

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

**AUSTRALIAN SHIPPING COMMISSION AMENDMENT BILL
1983**

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FORMAL AND OTHER MINOR AMENDMENTS

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 20 October 1983

(Minister for Transport)

A BILL

FOR

An Act to amend the *Australian Shipping Commission Act 1956*, and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

5 **1. (1)** This Act may be cited as the *Australian Shipping Commission Amendment Act 1983*.

(2) The *Australian Shipping Commission Act 1956*¹ is in this Act referred to as the Principal Act.

Interpretation

2. Section 5 of the Principal Act is amended—

10 (a) by omitting from sub-section (1) the definitions of “Acting Chairman”, “Acting Commissioner” and “approved bank” and substituting the following definitions:

 “‘acting Chairman’ means a person who is acting as Chairman in pursuance of an appointment under sub-section 9 (1);

'acting Commissioner' means a person who is acting as a Commissioner in pursuance of an appointment under sub-section 9B (1);

'acting Deputy Chairman' means a person who is acting as Deputy Chairman in pursuance of an appointment under sub-section 9A (1);

'appoint' includes re-appoint;

'Australia' includes the external Territories;"; and

- (b) by inserting after the definition of "Commission" in sub-section (1) the following definitions:

" 'Deputy Chairman' means the Deputy Chairman of the Commission;

'financial year' means the 12 months ending on 30 June;

'Managing Director' means the Managing Director of the Commission;

'non-executive Commissioner' means a Commissioner other than the Managing Director;".

Establishment of Australian Shipping Commission

3. Section 7 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

"(2) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Commission appearing on a document and shall presume that the document was duly sealed."

4. (1) Section 8 of the Principal Act is repealed and the following section is substituted:

Constitution of Commission

"8. (1) The Commission shall consist of 7 Commissioners, namely—

- (a) the Chairman of the Commission;
- (b) the Deputy Chairman of the Commission;
- (c) the Managing Director; and
- (d) 4 other Commissioners.

"(2) The non-executive Commissioners shall be appointed by the Governor-General and shall hold office on a part-time basis.

"(3) The Managing Director shall be appointed by the Governor-General and shall hold office on a full-time basis.

"(4) A person who has attained the age of 65 years shall not be appointed as the Managing Director and a person shall not be appointed as the Managing Director for a period that extends beyond the day on which he will attain the age of 65 years.

“(5) The Commissioners hold office on such terms and conditions (in respect of matters not provided for by this Act) as are determined by the Minister by instrument in writing.

5 “(6) The performance of the functions, and the exercise of the powers, of the Commission are not affected by reason only of there being a vacancy or vacancies in the membership of the Commission.”.

10 (2) The person who, immediately before the commencement of this Act, held office as Vice-Chairman holds office, after the commencement of this Act, as Deputy Chairman as if he had been appointed to that office under the Principal Act as amended by this Act and holds that office, subject to the *Australian Shipping Commission Act 1956*, for the remainder of the period of his appointment under the Principal Act.

15 (3) Each person who, immediately before the commencement of this Act, held office as a Commissioner (other than Chairman or Vice-Chairman) continues, after the commencement of this Act, to hold office as a Commissioner referred to in paragraph 8 (1) (d) of the Principal Act as amended by this Act as if he had been appointed to that office under the Principal Act as so amended and holds that office, subject to the *Australian Shipping Commission Act 1956*, for the remainder of the period of his appointment under the Principal Act.

20 5. Sections 8A, 8B, 8C, 9, 10, 11, 12, 13, 13A and 14 of the Principal Act are repealed and the following sections are substituted:

Period of appointment

25 “8A. Subject to this Division, a Commissioner holds office for such period, not exceeding 5 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

Acting Chairman

30 “9. (1) Subject to sub-section (2), the Minister may appoint the Deputy Chairman, another Commissioner or another person to act as Chairman—

- (a) during a vacancy in the office of Chairman; or
- (b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his office.

“(2) The Managing Director shall not be appointed to act as Chairman.

35 “(3) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

“(4) A person appointed under sub-section (1) to act during a vacancy in the office of Chairman shall not continue so to act for more than 12 months.

40 “(5) Where a person is acting as Chairman in accordance with paragraph (1) (b) and the office of Chairman becomes vacant while that person is so

acting, then, subject to sub-section (3), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurs expires, whichever first happens.

“(6) While a person is acting as Chairman, he has and may exercise all the powers, and shall perform all the functions, of the Chairman. 5

“(7) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Chairman; and
- (b) terminate such an appointment at any time.

