

Passed by both Houses



New South Wales

Barangaroo Delivery Authority Bill 2009

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2009*



New South Wales

Barangaroo Delivery Authority Bill 2009

Act No , 2009

An Act to constitute the Barangaroo Delivery Authority; to specify its functions; and to provide for other matters related to the development, use and management of Barangaroo.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

Clause 1 Barangaroo Delivery Authority Bill 2009

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Barangaroo Delivery Authority Act 2009*.

2 Commencement

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

3 Objects of Act

The objects of this Act are as follows:

- (a) to encourage the development of Barangaroo as an active, vibrant and sustainable community and as a location for national and global business,
- (b) to create a high quality commercial and mixed use precinct connected to and supporting the economic development of Sydney,
- (c) to facilitate the establishment of Barangaroo Headland Park and public domain land,
- (d) to promote the orderly and sustainable development of Barangaroo balancing social, economic and environmental outcomes,
- (e) to create in Barangaroo an opportunity for design excellence outcomes in architecture and public domain design.

4 Definitions

- (1) In this Act:

Authority means the Barangaroo Delivery Authority established by this Act.

Barangaroo means the land identified as the Barangaroo Delivery Authority operational area on the Barangaroo Delivery Authority Operational Area Map.

Barangaroo Headland Park means land identified as the Barangaroo Headland Park on the Barangaroo Headland Park and Public Domain Map.

Board means the Board, established by this Act, of the Authority.

Chief Executive Officer means the Chief Executive Officer of the Authority holding office as such under Chapter 1A of the *Public Sector Employment and Management Act 2002*.

council has the same meaning as in the *Local Government Act 1993*.

development has the same meaning as in the *Environmental Planning and Assessment Act 1979* and includes a project within the meaning of Part 3A of that Act.

exercise a function includes perform a duty.

function includes a power, authority or duty.

public domain means:

- (a) land identified as public domain on the Barangaroo Headland Park and Public Domain Map, and
 - (b) the public places (within the meaning of the *Local Government Act 1993*), other than the Barangaroo Headland Park and the land referred to in paragraph (a), that are situated within Barangaroo and that are vested in or managed by the Authority.
- (2) Notes included in this Act do not form part of this Act.

5 Maps

- (1) A reference in this Act to a named map is a reference to a map by that name:
 - (a) approved by the Minister on 26 February 2009, and
 - (b) as amended or replaced from time to time by maps declared in accordance with this section to amend or replace that map.
- (2) The declaration that a map amends or replaces a named map:
 - (a) in the case of a map that has the effect of altering the area of the Barangaroo Headland Park—is to be made by the regulations, and
 - (b) in any other case—is to be made by proclamation.
- (3) Any 2 or more named maps may be combined into a single map. In that case, a reference in this Act to any such named map is a reference to the relevant part or aspect of the single map.
- (4) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.
- (5) For the purposes of this Act, a map may be in, and may be kept and made available in, electronic or paper form, or both.

Note. The maps adopted by this Act are to be made available on the official NSW legislation website in connection with this Act.

Part 2 Constitution and management of Authority

6 Constitution of Authority

There is constituted by this Act a corporation with the corporate name of the Barangaroo Delivery Authority.

7 Status of Authority

The Authority is, for the purposes of any Act, a NSW Government agency.

8 Ministerial control

The Authority is subject to the control and direction of the Minister in the exercise of its functions.

9 Board of Authority

- (1) There is to be a Board of the Authority.
- (2) The Board is to consist of the following members:
 - (a) the Chief Executive Officer,
 - (b) the Secretary of the Treasury,
 - (c) a nominee of the City of Sydney Council approved by the Minister,
 - (d) not more than 4 persons appointed by the Minister.
- (3) Of the members appointed by the Minister, one is, in and by the instrument of appointment or another instrument made by the Minister, to be appointed as Chairperson of the Board.
- (4) Schedule 1 sets out provisions relating to the members and procedure of the Board.

10 Chief Executive Officer

- (1) The Chief Executive Officer is responsible for the day-to-day management of the affairs of the Authority in accordance with the specific policies and general directions of the Board.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the Chief Executive Officer is taken to have been done by the Authority.

11 Appointment of advisory committees

- (1) The Board may appoint such advisory committees as the Board considers appropriate for the purposes of advising the Board and the Authority for the purposes of this Act.

