
  - (i) The provision or making available of the goods or services; or
  - (ii) The conditions on which the goods or services are to be provided or made available,—

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the matter shall be referred to arbitration under the Arbitration Act 1908 with one arbitrator to be appointed by each party and an umpire to be appointed by those arbitrators before entering upon their reference.

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Cf. 1986, No. 124, s. 7

*Struck Out***19. Stevedoring operations of port companies—**

- (1) Notwithstanding anything in this Act or the memorandum of association or articles of association of the port company,  
5 any port company that engages in stevedoring operations (whether as a joint venture or otherwise)—
- (a) Shall make available to any other person who conducts or wishes to conduct stevedoring operations at the port any equipment ordinarily made available to such a  
10 person; and
- (b) In making equipment available to other persons who conduct or wish to conduct stevedoring operations at the port,—
- (i) Shall do so on a fair and reasonable basis having  
15 regard to the customs applicable to stevedoring operations in New Zealand; and
- (ii) In particular, shall not impose charges or other conditions that are designed or are likely to inhibit competition in the stevedoring industry.
- 20 (2) Nothing in this section shall derogate from or in any way limit the application of the Commerce Act 1986, the Fair Trading Act 1986, or any other Act.

**20. Audit Office to be auditor of port companies and subsidiaries—**

- (1) Notwithstanding sections 163 to 165 of the  
25 Companies Act 1955, the Audit Office shall be the auditor of every port company, and of every subsidiary of every port company and for the purposes of that Act shall have and may exercise the functions, duties, and powers of an auditor appointed under that Act and all such powers as it has under  
30 the Public Finance Act 1977 in respect of public money and public stores.
- (2) Every port company shall pay to the Audit Office for carrying out its duties and functions under this section fees at such rates as may be prescribed by the Minister of Finance.

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*New*

**20A. Application of Act to related and associated companies—**Sections 4 (except subsections (1), (3), (6), and (7)), 5, 6, 7, 15, and 18 of this Act shall apply to every company that is—

*New*

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|---|---|
| <p>(a) A related company (as defined in section 2 (5) of the Companies Act 1955) to a port company; or</p> <p>(b) A company which consists substantially of the same shareholders as the port company, or is under the control of the same persons—</p> <p>as if that company were a port company within the meaning of this Act.</p> | 5 |
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## PART II

## ESTABLISHMENT PROCEDURES

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**21. Establishment Units**—(1) Every Harbour Board shall, not later than the 1st day of June (May) 1988 or such later date as the Minister in any particular case may allow, constitute and adequately fund an Establishment Unit, which shall comprise such persons as the Harbour Board considers appropriate, having regard to the functions of the Establishment Unit. 15

(2) The function(s) of each Establishment Unit shall be to prepare and agree upon a port company plan with the Harbour Board, and, in so doing,—

- |   |    |
|---|----|
| (a) To identify the port related commercial undertakings of the Harbour Board:  | 20 |
| (b) To value those undertakings:  |    |
| (c) To determine the price that should be paid by the port company for those undertakings and the extent to which the price should be met by the issue of equity securities and debt securities to the Harbour Board from which the undertakings are to be transferred: | 25 |
| (d) To prepare in draft form a memorandum of association, articles of association, and statement of corporate intent for the port company:  | 30 |
| (e) To determine the best manner in which, and time within which, the port related commercial undertakings of the Harbour Board should be transferred to the port company:  |    |
| (f) To determine a fair and equitable system for the transfer of appropriate employees from the Harbour Board to the port company <u>(but without making determinations in respect of individual employees):</u>  | 35 |
| (g) To determine the responsibilities to be met and equipment and facilities to be provided by the  | 40 |



Harbour Board or the port company, or both, in respect of the Marine Pollution Act 1974:

- (h) Such other functions as are conferred upon it by this Act or as are necessary for the proper establishment of an efficient port company.

*New*

(2A) In the exercise of its function under subsection (2) of this section, the Establishment Unit shall seek the views of the Department of Conservation as to any relevant conservation matters.

(3) The Establishment Unit shall report on the matters specified in subsection (2) of this section to the Harbour Board and make the report available to the public not later than the 1st day of July 1988 or such later date as the Minister in any particular case may allow, and shall similarly make available any subsequent reports of the Establishment Unit on those matters.

*New*

(3A) The Local Government Official Information and Meetings Act 1987 shall apply in respect of every Establishment Unit as if it were a Harbour Board.

(4) Each Harbour Board is hereby authorised, and deemed always to have been authorised, to constitute, reconstitute, fund, and, after the approval of the port company plan, to dissolve an Establishment Unit.

(5) Where any Harbour Board has not constituted an Establishment Unit within the time required by this section, the Minister may constitute an Establishment Unit in respect of that Harbour Board, and determine the funding to be provided by the Harbour Board in respect of the Establishment Unit.

## **22. Determination of port company plan and port related commercial undertakings to be transferred—**

(1) The Harbour Board and the Establishment Unit shall each use their best endeavours to agree upon the matters specified in section 21 (2) of this Act.

(2) Not later than the 1st day of August 1988 or such later date as the Minister in any particular case may allow, the Harbour Board and the Establishment Unit shall report to the Minister

as to the extent of their agreement and any disagreement relating to—

- (a) The identification and valuation of the port related commercial undertakings of the Harbour Board: 5
  - (b) The price that should be paid by the port company for those undertakings and the extent to which the price is to be met by the issue of equity securities and debt securities to the Harbour Board: 5
  - (c) The debt securities required to be *(credited)* issued by section 29 of this Act: 10
  - (d) The manner in which and time within which the port related commercial undertakings of the Harbour Board are to be transferred to the port company:
  - (e) The system for the transfer of appropriate employees from the Harbour Board to the port company (but without making determinations in respect of individual employees): 15
  - (f) The responsibilities to be met and equipment and facilities to be provided by the Harbour Board or the port company, or both, in respect of the Marine Pollution Act 1974: 20
  - (g) Any other matter within the functions of the Establishment Unit—  
and in each case shall give full details.
- (3) Where there is disagreement on any matter referred to in subsection (2) of this section,— 25
- (a) The Harbour Board and the Establishment Unit shall report separately to the Minister and to each other setting out all the matters that each considers relevant and the solution proposed by each; and 30
  - (b) The disagreement shall be resolved by the written determination of the Minister.
- (4) Notwithstanding that the Harbour Board and the Establishment Unit may have agreed on any matter referred to in subsection (2) of this section, the Minister may determine the matter on a different basis if the Minister is satisfied that, having regard to the interests of the Harbour Board and the port company, and, if appropriate, the interests of other Harbour Boards and port companies, it is fair and equitable to do so and in so doing the Minister may exclude from the port company plan any port related commercial undertaking that the Minister does not consider ought to be transferred to the port company, or vary the manner in which any undertaking is to be transferred to the port company. 35 40

(5) Before making any determination under **subsection (4)** of this section, the Minister shall advise the Harbour Board and the Establishment Unit of the Minister's intention to do so, and give a reasonable opportunity for each to make submissions on the matter.

*Struck Out*

(6) Where any matter is to be determined by the Minister under **subsection (3)** or **subsection (4)** of this section, the matter shall, if the Minister so directs, be determined by arbitration or in such other manner as the Minister may direct, and **subsection (5)** of this section shall apply accordingly.

*New*

(6) Where any matter is to be determined by the Minister under **subsection (3)** or **subsection (4)** of this section, the Minister may, instead of determining the matter personally, direct that the matter be determined by arbitration or in some other manner, and, where the Minister so directs in relation to a matter to be determined under **subsection (4)** of this section, the provisions of **subsection (5)** of this section shall apply in relation to the persons directed to make the determination as if those persons were the Minister.

(7) Where any matter is not included in a port company plan and the Minister considers that it should be so included, the Minister may direct the Harbour Board and the Establishment Unit to consider the matter and report to the Minister concerning its inclusion in the port company plan.

(8) The Minister may, on the application of a Harbour Board, Establishment Unit, or port company, and after consultation with such of them as the Minister considers appropriate, amend any approved port company plan.

(9) No port company plan shall be put into effect until it has been approved by the Minister; and every port company plan shall be put into effect in the form approved by the Minister. The Minister may grant approval of part of a port company plan if the Minister considers it appropriate, and this Act shall apply to that part as if it were a port company plan.

**23. Port related commercial undertakings to be transferred to port company**—(1) The port related commercial undertakings of each Harbour Board (*shall*) that

are to be transferred to a port company in accordance with the port company plan shall be transferred as soon as practicable after the plan has been approved by the Minister under section 22 of this Act.

(2) *(Notwithstanding subsection (1) of this section, where)* Where the port company plan so provides, the Harbour Board may grant to the port company leases, licences, easements, permits, or rights of any kind in relation to the port related commercial undertakings of the Harbour Board for such consideration and on such terms and conditions as are provided for or contemplated by the port company plan.

(3) Property that is fixed to, or under or over, any land may be transferred to a port company pursuant to this Act whether or not any interest in the land is also transferred. Where any such property is so transferred, the property and the land shall be regarded as separate property each capable of separate ownership.

(4) Any port related commercial undertaking of a Harbour Board may be transferred to a port company pursuant to this Act whether or not any Act or agreement relating to the undertaking *(permits such transfer or requires any consent to such a transfer)* prohibits any such transfer or requires any consent to or in any way restricts any such transfer.

