

**MARITIME SERVICES (AMENDMENT) ACT, 1984, No. 101**

**New South Wales**



ANNO TRICESIMO TERTIO

**ELIZABETHÆ II REGINÆ**

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**Act No. 101, 1984.**

An Act to amend the Maritime Services Act, 1935, so as to reconstitute The  
Maritime Services Board of New South Wales; and for other purposes.  
[Assented to, 28th June, 1984.]

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See also Statutory and Other Offices Remuneration (Maritime Services Board) Amendment Act, 1984.

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*Maritime Services (Amendment).*

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**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, 1984".

**Commencement.**

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

(2) Except as provided by 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.

**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  
THE CONSTITUTION AND PROCEDURE OF THE BOARD.

SCHEDULE 2.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

**Amendment of Act No. 47, 1935.**

5. The Principal Act is amended in the manner set forth in Schedule 1.

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*Maritime Services (Amendment).*

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**Savings, transitional and other provisions.**

6. Schedule 2 has effect.

**Report and recommendations.**

7. Within 6 months after the day appointed and notified under section 2 (2), The Maritime Services Board of New South Wales shall—

- (a) forward to the Minister a report relating to the policies, financial management, industrial relations, operating activities and constructional role of the Board and such other matters as it determines or the Minister directs should be dealt with in the report; and
- (b) in the report make such recommendations with respect to any legislative, organisational, administrative or other changes as are, in its judgment, necessary or desirable, in the public interest, for the improvement of any of the matters mentioned in paragraph (a).

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SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD.

(1) Section 1 (3)—

After the matter relating to Part II, insert:—

PART IIA.—GENERAL MANAGER AND DEPUTY GENERAL  
MANAGER.

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

- (2) (a) Section 2 (1), definition of “Chairperson”—  
After the definition of “Board”, insert:—  
“Chairperson” means the Chairperson of the Board.
- (b) Section 2 (1), definitions of “Commissioner”, “Elected commissioner”—  
Omit the definitions.
- (c) Section 2 (1), definitions of “Deputy General Manager”, “Elected member”—  
Before the definition of “Freight receptacle”, insert:—  
“Deputy General Manager” means the Deputy General Manager of the Board.  
“Elected member” means the member referred to in section 3B (2) (b).
- (d) Section 2 (1), definition of “General Manager”—  
After the definition of “Fund”, insert:—  
“General Manager” means the General Manager of the Board.
- (e) Section 2 (1), definition of “Member”—  
After the definition of “Master”, insert:—  
“Member” means a member of the Board.
- (f) Section 2 (1), definition of “Part-time member”—  
After the definition of “Owner”, insert:—  
“Part-time member” means a member appointed under section 3B (1).

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

(g) Section 2 (1), definition of “President”—

Omit the definition.

(h) Section 2 (1), definition of “Regulations”—

Omit “section 3A (1)”, insert instead “clause 3 of Schedule 6”.

(i) Section 2 (1), definition of “Vice-President”—

Omit the definition.

(3) Sections 3–3B—

Omit sections 3 and 3A, insert instead:—

**The Board.**

3. There is hereby constituted a corporation under the corporate name of “The Maritime Services Board of New South Wales”.

**Control and direction of Minister.**

3A. The Board shall, in the exercise and discharge of its powers, authorities, duties and functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister.

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.***Provisions relating to membership and procedure of the Board.**

3B. (1) The Board shall consist of not less than 5 and not more than 7 members, of whom—

- (a) 1 shall be the person appointed as General Manager under section 4B (1) or for the time being acting in the office of General Manager; and
- (b) not less than 4 and not more than 6 shall be appointed by the Governor.

(2) Of the members appointed by the Governor under subsection (1)—

- (a) not less than 3 and not more than 5 shall be persons nominated for appointment as members by the Minister; and
- (b) 1 shall be a person elected in the manner prescribed by regulations made under clause 3 of Schedule 6.

(3) The members appointed by the Governor under subsection (1) shall, in and by the instruments by which the members are appointed, be appointed as part-time members.

