

MARITIME SERVICES ACT.

Act No. 47, 1935.

George V. An Act to provide for the constitution of a board
No. 47, 1935. to be styled "The Maritime Services Board of New South Wales"; to provide for the exercise and discharge by such board of the powers, authorities, duties, functions and obligations of the Sydney Harbour Trust Commissioners; to provide that such Board shall be charged with the administration of the Navigation Act, 1901, and certain other Acts; to confer and impose certain other powers, authorities, duties and functions on such board; to amend the Sydney Harbour Trust Act, 1900-1931, the Navigation Act, 1901, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 10th December, 1935.]

BE

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Maritime Services Act, 1935." Short title.

(2) This Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette. Commencement.

(3) This Act is divided into Parts, as follows:— Division into Parts.

PART I.—PRELIMINARY.

PART II.—CONSTITUTION OF THE MARITIME SERVICES BOARD OF NEW SOUTH WALES.

PART III.—POWERS, AUTHORITIES, DUTIES, FUNCTIONS AND OBLIGATIONS OF THE MARITIME SERVICES BOARD OF NEW SOUTH WALES.

DIVISION 1.—*Preliminary.*DIVISION 2.—*Transfer of powers, authorities, duties, functions and obligations of the Sydney Harbour Trust Commissioners.*DIVISION 3.—*Transfer of certain powers, authorities, duties, functions and obligations exercised and discharged under or by virtue of the Navigation Acts.*DIVISION 4.—*Officers.*DIVISION 5.—*Finance.*DIVISION 6.—*Accounts and audit.*

PART IV.—MISCELLANEOUS.

SCHEDULES.

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Interpreta
tion.

2. (1) In this Act, unless the context or subject-matter otherwise indicates or requires—

“Board” means the Maritime Services Board of New South Wales constituted under this Act.

“Commissioner” means a commissioner of the Board.

“President” means the President of the Board.

“Vice-President” means the Vice-President of the Board.

(2) A reference in this Act either generally or particularly to any provision of any other Act shall, if such provision is amended or replaced, be construed as a reference to the provision as so amended or replaced.

(3) A reference in this Act to any other Act shall be deemed to include a reference to all rules, regulations, by-laws, proclamations, notifications and instruments made, issued or executed under such Act and for the time being in force.

PART II.

CONSTITUTION OF THE MARITIME SERVICES BOARD OF NEW SOUTH WALES.

Constitu-
tion of
Board.

3. (1) (a) For the purpose of carrying out the provisions of this Act, there shall be constituted a Maritime Services Board of New South Wales which shall consist of five commissioners appointed by the Governor by commission under the Seal of the State.

(b) Of the five commissioners so to be appointed two shall be nominated by the Minister and shall be identified with such interests concerned with the administration of this Act as he may think advisable.

Commissioners nominated under this paragraph are in this Act referred to as “nominated commissioners.”

(c)

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(c) Of the remaining three commissioners so to be appointed two shall, in and by their commissions, be appointed respectively President and Vice-President of the Board. Either the President or the Vice-President shall be a person possessing special technical knowledge and experience in navigation and in matters relating thereto.

President and Vice-President.

(2) (a) The Board shall be a body corporate, with perpetual succession and a common seal, and may sue and be sued in its corporate name, and shall, for the purposes and subject to the provisions of this Act, be capable of purchasing, holding, granting, demising, disposing of or otherwise dealing with real and personal property, and of doing and suffering all such acts and things as bodies corporate may by law do and suffer.

Body corporate.

(b) The corporate name of the Board shall be "The Maritime Services Board of New South Wales."

Corporate name.

(c) The common seal shall be kept in the custody of the President and shall not be affixed to any instrument except in pursuance of a resolution of the Board.

Any instrument executed in pursuance of any such resolution shall be attested by the signature of any two commissioners.

(3) (a) Subject to this Act—

Term of office.

(i) a commissioner, other than a nominated commissioner, shall be appointed for a term of seven years and a nominated commissioner shall be appointed for a term of three years;

(ii) a commissioner shall be eligible from time to time for reappointment.

(b) A person who is of or above the age of sixty-five years shall not be appointed as a commissioner.

This paragraph shall not extend to or in respect of the appointment of a nominated commissioner.

(4) (a) The commissioners, other than the nominated commissioners, shall devote the whole of their time to the duties of their office and shall respectively receive such annual salaries as the Governor may determine.

Salaries of commissioners.

(b)

Maritime Services Act.

No. 47, 1935.

(b) Such salaries shall not be altered during the term of office of such commissioners, but shall be subject to any deduction provided by the Public Service Salaries Act, 1931-1935, or any Act amending or replacing that Act.

(c) Each of the nominated commissioners shall be entitled to receive as remuneration for his services such fee as may be from time to time fixed by the Governor for each meeting of the Board at which the nominated commissioner attends.

(d) Each commissioner shall be entitled to receive travelling expenses at such rate as the Governor may from time to time determine.

(e) All such salaries, fees and expenses, including remuneration and expenses of a deputy appointed under subsection six of this section, shall be paid out of the Sydney Harbour Trust Fund and out of moneys provided by Parliament in such proportions as the Governor may from time to time determine.

(f) The office of a nominated commissioner shall not, for the purposes of the Constitution Act, 1902, or the Sydney Corporation Act, 1932-1934, be deemed to be an office or place of profit under the Crown.

Public Service Act not to apply to appointment.

(5) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of the commissioners, and such commissioners shall not be subject to the provisions of any such Act during their term of office.

Appointment of Deputy.