“(8) The appointment of a person to act as Chairman ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister. 10

“(9) The validity of anything done by or in relation to a person purporting to act as Chairman shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased. 15

Acting Deputy Chairman

“9A. (1) Subject to sub-section (2), the Minister may appoint a Commissioner or another person to act as Deputy Chairman— 20

- (a) during a vacancy in the office of Deputy Chairman; or
- (b) during any period, or during all periods, when the Deputy Chairman is acting as Chairman, is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his office. 25

“(2) The Managing Director shall not be appointed to act as Deputy Chairman.

“(3) An appointment under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment. 30

“(4) A person appointed under sub-section (1) to act during a vacancy in the office of Deputy Chairman shall not continue so to act for more than 12 months.

“(5) Where a person is acting as Deputy Chairman in accordance with paragraph (1) (b) and the office of Deputy Chairman becomes vacant while that person is so acting, then, subject to sub-section (3), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurs expires, whichever first happens. 35

“(6) While a person is acting as Deputy Chairman, he has and may exercise all the powers, and shall perform all the functions, of the Deputy Chairman. 40

“(7) The Minister may—

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Deputy Chairman; and

5 (b) terminate such an appointment at any time.

“(8) The appointment of a person to act as Deputy Chairman ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

10 “(9) The validity of anything done by or in relation to a person purporting to act as Deputy Chairman shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

15 **Acting Commissioner**

“9B. (1) The Minister may appoint a person to act as a Commissioner—

(a) during a vacancy in the office of that Commissioner; or

20 (b) during any period, or during all periods, when that Commissioner is acting as Chairman or Deputy Chairman, is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his office.

“(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

25 “(3) A person appointed under sub-section (1) to act during a vacancy in the office of a Commissioner shall not continue so to act for more than 12 months.

30 “(4) Where a person is acting as a Commissioner in accordance with paragraph (1) (b) and the office of the Commissioner in whose place the person is acting becomes vacant while the person is so acting, then, subject to sub-section (2), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurs expires, whichever first happens.

35 “(5) While a person is acting as a Commissioner, he has and may exercise all the powers, and shall perform all the functions, of the Commissioner in whose place he is acting as a Commissioner.

“(6) The Minister may—

40 (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as a Commissioner; and

(b) terminate such an appointment at any time.

“(7) The appointment of a person to act as a Commissioner ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

“(8) The validity of anything done by or in relation to a person purporting to act as a Commissioner shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

“(9) A reference in this section to a Commissioner does not include a reference to the Chairman, the Deputy Chairman or the Managing Director.

Leave

“(10. (1) The Minister may grant leave of absence to the Managing Director upon such conditions as to remuneration or otherwise as the Minister thinks fit.

“(2) The Minister may grant leave to a non-executive Commissioner to be absent from a meeting of the Commission upon such conditions as to remuneration or otherwise as the Minister thinks fit.

Remuneration and allowances of Commissioners

“(11. (1) The Commissioners shall be paid by the Commission such remuneration as is determined by the Remuneration Tribunal.

“(2) The Commissioners shall be paid by the Commission such allowances as are prescribed by the regulations.

“(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Termination of appointment

“(12. (1) The Governor-General may terminate the appointment of a Commissioner for misbehaviour or physical or mental incapacity.

“(2) If—

- (a) a Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) the Managing Director is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months;
- (c) a non-executive Commissioner is absent, except on leave of absence granted by the Minister, from 3 consecutive meetings of the Commission; or

(d) a Commissioner fails, without reasonable excuse, to comply with his obligations under section 13,
the Governor-General shall terminate the appointment of the Commissioner.

Disclosure of interests

5 “13. (1) A Commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

10 “(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Commission and the Commissioner shall not, unless the Minister or the Commission otherwise determines—

(a) be present during any deliberation of the Commission with respect to that matter; or

15 (b) take part in any decision of the Commission with respect to that matter.

“ (3) For the purpose of the making of a determination by the Commission under sub-section (2) in relation to a Commissioner who has made a disclosure under sub-section (1), a Commissioner who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

20 (a) be present during any deliberation of the Commission for the purpose of making the determination; or

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

25 “(4) A reference in this section to a Commissioner includes a reference to an acting Chairman who is not a Commissioner, to an acting Deputy Chairman who is not a Commissioner and to an acting Commissioner.

Resignation

“13A. A Commissioner may resign his office by writing signed by him and delivered to the Governor-General.

Meetings of Commission

30 “14. (1) The Commission shall hold such meetings as are necessary for the efficient performance of its functions.

“ (2) The Chairman—

(a) may, at any time, convene a meeting of the Commission; and

35 (b) shall, on receipt of a written request signed by not less than 2 other Commissioners, convene a meeting of the Commission.

“ (3) The Minister may, at any time, convene a meeting of the Commission.

“ (4) The Chairman shall preside at all meetings of the Commission at which he is present.