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- (2) An advisory committee has such functions as the Board may from time to time determine in respect of it.
 - (3) An advisory committee consists of such committee members appointed by the Board as the Board thinks fit.
 - (4) An advisory committee member holds office for such period as is specified in the instrument of appointment of the committee member, but any such appointment may be terminated by the Board at any time.
 - (5) One of the advisory committee members, in and by the instrument by which the committee member is appointed or another instrument made by the Board, is to be appointed as chairperson of the committee.
 - (6) An advisory committee member is entitled to be paid such fees and allowances (if any) as the Minister may determine, from time to time, in respect of the committee member.
 - (7) Subject to the regulations and any directions of the Board, the procedure of an advisory committee appointed under this section is to be as determined by the advisory committee.
 - (8) The Board may dissolve an advisory committee appointed under this section.

12 Delegation of Authority's functions

- (1) The Authority may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Authority if the delegate is authorised in writing to do so by the Authority.
- (3) In this section, *authorised person* means:
 - (a) a member of staff of the Authority, or
 - (b) a council or the general manager of a council, or
 - (c) a person, or committee of persons, of a class approved by the Minister or prescribed by the regulations.

13 Exercise of functions through subsidiary corporations, joint ventures etc

- (1) In this section, *private subsidiary corporation* means a private subsidiary corporation referred to in section 23.
- (2) Any function of the Authority may be exercised:
 - (a) by the Authority itself, or
 - (b) by a private subsidiary corporation, or

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Part 2 Constitution and management of Authority

- (c) by the Authority or a private subsidiary corporation, or both, in a partnership, joint venture or other association with public or local authorities or other persons or bodies.

Part 3 Functions of Authority

Division 1 Principal functions

14 Functions—generally

- (1) The Authority has the following functions:
 - (a) to promote, procure, facilitate and manage the orderly and economic development and use of Barangaroo, including the provision and management of infrastructure,
 - (b) to promote, procure, organise, manage, undertake, secure, provide and conduct cultural, educational, residential, commercial, transport, tourist and recreational activities and facilities at Barangaroo,
 - (c) to develop and manage the Barangaroo Headland Park and public domain so as to encourage its use by the public and to regulate the use of those areas,
 - (d) to facilitate and provide for appropriate commercial activities within the Barangaroo Headland Park and public domain that are consistent with their use for cultural, educational and recreational activities and the use and enjoyment of those areas by the public,
 - (e) to promote development within Barangaroo that accords with best practice environmental and town planning standards, is environmentally sustainable and applies innovative environmental building and public domain design,
 - (f) to liaise with Government agencies with respect to the co-ordination and provision of infrastructure associated with Barangaroo,
 - (g) to undertake the delivery of infrastructure associated with Barangaroo or that relates to the principal functions of the Authority.
- (2) The Authority cannot employ any staff.

Note. Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Authority to exercise its functions.
- (3) The Authority is not limited to exercising its functions on or in relation to land within Barangaroo.
- (4) The Authority may only exercise its functions with respect to land outside Barangaroo with the approval of the Minister.

15 Other functions

- (1) The Authority has such other functions as are conferred or imposed on it by or under this or any other Act.
- (2) The Authority may do all such supplemental, incidental or consequential acts as may be necessary or expedient for the exercise of its functions.

Division 2 Ancillary functions

16 Acquisition of land

- (1) The Authority may acquire land, for the purposes of this Act, by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) For the purposes of the *Public Works Act 1912*, any acquisition of land under this Act is taken to be an authorised work, and the Authority is, in relation to that authorised work, taken to be the Constructing Authority.
- (3) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply to or in respect of works constructed under this Act.

17 Land dealings

- (1) The Authority has no power to sell or exchange the whole or any part of any land vested in the Authority (other than the Barangaroo Headland Park), or to otherwise dispose of the fee simple estate in that land, except by way of surrender to the Crown.
- (2) However, the Authority may, with the consent of the Minister and subject to such conditions as the Minister thinks fit, mortgage, lease or otherwise dispose of an interest (other than the fee simple) in land vested in the Authority (other than the Barangaroo Headland Park) and grant easements or rights-of-way over land vested in the Authority or any part of it.
- (3) This section does not require the Authority to obtain the consent of the Minister to a lease or licence for a term that, together with the term of any further lease or licence that may be granted under an option in respect of it, does not exceed 10 years.
- (4) The Authority must establish and maintain a public register of all land that is, from time to time, vested in or managed by the Authority.
- (5) A lease or licence granted under this section must not have a term that, together with the term of any further lease or licence that may be granted under an option in respect of it, exceeds 99 years.

18 Restrictions on disposal of Barangaroo Headland Park

- (1) The Authority has no power to sell or exchange the whole or any part of the Barangaroo Headland Park, or to otherwise dispose of the fee simple estate in that land, except by way of surrender to the Crown.
- (2) However, the Authority may, with the consent of the Minister and subject to such conditions as the Minister thinks fit, lease, mortgage or otherwise dispose of an interest (other than the fee simple) in the Barangaroo Headland Park or affect or create an estate or interest in the Barangaroo Headland Park.
- (3) This section does not require the Authority to obtain the consent of the Minister to a lease or licence for a term that, together with the term of any further lease or licence that may be granted under an option in respect of it, does not exceed 10 years.
- (4) A lease or licence granted under this section must not have a term that, together with the term of any further lease or licence that may be granted under an option in respect of it, exceeds 99 years.

