

Fremantle Port Assets (Disposal) Bill 2016

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Western Australia

LEGISLATIVE ASSEMBLY

Fremantle Port Assets (Disposal) Bill 2016

A Bill for

An Act to provide for the disposal of the whole or part of any business carried on by, or all or any of the assets or liabilities owned or managed by, the Fremantle Port Authority, and for related purposes.

The Parliament of Western Australia enacts as follows:

1 **Part 1 — Preliminary matters**

2 **1. Short title**

3 This is the *Fremantle Port Assets (Disposal) Act 2016*.

4 **2. Commencement**

5 This Act comes into operation as follows —

- 6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent (*assent day*);
8 (b) Part 7 — on the day on which the first order to take
9 effect under section 10(5) takes effect;
10 (c) the rest of the Act — on the day after assent day.

11 **3. Terms used**

12 In this Act, unless the contrary intention appears —

13 *acquirer* means the entity to which a port asset or associated
14 asset is disposed of for the purposes of a section 10 disposal;

15 *asset* means property of any kind whether tangible, intangible,
16 real or personal and includes (without limitation) —

- 17 (a) any chose in action, goodwill, right, interest or claim of
18 any kind, whether arising from, accruing under, created
19 or evidenced by or the subject of an instrument or
20 otherwise and whether liquidated or unliquidated or
21 actual, contingent or prospective; and
22 (b) a contractual right that is to be regarded as arising
23 because of section 24(2);

24 *associated agency* has the meaning given in section 4(3);

25 *associated asset* means an associated State asset or an
26 associated SC asset;

27 *associated SC asset* has the meaning given in section 4(2);

28 *associated State asset* has the meaning given in section 4(1);

- 1 **Authority** means the Fremantle Port Authority under the
2 PA Act;
- 3 **company** means a company registered under the *Corporations*
4 *Act 2001* (Commonwealth);
- 5 **corporate vehicle** means —
- 6 (a) a company created for the purposes of this Act each
7 security in which is held by the Minister or the Treasurer
8 on behalf of the State; or
- 9 (b) a subsidiary under the *Corporations Act 2001*
10 (Commonwealth) of a company referred to in
11 paragraph (a); or
- 12 (c) a subsidiary under the PA Act of the Authority; or
- 13 (d) a subsidiary of a subsidiary mentioned in paragraph (b)
14 or (c);
- 15 **dispose of**, in relation to a port asset or associated asset,
16 includes —
- 17 (a) to sell the port asset or associated asset; and
- 18 (b) to grant a lease or licence in respect of the port asset or
19 associated asset; and
- 20 (c) to create and assign an interest in the port asset or
21 associated asset;
- 22 **disposer** means the entity from which a port asset or associated
23 asset is disposed of for the purposes of a section 10 disposal;
- 24 **Government agreement** means an agreement referred to in
25 paragraph (a) of the definition of **Government agreement** in the
26 *Government Agreements Act 1979* section 2 and, if the
27 agreement has been varied, means the agreement as varied;
- 28 **lease** includes a concurrent lease, a sublease or a concurrent
29 sublease and **lessee** and **lessor** have corresponding meanings;

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1 **liability** —

2 (a) means any liability, duty or obligation —

3 (i) whether liquidated or unliquidated or actual,
4 contingent or prospective; or

5 (ii) whether owed alone or jointly or jointly and
6 severally with any other person;

7 and

8 (b) includes a contractual liability that is to be regarded as
9 arising because of section 24(2);

10 **PA Act** means the *Port Authorities Act 1999*;

11 **Port** means the Port of Fremantle mentioned in the PA Act
12 Schedule 1;

13 **port asset** means —

14 (a) the whole or any part of a business carried on by, or any
15 asset or liability owned or managed by, the Authority; or

16 (b) the whole or any part of a business carried on by, or any
17 asset or liability owned by or managed on behalf of the
18 Authority, an associated agency, a corporate vehicle or
19 the State by, a corporate vehicle;

20 **port authority** means a port authority under the PA Act
21 section 3(1);

22 **port facility** means —

23 (a) a port asset or associated asset disposed of under this
24 Act; or

25 (b) an asset that was a port asset or associated asset before it
26 was disposed of under this Act; or

27 (c) anything prescribed by the regulations to be a port
28 facility for the purposes of the provision in which the
29 term is used;

30 **private entity** means a person other than any of the following —

31 (a) a port authority;

32 (b) a statutory corporation;

1 (c) a corporate vehicle;

2 (d) the State;

3 ***purposes***, of a section 10 disposal, has the meaning given in
4 section 5;

5 ***regulations*** means regulations made under section 86;