(4) Sections 38 and 39 of the Interpretation Act, 1897, apply in relation to the Board as if it were constituted by an Act passed after the commencement of the Interpretation (Amendment) Act, 1969.

(5) Schedule 6 has effect with respect to the constitution of the Board.

(6) Schedule 7 has effect with respect to the procedure of the Board.

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

(4) Part IIA—

After Part II, insert:—

PART IIA.

GENERAL MANAGER AND DEPUTY GENERAL MANAGER.

**General Manager and Deputy General Manager.**

4B. (1) The Governor may appoint a General Manager of the Board.

(2) The Governor may appoint a Deputy General Manager of the Board.

(3) Schedule 8 has effect with respect to the General Manager and Deputy General Manager.

**Functions of General Manager.**

4C. The General Manager—

- (a) is responsible, as chief executive officer of the Board, for the management of the affairs of the Board subject to and in accordance with any directions of the Board; and
- (b) shall have and may exercise and discharge such other powers, authorities, duties and functions as are conferred or imposed on the General Manager by or under this or any other Act.

**Functions of Deputy General Manager**

4D. (1) The Deputy General Manager shall have and may exercise and discharge such powers, authorities, duties and functions (excluding those of the General Manager as a member of the Board) as the General Manager directs.

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

## (2) Where—

(a) the General Manager is prevented by illness or absence from exercising or discharging any of the powers, authorities, duties and functions of the office of General Manager; or

(b) there is a vacancy in the office of General Manager,

the Deputy General Manager shall have and may exercise and discharge the powers, authorities, duties and functions of that office (including those of the General Manager as a member of the Board and those delegated to the General Manager under section 36), and anything done by the Deputy General Manager while acting pursuant to this subsection shall be deemed to have been done by the General Manager.

(3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising the Deputy General Manager to act in the office of General Manager pursuant to subsection (2).

## (5) (a) Section 6 (3)—

Omit the subsection.

## (b) Section 6 (5)—

Omit “As from the appointed day a reference”, insert instead “A reference”.

## (c) Section 6 (5)—

Omit “President of the Board”, insert instead “General Manager”.

## (6) Section 13P—

Omit “any two of the commissioners”, insert instead “the General Manager”.



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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

(7) Section 15 (3)–(5)—

Omit “commissioner” wherever occurring, insert instead “member”.

(8) Sections 20 (1), 30, 31, 33, 35 (1)—

Omit “President” wherever occurring, insert instead “General Manager”.

(9) Section 23A (a)—

Omit the paragraph, insert instead:—

- (a) the remuneration, salaries, wages and allowances of members, the Deputy General Manager, officers and employees of the Board and any person acting in the office of member or Deputy General Manager; and

(10) Section 24G (2)—

Omit “President of the Maritime Services Board,”, insert instead “Chairperson”.

(11) Section 32 (1)—

Omit “Commissioner”, insert instead “member”.

(12) Section 36—

Omit the section, insert instead:—

**Delegation by the Board.**

36. (1) The Board may, by instrument in writing, delegate to—

- (a) the General Manager;

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

- (b) a committee comprised of members, including the General Manager or a member nominated by the General Manager;
- (c) an officer or employee of the Board;
- (d) a person for the time being holding or acting in a specified position in the staff establishment of the Board; or
- (e) any person of whose services the Board makes use pursuant to this or any other Act,

the exercise of such of the functions of the Board (other than this power of delegation) as are specified in the instrument.

(2) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time by the delegate in accordance with the terms of the delegation.

(3) Without limiting the operation of subsection (2), a function the exercise of which has been delegated under this section to the General Manager may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation by—

- (a) the Deputy General Manager;
- (b) an officer or employee of the Board;
- (c) a person for the time being holding or acting in a specified position in the staff establishment of the Board; or

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION AND  
PROCEDURE OF THE BOARD—*continued.*

(d) any person of whose services the Board makes use pursuant to this or any other Act,

as authorised by instrument in writing by the General Manager in that behalf either generally or in a particular case or class of cases.

(4) A delegation or authorisation under this section may be made subject to such conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstances, as may be specified in the instrument of delegation or authorisation.

