

MARITIME SERVICES (ELECTIONS) AMENDMENT BILL, 1979

EXPLANATORY NOTE

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

This Bill is cognate with the Metropolitan Water, Sewerage, and Drainage (Elections) Amendment Bill, 1979.

The object of this Bill is to amend the Maritime Services Act, 1935 ("the Principal Act"), to provide for the election of a person to be a commissioner of The Maritime Services Board of New South Wales ("the Board").

The Bill—

- (a) provides that one of the commissioners of the Board shall be a member of a union elected in the manner prescribed by the regulations made under section 3A (1) of the Principal Act, as inserted by the proposed Act, this commissioner being in addition to 6 (instead of 7) non-elected commissioners (Schedule 1 (2) and (3));
- (b) authorises the Electoral Commissioner for New South Wales to be the returning officer for any such election (Schedule 1 (3)—proposed section 3A (2));
- (c) confers an entitlement on employees of the Board to vote at any such election (Schedule 1 (3)—proposed section 3A (3));
- (d) permits an employee of the Board to continue as an employee if he is elected as such a commissioner (Schedule 1 (3)—proposed section 3A (5));
- (e) enables the elected commissioner to carry out his duties without any restrictions imposed by reason of his being an employee of the Board (Schedule 1 (3)—proposed section 3A (6));
- (f) restricts the power of the Board to appoint an elected commissioner to a position in the pay of the Board (Schedule 1 (4));

- (g) deems Mr T. C. Blood (a commissioner of the Board who was, as an officer, elected by officers and employees of the Board) to be the first elected commissioner under the Principal Act, as amended by the proposed Act (clause 6 of Schedule 2); and
- (h) effects savings, transitional and other provisions (Schedule 2).

The Bill makes other provisions of a minor, consequential or ancillary nature.

**MARITIME SERVICES (ELECTIONS) AMENDMENT
BILL, 1979**

No. , 1979.

A BILL FOR

An Act to amend the Maritime Services Act, 1935, with respect to the election of a commissioner of The Maritime Services Board of New South Wales by officers and employees of the Board.

[MR FERGUSON—27 March, 1979.]

Maritime Services (Elections) Amendment.

BE 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 :—

- 5 **1.** This Act may be cited as the "Maritime Services (Elections) Amendment Act, 1979". Short title.
- 2.** The Maritime Services Act, 1935, is referred to in this Act as the Principal Act. Principal Act.
- 3.** This Act contains the following Schedules :— Schedules.
- 10 **SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.**
 SCHEDULE 2.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.
- 4.** The Principal Act is amended in the manner set forth in Schedule 1. Amendment of Act No. 47, 1935.
- 15 **5.** Schedule 2 has effect. Savings, transitional and other provisions.

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO THE PRINCIPAL ACT.

- (1) (a) Section 2 (1), definition of "Elected commissioner"—
 After the definition of "Commissioner", insert :—
- 20 "Elected commissioner" means the commissioner referred to in section 3 (1) (b1).

Maritime Services (Elections) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) Section 2 (1), definition of “Regulations”—
5 After “Act”, insert “, other than regulations made
 under section 3A (1)”.
- (2) (a) Section 3 (1) (b)—
 Omit “Four”, insert instead “Three”.
- (b) Section 3 (1) (b) (ii)—
 Omit “three”, insert instead “two”.
- 10 (c) Section 3 (1) (b1)—
 After section 3 (1) (b), insert :—
 (b1) One of the commissioners so to be appointed
 shall be a person elected in the manner prescribed by
 the regulations made under section 3A (1).
- 15 (d) Section 3 (3) (a) (i)—
 After “nominated commissioner” where firstly
 occurring, insert “or the elected commissioner”.
- (e) Section 3 (3) (a) (i)—
20 After “nominated commissioner” where secondly
 occurring, insert “and the elected commissioner”.
- (f) Section 3 (3) (b), (c)—
 After “nominated commissioner” wherever occurring,
 insert “or the elected commissioner”.
- (g) Section 3 (4) (a)—
25 After “commissioners” where secondly occurring,
 insert “and the elected commissioner”.

Maritime Services (Elections) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (h) Section 3 (4) (f)—
5 After “commissioner”, insert “or the elected
 commissioner”.
- (i) Section 3 (9) (a) (i), (iii), (iv)—
 After “commissioner” wherever occurring, insert “or
 the elected commissioner”.
- (j) Section 3 (9) (b)—
10 After “commissioner” where secondly occurring,
 insert “and the elected commissioner”.
- (k) Section 3 (9) (c)—
 After “commissioner”, insert “or the elected
 commissioner”.
- 15 (3) Section 3A—
 After section 3, insert :—
- 3A. (1) The Governor may make regulations, not
 inconsistent with this Act, for or with respect to the election
 of a person to hold office as elected commissioner. Provisions
as to
elected
commis-
sioners.
- 20 (2) The Electoral Commissioner for New South
 Wales, or a person employed in the office of the Electoral
 Commissioner and nominated by him, shall be the returning
 officer for an election, and shall have and may exercise
25 and perform the powers, authorities, duties and functions
 conferred or imposed on the returning officer by the
 regulations made under subsection (1) in relation to the
 election.

