

# Sydney Harbour Foreshore Authority Act 1998

## No 170

[1998-170]



New South Wales

### Status Information

#### Currency of version

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#### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

#### Notes—

- **Does not include amendments by**  
[Redfern-Waterloo Authority Act 2004 No 107](#) (not commenced — to commence on 17.1.2005)

#### Authorisation

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# Sydney Harbour Foreshore Authority Act 1998 No 170



New South Wales

An Act to constitute the Sydney Harbour Foreshore Authority and to specify its functions; to repeal the *Sydney Cove Redevelopment Authority Act 1968* and the *Darling Harbour Authority Act 1984*; to amend certain Acts and instruments consequentially; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Sydney Harbour Foreshore Authority Act 1998*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) A day appointed under this section with respect to the commencement of sections 49 and 51, Schedule 4 and clauses 7, 8 and 9 of Schedule 5 must not be a day occurring before 1 January 2001.

### 3 Definitions

In this Act:

**Authority** means the Sydney Harbour Foreshore Authority constituted by this Act.

**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 Part 2 of the *Public Sector Management Act 1988*.

**core land**—see section 6.

**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*.

**exercise** a function includes perform a duty.

**foreshore area**—see section 5.

**function** includes a power, authority or duty.

**managed land**—see section 8.

**non-core land**—see section 7.

**the public domain**—see section 9.

#### 4 Notes

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

## Part 2 Classification of land for the purposes of this Act

### 5 Foreshore area

For the purposes of this Act, the **foreshore area** means the area of land described in Schedule 1.

### 6 Core land

For the purposes of this Act, **core land** means the land within the foreshore area that is vested in the Authority, being:

- (a) that part of the land that, immediately before the commencement of this section, was within the development area (within the meaning of the [Sydney Cove Redevelopment Authority Act 1968](#)) and was vested in the Sydney Cove Redevelopment Authority, and
- (b) that part of the land at Pyrmont that, immediately before the commencement of this section, was vested in the City West Development Corporation and is shown as bounded by a broken black line and a heavy black line on the map referred to in Schedule 1, and
- (c) the land that is vested in the Authority by clause 14 of Schedule 5, and
- (d) on and from the day appointed by proclamation under section 2 (2), that part of the land that, immediately before that day, was within the Development Area (within the meaning of the [Darling Harbour Authority Act 1984](#)) and was vested in the Darling Harbour Authority, and
- (e) any other land that is acquired by the Authority after the commencement of this section and that is declared by the regulations to be core land.

#### Note—

The core land of the Authority is land that, because of section 19, the Authority has no power to dispose of,

except in extremely limited circumstances.

## 7 Non-core land

For the purposes of this Act, **non-core land** means that part of the land within the foreshore area, not including core land, that is vested in the Authority from time to time.

### Note—

The non-core land of the Authority is land that, because of section 20, the Authority may dispose of with the consent of the Minister.

## 8 Managed land

For the purposes of this Act, **managed land** means that part of the foreshore area, not being core land or non-core land, that is managed by the Authority under an agreement with the owner or occupier of the land.

## 9 The public domain

For the purposes of this Act, **the public domain** means the public places (within the meaning of the [Local Government Act 1993](#)) that are situated within the foreshore area and that are vested in or managed by the Authority.

### Note—

The public domain may comprise core land, non-core land or managed land.

# Part 3 Constitution of Authority

## 10 Constitution of Authority

There is constituted by this Act a corporation with the corporate name of the Sydney Harbour Foreshore Authority.

## 11 Status of Authority

The Authority is, for the purposes of any Act, a statutory body representing the Crown.

### Note—

The management of the Sydney Harbour Foreshore Authority is provided for in Part 5 of this Act. The Authority has a Board and a Chief Executive Officer. The Authority is also subject to the control and direction of the Minister.

# Part 4 Functions of Authority

## Division 1 Principal functions

### 12 Functions—generally

(1) The Authority has the following functions:

- (a) to protect and enhance the natural and cultural heritage of the foreshore area,

- (b) to promote, co-ordinate, manage, undertake and secure the orderly and economic development and use of the foreshore area, including the provision of infrastructure,
  - (c) to promote, co-ordinate, organise, manage, undertake, secure, provide and conduct cultural, educational, commercial, tourist, recreational, entertainment and transport activities and facilities.
- (2) In addition, the Authority has the following functions in relation to particular classes of land within the foreshore area:
- (a) in relation to core land—to develop and manage core land,
  - (b) in relation to non-core land—to develop, manage and deal in non-core land,
  - (c) in relation to managed land—to manage managed land in accordance with the terms of the agreement with the owner or occupier of the land,
  - (d) in relation to the public domain—to enhance and manage the landscape of the public domain and to improve, maintain and regulate the use of the public domain.

