

PORT RATES ACT.

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 42, 1975.

An Act to provide for the charging and payment of rates in respect of goods brought into, shipped from or transhipped in New South Wales ports and rates and charges in respect of vessels berthed in those ports; to repeal the Sydney Harbour Rates Act, 1904, the Harbour and Tonnage Rates Act, 1920, and Part IV of the Sydney Harbour Trust Act, 1900; to amend the Maritime Services Act, 1935; and for purposes connected therewith. [Assented to, 18th April, 1975.]

BE

No. 42, 1975 **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:—

Short title. 1. This Act may be cited as the "Port Rates Act, 1975".

Commencement. 2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

The Crown 3. This Act binds the Crown in right of the State of New South Wales and also, so far as the legislative power of Parliament permits, in all its other capacities.

Act administered by Board. 4. The Board is charged with the administration of this Act.

Interpretation. 5. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

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

"buoy" means a floating apparatus (not being a wharf) in navigable waters used for securing a vessel;

"cargo

Port Rates.

“cargo buoy” means a buoy designated by order of the Board for use for securing a vessel during the shipment or unshipment of cargo thereon or therefrom; No. 42, 1975

“cargo dolphin” means a dolphin designated by order of the Board for use for securing a vessel during the shipment or unshipment of cargo thereon or therefrom;

“cargo vessel” means a vessel constructed or adapted for the carriage of goods by sea;

“dolphin” means an apparatus or a structure (not being a wharf) which is erected on the bed of navigable waters and which is used for securing a vessel;

“freight receptacle” means a receptacle of a permanent character, other than a vessel, used or designed or adapted for use as a receptacle for the carriage of goods;

“goods” includes wares, merchandise, articles and substances of whatsoever description and, except in the definition of “freight receptacle” in this subsection, includes a freight receptacle;

“lighter”, in relation to a port in which a lighter is required by law to be licensed, means a lighter which is the subject of, and used in accordance with the conditions of, a license that is in force;

“master” includes a person having lawfully, or in fact, the command, charge or management of a vessel for the time being;

“owner”

No. 42, 1975

“owner” includes a person exercising or discharging, or claiming the right or accepting the obligation to exercise or discharge, any of the powers or duties of an owner, whether on his own behalf or on behalf of another, and—

- (a) in relation to goods, other than freight receptacles, includes a consignor, consignee, shipper or agent for the sale, custody, shipment or unshipment of the goods;
- (b) in relation to a freight receptacle, includes a person who has contracted to carry goods therein, and the owner of any vessel on or from which the freight receptacle is carried or was last unshipped in a port; and
- (c) in relation to a vessel, includes—
 - (i) a person who is the owner of a vessel jointly with any other person or persons;
 - (ii) in relation to a vessel for which while it is in a port or when it was last in a port there is or was an agent for the berthing or working of the vessel and, where the vessel has left that port, for which there was no other agent when it last left that port—that firstmentioned agent; and
 - (iii) in relation to a vessel for which when it last left a port there was an agent other than an agent for the berthing or working of that vessel when it was in that port—that first-mentioned agent;

“passengers’

Port Rates.

“passengers’ luggage” means goods which belong to passengers on a vessel and which are carried on that vessel without charge for freight; No. 42, 1975

“port” includes any harbour or haven, whether natural or artificial, any estuary, channel, river, creek or roadstead and any navigable water in which ships may lie for shelter or for the shipment or unshipment of goods or passengers;

“public buoy” means a buoy in a scheduled port, being a buoy that is vested in the Crown or a Minister of the Crown;

“public cargo buoy” means a cargo buoy in a scheduled port, being a cargo buoy that is vested in the Crown or a Minister of the Crown;

“public cargo dolphin” means a cargo dolphin in a scheduled port, being a cargo dolphin that is vested in the Crown or a Minister of the Crown;

“public dolphin” means a dolphin in a scheduled port, being a dolphin that is vested in the Crown or a Minister of the Crown;

“public wharf” means a wharf in a scheduled port, being a wharf that is vested in the Crown or a Minister of the Crown, but does not include a public wharf the control and management of which is vested in the council of a city, municipality or shire;

“regulations” means regulations under this Act;

“scheduled port” means a port specified in the Schedule;

“Secretary of the Board” includes an officer of the Board for the time being acting as Secretary of the Board;

“vessel”

Port Rates.