(6) (a) In the case of the illness, suspension or absence of the President, the Vice-President shall act in his place, and whilst so acting shall have the immunities and may exercise all the powers and authorities of the President.

(b) In the case of the illness, suspension or absence of any commissioner, other than the President, the Governor may appoint a deputy to act in the place of such commissioner during his illness, suspension or absence.

(c)

(c) Where in pursuance of paragraph (a) of this subsection the Vice-President is acting in the place of the President, the Governor may appoint a deputy to act in the place of the Vice-President; and if one of the other commissioners is appointed as such deputy, the Governor may appoint a deputy to act in the place of that commissioner. No. 47, 1935.

(d) Any deputy appointed under this subsection shall have the immunities and while he acts as such deputy may exercise all the powers and authorities of the commissioner in whose place he acts.

(e) A deputy appointed under this section may, if the Governor thinks fit, be paid such remuneration for his services, including travelling expenses, as the Governor may determine.

(f) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising the Vice-President to act in the place of the President, or a deputy to act in the place of a commissioner, or as to the necessity or propriety of any appointment of a deputy; and all acts or things done or omitted by the Vice-President or a deputy when so acting as aforesaid shall be as valid and effectual and shall have the same consequences as if the same had been done or omitted by the President or the commissioner for whom the deputy is acting, as the case may be.

(7) On the occurrence of any vacancy in the office of a commissioner the person appointed to fill the vacant office shall, subject to this Act, hold office for the remainder of the unexpired term of the vacant office. Vacancy in office of commissioner.

(8) (a) A commissioner may be suspended from his office by the Governor for misbehaviour or incompetence, but shall not be removed from office except as hereinafter provided. Commissioner's suspension or removal.

The Minister shall cause to be laid before Parliament a full statement of the grounds of suspension within seven sitting days after such suspension if Parliament is in session, or if not, then within seven sitting days after the commencement of the next session.

(b)

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(b) A commissioner suspended under this subsection shall be restored to office unless each House of Parliament within twenty-one days from the time when such statement has been laid before it, declares by resolution that the said commissioner ought to be removed from office, and if each House of Parliament within the said time does so declare, the said commissioner shall be removed by the Governor accordingly.

Vacation of office.

(9) (a) A commissioner shall be deemed to have vacated his office—

- (i) if, not being a nominated commissioner, he engages in New South Wales during his term of office in any paid employment outside the duties of his office, except with the approval of the Governor;
- (ii) if he becomes bankrupt, compounds with his creditors, or makes an assignment of his salary, fees, or estate for their benefit;
- (iii) if, not being a nominated commissioner, he absents himself from duty for a period of fourteen consecutive days, except on leave granted by the Governor;
- (iv) if, being a nominated commissioner, he is absent from four consecutive ordinary meetings of the Board without leave obtained from the Board in that behalf;
- (v) if he becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898;
- (vi) if he resigns his office by writing under his hand addressed to the Governor.

(b) A commissioner other than a nominated commissioner shall be deemed to have vacated his office upon the day upon which he attains the age of sixty-five years.

(10) Any commissioner who—

- (a) is in any wise concerned or interested in any bargain or contract made by or on behalf of the Board; or

(b)

(b) in any wise participates or claims to be entitled to participate in the profit thereof or in any benefit or emolument arising from the same, shall thereby vacate his office as a commissioner, and shall also be liable upon summary conviction to a penalty not exceeding fifty pounds:

Provided that no commissioner shall be liable to vacate his office or be liable to any penalty as aforesaid by reason only of—

- (i) receiving or being entitled to receive any payment or expenses pursuant to this Act;
- (ii) being beneficially interested in any newspaper in which the Board inserts advertisements;
- (iii) being a shareholder or member (but not a director or manager) of any incorporated company of more than twenty persons which has entered into any contract with or done any work under the authority of the Board.

(11) A commissioner who at the date of his appointment is an officer of the Public Service shall, if he ceases to be a commissioner from any cause whatsoever, otherwise than in pursuance of subsection eight, subsection nine, or subsection ten of this section, be eligible for and shall be appointed to some office in the Public Service not lower in classification and salary than that which he held at the date of his appointment as commissioner.

Officer of Public Service appointed commissioner.

(12) (a) Notwithstanding anything contained in any Act, nothing contained in this Act shall affect the rights accrued and accruing under the Public Service Act, 1902, or under the Superannuation Act, 1916-1935, or any Act amending such Acts, to any person appointed a commissioner under this Act, who is at the time of his appointment or has been at any time previously thereto an officer of the Public Service or an employee within the meaning of the Superannuation Act, 1916-1935, or any amendment thereof.

Saving of rights.

(b) Any officer of the Public Service or person who is an employee within the meaning of the Superannuation Act, 1916-1935, or any amendment thereof, appointed

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appointed a commissioner under this Act shall continue to contribute to any fund or account and shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if he were an officer or employee within the meaning of the Public Service Act, 1902, or the Superannuation Act, 1916-1935, as the case may be, and for such purpose his service as a commissioner shall be deemed to be service for the purpose of such Acts.

Procedure.

(13) (a) The procedure for the calling of meetings of the Board and for the conduct of business at such meetings shall, subject to this Act and any regulations in relation thereto, be as determined by the Board.

(b) Three members of the Board, one of whom shall be the President or the Vice-President, shall form a quorum, and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Board, and shall have and may exercise and discharge all the powers, authorities, duties, functions and obligations of the Board.

(c) At any meeting of the Board the President, or in his absence the Vice-President, shall preside. The President, or in his absence the Vice-President, shall have a deliberative vote, and if the voting be equal, a casting vote.