19 Dedication of land

- (1) The Authority may, by notification published in the Gazette, declare that it proposes to surrender land described or referred to in the notification to the Crown to be dedicated:
 - (a) for any public purpose specified in the notification, or
 - (b) if so specified in the notification, as a public road.
- (2) When the land is surrendered:
 - (a) it becomes Crown land reserved from sale, lease or licence under the *Crown Lands Act 1989*, and
 - (b) on revocation of the reservation, it may be dedicated under that Act for the public purpose specified in the notification or under section 12 of the *Roads Act 1993* as a public road.
- (3) The Authority may, in a notification published under subsection (1), limit the description of, or reference to, land to a specified depth below the surface of the land. If the description or reference is so limited, subsection (2) does not apply to land below the specified depth.
- (4) The Authority may, by notification published in the Gazette, declare any elevated or subterranean structure owned by the Authority that continues the line of a public road to be a public road. On the publication of the notification in the Gazette, the structure, except in relation to any vesting of the structure, is taken to be a public road.

20 Roads

- (1) A road that is within Barangaroo cannot be provided, opened, dedicated, closed (within the meaning of Part 4 of the *Roads Act 1993*) or realigned by the Crown, a public authority or any person except with the consent of the Authority.
- (2) Except as provided by subsection (1), this Part does not affect the application of the *Roads Act 1993* or any other Act to a road that is within Barangaroo.
- (3) The Authority is a roads authority for the purposes of the *Roads Act 1993* in respect of the public roads vested in it.

21 Acquisition of property by gift, devise or bequest

- (1) The Authority may acquire by gift, devise or bequest any property for the purposes of this Act and may agree to carry out the conditions of any such gift, devise or bequest.
- (2) The rule of law against remoteness of vesting does not apply to any condition of a gift, devise or bequest to which the Authority has agreed.
- (3) The *Duties Act 1997* does not apply to or in respect of any gift, devise or bequest made or to be made to the Authority.

22 Dealings with certain property acquired by gift, devise or bequest

- (1) The Authority must not sell, lease, exchange or otherwise dispose of or deal with property acquired by gift, devise or bequest except:
 - (a) if the property has been acquired subject to a condition to which the Authority has agreed under section 21 (1), in accordance with the condition, or
 - (b) in any other case with the approval of the Minister.
- (2) Despite subsection (1) but subject to subsection (3), if the Authority decides that any property that has been acquired by the Authority subject to a condition to which the Authority has agreed under section 21 (1) is not required for the purposes of the Authority, the Authority may:
 - (a) sell the property and retain the proceeds of the sale as property of the Authority, or
 - (b) exchange the property for other property, or
 - (c) if the Authority is of the opinion that the property is of no commercial value, dispose of the property without valuable consideration,in contravention of the condition.

- (3) The Authority must not sell, exchange or otherwise dispose of any property under subsection (2) except with the consent of the Minister and in accordance with any condition the Minister may impose upon the grant of that consent.
- (4) The Minister may consent to the sale, exchange or disposal of property for the purposes of this section and may impose any condition the Minister thinks fit upon the grant of that consent.

23 Private subsidiary corporations

- (1) In this section:
 - private corporation* means a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth formed in or outside New South Wales.
 - private subsidiary corporation* means a private corporation in which the Authority has a controlling interest.
- (2) The Authority may, subject to subsection (3):
 - (a) form, or participate in the formation of, private corporations, and
 - (b) acquire interests in private corporations, and
 - (c) sell or otherwise dispose of interests in private corporations.
- (3) The Authority must not, without the approval of the Minister:
 - (a) form, or participate in the formation of, a private subsidiary corporation, or
 - (b) acquire an interest in a private corporation so that, as a result of the acquisition, the corporation becomes a private subsidiary corporation, or
 - (c) sell or otherwise dispose of any interest in a private subsidiary corporation so that, as a result of the sale or disposal, it ceases to be a private subsidiary corporation.
- (4) A private subsidiary corporation is not, and does not represent, the Crown.

24 Regulation of Barangaroo Headland Park and public domain

- (1) The Authority may enter into an agreement with the Sydney Harbour Foreshore Authority for the exercise by the Sydney Harbour Foreshore Authority of its regulatory powers under the *Sydney Harbour Foreshore Authority Act 1998* and the regulations under that Act in respect of any land within Barangaroo Headland Park and the public domain.

