

# Ports Assets (Authorised Transactions) Act 2012 No 101

[2012-101]



New South Wales

## Status Information

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### Authorisation

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# Ports Assets (Authorised Transactions) Act 2012 No 101



New South Wales

An Act to provide for the restructuring of arrangements for the operation and regulation of certain ports assets of the State; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Ports Assets (Authorised Transactions) Act 2012*.

### 2 Commencement

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

### 3 Interpretation—key definitions

#### Note—

Schedule 1 contains other interpretative provisions.

In this Act—

**associated port land** means land (including an interest in land) at Botany Bay, Port of Newcastle or Port Kembla that is vested in any of the following public sector agencies and designated by the Treasurer by order in writing as associated port land for the purposes of this Act—

- (a) Transport for NSW,
- (b) Property and Development NSW,
- (c) any other public sector agency prescribed by the regulations for the purposes of this definition.

**authorised transaction** means a transfer of ports assets authorised by Part 2.

**Port Botany land** means land at Botany Bay that is ports assets.

**Port Kembla land** means land at Port Kembla that is ports assets.

**Port of Newcastle land** means land at Port of Newcastle that is ports assets.

**port SOC** means the Port Kembla Port Corporation, the Newcastle Port Corporation or the Sydney Ports Corporation.

**ports assets** means—

- (a) the assets, rights and liabilities of a port SOC, and
- (b) associated port land.

**retained assets** means ports assets that relate only to port operations in Sydney Harbour, the port of Yamba or the port of Eden (and not to port operations in any other port).

**Note—**

For example, ports assets that relate to port operations in both Sydney Harbour and Botany Bay are not retained assets.

## Part 2 Authorised transactions

### 4 Authorised transfer of ports assets

- (1) This Act authorises the transfer of ports assets to the private sector or to any public sector agency, subject to the following limitations—
  - (a) Port Botany land, Port Kembla land, Port of Newcastle land and associated port land can be leased to the private sector but the ownership of the freehold title to that land must remain with a public sector agency,
  - (b) any lease of Port Botany land, Port Kembla land, Port of Newcastle land or associated port land must not have a term that, together with the term of any further lease that may be granted under an option in respect of it, exceeds 99 years,
  - (c) this Act does not authorise the transfer of retained assets to the private sector.
- (2) No compensation is payable in connection with the transfer under this Act of ports assets to a public sector agency (but this does not prevent such a transfer being for consideration).

### 5 Proceeds of transaction

- (1) The proceeds of the transfer of ports assets to the private sector pursuant to an authorised transaction (***the transaction proceeds***) belong to and are payable directly to the State.
- (2) The transaction proceeds include any payment to a public sector agency that is a periodic lease payment under a lease of ports assets to the private sector pursuant to

an authorised transaction.

- (3) The transaction proceeds paid to the State are to be paid into the Restart NSW Fund (**the Fund**) established under the [Restart NSW Fund Act 2011](#).
- (4) The following deductions are authorised to be made from the transaction proceeds—
  - (a) deduction of such amounts as the Treasurer approves to repay debt and satisfy other liabilities of a public sector agency in respect of ports assets transferred for the purposes of an authorised transaction,
  - (b) deduction of such amounts as the Treasurer approves to reimburse public sector agencies for payments made by them in respect of any tax, duty, fee or charge imposed by any Act or law of the State or any other jurisdiction in connection with a transaction arrangement,
  - (c) deduction of such amounts as the Treasurer approves to satisfy any liability of a public sector agency arising under or in connection with a transaction arrangement,
  - (d) deduction of such amounts as the Treasurer approves to meet expenses reasonably incurred by public sector agencies for the purposes of an authorised transaction.
- (5) The transaction proceeds do not include any amount certified by the Treasurer to have been paid to a public sector agency as a tax, duty, fee or charge imposed by any Act or law of the State in connection with a transaction arrangement.
- (6) The deductions authorised to be made from the transaction proceeds may be made before payment of the transaction proceeds into the Fund or may be made by payment from the Fund.
- (7) The requirements of this section do not affect the validity of a transaction arrangement.

## **Part 3 Facilitating authorised transactions**

### **6 Treasurer's functions**

The Treasurer has and may exercise all such functions as are necessary or convenient for the purposes of an authorised transaction. The functions conferred on the Treasurer by any other provision of this Act do not limit the Treasurer's functions under this section.

### **7 Manner of effecting authorised transaction**

- (1) An authorised transaction is to be effected as directed by the Treasurer and can be effected in any manner considered appropriate by the Treasurer.

- (2) There are no limitations as to the nature of the transactions or arrangements that can be entered into or used for the purposes of an authorised transaction.

**Note—**

For example, an ownership structure involving a unit trust could be used for the purposes of an authorised transaction.

- (3) The provisions of this Act for the establishment of various kinds of transaction entity do not limit the nature of the legal entities or arrangements that can be used for the purposes of an authorised transaction.

## **8 Transaction SOC**

- (1) A statutory State owned corporation may be established under this Act as a transaction SOC for the purposes of an authorised transaction.
- (2) The Governor may by order published in the Gazette—
  - (a) create a corporation under a corporate name specified in the order, and
  - (b) specify the functions of the corporation, and
  - (c) direct that the corporation is established as a statutory State owned corporation and as a transaction SOC.
- (3) On the day on which the order takes effect—
  - (a) a corporation is constituted with the corporate name and functions specified in the order, and
  - (b) the *State Owned Corporations Act 1989* is amended by inserting in Schedule 5 the corporate name specified in the order (to establish the corporation as a statutory State owned corporation under that Act), and
  - (c) the State owned corporation thereby established is a transaction SOC for the purposes of this Act.
- (4) The portfolio Minister of a SOC established under this section is the Minister administering the *Ports and Maritime Administration Act 1995*.
- (5) Schedule 2 has effect with respect to a transaction SOC. The provisions of that Schedule are in addition to and (except to the extent to which that Schedule otherwise provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

## **9 Transaction companies**

- (1) The Treasurer may for the purposes of an authorised transaction establish, or direct the establishment of, companies as transaction companies in any of the following ways—



