Reprint
as at 3 June 2017

Waterfront Industry Reform Act 1989

Public Act	1989 No 6
Date of assent	22 March 1989
Commencement	see section 1(2)

Waterfront Industry Reform Act 1989: repealed, on 3 June 2017, by section 3(1) of the Statutes Repeal Act 2017 (2017 No 23).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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Schedule 16
Repeals

An Act—

(a) to reform the law relating to employment on the waterfront, and, in particular,—

(i) to remove the special procedures regulating the conduct of relations between workers and employers in the waterfront industry; and

(ii) to provide for an orderly transition from the existing statutory framework regulating employment on the waterfront; and

(b) to provide for the dissolution of the Waterfront Industry Commission; and

(c) to repeal the Waterfront Industry Commission Act 1976; and

(d) to make provision incidental thereto

1 Short Title and commencement

(1) This Act may be cited as the Waterfront Industry Reform Act 1989.

(2) This Act shall come into force on 1 April 1989.

2 Interpretation

In this Act, unless the context otherwise requires,—

award or agreement means an award or agreement registered or deemed to be registered under the Labour Relations Act 1987

Commission means the Waterfront Industry Commission constituted under the Waterfront Industry Commission Act 1976

Harbour Board has the meaning given to it by section 2 of the Harbours Act 1950; and includes any successor in title to any such Harbour Board

joint Ministers means the Minister of Labour and the Minister of Transport

liquidator means the liquidator appointed by the joint Ministers under section 9

port company means a port company referred to in section 4 of the Port Companies Act 1988

specified date means 30 September 1989

waterfront industry has the meaning given to it by section 2 of the Waterfront Industry Commission Act 1976

waterside worker has the meaning given to it by section 2 of the Waterfront Industry Commission Act 1976.

3 Act to bind the Crown

This Act shall bind the Crown.

Part 1
Dissolution of Waterfront Industry Commission

4 Dissolution of Waterfront Industry Commission

The Waterfront Industry Commission is dissolved as from the close of 30 September 1989.

5 Functions of Commission

(1) Until the close of the specified date, the Commission shall have, in addition to the functions conferred on it by the Waterfront Industry Commission Act 1976, the function of providing to the liquidator such advice and assistance as the liquidator may require in the performance of the liquidator's duties and functions under this Act.

(2) In continuing to carry out its functions, the Commission shall take into account the provisions of this Act and, in making any decision, shall give due regard to—

(a) the need for the Commission and its business to be wound up in an orderly manner; and

(b) the plan prepared by the liquidator under section 10(b)(i); and

(c) any advice given by the liquidator under section 10(b)(ii).

6 Power of Commission to impose levy

The Commission may, in addition to the powers conferred on it by section 11 of the Waterfront Industry Commission Act 1976, impose a levy either on a national basis or on a port by port basis, as the Commission thinks appropriate, on the owners, agents, or masters of ships, and on any other employers of waterside workers, for the purpose of meeting its obligations under section 24.

7 Final report of Commission

(1) As soon as practicable after 30 September 1989, the persons who were the members of the Commission immediately before the close of that day shall send to the Minister of Labour a report of its operations.

(2) The report shall be called the Final Report of the Waterfront Industry Commission.

(3) A copy of the Final Report of the Waterfront Industry Commission shall be laid before the House of Representatives by the Minister of Labour as soon as practicable after its receipt by that Minister.

8 Final accounts of Commission

(1) As soon as reasonably practicable after 30 September 1989 the liquidator shall cause to be prepared final accounts of the Commission as at the close of 30 September 1989.

(2) A copy of the final accounts, together with a copy of the report of the Audit Office on those accounts, shall be sent by the liquidator to each of the joint Ministers.

(3) A copy of the final accounts, together with a copy of the report of the Audit Office on those accounts, shall be laid before the House of Representatives by the Minister of Labour as soon as practicable after their receipt by that Minister.

Part 2
Liquidator

9 Appointment of liquidator

The joint Ministers shall, by notice in the *Gazette*, appoint a suitable person to be the liquidator in relation to the affairs of the Waterfront Industry Commission.

10 Duties and functions of liquidator while Commission in existence

While the Commission continues in existence under the Waterfront Industry Commission Act 1976, the liquidator—

(a) shall identify all the assets and liabilities of the Commission; and

(b) shall be responsible—

(i) for preparing a plan for dealing with the assets and liabilities of the Commission; and

(ii) for advising the Commission on how it may best regulate its affairs in anticipation of its dissolution by this Act; and

(c) shall, on a port by port basis, consider any proposals from any group of registered employers or any registered employer at each port for arrangements that will remove the need for the Commission to operate at the port.

