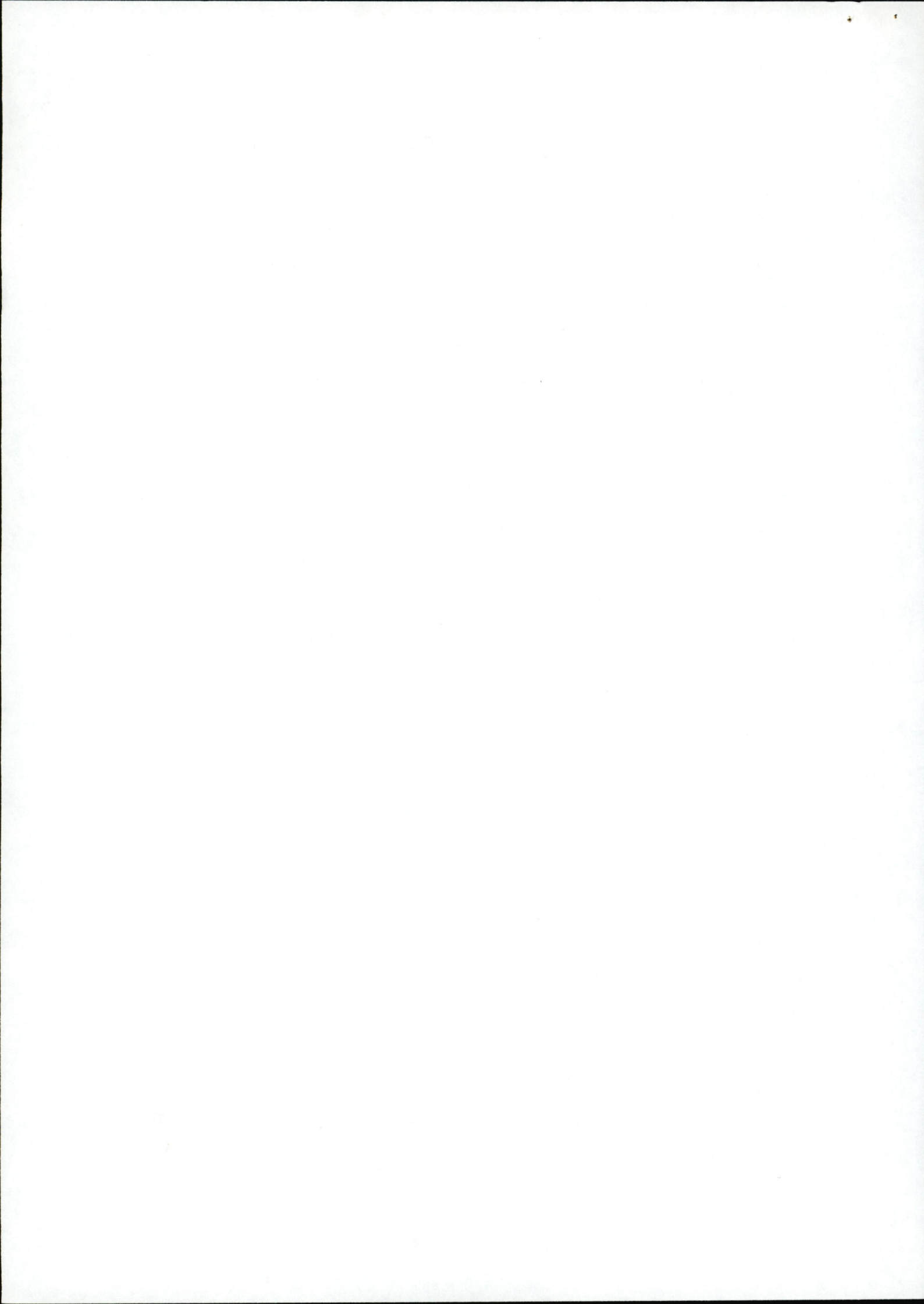


SECOND READING SPEECH

IT IS WITH GREAT PLEASURE THAT I INTRODUCE THIS LEGISLATION WHICH IS THE RESULT OF CAREFUL PLANNING AND PREPARATION BY THE MARITIME SERVICES BOARD AND THE DEPARTMENT OF TRANSPORT WITH A VIEW TO PROVIDING THE BEST POSSIBLE PILOTAGE SERVICE TO THE SHIPPING INDUSTRY AND THROUGH IT TO THE PEOPLE OF NEW SOUTH WALES.

THE OBJECT OF THIS BILL IS TO ENABLE THE MARITIME SERVICES BOARD TO PRIVATISE THE STATE'S PORT PILOTAGE SERVICES. THIS HAS BEEN ACHIEVED BY AMENDING THE PILOTAGE ACT 1971 TO PROVIDE FOR A PORT PILOTAGE SERVICE TO BE PROVIDED BY THE MSB, A SUBSIDIARY MSB PORT AUTHORITY OR AN INDEPENDENT OPERATOR. ADDITIONALLY AS A MEANS OF STREAMLINING THE SYSTEM, THE PILOTAGE CHARGES IN THE EXISTING PILOTAGE ACT HAVE BEEN TRANSFERRED TO THE MARINE PORT CHARGES ACT. IN THIS MANNER ALL CHARGES RELATING TO PORTS HAVE BEEN CONSOLIDATED INTO ONE ACT.

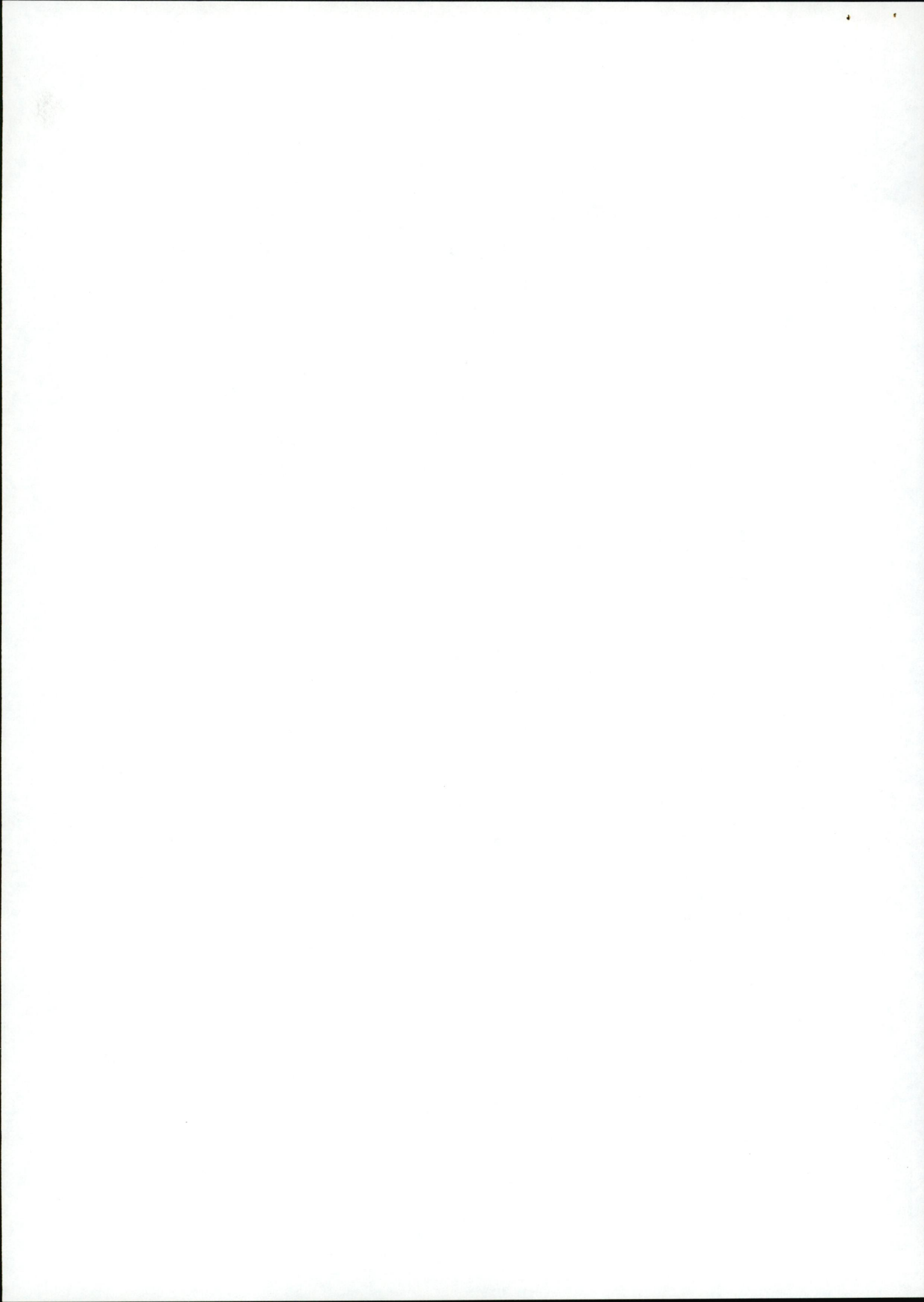
WHEN THIS GOVERNMENT CAME TO POWER IN 1988 IT DEDICATED ITSELF, AMONGST OTHER THINGS, TO REMOVING INEFFICIENCIES WHERE THEY EXIST IN PUBLIC ENTERPRISES. IT SIMULTANEOUSLY INTRODUCED THE HITHERTO VIRTUALLY NON-EXISTENT CONCEPT OF PUBLIC ACCOUNTABILITY. IN KEEPING WITH THIS CONCEPT I EMBARKED UPON A MAJOR OVERHAUL OF THE ADMINISTRATION OF TRANSPORT SYSTEMS IN NEW SOUTH WALES WHICH RESULTED IN THE PASSAGE OF THE TRANSPORT ADMINISTRATION ACT IN 1988.



I THEN CONCENTRATED ON THE MARITIME SERVICES BOARD AND, UNDER THE MARINE ADMINISTRATION ACT IN 1989, THE ENTIRE ORGANISATION WAS RESTRUCTURED AND GIVEN A CORPORATE IMAGE. THREE SEPARATE SUBSIDIARY PORT AUTHORITIES WERE ESTABLISHED AND CHARGED WITH THE RESPONSIBILITY OF THE ASSETS UNDER THEIR CONTROL. MORE IMPORTANTLY THEY WERE REQUIRED TO FOCUS ON THEIR CORE BUSINESS ACTIVITIES AND PROVIDE AN ADEQUATE RATE OF RETURN ON THEIR ASSETS. FOR THE FIRST TIME IN OVER 50 YEARS THE MSB WAS PLACED IN A POSITION WHERE IT WOULD BE ABLE TO CLEARLY IDENTIFY LOSS-MAKING ELEMENTS OF ITS BUSINESS AND WHERE CROSS-SUBSIDIES EXISTED.

PRIOR TO THIS RESTRUCTURING THE MSB WAS LIKE A SHIP WITHOUT A RUDDER FLOATING UPON A CONFUSED SEA OF INEFFICIENCY, OVERSTAFFING AND OUTMODED BUSINESS PRACTICES. THE RESTRUCTURING TOOK PLACE ALL THE WAY TO THE VERY TOP WITH A NEW BOARD REPLACING THE THEN EXISTING ONE. A NEW CULTURE WAS INJECTED INTO THIS ORGANISATION AND IT WAS REVITALISED AND TRANSFORMED INTO A LEAN AND EFFICIENT STRUCTURE CAPABLE OF MEETING THE CHALLENGES OF ITS PRIMARY ROLE IN THE COMMUNITY AND ITS OBLIGATIONS TO THE PUBLIC AT LARGE INCLUDING THE RECREATIONAL BOATERS.

