

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]
House of Representatives, 8 June 1984

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.

Right Hon. Mr Thomson

WHANGAREI REFINERY EXPANSION PROJECT DISPUTES

ANALYSIS

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A BILL INTITULED

An Act to make provision for the resumption and continuation of work on the expansion of the Whangarei Refinery at Marsden Point and for compliance with the terms and conditions of employment applying in relation to that work and for the resolution of industrial disputes arising in relation to that work

WHEREAS work on the expansion of the Whangarei Refinery at Marsden Point is effectively at a standstill: And whereas it is in the public interest that work on the expansion of that refinery be resumed as soon as possible and continued and that provision be made for compliance with terms and conditions of employment and for the observance of procedures for settling industrial disputes that arise in relation to that work:

No. 5—2

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

1. Short Title—This Act may be cited as the Whangarei Refinery Expansion Project Disputes Act 1984. 5

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Project employer”—

(a) Means any employer bound by—

- (i) The Whangarei Refinery Expansion Project—10 Composite Agreement, dated 29 October 1982; or
- (ii) The Whangarei Refinery Expansion Project Catering Staff—Collective Agreement (Voluntary), dated 15 November 1982; or 15
- (iii) The Whangarei Refinery Expansion Project Security Officers—Collective Agreement (Voluntary), dated 15 November 1982; or
- (iv) Any award or agreement that supersedes wholly or partially an agreement specified in 20 **subparagraph (i) or subparagraph (ii) or subparagraph (iii)** of this paragraph; and

(b) Includes any employer who has become a party to an agreement specified in **subparagraph (i) or subparagraph (ii) or subparagraph (iii) or subparagraph (iv)** of 25 **paragraph (a)** of this definition by filing with the Registrar of the Arbitration Court a notice of concurrence pursuant to—

- (i) Section 65 (6) of the Industrial Relations Act 1973; or 30
- (ii) Section 65 (6) of the Industrial Relations Act 1973 as applied by section 66 (2) of that Act; and

(c) Includes any employer who, not having filed a notice of concurrence with the Registrar of the 35 Arbitration Court pursuant to section 65 (6) of the Industrial Relations Act 1973 or to that section as applied by section 66 (2) of that Act, employs any workers on the Whangarei Refinery Expansion Project on the same terms and conditions as would apply in 40 respect of those workers if the employer had filed such a notice of concurrence:

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“Project worker” means any worker whose employment is subject to—

- (a) The Whangarei Refinery Expansion Project—Composite Agreement, dated 29 October 1982; or
- (b) The Whangarei Refinery Expansion Project Catering Staff—Collective Agreement (Voluntary), dated 15 November 1982; or
- (c) The Whangarei Refinery Expansion Project Security Officers—Collective Agreement (Voluntary), dated 15 November 1982; or
- (d) Any award or agreement that supersedes wholly or partially an agreement specified in **paragraph (a) or paragraph (b) or paragraph (c)** of this definition.

New

“Project worker”—

- (a) Means any worker whose employment is subject to—
 - (i) The Whangarei Refinery Expansion Project—Composite Agreement, dated 29 October 1982; or
 - (ii) The Whangarei Refinery Expansion Project Catering Staff—Collective Agreement (Voluntary), dated 15 November 1982; or
 - (iii) The Whangarei Refinery Expansion Project Security Officers—Collective Agreement (Voluntary), dated 15 November 1982; or
 - (iv) Any award or agreement that supersedes wholly or partially an agreement specified in **subparagraph (i) or subparagraph (ii) or subparagraph (iii)** of this paragraph; and
- (b) Includes any worker who is employed on the Whangarei Refinery Expansion Project by a project employer.

(2) Expressions defined in the Industrial Relations Act 1973 have in this Act the meanings so defined.

(3) For the purposes of this Act, the terms and conditions of employment of each project worker, whether employed on or after the 24th day of May 1984, shall be deemed to include, and, where appropriate, to have included at that date,—

- (a) A condition that the project worker accepts the employment on the expansion of the Whangarei Refinery at Marsden Point and on work in connection with that expansion of all or any of the eight scaffolders known as Adrian Hoeymans, Robert Smith, Colin Cooper, Ian McLean, Peter McGilp, Bernard McIntyre, John Kenyon, and Danny James Findlayson: 5

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- (ab) A condition that the project worker will not engage in any intimidatory or dangerous conduct towards the scaffolders named in **paragraph (a)** of this subsection or any of them: 10

- (b) A condition that the project worker will not impose any restrictions on working with all or any of the scaffolders named in **paragraph (a)** of this subsection and will not observe any restriction imposed by any union on working with all or any of those scaffolders: 15