### **13 Land register**

- (1) The Authority must establish and maintain a register of all land that is, from time to time, vested in or managed by the Authority.
- (2) The register must include the class of the land according to its classification under Part 2.
- (3) The register must be established within 12 months after the date of commencement of this section.
- (4) The register is to be open for public inspection without cost at the office of the Authority during ordinary office hours.

### **14 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.

### **15 Exercise of functions—principles of ecologically sustainable development**

In carrying out any of its functions, the Authority is to take into consideration, where relevant, the principles of ecologically sustainable development within the meaning of the [Local Government Act 1993](#).



## **16 Land on and in relation to which Authority's functions may be exercised**

The Authority is not limited to exercising its functions on or in relation to land within the foreshore area.

## **Division 2 Ancillary functions**

### **17 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.

### **18 Management of land of other public authorities**

- (1) If the Minister for a public authority that owns land within the foreshore area agrees that the land is not being used for the core activities of the public authority, the public authority must transfer:
  - (a) the land, or
  - (b) the management of the land,to the Authority, subject to any terms and conditions agreed to between that Minister and the Minister administering this Act.
- (2) 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.
- (3) Duty under the *Duties Act 1997* is not chargeable for or in respect of:
  - (a) a transfer effected in accordance with an agreement under this section or a voluntary transfer of land to the Authority by a public authority, or
  - (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).
- (4) A public authority whose land is managed by the Authority under an agreement with the public authority may delegate its functions to the Authority, despite the provisions of any other Act.

(5) In this section:

**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** includes:

- (a) a State owned corporation within the meaning of the [State Owned Corporations Act 1989](#) and a subsidiary within the meaning of that Act of such a corporation, and
- (b) the Waterways Authority constituted by the [Ports Corporatisation and Waterways Management Act 1995](#),

but does not include a council.

## 19 Disposal of core land

- (1) The Authority has no power to sell or exchange core land, or to otherwise dispose of the fee simple estate in core land, except by way of surrender to the Crown or except as provided by subsection (2).
- (2) The Authority may, with the consent of, and subject to any conditions imposed by, the Minister:
  - (a) mortgage, or grant a charge over, core land, or
  - (b) exchange core land for land within the foreshore area that adjoins or is adjacent to the core land to be exchanged, or
  - (c) in respect of a road that is core land:
    - (i) in the case of a public road, consent to an order being made under the [Roads Act 1993](#) to transfer the road to another roads authority, or
    - (ii) in the case of a road that is not a public road, transfer the road to the Sydney City Council.
- (3) The Authority may, with the consent of the Minister and subject to such conditions as the Minister thinks fit, lease or grant licences in respect of core land and grant easements or rights-of-way over core land.
- (4) 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 5 years.

- (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.

## **20 Disposal of non-core land**

- (1) The Authority may, with the consent of the Minister and subject to such conditions as the Minister thinks fit, sell, lease, exchange or otherwise dispose of or deal with non-core land and grant easements or rights-of-way over non-core land or any part of it.
- (2) 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 5 years.

## **21 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.

## **22 Roads**

- (1) A road that is core land, non-core land or managed land 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 core land, non-core land or managed land.
- (3) The Authority is a roads authority for the purposes of the [Roads Act 1993](#) in respect of the public roads vested in it.

### **23 Parking**

- (1) The Authority has, in relation to core land, non-core land and managed land, the same functions as a council and other persons and bodies have under the pay parking regulations.
- (2) The regulations may provide for how references to persons and areas in the pay parking regulations are to be read in their application to the Authority and to core land, non-core land and managed land.
- (3) In this section, **pay parking regulations** means regulations made under the [Road Transport \(Safety and Traffic Management\) Act 1999](#) in respect of pay parking.

### **24 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 inter vivos, devise or bequest made or to be made to the Authority.

