



New South Wales

Ports Corporatisation and Waterways Management Amendment Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Ports Corporatisation and Waterways Management Act 1995* (the **Principal Act**):

- (a) to change the name of the Act, and
- (b) to provide that the Minister, rather than the Governor, may issue operating licences to Port Corporations, and
- (c) to expand the statutory delegation powers of the Minister, and
- (d) to give the Maritime Authority a statutory power of delegation, and
- (e) to set out the principal functions of the Maritime Authority, and
- (f) to confirm the validity of certain instruments issued under non-statutory delegations.

The Bill also amends other Acts consequentially.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Ports Corporatisation and Waterways Management Act 1995* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after the date of assent. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Ports Corporatisation and Waterways Management Act 1995

Change of name of Principal Act

Schedule 1 [1] changes the name of the Principal Act to the *Ports and Maritime Administration Act 1995*.

Operating licences for Port Corporations

Currently, section 12 of the Principal Act enables port safety functions to be exercised by a Port Corporation in accordance with an operating licence issued by the Governor on the recommendation of the Minister. Under sections 13 and 15 of the Principal Act, the Governor may also renew and vary such licences.

Schedule 1 [3]–[5] amend sections 12, 13 and 15 of the Principal Act to enable the Minister to exercise those functions rather than the Governor.

Schedule 1 [9] amends Schedule 5 to the Principal Act to provide that operating licences previously issued by the Governor and still in force are taken to have been issued under the amended provisions of the Principal Act.

Schedule 1 [2] makes a consequential amendment.

Delegations

Schedule 1 [6] amends section 27 of the Principal Act to expand the Minister's statutory powers of delegation. Currently, section 27 of the Principal Act provides that the Minister can delegate functions conferred on the Minister under the marine legislation. The amendment will enable the Minister to delegate to certain authorised persons functions under other legislation conferred on the Minister in his or her capacity as the Minister administering the Principal Act.

Schedule 1 [8] inserts proposed section 41A into the Principal Act to enable the Maritime Authority to delegate functions conferred on the Authority to certain authorised persons.

Schedule 1 [9] amends Schedule 5 to the Principal Act to provide that certain instruments granted, given or issued by the staff of marine government agencies are not invalid merely because they were issued pursuant to non-statutory delegations given by the Minister.

Functions of Maritime Authority

Schedule 1 [7] amends section 41 of the Principal Act to set out the principal functions of the Maritime Authority.

Schedule 2 Amendment of other Acts

Schedule 2 makes amendments to other Acts as a consequence of the amendments made by Schedule 1.

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First print



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No. , 2006

A Bill for

An Act to amend the *Ports Corporatisation and Waterways Management Act 1995* with respect to the functions of the Maritime Authority, the name of the Act, operating licences of Port Corporations and delegations; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Ports Corporatisation and Waterways Management Amendment Act 2006</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Ports Corporatisation and Waterways Management Act 1995 No 13	7 8
The <i>Ports Corporatisation and Waterways Management Act 1995</i> is amended as set out in Schedule 1.	9 10
4 Amendment of other Acts	11
The Acts specified in Schedule 2 are amended as set out in that Schedule.	12 13
5 Repeal of Act	14
(1) This Act is repealed on the day following the day on which this Act commences.	15 16
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	17 18

Schedule 1	Amendment of Ports Corporatisation and Waterways Management Act 1995	1
		2
	(Section 3)	3
[1] Section 1 Name of Act		4
	Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ”.	5
	Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	6
[2] Section 3 Definitions		7
	Omit “Governor” from the definition of <i>operating licence</i> in section 3 (1).	8
	Insert instead “Minister”.	9
[3] Section 12 Exercise of port safety functions under operating licence		10
	Omit “Governor on the recommendation of the Minister” from section 12 (2).	11
	Insert instead “Minister”.	12
[4] Section 13 Performance standards and quality assurance programs for services under operating licence		13
	Omit “Governor” from section 13 (2). Insert instead “Minister”.	14
[5] Section 15 Other provisions relating to operating licence		16
	Omit “Governor” wherever occurring in section 15 (2), (3) and (4).	17
	Insert instead “Minister”.	18
[6] Section 27 Delegation of functions by Minister		19
	Omit section 27 (1). Insert instead:	20
	(1) The Minister may delegate to an authorised person any of the following functions, other than this power of delegation:	21
	(a) any function of the Minister under the marine legislation,	22
	(b) any function conferred by or under any Act on the Minister in his or her capacity as the Minister administering this Act.	23
		24
		25
		26