- (c) A condition that the project worker will not impose or observe any black ban or restrictive practice, which terms— 20

(i) Include any ban or restriction imposed, other than by the agreement or award, in relation to the working of overtime; but

(ii) Do not include any ban or restrictive practice proved by the project worker to be justified on the grounds of safety or health: 25

- (d) A condition that the project worker—

(i) Will not organise or be a party to any stopwork meeting (other than a stopwork meeting authorised by an agreement or award or the employer); or 30

(ii) Will not organise or be a party to an illegal strike; or

(iii) Will not without reasonable excuse (the proof of which shall lie on him) refuse to perform work: 35

- (e) A condition that the project worker will, without any stoppage of work (other than a stoppage of work proved by the project worker to be justified on the grounds of safety or health), accept and abide by the disputes and personal grievance procedures prescribed by the applicable agreement or award: 40

- (f) A condition that the project worker will, if he is a union delegate, observe, in relation to his business as such a delegate, the procedures prescribed by the applicable agreement or award.

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3. Obligation of workers to report for work on 11 June 1984—(1) Every worker who was, on the 24th day of May 1984, employed as a project worker shall, in accordance with the terms and conditions of employment applying in respect of that work on that date, report for work on the 11th day of June 1984.

(2) **Subsection (1)** of this section shall apply in respect of any worker notwithstanding that the project employer by whom that project worker was employed on the 24th day of May 1984 has, at any time in the period beginning on that date and ending with the close of the date on which this Act is passed, dismissed or purported to dismiss that project worker from his employment.

(3) **Subsection (1)** of this section shall not apply in respect of any worker—

(a) Who has, at any time in the period beginning on the 24th day of May 1984 and ending with the close of the date on which this Act is passed, entered the employment of any employer (other than the employer by whom the worker was employed on the 24th day of May 1984); and

(b) Who is, as at the 11th day of June 1984, no longer a project worker.

New

3. Obligation of workers to report for work on 13 June 1984—(1) Every person who was, on the 24th day of May 1984, employed as a project worker, whether or not that person was on that date on strike or otherwise in breach of that person's contract of employment, shall, in accordance with the terms and conditions of employment applying on that date in respect of that person's work as a project worker, report for work on the 13th day of June 1984.

(2) **Subsection (1)** of this section shall apply in respect of any person notwithstanding that the project employer by whom that person was employed as a project worker on the 24th day of May 1984 has, at any time in the period beginning on

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that date and ending with the close of the date on which this Act is passed, dismissed or purported to dismiss that person from his employment.

(3) **Subsection (1)** of this section shall not apply in respect of 5 any person—

(a) Who has, at any time in the period beginning on the 24th day of May 1984 and ending with the close of the date on which this Act is passed, entered the employment of any employer (other than the 10 employer by whom that person was employed on the 24th day of May 1984); and

(b) Who is, as at the 13th day of June 1984, not a project worker.

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4. Obligation of project employer to allow workers to resume work—Where a worker to whom **section 3 (1)** of this Act applies reports for work on the 11th day of June 1984 in accordance with that section to the project employer by whom that worker was employed as a project worker on the 24th 20 day of May 1984, that project employer—

(a) Shall allow that worker to resume normal work in accordance with the terms and conditions of employment applying in respect of that work on the 24th day of May 1984; and 25

(b) If the project employer has dismissed the worker since the 24th day of May 1984,—

(i) Shall offer to re-employ that worker on the same terms and conditions as applied on the 24th day of May 1984; and 30

(ii) Shall, if the worker accepts the offer of re-employment, re-employ the worker accordingly.

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4. Obligation of project employer to allow workers to resume work—(1) Where a person to whom **section 3 (1)** of 35 this Act applies reports for work on the 13th day of June 1984 in accordance with that section to the project employer by whom that person was employed as a project worker on the 24th day of May 1984, that project employer—