(5) Notwithstanding any delegation under this section, the Board may continue to exercise any function delegated.

(6) Any act or thing done or suffered by a delegate acting in the exercise of a delegation under this section, or by a person duly authorised in that behalf by the General Manager under this section, has the same force and effect as it would have if it had been done or suffered by the Board and shall be deemed to have been done or suffered by the Board.

(7) The Board may, by instrument in writing, revoke wholly or in part any delegation under this section, and the General Manager may, by instrument in writing, revoke wholly or in part any authorisation under this section.

(8) An instrument purporting to have been signed by a person in his or her capacity as a delegate of the Board, or as a person authorised under this section, shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument duly executed by the Board and shall, until the contrary is proved, be deemed to be an instrument signed by a delegate of the Board or by a person duly authorised under this section, as the case may be.

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

(9) In subsection (8), a reference to a delegate includes a reference to the chairperson of a committee to which the exercise of a function has been delegated under subsection (1) .

(10) Nothing in this section prevents a function of the Board from being exercised in any manner in which it could have been exercised had this section not been enacted.

(11) In this section, a reference to—

- (a) a function includes a reference to a power, authority and duty; and
- (b) the exercise of a function includes, where the function is a duty, a reference to the discharge of the duty.

(13) Schedules 6–8—

After Schedule 5, insert:—

## SCHEDULE 6.

(Sec. 3B (5).)

## PROVISIONS RELATING TO THE CONSTITUTION OF THE BOARD.

**Age of members.**

1. A person of or above the age of 70 years is not eligible to be appointed as a part-time member.

**Chairperson of the Board.**

2. (1) Of the part-time members, one shall, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Governor, be appointed as Chairperson of the Board.

(2) The Governor may remove a part-time member from the office of Chairperson.

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

(3) A person who is a part-time member and Chairperson shall be deemed to have vacated office as Chairperson if the person—

- (a) is removed from that office by the Governor under subclause (2);
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a part-time member.

**Elected member.**

3. (1) The Governor may make regulations for or with respect to the election of a person to hold office as elected member.

(2) The Electoral Commissioner for New South Wales, or a person employed in the office of the Electoral Commissioner and nominated by the Electoral Commissioner, shall be the returning officer for an election, and shall have and may exercise and discharge the powers, authorities, duties and functions conferred or imposed on the returning officer by the regulations made under this clause in relation to the election.

(3) Employees of the Board are entitled to vote at an election in accordance with the regulations made under this clause.

(4) A person's nomination as a candidate for election as elected member is invalid if—

- (a) the nomination is not made by at least 2 persons who are employees of the Board;
- (b) the person is not, at the time of nomination, an employee of the Board;
- (c) the person is not, at the time of nomination, a member of an industrial union registered as such under the Industrial Arbitration Act, 1940, or an association of employees registered as an organization under the Conciliation and Arbitration Act 1904 of the Commonwealth, being an industrial union or association that is prescribed by the regulations made under this clause for the purposes of this paragraph as being an industrial union or association representing employees of the Board; or
- (d) the instrument of nomination is not accompanied by a statutory declaration to the effect that the person is, at the time of nomination, such a member,

and the returning officer is entitled to rely on the information contained in the statutory declaration.

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

(5) A person may be, at the same time, both the elected member and an employee of the Board.

(6) Nothing in any law, rule, direction or other requirement that—

- (a) is applicable to the elected member in his or her capacity as an employee of the Board; and
- (b) would not be so applicable if the elected member were not such an employee,

operates so as to prevent or restrict the exercise or discharge by the member of any of the powers, authorities, duties and functions of an elected member.

(7) If no person is nominated at an election, or if for any other reason an election fails, the Governor may appoint a person eligible for election and nominated by the Minister to be a part-time member, and the person so nominated shall, on being appointed, be deemed to be a person elected in the manner prescribed by the regulations made under this clause.

(8) If a vacancy occurs in the office of elected member otherwise than by reason of the expiration of the term for which an elected member was appointed—

- (a) the Governor may appoint a person eligible for election and nominated by the Minister to hold, subject to this Schedule, the office of elected member for a term commencing on the date of the appointment or a later date specified in the instrument of appointment and ending on the commencement of the term of office of the next elected member; and
- (b) any person so nominated shall, on being so appointed, be deemed to be a person elected in the manner prescribed by the regulations made under this clause.