### **25 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 inter vivos, devise or bequest except:
  - (a) if the property has been acquired subject to a condition to which the Authority has agreed under section 24 (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 24 (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.

## **26 Exercise of Authority's functions**

The Authority, in the exercise of its functions, may arrange for the use of the services of any other person, including a government agency or a council.

## **27 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 of a class approved by the Authority or prescribed by the regulations.

## **Part 5 Management of Authority**

### **28 Ministerial control**

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

### **29 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 Director-General of the Department of Urban Affairs and Planning,
  - (c) not more than 5 persons appointed by the Minister.
- (3) Of the members appointed by the Minister, one is to be appointed by the Minister as Chairperson of the Board.
  - (4) The Director-General of the Department of Urban Affairs and Planning may be represented at any meeting of the Board by a person nominated by the Director-General.
  - (5) All members of the Board are part-time members.
  - (6) Schedule 2 has effect with respect to the constitution and procedure of the Board.

### **30 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.

### **31 Staff of Authority**

- (1) The staff of the Authority are (subject to this section) to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government agency. For the purposes of this Act, a person whose services are utilised under this subsection is a member of the staff of the Authority.
- (3) The Authority may employ casual staff otherwise than under the *Public Sector Management Act 1988*. A person so employed continues in the service of the Authority at the will of the Authority only.
- (4) The Authority may engage consultants or other persons for the purpose of obtaining services, information or advice.

### **32 Rangers**

- (1) The Authority may appoint a person employed or engaged under section 31 to be a ranger for the purposes of this Act.
- (1A) Rangers may include persons who are officers or employees of a body corporate providing services to the Authority under section 31 (4). Such persons are subject to the control and direction of the Chief Executive Officer while they are exercising the

functions of a ranger.

- (2) A ranger may exercise such functions as are conferred on a ranger by the regulations.
- (3) The Authority is to provide each ranger with an identification card.
- (4) An identification card is a card that:
  - (a) states that it is issued under this Act, and
  - (b) gives the name of the person to whom it is issued, and
  - (c) describes the nature of the powers conferred, and
  - (d) states the date (if any) on which it expires, and
  - (e) is signed by the Chief Executive Officer.
- (5) In the course of exercising the functions of a ranger under this Act, the ranger must, if requested to do so by a person affected by the exercise of any such function, produce the ranger's identification card to the person.

## Part 6 Finance

### 33 Sydney Harbour Foreshore Fund

- (1) There is to be established in the Special Deposits Account a Sydney Harbour Foreshore 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) the proceeds of the investment of money in the Fund, and
  - (d) all money received by the Authority from any other source.
- (2) The Fund is to be applied for the purpose of enabling the Authority to exercise its functions.
- (3) All expenditure incurred by the Authority is to be paid from the Fund.

### 34 Investment of money in Fund

The Authority may invest money in the Sydney Harbour Foreshore 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.

### **35 Administration of other funds**

- (1) The Authority may administer a fund established for the provision of services within the foreshore area to which money is paid by persons who carry on business within the foreshore area.
- (2) The Auditor-General is to audit any such fund, in the year it is established and in each year thereafter, as if the Minister had requested the Auditor-General to do so under section 45 of the *Public Finance and Audit Act 1983*.

## **Part 7 Miscellaneous**

### **36 Appointment of advisory committees**

- (1) The Minister may, on the recommendation of the Board, appoint such advisory committees as the Minister considers appropriate.
- (2) An advisory committee has such functions as the Minister may from time to time determine in respect of it.
- (3) An advisory committee consists of such committee members appointed by the Minister as the Minister thinks fit.
- (4) A 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 Minister at any time.
- (5) One of the committee members, in and by the instrument by which the committee member is appointed, is to be appointed as chairperson of the committee.
- (6) A committee member is entitled to be paid such fees and allowances (if any) as the Minister may determine in respect of the committee member.
- (7) The office of a committee member is, for the purposes of any Act, taken not to be an office or place of profit under the Crown.

### **37 Disclosure of information**

A person must not disclose any information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the Authority) 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 any such other Act),  
or



- (c) for the purposes of any legal proceedings arising out of this Act (or any such other 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 or imprisonment for 6 months.

**Note—**

The amount for the time being of a penalty unit is specified by section 17 of the *Crimes (Sentencing Procedure) Act 1999*.

