

Maritime Services Act 1935 No 47

[1935-47]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)
- **Proposed repeal**
The Act is to be repealed on the commencement of Part 1 of Sch 2 to the [Marine Safety Act 1998 No 121](#).

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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Maritime Services Act 1935 No 47



New South Wales

An Act to provide for the constitution of a board to be styled “The Maritime Services Board of New South Wales”; to provide for the exercise and discharge by such board of the powers, authorities, duties, functions and obligations of the Sydney Harbour Trust Commissioners; to provide that such Board shall be charged with the administration of the [Navigation Act 1901](#) and certain other Acts; to confer and impose certain other powers, authorities, duties and functions on such board; to amend the *Sydney Harbour Trust Act 1900-1931*, the [Navigation Act 1901](#) and certain other Acts in certain respects; and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act and commencement

- (1) This Act may be cited as the [Maritime Services Act 1935](#).
- (2) This Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.
- (3) (Repealed)

2 Definitions

- (1) In this Act, unless the context or subject-matter otherwise indicates or requires:

Freight receptacle means a receptacle of a permanent character, other than a vessel, used or designed or adapted for use as a receptacle for the carriage of goods.

Goods includes wares, merchandise, articles and substances of whatsoever description and, except in the definition of **Freight receptacle** in this subsection, includes a freight receptacle.

Harbour master has the same meaning as it has in the [Ports and Maritime Administration Act 1995](#).

Installation includes any fixed, floating or movable structure for the berthing, docking, slipping, or repairing of vessels, or the handling of passengers, cargo, supplies or fuel, any pipe-line, conveyor or loading or unloading apparatus, and anything whatsoever erected, constructed, moored or stationed in, on, or in the

vicinity of any port or navigable waters by the Board or by any person for the purpose of conducting, facilitating or regulating in any way the operation of such port or the use of such waters.

Master includes every person having lawfully, or de facto, the command, charge, or management of a vessel for the time being.

Owner includes any person exercising or discharging, or claiming the right or accepting the obligation to exercise or discharge, any of the powers or duties of an owner, whether on the person's own behalf or on behalf of another and:

- (a) in relation to goods, other than freight receptacles, includes a consignor, consignee, shipper or agent for the sale, custody, shipment or unshipment of the goods,
- (b) in relation to a freight receptacle, includes a person who has contracted to carry goods therein, and the owner of any vessel on or from which the freight receptacle is carried or was last unshipped in a port, and
- (c) in relation to a vessel, includes:
 - (i) a person who is the owner of a vessel jointly with any other person or persons,
 - (ii) in relation to a vessel for which while it is in a port or when it was last in a port there is or was an agent for the berthing or working of the vessel and, where the vessel has left that port, for which there was no other agent when it last left that port—that firstmentioned agent, and
 - (iii) in relation to a vessel for which when it last left a port there was an agent other than an agent for the berthing or working of that vessel when it was in that port—that firstmentioned agent.

Port includes:

- (a) any harbour or haven, whether natural or artificial, or any estuary, channel, river, creek or roadstead, and
- (b) any navigable water in which vessels may lie for shelter or for the shipment or unshipment of goods or passengers.

Shore means shore so far as the tide flows and reflows, between high and low water-marks.

Trading vessel means any vessel used for or in connection with the carriage of goods or persons by water from one port to another port in the course of any business or in connection with any commercial transaction.

Vessel means any ship, lighter, barge, boat, raft, craft and any floating object or

apparatus used wholly or in part for the conveyance of persons or things by water, of whatsoever description and howsoever navigated, and includes amphibious vehicles, seaplanes, hydroplanes, hydrofoils, hovercraft, sunken or stranded vessels and the wreck or remains of any vessel.

(1A)-(2) (Repealed)

(3) A reference in this Act to any other Act shall be deemed to include a reference to all rules, regulations, by-laws, proclamations, notifications and instruments made, issued or executed under such Act and for the time being in force.

2A Ports and Maritime Administration Act 1995

This Act is subject to the [Ports and Maritime Administration Act 1995](#).

2B Transfer of Maritime Services Board's functions

(1) On the dissolution of the Maritime Services Board the powers, authorities, duties and functions of the Maritime Services Board under this Act become the powers, authorities, duties and functions of the Minister.

(2) A reference in this Act to the Board is taken to be a reference to the Minister.

(3) A reference in this Act to an officer of the Board is taken to be a reference to a delegate of the Minister or any officer of such a delegate.

Parts 2, 2A

3-4D (Repealed)

Part 3 Powers, authorities, duties, functions and obligations of the Maritime Services Board of New South Wales

Divisions 1-3

5-13 (Repealed)

Division 3A Port of Newcastle

13A-13C (Repealed)

13D Control of construction of certain works in Hunter River

(1) This section shall commence upon the date appointed by the Governor under section 13A.

(2) In that part of the bed and shores of the Hunter River including the channels and bays thereof extending upstream from the area included in Part 1 of Schedule 3 to a line extending due west across the Hunter River from the point where the left bank of the

Williams River meets the left bank of the Hunter River, no person shall without the consent of the Board:

- (a) construct or authorise the construction of any embankment, retaining wall, reclamation, wharf, dock, pier, jetty, landing stage, mooring apparatus, slip or platform, or
 - (b) carry out any dredging operations.
- (3) This section shall bind the Crown but shall not apply to works or dredging undertaken or authorised by the Crown under the *Newcastle Harbour Improvements Act 1953*, the *Broken Hill Proprietary Company Limited (Reclamation and Exchange) Agreement Ratification Act 1950* or the *Broken Hill Proprietary Company Limited (Steelworks) Agreement Ratification Act 1950*, or otherwise undertaken by the Crown for the purpose of flood control in the Hunter River.
- (4) For the purposes of section 13T, any work carried out in contravention of paragraph (a) of subsection (2) shall be deemed to have been carried out on land vested in the Board.

13E Carrying out of certain works by Minister for Public Works

The Minister for Public Works in the exercise of the Minister's powers or authorities under the *Newcastle Harbour Improvements Act 1953* and the *Hunter Valley Flood Mitigation Act 1956* shall in respect of any works to be carried out upon lands vested in the Board do so at such times and in such manner as may be agreed upon between the Minister for Public Works and the Board.

13F Obligations of Board in exercise of certain powers

In the exercise of the powers provided for in section 13N in so far as the Port of Newcastle and the Hunter River are concerned it shall be incumbent upon the Board at all times:

- (a) to have regard to the likely effect of its proposals upon the river control and flood problems of the Hunter River,
- (b) to inform the Minister for Public Works of any proposed works likely to affect the river control and flood problems of such river, and
- (c) to consider all objections to such works which may be raised by the Minister for Public Works, and inform such Minister of the Board's decision before proceeding with any construction work involved.

13G Disagreements under secs 13E, 13F

If the Board and the Minister for Public Works are unable to agree upon any question or matter arising under or in connection with section 13E or 13F, the question or matter shall be referred to a Joint Committee and shall be determined by the Treasurer in accordance

with the provisions of subsection (2) of section 13B. The provisions of the said subsection applicable to the constitution of Joint Committees shall apply, mutatis mutandis, to the constitution of a Joint Committee under this section.

Divisions 3B, 3BA

13H-13JD (Repealed)

Division 3BB Trading installations

13JE Control by Board of the erection etc of installations used by trading vessels

A person who, on or after the date of assent to the [Maritime Services \(Amendment\) Act 1978](#):

- (a) erects, constructs, moors or stations any installation in, on or in the vicinity of any port or navigable waters for use by or in connection with trading vessels or extends any such installation, or
- (b) where an installation has not been used by or in connection with trading vessels for a period of 2 years or more, permits the installation to be used by or in connection with trading vessels,

otherwise than with the written permission of the Board and in accordance with any condition subject to which that permission is given, is liable on summary conviction to a penalty not exceeding 4 penalty units.

13JF Investigation of future installations for use by trading vessels etc

- (1) The Board may carry out investigations into:
 - (a) the provision of installations for use by or in connection with trading vessels, or
 - (b) proposals relating to any such installations.
- (2) The Board may, with the approval of the Minister and by order published in accordance with subsection (5), prohibit:
 - (a) the construction of any embankment, retaining wall or reclamation or of a structure of any kind, or
 - (b) the carrying out of any dredging operations,in any area of water specified in the order in, on or in the vicinity of which the provision of an installation for use by or in connection with trading vessels is under consideration by the Board, otherwise than with the written permission of the Board and in accordance with any condition subject to which that permission is given.
- (3) The Board shall not refuse to give its permission under subsection (2) nor make that

permission subject to any condition unless, in the opinion of the Board, it is necessary to do so to prevent the carrying out of any work that would adversely affect the provision in, on or in the vicinity of the area of water concerned of the installation under investigation or adversely affect its subsequent operation.