Maritime Services (Elections) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (3) Employees of the Board are entitled to vote at an election in accordance with the regulations made under subsection (1).

(4) A person's nomination as a candidate for election as elected commissioner is invalid if—

- 10 (a) the nomination is not made by at least 2 persons who are employees of the Board;
- 15 (b) he is not, at the time of his nomination, a member of an industrial union registered as such under the Industrial Arbitration Act, 1940, or an association of employees registered as an organization under the Conciliation and Arbitration Act 1904, as subsequently amended, of the Commonwealth; or
- 20 (c) the instrument of nomination is not accompanied by a statutory declaration to the effect that he is, at the time of his nomination, such a member, and the returning officer is entitled to rely on the information contained in the statutory declaration.

(5) Subject to section 15, a person may be, at the same time, both the elected commissioner and an employee of the Board.

25 (6) If the elected commissioner is an employee of the Board, nothing in any law, rule, direction or other requirement that—

- (a) is applicable to him in his capacity as an employee of the Board; and
- 30 (b) would not be so applicable if he were not such an employee,

Maritime Services (Elections) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

operates so as to prevent or restrict the exercise or performance by him of any of his powers, authorities, duties or functions as elected commissioner.

(7) If no person is nominated at an election, or if for any other reason an election fails, the Governor may appoint a person nominated by the Minister to be a commissioner, and the person so nominated shall, on being appointed, be deemed to be a person elected in the manner prescribed by the regulations made under subsection (1).

(8) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under subsection (1) as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

(9) In this section, "employee of the Board" means an officer or employee appointed under section 15 (1).

(4) Section 15 (3)–(5)—

After section 15 (2), insert :—

(3) A commissioner shall not be appointed to any position in the pay of the Board unless—

- (a) he is the elected commissioner;
- (b) he was, immediately before he was declared elected, an officer or employee appointed under this section and he has not, after he was declared elected, ceased to be a person who is such an officer or employee; and
- (c) the Governor approves of the appointment.

Maritime Services (Elections) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (4) A former commissioner shall not, except with the approval of the Governor, be appointed to any position in the pay of the Board until 6 months have elapsed from his ceasing to be a commissioner.

10 (5) Nothing in subsection (1) applies to the holding of office, by an officer or employee referred to in that subsection, as a commissioner of the Board or as a member of any other public or local authority, being an office that is to be filled by a person elected pursuant to this or any other Act by officers or employees appointed under this section or by officers, employees, servants or workmen of the other authority, as the case may be.

15

SCHEDULE 2.

Sec. 5.

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

1. In this Schedule, "Board" means The Maritime Services Board of New South Wales.

20 2. (1) If, immediately before the date of assent to this Act, 4 persons hold office as nominated commissioners of the Board under section 3 (1) (b) of the Principal Act, those persons shall cease to hold office as such on that date, but nothing in this clause prevents the re-appointment, or the election and re-appointment, of any of those persons in accordance with the Principal Act, as amended by this Act.

25 (2) Subclause (1) of this clause applies only if, immediately before the date of assent to this Act, the commissioner referred to in clause 5 does not hold office as a nominated commissioner of the Board under section 3 (1) (b) of the Principal Act.

30 3. Subject to clause 2, nothing in this Act affects the tenure of office of the commissioners of the Board holding office immediately before the date of assent to this Act.

Maritime Services (Elections) Amendment.

SCHEDULE 2—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

4. The body corporate in existence under the Principal Act, as amended by this Act, on the date of assent to this Act is a continuation of, and the same legal entity as, the body corporate in existence under the Principal Act immediately before that date.

5. The election, nomination and appointment of Thomas Charles Blood as a nominated commissioner of the Board for a period of 3 years on and from 26th October, 1977, shall be deemed to be and be deemed always to have been valid.

6. If the commissioner referred to in clause 5 is holding office, immediately before the date of assent to this Act, as a nominated commissioner of the Board, that commissioner shall be deemed to be the elected commissioner referred to in section 3 (1) (b1) of the Principal Act, as amended by this Act, as if he were the person elected in the manner prescribed by the regulations made under section 3A (1) of that Act, as so amended, and shall, subject to that Act, as so amended—

(a) hold office as the elected commissioner until the expiration of the term of office for which he was appointed as a nominated commissioner of the Board; and

(b) be eligible for re-election and re-appointment as the elected commissioner.