- (2) An agreement under this section may, but is not required to, make provision for the following matters:
 - (a) the payment by the Authority of fees to the Sydney Harbour Foreshore Authority,
 - (b) the payment to the Authority of fees or other charges collected by the Sydney Harbour Foreshore Authority when exercising functions under the agreement,
 - (c) the provision of information to the Authority by the Sydney Harbour Foreshore Authority relating to the exercise of its functions with respect to the land covered by the agreement,
 - (d) additional services to be provided by or on behalf of the Sydney Harbour Foreshore Authority in respect of the land covered by the agreement,
 - (e) conditions for the exercise of regulatory powers by the Sydney Harbour Foreshore Authority.
- (3) Subsection (2) does not limit the matters that may be included in an agreement under this section.
- (4) Land that is subject to an agreement under this section is taken to be managed land for the purposes of the *Sydney Harbour Foreshore Authority Act 1998* and land within a public area for the purposes of the regulations under that Act.
- (5) Section 22 (Roads) of the *Sydney Harbour Foreshore Authority Act 1998* does not apply to land the subject of an agreement under this section.
- (6) Any dispute arising under an agreement under this section between the Authority and the Sydney Harbour Foreshore Authority may be resolved by the Minister.
- (7) The Authority and the Sydney Harbour Foreshore Authority must comply with any direction arising out of the resolution of any such dispute and for that purpose is empowered to do so, despite the provisions of this or any other Act.

Part 4 Transfer of land to Authority

Division 1 Transfer by operation of this Act

25 Definitions

In this Part:

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

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

transfer date means the date specified in a notice by the Minister published in the Gazette.

transferor, in relation to land, means the person or body in whom or in which the land was vested immediately before the transfer date.

26 Transfer of land described in Schedule 2 to Authority

- (1) On the transfer date, the land described in Schedule 2 vests in the Authority for an estate in fee simple:
 - (a) without the need for any further conveyance, transfer, assignment or assurance, and
 - (b) subject to any trusts, estates, interests, dedications, conditions, restrictions and covenants to which the land was subject immediately before the transfer date.
- (2) On the transfer date, the following provisions have effect in relation to the land described in Schedule 2:
 - (a) the rights or liabilities of the transferor in relation to the land become by virtue of this section the rights or liabilities of the Authority,
 - (b) without limiting paragraph (a), any liability of the transferor to pay consideration for a previous transfer of the land to the transferor by Sydney Ports Corporation becomes by virtue of this section a liability of the Authority,
 - (c) all proceedings relating to the land commenced before the transfer date by or against the transferor or a predecessor of the transferor and pending immediately before the transfer date are taken to be proceedings pending by or against the Authority,
 - (d) any act, matter or thing done or omitted to be done in relation to the land before the transfer date by, to or in respect of the transferor is (to the extent to which that act, matter or thing has

- any force or effect) taken to have been done or omitted by, to or in respect of the Authority,
- (e) the Authority has all the entitlements and obligations of the transferor in relation to those rights and liabilities that the transferor would have had but for this section, whether or not those entitlements and obligations were actual or potential at the time the transfer took effect,
 - (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 that land or those rights or liabilities but subject to the regulations), to be read as, or as including, a reference to the Authority.
- (3) Regulations may be made for or with respect to the conversion of references to the transferor in any document or class of document to references to the Authority as a consequence of any transfer of land under this Division.

27 Effect of transfer of land under this Division

- (1) No compensation is payable to any person or body in connection with the operation of this Division.
- (2) The operation of this Division is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (3) The operation of this Division is not to be regarded as an event of default under any contract or other instrument.
- (4) No attornment to the Authority by a lessee from a transferor is required.
- (5) No provision in a lease transferred under this Division to the Authority is breached solely because the Authority sublets the property the subject of the lease to a Government agency.

28 Compensation for transfer of maritime land

- (1) Despite section 27 (1), the Authority is to pay compensation to the Maritime Authority of NSW (the *Maritime Authority*) for the transfer to the Authority, by this Act, of Lots 1 and 6 in Deposited Plan 876514.

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- (2) The amount of compensation, or the basis on which it is to be calculated, is to be determined by agreement between the Minister responsible for the Maritime Authority and the Minister administering this Act.
 - (3) Any dispute arising under this section between the Minister responsible for the Maritime Authority and the Minister administering this Act may be resolved by the Premier.
 - (4) A Minister, the Authority or the Maritime Authority must comply with any direction arising out of the resolution of a dispute under this section and for that purpose is empowered to do so, despite the provisions of this or any other Act.

