



New South Wales

Ports Assets (Authorised Transactions) Act 2012 No 101

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New South Wales

Ports Assets (Authorised Transactions) Act 2012 No 101

Act No 101, 2012

An Act to provide for the restructuring of arrangements for the operation and regulation of certain ports assets of the State; and for other purposes. [Assented to 26 November 2012]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Ports Assets (Authorised Transactions) Act 2012*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Interpretation—key definitions

Note. Schedule 1 contains other interpretative provisions.

In this Act:

associated port land means land (including an interest in land) at Botany Bay or Port Kembla that is vested in any of the following public sector agencies and designated by the Treasurer by order in writing as associated port land for the purposes of this Act:

- (a) Roads and Maritime Services,
- (b) State Property Authority,
- (c) any other public sector agency prescribed by the regulations for the purposes of this definition.

authorised transaction means a transfer of ports assets authorised by Part 2.

Port Botany land means land at Botany Bay that is ports assets.

Port Kembla land means land at Port Kembla that is ports assets.

port SOC means the Port Kembla Port Corporation or the Sydney Ports Corporation.

ports assets means:

- (a) the assets, rights and liabilities of a port SOC, and
- (b) associated port land.

retained assets means ports assets that relate only to port operations in Sydney Harbour, the port of Yamba or the port of Eden (and not to port operations in any other port).

Note. For example, ports assets that relate to port operations in both Sydney Harbour and Botany Bay are not retained assets.

Part 2 Authorised transactions

4 Authorised transfer of ports assets

- (1) This Act authorises the transfer of ports assets to the private sector or to any public sector agency, subject to the following limitations:
 - (a) Port Botany land, Port Kembla land and associated port land can be leased to the private sector but the ownership of the freehold title to that land must remain with a public sector agency,
 - (b) any lease of Port Botany land, Port Kembla land or associated port land must not have a term that, together with the term of any further lease that may be granted under an option in respect of it, exceeds 99 years,
 - (c) this Act does not authorise the transfer of retained assets to the private sector.
- (2) No compensation is payable in connection with the transfer under this Act of ports assets to a public sector agency (but this does not prevent such a transfer being for consideration).

5 Proceeds of transaction

- (1) The proceeds of the transfer of ports assets to the private sector pursuant to an authorised transaction (*the transaction proceeds*) belong to and are payable directly to the State.
- (2) The transaction proceeds include any payment to a public sector agency that is a periodic lease payment under a lease of ports assets to the private sector pursuant to an authorised transaction.
- (3) The transaction proceeds paid to the State are to be paid into the Restart NSW Fund (*the Fund*) established under the *Restart NSW Fund Act 2011*.
- (4) The following deductions are authorised to be made from the transaction proceeds:
 - (a) deduction of such amounts as the Treasurer approves to repay debt and satisfy other liabilities of a public sector agency in respect of ports assets transferred for the purposes of an authorised transaction,
 - (b) deduction of such amounts as the Treasurer approves to reimburse public sector agencies for payments made by them in respect of any tax, duty, fee or charge imposed by any Act or law of the State or any other jurisdiction in connection with a transaction arrangement,

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Part 2 Authorised transactions

- (c) deduction of such amounts as the Treasurer approves to satisfy any liability of a public sector agency arising under or in connection with a transaction arrangement,
 - (d) deduction of such amounts as the Treasurer approves to meet expenses reasonably incurred by public sector agencies for the purposes of an authorised transaction.
- (5) The transaction proceeds do not include any amount certified by the Treasurer to have been paid to a public sector agency as a tax, duty, fee or charge imposed by any Act or law of the State in connection with a transaction arrangement.
- (6) The deductions authorised to be made from the transaction proceeds may be made before payment of the transaction proceeds into the Fund or may be made by payment from the Fund.
- (7) The requirements of this section do not affect the validity of a transaction arrangement.

Part 3 Facilitating authorised transactions

6 Treasurer's functions

The Treasurer has and may exercise all such functions as are necessary or convenient for the purposes of an authorised transaction. The functions conferred on the Treasurer by any other provision of this Act do not limit the Treasurer's functions under this section.

7 Manner of effecting authorised transaction

- (1) An authorised transaction is to be effected as directed by the Treasurer and can be effected in any manner considered appropriate by the Treasurer.
- (2) There are no limitations as to the nature of the transactions or arrangements that can be entered into or used for the purposes of an authorised transaction.
Note. For example, an ownership structure involving a unit trust could be used for the purposes of an authorised transaction.
- (3) The provisions of this Act for the establishment of various kinds of transaction entity do not limit the nature of the legal entities or arrangements that can be used for the purposes of an authorised transaction.

8 Transaction SOCs

- (1) A statutory State owned corporation may be established under this Act as a transaction SOC for the purposes of an authorised transaction.
- (2) The Governor may by order published in the Gazette:
 - (a) create a corporation under a corporate name specified in the order, and
 - (b) specify the functions of the corporation, and
 - (c) direct that the corporation is established as a statutory State owned corporation and as a transaction SOC.
- (3) On the day on which the order takes effect:
 - (a) a corporation is constituted with the corporate name and functions specified in the order, and
 - (b) the *State Owned Corporations Act 1989* is amended by inserting in Schedule 5 the corporate name specified in the order (to establish the corporation as a statutory State owned corporation under that Act), and
 - (c) the State owned corporation thereby established is a transaction SOC for the purposes of this Act.

- (4) The portfolio Minister of a SOC established under this section is the Minister administering the *Ports and Maritime Administration Act 1995*.
- (5) Schedule 2 has effect with respect to a transaction SOC. The provisions of that Schedule are in addition to and (except to the extent to which that Schedule otherwise provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

9 Transaction companies

- (1) The Treasurer may for the purposes of an authorised transaction establish, or direct the establishment of, companies as transaction companies in any of the following ways:
 - (a) the formation or acquisition by or on behalf of the State or a SOC of a company limited by shares, so that all the issued shares in the company are held by or on behalf of the State or a SOC (or both),
 - (b) the formation or acquisition of a company as a wholly owned subsidiary company of a transaction company,
 - (c) the conversion of a port SOC or transaction SOC into a company limited by shares as provided by Schedule 3.
- (2) A transaction company that is a public sector agency may be converted from one kind of company to any other kind of company.
- (3) Except by express agreement with the Treasurer:
 - (a) a transaction company is not and does not represent the State, and
 - (b) the debts, liabilities and obligations of a transaction company are not guaranteed by the State.
- (4) The Treasurer may act for or on behalf of the State, a SOC or a transaction company that is a public sector agency in connection with the rights, privileges and benefits, and the duties, liabilities and obligations, of the State, a SOC or a transaction company as the holder of shares or other securities in or issued by a transaction company.
- (5) Shares and other securities in or issued by a transaction company that is a public sector agency may be issued, sold or transferred in accordance with the directions of the Treasurer. The Treasurer may on behalf of the State, a SOC or a transaction company that is a public sector agency, enter into and carry out transaction arrangements for the issue, sale or transfer of shares and other securities in or issued by a transaction company.
- (6) If a port SOC becomes a transaction company by being converted into a company under this section, a reference in this Act to the port SOC includes a reference to that transaction company.

10 Additional functions of port SOCs and transaction entities

- (1) Each port SOC and transaction entity has and may exercise all such functions as are necessary or convenient for the purposes of an authorised transaction.
- (2) The functions conferred by this section are in addition to any other functions that a port SOC or a transaction entity has apart from this section and those other functions do not prevent or otherwise limit the exercise of the additional functions conferred by this section.
- (3) The Treasurer may act for or on behalf of a port SOC or a transaction entity in the exercise of any of its functions for the purposes of an authorised transaction while it is a public sector agency.

11 Direction and control of port SOCs and transaction entities

- (1) Each port SOC and transaction entity is subject to the direction and control of the Treasurer in the exercise of any of its functions for the purposes of an authorised transaction while it is a public sector agency.
 - (2) The Treasurer may give directions for the purposes of an authorised transaction to a port SOC or transaction entity, and to the directors and other officers of a port SOC or transaction entity. Any such directions must be complied with by the port SOC, the transaction entity or the directors or other officers concerned.
 - (3) Directions to a transaction entity (or its directors and other officers) can only be given and are only required to be complied with while the transaction entity is a public sector agency.
 - (4) The power to give directions under this section extends to directions with respect to the way in which a port SOC or transaction entity is to conduct its business and other affairs.
 - (5) Action taken by a port SOC or transaction SOC to comply with a direction of the Treasurer under this Act does not require the approval of the voting shareholders or portfolio Minister of the corporation.
 - (6) Anything done or omitted to be done by a director or other officer of a port SOC or transaction entity in complying with a direction given by the Treasurer under this Act does not subject the director or officer personally to any action, liability, claim or demand.
 - (7) The provisions of this section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of the Corporations Act in relation to the provisions of the Corporations Act generally.
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12 Exercise of port SOC functions through subsidiaries

- (1) If ports assets are transferred to a subsidiary of a port SOC for the purposes of an authorised transaction, the functions of the port SOC in respect of those ports assets become either retained functions or shared functions, as follows:
 - (a) *retained functions* are all functions of the port SOC except those that are shared functions,
 - (b) *shared functions* are the functions of the port SOC under Part 5 (Port charges) of the *Ports and Maritime Administration Act 1995* but only in respect of charges of a kind that can be fixed under that Part by the port operator of a private port.
- (2) In the case of retained functions:
 - (a) the port SOC continues to have and may exercise retained functions as if the ports assets had remained vested in the port SOC, and
 - (b) the subsidiary is authorised to exercise retained functions on behalf of the port SOC (with the exception of any function or class of functions that is reserved to the port SOC by a direction of the port SOC to the subsidiary), and
 - (c) the subsidiary is subject to the direction and control of the port SOC in the exercise of retained functions on behalf of the port SOC, and
 - (d) any retained functions exercised by the subsidiary under this section are deemed to have been exercised by the port SOC.
- (3) In the case of shared functions:
 - (a) both the port SOC and the subsidiary have and may exercise shared functions, and
 - (b) the subsidiary has and may exercise shared functions as if the subsidiary were the port SOC, and
 - (c) Part 6 (Price monitoring scheme) of the *Ports and Maritime Administration Act 1995* applies to the subsidiary in respect of port charges charged by the subsidiary in the exercise of shared functions as if it were the port operator, and
 - (d) the subsidiary exercises shared functions on its own account, and
 - (e) any charges collected by the subsidiary in the exercise of shared functions are for its own use and benefit.
- (4) The regulations may prescribe additional functions of a port SOC as shared functions for the purposes of this section.

