

[AS REPORTED FROM THE LABOUR COMMITTEE]

House of Representatives, 9 March 1989.

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. Stan Rodger

WATERFRONT INDUSTRY REFORM

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No. 119—2

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A BILL INTITULED

An Act—

- (a) To reform the law relating to employment on the waterfront, and, in particular,—
- (i) To remove the special procedures 5
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 10
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 15
- (d) To make provision incidental thereto

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

1. Short Title and commencement—(1) This Act may be cited as the Waterfront Industry Reform Act 1988.

(2) This Act shall come into force on the 1st day of April 20
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 25
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 30
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 35
Ministers under section 9 of this Act:

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

“Specified date” means the 30th day of September 1989:

“Waterfront industry” has the meaning given to it by 40
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 I

5 DISSOLUTION OF WATERFRONT INDUSTRY COMMISSION

4. Dissolution of Waterfront Industry Commission—The Waterfront Industry Commission is dissolved as from the close of the 30th day of September 1989.

10 **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
15 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—

- 20 (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)** of this Act; and
 (c) Any advice given by the liquidator under **section 10 (b) (ii)** of this Act.

25 **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,
30 agents, or masters of ships, and on any other employers of waterside workers, for the purpose of meeting its obligations under **section 18** of this Act.

7. Final report of Commission—(1) As soon as practicable after the 30th day of September 1989, the persons who were
35 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 the 30th day of September 1989 the liquidator shall cause to be prepared final accounts of the Commission as at the close of the 30th day of 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 *(for)* of Labour as soon as practicable after their receipt by that Minister.

PART II

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 *(the group of registered employers)* 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—

- 5 (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—
- 10 (i) The funds of the Commission; or
- (ii) Funds realised from the Commission's assets; or
- (iii) Levies imposed in accordance with **section 13** of this Act; and
- (c) That the affairs of the Commission are wound up in an orderly fashion at the earliest opportunity.

15 **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.

20 (2) Without limiting the generality of **subsection (1)** of this section, 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.

25 **13. Power of liquidator to impose levies**—(1) The liquidator may, *after the specified date,* 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

30 Act.

New

(1A) Levies may be imposed under **subsection (1)** of this section—

- 35 (a) After the specified date; or
- (b) Where the Commission has, by virtue of a direction under **section 14** of this Act, ceased to operate at a port, after the date specified in that direction.

(2) Where the Commission had, before the specified date, power to impose a levy in respect of particular costs incurred

40 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) of this Act), 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.

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16. Amenities or facilities at ports—(1) This section applies in relation to any building—

(a) Which, immediately before the appropriate date, 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, "the appropriate date", in relation to any building to which this section applies, is—

(a) The specified date; or

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- (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** of this Act, 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) The purchase price shall be determined in accordance with this section.
- (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 the 17th day of March 1953.
- (6) Where the liquidator determines that a building to which this section applies was provided before the commencement of the 17th day of March 1953, the purchase price of that building shall be the book value of any improvements made by the Commission or its predecessor.
- (7) Where the liquidator determines that a building to which this section applies was provided after the commencement of the 17th day of March 1953, the purchase price of that building shall be equal to two-thirds of its market value as determined by a registered valuer.
- (8) If any dispute concerning the amount of the purchase price of a building to which this section 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.
- (9) 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.
- (10) Where any building to which this section applies is on land that is subject to a lease between the Commission and a

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Harbour Board or a port company, as the case may be, the lease shall be deemed to be surrendered as at the close of the appropriate date; and the Commission and the liquidator shall not be liable to pay any further money under the lease or to pay any compensation for the surrender of it. 5

(11) Where any lease deemed by this section 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. 10

New

16. Obligation to purchase buildings at ports—(1) This section applies in relation to any building—

(a) Which, immediately before the appropriate date, is occupied by the Commission; and 15

(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. 20

(2) For the purposes of this section and **section 16b** of this Act, “the appropriate date”, in relation to any building to which this section applies, is—

(a) The specified date; or 25

(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** of this Act, 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. 30

(4) Subject to **section 16b** of this Act, the purchase price shall be determined in accordance with **section 16A** of this Act. 35

(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 the 17th day of March 1953.

New

16A. Purchase price—(1) Where the liquidator determines that a building to which **section 16** of this Act applies was provided before the commencement of the 17th day of 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** of this Act applies was provided after the commencement of the 17th day of March 1953, the purchase price of that building shall, subject to **subsection (3)** of this section, 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** of this Act applies (being a building provided after the commencement of the 17th day of March 1953) and the Commission has not reimbursed the Harbour Board for the amount contributed, the liquidator may, for the purposes of **subsection (2)** of this section, make a pro rata reduction in the market value of the building.

16B. Dispute concerning purchase price—If any dispute concerning the amount of the purchase price of a building to which **section 16** of this Act 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.

16c. 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.

