

Ports and Maritime Administration Act 1995 No 13

[1995-13]



New South Wales

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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**
[Government Sector Finance Legislation \(Repeal and Amendment\) Act 2018 No 70](#) (not commenced)

Authorisation

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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 enable Roads and Maritime Services 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.

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

commercial vessel has the same meaning as in the *Marine Safety Act 1998*.

exercise a function includes perform a duty.

foreign vessel has the same meaning as in the *Navigation Act 2012* of the Commonwealth.

function includes a power, authority or duty.

harbour master means a person appointed or acting as harbour master under the

Marine Safety Act 1998.

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

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 2012

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*.

National law has the same meaning as in the *Marine Safety Act 1998*.

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 Authority of New South Wales means the Newcastle Port Corporation established under this Act.

port charge means a charge imposed under Part 5.

Port Corporation means the Newcastle Port Corporation established under section 6 (known as the Port Authority of New South Wales).

port operator:

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

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.

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

recreational vessel means a vessel other than a commercial vessel.

regulated Australian vessel has the same meaning as in the [Navigation Act 2012](#) of the Commonwealth.

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 Roads and Maritime Services constituted under the *Transport Administration Act 1988*.

vessel—see section 4.

Note—

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(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 (known as the Port Authority of New South Wales).

(2) (Repealed)

7, 8 (Repealed)

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.
- (1A) The object of this section is to promote the economically efficient operation of, use of and investment in land-based port facilities and port-related supply chain facilities.
- (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.
- (2A) A regulation may not be made under this section unless the Minister has certified that the Minister is satisfied that:
 - (a) the regulation will promote the object of this section, and
 - (b) the regulation will not operate to constrain or otherwise regulate the exercise of the port operator functions of the port operator of a private port.
- (2B) The **port operator functions** of the port operator of a private port are:
 - (a) the fixing and collection of port charges under Part 5, and
 - (b) the fixing and collection of charges (for example, rent) under a lease or licence, and
 - (c) any other function of the port operator as the lessor or licensor under a lease or licence.
- (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 (Repealed)

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.

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 2012](#)).

25 Particular marine safety functions

- (1) The Minister has the following particular marine safety functions:
 - (a) to provide or arrange for the provision of marine safety infrastructure and services,

- (a1) to provide or arrange for the provision of other infrastructure and services for use by vessels,
 - (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 2012*).
- (2) Examples of the infrastructure and services that may be provided under this section are as follows:
- (a) the installation and maintenance of navigation aids,
 - (b) vessel traffic control within ports,
 - (c) pilotage services within ports,
 - (d) the dredging and maintenance of navigation channels (including the improvement of river banks and other land for navigation),
 - (e) hydrographic services,
 - (f) moorings for vessels,
 - (g) wharves, piers, jetties and boat ramps,
 - (h) waste pump-out facilities for vessels,
 - (i) fire-fighting and rescue services relating to vessels and navigable waters.
- (3) The exercise of a function under this section is subject to any applicable provisions of the marine or other legislation.

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.
- (4) The Minister may, by order in writing, direct that such assets, rights and liabilities of any commercial port facilities managed by the Minister under this section as are

specified or referred to in the order be transferred to a Port Corporation so specified. Schedule 1 applies to such an order.

- (5) 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.
- (6) Section 20C of the *State Owned Corporations Act 1989* does not apply to the transfer of assets, rights or liabilities under this section.

26A Minister may enter into contract for 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 (whether directly or by way of a subsidiary).
- (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 or the National law 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 a 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 the National law, or on any other specified ground.

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 (or a person seconded to the staff) of the Authority, or
 - (b) a Port Corporation or a member of the staff (or a person seconded to the staff) of a Port Corporation, or
 - (c) a harbour master or acting harbour master, or
 - (d) a Public Service employee, 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 Maritime Advisory Council

- (1) The Minister may, subject to and in accordance with the regulations, establish a Maritime Advisory Council.
- (2) The members of the Maritime Advisory Council are to be appointed by the Minister in accordance with the regulations.
- (3) The regulations may make provision for or with respect to the membership and procedure of the Maritime Advisory Council.
- (4) The Maritime Advisory Council has the following functions:
 - (a) to advise the Minister on any matter that is referred to it by the Minister in connection with the operation of the marine legislation or the National law,
 - (b) to advise and make recommendations to the Minister on maritime safety and on expenditure priorities for the exercise of the Authority's functions in connection with maritime infrastructure and maritime research.

Part 3A Private ports

Division 1 Preliminary

35 Application

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

36 Definition

In this Part:

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

Division 2 Regulation of activities—port operator directions

37 Directions to maintain or improve safety and security

(1) The port operator of a private port may, for the purpose of maintaining or improving safety and security at the port, give directions (referred to in this Division as **port operator directions**) that regulate any of the following activities in the landside port precinct at the port:

- (a) the driving, stopping and parking of vehicles,
- (b) the movement, handling or storage of goods,
- (c) any activity that may pose a risk to safety or security at the port.

(2) The power to regulate an activity includes the power to prohibit the activity.

(3) A port operator direction may be of general application or may be limited in its application to specified persons or a specified class of persons.

(4) In this section:

landside port precinct at a port means:

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

relevant port lease means:

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

(c) for Port of Newcastle—a lease to the port operator of land at Port of Newcastle that comprised ports assets under the *Ports Assets (Authorised Transactions) Act 2012* before being leased to the private sector for the purposes of an authorised transaction under that Act.

