

# MARINE ADMINISTRATION ACT 1989 No. 93

## NEW SOUTH WALES



## TABLE OF PROVISIONS

### PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Definitions

### PART 2—MARITIME SERVICES BOARD OF NEW SOUTH WALES

#### Division 1—Constitution of MSB

4. Constitution of MSB

#### Division 2—Functions of MSB

5. General functions of MSB
6. Miscellaneous functions of MSB

#### Division 3—Management of MSB

7. MSB directors
8. Directors to determine policies of MSB
9. Chief Executive of MSB
10. Chief Executive to manage MSB
11. Ministerial control
12. MSB to supply information to Minister
13. Corporate plans
14. MSB policies on port charges
15. Exercise of functions through subsidiary authorities, joint ventures etc.
16. Delegation of functions of MSB

### PART 3—SUBSIDIARY AUTHORITIES

#### Division 1—Subsidiary ports authorities

17. Constitution of subsidiary ports authorities
18. Functions of subsidiary ports authorities
19. Ports assigned to subsidiary ports authorities
20. Directors of subsidiary ports authorities

#### Division 2—MSB Waterways Authority

21. Constitution of MSB Waterways Authority
22. Functions of MSB Waterways Authority
23. Directors of MSB Waterways Authority

*Marine Administration 1989*

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## Division 3—Other MSB subsidiary authorities

- 24. Constitution of other MSB subsidiary authorities
- 25. Functions of other MSB subsidiary authorities
- 26. Directors of other MSB subsidiary authorities

## Division 4—Provisions relating to subsidiary authorities

- 27. Application
- 28. Directors to determine policies of subsidiary authority
- 29. Managing Director of subsidiary authority
- 30. Managing Director to manage subsidiary authority
- 31. Staff of subsidiary authorities
- 32. Separate financial reporting requirements
- 33. Application of marine legislation
- 34. Transfer of assets etc.

## Division 5—Private subsidiary corporations

- 35. Definitions
- 36. Private subsidiary corporations etc.

## PART 4—STAFF

- 37. Employment of staff
- 38. Salary, conditions etc. of staff
- 39. Regulations relating to staff
- 40. Use of staff or facilities of Departments etc.
- 41. Consultants
- 42. Appointment of persons to act as staff

## PART 5—FINANCE

- 43. Establishment of Maritime Services Board Fund
- 44. Payments into the Fund
- 45. Payments from the Fund
- 46. MSB dividend contributions to Consolidated Fund
- 47. Investment
- 48. Capital indebtedness
- 49. Banking
- 50. Financial year

## PART 6—MISCELLANEOUS

- 51. Exercise of functions with respect to land purporting to be vested in MSB
- 52. Port of Eden and other advisory committees
- 53. Presumption of validity
- 54. Personal liability of directors etc.
- 55. Service of documents on MSB etc.
- 56. Seal of MSB etc.
- 57. Waiver or refund of charges etc. by MSB
- 58. Recovery of charges etc. by MSB
- 59. Proceedings for offences
- 60. Regulations
- 61. Savings, transitional and other provisions

## SCHEDULE 1—DIRECTORS OF THE MSB

## SCHEDULE 2—PROVISIONS RELATING TO CHIEF EXECUTIVE OF THE MSB

## SCHEDULE 3—DIRECTORS OF SUBSIDIARY AUTHORITIES

SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

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**MARINE ADMINISTRATION ACT 1989 No. 93**

**NEW SOUTH WALES**



**Act No. 93, 1989**

An Act to reconstitute the Maritime Services Board of New South Wales;  
and to make other provision with respect to marine administration.  
[Assented to 13 June 1989]

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See also Maritime Services (Amendment) Act 1989.

*Marine Administration 1989***The Legislature of New South Wales enacts:****PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Marine Administration Act 1989.

**Commencement**

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

**Definitions**

3. (1) In this Act—

“Board” means the Maritime Services Board of New South Wales established under Part 2;

“Fund” means the Maritime Services Board Fund established under section 43;

“marine legislation” means any of the following Acts (and the regulations and other instruments made under any of those Acts):

This Act;  
 Maritime Services Act 1935;  
 Navigation Act 1901;  
 Navigation and Other Acts (Validation) Act 1983;  
 Commercial Vessels Act 1979;  
 Pilotage Act 1971;  
 Port Rates Act 1975;  
 Seamen’s Act 1898;  
 Sydney Harbour Trust Act 1900;  
 Marine Pollution Act 1987,

and includes any Act prescribed for the purposes of this definition (or any regulations or other instruments so prescribed);

“MSB Hunter Ports Authority” means the MSB Hunter Ports Authority established under Part 3;

“MSB Illawarra Ports Authority” means the MSB Illawarra Ports Authority established under Part 3;

“MSB Sydney Ports Authority” means the MSB Sydney Ports Authority established under Part 3;

“MSB Waterways Authority” means the MSB Waterways Authority established under Part 3;

“navigable waters” means all waters that are from time to time capable of navigation and are open to or used by the public for navigation, whether on payment of a charge or fee or otherwise;

“officer”, in relation to the Board, includes an employee of the Board and any other person of whose services the Board makes use;

“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 cargo or passengers;

“port management” means the control and regulation of trading ports;

“subsidiary authority” means—

- (a) a subsidiary ports authority; or
- (b) the MSB Waterways Authority; or
- (c) any other subsidiary authority established under Division 3 of Part 3; or
- (d) a private subsidiary corporation referred to in Division 5 of Part 3;

“subsidiary ports authority” means—

- (a) the MSB Sydney Ports Authority; or
- (b) the MSB Hunter Ports Authority; or
- (c) the MSB Illawarra Ports Authority; or
- (d) any other subsidiary ports authority established under Division 1 of Part 3;

“vessel” includes any ship, lighter, barge, boat, raft, craft, hydroplane, hydrofoil, hovercraft and any floating object or apparatus (whether amphibious or not) used wholly or partly for the conveyance of persons or things by water, and also includes seaplanes, sunken or stranded vessels and the wreck or remains of any vessel;

“waterways management” means the control and regulation of vessels in the navigable waters of the State.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

## **PART 2—MARITIME SERVICES BOARD OF NEW SOUTH WALES**

### **Division 1—Constitution of MSB**

#### **Constitution of MSB**

4. (1) There is constituted by this Act a corporation with the corporate name of the Maritime Services Board of New South Wales.

(2) The Board is, for the purposes of any Act, a statutory body representing the Crown.

*Marine Administration 1989*

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**Division 2—Functions of MSB****General functions of MSB**

5. The Board has—

- (a) such port and waterways management functions; and
- (b) such other functions,

as are conferred or imposed on it by or under the marine legislation or any other legislation.

**Miscellaneous functions of MSB**

6. (1) Without limiting any other functions conferred or imposed on it, the Board may—

- (a) conduct any business, whether or not related to its port management or waterways management functions, and for that purpose use any property or the services of any staff of the Board; and
- (b) acquire any land and develop any land; and
- (c) acquire or build, and maintain or dispose of, any vessels, vehicles, plant, machinery or equipment; and
- (d) make and enter into contracts or arrangements for the carrying out of works or the performance of services or the supply of goods or materials; and
- (e) appoint agents, and act as agent for other persons.

(2) The Board may exercise its functions within or outside New South Wales.

**Division 3—Management of MSB****MSB directors**

7. (1) There shall be directors of the Board.

(2) The directors of the Board are—

- (a) the Chief Executive of the Board; and
- (b) not fewer than 4 and not more than 7 directors appointed by the Minister.

(3) The persons appointed as directors by the Minister must have such managerial or other qualifications as the Minister considers necessary to enable the directors to carry out their functions.

(4) Of the directors (including the Chief Executive), one shall (in and by the director's instrument of appointment as a director or in and by another instrument executed by the Minister) be appointed as Chairperson of the Board.

(5) Schedule 1 has effect with respect to the directors of the Board.



**Directors to determine policies of MSB**

8. (1) The directors of the Board have the function of determining the policies of the Board.

(2) In exercising that function, the directors shall, as far as practicable, ensure that the activities of the Board are carried out properly and efficiently and in accordance with sound commercial practice.

**Chief Executive of MSB**

9. (1) The Governor may appoint a Chief Executive of the Board.

(2) Before a person is appointed as Chief Executive, the Minister shall give the directors of the Board the opportunity to recommend any one or more persons for appointment.

(3) Schedule 2 has effect with respect to the Chief Executive.

**Chief Executive to manage MSB**

10. (1) The affairs of the Board shall be managed and controlled by the Chief Executive of the Board in accordance with the policies of the directors of the Board.

(2) Any act, matter or thing done in the name of, or on behalf of, the Board by the Chief Executive of the Board shall be taken to have been done by the Board.

**Ministerial control**

11. (1) The Minister may give the directors of the Board written directions in relation to the exercise of the Board's functions.

(2) Subject to this section—

- (a) the directors of the Board and the Chief Executive of the Board; and
- (b) to the extent that the function concerned has been delegated to a subsidiary authority—the directors of the subsidiary authority and the Managing Director of the subsidiary authority,

must ensure that the Board complies with any such direction.

(3) If the directors of the Board consider that—

- (a) the Board would suffer a significant financial loss as a result of complying with the direction; and
  - (b) the direction is not in the commercial interests of the Board,
- the directors may request the Minister to review the direction.

(4) A request for a review must be made within 7 days after the direction is given or within such other reasonable period as the Minister determines.

(5) If the directors request a review, the Board is not required to comply with the direction until notified of the Minister's decision following the review.

*Marine Administration 1989*

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(6) Following the review the Minister may confirm or revoke the direction, but the Minister shall not confirm the direction unless—

- (a) the Minister has estimated the financial loss concerned from information supplied by the Board or from other sources; and
- (b) the Minister has referred the matter to the Treasurer; and
- (c) the Treasurer has approved of the financial loss being reimbursed from public revenue.

(7) The amount to be reimbursed to the Board under this section shall be paid, from money advanced by the Treasurer or appropriated by Parliament for that purpose, at such times and in such amounts as the Treasurer determines after receiving advice from the Minister on the estimated financial loss incurred by the Board from time to time.

(8) For the purposes of this section, the amount of the financial loss that the Board suffers as a result of complying with a direction includes the amount of expenditure that the Board incurs, and the amount of revenue that the Board forgoes, as a result of complying with the direction which it would not otherwise incur or forgo.

**MSB to supply information to Minister**

12. The Board shall—

- (a) supply the Minister or a person nominated by the Minister with such information relating to its activities as the Minister or person may require; and
- (b) keep the Minister informed of the general conduct of its activities, and of any significant development in its activities.

**Corporate plans**

13. (1) The Board shall, at least 3 months before the beginning of each financial year of the Board, prepare and deliver to the Minister a draft corporate plan for the financial year.

(2) The Board shall—

- (a) consider any comments on the draft corporate plan that were made by the Minister within 2 months after the draft plan was delivered to the Minister; and
- (b) deliver the completed corporate plan to the Minister before the beginning of the financial year concerned.

(3) The Board shall, as far as practicable, exercise its functions in accordance with the relevant corporate plan.

(4) A corporate plan shall specify—

- (a) the separate activities of the Board and, in particular, the separate port management and waterways management activities and the separate activities of the subsidiary authorities; and



- (b) the objectives of each such separate activity for the financial year concerned and for the following 2 financial years (or such other number of financial years as the Minister directs); and
  - (c) the strategies, policies and budgets for achieving those objectives; and
  - (d) targets and criteria for assessing the performance of the Board and of each subsidiary authority.
- (5) This section is subject to any requirement made by or under the marine legislation (including the requirements of a direction by the Minister under section 11).
- (6) As soon as practicable after the commencement of this section, the Board shall carry out a review of its existing services and provide the Minister with a report on—
- (a) any of its activities which are not in the commercial interests of the Board; and
  - (b) the estimated amount of the annual financial loss resulting from those activities; and
  - (c) any action that can be taken for the carrying out of those activities in accordance with sound commercial practice.

#### **MSB policies on port charges**

**14. (1)** In this section—

“port charges” means charges for services provided to, or for the benefit of, the users of trading ports.

- (2) As soon as practicable after the commencement of this section, the Board shall—
- (a) review existing port charges; and
  - (b) develop policies in respect of future port charges; and
  - (c) report to the Minister on that review and those policies.
- (3) The policies developed in respect of future port charges must—
- (a) be directed at the recovery of the Board’s costs in providing services to, or for the benefit of, port users; and
  - (b) provide for an appropriate rate of return on the value of the assets used by the Board in providing services; and
  - (c) require the users of those services to pay port charges on the basis of the services used by them or provided for their benefit; and
  - (d) provide for the phasing-in of the policies in areas of significant change; and
  - (e) encourage the determination of charges by agreement between the Board and port users; and

*Marine Administration 1989*

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- (f) identify monopoly services and provide for the determination of a fair price for those services.
- (4) The Board may, from time to time, review the policies developed in respect of port charges and report to the Minister on any revised policies.
- (5) The Minister may, under and in accordance with section 11, give the Board directions in respect of port charges for services provided by the Board which are not fixed by the marine legislation.
- (6) The port charges for services provided by the Board which the Minister determines to be monopoly services and which are not fixed by the marine legislation must not be imposed by the Board without the Minister's approval.
- (7) The Minister may refer any proposed port charges referred to in subsection (6) to a suitably qualified person for advice.