- (a) the formation or acquisition by or on behalf of the State or a SOC of a company limited by shares, so that all the issued shares in the company are held by or on behalf of the State or a SOC (or both),
  - (b) the formation or acquisition of a company as a wholly owned subsidiary company of a transaction company,
  - (c) the conversion of a port SOC or transaction SOC into a company limited by shares as provided by Schedule 3.
- (2) A transaction company that is a public sector agency may be converted from one kind of company to any other kind of company.
- (3) Except by express agreement with the Treasurer—
- (a) a transaction company is not and does not represent the State, and
  - (b) the debts, liabilities and obligations of a transaction company are not guaranteed by the State.
- (4) The Treasurer may act for or on behalf of the State, a SOC or a transaction company that is a public sector agency in connection with the rights, privileges and benefits, and the duties, liabilities and obligations, of the State, a SOC or a transaction company as the holder of shares or other securities in or issued by a transaction company.
- (5) Shares and other securities in or issued by a transaction company that is a public sector agency may be issued, sold or transferred in accordance with the directions of the Treasurer. The Treasurer may on behalf of the State, a SOC or a transaction company that is a public sector agency, enter into and carry out transaction arrangements for the issue, sale or transfer of shares and other securities in or issued by a transaction company.
- (6) If a port SOC becomes a transaction company by being converted into a company under this section, a reference in this Act to the port SOC includes a reference to that transaction company.

## **10 Additional functions of port SOCs and transaction entities**

- (1) Each port SOC and transaction entity has and may exercise all such functions as are necessary or convenient for the purposes of an authorised transaction.
- (2) The functions conferred by this section are in addition to any other functions that a port SOC or a transaction entity has apart from this section and those other functions do not prevent or otherwise limit the exercise of the additional functions conferred by this section.
- (3) The Treasurer may act for or on behalf of a port SOC or a transaction entity in the

exercise of any of its functions for the purposes of an authorised transaction while it is a public sector agency.

## **11 Direction and control of port SOC and transaction entities**

- (1) Each port SOC and transaction entity is subject to the direction and control of the Treasurer in the exercise of any of its functions for the purposes of an authorised transaction while it is a public sector agency.
- (2) The Treasurer may give directions for the purposes of an authorised transaction to a port SOC or transaction entity, and to the directors and other officers of a port SOC or transaction entity. Any such directions must be complied with by the port SOC, the transaction entity or the directors or other officers concerned.
- (3) Directions to a transaction entity (or its directors and other officers) can only be given and are only required to be complied with while the transaction entity is a public sector agency.
- (4) The power to give directions under this section extends to directions with respect to the way in which a port SOC or transaction entity is to conduct its business and other affairs.
- (5) Action taken by a port SOC or transaction SOC to comply with a direction of the Treasurer under this Act does not require the approval of the voting shareholders or portfolio Minister of the corporation.
- (6) Anything done or omitted to be done by a director or other officer of a port SOC or transaction entity in complying with a direction given by the Treasurer under this Act does not subject the director or officer personally to any action, liability, claim or demand.
- (7) The provisions of this section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of the Corporations legislation generally.

## **12 Exercise of port SOC functions through subsidiaries**

- (1) If ports assets are transferred to a subsidiary of a port SOC for the purposes of an authorised transaction, the functions of the port SOC in respect of those ports assets become either retained functions or shared functions, as follows—
  - (a) **retained functions** are all functions of the port SOC except those that are shared functions,
  - (b) **shared functions** are the functions of the port SOC under Part 5 (Port charges) of the *Ports and Maritime Administration Act 1995* but only in respect of charges of a kind that can be fixed under that Part by the port operator of a private port.

- (2) In the case of retained functions—
- (a) the port SOC continues to have and may exercise retained functions as if the ports assets had remained vested in the port SOC, and
  - (b) the subsidiary is authorised to exercise retained functions on behalf of the port SOC (with the exception of any function or class of functions that is reserved to the port SOC by a direction of the port SOC to the subsidiary), and
  - (c) the subsidiary is subject to the direction and control of the port SOC in the exercise of retained functions on behalf of the port SOC, and
  - (d) any retained functions exercised by the subsidiary under this section are deemed to have been exercised by the port SOC.
- (3) In the case of shared functions—
- (a) both the port SOC and the subsidiary have and may exercise shared functions, and
  - (b) the subsidiary has and may exercise shared functions as if the subsidiary were the port SOC, and
  - (c) Part 6 (Price monitoring scheme) of the *Ports and Maritime Administration Act 1995* applies to the subsidiary in respect of port charges charged by the subsidiary in the exercise of shared functions as if it were the port operator, and
  - (d) the subsidiary exercises shared functions on its own account, and
  - (e) any charges collected by the subsidiary in the exercise of shared functions are for its own use and benefit.
- (4) The regulations may prescribe additional functions of a port SOC as shared functions for the purposes of this section.
- (5) This section operates only while the subsidiary in which ports assets are vested is a public sector agency.

### **13 Establishment of Ports Assets Ministerial Holding Corporation**

- (1) There is constituted by this Act a corporation with the corporate name of the Ports Assets Ministerial Holding Corporation.
- (2) The Corporation is a statutory body representing the Crown.
- (3) The affairs of the Corporation are to be managed by the Treasurer who may authorise another Minister to exercise functions in relation to particular assets, rights and liabilities.

- (4) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Treasurer or a Minister authorised by the Treasurer, or with the authority of the Treasurer or any such Minister, is taken to have been done by the Corporation.
- (5) The Corporation has the functions conferred or imposed on it by or under this or any other Act.
- (6) The functions of the Corporation are—
  - (a) to hold, on behalf of the Crown, ports assets acquired by it or transferred to it, and
  - (b) to carry on any activities or business that relate to any ports assets held by it, including demanding, collecting and receiving charges, levies, rates and fees, and
  - (c) such other functions for the purposes of an authorised transaction as may be prescribed by the regulations.

## **Part 4 Arrangements for transfer of staff**

### **14 Transfers within public sector**

- (1) The Treasurer may, for the purposes of an authorised transaction, by order in writing transfer the employment of an employee of a port SOC (a **transferred employee**) to the employment of another public sector agency.
- (2) A transferred employee is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the employee had the employee remained an employee of the port SOC concerned.
- (3) The Treasurer may negotiate and enter into agreements or industrial instruments concerning workplace relations for or on behalf of a public sector agency in connection with the operation of this section.

### **15 Temporary transfers (secondments)**

- (1) The Treasurer may, for the purposes of an authorised transaction, by order in writing temporarily transfer an employee of a port SOC to the service of another public sector agency or to the service of an employer in the private sector.
- (2) A person may be temporarily transferred under this section at the person's existing level of remuneration or at a higher level of remuneration.
- (3) A person who is temporarily transferred under this section remains an employee of the port SOC concerned (unless and until the person's employment is transferred under another provision of this Part).