“(5) Where the Chairman is not present at a meeting of the Commission—

(a) the Deputy Chairman shall preside at the meeting; or

(b) if the Deputy Chairman is not present at the meeting—the Commissioners present shall appoint one of their number to preside at the meeting.

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“(6) At a meeting of the Commission, 4 Commissioners constitute a quorum.

“(7) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the Commissioners present.

“(8) The person presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

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“(9) A reference in this section to the Chairman is, if there is an acting Chairman, a reference to the acting Chairman.

“(10) A reference in this section to the Deputy Chairman is, if there is an acting Deputy Chairman, a reference to the acting Deputy Chairman.

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“(11) A reference in this section to a Commissioner includes, unless the contrary intention appears, a reference to an acting Chairman who is not a Commissioner, to an acting Deputy Chairman who is not a Commissioner and to an acting Commissioner.

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Delegation

“14A. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a person all or any of its powers under this Act, other than this power of delegation.

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“(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Commission.

“(3) A delegation under this section does not prevent the exercise of a power by the Commission.”

Functions of Commission

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6. Section 15 of the Principal Act is amended—

(a) by omitting from sub-paragraph (a) (ii) “Australia” and substituting “a State”;

(b) by adding at the end of sub-paragraph (a) (iii) “and”;

(c) by omitting from sub-paragraph (a) (iv) “and” (last occurring);

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(d) by omitting sub-paragraph (a) (v); and

(e) by omitting paragraph (b) and substituting the following paragraphs:

“(b) to do anything incidental or conducive to the performance of the function referred to in paragraph (a); and

- 5 (c) to provide to the Commonwealth, authorities of the Commonwealth and other persons such other services as can conveniently be provided by the use of the resources of the Commission that are not immediately required by the Commission for the performance of the functions referred to in paragraphs (a) and (b).”.

Powers of Commission

7. Section 16 of the Principal Act is amended—

- 10 (a) by omitting from sub-section (2A) “or between a place in a Territory and a place in another country”; and
15 (b) by omitting sub-section (3) and substituting the following sub-sections:

“(3) The Commission shall not, without the approval of the Minister—

- 15 (a) enter into a contract under which the Commission is to pay or receive an amount exceeding \$2,000,000 or, if a higher amount is prescribed by the regulations, that higher amount; or
20 (b) enter into a contract or arrangement with another person under which the other person agrees to acquire real or personal property to be leased, or let on hire, to the Commission.

“(4) The reference in paragraph (3) (a) to a contract does not include a reference to a contract for the carriage of passengers or goods by the Commission.

25 “(5) An approval for the purposes of paragraph (3) (a) or (b) may be given in relation to—

- (a) a particular contract or arrangement; or
(b) contracts or arrangements included in a class of contracts or arrangements.

30 “(6) An approval under sub-section (3) shall be given by instrument in writing.”.

8. (1) Sections 17, 17A, 18 and 19 of the Principal Act are repealed and the following sections are substituted:

General duties of Commission

35 “17. (1) The Commission shall conduct its operations efficiently and, subject to sub-sections 18 (3) and 29 (3), in a manner that accords with sound commercial practice.

“(2) Nothing in sub-section (1) shall be taken to impose on the Commission a duty that is enforceable by proceedings in a court.

Directions to Commission

“18. (1) Except as provided by this section or as otherwise expressly provided by this Act, the Commission is not subject to direction by or on behalf of the Government of the Commonwealth.

“(2) Where the Minister is satisfied that it is desirable in the public interest to do so, he may, by notice in writing to the Commission, give directions to the Commission with respect to the performance of its functions or duties or the exercise of its powers. 5

“(3) The Commission shall comply with any direction given to it by the Minister under sub-section (2). 10

“(4) Where the Minister gives a direction to the Commission under sub-section (2), he shall cause a statement setting out particulars of, and the reasons for, the direction to be laid before each House of the Parliament within 7 sitting days of that House after the giving of the direction.

“(5) Where the Minister directs the Commission under sub-section (2) to establish, maintain and operate, or to continue to maintain and operate, a shipping service for the purpose of meeting the requirements of a particular area, he shall, as soon as practicable after the direction is given, cause an inquiry, in such form as he thinks appropriate, to be held into the following matters: 15

(a) whether the requirements of that area could be met by the provision of a shipping or other transport service by a person or persons other than the Commission; 20

(b) where the requirements of that area could be so met—

(i) whether the Commonwealth would be required to provide financial or other assistance in connection with the provision of the service by the other person or persons; and 25

(ii) if the Commonwealth would be required to provide such assistance—the nature, and the cost to the Commonwealth, of the assistance. 30

Reimbursement of cost of complying with directions

“19. (1) Where the Commission satisfies the Minister that it has, during any period, suffered financial detriment as a result of complying with a direction under sub-section 18 (2), the Commission is entitled to be reimbursed by the Commonwealth the amount that the Minister determines, by instrument in writing, to be the amount of the financial detriment suffered by the Commission during the period. 35

“(2) The reference in sub-section (1) to the Commission suffering financial detriment as a result of complying with a direction under sub-section 18 (2) includes a reference to the Commission— 40

(a) suffering a loss in complying with such a direction;

(b) incurring costs, in complying with such a direction, that are greater than the costs that the Commission would otherwise have incurred; or

- (c) foregoing revenue, in complying with such a direction, that the Commission would otherwise have received.