Cf. 1986, No. 124, s. 23 (3), (4)

**24. Abrogation of restrictions on transfer**—(1) No provision in any *(Act or agreement)* other Act or in any instrument—

- (a) Limiting the Harbour Board's right to sell or dispose of any property to any person; or
- (b) Prohibiting the sale or disposition of any property to *(third parties)* any person; or
- (c) Determining the consideration for the sale of any property; or
- (d) Obliging the Harbour Board to account to any person for the whole or part of the proceeds of sale by the Harbour Board of any property; or
- (e) Obliging the Harbour Board to pay a greater price than otherwise by reason of or as a consequence of the sale of any property to third parties,—

shall have any application or effect in respect of any agreement or transfer entered into or effected pursuant to or under this Act.

(2) Nothing in this section shall apply in respect of the sale of any area to which section 150 of the Harbours Act 1950

applies; but any such area may be leased to a port company by a Harbour Board for a period not exceeding 21 years, and sections 150 to 155 of the Harbours Act 1950 shall not apply in respect of any such lease.

5 Cf. 1986, No. 124, s. 23 (6)

**25. Transfer of reserves**—Any land that is subject to the Reserves Act 1977 and is identified in an approved port company plan as being all or part of a port related commercial undertaking may be transferred to a port company pursuant to this Act as if it were not subject to the Reserves Act 1977 and shall cease to be subject to that Act from the *(date of that registration of the transfer)*, unless otherwise expressly provided by this Act or any other Act).

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**26. Modification of provisions of Public Works Act 1981**—Nothing in sections 40 to 42 of the Public Works Act 1981 shall apply to the transfer of land to a port company pursuant to this Act, but sections 40 and 41 of that Act shall after the transfer apply to that land as if the port company were a Harbour Board and the land had not been transferred pursuant to this Act.

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Cf. 1986, No. 124, s. 24 (4)

**27. Effect of registration under Land Transfer Act 1952**—(1) On registration under the Land Transfer Act 1952 of a memorandum of transfer to a port company pursuant to a port company plan of land formerly vested in a Harbour Board in fee simple or held by it on lease—

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- (a) The land shall be deemed to vest in the port company for an estate in fee simple or to be held by it on lease, as the case may be; and
- 30 (b) All trusts, *(and reservations affecting the land)* reservations, and restrictions affecting the land *(except those imposed by section 8 of the Mining Act 1971 and section 5 of the Coal Mines Act 1979)* shall be deemed to have been cancelled; and
- 35 (c) Such of the land which previously was vested in the Harbour Board as an endowment shall be deemed to be no longer set apart as an endowment.

(2) The District Land Registrar for the district is authorised and directed on receipt for registration of a transfer to a port company and on completion of such surveys and deposit of such plans as the District Land Registrar may require, to issue such certificates of title and make such entries in the register

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and do all such things as may be necessary to implement sections 23 to 26 of this Act.

**28. Exclusion of Public Bodies Leases Act 1969—** Notwithstanding section 144 of the Harbours Act 1950, nothing in the Public Bodies Leases Act 1969 shall apply to any lease granted by a Harbour Board to a port company pursuant to a port company plan before the 1st day of October 1989 or such later date as the Minister in any particular case may allow. 5

**29. Liabilities in respect of port related commercial undertakings—**(1) Where any port related commercial undertaking is to be transferred to a port company, the Establishment Unit shall identify the liabilities of the Harbour Board that relate to that undertaking. 10

(2) The liabilities so identified shall remain liabilities of the Harbour Board(.) except to the extent of any written agreement to the contrary between— 15

*New*

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|---|----|
| <p>(a) The Harbour Board; and<br/>         (b) The Establishment Unit or port company; and<br/>         (c) The person or persons to whom the liability is owed; and<br/>         (d) Any guarantor of the liability.</p> <p>(2A) No such agreement shall be of any effect until it has been included in an approved port company plan.</p> | 20 |
|---|----|

*Struck Out*

<p>(3) The port company plan shall include provision for debt securities to be issued by the port company to the Harbour Board of such nature and amounts and subject to such terms and conditions as will ensure that the Harbour Board receives from the port company amounts sufficient to meet the liabilities that it has retained that relate to the port related commercial undertakings to be transferred from the Harbour Board to the port company.</p>	25 30
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*New*

<p>(3) The port company plan shall include provision for such debt securities to be issued by the port company to the Harbour Board as will ensure that the Harbour Board receives</p>	35
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*New*

from the port company funds sufficient to meet the liabilities that it is to retain and that relate to the port related commercial undertakings to be transferred to the port company.

- 5     **30. Certain matters not affected by transfer of undertakings to port company**—No transfer of any port related commercial undertaking of a Harbour Board to a port company pursuant to a port company plan approved by the Minister under **section 22** of this Act—
- 10     (a) Shall be regarded as placing the Harbour Board, or the port company, or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
- 15     (b) Shall be regarded as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or
- 20     (c) Shall be regarded as placing the Harbour Board, or the port company, or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or
- 25     (d) Shall release any surety wholly or in part from all or any obligation; or
- (e) Shall invalidate or discharge any contract or security.
- Cf. 1986, No. 129, s. 6 (g)

- 31. Consequential provisions on transfer of port related commercial undertakings to port company**—
- 30     (1) Where any port related commercial undertaking is transferred from a Harbour Board to a port company pursuant to a port company plan, thenceforth—
- (a) A reference (express or implied) to the Harbour Board in any Act or instrument relating to the port related commercial undertaking shall be read and construed as a reference to the port company:
- 35     (b) All contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices, (whether or not in writing) relating to the port commercial undertaking, entered into by, made with, given to or by, or addressed to the Harbour
- 40

Board (whether alone or with any other person) *(before and)* subsisting immediately before the transfer shall, to the extent that they were previously binding on and enforceable by, against, or in favour of the Harbour Board, be binding on and enforceable by, against, or in favour of the port company as fully and effectually in every respect as if, instead of the Harbour Board the port company had been the person by whom they were entered into, with whom they were made or to or by whom they were given or addressed, as the case may be. 5

(2) For the purposes of this section, an Act, instrument, contract, agreement, conveyance, deed, lease, licence, or other instrument or undertaking or notice shall be deemed to be related to the port related commercial undertaking if it is identified or referred to as being so related in the port company plan or acknowledged by both the Harbour Board and the port company as being so related. 15

(3) Nothing in this section shall apply in respect of the liabilities of the Harbour Board in relation to any port related commercial undertaking except as may be necessary to give effect to any agreement referred to in section 29 (2) of this Act. 20

Cf. 1986, No. 129, s. 6 (a), (b)

*New*

**31A. Employment deemed to be continuous**—Where any person who is an employee of the Harbour Board becomes an employee of the port company pursuant to or as contemplated by an approved port company plan— 25

(a) For the purposes of every enactment, law, award, determination, contract, and agreement relating to the employment of each such employee, the contract of employment of that employee shall be deemed to have been unbroken and the period of service with the Harbour Board shall be deemed to have been a period of service with the company: 30 35

(b) The terms and conditions of employment of each such employee shall, until varied, be identical with the terms and conditions of that employee's employment with the Harbour Board immediately before that employment ceases: 40



*New*

(c) No such employee shall be entitled to receive any payment or other benefit by reason of that employee ceasing to be an employee of the Harbour Board.

5 **32. Duty to act in furtherance of objects of Act—**

- (1) Every Harbour Board shall at all times do everything in its power to achieve the objectives of this Act and for that purpose, but without limitation, shall do everything in its power—
- 10 (a) To preserve and maintain all port related commercial undertakings of the Harbour Board pending the transfer of those undertakings to the port company:
- (b) To assist the Establishment Unit in the exercise of its functions:
- 15 (c) To enable the port company to assume the undertakings that are to be transferred to it:
- (d) To assist in the transfer of employees to the port company.
- (2) No Harbour Board shall, without the prior written consent
- 20 of the Minister,—
- (a) Dispose of or charge any of its undertakings:
- (b) Raise any loan under the Local Authorities Loans Act 1956 or otherwise borrow any money (whether on overdraft or otherwise):
- 25 (c) Enter into or grant any lease, licence, concession or other franchise agreement or arrangement of more than 12 months duration relating to any of its undertakings:
- (d) Extend the term of any lease, licence, concession or other franchise arrangement relating to any of its
- 30 undertakings for a period exceeding 12 months.
- (3) Nothing in subsection (2) of this section shall apply in respect of—
- (a) Any action taken by the Wellington Harbour Board pursuant to the Wellington Harbour Board and
- 35 Wellington City Council Vesting and Empowering Act 1987:
- (b) Any undertaking or class of undertaking that the Minister has informed the Harbour Board in writing is not to be subject to this section.
- 40 (4) The Minister shall, upon being satisfied that all the undertakings of the Harbour Board that are to be transferred to

the port company have been so transferred, advise the Board in writing that the consent of the Minister to any action referred to in **subsection (2)** of this section is no longer required.

**33. Supply of information**—The Minister and the Establishment Unit each may, from time to time, for the purposes of this Act, require the Harbour Board to make available to the Minister or the Establishment Unit, as the case may be, information in its possession or over which it has control relating to its undertakings, operations, and procedures; and the Harbour Board shall make that information available in a form in which it may be readily understood.

### PART III

#### MISCELLANEOUS PROVISIONS

**34. Public availability of documents**—Where any Harbour Board or port company is required under this Act to make any document available to the public, it shall—

- (a) Make sufficient copies of that document available for public inspection, free of charge; and
- (b) Make sufficient copies of that document available for purchase at a reasonable price during normal office hours at the principal office of the Harbour Board or port company, or both, as the case may require; and
- (c) Notify by advertisement in a newspaper circulating in every district of a local authority whose electors are electors of the Harbour Board to which or to whose port company the document relates, the fact that copies are so available.

**35. Power of other persons to operate ports**—

(1) Nothing in this Act shall prevent any person operating any port, whether as a private facility or as a publicly available facility.

