

MARITIME SERVICES (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 3, 1972.

An Act to make provision with respect to mining in or on certain lands vested in The Maritime Services Board of New South Wales; to increase certain penalties; to impose certain duties on the masters of vessels concerned in an accident in a port or navigable waters; to confer certain powers on the harbour master at Port Kembla; to confer on The Maritime Services Board of New South Wales certain powers under the Rivers and Foreshores Improvement Act, 1948; for these and other purposes to amend the Maritime Services Act, 1935, and the Rivers and Foreshores Improvement Act, 1948; and for purposes connected therewith. [Assented to, 6th March, 1972.]

BE

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No. 3, 1972 **B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. 1. This Act may be cited as the "Maritime Services (Amendment) Act, 1972".

Amend-
ment of
Act No. 47,
1935.

2. (1) The Maritime Services Act, 1935, is amended—

Sec. 13A.
(Vesting of
Port of
Newcastle
in
Board.)

(a) by inserting in section 13A after the word "lands" where firstly occurring the words "(excluding minerals as defined in section three of the Mining Act, 1906)";

Sec. 13c.
(Rights,
liabilities,
etc.)

(b) by inserting at the end of section 13c the following new subsection:—

(2) This section shall not apply to any lease under the Mining Act, 1906, or to any moneys, claims, suits, actions, proceedings, contracts, agreements, undertakings, securities or debts payable or recoverable under, related to, connected with or in any way arising from any such lease.

Sec. 13H.
(Vesting
of Port
of Botany
Bay in
Board.)

(c) by inserting in section 13H after the word "lands" the words "(excluding minerals as defined in section three of the Mining Act, 1906)";

Sec. 13J.
(Rights,
liabilities,
etc.)

(d) by inserting at the end of section 13J the following new subsection:—

(3) This section shall not apply to any lease under the Mining Act, 1906, or to any moneys,
claims,

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claims, suits, actions, proceedings, contracts, agreements, undertakings, securities or debts payable or recoverable under, related to, connected with or in any way arising from such leases. No. 3, 1972

(2) The amendments made by subsection one of this section shall be deemed to have commenced on the first day of May, one thousand nine hundred and sixty-one.

3. The Maritime Services Act, 1935, is further amended— Further amendment of Act No. 47, 1935.

- (a) (i) by omitting from subsection three of section 13T the word "two" and by inserting in lieu thereof the word "four"; Sec.13T. (Obstructions and encroachments in waters.)
- (ii) by omitting from subsection five of the same section the word "two" and by inserting in lieu thereof the word "four";
- (b) (i) by omitting from subsection one of section 13U the word "two" and by inserting in lieu thereof the word "four"; Sec. 13U. (Obstruction of waters or lands by vessels or articles.)
- (ii) by omitting from subsection two of the same section the word "two" and by inserting in lieu thereof the word "four";
- (iii) by inserting next after subsection five of the same section the following new subsections :—

(6) If a notice is given under subsection two of this section 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

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- (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 four of this section, 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.

Sec.13w.
(Powers of
harbour
master.)

- (c) (i) by inserting in subsection one of section 13W after the word "Newcastle" the words ". Port Kembla";
- (ii) by omitting from subsection three of the same section the word "two" and by inserting in lieu thereof the word "four";

Sec. 13y.
(Obstruc-
tion of
harbour
master,
etc.)

- (d) by omitting from section 13Y the word "two" and by inserting in lieu thereof the word "four";

(e)

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(e) by inserting next after section 13YA the following **No. 3, 1972** new sections :—

13YB. For the purposes of the Mining Act, 1906, and the Petroleum Act, 1955, land vested in the Board shall be deemed to be and to have always been Crown land.

New secs.
13YB, 13YC.
Land
vested in
Board
deemed to
be Crown
land for
certain
purposes.

13YC. (1) Subject to this section, paragraph (b) of subsection one of section twenty-three of the Mining Act, 1906, and section forty of the Petroleum Act, 1955, do 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 of this Act applies.

Grant of
leases for
mining pur-
poses
under
Mining
Act, 1906,
etc.

(2) Subsection one of this section does not apply where—

- (a) application is made under the Mining Act, 1906, for a lease for mining purposes referred to in paragraph (b) of subsection one of section twenty-three of that Act or under the Petroleum Act, 1955, for an easement or right of way under section forty of that Act;
- (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 lease, license, easement or right of way in substitution for the lease, easement or right of way applied for; or

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- (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 lease, license, easement or right of way.