Charges for services

5 “19A. (1) The rates of charges for any service provided by the Commission shall be such as the Commission, subject to this section and to sub-sections 17 (1), 18 (3) and 29 (3), fixes for the service.

“(2) The Commission shall, as soon as practicable after the commencement of this section—

- 10 (a) determine, by instrument in writing, the principles in accordance with which it proposes to fix rates of charges for prescribed services; and
(b) inform the Minister, by notice in writing, of the principles that it has so determined.

“(3) The Minister may, before the expiration of 60 days after receipt by him of the notice referred to in paragraph (2) (b)—

- 15 (a) determine, by instrument in writing, the principles in accordance with which the Commission is to fix rates of charges for a prescribed service or for the prescribed services included in a class of prescribed services; and
20 (b) inform the Commission, by notice in writing, of the principles so determined and the reasons for the determination.

“(4) Where the Commission proposes to make an alteration to the principles in accordance with which it fixes rates of charges for a prescribed service or for the prescribed services included in a class of prescribed services, the Commission shall inform the Minister, by notice in writing, of the proposed alteration.
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“(5) Where the Minister receives a notice under sub-section (4) of a proposed alteration to the principles in accordance with which the Commission fixes rates of charges for a prescribed service or for the prescribed services included in a class of prescribed services, the Minister may, before the expiration of 60 days after receipt by him of the notice, by instrument in writing—
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- (a) approve the proposed alteration to those principles;
(b) determine an alteration to those principles that is different from the alteration proposed in the notice; or
35 (c) refuse to agree to any alteration to those principles,
and inform the Commission, by notice in writing, of the approval, determination or refusal, as the case may be.

“(6) If the Minister does not, before the expiration of 60 days after the receipt by him of a notice under sub-section (4) proposing an alteration to the principles in accordance with which the Commission fixes rates of charges for a
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prescribed service or for the prescribed services included in a class of prescribed services—

- (a) approve the alteration proposed in the notice;
- (b) determine an alteration to the principles that is different from the alteration proposed in the notice; or
- (c) refuse to agree to any alteration to the principles,

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and inform the Commission as mentioned in sub-section (5), he shall be deemed to have, at the expiration of that period, approved the alteration proposed in the notice.

“(7) The Commission shall not fix a rate of charge for a prescribed service otherwise than—

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- (a) if the Commission has determined principles under sub-section (2) in relation to the prescribed service, the Minister has not determined principles under sub-section (3) in relation to the prescribed service and no alteration to the principles determined by the Commission has been approved or determined under sub-section (5) in relation to the prescribed service—in accordance with the principles so determined by the Commission;
- (b) if the Minister has determined principles under sub-section (3) in relation to the prescribed service and no alteration to those principles has been approved or determined under sub-section (5)—in accordance with the principles so determined by the Minister; or
- (c) if any principles are applicable in relation to the prescribed service by virtue of a determination under sub-section (2) or (3) and an alteration has or alterations have been approved or determined under sub-section (5) to those principles—in accordance with those principles as so altered by the alteration or alterations.

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“(8) A reference in this section to a prescribed service is a reference to a service for the carriage of passengers or goods.

Corporate objectives, &c.

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“19B. (1) The Commission shall—

- (a) develop objectives, strategies and policies for the purpose of ensuring that it fulfils, on a long-term basis, its duties under this Act; and
- (b) from time to time, review and revise the objectives, strategies and policies that it has developed for that purpose.

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“(2) The Commission shall, in performing its functions and duties and exercising its powers, have regard to the objectives, strategies and policies developed by it under sub-section (1).

“(3) The Commission shall, in accordance with sub-sections (4) and (5), furnish written reports to the Minister concerning the objectives, strategies and policies developed by it under sub-section (1).

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“(4) The first report under sub-section (3) shall be furnished to the Minister before the expiration of the period of 12 months after the day on which this section comes into operation.

5 “(5) The Commission shall ensure that not more than 12 months elapse between the furnishing to the Minister of a report under sub-section (3) and the furnishing to the Minister of the next such report.”.