(2) Notwithstanding **subsection (1)** of this section, no Harbour Board shall operate any port related commercial undertaking at any port without the consent of the Minister, which may be conditional and which shall be given only if the Minister is satisfied that at the time of giving the consent there is no port company or other person willing and able to operate the undertaking.

(3) For the purposes of **subsection (2)** of this section, in determining whether or not any port company or other person is able to operate any port related commercial undertaking the Minister shall be entitled to assume that the Harbour Board will

make available to that port company or other person on a reasonable commercial basis any part of the undertaking of the Harbour Board that reasonably ought to be made available by the Harbour Board to the port company or other person if the  
 5 Minister were to decline to give consent under subsection (2) of this section.

(4) Without prejudice to any other remedies available against any Harbour Board or its members, or against any other body or person, in respect of any contravention of subsection (2) of this  
 10 section, or in respect of any failure to comply with any condition to which any consent under that subsection is for the time being subject, the provisions of subsection (2) of this section and of that condition shall be enforceable by civil proceedings by the Attorney-General for an injunction or for any other  
 15 appropriate relief.

**36. Stamp duty exemption**—No stamp duty shall be payable under the Stamp and Cheque Duties Act 1971 in respect of any instrument of conveyance of property from a Harbour Board to a port company (*which*) or any lease between  
 20 those parties which, in each case, is executed pursuant to a port company plan and which is so executed before the 1st day of October 1989 or such later date in any particular case as the Minister, after consultation with the Minister of Finance, may allow.

**37. Application of Income Tax Act 1976 and Goods and Services Tax Act 1985**—(1) Nothing in section 67, section 117, or section 129 of the Income Tax Act 1976 shall apply in respect of any land or asset disposed of by a Harbour Board to a port company pursuant to a port company plan  
 30 before the 1st day of October 1989, or such later date in any particular case as the Minister, after consultation with the Minister of Finance, may allow.

*New*

(1A) For the purposes of the application of the Income Tax  
 35 Act 1976 in relation to any property transferred to a port company pursuant to a port company plan before the 1st day of October 1989 or such later date in any particular case as the Minister, after consultation with the Minister of Finance, may allow, the property shall be deemed to have been acquired by  
 40 the port company at the price attributed to that property in the

## New

port company plan, and nothing in section 111 of the Income Tax Act 1976 shall apply in respect of any such property.

(2) For the purposes of the Goods and Services Tax Act 1985, every transfer of an undertaking from a Harbour Board to a port company pursuant to a port company plan before the 1st day of October 1989, or such later date in any particular case as the Minister, after consultation with the Minister of Finance, may allow, shall be deemed to be the transfer of a part of a taxable activity as a going concern that is capable of separate operation.

**38. Designations under district schemes—**(1) No designation under an operative district scheme shall be vested in a port company under this Act unless the land or an interest in the land is transferred from the Harbour Board to the port company.

(2) Where a designation under an operative district scheme is vested in a port company pursuant to this Act,—

- (a) The designation shall remain in force until (*the 1st day of October 1990 or*) the next review of the district scheme or appropriate part of the district scheme, (*whichever first occurs,*) and shall then lapse; and
- (b) Sections 82 and 83 and Part VI of the Town and Country Planning Act 1977 shall apply to the designation as if the port company were a local authority and had made the requirement consequent upon which the designation was made:

Provided that where the designation was made under section 43 (1) (d) or section 118 (1) (d) of the Town and Country Planning Act 1977, the designation shall be included in the district scheme when it is next reviewed.

(3) Where any land is transferred under this section but the designation in respect of that land is not vested pursuant to this Act, any use of that land which is established at the date of the transfer shall be deemed to be a use permitted as of right under the Town and Country Planning Act 1977 until the next review (*of the operative district scheme*) of the district scheme or appropriate part of the district scheme. To the extent that any use which would be lawful under the designation has not been established by the date of the transfer of the land, the designation shall be deemed to be a consent under Part IV of

the Town and Country Planning Act 1977 granted as at the date of transfer and section 70 of that Act shall apply accordingly.

(4) Where any requirement has been made under section 43 or section 118 of the Town and Country Planning Act 1977 in respect of any work which has been transferred to a port company (*enterprise*) pursuant to this Act, the procedures specified in the Town and Country Planning Act 1977 may be completed as if the Harbour Board continued to be financially responsible for the work and as if the work were a public work.

**39. Special provision in relation to Gisborne, Greymouth, and Wanganui Harbour Boards—**(1) This section applies to—

- (a) The Gisborne Harbour Board; and
- (b) The Greymouth Harbour Board; and
- (c) The Wanganui Harbour Board.

(2) Each Harbour Board to which this section applies shall forthwith conduct a review of its operations and finances to determine, not later than the **1st day of June 1988** or such later date as the Minister in any particular case may allow, whether or not it is appropriate that its port related commercial undertakings should be transferred to a port company.

(3) Where a Harbour Board to which this section applies resolves that it is appropriate that its port related commercial undertakings be transferred to a port company, it shall forthwith advise the Minister accordingly, together with details supporting the reasons for that view and, unless the Minister (*makes an application to the Local Government Commission under section 26 (2) (b) of the Local Government Act 1974*) requests the Local Government Commission to issue a proposal under subsection (5) of this section within 21 days after receiving that advice, the provisions of this Act shall apply in respect of that Harbour Board in the same manner as if that Harbour Board were a Harbour Board specified in the **First Schedule** to this Act.

(4) Where a Harbour Board to which this section applies resolves that it is not appropriate that its port related commercial undertakings should be transferred to a port company, the Harbour Board shall forthwith (*prepare and submit a proposal to the Local Government Commission under section 26 (2) (a) of the Local Government Act 1974 for a reorganisation scheme in respect of the Harbour Board*) request the Local Government Commission to issue a proposal under subsection (5) of this section.

*Struck Out*

(5) Any reorganisation scheme sought under **subsection (3) or subsection (4)** of this section and any reorganisation plan prepared as a consequence by the Local Government Commission shall provide for the dissolution or abolition of the Harbour Board and the transfer of all the functions of the Harbour Board to another local authority or other local authorities. 5

*New*

(5) The Local Government Commission shall, as soon as practicable after receiving a request under **subsection (3) or subsection (4)** of this section, issue a proposal for the dissolution or abolition of the Harbour Board and the transfer of all the functions of the Harbour Board to another local authority or local authorities. 10 15

(6) When issuing a proposal under **subsection (5)** of this section, the Local Government Commission—

(a) Shall give such public notice of that proposal as it considers appropriate; and

(b) Shall invite interested persons and organisations to make submissions on the proposal within 2 months after the first public notice of the proposal. 20

(7) The Local Government Commission shall, as soon as practicable, consider all such submissions and may make such further inquiries as it considers necessary or desirable. 25

(8) The Local Government Commission shall, as soon as practicable after the submissions on the proposal have been considered and any further enquiries have been made, approve the proposal as publicly notified or as modified as a result of the consideration of the submissions or the Commission's further enquiries. 30

(9) The proposal, as approved by the Commission,—

(a) Shall be issued as a determination of the Commission; and

(b) Shall be submitted to the Minister of Transport; and

(c) Shall be made available by the Minister of Transport to the public. 35

(10) Every determination issued under **subsection (5)** of this section shall be given effect to by Order in Council, and the provisions of Part I of the Local Government Act 1974 shall

*New*

apply in respect of every such Order in Council as if it had been made pursuant to that Part of that Act.

- 5 (11) Subsections (1) and (2) of section 35, and sections 37c and 37f of the Local Government Act 1974 shall apply, with any necessary modifications, to any proposal or determination for the dissolution or abolition of a Harbour Board issued under this section as if the proposal or determination were a reorganisation scheme.

10 **40. Repeal of New Zealand Ports Authority Act 1968—**

(1) The New Zealand Ports Authority Act 1968 is hereby repealed.

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

- 15 (3) Every member of the New Zealand Ports Authority shall vacate office as from the commencement of the **1st day of (April) May 1988**; and no such member shall be entitled to any compensation in respect of loss of office.

- 20 **41. Transitional provision in respect of applications before Ports Authority—**Where, at the commencement of this Act, any application is before the New Zealand Ports Authority for its approval under section 13 of the New Zealand Ports Authority Act 1968, the application shall lapse; but the application may, if appropriate, be made to the Minister under  
25 **section 55A** of the Harbours Act 1950.

*New*

**41A. Amendment to Ministry of Transport Act 1968—**

- The First Schedule to the Ministry of Transport Act 1968 (as substituted by section 3 (1) of the Ministry of Transport  
30 Amendment Act 1973) is hereby amended by adding to Part I (as amended by section 15 (3) of the Shipping Act 1987) the following item:

“1988, No. 00—The Ports Reform Act 1988.”

- 35 **41B. Repeals—**The enactments specified in the **Third Schedule** to this Act are hereby repealed.

*New*

**41c. Repeals taking effect on 1 October 1988**—(1) The enactments specified in the Fourth Schedule to this Act are hereby repealed.

(2) This section and the Fourth Schedule to this Act shall come into force on the 1st day of October 1988. 5

## PART IV

## AMENDMENTS TO HARBOURS ACT 1950

**42. This Part to be read with Harbours Act 1950**—This Part of this Act and the Third Schedule to this Act shall be read together with and deemed part of the Harbours Act 1950\* (in this Part of this Act referred to as the principal Act). 10

\*R.S. Vol. 2, p. 551

Amendments: 1980, No. 54; 1981, No. 72; 1983, No. 6

**43. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “debentures”, the following definition: 15

“ ‘Debt security’ has the same meaning as in the Securities Act 1978.”.