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- (a) Shall allow that person to resume normal work in accordance with the terms and conditions of employment applying in respect of that work on the 24th day of May 1984; and
- 5 (b) If the project employer has dismissed that person since the 24th day of May 1984,—
- (i) Shall offer to re-employ that person on the same terms and conditions as applied on the 24th day of
- 10 May 1984; and
- (ii) Shall, if that person accepts the offer of re-employment, re-employ that person accordingly.
- (2) Where a person is re-employed by a project employer pursuant to **subsection (1)** of this section, the service of that
- 15 person as a project worker shall, notwithstanding that that person was not employed by that project employer for the whole or any part of the period beginning on the 25th day of May 1984 and ending with the close of the 13th day of June 1984, be deemed to have been continuous for the purpose of
- 20 any rights and benefits that are conditional on continuous service.
- (3) Nothing in this section confers on any person an entitlement—
- (a) To receive any remuneration by way of salary, wages,
- 25 allowances, or other emoluments in respect of the whole or any part of the period specified in **subsection (2)** of this section; or
- (b) To receive more than once any benefit which, in
- 30 accordance with the terms and conditions of employment applying in respect of that person's work, that person would have been entitled to receive only once if that person's service as a project worker had been continuous.
- 4A. Suspension of re-employed project workers where**
- 35 **work not available**—(1) Where—
- (a) Any persons to whom **section 3 (1)** of this Act applies fail to report for work on the 13th day of June 1984 in accordance with that section; and
- (b) Any project employer is, because of the failure of all or
- 40 any of those persons to report in accordance with that section, unable to provide for any persons re-employed by the project employer pursuant to **section 4 (1)** of this Act work that is normally performed by them,—

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that project employer may suspend the employment of all or any of the persons so re-employed until that project employer is able to provide for the persons so re-employed work that is normally performed by them. 5

(2) Where a person resumes employment with a project employer following that person's suspension by that project employer pursuant to **subsection (1)** of this section, the service of that person as a project worker shall be deemed to have been continuous for the purposes of any rights and benefits that are conditional on continuous service. 10

(3) Subject to any decision of the Court on an appeal under **subsection (4)** of this section, where any person is suspended under **subsection (1)** of this section, that person shall, notwithstanding anything in **subsection (1)** or **subsection (2)** of this section, not be entitled— 15

(a) To receive from the project employer any remuneration by way of salary, wages, allowances, or other emoluments in respect of the whole or any part of the period of that person's suspension; or 20

(b) To receive more than once any benefit which, in accordance with the terms and conditions of employment applying in respect of that person's work, that person would have been entitled to receive only once if that person's service as a project worker had been continuous. 25

(4) Where any person is suspended pursuant to **subsection (1)** of this section, that person or any union representing that person may appeal to the Arbitration Court against the suspension. 30

(5) The appellant shall—

(a) Within 14 days after the date on which the decision to suspend the person is made known to the person, give to the employer written notice of the appellant's intention to appeal; and 35

(b) Within 7 days after the date on which that notice has been given, lodge with the Registrar of the Court a written notice of appeal.

(6) On any appeal under **subsection (4)** of this section the Court may confirm or reverse or modify the decision appealed against, and may make such other order as it thinks just. 40

5. Obligation of project worker to comply with terms and conditions of employment—(1) Every project worker shall comply with the obligations imposed on him by the terms and conditions of his employment.

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(2) Nothing in **subsection (1)** of this section prevents any project worker from becoming a party to a strike that is not in contravention of—

- (a) **Section 7 (1)** of this Act; or
 - 10 (b) Any other Act; or
 - (c) Any award or collective agreement.
- (3) This section shall come into force on the 13th day of June 1984.

6. Voluntary unemployment—(1) Every worker, being a
15 worker to whom **section 3 (1)** of this Act applies, who fails without reasonable excuse (the proof of which shall lie on him) to report for work on the **(11th) 13th** day of June 1984 in accordance with that section shall not, in respect of the whole or any part of the period of 4 months beginning on that date,
20 be entitled to an unemployment benefit under Part I of the Social Security Act 1964.

(2) Every project worker who, on or after the **(11th) 13th** day of June 1984, fails without reasonable excuse (the proof of which shall lie on him) to comply with the terms and
25 conditions of his employment and who is dismissed from his employment by a project employer by reason of that failure shall not, in respect of the whole or any part of the period of 4 months beginning on the date of the dismissal, be entitled to an unemployment benefit under Part I of the Social Security
30 Act 1964.

(3) This section has effect notwithstanding anything in the Social Security Act 1964.

7. Strikes and lockouts in relation to the Whangarei Refinery expansion project—(1) Every person shall be liable
35 to a penalty not exceeding \$300 who, being a project worker,—

- (a) Strikes without that project worker or his union on his behalf having given to the project worker's employer, within one month before the date of commencement of the strike, not less than 14 days' notice in writing,
40 signed by him or on his behalf by his union of his intention to strike; or
- (b) Strikes before the expiry of notice of intention to strike given by him or on his behalf under **paragraph (a)** of this subsection.