6 ***right*** means any right, power, privilege or immunity whether
7 actual, contingent or prospective but, in relation to a transfer
8 order, does not include any privilege or immunity enjoyed as an
9 agent of the Crown except insofar as it relates to anything done
10 or omitted to be done before the transfer time;

11 ***section 10 disposal*** means a disposal for which an order is in
12 force under section 10;

13 ***statutory corporation*** means —

14 (a) a Minister or chief executive officer who is constituted,
15 or continued in existence, as a body corporate under an
16 Act; or

17 (b) any other body corporate, other than a port authority,
18 that is constituted, or continued in existence, under an
19 Act;

20 ***transferee***, in relation to a transfer order, has the meaning given
21 in section 21(1)(b);

22 ***transferor***, in relation to a transfer order, has the meaning given
23 in section 21(1)(b);

24 ***transfer order*** means a transfer order made under section 21 as
25 amended under that section or corrected under section 27;

26 ***transfer time***, in relation to a transfer order, means the time
27 specified under section 21(1)(a) in the transfer order.

28 **4. Associated assets and associated agencies**

29 (1) An associated State asset is any asset or liability that —

30 (a) is owned by the State but is not owned or managed by a
31 statutory corporation; and

32 (b) is, in the Minister's opinion, associated with a port asset.

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- 1 (2) An associated SC asset is any asset or liability that —
2 (a) is owned by, or managed on behalf of the State by, a
3 statutory corporation; and
4 (b) is, in the Minister's opinion, associated with a port asset.
- 5 (3) An associated agency is a statutory corporation that owns or
6 manages an associated SC asset.

7 **5. Purposes of section 10 disposal**

- 8 The purposes of a section 10 disposal include the following —
9 (a) the purpose of effecting or facilitating the section 10
10 disposal;
11 (b) any purpose ancillary or incidental to, or consequential
12 on, the section 10 disposal.

13 **6. Things on land**

14 A reference in this Act to a thing that is on land is to be taken to
15 be a reference to a thing that is on, in, over or under the land.

16 **7. Severance of things on land**

- 17 (1) The Minister may, by order in writing for the purposes of a
18 section 10 disposal, direct that a specified thing that is on land
19 and is capable of being disposed of is not part of the land,
20 regardless of whether it is in the nature of a fixture.
- 21 (2) The effect of the order is that, for the purposes of a section 10
22 disposal, the thing —
23 (a) is taken to be severed from the land; and
24 (b) is capable of being assigned as personal property
25 separately from the land; and
26 (c) is capable of being removed from the land by, or with
27 the authority of, the owner of the land.
- 28 (3) The severance of a thing from land under this section does not
29 affect the right of the thing to be situated on that land.

1 (4) The Minister may vary or revoke an order made under
2 subsection (1).

3 **8. Act binds Crown**

4 This Act binds the State and, so far as the legislative power of
5 the State permits, the Crown in all its other capacities.

Part 2 — Enabling disposal

9. Disposal of port assets and associated assets authorised

- (1) A port asset owned or managed by the Authority may be disposed of, whether by the Authority or the State, if the disposal is authorised by an order made under section 10.
- (2) A port asset owned or managed by a corporate vehicle may be disposed of, whether by the corporate vehicle or the State, if the disposal is authorised by an order made under section 10.
- (3) An associated State asset may be disposed of by the State if the disposal is authorised by an order made under section 10.
- (4) An associated SC asset may be disposed of, whether by the associated agency or the State, if the disposal is authorised by an order made under section 10.

10. Minister may order disposal of port assets or associated assets

- (1) The Minister may, by order —
- (a) direct the disposal of all or specified port assets or all or specified associated assets; or
- (b) vary or revoke an order made under paragraph (a), or under this paragraph, at any time before effect is given to the order.
- (2) An order made under subsection (1) may be in general terms and need not include any details about how the disposal is to be effected or specific details about the assets the subject of the disposal.
- (3) If the Minister is not the Treasurer, the Minister cannot make an order under subsection (1) without the Treasurer's approval.
- (4) If the Minister is not the Minister administering the PA Act, the Minister cannot make an order under subsection (1) without that Minister's approval.

- 1 (5) An order made under subsection (1) must be published in the
2 *Gazette* and takes effect —
3 (a) on the day after the day on which the order is published
4 in the *Gazette*; or
5 (b) if a later day is specified in the order — on that day.