[7] Section 41 Functions of Authority	1
Omit section 41 (1) and (2). Insert instead:	2
(1) The principal functions of the Authority are as follows:	3
(a) to exercise such maritime or other functions of the Minister under the marine legislation and other legislation as are delegated to it by the Minister,	4 5 6
(b) to provide advice to the Minister in relation to maritime and ports matters,	7 8
(c) to manage property vested in it.	9
(2) The Authority has such other functions as are conferred or imposed on it by or under this or any other Act.	10 11
[8] Section 41A	12
Insert after section 41:	13
41A Delegation of functions by Authority	14
(1) The Authority may delegate to an authorised person any function conferred on the Authority by or under this or any other Act, other than this power of delegation.	15 16 17
(2) In this section, <i>authorised person</i> means:	18
(a) a member of the staff of the Authority, or	19
(b) a Port Corporation or a member of the staff of a Port Corporation, or	20 21
(c) a harbour master or acting harbour master, or	22
(d) a public servant, or	23
(e) any person of a class prescribed by the regulations.	24

[9] Schedule 5 Savings, transitional and other provisions	1
Insert after Part 2:	2
Part 3 Provisions consequent on enactment of Ports Corporatisation and Waterways Management Amendment Act 2006	3 4 5
16 Existing operating licences	6
An operating licence in force immediately before the amendment of section 12 by the <i>Ports Corporatisation and Waterways Management Amendment Act 2006</i> is taken to have been issued under that section as so amended.	7 8 9 10
17 Provisions relating to certain instruments issued by Authority	11
(1) In this clause:	12
<i>delegation</i> includes purported delegation.	13
<i>maritime agency</i> means, in relation to the granting, giving or issuing of a relevant instrument, any government Department, government office or statutory authority for which the relevant Minister was responsible at the time of the granting, giving or issuing of the instrument.	14 15 16 17 18
<i>relevant instrument</i> means:	19
(a) a development consent granted under the <i>Environmental Planning and Assessment Act 1979</i> , or	20 21
(b) a permit, authorisation, approval or notice granted, given or issued under the <i>Rivers and Foreshores Improvement Act 1948</i> .	22 23 24
<i>relevant Minister</i> , in relation to a relevant instrument, means the Minister who has or had the function of granting, giving or issuing the instrument.	25 26 27
(2) Any relevant instrument purportedly granted, given or issued pursuant to a delegation made by the relevant Minister to the head of a maritime agency is not invalid (and is taken never to have been invalid) by reason only that:	28 29 30 31
(a) there was no statutory authority for the delegation, or	32
(b) the relevant instrument was not granted, given or issued in the name of the Minister, or	33 34
(c) the relevant instrument was granted, given or issued by a member of staff of the maritime agency.	35 36

Schedule 2	Amendment of other Acts	1
	(Section 4)	2
2.1	Commercial Vessels Act 1979 No 41	3
[1]	Section 4B Ports and Maritime Administration Act 1995	4
	Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ”.	5
	Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	6
[2]	Section 5 Definitions	7
	Omit “Waterways Authority” from the definition of <i>Secretary of the Minister</i> in section 5 (1).	8
	Insert instead “Maritime Authority”.	9
		10
2.2	Fines Act 1996 No 99	11
	Schedule 1 Statutory provisions under which penalty notices issued	12
	Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ”.	13
	Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	14
2.3	Fire Brigades Act 1989 No 192	15
	Section 20A Hazardous material incidents outside area to which Act applies	16
		17
	Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” wherever occurring in the definition of <i>port authority</i> in section 20A (4).	18
	Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	19
		20
2.4	Impounding Act 1993 No 31	21
[1]	Dictionary	22
	Omit “Minister for Ports” from the definition of <i>area of operations</i> .	23
	Insert instead “Minister administering the <i>Ports and Maritime Administration Act 1995</i> ”.	24
		25
[2]	Dictionary, definition of “impounding authority”	26
	Omit “Minister for Ports”.	27
	Insert instead “Minister administering the <i>Ports and Maritime Administration Act 1995</i> ”.	28
		29