11 Duties and functions of liquidator after Commission dissolved

(1) After the specified date the liquidator shall be responsible for winding up the affairs of the Commission in accordance with this Act.

(2) The liquidator, in winding up the affairs of the Commission, shall endeavour to ensure—

(a) that the assets of the Commission are realised in a manner that maximises the return from them; and

(b) that all liabilities of the Commission or of the liquidator are met from—

(i) the funds of the Commission; or

(ii) funds realised from the Commission's assets; or

(iii) levies imposed in accordance with section 13; and

(c) that the affairs of the Commission are wound up in an orderly fashion at the earliest opportunity.

12 Powers of liquidator

(1) The liquidator shall have all such powers as are reasonably necessary to enable the proper carrying out of the liquidator's functions and duties under this Act.

(2) Without limiting the generality of subsection (1), it is hereby declared that the liquidator may employ or engage other persons to assist in carrying out the liquidator's functions and duties under this Act.

13 Power of liquidator to impose levies

(1) The liquidator may impose levies, whether on a national basis or on a port by port basis, as the liquidator thinks appropriate, on the owners, agents, or masters of ships, and on any other employers of waterside workers, for the purpose of recovering the costs incurred by the liquidator in carrying out the liquidator's functions and duties under this Act.

(2) Levies may be imposed under subsection (1)—

(a) after the specified date; or

(b) where the Commission has, by virtue of a direction under section 14, ceased to operate at a port, after the date specified in that direction.

(3) Where the Commission had, before the specified date, power to impose a levy in respect of particular costs incurred by the Commission but had not done so, the liquidator shall have the same powers as the Commission had to impose that levy to recover those costs.

14 Power of liquidator to direct Commission to cease to operate at port

(1) Where the liquidator is satisfied, in respect of any port, that arrangements that will remove the need for the Commission to operate at that port can be and will be established at that port (being arrangements resulting from the consideration of proposals under section 10(c)), the liquidator may give to the Commission a direction that the Commission shall, on a date specified in the direction, cease to operate at that port.

(2) Every direction under this section—

(a) shall be in writing; and

(b) may, at the liquidator's discretion, relate to all or any of the Commission's functions, duties, and powers.

(3) Every direction under this section shall have effect according to its tenor and thereafter the Commission's functions, duties, and powers under the Waterfront Industry Commission Act 1976 shall be limited accordingly.

(4) As soon as practicable after the giving of a direction under this section, the liquidator shall publish a copy of that direction in the *Gazette*.

15 Vesting of assets and liabilities

From the close of the specified date, all assets and liabilities of the Commission shall vest in and become the assets and liabilities of the liquidator, to be dealt with by the liquidator in accordance with this Act.

16 Obligation to purchase buildings at ports

(1) This section applies in relation to any building—

(a) which, immediately before the appropriate date,—

(i) is held by the Commission under a lease, tenancy, licence, or agreement; or

(ii) is occupied by the Commission; and

(b) which is situated—

(i) on land vested in a Harbour Board or a port company; or

(ii) on any wharf owned by or under the control of a Harbour Board or a port company.

(2) For the purposes of this section and section 20, **the appropriate date**, in relation to any building to which this section applies, is—

(a) the specified date; or

(b) where the building is situated at a port, the earlier of the specified date or the date on which the Commission ceases, by virtue of a direction under section 14, to operate at that port.

(3) Every building to which this section applies shall be purchased by the Harbour Board or the port company that owns or controls the land or wharf on which the building is situated.

(4) Subject to section 18, the purchase price shall be determined in accordance with section 17.

(5) The liquidator shall determine in respect of each building to which this section applies whether that building was provided before or after the commencement of 17 March 1953.

17 Purchase price

(1) Where the liquidator determines that a building to which section 16 applies was provided before the commencement of 17 March 1953, the purchase price of that building shall be the book value of any improvements made by the Commission or its predecessor.

(2) Where the liquidator determines that a building to which section 16 applies was provided after the commencement of 17 March 1953, the purchase price of that building shall, subject to subsection (3), be equal to two-thirds of its market value as determined by a registered valuer.