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- (5) This section operates only while the subsidiary in which ports assets are vested is a public sector agency.

13 Establishment of Ports Assets Ministerial Holding Corporation

- (1) There is constituted by this Act a corporation with the corporate name of the Ports Assets Ministerial Holding Corporation.
- (2) The Corporation is a statutory body representing the Crown.
- (3) The affairs of the Corporation are to be managed by the Treasurer who may authorise another Minister to exercise functions in relation to particular assets, rights and liabilities.
- (4) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Treasurer or a Minister authorised by the Treasurer, or with the authority of the Treasurer or any such Minister, is taken to have been done by the Corporation.
- (5) The Corporation has the functions conferred or imposed on it by or under this or any other Act.
- (6) The functions of the Corporation are:
- (a) to hold, on behalf of the Crown, ports assets acquired by it or transferred to it, and
 - (b) to carry on any activities or business that relate to any ports assets held by it, including demanding, collecting and receiving charges, levies, rates and fees, and
 - (c) such other functions for the purposes of an authorised transaction as may be prescribed by the regulations.

Part 4 Arrangements for transfer of staff

14 Transfers within public sector

- (1) The Treasurer may, for the purposes of an authorised transaction, by order in writing transfer the employment of an employee of a port SOC (a *transferred employee*) to the employment of another public sector agency.
- (2) A transferred employee is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the employee had the employee remained an employee of the port SOC concerned.
- (3) The Treasurer may negotiate and enter into agreements or industrial instruments concerning workplace relations for or on behalf of a public sector agency in connection with the operation of this section.

15 Temporary transfers (secondments)

- (1) The Treasurer may, for the purposes of an authorised transaction, by order in writing temporarily transfer an employee of a port SOC to the service of another public sector agency or to the service of an employer in the private sector.
- (2) A person may be temporarily transferred under this section at the person's existing level of remuneration or at a higher level of remuneration.
- (3) A person who is temporarily transferred under this section remains an employee of the port SOC concerned (unless and until the person's employment is transferred under another provision of this Part).

16 Transfers to private sector employment

- (1) The Treasurer may, for the purposes of an authorised transaction, by order in writing transfer the employment of an employee of a port SOC or transaction entity (a *transferred employee*) to the employment of an employer in the private sector (the *new employer*).
- (2) The transfer of the employment of an employee under this section requires the consent of the employee unless the employee is a contract employee (in which case the employee's employment can be transferred with or without the employee's consent).
- (3) The employment of a transferred employee with the new employer is to be on the same terms and conditions as applied to the employee as an employee of the relevant port SOC or transaction entity immediately before the transfer date.

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- (4) Those terms and conditions cannot be varied during any employment guarantee period for the transferred employee except by agreement entered into by or on behalf of the transferred employee.
- (5) The employment of a transferred employee with the new employer cannot be terminated by the new employer during any employment guarantee period for the transferred employee, except:
- (a) for serious misconduct, or
 - (b) pursuant to the proper application of reasonable disciplinary procedures, or
 - (c) by agreement with the employee.
- (6) There is an **employment guarantee period** for transferred employees who are permanent or temporary employees, as follows:
- (a) for permanent employees the employment guarantee period is 2 years after the transfer date,
 - (b) for temporary employees the employment guarantee period is the remainder of the employee's current term of employment (as specified in the arrangements under which the employee was engaged as a temporary employee) immediately before the transfer date or the period of 2 years after the transfer date, whichever period ends first.

Note. There is no employment guarantee period for contract employees or casual employees. The employment of a transferred employee who is a contract employee remains governed by the contract of employment.

- (7) In this section:
- casual employee** means an employee whose employment is in a category of employment that is described in or classified under a relevant award as casual employment or who is otherwise engaged as a casual employee.
- contract employee** means an employee whose terms and conditions of employment are provided by an individual contract and not by a relevant award.
- permanent employee** means an employee whose employment is of indefinite duration and who is not a casual employee, temporary employee or contract employee.
- relevant award** means any award, agreement or other industrial instrument (under a law of the State or the Commonwealth) that provides for the terms and conditions of employment of employees.
- temporary employee** means an employee (other than a casual employee or contract employee) whose employment is in a category of employment that is described in or classified under a relevant award as

temporary employment or whose employment is, under the terms of his or her employment, for a limited period.

transfer date means the date on which the employment of a transferred employee is transferred under this section to the new employer.

17 Continuity of entitlements of transferred employees

- (1) On the transfer by order under this Part of an employee's employment from one employer (*the current employer*) to another employer (*the new employer*) the following provisions have effect:
 - (a) the employee is entitled to continue as a contributor, member or employee for the purposes of any superannuation scheme in respect of which he or she was a contributor, member or employee (as an employee of the current employer) immediately before the transfer of employment and remains so entitled subject to any variation to that entitlement made either by agreement or otherwise in accordance with law,
 - (b) the new employer is taken to be an employer for the purposes of any superannuation scheme in respect of which the employee continues as a contributor, member or employee pursuant to an entitlement under this section,
 - (c) the continuity of the employee's contract of employment is taken not to have been broken by the transfer of employment, and service of the employee with the current employer (including service deemed to be service with the current employer) that is continuous service up to the time of transfer is taken for all purposes to be service with the new employer,
 - (d) the employee retains any rights to sick leave, annual leave or long service leave accrued or accruing immediately before the transfer (except accrued leave for which the employee has, on ceasing to be an employee of the current employer, been paid the monetary value in pursuance of any other entitlement of the employee).
- (2) Nothing in the *Long Service Leave Act 1955* prevents payment in connection with the transfer under this Part of the employment of an employee of a port SOC to the employment of an employer in the private sector of the monetary value of long service leave in lieu of an entitlement to that leave accrued as an employee of a port SOC before the transfer of the employee's employment.

18 Payments to employees leaving public sector employment

- (1) The Treasurer or another public sector agency may enter into agreements or other arrangements with respect to the making of transfer payments to employees of a port SOC in connection with the transfer of employment of those employees to employment in the private sector as

a result of a transaction arrangement or as a result of an order under this Part.

- (2) A transfer payment is not to exceed an amount equivalent to 30 weeks of pay at the rate of an employee's base salary (that is, salary less any allowances).
- (3) Without affecting any entitlement to a transfer payment under this section, an employee of a port SOC is not entitled to receive any payment or other benefit (including in the nature of severance pay or redundancy compensation) merely because the employee ceased to be an employee of a public sector agency as a result of a transaction arrangement or as a result of an order under this Part.

Part 5 Arrangements for transfer of assets and functions

19 Vesting orders

The Treasurer may make vesting orders under Schedule 4 for the purposes of an authorised transaction.

20 Severance of fixtures

- (1) The Treasurer may by order in writing for the purposes of an authorised transaction direct that specified fixtures to which this section applies are severed from the land on which they are situated.
- (2) The effect of such an order is that the fixtures concerned are deemed to be severed from the land on which they are situated and may be dealt with as personal property separate from the land for the purposes of an authorised transaction.
- (3) This section applies to the following fixtures:
 - (a) rail infrastructure facilities owned by a port SOC and situated on land owned by a port SOC or another public sector agency,
 - (b) other fixtures designated by the Treasurer by order in writing to be fixtures to which this section applies that are owned by a port SOC and situated on land owned by a port SOC or another public sector agency.
- (4) The severance of a fixture from land under this section does not affect the right of the fixture to be situated on that land and does not affect any right to drain water or sewage from the fixture across and through the land or to use any means of drainage of water or sewage from the fixture across and through the land.
- (5) In this section, *rail infrastructure facilities* includes railway track, associated track structures, over track structures, cuttings, drainage works, track support earthworks and fences, tunnels, bridges, level crossings, service roads, signalling systems, train control systems, communication systems, overhead power supply systems, power and communication cables, and associated works, buildings, plant, machinery and equipment.

21 Grant of relevant authorisations

- (1) The Treasurer may give directions to a public sector agency for or with respect to the grant of any relevant authorisation to a person who becomes or who it is proposed will become the new operator of any ports assets pursuant to an authorised transaction, including directions for or with respect to any of the following:

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- (a) requiring the grant of any such relevant authorisation without the necessity for the making or determination of any application,
 - (b) the displacement or modification of any provision of a relevant law in its application to the grant of any such relevant authorisation,
 - (c) the conditions or endorsements subject to which any such relevant authorisation is to be granted or that are to be attached to any such relevant authorisation.
 - (2) A direction may only be given under this section for the grant of a relevant authorisation that:
 - (a) operates to transfer or replace an existing relevant authorisation that is currently in force, and
 - (b) is subject to terms, conditions or endorsements that are the same (or to substantially the same effect) as those to which that existing relevant authorisation is subject.
 - (3) The Treasurer must consult with a public sector agency before giving a direction to the public sector agency under this section.
 - (4) A public sector agency exercising functions under a relevant law must comply with a direction of the Treasurer under this section.
 - (5) Anything done by a port SOC in compliance with a condition or endorsement of a relevant authorisation in relation to ports assets of which a person is the new operator is taken to have been done by the new operator for the purposes of any corresponding condition or endorsement of a relevant authorisation granted to the new operator pursuant to a direction under this section.
 - (6) A relevant authorisation granted to a port SOC or to the new operator of ports assets may not be suspended or cancelled on the ground of the conversion of the port SOC or new operator to a company or on the ground of any change that has occurred in the officers or shareholders of the company as a result of that conversion or pursuant to a transaction arrangement.
 - (7) In this section:

grant includes issue and transfer.

new operator of ports assets means:

 - (a) a public sector agency to which any ports assets are transferred for the purposes of an authorised transaction, or
 - (b) a person (or the nominee of a person) in whom ports assets are vested, or to whom ports assets are transferred, pursuant to an authorised transaction.
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relevant authorisation means a licence, permit, consent, entitlement, accreditation, exemption or other authorisation under a relevant law.

relevant law means any of the following Acts and any regulations or instruments under those Acts:

Explosives Act 2003

Fisheries Management Act 1994

State Emergency and Rescue Management Act 1989

Water Management Act 2000

Work Health and Safety Act 2011

22 Acquisition of land by Ports Assets Ministerial Holding Corporation

- (1) The Ports Assets Ministerial Holding Corporation may, for the purposes of an authorised transaction, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* that the Corporation determines to be:
 - (a) land on which ports assets of a port SOC were situated on the date of assent to this Act and continue to be situated, or
 - (b) land that on the date of assent to this Act was used or occupied by a port SOC for or in connection with the exercise of any function of the port SOC and that continues to be so used or occupied.
- (2) In the case of land used (but not occupied) by a port SOC for or in connection with the exercise of any function of the port SOC, such as land used for the purposes of access, the power conferred by this section to acquire the land is limited to a power to acquire an interest in the land sufficient to allow that use of the land to continue.
- (3) A public sector agency is not entitled to compensation under the *Land Acquisition (Just Terms Compensation) Act 1991* as the owner of land acquired pursuant to this section.
- (4) Land acquired by the Corporation pursuant to this section is deemed to be an asset of a port SOC for the purposes of this Act and the Corporation is deemed to be a port SOC for the purposes of this Act while it holds the land.