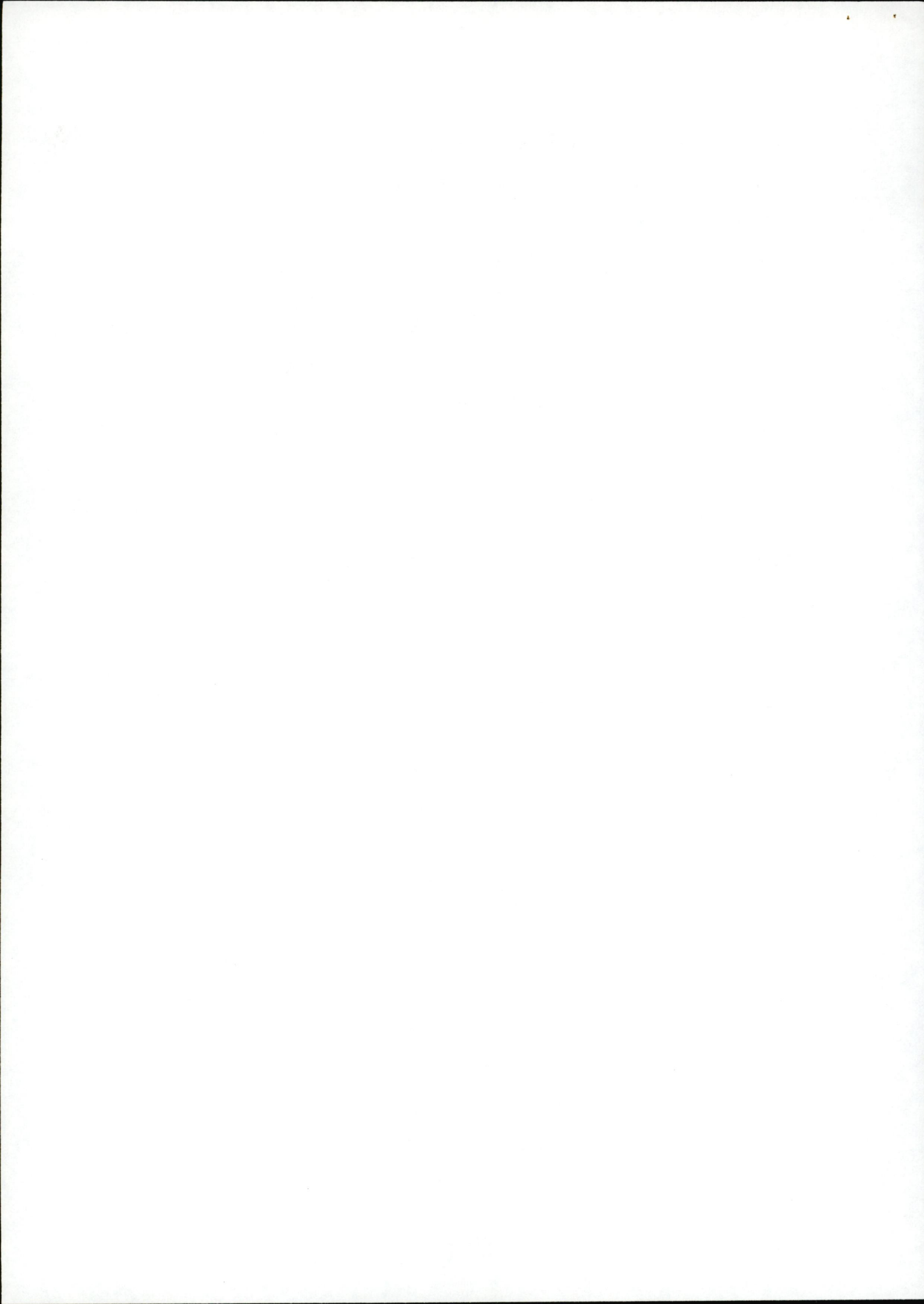
THE TASK OF RESTRUCTURING THE MSB HAS NOT BEEN AN EASY ONE AND THIS IS PROBABLY THE REASON PREVIOUS GOVERNMENTS CHOSE TO IGNORE THE PROBLEM. WHEN THE MSB WAS RESTRUCTURED IT WAS NOT



MERELY AN EXERCISE TO INSTITUTE CHANGE FOR THE SAKE OF CHANGE. IT WAS A CONSCIOUS AND DELIBERATE EFFORT ON MY PART TO INCULCATE MODERN BUSINESS PRINCIPLES INTO THE ORGANISATION WHICH, DESPITE WHAT I HAVE MENTIONED EARLIER, DOES HAVE A SPECIAL PLACE IN THE HISTORY OF NEW SOUTH WALES. CONSEQUENTLY I HAD TO ENSURE THE MSB, WHICH WAS STEEPED IN TRADITION, WAS TAKING EXTREMELY TOUGH MEASURES TO ONCE AGAIN BECOME A FORCE TO RECKON WITH IN THE INDUSTRY. THE ORGANISATION WAS GIVEN CLEAR ORDERS: IT WAS REQUIRED TO IDENTIFY ITS GOALS AND OBJECTIVES AND THEN TO PRESENT BUSINESS PLANS WHICH WOULD CLEARLY SHOW HOW THE OBJECTIVES WERE TO BE ACHIEVED AND THEN TO ATTAIN AND, WHERE POSSIBLE, BETTER THOSE OBJECTIVES.

BY FOCUSING ON THEIR CORE BUSINESS ACTIVITIES AND GETTING RID OF PERIPHERAL ACTIVITIES THE PORT AUTHORITIES HAVE ACHIEVED VIRTUALLY ALL OF THE AIMS THEY WERE SET AND HAVE COLLECTIVELY RETURNED RECORD DIVIDENDS TO GOVERNMENT. AS A RESULT THE SHIPPING INDUSTRY HAS BENEFITED BY A STREAMLINING OF PROCEDURES AND REDUCED PORT CHARGES OVERALL. THIS IS THE CONTEXT IN WHICH THIS BILL SHOULD BE SEEN - IT IS ONE OF THE FINAL MOVES IN WHAT HAS BEEN A CONTINUING PROCESS OF REFORM.

A RESTRUCTURED MSB HAS SEEN QUANTUM LEAPS IN EFFICIENCY AND REVENUE. THE EFFICIENCY MEASURED IN TERMS OF REVENUE PER EMPLOYEE WAS LESS THAN \$ 100,000 BEFORE RESTRUCTURING. TODAY THE FIGURE STANDS AT JUST UNDER \$ 200,000. DURING THE HEADY DAYS OF THE EARLY 1980'S WHEN INTEREST RATES WERE DECEPTIVELY LOW IN EUROPE, THE MSB BORROWED HEAVILY IN GERMAN AND SWISS



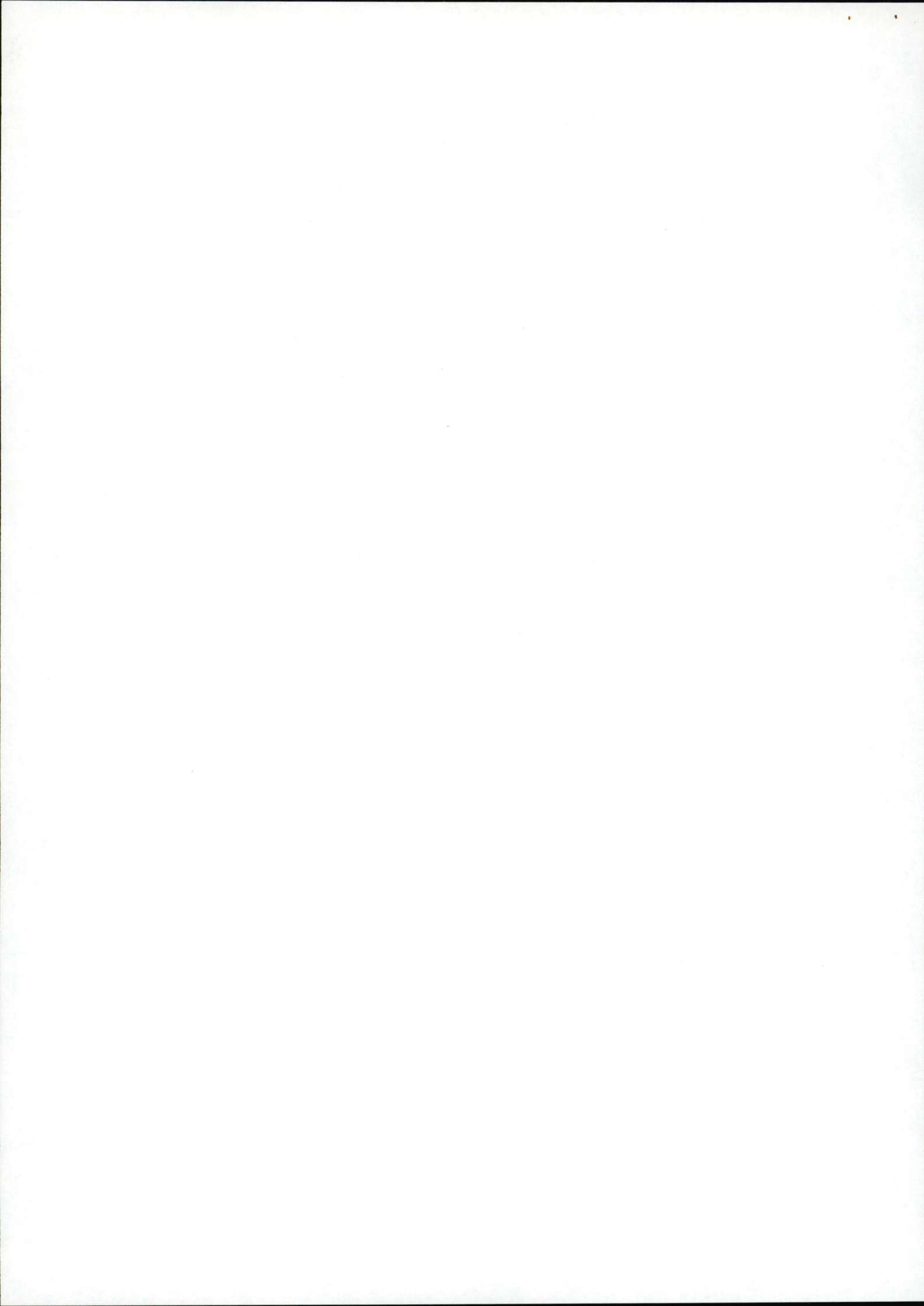
CURRENCIES. THE END RESULT AS WE WELL KNOW, IS THAT WHEN THE MARKETS TURNED, THE MSB FOUND ITSELF SADDLED WITH BURGEONING DEBT. WHEN I ASSUMED OFFICE, ONE OF THE FIRST THINGS I DID WAS TO FOCUS ON THE COMMERCIAL SIDE OF THIS ORGANISATION AND A DECISION WAS MADE TO RETIRE MOST OF THE FOREIGN DEBT. THIS EXERCISE RESULTED IN THE MSB'S EXTERNAL DEBT BEING REDUCED FROM AROUND \$ 400 MILLION TO ABOUT \$ 250 MILLION.

SINCE THE ORGANISATION HAD TO OPERATE IN AN EFFICIENT MANNER IT WAS NECESSARY TO BRING STAFF NUMBERS TO A MORE REALISTIC LEVEL. IT IS WELL KNOWN THAT THE NUMBERS HAVE BEEN DRASTICALLY REDUCED FROM OVER 3,000 IN 1988 TO ABOUT 1,500 LAST YEAR, AND THE MSB IS WORKING TOWARDS A TARGET OF 1,200 BY THE END OF FINANCIAL YEAR 1991/92.

WITH THE RESTRUCTURING DETAILED ABOVE IT IS CLEAR THAT THE ENTIRE PROCESS LENDS ITSELF TO RATIONALISATION AND THIS IS INVALUABLE IN IDENTIFYING LOSS-MAKING ELEMENTS WITHIN THE ORGANISATION.

ONE OF THE RESULTS OF THIS PROCESS WAS IDENTIFYING THE PILOTAGE SERVICES OF SYDNEY AND BOTANY BAY AS SUCH A LOSS-MAKING ELEMENT. HONOURABLE MEMBERS WILL REALISE THAT THIS HAS NOT BEEN ACHIEVED OVERNIGHT AND A LOT OF HARD WORK HAS GONE INTO PRODUCING THE OUTCOME.