(9) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this clause as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

(10) In this clause, "employee of the Board" means an officer or employee appointed under section 15 (1).

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.***Acting members and acting Chairperson.**

4. (1) The Governor, on the recommendation of the Minister, may, from time to time, appoint a person to act in the office of a part-time member during the illness or absence of the member, and the person, while so acting, shall have and may exercise and discharge all the powers, authorities, duties and functions of the member.

(2) The Governor, on the recommendation of the Minister, may, from time to time, appoint a part-time member to act in the office of Chairperson during the illness or absence of the Chairperson, and the part-time member, while so acting, shall have and may exercise and discharge all the powers, authorities, duties and functions of the Chairperson.

(3) The Governor may remove any person from any office to which the person was appointed under subclause (1) or (2).

(4) A person while acting in the office of a part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause—

- (a) a vacancy in the office of a part-time member or the Chairperson shall be deemed to be an absence from office of the member or Chairperson, as the case may be; and
- (b) a part-time member shall be deemed to be absent from office as a part-time member during any period that the member acts in the office of the General Manager or Deputy General Manager pursuant to an appointment under clause 3 of Schedule 8.

(6) In subclause (2), clauses 1, 9, 10 and 11 and Schedule 7—

- (a) a reference to a member or part-time member includes a reference to a person acting in the office of a member or part-time member;
- (b) a reference to the appointment of a part-time member includes a reference to the appointment of a person to act in the office of a part-time member; and
- (c) a reference to the office of a part-time member includes a reference to the office of a person appointed to act in the office of a part-time member.

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.***Terms of office.**

5. Subject to this Schedule, a part-time member shall hold office—
- (a) except in the case of the elected member—for the period not exceeding 5 years; or
  - (b) in the case of the elected member—for the period of 3 years,
- specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration.**

6. A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time member.

**Filling of vacancy in office of part-time member.**

7. In the event of the office of any part-time member becoming vacant a person shall, subject to this Act, be appointed to fill the vacancy.

**Casual vacancies.**

8. (1) A part-time member shall be deemed to have vacated office if the member—
- (a) dies;
  - (b) absents himself or herself from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister (which leave the Minister is hereby authorised to grant) or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment or his or her remuneration for their benefit;
  - (d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;



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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

- (e) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) resigns the office by instrument in writing addressed to the Minister;
- (g) attains the age of 70 years;
- (h) being the elected member, ceases to be an officer or employee of the Board; or
- (i) is removed from office by the Governor under subclause (2), (3) or (4).

(2) The Governor may remove a part-time member (other than the elected member) from office.

(3) The Governor may remove the elected member from office for incapacity, incompetence or misbehaviour.

(4) Without affecting the generality of subclause (2) or (3), the Governor may remove from office a part-time member who contravenes the provisions of clause 9.

**Disclosure of pecuniary interests.**

9. (1) A member who has a direct or indirect pecuniary interest—

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Board; or
- (b) in a thing being done or about to be done by the Board,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member—

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or a specified person.

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Board shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Board from time to time.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member shall not, unless the Minister otherwise determines—

- (a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to that matter; or
- (b) exercise or discharge any powers, authorities, duties or functions under this Act with respect to that thing,

as the case may require.

(5) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Board or the exercise or discharge of any power, authority, duty or function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises by reason only that—

- (a) the member is a participant in any service provided by the Board, in like manner and subject to the like conditions as are applicable in the case of persons who are not members of the Board; or
- (b) the member is an officer or employee appointed under section 15 (1).

(7) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

**Effect of certain other Acts.**

10. (1) The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of a part-time member and a part-time member is not, as a part-time member, subject to those provisions.