Note. Land acquired pursuant to this section is a ports asset for the purposes of an authorised transaction (whether or not it was a ports asset before it was acquired).

23 Adjustment of port SOC objectives and functions

- (1) The Treasurer may by direction in writing to a port SOC adjust the objectives and functions of the port SOC in such manner as the Treasurer considers appropriate to ensure that the objectives and functions of the port SOC remain appropriate, having regard to:
 - (a) the capacity of the port SOC to give effect to or exercise its existing objectives and functions following the transfer of any of its ports assets for the purposes of an authorised transaction, and
 - (b) the objectives and functions that would be appropriate for any remaining ports assets of the port SOC.
- (2) The objectives and functions of a port SOC may be adjusted under this section by being limited or dispensed with but not by being broadened.

Part 6 Operation of other laws

24 State taxes

(1) In this section:

relevant matter means any of the following:

- (a) any transaction arrangement,
- (b) a vesting of assets, rights or liabilities by operation of Schedule 4 (Vesting of assets, rights and liabilities) and anything certified by the Treasurer as having been done in consequence of such a vesting (for example, the transfer or registration of an interest in land),
- (c) the issue, disposal or purchase of shares or other securities in or issued by a company for the purposes of an authorised transaction,
- (d) any matter connected with the corporate conversion of a port SOC or transaction SOC for the purposes of an authorised transaction,
- (e) such other matters for the purposes of an authorised transaction as may be prescribed by the regulations,
- (f) any transaction occurring within 6 months after completion of an authorised transaction and certified by the Treasurer to be a transaction entered into in connection with the transfer of ports assets to the private sector pursuant to the authorised transaction.

State tax means application or registration fees, duty under the *Duties Act 1997* or any other tax, duty, fee or charge imposed by any Act or law of the State.

- (2) State tax is not payable by a public sector agency in relation to a relevant matter.
- (3) State tax is not payable by a person or body (other than a public sector agency) in relation to a relevant matter to such extent (if any) as the Treasurer may direct by order in writing, either generally or in a particular case.
- (4) An order may be made by the Treasurer under this section before or after the liability to pay the State tax concerned accrues.
- (5) The Treasurer must give a copy of an order under this section to the Chief Commissioner of State Revenue.

25 General relationship of Act with other State legislation

- (1) None of the following provisions operate to prevent, restrict or otherwise limit the carrying out of a transaction arrangement or the exercise of a function for the purposes of an authorised transaction:
 - (a) any provision of the *State Owned Corporations Act 1989*,
 - (b) any provision of the constitution of a statutory SOC or a subsidiary of a statutory SOC.
- (2) In the event of any inconsistency between the provisions of this Act or the regulations and a provision of any other State legislation that is prescribed by the regulations as an inconsistent provision for the purposes of this section, the provisions of this Act or the regulations (as the case may be) prevail to the extent of the inconsistency.
- (3) The requirements of any other Act (whether enacted before or after this Act) for the approval by resolution of either or both Houses of Parliament (or by Act) of any act that constitutes the transfer of ports assets for the purposes of an authorised transaction is satisfied by the enactment of this Act.

26 Public Authorities (Financial Arrangements) Act

The *Public Authorities (Financial Arrangements) Act 1987* does not apply to any transaction arrangement.

27 Release of information by Auditor-General

Section 38 (Secrecy) of the *Public Finance and Audit Act 1983* does not apply to or in respect of a report or communication that the Treasurer authorises the Auditor-General to make to a person for the purposes of an authorised transaction or for the purposes of the audit (before or after the completion of an authorised transaction) of records relating to ports assets transferred pursuant to an authorised transaction.

28 Contracts for sale of land

Section 52A (Contracts for sale of land) of the *Conveyancing Act 1919* does not apply to a contract for the sale of land that is entered into for the purposes of an authorised transaction.

29 Protection of contractual and other obligations

- (1) This section applies to the following:
 - (a) the operation of this Act (including any order under this Act and anything done or omitted to be done under or for the purposes of this Act),

- (b) the transfer of ports assets for the purposes of an authorised transaction,
 - (c) the entering into or performance of obligations under a transaction arrangement by a public sector agency,
 - (d) a disclosure of information by, on behalf of or with the consent of a public sector agency for the purposes of an authorised transaction.
- (2) None of the matters or things to which this section applies are to be regarded as:
- (a) a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities) or as requiring any act to be done under an instrument, or
 - (c) giving rise to any right or remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument, or
 - (d) an event of default under any contract or other instrument, or
 - (e) giving rise to a breach of or an offence against a provision of an Act that prohibits or restricts the disclosure of information, or
 - (f) releasing a surety or other obligee wholly or in part from an obligation.
- (3) This section does not affect the rights and obligations of the parties to a transaction arrangement in respect of the performance of obligations under the transaction arrangement.
- (4) In this section:
- instrument*** means an instrument (other than an instrument made under this Act) or any other document that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order, process or other instrument issued by a court or tribunal.

30 Compensation not payable

- (1) Compensation is not payable by or on behalf of the State:
- (a) because of the enactment or operation of this Act, or for any consequence of that enactment or operation, or
 - (b) because of any statement or conduct relating to the enactment of this Act.

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- (2) This section does not extend to compensation payable under a transaction arrangement to a party to the transaction arrangement in connection with the performance of obligations under the transaction arrangement.
- (3) In this section:
- compensation** includes damages or any other form of monetary compensation.
- conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.
- operation of this Act** includes the operation of any notice or order under this Act and any agreement entered into under or for the purposes of this Act.
- statement** includes a representation of any kind:
- (a) whether made verbally or in writing, and
 - (b) whether negligent, false, misleading or otherwise.
- the State** means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes a public sector agency and an officer, employee or agent of the Crown or a public sector agency.

31 Leases of ports assets

- (1) The provisions of a ports assets lease (or of any agreement or arrangement entered into in connection with such a lease) dealing with the following matters have effect according to their terms despite any law or rule to the contrary:
- (a) the payment of any amount by way of premium under the lease and the retention of any such amount by the lessor or the State,
 - (b) the circumstances or conditions under which the lease may be terminated by the lessor or lessee,
 - (c) the application or operation of section 122, 130 or 133B of the *Conveyancing Act 1919* to or in respect of the lease (or any lease under the lease),
 - (d) the application of a security provided in relation to the lease,
 - (e) the payment of a sum that is in the nature of a penalty,
 - (f) the ownership of, or the vesting or forfeiture of ownership of, any real or personal property on termination of the lease or on the occurrence of some other specified event or other thing,
 - (g) the pre-payment of amounts payable by way of rent under the lease and the retention of any such amounts by the lessor or the State,

- (h) the continuance of the lease despite the occurrence of unintended or unforeseen circumstances,
 - (i) the continuance of the obligation to pay rent despite the occurrence of unintended or unforeseen circumstances,
 - (j) the amount payable in consequence of a breach or early termination of the lease,
 - (k) the liability of the lessor or lessee in relation to the leased assets,
 - (l) the non-refundability of any payment made on account of rent, premium, option fee, outgoings, security deposit or otherwise,
 - (m) the operation of any set-off.
- (2) A ports assets lease may include provision for the removal by the lessee of any fixture severable from the land leased.
- (3) A scheme of arrangement, receivership, winding up or other external administration of a company is to be carried out in a manner that gives effect to the provisions of a lease or agreement referred to in subsection (1).
- (4) A variation of lease that operates to vary the land to which a lease relates can be registered under the *Real Property Act 1900* (despite section 55A (4) of that Act) if the Treasurer certifies that:
- (a) the lease is a ports assets lease, and
 - (b) the variation is for the purpose of including, as land to which that lease relates, land that is the subject of a lease of ports assets entered into after completion of an authorised transaction pursuant to an agreement for lease entered into before completion of the authorised transaction.
- (5) In this section:
- ports assets** includes assets that were ports assets before their transfer to the private sector for the purposes of an authorised transaction.
- ports assets lease** means:
- (a) a lease of ports assets entered into for the purposes of an authorised transaction, or
 - (b) a lease of ports assets that the Treasurer designates by order in writing as a ports assets lease for the purposes of this section.

32 No cargo throughput limits for Port Botany

- (1) A planning control is of no effect to the extent that it would operate to impose a cargo throughput limit for Port Botany.

