

MARINE PORT CHARGES ACT 1989 No. 143

NEW SOUTH WALES



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MARINE PORT CHARGES ACT 1989 No. 143

NEW SOUTH WALES



Act No. 143, 1989

An Act to provide for the levy and payment of certain charges in respect of vessels and their passengers and cargo in New South Wales ports; to repeal the Port Rates Act 1975 and to amend certain other Acts; and for other purposes. [Assented to 25 October 1989]

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The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Marine Port Charges Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act:

"Board" means the Maritime Services Board;

"buoy" means a floating apparatus (other than a vessel) in navigable waters used for securing a vessel;

"cargo" includes any container, drum, packing case or other item used to contain any substance or article;

"designated port" means a port designated for the time being by an order under section 5 as a port to which this Act applies;

"dolphin" means an apparatus or a structure (other than a wharf) permanently fixed to the bed of navigable waters and used for securing a vessel;

"port" includes:

- (a) any harbour or haven, whether natural or artificial; and
- (b) any estuary, channel, river, creek or roadstead; and
- (c) any navigable water in which vessels may lie for shelter or for the loading or unloading of cargo or the embarkation or disembarkation of passengers;

"private" means not vested in the Crown or in any person on behalf of the Crown;

"site" means an area defined on a map retained in the office of the Board, consisting of:

- (a) an area of water surrounding or adjacent to a wharf, buoy or dolphin; and
- (b) in the case of a wharf, or a dolphin of substantial size - the whole or part of the area of the wharf or dolphin,

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and includes any stratum of the air space above, or of the land or water below, an area so defined;

"stevedoring" means the loading or unloading of the cargo of a vessel and incidental activities such as the handling or storage of cargo or stevedoring equipment at any site;

"vessel" includes an amphibious vehicle, a hydroplane, a hydrofoil and a hovercraft.

(2) For the purposes of the definition of "site" in subsection (1), a wharf includes any land adjacent to it that is indicated on a map referred to in that definition.

(3) A reference in this Act to the owner of a vessel or cargo includes a reference to a joint owner and to any person who, whether on the person's own behalf or on behalf of another:

- (a) exercises or discharges any of the powers or duties of the owner of the vessel or cargo; or
- (b) represents to the Board that the person has the right or accepts the obligation to exercise or discharge any of those rights and duties.

(4) Without affecting subsection (3), if a vessel is for the time being chartered by any person, a reference in this Act to the owner of the vessel includes a reference to that person.

Application of Act

4. (1) This Act applies to vessels and their cargoes in designated ports.

(2) This Act does not apply:

- (a) to vessels of the Royal Australian Navy or their passengers or cargoes; or
- (b) to any vessels, passengers or cargoes prescribed, or of a class prescribed, by the regulations.

Designation of ports

5. By order published in the Gazette, the Minister may from time to time designate a port or ports as being a port or ports to which this Act applies.

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PART 2 - KINDS OF CHARGES

Division 1 - Wharf service charges

Site occupation charge

6. (1) A site occupation charge is payable for the occupation of all or part of a site:

- (a) for stevedoring purposes; or
- (b) for the embarkation or disembarkation of passengers; or
- (c) for the accommodation of a vessel for any purpose (including quarantine or customs purposes); or
- (d) in connection with a vessel, its passengers or cargo, for any other purpose.

(2) The charge is to be calculated by reference to the amount of time (as ascertained by the Board) during which the site, or a part of it, is reserved or is occupied without reservation.

(3) The charge is payable by the person whom the Board recognizes as the occupier of the site or part.

Wharfage charge

7. (1) A wharfage charge is payable in respect of availability of and access to a site at which stevedoring operations may be carried out.

(2) The charge is to be calculated by reference to the quantity of cargo loaded or unloaded.

(3) The charge is payable:

- (a) in the case of unloaded cargo - by the person who, immediately after it is unloaded, is the owner of the cargo; and
- (b) in the case of loaded cargo - by the person who, immediately before it is loaded, is the owner of the cargo.

(4) To the extent, however, that the charge is not paid by the person indicated in subsection (3) as liable for its payment, the charge is payable by the person who, at the time payment is demanded by the Board, is the owner of the cargo.

Division 2 - Other charges

Navigation service charge

8. (1) A navigation service charge is payable in respect of the use by a vessel of port staff and facilities generally, apart from:

- (a) the use of a pilot; or
- (b) the use of any staff or facilities directly involved in the provision of a service for which a charge is imposed under Division 1.

(2) The charge is payable on each entry by the vessel into any designated port, and is to be calculated by reference to the gross tonnage of the vessel.

(3) The charge is payable whether entry to the port is by sea or from the land (or, in the case of an airborne vessel, from the air).

(4) The charge is payable by the owner of the vessel.