7. The commissioner referred to in clause 5 shall be deemed—

(a) never to have ceased, by reason of his election, nomination, appointment or holding office as a nominated commissioner of the Board, to be an officer of the Board during the period commencing on 26th October, 1977, and ending immediately before the date of assent to this Act; and

(b) always to have been capable of being, during that period, both a nominated commissioner and an officer of the Board.

8. Any act, matter or thing done or omitted to be done under the Principal Act by the commissioner referred to in clause 5, and before the date of assent to this Act, which would, but for this Act, not be valid, but would be valid if this Act had been in force at the time the act, matter or thing was done or omitted to be done, is validated.

Maritime Services (Elections) Amendment.

SCHEDULE 2—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

9. Without affecting the operation of section 3 (15) of the Principal Act, any act or proceeding of the Board before the date of assent to this
5 Act shall be deemed not to have been invalidated by reason of the election, nomination or appointment of, or the holding of office by, the commissioner referred to in clause 5.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1979

[24c]

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CHICAGO, ILLINOIS 60607

W. J. ...
...

**MARITIME SERVICES (ELECTIONS)
AMENDMENT ACT, 1979, No. 56**

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 56, 1979.

An Act to amend the Maritime Services Act, 1935, with respect to the election of a commissioner of The Maritime Services Board of New South Wales by officers and employees of the Board. [Assented to, 9th May, 1979.]

Maritime Services (Elections) Amendment.

BE 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 (Elections) Amendment Act, 1979".

Principal
Act.

2. The Maritime Services Act, 1935, is referred to in this Act as the Principal Act.

Schedules.

3. This Act contains the following Schedules :—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Amend-
ment of
Act No.
47, 1935.

4. The Principal Act is amended in the manner set forth in Schedule 1.

Savings,
transitional
and other
provisions.

5. Schedule 2 has effect.

Sec. 4.

SCHEDULE 1.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 2 (1), definition of "Elected commissioner"—

After the definition of "Commissioner", insert :—

"Elected commissioner" means the commissioner referred to in section 3 (1) (b1).

Maritime Services (Elections) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 2 (1), definition of “Regulations”—

After “Act”, insert “, other than regulations made under section 3A (1)”.

(2) (a) Section 3 (1) (b)—

Omit “Four”, insert instead “Three”.

(b) Section 3 (1) (b) (ii)—

Omit “three”, insert instead “two”.

(c) Section 3 (1) (b1)—

After section 3 (1) (b), insert :—

(b1) One of the commissioners so to be appointed shall be a person elected in the manner prescribed by the regulations made under section 3A (1).

(d) Section 3 (3) (a) (i)—

After “nominated commissioner” where firstly occurring, insert “or the elected commissioner”.

(e) Section 3 (3) (a) (i)—

After “nominated commissioner” where secondly occurring, insert “and the elected commissioner”.

(f) Section 3 (3) (b), (c)—

After “nominated commissioner” wherever occurring, insert “or the elected commissioner”.

(g) Section 3 (4) (a)—

After “commissioners” where secondly occurring, insert “and the elected commissioner”.

Maritime Services (Elections) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(h) Section 3 (4) (f)—

After “commissioner”, insert “or the elected commissioner”.

(i) Section 3 (9) (a) (i), (iii), (iv)—

After “commissioner” wherever occurring, insert “or the elected commissioner”.

(j) Section 3 (9) (b)—

After “commissioner” where secondly occurring, insert “and the elected commissioner”.

(k) Section 3 (9) (c)—

After “commissioner”, insert “or the elected commissioner”.

(3) Section 3A—

After section 3, insert :—

3A. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to the election of a person to hold office as elected commissioner.

(2) The Electoral Commissioner for New South Wales, or a person employed in the office of the Electoral Commissioner and nominated by him, shall be the returning officer for an election, and shall have and may exercise and perform the powers, authorities, duties and functions conferred or imposed on the returning officer by the regulations made under subsection (1) in relation to the election.

Provisions
as to
elected
commis-
sioners.

Maritime Services (Elections) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Employees of the Board are entitled to vote at an election in accordance with the regulations made under subsection (1).

(4) A person's nomination as a candidate for election as elected commissioner is invalid if—

(a) the nomination is not made by at least 2 persons who are employees of the Board;

(b) he is not, at the time of his nomination, a member of an industrial union registered as such under the Industrial Arbitration Act, 1940, or an association of employees registered as an organization under the Conciliation and Arbitration Act 1904, as subsequently amended, of the Commonwealth; or

(c) the instrument of nomination is not accompanied by a statutory declaration to the effect that he is, at the time of his nomination, such a member,

and the returning officer is entitled to rely on the information contained in the statutory declaration.