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- (2) A ***cargo throughput limit*** for Port Botany is any direct or indirect limit or other restriction on the amount of cargo that can be received or handled at or transported from Port Botany and includes (without limitation) the following:
- (a) a limit or other restriction on the number of cargo containers that can be received or handled at or transported from Port Botany,
 - (b) a limit or other restriction on the nature, number or frequency of transport movements to or from Port Botany,
 - (c) a limit of the kind imposed by condition A1.4 (Port Throughput Capacity Limits) of the planning approval for the construction and operation of a new container terminal and associated infrastructure at Port Botany as granted on 13 October 2005.
- (3) The following provisions apply to the operation of this section:
- (a) this section does not apply to a planning control until the planning control has been imposed, so that it limits the effect of the planning control once imposed but does not prevent the planning control from being imposed,
 - (b) this section does not invalidate a planning control or any planning approval that imposes a planning control,
 - (c) this section does not prevent planning approval being granted merely because a planning control to be imposed by the planning approval will be rendered wholly or partially ineffective by this section.
- (4) In this section:
- Planning Act*** means the *Environmental Planning and Assessment Act 1979* and the regulations under that Act.
- planning approval*** means a consent, approval, permission or other authority under the Planning Act and includes any condition of or the terms of any such consent, approval, permission or other authority.
- planning control*** means any requirement or other control imposed (before or after the commencement of this section) by or under:
- (a) the Planning Act, or
 - (b) an environmental planning instrument under the Planning Act, or
 - (c) a planning approval.
- Port Botany*** means land in the local government areas of the City of Botany Bay and the City of Randwick (including land covered by water) leased to the private sector for the purposes of an authorised transaction.

Part 7 Miscellaneous

33 Delegation

The Treasurer may delegate to the Secretary of the Treasury, or to any other officer of the Government Service prescribed by the regulations, any function of the Treasurer under this Act except this power of delegation.

34 Act to bind State and other jurisdictions

- (1) This Act binds the State and, in so far as the legislative power of the Parliament of New South Wales permits, the other States, the Territories and the Commonwealth.
- (2) Without limiting subsection (1), this Act has effect despite any privilege or immunity of the Crown in any of its capacities.
- (3) This Act does not make any State or Territory, the Commonwealth, or the Crown in any of its capacities, liable to be prosecuted for an offence.
- (4) A reference in this section to a State, Territory or the Commonwealth includes a reference to the Government of the State, Territory or Commonwealth.

35 Extraterritorial operation of Act

- (1) It is the intention of the Parliament of New South Wales that the operation of this Act should, as far as possible, include operation in relation to the following:
 - (a) things situated in or outside the territorial limits of the State,
 - (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State,
 - (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State, a Territory, the Commonwealth or a foreign country.
- (2) Without limiting subsection (1), it is the intention of the Parliament of New South Wales that the provisions of this Act have an operation in relation to the things, acts, transactions and matters referred to in that subsection even if the rules of private international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.

36 Construction of Act and instruments so as not to exceed legislative power

- (1) Unless a contrary intention appears, if a provision of this Act or an instrument made under this Act:
- (a) would, apart from this section, have an invalid application, but
 - (b) also has at least one valid application,
- it is the intention of the Parliament of New South Wales that the provision is not to have the invalid application, but is to have every valid application.
- (2) Despite subsection (1), the provision is not to have a particular valid application if:
- (a) apart from this section, it is clear, taking into account the provision's context and the purposes or objects underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the legislative power of the Parliament of New South Wales, or
 - (b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application, or a particular invalid application, of the provision had been within the legislative power of the Parliament of New South Wales.
- (3) Subsection (2) does not limit the cases in which a contrary intention may be taken to appear for the purposes of subsection (1).
- (4) This section is in addition to, and not in derogation of, section 31 of the *Interpretation Act 1987*.
- (5) In this section:
- application** means an application in relation to:
- (a) one or more particular persons, things, matters, places, circumstances or cases, or
 - (b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

invalid application, in relation to a provision, means an application because of which the provision exceeds the legislative power of the Parliament of New South Wales.

valid application, in relation to a provision, means an application which, if it were the provision's only application, would be within the legislative power of the Parliament of New South Wales.

37 Orders

- (1) An order made under a provision of this Act takes effect at the beginning of the day on which it is made, unless the order otherwise provides.
- (2) An order cannot provide for the order to take effect earlier than the beginning of the day on which it is made (but can provide for the order to take effect at a time on the day on which it is made that is earlier than the time at which it is made).
- (3) A document purporting to be an order made under a provision of this Act is, unless the contrary is established, taken to be such an order and to have been properly made.
- (4) A certificate purporting to be signed by the Treasurer or an officer prescribed by the regulations certifying that an order specified or referred to in the certificate is an order made under a specified provision of this Act is admissible in evidence in any legal proceedings and is evidence of the matters certified.
- (5) A provision of another Act that results from an amendment made by this Act and that provides for the making of an order is deemed for the purposes of this section to be a provision of this Act (and the order is deemed to be an order made under a provision of this Act).

38 Service or giving of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on or given to any person may be served or given:
 - (a) in the case of a natural person:
 - (i) by delivering it to the person personally, or
 - (ii) by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
 - (iii) by sending it by facsimile transmission to the facsimile number of the person, or
 - (b) in the case of a body corporate:
 - (i) by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
 - (ii) by sending it by facsimile transmission to the facsimile number of the body corporate.

- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

39 Regulations

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

Schedule 1 Interpretative provisions

1 Definitions

In this Act:

assets means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

associated port land—see section 3.

authorised transaction—see section 3.

completion of an authorised transaction occurs on such date as may be designated by the Treasurer by order in writing as the date of completion of the authorised transaction.

corporate conversion, in relation to a port SOC or a transaction SOC, means the registration of the corporation as a company under the Corporations Act.

Corporations Act means the *Corporations Act 2001* of the Commonwealth.

Corporations legislation means the Corporations legislation to which Part 1.1A of the Corporations Act applies.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

general law means the common law and equity (as modified from time to time by legislation).

lease includes concurrent lease and any subletting (or concurrent subletting).

legislation includes:

- (a) any statute of a legislature (whether enacted or made in Australia or elsewhere), and
- (b) any proclamation, regulation, rule, by-law, order or any other kind of subordinate legislation (however described) made under the authority of a statute (whether enacted or made in Australia or elsewhere).

liabilities means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

modification includes addition, exception, omission or substitution.

Port Botany land—see section 3.

Port Kembla land—see section 3.

port SOC—see section 3.

ports assets—see section 3.

Ports Assets Ministerial Holding Corporation or *the Corporation* means the Ports Assets Ministerial Holding Corporation constituted by this Act.

private sector means any person other than a public sector agency.

Note. A person who is a public sector agency of another jurisdiction is a private sector person for the purposes of this Act.

public sector agency means any of the following:

- (a) the State (including the Crown in right of the State),
- (b) a Minister,
- (c) the Ministerial Holding Corporation constituted by the *State Owned Corporations Act 1989*,
- (d) the Ports Assets Ministerial Holding Corporation,
- (e) a SOC,
- (f) a public authority of the State,
- (g) any other person acting on behalf of the State (or the Crown in right of the State),
- (h) a transaction company, but only while all the shares in the transaction company are held by or on behalf of the State or a SOC or the transaction company is the subsidiary of another transaction company all the shares in which are held by or on behalf of the State or a SOC,
- (i) a wholly owned subsidiary of a public sector agency.

retained assets—see section 3.

rights means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

SOC means a State owned corporation within the meaning of the *State Owned Corporations Act 1989*.

State legislation means any legislation of the State.

the State means the State of New South Wales.

transaction arrangement means a transaction, agreement or other arrangement entered into by or on behalf of a public sector agency for the purposes of an authorised transaction.

transaction company means a company established as a transaction company pursuant to this Act.

transaction entity means a transaction SOC or a transaction company.

transaction SOC means a SOC established as a transaction SOC pursuant to this Act.

transfer of ports assets includes the sale or lease of ports assets and the creation and transfer of any interest in ports assets.

2 Ports assets

In this Act, *ports assets* includes assets, rights and liabilities vested in a public sector agency that were ports assets before their transfer to a public sector agency for the purposes of an authorised transaction. Assets, rights and liabilities cease to be ports assets when they are transferred to the private sector for the purposes of an authorised transaction.

3 Functions for the purposes of an authorised transaction

For the purposes of this Act, any act, matter or thing is done or has effect for the purposes of an authorised transaction if:

- (a) it is done or has effect for the purpose of effecting or facilitating an authorised transaction, or
- (b) it is done or has effect for any purpose that is ancillary or incidental to or consequential on an authorised transaction, or
- (c) it is done or has effect for any purpose connected with the vesting of ports assets in, or the transfer of staff of a port SOC to, a public sector agency at any time after completion of an authorised transaction.

4 Transfer and acquisition of assets, rights and liabilities

- (1) The assets, rights and liabilities of a body corporate include the assets, rights and liabilities of a wholly owned subsidiary of the body corporate and accordingly the following principles apply in the interpretation of this Act:
 - (a) assets, rights and liabilities of a body corporate can be transferred to another person (*the transferee*) by a transfer of shares or any other transaction that results in the body corporate becoming a wholly owned subsidiary of the transferee,
 - (b) assets, rights and liabilities of a body corporate are acquired by (and become assets, rights and liabilities of) a transferee when the body corporate becomes a wholly owned subsidiary of the transferee.
- (2) This clause does not limit the ways in which assets, rights and liabilities can be transferred for the purposes of an authorised transaction and does not prevent the direct transfer of assets, rights and liabilities to a transferee.

5 Employees of port SOC

If a transaction company is established by the conversion of a port SOC into a company, a reference in a provision of this Act to an employee of a port SOC includes a reference to an employee of the transaction company and a reference in the provision to the port SOC is to be read as a reference to the transaction company.

6 Words and expressions defined in Corporations Act

Words and expressions used in this Act that are defined in section 9 of the Corporations Act have the same meanings as in that section, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.

7 When events occur

If this Act provides for an event or other thing to occur on a particular day, that event or thing is taken to occur at the beginning of that day.

8 Notes

Notes included in this Act do not form part of this Act.