- (4) An order made under subsection (2) continues in force until:
 - (a) it is revoked by a further order made by the Board, with the approval of the Minister, and published in accordance with subsection (5),
 - (b) the expiration of 3 years after it was published in the Gazette or on an earlier date specified in the order, or
 - (c) the vesting in the Board pursuant to section 13JB of any of the land on the bed or shores of the area of water specified in the order.
- (5) An order made under subsection (2) or (4) (a) shall be published in the Gazette and in at least one newspaper circulating in the vicinity of the area of water to which it relates.
- (6) A person who carries out any work which is prohibited by an order in force under subsection (2) without having the written permission of the Board to do so or in contravention of any condition subject to which the permission was given is liable on summary conviction to a penalty not exceeding 4 penalty units.
- (7) Subsection (2) does not apply so as to enable an order to be made prohibiting the carrying out of any work pursuant to an aquaculture lease under Part 6 of the *Fisheries Management Act 1994*, a lease under the *Mining Act 1992* or a licence under the *Offshore Minerals Act 1999*.

13JG Removal of unauthorised works

- (1) A person who makes use of any work carried out in contravention of section 13JE (a) or 13JF (2) (a) after the expiration of the time specified in a notice from the Board served upon the person requiring the person to remove the work is liable on summary conviction to a penalty not exceeding 4 penalty units.
- (2) The Board may remove, or authorise the removal of, any work carried out in contravention of section 13JE (a) or 13JF (2) (a).
- (3) The Board may at its option cause or authorise any work or any part thereof removed in pursuance of subsection (2) to be destroyed, stored or sold, or may sell the work on condition that it be removed.
- (4) The Board may recover as a debt in a court of competent jurisdiction the costs and expenses incurred by it in the removal, destruction, storage or sale of any work or part thereof under this section from the person who carried out the work or who has made

use of it after service upon the person of a notice referred to in subsection (1).

Division 3C Additional powers of Board

13K, 13L (Repealed)

13M Construction of works and provision of services

- (1) The Board may upon any land vested in it or under its control or management construct and enclose any embankment, retaining wall, reclamation, wharf, dock, pier, jetty, landing stage, mooring apparatus, slip, platform, or other structure or apparatus, or remove, alter, or repair the same.
- (2) The Board may authorise the construction of any shed, warehouse, building of any description, embankment, retaining wall, reclamation, wharf, dock, pier, jetty, landing stage, slip, platform, tramway, railway, hoisting crane, shears, engine, or other structure or apparatus on any land subject to any lease or licence granted by it.
- (3) The Board may upon any land vested in it:
 - (a) construct, erect, remove, alter or repair such depots, sheds and warehouses for the reception of goods, such other buildings of any description, and such tramways, railways, engines, cranes, hoisting and weighing machines, and other apparatus for facilitating the loading and discharging or the masting or unmasting of vessels or the testing of chains and anchors, and
 - (b) provide such other conveniences,as it may think expedient for the efficient use of such land, or for the proper administration of its functions.
- (4) The Board may, on land vested in it or under its control or management, operate any depots, sheds, warehouses, buildings, tramways, railways, engines, cranes, hoisting and weighing machines, and other apparatus and conveniences for the loading, unloading, transporting or storage of goods or otherwise on such conditions and for such fees as it deems appropriate, or may make such charges as it deems reasonable for the use thereof and for the services of any persons engaged in the conduct and operation thereof.
- (5) Where money is appropriated by Parliament for the provision or maintenance on any land vested in the Board of any facility for commercial fishing operations or for recreational boating, those facilities shall be provided or maintained by the Board and in such manner as may be agreed upon between the Minister for Public Works and the Board.
- (6) If the Minister for Public Works and the Board are unable to agree upon any matter arising under or in connection with subsection (5), the matter shall be referred to the

Governor for settlement and any determination made by the Governor in pursuance of such a reference shall be final and binding on the Minister and the Board.

13MA (Repealed)

13N Improvement of navigable waters

- (1) The Board may, for the purpose of maintaining and improving the navigation of the rivers and channels within, or leading into, the areas vested in it, dredge, cleanse, and scour the said rivers and channels and alter, deepen, cleanse, scour, cut, enlarge and otherwise alter and improve the bed of the said rivers and channels.

The Board may reduce or remove any banks or shoals whatsoever within the said rivers and channels; and may abate and remove all impediments, obstructions, and annoyances, and all nuisances and abuses whatsoever in the said rivers and channels, or on the banks and shores thereof.

- (2) The Board may remove, scour, and take away any shoal, mud-bank or other accumulation which impedes the navigation of any area vested in it and may shorten any bend or remove any angle in the course of the rivers and channels within any such area.
- (3) The Board may cut the banks of the rivers within any area vested in it for the purpose of making, enlarging, or repairing any dock, canal, drain, sewer, or watercourse, or altering, laying down, or repairing any suction or other pipe, or for any other purpose whatsoever, and may authorise any person to cut the banks for any of the purposes aforesaid, under such restrictions and upon such terms and conditions as the Board may deem appropriate.
- (3A) The Board may carry out such dredging or deepening of the bed of navigable waters or such repair or improvement of the banks or shores of navigable waters as it considers necessary for the purpose of facilitating the use of those waters by trading vessels.
- (4) The Board may within, or in the vicinity of, any area vested in it or any area of navigable waters place and lay down or take up such buoys and beacons and construct and erect such marker piles, channel markers, leading marks, shoal or reef marks and such other apparatus as may be necessary and convenient for navigation or for the protection of vessels or installations.
- (5) No work shall be carried out in pursuance of this section in any area which is not vested in the Board without the prior consent and approval of the person in whom that area is vested and of all proper authorities having jurisdiction or control over that area.

13O Power to make contracts for works to be carried out

- (1) The Board may enter into contracts with any person or with the Crown for the execution of any work or the provision of any services authorised by this Act to be done or provided by it or for furnishing materials or labour, or for providing proper engines or other power, or for any other matters and things whatsoever necessary for enabling it to carry the purposes of this Act into full and complete effect, in such manner, and upon such terms, and for such sum of money, and under such stipulations, regulations, and restrictions as the Board may deem appropriate.
- (2) The Board shall not carry out any work referred to in section 13M (1) or (3) or section 13N (subsection (4) excepted), other than work carried out in or in relation to the Ports of Sydney, Newcastle, Port Kembla or Botany Bay, except under a contract entered into pursuant to subsection (1) between the Board and the Minister for Public Works.

13P (Repealed)

13Q Provision of roadways and lighting

The Board may make such provision as it deems necessary upon any land vested in it for the construction and maintenance of roads and approaches to any installation and the adequate lighting of such installation, roads and approaches.

13R Patrolling and working of lands and installations

The Board may appoint or may arrange for the provision of such persons as it deems necessary from time to time to preserve order on or in relation to any lands and installations vested in it or under its control or management, to prevent the entry of or to remove any persons making use of any such lands and installations for purposes other than those for which they are intended to be used or loitering thereon or adjacent thereto and to assist any vessel in making use of any such lands and installations and to conduct and operate any depot, shed, warehouse, building, tramway, railway, engine, crane, hoisting or weighing machine or other apparatus or convenience on any land vested in it or under its control or management.

13S Rescue and fire-extinguishing operations

The Board may provide and maintain such plant, apparatus and things as it deems necessary for the rescue and resuscitation of drowning or apparently drowned persons and for the recovery of drowned persons and for the extinguishing of any fire on vessels or on any property vested in it or under its control or management and may employ such persons as it deems necessary for the proper operation and use thereof.

13SA Speed limits of vessels within navigable waters

- (1) The Board may, by notification published in the Gazette, limit the speed of vessels within navigable waters.