10 (2) Notwithstanding the repeal of sections 17A and 18 of the Principal Act effected by sub-section (1), those sections (other than sub-section 18 (2)) continue to apply, after the commencement of this Act, in relation to the financial year that commenced on 1 July last preceding the date of commencement of this Act as if that repeal had not been effected.

15 (3) Notwithstanding the repeal of sections 18 and 19 of the Principal Act effected by sub-section (1), those sections continue to have effect in relation to fixing by the Commission of rates of charges for services until the expiration of the period of 60 days referred to in sub-section 19A (3) of the Principal Act as amended by sub-section (1) as if that repeal had not been effected.

20 (4) Sub-sections 19A (1), (4), (5), (6) and (7) of the Principal Act as amended by sub-section (1) do not have effect in relation to the fixing by the Commission of rates of charges for services until the expiration of the period referred to in sub-section (3).

Appointment of officers

9. Section 21 of the Principal Act is amended—

25 (a) by omitting from sub-section (1) “the purposes of this Act” and substituting “the performance of its functions and duties and the exercise of its powers”; and

(b) by omitting sub-sections (2) and (3).

10. (1) Sections 22 and 23 of the Principal Act are repealed and the following sections are substituted:

Terms and conditions of employment

30 “22. The terms and conditions of employment of officers appointed by the Commission shall be such as are determined by the Commission.

Managing Director to be chief executive officer

“23. The Managing Director shall be the chief executive officer of the Commission.”.

35 (2) A determination of terms and conditions in force immediately before the commencement of this section under sub-section 22 (1) of the Principal Act continues in force as if made under section 22 of the Principal Act as amended by this Act.

Capital of Commission

11. Section 28 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(2) Interest is not payable to the Commonwealth on the capital of the Commission, but the capital of the Commission is repayable to the Commonwealth at such times, and in such amounts, as the Minister determines by instrument in writing. 5

“(3) In making a determination under sub-section (2), the Minister shall have regard to any advice that the Commission has given to him in relation to its financial affairs.”. 10

12. (1) Section 29 of the Principal Act is repealed and the following sections are substituted:

Financial policy

“29. (1) The Commission shall, not later than 60 days before the commencement of each financial year— 15

(a) determine, by instrument in writing, that the financial target of the Commission for the financial year is to be—

(i) a specified profit;

(ii) neither a profit nor a loss; or

(iii) a specified loss; and 20

(b) inform the Minister, by notice in writing, of the financial target that it has determined for the financial year.

“(2) The Minister may, before the expiration of the period of 60 days after receipt by him of notice under sub-section (1) of the financial target that the Commission has determined for the financial year— 25

(a) determine, by instrument in writing, a different financial target for the financial year; and

(b) inform the Commission, by notice in writing, of the financial target that he has determined for the financial year and the reasons for his determination. 30

“(3) Subject to sub-section 18 (3), the Commission shall pursue a policy in the financial year directed at ensuring that it attains the financial target for the financial year.

“(4) Subject to sub-section (5), the Commission shall, whenever it considers it necessary or desirable to do so during the financial year, review the financial results of its operations during the part of the financial year that has elapsed and, if on any such review it appears to the Commission that its progress towards attaining the financial target for the financial year has not been satisfactory, the Commission shall— 35

(a) forthwith consider what specific measures should be adopted by it in order to ensure that it attains the financial target; and 40

5 (b) inform the Minister, by notice in writing, of the respects in which its progress towards attaining the financial target has not been satisfactory, of the measures it proposes to adopt in order to ensure that it attains the financial target and of the effect that, in its opinion, the adoption of those measures will have on the financial results of its operations for the financial year.

“(5) The Commission shall ensure that not more than 6 months elapse between—

- 10 (a) the commencement of the financial year and the commencement of the first review under sub-section (4) in relation to the financial year; or
- (b) the commencement of a review under sub-section (4) in relation to the financial year and the commencement of the next such review.

15 “(6) A reference in sub-section (3) or (4) to the financial target of the Commission for the financial year is a reference to—

- (a) the financial target determined by the Commission under sub-section (1) for the financial year; or
- 20 (b) where the Minister has, under sub-section (2), determined a different financial target for the financial year—the financial target so determined.

Payment of dividend to Commonwealth

“29A. (1) Before the expiration of the period of 4 months after the end of each financial year, the Commission shall, by notice in writing to the Minister, recommend—

- 25 (a) that the Commission pay a dividend, of a specified amount, to the Commonwealth for the financial year; or
- (b) that the Commission not pay a dividend to the Commonwealth for the financial year.

30 “(2) In making its recommendation under sub-section (1), the Commission shall have regard to—

- (a) the need to ensure that the Commonwealth receives a reasonable return on the capital of the Commission that was employed in the Commission’s operations in the financial year; and
- (b) such other commercial matters as the Commission considers relevant.