### **38 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.

**Note—**

The amount for the time being of a penalty unit is specified by section 17 of the *Crimes (Sentencing Procedure) Act 1999*.

- (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, solicitor, auditor or professional adviser

or in any other capacity for the Authority, the Minister, the Department of Urban Affairs and 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.

### **39 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 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 or the person so acting personally to any action, liability, claim or demand.

### **40 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](#).

### **41 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.

### **42 Recovery of money**

Any charge, fee or money due or payable to the Authority may be recovered as a debt.

### **43 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### **43A 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.

#### **44 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

#### **45 Amendment of Schedule 1**

- (1) The regulations may amend Schedule 1:
  - (a) by omitting any matter, or
  - (b) by inserting any matter, or
  - (c) by altering any matter.
- (2) The regulations may omit Schedule 1 and insert instead a Schedule that specifies or describes land on or in the vicinity of the foreshores of Sydney Harbour.

## 46 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 and any member of staff of the Authority, including rangers,
  - (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 core land, non-core land, managed land or the public domain,
  - (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) ensuring the proper conduct and safety of persons on core land, non-core land, managed land or the public domain or while using any facility or service referred to in paragraph (e) or (f),
  - (i) providing for the removal of trespassers and persons causing nuisance or annoyance to others while in the foreshore area,
  - (j) 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 50 penalty units.

### **Note—**

The amount for the time being of a penalty unit is specified by section 17 of the [Crimes \(Sentencing Procedure\) Act 1999](#).

## 47 (Repealed)

**48 Repeal of Sydney Cove Redevelopment Authority Act 1968 No 56**

The *Sydney Cove Redevelopment Authority Act 1968* is repealed.

**49 Repeal of Darling Harbour Authority Act 1984 No 103 and other instruments**

The following Acts and instruments are repealed:

*Darling Harbour Authority Act 1984 No 103*

*Darling Harbour Authority (Amendment) Act 1985 No 50*

*Darling Harbour Authority (Amendment) Act 1988 No 55*

*Darling Harbour Authority Amendment and Repeal Act 1998 No 29*

*Darling Harbour Authority (General) Regulation 1994*

*Darling Harbour (Management of Public Areas) Regulation 1995*

**50, 51 (Repealed)**

**52 Savings, transitional and other provisions**

Schedule 5 has effect.

**53 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 Foreshore area**

(Section 5)

The area bounded by a heavy black line drawn on the map marked “Sydney Harbour Foreshore Authority—Foreshore Area—Amendment No 3” catalogue number 05099916007, dated 15 February 2002, copies of which are deposited in the offices of the Authority and the Department of Planning.

## Schedule 2 Constitution and procedure of Board

(Section 29 (6))

### 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 penal servitude or 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 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.

## **9 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* 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**

### **10 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.

### **11 Quorum**

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

### **12 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.

### **13 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.

### **14 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.

### **15 First meeting**

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

fit.

## **Schedules 3, 4 (Repealed)**

## **Schedule 5 Savings, transitional and other provisions**

(Section 52)

### **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, 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 Provisions consequent on enactment of this Act**

#### **2 Definitions**

In this Schedule:

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

**former Authority** means the Sydney Cove Redevelopment Authority, the City West Development Corporation or the Darling Harbour Authority.

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

**new Authority** means the Sydney Harbour Foreshore Authority.

**rights** means any rights, powers, privileges or immunities (whether present or future and

whether vested or contingent).

### **3 Dissolution of Sydney Cove Redevelopment Authority**

- (1) The Sydney Cove Redevelopment Authority is dissolved.
- (2) A person who held office as a member of the Sydney Cove Redevelopment Authority immediately before it is dissolved is not entitled to any compensation for loss of office.

### **4 Transfer of staff of Sydney Cove Redevelopment Authority**

- (1) This clause applies to a person appointed and employed under section 6 of the *Sydney Cove Redevelopment Authority Act 1968* immediately before the day on which the Sydney Cove Redevelopment Authority is dissolved, other than a person to whom clause 12 applies.
- (2) A person to whom this clause applies is entitled to be appointed to a position in the Public Service in accordance with this clause.
- (3) The Governor may, on the recommendation of the Minister, by order published in the Gazette, transfer a person to whom this clause applies to a position in the Public Service (being a position in the new Authority).
- (4) A person who is the subject of an order under this clause is to be regarded for all purposes as having become an officer of the Public Service, in accordance with the terms of the order, on the day the Sydney Cove Redevelopment Authority is dissolved.
- (5) This clause has effect despite anything in the *Public Sector Management Act 1988* and a person transferred under this clause is to be regarded as having been transferred in accordance with any relevant provision of that Act.
- (6) A person who is the subject of an order under this clause is taken to be a person who ceases to be employed in a public sector service and immediately commences service in another public sector service within the meaning of Schedule 5A to the *Public Sector Management Act 1988* and Schedule 5A to that Act applies to the person accordingly.