- (2) Any such notification may apply:
 - (a) to vessels generally, to any class or classes of vessels specified in the notification or to vessels other than vessels of a class or of classes so specified,
 - (b) to navigable waters generally, to any navigable waters specified in the notification or to navigable waters other than navigable waters so specified, and
 - (c) at all times or at such times as may be specified in the notification.
- (3) For the purposes of any such notification, vessels may be classified by reference to their size, the method of their propulsion, the purpose for which they are used or such other circumstance as may be specified in the notification.
- (4) If any vessel to which any such notification applies exceeds the speed specified in the notification, the master of the vessel shall be liable to a penalty not exceeding 2 penalty units.
- (5) Nothing in this section affects any power to regulate or control the navigation or other use of vessels conferred on the Board or any officer of the Board by this Act or by any other Act, by-law, regulation or rule with the administration of which the Board is charged.

13T Obstructions and encroachments in waters

- (1) In this section, **structure** includes any post, pile, stake, fence, pipe, chain, cable or wire, that is fixed to the soil or to anything fixed to the soil, any rubble or reclamation, and any other article, material or thing that is so fixed.
- (2) For the purposes of this section a reference to the bed of any waters vested in or controlled by the Board includes a reference to any land which, but for the existence of a structure, would be covered by any such waters.
- (3) Any person who erects any structure in, upon or over the bed of any waters vested in the Board without first obtaining the permission of the Board, or who makes use of any structure in, upon or over the bed of any such waters after the expiration of the time specified in a notice from the Board served upon the person requiring the person to remove the structure, shall be liable to a penalty not exceeding 4 penalty units.
- (4) The Board may remove or authorise the removal of any structure, erected without its permission in, upon or over the bed of any waters vested in it or not removed in accordance with any notice given under subsection (3).
- (5) Any person who, without lawful authority, erects any structure in, upon or over the bed of any waters controlled by the Board, not being waters vested in the Board, or who, without lawful authority, makes use of any structure in, upon or over the bed of any such waters after the expiration of the time specified in a notice from the Board

served upon the person requiring the person to remove the structure shall be liable to a penalty not exceeding 4 penalty units.

- (6) Proof of the existence of lawful authority to erect or make use of a structure in respect of which a person is prosecuted for an offence under subsection (5) shall be upon that person.
- (7) Where the existence of a structure in, upon or over any waters controlled by the Board, not being waters vested in the Board, is not authorised by a continuing authority granted in accordance with law or is in breach of any term or condition subject to which any such authority was granted, the Board may remove or authorise the removal of the structure.
- (8) If, for a period of three months, a notice is displayed on or adjacent to any structure erected in, upon or over the bed of any waters controlled by the Board, not being waters vested in the Board, requiring any person who has been granted an authority to erect, maintain or use the structure or any part thereof to deliver to the Secretary of the Board a statement in writing signed by that person stating by what authority the person erected or is entitled to maintain or use the structure or part thereof, any person who, within one month after the expiration of that period, fails to deliver such a statement to the Secretary of the Board shall have no claim against the Board or any other person removing the structure in accordance with subsection (7).
- (9) The Board may at its option cause or authorise any structure or part thereof removed in pursuance of subsection (4) or (7) to be destroyed or stored or sold, or may sell the structure on condition that it be removed, and may recover in any court of competent jurisdiction the expenses incurred in the removal, destruction, storage or sale of the structure or part thereof from the person who erected the structure or caused the structure to be erected or has made use of it after service upon the person of a notice referred to in subsection (3) or after the expiration of the period of three months for which a notice referred to in subsection (8) and relating to the structure was displayed.

13TA Erosion or siltation in certain ports

- (1) For the purposes of this section and section 13TB:

prescribed land means land that is within a distance of ten metres measured horizontally on the landward side:

- (a) from the top of the bank of any non-tidal waters, or
- (b) from high water mark on the shore of any tidal waters,

being in each case waters of which the bed is vested in the Board.

prescribed work means:

- (a) excavation,
- (b) removal of soil, sand, gravel, stone, rock or other material from land, or
- (c) removal of a retaining wall.

public authority means:

- (a) the Board,
 - (b) any other body, corporate or unincorporate, constituted by an Act where the Governor or a Minister of the Crown appoints one or more of the members of the body,
 - (c) a corporation sole constituted by an Act, or
 - (d) a council or a county council within the meaning of the *Local Government Act 1993*.
- (2) A person (other than a public authority) who does prescribed work on prescribed land is liable on summary conviction to a penalty not exceeding 4 penalty units unless the work is done with the written permission of the Board and in accordance with any conditions subject to which that permission is given.
- (3) Where the Board is satisfied:
- (a) that the bank or shore of any waters of which the bed is vested in it is being eroded or is likely to be eroded, or
 - (b) that any material of any kind is being deposited, or is likely to be deposited, on the bed or shore of any such waters,
- by reason of or as a result of:
- (c) the carrying out on any land of any prescribed work (whether or not the person carrying out the work is liable to a penalty under subsection (2)), or
 - (d) the demolition, collapse, partial collapse or disrepair of or any damage to, a retaining wall or other structure on any land,
- the Board may give to the person prescribed by subsection (4) in relation to the land the notice prescribed by subsection (5).
- (4) The person prescribed by this subsection in relation to any land is:
- (a) where the land is not vested in the Crown or a public authority—the owner of the land, or
 - (b) where the land is vested in the Crown or a public authority and work referred to in subsection (3) (c) has been carried out on the land in connection with land not so

vested:

- (i) the person who carried out the work, or
- (ii) the owner of the land not so vested.

- (5) The notice prescribed by this subsection is a notice in writing requiring the person to whom it is given to take within a reasonable time specified in the notice such measures as are necessary to ensure:
- (a) in the case referred to in subsection (3) (a)—that the erosion ceases or is prevented and that any erosion that has occurred is made good, or
 - (b) in the case referred to in subsection (3) (b)—that the deposit of material ceases or is prevented and that any deposited material is removed.
- (6) Where any material of any kind escapes from, or is carried by natural forces from, any land on which a person:
- (a) stored or accumulated that material, or
 - (b) carried on any work of excavation, earthmoving, material extraction, demolition, engineering or building construction,
- and the material is deposited on the bed or shore of any waters of which the bed is vested in the Board, the Board may give to that person with respect to that land the notice prescribed by subsection (7).
- (7) The notice prescribed by this subsection is a notice in writing requiring the person to whom it is given to take within a reasonable time specified in the notice such measures as are necessary to ensure:
- (a) the prevention of any further deposit on the bed or shore of any waters the bed of which is vested in the Board of any material escaping, or carried by natural forces, from the land in respect of which it is given, and
 - (b) that any such material so deposited is removed.
- (8) The Board may amend or revoke a notice given under this section.

13TB Compliance with certain notices

- (1) Where a person other than a public authority fails to comply with the requirements of a notice under section 13TA the Board may cause the requirements of the notice to be complied with at its own expense and may recover as a debt in a court of competent jurisdiction the costs and expenses of so doing.
- (2) Where, in any proceedings brought under subsection (1), the court is satisfied that the work caused to be done by the Board to carry out or complete the requirements of any

notice referred to in that subsection also included work which was not, in the circumstances, necessary for proper and effective compliance with those requirements, the court, in determining the amount of the costs and expenses recoverable by the Board, may deduct from the costs and expenses of the work caused to be done by the Board such amount as it considers proper.

13TC Exclusion of [Dividing Fences Act 1991](#)

The [Dividing Fences Act 1991](#) does not apply to or in respect of so much of a sea retaining wall as separates land of the Board from land of another owner.

13U Obstruction of waters or lands by vessels or articles

- (1) Any person who moors, runs ashore, cuts loose, or abandons any vessel, buoy, or floating object or apparatus, or cuts or slips any chain or anchor, or places or deposits any article, material or thing in, or upon the bed or shores of, any waters vested in or controlled by the Board, or on any land or wharf or in any building vested in or controlled by the Board, with the intention of avoiding responsibility for the same or with the intention that the rights of the owner of the same shall be impeded or rendered ineffective, shall be liable to a penalty not exceeding 4 penalty units.
- (2) The owner of any vessel, buoy, floating object or apparatus, chain, anchor, article, material or thing in, or upon the bed or shores of, any waters vested in or controlled by the Board, or on any land or wharf or in any building vested in or controlled by the Board shall remove the same within such time as may be specified in a notice from the Board served upon the owner requiring the owner so to do, and in default shall be liable to a penalty not exceeding 4 penalty units.
- (3) If the owner of any such vessel, buoy, floating object or apparatus, chain, anchor, article, material or thing fails to comply with the requirements of the notice served upon the owner under subsection (2), or if the identity or address of the owner of the same cannot be established after such enquiry as the Board considers reasonable, or if in the opinion of the Board it is essential in the interests of navigation or for the proper and efficient use of any such land, wharf or building, or for the safe keeping or preservation of such vessel, buoy, floating object or apparatus, chain, anchor, article, material or thing in or upon the bed or shores of any waters vested in or controlled by the Board, or on any land or wharf or in any building vested in or controlled by the Board, that the same be removed without delay, or if it appears to the Board that the same is occupying such waters, land, wharf, or building as aforesaid in contravention of any Act, by-law, regulation or rule with the administration of which the Board is charged, the Board may assume possession of the same, and may if it deems that the circumstances so require remove the same and, in the case of a sunken or unseaworthy vessel, or other object or article which in its opinion cannot otherwise reasonably be dealt with, may blow up or demolish the same for the purpose of removal.

