

PILOTAGE (AMENDMENT) ACT 1992 No. 41

NEW SOUTH WALES



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PILOTAGE (AMENDMENT) ACT 1992 No. 41

NEW SOUTH WALES



Act No. 41, 1992

An Act to amend the Pilotage Act 1971 and the Marine Port Charges Act 1989 in relation to the contracting out of pilotage services, the fees for pilotage services and the licensing of pilots; and for other purposes.
[Assented to 19 May 1992]

Pilotage (Amendment) Act 1992 No. 41

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Pilotage (Amendment) Act 1992.

Commencement

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

Amendment of Pilotage Act 1971 No. 56

3. The Pilotage Act 1971 is amended as set out in Schedule 1.

Amendment of Marine Port Charges Act 1989 No. 143

4. The Marine Port Charges Act 1989 is amended as set out in Schedule 2.

Consequential repeal of provisions of Maritime Services Act 1935 No. 47

5. The Maritime Services Act 1935 is amended by omitting Division 4 of Part 3 [sections 21A and 21B—Liability of master and owner of ship under pilotage; Immunity of Crown, pilots etc.].

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971

(Sec. 3)

(1) Long title:

Omit the Long title, insert instead:

An Act to provide for the pilotage of ships and the licensing of pilots; and for other purposes.

(2) Section 2 (**Division of Act**):

Omit the section.

(3) Section 4 (**Definitions**):

In section 4 (1), insert in alphabetical order:

“**approved contractor**”, in relation to pilotage services, means a person with whom the Board has entered into a contract under Part 4A for the provision of those pilotage services;

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“Director-General” means the Director-General of the Department of Transport;

- (4) Sections 6 (1) (a) (ii), 7, 8, 10, 11, 12, 13, 36, 37, 38, 39, 40, 41 (where secondly occurring), 42, 43, 44, 45 (3) and (5), 46, 48 and 49:
Omit the “the Board” and “the Board’s” wherever occurring, insert instead “the Director-General” and “the Director-General’s” respectively.
- (5) Sections 8 (2) (where secondly occurring), 8 (4), 8 (5), 10 (1), 36 (2), 39 and 40:
Omit “it”, insert instead “the Director-General”.
- (6) Sections 8 (5) (a), 39 and 40 (3) (c):
Omit “its” wherever occurring, insert instead “the Director-General’s”.
- (7) Section 7 (**Granting of licences and certificates**):
(a) From section 7 (2) (a), omit “and be signed by the secretary”.
(b) After section 7 (2), insert:
(3) A certificate may consist of an endorsement on a certificate of competency under the Commercial Vessels Act 1979 instead of a separate document.
- (8) Section 12 (**Production and delivery of licences and certificates**):
(a) From section 12 (3) and (4), omit “the secretary” wherever occurring, insert instead “the Director-General”.
(b) From section 12 (5), omit “an officer of the Board”, insert instead “the Director-General”.
- (9) Sections 12, 18, 20, 22 and 47:
Omit “Penalty: Two hundred dollars.” wherever occurring, insert instead:
Maximum penalty: 10 penalty units.
- (10) Section 13, 14, 15, 16 (3), 24 (1), 28 and 50 (1):
Omit “Penalty: Four hundred dollars.” and “Penalty: Three hundred dollars.” wherever occurring, insert instead:
Maximum penalty: 20 penalty units.

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- (11) Section 14 (**Prohibition against acting as pilot**):
Omit section 14 (2) (a) and (b), insert instead:
(a) is in the employ of the Board or of an approved contractor; and
(b) has been assigned to act as a pilot in that pilotage port by the Board or by an approved contractor.
- (12) Section 15 (**Compulsory pilotage**):
(a) In section 15 (3) and (4), after “Board” wherever occurring, insert “or an approved contractor”.
(b) In section 15 (4), before “depart from”, insert “enter,”.
(c) In section 15 (4), after “movement”, insert “into the pilotage port,”.
- (13) Sections 18 (a), 20 (a), 22 (a) and 24 (1):
After “Board” wherever occurring, insert “or an approved contractor”.
- (14) Section 25 (**Deferment of pilotage**):
At the end of section 25, insert:
(2) When a ship is unable, or will in the opinion of the master be unable, to enter into a pilotage port, within one hour of the time stated for so entering in the application by the owner or master for a pilot, the pilot attending may defer pilotage and cease attendance.
- (15) Section 26 (**Duty of master when advised against leaving berth or entering port**):
Omit section 26 (1), insert instead:
(1) If the master of a ship decides that the ship should enter a pilotage port or leave its berth or place of anchorage in a pilotage port after having been advised by the pilot made available for pilotage that the ship cannot do so without undue risk, the master must forthwith give written confirmation to the pilot that the master has been so advised.