- (5) Land is **contiguous** with other land if it adjoins the other land (or would adjoin the other land were it not separated from the other land by a road, rail corridor or easement) or it is in close proximity to the other land.
- (6) A certificate issued by the Minister or by the port operator of a private port certifying that specified land is or is not part of the landside port precinct at a port is evidence of the matter certified.

38 How port operator directions are given

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

39 Enforcement of port operator directions

- (1) Port operator directions must be complied with (except to the extent that compliance would result in the contravention of a requirement imposed by or under an Act).

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

40 Advance notice of proposed work

- (1) The port operator is not authorised to enforce compliance with a port operator direction by carrying out work that a person has failed to carry out in contravention of the direction or that is reasonably required to be carried out to remedy a contravention by a person of the direction unless the port operator has given the person advance notice of the proposed work.
- (2) Advance notice of proposed work must be given no less than 7 days before the work commences, must be given in writing and must give details of the alleged contravention concerned.
- (3) Advance notice of proposed work is not required in an emergency or where the proposed work is necessary to avert an imminent threat of death or serious injury to

persons or serious damage to property.

40A Power of entry

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

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

40B Functions exercisable by authorised officers

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

40C Obstruction of authorised officer

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

Maximum penalty: 50 penalty units.

40D Monitoring of port operator directions

- (1) The port operator of a private port must within 3 months after the end of each 6 month period ending on 30 June or 31 December in a year (beginning with the year 2013) provide details to the Minister of such of the following matters (**reportable matters**) as occurred in the period concerned:
 - (a) the giving of a port operator direction by the port operator,
 - (b) any port operator direction given by the port operator ceasing to have effect,
 - (c) any contravention of which the port operator is aware of a port operator direction

given by the port operator,

- (d) any exercise by the port operator of the power under section 40A to enter land or premises,
 - (e) any action taken by the port operator to enforce compliance with a port operator direction (being action authorised to be taken under this Part).
- (2) The port operator must also provide details of reportable matters to the Minister as and when directed to do so by the Minister by notice in writing to the port operator. The notice must allow not less than 21 days for compliance with the direction.
- (3) Information required to be provided by or under this section must be provided in such manner and form as the Minister may from time to time direct by notice in writing to the port operator.
- (4) The Minister may from time to time publish reports and statements, based on information provided to the Minister under this section about reportable matters, subject to the following requirements:
- (a) any such report or statement must not include information that identifies a person (or is likely to lead to the identification of a person) as a person who has contravened a port operator direction,
 - (b) the Minister must provide the port operator with a copy of the proposed report or statement at least 14 days before it is published.
- (5) No liability (including liability in defamation) is incurred for publishing in good faith a report or statement under this section or a fair report or summary of such a report or statement.

Division 3 Information gathering by port operators

40E Power to require information to be provided

- (1) The port operator of a private port may by direction in writing (an **information direction**) require any of the following persons to provide relevant information to the port operator:
- (a) the master of any ship that berths at the port or adjacent port facilities,
 - (b) a shipping agent for goods shipped to, from or within the port or adjacent port facilities,
 - (c) a consignor or consignee of goods shipped to, from or within the port or adjacent port facilities,
 - (d) an operator of stevedoring or other facilities at the port or adjacent port facilities.

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

40F Use and disclosure of information collected

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

40G Compliance with information direction

- (1) A person must not without reasonable excuse fail to comply with an information direction given to the person.

Maximum penalty: 500 penalty units in the case of a corporation and 100 penalty units in any other case.

- (2) A person must not in purported compliance with an information direction given to the person provide information that the person knows is false or misleading in a material particular.

Maximum penalty: 500 penalty units in the case of a corporation and 100 penalty units in any other case.

- (3) Compliance with an information direction is required even if compliance would breach a duty of confidentiality. A duty of confidentiality is not a reasonable excuse for failure to comply with an information direction.

- (4) The provision of information that would otherwise constitute a breach of a duty of confidentiality does not constitute such a breach if the information is provided in compliance with an information direction.

Part 4 Functions etc of Roads and Maritime Services

Division 1

(Repealed)

Division 2 Functions of Authority

41 Functions of Authority

- (1) The principal maritime 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 exercise functions in relation to the implementation of the National law,
 - (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) (Repealed)

41A (Repealed)

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 in connection with the exercise of its functions under section 41, and

(b) all penalties recovered for offences against the marine legislation or the National law 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 in connection with the exercise of its functions under section 41, and

(e) all money appropriated by Parliament for the purposes of the Authority in connection with the exercise of its functions under section 41, 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 in respect of its functions under this Act or otherwise required to meet the expenditure incurred in relation to the functions of the Authority under this Act, and

(aa) payments authorised by the Minister to fund the Minister's functions relating to marine safety and the provision of infrastructure and services for vessels, and

(b) the remuneration (including allowances) of staff of the Authority engaged in the

administration of this Act, 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.

43A Exclusion of *Dividing Fences Act 1991*

The *Dividing Fences Act 1991* does not apply to or in respect of so much of a sea retaining wall that separates land vested in the Authority or Port Authority of New South Wales from land of another owner.

43B Land vested in the Authority taken to be Crown land for certain purposes

For the purposes of the *Mining Act 1992*, the *Offshore Minerals Act 1999* and the *Petroleum (Onshore) Act 1991*, land vested in the Authority or Port Authority of New South Wales is taken to be and to have always been Crown land.

