

MARITIME SERVICES (AMENDMENT) ACT.

Act No. 18, 1953.

An Act to make further provision in relation to wharfage, harbour and tonnage rates; for this and other purposes to amend the Sydney Harbour Trust Act, 1900, the Sydney Harbour Rates Act, 1904, the Harbour and Tonnage Rates Act, 1920, the Navigation Act, 1901, the Maritime Services Act, 1935, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 9th November, 1953.]

Elizabeth II,
No. 18, 1953.

BE it enacted by the Queen'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:—

1. (1) This Act may be cited as the "Maritime Services (Amendment) Act, 1953."

Short title
and
citation.

(2) The Maritime Services Act, 1935, as amended by subsequent Acts and by this Act, may be cited as the Maritime Services Act, 1935-1953.

(3) The Sydney Harbour Trust Act, 1900, as amended by subsequent Acts and by this Act, may be cited as the Sydney Harbour Trust Act, 1900-1953.

(4) The Sydney Harbour Rates Act, 1904, as amended by subsequent Acts and by this Act, may be cited as the Sydney Harbour Rates Act, 1904-1953.

(5) The Harbour and Tonnage Rates Act, 1920, as amended by subsequent Acts and by this Act, may be cited as the Harbour and Tonnage Rates Act, 1920-1953.

2.

Maritime Services (Amendment) Act.

No. 18, 1953. **2.** The Maritime Services Act, 1935-1941, is amended—

**Amendment
of Act
No. 47, 1935.
Sec. 4.
(Advisory
Committee,
Port of
Newcastle.)**

(a) (i) by omitting from paragraph (a) of subsection two of section four the word "five" and by inserting in lieu thereof the word "eight";

(ii) by omitting from paragraph (b) of the same subsection the word "four" and by inserting in lieu thereof the word "seven";

New sec. 4A. (b) by inserting next after the same section the following new section:—

**Advisory
Committees
for ports
other than
the Port of
Newcastle.**

4A. (1) The Governor may from time to time, on the recommendation of the Board, constitute an Advisory Committee in respect of any port, other than the Port of Newcastle, or group of ports for the purpose of giving advice and assistance to the Board in connection with the management, control and development of that port or group of ports.

(2) (a) An Advisory Committee constituted under this section shall consist of such number of persons as the Governor may appoint thereto.

(b) One of such members shall be nominated by the Board, and the remaining members shall be representative of the interests principally affected by the administration of this Act in relation to, or have special knowledge of, the port or group of ports in respect of which the Advisory Committee is constituted.

(3) It shall be the duty of an Advisory Committee appointed under this section to consider and advise the Board upon all major matters relating to the management, control and development of the port or group of ports in respect of which the Advisory Committee has been constituted, and upon any other matter or question which may from time to time be referred to it by the Board.

(4)

(4) The provisions of subsections four to fourteen, both inclusive, of section four of this Act shall, mutatis mutandis, apply to an Advisory Committee constituted under this section. No. 18, 1953.

(c) by omitting section thirty-three and by inserting in lieu thereof the following section:— Subst.
sec. 33.

33. In any prosecution or legal proceedings before any inferior court by or under the direction or authority of or on behalf or for the benefit of the Board, any officer of the Board appointed by the President in writing under his hand for that purpose may represent the Board or the person directed or authorised by the Board to institute such prosecution or legal proceedings in all respects as though such officer was the party concerned. Power of
officer to
represent
Board, &c.,
in inferior
courts.

(d) by inserting at the end of section thirty-four the following new paragraphs and subsection:— Sec. 34.
(Proof of
certain
matters not
required.)

- (j) the fact that any vessel or ship in question is, or at any relevant time was, being used for profit or reward;
- (k) the net tonnage or gross tonnage of any vessel or ship in question;
- (l) the fact that the owner of any vessel or ship in question does not, or did not at any relevant time, hold in respect of the vessel or ship a valid and unexpired certificate of compliance with, or a valid or unexpired certificate of survey issued under, the provisions of any Act or regulation administered by the Board.

(2) For the purpose of any such prosecution or legal proceedings, a person shall be deemed to be the owner of a vessel or ship notwithstanding that he has mortgaged, chartered, leased or hired in any way the vessel or ship
or

Maritime Services (Amendment) Act.**No. 18, 1953.**

or that any other person is entitled, whether at law or in equity, to any share or interest in the vessel or ship.

New secs. 37, 38.

(e) by inserting next after section thirty-six the following new sections:—

Proof of regulations.