No. 42, 1975

“vessel” means a ship, lighter, barge, boat, raft, craft or floating object or apparatus used wholly or in part for the conveyance of persons or things by water, of whatever description and however navigated, and includes an amphibious vehicle, a hydroplane, a hydrofoil and a hovercraft;

“vested buoy” means a buoy installed by the Board in a vested port or a scheduled port;

“vested cargo buoy” means a cargo buoy in a vested port or a cargo buoy installed by the Board in a scheduled port;

“vested cargo dolphin” means a cargo dolphin in a vested port or a cargo dolphin erected by the Board in a scheduled port;

“vested dolphin” means a dolphin erected by the Board in a vested port or a scheduled port;

“vested port” means such parts of the Ports of Sydney, Newcastle and Botany Bay as are vested in the Board and any other port for the time being vested in the Board;

“vested wharf” means a wharf in a vested port and a wharf erected, constructed or installed by the Board in a scheduled port;

“wharf” means a wharf, dock, pier, jetty, landing-stage, slip, platform or other fixed or floating structure or apparatus which is—

- (a) structurally attached to or made fast to the shore of a port or a structure on the shore of a port; or

(b)

Port Rates.

- (b) used or capable of use in connection with No. 42, 1975 the shipment or unshipment of passengers or goods on or from a vessel from or to the shore of a port without the use of another vessel or a pipeline,

and which is or is intended to be used for securing a vessel and includes any depot, shed, building or structure erected thereon or forming part thereof or used in connection therewith and any land adjoining or adjacent to any wharf as hereinbefore defined and used in connection therewith.

(2) The Governor may, by proclamation published in the Gazette, add the name of any port to or remove the name of any port from the Schedule.

(3) For the purposes of this Act—

- (a) a vessel shall be deemed to be berthed at a wharf, buoy or dolphin if it is secured to or otherwise held at that wharf, buoy or dolphin or if it is one of a number of vessels secured or held together, one of which is secured to or otherwise held at that wharf, buoy or dolphin; and
- (b) a wharf to or at which a vessel is secured or otherwise held while it is occupying waters in a port shall be deemed, while the vessel is so secured or held and where the port is—
- (i) a vested port; or
 - (ii) a scheduled port and the wharf was erected, constructed or installed by the Board,

to be a vested wharf notwithstanding that the wharf is not in that port.

No. 42, 1975
Rates
and
charges.

6. (1) Subject to this Act, the Maritime Services Act, 1935, the regulations and any agreement under section 10, there shall be chargeable in accordance with this Act and the regulations—

- (a) inward harbour rates in respect of goods brought by sea to a vested port or scheduled port for unshipment in that port or in waters connected therewith;
- (b) outward harbour rates in respect of goods shipped in a vested port or scheduled port or in waters connected with such a port and carried by sea from that port;
- (c) transshipment rates in respect of goods brought by sea to a vested port or scheduled port, unshipped in that port or in waters connected therewith and reshipped in that port or in waters connected therewith, within fourteen days after that unshipment, and carried by sea from that port;
- (d) tonnage rates in respect of any vessel, other than a lighter, having a gross tonnage of 240 or more while berthed at a vested wharf, a vested cargo dolphin, a vested cargo buoy, a public wharf, a public cargo dolphin or a public cargo buoy;
- (e) berthing charges in respect of any vessel having a gross tonnage of less than 240 or any lighter while the vessel or lighter is berthed at a vested wharf, a vested cargo dolphin, a vested cargo buoy, a public wharf, a public cargo dolphin or a public cargo buoy; and
- (f) moorage rates in respect of any vessel while berthed at a vested dolphin, vested buoy, public buoy or public dolphin.

(2)

Port Rates.

(2) Inward harbour rates, outward harbour rates, No. 42, 1975 transhipment rates, tonnage rates, berthing charges and moorage rates shall be of such amounts as may be prescribed in respect of any of those rates or those charges.

(3) Inward harbour rates and outward harbour rates are not chargeable in respect of—

- (a) goods in respect of which transhipment rates are chargeable; or
- (b) passengers' luggage.

(4) Moorage rates are not chargeable in respect of a vessel while berthed if tonnage rates or berthing charges are chargeable while the vessel is berthed.