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

(2) Where by or under any other Act provision is made requiring a person who is the holder of an office specified therein to devote the whole of his or her time to the duties of that office, or prohibiting the person from engaging in employment outside the duties of that office, that provision shall not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

(3) The office of a part-time member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

**Liability of members, etc.**

11. No matter or thing done by the Board, and no matter or thing done by any member or by any person acting under the direction of the Board, shall, if the matter or thing was done bona fide for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand whatever.

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SCHEDULE 7.

(Sec. 3B (6).)

PROVISIONS RELATING TO THE PROCEDURE OF THE BOARD.

**General procedure.**

1. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Board.

**Quorum.**

2. A majority of the members, of whom one shall be the General Manager or the person for the time being acting in the office of General Manager, shall form a quorum and any duly convened meeting of the Board 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 and functions of the Board.

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.***Presiding member.**

3. (1) The Chairperson or, in the absence of the Chairperson, another part-time member elected as chairperson for the meeting by the members present shall preside at a meeting of the Board.

(2) The person acting as chairperson at any meeting of the Board shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

**Voting.**

4. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present shall be the decision of the Board.

**Minutes.**

5. The Board shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

**First meeting of the Board.**

6. The Minister shall call the first meeting of the Board in such manner as the Minister thinks fit.

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SCHEDULE 8.

(Sec. 4B (3).)

PROVISIONS RELATING TO THE GENERAL MANAGER AND DEPUTY  
GENERAL MANAGER.**Interpretation.**

1. In this Schedule, "executive officer" means the General Manager or Deputy General Manager.

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

**Age of executive officers.**

2. A person of or above the age of 65 years is not eligible to be appointed as an executive officer.

**Acting executive officer.**

3. (1) The Minister may, from time to time, appoint a person to act in the office of an executive officer during the illness or absence of the executive officer, and the person, while so acting, shall have and may exercise and discharge all the powers, authorities, duties and functions of the executive officer.

(2) The Minister may remove any person from any office to which the person was appointed under subclause (1).

(3) A person, not being the Deputy General Manager, while acting in the office of an executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(4) For the purposes of this clause, a vacancy in the office of an executive officer shall be deemed to be an absence from office of the executive officer.

(5) In clauses 2, 5 and 9—

- (a) a reference to an executive officer includes a reference to a person acting in the office of an executive officer;
- (b) a reference to the appointment of an executive officer includes a reference to the appointment of a person to act in the office of an executive officer; and
- (c) a reference to the office of an executive officer includes a reference to the office of a person appointed to act in the office of an executive officer.

**Terms of office.**

4. Subject to this Schedule, an executive officer shall hold office for the period not exceeding 7 years specified in the instrument of appointment of the executive officer, but is eligible (if otherwise qualified) for re-appointment.

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.***Executive officer to be full-time officer.**

5. An executive officer shall devote the whole of his or her time to the duties of the office of executive officer, except as permitted by this Act or except with the consent of the Minister (which consent the Minister is hereby authorised to give).

**Remuneration.**

6. An executive officer is entitled to be paid—
- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the executive officer.

**Filling of vacancy in office of executive officer.**

7. In the event of the office of any executive officer becoming vacant a person shall, subject to this Act, be appointed to fill the vacancy.

**Casual vacancies.**

8. (1) An executive officer shall be deemed to have vacated office if the executive officer—

- (a) dies;
- (b) absents himself or herself from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Minister (which leave the Minister is hereby authorised to grant), unless the absence is occasioned by illness or other unavoidable cause;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;

*Maritime Services (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

- (e) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) engages in any paid employment outside the duties of the office of executive officer, except with the consent of the Minister (which consent the Minister is hereby authorised to give);
- (g) resigns the office by instrument in writing addressed to the Minister;
- (h) attains the age of 65 years;
- (i) is retired from office by the Governor under subclause (2); or
- (j) is removed from office by the Governor under subclause (3) or (4).

(2) An executive officer may, after attaining the age of 60 years and before attaining the age of 65 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

(3) The Governor may remove an executive officer from office for incapacity, incompetence or misbehaviour.

(4) Without affecting the generality of subclause (3), the Governor may remove from office an executive officer who contravenes the provisions of clause 9 of Schedule 6.