43C Grant of rights of way under the *Petroleum (Onshore) Act 1991*

- (1) Subject to this section, section 106 of the *Petroleum (Onshore) Act 1991* does not extend to land that is vested in the Authority or Port Authority of New South Wales.
- (2) Subsection (1) does not apply if:
 - (a) an application is made under section 106 of the *Petroleum (Onshore) Act 1991* for a right of way, and
 - (b) the Authority is notified of the application and is furnished with such information with respect to the application as it reasonably requires, and
 - (c) the Authority, within one month after being notified of the application or within such further time as the Secretary of the Department of Industry, Skills and Regional Development may specify:
 - (i) notifies that Secretary that the Authority is not prepared to grant to the applicant a right of way in substitution for the right of way applied for, or

- (ii) notifies that Secretary that the Authority and the applicant are unable to reach agreement as to the terms and conditions on which the Authority will grant such a right of way.

43D Leases and licences under other Acts

- (1) The Secretary of the Department of Industry, Skills and Regional Development must give to the Authority at least 21 days notice of any proposal to grant any lease or licence under the *Mining Act 1992*, the *Offshore Minerals Act 1999* or the *Petroleum (Onshore) Act 1991* in respect of any land:
 - (a) vested in the Authority or Port Authority of New South Wales, or
 - (b) contained in that part of the bed and shores of any area of water specified in an order in force under section 85D (2).
- (2) The Secretary of the Department of Industry, Skills and Regional Development must give the Authority at least 21 days notice of any proposal to grant any aquaculture lease under Part 6 of the *Fisheries Management Act 1994* in respect of any land referred to in subsection (1).
- (3) If, despite representations of the Authority to the contrary, it is decided that any such lease or licence is to be granted, the Authority must be notified accordingly and may, within 14 days of such notice, refer the dispute to the Minister.
- (4) A dispute referred to in subsection (3) is to be resolved by the Minister in consultation with any other responsible Ministers. If a resolution cannot be reached the dispute is to be resolved by the Premier.

Part 4A Safety directions

43E Directions to maintain or improve safety and security

- (1) The regulations may make provision for or with respect to maintaining or improving safety and security at a port (other than a private port) or wharf owned by the Authority or the Port Authority of New South Wales, including any of the following activities in the landside precinct at the port or wharf:
 - (a) the movement, handling or storage of goods,
 - (b) the conduct of any person or class of persons,
 - (c) any activity that may pose a risk to safety or security at the port or wharf.
- (2) Subject to the regulations, the Authority, Transport for NSW or the Port Authority of New South Wales may, for the purpose of maintaining or improving safety and security at a port (other than a private port) or wharf owned by the Authority or the Port Authority of New South Wales, give directions (referred to in this Part as **safety**

directions) that regulate any of the following activities in the landside precinct at the port or wharf:

- (a) the driving, stopping and parking of vehicles,
- (b) the movement, handling or storage of goods,
- (c) the conduct of any person or class of persons,
- (d) any activity that may pose a risk to safety or security at the port or wharf.

- (3) The power to regulate an activity includes the power to prohibit the activity.
- (4) A safety direction may be of general application or may be limited in its application to specified persons or a specified class of persons.
- (5) A certificate issued by the Minister or by the Authority certifying that specified land is or is not part of the landside precinct at a port or wharf is evidence of the matter certified.
- (6) In this section:

landside precinct at a port or wharf means:

- (a) land at the port or wharf that is not covered by water, or
- (b) any wharf or other structure built on or over land covered by water that is adjacent to land referred to in paragraph (a), or
- (c) land leased to the Authority, Transport for NSW or the Port Authority of New South Wales that is contiguous with land referred to in paragraph (a).

- (7) Land is **contiguous** with other land if it adjoins the other land (or would adjoin the other land were it not separated from the other land by a road, rail corridor or easement) or it is in close proximity to the other land.

43F How safety directions are given

- (1) A safety direction may be given in any of the following ways:
 - (a) by notice displayed in the area at the port or wharf where the direction applies,
 - (b) by notice published on the website of the Authority, Transport for NSW or the Port Authority of New South Wales,
 - (c) by notice served on the person or persons to whom the direction applies.
- (2) A safety direction given by notice published on the website of the Authority, Transport for NSW or the Port Authority of New South Wales has no effect until a copy of the notice is published in the Gazette.

- (3) Before a safety direction is given under section 43E (2) (a) or (b), not less than 2 weeks advance notice of the proposed direction must be given to the harbour master for the port.
- (4) Advance notice of a proposed safety direction is not required if the direction is given in an emergency.

43G Enforcement of safety directions

- (1) A person must comply with a safety direction (except to the extent that compliance would result in the contravention of a requirement imposed by or under an Act).
Maximum penalty: 30 penalty units.
- (2) The Authority, Transport for NSW or Port Authority of New South Wales may enforce compliance with a safety direction in any of the following ways:
 - (a) by using reasonable force to remove from the port or wharf any person who is contravening the direction,
 - (b) by removing from the port or wharf, or moving within the port or wharf, any vehicle or vessel that is stopped or parked in contravention of the direction (including by removing, dismantling or neutralising any locking device or other feature of the vehicle or vessel and allowing the vehicle or vessel to be started by other means),
 - (c) by removing from the port or wharf, or moving within the port or wharf, any goods stored in contravention of the direction (including by removing any locks preventing access to goods).
- (3) The Authority, Transport for NSW or the Port Authority of New South Wales may authorise the enforcement powers in subsection (2) to be exercised by an authorised officer, a delegate of the Authority, Transport for NSW or the Port Authority of New South Wales or any other person specifically authorised for the purposes of this section.
- (4) The power to remove or move a vehicle, vessel or goods from or within the port or wharf includes the power to place the vehicle, vessel or goods in secure storage pending return of the vehicle, vessel or goods to their owner.
- (5) The Authority, Transport for NSW or the Port Authority of New South Wales is entitled to recover as a debt the reasonable costs incurred by the Authority, Transport for NSW or the Port Authority of New South Wales in enforcing compliance with a safety direction. Those costs are recoverable from the person whose contravention of the direction resulted in those costs being incurred. The costs are a charge on any vehicle, vessel or goods removed under this section.
- (6) The Authority, Transport for NSW or the Port Authority of New South Wales must take

all reasonable steps to secure any vehicle, vessel or goods that are removed or moved under this section against theft or damage.

