

PUBLIC SERVICE ASSOCIATION WITHDRAWAL OF RECOGNITION BILL

EXPLANATORY NOTE

THIS Bill, which is based on the provisions of the Industrial Relations Act 1973 providing for the deregistration of unions, enables the Minister of State Services, by notice in the *Gazette*, to withdraw recognition from the New Zealand Public Service Association (Incorporated) where any discontinuance of employment with respect to any essential service is brought about wholly or partly by that Association or any member or members thereof.

Any such notice withdrawing recognition may be limited to a specified group or class of employees of the State services.

Right Hon. Mr Thomson

**PUBLIC SERVICE ASSOCIATION WITHDRAWAL OF
RECOGNITION**

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A BILL INTITULED

An Act to authorise the Minister of State Services, in certain circumstances, to withdraw from the New Zealand Public Service Association (Incorporated) its
5 **recognition as a service organisation**

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

1. Short Title and commencement—(1) This Act may be
10 cited as the Public Service Association Withdrawal of Recognition Act 1983.

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

2. Interpretation—In this Act, unless the context otherwise
15 requires,—

“Assets of the Association” means all real or personal property of the Association; and, without limiting the generality of the foregoing provisions of this definition, includes—

*Public Service Association Withdrawal
of Recognition*

(a) Bank notes and other currency, postal notes, money orders, promissory notes, and bills of exchange, and any other negotiable instruments payable in currency; and

(b) Any amount deposited in a bank, and any amount for which cheques can be drawn on a bank pursuant to an arrangement for the time being subsisting; and 5

(c) Any real or personal property of any member or officer or position-holder of the Association, if that property was the property of the Association on the date of the withdrawal of recognition of the Association; and 10

(d) All real and personal property of the Association which at the time has been transferred to or vested in any person in trust for the Association or has been disposed of without adequate consideration in money or money's worth: 15

“Association” means the New Zealand Public Service Association (Incorporated), a society incorporated under the Incorporated Societies Act 1908: 20

“Employee”, in relation to the State services, means an employee in any branch of the State services, whether paid by salary, wages, or otherwise; but does not include an independent contractor: 25

“Essential service” means a service specified in the First Schedule to the State Services Conditions of Employment Act 1977:

“Manager” means the Public Trustee as manager of the assets of the Association: 30

“Minister” means the Minister of State Services:

“Public Service” has the meaning given to it by section 2 of the State Services Act 1962:

“State services” has the meaning given to it by section 4 of the State Services Conditions of Employment Act 1977. 35

Cf. 1973, No. 19, s. 129

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

4. Withdrawal of recognition of the Association—

(1) Notwithstanding that the Association is recognised by or under the State Services Act 1962 or the State Services Conditions of Employment Act 1977 or any other enactment as a service organisation, the Minister may, in accordance with this section, withdraw any such recognition. 40

(2) Where any discontinuance of employment with respect to any essential service is brought about wholly or partly by the Association or any member or members thereof, the Minister may, by notice in the *Gazette*,—

- 5 (a) Withdraw the recognition of the Association as a service organisation; or
(b) Withdraw the recognition of the Association as a service organisation in respect of any group or class of employees of the State services specified in the notice.

10 (3) Any notice under this section may be general or may be limited to any specified locality.

(4) Every notice under this section shall have effect according to its tenor, and shall take effect on the date of its publication in the *Gazette*, or on such later date as may be specified in
15 that behalf in the notice.

(5) For the purposes of this section, the expression “discontinuance of employment” includes the refusal of any employees to accept engagement for any work in which they are usually employed, and any method, act, or omission in
20 the course of employment that has or is likely to have the effect of interrupting or impeding any essential service.

Cf. 1973, No. 19, s. 130

5. Effect of withdrawal of recognition of the Association—

(1) Where a notice under **section 4 (2) (a)** of this
25 Act withdraws the recognition of the Association as a service organisation,—

(a) The Association shall cease to be a service organisation not only for all of the purposes of the State Services Act 1962 and the State Services Conditions of
30 Employment Act 1977 but also for all of the purposes of any other enactment in which, or for the purposes of which, the Association is recognised as a service organisation; and

(b) All assets of the Association shall become vested in the
35 Public Trustee, and shall, subject to **section 8** of this Act, be held by him upon trust to manage and administer the same.