**Public Service Act, 1979.**

9. The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of an executive officer and an executive officer is not, as an executive officer, subject to those provisions.

**Preservation of rights of executive officer previously public servant, etc.**

10. (1) In this clause—

“statutory body” means any body declared under clause 12 to be a statutory body for the purposes of this Schedule;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

(2) Subject to subclause (3) and to the terms of appointment, where an executive officer was, immediately before being appointed as executive officer—

- (a) an officer of the Public Service or a Teaching Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she—

- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as executive officer; and
- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity.

as if he or she had continued to be such an officer, contributor or person during his or her service as executive officer and—

- (h) his or her service as executive officer shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee, and the Board shall be deemed to be the employer, for the purpose of the superannuation scheme to which he or she is entitled to contribute under this clause.

(3) If an executive officer would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled upon becoming (whether upon appointment as executive officer or at any later time while holding office as executive officer) a contributor to any other superannuation scheme, and the provisions of subclause (2) (i) cease to apply to or in respect of him or her and the Board in any case where he or she becomes a contributor to any such other superannuation scheme.



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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.*

(4) Subclause (3) does not prevent the payment to an executive officer upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(5) An executive officer shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

**Executive officer entitled to re-appointment to former employment in certain cases.**

11. (1) In this clause, “statutory body” means any body declared under clause 12 to be a statutory body for the purposes of this Schedule.

(2) A person who—

- (a) ceases to be an executive officer by reason of the expiration of the period for which the person was appointed or by reason of resignation;
- (b) was, immediately before being appointed as executive officer—
  - (i) an officer of the Public Service or a Teaching Service; or
  - (ii) an officer or employee of a statutory body; and
- (c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

shall be entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as executive officer.

(3) Where subclause (2) does not apply to a person who—

- (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (2) (b); and
- (b) is, after that appointment, appointed as executive officer,

the person shall have such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be executive officer, as are specified in the instrument of appointment as executive officer or as are agreed upon by the person and by or on behalf of the Government.

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*Maritime Services (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION  
AND PROCEDURE OF THE BOARD—*continued.***Declaration of statutory bodies.**

12. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

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SCHEDULE 2.

(Sec. 6.)

## SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

**Interpretation.**

## 1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2);

“new Board” means The Maritime Services Board of New South Wales constituted in accordance with the Principal Act as in force on or after the appointed day;

“old Board” means The Maritime Services Board of New South Wales constituted in accordance with the Principal Act as in force before the appointed day.

**Commissioners holding office immediately before the appointed day.**

2. (1) In this clause, “full-time commissioner” means any of the 3 commissioners referred to in section 3 (1) (c) of the Principal Act, as in force immediately before the appointed day.

(2) A person who, immediately before the appointed day, held office as a commissioner of the old Board—

(a) shall cease to hold office as such on that day; and

(b) is eligible (if otherwise qualified) to be appointed as a member of the new Board or as Deputy General Manager.

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*Maritime Services (Amendment).*

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SCHEDULE 2—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(3) A person who ceases to hold office as a commissioner of the old Board by reason of the operation of this Act is not entitled to be paid any remuneration or compensation by reason of ceasing to hold that office.

(4) A person who, immediately before the appointed day, held office as a full-time commissioner and who ceases to hold that office by reason of the operation of this Act, is, if the person—

- (a) is not appointed as General Manager or Deputy General Manager of the new Board with effect on and from that day; and
- (b) was, immediately before being appointed as a full-time commissioner, the holder of a full-time position in the service of the Government,

entitled to be appointed to some position in the service of the Government.

(5) A person referred to in subclause (4) who is appointed to a position pursuant to that subclause is, until—

- (a) the day on which the term of office for which the person had been appointed to the old Board expires;
- (b) the day on which the person ceases to hold the position to which the person is appointed pursuant to subclause (4); or
- (c) the day on which the person attains the age of 60 years.

whichever first occurs, entitled to be paid such salary as the Statutory and Other Offices Remuneration Tribunal may from time to time determine in relation to the person, not lower than the salary for the time being applicable to the position that the person held immediately before being first appointed to the old Board.