35 “(3) Before the expiration of the period of 60 days after receipt by him of notice under sub-section (1) of the recommendation made by the Commission under that sub-section in relation to the financial year, the Minister shall, by notice in writing to the Commission—

- 40 (a) where the recommendation is that the Commission pay a dividend to the Commonwealth for the financial year—
- (i) approve the recommendation; or

(ii) direct the Commission to pay a dividend, of a different specified amount, to the Commonwealth for the financial year;
or

(b) where the recommendation is that the Commission not pay a dividend to the Commonwealth for the financial year— 5

(i) approve the recommendation; or

(ii) direct the Commission to pay a dividend, of a specified amount, to the Commonwealth for the financial year.

“(4) Where the Minister gives the Commission a direction under sub-paragraph (3) (a) (ii) or (b) (ii), he shall inform the Commission, by notice in writing, of the reasons for the direction. 10

“(5) Where—

(a) the Minister, under sub-paragraph (3) (a) (i), approves a recommendation that the Commission pay a dividend, of a specified amount, to the Commonwealth for the financial year; or 15

(b) the Minister, under sub-paragraph (3) (a) (ii) or (b) (ii), directs the Commission to pay a dividend, of a specified amount, to the Commonwealth for the financial year,

the Commission shall, before the expiration of the period of 8 months after the end of the financial year or within such further time as the Minister allows by instrument in writing, pay a dividend, of the specified amount, to the Commonwealth. 20

“(6) A payment by the Commission of a dividend to the Commonwealth may be made—

(a) out of the profits of the Commission for the financial year to which the dividend relates; 25

(b) out of the profits of the Commission for any preceding financial year;
or

(c) partly out of the profits of the Commission for the financial year to which the dividend relates and partly out of the profits of the Commission for any preceding financial year.”. 30

(2) Sections 29 and 29A of the Principal Act as amended by sub-section (1) apply in relation to the financial year commencing on 1 July next succeeding the date of commencement of this Act and each subsequent financial year.

(3) Notwithstanding the repeal of section 29 of the Principal Act effected by sub-section (1), sub-sections 29 (1) and (3) of the Principal Act continue to apply, after the commencement of this Act, in relation to the financial year that commenced on 1 July last preceding the date of commencement of this Act as if that repeal had not been effected. 35

Borrowings from Commonwealth 40

13. Section 30 of the Principal Act is amended by omitting from sub-section (2) “, being a shipping undertaking that provides shipping services comparable with those provided by the Commission”.

14. (1) Sections 30A, 30B, 30C, 30D, 30E, 31 and 32 of the Principal Act are repealed and the following sections are substituted:

Borrowings otherwise than from Commonwealth

“31. (1) The Commission may, with the approval of the Treasurer—

- (a) borrow moneys otherwise than from the Commonwealth; or
- (b) raise moneys otherwise than by borrowing,

on such terms and conditions as are specified in the approval.

“(2) Without limiting the generality of sub-section (1), the Commission may, under that sub-section, borrow moneys, or raise moneys otherwise than by borrowing, by dealing with securities.

“(3) A borrowing of moneys, or a raising of moneys otherwise than by borrowing, under sub-section (1) may be made, in whole or in part, in a currency other than Australian currency.

“(4) An approval may be given under sub-section (1) in relation to a particular transaction or in relation to transactions included in a class of transactions.

“(5) An approval under sub-section (1) shall be given by instrument in writing.

“(6) For the purposes of this section—

- (a) the issue by the Commission of an instrument acknowledging a debt in consideration of—
 - (i) the payment or deposit of moneys; or
 - (ii) the provision of credit,

otherwise than in relation to a transaction that is in the ordinary course of the day to day operations of the Commission shall be deemed to be a raising by the Commission, otherwise than by borrowing, of an amount of moneys equal to the amount of the moneys paid or deposited or the value of the credit provided, as the case may be; and

- (b) the obtaining of credit by the Commission otherwise than in relation to a transaction that is in the ordinary course of the day to day operations of the Commission shall be deemed to be a raising by the Commission, otherwise than by borrowing, of an amount of moneys equal to the value of the credit so obtained.

Guarantees

“32. (1) The Treasurer may, on behalf of the Commonwealth, enter into a contract—

- (a) guaranteeing the repayment by the Commission of moneys borrowed by virtue of paragraph 31 (1) (a) and the payment by the Commission of interest on moneys so borrowed; or
- (b) guaranteeing the payment by the Commission of such moneys (including any interest) that the Commission is liable to pay with

respect to moneys raised by virtue of paragraph 31 (1) (b) as are specified in the contract.