- (4) Any vessel, buoy, floating object or apparatus, chain, anchor, article, material or thing possession of which has been assumed or which has been removed by the Board in accordance with subsection (3), or any component part thereof, shall be dealt with as follows:
- (a) if in the opinion of the Board the same has no value it shall be destroyed, otherwise it shall be held in the custody of the Board in such place as the Board deems appropriate, and may be so repaired and treated as shall in the Board's opinion be necessary to preserve its utility and value,
 - (b) if any person establishes to the Board's satisfaction the person's ownership of the same the person shall be entitled to receive the same upon payment of the expenses incurred in respect of the assuming possession, removal, custody, repair and treatment thereof, as fixed by the Board,
 - (c) if no person has established ownership of, and paid such expenses as aforesaid in respect of the same, the Board, after such lapse of time and such inquiry or public advertisement as it shall in the circumstances deem appropriate, may sell the same in such manner as it thinks fit, or if in its opinion the value of the same to the Board would exceed the proceeds of sale, may appropriate the same and credit the owner thereof with such value,
 - (d) if the net proceeds of sale of, or the credit allowed as aforesaid for, the same exceeds the expenses incurred in respect of the assuming possession, removal, custody, repair and treatment thereof as fixed by the Board, the surplus shall be paid by the Board on demand to the owner thereof,
 - (e) the Board may recover from the owner of the same the expenses incurred in the assuming possession, removal, custody, repair and treatment thereof, as fixed by the Board, after deduction therefrom of the net proceeds of any sale thereof or any credit allowed therefor,
 - (f) if the same has been destroyed pursuant to paragraph (a), the Board may recover from the owner of the same the expenses incurred in the assuming possession, removal, custody and destruction thereof, as fixed by the Board.
- (5) Nothing in this section shall affect or diminish the rights of the owner of any land in respect of such land, or of any lessee, tenant, or licensee in respect of the premises included in his or her lease, tenancy or licence.
- (6) If a notice is given under subsection (2) in respect of any vessel, buoy, floating object or apparatus, chain, anchor, article, material or thing, which is the subject of:
- (a) a warehouseman's lien in a warehouse of the Board, or
 - (b) any rate or charge under an Act or regulation, administered by the Board, which has the effect of prohibiting the removal of the same unless payment of the rate or

charge is first made,

the owner shall, unless the notice otherwise provides, before removing the same in compliance with the requirements of the notice, pay the amount of the lien, rate or charge and, unless the notice permits removal before payment, the refusal of any person to permit the owner to remove the same unless and until such payment is made shall not constitute a defence in any prosecution of the owner for failing to comply with the requirements of the notice.

- (7) If any rate or charge is payable to the Board in respect of, or if any warehouseman's lien had attached in a warehouse of the Board to, any vessel, buoy, floating object or apparatus, chain, anchor, article, material or thing which is held in the custody of, or sold by, the Board under subsection (4), the amount owing to the Board in respect of such rate, charge or lien may be included by the Board in the expenses which are payable to the Board, or which may be retained by the Board from any proceeds of sale or any credit allowed, in terms of that subsection.

13UA, 13UB (Repealed)

13V Hiring and disposal of plant

The Board may hire or lease to any person any vessels, floating and movable plant, mobile cranes, vehicles, machinery or apparatus together with the services of any persons employed in the operation thereof upon such terms as it deems fit, and may dispose of any vessels, floating and movable plant, mobile cranes, vehicles, machinery, apparatus, tools or materials which are or have become unnecessary for the conduct of its functions by sale or otherwise to any person in such manner as it deems fit.

13W (Repealed)

13WA Information regarding harbour master's directions etc

- (1) The Board may, for the purposes of providing relevant information to the public, make available (at such reasonable cost and in such manner as the Board may from time to time determine) a handbook or other publication containing the information.
- (2) **Relevant information** includes the kinds of directions that may be given by a harbour master and such other general information regarding the direction and control of vessels under that section as the Board considers to be appropriate.

13X Board may require work to be carried out on vessel

- (1) If in the opinion of the Board any vessel in or on the shores of any port used by trading vessels is unseaworthy or likely for any reason to cause damage to property or persons or to become a danger to shipping, the Board may serve notice on the owner thereof, or alternatively may affix to the vessel (if practicable) and publish in the Gazette and one newspaper circulating in the district a notification requiring that such

work be carried out in and about the vessel as the Board deems necessary within the time stated in such notice or notification or that the vessel be destroyed.

- (2) If the requirements of the Board are not so carried out, the Board may at its option:
- (a) carry out the work required,
 - (b) contract with any person for the carrying out of such work on such terms as it deems fit,
 - (c) destroy the said vessel or contract with any person for the destruction of the said vessel and sell in such manner as it deems fit any material or other property recovered from the vessel which in the Board's opinion has a sale value, or
 - (d) sell the said vessel for purposes of destruction to any person on such terms as it deems fit.
- (3) Any surplus moneys remaining after the deduction from the proceeds of any sale pursuant to paragraph (c) or (d) of subsection (2) of the charges and expenses incurred in the publication of any notification, the destruction of the vessel and the conducting of such sale shall be paid by the Board on demand to the person who at the time of the serving or publication of the said notice or notification was the owner of the vessel.
- (4) Any moneys remaining due to the Board in respect of:
- (a) the charges and expenses incurred in the publication of any notification and the carrying out of any work pursuant to paragraph (a) or (b) of subsection (2), or
 - (b) the charges and expenses incurred in the publication of any notification and the destruction of the vessel and the conducting of any sale pursuant to paragraph (c) or (d) of subsection (2), after allowing for the net proceeds of such sale,

shall be paid on demand to the Board by the person who at the time of the serving or publication of the said notice or notification was the owner of the vessel, and if unpaid may be recovered as a debt in any court of competent jurisdiction.

13Y Obstruction

Any person who obstructs or hinders the Board or any of its officers, servants or agents, or any person who has contracted with the Board or the officers, servants or agents of any such person, in the doing of anything authorised by section 13X shall be liable to a penalty not exceeding 4 penalty units.

13YA Liability of owners of vessels etc for damage to Board's property

- (1) This section shall apply:
- (a) to any damage done by any vessel, any floating timber or other material, or any

person employed about the vessel, timber or material to any installation, structure or fixed or movable property of any kind vested in or in the possession of the Board, and

(b) to the obstruction of the full and proper use of any port used by trading vessels, or of any installation or structure vested in or in the possession of the Board, occasioned by or resulting from the sinking, stranding or breaking up of any vessel or of any timber or other material.

(2) Where any damage or obstruction to which this section applies occurs:

(a) the owner of the vessel, timber or material concerned, shall be liable, and

(b) if the damage or obstruction was occasioned by the negligent act or default of the master of the vessel concerned or the person having charge of the timber or material concerned, the owner thereof and also such master or person shall be jointly and severally liable,

to pay to the Board all costs and expenses incurred in the repair and reinstatement of the installation, structure or property damaged, or in the removal of the obstruction and restoration of full and proper use of the port, installation or structure concerned, as the case may be.

(3) Any amount payable under subsection (2) which is not paid to the Board may be recovered by it as a debt in any court of competent jurisdiction.

13YB Land vested in Board taken to be Crown land for certain purposes

For the purposes of the *Offshore Minerals Act 1999*, the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*, land vested in the Board shall be deemed to be and to have always been Crown land.

13YC Grant of rights of way under the *Petroleum (Onshore) Act 1991*

(1) Subject to this section, section 106 of the *Petroleum (Onshore) Act 1991* does not extend to land that is vested in the Board or forms that part of the bed and shores of the Hunter River to which section 13D applies.