(2) *(The said section 2 (1))* Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term “electors”, the following definition: 20

“ ‘Equity security’ has the same meaning as in the Securities Act 1978.”.

*New*

(2A) Section 2 (1) of the principal Act is hereby amended by adding to the definition of the term “harbour dues” the words “but does not include any such items imposed by or payable to a port company”. 25

(3) *(The said section 2 (1))* Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term “pilot boat”, the following definitions: 30

“ ‘Port company’ means a port company within the meaning of the Ports Reform Act 1987; and, in relation to any Harbour Board, means such a port company that is established in relation to the port or ports within the jurisdiction of that Harbour Board: 35

“ ‘Port related commercial undertaking’ has the same meaning as in the Ports Reform Act 1987.”.



*New*

**43A. Control of waters by local authority or public body**—Section 8A of the principal Act (as inserted by section 6 of the Harbours Amendment Act 1961) is hereby amended by inserting, after subsection (3), the following subsections:

“(3A) For the avoidance of doubt it is hereby declared that any Order in Council made under this section may confer upon the public body or public bodies authority to enter into a management contract with any person named in the Order in Council or approved by the Minister authorising that person to manage the operation of all or part of the harbour or area of the sea or lake or river to which the Order in Council relates and authorising that person to exercise some or all of the functions, duties, and powers of the public body or public bodies (other than the power to appoint a Harbourmaster and the power to make bylaws).

“(3B) The public body or public bodies shall be liable to other persons for the exercise or failure to exercise the functions, duties, and powers by any person under the authority of a management contract referred to in **subsection (3A)** of this section as if the exercise or failure to exercise the functions, duties, or powers were that of the public body or public bodies.

“(3C) Nothing in the Public Bodies Leases Act 1969 shall apply in respect of any lease forming part of any management contract referred to in **subsection (3A)** of this section.”

**44. New sections inserted**—The principal Act is hereby amended by repealing section 49 (as substituted by section 3 (1) of the Harbours Amendment Act 1980), and substituting the following sections:

**49. Borrowing powers of Boards**—Subject to this Act, the Board may, in accordance with the Local Authorities Loans Act 1956, borrow money for the purposes of harbour works that are within the authority of the Board and for the purpose of subscribing for or acquiring equity securities or debt securities issued by any port company.

*New*

**49A. Advances to port companies**—(1) The Board may advance money to any port company in which it has a

*New*

shareholding, but, except as permitted under section 49 of this Act, the Harbour Board shall not be empowered to borrow money for that purpose.

“(2) The Board may, if it thinks fit, act as guarantor of any debt or obligation of a port company.” 5

**45. Distributions to local authorities**—The principal Act is hereby amended by inserting, before section 53, and after the heading “*Expenditure*”, the following section:

“52A. Each Board is hereby authorised to distribute money 10  
or property of any kind (whether held or received in any form  
and whether received from a port company or otherwise) to  
any local authority all or some of whose electors are electors of  
the Board.”

**46. Unauthorised expenditure**—The principal Act is 15  
hereby amended by repealing section 54 (as substituted by  
section 3 (1) of the Harbours Amendment Act 1980), and  
substituting the following section:

“54. (1) Any Harbour Board may in any financial year  
expend for the purposes not authorised by any Act or law for 20  
the time being in force any sum or sums amounting in total to  
not more than the prescribed amount in respect of that Board.

“(2) For the purposes of this section, the expression  
‘prescribed amount’ means,—

“(a) In relation to the Auckland, Wellington, Lyttelton, and 25  
Otago Harbour Boards, \$50,000:

“(b) In relation to the Northland, Bay of Plenty, Gisborne,  
Hawke’s Bay, Marlborough, Nelson, Timaru, and  
Southland Harbour Boards and the Taranaki  
Harbours Board, \$30,000: 30

“(c) In relation to any other Harbour Board, \$10,000 or 1  
percent of the gross revenue of the Harbour Board,  
whichever is the less.”

*New*

**46A. Disclosure in accounts**—The principal Act is hereby 35  
amended by repealing section 55 (as substituted by section 3 (1)  
of the Harbours Amendment Act 1980), and substituting the  
following section:

*New*

“55. (1) There shall be separately disclosed and identified in the income and expenditure account specified in section 59 (a) of this Act—

5 “(a) Every amount borrowed under section 49 (1) of this Act, and the application of any money borrowed under the authority of that section:

“(b) Every amount expended under each of paragraphs (d) to (h) of section 53 of this Act:

10 “(c) Every amount expended under section 54 of this Act:

“(d) Every grant of money or advance under section 135B of this Act.

15 “(2) An explanation of every current guarantee given under section 49A (2) of this Act by the Board shall be included in the statement of accounts of the Board.”

**47. Control of capital expenditure by Harbour Boards and local authorities**—The principal Act is hereby amended by inserting, after section 55 (as substituted by section 3 (1) of the Harbours Amendment Act 1980), the following section:

20 “55A. (1) In this section—

“‘Harbour works’ means any harbour works, as defined in section 2 (1) of this Act, that are used or are intended to be used for shipping purposes, except works for the purposes of routine maintenance or routine repair:

25 “‘Prescribed amount’ means,—

30 “(a) In relation to the Auckland, Wellington, Lyttelton, and Otago Harbour Boards, \$500,000 or such other amount as may from time to time be prescribed by the Governor-General by Order in Council:

35 “(b) In relation to the Northland, Bay of Plenty, Gisborne, Hawke’s Bay, Marlborough, Nelson, Timaru, and Southland Harbour Boards and the Taranaki Harbours Board, \$300,000 or such other amount as may from time to time be prescribed by the Governor-General by Order in Council:

40 “(c) In relation to any other Harbour Board, \$100,000 or such other amount as may from time to time be prescribed by the Governor-General by Order in Council:

“(d) In relation to any local authority, in respect of any harbour over which a Harbour Board specified in any of paragraphs (a), (b), and (c) of this definition has jurisdiction, the amount specified in that paragraph in relation to that Harbour Board or such other amount as may from time to time be prescribed by the Governor-General by Order in Council: 5

“(e) In every other case, \$100,000 or such other amount as may from time to time be prescribed by the Governor-General by Order in Council: 10

“‘Shipping purposes’—

“(a) Means any purpose that—

“(i) Conduces to the safety or convenience of ships (other than yachts, motor launches, speed boats, or other boats used exclusively for recreational purposes); or 15

“(ii) Facilitates the shipping or unshipping of goods or passengers; and

“(b) Without limiting the generality of paragraph (a) of this definition, includes the provision of any building, wherever situated, by a Harbour Board or local authority for use in connection with the handling, packing, or unpacking of goods for shipping or unshipping through any port. 20

“(2) Notwithstanding any other provision in any enactment or rule or law, it shall not be lawful for any Harbour Board or local authority, except with the prior consent of the Minister to expend in the undertaking of any harbour works— 25

“(a) Any sum in excess of the prescribed amount in relation to the Harbour Board or local authority; or 30

“(b) Any lesser sum, where the works form part of a project or one of a series of projects, whose total cost will exceed the prescribed amount in relation to the Harbour Board, or local authority.

“(3) For the purposes of subsection (2) of this section, the expenditure on any harbour works and the total cost of any project or series of projects shall be ascertained in each case by reference to the amount of the actual or the estimated expenditure thereon; and in calculating that amount there shall be included a sum, ascertained in the manner prescribed by the Minister, in respect of such other matters as in the opinion of the Minister are incidental to or consequential on the works or project or projects, including, but not in limitation, the value of any land acquired or to be acquired for, or appropriated or to 40

be appropriated to the purpose of, the works or project or projects.

“(4) Where before the 10th day of April 1969 (being the date of the coming into force of the New Zealand Ports Authority Act 1968) power has been given by any special Act to a Harbour Board to expend any money borrowed or to be borrowed by the Board in the undertaking of any harbour works specified in the special Act, the Board may apply to the Minister for the Minister’s consent to the application of the whole or any part of any money borrowed or to be borrowed under the authority of the special Act in or towards the undertaking of all or any of the following, namely:

“(a) Any other harbour works specified in the special Act:

“(b) Any variation or extension of any harbour works so specified:

“(c) Any harbour works other than those so specified.

“(5) On any application for consent under this section, the Minister may grant or refuse the application, or grant it in part only or subject to conditions, or defer it for a period not exceeding one year.

“(6) The Minister may vary any consent granted under this section by attaching conditions thereto, or by revoking or varying any conditions previously attached thereto or attaching further conditions.

“(7) Where the Minister consents to any such expenditure, and the expenditure is to be made out of the proceeds of any loan to be raised for the purpose by the Harbour Board, the Board shall be deemed to have authority to borrow money in accordance with the terms of the consent, but subject to and in accordance with the provisions of the Local Authorities Loans Act 1956; except that the Board shall not be entitled to make any special rate as security for the repayment of the loan, except under the authority of a special Act authorising the Board to make the rate.

“(8) Every application for consent under this section—

“(a) Shall be made in such manner as the Minister may require; and

“(b) Shall be supported by such plans, information, and particulars as may be prescribed or as the Minister may require.

“(9) For the purposes of this section the Minister may seek reports or advice from any Government department or any other source.

“(10) Unless the Minister proposes to grant consent under this section unconditionally, the Minister shall, if the applicant

so requests, give the applicant, by its representatives, an opportunity to be heard.

