

Ports and Maritime Administration Act 1995 No 13

[1995-13]



New South Wales

Status Information

Currency of version

Historical version for 1 December 2008 to 5 July 2009 (accessed 12 August 2024 at 19:57)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **Previously named**
Ports Corporatisation and Waterways Management Act 1995
- **Does not include amendments by**
[Marine Safety Act 1998 No 121](#), Sch 3.7 [3] [5]–[11] [13] and [15] (amended by [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2002 No 112](#) and [Ports Corporatisation and Waterways Management Amendment Act 2006 No 84](#)) (not commenced)
[Parliamentary Electorates and Elections Amendment Act 2006 No 68](#) (amended by [Ports Corporatisation and Waterways Management Amendment Act 2006 No 84](#)) (not commenced)
[Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)

Authorisation

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File last modified 17 March 2009

Ports and Maritime Administration Act 1995 No 13



New South Wales

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Ports and Maritime Administration Act 1995 No 13



New South Wales

An Act to establish statutory State owned corporations to operate the State's port facilities in the major ports; to transfer waterways management and other marine safety functions to the Minister; to establish the Maritime Authority of NSW to exercise those waterways management functions; to provide for port charges, pilotage and other marine matters; to dissolve the Maritime Services Board and its subsidiaries; to repeal certain existing marine legislation and to amend other legislation; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Ports and Maritime Administration Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

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.

commercial vessel has the same meaning it has in the *Commercial Vessels Act 1979*.

exercise a function includes perform a duty.

function includes a power, authority or duty.

harbour master means a person appointed or acting as harbour master under the *Marine Safety Act 1998*.

liabilities means any liabilities, debts and obligations (whether present or future and

whether vested or contingent).

marine legislation means any of the following Acts (and the regulations and other instruments made under any of those Acts):

this Act

[Marine Safety Act 1998](#)

[Marine Pollution Act 1987](#)

Any other Act prescribed by the regulations.

master of a vessel means the person having the command or charge of the vessel, but does not include a pilot.

MSB means the Maritime Services Board constituted under Part 2 of the [Marine Administration Act 1989](#).

MSB subsidiary means:

- (a) any MSB subsidiary ports authority (being the MSB Hunter Ports Authority, the MSB Illawarra Ports Authority or the MSB Sydney Ports Authority, constituted under Part 3 of the [Marine Administration Act 1989](#)), or
- (b) the MSB Waterways Authority constituted under Part 3 of the [Marine Administration Act 1989](#).

navigable waters means all waters (whether or not in the State) that are from time to time capable of navigation and are open to or used by the public for navigation, whether on payment of a fee or otherwise, but does not include flood waters that have temporarily flowed over the established bank of a watercourse.

navigation aid means any device used for the safety of navigation (such as a beacon, buoy or marine mark), but does not include a device on board a vessel.

operating licence of a Port Corporation means an operating licence issued to the Port Corporation by the Minister under Division 3 of Part 2.

owner of a vessel or cargo—see section 48.

pilot of a vessel means the person who has the conduct of the vessel but who does not belong to the vessel.

pilotage and **pilotage port** have the same meanings as in Part 6.

port includes any of following waters (or any part of those waters):

- (a) any harbour or haven, whether natural or artificial,

- (b) any estuary, channel, river, creek or roadstead,
- (c) any navigable water in which vessels may lie for shelter or for the transfer of cargo or passengers.

Port Corporation means the Newcastle Port Corporation, Port Kembla Port Corporation or Sydney Ports Corporation.

port-related supply chain means land-based services and facilities provided or operated in connection with cargo transport, handling and storage operations (and the co-ordination of those operations) at a port or supply chain facility, or between a port and a supply chain facility.

recreational vessel means a vessel other than a commercial vessel.

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

subsidiary, in relation to a Port Corporation, means a body corporate that would be a subsidiary (as determined by the [Corporations Act 2001](#) of the Commonwealth) of the Port Corporation if the Port Corporation were a company.

supply chain facility means a public-access facility provided for the storage, handling and distribution of cargo in connection with its transport to or from a port, including facilities for the storage and handling of empty cargo containers and facilities for the staging and exchange of cargo between different modes of transport (such as an intermodal terminal).

the Authority means the Maritime Authority of NSW constituted under Part 4.

vessel—see section 4.

- (2) Notes in the text of this Act do not form part of this Act.

4 Meaning of “vessel”

- (1) In this Act, **vessel** includes water craft of any description used or capable of being used as a means of transportation on water.
- (2) Without limiting the above, a vessel includes:
 - (a) any non-displacement craft, and
 - (b) a seaplane, but only while it is on water, and
 - (c) anything used on water that is declared by the regulations to be a vessel.
- (3) However, a vessel does not include anything that is declared by the regulations not to be a vessel.

5 Dissolution of MSB and its subsidiaries

(1) The MSB, and each MSB subsidiary, is dissolved.

(2) The following Schedules have effect:

Schedule 1 (Transfer of assets, rights and liabilities of MSB and its subsidiaries)

Schedule 2 (Transfer of former MSB staff other than senior executives).

Part 2 Port Corporations

Division 1 Establishment of Port Corporations as statutory State owned corporations

6 Establishment of Newcastle Port Corporation as statutory SOC

(1) There is constituted by this Act a corporation with the corporate name of the Newcastle Port Corporation.

(2) (Repealed)

7 Establishment of Port Kembla Port Corporation as statutory SOC

(1) There is constituted by this Act a corporation with the corporate name of the Port Kembla Port Corporation.

(2) (Repealed)

8 Establishment of Sydney Ports Corporation as statutory SOC

(1) There is constituted by this Act a corporation with the corporate name of the Sydney Ports Corporation.

(2) (Repealed)

Note—

The [State Owned Corporations Act 1989](#) contains many provisions that apply to the Port Corporations as statutory State owned corporations. In particular, Part 3 contains provisions relating to their status, the application of the [Corporations Act 2001](#) of the Commonwealth, the issue of shares to the Treasurer and another Minister, the board of directors, the chief executive officer, the employment of staff, the giving of directions by the portfolio Minister (including for the performance of non-commercial activities or the carrying out of public sector policies), the memorandum and articles, dividends and tax-equivalent payments, government guarantees, the sale or disposal of assets and legal capacity. Part 4 deals with the accountability of State owned corporations (including statements of corporate intent, annual reports and accounts). Part 5 deals with miscellaneous matters (including the duties and liabilities of directors and the application of public sector legislation).

Division 2 Objectives and functions of Port Corporations

9 Objectives of Port Corporations

The principal objectives of each Port Corporation are:

- (a) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable businesses, and
 - (ii) to maximise the net worth of the State's investment in the Port Corporation, and
 - (iii) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate these when able to do so, and
- (b) to promote and facilitate trade through its port facilities, and
- (c) to ensure that its port safety functions are carried out properly, and
- (d) to promote and facilitate a competitive commercial environment in port operations, and
- (e) to improve productivity and efficiency in its ports and the port-related supply chain.

10 Functions of Port Corporations

- (1) A Port Corporation has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of each Port Corporation are:
 - (a) to establish, manage and operate port facilities and services in its ports, and
 - (b) to exercise the port safety functions for which it is licensed in accordance with its operating licence, and
 - (c) to facilitate and co-ordinate improvements in the efficiency of the port-related supply chain.
- (3) A Port Corporation may:
 - (a) provide facilities or services that are ancillary or incidental to its principal functions, and
 - (b) conduct any business (whether or not related to its principal functions) that it considers will further its objectives.
- (4) This section does not limit the functions of a Port Corporation apart from this section, but is subject to the provisions of the [State Owned Corporations Act 1989](#), the marine

legislation and any other Act or law.

10A Ministerial directions to Port Corporation—competition and productivity

- (1) The Minister may give a Port Corporation directions in writing in relation to the exercise of any of the Corporation's functions in connection with its principal objectives under section 9 (d) and (e).
- (2) The Minister is to advise the voting shareholders of a Port Corporation of the giving and the terms of any such direction.
- (3) A Port Corporation is required to comply with a direction under this section.
- (4) If a Port Corporation considers that complying with any such direction may cause a significant variation in its approved financial outcomes, the Corporation must request the Minister to review the direction.
- (5) A request for a review must be made within 7 days after the direction is given or within such other reasonable period as the Minister determines.
- (6) If a Port Corporation requests such a review:
 - (a) the Corporation may request the Minister to provide it with a written record of the direction if it was not given in writing, and
 - (b) the Corporation is not to comply with the direction until notified of the Minister's decision following the review.
- (7) Following the review, the Minister may confirm or revoke the direction but the Minister is not to confirm the direction unless:
 - (a) the Minister has estimated the variation in the approved financial outcomes from the information supplied by the Port Corporation, and
 - (b) the Minister has referred the matter to the Treasurer, and
 - (c) the Treasurer has approved the direction.
- (8) The Minister's power to give directions to a Port Corporation under this section is in addition to the power of the Minister to give directions under section 20N, 20O or 20P of the *State Owned Corporations Act 1989*. Those sections of that Act do not apply to a direction of the Minister if the direction states that it is being given under this section.

10B Regulations to promote competition and productivity at ports

- (1) The regulations may make provision for or with respect to any of the matters set out in Schedule 4 in connection with the operation or provision of land-based port facilities and services and the facilities and services of the port-related supply chain, in relation

to the operation of the following ports:

- (a) Sydney Harbour,
- (b) Botany Bay,
- (c) Newcastle,
- (d) Port Kembla.

- (2) This section does not authorise the making of regulations with respect to the operation of any railway outside a port or supply chain facility.
- (3) A regulation under this section may create an offence punishable by a penalty not exceeding 500 penalty units.

Division 3 Operating licence for port safety functions of Port Corporations

11 Meaning of “port safety functions”

In this Division, **port safety functions** means any or all of the following functions of the Minister:

- (a) the function of providing or arranging for the provision of safety services in respect of ports (such as the installation and maintenance of navigation aids, vessel traffic control, pilotage services, the dredging and maintenance of navigation channels and hydrographic services),
- (b) the function of providing or arranging for the provision of emergency environment protection services for dealing with pollution incidents in relevant waters,
- (c) the function of carrying out investigations into marine accidents or incidents,
- (d) any other function determined by the Minister and specified in an operating licence under this Division.

