

MARITIME SERVICES (AMENDMENT) ACT, 1981, No. 76

New South Wales



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

Act No. 76, 1981.

An Act to amend the Maritime Services Act, 1935, with respect to the funds and accounts of The Maritime Services Board of New South Wales, the functions of the Board including the power of the Board to acquire shares in certain kinds of companies, and the remuneration of commissioners of the Board, and for other purposes. [Assented to, 1st June, 1981.]

See also Audit (Amendment) Act, 1981.

Maritime Services (Amendment).

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 "Maritime Services (Amendment) Act, 1981".

Commencement.

2. (1) Except as provided in this section, this Act shall commence on the date of assent to this Act.

(2) Section 5, in its application to a provision of Schedule 1, shall commence on the date on which that provision commences.

(3) Schedule 1 (1), (2), (3), (4), (6) and (8) shall commence on 1st July, 1981.

Principal Act.

3. The Maritime Services Act, 1935, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINANCE, ACCOUNTS AND AUDIT.

SCHEDULE 2.—AMENDMENT TO THE PRINCIPAL ACT RELATING TO THE ACQUISITION OF SHARES BY THE BOARD.

SCHEDULE 3.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

Maritime Services (Amendment).

SCHEDULE 4.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Amendment of Act No. 47, 1935.

5. The Principal Act is amended in the manner set forth in Schedules 1-3.

Savings, transitional and other provisions.

6. Schedule 4 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINANCE,
ACCOUNTS AND AUDIT.

(1) Section 2 (1), definition of "Fund"—

After the definition of "Freight receptacle", insert:—

"Fund" means the Maritime Services Board Fund established under section 22.

(2) Section 3 (4) (e)—

Omit "Maritime Services Board Fund established under section 24B", insert instead "Fund".

(3) Sections 22-24F—

Omit the sections, insert instead:—

Maritime Services Board Fund to be established.

22. The Board shall establish a fund to be known as the "Maritime Services Board Fund".

Maritime Services (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINANCE,
ACCOUNTS AND AUDIT—*continued.***Payments into the Fund.**

23. There shall be paid into the Fund—

- (a) all fees, rates, charges, rents and other money received by or on behalf of the Board under this Act, Part IV or VI of the Navigation Act, 1901, or any other Act with the administration of which the Board is charged;
- (b) all money payable to the Board as rents, occupation fees, payments for services rendered, things hired or work performed by the Board;
- (c) all fines and penalties recovered under this Act, Part IV or VI of the Navigation Act, 1901, or any other Act with the administration of which the Board is charged, other than fines and penalties under this Act, the Sydney Harbour Trust Act, 1900, the Pilotage Act, 1971, or the Port Rates Act, 1975, recovered on informations laid by members of the police force;
- (d) all penalties paid under section 30D;
- (e) all loan money appropriated by Parliament for the construction of new wharves, for the purchase of plant, for the purchase or resumption of land or for any other service or work to be undertaken by the Board;
- (f) all money appropriated by Parliament for the provision or maintenance by the Board on any land vested in it of any facility for commercial fishing operations or for recreational boating;
- (g) all interest received in respect of the investment of money belonging to the Fund;
- (h) all money by this or any other Act directed to be paid into the Fund, the Sydney Harbour Trust Fund or either of the funds established by section 24B as in force before 1st July, 1981; and

Maritime Services (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINANCE,
ACCOUNTS AND AUDIT—*continued.*

- (i) all money borrowed by or advanced to the Board.

Payments from the Fund.

23A. There shall be paid from the Fund—

- (a) the salaries, wages and allowances of commissioners, officers and employees of the Board; and
- (b) the expenses of the establishment, construction, extension, alteration, repair and maintenance of property or works of the Board and all other expenses of the Board in the carrying out of the purposes of this Act or any other Act with the administration of which the Board is charged or in the carrying out of powers, authorities, duties or functions conferred or imposed on the Board by any other Act.

Payments from the Fund into the Consolidated Revenue Fund.

23B. (1) There shall be paid from the Fund into the Consolidated Revenue Fund—

- (a) such proportion (not exceeding one-third) of the annual expense of works carried out under the Newcastle Harbour Improvements Act, 1953, as the Treasurer determines; and
- (b) the annual costs of all dredging and other works met from the Consolidated Revenue Fund and carried out in that portion of the Hunter River to which section 13D applies, other than works carried out under the Newcastle Harbour Improvements Act, 1953, necessary for the maintenance or facilitation of navigation or the operation of port facilities in that portion.