**Exercise of functions through subsidiary authorities, joint ventures etc.**

15. (1) Any function of the Board may be exercised—

- (a) by the Board itself; or
- (b) by a subsidiary authority; or
- (c) by the Board or a subsidiary authority, or both, in a partnership, joint venture or other association with other persons or bodies.

(2) A function of the Board may not be exercised by a subsidiary authority unless the function has been duly delegated to the subsidiary authority under this Act.

**Delegation of functions of MSB**

16. (1) The Board may delegate to—

- (a) a subsidiary authority; or
- (b) an authorised person,

any of the functions of the Board, other than this power of delegation.

(2) A delegate may sub-delegate to an authorised person any function delegated by the Board if the delegate is authorised in writing to do so by the Board.

(3) In this section, "authorised person" means—

- (a) an officer of the Board; or
- (b) a person of a class prescribed by the regulations or of a class approved by the directors of the Board.



**PART 3—SUBSIDIARY AUTHORITIES****Division 1—Subsidiary ports authorities****Constitution of subsidiary ports authorities**

17. (1) There are constituted by this Act corporations with the following corporate names:

- (a) MSB Sydney Ports Authority;
- (b) MSB Hunter Ports Authority;
- (c) MSB Illawarra Ports Authority.

(2) The regulations may constitute other subsidiary ports authorities with the corporate names specified in the regulations.

(3) A subsidiary ports authority is, for the purposes of any Act, a statutory body representing the Crown.

**Functions of subsidiary ports authorities**

18. (1) A subsidiary ports authority has such functions of the Board as are delegated to it under this Act.

(2) The Board must delegate to a subsidiary ports authority such of its functions as the Minister directs.

(3) A subsidiary ports authority also has the function of advising the Board on any matter relating to port management (either at the request of the Board or without any such request).

**Ports assigned to subsidiary ports authorities**

19. The functions of a subsidiary ports authority may be exercised in relation to the following ports:

- (a) in the case of the MSB Sydney Ports Authority—Sydney Harbour, Botany Bay and such other ports as are prescribed by the regulations;
- (b) in the case of the MSB Hunter Ports Authority—Port of Newcastle and such other ports as are prescribed by the regulations;
- (c) in the case of the MSB Illawarra Ports Authority—Port Kembla and such other ports as are prescribed by the regulations;
- (d) in the case of any other subsidiary ports authority—such ports as are prescribed by the regulations in relation to that authority.

**Directors of subsidiary ports authorities**

20. (1) There shall be directors of each subsidiary ports authority.

(2) The directors of a subsidiary ports authority are—

- (a) the Chief Executive of the Board; and
- (b) the Managing Director of the authority; and

*Marine Administration 1989*

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(c) not fewer than 3 and not more than 6 directors appointed by the Minister.

(3) The persons appointed as directors of a subsidiary ports authority by the Minister must have such managerial or other qualifications as the Minister considers necessary to enable the directors to carry out their functions.

(4) Of the appointed directors of a subsidiary ports authority, at least one shall be an appointed director of the Board and shall (in and by the director's instrument of appointment as a director of the authority) be appointed as Chairperson of the authority.

(5) Of the appointed directors of the MSB Illawarra Ports Authority, one shall be the chairperson of the Port of Eden Advisory Committee referred to in section 52.

(6) Schedule 3 has effect with respect to the directors of a subsidiary ports authority.

### **Division 2—MSB Waterways Authority**

#### **Constitution of MSB Waterways Authority**

21. (1) There is constituted by this Act a corporation with the corporate name of the MSB Waterways Authority.

(2) The MSB Waterways Authority is, for the purposes of any Act, a statutory body representing the Crown.

#### **Functions of MSB Waterways Authority**

22. (1) The MSB Waterways Authority has such functions of the Board as are delegated to it under this Act.

(2) The Board must delegate to the MSB Waterways Authority such of its functions as the Minister directs.

(3) The MSB Waterways Authority also has the function of advising the Board on any matter relating to waterways management (either at the request of the Board or without any such request).

#### **Directors of MSB Waterways Authority**

23. (1) There shall be directors of the MSB Waterways Authority.

(2) The directors of the MSB Waterways Authority are—

(a) the Chief Executive of the Board; and

(b) the Managing Director of the Authority; and

(c) not fewer than 5 and not more than 6 directors appointed by the Minister.

(3) The persons appointed as directors of the MSB Waterways Authority by the Minister must have such managerial or other qualifications as the Minister considers necessary to enable the directors to carry out their functions.

(4) Of the appointed directors of the MSB Waterways Authority, at least one shall be an appointed director of the Board and shall (in and by the director's instrument of appointment as a director of the Authority) be appointed as Chairperson of the Authority.

(5) Schedule 3 has effect with respect to the directors of the MSB Waterways Authority.

### **Division 3—Other MSB subsidiary authorities**

#### **Constitution of other MSB subsidiary authorities**

24. (1) The regulations may constitute other subsidiary authorities of the Board with corporate names specified in the regulations.

(2) Any such other subsidiary authority is, for the purposes of any Act, a statutory body representing the Crown.

#### **Functions of other MSB subsidiary authorities**

25. (1) A subsidiary authority under this Division has such functions of the Board as are delegated to it under this Act.

(2) The Board must delegate to any such subsidiary authority such of its functions as the Minister directs.

#### **Directors of other MSB subsidiary authorities**

26. (1) There shall be separate directors of each subsidiary authority under this Division.

(2) The directors of any such subsidiary authority are—

(a) the Chief Executive of the Board; and

(b) the Managing Director of the authority; and

(c) not fewer than 3 and not more than 6 directors appointed by the Minister.

(3) The persons appointed as directors of any such subsidiary authority by the Minister must have such managerial or other qualifications as the Minister considers necessary to enable the directors to carry out their functions.

(4) Of the appointed directors of any such subsidiary authority, one shall (in and by the director's instrument of appointment as a director or in and by another instrument executed by the Minister) be appointed as Chairperson of the authority.



*Marine Administration 1989*

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(5) Schedule 3 has effect with respect to the directors of any such subsidiary authority.

**Division 4—Provisions relating to subsidiary authorities****Application**

27. This Division applies to all subsidiary authorities of the Board except private subsidiary corporations.

**Directors to determine policies of subsidiary authority**

28. (1) The directors of a subsidiary authority have the function of determining the policies of the authority.

(2) In exercising that function, the directors shall, as far as practicable, ensure that the activities of the subsidiary authority are carried out properly and efficiently and in accordance with sound commercial practice.

**Managing Director of subsidiary authority**

29. (1) The Managing Director of a subsidiary authority shall be appointed by the Board and employed as an officer of the Board under Part 4.

(2) Before a person is appointed as Managing Director of a subsidiary authority, the Board shall give the directors of the authority the opportunity to recommend any one or more persons for appointment.

(3) If the Board does not propose to appoint a person recommended by the directors, the matter shall be referred to the Minister and a person shall not be appointed as Managing Director unless the Minister recommends the appointment.

**Managing Director to manage subsidiary authority**

30. (1) The affairs of a subsidiary authority shall be managed and controlled by the Managing Director of the authority in accordance with the policies of the directors of the authority.

(2) Any act, matter or thing done in the name of, or on behalf of, a subsidiary authority by the Managing Director of the authority shall be taken to have been done by the authority.

**Staff of subsidiary authorities**

31. (1) Such staff as may be necessary to enable a subsidiary authority to exercise its functions shall be employed by the Board under Part 4.

(2) The members of any such staff are subject to the control and direction of the Board, subject to any delegation of the Board's functions in relation to that staff made to the subsidiary authority concerned.



**Separate financial reporting requirements**

32. Any report in relation to the Board under the Public Finance and Audit Act 1983 or the Annual Reports (Statutory Bodies) Act 1984 must include a separate report on the financial position and activities of each subsidiary authority.

**Application of marine legislation**

33. Any provision of the marine legislation prescribed by the regulations applies to and in respect of a subsidiary authority in such manner and to such extent as are prescribed by the regulations.

**Transfer of assets etc.**

34. (1) With the approval of the Minister—

- (a) the Board may transfer any of its assets, rights or liabilities to a subsidiary authority; and
- (b) a subsidiary authority may transfer any of its assets, rights or liabilities to the Board or to another subsidiary authority.

(2) The regulations may make provision for or with respect to the vesting of those assets, rights and liabilities in the transferee without any transfer, conveyance or assignment.

(3) A subsidiary authority which is constituted by the regulations is dissolved by the repeal of those regulations (unless continued in existence by the regulations), and on any such dissolution the assets, rights and liabilities of the authority become the assets, rights and liabilities of the Board.

**Division 5—Private subsidiary corporations****Definitions**

35. In this Division—

“private corporation” means a corporation within the meaning of the Companies (New South Wales) Code formed in or outside New South Wales;

“private subsidiary corporation” means a private corporation in which the Board has a controlling interest.

**Private subsidiary corporations etc.**

36. (1) The Board may, subject to subsection (2)—

- (a) form, or participate in the formation of, private corporations; and
- (b) acquire interests in private corporations; and
- (c) sell or otherwise dispose of interests in private corporations,

*Marine Administration 1989*

whether or not the activities or proposed activities of any such private corporation are related to port management or waterways management.

(2) The Board must not, without the approval of the Minister—

- (a) form, or participate in the formation of, a private subsidiary corporation; or
- (b) acquire an interest in a private corporation so that, as a result of the acquisition, the corporation becomes a private subsidiary corporation; or
- (c) sell or otherwise dispose of any interest in a private subsidiary corporation so that, as a result of the sale or disposal, it ceases to be a private subsidiary corporation.

(3) A private subsidiary corporation is not, and does not represent, the Crown.

#### **PART 4—STAFF**

##### **Employment of staff**

37. The Board may employ such staff as it requires to exercise its functions.

##### **Salary, conditions etc. of staff**

38. The Board may fix the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any other Act or law.

##### **Regulations relating to staff**

39. (1) The regulations may make provision for or with respect to the employment of the staff of the Board, including the conditions of employment and the discipline of any such staff.

(2) Any such regulations relating to the conditions of employment or the discipline of staff—

- (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement to which the Board is a party; and
- (b) have effect despite any determination of the Board under section 38.

##### **Use of staff or facilities of Departments etc.**

40. (1) The Board may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority.

(2) For the purposes of the marine legislation, a person whose services are made use of under this section is a member of the staff of the Board.

*Marine Administration 1989*

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**Consultants**

41. The Board may engage such consultants as the Board requires to exercise its functions.

**Appointment of persons to act as staff**

42. (1) The Board may, on such conditions and during such period as it may determine, appoint persons to exercise the functions of members of the staff of the Board under the marine legislation.

(2) Any such person—

- (a) shall be taken to be a member of the staff of the Board for the purposes of the marine legislation in respect of which the person is appointed to exercise functions; and
- (b) in the exercise of those functions, is subject to the control of the Board and to the regulations under this Part to the same extent as if the person were a member of the staff of the Board.

**PART 5—FINANCE****Establishment of Maritime Services Board Fund**

43. The Board shall establish a fund to be known as the Maritime Services Board Fund.

**Payments into the Fund**

44. There shall be paid into the Fund—

- (a) all money received by or on account of the Board; and
- (b) all fines and penalties recovered for offences against the marine legislation and which are required by that legislation to be paid to the Board or are recovered on informations laid by officers of the Board; and
- (c) all penalties paid to an officer of the Board under section 30D of the Maritime Services Act 1935; and
- (d) all interest received in respect of the investment of money belonging to the Fund; and
- (e) all money borrowed by or advanced to the Board or appropriated by Parliament for the purposes of the Board; and
- (f) all money directed to be paid into the Fund by this or any other Act.

**Payments from the Fund**

45. There shall be paid from the Fund—

- (a) the remuneration (including allowances) of the directors of the Board or a subsidiary authority, staff of the Board and any person acting in the office of a director of the Board or a subsidiary authority; and



*Marine Administration 1989*

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- (b) all payments made on account of the Board or otherwise required to meet expenditure incurred in relation to the functions of the Board; and
- (c) all other payments required by or under this or any other Act to be paid from the Fund.