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

(16) Section 27:

Omit the section, insert instead:

Leaving, entering or moving within port contrary to prohibition

27. (1) If a pilot made available for pilotage considers that a ship should not enter a pilotage port or should not leave its berth or place of anchorage because of the danger which would be involved, the pilot may direct the master of the ship not to enter the pilotage port or leave the berth or place of anchorage pending the decision of the harbour master.

(2) The master of a ship must comply with any such direction.

Maximum penalty: 100 penalty units.

(3) A pilot who gives any such direction may defer pilotage and cease attendance.

(17) Sections 28A, 28B:

After section 28, insert:

Liability of master and owner of vessel under pilotage
(See s 21A Maritime Services Act)

28A. (1) A person who is employed as a pilot by the Board or by an approved contractor of the Board and who has the conduct of a ship is subject to the authority of the master of the ship. The master is not relieved from responsibility for the conduct and navigation of the ship merely because the ship is under pilotage.

(2) The master and the owner of a ship navigating under circumstances in which pilotage is compulsory are jointly and severally liable for any loss or damage caused by the ship or by any fault of navigation of the ship in the same manner as if pilotage were not compulsory.

Immunity of Crown, pilots etc. (See s 21B Maritime Services Act)

28B. (1) Neither the Crown, nor the Minister, nor the Board, nor an approved contractor is liable for any loss or damage that is attributable to the neglect or want of skill of any person employed as a pilot by the Board or by an approved contractor while the person is acting as a pilot.

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- (2) A person employed as a pilot by the Board or by an approved contractor is not personally liable in pecuniary damages for any loss or damage attributable to the person's neglect or want of skill while the person is acting as a pilot.
- (18) Section 29 (**Provisions to apply when ship under pilotage at request of owner**):
From section 29, omit “sections 17 to 28, both inclusive,” insert instead “this Part (except sections 15 and 16)”.
- (19) Part 4 (**Pilotage and other rates**):
Omit the Part.
- (20) Part 4A:
After Part 4, insert:

**PART 4A—APPROVED CONTRACTORS FOR
PILOTAGE SERVICES**

Board may enter into a contract for the provision of pilotage services at a pilotage port

34A. (1) The Board may enter into a contract with a person for the provision by that person of pilotage services at a pilotage port.

(2) The Board may enter into contracts under this Part with different persons for the provision of pilotage services at different pilotage ports.

(3) If the Board does not enter into a contract under this Part for the provision of pilotage services at a pilotage port, pilotage services at that port are to be provided by the Board's pilotage service.

Contract to be awarded by public tender

34B. (1) The Board is required to call public tenders for a contract under this Part.

(2) Any public tender called before the commencement of this section is taken to have been duly called under this section.

Provisions to be included in contracts

34C. (1) A contract under this Part must include such provisions as the Board thinks necessary or desirable to be included for ensuring compliance with this Act and the

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

regulations and the provision of the pilotage services required in the pilotage port concerned.

- (2) Without limiting subsection (1), such a contract must:
- (a) specify the level of pilotage services to be provided under the contract; and
 - (b) specify the amount of consideration to be paid to the Board by the contractor under the contract (such an amount may be calculated on the basis of a proportion of the pilotage charges payable to the contractor for the provision of pilotage services); and
 - (c) limit the maximum amounts of pilotage charges that the contractor may charge for the provision of those services to those fixed under the Marine Port Charges Act 1989; and
 - (d) require the contractor to keep records of the pilotage services provided by the contractor and the amounts charged and paid in respect of those services; and
 - (e) empower officers of the Board to inspect those records; and
 - (f) require the contractor to provide information, as and when the Board requires, as to the costs incurred by the contractor in providing pilotage services at the port concerned; and
 - (g) specify the port facilities that the Board will make available to the contractor to enable it to provide pilotage services under the contract; and
 - (h) empower the Board to terminate or suspend the contract on the ground that the contractor is unable to provide pilotage services at the level referred to in paragraph (a) or has contravened this Act or the regulations or on any other specified ground.

Minister's approval required for contracts

34D. (1) The Board may not enter into a contract with a person under this Part unless the Minister has approved of that person and of the terms of the proposed contract.

(2) The Minister may require any such person to pay a fee for the costs incurred by or on behalf of the Minister in dealing with the matter.