12 Exercise of port safety functions under operating licence

- (1) The port safety functions exercisable by a Port Corporation are to be determined by the Minister.
- (2) Any such port safety functions may only be exercised by a Port Corporation in accordance with an operating licence issued to the Port Corporation by the Minister.
- (3) While a Port Corporation holds an operating licence, the Port Corporation must exercise the port safety functions to which it applies and must do so in accordance with the licence, the marine legislation and any other relevant Act or law.

- (4) This Division does not limit the functions that may be delegated to a Port Corporation under this Act. This Division also does not limit the exercise of port safety functions by the Minister or their delegation under the marine legislation to others.

13 Performance standards and quality assurance programs for services under operating licence

- (1) An operating licence is to set out performance standards, and provide for quality assurance programs, for services to be provided by the Port Corporation in exercising port safety functions under the licence.
- (2) The Minister may vary an operating licence by omitting a port safety function from the licence if satisfied that the Port Corporation has failed to perform the service concerned to the standard required under the licence.

14 Fee for operating licence and other financial provisions

- (1) An operating licence is to make provision for the payment to the Minister by the Port Corporation of a periodic licence fee.
- (2) An operating licence may make provision for the fixing and collection by, and payment to, the Port Corporation of navigation service charges in accordance with Part 5. The licence may provide for the remittance of any part of the amount collected to the Minister.

15 Other provisions relating to operating licence

- (1) An operating licence may impose conditions and restrictions on the exercise of port safety functions under the licence.
- (2) The initial term of an operating licence is to be for a maximum of 5 years, as determined by the Minister. After the initial term, the Minister may renew an operating licence for a maximum of 5 years at a time (even if its term has expired).
- (3) An operating licence may be varied by the Minister during its term by notice served on the Port Corporation.
- (4) The Minister may cancel an operating licence for a contravention of the licence or in any other circumstances authorised by the licence.

Division 4 Transfer of assets, rights and liabilities

16 Transfer of MSB port assets, rights and liabilities

- (1) The Minister may, by order in writing, direct that such assets, rights and liabilities of the MSB or any MSB subsidiary, as are specified or referred to in the order, be transferred to a Port Corporation so specified.

- (2) Under such transfers:
 - (a) assets, rights and liabilities relating to the port of Newcastle may be transferred to Newcastle Port Corporation, and
 - (b) assets, rights and liabilities relating to the port of Port Kembla may be transferred to Port Kembla Port Corporation, and
 - (c) assets, rights and liabilities relating to the ports of Sydney Harbour and Botany Bay may be transferred to Sydney Ports Corporation.
- (3) The freehold title to land that comprises the bed of the waters of a port is not to be transferred to a Port Corporation under this section. However, this subsection does not prevent the transfer to a Port Corporation of the ownership of any facility installed on the bed of those waters.
- (4) Assets, rights or liabilities may not be transferred under this section to a Port Corporation unless the Port Corporation is a statutory State owned corporation.
- (5) Schedule 1 applies to an order under this section.
- (6) For the purposes of this section, the assets, rights and liabilities of the MSB or any MSB subsidiary include:
 - (a) (Repealed)
 - (b) any assets, rights or liabilities used by or attaching to the MSB or any MSB subsidiary and belonging to the State or an authority of the State.
- (7) Section 20C of the *State Owned Corporations Act 1989* does not apply to the assets, rights or liabilities of the MSB or an MSB subsidiary.

17 Port safety assets, rights and liabilities

- (1) The Minister may direct, by order in writing, that such port safety assets, rights and liabilities of a Port Corporation, as are specified or referred to in the order, be transferred to the Authority or to any other person on behalf of the State.
- (2) The port safety assets, rights and liabilities are those designated as such when transferred to the Port Corporation by order of the Minister under this Act or any other assets, rights and liabilities that relate to the port safety functions of the Port Corporation and are designated as such in the most recent statement of corporate intent of the Port Corporation.
- (3) An order under this section may be made on such terms and conditions as are specified or referred to in the order.
- (4) Schedule 1 applies to an order under this section.

Division 5 Miscellaneous

18 Special provision for election of staff director

- (1) The staff director of the board of directors of a Port Corporation (referred to in section 20J (3) (a) of the *State Owned Corporations Act 1989*) is to be a person elected in the manner prescribed by this section instead of a person selected in the manner prescribed by that Act.
- (2) Regulations may be made for or with respect to the election of a staff director.
- (3) Employees of a Port Corporation are entitled to vote at an election of the staff director of the board of the Port Corporation in accordance with the regulations under this section.
- (4) A person is entitled to be elected as the staff director of the board of a Port Corporation whether or not the person is an employee of the Port Corporation.
- (5) The Electoral Commissioner of New South Wales, or a person nominated by the Electoral Commissioner, is to be the returning officer and has all the functions conferred or imposed on the returning officer by the regulations under this section. A Port Corporation is required to re-imburse the Electoral Commissioner for the costs incurred by the Electoral Commissioner in conducting an election for the staff director of that Port Corporation.
- (6) A person may be, at the same time, both a staff director and an employee of the Port Corporation concerned. Nothing in any law, rule, direction or other requirement that:
 - (a) is applicable to a staff director in the person's capacity as an employee of the Port Corporation, and
 - (b) would not be so applicable if the person were not such an employee,operates so as to prevent or restrict the exercise by the person of his or her functions as a staff director.
- (7) If an election fails for any reason or a staff director vacates office before the end of the person's term of office, any person nominated by the Minister after consultation with representatives of the employees of the Port Corporation may be appointed as the staff director under section 20J (3) (a) of the *State Owned Corporations Act 1989* to hold office until an election of a staff director is held in the manner prescribed by this section. Such an appointment may also be made in the case of the first staff director after the establishment of the Port Corporation pending the first election.
- (8) The term for which a staff director is appointed (as specified in the director's instrument of appointment) is to be not less than 3 years. This subsection does not apply to an appointment referred to in subsection (7).

- (9) In this section, **employee** of a Port Corporation means any member of the staff of the Port Corporation, but (unless the regulations under this section otherwise provide) does not include a person who is employed on a temporary or casual basis.

Note—

Section 20J (3) of the *State Owned Corporations Act 1989* provides that one of the directors of a statutory SOC is to be a staff director. The above section provides for the manner of selecting that staff director (as contemplated by that Act—see clause 4 of Schedule 8 to that Act).

19 Restriction on sale or disposal of transferred land

For the purposes of section 20Y of the *State Owned Corporations Act 1989*, the main undertaking of a Port Corporation includes any land that is transferred to the Port Corporation by order under this Part.

Note—

Section 20Y of that Act prohibits the sale or disposal of any of the main undertakings of a statutory SOC (as described in its statement of corporate intent) without the prior written approval of the voting shareholders.

20 Foundation charter of Port Corporation for purposes of SOC Act

For the purposes of the *State Owned Corporations Act 1989*, the foundation charter of a Port Corporation is this Part of this Act (but not the remainder of this Act).

Note—

Section 3 of that Act defines the foundation charter of a statutory SOC as the whole of the Act by which a SOC is established for the purposes of the SOC Act, in particular for the purpose of provisions relating to the legal capacity of statutory SOCs and assumptions that they have complied with that Act and their foundation charter.

21 Consultation with Minister on appointment of directors of Port Corporation and on statement of corporate intent

- (1) The voting shareholders of a Port Corporation are to consult the Minister about any proposed recommendation of the voting shareholders to appoint directors of the Port Corporation under section 20J of the *State Owned Corporations Act 1989*.
- (2) The voting shareholders of a Port Corporation are also to consult the Minister about any proposed action of the voting shareholders concerning the preparation, completion or modification of the statement of corporate intent of the Port Corporation under section 21 of that Act.

21A Payment of penalties to Port Corporations

- (1) There is payable to a Port Corporation all penalties recovered for offences against the marine legislation that are recovered in prosecutions brought by (or penalty notices issued by) members of staff of the Port Corporation.
- (2) Penalties paid to a Port Corporation under this section become the property of the Port Corporation.

22 Interpretation of this Part

Words and expressions used in this Part and also in the *State Owned Corporations Act 1989* have the same meanings in this Part as they have in that Act.

Part 3 Marine safety and other functions of Minister

23 Functions under marine legislation

The Minister has such functions as are conferred or imposed on the Minister by or under the marine legislation.

Note—

The remaining functions of the MSB under the marine legislation have been conferred on the Minister by amendments to that legislation contained in Schedule 4.

24 Marine safety functions generally

The Minister has general responsibility for marine safety, including:

- (a) the safe operation of recreational and commercial vessels, and
- (b) the safety of navigation in ports and other navigable waters, and
- (c) the protection of the environment in connection with the use of vessels in State waters (within the meaning of the *Marine Pollution Act 1987*).

25 Particular marine safety functions

The Minister has the following particular marine safety functions:

- (a) to provide or arrange for the provision of marine safety services in accordance with the marine legislation (such as the installation and maintenance of navigation aids, vessel traffic control within ports, moorings in ports for vessels, pilotage services within ports, the dredging and maintenance of navigation channels and hydrographic services),
- (b) to investigate or arrange for the investigation of marine accidents and incidents,
- (c) to provide or arrange for the provision of emergency environment protection services for dealing with pollution incidents in State waters (within the meaning of the *Marine Pollution Act 1987*).

26 Management of trading ports not managed by Port Corporations

- (1) The Minister has the function of managing, or arranging for the management of, the commercial port facilities of the State that are not managed by a Port Corporation.
- (2) Those commercial port facilities comprise the port facilities that are vested in the Authority. They also comprise any port facilities that are vested in another State

authority and that the Minister has undertaken to manage with the agreement of that other State authority.

- (3) The Minister may establish committees to advise it on the management of those facilities.

Note—

On the enactment of this Act, the commercial port facilities at the ports of Yamba and Eden will be subject to the management of the Minister under the above section.

27 Delegation of functions by Minister

- (1) The Minister may delegate to an authorised person any of the following functions, other than this power of delegation:
 - (a) any function of the Minister under the marine legislation,
 - (b) any function conferred by or under any Act on the Minister in his or her capacity as the Minister administering this Act.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Minister if the delegate is authorised in writing to do so by the Minister.
- (3) In this section, **authorised person** means:
 - (a) the Authority or a member of the staff of the Authority, or
 - (b) a Port Corporation or a member of the staff of a Port Corporation, or
 - (c) a harbour master or acting harbour master, or
 - (d) a public servant, or
 - (e) any person of a class prescribed by the regulations.