16d. Surrender of lease—Where any building to which **section 16** of this Act applies, or any land or wharf on which is situated any building to which **section 16** of this Act applies, is

New

subject to a lease, tenancy, or other form of tenure between the Commission and a Harbour Board or port company, as the case may be, the lease, tenancy, or other form of tenure shall be deemed to be surrendered as at the close of the appropriate 5 date (as defined by section 16 (2) of this Act), and the Commission and the liquidator shall not be liable to pay any further money under the lease, tenancy, or other form of tenure, or to pay any compensation for the surrender of it.

16E. Registration of surrender of lease—Where any lease 10 deemed by section 16D of this Act 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.

17. Term of office of liquidator—(1) Any person 15 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- 20 appointment from time to time.

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

(4) Any person appointed as liquidator may at any time 25 resign his or her office by giving written notice to that effect to the Minister of Labour.

18. 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 30 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 35 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.

19. 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
5 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).

10 (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.

20. Application of certain Acts to liquidator and staff—

No person shall be deemed to be employed in the service of
15 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)** of this Act.

20 **21. 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
25 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.

22. Reports—(1) The liquidator shall, as soon as practicable
30 after the 30th day of 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
35 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.

40 (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.

23. 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.

New

23A. 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 24** of this Act, 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.

24. 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.

- 5 **25. 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
10 the rights of persons before the Court or otherwise, as the Court thinks just, having regard to the intention of this Act.

PART III

STAFF OF COMMISSION

15 **26. 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.

20 (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.

25 (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.

30 (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.

35 **27. 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.

40 (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 IV

WATERSIDE WORKERS

28. 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. 5

(2) The dissolution of the Commission shall not give rise to any claim for redundancy compensation against the Commission by any waterside worker. 10

(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 V

REPEALS AND SAVINGS

29. Repeals—The enactments specified in the Schedule to this Act are repealed as from the close of the specified date. 15

30. Consequential amendment—The Official Information Act 1982 is hereby consequentially amended, as from the close of the specified date, by omitting from the First Schedule (as substituted by section 23 (1) of the Official Information Amendment Act 1987) the item relating to the Waterfront Industry Commission. 20

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31. Savings—(1) In any union rule recorded under the Labour Relations Act 1987 before the close of the 30th day of 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. 30

(2) In any award or agreement registered or deemed to be registered under the Labour Relations Act 1987 and in force at the 30th day of September 1989, every reference to the Waterfront Industry Commission Act 1976 or to any term or procedure that is defined or established under that Act shall be read as if that Act had not been repealed. 35

(3) The repeal of the Waterfront Industry Commission Act 1976 by this Act shall not affect the union coverage that

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prevalled in the waterfront industry immediately before that repeal, and shall not affect the application of the Labour Relations Act 1987.

5

*New**Savings and Transitional Provisions*

31. Savings in respect of union rules—Subject to section 35 of this Act, in any union rule recorded under the Labour Relations Act 1987 before the close of the 30th day of 10 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.

32. Savings in respect of awards and agreements—Subject to sections 33 to 36 of this Act, in any award or 15 agreement registered or deemed to be registered under the Labour Relations Act 1987 and in force at the 30th day of 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 20 than section 9 (2)) shall be read as if that Act had not been repealed.

33. Currency of principal orders—(1) For the avoidance of doubt, but subject to subsections (2) to (4) of this section, it is hereby declared that section 171 of the Labour Relations Act 25 1987 applies to every principal order which is in force immediately before the commencement of the 1st day of 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.

30 (2) A principal order to which subsection (1) of this section applies 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 35 the parties wish it to be continued in force for a period specified by the parties (which period shall expire not later than one year after the expiry of the year for which the principal

New

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 (1) of this section applies. 5

(4) This section has effect notwithstanding anything in section 32 of this Act.

34. Vesting of functions—Where any award or agreement to which section 32 of this Act 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 the 30th day of September 1989, in the union and employer parties. 10

35. 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 the 30th day of September 1989, be read as a reference to an employer or to employers from time to time operating in the waterfront industry. 15 20

36. Negation of preference for workers on bureau register—(1) Notwithstanding anything in any other provision of this Act, section 39 of the Waterfront Industry Commission Act 1976 shall cease to have effect as from the commencement of the 1st day of April 1989. 25

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

37. Saving in respect of union coverage—The repeal of the Waterfront Industry Commission Act 1976 by this Act shall not affect— 30

- (a) The union coverage that prevailed in the waterfront industry immediately before that repeal; or
- (b) The application of the Labour Relations Act 1987.

Section 29

SCHEDULE

REPEALS

- 1976, No. 72—The Waterfront Industry Commission Act 1976. (R.S. Vol. 22, p. 907.)
- 1980, No. 26—The Waterfront Industry Commission Amendment Act 1980. (R.S. Vol. 22, p. 935.)
- 1987, No. 82—The Waterfront Industry Commission Amendment Act 1987. (R.S. Vol. 22, p. 936.)
- 1988, No. 41—The Waterfront Industry Commission Amendment Act 1988. (R.S. Vol. 22, p. 940.)
- 1988, No. 94—The Waterfront Industry Commission Amendment Act (No. 2) 1988. (R.S. Vol. 22, p. 941.)