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

- (21) Section 50 (**Disclosure of confidential information**):
- (a) In the definition of “confidential report” in section 50 (2), after “the Board”, insert “, an approved contractor or the Director-General”,
 - (b) From the definition of “prescribed person” in section 50 (2), omit paragraph (a), insert instead:
 - (a) a director of the Board or of a subsidiary authority of the Board, an officer of the Board or a person employed by an approved contractor;
 - (a1) the Director-General or an officer of the Department of Transport;
 - (c) In paragraph (f) of the definition of “prescribed person” in section 50 (2), after “the Board”, insert “or the Director-General”.
- (22) Section 50A:
- After section 50, insert:
- Delegation by Director-General**
- 50A. The Director-General may delegate the Director-General’s powers, authorities, duties and functions under this Act (except this power of delegation) to:
- (a) an officer of the Department of Transport; or
 - (b) the Board or a subsidiary authority of the Board or an officer of the Board; or
 - (c) any other person approved by the Minister.
- (23) Section 51 (**Recovery of penalties**):
- In section 51 (1), after “shall”, insert “(if the proceedings were brought by or on behalf of the Board)”.
- (24) Section 52 (**Regulations**):
- (a) From section 52 (1), omit “Board, with the approval of the Governor,” , insert instead “Governor”.
 - (b) From section 52 (1) (b), omit “and subsection (1) of section 30”.
 - (c) In section 52 (1) (e), after “Board’s pilotage service”, insert “(or that of an approved contractor)”.

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continued

(d) In section 52 (1) (f), after “Board”, insert “or the Director-General”.

(e) Omit section 52 (2)–(5), insert instead:

(2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

(3) A regulation made by the Board under this section (as in force before the commencement of the Pilotage (Amendment) Act 1992) is taken to be a regulation made by the Governor under this section (as in force after that commencement).

(25) Section 53 (**Exemption from compliance with regulations**):

After section 53 (3), insert:

(4) Any direction under this section may also be given by the Director-General if it relates to licences or certificates.

(26) Section 54:

After section 53, insert:

Pilotage (Amendment) Act 1992

54. Any licence or certificate issued by the Board under this Act before the commencement of the Pilotage (Amendment) Act 1992 or anything done by the Board under this Act before that commencement in connection with such a licence or certificate is taken to have been issued or done by the Director-General under this Act.

SCHEDULE 2—AMENDMENT OF MARINE PORT CHARGES
ACT 1989

(Sec. 4)

(1) After Division 1 of Part 2, insert:

Division 1A—Pilotage charges

Pilotage charges

7A. (1) A pilotage charge is payable in respect of a vessel on each occasion that it enters, leaves or moves within a pilotage port under the pilotage of a pilot in accordance with the Pilotage Act 1971.

SCHEDULE 2—AMENDMENT OF MARINE PORT CHARGES
ACT 1989—*continued*

(2) A pilotage charge is also payable for any deferral of pilotage authorised by that Act or at the request of the owner or master of the vessel.

(3) A pilotage charge is payable by the owner of the vessel.

Special provisions for pilotage services provided by approved contractors

7B. (1) This section applies to pilotage charges for pilotage services provided by a contractor to the Board under Part 4A of the Pilotage Act 1971.

(2) Any such pilotage charges are payable to the contractor instead of to the Board.

(3) Any such pilotage charges that the contractor may demand may be less than (but must not exceed) those fixed by the Board under this Act.

(4) For the purposes of any such pilotage charges:

- (a) section 17 (Collection of charges) applies as if references to the Board were references to the contractor; and
- (b) section 18 (Agreements in respect of charges) applies as if references to the Board were references to the contractor (but only in the case of an agreement approved by the Board); and
- (c) section 20 (Security for payment of charges) applies as if references to the Board were references to the contractor; and
- (d) section 21 (Failure to comply with Board's requirements) applies as if references to the Board were references to the contractor (but only in a case approved by the Board).

(2) Schedule 2 (**Savings and transitional provisions**):

- (a) In clause 1 (1), after “this Act”, insert “or the Pilotage (Amendment) Act 1992”.

SCHEDULE 2—AMENDMENT OF MARINE PORT CHARGES
ACT 1989—*continued*

- (b) At the end of clause 2 (c), insert:
- ; and
- (d) a reference to pilotage rates under the Pilotage Act 1971 is to be read as a reference to pilotage charges under this Act.
- (c) At the end of clause 3, insert:
- (2) Without limiting the operation of any saving contained in the Interpretation Act 1987, nothing in this Act or the Pilotage (Amendment) Act 1992 affects the liability of any person to pay any rate or charge incurred under the Pilotage Act 1971.
- (d) After clause 3, insert:
- Pilotage charges—transitional provision**
4. Until pilotage charges are fixed by the Board under this Act, the pilotage rates in force under Part 4 of the Pilotage Act 1971 immediately before its repeal by the Pilotage (Amendment) Act 1992 are taken to be the pilotage charges fixed under this Act.
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*[Minister's second reading speech made in-
Legislative Assembly on 5 March 1992
Legislative Council on 6 May 1992]*