Schedule 2 Provisions concerning transaction SOCs

(Section 8)

1 Board of directors

- (1) Each transaction SOC is to have a board of directors.
- (2) The board is to consist of:
 - (a) the chief executive officer, and
 - (b) at least 3 and not more than 5 other directors appointed by the voting shareholders.
- (3) Of the directors appointed under subclause (2) (b), one is (in and by the director's instrument of appointment as director or in and by another instrument executed by the voting shareholders) to be appointed as Chairperson of the Board.
- (4) The board is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the constitution of the transaction SOC.
- (5) The voting shareholders may remove a director, or the chairperson, from office at any time for any or no reason and without notice and, in that event, the office of the director or chairperson is taken to have become vacant for the purposes of Schedule 8 to the *State Owned Corporations Act 1989*.
- (6) Except as provided by this clause, Schedule 8 to the *State Owned Corporations Act 1989* has effect with respect to the constitution and procedure of the board.
- (7) The provisions of section 20J of the *State Owned Corporations Act 1989*, and of clauses 2 (1) and (2), 4 and 7 (1) (d) and (2) of Schedule 8 to that Act, do not apply to a transaction SOC or to the chairperson.
- (8) The provisions of clause 6 of Schedule 8 to the *State Owned Corporations Act 1989* do not apply to the chief executive officer, and the chief executive officer is not entitled to remuneration under that clause, in his or her capacity as a director.

2 Chief executive officer

- (1) The chief executive officer of a transaction SOC is to be appointed by the board after consultation with the voting shareholders.
- (2) The board may remove a person from office as chief executive officer, at any time, for any or no reason and without notice, but only after consultation with the voting shareholders.

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- (3) The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
 - (4) The board may, after consultation with the voting shareholders, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law.
 - (5) The *Public Sector Employment and Management Act 2002* (Chapter 5 included) does not apply to the chief executive officer.
 - (6) Subject to subclause (7), Schedule 9 to the *State Owned Corporations Act 1989* has effect with respect to the chief executive officer.
 - (7) The provisions of section 20K of the *State Owned Corporations Act 1989*, and of clauses 2, 3 and 6 of Schedule 9 to that Act, do not apply to the chief executive officer.

3 Acting chief executive officer

- (1) The board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer.
- (2) The board may remove a person from office as acting chief executive officer, at any time, for any or no reason and without notice.
- (3) A person, while acting in the office of chief executive officer:
 - (a) has all the functions of the chief executive officer and is taken to be the chief executive officer, and
 - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
- (4) For the purposes of this clause, a vacancy in the office of chief executive officer is regarded as an absence from office.
- (5) Clause 5 of Schedule 9 to the *State Owned Corporations Act 1989* does not apply to an acting chief executive officer of a transaction SOC.

4 Dividends

- (1) The voting shareholders of a transaction SOC, in consultation with the board, are to determine the corporation's share dividends scheme.
- (2) The dividends to be paid by a transaction SOC are to be declared by the board in accordance with the share dividends scheme so determined.
- (3) The provisions of section 20S (1) of the *State Owned Corporations Act 1989* do not apply to a transaction SOC.

5 Supply of information to portfolio Minister

The provisions of section 29 (2) of the *State Owned Corporations Act 1989* do not apply to a transaction SOC.

Schedule 3 Corporate conversion of port SOCs and transaction SOCs

(Section 9)

1 Direction for corporate conversion of port SOCs and transaction SOCs

- (1) The Treasurer may direct by order in writing (*a corporate conversion direction*) that a port SOC or a transaction SOC be converted into a company limited by shares of a specified type.
- (2) A port SOC cannot be the subject of a corporate conversion direction unless it is a port SOC on the date of assent to this Act or is a transaction SOC.

2 Application for conversion to company

- (1) A port SOC to which a corporate conversion direction has been given is authorised to apply to be registered under Part 5B.1 of the Corporations Act as a company limited by shares of the type specified in the direction.
- (2) That application can only be made if the Treasurer has issued a certificate to the corporation that certifies that the Treasurer is satisfied that the provisions of this Act have been complied with concerning the transfer of its incorporation to the Corporations Act.
- (3) A certificate issued by the Treasurer for the purposes of this clause:
 - (a) cannot be challenged, reviewed or called into question in proceedings before any court or tribunal, and
 - (b) is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the transfer of the incorporation of the corporation to the Corporations Act.

3 Effect of conversion

- (1) The following provisions are taken to have had effect immediately before a port SOC to which a corporate conversion direction has been given is registered as a company under the Corporations Act:
 - (a) the corporation ceases to be a statutory State owned corporation for the purposes of the *State Owned Corporations Act 1989* or any other State legislation,
 - (b) the corporation ceases to be a Port Corporation under the *Ports and Maritime Administration Act 1995* unless the regulations provide otherwise,

- (c) the voting shareholders (within the meaning of the *State Owned Corporations Act 1989*) of the corporation cease to be members of the corporation,
 - (d) the board of directors of the corporation is dissolved and each member (including any acting member) of the board ceases to hold office as such,
 - (e) any person who holds a statutory office of the corporation ceases to hold that office,
 - (f) any person who ceases to be a member of the corporation or to hold an office because of the operation of this subclause is not entitled to any compensation for the loss of that membership or office.
- (2) Nothing in this clause prevents any person from becoming an officer of the company into which the corporation is being converted in accordance with its constitution and the provisions of the Corporations Act.
- (3) A port SOC to which a corporate conversion direction has been given becomes a transaction company for the purposes of this Act only when it is registered as a company under the Corporations Act.

Schedule 4 Vesting of assets, rights and liabilities

(Section 19)

1 Definitions

In this Schedule:

transferee means the person or body in whom any assets, rights or liabilities are vested by a vesting order.

transferor means the person or body from whom any assets, rights or liabilities are divested by a vesting order.

vesting order means a vesting order under this Schedule.

2 Making of vesting order

The Treasurer may, by order in writing (*a vesting order*), vest assets, rights and liabilities comprising ports assets in a person specified in the order as the transferee.

3 Vesting of assets, rights and liabilities in transferee

- (1) When any assets, rights or liabilities are vested by a vesting order, the following provisions have effect (subject to the vesting order):
 - (a) the assets vest in the transferee by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
 - (b) the rights and liabilities become, by virtue of this clause, the rights and liabilities of the transferee,
 - (c) all proceedings relating to the assets, rights or liabilities pending by or against the transferor are taken to be proceedings pending by or against the transferee,
 - (d) the transferee has all the entitlements and obligations of the transferor in relation to the assets, rights and liabilities that the transferor would have had but for the order, whether or not those entitlements and obligations were actual or potential at the time the order took effect,
 - (e) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities by, to or in respect of the transferor is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
 - (f) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets or

liabilities but subject to the regulations) to be read as, or as including, a reference to the transferee.

- (2) No attornment to the transferee by a lessee from the transferor is required.

4 Terms and conditions of vesting

A vesting order may be made on such terms and conditions as are specified in the order.

5 Consideration for vesting

A vesting order may specify the consideration for which a vesting to which it applies is made and the value or values at which assets, rights or liabilities are vested.

6 Vesting of interests in land

- (1) A vesting order may vest an interest in respect of land vested in the transferor without vesting the whole of the interests of the transferor in that land.
- (2) If the interest vested is not a separate interest, the order operates to create the interest vested in such terms as are specified in the order.
- (3) This clause does not limit any other provision of this Schedule.

7 Confirmation of vesting

- (1) The Treasurer may by order in writing confirm a vesting of particular assets, rights or liabilities by operation of this Schedule.
- (2) Such an order is evidence of that vesting.

8 Determinations by Treasurer

For the purposes of the making of a vesting order, the Treasurer may determine whether or not particular assets, rights or liabilities comprise ports assets, and such a determination is conclusive as to the matters determined.

9 Certification to registration authorities

- (1) In this clause:
registration authority means a person or body that has functions under any law in connection with the keeping of a register in respect of assets, rights or liabilities.
- (2) A public sector agency that is the transferee or transferor under a vesting order may lodge with a registration authority a certificate certifying as to such information as may reasonably be required by the registration

authority to enable the registration authority to exercise any function of the authority arising in connection with the vesting of any asset, right or liability pursuant to the vesting order.

- (3) Such a certificate is to be accepted and acted upon by the registration authority and, despite any other law, the registration authority is not entitled to require that the information concerned be provided to it in any particular form or in any particular manner.
- (4) No fee or charge is payable by the transferee to a registration authority for or in respect of the exercise of any function by the registration authority in connection with the vesting of an asset, right or liability by a vesting order.
- (5) A document purporting to be a certificate given under this clause is, unless the contrary is established, taken to be such a certificate and to have been properly given.

10 Public sector accounting policies

The Treasurer may give directions to public sector agencies for or with respect to accounting policies to be applied by public sector agencies in connection with the transfer between public sector agencies of assets, rights and liabilities comprising ports assets for the purposes of an authorised transaction (in place of public sector accounting policies that would otherwise be applicable in respect of any such transfer).

Schedule 5 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than a public sector agency), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than a public sector agency) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Change of name of Port Corporation

The Governor may, by regulation, change the name of the Port Kembla Port Corporation or the Sydney Ports Corporation.

3 Dissolution of Port Corporations

- (1) The Governor may, by proclamation, dissolve the Port Kembla Port Corporation or the Sydney Ports Corporation.
- (2) On the day on which a proclamation under this clause takes effect:
 - (a) the Port Corporation concerned is dissolved, and
 - (b) the *State Owned Corporations Act 1989* is amended by omitting the name of that Port Corporation from Schedule 5.

4 Reference to dissolved or converted port SOC

The regulations may provide that a reference in a specified provision of an Act to a port SOC that has been dissolved or converted into a company is to be read as a reference to a specified public sector agency.

Schedule 6 Amendment of Acts and regulations

6.1 Fire Brigades Act 1989 No 192

Section 20A Hazardous material incidents outside area to which Act applies

Insert at the end of the definition of *port authority* in section 20A (4):

, or

- (c) the port operator of a private port under the *Ports and Maritime Administration Act 1995*.

6.2 Marine Safety Act 1998 No 121

Section 96 Appointment of authorised officers (other than harbour masters and police officers)

Insert at the end of section 96 (1):

- (f) an officer, employee or agent of the port operator of a private port under the *Ports and Maritime Administration Act 1995*.