Division 2 Transfer of land by agreement

29 Transfer of land or management of land of other public authorities

- (1) If the Minister for a public authority that owns land within Barangaroo agrees that the land is not being used or required for the core activities of the public authority, the public authority is to transfer:
 - (a) the land, or
 - (b) the management of the land,to the Authority, subject to the terms and conditions agreed to between the Minister for the public authority and the Minister administering this Act.
- (2) The Minister administering the *Crown Lands Act 1989* may transfer to the Authority, subject to the terms and conditions agreed to between that Minister and the Minister administering this Act, Crown land within Barangaroo or the management of any such Crown land.
- (3) Part 3 of the *Crown Lands Act 1989* and sections 34 (3)–(5) and 35 of that Act do not apply to any such transfer of Crown land.
- (4) An agreement may state whether the transfer is subject to the payment of compensation and, if compensation is to be paid, the amount of the compensation or the basis on which it is to be determined.
- (5) A public authority whose land is managed by the Authority under an agreement with the public authority may delegate its functions in respect of the land to the Authority, despite the provisions of any other Act.
- (6) In this section:
Crown land has the same meaning that it has in the *Crown Lands Act 1989* but does not include a Crown reserve within the meaning of section 34A of that Act.

Minister for a public authority means the Minister administering:

- (a) the Act by which the public authority is constituted or established, or
- (b) in the case of a subsidiary, the Act by which the subsidiary's parent is constituted or established.

public authority means a public authority constituted by or under an Act, and includes:

- (a) a government department, and
- (b) a statutory body representing the Crown, a State owned corporation within the meaning of the *State Owned Corporations Act 1989* and a subsidiary (within the meaning of that Act), and
- (c) a member of staff or other person who exercises functions on behalf of a public authority,

but does not include a council.

transfer of land includes the sale, lease, exchange or other disposal of or dealing with Crown land or the grant of easements or rights-of-way over, or licences or permits in respect of, Crown land.

- (7) Any dispute arising under this section between the Minister administering this Act and the Minister for a public authority or the Minister administering the *Crown Lands Act 1989* may be resolved by the Premier.
- (8) A Minister or public authority must comply with any direction arising out of the resolution of a dispute under this section and for that purpose is empowered to do so, despite the provisions of this or any other Act.

30 Transfer of maritime land by Authority

- (1) The Authority must transfer to the Maritime Authority of NSW (the **Maritime Authority**) any land below the mean high water mark that is within Barangaroo on the commencement of the operation of a commuter ferry wharf at Barangaroo or at such other time as may be agreed between the Minister responsible for the Maritime Authority and the Minister administering this Act. The transfer is to be subject to such terms and conditions as may be agreed to by those Ministers.
- (2) Any dispute arising under this section between the Minister responsible for the Maritime Authority and the Minister administering this Act may be resolved by the Premier.
- (3) A Minister, the Authority or the Maritime Authority must comply with any direction arising out of the resolution of a dispute under this section and for that purpose is empowered to do so, despite the provisions of this or any other Act.

- (4) Nothing in this section affects the functions of the Authority with respect to land.
- (5) This section has effect despite sections 17 and 18.

Part 5 Contributions and finance

Division 1 Contributions to Barangaroo

31 Definitions

In this Division:

Barangaroo contributions plan means the Barangaroo contributions plan prepared and approved under section 32.

development contribution means an amount of levy payable under the Barangaroo contributions plan.

development contributions provisions—see section 34 (2).

planning agreement—see section 35 (4).

32 Barangaroo contributions plan

- (1) The Authority must prepare and approve a Barangaroo contributions plan.
- (2) The Barangaroo contributions plan has no effect unless it is approved by the Minister.
- (3) The Barangaroo contributions plan must provide for the following:
 - (a) the payment of a levy of 1% to the Authority on development, calculated in respect of the cost of development of land,
 - (b) the development within Barangaroo to which the levy will apply,
 - (c) the manner in which the cost of development is to be calculated,
 - (d) the purposes for which a development contribution may be used, including the provision of local, State and regional infrastructure on or associated with the development of Barangaroo (whether or not situated within Barangaroo),
 - (e) the proposed timing for delivery of infrastructure for which development contributions are to be used.
- (4) The Authority may amend or replace the Barangaroo contributions plan.
- (5) An amendment to, or replacement of, the Barangaroo contributions plan has no effect unless it is approved by the Minister.
- (6) The regulations may make provision for or with respect to the preparation, approval and amendment of the Barangaroo contributions plan, including the format, structure and subject-matter of the plan.