(14) (a) The Board may from time to time by resolution delegate to any commissioner either generally or in any particular case or class of cases such of the powers, authorities, duties or functions of the Board as are specified in the resolution.

(b) A commissioner, when acting within the scope of any such delegation to him, shall be deemed to be the Board.

(c) The Board may by resolution revoke any such delegation.

Validity of acts and proceedings.

(15) No act or proceeding of the Board shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced, there was a vacancy in the office of any one commissioner.

(16).

(16) The Board shall cause minutes of its decisions to be kept upon the official papers, and cause minutes to be kept of its proceedings at formal meetings.

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Minutes.

(17) The Board shall furnish the Minister with full information on any business of the Board which the Minister may require.

Reports, etc., from Board to Minister.

(18) (a) No matter or thing done, and no contract entered into by the Board, and no matter or thing done by any commissioner or by any other person whomsoever acting under the direction of the Board shall, if the matter or thing was done or the contract was entered into bona fide for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim or demand whatsoever.

(b) Nothing in this subsection shall exempt any commissioner from liability to be surcharged with the amount of any payment which is disallowed by the Auditor-General in the accounts of the Board, and which such commissioner authorised or joined in authorising.

Port of Newcastle Advisory Committee.

4. (1) For the purpose of giving advice and assistance to the Board in connection with the exercise and discharge of its powers, authorities, duties, functions and obligations so far as the same relate to the management, control and development of the Port of Newcastle, there shall be constituted a committee which is in this section referred to as the Advisory Committee.

Advisory Committee, Port of Newcastle.

(2) (a) The Advisory Committee shall consist of five members who shall be appointed by the Governor.

Members of the Advisory Committee.

(b) One of such members shall be nominated by the Board, and the remaining four members shall be nominated by the Minister and shall be identified with such interests concerned with the administration of this Act in relation to the Port of Newcastle as the Minister may think advisable.

(3).

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Duties of
Advisory
Committee.

(3) It shall be the duty of the Advisory Committee to consider and advise the Board upon such matters relating to the management, control and development of the Port of Newcastle as the Advisory Committee may think fit, and upon any other matter or question which may from time to time be referred to it by the Board.

Chairman.

(4) The member of the Advisory Committee nominated by the Board shall be the chairman of the Advisory Committee, and if from any cause he is unable to be present at any meeting a person appointed by the Board either generally or for any particular case shall act in his place as chairman at such meeting and whilst so acting shall be deemed to be a member and the chairman of the Advisory Committee.

Procedure
and busi-
ness at
meetings.

(5) The procedure for the calling of meetings of the Advisory Committee, and the conduct of business at such meetings and the times at which such meetings shall be held, shall be as determined by the Advisory Committee.

Term of
office.

(6) The term of office of the members of the Advisory Committee shall be three years from the date of their appointment. Upon the expiration of the term of office of a member he shall, subject to this Act, be eligible for re-appointment.

Suspension
of member.

(7) The Governor for any sufficient reason may suspend or remove any member of the Advisory Committee from his office.

Vacation of
office.

(8) If any member of the Advisory Committee, without having received leave of absence from the Minister, fails for a period of three months to attend duly summoned meetings of the Advisory Committee, his seat shall thereupon become vacant, and he shall not be eligible for re-appointment to that vacancy.

Casual
vacancies.

(9) On a casual vacancy occurring on the Advisory Committee by reason of death, resignation or otherwise, the vacancy shall be filled by the appointment of a new member in like manner as the member in whose place he is appointed, and his term of office shall expire upon the date upon which the member in whose place he is appointed would have gone out of office.

(10) The proceedings of the Advisory Committee shall not be invalidated by any vacancy in its number or any defect in the appointment of any member.

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Validity of proceedings.

(11) The Board may place at the disposal of the Advisory Committee the services of any of its officers or servants.

Services of officers.

(12) (a) Such executive and clerical assistance as may be necessary in connection with the Advisory Committee shall be provided by the Board.

Assistance and expenses.

(b) All costs and expenses incurred in connection with the execution of any powers and duties of the Advisory Committee or the members thereof (including the remuneration of any officers and servants placed at the disposal of the committee by the Board or such apportioned part of such remuneration as the Board may determine to be proper) shall be paid out of moneys provided by Parliament.

(13) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to the appointment of members of the Advisory Committee, and such members shall not in their capacity as members of the Advisory Committee be subject to the provisions of any such Act.

(14) The members of the Advisory Committee shall not be entitled to receive any remuneration in their capacity as members of the Advisory Committee.

PART III.

POWERS, AUTHORITIES, DUTIES, FUNCTIONS AND OBLIGATIONS OF THE MARITIME SERVICES BOARD OF NEW SOUTH WALES.

DIVISION 1.—*Preliminary.*

5. (1) In this Part the expression "appointed day" means the date of the commencement of this Act.

Appointed day.

(2) (a) Any alteration of the law by this Part, whether by the repeal of an enactment or otherwise, shall not, unless otherwise expressly provided by this Part, affect—

Savings.

(i) any right accrued, or obligation incurred, before the appointed day under the law so altered;

(ii)

(ii) the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered before the appointed day;

(iii) any action, proceeding, or thing pending or uncompleted immediately before the appointed day.

(b) Every such action, proceeding and thing may be carried on and completed as if the enactment had not been repealed or the law otherwise altered.

(c) The transfer to the Board of any powers, authorities, duties, functions or obligations in pursuance of this Part shall not affect the validity or the force or effect of any proclamation, notification, order, demand or notice duly made, published, served, or given, any lease or license duly granted, any certificate duly issued, any form duly prescribed, any authority duly given, any appointment duly made of any officer, servant or employee of any kind whatsoever, or any act or thing duly done under the authority of any Act before the appointed day.