- (7) The Authority, Transport for NSW or the Port Authority of New South Wales must take all reasonable steps to limit any damage to any vehicle, vessel or goods that are removed or moved under this section.
- (8) A certificate issued by the Authority, Transport for NSW or the Port Authority of New South Wales certifying as to the reasonable costs incurred by the Authority, Transport for NSW or the Port Authority of New South Wales in enforcing compliance with a safety direction is evidence of the matters certified.
- (9) Anything done by or on behalf of the Authority, Transport for NSW or the Port Authority of New South Wales reasonably and in good faith to enforce compliance with a safety direction as permitted by this Part does not subject the Authority, Transport for NSW or the Port Authority of New South Wales or any other person to any action, liability, claim or demand.

44-46 (Repealed)

Part 5 Port charges

Division 1 Preliminary

47 Definitions generally

- (1) In this Part:

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

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
- (a1) in relation to a navigation service charge for Port Kembla or Port of Newcastle—each of the port operator of the port and the appropriate public agency for the port, 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 of the *Marine Safety Act 1998*), 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
- (e1) in relation to site occupation and wharfage charges for sites at a private port—each of the port operator of the port and the appropriate public agency for the port, or
- (f) in relation to site occupation and wharfage charges for other sites or in relation to berthing charges—the Minister, or
- (g) in relation to port infrastructure charges for a private port—each of the port operator of the port and the appropriate public agency for the port, or
- (h) in relation to port infrastructure charges for any other port—the appropriate public agency for the port.

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) A reference in this Part to anything owned or operated by the Minister includes a

reference to anything owned or operated by the Authority.

- (2A) If the relevant port authority in relation to a charge is each of the port operator of a private port and the appropriate public agency for the port, the port charge can be fixed and collected by either or both of the port operator and the appropriate public agency.
- (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 the National law 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 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.

Editorial note—

See clause 23 of Schedule 5 for the operational commencement of the amendments to this section by the [Ports Assets \(Authorised Transactions\) Act 2012](#).

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 of the *Marine Safety Act 1998*.

- (2) A pilotage charge is also payable for any deferral of pilotage authorised by Part 6 of the *Marine Safety Act 1998* 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 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.

Editorial note—

See clause 23 of Schedule 5 for the operational commencement of the amendments to this section by the *Ports Assets (Authorised Transactions) Act 2012*.

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

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

- (3) In this section, **wharf** includes any land adjacent to it.
- (4) For the purposes of this section, an area of water is deemed to be owned or operated by the relevant port authority if the bed of the water is owned or leased by the State or the Authority and:
 - (a) the area surrounds or is adjacent to a wharf, buoy or dolphin owned or operated by, or leased to, the relevant port authority, or
 - (b) the area is burdened by an easement that benefits an area of land owned or operated by, or leased to, the relevant port authority, or
 - (c) the area surrounds or is adjacent to an area referred to in paragraph (b), or
 - (d) the Minister approves of that area of water being included in a site operated by the relevant port authority.
- (5) The relevant port authority is to keep at its office a copy of a map defining each site it owns, operates or leases.
- (6) A map or a copy of a map referred to in this section may be inspected, without charge, by any person during business hours at the office at which it is kept.
- (7) For the purposes of any legal proceedings, it is to be presumed (unless the contrary is established) that an area has been duly designated as a site under this Division if the area is defined as such on a map kept at the office of the Minister or (in the case of a site at a private port) at the office of the port operator of the private port.
- (8) An area that, immediately before the repeal of the [Marine Port Charges Act 1989](#), was a site within the meaning of that Act and is owned or operated by a relevant port authority is (subject to this section) a site for the purposes of this Division.
- (9) An area at a private port that was a site immediately before the substitution of this section by the [Ports Assets \(Authorised Transactions\) Act 2012](#) is deemed to be a site for the purposes of this Division.
- (10) An area at the private port of Port of Newcastle that was a site immediately before the commencement of this subsection (as inserted by the [Ports Assets \(Authorised Transactions\) Amendment Act 2013](#)) is deemed to be 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, unless the site is a site at a private port.

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) (Repealed)
- (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.

Editorial note—

See clause 23 of Schedule 5 for the operational commencement of the amendments to this section by the [Ports Assets \(Authorised Transactions\) Act 2012](#).

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 (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 6A Port infrastructure charges

66A Application of Division

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

66B Port infrastructure charges

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

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

66C Fixing of port infrastructure charges

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

Division 7 Agreements in respect of charges

67 Agreements in respect of charges

- (1) The relevant port authority may 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.

Editorial note—

See clause 23 of Schedule 5 for the operational commencement of the amendments to this section by the [Ports Assets \(Authorised Transactions\) Act 2012](#).