## 16 Transfers to private sector employment

- (1) The Treasurer may, for the purposes of an authorised transaction, by order in writing transfer the employment of an employee of a port SOC or transaction entity (a **transferred employee**) to the employment of an employer in the private sector (the **new employer**).
- (2) The transfer of the employment of an employee under this section requires the consent of the employee unless the employee is a contract employee (in which case the employee's employment can be transferred with or without the employee's consent).
- (3) The employment of a transferred employee with the new employer is to be on the same terms and conditions as applied to the employee as an employee of the relevant port SOC or transaction entity immediately before the transfer date.
- (4) Those terms and conditions cannot be varied during any employment guarantee period for the transferred employee except by agreement entered into by or on behalf of the transferred employee.
- (5) The employment of a transferred employee with the new employer cannot be terminated by the new employer during any employment guarantee period for the transferred employee, except—
  - (a) for serious misconduct, or
  - (b) pursuant to the proper application of reasonable disciplinary procedures, or
  - (c) by agreement with the employee.
- (6) There is an **employment guarantee period** for transferred employees who are permanent or temporary employees, as follows—
  - (a) for permanent employees the employment guarantee period is 2 years after the transfer date,
  - (b) for temporary employees the employment guarantee period is the remainder of the employee's current term of employment (as specified in the arrangements under which the employee was engaged as a temporary employee) immediately before the transfer date or the period of 2 years after the transfer date, whichever period ends first.

### Note—

There is no employment guarantee period for contract employees or casual employees. The employment of a transferred employee who is a contract employee remains governed by the contract of employment.

- (7) In this section—

**casual employee** means an employee whose employment is in a category of employment that is described in or classified under a relevant award as casual employment or who is otherwise engaged as a casual employee.

**contract employee** means an employee whose terms and conditions of employment are provided by an individual contract and not by a relevant award.

**permanent employee** means an employee whose employment is of indefinite duration and who is not a casual employee, temporary employee or contract employee.

**relevant award** means any award, agreement or other industrial instrument (under a law of the State or the Commonwealth) that provides for the terms and conditions of employment of employees.

**temporary employee** means an employee (other than a casual employee or contract employee) whose employment is in a category of employment that is described in or classified under a relevant award as temporary employment or whose employment is, under the terms of his or her employment, for a limited period.

**transfer date** means the date on which the employment of a transferred employee is transferred under this section to the new employer.

## **17 Continuity of entitlements of transferred employees**

- (1) On the transfer by order under this Part of an employee's employment from one employer (**the current employer**) to another employer (**the new employer**) the following provisions have effect—
  - (a) the employee is entitled to continue as a contributor, member or employee for the purposes of any superannuation scheme in respect of which he or she was a contributor, member or employee (as an employee of the current employer) immediately before the transfer of employment and remains so entitled subject to any variation to that entitlement made either by agreement or otherwise in accordance with law,
  - (b) the new employer is taken to be an employer for the purposes of any superannuation scheme in respect of which the employee continues as a contributor, member or employee pursuant to an entitlement under this section,
  - (c) the continuity of the employee's contract of employment is taken not to have been broken by the transfer of employment, and service of the employee with the current employer (including service deemed to be service with the current employer) that is continuous service up to the time of transfer is taken for all purposes to be service with the new employer,
  - (d) the employee retains any rights to sick leave, annual leave or long service leave

accrued or accruing immediately before the transfer (except accrued leave for which the employee has, on ceasing to be an employee of the current employer, been paid the monetary value in pursuance of any other entitlement of the employee).

- (2) Nothing in the *Long Service Leave Act 1955* prevents payment in connection with the transfer under this Part of the employment of an employee of a port SOC to the employment of an employer in the private sector of the monetary value of long service leave in lieu of an entitlement to that leave accrued as an employee of a port SOC before the transfer of the employee's employment.

## **18 Payments to employees leaving public sector employment**

- (1) The Treasurer or another public sector agency may enter into agreements or other arrangements with respect to the making of transfer payments to employees of a port SOC in connection with the transfer of employment of those employees to employment in the private sector as a result of a transaction arrangement or as a result of an order under this Part.
- (2) A transfer payment is not to exceed an amount equivalent to 30 weeks of pay at the rate of an employee's base salary (that is, salary less any allowances).
- (3) Without affecting any entitlement to a transfer payment under this section, an employee of a port SOC is not entitled to receive any payment or other benefit (including in the nature of severance pay or redundancy compensation) merely because the employee ceased to be an employee of a public sector agency as a result of a transaction arrangement or as a result of an order under this Part.

## **Part 5 Arrangements for transfer of assets and functions**

### **19 Vesting orders**

The Treasurer may make vesting orders under Schedule 4 for the purposes of an authorised transaction.

### **20 Severance of fixtures**

- (1) The Treasurer may by order in writing for the purposes of an authorised transaction direct that specified fixtures to which this section applies are severed from the land on which they are situated.
- (2) The effect of such an order is that the fixtures concerned are deemed to be severed from the land on which they are situated and may be dealt with as personal property separate from the land for the purposes of an authorised transaction.
- (3) This section applies to the following fixtures—
  - (a) rail infrastructure facilities owned by a port SOC and situated on land owned by a

port SOC or another public sector agency,

(b) other fixtures designated by the Treasurer by order in writing to be fixtures to which this section applies that are owned by a port SOC and situated on land owned by a port SOC or another public sector agency.

(4) The severance of a fixture from land under this section does not affect the right of the fixture to be situated on that land and does not affect any right to drain water or sewage from the fixture across and through the land or to use any means of drainage of water or sewage from the fixture across and through the land.

(5) In this section, **rail infrastructure facilities** includes railway track, associated track structures, over track structures, cuttings, drainage works, track support earthworks and fences, tunnels, bridges, level crossings, service roads, signalling systems, train control systems, communication systems, overhead power supply systems, power and communication cables, and associated works, buildings, plant, machinery and equipment.

## 21 Grant of relevant authorisations

(1) The Treasurer may give directions to a public sector agency for or with respect to the grant of any relevant authorisation to a person who becomes or who it is proposed will become the new operator of any ports assets pursuant to an authorised transaction, including directions for or with respect to any of the following—

(a) requiring the grant of any such relevant authorisation without the necessity for the making or determination of any application,

(b) the displacement or modification of any provision of a relevant law in its application to the grant of any such relevant authorisation,

(c) the conditions or endorsements subject to which any such relevant authorisation is to be granted or that are to be attached to any such relevant authorisation.