6 **11. Effecting disposal**

- 7 (1) Subject to section 12, there are no limitations on the nature of
8 any transaction or arrangement that can be entered into for the
9 purposes of a section 10 disposal.
- 10 (2) An express provision of this Act authorising the establishment
11 of a particular kind of legal entity for the purposes of a
12 section 10 disposal does not limit the kinds of legal entity that
13 can be used for those purposes.
- 14 (3) One or more corporate vehicles or one or more trusts can be
15 used for the purposes of a section 10 disposal.
- 16 (4) If a company mentioned in paragraph (a) of the definition of
17 ***corporate vehicle*** in section 3 is to be used for the purposes of a
18 section 10 disposal by the State, the Under Treasurer must
19 ensure that the necessary steps are taken on behalf of the State
20 to create the company.
- 21 (5) The Minister or the Treasurer can —
22 (a) receive on behalf of the State an allotment and issue of,
23 or otherwise acquire on behalf of the State, securities in
24 the company; and
25 (b) hold, and dispose of, on behalf of the State any
26 securities in the company so acquired by the person.
- 27 (6) The Minister may enter into on behalf of the State any
28 agreement for the purposes of a section 10 disposal.

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1 **12. Disposal of land**

2 (1) The following land can be disposed of under this Act —

- 3 (a) Crown land;
- 4 (b) freehold land owned by the Authority, an associated
- 5 agency, a corporate vehicle or the State.

6 (2) Land referred to in subsection (1) can only be disposed of under

7 this Act to a private entity by granting to the private entity —

- 8 (a) an interest in the land that is no greater than a leasehold
- 9 interest for a period not exceeding 99 years; or
- 10 (b) a licence in respect of the land for a period not
- 11 exceeding 99 years.

12 (3) The securities in a corporate vehicle can only be disposed of

13 under this Act to a private entity if the corporate vehicle

14 holds —

- 15 (a) an interest in the land referred to in subsection (1) that is
- 16 no greater than a leasehold interest for a period not
- 17 exceeding 99 years; or
- 18 (b) a licence in respect of the land referred to in
- 19 subsection (1) for a period not exceeding 99 years.

20 (4) In calculating, for subsection (2) or (3), the period for which an

21 interest in land or licence in respect of land (the ***interest or***

22 ***licence***) is granted or is held, any further period is to be

23 included.

24 (5) In subsection (4) —

25 ***further period*** means the period of any further interest in the

26 land, or further licence in respect of the land, that may be

27 granted whether under —

- 28 (a) an option to renew the interest or licence; or
- 29 (b) an option to renew any further interest or licence,
- 30 or otherwise.

31 (6) This section applies despite the PA Act section 28(3) and (4).

1 **13. Land subject to unregistered leases with terms exceeding**
2 **5 years**

3 Despite the *Transfer of Land Act 1893* section 68, land disposed
4 of under this Act is subject to any prior unregistered lease or
5 agreement for lease or for letting for a term exceeding 5 years to
6 a tenant in actual possession even though the lease or agreement
7 may not be specially notified as an encumbrance on the
8 certificate of title or registered instrument for the land.

9 **14. Development and building work**

10 (1) In this section —

11 **approval** includes —

- 12 (a) a permit, consent, notice, permission, or other
13 authorisation;
14 (b) an approval certificate or other certificate;
15 (c) an exemption or waiver;

16 **building work** means —

- 17 (a) building work as defined in the *Building Act 2011*
18 section 3; or
19 (b) demolition work as defined in the *Building Act 2011*
20 section 3; or
21 (c) plumbing work as defined in the *Plumbers Licensing*
22 *Act 1995* section 59I; or
23 (d) any other work of a similar or related nature;

24 **development** has the meaning given in the *Planning and*
25 *Development Act 2005* and includes any other development or
26 use of a similar or related nature;

27 **issue** includes give or grant.

28 (2) Subsection (3) applies if —

- 29 (a) at any time before this subsection comes into operation,
30 development or building work was carried out at the

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- 1 Port by, or on behalf of, the State, the Authority or a
2 statutory corporation; and
- 3 (b) under the law in force at the relevant time, an approval
4 was required to be issued for the carrying out of the
5 development or building work; and
- 6 (c) the approval was not issued; and
- 7 (d) the regulations provide that subsection (3) applies to the
8 development or building work.
- 9 (3) The approval is to be taken to have been issued.

10 **15. Functions and powers of Minister**

11 The Minister has all of the functions and powers that are
12 necessary or convenient for the purposes of this Act, including
13 the power to acquire land.

14 **16. Functions and powers of Authority**

15 The Authority has all of the functions and powers that are
16 necessary or convenient for the purposes of the disposal of a
17 port asset under this Act, including the power to acquire land.

18 **17. Functions and powers of associated agencies**

19 An associated agency has all of the functions and powers that
20 are necessary or convenient for the purposes of the disposal of
21 an associated SC asset under this Act, including the power to
22 acquire land.