(2) A certificate under the hand and seal of the Public Trustee or of any District Public Trustee to the effect that any asset
40 described in the certificate has vested in the Public Trustee pursuant to **subsection (1)** of this section shall be accepted by all Courts, Registrars, officials, companies, corporations, and other persons as sufficient evidence that the asset has so vested.

(3) On the production of any such certificate, together with an application by the Public Trustee or any District Public Trustee, for the registration of the Public Trustee as proprietor of the asset described in the certificate in place of the proprietor named in the instrument of title to that asset, the Registrar, official, company, corporation, or other person responsible for keeping a register of such instruments of title shall register the Public Trustee as proprietor of that asset. 5

Cf. 1973, No. 19, s. 131

6. Powers of manager—The manager shall have the following powers: 10

- (a) To take and retain possession of all assets of the Association, and in particular, but without limiting the generality of the power conferred by this paragraph, to demand, receive, and hold all instruments of title to any of the assets which are or may be in the possession or under the control of any person, whether or not employed by the Association, with all related documents, records, and lists or instruments of title: 15 20
- (b) To have full and free access to any books of accounts, documents, and records of the Association, and make copies thereof or take extracts therefrom, and, if he considers it necessary, to take and retain possession thereof: 25
- (c) To complete, carry out, perform, or enforce in such manner as he may think fit any contracts entered into by the Association before the withdrawal of recognition of the Association and exercise any powers conferred by any such contract: 30
- (d) To do any act or thing requisite to obtaining or perfecting the title to any of the assets: 35
- (e) To bring any action or other proceedings relating to the assets or to the recovery thereof, and defend, confess, or compromise, or submit to judgment in, any action, claim, demand, or proceeding touching the assets: 35
- (f) To sell or lease any assets of the Association (whether real or personal) in such manner and on such terms and conditions as he thinks fit:
- (g) To insure against fire or accident or otherwise any of the assets: 40

- (h) To employ or appoint servants, clerks, and agents on such terms and subject to such conditions as he thinks fit:
- 5 (i) To appoint an agent to do anything that the manager is authorised to do as manager of the assets of the Association; to delegate all or any of his powers and functions, either generally or particularly, to any person or class of persons, and to revoke any such delegation:
- 10 (j) To open in any bank in New Zealand an account in the name of the Public Trustee as manager, and operate on the account in such manner and to such extent as the Public Trustee as manager may from time to time determine:
- 15 (k) To exercise as if he were trustee of the assets such other powers as he could exercise under the Trustee Act 1956 or any other Act or law:
- (l) Such other powers as may be conferred on the manager by regulations made pursuant to **section 11** of this
- 20 Act.

Cf. 1973, No. 19, s. 132

7. Liabilities, expenses, and remuneration—(1) The manager may pay or satisfy out of the assets of the Association all debts, liabilities, and obligations of the Association so far

25 as the law binds and the assets in his hands and available for the purpose extend.

(2) The remuneration of the Public Trustee as manager of the Association shall, subject to the approval of the Minister, be determined in accordance with the regulations for the time

30 being in force under the Public Trust Office Act 1957, and shall be paid out of the assets of the Association to the credit of the Public Trustee's Account.

(3) All costs, charges, and expenses incurred by the Public Trustee as manager of the assets of the Association, and the

35 remuneration of the Public Trustee, shall be paid out of those assets in priority to all other claims.