(2) A direction may only be given under this section for the grant of a relevant authorisation that—

(a) operates to transfer or replace an existing relevant authorisation that is currently in force, and

(b) is subject to terms, conditions or endorsements that are the same (or to substantially the same effect) as those to which that existing relevant authorisation is subject.

(3) The Treasurer must consult with a public sector agency before giving a direction to the public sector agency under this section.

(4) A public sector agency exercising functions under a relevant law must comply with a



direction of the Treasurer under this section.

- (5) Anything done by a port SOC in compliance with a condition or endorsement of a relevant authorisation in relation to ports assets of which a person is the new operator is taken to have been done by the new operator for the purposes of any corresponding condition or endorsement of a relevant authorisation granted to the new operator pursuant to a direction under this section.
- (6) A relevant authorisation granted to a port SOC or to the new operator of ports assets may not be suspended or cancelled on the ground of the conversion of the port SOC or new operator to a company or on the ground of any change that has occurred in the officers or shareholders of the company as a result of that conversion or pursuant to a transaction arrangement.
- (7) In this section—

**grant** includes issue and transfer.

**new operator** of ports assets means—

- (a) a public sector agency to which any ports assets are transferred for the purposes of an authorised transaction, or
- (b) a person (or the nominee of a person) in whom ports assets are vested, or to whom ports assets are transferred, pursuant to an authorised transaction.

**relevant authorisation** means a licence, permit, consent, entitlement, accreditation, exemption or other authorisation under a relevant law.

**relevant law** means any of the following Acts and any regulations or instruments under those Acts—

*Explosives Act 2003*

*Fisheries Management Act 1994*

*State Emergency and Rescue Management Act 1989*

*Water Management Act 2000*

*Work Health and Safety Act 2011*

## **22 Acquisition of land by Ports Assets Ministerial Holding Corporation**

- (1) The Ports Assets Ministerial Holding Corporation may, for the purposes of an authorised transaction, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* that the Corporation determines to be—

- (a) land on which ports assets of a port SOC were situated on the date of assent to this Act and continue to be situated, or
  - (b) land that on the date of assent to this Act was used or occupied by a port SOC for or in connection with the exercise of any function of the port SOC and that continues to be so used or occupied.
- (2) In the case of land used (but not occupied) by a port SOC for or in connection with the exercise of any function of the port SOC, such as land used for the purposes of access, the power conferred by this section to acquire the land is limited to a power to acquire an interest in the land sufficient to allow that use of the land to continue.
- (3) A public sector agency is not entitled to compensation under the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) as the owner of land acquired pursuant to this section.
- (4) Land acquired by the Corporation pursuant to this section is deemed to be an asset of a port SOC for the purposes of this Act and the Corporation is deemed to be a port SOC for the purposes of this Act while it holds the land.

**Note—**

Land acquired pursuant to this section is a ports asset for the purposes of an authorised transaction (whether or not it was a ports asset before it was acquired).

### **23 Adjustment of port SOC objectives and functions**

- (1) The Treasurer may by direction in writing to a port SOC adjust the objectives and functions of the port SOC in such manner as the Treasurer considers appropriate to ensure that the objectives and functions of the port SOC remain appropriate, having regard to—
- (a) the capacity of the port SOC to give effect to or exercise its existing objectives and functions following the transfer of any of its ports assets for the purposes of an authorised transaction, and
  - (b) the objectives and functions that would be appropriate for any remaining ports assets of the port SOC.
- (2) The objectives and functions of a port SOC may be adjusted under this section by being limited or dispensed with but not by being broadened.

## **Part 6 Operation of other laws**

### **24 State taxes**

- (1) In this section—

**relevant matter** means any of the following—

- (a) any transaction arrangement,
- (b) a vesting of assets, rights or liabilities by operation of Schedule 4 (Vesting of assets, rights and liabilities) and anything certified by the Treasurer as having been done in consequence of such a vesting (for example, the transfer or registration of an interest in land),
- (c) the issue, disposal or purchase of shares or other securities in or issued by a company for the purposes of an authorised transaction,
- (d) any matter connected with the corporate conversion of a port SOC or transaction SOC for the purposes of an authorised transaction,
- (e) such other matters for the purposes of an authorised transaction as may be prescribed by the regulations,
- (f) any transaction occurring within 6 months after completion of an authorised transaction and certified by the Treasurer to be a transaction entered into in connection with the transfer of ports assets to the private sector pursuant to the authorised transaction.

**State tax** means application or registration fees, duty under the [Duties Act 1997](#) or any other tax, duty, fee or charge imposed by any Act or law of the State.

- (2) State tax is not payable by a public sector agency in relation to a relevant matter.
- (3) State tax is not payable by a person or body (other than a public sector agency) in relation to a relevant matter to such extent (if any) as the Treasurer may direct by order in writing, either generally or in a particular case.
- (4) An order may be made by the Treasurer under this section before or after the liability to pay the State tax concerned accrues.
- (5) The Treasurer must give a copy of an order under this section to the Chief Commissioner of State Revenue.

## **25 General relationship of Act with other State legislation**

- (1) None of the following provisions operate to prevent, restrict or otherwise limit the carrying out of a transaction arrangement or the exercise of a function for the purposes of an authorised transaction—
  - (a) any provision of the [State Owned Corporations Act 1989](#),
  - (b) any provision of the constitution of a statutory SOC or a subsidiary of a statutory SOC.
- (2) In the event of any inconsistency between the provisions of this Act or the regulations

and a provision of any other State legislation that is prescribed by the regulations as an inconsistent provision for the purposes of this section, the provisions of this Act or the regulations (as the case may be) prevail to the extent of the inconsistency.

- (3) The requirements of any other Act (whether enacted before or after this Act) for the approval by resolution of either or both Houses of Parliament (or by Act) of any act that constitutes the transfer of ports assets for the purposes of an authorised transaction is satisfied by the enactment of this Act.

## **26 Part 6 of [Government Sector Finance Act 2018](#)**

Part 6 of the [Government Sector Finance Act 2018](#) does not apply to any transaction arrangement.

## **27 Release of information by Auditor-General**

Section 38 (Secrecy) of the [Government Sector Audit Act 1983](#) does not apply to or in respect of a report or communication that the Treasurer authorises the Auditor-General to make to a person for the purposes of an authorised transaction or for the purposes of the audit (before or after the completion of an authorised transaction) of records relating to ports assets transferred pursuant to an authorised transaction.