(6) Pending the making of the relevant determination under subclause (5), salary shall continue to be paid to a person referred to in subclause (4) at the rate at which it was payable to the person immediately before the appointed day.

(7) A reference in this clause to a position in the service of the Government includes a reference to an office or position as a member, officer or employee of a body constituted by an Act.

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*Maritime Services (Amendment).*

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SCHEDULE 2—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Elected member.**

3. The person who, immediately before the appointed day, held office as the elected commissioner of the old Board shall (without further election) be deemed to have been duly appointed as the elected member of the new Board, and—

- (a) shall be deemed to have been so appointed—
  - (i) upon the same terms and conditions as those applicable to the person immediately before the appointed day; and
  - (ii) for the residue of the term of office for which the person was appointed; and
- (b) is eligible (if otherwise qualified) for appointment or re-appointment under the Principal Act, as subsequently amended, with effect from the expiration of that term of office or from any subsequent time.

**Continuity of Board.**

4. The new Board is a continuation of, and the same legal entity as, the old Board.

**References to certain officers of old Board.**

5. (1) Except as provided by subclause (2), on and from the appointed day, a reference in any other Act, in any instrument made under any Act or in any other instrument of any kind (enacted, made or executed before the appointed day) to the President or Vice-President of the old Board shall be read and construed as a reference to the General Manager or Deputy General Manager, respectively, appointed under the Principal Act, as amended by this Act.

(2) Subclause (1) does not apply to any determination under the Statutory and Other Offices Remuneration Act, 1975.

**Certain documents deemed to have been served on or signed by the General Manager.**

6. (1) For the purposes of section 30 of the Principal Act, as amended by this Act, any notice, summons, writ or other proceeding required to be served upon the Board and given personally, before the appointed day, to the President of the old Board shall, on and from the appointed day, be deemed to have been given personally to the General Manager of the new Board.

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*Maritime Services (Amendment).*

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SCHEDULE 2—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(2) For the purposes of section 31 of the Principal Act, as amended by this Act, any summons, process, demand, order, notice, statement, direction or document requiring authentication by the Board and signed, before the appointed day, by the President of the old Board shall, on and from the appointed day, be deemed to have been signed by the General Manager of the new Board.

(3) For the purposes of section 32 of the Principal Act, as amended by this Act, any direction, authorisation or approval referred to in that section given before the appointed day by a commissioner of the old Board shall, on and from the appointed day, be deemed to have been given by the General Manager of the new Board.

(4) For the purposes of section 33 of the Principal Act, as amended by this Act, any appointment made before the appointed day by the President of the old Board in writing under the President's hand shall, on and from the appointed day, be deemed to have been made under the hand of the General Manager of the new Board.

(5) For the purposes of section 35 of the Principal Act, as amended by this Act, any document purporting to be issued or written by or under the direction of the old Board, and purporting to have been signed by the President of the old Board before the appointed day, shall, on and from the appointed day, be deemed to purport to have been signed by the General Manager of the new Board.

**Appointments, etc., before appointed day.**

7. For the purpose only of enabling the new Board to be constituted in accordance with the Principal Act, as amended by this Act, on or after (but not before) the appointed day, appointments may be made under the Principal Act, as so amended, and any other act, matter or thing may be done, before that day as if the whole of this Act commenced on the date of assent to this Act, but so that no appointment as a member of the new Board as so constituted takes effect before the appointed day.

**Employment of former commissioner.**

8. For the purposes of section 15 (4) of the Principal Act, as amended by this Act, a reference in that section to a member shall be read and construed as including a reference to a commissioner of the old Board.

**Savings.**

9. (1) Any regulation made under section 3A (1) of the Principal Act and in force immediately before the appointed day shall, on that day, be deemed to be a regulation made under clause 3 of Schedule 6.

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*Maritime Services (Amendment).*

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SCHEDULE 2—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(2) Any delegation made under section 36 of the Principal Act and in force immediately before the appointed day shall, on that day, be deemed to be a delegation made under section 36 of the Principal Act, as amended by this Act.

**Regulations.**

10. (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the appointed day or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding any other clause of this Schedule (clause 2 excepted).

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