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 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.

Editorial note—

See clause 23 of Schedule 5 for the operational commencement of the amendments to this section by the *Ports Assets (Authorised Transactions) Act 2012*.

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 Price monitoring scheme

Editorial note—

See clause 23 of Schedule 5 for the operational commencement of this Part.

77 Scheme objective

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

78 Ports to which Part applies

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

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

(f) Port of Yamba.

79 Publication of charges

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

80 Notice of increase in service charges

- (1) The port operator of a port must give notice of any proposed change in the port operator's service charges (whether the change is a variation of an existing charge, the imposition of a new charge or the removal of an existing charge).
- (2) The notice of a proposed change in service charges must be given in the following manner and at the following times:
 - (a) notice of the change must be given to the Minister in writing at least 20 business days before the change is proposed to be made,
 - (b) notice of the change must be published on the port operator's website in a prominent position in a publicly accessible part of the website at least 10 business days before the change is proposed to be made.
- (3) The notice of a proposed change in a service charge must separately identify each charge to which the change relates and provide the following information about the charge:
 - (a) the basis on which the amount of the charge is calculated including (in the case of a charge payable on a unit basis such as a unit of vessel cargo capacity or vessel gross tonnage) the unit on which the charge is imposed,
 - (b) the reason for the change (in the case of a variation of an existing charge),
 - (c) if the change is the imposition of a new charge—the information required for a new charge under this section.

- (4) The information required for a new charge (other than a port infrastructure charge under Division 6A of Part 5) is as follows:
 - (a) the purpose and function of the charge,
 - (b) the basis on which the amount of the charge has been calculated,
 - (c) the persons who will be required to pay the charge.
- (5) The information required for a new charge that is a port infrastructure charge under Division 6A of Part 5 is as follows:
 - (a) details of the port infrastructure project to which the proposed charge relates,
 - (b) the basis on which the amount of the charge has been calculated,
 - (c) the persons who will be required to pay the charge,
 - (d) the period of time for which the charge is proposed to be imposed.

81 Annual reporting of charges to the Minister

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

- (a) a list of the types of service charges charged by the port operator during that financial year,
- (b) the revenue received by the operator during the financial year from service charges (showing the amount of revenue for each separate charge),
- (c) in the case of a service charge payable on the basis of the number of chargeable units (such as a unit of vessel cargo capacity or vessel gross tonnage)—the total number of units charged for or in respect of each separate charge,
- (d) if the amount of a charge was varied during the financial year—the amount of the variation and the reason for it.

82 Power of Minister to require information

- (1) The Minister may by direction in writing given to the port operator of a port to which this Part applies require the port operator to provide the Minister with specified information about any of the following in respect of service charges charged or proposed to be charged by the port operator:
 - (a) the amount of a particular charge,
 - (b) the purpose and function of a particular charge,

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

83 Confidential information

- (1) A port operator may, when providing information pursuant to a direction of the Minister under this Part, claim that the information is confidential if there are sufficient grounds for such a claim.
- (2) There are sufficient grounds for a claim that information is confidential only if it appears that disclosure of the information:
 - (a) could adversely affect the competitive position of the port operator or any other person, or
 - (b) would result in the port operator being in breach of a duty of confidentiality owed to another person.
- (3) A claim that information is confidential must be accompanied by a detailed statement of the reasons in support of the claim and is not duly made unless accompanied by such a statement.
- (4) The Minister must take all reasonable steps to prevent the disclosure of information that is claimed to be confidential unless the disclosure is authorised by this section.
- (5) The disclosure of information that is claimed to be confidential is authorised if:
 - (a) the disclosure is for the purposes of the administration of this Act to a person

engaged in the administration of this Act, or

- (b) the disclosure is made with the consent of the person who provided the information and (if disclosure could adversely affect the competitive position of another person) that other person, or
 - (c) the disclosure is authorised or required under any other Act or law, or
 - (d) the disclosure is authorised or required by a court, or
 - (e) the disclosure is, in the opinion of the Minister, in the public interest and the Minister is of the opinion that the public benefit in disclosing the information outweighs any detriment that might be suffered by a person as a result of the disclosure.
- (6) This section does not prevent the disclosure of information that is claimed to be confidential if the Minister is of the opinion that there are insufficient grounds for the claim and the Minister has notified the Minister's opinion to the person who provided the information.
- (7) A disclosure of information authorised by this section does not constitute a breach of any duty of confidentiality (either by the person making the disclosure or by the port operator).

84 Reports and statements by Minister

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

85 Part extends to port corporation as appropriate public agency

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

Part 6A Management of wharves, moorings, port facilities and works

85A Access to wharves

- (1) A person must not secure a commercial vessel, or cause a commercial vessel to be secured, to a wharf of the Authority unless the person:
 - (a) is authorised to do so by a wharf authorisation, and
 - (b) complies with the conditions (if any) of the wharf authorisation.

Maximum penalty: 100 penalty units.

(2) In this section:

wharf authorisation means an authorisation (however described) given by the Authority or Transport for NSW that permits a person to secure a vessel to a wharf of the Authority.

Note—

A wharf authorisation includes the following:

- (a) a contract or agreement between a person and the Authority or Transport for NSW that authorises the person to secure a commercial vessel to a wharf,
- (b) a permit issued under the Commuter Wharf Permit Scheme administered by the Authority,
- (c) a booking made through the Charter Wharf Booking System administered by the Authority.

wharf of the Authority means a wharf, pier, jetty, landing stage or dock owned by the Authority within Sydney Harbour or its tributaries.