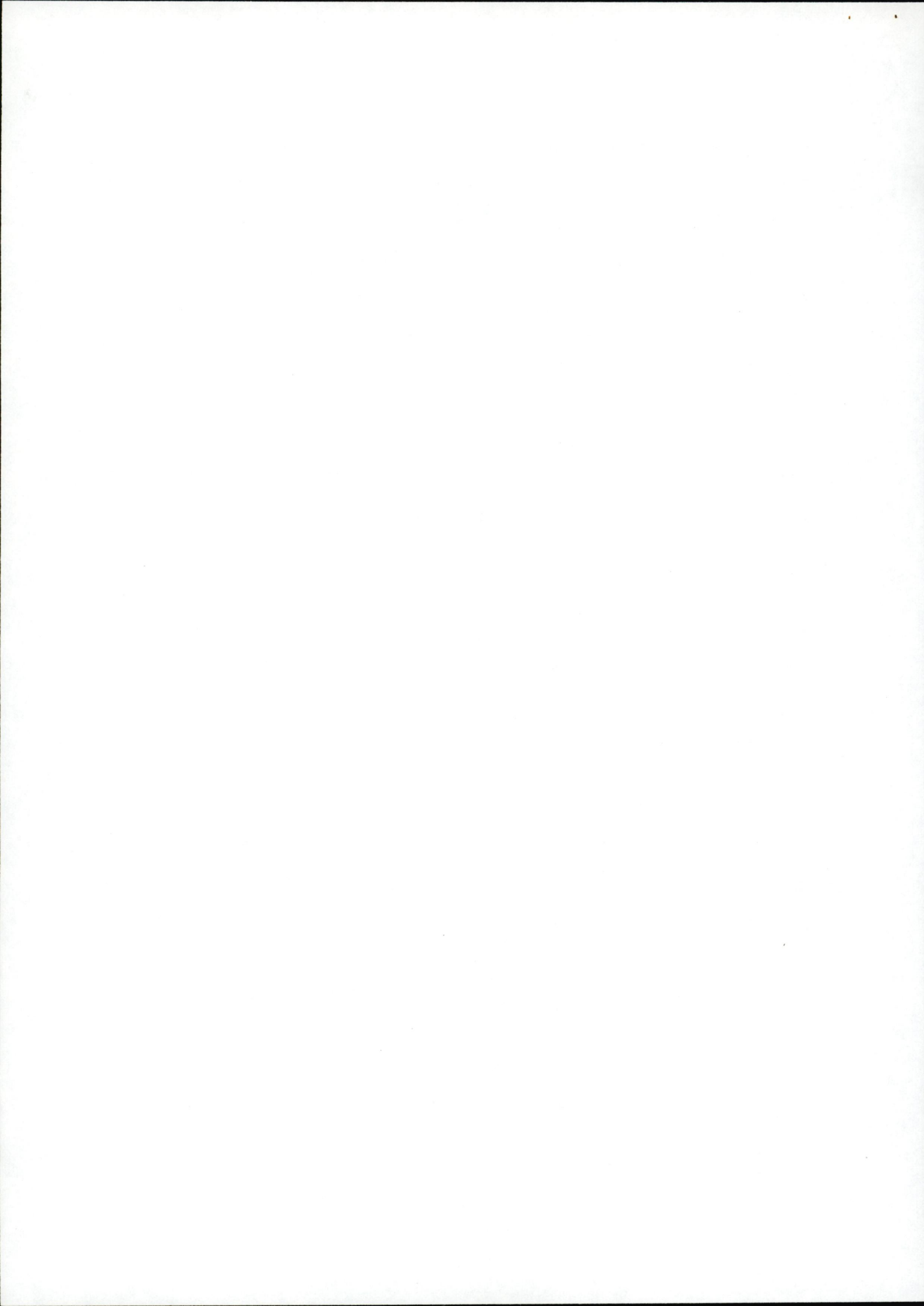
THE SYDNEY PORTS AUTHORITY HAS NOW BEEN ABLE TO CLEARLY IDENTIFY THE PILOTAGE SERVICE FOR THE PORTS OF SYDNEY AND



BOTANY BAY AS A LOSS-MAKING ELEMENT IN AN OTHERWISE PROFITABLE ENTERPRISE. THE PILOTAGE SERVICE HAS INCURRED HEAVY LOSSES OVER THE LAST THREE FINANCIAL YEARS, WITH LOSSES RANGING BETWEEN \$500,000 AND \$700,000 PER ANNUM. FURTHER LOSSES WERE PROJECTED IN FUTURE YEARS. CONSEQUENTLY IT WAS DECIDED TO PRIVATISE THIS SERVICE AS IT IS NOW CLEAR THAT THIS A PRACTICABLE AND SENSIBLE WAY TO GO.

INDUSTRY HAS WELCOMED THE MOVE TOWARDS PRIVATISATION AND THIRTEEN RESPONSES WERE RECEIVED TO THE EXPRESSIONS OF INTEREST ADVERTISED BY THE MSB FOR OPERATORS OF THE PILOTAGE SERVICES IN THE PORTS OF BOTANY BAY AND SYDNEY. THIS IS AN EXCELLENT RESPONSE CONSIDERING THAT A PILOTAGE SERVICE IS A VERY SPECIALISED ONE. PILOTS WHO PROVIDE THE EXISTING SERVICE SUPPORTED THIS MOVE AND WERE AMONGST THOSE WHO RESPONDED. SIX ORGANISATIONS HAVE ALREADY BEEN INVITED TO FORMALLY TENDER FOR THE SERVICE SUBJECT TO THE BILL BEFORE THE HOUSE BECOMING LAW.

THE BILL ACHIEVES YET ANOTHER AIM OF THIS GOVERNMENT WHICH IS TO MAXIMISE PRIVATE INVOLVEMENT IN PUBLIC SECTOR ENTERPRISE, WHERE APPROPRIATE. IN FULFILLING ITS COMMITMENT THE GOVERNMENT HAS ACHIEVED A TWO-FOLD RESULT: FIRST, IT HAS ENABLED THE SYDNEY PORTS AUTHORITY TO DIVEST ITSELF OF A LOSS-MAKING ELEMENT; SECOND, IT HAS INSTILLED CONFIDENCE IN THE INDUSTRY BY MAKING IT A CONDITION OF THE TENDER THAT NO INCREASE IN CHARGES WILL BE PERMITTED FOR THE TERM OF THE INITIAL CONTRACT WHICH WILL BE THREE YEARS. THIS "FREEZE" HAS BEEN INSTITUTED TO ENSURE THERE IS NO COLLUSION BY PROSPECTIVE

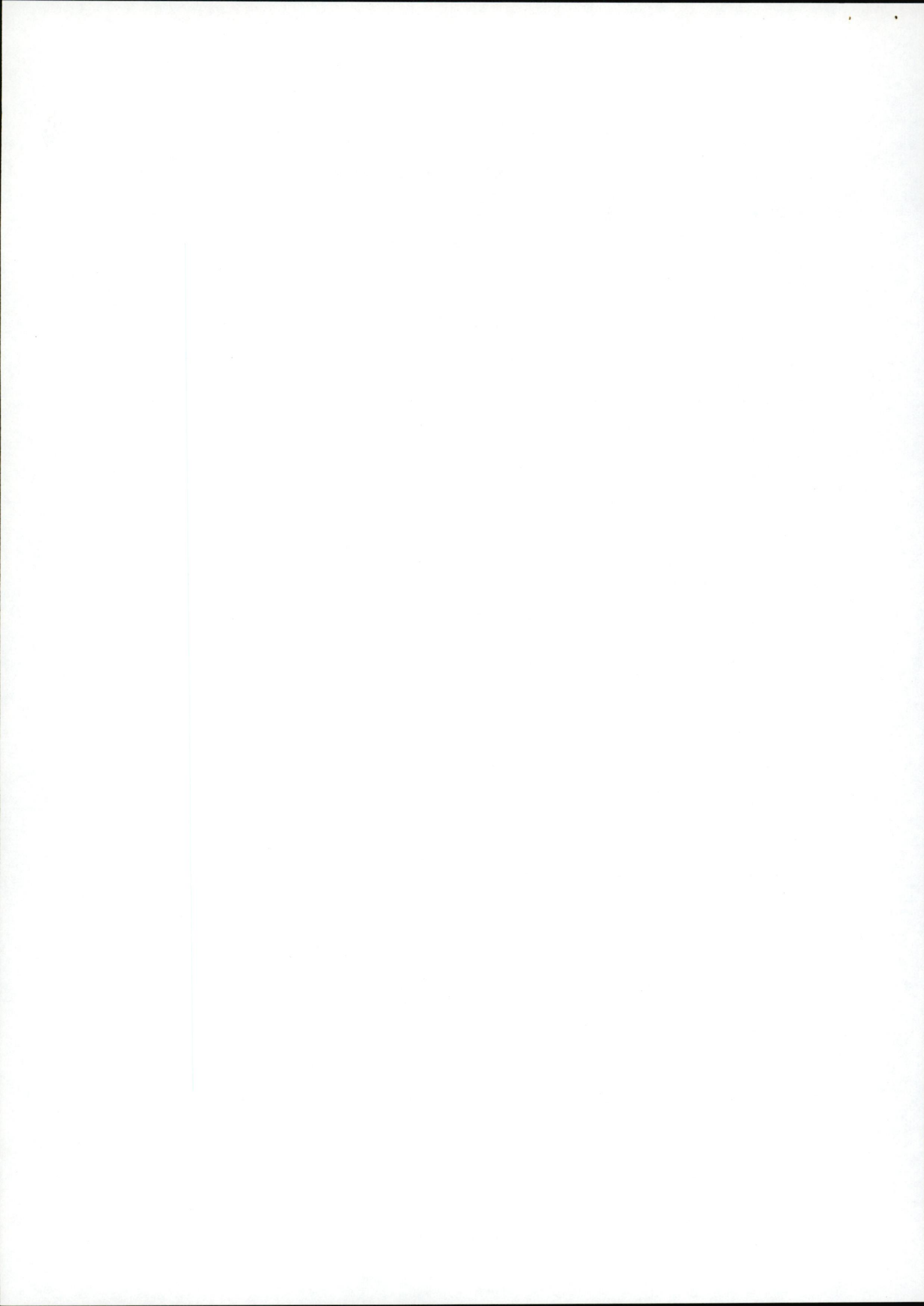


TENDERERS TO IMPOSE CHARGES HIGHER THAN THOSE CONTAINED IN THE MARINE PORT CHARGES ACT. NOTWITHSTANDING THIS, THE BILL WILL EMPOWER ME TO APPROVE ALL CHARGES RELATING TO PILOTAGE SERVICES AND THIS WILL REQUIRE THEM TO BE REVIEWED ON AN ANNUAL BASIS. IT WILL ALSO PROVIDE ME WITH AN OPPORTUNITY TO DETERMINE IF THESE CHARGES CAN BE REDUCED. THE PRICING POLICY FOR PILOTAGE CHARGES WILL ALSO TAKE ACCOUNT OF THE REQUIREMENTS OF THE PRICES SURVEILLANCE AUTHORITY.

A FURTHER FEATURE OF THE BILL BEFORE THE HOUSE IS THAT IT REFLECTS GOVERNMENT'S POLICY OF SEPARATING REGULATORY AND POLICY FUNCTIONS FROM OPERATIONS AND ADMINISTRATION. THIS HAS BEEN ACHIEVED BY TRANSFERRING THE EXISTING POLICY AND REGULATORY POWERS OF THE MARITIME SERVICES BOARD INSOFAR AS THEY RELATE TO PILOTAGE MATTERS TO THE DIRECTOR-GENERAL OF THE NSW DEPARTMENT OF TRANSPORT.

THIS APPROACH IS CONSISTENT WITH THAT OF EXISTING LEGISLATION ADMINISTERED BY THE TRANSPORT PORTFOLIO.