6.3 Ports and Maritime Administration Act 1995 No 13

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

lease includes concurrent lease and any subletting (or concurrent subletting).

port charge means a charge imposed under Part 5.

port operator:

- (a) of a private port means the person declared to be the port operator of the private port by the Minister by order in writing, or
- (b) of any other port means the port corporation that manages and operates the port facilities and services of the port concerned.

private port—means the ports of Botany Bay and Port Kembla.

[2] Section 10B Regulations to promote competition and productivity at ports

Insert after section 10B (1):

- (1A) The object of this section is to promote the economically efficient operation of, use of and investment in land-based port facilities and port-related supply chain facilities.

[3] Section 10B (2A) and (2B)

Insert after section 10B (2):

- (2A) A regulation may not be made under this section unless the Minister has certified that the Minister is satisfied that:
- (a) the regulation will promote the object of this section, and
 - (b) the regulation will not operate to constrain or otherwise regulate the exercise of the port operator functions of the port operator of a private port.
- (2B) The *port operator functions* of the port operator of a private port are:
- (a) the fixing and collection of port charges under Part 5, and
 - (b) the fixing and collection of charges (for example, rent) under a lease or licence, and
 - (c) any other function of the port operator as the lessor or licensor under a lease or licence.

[4] Section 27 Delegation of functions by Minister

Insert “(or a person seconded to the staff)” after “member of the staff” wherever occurring in section 27 (3) (a) and (b).

[5] Part 3A

Insert after Part 3:

Part 3A Private ports

Division 1 Preliminary

35 Application

This Part applies only to and in respect of a private port.

36 Definitions

In this Part:

authorised officer has the same meaning as in the *Marine Safety Act 1998*.

port operator directions means port operator directions given under Division 2.

Division 2 Regulation of activities—port operator directions

37 Directions to maintain or improve safety and security

- (1) The port operator of a private port may, for the purpose of maintaining or improving safety and security at the port, give directions (referred to in this Division as *port operator directions*) that regulate any of the following activities in the landside port precinct at the port:
 - (a) the driving, stopping and parking of vehicles,
 - (b) the movement, handling or storage of goods,
 - (c) any activity that may pose a risk to safety or security at the port.
- (2) The power to regulate an activity includes the power to prohibit the activity.
- (3) A port operator direction may be of general application or may be limited in its application to specified persons or a specified class of persons.
- (4) In this section:

landside port precinct at a port means:

 - (a) land at the port that is not covered by water and that is the subject of a relevant port lease, and
 - (b) any wharf or other structure built at the port on or over land covered by water that is adjacent to land referred to in paragraph (a), and
 - (c) land leased to the port operator that is contiguous with land referred to in paragraph (a).

relevant port lease means:

 - (a) for Botany Bay— a lease to the port operator of land in the Cities of Botany Bay and Randwick that comprised ports assets under the *Ports Assets (Authorised Transactions) Act 2012* before being leased to the private sector for the purposes of an authorised transaction under that Act, or

-
- (b) for Port Kembla—a lease to the port operator of land at Port Kembla that comprised ports assets under the *Ports Assets (Authorised Transactions) Act 2012* before being leased to the private sector for the purposes of an authorised transaction under that Act.
 - (5) Land is **contiguous** with other land if it adjoins the other land (or would adjoin the other land were it not separated from the other land by a road, rail corridor or easement) or it is in close proximity to the other land.
 - (6) A certificate issued by the Minister or by the port operator of a private port certifying that specified land is or is not part of the landside port precinct at a port is evidence of the matter certified.

38 How port operator directions are given

- (1) A port operator direction may be given in any of the following ways:
 - (a) by notice displayed in the area at the port where the direction applies,
 - (b) by notice published on the port operator's website,
 - (c) by notice served on the person or persons to whom the direction applies.
- (2) A port operator direction given by notice published on the port operator's website is of no effect until a copy of the notice has been published in the Gazette.
- (3) Before a port operator direction is given, not less than 2 weeks advance notice of the proposed direction must be given:
 - (a) to the harbour master for the port, and
 - (b) to the Minister administering Part 11 (Special requirements relating to ports) of the *Dangerous Goods (General) Regulation 1999* if the direction relates to dangerous goods to which that Part applies.
- (4) Advance notice of a proposed port operator direction is sufficiently given to a harbour master or the Minister by being delivered or sent by post to the office of the harbour master or the Minister, as appropriate.
- (5) Advance notice of a proposed port operator direction is not required if the direction is given in an emergency or is necessary to avert an imminent threat of death or serious injury to persons or serious damage to property. In such a case, notice of the work

being undertaken must be given as soon as reasonably practicable in the circumstances.

39 Enforcement of port operator directions

- (1) Port operator directions must be complied with (except to the extent that compliance would result in the contravention of a requirement imposed by or under an Act).
- (2) The port operator may enforce compliance with a port operator direction in any of the following ways:
 - (a) by removing from the port any person who is contravening the direction,
 - (b) by removing from the port or moving within the port any vehicle that is stopped or parked in contravention of the direction,
 - (c) by removing from the port or moving within the port any goods stored in contravention of the direction,
 - (d) by carrying out any work at the port that a person has failed to carry out in contravention of the direction or that is reasonably required to be carried out to remedy a contravention of the direction.
- (3) The power to remove or move a vehicle or goods from or within the port includes the power to place the vehicle or goods in secure storage pending return of the vehicle or goods to their owner.
- (4) The port operator is entitled to recover as a debt the reasonable costs incurred by the port operator in enforcing compliance with a port operator direction. Those costs are recoverable from the person whose contravention of the direction resulted in those costs being incurred.
- (5) A certificate issued by the port operator certifying as to the reasonable costs incurred by the port operator in enforcing compliance with a port operator direction is evidence of the matters certified.
- (6) Anything done by or on behalf of a port operator reasonably and in good faith to enforce compliance with a port operator direction as permitted by this Division does not subject the port operator or any other person to any action, liability, claim or demand.

40 Advance notice of proposed work

- (1) The port operator is not authorised to enforce compliance with a port operator direction by carrying out work that a person has failed to carry out in contravention of the direction or that is

reasonably required to be carried out to remedy a contravention by a person of the direction unless the port operator has given the person advance notice of the proposed work.

- (2) Advance notice of proposed work must be given no less than 7 days before the work commences, must be given in writing and must give details of the alleged contravention concerned.
- (3) Advance notice of proposed work is not required in an emergency or where the proposed work is necessary to avert an imminent threat of death or serious injury to persons or serious damage to property.

40A Power of entry

The port operator may enter any land or premises at the port at any time for the purpose of:

- (a) ascertaining whether port operator directions are being complied with or have been contravened, or
- (b) doing anything that the port operator is authorised to do to enforce compliance with a port operator direction.

40B Functions exercisable by authorised officers

- (1) The functions of a port operator under this Division can be exercised on behalf of the port operator by an authorised officer who is an officer, employee or agent of the port operator.
- (2) Accordingly, a reference in this section to a port operator direction includes such a direction given by an authorised officer on behalf of the port operator.
- (3) An authorised officer who enters land or premises under the authority of this Division may be accompanied by any person believed by the authorised officer to be capable of providing assistance in the exercise of the authorised officer's functions under this Division.
- (4) An authorised officer may request the assistance of any police officer if the authorised officer reasonably believes that the exercise of the authorised officer's functions under this Division will be obstructed or otherwise interfered with.

40C Obstruction of authorised officer

A person must not obstruct or otherwise interfere with an authorised officer in the exercise of any function of the authorised officer under this Division.

Maximum penalty: 50 penalty units.

40D Monitoring of port operator directions

- (1) The port operator of a private port must within 3 months after the end of each 6 month period ending on 30 June or 31 December in a year (beginning with the year 2013) provide details to the Minister of such of the following matters (*reportable matters*) as occurred in the period concerned:
 - (a) the giving of a port operator direction by the port operator,
 - (b) any port operator direction given by the port operator ceasing to have effect,
 - (c) any contravention of which the port operator is aware of a port operator direction given by the port operator,
 - (d) any exercise by the port operator of the power under section 40A to enter land or premises,
 - (e) any action taken by the port operator to enforce compliance with a port operator direction (being action authorised to be taken under this Part).
- (2) The port operator must also provide details of reportable matters to the Minister as and when directed to do so by the Minister by notice in writing to the port operator. The notice must allow not less than 21 days for compliance with the direction.
- (3) Information required to be provided by or under this section must be provided in such manner and form as the Minister may from time to time direct by notice in writing to the port operator.
- (4) The Minister may from time to time publish reports and statements, based on information provided to the Minister under this section about reportable matters, subject to the following requirements:
 - (a) any such report or statement must not include information that identifies a person (or is likely to lead to the identification of a person) as a person who has contravened a port operator direction,
 - (b) the Minister must provide the port operator with a copy of the proposed report or statement at least 14 days before it is published.
- (5) No liability (including liability in defamation) is incurred for publishing in good faith a report or statement under this section or a fair report or summary of such a report or statement.

Division 3 Information gathering by port operators

40E Power to require information to be provided

- (1) The port operator of a private port may by direction in writing (an *information direction*) require any of the following persons to provide relevant information to the port operator:
 - (a) the master of any ship that berths at the port or adjacent port facilities,
 - (b) a shipping agent for goods shipped to, from or within the port or adjacent port facilities,
 - (c) a consignor or consignee of goods shipped to, from or within the port or adjacent port facilities,
 - (d) an operator of stevedoring or other facilities at the port or adjacent port facilities.
- (2) Information is *relevant information* if it is information that the port operator reasonably requires for any of the following allowable purposes:
 - (a) monitoring compliance with port operator directions,
 - (b) determining liability for and the amount of, and facilitating the collection of, port charges,
 - (c) compiling statistics that the port operator is authorised or required to compile,
 - (d) co-ordinating communication at the port,
 - (e) any purpose prescribed by the regulations in connection with the operation and management of the port.
- (3) An information direction must allow a reasonable period of not less than 14 days for compliance with the direction unless the direction is given in response to an emergency or to avert an imminent threat of death or serious injury to persons or serious damage to property (in which case compliance is required as soon as reasonably practicable).
- (4) In this section, *adjacent port facilities* means any wharf adjacent to the waters of a private port.