37. In any prosecution or legal proceedings the production of any writing purporting to be a copy of any regulation made under this Act, the Sydney Harbour Trust Act, 1900-1953, the Navigation Act, 1901-1949, or any other Act with the administration of which the Board is charged, or under any amendment of any of such Acts, and purporting to be certified as a true copy of such regulation by the Secretary of the Board or by the officer of the Board for the time being acting as Secretary of the Board shall be evidence that such regulation was duly made or duly made and confirmed and that it is still in force without any proof of the official character or of the signature of the person appearing to have signed such writing.

Board may make regulations.

38. (1) The Board, with the approval of the Governor, may make regulations not inconsistent with this Act or with any other Act with the administration of which the Board is charged—

- (a) in relation to any authority, duty, function, obligation or power conferred or imposed on the Board;
- (b) in relation to any matter or thing over which the Board has control or the general superintendence;
- (c) prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to the Sydney Harbour Trust Act, 1900, the Sydney Harbour Rates Act, 1904, the Harbour and Tonnage Rates Act, 1920, or any amendment of any of those Acts.

(2)

(2) In particular and without limiting the generality of the foregoing power the Board, with the approval of the Governor, may make regulations for or in relation to—

No. 18, 1953.

- (a) the marking, sorting, stacking, loading, unloading, delivery and the handling generally of cargo and goods in any port or on any wharf or on any land vested in the Board or under its control and management;
- (b) controlling and regulating the placing, removing or use of moorings in any port and providing for their registration, inspection, realignment and replacement;
- (c) notwithstanding anything contained in section eighty-six of the Sydney Harbour Trust Act, 1900-1953, the prevention, prohibition or regulation, whether by the adoption of standards or otherwise, of the doing or continuance of anything likely to cause the pollution of the navigable waters lying within one nautical league of the coast or the inland navigable waters of New South Wales or the foreshores or shores of any such navigable waters or inland navigable waters, or any portion of such navigable waters, inland navigable waters, foreshores or shores;
- (d) the management, control and development of any port or wharf or any land vested in the Board or under its control and management;
- (e) controlling and regulating the use of any portion of the bed, foreshores, or shores of any port;
- (f) controlling and regulating the use of vessels or ships in the inland navigable waters of New South Wales generally and

No. 18, 1953.

and in particular for the purpose of diminishing or preventing the emission of sparks, smoke or noise therefrom or of preventing their interference with other vessels or ships or their use in such manner that they become an annoyance, nuisance or danger to any person;

- (g) the commencement, carrying-out, completion and control generally of all work connected with the cutting-down, demolition, destruction and removal of any ship, vessel or structure in any port and the imposition of fees in relation to any such work; the removal by any means whatsoever of derelicts, impediments, obstructions, nuisances, wrecks and the like;
- (h) the precautionary or safety measures to be taken and the control generally of all matters relating to the conveying, loading, unloading, delivery and the handling generally of explosives in any port;
- (i) the control, regulation and management generally of all matters relating to vessels or ships in any port and to vehicles of any description and their drivers on any wharf or on any property vested in the Board or under its management or control;
- (j) the licensing of porters and prescribing their duties;
- (k) controlling and regulating the use of any vehicle or machine of any description operating on any wharf or on any property vested in the Board or under its management or control.

(3)

- (3) A regulation may—
- (a) be of general or specially limited application according to time, place or circumstances, and may be general or restricted to any specified class of subject matter;
 - (b) provide for the issue, making, revocation, cancellation or suspension of licenses, registration certificates or permits to or with respect to persons and property and for the payment of license, registration and permit fees;
 - (c) provide for the payment of fees for inspections and other services rendered by officers and employees of the Board;
 - (d)
 - (i) where the regulation is made under paragraph (c) of subsection two of this section for the purpose of preventing, prohibiting or regulating the doing or continuance of anything likely to cause any such pollution as is referred to in that paragraph by inflammable liquid, or dangerous goods, or volatile or furnace or lubricating oil, or liquid derived from petroleum, shale or coal, impose a penalty not exceeding one thousand pounds for any breach thereof;
 - (ii) in any other case, impose a penalty not exceeding one hundred pounds for any breach thereof;
 - (e) fix a minimum as well as a maximum penalty, and impose a daily penalty for any continuing breach thereof not exceeding twenty pounds per day;
 - (f) provide that any costs or expenses incurred by the Board as a result of the breach thereof may be recovered in any court of competent jurisdiction from the person convicted of such breach.

No. 18, 1953.

(4) In this section—

“dangerous goods” has the meaning ascribed to that expression in section five and in paragraph (b) of subsection five of section nineteen of the Inflammable Liquid Act, 1915, as amended by subsequent Acts.

“inflammable liquid” has the meaning ascribed to that expression in the Inflammable Liquid Act, 1915, as amended by subsequent Acts.