THE EXISTING PILOTAGE LEGISLATION IS SO FRAMED THAT IT DOES NOT ENABLE THE GOVERNMENT TO ADOPT A PROACTIVE APPROACH TO RESPOND TO THE UNACCEPTABLE LOSS OF TAXPAYER'S MONEY WHICH HAS BEEN OCCURRING IN PAST YEARS. AMENDMENT IS THEREFORE NECESSARY TO ACHIEVE THE RESULTS I HAVE ALREADY DESCRIBED AS BEING OBJECTIVES OF THE BILL. AMONGST OTHER THINGS THE BILL ALSO CONTAINS PROVISIONS TO CORRECT A SERIOUS PRACTICAL OMISSION IN EXISTING LAW BY PROVIDING FOR A LIABILITY BY AN

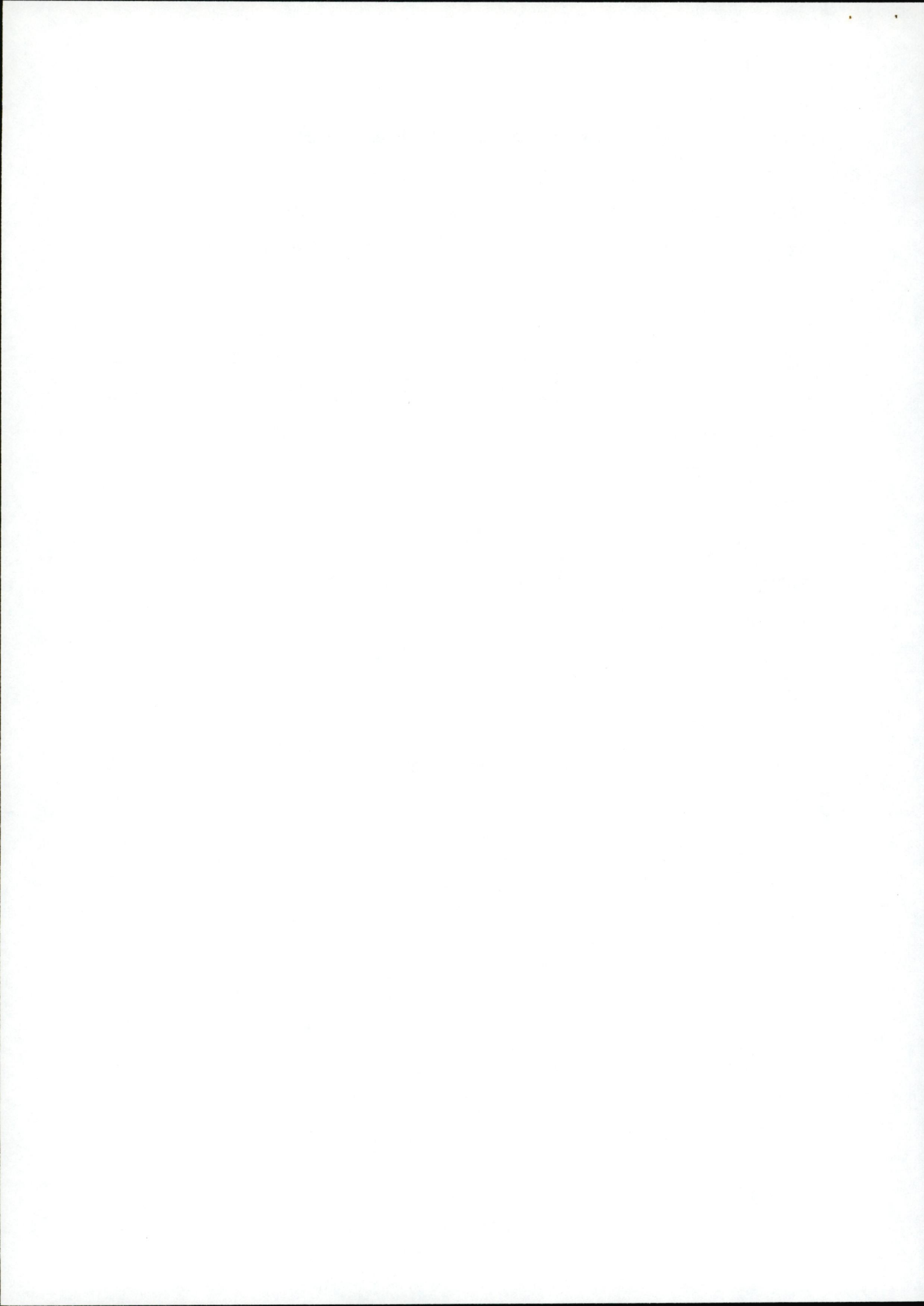


OWNER TO PAY A DEFERMENT CHARGE FOR INWARD PILOTAGE ABOUT WHICH THE CURRENT LEGISLATION IS SILENT. THIS NEW PROVISION WILL COMPLEMENT AN EXISTING PROVISION WHICH DEALS ONLY WITH DEFERMENT CHARGES ON LEAVING A PORT OR MOVING WITHIN IT FROM ONE PLACE TO ANOTHER.

THE BILL CONTINUES THE REQUIREMENT THAT THE MASTER AND OWNER OF A SHIP NAVIGATING UNDER COMPULSORY PILOTAGE ARE JOINTLY AND SEVERALLY LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY THE SHIP. THIS RESTATES THE COMMON LAW POSITION THAT A PILOT IS ON BOARD A SHIP IN AN ADVISORY CAPACITY ONLY AND IS SUBJECT TO THE AUTHORITY OF THE MASTER. THE MASTER SHOULD NOT BE RELIEVED FROM RESPONSIBILITY MERELY BECAUSE THE SHIP IS UNDER PILOTAGE. THE EXEMPTION FROM LIABILITY PRESENTLY AFFORDED TO PILOTS EMPLOYED BY THE MSB WILL BE EXTENDED TO PILOTS EMPLOYED BY APPROVED CONTRACTORS.

SIMILARLY THE PRESENT IMMUNITY OF THE CROWN, THE MSB AND MYSELF, AS MINISTER, FROM PROSECUTION FOR ANY LOSS OR DAMAGE THAT IS ATTRIBUTABLE TO THE NEGLIGENCE OR WANT OF SKILL OF ANY PERSON EMPLOYED AS A PILOT BY THE MSB WILL BE EXTENDED TO THE APPROVED CONTRACTOR AND WILL INCLUDE PILOTS EMPLOYED BY AN APPROVED CONTRACTOR.

THE BILL SETS OUT THE MINIMUM CONTRACTUAL CONDITIONS TO ENSURE THAT THE SHIPPING COMMUNITY RECEIVES THE BEST PILOTAGE SERVICE POSSIBLE. FURTHER, AS I HAVE ALREADY MENTIONED, MY APPROVAL WILL BE REQUIRED BEFORE THE MSB ENTERS INTO A CONTRACT WITH

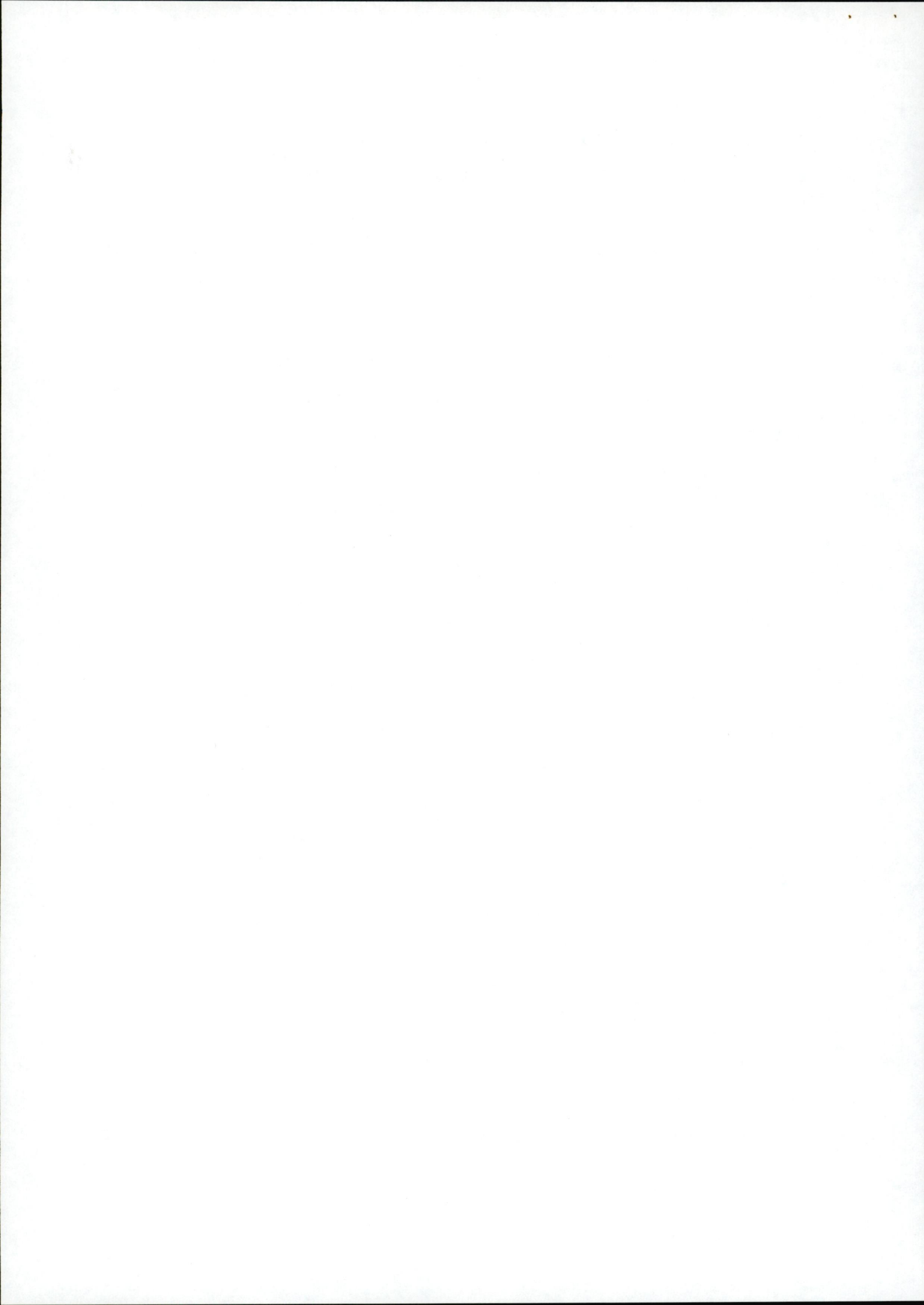


ANY PERSON TO PROVIDE PILOTAGE. THE MSB MAY ITSELF REVERT TO PROVIDING THE SERVICE DEPENDING ON CIRCUMSTANCES AT THE TIME.

THE BILL WILL ENABLE PILOTAGE CHARGES TO BE DETERMINED BY THE BOARD AS A PORT CHARGE UNDER THE MARINE PORT CHARGES ACT, SUBJECT TO MY APPROVAL, AS IS REQUIRED IN RESPECT OF ALL OTHER GOVERNMENT MONOPOLY SERVICES. WHERE A CONTRACT IS ENTERED INTO, THE CONTRACTOR WILL BE RESPONSIBLE FOR COLLECTION OF PILOTAGE CHARGES. THE CONTRACTOR WILL RETURN A PROPORTION OF THOSE CHARGES TO THE MSB AS AN OPERATING FEE WHICH WOULD COVER THE COSTS OF THE PORT AUTHORITY'S COMMUNICATION CENTRE.

THE USE OF THE MARINE PORT CHARGES ACT AS THE CHARGING MECHANISM WILL BRING REQUIREMENTS IN RELATION TO DETERMINING AND COLLECTING PILOTAGE FEES MORE INTO LINE WITH TODAY'S COMMERCIAL PRACTICE WHILST RETAINING THE NECESSARY CONTROL OVER PILOTAGE OPERATIONS THROUGH GOVERNMENT ACCREDITATION OF PILOTS AND CONTRACTORS. THIS ACCREDITATION RESPONSIBILITY WILL RESIDE WITH THE DIRECTOR-GENERAL OF THE DEPARTMENT OF TRANSPORT. A GENERAL POWER OF DELEGATION FROM THE DIRECTOR-GENERAL MAY BE EXERCISED AS REQUIRED TO FACILITATE THE MSB'S DAY-TO-DAY COMMERCIAL AND ADMINISTRATIVE ACTIVITIES.