28 Minister may contract for supply of services

- (1) The Minister may enter into contracts for the supply of services required to be provided by the Minister in the exercise of the functions of the Minister referred to in this Division.
- (2) This section does not affect any other power of the Minister to enter into a contract for the supply of services.

29-32 (Repealed)

33 Acquisition of land by Authority

- (1) The Minister may, for the purposes of the marine legislation, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the

Land Acquisition (Just Terms Compensation) Act 1991.

- (2) Without limiting subsection (1), land may be so acquired for the purposes of the Minister under the marine legislation, the Authority or a Port Corporation.
- (2A) Land so acquired for the purposes of the Authority may be transferred to the Authority, but only if the Authority makes provision to the satisfaction of the Minister for the payment of the purchase price or of compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).
- (3) Land so acquired for the purposes of a Port Corporation may be transferred to the Port Corporation or a subsidiary of the Port Corporation, but only if the Port Corporation or subsidiary makes provision to the satisfaction of the Minister for the payment of the purchase price or of compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).
- (4) For the purposes of the *Public Works Act 1912*, any such acquisition of land is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.
- (5) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this Act.

34 (Repealed)

Part 4 Maritime Authority of NSW

Division 1 Constitution and management of Authority

35 Constitution of Authority

- (1) There is constituted by this Act a body corporate with the corporate name of the Maritime Authority of NSW.
- (2) The Authority is, for the purposes of any Act, a statutory body representing the Crown.

36 Chief Executive of Authority

- (1) The Governor may appoint a Chief Executive of the Authority.
- (2) The employment of the Chief Executive is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.
- (3) The Minister may, from time to time, appoint a person to act in the office of the Chief Executive during the illness or absence of the Chief Executive (or during a vacancy in the office of Chief Executive) and the person, while so acting, has all the functions of the Chief Executive and is taken to be the Chief Executive.

- (4) The Minister may, at any time, remove a person from office as acting Chief Executive.
- (5) An acting Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

37 Chief Executive to manage and control affairs of Authority

- (1) The affairs of the Authority are to be managed and controlled by the Chief Executive of the Authority.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the Chief Executive is taken to have been done by the Authority.

38 Ministerial control of Authority

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

39 Corporate plan

- (1) The Authority is required to prepare and deliver to the Minister, at least 3 months before the beginning of each financial year of the Authority, a draft corporate plan for the financial year.
- (2) The Authority:
 - (a) must consider any comments on the draft corporate plan that are made by the Minister within 2 months after the plan is delivered to the Minister, and
 - (b) must deliver the completed corporate plan to the Minister before the beginning of the financial year concerned.
- (3) The Authority is, as far as practicable, to exercise its functions in accordance with the relevant corporate plan.
- (4) A corporate plan must specify:
 - (a) the objectives of the activities of the Authority for the financial year concerned and for such future financial years as the Minister directs, and
 - (b) the strategies, policies and budgets for achieving those objectives, and
 - (c) targets and criteria for assessing the performance of the Authority.
- (5) This section is subject to the requirements of any law, including the requirements of a direction of the Minister under this Act.

40 Regulations relating to certain staff

- (1) This section applies to and in respect of such staff as are 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.
- (2) The regulations may make provision for or with respect to the staff of the Authority, including the conditions of employment and the discipline of any such staff.
- (3) Any such regulations relating to the conditions of employment or the discipline of staff to which this section applies:
 - (a) have effect subject to any State industrial instrument relating to that staff, and
 - (b) have effect despite any determination under section 4E (1) of the *Public Sector Employment and Management Act 2002*.

40A Abolition of Marine Ministerial Holding Corporation

- (1) On the abolition of the Marine Ministerial Holding Corporation, the assets, rights and liabilities of the Marine Ministerial Holding Corporation are transferred to the Waterways Authority.
- (2) Schedule 1 applies to the transfer of the assets, rights and liabilities of the Marine Ministerial Holding Corporation.
- (3) On the abolition of the Marine Ministerial Holding Corporation, a reference in any Act, in any instrument made under any Act or in any document of any kind to the Marine Ministerial Holding Corporation is taken to be a reference to the Waterways Authority.

Note—

The Marine Ministerial Holding Corporation was abolished by section 4 of the *Statute Law (Miscellaneous Provisions) Act 2000*.

Division 2 Functions of Authority

41 Functions of Authority

- (1) The principal functions of the Authority are as follows:
 - (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,
 - (b) to provide advice to the Minister in relation to maritime and ports matters,
 - (c) to manage property vested in it.
- (2) The Authority has such other functions as are conferred or imposed on it by or under this or any other Act.

(3) The Authority may:

- (a) for the purpose of exercising its functions, acquire, use, lease or dispose of land, buildings, vessels, equipment and other assets, and
 - (a1) hold on behalf of the State, retain, transfer and dispose of assets, rights and liabilities transferred to it under this Act,
 - (a2) carry on any activity or business that relates to the assets, rights and liabilities transferred to it or that is incidental or ancillary to the assets, right and liabilities transferred to it,
 - (a3) develop and manage land transferred to it under this Act or otherwise acquired by it,
- (b) for the purpose of exercising its functions, enter into any contracts or arrangements for the carrying out of any works or the performance of services or the supply of goods or materials, and
- (c) for the purpose of exercising its functions, appoint agents and act as agent for other persons, and
- (d) do all such things as are supplemental or incidental to the exercise of its functions, and
- (e) exercise its functions within or outside New South Wales.

(4) However, 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.

41A Delegation of functions by Authority

- (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.
- (2) In this section, **authorised person** means:
 - (a) a member of the staff of the Authority, or
 - (b) a Port Corporation or a member of the staff of a Port Corporation, or
 - (c) a harbour master or acting harbour master, or
 - (d) a public servant, or
 - (e) any person of a class prescribed by the regulations.

Division 3 Financial and other provisions relating to Authority

42 Waterways Fund

- (1) There is established a fund to be called the Waterways Fund.
- (2) There is payable into the Waterways Fund:
 - (a) all money received by the Authority (other than money required under subsection (3) to be paid into the Consolidated Fund), and
 - (b) all penalties recovered for offences against the marine legislation that are recovered in prosecutions brought by (or penalty notices issued by) any person except where the penalty is payable to a Port Corporation under section 21A, and
 - (c) all interest received in respect of the investment of money belonging to the Fund, and
 - (d) all money borrowed by the Authority, and
 - (e) all money appropriated by Parliament for the purposes of the Authority, and
 - (f) all money directed to be paid into the Fund by this or any other Act.
- (3) The Minister may, with the concurrence of the Treasurer, determine whether money received by the Authority in the exercise of functions delegated to it by the Minister is to be paid into the Consolidated Fund or the Waterways Fund.
- (4) There is payable from the Waterways Fund:
 - (a) all payments made on account of the Authority or otherwise required to meet the expenditure incurred in relation to the functions of the Authority, and
 - (b) the remuneration (including allowances) of the Chief Executive and staff of the Authority, and
 - (c) all money directed to be paid from the Fund by this or any other Act.
- (5) All money payable into the Fund is to be paid into one or more banks, building societies or credit unions in New South Wales.

43 Investment

The Authority may invest money in the Waterways Fund:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Authority to invest money—in accordance with the *Trustee Act 1925* or in any other manner approved by the Minister with the

concurrence of the Treasurer.

44 Financial year of Authority

- (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*.

45 (Repealed)

46 Seal of Authority

The seal of the Authority is to be kept by the Chief Executive of the Authority and may be affixed to a document only:

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

Part 5 Port charges

Division 1 Preliminary

47 Definitions generally

- (1) In this Part:

buoy means a floating apparatus (other than a vessel) that is in navigable waters and used for securing a vessel.

cargo includes any container or other item used to contain any substance or article.

designated port means (subject to subsection (3)) any of the following ports:

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

Note—

On the enactment of this Act, the ports that are pilotage ports are the same as the ports that are designated

ports.

dolphin means an apparatus or a structure (other than a wharf or buoy) that is permanently fixed to the bed of navigable waters and that is used for securing a vessel.

relevant port authority means:

- (a) in relation to navigation service charges fixed under an operating licence issued to a Port Corporation—that Port Corporation, or
- (b) in relation to any other navigation service charges—the Minister, or
- (c) in relation to pilotage charges—the pilotage service provider (within the meaning of Part 6), or
- (d) in relation to port cargo access charges—the Minister, or
- (e) in relation to site occupation and wharfage charges for sites owned or operated by a Port Corporation—that Port Corporation, or
- (f) in relation to site occupation and wharfage charges for other sites or in relation to berthing charges—the Minister.

site means a site referred to in section 59.

stevedoring means the loading or unloading of the cargo of a vessel and incidental activities such as the handling or storage of cargo or stevedoring equipment at the place at which the cargo is loaded or unloaded.

- (2) (Repealed)
- (3) The regulations may provide that any other port is a designated port for the purposes of this Part or that a port is no longer such a designated port.

48 Meaning of “owner” of vessel or cargo

- (1) In this Act, **owner** of a vessel or cargo means (subject to this section) the person who owns the vessel or cargo.
- (2) A reference in this Act to the owner of a vessel includes a reference to:
 - (a) a person registered as the vessel’s owner in the relevant authority under the marine legislation or other certificate of registry for the vessel, or
 - (b) a person who has chartered the vessel.
- (3) A reference in this Act to the owner of a vessel or cargo includes a reference to a joint owner of the vessel or cargo.

- (4) A reference in this Act to the owner of a vessel or cargo includes a reference to any person who, whether on the person's own behalf or on behalf of another:
 - (a) exercises any of the functions of the owner of the vessel or cargo, or
 - (b) represents to the relevant port authority that the person has those functions or accepts the obligation to exercise those functions.
- (5) For the purposes of this Act, a person does not cease to be an owner of a vessel because the vessel is mortgaged, chartered, leased or hired to another person.

Division 2 Navigation service charges

49 Application of Division

This Division applies to the following vessels in designated ports:

- (a) vessels for which pilotage in such a port is compulsory under Part 6,
- (b) vessels for which pilotage would be compulsory if the master did not hold a pilotage exemption certificate,
- (c) vessels declared by the regulations to be liable for navigation service charges.