“(11) Without prejudice to any other remedies available against any Harbour Board, local authority or its members, in respect of any contravention of **subsection (2)** of this section, or in respect of any failure to comply with any condition to which any consent under this section is for the time being subject, the provisions of **subsection (2)** of this section and of that condition shall be enforceable by civil proceedings by the Attorney-General for an injunction or for any other appropriate relief.” 10

Cf. 1968, No. 140. s. 13 (1), (3), (4), (4A), (5), (6), (8) (a), (11), (12)

**48. Financial year of Boards**—Section 56 of the principal Act (as substituted by section 3 (1) of the Harbours Amendment Act 1980) is hereby amended by adding the words “or shall be such other 12-month period as the Board may determine”. 15

**49. Annual financial estimates**—Section 57 of the principal Act (as substituted by section 3 (1) of the Harbours Amendment Act 1980) is hereby amended by repealing subsections (1) and (2), and substituting the following subsections: 20

“(1) The Board shall, in respect of every financial year, cause 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. 25

“(2) Such estimates shall be presented to the Board for consideration and approval within 3 months after the commencement of the financial year to which they relate.”

**50. Annual statement and audit of accounts**—Section 59 of the principal Act (as substituted by section 3 (1) of the Harbours Amendment Act 1980) is hereby amended by inserting, after paragraph (c), the following paragraph: 30

“(ca) The equity securities and debt securities held by the Board in any port company, and the returns to the Board from those securities:” 35

**51. Accounts and reports**—The principal Act is hereby amended by repealing section 60 (as substituted by section 3 (1) of the Harbours Amendment Act 1980), and substituting the following section:

“60. (1) The statement of accounts, together with any report received from the Audit Office, shall be produced at a meeting 40

of the Board to be held (*not later than the 31st day of March following*) within 6 months after the close of the financial year to which the statement relates.

5 “(2) The Board shall produce and adopt a report on the activities and performance of the port company and shall include in that report the Board’s assessment of the extent to which the objectives of the port company are being realised and the statement of corporate intent of the port company is being met.

10 “(3) The report prepared under **subsection (2)** of this section shall be produced at the meeting referred to in **subsection (1)** of this section.

“(4) The Board—

15 “(a) Shall consider the statement of accounts and the report of the Audit Office; and

“(b) 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.

20 “(5) The Chairman shall, forthwith upon such adoption, sign the statement of accounts and the Board’s report on the port company and ensure that 3 copies of each are sent to the Secretary for Transport.

25 “(6) The statement of accounts, the report of the Audit Office, and the Board’s report on the port company shall be made public by the Board as soon as practicable after the making of the resolution referred to in **subsection (4)** of this section.

“(7) The Board shall make the documents public—

30 “(a) By furnishing a copy of each 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

35 “(b) By making sufficient copies of each available for public inspection, free of charge, during normal office hours at the principal office of the Board; and

“(c) By notifying by advertisement in a newspaper circulating in every district of a local authority whose electors are electors of the Board, the fact that copies are so available.”

40 **52. Existing dues**—Section 93 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) Nothing in this section shall apply in respect of any area, land, goods, vessel, ship, person, or thing that is within the jurisdiction of or in an area under the control of a port

company unless the dues relate to pilotage, safety, or navigation."

**53. Repeal of sections relating to harbour dues**—The principal Act is hereby amended by repealing sections 94, 95, 96, 97, 117, and 118.

5

**54. Power for Collector of Customs to withhold clearance until dues are paid**—Section 109 of the principal Act is hereby amended by inserting, after the word "Board", the words "or port company".

**55. Limitation of powers of port companies**—The principal Act is hereby amended by inserting, after section 112, the following section:

"112A. Nothing in section 111 or section 112 of this Act shall apply in respect of any dues levied by a port company."

**56. Vessels returning from stress of weather**—Section 119 of the principal Act is hereby amended by adding the words "or the port company".

**57. Board may levy harbour improvement rates**—Section 120 of the principal Act (as amended by section 8 (2) of the Harbours Amendment Act 1968) is hereby amended by adding the following subsection:

"(4) (No Board that has a port company shall) Where any port related commercial undertaking is vested in a port company, the Harbour Board for that harbour shall not levy any rate under the authority of this section or any bylaw made under this section in respect of goods discharged, transhipped, or shipped at or from any port related commercial undertaking on or after the date on which the port related commercial undertaking is transferred to a port company."

**58. Board's responsibility for harbour works**—The principal Act is hereby amended by inserting, before section 128 and the heading "Contracts", the following section:

"127AA. (1) (Where any Harbour Board has a port company, the Board) Where port related commercial undertakings are vested in a port company the Harbour Board for that harbour, shall not have any functions, duties, or powers under this Act in respect of any harbour works transferred to the port company except those functions, duties, and powers that relate to pilotage, safety, or good navigation."



- “(2) (*Where any Harbour Board has a port company*) Where port related commercial undertakings are vested in a port company and there is a proposal for the carrying out of new or additional harbour works, the Board shall have the functions, duties, and powers under this Act in respect of the works (except those functions, duties, and powers that relate to *(supply)* pilotage, safety, or good navigation) only if when completed, the harbour works will not form part of the port related commercial undertakings of the port company.
- 10 “(3) Nothing in this section shall prevent any Board erecting, constructing, or executing any harbour works on behalf of any port company and every Board is hereby authorised to so act in respect of any port company.”

- 59. Endowments may be revoked if Board fails to perform duties**—Section 139 of the principal Act is hereby amended by adding the following subsection:

- “(3) The transfer of any port related commercial undertaking from a Board to a port company as required under the Ports Reform Act 1987 shall not constitute the refusal or neglect by the Board to carry on the general administration of the harbour within the meaning of subsection (1) of this section.”

- 60. Repeal of power to acquire land, gravel, etc.**—The principal Act is hereby amended by repealing section 140.

*Struck Out*

- 61. Vesting of land on closing of street**—Section 142 of the principal Act is hereby amended by omitting the words “or hereafter takes under the first-mentioned Act,”.

- 62. Resumption of leased land in certain cases**—Section 155 of the principal Act is hereby amended by adding the following subsection:

“(3) Nothing in this section shall apply in respect of any lease granted by the Board to a port company where the lease provides that this section is not to apply”.

- 63. Revocation of licence for use of foreshore**—Section 161 of the principal Act is hereby amended by adding the following subsection:

“(4) Nothing in this section shall apply in respect of any licence granted by a Board or local authority (*to a port company*) where the licence provides that this section is not to apply.”

## New

**63A. Grant of control of foreshore or bed of lake to public body**—Section 165 of the principal Act (as substituted by section 9 (1) of the Harbours Amendment Act 1961) is hereby amended by inserting, after subsection (1A) (as substituted by section 33 (1) of the Harbours Amendment Act 1977), the following subsections: 5

“(1AA) Any Order in Council made under this section may confer upon the public body concerned authority to enter into a management contract with any person named in the Order in Council or approved by the Minister authorising that person to manage the operation of all or part of the area to which the Order in Council applies and authorising the person to exercise some or all of the functions, duties, and powers of the public body (other than the power to make bylaws and the power to grant licences and permits under this section). 10 15

“(1AB) The public body shall be liable to other persons for the exercise or failure to exercise the functions, duties, and powers by any person under the authority of a management contract referred to in subsection (1AA) of this section as if the exercise or failure to exercise the functions, duties, or powers were that of the public body. 20

“(1AC) Nothing in the Public Bodies Leases Act 1969 shall apply in respect of any lease forming part of any management contract referred to in subsection (1AB) of this section.” 25

**64. Power of Board to construct works**—Section 173 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) *(Where any Harbour Board has a port company)* Where port related commercial undertakings are vested in a port company, the powers conferred by subsection (1) of this section shall not be exercisable by the Board in respect of any port related commercial undertaking without the prior consent of the Minister which shall only be given if the Minister has given consent under section 35 (2) of the Ports Reform Act 1987 to the conduct of the commercial undertaking by the Board”. 30 35

**65. Limitation on exercise of powers under Public Works Act 1981**—The principal Act is hereby amended by inserting, after section 173, the following section:

“173A. The powers of a Harbour Board under the Public Works Act 1981 may be exercised only in respect of land or interests in land for purposes that are within the statutory functions, duties, or powers of the Harbour Board; and shall  
5 not be exercised to acquire land or interests in land for the benefit or use of a port company or other person.”

**66. Repeal of sections relating to facilities for waterside workers, harbour works, reclaimed land, and wharves**—The principal Act is hereby amended by repealing  
10 sections 174, 185, 186, 187, *(188, and 190)* and 188.

*New*

**66A. Definition of wharf limits**—Section 190 (1) of the principal Act is hereby amended by inserting, after the word  
15 “notice”, the words “made after consultation with the port company (if any)”.

**67. Minister to have powers of Board in respect of Government wharf**—Section 191 (1) of the principal Act is hereby amended (*by*)—

- 20 (a) By inserting, after the word “Board”, the words “or port company”; and  
(b) By omitting the words “under this Act”.

**68. Board empowered to expend money in providing and maintaining tugs and other vessels**—Section 195 of the principal Act is hereby amended by adding the following  
25 subsection:

“(3) (*Where any Harbour Board has a port company, the Board*)  
30 Where port related commercial undertakings are vested in a port company, the Harbour Board for that harbour, shall not exercise its powers under this section in respect of any port related commercial undertaking without the prior consent of the Minister which shall only be given if the Minister has given consent under section 35 (2) of the Ports Reform Act 1987 to the conduct of the commercial undertaking by the Board.”

**69. Services rendered by Board**—Section 196 of the  
35 principal Act is hereby amended by inserting, before the words “A Board”, the words “Subject to this Act and the Ports Reform Act 1987,”.

**70. Repeal of sections relating to loading and discharging**—The principal Act is hereby amended by repealing sections 198 to 201.