Cf. 1973, No. 19, s. 133

8. Disposal of assets—(1) Notwithstanding anything in section 5 of the State Services Conditions of Employment Act

40 1977, but subject to **subsection (4)** of this section, when the Minister is satisfied that the Association should again be

recognised as a service organisation or that another organisation should be recognised as a service organisation in the place of the Association, he shall, by notice in the *Gazette*, declare that—

- (a) The Association or the new service organisation, as the case may be, has been so recognised under the name specified in the notice; and 5
- (b) On the date specified in the notice (being the date of the notice or any later date), the assets of the Association then vested in the Public Trustee shall, pursuant to **subsection (2)** of this section, revest in the Association or vest in the new service organisation, as the case may require. 10
- (2) On the publication of that notice in the *Gazette*,—
- (a) Those assets of the Association shall, by virtue of this subsection, on the date specified in the notice, revest in the Association or vest in the new service organisation named in the notice, as the case may require; and 15
- (b) All the liabilities and obligations of the Association or of the manager on that date shall become liabilities and obligations of the Association or the new service organisation, as the case may require. 20
- (3) Where the Public Trustee has not been registered as the proprietor of any asset of the Association, a certificate under the hand and seal of the Public Trustee or of any District Public Trustee to the effect that that asset is one which was vested in the Public Trustee pursuant to **section 5 (1)** of this Act shall be accepted by all Courts, Registrars, officials, companies, corporations, and other persons as sufficient evidence that that asset is one to which **subsection (2)** of this section applies. 25 30
- (4) If the Association or a new organisation is not recognised within 6 months after the withdrawal of recognition of the Association, or within such further time as the Minister, before the expiry of the said period of 6 months, may direct, the assets of the Association shall be distributed in the prescribed manner amongst the persons who were members of it at the date of the withdrawal of recognition. 35
- (5) Notwithstanding anything in **subsection (4)** of this section—
- (a) If the assets have been realised and the net proceeds after payment of all liabilities, remuneration, and expenses payable out of them do not exceed \$500, the amount of the net proceeds, instead of being distributed in 40

accordance with that subsection, may be paid to the Public Account to the credit of the Consolidated Account:

5 (b) If any of the assets are of such a nature that within 2 years after their vesting in the Public Trustee they cannot be realised and distributed in accordance with that subsection, the net proceeds of their realisation at any time after the expiry of that period may be paid to the Public Account to the credit of the
10 Consolidated Account.

(6) Notwithstanding anything in **subsection (1)** of this section, if the Association or a new organisation is not recognised, but the Minister is satisfied, within the time prescribed or directed under **subsection (4)** of this section, that a majority of the
15 members of the Association have become, or desire to become, members of another organisation, the Minister may, by notice in the *Gazette*, declare that on the date specified in the notice (being the date of the notice or any later date) the assets of the Association then vested in the Public Trustee shall vest in
20 that other organisation. In any such case **subsections (2) to (5)** of this section shall extend and apply, with all necessary modifications, as if that other organisation were a new service organisation, and as if the references in **subsection (4)** of this section to no new organisation being recognised included
25 references to the majority of the members of the Association not joining another organisation.

Cf. 1973, No. 19, s. 134

9. Power to recognise the Association—Where the recognition of the Association has been withdrawn under **section**
30 **4** of this Act, the Minister may for the purposes of any enactment, and notwithstanding the withdrawal of recognition, recognise the Association as the service organisation for the purposes of that enactment.

10. Offences—(1) Every person commits an offence who—
35 (a) Acts in contravention of or fails to comply in any respect with any requirement lawfully made under **section 6** of this Act; or
(b) Resists, obstructs, deceives, or attempts to deceive the
40 manager or any other person who is exercising or attempting to exercise any power or function under that section; or

(c) Knowingly or negligently makes any false or misleading statement or any material omission in any information or particulars furnished to the manager or any other person under or for the purposes of that section. 5

(2) Every person who commits an offence against this section or against any provision of any regulations made for the purposes of **sections 5 to 8** of this Act shall be liable on summary conviction to a fine not exceeding \$500.

Cf. 1973, No. 19, s. 135 10

11. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) Conferring on the manager such powers as may be necessary for the exercise of any of his functions or powers under **sections 5 to 8** of this Act in relation to the assets of the Association: 15

(b) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration. 20

Cf. 1973, No. 19, s. 136