50 Imposition of navigation service charge

- (1) A navigation service charge is payable in respect of the general use by a vessel of a designated port and its infrastructure, apart from:
 - (a) the use of a pilot, or
 - (b) the use of land-based port facilities and staff directly involved in providing services at those facilities, or
 - (c) port access for cargo at the interface between the vessel and land-based facilities for the purpose of stevedoring operations.
- (2) Unless the regulations otherwise provide, the charge:
 - (a) is payable on each entry by the vessel into any designated port, and
 - (b) is to be calculated by reference to the gross tonnage of the vessel.
- (3) The charge is payable whether entry to the waters of a port is by sea or from the land (or, in the case of a seaplane, from the air).
- (4) A navigation service charge is payable by the owner of the vessel concerned.

51 Fixing of navigation service charges

- (1) The relevant port authority may fix navigation service charges.

- (2) If the relevant port authority is a Port Corporation, the navigation service charges may only be fixed with the approval of the Minister and in accordance with the operating licence issued to the Port Corporation.
- (3) Different charges may (subject to this Part) be fixed in respect of different ports or vessels, or according to such other factors as the relevant port authority thinks fit.

Division 3 Pilotage charges

52 Application of Division

This Division applies to vessels entering, moving within or leaving pilotage ports.

53 Pilotage charges

- (1) A pilotage charge is payable in respect of a vessel on each occasion that it:
 - (a) enters, or
 - (b) leaves, or
 - (c) moves within,a pilotage port under the pilotage of a pilot in accordance with Part 6.
- (2) A pilotage charge is also payable for any deferral of pilotage authorised by Part 6 or at the request of the owner or master of the vessel.
- (3) Pilotage charges may be calculated (but are not required to be calculated) by reference to the gross tonnage of the vessel.
- (4) A pilotage charge is payable by the owner of the vessel concerned.

54 Fixing of pilotage charges

- (1) The relevant port authority may fix pilotage charges.
- (2) If the relevant port authority is a Port Corporation, the pilotage charges may only be fixed with the approval of the Minister and in accordance with the operating licence issued to the Port Corporation.
- (3) If the relevant port authority is a contractor, the pilotage charges may only be fixed with the approval of the Minister and in accordance with the contract with the Minister to provide the pilotage services.
- (4) Different charges may (subject to this Part) be fixed in respect of different ports or vessels, or according to such other factors as the relevant port authority thinks fit.

Division 4 Port cargo access charges

55 Application of Division

This Division applies to vessels and their cargo in designated ports.

56 Port cargo access charge

- (1) A port cargo access charge is payable in respect of port access for cargo at the interface between the vessel and land-based facilities for the purpose of stevedoring operations.
- (2) The charge is payable whether the stevedoring operations are carried out at the facilities of a Port Corporation, privately-owned facilities or other facilities.
- (3) Unless the regulations otherwise provide, the charge is to be calculated by reference to the quantity of cargo loaded or unloaded at the facility.
- (4) The charge is payable:
 - (a) in the case of cargo that is unloaded at the facility—by the person who, immediately after it is unloaded, is the owner of the cargo, and
 - (b) in the case of cargo that is loaded at the facility—by the person who, immediately before it is loaded, is the owner of the cargo.
- (5) To the extent, however, that the charge is not paid by the person indicated in subsection (4) as liable for its payment, the charge is payable by the person who, at the time payment is demanded, is the owner of the cargo.

57 Fixing of port cargo access charges

- (1) The Minister may fix port cargo access charges.
- (2) Different charges may (subject to this Part) be fixed in respect of different ports, cargo or vessels, or according to such other factors as the Minister thinks fit.

Division 5 Site occupation charges and wharfage charges

58 Application of Division

This Division applies to vessels and their passengers and cargo in designated ports, but only applies in respect of sites owned or operated by a Port Corporation, the Minister or the Authority (being the relevant port authorities for the purposes of this Division).

59 Meaning of “site”

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

- (2) The Minister may designate an area as a site, but only if it is owned or operated by a relevant port authority and it consists of:
- (a) an area of water surrounding or adjacent to a wharf, buoy or dolphin, and
 - (b) in the case of a wharf or a dolphin—the whole or part of the area of the wharf or dolphin.

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

- (3) In subsection (2), **wharf** includes any land adjacent to it.
- (4) For the purposes of subsection (2) (a), an area of water is owned or operated by the relevant port authority only if:
- (a) the bed of the water is owned or leased by the relevant port authority, or
 - (b) the bed of the water is owned or leased by the State or the Authority and the Minister approves of that area of water being included in a site operated by the relevant port authority.
- (5) The relevant port authority is to keep at its office a copy of a map defining each site it owns or operates.
- (6) A map or a copy of a map referred to in this section may be inspected, without charge, by any person during business hours at the office at which it is kept.
- (7) For the purposes of any legal proceedings, an area defined on a map kept at the office of the Minister is taken to have been duly designated as a site by the Minister under this Division unless the contrary is established.
- (8) An area that, immediately before the repeal of the [Marine Port Charges Act 1989](#), was a site within the meaning of that Act and is owned or operated by a relevant port authority is (subject to this section) a site for the purposes of this Division.

60 Site occupation charge

- (1) A site occupation charge is payable in respect of the occupation of all or part of a site:
- (a) for stevedoring purposes, or
 - (b) for the embarkation or disembarkation of passengers, or
 - (c) for the accommodation of a vessel for any purpose (including quarantine or customs purposes), or
 - (d) for any other purpose in connection with a vessel, its passengers or cargo.
- (2) Unless the regulations otherwise provide, the charge is to be calculated by reference

to the amount of time (as ascertained by the relevant port authority) during which the site, or a part of it, is reserved or is occupied without reservation.

- (3) The charge is payable by the person whom the relevant port authority recognises as the occupier of the site or part.
- (4) This section does not apply in respect of so much of a site as is leased by the relevant port authority as lessor.

61 Wharfage charge

- (1) A wharfage charge is payable in respect of availability of a site at which stevedoring operations may be carried out.
- (2) Unless the regulations otherwise provide, the charge is to be calculated by reference to the quantity of cargo loaded or unloaded at the site.
- (3) The charge is payable:
 - (a) in the case of cargo that is unloaded at the site—by the person who, immediately after it is unloaded, is the owner of the cargo, and
 - (b) in the case of cargo that is loaded at the site—by the person who, immediately before it is loaded, is the owner of the cargo.
- (4) To the extent, however, that the charge is not paid by the person indicated in subsection (3) as liable for its payment, the charge is payable by the person who, at the time payment is demanded by the relevant port authority, is the owner of the cargo.

62 Fixing of charges under this Division

- (1) The relevant port authority may fix the charges payable under this Division.
- (2) If the relevant port authority is a Port Corporation, the charges under this Division may only be fixed with the approval of the Minister.
- (3) Different charges may (subject to this Part) be fixed in respect of different ports, sites, cargo or vessels, or according to such other factors as the relevant port authority thinks fit.

63 Replacement of statutory charges with contractual charges

- (1) Charges cease to be payable under this Division on a day or days to be appointed by proclamation.
- (2) Without limiting subsection (1), different days may be appointed in respect of charges payable to different relevant port authorities or in respect of different charges or other circumstances.

- (3) A proclamation under this section may be varied by a subsequent proclamation (whether before or after the day appointed by the original proclamation).
- (4) Any liability incurred under this Division before a charge ceases to be payable is not affected and the provisions of this Part continue to apply to that liability.
- (5) The fact that charges cease to be payable under this Division does not prevent commercial arrangements from being made for the payment of charges for services provided after that time.

Division 6 Berthing charges

64 Application of Division

This Division applies to vessels in designated ports that are berthed at wharves, buoys or dolphins owned or operated by the Minister or the Authority (being the relevant port authority for the purposes of this Division).

65 Berthing charge

- (1) A berthing charge is payable in respect of the berthing of a vessel at a wharf, buoy or dolphin if the vessel is a lighter or has a gross tonnage of less than that prescribed by the regulations.
- (2) The berthing charge is payable by the owner of the vessel concerned.
- (3) For the purposes of this section, a vessel is taken to be berthed at a wharf, buoy or dolphin:
 - (a) if it is secured to or otherwise held at the wharf, buoy or dolphin, or
 - (b) if it is one of a number of vessels secured or otherwise held together, one of which is secured to or otherwise held at the wharf, buoy or dolphin.

66 Fixing of berthing charges

- (1) The relevant port authority may fix berthing charges.
- (2) Different charges may (subject to this Part) be fixed in respect of different ports, vessels, wharves, buoys or dolphins, or according to such other factors as the relevant port authority thinks fit.

Division 7 Agreements in respect of charges

67 Agreements in respect of charges

- (1) The relevant port authority may, with the approval of the Minister, enter into an agreement with a person liable to pay any kind of charge under this Part.

- (2) Such an agreement may make provision for or with respect to:
 - (a) fixing the amount of any charge payable by the person to the relevant port authority, and
 - (b) any other matter which the relevant port authority is permitted by or under this Part to determine in respect of the charge, and
 - (c) any right or privilege which by or under this Part accrues to the person liable to pay the charge, or which the relevant port authority may confer on the person.
- (3) To the extent that provision is so made, the agreement displaces any determinations of the relevant port authority in relation to the charge or to the matter, right or privilege concerned.

Division 8 Miscellaneous

68 Payment and collection of charges

- (1) A charge under this Part is payable on demand by the relevant port authority, or at such time, or on such terms, as the relevant port authority may determine in respect of the person liable to pay it.
- (2) Agents may be appointed by the relevant port authority for collection of charges.
- (3) If the relevant port authority is the Minister, the Minister may appoint a Port Corporation or any other person as the agent for the collection of charges. The appointment may also be made in an operating licence issued to a Port Corporation.
- (4) A charge under this Part is a debt due to the relevant port authority from the person liable to pay it, and is recoverable by the relevant port authority in any court of competent jurisdiction.
- (5) If there is more than one person liable to pay a charge under this Part, those persons are jointly and severally liable to pay the charge.

69 Payment of charges to Minister to be credited to Consolidated Fund

Payments of charges under this Part that are made to the Minister as the relevant port authority (and any remittance to the Minister of part of a navigation service charge under the operating licence of a Port Corporation) are to be paid into the Consolidated Fund.