## **28 Contracts for sale of land**

Section 52A (Contracts for sale of land) of the [Conveyancing Act 1919](#) does not apply to a contract for the sale of land that is entered into for the purposes of an authorised transaction.

## **29 Protection of contractual and other obligations**

- (1) This section applies to the following—
  - (a) the operation of this Act (including any order under this Act and anything done or omitted to be done under or for the purposes of this Act),
  - (b) the transfer of ports assets for the purposes of an authorised transaction,
  - (c) the entering into or performance of obligations under a transaction arrangement by a public sector agency,
  - (d) a disclosure of information by, on behalf of or with the consent of a public sector agency for the purposes of an authorised transaction.
- (2) None of the matters or things to which this section applies are to be regarded as—
  - (a) a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or

liabilities) or as requiring any act to be done under an instrument, or

(c) giving rise to any right or remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument, or

(d) an event of default under any contract or other instrument, or

(e) giving rise to a breach of or an offence against a provision of an Act that prohibits or restricts the disclosure of information, or

(f) releasing a surety or other obligee wholly or in part from an obligation.

(3) This section does not affect the rights and obligations of the parties to a transaction arrangement in respect of the performance of obligations under the transaction arrangement.

(4) In this section—

**instrument** means an instrument (other than an instrument made under this Act) or any other document 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, process or other instrument issued by a court or tribunal.

### 30 Compensation not payable

(1) Compensation is not payable by or on behalf of the State—

(a) because of the enactment or operation of this Act, or for any consequence of that enactment or operation, or

(b) because of any statement or conduct relating to the enactment of this Act.

(2) This section does not extend to compensation payable under a transaction arrangement to a party to the transaction arrangement in connection with the performance of obligations under the transaction arrangement.

(3) In this section—

**compensation** includes damages or any other form of monetary compensation.

**conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

**operation of this Act** includes the operation of any notice or order under this Act and any agreement entered into under or for the purposes of this Act.

**statement** includes a representation of any kind—

(a) whether made verbally or in writing, and

(b) whether negligent, false, misleading or otherwise.

**the State** means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes a public sector agency and an officer, employee or agent of the Crown or a public sector agency.

### 31 Leases of ports assets

- (1) The provisions of a ports assets lease (or of any agreement or arrangement entered into in connection with such a lease) dealing with the following matters have effect according to their terms despite any law or rule to the contrary—
  - (a) the payment of any amount by way of premium under the lease and the retention of any such amount by the lessor or the State,
  - (b) the circumstances or conditions under which the lease may be terminated by the lessor or lessee,
  - (c) the application or operation of section 122, 130 or 133B of the *Conveyancing Act 1919* to or in respect of the lease (or any lease under the lease),
  - (d) the application of a security provided in relation to the lease,
  - (e) the payment of a sum that is in the nature of a penalty,
  - (f) the ownership of, or the vesting or forfeiture of ownership of, any real or personal property on termination of the lease or on the occurrence of some other specified event or other thing,
  - (g) the pre-payment of amounts payable by way of rent under the lease and the retention of any such amounts by the lessor or the State,
  - (h) the continuance of the lease despite the occurrence of unintended or unforeseen circumstances,
  - (i) the continuance of the obligation to pay rent despite the occurrence of unintended or unforeseen circumstances,
  - (j) the amount payable in consequence of a breach or early termination of the lease,
  - (k) the liability of the lessor or lessee in relation to the leased assets,
  - (l) the non-refundability of any payment made on account of rent, premium, option fee, outgoings, security deposit or otherwise,
  - (m) the operation of any set-off.
- (2) A ports assets lease may include provision for the removal by the lessee of any fixture severable from the land leased.

- (3) A scheme of arrangement, receivership, winding up or other external administration of a company is to be carried out in a manner that gives effect to the provisions of a lease or agreement referred to in subsection (1).
- (4) A variation of lease that operates to vary the land to which a lease relates can be registered under the *Real Property Act 1900* (despite section 55A (4) of that Act) if the Treasurer certifies that—
  - (a) the lease is a ports assets lease, and
  - (b) the variation is for the purpose of including, as land to which that lease relates, land that is the subject of a lease of ports assets entered into after completion of an authorised transaction pursuant to an agreement for lease entered into before completion of the authorised transaction.
- (5) In this section—

**ports assets** includes assets that were ports assets before their transfer to the private sector for the purposes of an authorised transaction.

**ports assets lease** means—

- (a) a lease of ports assets entered into for the purposes of an authorised transaction, or
- (b) a lease of ports assets that the Treasurer designates by order in writing as a ports assets lease for the purposes of this section.

### **32 No cargo throughput limits for Port Botany**

- (1) A planning control is of no effect to the extent that it would operate to impose a cargo throughput limit for Port Botany.
- (2) A **cargo throughput limit** for Port Botany is any direct or indirect limit or other restriction on the amount of cargo that can be received or handled at or transported from Port Botany and includes (without limitation) the following—
  - (a) a limit or other restriction on the number of cargo containers that can be received or handled at or transported from Port Botany,
  - (b) a limit or other restriction on the nature, number or frequency of transport movements to or from Port Botany,
  - (c) a limit of the kind imposed by condition A1.4 (Port Throughput Capacity Limits) of the planning approval for the construction and operation of a new container terminal and associated infrastructure at Port Botany as granted on 13 October 2005.
- (3) The following provisions apply to the operation of this section—

- (a) this section does not apply to a planning control until the planning control has been imposed, so that it limits the effect of the planning control once imposed but does not prevent the planning control from being imposed,
- (b) this section does not invalidate a planning control or any planning approval that imposes a planning control,
- (c) this section does not prevent planning approval being granted merely because a planning control to be imposed by the planning approval will be rendered wholly or partially ineffective by this section.

(4) In this section—

**Planning Act** means the *Environmental Planning and Assessment Act 1979* and the regulations under that Act.

**planning approval** means a consent, approval, permission or other authority under the Planning Act and includes any condition of or the terms of any such consent, approval, permission or other authority.

**planning control** means any requirement or other control imposed (before or after the commencement of this section) by or under—

- (a) the Planning Act, or
- (b) an environmental planning instrument under the Planning Act, or
- (c) a planning approval.

**Port Botany** means land in the local government areas of the City of Botany Bay and the City of Randwick (including land covered by water) leased to the private sector for the purposes of an authorised transaction.