**MSB dividend contributions to Consolidated Fund**

46. (1) There shall be paid from the Fund into the Consolidated Fund, by way of dividend contribution in respect of each financial year of the Board, an amount determined by the Treasurer.

(2) The amount so determined shall be an amount equal to a percentage fixed by the Treasurer of the value of relevant assets of the Board.

(3) Different percentages may be fixed in respect of different classes of relevant assets of the Board.

(4) The relevant assets of the Board, and the value of those assets, shall be determined by the Treasurer.

(5) A dividend contribution payable by the Board under this section shall be paid in such instalments and at such times as are determined by the Treasurer.

(6) The Treasurer must consult the Minister and the Board in connection with any determination to be made by the Treasurer under this section.

(7) This section applies as from such financial year of the Board as the Treasurer determines.

(8) Sections 23B and 23BA of the Maritime Services Act 1935 continue to apply in respect of a financial year to which this section does not apply.

**Investment**

47. The Board may invest money held by it—

- (a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or
- (b) if that Act does not confer power to invest money held by the Board—
  - (i) in accordance with and subject to the Trustee Act 1925; and
  - (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

**Capital indebtedness**

48. (1) The capital indebtedness to the State of the Board is the amount it was on 1 July immediately before the commencement of this section.



*Marine Administration 1989*

(2) The Minister shall, as soon as practicable after the end of each financial year, certify the total expenditure during the preceding financial year out of money provided by Parliament (except under section 11) for any service or work of the Board.

(3) The expenditure so certified shall be notified by the Minister in the Gazette, and shall be added to and become part of the capital indebtedness of the Board.

(4) Nothing in this section affects the loan liability of the Board or any charges payable to the Treasurer in respect of that loan liability.

**Banking**

49. All money received on account of the Fund shall be paid into a bank or banks in New South Wales.

**Financial year**

50. (1) The financial year of the Board is the year commencing on 1 July.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

**PART 6—MISCELLANEOUS****Exercise of functions with respect to land purporting to be vested in MSB**

51. (1) If land purportedly vested in the Board by an Act is not vested because the vesting exceeds the legislative power of the State, any function conferred or imposed on the Board in respect of land vested in the Board shall be regarded as also conferred or imposed in respect of the land purportedly so vested in the Board.

(2) This section applies to land purportedly vested in the Board before or after this section commences.

**Port of Eden and other advisory committees**

52. (1) The Board shall establish a Port of Eden Advisory Committee to give advice and assistance to the Board in connection with the control and regulation of the Port of Eden.

(2) The Board may establish other advisory committees to give advice and assistance to the Board in connection with any particular matter or function of the Board.

**Presumption of validity**

53. (1) The exercise of a function by the Board or by a subsidiary authority or other delegate of the Board is not invalidated because it is exercised in contravention of a direction by the Minister.

(2) If a recommendation by the Board is a condition precedent to the exercise of a function by the Minister, the exercise of the function by the Minister is evidence of the making of the recommendation.

#### **Personal liability of directors etc.**

54. (1) No matter or thing done by the Board, the Chief Executive or other director of the Board or any person acting under the direction of the Board shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the Chief Executive or other director or a person so acting personally to any action, liability, claim or demand.

(2) In this section, a reference to the Board includes a reference to a subsidiary authority (not being a private subsidiary corporation).

#### **Service of documents on MSB etc.**

55. (1) A document may be served on the Board by leaving it at, or by sending it by post to—

- (a) the office of the Board; or
- (b) if it has more than one office—any one of its offices.

(2) A document may be served on a subsidiary authority by leaving it at, or by sending it by post to—

- (a) the office of the authority; or
- (b) if it has more than one office—any one of its offices.

(3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Board or a subsidiary authority in any other manner.

#### **Seal of MSB etc.**

56. (1) The seal of the Board shall be kept by the Chief Executive of the Board and shall be affixed to a document only—

- (a) in the presence of the Chief Executive of the Board or a member of the staff of the Board authorised in that behalf by the Chief Executive; and
- (b) with an attestation by the signature of the Chief Executive or that member of staff of the fact of the affixing of the seal.

(2) The seal of a subsidiary authority (not being a private subsidiary corporation) shall be kept by the Managing Director of the authority and shall be affixed to a document only—

- (a) in the presence of the Managing Director of the authority or a member of the staff of the Board authorised in that behalf by the Managing Director; and

*Marine Administration 1989*

- (b) with an attestation by the signature of the Managing Director or that member of staff of the fact of the affixing of the seal.

**Waiver or refund of charges etc. by MSB**

57. The Board may waive or refund the whole or any part of any charge, fee or money due to the Board, or to the Crown in respect of the activities of the Board, in any particular case or in any class of cases.

**Recovery of charges etc. by MSB**

58. Any charge, fee or money due to the Board, or to the Crown in respect of the activities of the Board, may be recovered by the Board as a debt in a court of competent jurisdiction.

**Proceedings for offences**

59. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Regulations**

60. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

**Savings, transitional and other provisions**

61. Schedule 4 has effect.

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**SCHEDULE 1—DIRECTORS OF THE MSB**

(Sec. 7 (5))

**Definitions**

1. In this Schedule—

“appointed director” means a director of the Board other than the Chief Executive of the Board;

“Chief Executive” means the Chief Executive of the Board;

“director” means any director of the Board.

**Chairperson of Board**

2. (1) The Minister may remove a director from the office of Chairperson of the Board at any time.



*Marine Administration 1989*SCHEDULE 1—DIRECTORS OF THE MSB—*continued*

(2) A person who is a director and Chairperson of the Board vacates office as Chairperson if the person—

- (a) is removed from that office by the Minister; or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a director.

**Deputies**

3. (1) The Chief Executive may, from time to time, appoint a person to be his or her deputy, and the Chief Executive or the Minister may revoke any such appointment.

(2) The Minister may, from time to time, appoint a person to be the deputy of an appointed director, and the Minister may revoke any such appointment.

(3) In the absence of a director, the director's deputy—

- (a) shall, if available, act in the place of the director; and
- (b) while so acting, has all the functions of the director and shall be taken to be a director.

(4) The deputy of a director who is Chairperson of the Board does not have the director's functions as Chairperson.

(5) A person while acting in the place of a director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

**Terms of office of appointed directors**

4. Subject to this Schedule, an appointed director shall hold office for such period (not exceeding 3 years) as may be specified in the director's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration**

5. An appointed director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

**Vacancy in office of appointed directors**

6. (1) The office of an appointed director becomes vacant if the director—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
- (e) is absent from 4 consecutive meetings of directors of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the directors or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the other directors for having been absent from those meetings; or

*Marine Administration 1989*SCHEDULE 1—DIRECTORS OF THE MSB—*continued*

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
  - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed director from office at any time.

**Disclosure of pecuniary interests**

7. (1) If—

- (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the directors; and
- (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,

the director shall, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the directors.

(2) A disclosure by a director at a meeting of the directors that the director—

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause shall be recorded by the directors in a book kept for the purpose and that book shall be open at all reasonable hours to inspection by any person on payment of the fee determined by the directors.

(4) After a director has disclosed the nature of an interest in any matter, the director shall not, unless the Minister or the other directors otherwise determine—

- (a) be present during any deliberation of the directors with respect to the matter; or
- (b) take part in any decision of the directors with respect to the matter.

(5) For the purposes of the making of a determination by the directors under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the other directors for the purpose of making the determination; or
- (b) take part in the making by the other directors of the determination.

(6) A contravention of this clause does not invalidate any decision of the directors.



*Marine Administration 1989*SCHEDULE 1—DIRECTORS OF THE MSB—*continued*

(7) This clause does not apply to or in respect of an interest of a director (being the provision of goods or services to the director by the Board) if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

**Filling of vacancy in office of appointed director**

8. If the office of any appointed director becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Effect of certain other Acts**

9. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of an appointed director.

(2) If by or under any Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed director or from accepting and retaining any remuneration payable to the person under this Act as such a director.

(3) The office of an appointed director is not, for the purposes of any Act, an office or place of profit under the Crown.

**General procedure**

10. The procedure for the calling of meetings of directors and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the directors.

**Quorum**

11. The quorum for a meeting of directors is a majority of the directors for the time being.

**Presiding member**

12. (1) The Chairperson of the Board or, in the absence of the Chairperson, another director elected to chair the meeting by the directors present shall (subject to subclause (2)) preside at a meeting of the directors.

(2) If the Chief Executive is not the Chairperson, the Chief Executive (if present) shall preside in the absence of the Chairperson at a meeting of the directors.

(3) The person presiding at any meeting of directors has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

13. A decision supported by a majority of the votes cast at a meeting of the directors at which a quorum is present is the decision of the directors.



*Marine Administration 1989*SCHEDULE 1—DIRECTORS OF THE MSB—*continued***Transaction of business outside meetings or by telephone etc.**

14. (1) The directors may, if they think fit, transact any of their business by the circulation of papers among all the directors of the Board for the time being, and a resolution in writing approved in writing by a majority of those directors shall be taken to be a decision of the directors.

(2) The directors may, if they think fit, transact any of their business at a meeting at which directors (or some directors) participate by telephone, closed-circuit television or other means, but only if any director who speaks on a matter before the meeting can be heard by the other directors.

(3) For the purposes of—

(a) the approval of a resolution under subclause (1); or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each director have the same voting rights as they have at an ordinary meeting of the directors.

(4) A resolution approved under subclause (1) shall, subject to the regulations, be recorded in the minutes of the meetings of directors.

(5) Papers may be circulated among directors for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**First meeting**

15. The Minister shall call the first meeting of the directors in such manner as the Minister thinks fit.

SCHEDULE 2—PROVISIONS RELATING TO CHIEF EXECUTIVE OF THE  
MSB

(Sec. 9 (3))

**Definition**

1. In this Schedule—

“Chief Executive” means the Chief Executive of the Board.

**Acting Chief Executive**

2. (1) The Minister may, from time to time, appoint a person to act in the office of the Chief Executive during the illness or absence of the Chief Executive, and the person, while so acting, has all the functions of the Chief Executive and shall be taken to be the Chief Executive.

(2) The Minister may, at any time, remove any person from an office to which the person was appointed under this clause.

(3) A person while acting in the office of the Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(4) For the purposes of this clause, a vacancy in the office of the Chief Executive shall be regarded as an absence from office of the Chief Executive.

*Marine Administration 1989*


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SCHEDULE 2—PROVISIONS RELATING TO CHIEF EXECUTIVE OF THE  
MSB—*continued*

**Term of office**

3. Subject to this Schedule, the Chief Executive shall hold office for such period, not exceeding 5 years, as may be specified in the instrument of appointment of the Chief Executive, but is eligible (if otherwise qualified) for re-appointment.

**Chief Executive to be full-time**

4. The Chief Executive shall devote the whole of his or her time to the duties of his or her office, except to the extent permitted by this Act or by the Minister.

**Remuneration**

5. The Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine in respect of the Chief Executive.

**Casual vacancies**

6. (1) The office of the Chief Executive becomes vacant if the Chief Executive—
- (a) dies; or
  - (b) completes a term of office and is not re-appointed; or
  - (c) resigns the office by instrument in writing addressed to the Minister; or
  - (d) is retired or removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
  - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
  - (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
  - (h) engages in any paid employment outside the duties of his or her office, except with the consent of the Minister.
- (2) The Chief Executive may, after reaching the age of 60 years and before reaching the age of 65 years, be retired from office by the Governor.
- (3) The Governor may remove the Chief Executive from office for incapacity, incompetence or misbehaviour.

**Filling of vacancy in office of the Chief Executive**

7. If the office of the Chief Executive becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Part 2 of Public Sector Management Act 1988 not to apply**

8. Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of the Chief Executive.



*Marine Administration 1989*


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SCHEDULE 2—PROVISIONS RELATING TO CHIEF EXECUTIVE OF THE  
MSB—*continued*

**Preservation of rights of Chief Executive previously public servant etc.**

9. (1) This clause applies to a Chief Executive who, immediately before being appointed as Chief Executive, was—

- (a) an officer of the Board; or
- (b) an officer of the Public Service; or
- (c) a contributor to a superannuation scheme; or
- (d) an officer employed by a proclaimed statutory body; or
- (e) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.

(2) Subject to the terms of the Chief Executive's appointment, the Chief Executive—

- (a) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person; and
- (b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as Chief Executive; and
- (c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if the Chief Executive had continued to be such an officer, contributor or person during his or her service as Chief Executive.

(3) Service as Chief Executive shall be regarded as service as an officer or employee for the purposes of any law under which any such rights accrued or were accruing, under which he or she continues to contribute to any such superannuation scheme or by which any such entitlement is conferred.