Maritime Services (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINANCE,
ACCOUNTS AND AUDIT—*continued.*

(2) For the purposes of subsection (1) (a)—

- (a) “annual expense”, in relation to a year, means the amount arrived at by deducting from the capital debt charges for the year in respect of the works referred to in that paragraph a proportion of the net revenue for the year derived from leases or licenses granted in respect of any lands benefited by the works after allowing for maintenance costs relating to the access to and facilities of the land; and
- (b) the Treasurer may make such determination as he thinks proper in the circumstances and he shall have regard to any work done or facilities or materials provided by the Board during the relevant year and benefiting the works referred to.

(3) For the purposes of subsection (1) (b), “costs” shall be deemed to include such capital debt charges as may be determined by the Treasurer in respect of port facilities, dredging and other works on the portion referred to in that paragraph which have been provided from money from the General Loan Account.

Payments into the Consolidated Revenue Fund.

23c. There shall be paid into the Consolidated Revenue Fund—

- (a) all fines and penalties under this Act, the Sydney Harbour Trust Act, 1900, the Pilotage Act, 1971, or the Port Rates Act, 1975, recovered on informations laid by members of the police force;
- (b) all fees, rates, charges and other money levied or collected by the Board under the Navigation Act, 1901, other than fees and charges received by or on behalf of the Board under Part IV or VI of that Act; and

Maritime Services (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINANCE,
ACCOUNTS AND AUDIT—*continued.*

- (c) all fines and penalties recovered under the Navigation Act, 1901, other than fines and penalties recovered under Part IV or VI of that Act.

Investment.

23D. The Board may invest money held by it in Government securities of the Commonwealth or of the State or in any securities guaranteed by the Government of the State, or on call or on fixed deposit, or partly on call and partly on fixed deposit, with the Treasurer or with any bank or in such other manner as the Governor approves or as is prescribed.

Capital indebtedness.

24. (1) The capital indebtedness to the State of the Board is the amount that it was immediately before 1st July, 1981.

(2) The Minister shall, as soon as practicable after the commencement of the financial year commencing on 1st July in 1982 and each succeeding year, certify the total expenditure during the preceding financial year out of money provided by Parliament for any service or work of the Board.

(3) The expenditure so certified shall be notified by the Minister in the Gazette, and shall be added to and become part of the capital indebtedness of the Board.

- (4) Section 24I—

Omit the section, insert instead:—

Banking.

24I. All money received on account of the Fund shall be paid into a bank or banks in New South Wales.

Maritime Services (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINANCE,
ACCOUNTS AND AUDIT—*continued.*

(5) Section 24J—

Omit the section, insert instead:—

Temporary accommodation.

24J. (1) For the temporary accommodation of the Board, it may obtain advances by overdraft of current account in any bank or banks upon credit of the Board's funds to such extent as may, from time to time, be approved by the Governor.

(2) The Treasurer may advance such money to the Board, on such terms and conditions as to repayment and interest, as may be agreed upon.

(6) Section 25—

Omit the section.

(7) Section 26—

Omit the section.

(8) Section 27—

Omit the section.

(9) Part III, Division 6—

Omit the Division, insert instead:—

DIVISION 6.—*Accounts and audit.***Accounts.**

28. (1) The Board shall cause to be kept proper accounts and records in relation to all of its operations.

Maritime Services (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINANCE,
ACCOUNTS AND AUDIT—*continued.*

(2) The Board shall, as soon as practicable, but within 6 months, after the end of each financial year of the Board, prepare and submit to the Minister for presentation to Parliament a statement of accounts, together with the Auditor-General's certificate given under this section in relation to the statement.

(3) The statement of accounts shall be in a form approved by the Auditor-General, and shall include such information as is requested by him, and shall exhibit a true and fair view of the financial position and transactions of the Board.

(4) The Board shall, as soon as practicable, but within 4 months, after the end of the financial year to which a statement of accounts relates, transmit the statement to the Auditor-General for verification and certification.

(5) The Auditor-General's certificate shall state that he has audited the accounts of the Board relating to the relevant financial year, and shall indicate whether the statement of accounts complies with subsection (3), and shall set forth any qualifications subject to which the certificate is given.

(6) Nothing in this section prevents the alteration of the statement of accounts, with the approval of the Auditor-General, after its receipt by him and before its submission to the Minister.

(7) The Minister shall lay the statement of accounts, or cause it to be laid, together with the Auditor-General's certificate, before both Houses of Parliament as soon as practicable after the receipt by him of the statement.

(8) The financial year of the Board shall be the year ending on 30th June.

Maritime Services (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINANCE,
ACCOUNTS AND AUDIT—*continued.***Audit.**

28A. (1) The accounts and records of financial transactions of the Board, and the records relating to assets of or in the custody of the Board, shall be inspected and audited by the Auditor-General.