(2) Subsection (1) does not apply where:

(a) application is made under section 106 of the *Petroleum (Onshore) Act 1991* for a right of way,

(b) the Board is notified of the application and is furnished with such information with respect thereto as it reasonably requires, and

(c) the Board, within one month after being notified of the application or within such further time as the Under Secretary of the Department of Mines may specify:

- (i) notifies that Under Secretary that the Board is not prepared to grant to the applicant a right of way in substitution for the right of way applied for, or
- (ii) notifies that Under Secretary that the Board and the applicant are unable to reach agreement as to the terms and conditions upon which the Board will grant such a right of way.

13Z Leases and licences under other Acts

- (1) The Director-General of the Department of Mineral Resources shall give to the Board not less than twenty-one days' notice of any proposal to grant any lease or licence under the *Offshore Minerals Act 1999*, the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991* in respect of any land:
 - (a) vested in the Board,
 - (b) contained in that part of the bed and shores of the Hunter River to which section 13D applies, or
 - (c) contained in that part of the bed and shores of any area of water specified in an order in force under section 13JF (2).
- (1A) The Director of the New South Wales State Fisheries shall give to the Board not less than 21 days' notice of any proposal to grant any aquaculture lease under Part 6 of the *Fisheries Management Act 1994* in respect of any land referred to in subsection (1).
- (2) If, notwithstanding representations of the Board to the contrary, it is decided that any such lease or licence shall be granted, the Board shall be notified accordingly and may, within fourteen days of such notice, refer the dispute to the Minister for settlement by the Governor.
- (3) The Governor may make such order in the public interest and in the circumstances of the case as may seem to the Governor to be just and equitable.

Divisions 4-6

14-28A (Repealed)

Part 4 Miscellaneous

29, 30 (Repealed)

30A Service of notices and legal processes

- (1) Any notice required to be given under any Act, by-law, regulation or rule with the administration of which the Board is charged may be sufficiently served by posting the same duly stamped and addressed to the person to whom such notice is directed at

the person's place of abode or business last known to the Board, or in the manner herein prescribed for service of any summons or process.

- (2) Any summons or other process in any legal proceeding under any such Act, by-law, regulation or rule may be sufficiently served by delivering the same:
 - (a) personally to the person to be served, or
 - (b) at the person's place of abode or business last known to the Board, or
 - (c) on board any vessel to which the person belongs, and accompanied with a statement of the purport thereof to the person being or appearing to be in command or charge of such vessel.
- (3) The service of any notice, summons or process under this section may be proved in any legal proceedings either by the oath or by the affidavit of the person by whom it was served or otherwise.

30B Powers of entry and inspection

- (1) Any officer or employee of the Board or any member of the police force may enter and inspect any vessel, structure or wharf, or any land or building, in any waters controlled by the Board, or in or adjacent to or in the vicinity of any area vested in or controlled by the Board, for the purpose of ascertaining if any breach of any Act, by-law, regulation or rule, with the administration of which the Board is charged, has been committed, at any time reasonable in the circumstances, and may there make such measurements or tests, take such photographs and remove such specimens or samples of any substance, material or thing as may in the circumstances be reasonable.
- (2) Any person who prevents or obstructs the entry of any such officer or employee or member of the police force, or the making by him or her of such measurements or tests, the taking by him or her of such photographs or the removal by him or her of such specimens or samples, shall be liable to a penalty not exceeding 4 penalty units.

30C Liability of vehicle owner for parking offences

- (1) When a parking offence occurs in relation to any vehicle the person who at the time of the occurrence of the offence is the owner of the vehicle shall, by virtue of this section, be guilty of an offence under the regulation concerned in all respects as if the owner were the actual offender guilty of the parking offence unless:
 - (a) in any case where such offence is dealt with under section 30D, such owner satisfies the prescribed officer under section 30D that such vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used,
 - (b) in any other case the court is satisfied that such vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used.

- (2) Nothing in this section shall affect the liability of the actual offender but where a penalty has been imposed on or recovered from any person in relation to any parking offence no further penalty shall be imposed on or recovered from any other person in relation thereto.
- (3) Notwithstanding anything in the foregoing provisions of this section no owner of a vehicle shall by virtue of this section be guilty of an offence if:
- (a) in any case where such offence is dealt with under section 30D, the owner:
- (i) within twenty-one days after service on the owner of a notice under section 30D alleging that the owner has been guilty of such offence, supplies by statutory declaration to the prescribed officer under section 30D the name and address of the person who was in charge of the vehicle at all relevant times relating to the parking offence concerned, or
- (ii) satisfies such prescribed officer that the owner did not know and could not with reasonable diligence have ascertained such name and address,
- (b) in any other case the owner:
- (i) within twenty-one days after service on the owner of a summons in respect of such offence, supplies by statutory declaration to the informant the name and address of the person who was in charge of the vehicle at all relevant times relating to the parking offence concerned, or
- (ii) satisfies the court that the owner did not know and could not with reasonable diligence have ascertained such name and address.
- (4) A statutory declaration under subsection (3) if produced in any proceedings against the person named therein and in respect of the parking offence concerned shall be prima facie evidence that such person was in charge of the vehicle at all relevant times relating to such parking offence.
- (5) A statutory declaration which relates to more than one parking offence shall not be deemed to be a statutory declaration under or for the purposes of subsection (3).
- (6) In this section:
- Owner** of a vehicle includes the responsible person for the vehicle within the meaning of the *Road Transport (General) Act 2005*.
- Parking offence** means any offence of standing or parking a vehicle or of causing or permitting a vehicle to stand, wait or be parked in contravention of any regulation under this Act.
- (7) The provisions of this section shall be in addition to and not in derogation of any other provisions of this or any other Act.

30D Penalty notices for certain offences

Editorial note—

See also Part 3 of the *Fines Act 1996*.

- (1) A police officer or a prescribed officer may serve a penalty notice on a person if it appears to the police officer or the prescribed officer that the person has committed:
 - (a) an offence under section 13SA, or
 - (b) a prescribed offence under any regulation, or
 - (c) a prescribed offence under the *Commercial Vessels Act 1979* or a regulation under that Act, or
 - (d) a prescribed offence under the *Navigation Act 1901*, being an offence arising under the *Navigation (Collision) Regulations 1983* that is committed by the owner or master of:
 - (i) a vessel to or in relation to which the *Commercial Vessels Act 1979* applies, or
 - (ii) a vessel referred to in section 4A (2) of that Act, or
 - (iii) a vessel the subject of an exemption under section 48 of that Act, or
 - (iv) a recreational vessel (within the meaning of the *Ports and Maritime Administration Act 1995*).
- (1A) A police officer or a prescribed officer may also serve a penalty notice on a person if it appears to the police officer or the prescribed officer that the person is, by virtue of section 30C, guilty of a parking offence (within the meaning of that section) that is a prescribed offence.
- (1B) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (2) Any notice under subsection (1) or (1A):
 - (a) may be served in a manner provided by section 30A, or
 - (b) if it relates to an offence of which the owner of a vehicle is guilty by virtue of section 30C, may be addressed to the owner without naming the owner or stating the owner's address and may be served by leaving it on or attaching it to the vehicle.
- (3) (Repealed)

- (4) Where the amount of any prescribed penalty for an alleged offence is paid pursuant to this section no person shall be liable for any further proceedings for the alleged offence.
- (5) Payment of a penalty pursuant to this section shall not be regarded as an admission of liability for the purpose of nor in any way affect or prejudice any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
 - (a) prescribe the offences which shall be prescribed offences for the purposes of this section by setting out such offences or by a reference to the regulation or part of the regulation creating the offence,
 - (b) prescribe the amount of penalty payable under this section for any prescribed offence or any offence under section 13SA,
 - (c) for the purposes of this section, prescribe different amounts of penalties for different offences or classes of offences or for offences or classes of offences having regard to the circumstances thereof,
 - (d) prescribe the persons or classes of persons who shall be prescribed officers for the purposes of this section.
- (7) No penalty prescribed under this section for any offence shall exceed any maximum amount of penalty which could be imposed for such offence by a court.
- (8) The provisions of this section are supplemental to and not in derogation of the provisions of any other section of this Act or any other Act in relation to proceedings which may be taken in respect of offences.