Berthing charge

9. (1) A berthing charge is payable in respect of the berthing of a vessel at a wharf, buoy or dolphin (other than a private wharf, buoy or dolphin) if the vessel is a lighter or has a gross tonnage of less than 240 tons.

(2) The charge is payable by the owner of the vessel.

(3) For the purposes of this section, a vessel is to be taken to be berthed at a wharf, buoy or dolphin:

- (a) if it is secured to or otherwise held at the wharf, buoy or dolphin; or
- (b) if it is one of a number of vessels secured or otherwise held together, one of which is secured to or otherwise held at the wharf, buoy or dolphin.

Other charges

10. The Board may impose charges for any of the following:

- (a) the use of any real or personal property vested in or under the control of the Board;

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- (b) furnishing information to any person;
- (c) consultancy or advisory services;
- (d) such other services, provided by the Board or by its officers, employees or agents, as may be prescribed by the regulations.

Division 3 - Charging policy

Definitions

11. For the purposes of this Part:
- (a) a reference to services provided by the Board includes a reference to facilities made available by the Board; and
 - (b) the extent to which a charge is related to a service is the extent to which, in the estimation of the Board, it is so related.

Ministerial directions

12. Under and in accordance with section 11 of the Marine Administration Act 1989, the Minister may give directions to the directors of the Board in respect of charges under this Act.

Pricing objectives

13. In fixing charges under this Act, the Board's policy will be to achieve the following objectives:

- (a) recovery of the Board's costs in providing services to, or for the benefit of, port users; and
- (b) achievement of an appropriate rate of return on the value of the assets used by the Board in providing those services; and
- (c) requiring the users of those services to pay charges related to the kind and quantity of services used by them or provided for their benefit.

Implementation of objectives

14. (1) In implementing its pricing objectives the Board may proceed by stages.

(2) At any stage the Board is to endeavour to reduce the extent to which, at any previous stage:

- (a) charges imposed in relation to services have fallen short of, or have exceeded, the sum of:

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- (i) the Board's costs in providing those services; and
 - (ii) a surplus that reflects a reasonable rate of return on the value of the assets used by the Board in providing those services; or
- (b) the amount of charges payable by any particular port user or group of port users has been disproportionate, having regard to:
- (i) the relative amounts paid by all port users; and
 - (ii) the relative benefits respectively derived by those users from services related to those charges.
- (3) In implementing the Board's pricing objectives, wharf service charges under Division 1 may be taken to be charges for services provided to a single group of users who derive a common benefit from those services.

Monopoly services

15. (1) Charges for services which the Minister by notification to the Board advises to be, in the Minister's opinion, monopoly services of the Board may not be imposed by the Board without the Minister's approval.

(2) The Minister may refer any proposed charges for such services to a suitably qualified person for advice.

PART 3 - FIXING AND COLLECTION OF CHARGES

Fixing of charges

16. (1) The Board may fix the charges payable under this Act.

(2) Different charges may be fixed in respect of different ports, wharves, cargoes or vessels, or according to such other factors as the Board thinks fit.

Collection of charges

17. (1) A charge under this Act is payable on demand by the Board, or at such time, or on such terms, as the Board may determine in respect of the person liable to pay it.

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(2) Agents may be appointed by the Board for collection of charges.

(3) A charge under this Act is a debt due to the Board from the person liable to pay it, and is recoverable by the Board in any court of competent jurisdiction.

Agreements in respect of charges

18. (1) The Board may enter into an agreement with a person liable to pay any kind of charge under this Act.

(2) Such an agreement may make provision for or with respect to:

- (a) fixing the amount of any charge payable by the person; and
- (b) any other matter which the Board is permitted by or under this Act to determine in respect of the charge; and
- (c) any right or privilege which by or under this Act accrues to the person liable to pay the charge, or which the Board may confer on the person.

(3) To the extent that provision is so made, the agreement displaces any determinations of the Board in relation to the charge or to the matter, right or privilege concerned.

(4) An amount due and payable to the Board under any such agreement is recoverable by the Board in any court of competent jurisdiction.

PART 4 - GENERAL

Interest on overdue payments

19. (1) Charges under this Act that are unpaid by the due date attract interest at a rate determined by the Board.

(2) Different rates may be determined for charges that remain unpaid for different periods of time.

(3) Interest may be compounded if the regulations so provide.

(4) No rate determined in respect of any period is to exceed 20 per cent per annum (simple interest) or such other rate (simple or compound) as the regulations may prescribe in respect of that period.

Security for payment of charges

20. (1) As security for the payment of charges that have been or may be incurred under this Act by a person, the Board may require the person to lodge with it a security deposit.

(2) The security deposit may take the form of cash or a bank guarantee or such other form as the Board may approve, and is to be in or for an amount determined by the Board.