(2) A notice given by a union for the purposes of **subsection (1)** of this section need not specify by name the project workers on whose behalf it is given if it is expressed to be given on behalf of all project workers who are members of the union and who are employed to work on or in connection with the expansion of the Whangarei Refinery at Marsden Point or at any particular place or places at which work in relation to that expansion is being carried on. 5

(3) Every person shall be liable to a penalty not exceeding \$3,000 who, being a project employer,— 10

(a) Locks out any project worker without having given to those project workers, within one month before the date of commencement of the lockout, not less than 14 days' notice in writing, signed by him or on his behalf, of his intention to lock out; or 15

(b) Locks out, after notice of intention to lock out has been given by him or on his behalf under **paragraph (a)** of this subsection, but before the expiry of that notice, any of the project workers to whom it was given.

(4) Every person who incites, instigates, aids, or abets a breach of this section, or who incites, instigates, or assists any person who has struck or locked out in breach of this section to continue to be a party to the strike or lockout, shall be liable,— 20

(a) If a worker or other person to whom the following paragraphs of this subsection do not apply, to a penalty not exceeding \$300: 25

(b) If an officer or member of the committee of management of any union or association, or of the branch (if any) concerned, to a penalty not exceeding \$1,500: 30

(c) If a person acting on behalf of an employer, to a penalty not exceeding \$1,500:

(d) If a union, association, or employer, to a penalty not exceeding \$3,000.

(5) In any proceedings for the recovery of a penalty for a breach of this section, it shall be a defence to prove that the strike or lockout was justified on the grounds of safety or health. 35

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(6) This section shall come into force on the 13th day of June 1984. 40

8. Inciting contravention of Act, etc.—Every person commits a breach of this Act and is liable to a penalty not exceeding \$3,000 who—

- (a) Incites, instigates, aids, or abets a breach of any provision of this Act (other than section 7); or
- (b) Either alone or in combination with any other person or group or body of persons, does any act with the intention of defeating or evading any provision of this Act.

9. Jurisdiction concerning penalties—(1) District Courts shall have full and exclusive jurisdiction to hear and determine any action for the recovery of any penalty provided for in **section 7** or **section 8** of this Act; and sections 151 to 157 of the Industrial Relations Act 1973 (except subsections (1), (5), and (6) of section 151) shall apply accordingly with all necessary modifications.

(2) An action for the recovery of a penalty provided for in **section 7** of this Act may be brought—

(a) In the case of a breach alleged to have been committed by a worker or, in the case of a breach of **section 7 (4)** of this Act, in relation to a strike by a worker), only at the suit of—

- (i) An employer of the worker; or
- (ii) A union to which the employer of the worker alleged to have struck belongs or any association of unions of employers to which any such union belongs; or

(b) In the case of a breach alleged to have been committed by an employer or, in the case of a breach of **section 7 (4)** of this Act, in relation to an alleged lockout by an employer), only at the suit of—

- (i) The union of workers to which the worker alleged to have been locked out belongs; or
- (ii) The association of unions of workers to which the union mentioned in **subparagraph (i)** of this paragraph belongs.

(3) An action for the recovery of a penalty provided for in **section 8** of this Act may be brought—

- (a) In the case of a breach alleged to have been committed by a worker or a union of workers or an association of unions of workers or an officer or member of the committee of management of any such union or association, only at the suit of a project employer or a union of employers or an association of unions of employers; or

- (b) In the case of a breach alleged to have been committed by an employer or a union of employers or an association of unions of employers or an officer or member of the committee of management of any such union or association, only at the suit of a project worker or a union of workers or an association of unions of workers. 5

10. Picketing—(1) In this Act “sergeant” means any member of the Police of or above the rank of sergeant.

(2) Where in the opinion of a sergeant the presence of any person on or in any place is intended or likely to influence any other person— 10

(a) To contravene any provision of this Act; or

(b) To refrain from or cease working in or in connection with the expansion of the Whangarei Refinery at Marsden Point,— 15

that sergeant may give to the first-mentioned person such oral directions as the sergeant considers necessary in the circumstances, including a direction to remove himself forthwith from that place where he then is to such reasonable distance as the sergeant considers necessary, or both a direction so to remove himself and a direction to remain at such reasonable distance from that place as may be specified by the sergeant. 20

(3) Where an opinion under **subsection (2)** of this section is formed by a sergeant in respect of 2 or more persons present on or in any place, any direction authorised by that subsection may be given to those persons collectively. 25

(4) Any sergeant, acting under **subsection (2)** of this section, may direct any person not to enter or remain on or in any specified place, whether or not that person is on or in the vicinity of that place when the direction is given. 30

(5) Every person commits an offence against this Act and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$1,000 who fails to comply in any respect with the requirements of a direction given to him under this section. 35

(6) This section is in addition to and not in derogation of any other enactment such as section 21 of the Summary Offences Act 1981. 40