(5) Any rates that but for this subsection would be chargeable under subsection (1) (a), (b) or (c) in respect of goods shall not be so chargeable if the goods are or belong to a class that is exempted from those rates by order of the Board.

(6) The Board shall not make an order under subsection (5) in respect of a scheduled port except with the approval of the Treasurer.

7. (1) Inward harbour rates, outward harbour rates and transhipment rates are payable, on demand made by the Board, to the Board— Payment
of rates
and
charges.

(a) by the person who was the owner of the goods in respect of which the rates are chargeable under section 6 when the goods were—

- (i) in the case of inward harbour rates, brought into the port;
- (ii) in the case of outward harbour rates, carried by sea from the port; and

(iii)

Port Rates.

No. 42, 1975

(iii) in the case of transshipment rates, unshipped in the port or in waters connected therewith;
or

(b) so far as the rates have not been paid by the person referred to in paragraph (a), by the person who is the owner of the goods in respect of which the rates are chargeable under section 6 when the demand is made.

(2) Tonnage rates, berthing charges and moorage rates are payable, on demand made by the Board, to the Board—

(a) by the person who was the owner of the vessel in respect of which the rates are chargeable under section 6 when the rates or charges accrued;

(b) so far as the rates have not been paid by the person referred to in paragraph (a), by the person who is the owner of the vessel in respect of which the rates are chargeable under section 6 when the demand is made.

(3) Any such rates or charges are, if unpaid, recoverable as a debt in any court of competent jurisdiction from the person by whom they are payable.

Penalties
for non-
payment of
rates or
charges,
etc.

8. (1) Subject to any agreement under section 10, a person shall not remove or cause, permit or suffer to be removed from—

(a) a vessel otherwise than to a wharf; or

(b) a wharf,

any goods in respect of which inward harbour rates are chargeable but unpaid (whether or not a demand for payment has been made by the Board).

(2)

Port Rates.

(2) Subject to any agreement under section 10, the owner of a vessel shall not issue a bill of lading in respect of any goods carried by the vessel in respect of which outward harbour rates or transshipment rates are chargeable but unpaid (whether or not a demand for payment has been made by the Board). No. 42, 1975

(3) Subject to any agreement under section 10, a person on whom a demand in writing has been made by the Board for the payment of tonnage rates, berthing charges or moorage rates chargeable under section 6 in respect of a vessel contravenes this section if the vessel leaves the port in which the rates or charges became payable without their being paid and that person is the owner of the vessel when it leaves that port.

(4) A person shall not furnish to the Board any false or misleading information with respect to any matter relevant to the calculation of any rates or charges chargeable under this Act.

Penalty : \$1,000.

9. The owner of a vessel shall—

(a) within one day after the vessel enters a vested port or scheduled port on a voyage, cause to be given to the Board—

Cargo
manifests
and
notices.

- (i) two copies of a manifest containing the prescribed particulars of all goods that, on that voyage, have been or are intended to be unshipped from that vessel (including goods unshipped or intended to be unshipped for reshipment) in that port; or
- (ii) in the case of a cargo vessel, if no such goods have been or are intended to be so unshipped, notice of that fact; or

(b)

Port Rates.

No. 42, 1975

(b) within fourteen days after a vessel leaves a vested port or scheduled port on a voyage, cause to be given to the Board—

- (i) two copies of a manifest containing the prescribed particulars of all goods that, on that voyage, were shipped on that vessel (including goods reshipped) in that port; or
- (ii) in the case of a cargo vessel, if no such goods were so shipped, notice of that fact.

Penalty : \$1,000.

Special agreements regarding rates and charges.

10. (1) The Board may, by agreement with any person containing such terms and conditions as may be agreed upon, authorise—

- (a) the removal from a wharf or vessel of; or
- (b) the issue of bills of lading in respect of,

specified goods or goods of or other than of a specified class, in respect of which rates chargeable under this Act have not been paid.