40F Use and disclosure of information collected

A port operator is authorised to use and disclose information provided to the port operator in compliance with an information direction for any allowable purpose for which the port operator is authorised to require the information.

40G Compliance with information direction

- (1) A person must not without reasonable excuse fail to comply with an information direction given to the person.
Maximum penalty: 500 penalty units in the case of a corporation and 100 penalty units in any other case.
- (2) A person must not in purported compliance with an information direction given to the person provide information that the person knows is false or misleading in a material particular.
Maximum penalty: 500 penalty units in the case of a corporation and 100 penalty units in any other case.
- (3) Compliance with an information direction is required even if compliance would breach a duty of confidentiality. A duty of confidentiality is not a reasonable excuse for failure to comply with an information direction.
- (4) The provision of information that would otherwise constitute a breach of a duty of confidentiality does not constitute such a breach if the information is provided in compliance with an information direction.

[6] Section 47 Definitions generally

Insert in alphabetical order in section 47 (1):

appropriate public agency for a port means the Minister or a port corporation designated by the Minister by order in writing as the appropriate public agency for the port.

[7] Section 47 (1), definition of “relevant port authority”

Insert after paragraph (a) of the definition:

- (a1) in relation to a navigation service charge for Port Kembla—each of the port operator of Port Kembla and the appropriate public agency for Port Kembla, or

[8] Section 47 (1), definition of “relevant port authority”

Insert after paragraph (e) of the definition:

- (e1) in relation to site occupation and wharfage charges for sites at a private port—each of the port operator of the port and the appropriate public agency for the port, or

[9] Section 47 (1), definition of “relevant port authority”

Insert at the end of paragraph (f) of the definition:

, or

- (g) in relation to port infrastructure charges for a private port—each of the port operator of the port and the appropriate public agency for the port, or
- (h) in relation to port infrastructure charges for any other port—the appropriate public agency for the port.

[10] Section 47 (2) and (2A)

Insert after section 47 (1):

- (2) A reference in this Part to anything owned or operated by the Minister includes a reference to anything owned or operated by the Authority.
- (2A) If the relevant port authority in relation to a charge is each of the port operator of a private port and the appropriate public agency for the port, the port charge can be fixed and collected by either or both of the port operator and the appropriate public agency.

[11] Section 51 Fixing of navigation service charges

Omit “with the approval of the Minister and” from section 51 (2).

[12] Section 54 Fixing of pilotage charges

Omit “with the approval of the Minister and” from section 54 (2).

[13] Section 58 Application of Division

Omit “sites owned or operated by a Port Corporation, the Minister or the Authority”.

Insert instead “sites owned or operated by a Port Corporation or the Minister, or leased to the port operator of a private port”.

[14] Section 59

Omit the section. Insert instead:

59 Meaning of “site”

- (1) For the purposes of this Division, a *site* is:
 - (a) an area designated by the Minister under this Division and defined on a map kept at the office of the relevant port authority, or

- (b) in the case of a site at a private port—an area designated under this Division by the relevant port authority and defined on a map kept at the office of the relevant port authority.
- (2) An area cannot be designated as a site unless it is owned or operated by, or leased to, a relevant port authority and it consists of:
- (a) an area of water surrounding or adjacent to a wharf, buoy or dolphin, and
 - (b) in the case of a wharf or a dolphin—the whole or part of the area of the wharf or dolphin.

The designated site includes any stratum of the air space above, or of the land or water below, an area so designated.

- (3) In this section, *wharf* includes any land adjacent to it.
- (4) For the purposes of this section, an area of water is deemed to be owned or operated by the relevant port authority if the bed of the water is owned or leased by the State or the Authority and:
- (a) the area surrounds or is adjacent to a wharf, buoy or dolphin owned or operated by, or leased to, the relevant port authority, or
 - (b) the area is burdened by an easement that benefits an area of land owned or operated by, or leased to, the relevant port authority, or
 - (c) the area surrounds or is adjacent to an area referred to in paragraph (b), or
 - (d) the Minister approves of that area of water being included in a site operated by the relevant port authority.
- (5) The relevant port authority is to keep at its office a copy of a map defining each site it owns, operates or leases.
- (6) A map or a copy of a map referred to in this section may be inspected, without charge, by any person during business hours at the office at which it is kept.
- (7) For the purposes of any legal proceedings, it is to be presumed (unless the contrary is established) that an area has been duly designated as a site under this Division if the area is defined as such on a map kept at the office of the Minister or (in the case of a site at a private port) at the office of the port operator of the private port.

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- (8) An area that, immediately before the repeal of the *Marine Port Charges Act 1989*, was a site within the meaning of that Act and is owned or operated by a relevant port authority is (subject to this section) a site for the purposes of this Division.
- (9) An area at a private port that was a site immediately before the substitution of this section by the *Ports Assets (Authorised Transactions) Act 2012* is deemed to be a site for the purposes of this Division.

[15] Section 60 Site occupation charge

Insert “, unless the site is a site at a private port” after “lessor” in section 60 (4).

[16] Section 62 Fixing of charges under this Division

Omit section 62 (2).

[17] Section 64 Application of Division

Omit “or the Authority”.

[18] Part 5, Division 6A

Insert after Division 6 of Part 5:

Division 6A Port infrastructure charges

66A Application of Division

- (1) This Division applies to the following persons (referred to in this Division as *port users*):
- (a) the owners of cargo loaded or unloaded in the course of stevedoring operations at a designated port,
 - (b) the owners of vessels that berth at a wharf, buoy or dolphin at a designated port,
 - (c) persons liable to pay a site occupation charge at a designated port,
 - (d) persons who operate road or rail cargo transport services as part of the port-related supply chain.
- (2) Unless the regulations otherwise provide, owners of the following vessels are not *port users* for the purposes of this Division:
- (a) vessels owned or operated by the State or its agents,
 - (b) vessels owned or operated by the Commonwealth or its agents,

- (c) police or emergency services vehicles,
- (d) fishing vessels other than those used for commercial purposes,
- (e) recreational or pleasure vessels including sailing craft and personal watercraft, other than those used for commercial purposes.

66B Port infrastructure charges

Port infrastructure charges are payable by port users to fund investment (and return on investment) in *port infrastructure projects*, being the acquisition or development of land or the provision of services and facilities by the port operator, either:

- (a) at the port in connection with the operation of the port, or
- (b) outside the port in connection with the transport of cargo to or from the port or the storage, handling or distribution of cargo transported to or from the port.

66C Fixing of port infrastructure charges

- (1) The relevant port authority may fix port infrastructure charges.
- (2) Different charges may be fixed in respect of different port users, or according to such other factors as the relevant port authority thinks fit.

[19] Section 67 Agreements in respect of charges

Omit “, with the approval of the Minister,” from section 67 (1).

[20] Section 74 Waiver or refund of charges

Omit “, with the approval of the Minister,”.

[21] Part 6

Insert after Part 5:

Part 6 Price monitoring scheme

77 Scheme objective

The objective of the price monitoring scheme established by this Part (the *scheme objective*) is to promote the economically efficient operation of, use of and investment in major port facilities in the State by monitoring the prices port operators charge users of those facilities, so as to promote a competitive commercial environment in port operations.

78 Ports to which Part applies

This Part applies to and in respect of the following ports:

- (a) Botany Bay,
- (b) Sydney Harbour,
- (c) Port Kembla,
- (d) Port of Newcastle,
- (e) Port of Eden,
- (f) Port of Yamba.

79 Publication of charges

- (1) The port operator of a port to which this Part applies must publish a list of the following charges (*service charges*):
 - (a) the port charges charged by the port operator, and
 - (b) the standard rate of other charges charged by the port operator for or in respect of the use of facilities at the port.
- (2) Rent and any other amount payable under a lease is not a service charge for the purposes of this Part.
- (3) The list of service charges must be published on the port operator's website in a prominent position in a publicly accessible part of the website.
- (4) Charges that are the subject of an agreement under section 67 (Agreements in respect of charges) are not service charges for the purposes of this Part.

80 Notice of increase in service charges

- (1) The port operator of a port must give notice of any proposed change in the port operator's service charges (whether the change is a variation of an existing charge, the imposition of a new charge or the removal of an existing charge).
- (2) The notice of a proposed change in service charges must be given in the following manner and at the following times:
 - (a) notice of the change must be given to the Minister in writing at least 20 business days before the change is proposed to be made,
 - (b) notice of the change must be published on the port operator's website in a prominent position in a publicly accessible part of the website at least 10 business days before the change is proposed to be made.

- (3) The notice of a proposed change in a service charge must separately identify each charge to which the change relates and provide the following information about the charge:
 - (a) the basis on which the amount of the charge is calculated including (in the case of a charge payable on a unit basis such as a unit of vessel cargo capacity or vessel gross tonnage) the unit on which the charge is imposed,
 - (b) the reason for the change (in the case of a variation of an existing charge),
 - (c) if the change is the imposition of a new charge—the information required for a new charge under this section.
- (4) The information required for a new charge (other than a port infrastructure charge under Division 6A of Part 5) is as follows:
 - (a) the purpose and function of the charge,
 - (b) the basis on which the amount of the charge has been calculated,
 - (c) the persons who will be required to pay the charge.
- (5) The information required for a new charge that is a port infrastructure charge under Division 6A of Part 5 is as follows:
 - (a) details of the port infrastructure project to which the proposed charge relates,
 - (b) the basis on which the amount of the charge has been calculated,
 - (c) the persons who will be required to pay the charge,
 - (d) the period of time for which the charge is proposed to be imposed.

81 Annual reporting of charges to the Minister

The port operator of a port to which this Part applies must before 1 October 2013 and before 1 October in each subsequent year provide the following information to the Minister in respect of the financial year ending on the previous 30 June:

- (a) a list of the types of service charges charged by the port operator during that financial year,
- (b) the revenue received by the operator during the financial year from service charges (showing the amount of revenue for each separate charge),
- (c) in the case of a service charge payable on the basis of the number of chargeable units (such as a unit of vessel cargo

capacity or vessel gross tonnage)—the total number of units charged for or in respect of each separate charge,

- (d) if the amount of a charge was varied during the financial year—the amount of the variation and the reason for it.