(3) Where a Harbour Board has contributed to the cost of a building to which section 16 applies (being a building provided after the commencement of 17 March 1953) and the Commission has not reimbursed the Harbour Board for the amount contributed, the liquidator may, for the purposes of subsection (2), make a pro rata reduction in the market value of the building.

18 Dispute concerning purchase price

If any dispute concerning the amount of the purchase price of a building to which section 16 applies arises between—

(a) a Harbour Board or a port company; and

(b) the liquidator,—

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.

19 Date for payment of purchase price

The liquidator may, in respect of any purchase price finally fixed under this section, impose a date by which the Harbour Board or the port company must pay to the liquidator the amount of that purchase price, and that amount or any portion of that amount that is unpaid at the close of that date shall become a debt due to the liquidator.

20 Surrender of lease and cancellation of licences and agreements

Where any building to which section 16 applies, or any land or wharf on which is situated any building to which section 16 applies, is subject to a lease, tenancy, licence, or agreement between the Commission and a Harbour Board or port company, as the case may be, the lease or tenancy shall be deemed to be surrendered as at the close of the appropriate date (as defined by section 16(2)), or, as the case may require, the licence or agreement shall be deemed to be cancelled as at the close of that date, and the Commission and the liquidator shall not be liable to pay any further money under the lease, tenancy, licence, or agreement, or to pay any compensation for the surrender or cancellation of it.

21 Protection of subtenants and occupiers

Where, in the case of a building to which section 16 applies, any person is, immediately before the appropriate date,—

(a) either—

(i) a subtenant of any part of that building as a result of the subletting of that part of that building to that person by the Commission; or

(ii) a person occupying any part of that building as the result of an agreement between that person and the Commission; and

(b) the lease, tenancy, licence, or agreement under which the Commission holds that building or the land or wharf on which that building is situated is deemed, by section 20, to be surrendered or cancelled,—

that person shall, as the case may require, be deemed to become, on the same terms as applied under the lease, tenancy, licence, or agreement, either the tenant of the Harbour Board or port company that owns or controls the land or wharf on which that building is situated or a person occupying that part of that building as a result of an agreement between that person and that Harbour Board or port company.

22 Registration of surrender of lease

Where any lease deemed by section 20 to be surrendered is registered under the Land Transfer Act 1952, the District Land Registrar shall, on the application of the liquidator, note that surrender on the register and on the outstanding certificate of title.

23 Term of office of liquidator

(1) Any person appointed as liquidator shall be appointed for such term, not exceeding 12 months, as may be specified in the instrument of appointment.

(2) Any person appointed as liquidator shall be eligible for re-appointment from time to time.

(3) Any person appointed as liquidator may at any time be removed from office by the joint Ministers for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the joint Ministers.

(4) Any person appointed as liquidator may at any time resign his or her office by giving written notice to that effect to the Minister of Labour.

Section 23(3): amended, on 1 January 2002, by section 70(1) of the Human Rights Amendment Act 2001 (2001 No 96).

24 Expenses of liquidator

(1) Before the close of the specified date the Commission shall be responsible for meeting all costs, charges, liabilities, and expenses incurred in good faith by the liquidator in the exercise of the liquidator's duties, functions, and powers under this Act.

(2) After the specified date, the liquidator shall pay any such costs, charges, liabilities, or expenses out of the money or property vested in or acquired by the liquidator as a result of the dissolution of the Commission.

(3) For the purposes of this section, costs incurred by the liquidator include an amount for the liquidator's services at a rate to be fixed from time to time by the joint Ministers.

25 Indemnity

(1) The liquidator shall not be personally liable for any acts done by the liquidator in exercise of the powers, duties, and functions of the liquidator under this Act, unless it is shown that the liquidator acted in bad faith or without reasonable care.

(2) The liquidator shall be indemnified out of the property held by the liquidator under this Act in respect of all liabilities incurred (other than those incurred in bad faith or without reasonable care).

(3) No action or proceeding shall be brought or commenced against the liquidator except by leave of the High Court and subject to such terms as that court may impose.

26 Application of certain Acts to liquidator and staff

No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason of that person's appointment as liquidator or by reason only of that person's employment or engagement under section 12(2).

27 Accounts

(1) The liquidator shall keep proper books and accounts of all transactions and of all money and property vested in or acquired by the liquidator.

(2) The books and accounts of the liquidator shall be audited by the Audit Office or by an auditor to be appointed for the purpose by the Audit Office in the same manner in all respects as if the money and stores of the liquidator were public money and public stores within the meaning of the Public Finance Act 1977.