70 Interest on overdue payments

- (1) The relevant port authority may charge interest, at a rate determined by the authority, on charges under this Part that are unpaid by the due date.
- (2) Different rates may be determined for charges that remain unpaid for different periods of time.

- (3) Unless the regulations otherwise provide, the rate determined in respect of any period is not to exceed 5 per cent per annum above the interest rate that in the ordinary course of business would be charged by the Commonwealth Bank for the relevant period on unsecured overdrafts of more than \$100,000.

71 Security for payment of charges

- (1) As security for the payment of charges that have been or may be incurred under this Part by a person, the relevant port authority may require the person to lodge with it a security deposit.
- (2) The security deposit may take the form of cash or a guarantee from a bank, building society or credit union or such other form as the relevant port authority may approve, and is to be in or for an amount determined by the relevant port authority.
- (3) The relevant port authority may appropriate a security deposit or the proceeds of a security deposit to meet liabilities of the depositor (including any interest payable) under this Part that are unpaid after becoming due.
- (4) In the event that a security deposit or the proceeds of a security deposit have been appropriated or partly appropriated, the relevant port authority may require lodgment of further security.
- (5) If at any time the relevant port authority considers that a depositor's potential liabilities under this Part should be more adequately guaranteed, the relevant port authority may require the lodgment of security in a greater amount, or in a different form, or both.
- (6) This section is subject to the terms of any operating licence issued to a Port Corporation or of any contract made with the Minister by a contractor.

72 Failure to comply with relevant port authority's requirements

- (1) The relevant port authority may withhold or withdraw the provision of services or facilities to a person who fails to comply with any lawful requirement made by the relevant port authority with respect to the provision of those services or facilities, whether or not the person has paid a charge for the provision of the services or facilities.
- (2) Nothing in this section affects any other function or discretion of the relevant port authority in relation to its services and facilities.
- (3) This section is subject to the terms of any operating licence issued to a Port Corporation or of any contract made with the Minister by a contractor.

73 Liability of current owners and agents

- (1) To the extent to which a charge under this Part, payable by the owner of a vessel, is

not paid by the person who was the owner at the time the charge was incurred, the charge is payable by the person who is the owner at the time payment is demanded by the relevant port authority.

(2) If, at the time when a vessel left a port:

- (a) there was an agent for the berthing or working of the vessel, and
- (b) there was no other agent for the vessel,

that agent is liable, to the same extent as the owner of the vessel, for charges under this Part incurred by the vessel while in port and which are unpaid.

(3) If, at the time when a vessel left a port, there was an agent for the vessel other than an agent for the berthing or working of the vessel, that agent is liable, to the same extent as the owner of the vessel, for any such unpaid charges.

74 Waiver or refund of charges

The relevant port authority may, with the approval of the Minister, waive or refund the whole or any part of any charge under this Part that is due to the port authority in any particular case or class of cases.

75 Part does not apply to Australian Defence Force vessels

- (1) This Part does not apply to or in respect of a vessel belonging to the Defence Force of Australia, or its passengers or cargo.
- (2) However, the relevant port authority and the person otherwise liable to pay a charge under this Part may enter into an agreement under which all or any of the provisions of this Part apply to the vessel, its cargo or passengers.

76 Regulations

- (1) The regulations may make provision for or with respect to charges under this Part.
- (2) In particular, the regulations may make provision for or with respect to:
 - (a) the manner of payment of charges under this Part, and
 - (b) the furnishing to the relevant port authority of information relevant to the liability of any person to pay a charge under this Part, and
 - (c) the furnishing to the relevant port authority of particulars of any cargo, or any vessel, in respect of which any charges are payable under this Part, and
 - (d) ascertaining the gross tonnages of vessels, the quantity of any cargo and any other matter necessary or incidental to the calculation of the amount of any charge under this Part, and

- (e) the detention and inspection of any vessel, and the unloading of any cargo, for any of the purposes of this Part and the regulations, and
- (f) the exemption of any vessels, cargo or other things from this Part or any provisions of this Part.

Part 6 Pilotage

77 Definitions

(1) In this Part:

pilotage means the conduct of a vessel by a pilot as follows:

- (a) inward pilotage, that is, the pilotage of a vessel entering into a pilotage port,
- (b) outward pilotage, that is, the pilotage of a vessel leaving a pilotage port,
- (c) harbour pilotage, that is, the pilotage of a vessel being moved within a pilotage port.

pilotage port means (subject to subsection (2)) any of the following ports:

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

pilotage service provider means:

- (a) in relation to pilotage services provided by a Port Corporation under an operating licence—the Port Corporation, or
- (b) in relation to pilotage services provided by a contractor under a contract under section 81—the contractor, or
- (c) in relation to any other pilotage services—the Minister.

(2) The regulations may provide that any other port is a pilotage port for the purposes of this Part or that a port is no longer such a port.

(3) A reference in this Part to pilotage services provided by a Port Corporation includes a reference to pilotage services provided by a subsidiary of the Port Corporation, and a reference to a pilotage service provider is to be construed as including a reference to

any such subsidiary providing pilotage services.

78 Pilotage compulsory in pilotage ports

- (1) Pilotage is compulsory in every pilotage port.
- (2) The master of a vessel must not enter, leave or move within a pilotage port with the vessel before taking on board the pilot made available by the pilotage service provider to conduct the vessel on its movement into the port, out of the port or within the port.

Maximum penalty: 100 penalty units.

- (3) This section continues to apply even though a pilot has deferred pilotage under this Part.

79 Vessels exempted from compulsory pilotage

- (1) Pilotage is not compulsory in a pilotage port in respect of the following vessels:
 - (a) a vessel whose master is the holder of a pilotage exemption certificate or certificate of local knowledge under the [Marine Pilotage Licensing Act 1971](#) that applies to that port and vessel,
 - (b) a recreational vessel,
 - (c) a vessel less than 30 metres in length,
 - (d) a seaplane,
 - (e) a vessel of any class declared by the regulations to be an exempt vessel for the purposes of this Part,
 - (f) a particular vessel declared to be an exempt vessel for the purposes of this Part by order of the Minister given to the owner or master of the vessel.
- (2) Despite subsection (1), pilotage is compulsory in respect of a vessel (whether or not the master is the holder of a pilotage exemption certificate or certificate of local knowledge) if pilotage is declared to be compulsory by the regulations or by order of the Minister given to the owner or master of the vessel.

Note—

The [Marine Pilotage Licensing Act 1971](#) deals with the licensing of pilots and the issue of pilotage exemption certificates and certificates of local knowledge.

80 Pilots in pilotage ports to be provided by pilotage service provider

A person must not act as the pilot of a vessel in a pilotage port unless the person has been assigned by the pilotage service provider to act as a pilot in that pilotage port.

Maximum penalty: 100 penalty units.

81 Minister may enter into a contract for the provision of pilotage services not provided by Port Corporation

- (1) The Minister may enter into a contract with a person (a **contractor**) for the provision by that person of pilotage services at any port. Contracts may be entered into with different persons for the provision of pilotage services at different ports.
- (2) This section does not apply to pilotage services that are provided by a Port Corporation under an operating licence.
- (3) The Minister is required to call public tenders for a contract under this section.
- (4) A contract under this section must include such provisions as the Minister thinks necessary or desirable to be included for ensuring compliance with the marine legislation and the provision of the pilotage services required in the port concerned.
- (5) Without limiting subsection (1), such a contract is to:
 - (a) specify the level of pilotage services to be provided under the contract, and
 - (b) set out performance standards, and quality assurance programs, for pilotage services to be provided under the contract, and
 - (c) provide for the fixing and collection by, and payment to, the contractor of pilotage charges in accordance with Part 5, and
 - (d) specify the amount of consideration to be paid to the Minister by the contractor under the contract (such an amount may be calculated on the basis of a proportion of the pilotage charges payable to the contractor for the provision of pilotage services), and
 - (e) require the contractor to keep records of the pilotage services provided by the contractor and the amounts charged and paid in respect of those services, and
 - (f) empower the Minister and any person authorised by the Minister to inspect those records, and
 - (g) require the contractor to provide information, as and when the Minister requires, as to the costs incurred by the contractor in providing pilotage services at the port concerned, and
 - (h) empower the Minister to terminate or suspend the contract on the ground that the contractor is unable to provide pilotage services at the level referred to in paragraph (a) or has contravened the marine legislation, or on any other specified ground.

Note—

This section re-enacts relevant provisions of Part 4A of the *Pilotage Act 1971* (now *Marine Pilotage Licensing Act*)

1971).

82 Deferment of pilotage generally

- (1) When a vessel is unable, or will in the opinion of the master of the vessel be unable, to leave its berth or place of anchorage in a pilotage port within 1 hour after the time stated for so leaving in the application by the owner or master for a pilot, the pilot attending may defer pilotage and cease attendance.
- (2) When a vessel is unable, or will in the opinion of the master be unable, to enter into a pilotage port, within 1 hour after the time stated for so entering in the application by the owner or master for a pilot, the pilot attending may defer pilotage and cease attendance.

83 Deferment of pilotage for safety reasons

- (1) If a pilot made available for pilotage considers that a vessel should not enter a pilotage port or should not leave its berth or place of anchorage for any reason related to marine safety, the pilot may direct the master of the vessel not to enter the pilotage port or not to leave the berth or place of anchorage pending the decision of the harbour master of the port.
- (2) The master of a vessel must comply with any such direction.
Maximum penalty: 100 penalty units.
- (3) A pilot who gives any such direction may defer pilotage and cease attendance.

84 Duties of master in connection with pilotage

- (1) The master of a vessel under pilotage must:
 - (a) ensure that any order given with the master's authority by the pilot is carried out, and
 - (b) give the pilot such information as the pilot may require for the safe navigation of the vessel.
- (2) The master of a vessel must not give to a pilot who requires information for the navigation of the vessel any information that the master knows is false or misleading.

Maximum penalty: 100 penalty units.

85 Liability of master and owner of vessel under pilotage

- (1) A person who is employed as a pilot by the pilotage service provider and who has the conduct of a vessel is subject to the authority of the master of the vessel. The master is not relieved from responsibility for the conduct and navigation of the vessel merely because the vessel is under pilotage.

