

SHIPPING AND SEAMEN AMENDMENT (NO. 2) BILL

EXPLANATORY NOTE

THIS Bill amends the Shipping and Seamen Act 1952.

Clause 1 relates to the Short Title.

Clause 2 inserts a new section 151B in the principal Act providing for the compulsory reference to a conciliator of certain questions arising between a master or other officer or the owner or charterer of a New Zealand ship, and any officer or seaman, or between the owner or charterer and the master.

The new section provides that if the Minister considers that the sailing of any New Zealand ship is prevented or impeded because of any question that has arisen between the master or any other officer or the owner or charterer of a New Zealand ship and any officer or seaman or person seeking engagement as such, or between the owner or charterer and the master, he may direct that the question be heard and determined by a conciliator to be agreed upon between the parties. If the parties do not agree upon a conciliator, the Minister is to appoint one.

The conciliator may adopt such procedure as he considers suitable, but must comply with the rules of natural justice and must hear all evidence given and representations made by the parties to the question, maritime organisations (as defined in subsection (12)), and the owner or charterer of the ship.

The conciliator will have the powers of a Commission of Inquiry, and will not be bound by the strict rules of evidence.

In giving his decision, the conciliator may give directions as to the steps to be taken to give effect to the decision and to ensure that the sailing of the ship will not be prevented or impeded. That decision will be binding on the parties, every maritime organisation, and the owner or charterer of the ship.

It will be an offence to fail to comply with or to do any act in contravention of the decision or likely to prevent or hinder compliance with the decision, and it will also be an offence for any person to aid or abet or counsel or procure the commission of any such first-mentioned offence.

If any maritime organisation commits an offence against the section, every person holding office in that organisation will also be guilty of the offence, unless he proves that the offence occurred without his knowledge or that he did everything in his power to prevent the commission of the offence. If a person holding office in any such organisation commits an offence against the section, the organisation also commits that offence.

The maximum penalties for offences against the section are set out in subsection (11).

Hon. Mr McCready

SHIPPING AND SEAMEN AMENDMENT (NO. 2)

ANALYSIS

Title	2. Settlement of question preventing or impeding sailing of New Zealand ship
1. Short Title	

A BILL INTITULED

An Act to amend the Shipping and Seamen Act 1952

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

- 1. Short Title**—This Act may be cited as the Shipping and Seamen Amendment Act (No. 2) 1970, and shall be read together with and deemed part of the Shipping and Seamen Act 1952* (hereinafter referred to as the principal Act).
- 10 **2. Settlement of question preventing or impeding sailing of New Zealand ship**—The principal Act is hereby amended by inserting, after section 151A (as inserted by section 25 of the Shipping and Seamen Amendment Act 1959), the following section:

*Reprinted 1965, Vol. 3, p. 1631
Amendments: 1966, No. 84; 1967, No. 119; 1968, No. 55; 1969, Nos. 4, 25

“151B. (1) Where the Minister considers that the sailing of any New Zealand ship is prevented or impeded because of any question that has arisen, whether before or after the commencement of this section, between the master or any other officer or the owner or charterer of the ship and any officer or seaman who is a member of the crew or any person seeking engagement as an officer or a seaman on that ship, or between the owner or charterer and the master, and that it is in the public interest that the question be referred to a conciliator for decision, he may direct the Secretary to refer that question to a conciliator to be agreed upon between the parties to the question, and the Secretary shall refer it to a conciliator accordingly. 5

“(2) The Secretary shall, by notice in writing to each of the parties, require them to notify him of the conciliator agreed upon for the purposes of this section. If notice in writing signed by each of the parties agreeing upon a conciliator is not received by the Secretary within 48 hours after the first-mentioned notice has been given to each of the parties, then, notwithstanding anything in subsection (1) of this section, the Secretary shall refer the question for decision to a conciliator appointed by the Minister. 10 15 20

“(3) The conciliator to whom the question is referred shall hear and decide the question, and, subject to the provisions of this section, the procedure at any such hearing shall be such as he in his sole discretion considers suitable. 25

“Provided that at the hearing of any such question the rules of natural justice shall be complied with and the conciliator shall hear all relevant evidence given and all relevant representations made by or on behalf of the parties to the question, any maritime organisation, and the owner or charterer of the ship. 30

“(4) For the purposes of hearing and determining any question referred to him under this section, the conciliator shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and the provisions of that Act, except sections 2 and 4A and 13 to 15, shall apply accordingly. 35

“(5) The conciliator may receive evidence notwithstanding that it would not be admissible in a court of law. 40

“(6) The decision of the conciliator on any question referred to him under this section may specify the action to be taken by any party to the question or any maritime organis-

ation or the owner or charterer of the ship for the purpose of giving effect to that decision and ensuring that the sailing of the ship is not prevented or impeded, whether or not that party or organisation or owner or charterer appeared at the
5 hearing.

“(7) The conciliator shall record his decision on the question in a document under his hand and that document shall be admissible in evidence without proof of his signature. The Secretary shall cause a copy of that document to be given
10 in the manner specified in section 507 of this Act to every party to the question, every maritime organisation, and the owner or charterer of the ship, whether or not that party or organisation or owner or charterer appeared at the hearing.

“(8) The decision of the conciliator on any question re-
15 ferred to him under this section shall be final and binding on and be complied with by the parties to the question, every maritime organisation, and the owner or charterer of the ship.

“(9) Every person commits an offence who—

“(a) Fails to comply with or does any act in contravention
20 of or likely to prevent or hinder compliance with any decision of the conciliator under this section; or

“(b) Aids or abets any person or counsels or procures any person to fail to comply with, or to do any act in contravention of or likely to prevent or hinder
25 compliance with, any such decision.

“(10) Where any maritime organisation commits an offence against this section, every person holding any office in the organisation shall be deemed also to have committed the offence unless he proves that the offence occurred without
30 his knowledge or that he did everything in his power to prevent the commission of the offence.

“(11) Where any person holding any office in any maritime organisation commits an offence against this section, that organisation shall be deemed also to have committed that
35 offence.

“(12) Every person who commits an offence against this section is liable on summary conviction—

“(a) In the case of an individual, to imprisonment for
40 a term not exceeding 6 months or a fine not exceeding \$100 or to both, and, where the offence is a continuing one, to imprisonment for a further term not exceeding 1 month or a fine not exceeding \$20 or to both for every day on which the offence has continued:

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“(b) In the case of a body corporate, to a fine not exceeding \$2,000, and, where the offence is a continuing one, to a further fine not exceeding \$200 for every day on which the offence has continued.

“(13) In this section, the term ‘maritime organisation’ means— 5

“(a) The New Zealand Merchant Service Guild Industrial Union of Workers:

“(b) The New Zealand Institute of Marine and Power Engineers Incorporated: 10

“(c) The New Zealand Seamen’s Industrial Union of Workers:

“(d) Federated Cooks’ and Stewards’ Union of New Zealand Industrial Union of Workers.”