85B Use of moorings by vessels

A person must not cause a vessel to occupy a mooring in any navigable waters except in accordance with a mooring licence issued by the Authority in accordance with the regulations.

Maximum penalty: 50 penalty units.

85C Use of port facilities by vessels

- (1) A person must not establish any port facilities for use by commercial vessels, foreign vessels or regulated Australian vessels in or in the vicinity of any pilotage port that affects the safety of navigation except in accordance with an approval from the Authority, Transport for NSW or the Port Authority of New South Wales.

Maximum penalty: 100 penalty units.

- (2) A person must not permit any port facility that has not been used for the berthing, docking or mooring of a commercial vessel, foreign vessel or regulated Australian vessel for 2 years or more to be used except in accordance with an approval from the Authority, Transport for NSW or the Port Authority of New South Wales.

Maximum penalty: 100 penalty units.

85D Investigation of port facilities

- (1) The Authority, Transport for NSW or the Port Authority of New South Wales may investigate existing or proposed port facilities for use by vessels.
- (2) The Authority, Transport for NSW or the Port Authority of New South Wales may, with

the approval of the Minister, make an order prohibiting:

- (a) the construction of any embankment, retaining wall, reclamation, wharf or a structure of any kind, or
- (b) the carrying out of any dredging operations,

in any specified area of water affected by an investigation under subsection (1) except in accordance with an approval given by the Authority, Transport for NSW or the Port Authority of New South Wales.

- (3) An order under subsection (2) must be published in the Gazette.
- (4) The Authority, Transport for NSW or the Port Authority of New South Wales is only to prohibit works referred to in subsection (2) if those works would adversely affect the port facilities under investigation or adversely affect the subsequent operation of the port facilities.
- (5) A person must not carry out any work that is prohibited by an order in force under this section.

Maximum penalty: 100 penalty units.

- (6) Nothing in this section enables the prohibition of the carrying out of work pursuant to an aquaculture lease under Part 6 of the *Fisheries Management Act 1994*, a lease under the *Mining Act 1992* or a licence under the *Offshore Minerals Act 1999*.

85E Removal of unauthorised works

- (1) The Authority, Transport for NSW or the Port Authority of New South Wales may give notice to a person who is making use of any work carried out in contravention of section 85C or 85D requiring the person to stop making use of that work by a specified date.
- (2) A person must not fail to comply with a notice given in accordance with subsection (1).
Maximum penalty: 50 penalty units.
- (3) The Authority, Transport for NSW or the Port Authority of New South Wales may remove, or authorise the removal of, any work carried out in contravention of section 85C or 85D.
- (4) The Authority, Transport for NSW or the Port Authority of New South Wales may cause or authorise any work or any thing removed in accordance with subsection (3) to be destroyed, stored or sold, or may sell the work on condition that it be removed.
- (5) The Authority, Transport for NSW or the Port Authority of New South Wales may recover as a debt in a court of competent jurisdiction the costs and expenses incurred

by it in the removal, destruction, storage or sale of any work under this section from the person who carried out the work or who has made use of it after the receipt of a notice referred to in subsection (1).

85F Proof of certain matters not required

A certificate signed or purporting to be signed by the Authority or an officer prescribed by the regulations and stating that:

- (a) a person named in the certificate did or did not at a specified time hold a commuter wharf permit issued by the Authority in accordance with the regulations, or
- (b) any such permit was or was not suspended or cancelled at a specified time, or
- (c) a vessel named in the certificate did or did not at a specified time have a booking under the wharf booking system established by the Authority in accordance with the regulations, or
- (d) a person named in the certificate was or was not at a specified time the holder of a mooring licence issued by the Authority in accordance with the regulations, or
- (e) any such licence was or was not suspended or cancelled at a specified time or was or was not subject to a specified condition at a specified time,

is admissible in any legal proceedings and is evidence of the matters stated in the certificate.

85G Regulations under this Part

- (1) The regulations may make provision for or with respect to access to wharves, mooring licences and removal of unauthorised works under this Part.
- (2) In particular, the regulations may make provision for or with respect to the following:
 - (a) the establishment of a commuter wharf permit system to control access to wharves,
 - (b) the establishment, administration, operation and enforcement of a wharf booking system and mooring licensing system,
 - (c) the approval, refusal, issue, duration and renewal of permits and licences under such systems,
 - (d) the imposition of conditions on permits and licences,
 - (e) the variation, suspension or cancellation of permits and licences,
 - (f) the application requirements for permits and licences,
 - (g) the fees payable in relation to permits, licences and bookings under a wharf

booking system,

- (h) classes of permits and licences,
- (i) the equipment, or type of equipment, that must be used to secure a vessel to a mooring,
- (j) the exemption of any person, vessel or other thing from this Part or any provisions of this Part.

85H Administrative reviews by NCAT

- (1) The regulations may provide that a person may apply to the Civil and Administrative Tribunal for the administrative review under the [Administrative Decisions Review Act 1997](#) of a decision made in respect of the person under the regulations under section 85G in relation to a mooring licence issued by the Authority.
- (2) The Minister is not to recommend the making of a regulation containing provisions for the purposes of subsection (1) unless the Minister certifies that the Minister administering the [Civil and Administrative Tribunal Act 2013](#) has agreed to the provisions.

Parts 7, 7A

86-99C (Repealed)

Part 8 Legal proceedings

100 Penalty notices

- (1) A law enforcement officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The [Fines Act 1996](#) applies to a penalty notice issued under this section.