(d) The generality of this subsection shall not be affected by any saving in any other section of this Part, nor shall this section or any other section in this Part limit any saving in the Interpretation Act of 1897.

DIVISION 2.—Transfer of powers, authorities, duties, functions and obligations of the Sydney Harbour Trust Commissioners.

Sydney
Harbour
Trust Com-
missioners.

6. (1) Upon the appointed day the powers, authorities, duties, functions and obligations which theretofore were exercised and discharged by the Sydney Harbour Trust Commissioners shall be transferred to and shall thereafter be exercised and discharged by the Board. The Board shall be in law the successor of the Sydney Harbour Trust Commissioners, and the authority to carry out the Sydney Harbour Trust Act, 1900-1931, the Sydney Harbour Rates Act, 1904, and any amendment

of

of such Acts, and any other Act the execution of which is by law committed to the Sydney Harbour Trust Commissioners immediately before the appointed day.

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(2) Upon the appointed day the body corporate under the name of the Sydney Harbour Trust Commissioners shall be dissolved.

Dissolution
of body
corporate.

(3) Upon the appointed day each of the commissioners appointed under the Sydney Harbour Trust Act, 1900-1931, shall cease to hold office as a commissioner under that Act, but shall be eligible for appointment as a commissioner of the Board under this Act; and if he is not so appointed he shall receive such compensation as he would have been entitled to had his services as a commissioner under the Sydney Harbour Trust Act, 1900-1931, been dispensed with otherwise than according to law, and shall be entitled to any superannuation rights he would have had if his services had been dispensed with by reason that his office had been abolished.

Commis-
sioner
eligible for
appoint-
ment
under this
Act.

(4) All regulations and by-laws in force immediately before the appointed day made under the Sydney Harbour Trust Act, 1900-1931, or any other Act the execution of which is transferred to the Board under this Division shall, to the extent to which they are not inconsistent with this Act or with any regulations made thereunder, continue and remain in force until altered or repealed by regulations or by-laws made under the same Act as amended by this Act.

(5) As from the appointed day a reference, whether express or implied, to the Sydney Harbour Trust Commissioners in any Act, regulation or by-law, or in any other instrument or document whatsoever, shall be construed as a reference to the Board, and a reference to the President of the Sydney Harbour Trust Commissioners shall be construed as a reference to the President of the Board.

7. On and from the appointed day the following provisions shall, subject to this Act, have effect:—

Rights,
liabilities
and pro-
perty.

- (a) All real and personal property and all right and interest therein, and all management and control of any land or thing which, immediately before the

the

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- the appointed day, is vested in or belongs to the Sydney Harbour Trust Commissioners, shall vest in and belong to the Board.
- (b) No attornment by a lessee of any land vested in the Board by this section shall be necessary.
 - (c) All rates, tolls, charges, moneys, liquidated and unliquidated claims which, immediately before the appointed day, are payable to or recoverable by the Sydney Harbour Trust Commissioners, shall respectively be rates, tolls, charges, moneys, liquidated and unliquidated claims payable to or recoverable by the Board.
 - (d) All suits, actions and proceedings, pending immediately before the appointed day at the suit of the Sydney Harbour Trust Commissioners in relation to any matter or claim shall respectively be suits, actions and proceedings pending at the suit of the Board.
 - (e) All contracts, agreements and undertakings entered into with, and all securities lawfully given to or by the Sydney Harbour Trust Commissioners, and in force immediately before the appointed day, shall be deemed to be contracts, agreements and undertakings entered into with and securities given to or by the Board.
 - (f) The Board may pursue the same remedies for the recovery of any such rates, tolls, charges, moneys and claims, and for the prosecution of such suits, actions and proceedings as the Sydney Harbour Trust Commissioners might have done if this Act had not been enacted.
 - (g) The Board may enforce and realise any security or charge existing immediately before the appointed day in favour of the Sydney Harbour Trust Commissioners in respect of any such rates, tolls, charges, moneys and claims as if such security or charge were existing in favour of the Board.
 - (h) All debts due and moneys payable by the Sydney Harbour Trust Commissioners, and all claims, liquidated or unliquidated, recoverable against

against the Sydney Harbour Trust Commissioners, shall be debts due and moneys payable by and claims recoverable against the Board.

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8. (1) As from the appointed day the Board shall assume all liabilities of the Sydney Harbour Trust Commissioners incurred in respect of their operations.

Board to assume liabilities.

(2) As from the appointed day the capital indebtedness of the State in respect of the Sydney Harbour Trust Commissioners fixed in accordance with the provisions of section 77E of the Sydney Harbour Trust Act, 1900-1931, or as readjusted in accordance with the provisions of section 77H of that Act, shall be the capital indebtedness of the Board.

9. (1) As from the appointed day the Sydney Harbour Trust Act, 1900-1931, is amended in the manner set out in Schedule One to this Act.

Amendment of Act No. 1, 1901.

(2) The Sydney Harbour Trust Act, 1900-1931, as amended by this Act, may be cited as the Sydney Harbour Trust Act, 1900-1935.

DIVISION 3.—Transfer of certain powers, authorities, duties, functions and obligations exercised and discharged under or by virtue of the Navigation Acts.

10. In this Division the expression "Navigation Acts" means the Navigation Act, 1901, the Navigation Amendment (Regulations) Act, 1904, the Navigation (Amendment) Act, 1927, the Harbour and Tonnage Rates Act, 1920, and any other Act the execution of which is by law committed to the Superintendent of Navigation immediately before the appointed day.