## Part 7 Miscellaneous

### 33 Delegation

The Treasurer may delegate to the Secretary of the Treasury, or to any other Public Service employee prescribed by the regulations, any function of the Treasurer under this Act except this power of delegation.

### 34 Act to bind State and other jurisdictions

- (1) This Act binds the State and, in so far as the legislative power of the Parliament of New South Wales permits, the other States, the Territories and the Commonwealth.
- (2) Without limiting subsection (1), this Act has effect despite any privilege or immunity of the Crown in any of its capacities.



- (3) This Act does not make any State or Territory, the Commonwealth, or the Crown in any of its capacities, liable to be prosecuted for an offence.
- (4) A reference in this section to a State, Territory or the Commonwealth includes a reference to the Government of the State, Territory or Commonwealth.

### **35 Extraterritorial operation of Act**

- (1) It is the intention of the Parliament of New South Wales that the operation of this Act should, as far as possible, include operation in relation to the following—
  - (a) things situated in or outside the territorial limits of the State,
  - (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State,
  - (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State, a Territory, the Commonwealth or a foreign country.
- (2) Without limiting subsection (1), it is the intention of the Parliament of New South Wales that the provisions of this Act have an operation in relation to the things, acts, transactions and matters referred to in that subsection even if the rules of private international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.

### **36 Construction of Act and instruments so as not to exceed legislative power**

- (1) Unless a contrary intention appears, if a provision of this Act or an instrument made under this Act—
  - (a) would, apart from this section, have an invalid application, but
  - (b) also has at least one valid application,it is the intention of the Parliament of New South Wales that the provision is not to have the invalid application, but is to have every valid application.
- (2) Despite subsection (1), the provision is not to have a particular valid application if—
  - (a) apart from this section, it is clear, taking into account the provision's context and the purposes or objects underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the legislative power of the Parliament of New South Wales, or
  - (b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application, or a particular invalid application, of

the provision had been within the legislative power of the Parliament of New South Wales.

- (3) Subsection (2) does not limit the cases in which a contrary intention may be taken to appear for the purposes of subsection (1).
- (4) This section is in addition to, and not in derogation of, section 31 of the *Interpretation Act 1987*.
- (5) In this section—

**application** means an application in relation to—

- (a) one or more particular persons, things, matters, places, circumstances or cases, or
- (b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

**invalid application**, in relation to a provision, means an application because of which the provision exceeds the legislative power of the Parliament of New South Wales.

**valid application**, in relation to a provision, means an application which, if it were the provision's only application, would be within the legislative power of the Parliament of New South Wales.

### 37 Orders

- (1) An order made under a provision of this Act takes effect at the beginning of the day on which it is made, unless the order otherwise provides.
- (2) An order cannot provide for the order to take effect earlier than the beginning of the day on which it is made (but can provide for the order to take effect at a time on the day on which it is made that is earlier than the time at which it is made).
- (3) A document purporting to be an order made under a provision of this Act is, unless the contrary is established, taken to be such an order and to have been properly made.
- (4) A certificate purporting to be signed by the Treasurer or an officer prescribed by the regulations certifying that an order specified or referred to in the certificate is an order made under a specified provision of this Act is admissible in evidence in any legal proceedings and is evidence of the matters certified.
- (5) A provision of another Act that results from an amendment made by this Act and that provides for the making of an order is deemed for the purposes of this section to be a provision of this Act (and the order is deemed to be an order made under a provision of this Act).

### 38 Service or giving of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on or given to any person may be served or given—
  - (a) in the case of a natural person—
    - (i) by delivering it to the person personally, or
    - (ii) by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) by sending it by facsimile transmission to the facsimile number of the person, or
  - (b) in the case of a body corporate—
    - (i) by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
    - (ii) by sending it by facsimile transmission to the facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

### 39 Regulations

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.

## Schedule 1 Interpretative provisions

### 1 Definitions

In this Act—

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

**associated port land**—see section 3.

**authorised transaction**—see section 3.

**completion** of an authorised transaction occurs on such date as may be designated by the Treasurer by order in writing as the date of completion of the authorised transaction.

**corporate conversion**, in relation to a port SOC or a transaction SOC, means the registration of the corporation as a company under the Corporations Act.

**Corporations Act** means the [Corporations Act 2001](#) of the Commonwealth.

**Corporations legislation** means the Corporations legislation to which Part 1.1A of the Corporations Act applies.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**general law** means the common law and equity (as modified from time to time by legislation).

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

**legislation** includes—

- (a) any statute of a legislature (whether enacted or made in Australia or elsewhere), and
- (b) any proclamation, regulation, rule, by-law, order or any other kind of subordinate legislation (however described) made under the authority of a statute (whether enacted or made in Australia or elsewhere).

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

**modification** includes addition, exception, omission or substitution.

**Port Botany land**—see section 3.

**Port Kembla land**—see section 3.

**Port of Newcastle land**—see section 3.

**port SOC**—see section 3.

**ports assets**—see section 3.

**Ports Assets Ministerial Holding Corporation** or **the Corporation** means the Ports Assets Ministerial Holding Corporation constituted by this Act.

**private sector** means any person other than a public sector agency.

**Note**—

A person who is a public sector agency of another jurisdiction is a private sector person for the purposes of this Act.

**public sector agency** means any of the following—

- (a) the State (including the Crown in right of the State),
- (b) a Minister,
- (c) the Ministerial Holding Corporation constituted by the [State Owned Corporations Act 1989](#),
- (d) the Ports Assets Ministerial Holding Corporation,
- (e) a SOC,
- (f) a public authority of the State,
- (g) any other person acting on behalf of the State (or the Crown in right of the State),
- (h) a transaction company, but only while all the shares in the transaction company are held by or on behalf of the State or a SOC or the transaction company is the subsidiary of another transaction company all the shares in which are held by or on behalf of the State or a SOC,
- (i) a wholly owned subsidiary of a public sector agency.

**retained assets**—see section 3.

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

**SOC** means a State owned corporation within the meaning of the [State Owned Corporations Act 1989](#).

**State legislation** means any legislation of the State.

**the State** means the State of New South Wales.

**transaction arrangement** means a transaction, agreement or other arrangement entered into by or on behalf of a public sector agency for the purposes of an authorised transaction.

**transaction company** means a company established as a transaction company pursuant to this Act.

**transaction entity** means a transaction SOC or a transaction company.

**transaction SOC** means a SOC established as a transaction SOC pursuant to this Act.

**transfer** of ports assets includes the sale or lease of ports assets and the creation and transfer of any interest in ports assets.