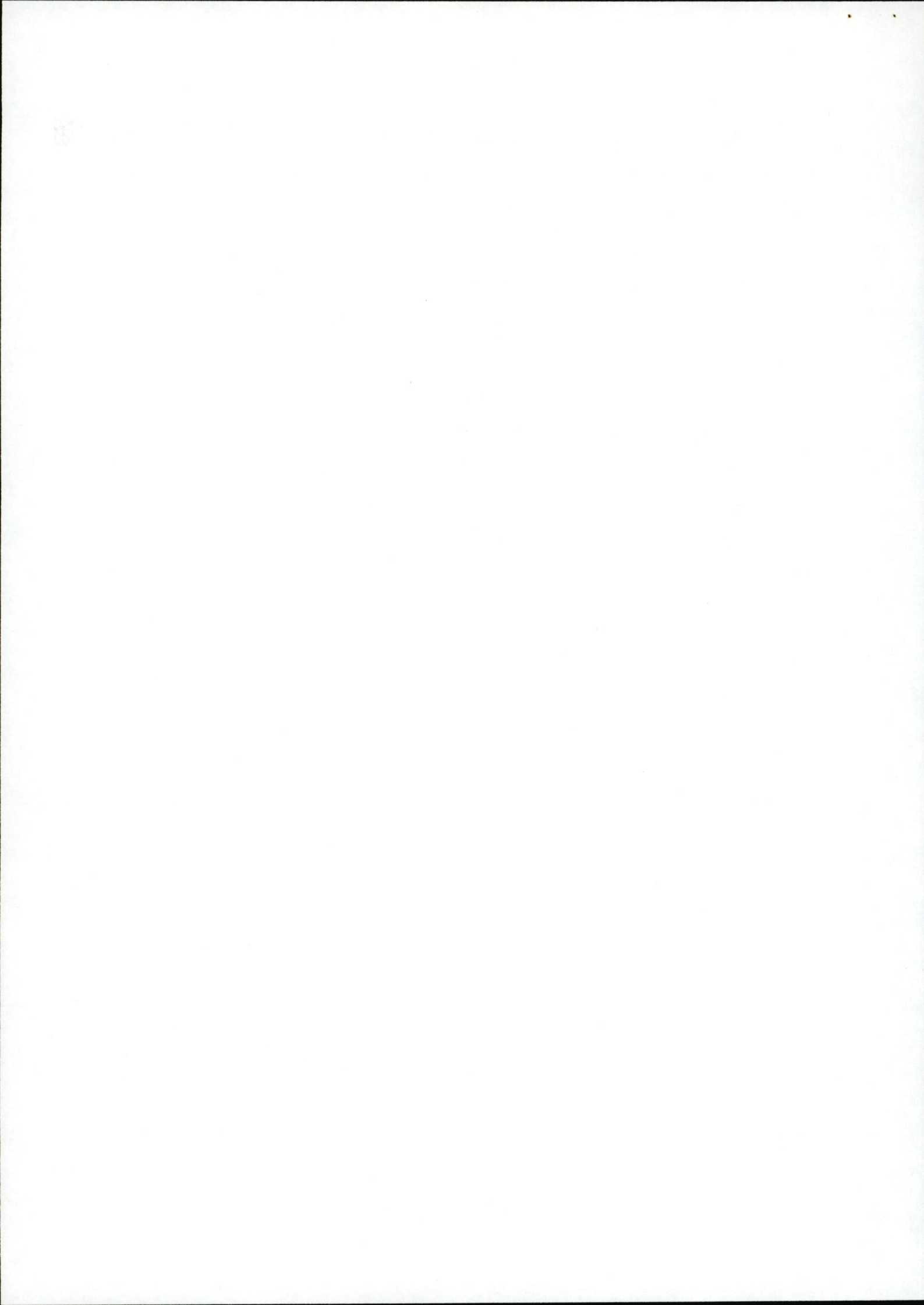
HONOURABLE MEMBERS WILL AGREE WITH ME WHEN I SAY THAT THE PENALTIES CONTAINED IN SOME OF OUR OLDER LEGISLATION ARE WOEFULLY INADEQUATE BY CURRENT STANDARDS. CONSEQUENTLY THE BILL HAS RAISED THE PENALTIES IN THE ACT TO REALISTIC LEVELS. FOR EXAMPLE THERE WILL BE A PENALTY OF \$10,000 FOR A MASTER



WHO DISOBEYS A PILOT'S SAFETY ORDER AND TAKES AN UNSAFE SHIP TO SEA, ENDANGERING LIFE AND PROPERTY. THIS IS IN LIEU OF THE EXISTING PENALTY OF ONLY \$400.

MR SPEAKER, THE BILL BEFORE THE HOUSE MARKS YET ANOTHER MILESTONE IN THIS GOVERNMENT'S COMMITMENT TOWARDS MICRO-ECONOMIC REFORM. HOWEVER, I SHOULD POINT OUT THAT NEW SOUTH WALES IS NOT GOING IT ALONE IN THIS AREA OF ENDEAVOUR. MOST OF THE LEADING OECD COUNTRIES HAVE EMBARKED OR ARE CONSIDERING EMBARKING ON A SIMILAR COURSE OF ACTION WITH REGARD TO THEIR PILOTAGE SERVICES. CLOSER TO HOME OTHER PORTS SUCH AS BRISBANE, WESTERNPORT AND PORT PHILLIP HAVE ALREADY PRIVATISED.

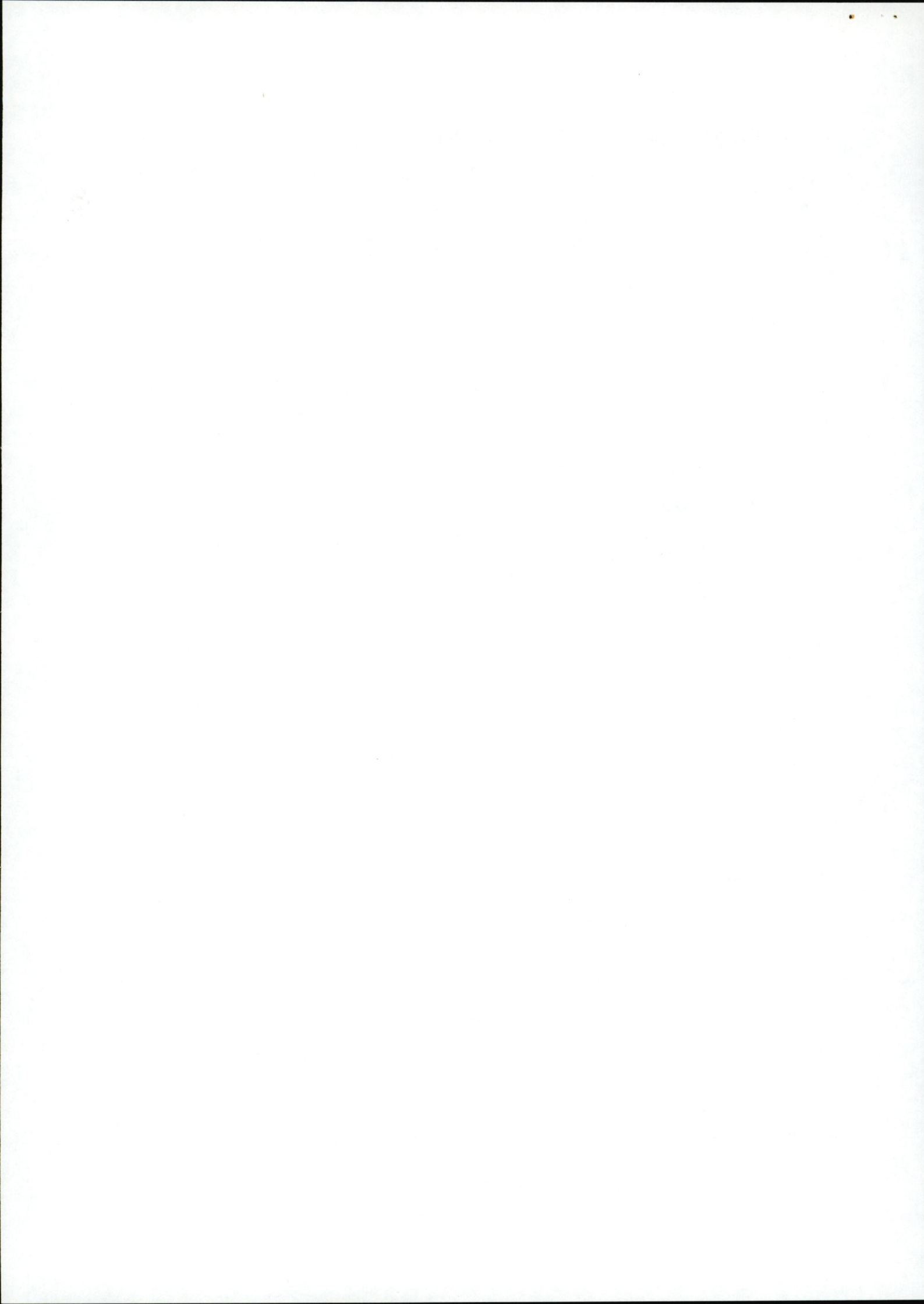
HONOURABLE MEMBERS MAY ALSO BE AWARE OF A PRIVATE COMPANY KNOWN AS THE QUEENSLAND AND TORRES STRAIT PILOTAGE SERVICE. THIS ORGANISATION HAS BEEN OPERATING IN AN EFFICIENT AND PROFITABLE MANNER SINCE 1874 EVEN THOUGH THE REQUIREMENT FOR PILOTAGE THROUGH THE BARRIER REEF HAS BEEN, UNTIL RECENTLY, LARGELY OPTIONAL AS OPPOSED TO THE OBLIGATORY REQUIREMENT IN SYDNEY AND BOTANY BAY. FURTHERMORE, THE QUEENSLAND AND TORRES STRAIT PILOTAGE SERVICE HAS BEEN COMPLETELY FREE OF INDUSTRIAL DISPUTES IN ALL THAT TIME, IN MARKED CONTRAST TO THE FREQUENCY OF STOPPAGES WHICH OCCUR IN NEW SOUTH WALES AND WHICH OFTEN EFFECTIVELY CLOSE OUR PORTS FOR VARYING PERIODS OF TIME. WE ARE CONFIDENT WE CAN EMULATE THE RECORD OF THE QUEENSLAND AND TORRES STRAIT SERVICE AND THEREBY PROVIDE THE SHIPPING INDUSTRY WITH A MUCH MORE RELIABLE AND EFFICIENT SERVICE WHICH



WILL HAVE COST BENEFITS WHICH WILL FLOW ON TO THE WIDER COMMUNITY. SHIPS AT ANCHOR OFF OUR PORTS AND UNABLE TO ENTER BECAUSE OF INDUSTRIAL TROUBLES COST MONEY AND GIVE US A POOR REPUTATION WITH OUR TRADING PARTNERS. WE EXPECT THAT PRIVATISATION OF THE PILOTAGE SERVICE WILL GO A LONG WAY TOWARDS IMPROVING THAT SITUATION.

THE PROVISIONS OF THIS BILL WILL SET THE ENABLING MECHANISMS FOR PRIVATISATION IN PLACE. AT THE SAME TIME THE BILL HAS BEEN CAREFULLY DRAFTED TO ENSURE THAT SAFETY IS NOT SACRIFICED FOR THE SAKE OF PRIVATISATION. CONSEQUENTLY THE EXISTING REGULATORY REQUIREMENTS FOR THE PILOTAGE SERVICE WILL BE MAINTAINED. AS I HAVE PREVIOUSLY STATED AN ADDITIONAL MEASURE WILL EXIST WHEREBY THE OPERATOR WILL BE REQUIRED TO BE ACCREDITED BY THE DEPARTMENT OF TRANSPORT TO ENSURE THAT THE PRIVATISED PILOTAGE SERVICE HAS ALL OF THE REQUIRED STANDARDS AND PROCEDURES IN PLACE TO ENSURE THAT SAFETY AND EFFICIENCY ARE NOT COMPROMISED. I CAN ASSURE THE HOUSE THAT THESE REMAIN PRIME CONSIDERATIONS FOR THE GOVERNMENT.