Definition.

11. (1) On and from the appointed day the Board shall be the authority charged with the administration of the Navigation Acts and shall have and may exercise and discharge all the powers, authorities, duties and functions necessary or convenient for carrying out the provisions of the Navigation Acts.

Navigation.

(2) All rules, regulations and by-laws in force immediately before the appointed day made under any of the Navigation Acts shall, to the extent to which they are not inconsistent with this Act or with any regulations made

made

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made thereunder continue and remain in force until altered or repealed by rules, regulations or by-laws made under the same Act as amended by this Act.

(3) As from the appointed day a reference, whether express or implied, to the Superintendent of the Department of Navigation in any Act, rule, regulation or by-law or in any other instrument or document whatsoever, shall be construed as a reference to the Board.

12. On and from the appointed day the following provisions shall, subject to this Act, have effect:—

Rights,
liabilities
and
property.

- (a) All management and control of any land or thing which immediately before the appointed day is vested in or belongs to the Crown, the Colonial Treasurer or the Superintendent of the Department of Navigation under or by virtue of any of the Navigation Acts shall vest in and belong to the Board.
- (b) All leases granted by the Colonial Treasurer under any of the Navigation Acts, and all licenses issued by the Colonial Treasurer under any such Act, shall be deemed to be leases and licenses granted and issued by the Board, and the Board shall have in respect of each such lease or license the same rights and remedies and the same liabilities and obligations as if the lease or license had been granted or issued by the Board after the appointed day.
- (c) All rates, dues, fees, charges, moneys, liquidated and unliquidated claims, which immediately before the appointed day are payable to or recoverable by the Crown, the Colonial Treasurer, or any person on behalf of the Crown or the Colonial Treasurer under or by virtue of any of the Navigation Acts or any rules, regulations, or by-laws made under any such Act, shall respectively be rates, dues, fees, charges, moneys, liquidated and unliquidated claims payable to or recoverable by or on behalf of the Board.

(d)

- (d) All suits, actions and proceedings pending immediately before the appointed day at the suit of or on behalf of the Crown, the Colonial Treasurer, or the Superintendent of the Department of Navigation, under or by virtue of any of the Navigation Acts, or any rules, regulations or by-laws made under any such Act, shall respectively be suits, actions and proceedings pending at the suit of or on behalf of the Board.
- (e) All contracts, agreements and undertakings entered into with and all securities lawfully given to or by the Crown, the Colonial Treasurer, the Superintendent of the Department of Navigation, or any person on behalf of the Crown, the Colonial Treasurer, or the Superintendent of the Department of Navigation under or by virtue of any of the Navigation Acts or any rules, regulations or by-laws made under any such Act and in force immediately before the appointed day shall be deemed to be contracts, agreements and undertakings entered into with and securities given to or by the Board or such person on behalf of the Board.
- (f) The Board may pursue the same remedies for the recovery of any such rates, dues, fees, charges, moneys, and claims, and for the prosecution of any such suits, actions and proceedings as the Crown, the Colonial Treasurer, the Superintendent of the Department of Navigation, or any person on behalf of the Crown, the Colonial Treasurer or such Superintendent might have done if this Act had not been enacted.
- (g) The Board may enforce and realise any security or charge existing immediately before the appointed day in favour of the Crown, the Colonial Treasurer, or the Superintendent of the Department of Navigation, or any person on behalf of the Crown, the Colonial Treasurer or such Superintendent, in respect of any such rates, dues, fees, charges, moneys and claims as if such security or charge were existing in favour of the Board.

(h)

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- (h) All debts due and all moneys payable by, and all claims, liquidated or unliquidated, recoverable against the Crown, the Colonial Treasurer or the Superintendent of the Department of Navigation, or any person on behalf of the Crown, the Colonial Treasurer or such Superintendent under or by virtue of any of the Navigation Acts shall be debts due and moneys payable by and claims recoverable against the Board.

Amendment
of Act No.
60, 1901 and
Act No. 12,
1920.

13. (1) As from the appointed day the Navigation Act, 1901, as amended by subsequent Acts, and the Harbour and Tonnage Rates Act, 1920, are amended in the manner set out in Schedule Two to this Act.

(2) The Navigation Act, 1901, as amended by subsequent Acts and this Act, may be cited as the Navigation Act, 1901-1935.

(3) The Harbour and Tonnage Rates Act, 1920, as amended by this Act, may be cited as the Harbour and Tonnage Rates Act, 1920-1935.

DIVISION 4.—*Officers.*

Transfer
of officers.

14. (1) On and from the appointed day all persons who immediately before such day—

- (a) were officers or servants of the Sydney Harbour Trust Commissioners;
- (b) were officers or employees in the Department of Navigation (including pilots appointed under the Navigation Act, 1901, as amended by subsequent Acts),

shall be transferred to and shall be deemed to have been appointed by the Board as officers and employees of the Board.

The persons so transferred shall continue in the employ of the Board at the will of the Board only.

(2) Any person so transferred shall retain any accrued and accruing rights, including the right to continue to contribute to any fund or account and to receive any annual, sick, deferred, or extended leave, and any payment, pension, or gratuity, as if he had remained an officer,

officer, servant or employee within the meaning of the Sydney Harbour Trust Act, 1900-1931, the Navigation Act, 1901, the Public Service Act, 1902, or the Superannuation Act, 1916-1935, or any Act amending those Acts, as the case may be, and for any such purposes his service as an officer or employee of the Board shall be deemed to be service for the purposes of any of such Acts.