“(2) The Treasurer may, by instrument in writing, determine—

- (a) that the repayment by the Commission of moneys borrowed by virtue of paragraph 31 (1) (a), and the payment by the Commission of interest on moneys so borrowed, are guaranteed by the Commonwealth; or 5
- (b) that the payment by the Commission of such moneys (including any interest) that the Commission is liable to pay with respect to moneys raised by virtue of paragraph 31 (1) (b) as are specified in the determination is guaranteed by the Commonwealth, 10

and, where the Treasurer so determines, the repayment of those moneys and the payment of that interest are, or the payment of those moneys is, by the force of this sub-section, guaranteed by the Commonwealth.

“(3) A contract may be entered into by virtue of sub-section (1), and a determination may be made by virtue of sub-section (2), in relation to a particular transaction or in relation to transactions included in a class of transactions. 15

“(4) A contract entered into by virtue of sub-section (1) may include—

- (a) a provision agreeing, on behalf of the Commonwealth, that proceedings under the contract may be taken in the courts, or a specified court, of a country other than Australia; or 20
- (b) a provision waiving, on behalf of the Commonwealth, the immunity of the Commonwealth from suit in the courts, or a specified court, of a country other than Australia in relation to any proceedings that may be taken under the contract. 25

Commission may give security

“32A. The Commission may give security over the whole or any part of its assets for—

- (a) the repayment by the Commission of moneys borrowed by virtue of sub-section 30 (1) or paragraph 31 (1) (a) and the payment by the Commission of interest on moneys so borrowed; 30
- (b) the payment by the Commission of moneys (including any interest) that the Commission is liable to pay with respect to moneys raised by virtue of paragraph 31 (1) (b); or 35
- (c) the payment to the Commonwealth of amounts equal to any amounts that the Commonwealth may become liable to pay under a contract entered into by virtue of sub-section 32 (1) or a determination made by virtue of sub-section 32 (2).

Borrowings not otherwise permitted

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“32B. The Commission shall not borrow moneys, or raise moneys otherwise than by borrowing, except in accordance with sections 30 and 31.”.

(2) It is declared that the power of the Commission under the *Australian Shipping Commission Act 1956* to borrow moneys, or borrow or otherwise raise moneys by dealing with securities, has always included a power to borrow moneys or borrow or otherwise raise moneys by dealing with securities, as the case may be, in a currency other than Australian currency.

(3) An approval given by the Treasurer for the purposes of paragraph 32 (2) (c) of the Principal Act, and in force immediately before the commencement of this Act, has effect, after the commencement of this Act, as if it had been given by the Treasurer for the purposes of paragraph 63E (1) (c) of the *Audit Act 1901* (as that paragraph applies in relation to the Commission by virtue of sub-section 35 (1) of the Principal Act as amended by this Act).

Profits of Commission

15 15. (1) Section 33 of the Principal Act is amended by omitting sub-sections (3) and (4) and substituting the following sub-section:

“(2) The profits of the Commission for a financial year shall be applied in the first place in payment of the dividend (if any) payable under section 29A for the financial year, and the balance (if any) shall be applied in such manner as the Commission thinks fit.”.

20 (2) Sub-section 33 (2) of the Principal Act as amended by sub-section (1) applies in relation to the financial year commencing on 1 July next succeeding the date of commencement of this Act and each subsequent financial year.

25 (3) Notwithstanding the amendment of section 33 of the Principal Act made by sub-section (1), that section continues to apply, after the commencement of this Act, in relation to the financial year that commenced on 1 July last preceding the date of commencement of this Act as if that amendment had not been made.

16. Sections 34 and 35 of the Principal Act are repealed and the following sections are substituted:

Application of moneys

30 “34. The moneys of the Commission shall be applied only—

- (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Commission in the performance of its functions and duties and the exercise of its powers;
- 35 (b) in payment of the remuneration and allowances payable to persons appointed or employed under this Act;
- (c) in making payments to the Commonwealth as provided by this Act; and
- (d) in making investments that the Commission is authorized to make under section 63E of the *Audit Act 1901* (as that section applies in relation to the Commission by virtue of sub-section 35 (1) of this Act).

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Application of Division 2 of Part XI of the *Audit Act 1901*

“35. (1) It is hereby declared that the Commission is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

“(2) The Commission shall, in each report prepared in pursuance of section 63H of the *Audit Act 1901* (as that section applies in relation to the Commission by virtue of sub-section (1))— 5

- (a) include particulars of each direction given to it by the Minister under sub-section 16 (2D) or 18 (2) that is applicable to the financial year to which the report relates;
- (b) deal specifically with the effect on the operations of the Commission of each such direction under sub-section 18 (2); 10
- (c) specify the financial target determined by the Commission under sub-section 29 (1) for the financial year; and
- (d) where the Minister has, under sub-section 29 (2), determined a different financial target for the financial year—specify the financial target determined by the Minister for the financial year and set out the reasons given to it by the Minister for his determination. 15