82 Power of Minister to require information

- (1) The Minister may by direction in writing given to the port operator of a port to which this Part applies require the port operator to provide the Minister with specified information about any of the following in respect of service charges charged or proposed to be charged by the port operator:
- (a) the amount of a particular charge,
 - (b) the purpose and function of a particular charge,
 - (c) the administration of a particular charge.
- (2) A direction under this section is not to be given unless the Minister is satisfied that:
- (a) provision of the information is reasonably necessary for achieving the scheme objective, and
 - (b) the likely cost to the port operator of complying with the direction is not disproportionate to the benefit that provision of the information will provide for achieving the scheme objective.
- (3) A direction under this section must be in writing and specify:
- (a) the manner and form in which the required information is to be provided, and
 - (b) a reasonable time within which the required information is to be provided.
- (4) Compliance with a direction under this section is required even if compliance would breach a duty of confidentiality.
- (5) The provision of information that would otherwise constitute a breach of a duty of confidentiality does not constitute such a breach if the information is provided in compliance with a direction under this section.

83 Confidential information

- (1) A port operator may, when providing information pursuant to a direction of the Minister under this Part, claim that the information is confidential if there are sufficient grounds for such a claim.

- (2) There are sufficient grounds for a claim that information is confidential only if it appears that disclosure of the information:
 - (a) could adversely affect the competitive position of the port operator or any other person, or
 - (b) would result in the port operator being in breach of a duty of confidentiality owed to another person.
- (3) A claim that information is confidential must be accompanied by a detailed statement of the reasons in support of the claim and is not duly made unless accompanied by such a statement.
- (4) The Minister must take all reasonable steps to prevent the disclosure of information that is claimed to be confidential unless the disclosure is authorised by this section.
- (5) The disclosure of information that is claimed to be confidential is authorised if:
 - (a) the disclosure is for the purposes of the administration of this Act to a person engaged in the administration of this Act, or
 - (b) the disclosure is made with the consent of the person who provided the information and (if disclosure could adversely affect the competitive position of another person) that other person, or
 - (c) the disclosure is authorised or required under any other Act or law, or
 - (d) the disclosure is authorised or required by a court, or
 - (e) the disclosure is, in the opinion of the Minister, in the public interest and the Minister is of the opinion that the public benefit in disclosing the information outweighs any detriment that might be suffered by a person as a result of the disclosure.
- (6) This section does not prevent the disclosure of information that is claimed to be confidential if the Minister is of the opinion that there are insufficient grounds for the claim and the Minister has notified the Minister's opinion to the person who provided the information.
- (7) A disclosure of information authorised by this section does not constitute a breach of any duty of confidentiality (either by the person making the disclosure or by the port operator).

84 Reports and statements by Minister

- (1) The Minister may from time to time publish reports and statements, based on information provided or obtained under this Part, about the service charges charged at any one or more of the ports to which this Part applies.
- (2) No liability (including liability in defamation) is incurred for publishing in good faith a report or statement under this section or a fair report or summary of such a report or statement.

85 Part extends to port corporation as appropriate public agency

A reference in this Part to the port operator of a port includes a reference to a port corporation designated under Part 5 as the appropriate public agency for the port.

[22] Schedule 5 Savings, transitional and other provisions

Insert after Part 4:

Part 5 Provisions consequent on Ports Assets (Authorised Transactions) Act 2012

22 Definitions

In this Part:

relevant port corporation for a port means the port corporation that manages and operates the port facilities and services of the port.

settlement day means the day designated by the Treasurer by order in writing as settlement day for the purposes of this Part (and for that purpose different settlement days may be designated for Botany Bay and Port Kembla).

23 Provisions delayed until operational commencement

- (1) The operation of the following provisions is delayed until operational commencement:
 - (a) Part 6 (Price monitoring scheme) of this Act,
 - (b) the amendments made to sections 51, 54, 62, 67 and 74 by the *Ports Assets (Authorised Transactions) Act 2012* (to remove the requirement for the approval of the Minister under those sections),

- (c) such other amendments made to this Act by the *Ports Assets (Authorised Transactions) Act 2012* as the Treasurer may direct by order in writing made before operational commencement.
- (2) For the purposes of this clause, ***operational commencement*** is the beginning of 1 January 2013 or the beginning of such later day as the Treasurer may by order in writing made before 1 January 2013 designate as operational commencement.

24 Operation of Parts 3A, 5 and 6

- (1) Until settlement day, Part 3A (Private ports), Part 5 (Port charges) and Part 6 (Price monitoring scheme) of this Act operate in respect of a private port as if the relevant port corporation for the port were the port operator of the port.
- (2) Accordingly, the relevant port corporation has and may exercise all the functions of the port operator of a private port under those Parts until settlement day.
- (3) Section 12 (Exercise of port SOC functions through subsidiaries) of the *Ports Assets (Authorised Transactions) Act 2012* extends to any such function.
- (4) For the purposes of the operation of Part 3A of this Act under this clause, the ***landside port precinct*** at a port is:
 - (a) land at the port that is not covered by water and that comprises ports assets under the *Ports Assets (Authorised Transactions) Act 2012*, and
 - (b) any wharf or other structure built at the port on or over land covered by water that is adjacent to land referred to in paragraph (a).
- (5) For the purposes of the operation of Part 5 of this Act under this clause, a site at a port leased to a subsidiary of the relevant port corporation for the port is deemed to be leased to that port corporation.

6.4 Ports and Maritime Administration Regulation 2012

[1] Clause 5 Definitions

Insert at the end of the definition of *officer of a relevant port authority* in clause 5 (1):

, or

- (c) if the relevant port authority is the port operator of a private port—an officer, employee or agent of the port operator appointed by the port operator as an officer for the purposes of this Part.

[2] Clause 5 (1A)

Insert after clause 5 (1):

- (1A) If there is more than one relevant port authority in relation to port charges at a port, a requirement of this Part to furnish particulars or give a manifest to the relevant port authority in connection with the charge is a requirement to furnish the particulars or give the manifest to each of those relevant port authorities.

[3] Clause 21A

Insert after clause 21:

21A Requirement for industry consultation before setting mandatory standards

- (1) Before setting or amending a mandatory standard, the Minister is to cause the proposed standard or amendment to be the subject of appropriate industry consultation.
- (2) Appropriate industry consultation is such consultation as the Minister considers appropriate with representative bodies and organisations of people likely to be affected by the proposed standard or amendment.
- (3) The consultation must provide the bodies and organisations that are consulted with an adequate opportunity to comment on the proposed standard or amendment.

[4] Clause 39A

Insert after clause 39:

39A Confidentiality of information

- (1) A person may, when providing information pursuant to a requirement imposed by or under this Part, claim that the

information is confidential if there are sufficient grounds for such a claim.

- (2) There are sufficient grounds for a claim that information is confidential only if it appears that disclosure of the information:
 - (a) could adversely affect the competitive position of the person or any other person, or
 - (b) would result in the person being in breach of a duty of confidentiality owed to another person.
- (3) A claim that information is confidential must be accompanied by a detailed statement of the reasons in support of the claim and is not duly made unless accompanied by such a statement.
- (4) The Minister or the port corporation to which information is provided must take all reasonable steps to prevent the disclosure of information that is claimed to be confidential unless the disclosure is authorised by this clause.
- (5) The disclosure of information that is claimed to be confidential is authorised if:
 - (a) the disclosure is for the purposes of the administration of the Act to a person engaged in the administration of the Act, or
 - (b) the disclosure is made with the consent of the person who provided the information and (if disclosure could adversely affect the competitive position of another person) that other person, or
 - (c) the disclosure is authorised or required under any Act or law, or
 - (d) the disclosure is authorised or required by a court, or
 - (e) the disclosure is, in the opinion of the Minister, in the public interest and the Minister is of the opinion that the public benefit in disclosing the information outweighs any detriment that might be suffered by a person as a result of the disclosure.
- (6) This clause does not prevent the disclosure of information that is claimed to be confidential if the Minister or the port corporation concerned is of the opinion that there are insufficient grounds for the claim and the Minister or the port corporation has notified the Minister's or port corporation's opinion to the person who provided the information.

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- (7) A disclosure of information authorised by this clause does not constitute a breach of any duty of confidentiality (either by the person making the disclosure or by the person who provided the information).

6.5 State Owned Corporations Act 1989 No 134

Section 20B Change or removal of name of statutory SOC

Insert after section 20B (1A):

- (1B) On the day on which a regulation under clause 2 of Schedule 5 to the *Ports Assets (Authorised Transactions) Act 2012* takes effect, this Act is amended by omitting from Schedule 5 the name of the Port Corporation whose name is being changed and by inserting instead the corporation's name as changed.

6.6 Subordinate Legislation Act 1989 No 146

Schedule 4 Excluded instruments

Insert at the end of the Schedule (with appropriate item number):

Regulations under the *Ports Assets (Authorised Transactions) Act 2012*.

6.7 Sydney Harbour Tunnel (Private Joint Venture) Act 1987 No 49

Schedule 4 The ancillary sites

Insert at the end of the Schedule:

Land that is the subject of a lease (including a concurrent lease) to the private sector under the *Ports Assets (Authorised Transactions) Act 2012* is excluded from this Schedule.

6.8 Work Health and Safety Regulation 2011

Schedule 18B Savings and transitional provisions

Insert at the end of clause 63:

- (4) An officer, employee or agent of a Port Corporation (within the meaning of the *Ports and Maritime Administration Act 1995*) to whom the Port Corporation has issued written authorisation for the purposes of the *Dangerous Goods (General) Regulation 1999* has and may exercise the functions of an inspector under section 31 of the *Dangerous Goods Act 1975* (as in force immediately before its repeal) in relation to:
 - (a) dangerous goods in an area where the Port Corporation exercises port safety functions to which an operating licence held by it under that Act applies, and
 - (b) a contravention or suspected contravention of a provision of Part 11 of the *Dangerous Goods (General) Regulation 1999* in such an area.

[Second reading speech made in—

Legislative Assembly on 17 October 2012

Legislative Council on 21 November 2012]