(3) No person so transferred shall be entitled to claim benefits under this Act as well as under any other Act for the same period of service.

(4) Where any condition of employment of any person so transferred is at the date of his transfer regulated by an award or industrial agreement, such condition shall continue to be so regulated until an award by which the Board is bound is made by a court of competent jurisdiction, or such condition is regulated by an industrial agreement to which the Board is a party.

(5) Any person so transferred who was immediately before the appointed day an officer within the meaning of the Public Service Act, 1902, as amended by subsequent Acts, shall have the same right to consideration for any appointment in the Public Service as is provided by the Public Service Act, 1902, or any Act amending that Act, for an officer of the Public Service.

15. (1) The Board shall appoint and employ such officers and employees as may be necessary for carrying out the provisions of this Act. Appoint-
ment of
officers and
employees.

The officers and employees so appointed and employed shall continue in the employ of the Board at the will of the Board only.

Such persons so to be appointed and all persons transferred to the Board under section fourteen of this Act shall be subject to the sole control and governance of the Board.

No person so appointed or transferred shall be permitted to engage in any employment other than in connection with the duties of his office without the sanction in writing of the Board.

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Use of officers and employees of other Departments and statutory bodies.

(2) For the purpose of carrying out the provisions of this Act the Board, with the approval of the Minister of the Department concerned or of any statutory body representing the Crown, and on such terms as may be arranged, may make use of any of the officers or employees of that Department or statutory body.

Public Service Act, 1902, not to apply to officers and employees.

16. The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to the appointment under this Act of any officer or employee of the Board.

Officers and employees so appointed and officers and employees transferred to the Board under this Act shall not during their employment with the Board be subject to the provisions of the Public Service Act, 1902, or any Act amending that Act.

Amendment of Public Service Salaries Act, 1931-1935. Schedule.

17. The Public Service Salaries Act, 1931-1935, is amended—

- (a) by omitting from the Schedule the words "The Sydney Harbour Trust";
- (b) by inserting at the end of the Schedule the words "The Maritime Services Board of New South Wales."

Regulations.

18. (1) The Board may make regulations not inconsistent with this Division of this Part providing for the regulation and control of its officers and employees, and for all matters necessary or convenient for giving effect to this Division of this Part.

(2) Such regulations shall—

- (a) be submitted to the Governor for his approval;
- (b) when approved by the Governor be published in the Gazette;
- (c) take effect from the date of such publication or from a later date to be specified in the regulations;
- (d) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

19.

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If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

19. (1) Any officer or employee of the Board who, without lawful authority, demands or receives from any person any payment, gratuity or present in consideration of doing or omitting to do any act or thing pertaining to his office or employment, shall upon summary conviction be liable to imprisonment for a term not exceeding one year.

Corruption.
cf. Act No. 41, 1919, s. 101.

(2) Any person who, without lawful authority, offers, makes or gives to any officer or employee of the Board any payment, gratuity or present in consideration that such officer or employee will do or omit to do some act or thing pertaining to his office or employment, shall be liable upon summary conviction to imprisonment for a term not exceeding one year.

20. (1) If any officer or employee of the Board when required by the President fails—

Failure to account or deliver up.

- (a) to render account of moneys which shall have come into his hands or under his control and of his dealings therewith, or to pay to the Board the balance of such moneys; or
- (b) to deliver up within two days to the Board all papers, property and things in his possession or power relating to the execution of this Act or belonging to the Board,

cf. *Ibid.* s. 102.

any stipendiary or police magistrate or any two justices may, on the complaint of the President, order such officer or employee to render the accounts, pay the balance or deliver up the papers, property and things, as the case may be, and that, on non-compliance with the order, the officer or employee be imprisoned for a period not exceeding six months.

(2) Proceedings under this section shall not affect the liability of any surety of the officer or employee, or relieve any officer or employee from being held to answer any criminal information, charge or proceeding.

(3)

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(3) For the purposes of this section "officer" or "employee" shall include a person who has, within six months prior to any requirement aforesaid, been an officer or employee, as the case may be, of the Board.

Wilful destruction of documents. cf. Act No. 41, 1919, s. 103.

21. Any officer or employee of the Board, or any other person, who wilfully destroys any document of or belonging to the Board, shall be deemed guilty of a misdemeanour, and shall be liable upon conviction to imprisonment for a term of two years.

DIVISION 5.—*Finance.*

Accounts. cf. Act No. 1, 1901, s. 77B.

22. (1) Full and accurate accounts shall be kept by the Board of its assets, liabilities, income, and expenditure.

Complete and separate financial and cost accounts of each of the functions transferred to the Board under this Act shall also be kept.

(2) The forms and manner of keeping such accounts shall be such as are prescribed by regulations made under the provisions of the Audit Act, 1902.

Receipts.

23. (1) All moneys received or receivable in respect of any function transferred to the Board under this Act shall, subject to this Act, be paid into the same fund and accounted for in the same manner as moneys received or receivable in respect of that function immediately before its transfer to the Board would have been lawfully paid and accounted for.

Expenditure.

(2) All moneys expended or expendable in respect of any function transferred to the Board under this Act shall, subject to this Act, be paid from the same fund or account and in the same manner as moneys expended or expendable in respect of that function immediately before its transfer to the Board would have been paid.

General administrative expenses.

24. The Board shall distribute the general administrative expenses amongst the functions transferred to it in such manner as the Board thinks fair and equitable.

Accounts to be rendered to Minister.