33 Developer agreements subject to condition requiring payment of development contributions

- (1) A development agreement relating to development within Barangaroo for which a development contribution is payable under the Barangaroo contributions plan is subject to a condition that the development contribution must be paid to the Authority in accordance with that plan.
- (2) A failure by a party to a development agreement to pay the whole or any part of a development contribution in accordance with the Barangaroo contributions plan is taken to be a breach of that agreement and is enforceable as such.
- (3) A development agreement may provide for the provision of works in kind or the dedication of land instead of the payment of the whole or part of a development contribution.
- (4) For the purposes of subsection (2), a party to a development agreement is not in breach of that agreement if:
 - (a) the party fails to provide the whole or part of a development contribution, and
 - (b) the party has entered into an agreement, in accordance with subsection (3), to provide works in kind or to dedicate land instead of paying the whole or that part of the development contribution.
- (5) A development agreement may contain provisions, not inconsistent with the Barangaroo contributions plan, as to the payment of a development contribution.
- (6) No contract or agreement entered into before or after the commencement of this section operates to annul, vary or exclude the provisions of this section.
- (7) This section has effect despite any other Act or law.
- (8) In this section:

development agreement means an agreement between the Authority and one or more other persons:

 - (a) under which the person agrees to carry out development within Barangaroo (whether or not the agreement also relates to development outside Barangaroo), and
 - (b) that may or may not provide for the disposal by the Authority of an interest in the land concerned, and
 - (c) that may be a planning agreement.

34 Contributions provisions of other planning Acts not to apply

- (1) The development contributions provisions of the *Environmental Planning and Assessment Act 1979* and the *City of Sydney Act 1988* (the **planning Acts**) do not apply to or in respect of any development for which a development contribution is payable under the Barangaroo contributions plan.
- (2) The **development contributions provisions** of the planning Acts are the following provisions:
 - (a) Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (other than Subdivision 2),
 - (b) Part 5B (other than Division 4) of and Schedules 1 (other than Part 3) and 5A to the *Environmental Planning and Assessment Act 1979* (after the insertion of those provisions by Schedule 3 to the *Environmental Planning and Assessment Amendment Act 2008*),
 - (c) any provisions replacing or amending the provisions referred to in paragraph (a) or (b),
 - (d) section 61 of the *City of Sydney Act 1988*,
 - (e) any other provision of the planning Acts, relating to development contributions, prescribed by the regulations.

35 Application of planning agreement provisions of Environmental Planning and Assessment Act 1979

- (1) The Authority is taken to be a planning authority for the purposes of the *Environmental Planning and Assessment Act 1979*.
- (2) A planning agreement entered into under the *Environmental Planning and Assessment Act 1979* may provide for the payment of the whole or part of a development contribution under this Division, or the provision of works in kind or the dedication of land instead of the payment of the whole or part of a development contribution under this Division, in addition to any other matters the agreement may provide for under that Act.
- (3) Any such planning agreement is not required to comply with the provisions of the *Environmental Planning and Assessment Act 1979* relating to the exclusion or otherwise of the development contributions provisions of that Act in relation to development referred to in section 34 (1).
- (4) In this Division:

planning agreement means an agreement entered into under:

 - (a) Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979*, or

- (b) Division 4 of Part 5B of that Act (after its insertion by Schedule 3 to the *Environmental Planning and Assessment Amendment Act 2008*).

Division 2 Finance

36 Barangaroo Fund

- (1) There is to be established in the Special Deposits Account a Barangaroo Fund (the *Fund*) into which is to be paid:
- (a) all money advanced to the Authority by the Treasurer or appropriated by Parliament for the purposes of the Authority, and
 - (b) all money directed or authorised to be paid into the Fund by or under this or any other Act, and
 - (c) development contributions or other payments made under Division 1, and
 - (d) the proceeds of the investment of money in the Fund, and
 - (e) all money received by the Authority from any other source.
- (2) Money may be paid from the Fund for the following purposes:
- (a) enabling the Authority to exercise its functions,
 - (b) the provision of infrastructure by a public authority or council,
 - (c) payments in respect of liabilities transferred to the Authority under Part 4.
- (3) All expenditure incurred by the Authority is to be paid from the Fund.

37 Financial year

- (1) The financial year of the Authority is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

38 Investment of money in Fund

The Authority may invest money in the Barangaroo Fund:

- (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Authority to invest the money, in any other manner approved by the Minister with the concurrence of the Treasurer.

Part 6 Miscellaneous

39 No duty payable in relation to agreements, vestings or transfers under Act

Duty under the *Duties Act 1997* is not chargeable for or in respect of:

- (a) a vesting or transfer of land or other property effected under this Act or in accordance with arrangements entered into under this Act, or
- (b) anything certified by the Minister as having been done in consequence of such a vesting or transfer or under any such arrangements.

40 Annual report to include certain matters

The annual report of the Authority required to be prepared under the *Annual Reports (Statutory Bodies) Act 1984* is to include a report as to the outcomes achieved by the Authority during the reporting period.