(5) Subject to section 15, a person may be, at the same time, both the elected commissioner and an employee of the Board.

(6) If the elected commissioner is an employee of the Board, nothing in any law, rule, direction or other requirement that—

(a) is applicable to him in his capacity as an employee of the Board; and

(b) would not be so applicable if he were not such an employee,

Maritime Services (Elections) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

operates so as to prevent or restrict the exercise or performance by him of any of his powers, authorities, duties or functions as elected commissioner.

(7) If no person is nominated at an election, or if for any other reason an election fails, the Governor may appoint a person nominated by the Minister to be a commissioner, and the person so nominated shall, on being appointed, be deemed to be a person elected in the manner prescribed by the regulations made under subsection (1).

(8) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under subsection (1) as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

(9) In this section, "employee of the Board" means an officer or employee appointed under section 15 (1).

(4) Section 15 (3)–(5)—

After section 15 (2), insert :—

(3) A commissioner shall not be appointed to any position in the pay of the Board unless—

- (a) he is the elected commissioner;
- (b) he was, immediately before he was declared elected, an officer or employee appointed under this section and he has not, after he was declared elected, ceased to be a person who is such an officer or employee; and
- (c) the Governor approves of the appointment.

Maritime Services (Elections) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) A former commissioner shall not, except with the approval of the Governor, be appointed to any position in the pay of the Board until 6 months have elapsed from his ceasing to be a commissioner.

(5) Nothing in subsection (1) applies to the holding of office, by an officer or employee referred to in that subsection, as a commissioner of the Board or as a member of any other public or local authority, being an office that is to be filled by a person elected pursuant to this or any other Act by officers or employees appointed under this section or by officers, employees, servants or workmen of the other authority, as the case may be.

SCHEDULE 2.

Sec. 5.

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

1. In this Schedule, "Board" means The Maritime Services Board of New South Wales.

2. (1) If, immediately before the date of assent to this Act, 4 persons hold office as nominated commissioners of the Board under section 3 (1) (b) of the Principal Act, those persons shall cease to hold office as such on that date, but nothing in this clause prevents the re-appointment, or the election and re-appointment, of any of those persons in accordance with the Principal Act, as amended by this Act.

(2) Subclause (1) of this clause applies only if, immediately before the date of assent to this Act, the commissioner referred to in clause 5 does not hold office as a nominated commissioner of the Board under section 3 (1) (b) of the Principal Act.

3. Subject to clause 2, nothing in this Act affects the tenure of office of the commissioners of the Board holding office immediately before the date of assent to this Act.

Maritime Services (Elections) Amendment.

SCHEDULE 2—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

4. The body corporate in existence under the Principal Act, as amended by this Act, on the date of assent to this Act is a continuation of, and the same legal entity as, the body corporate in existence under the Principal Act immediately before that date.

5. The election, nomination and appointment of Thomas Charles Blood as a nominated commissioner of the Board for a period of 3 years on and from 26th October, 1977, shall be deemed to be and be deemed always to have been valid.

6. If the commissioner referred to in clause 5 is holding office, immediately before the date of assent to this Act, as a nominated commissioner of the Board, that commissioner shall be deemed to be the elected commissioner referred to in section 3 (1) (b1) of the Principal Act, as amended by this Act, as if he were the person elected in the manner prescribed by the regulations made under section 3A (1) of that Act, as so amended, and shall, subject to that Act, as so amended—

- (a) hold office as the elected commissioner until the expiration of the term of office for which he was appointed as a nominated commissioner of the Board; and
- (b) be eligible for re-election and re-appointment as the elected commissioner.

7. The commissioner referred to in clause 5 shall be deemed—

- (a) never to have ceased, by reason of his election, nomination, appointment or holding office as a nominated commissioner of the Board, to be an officer of the Board during the period commencing on 26th October, 1977, and ending immediately before the date of assent to this Act; and
- (b) always to have been capable of being, during that period, both a nominated commissioner and an officer of the Board.

8. Any act, matter or thing done or omitted to be done under the Principal Act by the commissioner referred to in clause 5, and before the date of assent to this Act, which would, but for this Act, not be valid, but would be valid if this Act had been in force at the time the act, matter or thing was done or omitted to be done, is validated.

Maritime Services (Elections) Amendment.

SCHEDULE 2—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

9. Without affecting the operation of section 3 (15) of the Principal Act, any act or proceeding of the Board before the date of assent to this Act shall be deemed not to have been invalidated by reason of the election, nomination or appointment of, or the holding of office by, the commissioner referred to in clause 5.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 9th May, 1979.*