- (2) The master and the owner of a vessel being navigated under circumstances in which pilotage is compulsory are jointly and severally liable for any loss or damage caused by the vessel or by any fault of navigation of the vessel in the same manner as if pilotage were not compulsory.

86 Immunity of State, pilots, pilotage service provider and others

- (1) Neither the State, nor the Minister, nor a pilotage service provider is liable for any loss or damage that is attributable to the negligence of any person employed as a pilot by the pilotage service provider while the person is acting as a pilot.
- (2) A person employed as a pilot by the pilotage service provider is not personally liable in pecuniary damages for any loss or damage attributable to the person's negligence while the person is acting as a pilot.

Note—

This section re-enacts section 28B of the *Pilotage Act 1971* (now *Marine Pilotage Licensing Act 1971*). Section 85 re-enacts section 28A of that Act.

87 Offence for pilot to endanger vessel

A pilot of a vessel who, by any wilful act or omission, endangers the vessel or its crew is guilty of an offence.

Maximum penalty: 100 penalty units.

88 Provisions to apply when vessel under pilotage at request of owner

If a vessel (not required to be under pilotage) is under pilotage at the request of its owner, this Part applies to that vessel and its master and owner for the purposes of that pilotage.

89 Regulations

The regulations may make provision for or with respect to pilotage and, in particular, for or with respect to:

- (a) the administration of the pilotage service of a pilotage service provider and the duties of pilots and other officers appointed to that service, and
- (b) the specification of when inward, outward and harbour pilotage begins and ends, and
- (c) the records and reports in connection with pilotage to be made and furnished by masters of vessels and pilots.

Part 7

90-99 (Repealed)

Part 8 Legal proceedings

100 Penalty notices

- (1) A law enforcement officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against the marine legislation, being an offence prescribed by the regulations.
- (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 may pay, within the time and to the person specified in the notice, the 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 the 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 an admission of liability for the purposes of, and does not 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 for an offence if dealt with under this section, and
 - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not 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 which may be taken in respect of offences.
- (9) In this section, **law enforcement officer** means a police officer or, in relation to a particular offence, a person belonging to a class of persons specified in the regulations in relation to that offence.

101 Offences

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before:
 - (a) a Local Court, or
 - (b) the Supreme Court in its summary jurisdiction.

- (2) If proceedings are brought before a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

102 Time within which proceedings may be commenced

Despite the *Criminal Procedure Act 1986* or any other Act, proceedings for an offence under this Act or the regulations may be commenced not later than 2 years after the date alleged to be the date on which the offence was committed.

103 Persons who may bring proceedings

Proceedings for an offence against the marine legislation may be brought by any person, including a police officer or a member of the staff of the Authority.

104 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Part 9 Miscellaneous

105 Port boundaries

- (1) The regulations may describe the boundaries of any port or area of water.
- (2) Any such description of a port may include an area of water adjacent to the entrance to the port.
- (3) A reference in the marine legislation to a specified port or area of water is, if the boundaries of that port or area have been described by the regulations and unless the context or subject-matter otherwise indicates or requires, a reference to that port or area with boundaries as so described.

106 Act binds Crown

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

107 Combined financial and other reporting by Authority and Minister's Department

- (1) The reports of relevant marine agencies under the *Public Finance and Audit Act 1983*, the *Annual Reports (Statutory Bodies) Act 1984* or the *Annual Reports (Departments) Act 1985* may be combined, but must include a separate report on the financial transactions and activities of each of them.
- (2) For the purposes of this section, the relevant marine agencies are the Authority and any Department administered by the Minister.

108 Service of documents

- (1) A document may be served on a Port Corporation or the Authority by leaving it at, or by sending it by post to:
 - (a) the office of the relevant Port Corporation or the Authority, or
 - (b) if the relevant Port Corporation or the Authority has more than one office—any one of its offices.
- (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 Port Corporation or the Authority in any other manner.
- (3) (Repealed)

109 Recovery or waiver of money due

- (1) Any charge, fee or money due to the Authority may be recovered by it as a debt in a court of competent jurisdiction.
- (2) Any such charge, fee or money may be waived or refunded (in whole or in part) by the Authority.
- (3) (Repealed)

110 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) A regulation may create an offence punishable by a penalty for a breach of the regulation not exceeding 100 penalty units.
- (3) The regulations may incorporate by reference, wholly or in part and with or without modification, any standards, rules, codes, specifications or methods, as in force at a particular time or as in force from time to time, prescribed or published by an authority or body (whether or not it is a New South Wales authority or body).

111 Repeals

- (1) The Acts specified in Part 1 of Schedule 3 are repealed.
- (2) All regulations, by-laws, rules and other instruments made under any such Acts (including those specified in Part 2 of Schedule 3) are repealed.

112 (Repealed)

113 Savings, transitional and other provisions

Schedule 5 has effect.

114 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 of 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 Transfer of assets, rights and liabilities of MSB and its subsidiaries and of the Marine Ministerial Holding Corporation

(Sections 5, 16, 17, 32 (repealed), 40A, 45)

1 Definitions

In this Schedule:

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

Ministerial Corporation means the Marine Ministerial Holding Corporation as formerly constituted under Part 3 (as enacted).

2 Application and interpretation

- (1) This Schedule applies to the following orders under this Act:
 - (a) an order under section 16 transferring assets, rights or liabilities of the MSB or any MSB subsidiary to a Port Corporation,
 - (b) an order under section 17 transferring assets, rights or liabilities of a Port Corporation to the Ministerial Corporation or to any person on behalf of the State,

- (c) an order under section 32 (3) transferring assets, rights or liabilities of the MSB or any MSB subsidiary to a person on behalf of the State,
 - (d) an order under section 45 transferring assets, rights or liabilities to the Waterways Authority or to the Ministerial Corporation.
- (2) This Schedule also applies to the transfer of assets, rights and liabilities to the Ministerial Corporation by the operation of section 32 and so applies as if that section were an order to which this Schedule applies taking effect when that section takes effect.
- (2A) This Schedule also applies to the transfer of assets, rights and liabilities to the Waterways Authority by the operation of section 40A and so applies as if that section were an order to which this Schedule applies taking effect when that section takes effect.
- (3) In this Schedule, the body or person from whom any assets, rights or liabilities are so transferred is called the **transferor** and the body or person to whom they are being so transferred is called the **transferee**.

3 Vesting of undertaking in transferee

When any assets, rights or liabilities are transferred by an order to which this Schedule applies, the following provisions have effect (subject to the order):

- (a) those assets of the transferor vest in the transferee by virtue of this Schedule and without the need for any conveyance, transfer, assignment or assurance,
- (b) those rights or liabilities of the transferor become by virtue of this Schedule the rights or liabilities of the transferee,
- (c) all proceedings relating to those assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
- (d) any act, matter or thing done or omitted to be done in relation to those assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
- (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities but subject to the regulations or other provisions under Schedule 5), to be read as, or as including, a reference to the transferee.

4 Operation of Schedule

- (1) The operation of this Schedule 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.
- (2) The operation of this Schedule is not to be regarded as an event of default under any contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.
- (4) The operation of this Schedule includes the making of an order to which this Schedule applies.

5 Date of vesting

An order to which this Schedule applies takes effect on the date specified in the order.

6 Consideration for vesting

An order to which this Schedule applies may specify the consideration on which the order is made and the value or values at which the assets, rights or liabilities are transferred.

7 Stamp duty

Stamp duty is not chargeable in respect of:

- (a) the transfer of assets, rights and liabilities to a Port Corporation, the Waterways Authority, the Ministerial Corporation or other person by an order to which this Schedule applies, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

8 Transfer of interests in land

- (1) An order to which this Schedule applies may transfer an interest in respect of land vested in the MSB or any MSB subsidiary without transferring the whole of the interests of the MSB or subsidiary in that land.
- (2) If the interest transferred is not a separate interest, the order operates to create the interest transferred in such terms as are specified in the order.

(3) This clause does not limit any other provision of this Schedule.

9 Determinations of Minister for purposes of orders

For the purposes of any order to which this Schedule applies, a determination by the Minister as to the port to which any assets, rights or liabilities relate, whether any land comprises the bed of the waters of a port or whether any assets, rights or liabilities are port safety assets, rights or liabilities is conclusive.

10 Confirmation of vesting in Ministerial Corporation or the Waterways Authority

(1) The Minister may, by notice in writing, confirm the transfer to the Ministerial Corporation of particular assets, rights or liabilities by the operation of section 32 (as in force immediately before its repeal) or the transfer to the Waterways Authority of particular assets, rights or liabilities by the operation of section 40A.

(2) Such a notice is evidence of that transfer.

11 Successor of MSB, MSB subsidiary or Ministerial Corporation

The Waterways Authority is taken for all purposes, including the rules of private international law, to be the successor of the MSB, of each MSB subsidiary and of the Ministerial Corporation (except in respect of assets, rights and liabilities transferred under this Act to any other body or person).

12 Leases

(1) Any lease entered into by the Ministerial Corporation between 10 March 2000 and the date of commencement of this clause is taken to have been entered into by the Ministerial Corporation as the agent of the Waterways Authority.

(2) On and from the abolition of the Ministerial Corporation, any interest of the Ministerial Corporation in any such lease is transferred to the Waterways Authority.

Schedule 2 Transfer of former MSB Staff (other than senior executives)

(Section 5)

1 Definitions

In this Schedule:

former MSB staff means the members of staff of the MSB immediately before the dissolution of the MSB (other than the holder of a chief executive or senior executive position under Part 2A of the [Public Sector Management Act 1988](#)).

marine administration Department means the Department under the [Public Sector Management Act 1988](#) (or branch) that is responsible to the Minister for the purposes of

the administration of the marine legislation.

temporary or casual MSB staff means any former MSB staff who were engaged in a position for a nominated period or for a nominated project or activity which is limited in time or who were engaged on an irregular day-to-day basis on hourly hire.

the MSB enterprise agreements means:

- (a) the enterprise agreement which was entered into by the MSB with respect to all its staff (other than executive service officers and pilots) and which took effect on 13 December 1993 (as in force on the dissolution of the MSB), and
- (b) the MSB Illawarra Ports Authority Assistant Harbour Master/Marine Pilots Enterprise Agreement, 1995 (as in force on the dissolution of the MSB), and
- (c) the MSB Hunter Ports Authority Marine Pilots Enterprise Agreement, 1995 (as in force on the dissolution of the MSB),

or, if any such agreement expires or is replaced before the dissolution of the MSB, any new enterprise agreement entered into by the MSB or an MSB subsidiary to replace that agreement (as so in force).