(4) The Chief Executive shall be regarded as an officer or employee, and the Board shall be regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(5) If the Chief Executive would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme—

- (a) he or she shall not be so entitled upon becoming (whether upon appointment as Chief Executive or at any later time while holding office as Chief Executive) a contributor to any other superannuation scheme; and
- (b) the provisions of subclause (4) cease to apply to or in respect of him or her and the Board in any case where he or she becomes a contributor to any such other superannuation scheme.

(6) Subclause (5) does not prevent the payment to the Chief Executive (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(7) The Chief Executive is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

(8) In this clause—



*Marine Administration 1989*


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**SCHEDULE 2—PROVISIONS RELATING TO CHIEF EXECUTIVE OF THE  
MSB—continued**

“proclaimed statutory body” means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

**Chief Executive entitled to re-appointment to former employment in certain cases**

10. (1) A person who—

- (a) ceases to be Chief Executive by reason of the expiration of the period for which the person was appointed or by reason of resignation; and
- (b) was, immediately before being appointed as Chief Executive—
  - (i) an officer of the Board; or
  - (ii) an officer of the Public Service; or
  - (iii) an officer or employee of a proclaimed statutory body; and
- (c) has not reached the age of 60 years,

is entitled to be appointed to some position in the Board, the Public Service or the service of that statutory body, as the case may be, not lower in salary than the current salary for the position which the person held immediately before being appointed as Chief Executive (or a similar position).

(2) If subclause (1) does not apply to a person who—

- (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and
- (b) is after that appointment appointed as Chief Executive,

the person has such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be Chief Executive, as are specified in the instrument of appointment as Chief Executive or as are agreed on by the person and by or on behalf of the Government.

(3) In this clause, “proclaimed statutory body” means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause.

**SCHEDULE 3—DIRECTORS OF SUBSIDIARY AUTHORITIES**

(Secs. 20 (6), 23 (5) and 26 (5))

**Definitions**

1. In this Schedule—

“appointed director” means a director of a subsidiary authority other than the Chief Executive of the Board or the Managing Director of any such authority;

“director” means any director of a subsidiary authority;

“subsidiary authority” does not include a private subsidiary corporation.

*Marine Administration 1989***SCHEDULE 3—DIRECTORS OF SUBSIDIARY AUTHORITIES—*continued*****Chairperson of subsidiary authority**

2. A person who is a director and Chairperson of a subsidiary authority vacates office as Chairperson if the person ceases to be a director.

**Deputies**

3. (1) The Chief Executive of the Board or the Managing Director of a subsidiary authority may, from time to time, appoint an officer of the Board to be his or her deputy as director of a subsidiary authority, and the Chief Executive or Managing Director, or the Board, may revoke any such appointment.

(2) The Minister may, from time to time, appoint a person to be the deputy of an appointed director, and the Minister may revoke any such appointment.

(3) In the absence of a director, the director's deputy—

(a) shall, if available, act in the place of the director; and

(b) while so acting, has all the functions of the director and shall be taken to be a director.

(4) The deputy of a director who is Chairperson of a subsidiary authority does not have the director's functions as Chairperson.

(5) A person while acting in the place of a director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

**Terms of office of appointed directors**

4. Subject to this Schedule, an appointed director shall hold office for such period (not exceeding 3 years) as may be specified in the director's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration**

5. An appointed director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

**Vacancy in office of appointed directors**

6. (1) The office of an appointed director becomes vacant if the director—

(a) dies; or

(b) completes a term of office and is not re-appointed; or

(c) resigns the office by instrument in writing addressed to the Minister; or

(d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or

(e) is absent from 4 consecutive meetings of directors of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the directors or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the other directors for having been absent from those meetings; or

(f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or



*Marine Administration 1989*SCHEDULE 3—DIRECTORS OF SUBSIDIARY AUTHORITIES—*continued*

- (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
  - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
  - (i) in the case of the Chairperson—ceases to be a director of the Board.
- (2) The Minister may remove an appointed director from office at any time.

**Disclosure of pecuniary interests**

## 7. (1) If—

- (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the directors of a subsidiary authority; and
- (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,

the director shall, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the directors of the subsidiary authority.

- (2) A disclosure by a director at a meeting of the directors that the director—
- (a) is a member, or is in the employment, of a specified company or other body;
  - (b) is a partner, or is in the employment, of a specified person; or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause shall be recorded by the directors of the subsidiary authority in a book kept for the purpose and that book shall be open at all reasonable hours to inspection by any person on payment of the fee determined by the directors.

(4) After a director has disclosed the nature of an interest in any matter, the director shall not, unless the Minister or the other directors of the subsidiary authority otherwise determine—

- (a) be present during any deliberation of the directors of the subsidiary authority with respect to the matter; or
- (b) take part in any decision of those directors with respect to the matter.

(5) For the purposes of the making of a determination by the directors of a subsidiary authority under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the other directors for the purpose of making the determination; or



*Marine Administration 1989***SCHEDULE 3—DIRECTORS OF SUBSIDIARY AUTHORITIES—*continued***

(b) take part in the making by the other directors of the determination.

(6) A contravention of this clause does not invalidate any decision of the directors of a subsidiary authority.

(7) This clause does not apply to or in respect of an interest of a director (being the provision of goods or services to the director by the Board or a subsidiary authority) if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

**Filling of vacancy in office of appointed director**

8. If the office of any appointed director becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Effect of certain other Acts**

9. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of an appointed director.

(2) If by or under any Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed director or from accepting and retaining any remuneration payable to the person under this Act as such a director.

(3) The office of an appointed director is not, for the purposes of any Act, an office or place of profit under the Crown.

**General procedure**

10. The procedure for the calling of meetings of directors of a subsidiary authority and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by those directors.

**Quorum**

11. The quorum for a meeting of directors of a subsidiary authority is a majority of the directors for the time being of the authority.

**Presiding member**

12. (1) The Chairperson of a subsidiary authority or, in the absence of the Chairperson, another director elected to chair the meeting by the directors present shall preside at a meeting of the directors of the authority.

(2) The person presiding at any meeting of directors has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

13. A decision supported by a majority of the votes cast at a meeting of the directors of a subsidiary authority at which a quorum is present is the decision of those directors.

*Marine Administration 1989*SCHEDULE 3—DIRECTORS OF SUBSIDIARY AUTHORITIES—*continued***Transaction of business outside meetings or by telephone etc.**

14. (1) The directors of a subsidiary authority may, if they think fit, transact any of their business by the circulation of papers among all the directors of the authority for the time being, and a resolution in writing approved in writing by a majority of those directors shall be taken to be a decision of the directors of the authority.

(2) The directors of a subsidiary authority may, if they think fit, transact any of their business at a meeting at which directors (or some directors) participate by telephone, closed-circuit television or other means, but only if any director who speaks on a matter before the meeting can be heard by the other directors.

(3) For the purposes of—

- (a) the approval of a resolution under subclause (1); or
- (b) a meeting held in accordance with subclause (2),

the Chairperson of the subsidiary authority and each director have the same voting rights as they have at an ordinary meeting of the directors of the authority.

(4) A resolution approved under subclause (1) shall, subject to the regulations, be recorded in the minutes of the meetings of directors of the subsidiary authority.

(5) Papers may be circulated among directors for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**First meeting**

15. The Minister shall call the first meeting of the directors of a subsidiary authority in such manner as the Minister thinks fit.

## SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 61)

**PART 1—PRELIMINARY****Definition**

1. In this Schedule—

“appointed day” means the day appointed for the commencement of section 4.

**Savings and transitional provisions**

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act;  
The Maritime Services (Amendment) Act 1989.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the appointed day or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

*Marine Administration 1989*

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**SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—**  
*continued*

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENTIAL ON ENACTMENT OF THIS ACT AND MARITIME SERVICES (AMENDMENT) ACT 1989****Continuity of MSB**

3. (1) The Maritime Services Board of New South Wales constituted by this Act is a continuation of, and the same legal entity as, The Maritime Services Board of New South Wales constituted by the Maritime Services Act 1935.

(2) The Maritime Services Board of New South Wales is the successor in law of the Sydney Harbour Trust Commissioners.

**Superseded references**

4. On and from the appointed day, a reference in any other Act, in any instrument made under any Act or in any document of any kind—

- (a) to The Maritime Services Board of New South Wales shall be read as a reference to the Maritime Services Board of New South Wales;
- (b) to the Sydney Harbour Trust Commissioners shall be read as a reference to the Maritime Services Board of New South Wales;
- (c) to the Superintendent of the Department of Navigation shall be read as a reference to the Maritime Services Board of New South Wales;
- (d) to the President of the Sydney Harbour Trust Commissioners shall be read as a reference to the Chief Executive of the Board;
- (e) to the President or Vice-President of The Maritime Services Board constituted in accordance with the Maritime Services Act 1935 as in force immediately before the commencement of the Maritime Services (Amendment) Act 1985 shall be read as a reference to the Chief Executive of the Board; or
- (f) to a member of The Maritime Services Board of New South Wales shall be read as a reference to a director of the Board.

**Existing part-time members of MSB**

5. (1) A person who, immediately before the appointed day, held office as a part-time member of the Board—

- (a) ceases to hold that office; and
- (b) is eligible (if otherwise qualified) to be appointed as a director of the Board.

(2) A person who so ceases to hold office as a member of the Board is not entitled to any remuneration or compensation because of the loss of that office.



*Marine Administration 1989*


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 SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—  
*continued*
**Existing General Manager and Deputy General Manager of MSB**

6. (1) A person who, immediately before the appointed day, held office as General Manager or Deputy General Manager of the Board—

- (a) ceases to hold that office; and
- (b) except as provided by this clause, is not entitled to any remuneration or compensation because of the loss of that office.

(2) If the General Manager of the Board is not appointed as the Chief Executive of the Board with effect from the appointed day, the General Manager is, on the appointed day, entitled to an engagement in the public sector, or compensation, in accordance with Part 8 of the Public Sector Management Act 1988 as if removed from office under that Part.

(3) The Deputy General Manager of the Board is entitled to be appointed, on the appointed day, to a position in the service of the Government not lower in salary than the salary payable to the person as Deputy General Manager immediately before the appointed day.

**Continuity of staff of MSB etc.**

7. (1) The persons who were, immediately before the appointed day, officers and employees of the Board shall be taken to be officers and employees of the Board employed under this Act.

(2) Members of staff whose services were, immediately before the appointed day, made use of pursuant to section 15 (2) of the Maritime Services Act 1935 shall be taken to be members of staff whose services are being made use of pursuant to this Act.

(3) Persons who were, immediately before the appointed day, appointed under section 15 (1A) of the Maritime Services Act 1935 to exercise any particular functions shall be deemed to have been appointed under this Act to exercise the corresponding functions under the marine legislation.

**Saving of staff regulation**

8. The Maritime Services (Recruitment and Promotion to Officer Positions) Regulation 1985 is not repealed by the repeal of section 18 of the Maritime Services Act 1935 but shall be taken to be a regulation made under this Act.

**Continuation of Maritime Services Board Fund**

9. The Maritime Services Board Fund, established under section 22 of the Maritime Services Act 1935 shall, on the appointed day, become the Maritime Services Board Fund established under section 43.

*Marine Administration 1989*

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SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—  
*continued***Existing delegations and authorisations**

10. A delegation or authorisation in force under section 36 of the Maritime Services Act 1935 immediately before the appointed day shall, on the appointed day, be taken to be a delegation under section 16 of this Act.

