

MARINE ADMINISTRATION BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Maritime Services (Amendment) Bill 1989 is cognate with this Bill.

The object of this Bill is to enact new marine administration legislation dealing with the constitution and functions of the Maritime Services Board of New South Wales ("MSB") and its subsidiary authorities.

The Bill—

- reconstitutes the MSB.
- provides for the management of the MSB. The MSB is to be managed by a Chief Executive. The policies of the MSB are to be determined by a board of directors which comprises the Chief Executive and part-time directors. Provision is made for Ministerial control, preparation of corporate plans, the MSB's pricing policies and delegation of functions to subsidiary authorities and other persons.
- establishes subsidiary ports authorities, including the MSB Sydney Ports Authority, the MSB Hunter Ports Authority and the MSB Illawarra Ports Authority. The subsidiary ports authorities are to have delegated MSB port management functions with respect to ports assigned to them.
- provides for the management of subsidiary ports authorities. The directors of each such authority are to comprise a director of the MSB (as Chairperson), the Chief Executive of the MSB, the Managing Director of the authority and other part-time directors.
- establishes a MSB Waterways Authority. The Authority is to have delegated MSB waterways management functions.
- provides for the management of the MSB Waterways Authority. The directors of the Authority are to comprise a director of the MSB (as Chairperson), the Chief Executive of the MSB, the Managing Director of the Authority and other part-time directors.
- provides for the staff of the MSB.

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- deals with financial provisions relating to the MSB, including provision for the payment of a dividend to the Treasury based on a percentage of the value of the assets of the MSB instead of the revenue of the MSB.
- enacts other miscellaneous provisions.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.

Clause 3 defines expressions used in the proposed Act. In particular, "marine legislation" is defined to include the various Acts and statutory instruments presently administered by the MSB.

PART 2—MARITIME SERVICES BOARD OF NEW SOUTH WALES

Division 1—Constitution of MSB

Clause 4 constitutes, as a statutory body representing the Crown, the Maritime Services Board of New South Wales.

Division 2—Functions of MSB

Clause 5 states the general functions of the MSB (including port and waterways management functions conferred by the marine legislation).

Clause 6 confers miscellaneous powers and functions on the MSB. In particular, the MSB is authorised to conduct any business in order to utilise its staff and facilities.

Division 3—Management of MSB

Clause 7 provides for directors of the MSB. They are the Chief Executive of the MSB and up to 7 part-time directors appointed by the Minister. One of the directors is to be appointed as Chairperson of the MSB.

Clause 8 provides that the function of the directors is to determine the policies of the MSB.

Clause 9 provides for the appointment of a Chief Executive of the MSB by the Governor after the directors of the MSB have been given an opportunity to recommend a person or persons for appointment.

Clause 10 provides for the affairs of the MSB to be managed and controlled by the Chief Executive in accordance with the policies of the directors.

Clause 11 deals with Ministerial control of the MSB. Under the clause—

- (a) any direction by the Minister must be in writing;
- (b) the directors may request the Minister to review the direction if the MSB would suffer a significant financial loss;
- (c) the MSB is not obliged to comply with the direction pending the review; and
- (d) the Minister may confirm the direction following the review only if the Minister, with the approval of the Treasurer, agrees to reimburse the MSB from public revenue for the estimated loss incurred by the MSB in complying with the direction.

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Clause 12 requires the MSB to supply the Minister with relevant information relating to its activities.

Clause 13 makes provision for the preparation and annual review of a corporate plan for the MSB. Under the clause—

- (a) the MSB is required each year to prepare a corporate plan having regard to such comments as the Minister may make on the draft plan;
- (b) the MSB is required to exercise its functions, as far as practicable, in accordance with the plan; and
- (c) the plan is to specify objectives, policies etc. to achieve those objectives and criteria to assess performance.

Clause 14 requires the MSB to review existing port charges and develop policies in respect of future port charges.

Clause 15 enables the MSB to exercise its functions through subsidiary authorities, joint ventures, partnerships etc.

Clause 16 authorises the delegation of the functions of the MSB to subsidiary authorities or authorised persons.

PART 3—SUBSIDIARY AUTHORITIES

Division 1—Subsidiary ports authorities

Clause 17 constitutes, as statutory bodies representing the Crown, the MSB Sydney Ports Authority, the MSB Hunter Ports Authority and the MSB Illawarra Ports Authority. Other subsidiary ports authorities may be constituted by the regulations.

Clause 18 describes the functions of a subsidiary ports authority, namely, delegated MSB functions with respect to the ports assigned to it and the function of advising the MSB on any matter relating to port management.

Clause 19 specifies the ports in respect of which the functions of a subsidiary ports authority may be exercised. For example, the MSB Sydney Ports Authority may exercise its functions in relation to Sydney Harbour, Botany Bay and other ports prescribed by the regulations.

Clause 20 provides for directors of each subsidiary ports authority. They are a director of the MSB (as Chairperson), the Chief Executive of the MSB, the Managing Director of the subsidiary ports authority and part-time directors. In the case of the MSB Illawarra Ports Authority, one of the part-time directors is to be the chairperson of the Port of Eden Advisory Committee referred to in clause 52.

Division 2—MSB Waterways Authority

Clause 21 constitutes, as a statutory body representing the Crown, the MSB Waterways Authority.