(3) The Board may appropriate a security deposit or the proceeds of a security deposit to meet liabilities of the depositor (including any interest payable) under this Act that are unpaid after becoming due.

(4) In the event that a security deposit or the proceeds of a security deposit have been appropriated or partly appropriated, the Board may require lodgment of further security.

(5) If at any time the Board considers that a depositor's potential liabilities under this Act should be more adequately guaranteed, the Board may require the lodgment of security in a greater amount, or in a different form, or both.

Failure to comply with Board's requirements

21. (1) The Board may withhold or withdraw the provision of services or facilities to a person who fails to comply with any lawful requirement made by the Board, whether or not the person has paid a charge for the provision of the services or facilities.

(2) Nothing in this section affects any other function or discretion of the Board in relation to its services and facilities.

Liability of current owners and agents

22. (1) To the extent to which a charge under this Act, payable by the owner of a vessel, is not paid by the person who was the owner at the time the charge was incurred, the charge is payable by the person who is the owner at the time payment is demanded by the Board.

(2) If, at the time when a vessel left a port:

- (a) there was an agent for the berthing or working of the vessel; and
- (b) there was no other agent for the vessel,

that agent is liable, to the same extent as the owner of the vessel, for charges under this Act incurred by the vessel while in port and which are unpaid.

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(3) If, at the time when a vessel left a port, there was an agent for the vessel other than an agent for the berthing or working of the vessel, that agent is liable, to the same extent as the owner of the vessel, for any such unpaid charges.

Regulations

23. (1) The Governor may make regulations not inconsistent with this Act for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) In particular, regulations may be made for or with respect to:
- (a) the manner of payment of charges under this Act; and
 - (b) the furnishing to the Board of information relevant to the liability of any person to pay a charge under this Act; and
 - (c) the furnishing to the Board of particulars of any cargo, or any vessel, in respect of which any charges are payable under this Act; and
 - (d) ascertaining the gross tonnages of vessels, the quantity of any cargo and any other matter necessary or incidental to the calculation of the amount of any charge under this Act; and
 - (e) the detention and inspection of any vessel, and the unloading of any cargo, for any of the purposes of this Act and the regulations; and
 - (f) the inspection, by interested persons or by the public, of maps defining site areas; and
 - (g) the exemption (whether at the discretion of the Board or otherwise) of any or any kind of persons, wharves, sites, vessels or cargo from all or any of the provisions of this Act.

(3) The regulations may create offences punishable by penalties not exceeding 20 penalty units.

Proceedings for offences

24. Proceedings for offences against the regulations may be dealt with summarily in a Local Court constituted by a Magistrate sitting alone.

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Repeal of Port Rates Act 1975 No. 42 and regulations

25. (1) The Port Rates Act 1975 is repealed.
- (2) All regulations under that Act are repealed also.

Amendment of other Acts

26. Each Act specified in Schedule 1 is amended as set out in that Schedule.

Savings and transitional provisions

27. Schedule 2 has effect.
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SCHEDULE 1 - CONSEQUENTIAL AMENDMENTS

(Sec. 26)

Marine Administration Act 1989 No. 93:

- (1) Section 3, definition of "marine legislation":
Omit "Port Rates Act 1975;"; insert instead "Marine Port Charges Act 1989;".
- (2) Omit section 14 (**MSB policies on port charges**).

Pilotage Act 1971 No. 56:

- (1) Omit section 31 (**Harbour and light rates**).
- (2) Section 32 (**Duties of owner in respect of pilotage rates etc.**):
Omit "or harbour and light rates".
- (3) Section 34 (**Recovery of rates and charges**):
 - (a) Omit ", harbour and light rates" from subsection (1).
 - (b) Omit "or harbour and light rates" from subsection (2) (a).
- (4) Section 52 (**Regulations**):
Omit "or harbour and light rates" from both subsections (2) and (3) (a).

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SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 27)

Regulations

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

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the commencement of this Schedule or a later day.

(3) To the extent that 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; 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.

Construction of certain references

2. In any Act or statutory instrument and in any legal document:
- (a) a reference to harbour rates under the Port Rates Act 1975 is to be read as a reference to wharfage charges under this Act; and
 - (b) a reference to tonnage rates under that Act is to be read as a reference to site occupation charges under this Act; and
 - (c) a reference to harbour and light rates under the Pilotage Act 1971 is to be read as a reference to navigation service charges under this Act.

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SCHEDULE 2 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued*

Accrued rates and charges

3. Without limiting the operation of any saving contained in the Interpretation Act 1987, nothing in this Act affects the liability of any person to pay any rate or charge incurred under the Port Rates Act 1975.

[*Minister's second reading speech made in -
Legislative Assembly on 13 September 1989
Legislative Council on 11 October 1989*]