2 Transfer of former MSB staff to Port Corporations

- (1) The Minister may, by order in writing, provide that such former MSB staff as are specified or described in the order are transferred to a Port Corporation specified in the order.
- (2) A person who is the subject of an order under this clause is to be regarded for all purposes as having become an employee of the Port Corporation, in accordance with the terms of the order, on the day the MSB is dissolved.

3 Transfer of former MSB staff to Waterways Authority

- (1) The Minister may, by order in writing, provide that such former MSB staff as are specified or described in the order are transferred to the Waterways Authority.
- (2) A person who is the subject of an order under this clause is to be regarded for all purposes as having become an employee of the Waterways Authority, in accordance with the terms of the order, on the day the MSB is dissolved.

4 Transfer of remainder of former MSB staff to Public Service

- (1) Any former MSB staff (other than temporary or casual MSB staff) who are not transferred under this Schedule to a Port Corporation or to the Waterways Authority are entitled to be appointed to a position in the Public Service in accordance with this clause.
- (2) The Governor may, on the recommendation of the Minister, by order published in the

Gazette, transfer any such former MSB staff to a position in the Public Service (being a position in the marine administration Department).

- (3) 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 MSB is dissolved.
- (4) Any former MSB staff (being temporary or casual MSB staff) who are not transferred under this Schedule to a Port Corporation or the Waterways Authority are taken to be transferred to temporary employment under section 38 of the *Public Sector Management Act 1988* in the marine administration Department.
- (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.

5 Preservation of MSB enterprise agreements

- (1) Despite the dissolution of the MSB and the MSB subsidiaries, the MSB enterprise agreements continue in force for the terms of the agreements, but subject to this clause.
- (2) The MSB enterprise agreements apply to the staff of Port Corporations or the Waterways Authority as follows:
 - (a) the provisions of the agreements applying to staff employed within the MSB Hunter Ports Authority apply to the staff of the Newcastle Port Corporation,
 - (b) the provisions of the agreements applying to staff employed within the MSB Illawarra Ports Authority apply to the staff of the Port Kembla Port Corporation,
 - (c) the provisions of the agreements applying to staff employed within the MSB Sydney Ports Authority apply to the staff of the Sydney Ports Corporation,
 - (d) the provisions of the agreements applying to staff employed within the MSB Waterways Authority apply to the staff of the Waterways Authority,
 - (e) the agreements so apply to the staff of a Port Corporation or Waterways Authority transferred under this Schedule or employed by the Port Corporation or Waterways Authority during the term of the agreement.
- (3) The MSB enterprise agreements apply to the marine administration Department as follows:
 - (a) the provisions of the agreements applying to a member of staff of the MSB who is transferred under this Schedule to that Department apply to that member of staff,
 - (b) the provisions so apply only while the person remains a member of the staff of

that Department (whether or not the person is appointed to another position on that staff),

(c) the agreements do not apply to any other staff of that Department.

Nothing in this subclause prevents a member of staff who is so transferred being employed on the same conditions as the other members of staff of that Department if those conditions are no less favourable than the conditions applicable under the agreements.

(4) The Port Corporations, the Waterways Authority and the Public Employment Industrial Relations Authority (and their successors) are, for the purposes of this clause, taken to be parties to the MSB enterprise agreements.

6 Preservation of remuneration and other conditions of employment on transfer from MSB

Except as otherwise provided by this Schedule and the regulations, the terms and conditions on which former MSB staff become employed on being transferred under this Schedule (including as to remuneration and duration of employment) are those on which they were employed by the MSB immediately before its dissolution. This clause does not affect anything duly done after the dissolution of the MSB with respect to the employment of the former MSB staff.

7 Preservation of leave and other entitlements for previous service of MSB staff and mobility entitlements of former MSB staff for future service with one or more new employers

- (1) Continuous service of former MSB staff with the MSB and with one or more new employers is to be taken, for all purposes, as service with their current new employer.
- (2) This clause applies, without limiting its operation, for the purpose of the accrual of leave with the new employer and for the purpose of any entitlements to redundancy payments from the current new employer.
- (3) In particular, former MSB staff retain, on transfer under this Schedule (or on subsequent transfer) to a new employer, any rights to annual leave, long service leave and sick leave accrued or accruing in their previous employment with the MSB or a new employer.
- (4) A person's entitlement to any such leave is to be calculated:
 - (a) for such part of any period during which that leave accrued or was accruing as occurred before the day of transfer to the new employer—at the rate for the time being applicable to the person before that day (as an employee of the MSB or of the former new employer), and
 - (b) for such part of the period as occurred after the day of transfer to the current employer—at the rate for the time being applicable to the person after that day

(as an employee of the current new employer).

- (5) For the purposes of this clause, a **new employer** is any Port Corporation, the Waterways Authority and the marine administration Department.

8 Applications for transfers by former MSB staff after dissolution of MSB

- (1) This clause applies, in the period of 3 years after the dissolution of the MSB, to the filling of any vacant position in a Port Corporation or the Waterways Authority if the applicants eligible to apply for the vacancy are limited to the staff of that Port Corporation or the Waterways Authority, as the case may be.
- (2) Any former MSB staff who are transferred under this Schedule are eligible to apply for a vacancy to which this clause applies as if they were members of the staff of the relevant Port Corporation or the Waterways Authority.
- (3) This clause does not apply to former MSB staff who are no longer employed by a Port Corporation or by the Waterways Authority or in the Public Service.

Note—

Entitlements to superannuation for former MSB staff are preserved by amendments made in Schedule 4 that declare the Port Corporations to be employers for the purposes of the State's superannuation schemes.

9 No payment out on transfer or dual benefits

- (1) This clause applies to a person who becomes, because of this Schedule, a member of the staff of a Port Corporation, a member of the staff of the Waterways Authority or an officer of the Public Service.
- (2) A person to whom this clause applies is not entitled to receive any payment or other benefit merely because the person ceases to be a member of the staff of the MSB.
- (3) A person to whom this clause applies is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

Schedule 3 Repeals

(Section 111)

Part 1 Acts

[Marine Administration Act 1989 No 93](#)
[Marine Port Charges Act 1989 No 143](#)
[Navigation and Other Acts \(Validation\) Act 1983 No 115](#)
[Seamen's Act 1898 No 46](#)
[Sydney Harbour Trust Act 1900 \(1901 No 1\)](#)
[Sydney Harbour Trust Land Titles Act 1909 No 7](#)
[Sydney Harbour Trust \(Leasing\) Act 1903 No 16](#)
[Sydney Harbour Trust \(Rating\) Act 1919 No 21](#)

[Sydney Harbour Trust \(Reclamations and Leasing\) Act 1905 No 37](#)

Part 2 Regulations

Marine Administration Act 1989

Marine Administration Regulation 1989

Maritime Services (Recruitment and Promotion to Officer Positions) Regulation 1985

Schedule 4 Regulations to promote competition and productivity at ports

(Section 10B)

1 Information for monitoring performance and investment

Requiring (or authorising the Minister to require) a person who operates or provides land-based port facilities or services or facilities and services of the port-related supply chain to provide a Port Corporation or other specified person with information relating to the operation or provision of those facilities or services, for the purpose of facilitating the monitoring of any of the following:

- (a) performance and efficiency in the operation or provision of those facilities or services,
- (b) capital investment in connection with the operation or provision of those facilities or services.

2 Mandatory standards

Setting (including authorising the Minister to set) standards (referred to in this Schedule as **mandatory standards**) in connection with the operation or provision of land-based port facilities and services or facilities and services of the port-related supply chain, including (without limitation) mandatory standards relating to any of the following:

- (a) performance in the delivery and use of services,
- (b) access to facilities and services,
- (c) handling capacity of facilities and services,
- (d) co-ordination of the delivery of services in the port-related supply chain.

3 Reporting on compliance with mandatory standards

Requiring (including authorising the Minister to require) the operator or provider of land-based port facilities or services or facilities and services of the port-related supply chain to keep records and provide information (including reports) to the Minister or a Port Corporation, to facilitate the monitoring of compliance with mandatory standards.

4 Verifying compliance with mandatory standards

Verifying compliance with mandatory standards, including (without limitation):

- (a) requiring the auditing of compliance, and
- (b) authorising entry onto and inspection of any premises or facilities at a port or supply chain facility to facilitate verification of compliance.

5 Compliance incentives and penalties

(1) Providing incentives to encourage compliance with mandatory standards and imposing sanctions and penalties for any failure to comply with mandatory standards, including (without limitation):

- (a) creating offences for any failure to comply with mandatory standards, and
- (b) requiring the payment of and providing for the recovery of financial penalties in connection with a failure by any participant in the port-related supply chain to comply with the mandatory standards, and
- (c) providing for any financial penalty payable in connection with a failure to comply with a mandatory standard to be collected by a Port Corporation on behalf of the person to whom the penalty is payable for payment to that person, to facilitate the due payment and recovery of penalties and the reconciliation of penalty liabilities.

(2) In this clause:

financial penalty means a monetary penalty payable by a participant in the port-related supply chain to another participant in the port-related supply chain in connection with a failure to comply with a mandatory standard.

participant in the port-related supply chain means a person who operates or makes use of any facility, or who provides or makes use of any service, in the port-related supply chain.

6 Supply chain charges

Regulating (or authorising the Minister to regulate) the charges (**supply chain charges**) that may be imposed for or in connection with the operation or provision of facilities or services of the port-related supply chain at a port or supply chain facility, including (without limitation):

- (a) setting maximum supply chain charges, and
- (b) regulating the manner in which supply chain charges are to be set or determined (for example, by providing for charges to be set by means of an auction or other market-based pricing mechanism), and

- (c) specifying or otherwise determining the persons by whom supply chain charges are payable, and
- (d) regulating the collection and recovery of supply chain charges, and
- (e) prohibiting the imposition, collection or recovery of supply chain charges contrary to the regulations.

7 Disclosure of information

Authorising, prohibiting and otherwise regulating the publication or disclosure of information provided in response to a requirement imposed by or under a regulation under this Schedule.