(2) For the purposes of any such inspection and audit, the Auditor-General or a person authorised by him is entitled at all reasonable times to full and free access to the accounts, records, documents and papers of the Board and may make copies thereof or take extracts therefrom.

(3) The Auditor-General or a person authorised by him may require a person, being a commissioner, officer or employee of the Board, to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

Penalty: \$200.

(4) The Auditor-General may dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (1).

(5) The Auditor-General shall report to the Board and the Minister on the result of any such inspection and audit, and as to such irregularities or other matters as in his judgment call for special notice.

(6) Towards defraying the costs and expenses of any such inspection and audit, the Board shall pay to the Consolidated Revenue Fund such amounts, at such times, as the Treasurer decides or as are prescribed.

Maritime Services (Amendment).

SCHEDULE 2.

(Sec. 5.)

AMENDMENT TO THE PRINCIPAL ACT RELATING TO THE ACQUISITION
OF SHARES BY THE BOARD.

Section 13MA—

After section 13M, insert:—

Acquisition of shares by the Board.

13MA. (1) The Board may, with the approval of the Minister and subject to such conditions as the Minister may from time to time determine, purchase shares in, or subscribe to the issue of shares by, any company (in this section referred to as “the company”), whether incorporated in New South Wales or elsewhere, whose powers include powers that are, in the opinion of the Board, substantially the same as or similar to any of the powers of the Board under section 13M.

(2) The Board may do, omit to do or suffer to be done any act, matter or thing arising from or incidental or ancillary to the purchase, holding, disposition or dealing by it of or with shares in, or the subscription by it to issues of shares by, the company.

(3) Any appointment of a director of the company which the Board may be entitled to make shall not be made except with the approval of the Minister.

(4) The fact that any director appointed as referred to in subsection (3) is accustomed to act in accordance with the directions or instructions of a Minister does not constitute that Minister a director of the company.

(5) Any payment by the Board required for or in connection with the purchase of shares, or the subscription to issues of shares, as referred to in this section, shall be made out of the Fund.

Maritime Services (Amendment).

SCHEDULE 3.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 3 (4) (c)—

Omit the paragraph, insert instead:—

- (c) The nominated commissioners and the elected commissioner are each entitled to be paid such remuneration as the Minister may from time to time determine in respect of them respectively.

(2) Section 13TC—

After section 13TB, insert:—

Exclusion of Dividing Fences Act, 1951.

13TC. The Dividing Fences Act, 1951, does not apply to or in respect of so much of a sea retaining wall as separates land of the Board from land of another owner.

(3) (a) Section 13U (4) (e)—

Omit “therefor.”, insert instead “therefor;”.

(b) Section 13U (4) (f)—

After section 13U (4) (e), insert:—

- (f) if the same has been destroyed pursuant to paragraph (a), the Board may recover from the owner of the same the expenses incurred in the assuming possession, removal, custody and destruction thereof, as fixed by the Board.

(4) Section 30G (1)—

Omit “one hundred feet”, insert instead “30 metres”.

Maritime Services (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (5) (a) Section 36 (1)—
Omit “its powers or functions under this Act”, insert instead “the functions conferred or imposed on the Board by or under this or any other Act”.
- (b) Section 36 (1)—
Omit “powers or” where secondly and thirdly occurring.
- (c) Section 36 (2)—
Omit “power or”.
- (d) Section 36 (3)—
After section 36 (2), insert:—
(3) In this section, “function” includes power, authority and duty.

SCHEDULE 4.

(Sec. 6.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Maritime Services Board Fund.

1. All money standing, immediately before the commencement of Schedule 1 (3), to the credit of the Maritime Services Board Fund and the Maritime Services Board Renewals Fund as established under section 24B of the Principal Act as in force before that commencement shall be paid into the Maritime Services Board Fund established by section 22 of the Principal Act as amended by this Act.

Financial accommodation.

2. (1) If the date of commencement of Schedule 1 (3) is before the day appointed and notified under section 2 (2) of the Public Authorities (Financial Accommodation) Act, 1981, the amendments made to section 24C of the Principal Act by the Miscellaneous Acts (Financial Accommodation) Amendment Act, 1981, shall have no force or operation.

(2) If the day appointed and notified under section 2 (2) of the Public Authorities (Financial Accommodation) Act, 1981, is before the date of commencement of Schedule 1 (5), that item shall have no force or operation.

Maritime Services (Amendment).

SCHEDULE 4—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Obstruction of waters or land by vessels or articles.**

3. Section 13U (4) (f) of the Principal Act, as amended by this Act, applies to and in respect of anything destroyed before, as well as anything destroyed after, the commencement of that paragraph.