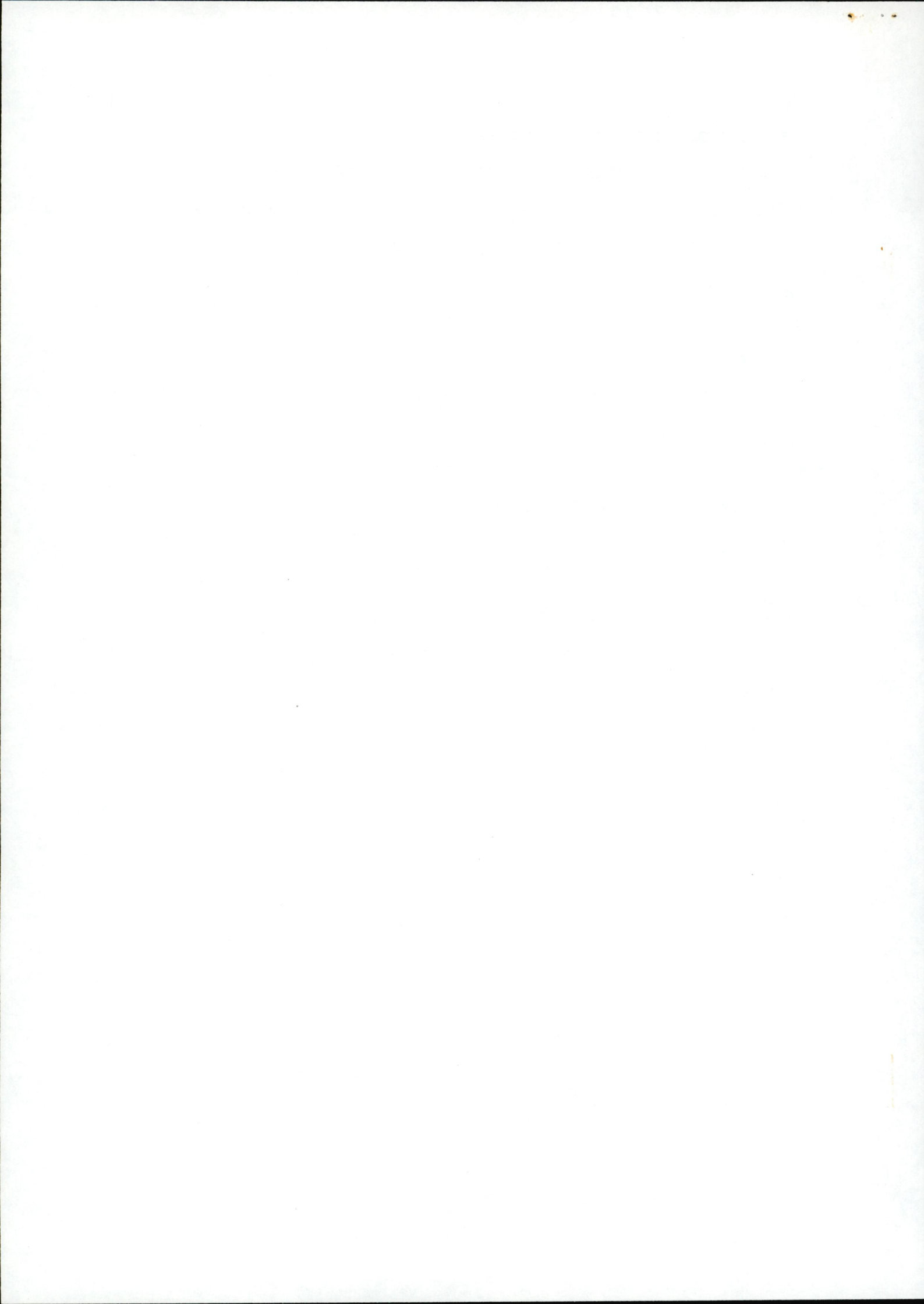
MR SPEAKER, I WOULD LIKE TO CONCLUDE BY SUMMARISING THE OBJECTIVES OF THIS BILL. IT HAS BEEN INTRODUCED TO AMEND THE PILOTAGE ACT 1971 AND THE MARINE PORT CHARGES ACT 1989 SO AS TO ENABLE THE MARITIME SERVICES BOARD AND MSB PORT AUTHORITIES TO CONTRACT OUT THEIR CURRENT EXCLUSIVE PROVISION OF PORT PILOTAGE SERVICES AND ALSO TO PROVIDE FOR THE FIXING AND PAYMENT OF FEES FOR PILOTAGE SERVICES UNDER THE MARINE PORT CHARGES ACT 1989 INSTEAD OF THE MORE CUMBERSOME PROCEDURES IN



THE PILOTAGE ACT 1971 WHERE FEES MUST BE FIXED BY REGULATION. IT WILL ALSO TRANSFER RESPONSIBILITY FOR THE LICENSING OF PILOTS (AND ASSOCIATED REGULATORY FUNCTIONS) FROM THE MSB TO THE DIRECTOR-GENERAL OF THE DEPARTMENT OF TRANSPORT.

THE PRINCIPAL PURPOSE OF THE BILL IS TO SHED A LOSS-MAKING ELEMENT OF GOVERNMENT BUSINESS AND TO ENABLE PRIVATE ENTERPRISE TO TENDER FOR THIS PREVIOUSLY GOVERNMENT OPERATED SERVICE TO SHIPPING. IT SEEKS TO DO THIS BY PERMITTING THE MSB TO ENTER INTO CONTRACTS WITH PRIVATE COMPANIES FOR THE PROVISION OF PILOTAGE SERVICES AT DIFFERENT PILOTAGE PORTS UNDER CONTRACT.

THE INITIATIVES CONTAINED IN THE PILOTAGE (AMENDMENT) BILL ARE IMPORTANT MEASURES WHICH THE GOVERNMENT WOULD SEEK TO HAVE IMPLEMENTED WITHOUT DELAY. I COMMEND THE BILL TO THE HOUSE.



FIRST PRINT

PILOTAGE (AMENDMENT) BILL 1992

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend the Pilotage Act 1971 and the Marine Port Charges Act 1989:

- (a) to enable the Maritime Services Board (the MSB) and MSB Port Authorities to contract out the operation of port pilotage services; and
- (b) to provide for the fixing and payment of fees for pilotage services under the Marine Port Charges Act 1989 instead of under the Pilotage Act 1971; and
- (c) to transfer responsibility for the licensing of pilots (and associated regulatory functions) from the MSB to the Director-General of the Department of Transport; and
- (d) to make other related and consequential changes.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a day or days to be appointed by proclamation.

Clause 3 gives effect to the Schedule of amendments to the Pilotage Act 1971.

Clause 4 gives effect to the Schedule of amendments to the Marine Port Charges Act 1989.

Clause 5 repeals sections 21A and 21B of the Maritime Services Act 1935 (relating to liability in connection with pilotage) as a consequence of the transfer of those provisions to the Pilotage Act 1971 and their extension to pilots employed by contractors to the MSB.

Pilotage (Amendment) 1992

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971

Schedule 1 (1)–(3) make consequential changes.

Schedule 1 (4)–(8) transfer responsibility for the licensing of pilots (and associated regulatory functions) from the MSB to the Director-General of the Department of Transport.

Schedule 1 (9) and (10) increase the maximum penalties for offences against the Act. The maximum penalties for offences currently subject to a \$200 penalty are to be increased to \$1,000 and those currently subject to a \$300 or \$400 penalty are to be increased to \$2,000.

Under Schedule 1 (16) the penalty for a master of a ship breaching a safety direction of a pilot is to be increased from \$400 to \$10,000.

Schedule 1 (11)–(13) extend the provisions relating to compulsory pilotage by pilots employed by the MSB to pilots employed by approved contractors to the MSB in respect of those pilotage ports in which pilotage services have been contracted out.

Schedule 1 (14)–(16) extend the provisions relating to deferment of pilotage for a ship leaving a port or its berth to a ship entering the port. Accordingly, pilotage charges will also be payable if pilotage is deferred because the master of the ship has delayed entering port for more than 1 hour after requesting a pilot.

Schedule 1 (17) and (18) transfer from the Maritime Services Act 1935 provisions relating to liability in respect of ships under pilotage. At present, the master and owner of a ship remain liable even though the ship is under pilotage and the Crown, MSB and pilot are not liable. The provisions are to be extended to approved contractors of the MSB and their pilots. Accordingly, a person who suffers any loss or damage from a ship under pilotage will continue to have an action against the master and owner of the ship and not against the pilot or the pilot's employer (whether the MSB or its contractor).

Schedule 1 (19) repeals provisions relating to pilotage charges as a consequence of the transfer of those provisions to the Marine Port Charges Act 1989 (see Schedule 2).

Schedule 1 (20) inserts provisions to enable the MSB to contract out the operation of port pilotage services. In those pilotage ports where the relevant functions of the MSB have been delegated to an MSB port authority under the Marine Administration Act 1988 the port authority will be authorised to enter into the relevant contract. The MSB will be required to call public tenders for a contract. A contract will be required to deal with a number of matters, including the level of pilotage services to be provided, the amount payable to the MSB by the contractor and the limiting of pilotage charges to those fixed under the Marine Port Charges Act 1989. A contract will be required to be approved by the Minister.

Schedule 1 (21), (23)–(26) contain consequential and ancillary provisions.

Schedule 1 (22) authorises the Director-General to delegate his or her functions under the Act.

Pilotage (Amendment) 1992

SCHEDULE 2—AMENDMENT OF MARINE PORT CHARGES ACT 1989

Schedule 2 (1) inserts into the Marine Port Charges Act 1989 provision for the fixing by the MSB of pilotage charges. At present the relevant charges are fixed by regulation under the Pilotage Act 1971. Pilotage charges will be subject to the same legislative requirements as apply to other port charges. Special provision is made in the case of pilotage services provided by an approved contractor of the Board. In that case the contractor will be authorised to collect the charges but those charges may not exceed those fixed by the MSB under the Act.

Schedule 2 (2) enacts transitional provisions. In particular, the existing pilotage charges are continued until new charges are fixed under the Marine Port Charges Act 1989.

FIRST PRINT

PILOTAGE (AMENDMENT) BILL 1992

NEW SOUTH WALES



TABLE OF PROVISIONS

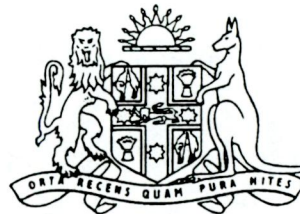
1. Short title
2. Commencement
3. Amendment of Pilotage Act 1971 No. 56
4. Amendment of Marine Port Charges Act 1989 No. 143
5. Consequential repeal of provisions of Maritime Services Act 1935 No. 47

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971

SCHEDULE 2—AMENDMENT OF MARINE PORT CHARGES ACT 1989

PILOTAGE (AMENDMENT) BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Pilotage Act 1971 and the Marine Port Charges Act 1989 in relation to the contracting out of pilotage services, the fees for pilotage services and the licensing of pilots; and for other purposes.

Pilotage (Amendment) 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Pilotage (Amendment) Act 1992.

Commencement

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

Amendment of Pilotage Act 1971 No. 56

3. The Pilotage Act 1971 is amended as set out in Schedule 1.

Amendment of Marine Port Charges Act 1989 No. 143

4. The Marine Port Charges Act 1989 is amended as set out in Schedule 2.

Consequential repeal of provisions of Maritime Services Act 1935 No. 47

5. The Maritime Services Act 1935 is amended by omitting Division 4 of Part 3 [sections 21A and 21B—Liability of master and owner of ship under pilotage; Immunity of Crown, pilots etc.].

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971

(Sec. 3)

(1) Long title:

Omit the Long title, insert instead:

An Act to provide for the pilotage of ships and the licensing of pilots; and for other purposes.

(2) Section 2 (**Division of Act**):

Omit the section.

(3) Section 4 (**Definitions**):

In section 4 (1), insert in alphabetical order:

“**approved contractor**”, in relation to pilotage services, means a person with whom the Board has entered into a contract under Part 4A for the provision of those pilotage services;

Pilotage (Amendment) 1992

 SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

“**Director-General**” means the Director-General of the Department of Transport;

- (4) Sections 6 (1) (a) (ii), 7, 8, 10, 11, 12, 13, 36, 37, 38, 39, 40, 41 (where secondly occurring), 42, 43, 44, 45 (3) and (5), 46, 48 and 49:
 Omit the “the Board” and “the Board’s” wherever occurring, insert instead “the Director-General” and “the Director-General’s” respectively.
- (5) Sections 8 (2) (where secondly occurring), 8 (4), 8 (5), 10 (1), 36 (2), 39 and 40:
 Omit “it”, insert instead “the Director-General”.
- (6) Sections 8 (5) (a), 39 and 40 (3) (c):
 Omit “its” wherever occurring, insert instead “the Director-General’s”.
- (7) Section 7 (**Granting of licences and certificates**):
 (a) From section 7 (2) (a), omit “and be signed by the secretary”.
 (b) After section 7 (2), insert:
 (3) A certificate may consist of an endorsement on a certificate of competency under the Commercial Vessels Act 1979 instead of a separate document.
- (8) Section 12 (**Production and delivery of licences and certificates**):
 (a) From section 12 (3) and (4), omit “the secretary” wherever occurring, insert instead “the Director-General”.
 (b) From section 12 (5), omit “an officer of the Board”, insert instead “the Director-General”.
- (9) Sections 12, 18, 20, 22 and 47:
 Omit “Penalty: Two hundred dollars.” wherever occurring, insert instead:
 Maximum penalty: 10 penalty units.
- (10) Section 13, 14, 15, 16 (3), 24 (1), 28 and 50 (1):
 Omit “Penalty: Four hundred dollars.” and “Penalty: Three hundred dollars.” wherever occurring, insert instead:
 Maximum penalty: 20 penalty units.

Pilotage (Amendment) 1992

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

(11) Section 14 (**Prohibition against acting as pilot**):

Omit section 14 (2) (a) and (b), insert instead:

- (a) is in the employ of the Board or of an approved contractor; and
- (b) has been assigned to act as a pilot in that pilotage port by the Board or by an approved contractor.