30E (Repealed)

30F Information to be given to identify master of vessel

- (1) Where the master of a vessel is alleged to be guilty of an offence under any Act, by-law, regulation or rule with the administration of which the Board is charged:
 - (a) the owner of the vessel, or the person having the control of the vessel, or where such owner or person is a company the secretary of the company shall, when required so to do by an officer of the Board or a member of the police force, forthwith furnish a statement in writing and signed by such owner, person or secretary, stating the name and address of such master, and if any such owner, person or secretary fails to do so he or she shall be guilty of an offence against this Act and liable to a penalty not exceeding 4 penalty units unless he or she proves to the satisfaction of the court that he or she was unable to furnish such statement and that his or her inability to do so was not due to any lack of proper supervision on his or her part of the use made of the vessel, and

(b) any other person shall, if required as aforesaid, give any information which it is in the person's power to give and which may lead to the identification of such master and, if the person fails to do so, the person shall be guilty of an offence against this Act and liable to a penalty not exceeding 4 penalty units.

(2) Where a statement in writing purporting to be furnished under paragraph (a) of subsection (1) and to contain particulars of the name and address of the master of a vessel at the time of the commission of an alleged offence referred to in that subsection is produced in any court in proceedings for the offence against the person named in the statement as the master, the statement shall be evidence without proof of signature that the person was the master of such vessel at such time.

30G Requirements in case of accident

(1) In this section the word **vessel** means a vessel of less than 30 metres in length overall.

(2) Where, owing to the presence of a vessel in any port or navigable waters, an accident occurs, the master of a vessel concerned in the accident:

(a) shall stop the master's vessel,

(b) if the accident results in the death of or injury to any person, or in damage to a vessel which affects the seaworthiness of the vessel or the safety of persons on board the vessel, shall give any assistance which may be necessary and which it is in the master's power to give,

(c) if required so to do by any person having reasonable grounds for so requiring, shall produce any licence to navigate a vessel at speed, licence as coxswain or master's certificate, which the master holds, and shall give particulars of the master's name and place of abode, the name and address of the owner of the vessel, the name of the vessel and any distinguishing number which is, or is required to be, displayed by the vessel in pursuance of or by any Act or regulation,

(d) if required so to do by any officer of the Board or any member of the police force, shall give such particulars as it is in the master's power to give as to the time, place and nature of the accident, the name of every vessel concerned in the accident and any distinguishing number which was carried by any such vessel, the name and address of every person who was concerned in or who witnessed the accident, and the extent of any injury or damage resulting from the accident, and

(e) if such accident has resulted in the death of or injury to any person, or in damage to a vessel or to any other property to an extent apparently exceeding one hundred dollars, shall, as soon as practicable and in any case within twenty-four hours after the accident, forward to the Board in writing the particulars that, under paragraph (d), the master may be required to give, unless such particulars have

already been given by the master to a member of the police force, or to an officer of the Board, who required the master to give such particulars.

(3) Any person who:

- (a) without reasonable excuse, fails to comply with any provision of subsection (2), or
- (b) wilfully furnishes any false or misleading particulars in respect of any matter pursuant to paragraph (c), (d) or (e) of subsection (2),

shall be guilty of an offence against this Act and liable to a penalty not exceeding 4 penalty units.

31, 31A (Repealed)

32 Variations in proceedings

- (1) Any direction, authorisation or approval by the Board or by a member given, pursuant to this Act or to any other Act, by-law, regulation or rule with the administration of which the Board is charged, for the commencing of any prosecution or legal proceedings against any person shall be deemed a direction, authorisation or approval for the commencing of any other prosecution or proceedings against such person arising from or connected with the same or substantially the same facts.
- (2) The provisions of section 65 of the *Justices Act 1902* apply to any such direction, authorisation or approval in the same manner as those provisions apply to an information, complaint, summons or warrant.

33 (Repealed)

34 Proof of certain matters not required

- (1) In any prosecution or legal proceedings by or under the direction or authority of or on behalf or for the benefit of the Board no proof shall be required (until evidence is given to the contrary) of:
 - (a) (Repealed)
 - (b) any order of the Board,
 - (c) the particular or general appointment of any officer of the Board or any member of the police force to take proceedings against any person,
 - (d) the powers of any officer or any member of the police force to prosecute or take proceedings,
 - (e) the fact that any particular matter or place is within the jurisdiction of the Board,
 - (f) the fact that the defendant is, or at any relevant time was, the owner or occupier

of any land in question,

- (g) the fact that the defendant is, or at any relevant time was, the owner or in possession, control, or in charge of any thing in question,
 - (h) the fact that the defendant is, or at any relevant time was, the master or person in charge of any vessel or ship in question,
 - (i) the fact that the defendant is, or at any relevant time was, the owner or agent of any vessel or ship in question,
 - (j) the fact that, at any relevant time, any vessel or ship was not used solely for pleasure or was used for profit or reward,
 - (k) the fact that any vessel or ship was, at any relevant time, of such a net tonnage, gross tonnage or length that any provision of any Act, by-law, regulation or rule with the administration of which the Board is charged applied to it,
 - (l) the fact that the owner of any vessel or ship in question does not, or did not at any relevant time, hold in respect of the vessel or ship a valid and unexpired certificate of compliance with, or a valid or unexpired certificate of survey issued under, the provisions of any Act or regulation administered by the Board,
 - (m) the appointment of any person under any Act, by-law, regulation or rule with the administration of which the Board is charged,
 - (n) the fact that any land in question is, or at any relevant time was, vested in the Board or in the Crown or any Minister of the Crown or any statutory body,
 - (o) the fact that the control and management of any land vested in the Crown or any Minister of the Crown or any statutory body is, or at any relevant time was, properly placed in the Board or in The Housing Commission of New South Wales or in the Board as deputy, attorney or agent of The Housing Commission of New South Wales.
- (2) For the purpose of any such prosecution or legal proceedings, a person shall be deemed to be the owner of a vessel or ship notwithstanding that the person has mortgaged, chartered, leased or hired in any way the vessel or ship or that any other person is entitled, whether at law or in equity, to any share or interest in the vessel or ship.
- (3) For the purposes of this section:
- (a) a certificate purporting to be signed by the Secretary of the Board and certifying that the Board has directed that any prosecution or legal proceedings referred to in the certificate be commenced shall be evidence of that direction,
 - (b) any prosecution or legal proceedings undertaken by an officer of the Board shall

be deemed to have been directed by the Board in the absence of proof to the contrary, and

- (c) any prosecution undertaken by a member of the police force in pursuance of any Act, by-law, regulation or rule with the administration of which the Board is charged, shall be deemed to have been directed by the Board in the absence of proof to the contrary.
- (4) In any prosecution or legal proceedings by or under the direction or authority of or on behalf or for the benefit of the Board:
- (a) any writing purporting to be a copy of a licence, certificate or permission granted by the Board, or of a direction under the hand of an officer or employee of the Board that compliance with a requirement of any Act, by-law, regulation or rule with the administration of which the Board is charged be dispensed with, or of an instrument granting exemption from any such requirement, or of any conditions subject to which such dispensation or exemption was granted, and purporting to be certified as a true copy of such licence, certificate, permission, direction, instrument or conditions by the Secretary of the Board, shall be prima facie proof of the terms of such licence, certificate, permission, direction, instrument or conditions and that it was duly granted or given and duly issued, and production of the original licence, certificate, permission, direction, instrument or conditions shall not be required,
 - (b) a certificate purporting to be signed by the Secretary of the Board that any certificate, licence, permit, registration or exemption under any Act, by-law, regulation or rule with the administration of which the Board is charged or any renewal of any such certificate, licence, permit, registration or exemption has not been issued, granted or effected or was not in force on a day specified in the certificate purporting to be so signed shall be prima facie proof of the facts stated therein,
 - (c) a copy of the Gazette containing any notification purporting to be made under any Act, by-law, regulation or rule with the administration of which the Board is charged shall be prima facie proof of the due making of the notification and of its contents,
 - (d) a certificate purporting to be signed by the Secretary of the Board that any licence, registration, certificate, permission or direction granted, effected, issued or given by the Board, was cancelled, suspended or revoked by the Board or that any application made to the Board was refused by the Board shall be prima facie proof of such cancellation, suspension, revocation or refusal and where the certificate purporting to be so signed specifies the grounds upon which the licence, registration, certificate, permission, direction or application was cancelled, suspended, revoked or refused, of the grounds for the cancellation, suspension,

revocation or refusal,

(e) the statement in a daily newspaper circulating throughout New South Wales of the times of sunrise and sunset on any day shall be prima facie proof of such times.