“port” means so much of the port of Sydney, the rivers falling into it with their tributaries, and the land on the margins thereof as is covered at mean high-water, and includes any other harbour or haven, whether natural or artificial, and any estuary, channel, river, creek or roadstead and any navigable water in which ships may lie for shelter, or for shipping or unshipping goods or passengers.

“wharf” means any wharf, dock, pier, jetty, landing-stage, slip or platform vested in the Crown or the Board and includes any depot, shed, building or structure erected thereon or forming part thereof or used in connection therewith and any land vested in the Crown or the Board adjoining or adjacent to any wharf as hereinbefore defined and used in connection therewith, but does not include any wharf as hereinbefore defined the control and management of which is vested in the council of a municipality or shire.

(5) Any regulations so made shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication, or from a later date to be specified in such regulations; and

(c)

- (c) 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. No. 18, 1953.

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

3. The Sydney Harbour Trust Act, 1900, as amended by subsequent Acts, is amended— Amendment of Act No. 1, 1901.

- (a) by inserting in section three next after the definition of "Ballast" the following new definition:— Sec. 3. (Interpretation.)

"Board" means The Maritime Services Board of New South Wales.

- (b) by omitting section twenty-six and by inserting in lieu thereof the following section:— Subst. sec. 26.

26. (1) All actions against the Board or any person for anything done or omitted, or purporting to have been done or omitted, under the provisions of this Act shall be commenced within one year after the act or the omission complained of was committed or made. Actions against the Board or its officers.

(2) No action shall be commenced against the Board or any person for anything done or omitted, or purporting to have been done or omitted, by it or him under the provisions of this Act, until one month, at least, after a notice in writing of such intended action has been delivered to or left at—

- (a) in the case of an intended action against the Board or any one or more of the commissioners thereof—the office of the Board;
- (b) in the case of an intended action against any other person—his usual place of abode,

by

No. 18, 1953.

by the party intending to commence such action or by his attorney or agent.

(3) Such notice shall state clearly and explicitly the cause of action and the court in which the same is intended to be brought, and upon the back thereof shall be endorsed the name and usual place of abode of the party intending to sue, and also the name and usual place of abode or of business of the attorney or agent, if such notice was served by such attorney or agent.

(4) A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge before whom the action is tried is of opinion that the defendant in the action has been prejudiced in his defence by such defect or inaccuracy.

(5) The defendant in any such action may plead the general issue, and at the trial thereof give this Act and the special matter in evidence.

(6) The plaintiff shall not recover in any such action if tender of sufficient amends has been made before such action was brought, or if a sufficient sum of money has been paid into court after the commencement of such action by or on behalf of the defendant.

(7) If the matter or thing complained of appears to have been done or omitted under the authority and in the execution of this Act, or if any such action is brought after the time limited for bringing the same, or if any such notice has not been given as aforesaid, the jury shall find or judgment shall be given for the defendant.

New sec. 30A.

(c) by inserting next after section thirty the following new section:—

Small
reclamations.

30A. It shall be and shall be deemed always to have been lawful for the Board to authorise any person to reclaim any part of the port adjoining the shores of the port and to sell such part to that person notwithstanding that the provisions of section thirty of this Act are not or have not been complied with:

Provided

Provided that no such reclamation shall be authorised which may interrupt or interfere with navigation: No. 18, 1953.

Provided further that after the commencement of the Maritime Services (Amendment) Act, 1953, the Board shall not, pursuant to this section, authorise any person to reclaim any part of the port in excess of two roods;

(d) by omitting section thirty-five;

Sec. 35.
(No mooring chains to be laid down without permission of the Board.)

(e) (i) by omitting the proviso to section forty-nine;

Sec. 49.
(Contracts by the Board, how to be entered into.)

(ii) by inserting at the end of the same section the following new subsection:—

(2) The Board shall not enter into any contract where the amount involved exceeds two thousand pounds except after public tender, of which public notice has been given, but the Board shall not be bound to accept the lowest tender:

Provided that the foregoing provisions of this subsection do not apply in cases of emergency or where the Board, after due enquiry, is satisfied that there is only one manufacturer or supplier of the articles or goods required by the Board.

(f) (i) by omitting from section fifty the words “for the commissioners, with the approval of the Minister, at a meeting specially called for that purpose, of which meeting three days’ notice shall be given,” and by inserting in lieu thereof the words “and shall be deemed always to have been lawful for the Board at any duly convened meeting at which a quorum is present”;

Sec. 50.
(Board may compound for breach of contracts.)

(ii)

Maritime Services (Amendment) Act.**No. 18, 1953.**

(ii) by omitting from the same section the words "recompense as the commissioners" and by inserting in lieu thereof the words "consideration as the Board";

Subst. sec. 69A.