25. (1) Before the thirty-first day of August in each year the Board shall render to the Minister accounts and statements for the then next preceding financial year in respect of each function transferred to the Board under this Act in a form prescribed by regulations made under the provisions of the Audit Act, 1902. (2)

(2) Such accounts and statements shall show fully the true financial position of the Board in respect of each such function and of all services undertaken by the Board in connection with any such function.

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To show true financial position.

(3) The Minister shall cause each of such accounts and statements to be laid before Parliament forthwith if Parliament is then sitting, otherwise within seven sitting days after the commencement of the next ensuing session.

Accounts to be laid before Parliament.

26. The Board shall in the month of May in each year, or at such other time or times as may be required by the Minister, prepare and supply to the Minister in a form prescribed by regulations made under the provisions of the Audit Act, 1902, estimates in respect of each function transferred to the Board under this Act of the income from all sources and of the expenditure proposed for the financial year commencing on the first day of July following or for any other period, and, where necessary, of the amount which the Board proposes that Parliament should appropriate for the requirements of the function for which the appropriation is proposed, and the Board shall, on request, furnish the Minister with all the information at its disposal relating to any item of the estimated income or expenditure.

Estimates. cf. Act No. 1, 1901, s. 77D.

27. (1) Regulations may be made under the provisions of the Audit Act, 1902, for carrying this Division into effect.

Regulations.

(2) Any regulations made under the provisions of the Audit Act, 1902, prescribing the forms and manner of keeping the accounts of the Sydney Harbour Trust Commissioners, and in force at the commencement of this Act, shall continue in force in respect of the accounts of the Board relative to the functions of the Sydney Harbour Trust Commissioners transferred to the Board by this Act until repealed or replaced by later regulations.

DIVISION 6.—*Accounts and audit.*

28. (1) The accounts of the Board shall be audited by the Auditor-General, who shall have, in respect thereof, all the powers conferred on the Auditor-General by any law now or hereafter to be in force relating to the audit

Audit.

of

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of public accounts; and the Audit Act, 1902, and any Acts amending the same, shall apply to the Board and its officers and servants in the same manner as it applies to accounting officers of public departments.

(2) Towards defraying the costs and expenses of such audit, the Board shall pay to the Consolidated Revenue Fund such sums, at such times, as the Colonial Treasurer may decide.

Distribution
of cost of
audit.

(3) The cost and expenses of such audit shall be distributed amongst the functions transferred to the Board by this Act in such manner as the Board thinks fair and equitable.

PART IV.

MISCELLANEOUS.

Judicial
notice of the
seal of the
Board.

29. All courts and persons having by law or consent of parties authority to hear, receive and examine evidence—

- (a) shall take judicial notice of the seal of the Board affixed to any document; and
- (b) shall, until the contrary is proved, presume that such seal was properly affixed thereto.

Service of
notice and
legal
proceedings.
cf. Act No. 1,
1901, s. 96.

30. Any notice, summons, writ, or other proceeding required to be served upon the Board may be served by being given personally to the President or by leaving the same at the office of the Board.

Documents how
authenticated.
cf. *Ibid.* s. 97.

31. Every summons, process, demand, order, notice, statement, direction or document requiring authentication by the Board may be sufficiently authenticated without the seal of the Board if signed by the President.

Power to
direct
prosecutions.
cf. Act No.
32, 1931,
Schedule,
cl. 13.

32. The Board may order either generally or in any particular case that proceedings may be taken for the recovery of any money payable to it or for the recovery of any penalties incurred under or for the punishment of any persons offending against this Act or any Act the execution

execution of which is vested in the Board, or under or against any rule, regulation, or by-law made under any such Act. No. 47, 1935,

33. In all proceedings before any court of petty sessions any officer of the Board appointed by the President in writing under his hand for that purpose may represent the Board in all respects as though such officer was the party concerned.

Power of officer to represent Board in petty sessions.
cf. Act No. 32, 1931, Schedule, cl. 14.

34. In any prosecution or legal proceedings by or under the direction or authority of or on behalf or for the benefit of the Board no proof shall be required (until evidence is given to the contrary) of—

Proof of certain matters not required.
cf. *Ibid.* cl. 15.

- (a) the constitution of the Board;
- (b) any order of the Board;
- (c) the particular or general appointment of any officer of the Board to take proceedings against any person;
- (d) the powers of any officer to prosecute or take proceedings;
- (e) the fact that any particular matter or place is within the jurisdiction of the Board;
- (f) the fact that the defendant is, or at any relevant time was, the owner or occupier of any land in question;
- (g) the fact that the defendant is, or at any relevant time was, the owner or in possession, control, or in charge of anything in question;
- (h) the fact that the defendant is, or at any relevant time was, the master or person in charge of any vessel or ship in question;
- (i) the fact that the defendant is, or at any relevant time was, the owner or agent of any vessel or ship in question.

35. (1) All documents whatsoever purporting to be issued or written by or under the direction of the Board, and purporting to be signed by the President, shall be received as evidence in all courts and before all persons acting judicially within New South Wales, and shall, without proof, be deemed to have been issued or written by or under the direction of the Board until the contrary is shown.

Evidence of documents issued by the Board.
cf. *Ibid.* cl. 16.

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(2) In this section the word "documents" includes demands, orders, notices, statements, or directions.

Delegation
by Board.

36. (1) In relation to any particular matters or class of matters, or as to any particular part or port of the State, the Board may by writing delegate any of its powers or functions under this Act (except this power of delegation) to any officer or employee of the Board, so that the delegated powers or functions may be exercised by the delegate with respect to the powers or functions or class of matters specified or the part or port defined in the instrument of delegation.