Schedule 5 Savings, transitional and other provisions

(Section 113)

Part 1 Regulations

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such savings or transitional provision may include the interpretation of references to the MSB or any MSB subsidiary, to any director or employee of the MSB or any MSB subsidiary or to an Act repealed by this Act or any provision of such an Act.
- (3) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.
- (4) To the extent to which any such savings or transitional provision takes effect on 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, a Port Corporation, the MSB, any MSB subsidiary or any 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, a Port Corporation, the MSB, any MSB subsidiary or any 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 Directors and senior executives of MSB and its subsidiaries to vacate office

- (1) A person who, immediately before the dissolution of the MSB, held office as a director

of the MSB:

- (a) ceases to hold that office, and
 - (b) is not entitled to any remuneration or compensation because of the loss of that office.
- (2) A person who, immediately before the dissolution of any MSB subsidiary, held office as a director of the subsidiary:
- (a) ceases to hold that office, and
 - (b) is not entitled to any remuneration or compensation because of the loss of that office.
- (3) A person who, immediately before the dissolution of the MSB, was a member of staff of the MSB and held an executive position under Part 2A of the *Public Sector Management Act 1988* (including the Chief Executive of the MSB or the Managing Director of any MSB subsidiary):
- (a) ceases to hold that position, and
 - (b) except as provided by subclause (4), is not entitled to any remuneration or compensation because of the loss of that position.
- (4) Part 2A of the *Public Sector Management Act 1988* applies to a person who so ceases to hold an executive position as if the person had been removed from that position under section 42Q (1) of that Act. If the person is not immediately engaged in a Port Corporation, the Waterways Authority, the Public Service or a public sector agency, the person is taken to be an unattached officer in the Public Service under section 42Q (2) (a) of that Act until such time as the person is so engaged, the declaration is duly revoked under that Act, or the person's period of appointment with the MSB ends, whichever first occurs.

3 MSB or subsidiary as consent or concurring authority under planning instruments

- (1) A reference in any environmental planning instrument or development consent or other instrument under the *Environmental Planning and Assessment Act 1979* to the MSB or any MSB subsidiary as the consent authority, or as an authority whose approval or concurrence is to be obtained or as an authority which is to be consulted, in respect of any development is to be read as a reference to the Minister.
- (2) This clause is subject to the regulations under clause 1.

4 Pending environmental impact statements

- (1) If, before the commencement of this clause:
 - (a) the Director of Planning has notified the MSB or any MSB subsidiary of

requirements as to the form and content of a proposed environmental impact statement or any other matter to be attended to by or on behalf of the MSB or MSB subsidiary in accordance with Part 5 of the *Environmental Planning and Assessment Act 1979*, or

- (b) the MSB or any MSB subsidiary, or a person on its behalf, has commenced the preparation of an environmental impact statement under that Part, or
- (c) an environmental impact statement has been prepared by or on behalf of the MSB or any MSB subsidiary under that Part,

that Part applies in relation to the activity concerned as if the MSB or MSB subsidiary had continued in existence and the Minister were the MSB or MSB subsidiary.

(2) This clause is subject to the regulations under clause 1.

5 Abolition of Maritime Services Board Fund

- (1) The Maritime Services Board Fund established under the *Marine Administration Act 1989* is abolished on the dissolution of the MSB.
- (2) Any money standing to the credit of that Fund that becomes an asset of the Waterways Authority by the operation of this Act is payable into the Waterways Authority Fund established under this Act.

6 Special provisions relating to MSB land in Sydney Harbour

- (1) This clause applies to any land that, immediately before its transfer under this Act to the Ministerial Corporation, a Port Corporation or any other person or body, was vested in the MSB pursuant to the *Sydney Harbour Trust Act 1900*.
- (2) Land to which this clause applies is freed and discharged from any trusts, restrictions or other provisions affecting that land, or any part of it, arising under the *Sydney Harbour Trust Act 1900*.
- (3) In particular, the land is freed and discharged from:
 - (a) the trust arising under section 27 of that Act that it is vested in the MSB upon trust for the purposes of that Act, and
 - (b) the restriction arising under section 28 of that Act that land withdrawn from the MSB vests in the persons who would have been entitled to it as if that Act had not been passed.

7, 8 (Repealed)

9 Acting board of directors on establishment of Port Corporations

- (1) This clause applies if, on the establishment of a Port Corporation, no directors of the

board of the Port Corporation have been appointed in accordance with the *State Owned Corporations Act 1989*.

- (2) Until directors are first so appointed, the persons who were the appointed directors of the relevant MSB subsidiary ports authority are appointed by this clause to act as directors of the Port Corporation. While so acting they have all the functions of a director and are taken to be the directors of the Port Corporation.
- (3) The Minister may remove any such acting director from office at any time.
- (4) Any such acting directors cease to hold office when the first directors of the Port Corporation are appointed in accordance with the *State Owned Corporations Act 1989*.
- (5) For the purposes of this clause, **the relevant MSB port authority** is:
 - (a) in the case of Newcastle Port Corporation—the MSB Hunter Ports Authority, and
 - (b) in the case of Port Kembla Port Corporation—the MSB Illawarra Ports Authority, and
 - (c) in the case of Sydney Ports Corporation—the MSB Sydney Ports Authority.

10 Timetable for first statement of corporate intent

A period within which any matter is required to be done under section 21 of the *State Owned Corporations Act 1989* in connection with the first statement of corporate intent of a Port Corporation may be extended by the voting shareholders of the Port Corporation.

11 Saving of contracts for pilotage services under *Pilotage Act 1971*

A contract under Part 4A of the *Pilotage Act 1971* that is in force on the repeal of that Part is taken to be a contract under section 81 of this Act.

12 Port charges

- (1) In any Act or statutory instrument and in any legal document:
 - (a) a reference to harbour rates under the *Port Rates Act 1975* (or wharfage charges under the *Marine Port Charges Act 1989*) is to be read as a reference to wharfage charges and port cargo access charges under this Act (or to one of those charges if the context or subject matter so requires), and
 - (b) a reference to berthing charges under the *Marine Port Charges Act 1989* is to be read as a reference to berthing charges under this Act, and
 - (c) a reference to tonnage rates under the *Port Rates Act 1975* (or site occupation charges under the *Marine Port Charges Act 1989*) is to be read as a reference to site occupation charges under this Act, and

- (d) a reference to harbour and light rates under the *Pilotage Act 1971* (or navigation service charges under the *Marine Port Charges Act 1989*) is to be read as a reference to navigation service charges under this Act, and
 - (e) a reference to pilotage rates under the *Pilotage Act 1971* (or pilotage charges under the *Marine Port Charges Act 1989*) is to be read as a reference to pilotage charges under this Act.
- (2) An agreement under section 18 of the *Marine Port Charges Act 1989* between the MSB or an MSB subsidiary and a person liable to pay a charge under that Act is taken to be an agreement under Division 7 of Part 5 of this Act. The agreement is subject to such modifications as are required by subclause (1) or as are made by the relevant port authority, by notice served on the person, for the purpose of making any necessary adjustments as a consequence of the changes to port charges effected by Part 5 of this Act.
 - (3) Any purported agreement by MSB or an MSB subsidiary port authority (or a person purporting to act on their behalf) under which wharfage charges under section 7 of the *Marine Port Charges Act 1989* at sites not operated by the MSB or an MSB subsidiary port authority are waived in a particular port for cargo generally or any class of cargo is void (and was always void). This subclause only applies to agreements notified in the Gazette by the Minister for the purposes of this clause. The wharfage charges concerned are payable even though the demand for payment is made after the commencement of this clause.
 - (4) A security lodged under section 20 of the *Marine Port Charges Act 1989* by a person liable to pay a charge under that Act is taken to be a security lodged under section 71 of this Act.
 - (5) Without limiting the operation of any saving contained in the *Interpretation Act 1987*, nothing in this Act affects the liability of any person to pay any rate or charge incurred under the *Marine Port Charges Act 1989*. Subject to any regulation under clause 1 or Part 5 of this Act, the provisions of that Part apply to the payment of any such rate or charge to the successor of the MSB that acquires under this Act the right to that payment.

13 Continuation of certain port charges regulations and port boundaries regulations

- (1) The *Marine Port Charges Regulation 1990* made under the *Marine Port Charges Act 1989* is (to the extent that it can lawfully be made under this Act) taken to be a regulation made under this Act (see section 76). A reference in that regulation to the MSB is taken to be a reference to the relevant port authority within the meaning of Part 5 of this Act.
- (2) The *Ports Boundaries Regulation 1978* made under the *Maritime Services Act 1935* is (to the extent that it can lawfully be made under this Act) taken to be a regulation

made under this Act (see section 105).

14 Saving of appointments of harbour masters

A person who, immediately before the repeal of section 36A of the *Maritime Services Act 1935*, was duly appointed as a harbour master, or to act in the capacity of a harbour master, under the marine legislation is taken to have been so appointed under Part 7 of this Act.

15 General savings

- (1) Anything done under an Act, provision of an Act or regulation repealed by this Act that has any force or effect immediately before its repeal, is taken to have been done under the corresponding provision of this Act.
- (2) Anything done by the MSB under a provision of the marine legislation that is amended by this Act (being an amendment that changes references to the MSB with references to the Minister) and that has any force or effect immediately before its amendment is (subject to this Act) taken to have been done by the Minister.

Part 3 Provisions consequent on enactment of *Ports Corporatisation and Waterways Management Amendment Act 2006*

16 Existing operating licences

An operating licence in force immediately before the amendment of section 12 by the *Ports Corporatisation and Waterways Management Amendment Act 2006* is taken to have been issued under that section as so amended.

17 Provisions relating to certain instruments issued by Authority

- (1) In this clause:

delegation includes purported delegation.

maritime agency 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.

relevant instrument means:

- (a) a development consent granted under the *Environmental Planning and Assessment Act 1979*, or
- (b) a permit, authorisation, approval or notice granted, given or issued under the *Rivers and Foreshores Improvement Act 1948*.

relevant Minister, in relation to a relevant instrument, means the Minister who has

or had the function of granting, giving or issuing the instrument.

- (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:
- (a) there was no statutory authority for the delegation, or
 - (b) the relevant instrument was not granted, given or issued in the name of the Minister, or
 - (c) the relevant instrument was granted, given or issued by a member of staff of the maritime agency.