41 Provision of other information by Authority

The Authority must provide reports about its activities and any other information if requested to do so by the Minister.

42 Disclosure of information

A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act, or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units.

43 Misuse of information

- (1) If, through association with the Authority, a person has knowledge of specific information relating to proposals made, or to be made, by the Authority in respect of the acquisition, development or disposal of land and that information is not generally known but, if generally known,

might reasonably be expected to affect materially the market price of that land, the person contravenes this subsection if the person:

- (a) deals, directly or indirectly, in that or in any other land for the purpose of gaining an advantage for the person by the use of that information, or
- (b) divulges that information for the purpose of enabling another person to gain an advantage by using that information to deal, directly or indirectly, in that or in any other land.

Maximum penalty: 20 penalty units.

- (2) If, through association with the Authority, a person is in a position to influence proposals made, or to be made, by the Authority in respect of the acquisition, development or disposal of land and does influence the proposals by securing the inclusion or alteration of any matter in, or the exclusion or omission of any matter from, the proposals, the person contravenes this subsection if:

- (a) the person does so for the purpose of gaining an advantage for the person, or
- (b) the person does so for the purpose of enabling another person to gain an advantage.

Maximum penalty: 20 penalty units.

- (3) If:

- (a) a contravention of subsection (1) occurs and an advantage referred to in that subsection is gained from any dealing in land to which the contravention relates, or
- (b) a contravention of subsection (2) occurs and an advantage referred to in that subsection is gained from any dealing in land to which the contravention relates, being an advantage which would not have been gained if the proposals concerned had not been influenced,

any person who gained that advantage is, whether or not any person has been prosecuted for or convicted of an offence in respect of a contravention of subsection (1) or (2), liable to another person for the amount of any loss incurred by that other person by reason of the gaining of that advantage.

- (4) If a loss referred to in subsection (3) is incurred by reason of an advantage gained from a dealing in land, the amount of the loss is the difference between the price at which the dealing was effected and:

- (a) in the case of any dealing to which subsection (1) relates, the price that, in the opinion of the court before which it is sought to recover the amount of the loss, would have been the market price of the land at the time of the dealing if the specific information

used to gain that advantage had been generally known at that time, or

- (b) in any case to which subsection (2) relates, the price that, in the opinion of the court before which it is sought to recover the amount of the loss, would have been the market price of the land at the time of the dealing if the proposals concerned had not been influenced.
- (5) An action to recover a loss referred to in subsection (3) may not be brought more than 5 years after the dealing in land in relation to which the loss was incurred.
- (6) For the purposes of this section, a person is associated with the Authority:
 - (a) if the person is a member of the Board, or a member of staff of the Authority, or a person of whose services the Authority makes use, or who is otherwise appointed, employed or engaged, pursuant to this Act, or
 - (b) if the person is a committee member of an advisory committee, or
 - (c) if the person is an officer of the Department within the meaning of the *Environmental Planning and Assessment Act 1979* or a person who is a member of a committee or subcommittee established by or under that Act, or
 - (d) if the person is an officer or an employee of a council, or
 - (e) if the person acts or has acted as banker, Australian legal practitioner, auditor or professional adviser or in any other capacity for the Authority, the Minister, the Department of Planning or a council, or
 - (f) where the person, so associated by virtue of paragraph (e), is a corporation, if the person is a director, manager or secretary of the corporation.

44 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before a Local Court.

45 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay,

within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section, *authorised officer* means a person authorised in writing by the Authority as an authorised officer for the purposes of this section.

46 Personal liability

A matter or thing done or omitted to be done by the Authority, the Board or a member of the Board, the Chief Executive Officer, a member of an advisory committee appointed under this Act, or a person acting under the direction of the Authority, the Board or the Chief Executive Officer does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the member of the Board, the Chief Executive Officer, the member of the advisory committee or the person so acting personally to any action, liability, claim or demand.

47 Seal of Authority

The seal of the Authority is to be kept by the Chief Executive Officer, or by a member of the staff of the Authority authorised in that behalf by the Chief Executive Officer, and may be fixed to a document only:

- (a) in the presence of the Chief Executive Officer or that member of the staff, and
- (b) with an attestation by the signature of the Chief Executive Officer or that member of staff of the fact of the fixing of the seal.

48 Recovery of money

Any charge, fee or money due or payable to the Authority may be recovered as a debt in a court of competent jurisdiction.

49 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by:
 - (a) in the case of a natural person:
 - (i) delivering it to the person personally, or
 - (ii) 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) sending it by facsimile transmission to the facsimile number of the person or by email to the internet address of the person, or
 - (b) in the case of a body corporate:
 - (i) 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) sending it by facsimile transmission to the facsimile number of the body corporate or by email to the internet address 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.