### **5 Dissolution of City West Development Corporation**

- (1) The City West Development Corporation is dissolved.
- (2) A person who held office as a member of the City West Development Corporation immediately before it is dissolved is not entitled to any compensation for loss of office.

### **6 Transfer of certain staff attached to City West Development Corporation**

- (1) The group of staff attached to the City West Development Corporation is removed from the Department of Urban Affairs and Planning and added to the group of staff attached to the new Authority.

- (2) Section 8 (5) of the *Public Sector Management Act 1988* applies to the removal of staff in accordance with this clause in the same way as it applies to the removal by the Governor of a branch from a Department and the adding of that branch to another Department under section 55A of that Act.

## **7 Dissolution of Darling Harbour Authority**

- (1) The Darling Harbour Authority is dissolved.
- (2) Part 8 of the *Public Sector Management Act 1988* applies to each member of the Authority as if the member had been removed from office by the Governor under section 90 of that Act.

## **8 Abolition of department and transfer of branches**

- (1) The Darling Harbour Authority is abolished as a department of the Public Service.
- (2) All branches of that department are removed from that department and added to the group of public service staff attached to the new Authority.
- (3) Section 8 (5) of the *Public Sector Management Act 1988* applies to the removal of staff in accordance with this clause in the same way as it applies to the removal by the Governor of a branch from a Department and the adding of that branch to another Department under section 55A of that Act.

## **9 Transfer of certain staff of Darling Harbour Authority**

- (1) This clause applies to a person appointed and employed under section 8 (3) of the *Darling Harbour Authority Act 1984* immediately before the day on which the Darling Harbour Authority is dissolved.
- (2) A person to whom this clause applies is entitled to be appointed to a position in the Public Service in accordance with this clause.
- (3) The Governor may, on the recommendation of the Minister, by order published in the Gazette, transfer a person to whom this clause applies to a position in the Public Service (being a position in the new Authority).
- (4) A person who is the subject of an order under this clause is to be regarded for all purposes as having become an officer of the Public Service, in accordance with the terms of the order, on the day the Darling Harbour Authority is dissolved.
- (5) This clause has effect despite anything in the *Public Sector Management Act 1988* and a person transferred under this clause is to be regarded as having been transferred in accordance with any relevant provision of that Act.
- (6) A person who is the subject of an order under this clause is taken to be a person who ceases to be employed in a public sector service and immediately commences service

in another public sector service within the meaning of Schedule 5A to the *Public Sector Management Act 1988* and Schedule 5A to that Act applies to the person accordingly.

#### **10 Construction of certain references**

- (1) On the dissolution of a former Authority, a reference in any Act, in any instrument made under any Act or in any document of any kind to the former Authority or a predecessor of the former Authority, is taken to be a reference to the new Authority.
- (2) On the dissolution of a former Authority, a reference in any Act, in any instrument made under any Act or in any document of any kind to:
  - (a) the Director of the Sydney Cove Redevelopment Authority, in the case of the dissolution of that Authority, or
  - (b) the General Manager of the City West Development Corporation, in the case of the dissolution of that Corporation, or
  - (c) the General Manager of the Darling Harbour Authority, in the case of the dissolution of that Authority,

is taken to be a reference to the Chief Executive Officer of the new Authority.

#### **11 Chief Executive Officer of the new Authority**

On the dissolution of City West Development Corporation, the person who, immediately before its dissolution, held office as General Manager of City West Development Corporation is taken to be appointed under Part 2 of the *Public Sector Management Act 1988* as Chief Executive Officer of the new Authority for the balance of the term of office as General Manager that remained immediately before its dissolution and subject to the same terms and conditions as those on which the person held office immediately before its dissolution, until those terms and conditions are varied in accordance with law.