Clause 22 describes the functions of the MSB Waterways Authority, namely, delegated MSB functions and the function of advising the MSB on any matter relating to waterways management.

Clause 23 provides for directors of the MSB Waterways Authority. They are a director of the MSB (as Chairperson) the Chief Executive of the MSB, the Managing Director of the Authority and part-time directors.

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Division 3—Other MSB subsidiary authorities

Clause 24 provides for the constitution by the regulations of other subsidiary authorities of the MSB.

Clause 25 provides that a subsidiary authority under Division 3 has such functions of the MSB as are delegated to it at the direction of the Minister.

Clause 26 provides for separate directors of each subsidiary authority under Division 3 along the same lines as for subsidiary ports authorities under Division 1.

Division 4—Provisions relating to subsidiary authorities

Clause 27 provides that Division 4 applies to all subsidiary authorities of the MSB except private subsidiary corporations.

Clause 28 provides that the directors of a subsidiary authority are to determine the policies of the authority.

Clause 29 provides for the appointment of a Managing Director of a subsidiary authority by the MSB after the MSB has given the directors of the authority an opportunity to recommend a person or persons for appointment.

Clause 30 provides for the affairs of a subsidiary authority to be managed and controlled by the Managing Director in accordance with the policies of the directors.

Clause 31 authorises the MSB to employ necessary staff to enable a subsidiary authority to exercise its functions.

Clause 32 provides that the financial reporting requirements of the MSB must include a separate report on the financial position and activities of each subsidiary authority.

Clause 33 provides for the application, in a manner and to the extent prescribed by the regulations, of the provisions of the marine legislation to a subsidiary authority.

Clause 34 provides for the exchange, with the Minister's approval, of assets, rights or liabilities between the MSB and a subsidiary authority.

Division 5—Private subsidiary corporations

Clause 35 contains definitions for the purposes of the proposed Division.

Clause 36 authorises the MSB to form private companies, to acquire interests in private companies or to dispose of any such interest. The Minister's approval is required if such a private company becomes or ceases to be a private subsidiary corporation (namely, a private corporation in which the MSB has a controlling interest). A private subsidiary corporation is not to be a statutory body representing the Crown.

PART 4—STAFF

Clause 37 authorises the MSB to employ necessary staff. The staff are not employed under the Public Sector Management Act 1988.

Clause 38 authorises the MSB to fix the salary, wages and conditions of its staff (subject to any other Act or law).

Clause 39 authorises regulations to be made with respect to the employment of the staff of the MSB. The regulations are to be subject to any industrial award or agreement in connection with conditions of employment.

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Clause 40 authorises the MSB to arrange for the use of the staff and facilities of other government departments and of public or local authorities.

Clause 41 enables the MSB to engage consultants.

Clause 42 authorises the MSB to appoint persons to act as members of the staff of the MSB and to exercise their functions as members.

PART 5—FINANCE

Clause 43 provides for the continuation of the Maritime Services Board Fund.

Clause 44 provides for the payment into the Fund of government grants, revenue and other money of the MSB.

Clause 45 provides for the payment from the Fund of all payments required to be made by the MSB.

Clause 46 provides for the payment from the Fund of a dividend to the Treasury based on a percentage of the value of the assets of the MSB instead of on a percentage of the revenue of the MSB.

Clause 47 authorises the MSB to invest money held by it.

Clause 48 continues provisions relating to the capital indebtedness of the MSB to the State.

Clause 49 provides that all money received on account of the Fund is to be paid into a bank in New South Wales.

Clause 50 provides for the financial year of the MSB.

PART 6—MISCELLANEOUS

Clause 51 re-enacts a provision which preserves the MSB's functions in respect of land purporting to be vested in the MSB by the State.

Clause 52 requires the MSB to establish a Port of Eden Advisory Committee and enables the MSB to establish other advisory committees to advise and assist the MSB in its functions.

Clause 53 provides that a function exercised by the MSB, a subsidiary authority or a delegate of the MSB is not invalidated if it is exercised contrary to a direction by the Minister.

Clause 54 exculpates from personal liability the directors of the MSB or subsidiary authorities or persons duly acting under direction for any matter or thing done in good faith in the execution of official duties.

Clause 55 provides for the service of documents on the MSB or a subsidiary authority.

Clause 56 makes provision for the custody and use of the seal of the MSB or a subsidiary authority.

Clause 57 authorises the MSB to waive or refund charges etc.

Clause 58 enables the MSB to recover charges etc. due as a debt.

Clause 59 provides that offences against the proposed Act or regulations may be dealt with in a summary manner before a Local Court.

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Clause 60 empowers the making of regulations generally for the purposes of the proposed Act.

Clause 61 is a formal provision that gives effect to the savings, transitional and other provisions in Schedule 4.

Schedule 1 contains provisions relating to the directors of the MSB (including the procedure at meetings of the directors of the MSB).

Schedule 2 contains provisions relating to the Chief Executive of the MSB.

Schedule 3 contains provisions relating to the directors of subsidiary authorities (including the procedure at meetings of the directors of a subsidiary authority).

Schedule 4 contains savings, transitional and other provisions consequent on the enactment of the proposed Act and the cognate Act.