Note—

The [Fines Act 1996](#) provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

- (6) 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) the Local Court, or
 - (b) the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought before the 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.

105A Erosion or siltation in certain ports

- (1) In this section:

prescribed land means land that is within a distance of 10 metres measured horizontally on the landward side:

(a) from the top of the bank of any non-tidal waters, or

(b) from high water mark on the shore of any tidal waters,

being in each case waters of which the bed is vested in the Authority.

prescribed work means:

(a) excavation, or

(b) removal of soil, sand, gravel, stone, rock or other material from land, or

(c) removal of a retaining wall.

public authority means:

(a) the Authority, or

(b) any other body, corporate or unincorporate, constituted by an Act where the Governor or a Minister of the Crown appoints one or more of the members of the body, or

(c) a corporation constituted by an Act, or

(d) a council or a county council within the meaning of the [Local Government Act 1993](#).

- (2) A person (other than a public authority) must not carry out any prescribed work on prescribed land except in accordance with an approval (and any conditions of the approval) in writing from the Authority.

Maximum penalty: 100 penalty units.

- (3) If the Authority is satisfied:

(a) that the bank or shore of any waters of which the bed is vested in the Authority is being eroded or is likely to be eroded, or

(b) that any material of any kind is being deposited, or is likely to be deposited, on the bed or shore of any such waters,

by reason of or as a result of:

(c) the carrying out on any land of any prescribed work (whether or not the person carrying out the work is liable to a penalty under subsection (2)), or

(d) the demolition, collapse, partial collapse or disrepair of or any damage to, a retaining wall or other structure on any land,

the Authority may give to the prescribed person in relation to the land the notice specified in subsection (5).

(4) The person prescribed by this subsection in relation to any land (the **prescribed person**) is:

(a) where the land is not vested in the Crown or a public authority—the owner of the land, or

(b) where the land is vested in the Crown or a public authority and work referred to in subsection (3) (c) has been carried out on the land in connection with land not so vested:

(i) the person who carried out the work, or

(ii) the owner of the land not so vested.

(5) The notice prescribed by this subsection is a notice in writing requiring the person to whom it is given to take within a reasonable time specified in the notice such measures as are necessary to ensure:

(a) in the case referred to in subsection (3) (a)—that the erosion ceases or is prevented and that any erosion that has occurred is made good, or

(b) in the case referred to in subsection (3) (b)—that the deposit of material ceases or is prevented and that any deposited material is removed.

(6) If any material of any kind escapes from, or is carried by natural forces from, any land on which a person:

(a) stored or accumulated that material, or

(b) carried on any work of excavation, earthmoving, material extraction, demolition, engineering or building construction,

and the material is deposited on the bed or shore of any waters of which the bed is vested in the Authority, the Authority may give to that person with respect to that land the notice specified in subsection (7).

- (7) The notice prescribed by this subsection is a notice in writing requiring the person to whom it is given to take within a reasonable time specified in the notice such measures as are necessary to ensure:
- (a) the prevention of any further deposit on the bed or shore of any waters (the bed of which is vested in the Authority) of any material escaping, or carried by natural forces, from the land in respect of which it is given, and
 - (b) that any such material so deposited is removed.
- (8) The Authority may amend or revoke a notice given under this section.
- (9) A person who is given a notice specified in subsection (5) or (7) must comply with the notice.

Maximum penalty: 100 penalty units.

105B Liability of owners and masters of vessels for damage to certain property

- (1) If a vessel damages any wharf, structure or fixed or movable property of any kind vested in or in the possession of a relevant authority, the owner or master of the vessel must pay to the relevant authority the costs and expenses incurred in the repair and reinstatement of the wharf, structure or property damaged.
- (2) Any amount payable under subsection (1) that is not paid may be recovered by the relevant authority as a debt in any court of competent jurisdiction.
- (3) In this section, a **relevant authority** means the Authority, Transport for NSW or the Port Authority of New South Wales.

105C Obstructions and encroachments in waters

- (1) In this section, **structure** includes any swimming pool, pontoon, jetty, shed or any other structure.
- (2) For the purposes of this section a reference to the bed of any waters vested in a relevant authority includes a reference to any land that, but for the existence of a structure, would be covered by any such waters.
- (3) A person must not erect a structure in, on or over the bed of any waters vested in a relevant authority without first obtaining the permission of the relevant authority.

Maximum penalty: 100 penalty units.

- (4) A person who erects a structure in, on or over the bed of any waters vested in a relevant authority must not use the structure after the expiration of the time specified in a written notice from the relevant authority served on the person and requiring the person to remove the structure.

Maximum penalty: 100 penalty units.

- (5) A relevant authority may remove or authorise the removal of any structure, erected without its permission in, on or over the bed of any waters vested in it or not removed in accordance with any notice given under subsection (4).
- (6) The relevant authority may cause or authorise any structure or part of a structure removed in accordance with this section to be destroyed or stored or sold, or may sell the structure on condition that it be removed, and may recover in any court of competent jurisdiction the expenses incurred in the removal, destruction, storage or sale from the person who erected the structure or caused the structure to be erected or has made use of it after service on the person of a notice referred to in subsection (4).
- (7) In this section, a **relevant authority** means the Authority, Transport for NSW or Port Authority of New South Wales.