#### **12 Other executive officers**

- (1) A person (other than the General Manager of City West Development Corporation) who, immediately before the dissolution of a former Authority, held a senior executive position or a chief executive position within the meaning of the *Public Sector Management Act 1988* in a former Authority is, on that dissolution, taken to have been removed from that position by the Governor under section 42Q (1) of that Act and declared by the Governor under section 42Q (2) of that Act to be an unattached officer in the Public Service.
- (2) For the purposes of section 42Q (3) (c) of the *Public Sector Management Act 1988* and the provisions of that Act referred to in that paragraph, such a person is to be regarded as holding an equivalent (though notional) executive position in the Department comprising the group of staff attached to the new Authority.

- (3) A person who is taken to be removed from a position in the Sydney Cove Redevelopment Authority and declared to be an unattached officer in the Public Service under this clause is taken to be a person who ceases to be employed in a public sector service and immediately commences service in another public sector service within the meaning of Schedule 5A to the *Public Sector Management Act 1988* and Schedule 5A to that Act applies to the person accordingly.

### **13 Vesting of undertaking of former Authority in new Authority**

- (1) On the dissolution of a former Authority, the following provisions have effect:
- (a) the assets of the former Authority vest in the new Authority by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
  - (b) the rights or liabilities of the former Authority become by virtue of this clause the rights or liabilities of the new Authority,
  - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the former Authority or a predecessor of the former Authority and pending immediately before the transfer are taken to be proceedings pending by or against the new Authority,
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the former Authority 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 new Authority.
- (2) The operation of this clause 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 clause is not to be regarded as an event of default under any contract or other instrument.
- (4) No attornment to the transferee by a lessee from the former Authority is required.
- (5) No compensation is payable to any person or body in connection with a transfer.
- (6) Subclause (5) does not affect the rights of any member of staff who is the subject of a transfer.

#### **14 Vesting of certain land in the new Authority**

(1) On the commencement of this clause:

- (a) the land shown hatched and edged heavy black on the map marked “Dawes Point Park” catalogue no 05099916002, copies of which are deposited, on that commencement, in the offices of the new Authority and the Department of Urban Affairs and Planning, and
- (b) the land shown coloured pink on the map catalogue no 05099916004, copies of which are deposited, on that commencement, in the offices of the new Authority and the Department of Urban Affairs and Planning,

vests in the new Authority for an estate in fee simple, subject to any trusts, estates, interests, dedications, conditions, restrictions and covenants to which the land was subject immediately before that commencement, except any trust of which the Sydney City Council was the trustee.

- (2) The vesting of land in accordance with this clause is subject to any limitation as to the height or depth of the land concerned that may be shown on the relevant plan.
- (3) No compensation is payable to any person or body in connection with the vesting.
- (4) The Authority may agree to pay income (or a portion of any income) derived from any part of the land vested in accordance with this clause to the Sydney City Council or a public authority.
- (5) This clause does not vest any fee simple estate of the Roads and Traffic Authority, the State Transit Authority or the State Rail Authority in the new Authority.

#### **15 Transfer duty**

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

- (a) a transfer effected by or under this Schedule, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

#### **16 Notification of interests**

- (1) The Registrar-General must, at the request of the new Authority made in a manner approved by the Registrar-General and on payment of the fee prescribed under the *Real Property Act 1900*, make, in the Register kept under that Act, a recording appropriate to signify that a recording made pursuant to section 17 (1) (a) of the *Darling Harbour Authority Act 1984* has ceased to have effect.
- (2) If a recording pursuant to section 17 (1) (a) of the *Darling Harbour Authority Act 1984* has been made in respect of any land, the Registrar-General must not register under



the *Real Property Act 1900* a transfer of that land to or by a person other than the new Authority unless the transfer would (but for this subclause) be so registrable and unless:

- (a) a recording pursuant to subclause (1) has been made in respect of the land, or
- (b) the consent of the new Authority to the transfer has been endorsed on the transfer.

#### **17 Making of orders under *Public Sector Management Act 1988***

This Schedule is subject to any order that may be made with respect to a former Authority or the new Authority under the *Public Sector Management Act 1988*.

#### **18 Roads in course of construction**

The Roads and Traffic Authority is not required to obtain the consent of the new Authority under section 22 with respect to the provision, opening or dedication of any road the construction of which was commenced before the commencement of this clause.