50 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, regulations may be made for or with respect to the following:
 - (a) the functions of the Authority,
 - (b) the fees and charges that may be imposed for the purposes of this Act,
 - (c) the procedures of advisory committees,
 - (d) regulating the use by the public of, and the conduct of the public on, land vested in or managed by the Authority or public areas within Barangaroo,
 - (e) regulating the use of facilities of the Authority and the provision of services by the Authority,
 - (f) requiring the payment of fares or other charges for the use of any facility operated or service provided by the Authority,
 - (g) authorising a person granted a lease, licence or other authority by the Authority to require the payment of fares or other charges for the use of any facility operated or service provided under the lease, licence or other authority,
 - (h) conferring on the Authority any function that may be exercised by a council in relation to a public place.
- (3) The regulations may create an offence punishable by a maximum penalty of 20 penalty units.

51 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Members and procedure of Board

(Section 9 (4))

Part 1 General

1 Definitions

In this Schedule:

appointed member means a person who is appointed by the Minister as a member of the Board.

member means any member of the Board.

Part 2 Constitution

2 Terms of office of members

Subject to this Schedule and the regulations, an appointed member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Part-time appointments

Appointed members hold office as part-time members.

4 Remuneration

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

5 Vacancy in office of member

- (1) The office of an appointed member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

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

6 Filling of vacancy in office of appointed member

If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

7 Chairperson

- (1) The Chairperson vacates office as Chairperson if he or she:
 - (a) is removed from that office by the Minister under this clause, or
 - (b) resigns that office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member of the Board.
- (2) The Minister may at any time remove the Chairperson from office as Chairperson.

8 Alternate members

- (1) The Secretary of the Treasury may, from time to time, appoint a member of staff of the Treasury to be his or her alternate as a member.
- (2) The nominee of the City of Sydney Council may, from time to time, with the approval of the Minister, appoint a person to be his or her alternate as a member.
- (3) In the absence of a member, the member's alternate may, if available, act in the place of the member.
- (4) While acting in the place of a member, a person has all the functions of the member and is taken to be the member.

9 Disclosure of pecuniary interests

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

10 Disclosure of other matters

- (1) This clause applies to a member if the member:
 - (a) has an interest in a matter that is being considered or is about to be considered at a meeting of the Board, and
 - (b) the interest is of a kind that is required to be disclosed under a code of conduct prepared by the Minister and specified in the regulations.
- (2) Clause 9 applies to or in respect of a member to whom this clause applies in the same way as that clause applies to or in respect of a member who has an interest that is required to be disclosed under clause 9 (1).

11 Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Part 3 Procedure

12 General procedure

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

13 Quorum

The quorum for a meeting of the Board is a majority of its members for the time being.

14 Presiding member

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.

- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

15 Voting

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

16 Transaction of business outside meetings or by telephone

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
- (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),
- the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

17 First meeting

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

Schedule 2 Land transferred to Authority

(Section 26 (1))

Lots 1, 3, 5 and 6 in Deposited Plan 876514

Schedule 3 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 the following Acts:
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 in the Gazette or on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provision consequent on enactment of this Act

2 Regulation of Barangaroo Headland Park and public domain

- (1) This clause has effect in respect of land within the Barangaroo Headland Park and public domain if an agreement under section 24 is not in force in relation to that land.
- (2) The Minister may, by order, determine the terms on which the Sydney Harbour Foreshore Authority is to exercise its regulatory powers under the *Sydney Harbour Foreshore Authority Act 1998* or regulations under that Act in respect of any land within the Barangaroo Headland Park and public domain.
- (3) The Minister is to notify the Authority and the Sydney Harbour Foreshore Authority in writing of a determination under this clause.
- (4) Section 24 applies to land that is subject to a determination under this clause as if it were subject to an agreement under that section.

Schedule 4 Amendment of Acts

4.1 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order:

Barangaroo Delivery Authority Act 2009, section 45

4.2 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Insert in alphabetical order:

Barangaroo Delivery Authority

4.3 Public Sector Employment and Management Act 2002 No 43

Schedule 1 Divisions of the Government Service

Insert in appropriate order in the Table to Part 1 in Columns 1 and 2, respectively:

Office of the Barangaroo Delivery
Authority

Chief Executive Officer of the Authority

4.4 Sydney Harbour Foreshore Authority Act 1998 No 170

Schedule 1 Foreshore area

Omit the matter in the Schedule. Insert instead:

The area bounded by a heavy black line drawn on the map marked “Sydney Harbour Foreshore Authority—Foreshore Area—Amendment No 5”, dated 26 February 2009, copies of which are deposited in the offices of the Sydney Harbour Foreshore Authority.