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*[Minister's second reading speech made in—  
Legislative Assembly on 4 May 1989  
Legislative Council on 24 May 1989]*





## MARINE ADMINISTRATION BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

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

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

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

The Bill—

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

*Marine Administration 1989*

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

**PART 1—PRELIMINARY**

**Clause 1** specifies the short title of the proposed Act.

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

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

**PART 2—MARITIME SERVICES BOARD OF NEW SOUTH WALES**

**Division 1—Constitution of MSB**

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

**Division 2—Functions of MSB**

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

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

**Division 3—Management of MSB**

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

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

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

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

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

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

*Marine Administration 1989*

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

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

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

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

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

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

### PART 3—SUBSIDIARY AUTHORITIES

#### Division 1—Subsidiary ports authorities

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

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

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

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

#### Division 2—MSB Waterways Authority

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

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

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



### *Marine Administration 1989*

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#### **Division 3—Other MSB subsidiary authorities**

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

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

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

#### **Division 4—Provisions relating to subsidiary authorities**

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

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

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

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

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

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

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

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

#### **Division 5—Private subsidiary corporations**

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

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

#### **PART 4—STAFF**

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

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

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

*Marine Administration 1989*

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

**Clause 41** enables the MSB to engage consultants.

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

**PART 5—FINANCE**

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

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

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

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

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

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

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

**Clause 50** provides for the financial year of the MSB.

**PART 6—MISCELLANEOUS**

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

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

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

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

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

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

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

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

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

*Marine Administration 1989*

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

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

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

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

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

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

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# MARINE ADMINISTRATION BILL 1989

## NEW SOUTH WALES



## TABLE OF PROVISIONS

### PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Definitions

### PART 2—MARITIME SERVICES BOARD OF NEW SOUTH WALES

#### Division 1—Constitution of MSB

4. Constitution of MSB

#### Division 2—Functions of MSB

5. General functions of MSB
6. Miscellaneous functions of MSB

#### Division 3—Management of MSB

7. MSB directors
8. Directors to determine policies of MSB
9. Chief Executive of MSB
10. Chief Executive to manage MSB
11. Ministerial control
12. MSB to supply information to Minister
13. Corporate plans
14. MSB policies on port charges
15. Exercise of functions through subsidiary authorities, joint ventures etc.
16. Delegation of functions of MSB

### PART 3—SUBSIDIARY AUTHORITIES

#### Division 1—Subsidiary ports authorities

17. Constitution of subsidiary ports authorities
18. Functions of subsidiary ports authorities
19. Ports assigned to subsidiary ports authorities
20. Directors of subsidiary ports authorities

#### Division 2—MSB Waterways Authority

21. Constitution of MSB Waterways Authority
22. Functions of MSB Waterways Authority
23. Directors of MSB Waterways Authority

*Marine Administration 1989*

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Division 3—Other MSB subsidiary authorities

24. Constitution of other MSB subsidiary authorities
25. Functions of other MSB subsidiary authorities
26. Directors of other MSB subsidiary authorities

Division 4—Provisions relating to subsidiary authorities

27. Application
28. Directors to determine policies of subsidiary authority
29. Managing Director of subsidiary authority
30. Managing Director to manage subsidiary authority
31. Staff of subsidiary authorities
32. Separate financial reporting requirements
33. Application of marine legislation
34. Transfer of assets etc.

Division 5—Private subsidiary corporations

35. Definitions
36. Private subsidiary corporations etc.

PART 4—STAFF

37. Employment of staff
38. Salary, conditions etc. of staff
39. Regulations relating to staff
40. Use of staff or facilities of Departments etc.
41. Consultants
42. Appointment of persons to act as staff

PART 5—FINANCE

43. Establishment of Maritime Services Board Fund
44. Payments into the Fund
45. Payments from the Fund
46. MSB dividend contributions to Consolidated Fund
47. Investment
48. Capital indebtedness
49. Banking
50. Financial year

PART 6—MISCELLANEOUS

51. Exercise of functions with respect to land purporting to be vested in MSB
52. Port of Eden and other advisory committees
53. Presumption of validity
54. Personal liability of directors etc.
55. Service of documents on MSB etc.
56. Seal of MSB etc.
57. Waiver or refund of charges etc. by MSB
58. Recovery of charges etc. by MSB
59. Proceedings for offences
60. Regulations
61. Savings, transitional and other provisions

SCHEDULE 1—DIRECTORS OF THE MSB

SCHEDULE 2—PROVISIONS RELATING TO CHIEF EXECUTIVE OF THE MSB

SCHEDULE 3—DIRECTORS OF SUBSIDIARY AUTHORITIES

SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

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# MARINE ADMINISTRATION BILL 1989

NEW SOUTH WALES



No. , 1989

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## A BILL FOR

An Act to reconstitute the Maritime Services Board of New South Wales;  
and to make other provision with respect to marine administration.

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See also Maritime Services (Amendment) Bill 1989.



*Marine Administration 1989*

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

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Marine Administration Act 1989.

**5 Commencement**

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

**Definitions**

3. (1) In this Act—

10 “Board” means the Maritime Services Board of New South Wales established under Part 2;

“Fund” means the Maritime Services Board Fund established under section 43;

15 “marine legislation” means any of the following Acts (and the regulations and other instruments made under any of those Acts):

This Act;

Maritime Services Act 1935;

Navigation Act 1901;

20 Navigation and Other Acts (Validation) Act 1983;

Commercial Vessels Act 1979;

Pilotage Act 1971;

Port Rates Act 1975;

Seamen’s Act 1898;

25 Sydney Harbour Trust Act 1900;

Marine Pollution Act 1987,

and includes any Act prescribed for the purposes of this definition (or any regulations or other instruments so prescribed);

“MSB Hunter Ports Authority” means the MSB Hunter Ports Authority established under Part 3;

30 “MSB Illawarra Ports Authority” means the MSB Illawarra Ports Authority established under Part 3;

“MSB Sydney Ports Authority” means the MSB Sydney Ports Authority established under Part 3;

35 “MSB Waterways Authority” means the MSB Waterways Authority established under Part 3;

“navigable waters” means all waters that are from time to time capable of navigation and are open to or used by the public for navigation, whether on payment of a charge or fee or otherwise;

40 “officer”, in relation to the Board, includes an employee of the Board and any other person of whose services the Board makes use;

*Marine Administration 1989*

“port” includes—

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

“port management” means the control and regulation of trading ports;

“subsidiary authority” means—

- (a) a subsidiary ports authority; or
- (b) the MSB Waterways Authority; or
- 10 (c) any other subsidiary authority established under Division 3 of Part 3; or
- (d) a private subsidiary corporation referred to in Division 5 of Part 3;

“subsidiary ports authority” means—

- 15 (a) the MSB Sydney Ports Authority; or
- (b) the MSB Hunter Ports Authority; or
- (c) the MSB Illawarra Ports Authority; or
- (d) any other subsidiary ports authority established under Division 1 of Part 3;

20 “vessel” includes any ship, lighter, barge, boat, raft, craft, hydroplane, hydrofoil, hovercraft and any floating object or apparatus (whether amphibious or not) used wholly or partly for the conveyance of persons or things by water, and also includes seaplanes, sunken or stranded vessels and the wreck or remains of any vessel;

25 “waterways management” means the control and regulation of vessels in the navigable waters of the State.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- 30 (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

## **PART 2—MARITIME SERVICES BOARD OF NEW SOUTH WALES**

### **Division 1—Constitution of MSB**

#### **Constitution of MSB**

35 4. (1) There is constituted by this Act a corporation with the corporate name of the Maritime Services Board of New South Wales.

(2) The Board is, for the purposes of any Act, a statutory body representing the Crown.

*Marine Administration 1989***Division 2—Functions of MSB****General functions of MSB**

5. The Board has—
- (a) such port and waterways management functions; and
  - 5 (b) such other functions,
- as are conferred or imposed on it by or under the marine legislation or any other legislation.

**Miscellaneous functions of MSB**

6. (1) Without limiting any other functions conferred or imposed on it,  
10 the Board may—
- (a) conduct any business, whether or not related to its port management or waterways management functions, and for that purpose use any property or the services of any staff of the Board; and
  - (b) acquire any land and develop any land; and
  - 15 (c) acquire or build, and maintain or dispose of, any vessels, vehicles, plant, machinery or equipment; and
  - (d) make and enter into contracts or arrangements for the carrying out of works or the performance of services or the supply of goods or materials; and
  - 20 (e) appoint agents, and act as agent for other persons.
- (2) The Board may exercise its functions within or outside New South Wales.

**Division 3—Management of MSB****MSB directors**

- 25 7. (1) There shall be directors of the Board.
- (2) The directors of the Board are—
- (a) the Chief Executive of the Board; and
  - (b) not fewer than 4 and not more than 7 directors appointed by the Minister.
- 30 (3) The persons appointed as directors by the Minister must have such managerial or other qualifications as the Minister considers necessary to enable the directors to carry out their functions.
- (4) Of the directors (including the Chief Executive), one shall (in and by the director's instrument of appointment as a director or in and by another  
35 instrument executed by the Minister) be appointed as Chairperson of the Board.
- (5) Schedule 1 has effect with respect to the directors of the Board.



**Directors to determine policies of MSB**

8. (1) The directors of the Board have the function of determining the policies of the Board.

(2) In exercising that function, the directors shall, as far as practicable, ensure that the activities of the Board are carried out properly and efficiently and in accordance with sound commercial practice.

**Chief Executive of MSB**

9. (1) The Governor may appoint a Chief Executive of the Board.

(2) Before a person is appointed as Chief Executive, the Minister shall give the directors of the Board the opportunity to recommend any one or more persons for appointment.

(3) Schedule 2 has effect with respect to the Chief Executive.

**Chief Executive to manage MSB**

10. (1) The affairs of the Board shall be managed and controlled by the Chief Executive of the Board in accordance with the policies of the directors of the Board.

(2) Any act, matter or thing done in the name of, or on behalf of, the Board by the Chief Executive of the Board shall be taken to have been done by the Board.

**20 Ministerial control**

11. (1) The Minister may give the directors of the Board written directions in relation to the exercise of the Board's functions.

(2) Subject to this section—

(a) the directors of the Board and the Chief Executive of the Board; and  
 25 (b) to the extent that the function concerned has been delegated to a subsidiary authority—the directors of the subsidiary authority and the Managing Director of the subsidiary authority,

must ensure that the Board complies with any such direction.

(3) If the directors of the Board consider that—

30 (a) the Board would suffer a significant financial loss as a result of complying with the direction; and

(b) the direction is not in the commercial interests of the Board, the directors may request the Minister to review the direction.

(4) A request for a review must be made within 7 days after the direction is given or within such other reasonable period as the Minister determines.

35 (5) If the directors request a review, the Board is not required to comply with the direction until notified of the Minister's decision following the review.

*Marine Administration 1989*

(6) Following the review the Minister may confirm or revoke the direction, but the Minister shall not confirm the direction unless—

- (a) the Minister has estimated the financial loss concerned from information supplied by the Board or from other sources; and
- 5 (b) the Minister has referred the matter to the Treasurer; and
- (c) the Treasurer has approved of the financial loss being reimbursed from public revenue.

(7) The amount to be reimbursed to the Board under this section shall be paid, from money advanced by the Treasurer or appropriated by  
10 Parliament for that purpose, at such times and in such amounts as the Treasurer determines after receiving advice from the Minister on the estimated financial loss incurred by the Board from time to time.

(8) For the purposes of this section, the amount of the financial loss that the Board suffers as a result of complying with a direction includes the  
15 amount of expenditure that the Board incurs, and the amount of revenue that the Board forgoes, as a result of complying with the direction which it would not otherwise incur or forgo.

**MSB to supply information to Minister**

12. The Board shall—

- 20 (a) supply the Minister or a person nominated by the Minister with such information relating to its activities as the Minister or person may require; and
- (b) keep the Minister informed of the general conduct of its activities, and of any significant development in its activities.

**25 Corporate plans**

13. (1) The Board shall, at least 3 months before the beginning of each financial year of the Board, prepare and deliver to the Minister a draft corporate plan for the financial year.

(2) The Board shall—

- 30 (a) consider any comments on the draft corporate plan that were made by the Minister within 2 months after the draft plan was delivered to the Minister; and
- (b) deliver the completed corporate plan to the Minister before the beginning of the financial year concerned.

35 (3) The Board shall, as far as practicable, exercise its functions in accordance with the relevant corporate plan.

(4) A corporate plan shall specify—

- 40 (a) the separate activities of the Board and, in particular, the separate port management and waterways management activities and the separate activities of the subsidiary authorities; and



*Marine Administration 1989*

- (b) the objectives of each such separate activity for the financial year concerned and for the following 2 financial years (or such other number of financial years as the Minister directs); and
- 5 (c) the strategies, policies and budgets for achieving those objectives; and
- (d) targets and criteria for assessing the performance of the Board and of each subsidiary authority.
- (5) This section is subject to any requirement made by or under the marine legislation (including the requirements of a direction by the Minister  
10 under section 11).
- (6) As soon as practicable after the commencement of this section, the Board shall carry out a review of its existing services and provide the Minister with a report on—
- 15 (a) any of its activities which are not in the commercial interests of the Board; and
- (b) the estimated amount of the annual financial loss resulting from those activities; and
- (c) any action that can be taken for the carrying out of those activities in accordance with sound commercial practice.
- 20 **MSB policies on port charges**
14. (1) In this section—
- “port charges” means charges for services provided to, or for the benefit of, the users of trading ports.
- (2) As soon as practicable after the commencement of this section, the  
25 Board shall—
- (a) review existing port charges; and
- (b) develop policies in respect of future port charges; and
- (c) report to the Minister on that review and those policies.
- (3) The policies developed in respect of future port charges must—
- 30 (a) be directed at the recovery of the Board’s costs in providing services to, or for the benefit of, port users; and
- (b) provide for an appropriate rate of return on the value of the assets used by the Board in providing services; and
- 35 (c) require the users of those services to pay port charges on the basis of the services used by them or provided for their benefit; and
- (d) provide for the phasing-in of the policies in areas of significant change; and
- (e) encourage the determination of charges by agreement between the Board and port users; and



*Marine Administration 1989*

(f) identify monopoly services and provide for the determination of a fair price for those services.