Sec. 15.
(Appointment of officers and employees.)

- (f) (i) by inserting next after subsection one of section fifteen the following new subsection :—

(1A) (a) For the purpose of carrying out the provisions of any Act or regulation with the administration of which the Board is charged, the Board may appoint persons to exercise and perform the powers and duties of officers of the Board in relation to any such Act or regulation.

(b) An appointment under this subsection shall be upon such conditions as to duration or other circumstances as the Board may determine.

(c) A person appointed under this subsection shall—

- (i) be deemed to be an officer of the Board for the purposes of section sixteen of this Act, and for the purposes of the Act or regulation in relation to which he is appointed to exercise and perform powers and duties; and

- (ii) in the exercise and performance of such powers and duties, be subject to the sole control and governance of the Board, and to regulations made under section eighteen of this Act to the same extent as if he were an officer of the Board.

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- (ii) by inserting in subsection two of the same section after the word "Crown" the words "or of any local or other public authority or of any trustee of land for public purposes";
- (iii) by omitting from the same subsection the words "or statutory body" and by inserting in lieu thereof the words ", statutory body, authority or trustee";
- (g) by omitting from subsection two of section 30B the word "two" and by inserting in lieu thereof the word "four";
- (h) (i) by omitting from paragraph (a) of subsection one of section 30F the word "two" and by inserting in lieu thereof the word "four";
- (ii) by omitting from paragraph (b) of the same subsection the word "two" and by inserting in lieu thereof the word "four";
- (i) by inserting next after section 30F the following new section :—

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Sec. 30B.
(Powers of entry and inspection.)Sec. 30F.
(Information to be given to identify master of vessel.)

New sec. 30G.

30G. (1) In this section the word "vessel" means a vessel of less than one hundred feet in length overall.

Requirements in case of accident.

(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 his 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 his power to give;

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- (c) if required so to do by any person having reasonable grounds for so requiring, shall produce any license to navigate a vessel at speed, license as coxswain or master's certificate, which he holds, and shall give particulars of his 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 his 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) of this subsection, he may be required to give, unless such particulars have already been given by him to a member of the police force, or to an officer of the Board, who required him to give such particulars.

(3)

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(3) Any person who—

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

shall be guilty of an offence against this Act and liable to a penalty not exceeding four hundred dollars.

- (j) by inserting at the end of section thirty-four the following new subsection :—

Sec. 34.
(Proof of certain matters not required.)

(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 his 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.

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Sec. 38.
(Board
may make
regula-
tions.)

(k) (i) by inserting next after paragraph (e) of subsection two of section thirty-eight the following new paragraphs :—

(ei) prohibiting or regulating on, or in connection with, any vessel, floating object, apparatus or structure in any port or inland 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) of this subsection;

(ii) by omitting from paragraph (fi) of the same subsection the word “two” and by inserting in lieu thereof the word “four”;

(iii) by inserting next after paragraph (n) of the same subsection the following new paragraph :—

(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;

(iv)

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(iv) by inserting next after paragraph (o) of No. 3, 1972 the same subsection the following new paragraph :—

(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.

(v) by inserting next after paragraph (e) of subsection (2A) of the same section the following new paragraphs :—

(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;

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- (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 two hundred dollars 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 two hundred dollars 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

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continuation of any activity, operation, installation, use or emission referred to in paragraph (ei) or (f) of subsection two of this section, 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 four hundred dollars for any failure to comply with any such notice, and the payment of fees and charges for or in connection with any such investigation.

- (vi) by inserting at the end of paragraph (a) of subsection three of the same section the words "or restricted to all subject matter other than subject matter of a specified class or specified classes";
- (vii) by omitting from subparagraph (ii) of paragraph (d) of the same subsection the word "two" and by inserting in lieu thereof the word "four";
- (viii) by omitting from paragraph (e) of the same subsection the word "forty" and by inserting in lieu thereof the word "eighty".

4. The Rivers and Foreshores Improvement Act, 1948, is amended by inserting next after subsection ten of section 23A the following new subsection :—

(11) Notwithstanding the definition of "Constructing Authority" in subsection ten of this section, the Maritime Services Board of New South Wales shall be the Constructing Authority for the purposes of this section

in

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Amendment of Act No. 20, 1948.

Sec. 23A.
(Removal of soil from or in proximity to banks of rivers.)

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in any case where the bed of the river immediately adjacent to the land on which an excavation has been or is being made or from which soil has been or is being removed, is vested in that Board.