28 Reports

(1) The liquidator shall, as soon as practicable after 30 September in each year, give to the joint Ministers a report on the liquidator's activities under this Act to that date, together with a copy of the liquidator's accounts and of the report of the Audit Office upon them.

(2) The liquidator shall, if the liquidator's term of office expires and the liquidator is not re-appointed by the joint Ministers, give to the joint Ministers a report on the liquidator's activities under this Act at the date of that expiry, together with a copy of the liquidator's accounts and of the report of the Audit Office upon them.

(3) As soon as practicable after receiving copies of any such report, accounts, and report of the Audit Office, the Minister of Labour shall lay copies before the House of Representatives.

29 Access to property and records

(1) The Commission and its staff shall afford the liquidator ready access to such of its property and records as is necessary to enable the liquidator to properly carry out the liquidator's duties and functions.

(2) The liquidator may hand over such records of the Commission in relation to any port as the liquidator thinks fit to an employer or group of employers.

30 Distribution of accumulated funds

(1) This section applies to funds accumulated by the Commission to meet ongoing liabilities of the Commission to workers in the waterfront industry, being liabilities required to be discharged as part of the terms and conditions of employment of such workers.

(2) Funds to which this section applies—

(a) shall, for the purposes of section 31, be deemed to be liabilities of the Commission; and

(b) shall be distributed by the liquidator, on as equitable a basis as possible, to the employer or employers who accept continuing responsibility for the ongoing liabilities of the Commission in respect of which those funds were accumulated (being liabilities with respect to waterside workers and other workers within the waterfront industry).

(3) The liquidator may from time to time make interim distributions of funds to which this section applies.

(4) The liquidator shall, in making any distribution of funds to which this section applies, have regard, as far as practicable, to the basis on which those funds were collected by the Commission.

31 Conclusion of liquidator's role

(1) When the liquidator is satisfied that all assets of the Commission have been collected by the liquidator and that all liabilities of the Commission (including those to the liquidator) have been met, the liquidator shall hold any surplus funds on behalf of the joint Ministers and shall deal with those funds as directed by the joint Ministers.

(2) The joint Ministers shall decide how any surplus funds of the Commission are to be applied and shall direct the liquidator accordingly.

(3) In deciding how any surplus funds of the Commission are to be applied, the joint Ministers shall ensure that the surplus funds are applied for a purpose related to the waterfront industry.

32 Application for directions

Before exercising any power in relation to the liquidator's functions and duties under this Act, the liquidator may apply to the High Court *ex parte* for directions with respect to the exercise of the power, and the court may, on any such

application, make such order declaring the rights of persons before the court or otherwise, as the court thinks just, having regard to the intention of this Act.

Part 3
Staff of Commission

33 Staff

(1) Every person who at the date of commencement of this Act is employed by the Commission shall continue to be so employed after that date subject to the terms and conditions of any applicable agreement, whether or not that agreement is registered or capable of registration under the Labour Relations Act 1987.

(2) Every such employee shall, unless he or she sooner dies or resigns or is sooner dismissed or declared redundant by the Commission, be deemed, as from the close of the specified date to be a redundant employee of the Commission.

(3) The Commission shall, in declaring employees redundant, comply with such of the requirements of any applicable agreement as relate to notice of, and compensation for, redundancy.

(4) Any compensation for redundancy due to an employee by the Commission under any applicable agreement shall be a debt due by the Commission and shall be payable out of the Commission's funds or from levies.

34 General Manager

(1) The person who holds office as the General Manager of the Commission immediately before the close of the specified date shall be deemed, as from the close of the specified date, to be a redundant employee of the Commission.

(2) The terms and conditions applicable in respect of the redundancy of the General Manager shall be determined by agreement between the State Services Commission and the General Manager or, if they fail to agree, by the joint Ministers.

(3) The cost of any terms and conditions in relation to the redundancy of the General Manager shall be a debt due by the liquidator and shall be payable out of the liquidator's funds or from levies.

Part 4
Waterside workers

35 Effect of dissolution of Commission

(1) Nothing in the Waterfront Industry Commission Act 1976 or in this Act shall be construed as meaning that the Commission is or ever has been an employer of waterside workers.

(2) The dissolution of the Commission shall not give rise to any claim for redundancy compensation against the Commission by any waterside worker.

(3) The dissolution of the Commission shall not affect, for the purposes of any applicable award or agreement, the continuity of service of any waterside worker.