(12) Section 15 (**Compulsory pilotage**):

- (a) In section 15 (3) and (4), after “Board” wherever occurring, insert “or an approved contractor”.
- (b) In section 15 (4), before “depart from”, insert “enter,”.
- (c) In section 15 (4), after “movement”, insert “into the pilotage port,”.

(13) Sections 18 (a), 20 (a), 22 (a) and 24 (1):

After “Board” wherever occurring, insert “or an approved contractor”.

(14) Section 25 (**Deferment of pilotage**):

At the end of section 25, insert:

(2) When a ship is unable, or will in the opinion of the master be unable, to enter into a pilotage port, within one hour of the time stated for so entering in the application by the owner or master for a pilot, the pilot attending may defer pilotage and cease attendance.

(15) Section 26 (**Duty of master when advised against leaving berth or entering port**):

Omit section 26 (1), insert instead:

(1) If the master of a ship decides that the ship should enter a pilotage port or leave its berth or place of anchorage in a pilotage port after having been advised by the pilot made available for pilotage that the ship cannot do so without undue risk, the master must forthwith give written confirmation to the pilot that the master has been so advised.

Pilotage (Amendment) 1992

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

(16) Section 27:

Omit the section, insert instead:

Leaving, entering or moving within port contrary to prohibition

27. (1) If a pilot made available for pilotage considers that a ship should not enter a pilotage port or should not leave its berth or place of anchorage because of the danger which would be involved, the pilot may direct the master of the ship not to enter the pilotage port or leave the berth or place of anchorage pending the decision of the harbour master.

(2) The master of a ship must comply with any such direction.

Maximum penalty: 100 penalty units.

(3) A pilot who gives any such direction may defer pilotage and cease attendance.

(17) Sections 28A, 28B:

After section 28, insert:

Liability of master and owner of vessel under pilotage
(See s. 21A Maritime Services Act)

28A. (1) A person who is employed as a pilot by the Board or by an approved contractor of the Board and who has the conduct of a ship is subject to the authority of the master of the ship. The master is not relieved from responsibility for the conduct and navigation of the ship merely because the ship is under pilotage.

(2) The master and the owner of a ship navigating under circumstances in which pilotage is compulsory are jointly and severally liable for any loss or damage caused by the ship or by any fault of navigation of the ship in the same manner as if pilotage were not compulsory.

Immunity of Crown, pilots etc. (See s. 21B Maritime Services Act)

28B. (1) Neither the Crown, nor the Minister, nor the Board, nor an approved contractor is liable for any loss or damage that is attributable to the neglect or want of skill of any person employed as a pilot by the Board or by an approved contractor while the person is acting as a pilot.

Pilotage (Amendment) 1992

 SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

(2) A person employed as a pilot by the Board or by an approved contractor is not personally liable in pecuniary damages for any loss or damage attributable to the person's neglect or want of skill while the person is acting as a pilot.

(18) Section 29 (**Provisions to apply when ship under pilotage at request of owner**):

From section 29, omit "sections 17 to 28, both inclusive," insert instead "this Part (except sections 15 and 16)".

(19) Part 4 (**Pilotage and other rates**):

Omit the Part.

(20) Part 4A:

After Part 4, insert:

**PART 4A—APPROVED CONTRACTORS FOR
PILOTAGE SERVICES**

Board may enter into a contract for the provision of pilotage services at a pilotage port

34A. (1) The Board may enter into a contract with a person for the provision by that person of pilotage services at a pilotage port.

(2) The Board may enter into contracts under this Part with different persons for the provision of pilotage services at different pilotage ports.

(3) If the Board does not enter into a contract under this Part for the provision of pilotage services at a pilotage port, pilotage services at that port are to be provided by the Board's pilotage service.

Contract to be awarded by public tender

34B. (1) The Board is required to call public tenders for a contract under this Part.

(2) Any public tender called before the commencement of this section is taken to have been duly called under this section.

Provisions to be included in contracts

34C. (1) A contract under this Part must include such provisions as the Board thinks necessary or desirable to be included for ensuring compliance with this Act and the

Pilotage (Amendment) 1992

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

regulations and the provision of the pilotage services required in the pilotage port concerned.

(2) Without limiting subsection (1), such a contract must:

- (a) specify the level of pilotage services to be provided under the contract; and
- (b) specify the amount of consideration to be paid to the Board by the contractor under the contract (such an amount may be calculated on the basis of a proportion of the pilotage charges payable to the contractor for the provision of pilotage services); and
- (c) limit the maximum amounts of pilotage charges that the contractor may charge for the provision of those services to those fixed under the Marine Port Charges Act 1989; and
- (d) require the contractor to keep records of the pilotage services provided by the contractor and the amounts charged and paid in respect of those services; and
- (e) empower officers of the Board to inspect those records; and
- (f) require the contractor to provide information, as and when the Board requires, as to the costs incurred by the contractor in providing pilotage services at the port concerned; and
- (g) specify the port facilities that the Board will make available to the contractor to enable it to provide pilotage services under the contract; and
- (h) empower the Board to terminate or suspend the contract on the ground that the contractor is unable to provide pilotage services at the level referred to in paragraph (a) or has contravened this Act or the regulations or on any other specified ground.

Minister's approval required for contracts

34D. (1) The Board may not enter into a contract with a person under this Part unless the Minister has approved of that person and of the terms of the proposed contract.

(2) The Minister may require any such person to pay a fee for the costs incurred by or on behalf of the Minister in dealing with the matter.

Pilotage (Amendment) 1992

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

(21) Section 50 (**Disclosure of confidential information**):

- (a) In the definition of “confidential report” in section 50 (2), after “the Board”, insert “, an approved contractor or the Director-General”.
- (b) From the definition of “prescribed person” in section 50 (2), omit paragraph (a), insert instead:
 - (a) a director of the Board or of a subsidiary authority of the Board, an officer of the Board or a person employed by an approved contractor;
 - (a1) the Director-General or an officer of the Department of Transport;
- (c) In paragraph (f) of the definition of “prescribed person” in section 50 (2), after “the Board”, insert “or the Director-General”.

(22) Section 50A:

After section 50, insert:

Delegation by Director-General

50A. The Director-General may delegate the Director-General’s powers, authorities, duties and functions under this Act (except this power of delegation) to:

- (a) an officer of the Department of Transport; or
- (b) the Board or a subsidiary authority of the Board or an officer of the Board; or
- (c) any other person approved by the Minister.

(23) Section 51 (**Recovery of penalties**):

In section 51 (1), after “shall”, insert “(if the proceedings were brought by or on behalf of the Board)”.

(24) Section 52 (**Regulations**):

- (a) From section 52 (1), omit “Board, with the approval of the Governor,”, insert instead “Governor”.
- (b) From section 52 (1) (b), omit “and subsection (1) of section 30”.
- (c) In section 52 (1) (e), after “Board’s pilotage service”, insert “(or that of an approved contractor)”.

Pilotage (Amendment) 1992

 SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

(d) In section 52 (1) (f), after “Board”, insert “or the Director-General”.

(e) Omit section 52 (2)–(5), insert instead:

(2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

(3) A regulation made by the Board under this section (as in force before the commencement of the Pilotage (Amendment) Act 1992) is taken to be a regulation made by the Governor under this section (as in force after that commencement).

(25) Section 53 (**Exemption from compliance with regulations**):

After section 53 (3), insert:

(4) Any direction under this section may also be given by the Director-General if it relates to licences or certificates.

(26) Section 54:

After section 53, insert:

Pilotage (Amendment) Act 1992

54. Any licence or certificate issued by the Board under this Act before the commencement of the Pilotage (Amendment) Act 1992 or anything done by the Board under this Act before that commencement in connection with such a licence or certificate is taken to have been issued or done by the Director-General under this Act.

**SCHEDULE 2—AMENDMENT OF MARINE PORT CHARGES
ACT 1989**

(Sec. 4)

(1) After Division 1 of Part 2, insert:

Division 1A—Pilotage charges

Pilotage charges

7A. (1) A pilotage charge is payable in respect of a vessel on each occasion that it enters, leaves or moves within a pilotage port under the pilotage of a pilot in accordance with the Pilotage Act 1971.

Pilotage (Amendment) 1992

SCHEDULE 2—AMENDMENT OF MARINE PORT CHARGES
ACT 1989—*continued*

(2) A pilotage charge is also payable for any deferral of pilotage authorised by that Act or at the request of the owner or master of the vessel.

(3) A pilotage charge is payable by the owner of the vessel.

Special provisions for pilotage services provided by approved contractors

7B. (1) This section applies to pilotage charges for pilotage services provided by a contractor to the Board under Part 4A of the Pilotage Act 1971.

(2) Any such pilotage charges are payable to the contractor instead of to the Board.

(3) Any such pilotage charges that the contractor may demand may be less than (but must not exceed) those fixed by the Board under this Act.

(4) For the purposes of any such pilotage charges:

- (a) section 17 (Collection of charges) applies as if references to the Board were references to the contractor; and
- (b) section 18 (Agreements in respect of charges) applies as if references to the Board were references to the contractor (but only in the case of an agreement approved by the Board); and
- (c) section 20 (Security for payment of charges) applies as if references to the Board were references to the contractor; and
- (d) section 21 (Failure to comply with Board's requirements) applies as if references to the Board were references to the contractor (but only in a case approved by the Board).

(2) Schedule 2 (**Savings and transitional provisions**):

- (a) In clause 1 (1), after "this Act", insert "or the Pilotage (Amendment) Act 1992".

Pilotage (Amendment) 1992

SCHEDULE 2—AMENDMENT OF MARINE PORT CHARGES
ACT 1989—*continued*

(b) At the end of clause 2 (c), insert:

; and

(d) a reference to pilotage rates under the Pilotage Act 1971 is to be read as a reference to pilotage charges under this Act.

(c) At the end of clause 3, insert:

(2) Without limiting the operation of any saving contained in the Interpretation Act 1987, nothing in this Act or the Pilotage (Amendment) Act 1992 affects the liability of any person to pay any rate or charge incurred under the Pilotage Act 1971.

(d) After clause 3, insert:

Pilotage charges—transitional provision

4. Until pilotage charges are fixed by the Board under this Act, the pilotage rates in force under Part 4 of the Pilotage Act 1971 immediately before its repeal by the Pilotage (Amendment) Act 1992 are taken to be the pilotage charges fixed under this Act.

PILOTAGE (AMENDMENT) ACT 1992 No. 41

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Pilotage Act 1971 No. 56
4. Amendment of Marine Port Charges Act 1989 No. 143
5. Consequential repeal of provisions of Maritime Services Act 1935 No. 47

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971

SCHEDULE 2—AMENDMENT OF MARINE PORT CHARGES ACT 1989

PILOTAGE (AMENDMENT) ACT 1992 No. 41

NEW SOUTH WALES



Act No. 41, 1992

An Act to amend the Pilotage Act 1971 and the Marine Port Charges Act 1989 in relation to the contracting out of pilotage services, the fees for pilotage services and the licensing of pilots; and for other purposes.
[Assented to 19 May 1992]

Pilotage (Amendment) Act 1992 No. 41

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Pilotage (Amendment) Act 1992.

Commencement

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

Amendment of Pilotage Act 1971 No. 56

3. The Pilotage Act 1971 is amended as set out in Schedule 1.

Amendment of Marine Port Charges Act 1989 No. 143

4. The Marine Port Charges Act 1989 is amended as set out in Schedule 2.

Consequential repeal of provisions of Maritime Services Act 1935 No. 47

5. The Maritime Services Act 1935 is amended by omitting Division 4 of Part 3 [sections 21A and 21B—Liability of master and owner of ship under pilotage; Immunity of Crown, pilots etc.].

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971

(Sec. 3)

(1) Long title:

Omit the Long title, insert instead:

An Act to provide for the pilotage of ships and the licensing of pilots; and for other purposes.

(2) Section 2 (Division of Act):

Omit the section.