(2) The Board may, by agreement with any person containing such terms and conditions as may be agreed upon (whether or not the agreement is included in a lease or license in respect of real or personal property), exempt wholly or in part a specified vessel, all vessels or vessels of or other than of a specified class, from tonnage rates, berthing charges or moorage rates in respect of that vessel or vessels of or other than of that class, as the case may be, while it is or they are berthed at a specified wharf, dolphin or buoy, or a wharf, dolphin or buoy of or other than of a specified class, in all ports, in a specified port, in all ports other than specified ports or in a specified part or all parts other than a specified part of a specified port.

(3)

Port Rates.

(3) The Board shall not enter into an agreement No. 42, 1975 under subsection (2) with respect to a scheduled port except with the approval in writing of the Treasurer.

11. (1) The Board may, by agreement with any person Agents of the Board. containing such terms and conditions and upon such securities as may be agreed upon, authorise that person to collect or receive on its behalf any rates or charges chargeable under this Act on any goods or goods of or other than of a specified class or in respect of any vessel or vessels of or other than of a specified class.

(2) Any rates or charges paid to a person with whom the Board has entered into an agreement under subsection (1) shall be deemed to have been paid to the Board.

12. A certificate purporting to be signed by the Secretary Evidence. of the Board certifying that on a date specified therein a buoy or dolphin was or was not a cargo buoy or a cargo dolphin, as the case may be, is admissible in any proceedings and is prima facie evidence of the matter so certified.

13. Proceedings for offences against this Act or the Proceedings for offences. regulations may be disposed of summarily before a stipendiary magistrate sitting alone or any two justices in petty sessions.

14. (1) The Board, with the approval of the Governor, Regulations. may make regulations for or with respect to—

- (a) any matter which is required or permitted to be prescribed under this Act or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act;
- (b) the furnishing of particulars of goods in respect of which any rates are chargeable under this Act;

(c)

Port Rates.

No. 42, 1975

- (c) the furnishing of particulars of any vessel in respect of which any rates or charges are chargeable under this Act;
- (d) the exemption or partial exemption from tonnage rates, berthing charges or moorage rates;
- (e) the imposition and payment of rates or charges in respect of the use of—
 - (i) any real or personal property vested in or under the control or management of the Board, other than rates or charges in respect of vessels while berthed at vested wharfs, vested cargo dolphins, vested cargo buoys, vested dolphins or vested buoys;
 - (ii) the services of any officer or employee of the Board;
- (f) defining the gross tonnage of vessels for the purpose of charging tonnage rates and berthing charges, specifying the method of ascertaining, whether by reference to any specified record or publication or by way of measurement or estimation, the gross tonnage, as so defined, of vessels, providing that the gross tonnage of any vessel shall, for the purpose of charging tonnage rates and berthing charges, be—
 - (i) the gross tonnage, as so defined, of the vessel; or
 - (ii) if the Board so directs the sum of the gross tonnage, as so defined, of the vessel and any space not included in the gross tonnage, as so defined, which is occupied by goods,

or

Port Rates.

or such gross tonnage as may be agreed upon by the owner of the vessel and the Board, requiring the production of any document or record, authorising the inspection of any vessel or its cargo, detaining any vessel or requiring the unshipment of any cargo for the purpose of enabling the gross tonnage, as so defined, of the vessel to be ascertained; and

(g) the forms to be used for the purposes of this Act.

(2) A regulation (whether or not it is a regulation prescribing any rates or charges for the purposes of this Act) may—

- (a) be of general application or limited in its application by reference to time, place or circumstances;
- (b) be restricted in its application to any specified class of subject-matter or to all subject-matter other than that of a specified class;
- (c) differ in its application according to specified factors or circumstances; and
- (d) impose a penalty not exceeding \$400 for any offence against the regulation.

15. (1) The Sydney Harbour Rates Act, 1904, the Harbour and Tonnage Rates Act, 1920, and Part IV of the Sydney Harbour Trust Act, 1900, are hereby repealed. Repeal of certain enactments.

(2) A reference in any Act or other instrument to any enactment referred to in subsection (1) shall be construed as a reference to this Act.

(3) A reference in any Act or other instrument to rates or charges imposed under any enactment referred to in subsection (1), being rates or charges of a kind chargeable under this Act, shall be construed as a reference to the rates or charges of that kind.

No. 42, 1975 **16.** Subject to section 15 (2) and (3), nothing in this Act affects any provision of any other Act relating to the amount payable by any person in respect of tonnage rates.

Saving.