(5) In any prosecution or legal proceedings by or under the direction of or on behalf of or for the benefit of the Board, or in any Court of Marine Inquiry, evidence that:

(a) a message or signal was transmitted, given or made by an officer of the Board in the course of the officer's duties, and

(b) the vessel to which the message or signal was transmitted, given or made was so located as to be able to receive the message or signal,

shall be prima facie proof that the message or signal was received by the master of the vessel concerned.

35-36A (Repealed)

37 Proof of regulations

In any prosecution or legal proceedings any writing purporting to be a copy of any regulation made under this Act, the *Sydney Harbour Trust Act 1900*, the *Navigation Act 1901* or any other Act with the administration of which the Board is charged and purporting to be certified as a true copy of such regulation by the Secretary of the Board or by the officer of the Board for the time being acting as Secretary of the Board shall be evidence that such regulation was duly made or duly made and confirmed and that it is still in force without any proof of the official character or of the signature of the person appearing to have signed such writing.

37A Application of penalties

(1) All penalties recovered for offences against this Act or any regulation made under this Act shall be paid to the Board.

(2) All proceedings for offences against this Act or the regulations shall be disposed of summarily before a stipendiary magistrate or any two justices in petty sessions.

38 Regulations

(1) The Governor may make regulations not inconsistent with this Act or with any other Act with the administration of which the Board is charged:

(a) in relation to any authority, duty, function, obligation or power conferred or imposed on the Board,

(b) in relation to any land vested in the Board or any matter or thing over which the Board has control or the general superintendence,

- (c) prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, the *Sydney Harbour Trust Act 1900* or the *Port Rates Act 1975*.
- (2) In particular and without limiting the generality of the foregoing power the Governor may make regulations for or in relation to:
- (a) the marking, sorting, stacking, loading, unloading, delivery and the handling generally of cargo and goods in any port or on any wharf or on any land vested in the Board or under its control or management,
 - (ai) the removal of such cargo or goods by the owner thereof, or by the owner of a vessel who has received such cargo or goods for shipment on that vessel, from such port, wharf or land, the removal by the Board of any such cargo or goods or any class thereof to any other place vested in or controlled by the Board, or the depositing of the same by the Board in any bond or store, the imposition in respect of any cargo or goods or any class thereof not removed by the owner thereof, or by the owner of a vessel who has received such cargo or goods for shipment on that vessel, from any such port, wharf or land within any time or times specified in the regulations of charges either general in application or specifically applying to particular classes of cargo or goods, particular wharves or areas or particular times or calculated by reference to the average dimensions or weight of any separate portions of any cargo or goods or by reference to such method as may be prescribed by the regulations, and the recovery by the Board of the costs and expenses incurred in the removal of any such cargo or goods and in cleansing or reinstating any wharf or land affected by such cargo or goods,
 - (aii) the imposition, in respect of vessels which enter or leave any port or ports or which are berthed at any installation or any class or classes of installations in any port or ports, of passenger rates calculated by reference to any one or more of the following, namely, the number of passengers carried, embarked, or disembarked on, on to or from any such vessel, the voyage or class of voyage made or to be made, the class of accommodation provided, the passage money charged, or any other circumstances specified in the regulations,
 - (b) controlling and regulating the occupation of navigable waters by structures or floating objects or apparatus or by vessels occupying navigable waters for the purpose other than the normal incidents of a voyage, and the use of moorings,
 - (c) notwithstanding anything contained in section 86 of the *Sydney Harbour Trust Act 1900*, the prevention, prohibition or regulation, whether by the adoption of standards or otherwise, of the doing or continuance, in or on any waters or lands vested in or controlled by the Board or in the vicinity thereof, of anything likely to cause the pollution of the navigable waters lying within one nautical league of the coast or the inland navigable waters of New South Wales or the foreshores or

- shores of any such navigable waters or inland navigable waters, or any portion of such navigable waters, inland navigable waters, foreshores or shores,
- (d) the management, control or development of any port or wharf or any land vested in the Board or under its control or management,
 - (e) controlling and regulating the use of any portion of the bed, foreshores, or shores of any port,
 - (ei) prohibiting or regulating on, or in connection with, any vessel, floating object, apparatus or structure in any navigable waters, the carrying on of any activity or operation, or the installation or use of any fitting, equipment or machine, which may cause annoyance, nuisance, injury or danger to any person, damage or risk of damage to any property or pollution of navigable waters, or which involves the emission of noise, smoke, dust, cinders, solid particles of any kind, gases, fumes, mist, odours, radio-activity or radio-active substances,
 - (eii) prescribing equipment to be installed to prevent or limit any emission referred to in paragraph (ei),
 - (f) generally controlling and regulating the navigation, use and equipment of vessels in the navigable waters of New South Wales and, without limiting the generality of the foregoing:
 - (i) the proper, safe, and efficient conduct of navigation and of maritime and aquatic activities,
 - (ii) preventing interference by or in the use of any vessel with the operation or use of any other vessel,
 - (iii) preventing the operation or use of any vessel in a manner that may cause annoyance, nuisance, injury or danger to any person or damage or risk of damage to any property, and
 - (iv) preventing or limiting the emission from vessels of noise, smoke, dust, cinders, solid particles of any kind, gases, fumes, mist, odours, radio-activity or radio-active substances, prescribing the equipment to be installed in vessels to prevent or limit any such emission, and preventing or regulating the use, movement or operation of vessels in such manner as may cause, increase, or render more serious the effect of, any such emission,
 - (fi) the issue by the Board and the use and return to the Board of special plates for attachment to vessels, the conditions subject to which any such plates may be issued or used, the fees payable in respect of any such plates, the exemption of the owner or master of any vessel to which any such plate is attached from such of the provisions of any Act, by-law, regulation or rule with the administration of which the Board is charged as may be specified in the regulations made under this

paragraph or in any conditions subject to which any such plates may be issued or used, and the imposition of penalties not exceeding 4 penalty units for any breach of any regulation made under this paragraph or of any condition subject to which any plate may be used,

- (g) the commencement, carrying-out, completion and control generally of all work connected with the cutting-down, demolition, destruction and removal of any vessel or structure in any port and the imposition of fees in relation to any such work; the removal by any means whatsoever of derelicts, impediments, obstructions, nuisances, wrecks and the like,
- (h) the precautionary or safety measures to be taken and the control generally of all matters relating to the conveying, loading, unloading, delivery and the handling generally of explosives in any port,
- (i) the control, regulation and management generally of all matters relating to vessels in any port and to vehicles of any description and their drivers on any wharf or on any property vested in the Board or under its management or control,
- (j) the licensing of porters and prescribing their duties,
- (k) controlling and regulating the use of any vehicle or machine of any description operating on any wharf or on any property vested in the Board or under its management or control,
- (l) the payment of fees to assessors engaged in a court of marine inquiry,
- (m) the keeping and using, by persons concerned with the marking, sorting, stacking, loading, unloading, delivery and the handling generally of cargo or goods in any port or on any wharf or land vested in or controlled by the Board, of records and forms relating to such operations, providing for inspection of such records and forms by or on behalf of the Board, providing for the furnishing of such records and forms, or copies or extracts thereof, for use in any legal proceedings instituted by the Board or by its direction,
- (n) prohibiting or regulating on any vessel, or on any land or in any building vested in or controlled by the Board, the carrying on of operations involving risk of fire, explosion or other damage to persons or property or any danger to health, and prohibiting the entry to any port or place, and in general controlling the movements, of vessels which for any reason constitute such a risk or danger,
- (ni) the carriage and use by a vessel within a port of equipment and apparatus for the receipt or despatch of messages or signals or for the purpose of indicating, by the emission or reflection of signals or otherwise, the location and movements of such vessel,
- (o) the conduct of persons using or being upon or in any land, wharf, depot, shed,

warehouse or other place vested in or controlled by the Board, the prevention of the improper use of the same and of objectionable or dangerous conduct thereon or therein, and the prevention of damage or injury to any such land, wharf, depot, shed, warehouse or place, or to any goods, cargo, plant, machinery, vehicles or things, or to other persons, thereon or therein,

(p) prohibiting or regulating the presence of, or any specified activity of, persons:

(i) in any navigable waters in the vicinity of or within a prescribed distance of any moored, anchored, sunken or stranded vessel, or

(ii) in or on, or on land adjacent to, any navigable waters or any lands vested in or controlled by the Board, in the vicinity of or within a prescribed distance of any wharf or installation which is used for the shipment or unshipment of cargo, any installation used for the construction, repair or refitting of vessels, any depot, shed, warehouse or area used for the storage, handling or safe keeping of cargo, goods, vehicles, plant, equipment or materials, or any site on which construction work is being carried out by the Board or any public authority,

(q) subject to subsection (3A), describing the boundaries of any port or area of water.