(4) The Board may, from time to time, review the policies developed in respect of port charges and report to the Minister on any revised policies.

5 (5) The Minister may, under and in accordance with section 11, give the Board directions in respect of port charges for services provided by the Board which are not fixed by the marine legislation.

(6) The port charges for services provided by the Board which the Minister determines to be monopoly services and which are not fixed by the marine legislation must not be imposed by the Board without the Minister's approval.

10

(7) The Minister may refer any proposed port charges referred to in subsection (6) to a suitably qualified person for advice.

**Exercise of functions through subsidiary authorities, joint ventures etc.**

15 15. (1) Any function of the Board may be exercised—

(a) by the Board itself; or

(b) by a subsidiary authority; or

(c) by the Board or a subsidiary authority, or both, in a partnership, joint venture or other association with other persons or bodies.

20 (2) A function of the Board may not be exercised by a subsidiary authority unless the function has been duly delegated to the subsidiary authority under this Act.

**Delegation of functions of MSB**

16. (1) The Board may delegate to—

25 (a) a subsidiary authority; or

(b) an authorised person,

any of the functions of the Board, other than this power of delegation.

(2) A delegate may sub-delegate to an authorised person any function delegated by the Board if the delegate is authorised in writing to do so by the Board.

30

(3) In this section, "authorised person" means—

(a) an officer of the Board; or

(b) a person of a class prescribed by the regulations or of a class approved by the directors of the Board.

**PART 3—SUBSIDIARY AUTHORITIES****Division 1—Subsidiary ports authorities****Constitution of subsidiary ports authorities**

17. (1) There are constituted by this Act corporations with the following  
5 corporate names:

- (a) MSB Sydney Ports Authority;
- (b) MSB Hunter Ports Authority;
- (c) MSB Illawarra Ports Authority.

(2) The regulations may constitute other subsidiary ports authorities with  
10 the corporate names specified in the regulations.

(3) A subsidiary ports authority is, for the purposes of any Act, a  
statutory body representing the Crown.

**Functions of subsidiary ports authorities**

18. (1) A subsidiary ports authority has such functions of the Board as  
15 are delegated to it under this Act.

(2) The Board must delegate to a subsidiary ports authority such of its  
functions as the Minister directs.

(3) A subsidiary ports authority also has the function of advising the  
Board on any matter relating to port management (either at the request of  
20 the Board or without any such request).

**Ports assigned to subsidiary ports authorities**

19. The functions of a subsidiary ports authority may be exercised in  
relation to the following ports:

- 25 (a) in the case of the MSB Sydney Ports Authority—Sydney Harbour,  
Botany Bay and such other ports as are prescribed by the regulations;
- (b) in the case of the MSB Hunter Ports Authority—Port of Newcastle  
and such other ports as are prescribed by the regulations;
- (c) in the case of the MSB Illawarra Ports Authority—Port Kembla and  
such other ports as are prescribed by the regulations;
- 30 (d) in the case of any other subsidiary ports authority—such ports as  
are prescribed by the regulations in relation to that authority.

**Directors of subsidiary ports authorities**

20. (1) There shall be directors of each subsidiary ports authority.

(2) The directors of a subsidiary ports authority are—

- 35 (a) the Chief Executive of the Board; and
- (b) the Managing Director of the authority; and

*Marine Administration 1989*

(c) not fewer than 3 and not more than 6 directors appointed by the Minister.

(3) The persons appointed as directors of a subsidiary ports authority by the Minister must have such managerial or other qualifications as the Minister considers necessary to enable the directors to carry out their functions.

(4) Of the appointed directors of a subsidiary ports authority, at least one shall be an appointed director of the Board and shall (in and by the director's instrument of appointment as a director of the authority) be appointed as Chairperson of the authority.

(5) Of the appointed directors of the MSB Illawarra Ports Authority, one shall be the chairperson of the Port of Eden Advisory Committee referred to in section 52.

(6) Schedule 3 has effect with respect to the directors of a subsidiary ports authority.

### **Division 2—MSB Waterways Authority**

#### **Constitution of MSB Waterways Authority**

21. (1) There is constituted by this Act a corporation with the corporate name of the MSB Waterways Authority.

(2) The MSB Waterways Authority is, for the purposes of any Act, a statutory body representing the Crown.

#### **Functions of MSB Waterways Authority**

22. (1) The MSB Waterways Authority has such functions of the Board as are delegated to it under this Act.

(2) The Board must delegate to the MSB Waterways Authority such of its functions as the Minister directs.

(3) The MSB Waterways Authority also has the function of advising the Board on any matter relating to waterways management (either at the request of the Board or without any such request).

#### **Directors of MSB Waterways Authority**

23. (1) There shall be directors of the MSB Waterways Authority.

(2) The directors of the MSB Waterways Authority are—

(a) the Chief Executive of the Board; and

(b) the Managing Director of the Authority; and

(c) not fewer than 5 and not more than 6 directors appointed by the Minister.



*Marine Administration 1989*

(3) The persons appointed as directors of the MSB Waterways Authority by the Minister must have such managerial or other qualifications as the Minister considers necessary to enable the directors to carry out their functions.

5 (4) Of the appointed directors of the MSB Waterways Authority, at least one shall be an appointed director of the Board and shall (in and by the director's instrument of appointment as a director of the Authority) be appointed as Chairperson of the Authority.

10 (5) Schedule 3 has effect with respect to the directors of the MSB Waterways Authority.

**Division 3—Other MSB subsidiary authorities****Constitution of other MSB subsidiary authorities**

24. (1) The regulations may constitute other subsidiary authorities of the Board with corporate names specified in the regulations.

15 (2) Any such other subsidiary authority is, for the purposes of any Act, a statutory body representing the Crown.

**Functions of other MSB subsidiary authorities**

25. (1) A subsidiary authority under this Division has such functions of the Board as are delegated to it under this Act.

20 (2) The Board must delegate to any such subsidiary authority such of its functions as the Minister directs.

**Directors of other MSB subsidiary authorities**

26. (1) There shall be separate directors of each subsidiary authority under this Division.

25 (2) The directors of any such subsidiary authority are—

(a) the Chief Executive of the Board; and

(b) the Managing Director of the authority; and

(c) not fewer than 3 and not more than 6 directors appointed by the Minister.

30 (3) The persons appointed as directors of any such subsidiary authority by the Minister must have such managerial or other qualifications as the Minister considers necessary to enable the directors to carry out their functions.

35 (4) Of the appointed directors of any such subsidiary authority, one shall (in and by the director's instrument of appointment as a director or in and by another instrument executed by the Minister) be appointed as Chairperson of the authority.

*Marine Administration 1989*

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(5) Schedule 3 has effect with respect to the directors of any such subsidiary authority.

**Division 4—Provisions relating to subsidiary authorities****Application**

5 27. This Division applies to all subsidiary authorities of the Board except private subsidiary corporations.

**Directors to determine policies of subsidiary authority**

28. (1) The directors of a subsidiary authority have the function of determining the policies of the authority.

10 (2) In exercising that function, the directors shall, as far as practicable, ensure that the activities of the subsidiary authority are carried out properly and efficiently and in accordance with sound commercial practice.

**Managing Director of subsidiary authority**

15 29. (1) The Managing Director of a subsidiary authority shall be appointed by the Board and employed as an officer of the Board under Part 4.

(2) Before a person is appointed as Managing Director of a subsidiary authority, the Board shall give the directors of the authority the opportunity to recommend any one or more persons for appointment.

20 (3) If the Board does not propose to appoint a person recommended by the directors, the matter shall be referred to the Minister and a person shall not be appointed as Managing Director unless the Minister recommends the appointment.

**Managing Director to manage subsidiary authority**

25 30. (1) The affairs of a subsidiary authority shall be managed and controlled by the Managing Director of the authority in accordance with the policies of the directors of the authority.

30 (2) Any act, matter or thing done in the name of, or on behalf of, a subsidiary authority by the Managing Director of the authority shall be taken to have been done by the authority.

**Staff of subsidiary authorities**

31. (1) Such staff as may be necessary to enable a subsidiary authority to exercise its functions shall be employed by the Board under Part 4.

35 (2) The members of any such staff are subject to the control and direction of the Board, subject to any delegation of the Board's functions in relation to that staff made to the subsidiary authority concerned.



*Marine Administration 1989***Separate financial reporting requirements**

32. Any report in relation to the Board under the Public Finance and Audit Act 1983 or the Annual Reports (Statutory Bodies) Act 1984 must include a separate report on the financial position and activities of each  
5 subsidiary authority.

**Application of marine legislation**

33. Any provision of the marine legislation prescribed by the regulations applies to and in respect of a subsidiary authority in such manner and to such extent as are prescribed by the regulations.

**10 Transfer of assets etc.**

34. (1) With the approval of the Minister—

- (a) the Board may transfer any of its assets, rights or liabilities to a subsidiary authority; and
- (b) a subsidiary authority may transfer any of its assets, rights or  
15 liabilities to the Board or to another subsidiary authority.

(2) The regulations may make provision for or with respect to the vesting of those assets, rights and liabilities in the transferee without any transfer, conveyance or assignment.

(3) A subsidiary authority which is constituted by the regulations is  
20 dissolved by the repeal of those regulations (unless continued in existence by the regulations), and on any such dissolution the assets, rights and liabilities of the authority become the assets, rights and liabilities of the Board.

**Division 5—Private subsidiary corporations****25 Definitions**

35. In this Division—

- “private corporation” means a corporation within the meaning of the Companies (New South Wales) Code formed in or outside New South Wales;
- 30 “private subsidiary corporation” means a private corporation in which the Board has a controlling interest.

**Private subsidiary corporations etc.**

36. (1) The Board may, subject to subsection (2)—

- (a) form, or participate in the formation of, private corporations; and
- 35 (b) acquire interests in private corporations; and
- (c) sell or otherwise dispose of interests in private corporations,



*Marine Administration 1989*

whether or not the activities or proposed activities of any such private corporation are related to port management or waterways management.

(2) The Board must not, without the approval of the Minister—

- 5 (a) form, or participate in the formation of, a private subsidiary corporation; or
- (b) acquire an interest in a private corporation so that, as a result of the acquisition, the corporation becomes a private subsidiary corporation; or
- 10 (c) sell or otherwise dispose of any interest in a private subsidiary corporation so that, as a result of the sale or disposal, it ceases to be a private subsidiary corporation.

(3) A private subsidiary corporation is not, and does not represent, the Crown.

**PART 4—STAFF****15 Employment of staff**

37. The Board may employ such staff as it requires to exercise its functions.

**Salary, conditions etc. of staff**

20 38. The Board may fix the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any other Act or law.

**Regulations relating to staff**

39. (1) The regulations may make provision for or with respect to the employment of the staff of the Board, including the conditions of employment and the discipline of any such staff.

25 (2) Any such regulations relating to the conditions of employment or the discipline of staff—

- (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement to which the Board is a party; and
- 30 (b) have effect despite any determination of the Board under section 38.

**Use of staff or facilities of Departments etc.**

40. (1) The Board may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority.

35 (2) For the purposes of the marine legislation, a person whose services are made use of under this section is a member of the staff of the Board.

**Consultants**

41. The Board may engage such consultants as the Board requires to exercise its functions.

**Appointment of persons to act as staff**

5 42. (1) The Board may, on such conditions and during such period as it may determine, appoint persons to exercise the functions of members of the staff of the Board under the marine legislation.

(2) Any such person—

- 10 (a) shall be taken to be a member of the staff of the Board for the purposes of the marine legislation in respect of which the person is appointed to exercise functions; and
- (b) in the exercise of those functions, is subject to the control of the Board and to the regulations under this Part to the same extent as if the person were a member of the staff of the Board.

15

**PART 5—FINANCE****Establishment of Maritime Services Board Fund**

43. The Board shall establish a fund to be known as the Maritime Services Board Fund.

**Payments into the Fund**

20 44. There shall be paid into the Fund—

- (a) all money received by or on account of the Board; and
- 25 (b) all fines and penalties recovered for offences against the marine legislation and which are required by that legislation to be paid to the Board or are recovered on informations laid by officers of the Board; and
- (c) all penalties paid to an officer of the Board under section 30D of the Maritime Services Act 1935; and
- (d) all interest received in respect of the investment of money belonging to the Fund; and
- 30 (e) all money borrowed by or advanced to the Board or appropriated by Parliament for the purposes of the Board; and
- (f) all money directed to be paid into the Fund by this or any other Act.