**71. Harbour lights, etc., not to be placed or removed without sanction of Minister of Transport**—The principal Act is hereby amended by repealing section 203 (as amended by section 65 (1) of the Conservation Act 1987), and substituting the following section: 5

“203. (1) No person shall erect or place any harbour light, signal, buoy, or beacon in any harbour or the approaches thereto, or alter or remove the position of any light, signal, buoy, or beacon, without the sanction of the Minister of Transport. 10

“(2) In order to obtain that sanction the person shall forward to the Minister of Transport a detailed plan fully specifying the position and nature of the light proposed to be erected or of the work proposed to be undertaken in placing or removing any light, signal, buoy, or beacon; and the Minister of Transport shall have power to give any directions that that Minister thinks fit in relation to the matter by granting or withholding sanction either wholly or partially and either with or without modification.” 15 20

**72. Ministry of Transport to inform persons affected of decisions of Minister of Transport**—Section 204 of the principal Act (as amended by section 65 (1) of the Conservation Act 1987) is hereby amended by omitting the word “Board” in both places where it occurs, and substituting in each case the word “person”. 25

**73. Minister of Transport may appoint persons to inspect buoys and beacons**—Section 205 (1) of the principal Act is hereby amended by omitting the words “under the management of any Board”. 30

**74. Power of Minister of Transport as to lights, buoys, and beacons**—Section 206 of the principal Act is hereby amended by inserting, after the word “Board” wherever it appears, the words “or the port company or other person operating the port”. 35

**75. Prevention of lights liable to be confused with harbour lights, etc.**—Section 207 (3) of the principal Act is

hereby amended by omitting the words “and is also guilty of a common nuisance”.

*Struck Out*

**76. Appointment of pilots by port companies**—The principal Act is hereby amended by inserting, after section 212, the following section:

“212A. (1) Where any Harbour Board has a port company, the port company shall have power to appoint, subject to section 214 of this Act, a pilot or pilots to provide pilotage services in the pilotage district.

“(2) The port company shall not allow any person appointed by it to act as a pilot to so act unless it has obtained from the Harbour Board a certificate that sections 212 (1) and 214A (1) of this Act have been complied with in respect of that pilot.

“(3) Nothing in section 214A (5) of this Act shall apply in respect of any pilot appointed by a port company.”

*New*

**76. Further powers of appointment, licensing and employment of pilots**—(1) The principal Act is hereby amended by repealing section 212, and substituting the following section:

“212. (1) Subject to ~~subsection (2)~~ of this section, any person (including a Harbour Board or a port company) may provide the services of pilots to act within a pilotage district.

“(2) No person may act as a pilot within any pilotage district attached to any harbour in respect of which there is a Harbour Board unless that person has been appointed or licensed by that Harbour Board to act as a pilot within that pilotage district and holds a certificate to that effect.

“(3) Harbour Boards may, in accordance with this Act, appoint and license pilots in accordance with regulations made under section 241 of this Act. An appointed pilot shall be a duly qualified pilot who is appointed by the Harbour Board whether as an employee or otherwise. A licensed pilot shall be a duly qualified pilot who is licensed by the Harbour Board but is employed by a port company or other person or is self-employed.

“(4) No liability shall be imposed on the Board in respect of any act or omission of any appointed or licensed pilot by reason

## New

of the fact that the pilot was appointed or licensed or paid by the Board.

“(5) Where the Board’s Harbourmaster acts as a pilot and is a duly qualified pilot, the Board shall not be further or otherwise liable for his or her acts or omissions whilst so acting than it would be for acts or omissions of a duly appointed pilot.”

**77. Pilots to give bond**—(1) Section 214A (1) of the principal Act (as inserted by section 10 (1) of the Harbours Amendment Act 1959) is hereby amended by omitting the words “to the Board”. 10

(2) (1) Section 214A of the principal Act (as inserted by section 10 (1) of the Harbours Amendment Act 1959) is hereby amended by adding the following subsection:

“(6) Where any pilotage fees are not payable to or are refundable by any port company by virtue of this section, the Board shall be liable to the port company for those fees.” 15

**78. Pilot reports**—The principal Act is hereby amended by inserting, after section 214B (as inserted by section 11 (1) of the Harbours Amendment Act 1959), the following section:

“214c. Every (pilot) person, being a pilot or a holder of a pilotage exemption certificate, shall, on request by the appropriate Harbourmaster, provide a written report on—

“(a) Any pilotage activity conducted by the (pilot) person; and

“(b) Any observation made or incident that occurs during any pilotage activity conducted by the (pilot) person.” 25

**79. Pilotage rates exemption certificates**—Section 222 of the principal Act is hereby amended by adding the following subsection: 30

“(4) Nothing in this section shall apply in respect of any harbour where the pilot or pilots are (appointed) employed by a port company, ( ) or other person or are self-employed, and the exemption (if any) from pilotage rates shall be a matter to be determined between the port company, person, or pilot and the owner or master of the ship in each case.” 35

**80. To whom pilotage rates payable**—Section 223 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

5 “(2) Nothing in this section shall apply in respect of any pilotage rate or other pilotage charge imposed by a port company.”

**81. Ship not to be conducted to sea until pilotage rates are paid**—Section 224 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

10 “(2) Nothing in this section shall apply in respect of any pilotage rate or other pilotage charge imposed by a port company.”

*New*

**81A. Exemptions from compulsory pilotage**—The principal Act is hereby amended by repealing section 225, and substituting the following section:

15 “225. (1) All ships of not more than 100 tons gross tonnage shall be exempted from compulsory pilotage.

20 “(2) Notwithstanding subsection (1) of this section, a Harbour Board may exempt from compulsory pilotage within its pilotage district any ship of more than 100 tons gross tonnage but less than 500 tons gross tonnage.

25 “(3) Any exemption granted pursuant to subsection (2) of this section may be granted subject to such conditions relating to safety or good navigation as the Harbour Board may specify, and may be amended or revoked by the Harbour Board.”

**82. Offences by pilots**—Section 228 (f) of the principal Act is hereby amended by inserting, after the word “thereof”, the words “or by any officer of the port company”.

30 **83. Effect of bylaws on port company operations**—The principal Act is hereby amended by inserting, after section 232A (as inserted by section 16 (1) of the Harbours Amendment Act 1968), the following section:

35 “232B. (1) Except as provided in subsection (2) of this section, the jurisdiction of the Board in relation to the making and enforcing of bylaws shall not extend to any area or undertaking under the control of a port company or any related vessel, vehicle, matter, or thing; and any bylaw made by the Board and in force at the time of the transfer of any port related

commercial undertaking to a port company shall cease to have effect in respect of that area or undertaking and any related vessel, vehicle, matter, or thing on the transfer of that undertaking to the port company.

*Struck Out*

5

“(2) Nothing in this section shall apply in respect of paragraphs (46) to (50B) of section 232 of this Act.”

*New*

“(2) Nothing in this section shall apply in respect of bylaws made pursuant to paragraphs (46) to (50B) of section 232 of this Act or bylaws imposing dues in respect of matters that are statutory functions or duties of the Harbour Board relating to safety or navigation or that are the responsibility of the Harbour Board in relation to marine pollution.”

**84. Application to new installations of bylaws as to harbour dues**—Section 234A of the principal Act (as inserted by section 66 (1) of the Harbours Amendment Act 1977) is hereby amended by adding the following subsection:

“(4) This section shall have no application in respect of any installation or facility under the control of a port company; and bylaws and fines levied under them shall not apply in respect of such installations and facilities by virtue of section 232B of this Act.”

*New*

**84A. New Part VIA relating to Westport Harbour**—The principal Act is hereby amended by inserting, after section 240, the following Part:

“PART VIA

WESTPORT HARBOUR

**“240A. Vesting of Westport Harbour assets in Westport Borough and Buller County jointly**—(1) The assets described in a deed of agreement between the Crown of the one part and the Westport Borough Council and Buller County Council of the other part shall vest, on the 1st day of July 1988,



*New*

in the Councils jointly but subject to all interests existing immediately before that date.

5 “(2) Any land vested in the Westport Borough Council and the Buller County Council jointly by subsection (1) of this section may be sold, exchanged, subdivided, leased, or otherwise disposed of in accordance with an Order in Council made pursuant to section 8A or section 165 of this Act or in accordance with sections 143 to 144 of this Act, which sections shall apply  
10 in all respects as if those Councils jointly were a Harbour Board.

“**240B. Application of income**—The income derived from the use or disposal of any asset referred to in section 240A (1) of this Act may be applied only towards the operation or development of the port at Westport or for such other purposes  
15 as the Westport Borough Council and the Buller County Council or either of them are authorised by this Act or by virtue of any Order in Council made under this Act to apply that income, and for no other purposes unless the Minister of Transport in any specific case otherwise permits.

20 “**240C. Registration of transfers**—(1) District Land Registrars are hereby authorised and directed to make such entries in their respective registers, and to do all such other things, as may be necessary to give full effect to the provisions of section 240A (1) of this Act.

25 “(2) The registrar of any property which is transferable only in books kept by a company or other body or in a manner directed by or under any Act shall on written application under the seals of the Westport Borough Council and the Buller County Council register them as the holders of any such  
30 property that is vested in them by section 240A (1) of this Act.”

**84B. Powers of entry of Harbourmaster**—Section 255 of the principal Act is hereby amended by adding, as subsections (2) and (3), the following subsections:

35 “(2) Any Harbourmaster or person authorised in writing by the Harbourmaster (together with such assistants and equipment as are considered necessary) may enter and remain upon any land or property of a port company within the harbour under the control of the Board that appointed the Harbourmaster, and carry out any inspection that the  
40 Harbourmaster may carry out in the course of duty.