2.5	Independent Pricing and Regulatory Tribunal Act 1992 No 39	1
[1]	Section 4 Government monopoly services	2
	Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from section 4 (5).	3 4
	Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	5
[2]	Schedule 1 Government agencies for which Tribunal has standing reference	6 7
	Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ”.	8
	Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	9
2.6	Local Government Act 1993 No 30	10
	Section 600 Rebates in respect of certain land vested in public bodies	11
	Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from the definition of public body in section 600 (9).	12 13
	Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	14
2.7	Marine Pollution Act 1987 No 299	15
[1]	Section 3 Definitions	16
	Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from the definition of harbour master in section 3 (1).	17 18
	Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	19
[2]	Section 5A Ports and Maritime Administration Act 1995	20
	Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ”.	21
	Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	22
[3]	Section 13B Ships must be insured against oil pollution	23
	Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from the definition of port in section 13B (1).	24 25
	Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	26

2.8 Marine Safety Act 1998 No 121	1
[1] Section 4 Definitions	2
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ”	3
wherever occurring in the definitions of <i>marine legislation</i> and <i>Maritime Authority</i> in section 4 (1).	4
Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	5
	6
[2] Section 19 Regulations relating to safety of navigation	7
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from the	8
note.	9
Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	10
[3] Section 71 Definitions	11
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ”	12
wherever occurring in paragraphs (a) and (b) of the definition of <i>pilotage service provider</i> in section 71 (1).	13
Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	14
	15
[4] Section 74 Pilotage compulsory in pilotage ports	16
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from the	17
note.	18
Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	19
[5] Section 127 Summary proceedings for offences	20
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from the	21
note.	22
Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	23
[6] Schedule 3 Amendment of other Acts	24
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from	25
Schedule 3.6 [1].	26
Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	27
[7] Schedule 3.7	28
Omit “ Ports Corporatisation and Waterways Management Act 1995 ”	29
from the heading.	30
Insert instead “ Ports and Maritime Administration Act 1995 ”.	31

[8] Schedule 4 Savings, transitional and other provisions	1
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from clause 5.	2 3
Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	4
2.9 Maritime Services Act 1935 No 47	5
[1] Section 2 Definitions	6
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from the definition of Harbour master in section 2 (1).	7 8
Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	9
[2] Section 2A Ports and Maritime Administration Act 1995	10
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ”.	11
Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	12
[3] Section 30D Penalty notices for certain offences	13
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from section 30D (1) (d) (iv).	14 15
Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	16
[4] Section 38 Regulations	17
Omit “Waterways Authority within the meaning of the <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from section 38 (5).	18 19
Insert instead “Authority within the meaning of the <i>Ports and Maritime Administration Act 1995</i> ”.	20 21
2.10 Navigation Act 1901 No 60	22
Section 4B Ports and Maritime Administration Act 1995	23
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ”.	24
Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	25

2.11 Parliamentary Electorates and Elections Amendment Act 2006 No 68	1
	2
Schedule 19 Amendment of other legislation	3
Omit “ Ports Corporatisation and Waterways Management Act 1995 ”	4
from the heading to Schedule 19.17.	5
Insert instead “ Ports and Maritime Administration Act 1995 ”.	6
2.12 Passenger Transport Act 1990 No 39	7
Section 3 Definitions	8
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from the	9
definition of <i>Maritime Authority</i> in section 3 (1).	10
Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	11
2.13 Protection of the Environment Operations Act 1997 No 156	12
Dictionary	13
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from the	14
definition of <i>marine authority</i> .	15
Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	16
2.14 Rivers and Foreshores Improvement Act 1948 No 20	17
[1] Section 22A Definitions	18
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i>)—the	19
Minister for Ports” from paragraph (a) of the definition of <i>Constructing</i>	20
<i>Authority</i> .	21
Insert instead “ <i>Ports and Maritime Administration Act 1995</i>)—the Minister	22
administering that Act”.	23
[2] Section 23 Construction of works in navigable waters	24
Omit “Minister for Ports” wherever occurring.	25
Insert instead “Minister administering the <i>Ports and Maritime Administration</i>	26
<i>Act 1995</i> ”.	27

2.15 State Emergency and Rescue Management Act 1989 No 165	1
Section 53 Offence to operate rescue unit or rescue vehicle without accreditation	2 3
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from section 53 (3) (b).	4 5
Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	6
2.16 Sydney Harbour Foreshore Authority Act 1998 No 170	7
Section 18 Management of land of other public authorities	8
Omit “ <i>Ports Corporatisation and Waterways Management Act 1995</i> ” from paragraph (b) of the definition of public authority in section 18 (5).	9 10
Insert instead “ <i>Ports and Maritime Administration Act 1995</i> ”.	11