(g) by omitting section 69A and by inserting in lieu thereof the following section:—

Amount of rates.

69A. The Board shall, by regulations which it is hereby authorised with the approval of the Governor to make, fix the amount of such wharfage rates.

Such rates, whether inward or outward, may be by measurement or weight, in the discretion of the Board, but outward wharfage rates shall not exceed half the inward wharfage rates so fixed.

Fixed rates may also be imposed by such regulations on specified articles or packages or classes of articles or packages:

Provided that the rates so imposed for any specified article or package or class of article or package shall not exceed the rate prescribed by measurement or weight, as the case may be:

Provided also that a minimum rate may be imposed on any specified articles or packages or classes of articles or packages.

Amendment of Act No. 26, 1904.

Subst. sec. 7.

4. The Sydney Harbour Rates Act, 1904, as amended by subsequent Acts, is amended by omitting section seven and by inserting in lieu thereof the following section:—

Scale of tonnage rates.

7. (1) The tonnage rates to be levied shall be at such rate as may be prescribed by the regulations for each ton of the gross tonnage measurement of the vessel for each complete period of twenty-four hours, and for periods of less than twenty-four hours at such rate as may be prescribed by the regulations for each ton of the gross tonnage measurement of the vessel for each period of six hours or part thereof but in such case the rate prescribed shall not exceed one-fourth of the rate prescribed for a complete period of twenty-four hours.

(2)

Maritime Services (Amendment) Act.

93

(2) The regulations may, on such conditions (including the imposition of a fee or charge), if any, as may be prescribed by the regulations, provide that tonnage rates shall not be levied upon any vessel—

No. 18, 1953.

- (a) using any wharf, dock, pier, jetty, landing-stage, slip or platform vested in the Board, for purposes other than the handling of cargo or passengers;
- (b) detained by the harbour-master at any wharf, dock, pier, jetty, landing-stage, slip or platform vested in the Board, for any purpose connected with the control or management of the port; or
- (c) allowed by the harbour-master to take up or to continue to occupy any wharf, dock, pier, jetty, landing-stage, slip or platform vested in the Board because of the stress of the weather.

5. The Harbour and Tonnage Rates Act, 1920, as amended by subsequent Acts, is amended—

Amendment of Act No. 12, 1920.

- (a) by inserting in section five after the words “port to” the words “or remove any port from”;
- (b) by omitting subsection two of section six and by inserting in lieu thereof the following subsection:—

Sec. 5.
(Ports to which Act applies.)

Sec. 6.
(Harbour rates to be levied.)

(2) Such rates, whether inward or outward, may be by measurement or weight, in the discretion of the Board, but outward harbour rates shall not exceed half the inward harbour rates so fixed.

Fixed rates may be imposed by such regulations on specified articles or packages or classes of articles or packages:

Provided that the rates so imposed for any specified article or package or class of article or package shall not exceed the rate prescribed by measurement or weight, as the case may be:

Provided

No. 18, 1953.

Provided also that a minimum rate may be imposed on any specified articles or packages or classes of articles or packages.

Sec. 9.
(Levy of
tonnage
rates.)

(c) (i) by omitting from section nine all words after the word "port" where firstly occurring and by inserting in lieu thereof the words "at such rate as may be prescribed by the regulations for each ton of the gross tonnage measurement of the vessel for each complete period of twenty-four hours, and for periods of less than twenty-four hours at such rate as may be prescribed by the regulations for each ton of the gross tonnage measurement of the vessel for each period of six hours or part thereof but in such case the rate prescribed shall not exceed one-fourth of the rate prescribed for a complete period of twenty-four hours";

(ii) by inserting at the end of the same section the following new subsection:—

(2) The regulations may, on such conditions (including the imposition of a fee or charge), if any, as may be prescribed by the regulations, provide that tonnage rates shall not be levied upon any vessel—

(a) using any public wharf for purposes other than the handling of cargo or passengers;

(b) detained by the officer-in-charge at any public wharf for any purpose connected with the control or management of the port; or

(c) allowed by the officer-in-charge to take up or to continue to occupy any public wharf because of the stress of the weather.

(d)

(d) by inserting next after paragraph (h) of sub- No. 18, 1953.
section one of section eighteen the following Sec. 13.
new paragraph:—

(h1) the fixing and collecting of charges (Power to
for berthing or mooring at or using make
any dolphin or dolphins. regula-
tions.)

6. Any regulations made under any Act amended by Savings.
this Act fixing, imposing or levying any wharfage,
harbour or tonnage rates and in force immediately
before the commencement of this Act shall be deemed to
have been made under such first-mentioned Act, as
amended by this Act.