*New*

“(3) Every person exercising any power under this section may do so only in a manner and at a time that is reasonable in the circumstances, and shall produce evidence of identity and evidence that he or she is a Harbourmaster, authorised person, officer of the Board, or honorary warden whenever reasonably requested to do so.” 5

*Struck Out*

**85. Jurisdiction as Maritime Planning Authority**—The principal Act is hereby amended by inserting, after section 261, the following section: 10

“261A. (1) Where any Harbour Board is a Maritime Planning Authority and any application for its consent in that capacity is made under section 102A of the Town and Country Planning Act 1977 by a port company or an application is made for that consent under that section in respect of any other port related commercial proposal, the matter shall not be determined by that Authority but shall forthwith be referred to the Planning Tribunal for determination. 15

“(2) The Planning Tribunal shall have all the functions, duties, and powers of the Maritime Planning Authority, and shall give or cause to be given public notice of the application.” 20

*New*

*Amendments, Repeals, Transitional Provisions, and Revocation in Relation to Westport Harbour* 25

**85A. Amendment to Ministry of Transport Act 1968**—(1) The First Schedule to the Ministry of Transport Act 1968 (as substituted by section 3(1) of the Ministry of Transport Amendment Act 1973) is hereby amended by omitting from Part I the item relating to the Westport Harbour Act 1920. 30

(2) This section shall come into force on the **1st day of July 1988**.

**85B. Repeals**—(1) The following enactments are hereby repealed:

- (a) The Westport Harbour Act 1920: 35
- (b) The Westport Harbour Amendment Act 1926:

*New*

- (c) Section 50 of the Finance Act 1950:  
 (d) The Westport Harbour Amendment Act 1979.  
 (2) This section shall come into force on the 1st day of July 1988.

5 **85c. Regulations to have effect as bylaws until 31 December 1988**—The Westport Harbour Regulations 1982 (S.R. 1982/21) shall have effect in respect of the period beginning on the 1st day of July 1988 and ending with the close of the 31st day of December 1988 as if they were bylaws made  
 10 by the Westport Borough Council and the Buller County Council jointly, and as if—

- (a) Every reference in those regulations to the Ministry or to the Crown were a reference to those Councils jointly:  
 15 (b) Every reference in those regulations to the Secretary-Manager were a reference to the Secretary of the Westport Harbour Committee.

**85d. Revocation**—(1) The Westport Harbour Regulations 1982 are hereby revoked.

20 (2) This section shall come into force on the 1st day of January 1989.

*Other Amendments and Repeals*

**85e. Amendment to Conservation Act 1987**—The Conservation Act 1987 is hereby amended by omitting from the Second Schedule the references to sections 203 (1) and 203  
 25 (3) of the Harbours Act 1950.

**85f. Repeals**—The enactments specified in the Fifth Schedule to this Act are hereby repealed.

## PART V

30 AMENDMENTS TO MARINE POLLUTION ACT 1974

**86. This Part to be read with Marine Pollution Act 1974**—This Part of this Act shall be read together with and deemed part of the Marine Pollution Act 1974\* (in this Part of this Act referred to as the principal Act).

\*1974, No. 14

Amendments: 1975, No. 89; 1977, No. 12; 1977, No. 130; 1980, No. 53

**87. Facilities in harbours for disposal of residues—**

Section 12 of the principal Act is hereby amended by repealing subsections (5) to (7), and substituting the following subsections:

“(5) Where in the case of any harbour it appears to the Minister, after consultation with the Harbour Board and port company (if any) or other person operating the port and with any organisation appearing to the Minister to be representative of shipowners, whether of New Zealand ships or not,— 5

“(a) If the harbour has oil or pollutant reception facilities, that those facilities are inadequate; or 10

“(b) If the harbour has no such facilities, that the harbour has need of such facilities,—

the Minister may direct the Harbour Board or the port company or other person operating the port to provide, or arrange for the provision of, such oil or pollutant reception facilities as may be specified in the directions. 15

“(6) Nothing in this section shall be construed as requiring a Harbour Board or port company or other person operating the port to allow untreated ballast water (that is to say, ballast water which contains oil or pollutant and has not been subjected to an effective process for separating the oil or the pollutant from the water) to be discharged into any oil or pollutant reception facilities provided by, or by arrangement with, the Harbour Board or port company or other person operating the port; and the Minister shall exercise his or her powers under subsection (5) of this section accordingly. 20 25

“(7) Any Harbour Board or port company failing to comply with any directions given under subsection (5) of this section within the period specified in the directions, or within any extended period allowed by the Minister (whether before or after the end of the period so specified), commits an offence and is liable on summary conviction to a fine not exceeding \$500 for each day during which the default continues, from the day after the end of the period specified in the directions or any extended period allowed by the Minister, as the case may be, until the last day before that on which the facilities are provided in accordance with the directions.” 30 35

**88. Provision of substances and equipment in harbours—**

(1) The principal Act is hereby amended by repealing section 13, and substituting the following section: 40

“13. (1) Where in the case of any harbour it appears to the Minister, after consultation with the Harbour Board and port company (if any) or other person operating the port, that—

5 “(a) If the Harbour Board or port company or other person operating the port has substances, materials, and equipment on hand for dealing with, cleaning up, removing, or dispersing any oil or pollutant which has been discharged or has escaped into the harbour from a ship, a place on land, or a pipeline, those substances or materials or that equipment are inadequate; or

10 “(b) If the Harbour Board or port company or other person operating the port has no such substances, materials, or equipment, as the case may be, on hand for dealing with, cleaning up, removing, or dispersing any oil or pollutant which has been discharged or has escaped into the harbour from a ship, a place on land, or a pipeline, the harbour has need of such substances, materials, or equipment, as the case may be,—

15 the Minister may direct the Harbour Board or port company or other person operating the port to provide or arrange for the provision of such substances, materials, or equipment, as the case may be, as may be specified in the directions.

20 “(2) Where any oil or pollutant has been discharged or has escaped into a harbour from a ship, a place on land, or a pipeline, the Minister may direct the Harbour Board or port company or other person operating the port to deal with, clean up, remove, or disperse that oil or pollutant.

25 “(3) Any Harbour Board or port company failing to comply with any directions given under subsection (1) or subsection (2) of this section within the period specified in the directions, or 30 within any extended period allowed by the Minister (whether before or after the end of the period so specified), commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 for each day during which the default continues, from the day after the end of the period specified in 35 the directions or any extended period allowed by the Minister, as the case may be, until the last day before or on which the directions are complied with.”

(2) The following enactments are hereby consequentially repealed, *namely*:

40 (a) Section 2 of the Marine Pollution Amendment Act (No. 2) 1977:

(b) So much of the Schedule to the Marine Pollution Amendment Act 1980 as relates to section 13 (2) of the principal Act.

**89. Liability for costs of removal of oil or pollutant or waste or other matter**—Section 30 of the principal Act is hereby amended by inserting, after the words “Harbour Board” in both places where they occur, the words “or the port company”.

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## PART VI

AMENDMENTS TO WATERFRONT INDUSTRY COMMISSION ACT  
1976

**90. This Part to be read with Waterfront Industry Commission Act 1976**—This Part of this Act shall be read together with and deemed part of the Waterfront Industry Commission Act 1976\* (in this Part referred to as the principal Act).

\*1976, No. 72

Amendments: 1980, No. 26; 1987, No. 82; 1988, No. 41

**91. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by omitting from paragraph (b) (i) of the definition of the term “waterfront industry” the words “where such cranes, trucks, or equipment are owned or provided by a harbour board and such work at the port is the major part of the work carried out by the worker or workers concerned”.

*New*

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(2) Section 2 (3) (a) of the principal Act is hereby repealed.

**91A. Waterfront Industry Commission**—(1) Section 4 (2) of the principal Act is hereby amended by repealing paragraph (c) (as substituted by section 4 of the Waterfront Industry Commission Amendment Act 1987), and substituting the following paragraph:

“(c) One shall be a person appointed on the nomination of an organisation of port companies (being the organisation of port companies that the Minister is satisfied is the most representative of port companies at ports where the Commission provides amenities for waterside workers) or, if there is no such organisation, a person appointed by the Minister following consultation with such of the port companies as the Minister considers appropriate.”

(2) This section shall come into force on the 1st day of October 1988.

**92. Functions of Commission**—(1) Section 9 (1) (c) of the principal Act is hereby repealed.

(2) Notwithstanding the repeal effected by subsection (1) of this section, any determination made under section 9 (1) (c) of the principal Act and in force immediately before the commencement of this section shall continue to have effect until amended or superseded by an agreement made under section 38(b) of this Act.

**93. Amenities for waterside workers**—(1) Section 10 (1) of the principal Act is hereby amended by repealing paragraphs (b) and (c).

(2) Section 10 of the principal Act is hereby further amended by repealing subsections (2) to (4), and substituting the following subsections:

15

*New*

“(2) Where any amenities provided and paid for by the Commission at any time before the 1st day of May 1988 are either—

20 “(a) On land vested in a harbour board or on any wharf owned by or under the control of a harbour board; or

25 “(b) On any such land or wharf originally vested in, owned by or under the control of a harbour board and subsequently transferred by a harbour board to a port company—

the value of those amenities shall be paid to the Commission by the harbour board or by the port company having control of the land or wharf at the time when the amenities ceased to be used for waterside workers.

30 “(3) If any dispute arises between the Commission and any harbour board or port company, as the case may require, as to the value of any amenities for the purposes of this section, the dispute shall be referred to arbitration under the Arbitration Act 1908, with one arbitrator to be appointed by each party and an umpire to be appointed by those arbitrators before entering upon their reference.”