(2A) Without limiting the generality of any other provision of this section, the power of the Governor to make regulations under this section includes power to make regulations for or with respect to:

(a) the erection by the Board of signs and notices for the purpose of prohibiting or regulating the movement, standing, waiting or parking of vehicles on any wharf or property vested in the Board or under its control or management and the imposing of penalties not exceeding 2 penalty units for any failure to comply with any such sign or notice,

(b) the installation by the Board of parking meters on any such wharf or property for the purpose of regulating the standing, waiting or parking of vehicles in any place on any such wharf or property and the operation and protection from damage of any parking meters so installed,

(c) the demanding, recovery or collection by the Board of such charges or fees as may be fixed by the Board in respect of any vehicle standing, waiting or parked in any place on any such wharf or property where the regulations require the payment of such fees or charges in respect of vehicles standing, waiting or parked in that place,

(d) the prohibition or regulation of the entry of vehicles on to, and the movement of vehicles on, any such wharf or property,

(e) the production, by the driver of any vehicle on any such wharf or property to a member of the police force or a person appointed by the Secretary of the Board, of

any licence required by law to be held by the driver as the driver of that vehicle,

- (f) the making or display by vessels of prescribed signals or lights, and the manner of navigation of other vessels when such signals or lights are made or displayed by a vessel,
- (g) the erection by the Board of signs and notices for the purpose of prohibiting or regulating the navigation of vessels, or the use of vessels for a purpose or purposes or otherwise than for a purpose or purposes stated in such sign or notice, or the mooring or anchoring of vessels, or of vessels of a specified class or classes, or of vessels other than vessels of a specified class or classes, stated in such sign or notice, in any area of navigable waters and the imposing of penalties not exceeding 2 penalty units for any failure to comply with any such sign or notice,
- (h) the erection by the Board of signs and notices for the purpose of prohibiting or regulating the presence of persons, or of persons of a class or classes or of persons other than of a class or classes stated in any such sign or notice, on or in any land, wharf, building or structure vested in the Board or under its control or management, or the use by persons of any such land, wharf, building or structure for a purpose or purposes or otherwise than for a purpose or purposes stated in such sign or notice, and the imposing of penalties not exceeding 2 penalty units for any failure to comply with any such sign or notice,
- (i) the giving by the Board, or a servant of the Board, of a notice to any person for the purpose of preventing, prohibiting or regulating, either absolutely or conditionally, the carrying on or continuance of any activity, operation, installation, use or emission referred to in paragraph (ei) or (f) of subsection (2), the investigation, by such persons in such manner and circumstances as may be prescribed, as to whether a notice should continue in force, the imposing of penalties not exceeding 4 penalty units for any failure to comply with any such notice, and the payment of fees and charges for or in connection with any such investigation.

(2B) Without limiting the generality of any other provision of this section, the Governor may, make regulations for and with respect to the safety of persons who operate, use, or are carried in, a vessel (not being a vessel engaged in the coasting trade) which is in, or has gone to sea from, any navigable waters within, or within one nautical league from the coast of, New South Wales including, without limiting the generality of the foregoing, regulations relating to:

- (a) the design and construction of vessels,
- (b) the carriage in a vessel of equipment for the safe and proper navigation and use of the vessel,
- (c) the carriage in a vessel of life-saving equipment and apparatus, and of means of

making distress signals,

- (d) the carriage in a vessel of equipment for facilitating rescue,
- (e) the use to be made of prescribed equipment carried on a vessel,
- (f) the making or display by vessels of prescribed signals or lights, and use of a vessel and its equipment.

(3) A regulation may:

- (a) be of general or specially limited application according to time, place or circumstances, and may be general or restricted to any specified class of subject matter or restricted to all subject matter other than subject matter of a specified class or specified classes,
- (b) provide for the issue, making, revocation, cancellation or suspension of licences, registration certificates or permits to or with respect to persons and property and for the payment of licence, registration and permit fees,
- (c) provide for the payment of fees for inspections and other services rendered by officers and employees of the Board,
- (d)
 - (i) where the regulation is made under paragraph (c) of subsection (2) for the purpose of preventing, prohibiting or regulating the doing or continuance of anything likely to cause any such pollution as is referred to in that paragraph by dangerous goods or volatile or furnace or lubricating oil, or liquid derived from petroleum, shale or coal, impose a penalty not exceeding 20 penalty units for any breach thereof,
 - (ii) in any other case, impose a penalty not exceeding 15 penalty units for any breach thereof,
- (e) fix a minimum as well as a maximum penalty, and impose a daily penalty for any continuing breach thereof not exceeding 1 penalty unit per day,
- (f) provide that any costs or expenses incurred by the Board or the Crown as a result of the breach thereof may be recovered in any court of competent jurisdiction from the person convicted of such breach,
- (g) make both the owner and the master of any vessel liable for any breach of any such regulation committed from or in the use of such vessel,
- (h) provide that any licence, registration certificate or permit therein referred to may be issued, or any consent or approval therein referred to may be given, upon any conditions deemed appropriate by the Board, that any such condition may be

varied or revoked, and that a breach of any such condition shall constitute a breach of such regulation.

(3A) Where the boundaries of a port are described by a regulation made pursuant to subsection (2) (q), the boundaries of the port as so described may include an area of water adjacent to the entrance to the port.

(4) In this section:

dangerous goods has the same meaning as in the *Dangerous Goods (Road and Rail Transport) Act 2008*.

mooring means the whole of the apparatus used to secure a vessel in any navigable waters for any purpose other than the normal incidents of a voyage, whether or not such apparatus or any part thereof is itself beyond the shores of such waters, and whether or not such apparatus, or any part thereof, is, has been, or is proposed to be used by the same or any other person for any other purpose, and any apparatus or group thereof used to secure more than one vessel shall constitute as many moorings as there are vessels so secured, but does not include the gear or equipment of a vessel by which such vessel is so secured.

wharf means any wharf, dock, pier, jetty, landing-stage, slip or platform vested in the Crown or the Board and includes any depot, shed, building or structure erected thereon or forming part thereof or used in connection therewith and any land vested in the Crown or the Board adjoining or adjacent to any wharf as hereinbefore defined and used in connection therewith, but does not include any wharf as hereinbefore defined the control and management of which is vested in a council within the meaning of the *Local Government Act 1993*.

(4A)

(a) If it appears to the Board, on the application of any person affected by any regulation or part thereof, that compliance with that regulation or part is impracticable or unnecessary, the Board may direct that compliance with that regulation or part may be dispensed with, and may, by the same direction, direct that some other requirement be substituted for the requirement of the regulation or part thereof.

(b) A breach of any requirement directed by the Board to be substituted for any regulation or part of a regulation specified in the direction shall be deemed to be a breach of that regulation.

(c) Any direction under this subsection may be given under the hand of any officer or employee of the Board appointed by the Board in that behalf.

(5) A power to make a regulation under this section in respect of anything vested in or controlled by the Board includes such a power in respect of anything vested in or

controlled by a Port Corporation or the Authority within the meaning of the *Ports and Maritime Administration Act 1995*.

- (6) A regulation made by the Maritime Services Board under this section and in force immediately before the commencement of this subsection is taken to have been made by the Governor.

39, 40 (Repealed)

Schedule 1

(Section 9)

Amendments to the Sydney Harbour Trust Act 1900-1931

Editorial note—

The amending provisions are not reprinted: *Reprints Act 1972*, section 6.

Schedule 2

(Section 13)

Amendments to the Navigation Act 1901

Editorial note—

The amending provisions are not reprinted: *Reprints Act 1972*, section 6.

Amendments to the Harbour and Tonnage Rates Act 1920

Editorial note—

The amending provisions are not reprinted: *Reprints Act 1972*, section 6.

Schedules 3-8 (Repealed)