“(3) The Commission shall, in the financial statements prepared in respect of each financial year in pursuance of section 63H of the *Audit Act 1901* (as that section applies in relation to the Commission by virtue of sub-section (1)) show separately the financial effect on the operations of the Commission of each direction given to it by the Minister under sub-section 18 (2) that is applicable to the financial year to which the financial statements relate.”. 20

Liability of Commission to taxation

17. Section 36 of the Principal Act is amended by omitting from paragraphs (4) (c) and (d) “or other raising of moneys by the Commission” and substituting “, or a raising of moneys otherwise than by borrowing, by the Commission”. 25

18. After section 36 of the Principal Act the following section is inserted in Division 4 of Part II: 30

Estimates

- “37. (1) The Commission shall—
- (a) prepare estimates, in such form as the Minister directs, of its receipts and expenditure for each financial year and, if the Minister so directs, for any other period; and 35
 - (b) submit those estimates to the Minister not later than such date as the Minister directs.

“(2) A direction under sub-section (1) shall be given by instrument in writing.”.

Repeal of Division 5 of Part II 40

19. Division 5 of Part II of the Principal Act is repealed.

20. Section 44 of the Principal Act is repealed and the following section is substituted:

Reports to Minister

“44. The Commission shall—

- 5 (a) from time to time inform the Minister concerning the general conduct of its operations; and
- (b) furnish to the Minister such information in relation to its operations as the Minister requires.”.

10 21. Sections 47, 48, 49 and 50 of the Principal Act are repealed and the following sections are substituted:

By-laws

“47. (1) The Commission may make by-laws, not inconsistent with this Act or the regulations, prescribing matters—

- 15 (a) required or permitted by this Act to be prescribed by the by-laws; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular, making provision for, or with respect to—

- 20 (c) the terms and conditions governing the provision to, or use by, any person of services provided by, or facilities owned or operated by, the Commission;
- (d) the protection and preservation of property of, or property in the custody or under the control of, the Commission;
- (e) the maintenance of safety and order on ships operated by the Commission;
- 25 (f) the sale or other disposal of unclaimed goods in the possession of the Commission and the disposal of the proceeds of any such sale;
- (g) the prohibition of interference with—
 - (i) services provided by the Commission; and
 - 30 (ii) property of, or property in the custody or under the control of, the Commission; and
- (h) prescribing penalties not exceeding a fine of \$500 for breaches of the by-laws.

35 “(2) Sections 48, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to by-laws made under sub-section (1) as if, in those sections, references to regulations were references to such by-laws, references to a regulation were references to a by-law and references to a repeal were references to a revocation.

40 “(3) By-laws made under sub-section (1) shall be deemed not to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but sub-sections 5 (3) to (3C) (inclusive) of that Act apply in relation to such by-laws in like manner as they apply in relation to statutory rules.

“(4) For the purposes of the application of sub-section 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with sub-section (3), the reference in that first-mentioned sub-section to the Minister of State for Administrative Services shall be read as a reference to the Minister administering this Act.

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Regulations

“48. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed by the regulations; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

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and, in particular, prescribing penalties not exceeding a fine of \$500 for offences against the regulations.”.

Formal and other minor amendments

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22. The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 22

FORMAL AND OTHER MINOR AMENDMENTS

Provision	Amendment
Section 6	Insert “external” after “every”
Sub-section 16 (2)	Omit “the last preceding sub-section”, substitute “sub-section (1)”
Sub-section 16 (2A)	(a) Omit “the preceding provisions of this section”, substitute “sub-sections (1) and (2)” (b) Omit “paragraph (j) of the last preceding sub-section”, substitute “paragraph (2) (j)”
Paragraph 16 (2D) (a)	Omit “the last preceding sub-section”, substitute “sub-section (2C)”
Section 25	Omit “—1955”
Section 26	Omit “—1955”
Section 27	Omit “—1954”
Sub-section 36 (2)	Omit “paragraph (d) of section 23”, substitute “paragraph 23 (d)”
Sub-section 45 (2)	Omit “the last preceding sub-section”, substitute “sub-section (1)”
Schedule	(a) Omit “—1954” (first and last occurring) (b) Omit “—1955” (c) Omit “—1953” (wherever occurring) (d) Omit “1908—1950” (e) Omit “ <i>Stevedoring Industry Act 1949-1954</i> ”

NOTE

1. No. 41, 1956, as amended. For previous amendments, see No. 87, 1962; No. 88, 1964; No. 4, 1966; No. 145, 1968; No. 55, 1969; No. 216, 1973 (as amended by No. 20, 1974); No. 83, 1974; No. 153, 1977; No. 36, 1978; No. 39, 1980; and No. 26, 1982.