(3) Section 4 (Definitions):

In section 4 (1), insert in alphabetical order:

“**approved contractor**”, in relation to pilotage services, means a person with whom the Board has entered into a contract under Part 4A for the provision of those pilotage services;

Pilotage (Amendment) Act 1992 No. 41

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

- “Director-General”** means the Director-General of the Department of Transport;
- (4) Sections 6 (1) (a) (ii), 7, 8, 10, 11, 12, 13, 36, 37, 38, 39, 40, 41 (where secondly occurring), 42, 43, 44, 45 (3) and (5), 46, 48 and 49:
Omit the “the Board” and “the Board’s” wherever occurring, insert instead “the Director-General” and “the Director-General’s” respectively.
- (5) Sections 8 (2) (where secondly occurring), 8 (4), 8 (5), 10 (1), 36 (2), 39 and 40:
Omit “it”, insert instead “the Director-General”.
- (6) Sections 8 (5) (a), 39 and 40 (3) (c):
Omit “its” wherever occurring, insert instead “the Director-General’s”.
- (7) Section 7 (**Granting of licences and certificates**):
(a) From section 7 (2) (a), omit “and be signed by the secretary”.
(b) After section 7 (2), insert:
(3) A certificate may consist of an endorsement on a certificate of competency under the Commercial Vessels Act 1979 instead of a separate document.
- (8) Section 12 (**Production and delivery of licences and certificates**):
(a) From section 12 (3) and (4), omit “the secretary” wherever occurring, insert instead “the Director-General”.
(b) From section 12 (5), omit “an officer of the Board”, insert instead “the Director-General”.
- (9) Sections 12, 18, 20, 22 and 47:
Omit “Penalty: Two hundred dollars.” wherever occurring, insert instead:
Maximum penalty: 10 penalty units.
- (10) Section 13, 14, 15, 16 (3), 24 (1), 28 and 50 (1):
Omit “Penalty: Four hundred dollars.” and “Penalty: Three hundred dollars.” wherever occurring, insert instead:
Maximum penalty: 20 penalty units.

Pilotage (Amendment) Act 1992 No. 41

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

- (11) Section 14 (**Prohibition against acting as pilot**):
Omit section 14 (2) (a) and (b), insert instead:
(a) is in the employ of the Board or of an approved contractor; and
(b) has been assigned to act as a pilot in that pilotage port by the Board or by an approved contractor.
- (12) Section 15 (**Compulsory pilotage**):
(a) In section 15 (3) and (4), after “Board” wherever occurring, insert “or an approved contractor”.
(b) In section 15 (4), before “depart from”, insert “enter,”.
(c) In section 15 (4), after “movement”, insert “into the pilotage port,”.
- (13) Sections 18 (a), 20 (a), 22 (a) and 24 (1):
After “Board” wherever occurring, insert “or an approved contractor”.
- (14) Section 25 (**Deferment of pilotage**):
At the end of section 25, insert:
(2) When a ship is unable, or will in the opinion of the master be unable, to enter into a pilotage port, within one hour of the time stated for so entering in the application by the owner or master for a pilot, the pilot attending may defer pilotage and cease attendance.
- (15) Section 26 (**Duty of master when advised against leaving berth or entering port**):
Omit section 26 (1), insert instead:
(1) If the master of a ship decides that the ship should enter a pilotage port or leave its berth or place of anchorage in a pilotage port after having been advised by the pilot made available for pilotage that the ship cannot do so without undue risk, the master must forthwith give written confirmation to the pilot that the master has been so advised.

Pilotage (Amendment) Act 1992 No. 41

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

(16) Section 27:

Omit the section, insert instead:

Leaving, entering or moving within port contrary to prohibition

27. (1) If a pilot made available for pilotage considers that a ship should not enter a pilotage port or should not leave its berth or place of anchorage because of the danger which would be involved, the pilot may direct the master of the ship not to enter the pilotage port or leave the berth or place of anchorage pending the decision of the harbour master.

(2) The master of a ship must comply with any such direction.

Maximum penalty: 100 penalty units.

(3) A pilot who gives any such direction may defer pilotage and cease attendance.

(17) Sections 28A, 28B:

After section 28, insert:

Liability of master and owner of vessel under pilotage
(See s. 21A Maritime Services Act)

28A. (1) A person who is employed as a pilot by the Board or by an approved contractor of the Board and who has the conduct of a ship is subject to the authority of the master of the ship. The master is not relieved from responsibility for the conduct and navigation of the ship merely because the ship is under pilotage.

(2) The master and the owner of a ship navigating under circumstances in which pilotage is compulsory are jointly and severally liable for any loss or damage caused by the ship or by any fault of navigation of the ship in the same manner as if pilotage were not compulsory.

Immunity of Crown, pilots etc. (See s. 21B Maritime Services Act)

28B. (1) Neither the Crown, nor the Minister, nor the Board, nor an approved contractor is liable for any loss or damage that is attributable to the neglect or want of skill of any person employed as a pilot by the Board or by an approved contractor while the person is acting as a pilot.

Pilotage (Amendment) Act 1992 No. 41

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

- (2) A person employed as a pilot by the Board or by an approved contractor is not personally liable in pecuniary damages for any loss or damage attributable to the person's neglect or want of skill while the person is acting as a pilot.
- (18) Section 29 (**Provisions to apply when ship under pilotage at request of owner**):
From section 29, omit "sections 17 to 28, both inclusive," insert instead "this Part (except sections 15 and 16)".
- (19) Part 4 (**Pilotage and other rates**):
Omit the Part.
- (20) Part 4A:
After Part 4, insert:

**PART 4A—APPROVED CONTRACTORS FOR
PILOTAGE SERVICES**

Board may enter into a contract for the provision of pilotage services at a pilotage port

34A. (1) The Board may enter into a contract with a person for the provision by that person of pilotage services at a pilotage port.

(2) The Board may enter into contracts under this Part with different persons for the provision of pilotage services at different pilotage ports.

(3) If the Board does not enter into a contract under this Part for the provision of pilotage services at a pilotage port, pilotage services at that port are to be provided by the Board's pilotage service.

Contract to be awarded by public tender

34B. (1) The Board is required to call public tenders for a contract under this Part.

(2) Any public tender called before the commencement of this section is taken to have been duly called under this section.

Provisions to be included in contracts

34C. (1) A contract under this Part must include such provisions as the Board thinks necessary or desirable to be included for ensuring compliance with this Act and the

Pilotage (Amendment) Act 1992 No. 41

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

regulations and the provision of the pilotage services required in the pilotage port concerned.

- (2) Without limiting subsection (1), such a contract must:
- (a) specify the level of pilotage services to be provided under the contract; and
 - (b) specify the amount of consideration to be paid to the Board by the contractor under the contract (such an amount may be calculated on the basis of a proportion of the pilotage charges payable to the contractor for the provision of pilotage services); and
 - (c) limit the maximum amounts of pilotage charges that the contractor may charge for the provision of those services to those fixed under the Marine Port Charges Act 1989; and
 - (d) require the contractor to keep records of the pilotage services provided by the contractor and the amounts charged and paid in respect of those services; and
 - (e) empower officers of the Board to inspect those records; and
 - (f) require the contractor to provide information, as and when the Board requires, as to the costs incurred by the contractor in providing pilotage services at the port concerned; and
 - (g) specify the port facilities that the Board will make available to the contractor to enable it to provide pilotage services under the contract; and
 - (h) empower the Board to terminate or suspend the contract on the ground that the contractor is unable to provide pilotage services at the level referred to in paragraph (a) or has contravened this Act or the regulations or on any other specified ground.

Minister's approval required for contracts

34D. (1) The Board may not enter into a contract with a person under this Part unless the Minister has approved of that person and of the terms of the proposed contract.

(2) The Minister may require any such person to pay a fee for the costs incurred by or on behalf of the Minister in dealing with the matter.

Pilotage (Amendment) Act 1992 No. 41

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

- (21) Section 50 (**Disclosure of confidential information**):
- (a) In the definition of “confidential report” in section 50 (2), after “the Board”, insert “, an approved contractor or the Director-General”.
 - (b) From the definition of “prescribed person” in section 50 (2), omit paragraph (a), insert instead:
 - (a) a director of the Board or of a subsidiary authority of the Board, an officer of the Board or a person employed by an approved contractor;
 - (a1) the Director-General or an officer of the Department of Transport;
 - (c) In paragraph (f) of the definition of “prescribed person” in section 50 (2), after “the Board”, insert “or the Director-General”.
- (22) Section 50A:
- After section 50, insert:
- Delegation by Director-General**
- 50A. The Director-General may delegate the Director-General’s powers, authorities, duties and functions under this Act (except this power of delegation) to:
- (a) an officer of the Department of Transport; or
 - (b) the Board or a subsidiary authority of the Board or an officer of the Board; or
 - (c) any other person approved by the Minister.
- (23) Section 51 (**Recovery of penalties**):
- In section 51 (1), after “shall”, insert “(if the proceedings were brought by or on behalf of the Board)”.
- (24) Section 52 (**Regulations**):
- (a) From section 52 (1), omit “Board, with the approval of the Governor,”, insert instead “Governor”.
 - (b) From section 52 (1) (b), omit “and subsection (1) of section 30”.
 - (c) In section 52 (1) (e), after “Board’s pilotage service”, insert “(or that of an approved contractor)”.

Pilotage (Amendment) Act 1992 No. 41

SCHEDULE 1—AMENDMENT OF PILOTAGE ACT 1971—
continued

(d) In section 52 (1) (f), after “Board”, insert “or the Director-General”.

(e) Omit section 52 (2)–(5), insert instead:

(2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

(3) A regulation made by the Board under this section (as in force before the commencement of the Pilotage (Amendment) Act 1992) is taken to be a regulation made by the Governor under this section (as in force after that commencement).

(25) Section 53 (**Exemption from compliance with regulations**):

After section 53 (3), insert:

(4) Any direction under this section may also be given by the Director-General if it relates to licences or certificates.

(26) Section 54:

After section 53, insert:

Pilotage (Amendment) Act 1992

54. Any licence or certificate issued by the Board under this Act before the commencement of the Pilotage (Amendment) Act 1992 or anything done by the Board under this Act before that commencement in connection with such a licence or certificate is taken to have been issued or done by the Director-General under this Act.

SCHEDULE 2—AMENDMENT OF MARINE PORT CHARGES
ACT 1989

(Sec. 4)

(1) After Division 1 of Part 2, insert:

Division 1A—Pilotage charges

Pilotage charges

7A. (1) A pilotage charge is payable in respect of a vessel on each occasion that it enters, leaves or moves within a pilotage port under the pilotage of a pilot in accordance with the Pilotage Act 1971.

Pilotage (Amendment) Act 1992 No. 41

SCHEDULE 2—AMENDMENT OF MARINE PORT CHARGES
ACT 1989—*continued*

(2) A pilotage charge is also payable for any deferral of pilotage authorised by that Act or at the request of the owner or master of the vessel.

(3) A pilotage charge is payable by the owner of the vessel.

Special provisions for pilotage services provided by approved contractors

7B. (1) This section applies to pilotage charges for pilotage services provided by a contractor to the Board under Part 4A of the Pilotage Act 1971.

(2) Any such pilotage charges are payable to the contractor instead of to the Board.

(3) Any such pilotage charges that the contractor may demand may be less than (but must not exceed) those fixed by the Board under this Act.

(4) For the purposes of any such pilotage charges:

- (a) section 17 (Collection of charges) applies as if references to the Board were references to the contractor; and
- (b) section 18 (Agreements in respect of charges) applies as if references to the Board were references to the contractor (but only in the case of an agreement approved by the Board); and
- (c) section 20 (Security for payment of charges) applies as if references to the Board were references to the contractor; and
- (d) section 21 (Failure to comply with Board's requirements) applies as if references to the Board were references to the contractor (but only in a case approved by the Board).

(2) Schedule 2 (Savings and transitional provisions):

- (a) In clause 1 (1), after "this Act", insert "or the Pilotage (Amendment) Act 1992".

Pilotage (Amendment) Act 1992 No. 41

SCHEDULE 2—AMENDMENT OF MARINE PORT CHARGES
ACT 1989—*continued*

(b) At the end of clause 2 (c), insert:

; and

(d) a reference to pilotage rates under the Pilotage Act 1971 is to be read as a reference to pilotage charges under this Act.

(c) At the end of clause 3, insert:

(2) Without limiting the operation of any saving contained in the Interpretation Act 1987, nothing in this Act or the Pilotage (Amendment) Act 1992 affects the liability of any person to pay any rate or charge incurred under the Pilotage Act 1971.

(d) After clause 3, insert:

Pilotage charges—transitional provision

4. Until pilotage charges are fixed by the Board under this Act, the pilotage rates in force under Part 4 of the Pilotage Act 1971 immediately before its repeal by the Pilotage (Amendment) Act 1992 are taken to be the pilotage charges fixed under this Act.

[Minister's second reading speech made in—
Legislative Assembly on ~~5 March 1992~~ 26 February 1992
Legislative Council on 6 May 1992]