**94. Powers of Commission**—(1) Section 11 (2) (a) of the principal Act is hereby amended by repealing the proviso (as amended by section 7 (2) of the Waterfront Industry

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Commission Amendment Act 1987), and substituting the following proviso:

“Provided that, before making any variation in any levy imposed under this paragraph the Commission shall supply to all registered employers a statement of the Commission’s estimated income and expenditure for the then current financial year (which statement shall include a statement of the Commission’s estimated income and expenditure in respect of each port for the then current financial year):”.

(2) Section 11 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsections:

“(2A) Levies imposed pursuant to subsection (2) (a) of this section shall be imposed, on a port by port basis, on the employers of waterside workers at each port.

“(2B) The levies imposed or to be imposed on the employers of waterside workers at any port—

“(a) Shall be sufficient to recover from those employers the payments made and services provided by the Commission in respect of waterside workers employed by those employers at that port, including an appropriate proportion of the costs of any functions carried out by the Commission on a national basis or on a regional basis that includes that port; and

“(b) Shall, as far as practicable, not be used to fund payments made or services provided by the Commission in respect of waterside workers employed at any other port.”)

*New*

“(2c) Notwithstanding **subsection (2B)** of this section, the Commission may apportion among employers of waterside workers any levies or other amounts payable to the Accident Compensation Corporation having regard to accident records and safety programmes and such other matters as the Commission thinks fit.”

(3) Levies imposed under subparagraph (vi) or subparagraph (viii) of section 11 (2) (a) of the principal Act in respect of any period before the 1st day of October 1989 may be imposed as if **subsections (2A), (and) (2B), and (2c)** had not been inserted into section 11 of the principal Act by **subsection (2)** of this section.



*New*

(4) Section 7 (2) of the Waterfront Industry Commission Amendment Act 1987 is hereby consequentially repealed.

*Struck Out*

5 **95. Number of workers on bureau register**—(1) The principal Act is hereby amended by inserting, before section 39, the following section:

10 “38B. (1) Subject to **subsection (2)** of this section, the number of workers whose names may be entered on the bureau register for a port shall be determined from time to time by agreement between the group of registered employers and the unions of workers at the port.

15 “(2) Any number of workers determined under **subsection (1)** of this section in relation to any port at any time before the 1st day of October 1989—

20 “(a) Shall be submitted by the parties to an organisation of employers (being the organisation of employers that the Minister is satisfied is the most representative of registered employers of waterside workers) and to an organisation of workers (being the organisation of workers that the Minister is satisfied is the most representative of waterside workers in New Zealand) for their approval; and

25 “(b) Shall not apply in relation to the bureau register for that port until each of the associations mentioned in **paragraph (a)** of this subsection has notified the Commission in writing that it has approved that number of workers.”

30 (2) An agreement made under **section 38B (1)** of the principal Act (as inserted by **subsection (1)** of this section) in relation to any port may amend or supersede, in relation to that port, any determination made before the commencement of this section under section 9 (1) (c) of the principal Act.

*New*

35 **95. Number of workers on bureau register**—Section 38 of the principal Act (as substituted by section 12 (1) of the Waterfront Industry Commission Amendment Act 1987) is

## New

hereby amended by repealing subsection (1), and substituting the following subsections:

“(1) The number of workers whose names may be entered on the bureau register for a port shall be determined from time to time by agreement between any group of registered employers and the unions of workers at the port. 5

“(1A) Where agreement cannot be reached under subsection (1) of this section, the matter shall be referred to the Commission for decision. 10

“(1B) Any agreement made under subsection (1) of this section and any decision made under subsection (2) of this section in relation to any port may amend or supersede, in relation to that port, any determination made before the commencement of this section under section 9 (1) (c) of this Act.” 15

**96. Use of mechanical equipment within wharf limits**—(1) The principal Act is hereby amended by repealing section 49, and substituting the following section:

“49. Notwithstanding any enactment or any bylaws made by any Harbour Board, a registered employer at any port (*shall be entitled to*) may use, within the wharf limits, mechanical equipment owned or provided by that registered employer.” 20

(2) This section shall come into force on the 1st day of October 1988.

**97. Accounts of Commission**—(1) Section 56 (1) of the principal Act is hereby amended by omitting the words “branch of the Bank of New Zealand”, and substituting the words “registered bank within the meaning of the Reserve Bank Act 1965”. 25

(2) Section 56 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection: 30

“(2) The Commission may arrange for one or more of its accounts with any such bank to be overdrawn as the Commission and the bank may agree.” 35

**SCHEDULES**

**FIRST SCHEDULE**

**Section 2**

**SPECIFIED HARBOUR BOARDS**

Auckland Harbour Board.  
Bay of Plenty Harbour Board.  
Hawke's Bay Harbour Board.  
Lyttelton Harbour Board.  
Marlborough Harbour Board.  
Nelson Harbour Board.  
Northland Harbour Board.  
Otago Harbour Board.  
Southland Harbour Board.  
Taranaki Harbours Board.  
Timaru Harbour Board.  
Wellington Harbour Board.

**SECOND SCHEDULE**

**Section 40 (2)**

**ENACTMENTS REPEALED**

- 1968, No. 39—The Ministry of Transport Act 1968: So much of the First Schedule (as substituted by section 3 (1) of the Ministry of Transport Amendment Act 1973) as relates to the New Zealand Ports Authority Act 1968. (R.S. Vol. 18, p. 531.)
- 1969, No. 100—The New Zealand Ports Authority Amendment Act 1969. (R.S. Vol. 17, p. 535.)
- 1970, No. 95—The New Zealand Ports Authority Amendment Act 1970. (R.S. Vol. 17, p. 535.)
- 1972, No. 4—The Ministry of Transport Amendment Act 1972: So much of the First Schedule as relates to the New Zealand Ports Authority Act 1968. (R.S. Vol. 18, p. 549.)
- 1978, No. 12—The Zealand Ports Authority Amendment Act 1978. (R.S. Vol. 17, p. 535.)
- 1982, No. 156—The Official Information Act 1982: So much of the First Schedule (as substituted by section 23 (1) of the Official Information Amendment Act 1987) as relates to the New Zealand Ports Authority. (R.S. Vol. 21.)

*New*

**THIRD SCHEDULE**

**Section 41a**

**ENACTMENTS REPEALED**

- 1882, No. 26 (Local)—The Bluff Harbour Foreshore Reclamation Act 1882.
- 1897, No. 13 (Local)—The Southland Harbour Board Empowering Act 1897.
- 1902, No. 28 (Local)—The Bluff Harbour Foreshore Reclamation and Leasing and Borrowing Act 1902.

*New*THIRD SCHEDULE—*continued*ENACTMENTS REPEALED—*continued*

- 1909, No. 37 (Local)—The Southland Harbour Board Empowering Act 1909.
- 1910, No. 8 (Local)—The New Zealand Portland Cement Company (Limited) Reclamation and Empowering Act 1910.
- 1913, No. 6 (Local)—The Southland Harbour Board Empowering Act 1913.
- 1915, No. 10 (Local)—The Bluff Harbour Improvements Act 1915.
- 1929, No. 7 (Local)—The Bluff Harbour Reclamation and Leasing and Empowering Act 1929: Sections 4 and 5 and the Second Schedule.
- 1931, No. 43—The Local Legislation Act 1931: Section 30.
- 1949, No. 3 (Local)—The Southland Harbour Board Empowering Act 1949.
- 1952, No. 14 (Local)—The Bluff Harbour Improvement Act 1952: Section 10.
- 1958, No. 6 (Local)—The Southland Harbour Board Act 1958: Sections 5 to 7 and the Schedule.
- 1959, No. 12 (Local)—The Timaru Harbour Board Loan and Empowering Act 1959: Section 15.
- 1961, No. 4 (Local)—The Southland Harbour Board Empowering Act 1961.
- 1961, No. 14 (Local)—The Southland Harbour Board Empowering Act (No. 2) 1961.
- 1965, No. 5 (Local)—The Southland Harbour Board Empowering Act 1965.

## Section 41c

## FOURTH SCHEDULE

## ENACTMENTS REPEALED ON 1 OCTOBER 1988

- 1955, No. 5 (Local)—The Lyttelton Harbour Board Loan and Empowering Act 1955: Section 7.
- 1956, No. 4 (Local)—The Taranaki Harbours Board Empowering Amendment Act 1956: Section 4.
- 1958, No. 6 (Local)—The Southland Harbour Board Act 1958: Section 8.
- 1959, No. 12 (Local)—The Timaru Harbour Board Loan and Empowering Act 1959: Section 15.
- 1959, No. 16 (Local)—The Bay of Plenty Harbour Board Loan and Empowering Act 1959: Section 10.
- 1966, No. 16 (Local)—The Timaru Harbour Board Loan and Empowering Act 1966: Sections 7 and 8.
- 1967, No. 15 (Local)—The Wellington Harbour Board Loan and Empowering Act 1967: Section 12.

*New*

FIFTH SCHEDULE

Section 85F

ENACTMENTS REPEALED

- 1959, No. 6—The Harbours Amendment Act 1959: Section 4. (R.S. Vol. 2, p. 731.)
- 1965, No. 6—The Harbours Amendment Act 1965: Section 6. (R.S. Vol. 2, p. 737.)
- 1968, No. 139—The Harbours Amendment Act 1968: Sections 5, 14, and 15. (R.S. Vol. 2, p. 740.)
- 1971, No. 58—The Harbours Amendment Act (No. 2) 1971: Section 8. (R.S. Vol. 2, p. 743.)
- 1977, No. 80—The Harbours Amendment Act 1977: Sections 22, 23, 46, and 52. (R.S. Vol. 2, p. 746.)