Part 5
Repeals and savings

36 Repeals

The enactments specified in the Schedule are repealed as from the close of the specified date.

37 Consequential amendment

Amendment(s) incorporated in the Acts.

Savings and transitional provisions

38 Savings in respect of union rules

Subject to section 42, in any union rule recorded under the Labour Relations Act 1987 before the close of 30 September 1989, every reference to the Waterfront Industry Commission Act 1976 or to any term that is defined in that Act shall be read as if that Act had not been repealed.

39 Savings in respect of awards and agreements

Subject to sections 40 to 43, in any award or agreement registered or deemed to be registered under the Labour Relations Act 1987 and in force at 30 September 1989, every reference to the Waterfront Industry Commission Act 1976 or to any term or procedure that is defined or established under any provision of that Act (other than section 9(2)) shall be read as if that Act had not been repealed.

40 Currency of principal orders

(1) For the avoidance of doubt, but subject to subsections (2) to (4), it is hereby declared that section 171 of the Labour Relations Act 1987 applies to every principal order which is in force immediately before the commencement of 1 April 1989 and which is deemed, by section 364(9) of the Labour Relations Act 1987, to be an award registered by the Arbitration Commission under that Act.

(2) Where a principal order to which subsection (1) applies was made on an application under section 18 of the Waterfront Industry Commission Act 1976 to which the only parties were—

(a) the New Zealand Waterfront Workers Union (or a union whose registration was cancelled under section 25(7) of the Labour Relations Act 1987 on the registration of the New Zealand Waterfront Workers Union); and

(b) the New Zealand Waterside Employers' Industrial Union of Employers,—

that principal order shall be cancelled at the end of the period for which it was continued in force under section 171(3) of the Labour Relations Act 1987 unless the parties to it notify the Arbitration Commission in writing before the expiration of that period that the parties wish it to be continued in force for a period specified by the parties (which period shall expire not later than 1 year after the expiry of the year for which the principal order was continued in force under section 171(3) of the Labour Relations Act 1987).

(3) Nothing in subsections (4) and (5) of section 171 of the Labour Relations Act 1987 shall apply in respect of a principal order to which subsection (2) of this section applies.

(4) This section has effect notwithstanding anything in section 39.

41 Vesting of functions

Where any award or agreement to which section 39 applies confers any function on the Waterfront Industry Commission or a Port Conciliation Committee or a Port Amenities Committee, that function shall vest, as from the close of 30 September 1989, in the union and employer parties.

42 References to registered employers

Every reference in a union rule, award, or agreement to registered employer or registered employers shall, as from the close of 30 September 1989, be read as a reference to an employer or to employers from time to time operating in the waterfront industry.

43 Negation of preference for workers on bureau register

(1) Subject to subsection (2), but notwithstanding anything in any other provision of this Act, sections 38 and 39 of the Waterfront Industry Commission Act 1976 shall cease to have effect as from the commencement of 1 April 1989.

(2) Where any award or agreement registered or deemed to be registered under the Labour Relations Act 1987 and in force at any time in the period beginning on 1 April 1989 and ending with the close of 30 September 1989 contains a reference to section 38 of the Waterfront Industry Commission Act 1976 or to a term or procedure that is defined or established under that section, that reference shall, during that period, be read as if subsection (1) had not been passed.

(3) Nothing in this Act limits the application of section 60 of the Labour Relations Act 1987.

44 Saving in respect of union coverage

The repeal of the Waterfront Industry Commission Act 1976 by this Act shall not affect—

(a) the union coverage that prevailed in the waterfront industry immediately before that repeal; or

(b) the application of the Labour Relations Act 1987.

Schedule
Repeals

s 36

Waterfront Industry Commission Act 1976 (1976 No 72) (RS Vol 22, p 907)

Waterfront Industry Commission Amendment Act 1980 (1980 No 26) (RS Vol 22, p 935)

Waterfront Industry Commission Amendment Act 1987 (1987 No 82) (RS Vol 22, p 936)

Waterfront Industry Commission Amendment Act 1988 (1988 No 41) (RS Vol 22, p 940)

Waterfront Industry Commission Amendment Act (No 2) 1988 (1988 No 94) (RS Vol 22, p 941)

Reprints notes

1 General

This is a reprint of the Waterfront Industry Reform Act 1989 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

4 Amendments incorporated in this reprint

Statutes Repeal Act 2017 (2017 No 23): section 3(1)

Human Rights Amendment Act 2001 (2001 No 96): section 70(1)

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