**Payments from the Fund**

45. There shall be paid from the Fund—

- 35 (a) the remuneration (including allowances) of the directors of the Board or a subsidiary authority, staff of the Board and any person acting in the office of a director of the Board or a subsidiary authority; and

*Marine Administration 1989*

(b) all payments made on account of the Board or otherwise required to meet expenditure incurred in relation to the functions of the Board; and

5 (c) all other payments required by or under this or any other Act to be paid from the Fund.

**MSB dividend contributions to Consolidated Fund**

46. (1) There shall be paid from the Fund into the Consolidated Fund, by way of dividend contribution in respect of each financial year of the Board, an amount determined by the Treasurer.

10 (2) The amount so determined shall be an amount equal to a percentage fixed by the Treasurer of the value of relevant assets of the Board.

(3) Different percentages may be fixed in respect of different classes of relevant assets of the Board.

15 (4) The relevant assets of the Board, and the value of those assets, shall be determined by the Treasurer.

(5) A dividend contribution payable by the Board under this section shall be paid in such instalments and at such times as are determined by the Treasurer.

20 (6) The Treasurer must consult the Minister and the Board in connection with any determination to be made by the Treasurer under this section.

(7) This section applies as from such financial year of the Board as the Treasurer determines.

(8) Sections 23B and 23BA of the Maritime Services Act 1935 continue to apply in respect of a financial year to which this section does not apply.

**25 Investment**

47. The Board may invest money held by it—

(a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or

30 (b) if that Act does not confer power to invest money held by the Board—

(i) in accordance with and subject to the Trustee Act 1925; and

(ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

**Capital indebtedness**

35 48. (1) The capital indebtedness to the State of the Board is the amount it was on 1 July immediately before the commencement of this section.



*Marine Administration 1989*

(2) The Minister shall, as soon as practicable after the end of each financial year, certify the total expenditure during the preceding financial year out of money provided by Parliament (except under section 11) for any service or work of the Board.

- 5 (3) The expenditure so certified shall be notified by the Minister in the Gazette, and shall be added to and become part of the capital indebtedness of the Board.

(4) Nothing in this section affects the loan liability of the Board or any charges payable to the Treasurer in respect of that loan liability.

#### 10 **Banking**

49. All money received on account of the Fund shall be paid into a bank or banks in New South Wales.

#### **Financial year**

- 15 50. (1) The financial year of the Board is the year commencing on 1 July.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

### **PART 6—MISCELLANEOUS**

#### **Exercise of functions with respect to land purported to be vested in MSB**

- 20 51. (1) If land purportedly vested in the Board by an Act is not vested because the vesting exceeds the legislative power of the State, any function conferred or imposed on the Board in respect of land vested in the Board shall be regarded as also conferred or imposed in respect of the land purportedly so vested in the Board.

- 25 (2) This section applies to land purportedly vested in the Board before or after this section commences.

#### **Port of Eden and other advisory committees**

- 30 52. (1) The Board shall establish a Port of Eden Advisory Committee to give advice and assistance to the Board in connection with the control and regulation of the Port of Eden.

(2) The Board may establish other advisory committees to give advice and assistance to the Board in connection with any particular matter or function of the Board.

#### **Presumption of validity**

- 35 53. (1) The exercise of a function by the Board or by a subsidiary authority or other delegate of the Board is not invalidated because it is exercised in contravention of a direction by the Minister.

*Marine Administration 1989*

(2) If a recommendation by the Board is a condition precedent to the exercise of a function by the Minister, the exercise of the function by the Minister is evidence of the making of the recommendation.

**Personal liability of directors etc.**

5 54. (1) No matter or thing done by the Board, the Chief Executive or other director of the Board or any person acting under the direction of the Board shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the Chief Executive or other director or a person so acting personally to any action, liability, claim or  
10 demand.

(2) In this section, a reference to the Board includes a reference to a subsidiary authority (not being a private subsidiary corporation).

**Service of documents on MSB etc.**

15 55. (1) A document may be served on the Board by leaving it at, or by sending it by post to—

- (a) the office of the Board; or
- (b) if it has more than one office—any one of its offices.

(2) A document may be served on a subsidiary authority by leaving it at, or by sending it by post to—

- 20
- (a) the office of the authority; or
  - (b) if it has more than one office—any one of its offices.

(3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Board or a subsidiary authority in any other manner.

**25 Seal of MSB etc.**

56. (1) The seal of the Board shall be kept by the Chief Executive of the Board and shall be affixed to a document only—

- 30
- (a) in the presence of the Chief Executive of the Board or a member of the staff of the Board authorised in that behalf by the Chief Executive; and
  - (b) with an attestation by the signature of the Chief Executive or that member of staff of the fact of the affixing of the seal.

(2) The seal of a subsidiary authority (not being a private subsidiary corporation) shall be kept by the Managing Director of the authority and  
35 shall be affixed to a document only—

- (a) in the presence of the Managing Director of the authority or a member of the staff of the Board authorised in that behalf by the Managing Director; and

*Marine Administration 1989*

- (b) with an attestation by the signature of the Managing Director or that member of staff of the fact of the affixing of the seal.

**Waiver or refund of charges etc. by MSB**

57. The Board may waive or refund the whole or any part of any charge, fee or money due to the Board, or to the Crown in respect of the activities of the Board, in any particular case or in any class of cases.

**Recovery of charges etc. by MSB**

58. Any charge, fee or money due to the Board, or to the Crown in respect of the activities of the Board, may be recovered by the Board as a debt in a court of competent jurisdiction.

**Proceedings for offences**

59. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**15 Regulations**

60. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- 20 (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

**Savings, transitional and other provisions**

61. Schedule 4 has effect.

**SCHEDULE 1—DIRECTORS OF THE MSB**

25

(Sec. 7 (5))

**Definitions**

1. In this Schedule—

“appointed director” means a director of the Board other than the Chief Executive of the Board;

- 30 “Chief Executive” means the Chief Executive of the Board;

“director” means any director of the Board.

**Chairperson of Board**

2. (1) The Minister may remove a director from the office of Chairperson of the Board at any time.



*Marine Administration 1989*SCHEDULE 1—DIRECTORS OF THE MSB—*continued*

(2) A person who is a director and Chairperson of the Board vacates office as Chairperson if the person—

- (a) is removed from that office by the Minister; or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- 5 (c) ceases to be a director.

**Deputies**

3. (1) The Chief Executive may, from time to time, appoint a person to be his or her deputy, and the Chief Executive or the Minister may revoke any such appointment.

(2) The Minister may, from time to time, appoint a person to be the deputy of an appointed director, and the Minister may revoke any such appointment.

(3) In the absence of a director, the director's deputy—

- (a) shall, if available, act in the place of the director; and
- (b) while so acting, has all the functions of the director and shall be taken to be a director.

15 (4) The deputy of a director who is Chairperson of the Board does not have the director's functions as Chairperson.

(5) A person while acting in the place of a director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

**20 Terms of office of appointed directors**

4. Subject to this Schedule, an appointed director shall hold office for such period (not exceeding 3 years) as may be specified in the director's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration**

25 5. An appointed director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

**Vacancy in office of appointed directors**

6. (1) The office of an appointed director becomes vacant if the director—

- 30 (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
- 35 (e) is absent from 4 consecutive meetings of directors of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the directors or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the other directors for having been absent from those meetings; or

*Marine Administration 1989*SCHEDULE 1—DIRECTORS OF THE MSB—*continued*

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- 5 (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- 10 (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed director from office at any time.

**Disclosure of pecuniary interests**

7. (1) If—
- 15 (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the directors; and
- (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,
- 20 the director shall, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the directors.
- (2) A disclosure by a director at a meeting of the directors that the director—
- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- 25 (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause shall be recorded by the
- 30 directors in a book kept for the purpose and that book shall be open at all reasonable hours to inspection by any person on payment of the fee determined by the directors.
- (4) After a director has disclosed the nature of an interest in any matter, the director shall not, unless the Minister or the other directors otherwise determine—
- (a) be present during any deliberation of the directors with respect to the matter; or
- 35 (b) take part in any decision of the directors with respect to the matter.
- (5) For the purposes of the making of a determination by the directors under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates shall not—
- (a) be present during any deliberation of the other directors for the purpose of
- 40 making the determination; or
- (b) take part in the making by the other directors of the determination.
- (6) A contravention of this clause does not invalidate any decision of the directors.



*Marine Administration 1989*SCHEDULE 1—DIRECTORS OF THE MSB—*continued*

(7) This clause does not apply to or in respect of an interest of a director (being the provision of goods or services to the director by the Board) if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

**Filling of vacancy in office of appointed director**

- 5 8. If the office of any appointed director becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Effect of certain other Acts**

9. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of an appointed director.

- 10 (2) If by or under any Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or  
 (b) prohibiting the person from engaging in employment outside the duties of that office,

- 15 the provision does not operate to disqualify the person from holding that office and also the office of an appointed director or from accepting and retaining any remuneration payable to the person under this Act as such a director.

(3) The office of an appointed director is not, for the purposes of any Act, an office or place of profit under the Crown.

**20 General procedure**

10. The procedure for the calling of meetings of directors and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the directors.

**Quorum**

- 25 11. The quorum for a meeting of directors is a majority of the directors for the time being.

**Presiding member**

12. (1) The Chairperson of the Board or, in the absence of the Chairperson, another director elected to chair the meeting by the directors present shall (subject to subclause

- 30 (2)) preside at a meeting of the directors.

(2) If the Chief Executive is not the Chairperson, the Chief Executive (if present) shall preside in the absence of the Chairperson at a meeting of the directors.

(3) The person presiding at any meeting of directors has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**35 Voting**

13. A decision supported by a majority of the votes cast at a meeting of the directors at which a quorum is present is the decision of the directors.



*Marine Administration 1989*SCHEDULE 1—DIRECTORS OF THE MSB—*continued***Transaction of business outside meetings or by telephone etc.**

14. (1) The directors may, if they think fit, transact any of their business by the circulation of papers among all the directors of the Board for the time being, and a resolution in writing approved in writing by a majority of those directors shall be taken  
5 to be a decision of the directors.

(2) The directors may, if they think fit, transact any of their business at a meeting at which directors (or some directors) participate by telephone, closed-circuit television or other means, but only if any director who speaks on a matter before the meeting can be heard by the other directors.

10 (3) For the purposes of—

(a) the approval of a resolution under subclause (1); or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each director have the same voting rights as they have at an ordinary meeting of the directors.

15 (4) A resolution approved under subclause (1) shall, subject to the regulations, be recorded in the minutes of the meetings of directors.

(5) Papers may be circulated among directors for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**First meeting**

20 15. The Minister shall call the first meeting of the directors in such manner as the Minister thinks fit.

**SCHEDULE 2—PROVISIONS RELATING TO CHIEF EXECUTIVE OF THE  
MSB**

(Sec. 9 (3))

**25 Definition**

1. In this Schedule—

“Chief Executive” means the Chief Executive of the Board.

**Acting Chief Executive**

30 2. (1) The Minister may, from time to time, appoint a person to act in the office of the Chief Executive during the illness or absence of the Chief Executive, and the person, while so acting, has all the functions of the Chief Executive and shall be taken to be the Chief Executive.

(2) The Minister may, at any time, remove any person from an office to which the person was appointed under this clause.

35 (3) A person while acting in the office of the Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(4) For the purposes of this clause, a vacancy in the office of the Chief Executive shall be regarded as an absence from office of the Chief Executive.

*Marine Administration 1989*


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 SCHEDULE 2—PROVISIONS RELATING TO CHIEF EXECUTIVE OF THE  
 MSB—*continued*
**Term of office**

3. Subject to this Schedule, the Chief Executive shall hold office for such period, not exceeding 5 years, as may be specified in the instrument of appointment of the Chief Executive, but is eligible (if otherwise qualified) for re-appointment.

**5 Chief Executive to be full-time**

4. The Chief Executive shall devote the whole of his or her time to the duties of his or her office, except to the extent permitted by this Act or by the Minister.

**Remuneration**

10 5. The Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine in respect of the Chief Executive.

**Casual vacancies**

6. (1) The office of the Chief Executive becomes vacant if the Chief Executive—

- 15 (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is retired or removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
- 20 (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the
- 25 Protected Estates Act 1983; or
- (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- 30 (h) engages in any paid employment outside the duties of his or her office, except with the consent of the Minister.

(2) The Chief Executive may, after reaching the age of 60 years and before reaching the age of 65 years, be retired from office by the Governor.

35 (3) The Governor may remove the Chief Executive from office for incapacity, incompetence or misbehaviour.

**Filling of vacancy in office of the Chief Executive**

7. If the office of the Chief Executive becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Part 2 of Public Sector Management Act 1988 not to apply**

40 8. Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of the Chief Executive.