## 2 Ports assets

In this Act, **ports assets** includes assets, rights and liabilities vested in a public sector agency that were ports assets before their transfer to a public sector agency for the purposes of an authorised transaction. Assets, rights and liabilities cease to be ports assets when they are transferred to the private sector for the purposes of an authorised transaction.

## 3 Functions for the purposes of an authorised transaction

For the purposes of this Act, any act, matter or thing is done or has effect for the purposes of an authorised transaction if—

- (a) it is done or has effect for the purpose of effecting or facilitating an authorised transaction, or
- (b) it is done or has effect for any purpose that is ancillary or incidental to or consequential on an authorised transaction, or
- (c) it is done or has effect for any purpose connected with the vesting of ports assets in, or the transfer of staff of a port SOC to, a public sector agency at any time after completion of an authorised transaction.

## 4 Transfer and acquisition of assets, rights and liabilities

(1) The assets, rights and liabilities of a body corporate include the assets, rights and liabilities of a wholly owned subsidiary of the body corporate and accordingly the following principles apply in the interpretation of this Act—

- (a) assets, rights and liabilities of a body corporate can be transferred to another person (**the transferee**) by a transfer of shares or any other transaction that results in the body corporate becoming a wholly owned subsidiary of the transferee,
- (b) assets, rights and liabilities of a body corporate are acquired by (and become assets, rights and liabilities of) a transferee when the body corporate becomes a wholly owned subsidiary of the transferee.

(2) This clause does not limit the ways in which assets, rights and liabilities can be transferred for the purposes of an authorised transaction and does not prevent the direct transfer of assets, rights and liabilities to a transferee.

## 5 Employees of port SOC

If a transaction company is established by the conversion of a port SOC into a company, a reference in a provision of this Act to an employee of a port SOC includes a reference to

an employee of the transaction company and a reference in the provision to the port SOC is to be read as a reference to the transaction company.

## **6 Words and expressions defined in Corporations Act**

Words and expressions used in this Act that are defined in section 9 of the Corporations Act have the same meanings as in that section, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.

## **7 When events occur**

If this Act provides for an event or other thing to occur on a particular day, that event or thing is taken to occur at the beginning of that day.

## **8 Notes**

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

# **Schedule 2 Provisions concerning transaction SOCs**

(Section 8)

## **1 Board of directors**

- (1) Each transaction SOC is to have a board of directors.
- (2) The board is to consist of—
  - (a) the chief executive officer, and
  - (b) at least 3 and not more than 5 other directors appointed by the voting shareholders.
- (3) Of the directors appointed under subclause (2) (b), one is (in and by the director's instrument of appointment as director or in and by another instrument executed by the voting shareholders) to be appointed as Chairperson of the Board.
- (4) The board is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the constitution of the transaction SOC.
- (5) The voting shareholders may remove a director, or the chairperson, from office at any time for any or no reason and without notice and, in that event, the office of the director or chairperson is taken to have become vacant for the purposes of Schedule 8 to the *State Owned Corporations Act 1989*.
- (6) Except as provided by this clause, Schedule 8 to the *State Owned Corporations Act 1989* has effect with respect to the constitution and procedure of the board.
- (7) The provisions of section 20J of the *State Owned Corporations Act 1989*, and of clauses 2 (1) and (2), 4 and 7 (1) (d) and (2) of Schedule 8 to that Act, do not apply to

a transaction SOC or to the chairperson.

- (8) The provisions of clause 6 of Schedule 8 to the *State Owned Corporations Act 1989* do not apply to the chief executive officer, and the chief executive officer is not entitled to remuneration under that clause, in his or her capacity as a director.

## **2 Chief executive officer**

- (1) The chief executive officer of a transaction SOC is to be appointed by the board after consultation with the voting shareholders.
- (2) The board may remove a person from office as chief executive officer, at any time, for any or no reason and without notice, but only after consultation with the voting shareholders.
- (3) The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
- (4) The board may, after consultation with the voting shareholders, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law.
- (5) The *Government Sector Employment Act 2013* (Part 6 included) does not apply to the chief executive officer.
- (6) Subject to subclause (7), Schedule 9 to the *State Owned Corporations Act 1989* has effect with respect to the chief executive officer.
- (7) The provisions of section 20K of the *State Owned Corporations Act 1989*, and of clauses 2, 3 and 6 of Schedule 9 to that Act, do not apply to the chief executive officer.

## **3 Acting chief executive officer**

- (1) The board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer.
- (2) The board may remove a person from office as acting chief executive officer, at any time, for any or no reason and without notice.
- (3) A person, while acting in the office of chief executive officer—
- (a) has all the functions of the chief executive officer and is taken to be the chief executive officer, and
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
- (4) For the purposes of this clause, a vacancy in the office of chief executive officer is regarded as an absence from office.



- (5) Clause 5 of Schedule 9 to the *State Owned Corporations Act 1989* does not apply to an acting chief executive officer of a transaction SOC.

#### **4 Dividends**

- (1) The voting shareholders of a transaction SOC, in consultation with the board, are to determine the corporation's share dividends scheme.
- (2) The dividends to be paid by a transaction SOC are to be declared by the board in accordance with the share dividends scheme so determined.
- (3) The provisions of section 205 (1) of the *State Owned Corporations Act 1989* do not apply to a transaction SOC.

#### **5 Supply of information to portfolio Minister**

The provisions of section 29 (2) of the *State Owned Corporations Act 1989* do not apply to a transaction SOC.

### **Schedule 3 Corporate conversion of port SOCs and transaction SOCs**

(Section 9)

#### **1 Direction for corporate conversion of port SOCs and transaction SOCs**

- (1) The Treasurer may direct by order in writing (**a corporate conversion direction**) that a port SOC or a transaction SOC be converted into a company limited by shares of a specified type.
- (2) A port SOC cannot be the subject of a corporate conversion direction unless it is a port SOC on the date of assent to this Act or is a transaction SOC.

#### **2 Application for conversion to company**

- (1) A port SOC to which a corporate conversion direction has been given is authorised to apply to be registered under Part 5B.1 of the Corporations Act as a company limited by shares of the type specified in the direction.
- (2) That application can only be made if the Treasurer has issued a certificate to the corporation that certifies that the Treasurer is satisfied that the provisions of this Act have been complied with concerning the transfer of its incorporation to the Corporations Act.
- (3) A certificate issued by the Treasurer for the purposes of this clause—
- (a) cannot be challenged, reviewed or called into question in proceedings before any court or tribunal, and
  - (b) is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the transfer of the

incorporation of the corporation to the Corporations Act.