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 (Repealed)

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.
- (1A) Without limiting subsection (1), the regulations may make provision for or with respect to the driving, stopping and parking of vehicles at a port (other than a private port) or wharf owned by the Authority or the Port Authority of New South Wales.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the management of dangerous goods in ports, including (but not limited to) the following:
 - (a) the identification or classification of substances and articles as dangerous goods,
 - (b) the navigation or mooring of vessels carrying dangerous goods,
 - (c) the use, storage or handling of dangerous goods,
 - (d) the use of equipment in connection with the use, storage or handling of dangerous goods,
 - (e) the inspection, examination and testing of dangerous goods and equipment used (or intended for use) in connection with dangerous goods,
 - (f) the making, keeping, inspection and provision of records in connection with dangerous goods,
 - (g) the escape or spillage of dangerous goods,
 - (h) the declaration of the day on which clause 63 of Schedule 18B to the *Work Health and Safety Regulation 2011* (or any provision that is made under the *Work Health and Safety Act 2011* in substitution of that provision) ceases to apply in relation to ports.
- (2A) The regulations may create offences punishable by:
 - (a) in the case of regulations made for the purposes of subsection (2)—a penalty not exceeding 300 penalty units, and
 - (b) in any other case—a penalty not exceeding 100 penalty units.
- (3) The regulations may incorporate by reference, wholly or in part and with or without modification, any guidelines, 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, 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

(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,
 - (b1) an order under section 26 transferring assets, rights or liabilities of commercial port facilities to a Port Corporation,
 - (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 (Repealed)

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 or any Act that amends 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 the Act concerned 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.

Part 4 Provisions consequent on Transport Legislation Amendment Act 2011

18 Interpretation

In this Part:

amending Act means the *Transport Legislation Amendment Act 2011*.

19 Abolition of Maritime Authority

- (1) The Maritime Authority of NSW is abolished.
- (2) A reference in any Act (other than this Act), in any instrument made under any Act or in any document of any kind to the Maritime Authority of NSW is to be construed as a reference to Roads and Maritime Services.

Note—

Schedule 7 to the *Transport Administration Act 1988* provides for the transfer of the assets, rights and liabilities of the Maritime Authority to Roads and Maritime Services.

20 Abolition of Maritime Authority of NSW Division

- (1) The Maritime Authority of NSW Division of the Government Service is abolished as a Division of the Government Service.
- (2) A person who was employed in the Maritime Authority of NSW Division immediately before the abolition of that Division becomes employed in the Roads and Maritime Services Division of the Government Service on the commencement of this clause.
- (3) The terms and conditions on which a person becomes employed in the Roads and Maritime Services Division under this clause (including terms and conditions as to remuneration, allowances and duration of employment) are, until such time as provision is otherwise made under this Act or any other law, those on which the person was employed immediately before the commencement of this clause.
- (4) Division 4 of Part 7 of the *Transport Administration Act 1988* applies in relation to persons who become employed in the Roads and Maritime Services Division under this clause in the same way as that Division applies to persons who are transferred under that Division.

21 Transfer of Yamba and Eden ports staff

- (1) The Minister may, by order in writing, provide that such members of staff of the Roads and Maritime Services Division as are employed at the ports of Yamba and Eden and 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 becomes an employee of the specified Port Corporation, in accordance with the terms of the order, on the day the order takes effect.
- (3) A person whose employment is transferred to a Port Corporation under this clause is not entitled to receive any payment or other benefit merely because the person ceases to be a member of the staff of the Roads and Maritime Services Division and 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.

- (4) For the purposes of this clause, **the ports of Yamba and Eden** are the commercial port facilities at Yamba and Eden that are vested in the Authority or another State authority and subject to the management of the Minister under section 26 of this Act.

Part 5 Provisions consequent on [Ports Assets \(Authorised Transactions\) Act 2012](#)

22 Definitions

In this Part:

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

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

23 Provisions delayed until operational commencement

- (1) The operation of the following provisions is delayed until operational commencement:
- (a) Part 6 (Price monitoring scheme) of this Act,
 - (b) the amendments made to sections 51, 54, 62, 67 and 74 by the [Ports Assets \(Authorised Transactions\) Act 2012](#) (to remove the requirement for the approval of the Minister under those sections),
 - (c) such other amendments made to this Act by the [Ports Assets \(Authorised Transactions\) Act 2012](#) as the Treasurer may direct by order in writing made before operational commencement.
- (2) For the purposes of this clause, **operational commencement** is the beginning of 1 January 2013 or the beginning of such later day as the Treasurer may by order in writing made before 1 January 2013 designate as operational commencement.

24 Operation of Parts 3A, 5 and 6

- (1) Until settlement day, Part 3A (Private ports), Part 5 (Port charges) and Part 6 (Price monitoring scheme) of this Act operate in respect of a private port as if the relevant port corporation for the port were the port operator of the port.
- (2) Accordingly, the relevant port corporation has and may exercise all the functions of the port operator of a private port under those Parts until settlement day.
- (3) Section 12 (Exercise of port SOC functions through subsidiaries) of the [Ports Assets](#)

(Authorised Transactions) Act 2012 extends to any such function.

- (4) For the purposes of the operation of Part 3A of this Act under this clause, the **landside port precinct** at a port is:
 - (a) land at the port that is not covered by water and that comprises ports assets under the *Ports Assets (Authorised Transactions) Act 2012*, and
 - (b) any wharf or other structure built at the port on or over land covered by water that is adjacent to land referred to in paragraph (a).
- (5) For the purposes of the operation of Part 5 of this Act under this clause, a site at a port leased to a subsidiary of the relevant port corporation for the port is deemed to be leased to that port corporation.