Amendment of Act No. 47, 1935. **17.** The Maritime Services Act, 1935, is amended—

Sec. 2.
(Interpretation.)

(a) (i) by inserting after the definition of “Commissioner” in section 2 (1) the following definition :—

“Freight receptacle” means a receptacle of a permanent character, other than a vessel, used or designed or adapted for use as a receptacle for the carriage of goods.

(ii) by inserting in the definition of “Goods” in section 2 (1) after the word “description” the words “and, except in the definition of ‘Freight receptacle’ in this subsection, includes a freight receptacle”;

(iii) by inserting in the definition of “Owner” in section 2 (1) after the word “another” the following word and paragraphs :—

and—

(a) in relation to goods, other than freight receptacles, includes a consignor, consignee, shipper or agent for the sale, custody, shipment or unshipment of the goods;

(b) in relation to a freight receptacle, includes a person who has contracted to carry goods therein, and the owner of any vessel on or from

which

Port Rates.

which the freight receptacle is carried or was last unshipped in a port; and

(c) in relation to a vessel, includes—

(i) a person who is the owner of a vessel jointly with any other person or persons;

(ii) in relation to a vessel for which while it is in a port or when it was last in a port there is or was an agent for the berthing or working of the vessel and, where the vessel has left that port, for which there was no other agent when it last left that port—that firstmentioned agent; and

(iii) in relation to a vessel for which when it last left a port there was an agent other than an agent for the berthing or working of that vessel when it was in that port—that firstmentioned agent;

(iv) by inserting after section 2 (1A) the following subsection :—

(1B) A reference in this Act and in any other Act with the administration of which the Board is charged to a specified port or area of water is, if the boundaries of that port or area have been described by regulations and unless

the

Port Rates.

No. 42, 1975

the context or subject-matter otherwise indicates or requires, a reference to that port or area with boundaries as so described.

Sec. 24c.
(Payments
into Fund.)

(b) (i) by omitting section 24c (1) (a) and by inserting instead the following paragraph :—

(a) all rates and charges levied and collected by the Board pursuant to the Port Rates Act, 1975, and the regulations thereunder, so far as those rates and charges relate to any area vested in the Board or to structures or apparatus erected, constructed or installed by the Board in any other area;

(ii) by omitting from section 24c (1) (aa) the words “, the Sydney Harbour Trust Act, 1900, and the Sydney Harbour Rates Act, 1904, and the regulations made under those Acts” and by inserting instead the words “or the regulations thereunder”;

(iii) by omitting from section 24c (1) (c) the words “Harbour and Tonnage Rates Act, 1920, as amended by subsequent Acts” and by inserting instead the words “Port Rates Act, 1975”;

(iv) by omitting section 24c (2) (b) and by inserting instead the following paragraph :—

(b) all rates and charges levied and collected by the Board pursuant to the Port Rates Act, 1975, except those rates and charges payable into the Fund pursuant to subsection (1) (a) or (c);

(c)

Port Rates.

- (c) (i) by omitting from section 38 (1) (c) the words ^{No. 42, 1975} "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" and by inserting ^{Sec. 38. (Board may make regulations.)} instead the words "this Act, the Sydney Harbour Trust Act, 1900, or the Port Rates Act, 1975";
- (ii) by inserting at the end of section 38 (2) the following paragraph :—
- (q) describing the boundaries of any port or area of water.

SCHEDULE
Sec. 5.

| | |
|--|------------------|
| Tweed River | Lake Macquarie |
| Byron Bay | Broken Bay |
| Richmond River | Hawkesbury River |
| Clarence River | Pittwater |
| Woolgoolga | Brisbane Water |
| Coff's Harbour | Wollongong |
| Bellinger River | Port Kembla |
| Nambucca River | Kiama |
| Port of Trial Bay | Shoalhaven |
| Macleay River | Crookhaven |
| Port Macquarie | Shoalhaven River |
| Camden Haven | Ulladulla |
| Harrington Inlet | Bateman Bay |
| Manning River | Clyde River |
| Cape Hawke Harbour | Moruya |
| Wallis Lake | Narooma |
| Port Stephens | Bermagui |
| Hunter River and its tributaries (excluding the Port of Newcastle) | Tathra |
| | Merimbula |
| | Twofold Bay |

VALUATION