(2) Every such delegation shall be revocable in writing at will, and no delegation shall prevent the exercise of any power or function by the Board.

SCHEDULES.

SCHEDULE ONE.

Sec. 9.

Amendments to the Sydney Harbour Trust Act, 1900-1931.

Amendment of
Act No. 1,
1901.Sec. 3.
(Definitions.)

New s. 3A.

References to
the commis-
sioners.Secs. 5-20.
(The Commis-
sioners and
officers.)Secs. 77B, 77C,
77D.
(Accounts,
report, esti-
mates.)Secs. 89, 90,
98.
(Consequen-
tial.)

THE Sydney Harbour Trust Act, 1900-1931, is amended as follows:—

- (a) by omitting from section three the definition of "Commissioners";
- (b) by inserting next after section three the following new section:—
 - 3A. A reference express or implied in this Act to the Sydney Harbour Trust Commissioners or to the Sydney Harbour Trust or to the commissioners shall be read and construed as a reference to The Maritime Services Board of New South Wales constituted under the Maritime Services Act, 1935.
- (c) by omitting sections five to twenty both inclusive;
- (d) by omitting sections 77B, 77C and 77D;
- (e) by omitting sections eighty-nine, ninety-six and ninety-eight.

SCHEDULE

SCHEDULE TWO.

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Sec. 13.

Amendments to the Navigation Act, 1901.

1. The Navigation Act, 1901, as amended by subsequent Acts, is amended as follows:—

Amendment of Act No. 60, 1901.

(a) by inserting in section three immediately before the definition of the expression "British Possession" the following definition:—

Sec. 3. (Definitions.)

"Board" means "The Maritime Services Board of New South Wales constituted under the Maritime Services Act, 1935";

(b) by inserting next after section three the following new section:—

New s. 3A.

3A. A reference, express or implied, in this Act to the Superintendent or to the Superintendent of Navigation shall be read and construed as a reference to The Maritime Services Board of New South Wales constituted under the Maritime Services Act, 1935.

References to Superintendent.

(c) by omitting section six;

Sec. 6. (Superintendent.)

(d) by omitting from section seven the words "subject to the control of the Treasurer."

Sec. 7. (Powers of Superintendent.)

(e) by omitting section fourteen;

Sec. 14. (Deputy Superintendent.)

(f) by omitting section fifteen;

Sec. 15. (Officers.)

(g) by omitting from section sixteen the word "Governor" and by inserting in lieu thereof the word "Board";

Sec. 16. (Inspectors.)

(h) (i) by omitting from section seventeen the word "Governor" and by inserting in lieu thereof the word "Board";

Sec. 17. (Surveyors.)

(ii) by omitting from the same section the word "he" and by inserting in lieu thereof the word "it";

(i) by omitting from subsection one of section twenty-one the words "the Superintendent" where secondly occurring and by inserting in lieu thereof the words "any person so deputed as aforesaid";

Sec. 21. (Arrest.)

(j) by omitting section twenty-two;

Sec. 22. (Appointments.)

(k) by omitting from subsection six of section thirty-two the words "Colonial Treasurer" and by inserting in lieu thereof the word "Board";

Sec. 32. (Inquiries.)

(l) by inserting in subsection two of section sixty-two after the words "accounted for and paid" the words "to the Board and by it paid";

Sec. 62. (Rates, etc.)

(m)

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Sec. 71.
(Consequential.)

(m) by omitting from subsection two of section seventy-one the word "Government" and by inserting in lieu thereof the word "Board";

Sec. 109.
(Inspection of ships.)

(n) by omitting from section one hundred and nine the word "Governor" wherever occurring and by inserting in lieu thereof the word "Board";

Sec. 135.
(Regulations.)

(o) by omitting from paragraph (a) of section one hundred and thirty-five the words "the Governor prescribes" and by inserting in lieu thereof the words "the regulations may prescribe";

Sec. 145 (3).
(Harbour Master's fees.)

(p) by omitting from subsection three of section one hundred and forty-five the word "Government" and by inserting in lieu thereof the word "Board";

Sec. 154.
(Leasing of public wharf.)

(q) (i) by omitting from section one hundred and fifty-four the word "Treasurer" wherever occurring and by inserting in lieu thereof the word "Board";

(ii) by omitting from subsection one of the same section the word "he" and by inserting in lieu thereof the word "it."

Sec. 157.
(Fees.)

(r) by omitting from subsection three of section one hundred and fifty-seven the word "Governor" and by inserting in lieu thereof the word "Board";

Sec. 169.
(Penalties.)

(s) by inserting in section one hundred and sixty-nine after the word "paid" the words "to the Board and by it paid."

Sec. 18.

Amendments to the Harbour and Tonnage Rates Act, 1920.

Amendment of Act No. 12, 1920.

2. The Harbour and Tonnage Rates Act, 1920, is amended as follows:—

Sec. 4.
(Definitions.)

(a) by inserting in section four immediately before the definition of "Goods" the following new definition:—

"Board" means The Maritime Services Board of New South Wales constituted under the Maritime Services Act, 1935.

Sec. 5A.
Administration.

(b) by inserting after section five the following new section:—

5A. The Board shall have the administration of this Act and shall exercise the powers and discharge the duties conferred and imposed on it by this Act.

Sec. 13
(Wharfingers.)

(c) by omitting section thirteen;

Sec. 15.
(Recovery of rates.)

(d) (i) by inserting in subsection one of section fifteen after the word "recovered" the words "by the Board and shall be recoverable";

(ii) by omitting from subsection five of the same section the words "Colonial Treasurer" and by inserting in lieu thereof the word "Board";

APPROPRIATION.