### 3 Effect of conversion

- (1) The following provisions are taken to have had effect immediately before a port SOC to which a corporate conversion direction has been given is registered as a company under the Corporations Act—
  - (a) the corporation ceases to be a statutory State owned corporation for the purposes of the *State Owned Corporations Act 1989* or any other State legislation,
  - (b) the corporation ceases to be a Port Corporation under the *Ports and Maritime Administration Act 1995* unless the regulations provide otherwise,
  - (c) the voting shareholders (within the meaning of the *State Owned Corporations Act 1989*) of the corporation cease to be members of the corporation,
  - (d) the board of directors of the corporation is dissolved and each member (including any acting member) of the board ceases to hold office as such,
  - (e) any person who holds a statutory office of the corporation ceases to hold that office,
  - (f) any person who ceases to be a member of the corporation or to hold an office because of the operation of this subclause is not entitled to any compensation for the loss of that membership or office.
- (2) Nothing in this clause prevents any person from becoming an officer of the company into which the corporation is being converted in accordance with its constitution and the provisions of the Corporations Act.
- (3) A port SOC to which a corporate conversion direction has been given becomes a transaction company for the purposes of this Act only when it is registered as a company under the Corporations Act.

## Schedule 4 Vesting of assets, rights and liabilities

(Section 19)

### 1 Definitions

In this Schedule—

**transferee** means the person or body in whom any assets, rights or liabilities are vested by a vesting order.

**transferor** means the person or body from whom any assets, rights or liabilities are divested by a vesting order.

**vesting order** means a vesting order under this Schedule.

## **2 Making of vesting order**

The Treasurer may, by order in writing (**a vesting order**), vest assets, rights and liabilities comprising ports assets in a person specified in the order as the transferee.

## **3 Vesting of assets, rights and liabilities in transferee**

(1) When any assets, rights or liabilities are vested by a vesting order, the following provisions have effect (subject to the vesting order)—

- (a) the assets vest in the transferee by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
- (b) the rights and liabilities become, by virtue of this clause, the rights and liabilities of the transferee,
- (c) all proceedings relating to the assets, rights or liabilities pending by or against the transferor are taken to be proceedings pending by or against the transferee,
- (d) the transferee has all the entitlements and obligations of the transferor in relation to the assets, rights and liabilities that the transferor would have had but for the order, whether or not those entitlements and obligations were actual or potential at the time the order took effect,
- (e) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities by, to or in respect of the transferor is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
- (f) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets or liabilities but subject to the regulations) to be read as, or as including, a reference to the transferee.

(2) No attornment to the transferee by a lessee from the transferor is required.

## **4 Terms and conditions of vesting**

A vesting order may be made on such terms and conditions as are specified in the order.

## **5 Consideration for vesting**

A vesting order may specify the consideration for which a vesting to which it applies is made and the value or values at which assets, rights or liabilities are vested.

## 6 Vesting of interests in land

- (1) A vesting order may vest an interest in respect of land vested in the transferor without vesting the whole of the interests of the transferor in that land.
- (2) If the interest vested is not a separate interest, the order operates to create the interest vested in such terms as are specified in the order.
- (3) This clause does not limit any other provision of this Schedule.

## 7 Confirmation of vesting

- (1) The Treasurer may by order in writing confirm a vesting of particular assets, rights or liabilities by operation of this Schedule.
- (2) Such an order is evidence of that vesting.

## 8 Determinations by Treasurer

For the purposes of the making of a vesting order, the Treasurer may determine whether or not particular assets, rights or liabilities comprise ports assets, and such a determination is conclusive as to the matters determined.

## 9 Certification to registration authorities

- (1) In this clause—

**registration authority** means a person or body that has functions under any law in connection with the keeping of a register in respect of assets, rights or liabilities.

- (2) A public sector agency that is the transferee or transferor under a vesting order may lodge with a registration authority a certificate certifying as to such information as may reasonably be required by the registration authority to enable the registration authority to exercise any function of the authority arising in connection with the vesting of any asset, right or liability pursuant to the vesting order.
- (3) Such a certificate is to be accepted and acted upon by the registration authority and, despite any other law, the registration authority is not entitled to require that the information concerned be provided to it in any particular form or in any particular manner.
- (4) No fee or charge is payable by the transferee to a registration authority for or in respect of the exercise of any function by the registration authority in connection with the vesting of an asset, right or liability by a vesting order.
- (5) A document purporting to be a certificate given under this clause is, unless the contrary is established, taken to be such a certificate and to have been properly given.

## **10 Public sector accounting policies**

The Treasurer may give directions to public sector agencies for or with respect to accounting policies to be applied by public sector agencies in connection with the transfer between public sector agencies of assets, rights and liabilities comprising ports assets for the purposes of an authorised transaction (in place of public sector accounting policies that would otherwise be applicable in respect of any such transfer).

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

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than a public sector agency), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than a public sector agency) 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 Change of name of Port Corporation**

The Governor may, by regulation, change the name of the Port Kembla Port Corporation, the Newcastle Port Corporation or the Sydney Ports Corporation.

#### **3 Dissolution of Port Corporations**

- (1) The Governor may, by proclamation, dissolve the Port Kembla Port Corporation, the Newcastle Port Corporation or the Sydney Ports Corporation.
- (2) On the day on which a proclamation under this clause takes effect—
  - (a) the Port Corporation concerned is dissolved, and
  - (b) the *State Owned Corporations Act 1989* is amended by omitting the name of that Port Corporation from Schedule 5.

#### **4 Reference to dissolved or converted port SOC**

The regulations may provide that a reference in a specified provision of an Act to a port SOC that has been dissolved or converted into a company is to be read as a reference to a specified public sector agency.

### **Part 3 Provision consequent on enactment of [Ports Assets \(Authorised Transactions\) Amendment Act 2013](#)**

#### **5 Application of provisions to Port of Newcastle**

A reference in the following provisions to the date of assent to this Act is, in the application of those provisions to or in respect of the Newcastle Port Corporation, to be read as a reference to the date of assent to the [Ports Assets \(Authorised Transactions\) Amendment Act 2013](#)—

section 22 (Acquisition of land by Ports Assets Ministerial Holding Corporation)

clause 1 of Schedule 3 (Corporate conversion of port SOCs and transaction SOCs)

### **Schedule 6 (Repealed)**