*Marine Administration 1989*


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 SCHEDULE 2—PROVISIONS RELATING TO CHIEF EXECUTIVE OF THE  
 MSB—*continued*
**Preservation of rights of Chief Executive previously public servant etc.**

9. (1) This clause applies to a Chief Executive who, immediately before being appointed as Chief Executive, was—

- (a) an officer of the Board; or
  - 5 (b) an officer of the Public Service; or
  - (c) a contributor to a superannuation scheme; or
  - (d) an officer employed by a proclaimed statutory body; or
  - (e) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.
- 10 (2) Subject to the terms of the Chief Executive's appointment, the Chief Executive—
- (a) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person; and
  - (b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as Chief Executive; and
  - 15 (c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if the Chief Executive had continued to be such an officer, contributor or person during his or her service as Chief Executive.

20 (3) Service as Chief Executive shall be regarded as service as an officer or employee for the purposes of any law under which any such rights accrued or were accruing, under which he or she continues to contribute to any such superannuation scheme or by which any such entitlement is conferred.

25 (4) The Chief Executive shall be regarded as an officer or employee, and the Board shall be regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(5) If the Chief Executive would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme—

- 30 (a) he or she shall not be so entitled upon becoming (whether upon appointment as Chief Executive or at any later time while holding office as Chief Executive) a contributor to any other superannuation scheme; and
- (b) the provisions of subclause (4) cease to apply to or in respect of him or her and the Board in any case where he or she becomes a contributor to any such other superannuation scheme.

35 (6) Subclause (5) does not prevent the payment to the Chief Executive (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

40 (7) The Chief Executive is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

(8) In this clause—



*Marine Administration 1989*


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**SCHEDULE 2—PROVISIONS RELATING TO CHIEF EXECUTIVE OF THE  
MSB—continued**

“proclaimed statutory body” means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause;

5 “superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

**Chief Executive entitled to re-appointment to former employment in certain cases**

10. (1) A person who—

10 (a) ceases to be Chief Executive by reason of the expiration of the period for which the person was appointed or by reason of resignation; and

(b) was, immediately before being appointed as Chief Executive—

(i) an officer of the Board; or

(ii) an officer of the Public Service; or

(iii) an officer or employee of a proclaimed statutory body; and

15 (c) has not reached the age of 60 years,

is entitled to be appointed to some position in the Board, the Public Service or the service of that statutory body, as the case may be, not lower in salary than the current salary for the position which the person held immediately before being appointed as Chief Executive (or a similar position).

20 (2) If subclause (1) does not apply to a person who—

(a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and

(b) is after that appointment appointed as Chief Executive,

25 the person has such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be Chief Executive, as are specified in the instrument of appointment as Chief Executive or as are agreed on by the person and by or on behalf of the Government.

30 (3) In this clause, “proclaimed statutory body” means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause.

**SCHEDULE 3—DIRECTORS OF SUBSIDIARY AUTHORITIES**

(Secs. 20 (6), 23 (5) and 26 (5))

**Definitions**

1. In this Schedule—

35 “appointed director” means a director of a subsidiary authority other than the Chief Executive of the Board or the Managing Director of any such authority;

“director” means any director of a subsidiary authority;

“subsidiary authority” does not include a private subsidiary corporation.

*Marine Administration 1989*SCHEDULE 3—DIRECTORS OF SUBSIDIARY AUTHORITIES—*continued***Chairperson of subsidiary authority**

2. A person who is a director and Chairperson of a subsidiary authority vacates office as Chairperson if the person ceases to be a director.

**Deputies**

5 3. (1) The Chief Executive of the Board or the Managing Director of a subsidiary authority may, from time to time, appoint an officer of the Board to be his or her deputy as director of a subsidiary authority, and the Chief Executive or Managing Director, or the Board, may revoke any such appointment.

10 (2) The Minister may, from time to time, appoint a person to be the deputy of an appointed director, and the Minister may revoke any such appointment.

(3) In the absence of a director, the director's deputy—

(a) shall, if available, act in the place of the director; and

(b) while so acting, has all the functions of the director and shall be taken to be a director.

15 (4) The deputy of a director who is Chairperson of a subsidiary authority does not have the director's functions as Chairperson.

(5) A person while acting in the place of a director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

**20 Terms of office of appointed directors**

4. Subject to this Schedule, an appointed director shall hold office for such period (not exceeding 3 years) as may be specified in the director's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration**

25 5. An appointed director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

**Vacancy in office of appointed directors**

30 6. (1) The office of an appointed director becomes vacant if the director—

(a) dies; or

(b) completes a term of office and is not re-appointed; or

(c) resigns the office by instrument in writing addressed to the Minister; or

(d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or

35 (e) is absent from 4 consecutive meetings of directors of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the directors or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the other directors for having been absent from those meetings; or

40 (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or



*Marine Administration 1989*SCHEDULE 3—DIRECTORS OF SUBSIDIARY AUTHORITIES—*continued*

- (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- 5 (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (i) in the case of the Chairperson—ceases to be a director of the Board.
- 10 (2) The Minister may remove an appointed director from office at any time.

**Disclosure of pecuniary interests**

7. (1) If—
- (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the directors of a subsidiary authority; and
- 15 (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,
- the director shall, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the directors of the
- 20 subsidiary authority.
- (2) A disclosure by a director at a meeting of the directors that the director—
- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- 25 (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause shall be recorded by the
- 30 directors of the subsidiary authority in a book kept for the purpose and that book shall be open at all reasonable hours to inspection by any person on payment of the fee determined by the directors.
- (4) After a director has disclosed the nature of an interest in any matter, the director shall not, unless the Minister or the other directors of the subsidiary authority otherwise
- 35 determine—
- (a) be present during any deliberation of the directors of the subsidiary authority with respect to the matter; or
- (b) take part in any decision of those directors with respect to the matter.
- (5) For the purposes of the making of a determination by the directors of a subsidiary
- 40 authority under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates shall not—
- (a) be present during any deliberation of the other directors for the purpose of making the determination; or



*Marine Administration 1989*SCHEDULE 3—DIRECTORS OF SUBSIDIARY AUTHORITIES—*continued*

(b) take part in the making by the other directors of the determination.

(6) A contravention of this clause does not invalidate any decision of the directors of a subsidiary authority.

(7) This clause does not apply to or in respect of an interest of a director (being the provision of goods or services to the director by the Board or a subsidiary authority) if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

**Filling of vacancy in office of appointed director**

8. If the office of any appointed director becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Effect of certain other Acts**

9. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of an appointed director.

(2) If by or under any Act provision is made—

- 15 (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or  
 (b) prohibiting the person from engaging in employment outside the duties of that office,

20 the provision does not operate to disqualify the person from holding that office and also the office of an appointed director or from accepting and retaining any remuneration payable to the person under this Act as such a director.

(3) The office of an appointed director is not, for the purposes of any Act, an office or place of profit under the Crown.

**General procedure**

25 10. The procedure for the calling of meetings of directors of a subsidiary authority and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by those directors.

**Quorum**

30 11. The quorum for a meeting of directors of a subsidiary authority is a majority of the directors for the time being of the authority.

**Presiding member**

12. (1) The Chairperson of a subsidiary authority or, in the absence of the Chairperson, another director elected to chair the meeting by the directors present shall preside at a meeting of the directors of the authority.

35 (2) The person presiding at any meeting of directors has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

13. A decision supported by a majority of the votes cast at a meeting of the directors of a subsidiary authority at which a quorum is present is the decision of those directors.

*Marine Administration 1989*SCHEDULE 3—DIRECTORS OF SUBSIDIARY AUTHORITIES—*continued***Transaction of business outside meetings or by telephone etc.**

14. (1) The directors of a subsidiary authority may, if they think fit, transact any of their business by the circulation of papers among all the directors of the authority for the time being, and a resolution in writing approved in writing by a majority of those  
5 directors shall be taken to be a decision of the directors of the authority.

(2) The directors of a subsidiary authority may, if they think fit, transact any of their business at a meeting at which directors (or some directors) participate by telephone, closed-circuit television or other means, but only if any director who speaks on a matter before the meeting can be heard by the other directors.

10 (3) For the purposes of—

(a) the approval of a resolution under subclause (1); or

(b) a meeting held in accordance with subclause (2),

the Chairperson of the subsidiary authority and each director have the same voting rights as they have at an ordinary meeting of the directors of the authority.

15 (4) A resolution approved under subclause (1) shall, subject to the regulations, be recorded in the minutes of the meetings of directors of the subsidiary authority.

(5) Papers may be circulated among directors for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**First meeting**

20 15. The Minister shall call the first meeting of the directors of a subsidiary authority in such manner as the Minister thinks fit.

## SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 61)

## PART 1—PRELIMINARY

25 **Definition**

1. In this Schedule—

“appointed day” means the day appointed for the commencement of section 4.

**Savings and transitional provisions**

30 2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act;

The Maritime Services (Amendment) Act 1989.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the appointed day or a later day.

35 (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

40 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or



*Marine Administration 1989*


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 SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—  
*continued*

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENT ON ENACTMENT OF THIS ACT AND  
 5 MARITIME SERVICES (AMENDMENT) ACT 1989**
**Continuity of MSB**

3. (1) The Maritime Services Board of New South Wales constituted by this Act is a continuation of, and the same legal entity as, The Maritime Services Board of New South Wales constituted by the Maritime Services Act 1935.
- 10 (2) The Maritime Services Board of New South Wales is the successor in law of the Sydney Harbour Trust Commissioners.

**Superseded references**

4. On and from the appointed day, a reference in any other Act, in any instrument made under any Act or in any document of any kind—
- 15 (a) to The Maritime Services Board of New South Wales shall be read as a reference to the Maritime Services Board of New South Wales;
- (b) to the Sydney Harbour Trust Commissioners shall be read as a reference to the Maritime Services Board of New South Wales;
- 20 (c) to the Superintendent of the Department of Navigation shall be read as a reference to the Maritime Services Board of New South Wales;
- (d) to the President of the Sydney Harbour Trust Commissioners shall be read as a reference to the Chief Executive of the Board;
- (e) to the President or Vice-President of The Maritime Services Board constituted in accordance with the Maritime Services Act 1935 as in force immediately before  
 25 the commencement of the Maritime Services (Amendment) Act 1985 shall be read as a reference to the Chief Executive of the Board; or
- (f) to a member of The Maritime Services Board of New South Wales shall be read as a reference to a director of the Board.

**Existing part-time members of MSB**

- 30 5. (1) A person who, immediately before the appointed day, held office as a part-time member of the Board—
- (a) ceases to hold that office; and
- (b) is eligible (if otherwise qualified) to be appointed as a director of the Board.
- (2) A person who so ceases to hold office as a member of the Board is not entitled to  
 35 any remuneration or compensation because of the loss of that office.

**Existing General Manager and Deputy General Manager of MSB**

6. (1) A person who, immediately before the appointed day, held office as General Manager or Deputy General Manager of the Board—
- (a) ceases to hold that office; and



*Marine Administration 1989*


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 SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—  
*continued*

(b) except as provided by this clause, is not entitled to any remuneration or compensation because of the loss of that office.

5 (2) If the General Manager of the Board is not appointed as the Chief Executive of the Board with effect from the appointed day, the General Manager is, on the appointed day, entitled to an engagement in the public sector, or compensation, in accordance with Part 8 of the Public Sector Management Act 1988 as if removed from office under that Part.

10 (3) The Deputy General Manager of the Board is entitled to be appointed, on the appointed day, to a position in the service of the Government not lower in salary than the salary payable to the person as Deputy General Manager immediately before the appointed day.

**Continuity of staff of MSB etc.**

15 7. (1) The persons who were, immediately before the appointed day, officers and employees of the Board shall be taken to be officers and employees of the Board employed under this Act.

(2) Members of staff whose services were, immediately before the appointed day, made use of pursuant to section 15 (2) of the Maritime Services Act 1935 shall be taken to be members of staff whose services are being made use of pursuant to this Act.

20 (3) Persons who were, immediately before the appointed day, appointed under section 15 (1A) of the Maritime Services Act 1935 to exercise any particular functions shall be deemed to have been appointed under this Act to exercise the corresponding functions under the marine legislation.

**Saving of staff regulation**

25 8. The Maritime Services (Recruitment and Promotion to Officer Positions) Regulation 1985 is not repealed by the repeal of section 18 of the Maritime Services Act 1935 but shall be taken to be a regulation made under this Act.

**Continuation of Maritime Services Board Fund**

30 9. The Maritime Services Board Fund, established under section 22 of the Maritime Services Act 1935 shall, on the appointed day, become the Maritime Services Board Fund established under section 43.

**Existing delegations and authorisations**

10. A delegation or authorisation in force under section 36 of the Maritime Services Act 1935 immediately before the appointed day shall, on the appointed day, be taken to be a delegation under section 16 of this Act.