23 **18. Functions and powers of corporate vehicles**

24 A corporate vehicle has all of the functions and powers that are
25 necessary or convenient for the purposes of the disposal of a
26 port asset under this Act, including —

- 27 (a) the power to acquire land; and
- 28 (b) the power to create subsidiaries.

1 **19. Directions by Minister**

- 2 (1) The Minister may, for the purposes of a section 10 disposal,
3 give a written direction to the Authority, an associated agency
4 or a corporate vehicle.
- 5 (2) The Authority, an associated agency or a corporate vehicle must
6 comply with a direction given to it under subsection (1).
- 7 (3) The Authority, an associated agency or a corporate vehicle, or a
8 director or officer of the Authority, an associated agency or a
9 corporate vehicle, is not liable for, and does not contravene the
10 PA Act or the *Western Australian Land Authority Act 1992* by
11 reason of, anything done or omitted to be done in good faith in
12 compliance with, or purported compliance with, a direction
13 given under subsection (1).
- 14 (4) Unless a direction given under subsection (1) specifies
15 otherwise, nothing in the direction or this section affects any
16 requirement under the PA Act or the *Western Australian Land*
17 *Authority Act 1992* for the approval of a Minister to be obtained
18 in relation to any matter.
- 19 (5) This section is declared to be a Corporations legislation
20 displacement provision for the purposes of the *Corporations*
21 *Act 2001* (Commonwealth) section 5G in relation to the
22 Corporations legislation generally.

23 **20. Regulations about corporate vehicles and trusts**

- 24 (1) Regulations may make provision about the constitution, trust
25 deed or another constituent document of a corporate vehicle or
26 trust that is to be used for the purposes of a section 10 disposal.
- 27 (2) Regulations may declare a matter dealt with, provided for, done
28 or occurring under regulations referred to in subsection (1) to be
29 an excluded matter for the purposes of the *Corporations*
30 *Act 2001* (Commonwealth) section 5F in relation to —
- 31 (a) the whole of the Corporations legislation; or
32 (b) a specified provision of that legislation; or

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- 1 (c) that legislation other than a specified provision; or
- 2 (d) that legislation other than to a specified extent.

Part 3 — Implementing disposal

Division 1 — Transfer orders

21. Minister may make transfer orders

- (1) For the purposes of a section 10 disposal, the Minister may, by order published in the *Gazette* (a **transfer order**), specify all or any of the following —
 - (a) a time (which must be after the day on which the order is published in the *Gazette*) that is the transfer time under the transfer order;
 - (b) any asset or liability that, by operation of section 22, is to be transferred from the Authority, an associated agency, a corporate vehicle or the State as specified in the order (the **transferor**) to the Authority, a corporate vehicle or a private entity as specified in the order (the **transferee**);
 - (c) proceedings in which, by operation of section 22, the transferee is to be substituted for the transferor as a party;
 - (d) any agreement or instrument relating to anything transferred that, by operation of section 22, is to have effect as if, unless otherwise expressly specified in the order, references to the transferee were substituted for references to the transferor in the agreement or instrument.
- (2) If the transfer time is specified by reference to when a thing is done, the Minister must ensure that notice of the time when the thing is done is published in the *Gazette*.
- (3) A transfer order may specify persons or things by reference to schedules that —
 - (a) need not be published in the *Gazette*; but
 - (b) must be available for public inspection on business days at the place and between the times specified in the

1 transfer order for 6 months after the day on which the
2 transfer order is published in the *Gazette*.

3 (4) For subsection (3)(b), a business day is a day other than a
4 Saturday, Sunday or public holiday.

5 (5) A person or thing specified in a schedule for a transfer order is
6 to be taken to be specified in the transfer order.

7 (6) A person or thing may be specified in a transfer order by
8 describing the person or thing as a member of a class.

9 (7) Before a transfer order is made specifying anything by reference
10 to a schedule, the Minister must consult each relevant official to
11 whom a copy of the schedule must be given under section 26(2)
12 about the form and content of the schedule for the purpose of
13 facilitating the recording and registration of instruments or
14 documents as required by section 26(3)(b).

15 (8) The Minister may, by order published in the *Gazette*, amend a
16 transfer order or a schedule for a transfer order, but only —

17 (a) before the transfer time; and

18 (b) with the consent of the transferee.

19 **22. Consequences of transfer orders**

20 (1) In this section —

21 *specified* means specified in the transfer order.

22 (2) A transfer order has effect at the transfer time as follows —

23 (a) a specified asset is, by operation of this section and
24 without the need for any conveyance, transfer,
25 assignment or assurance or any prior notice or further
26 act, transferred to the transferee and becomes an asset of
27 the transferee;

28 (b) a specified liability is, by operation of this section and
29 without the need for any prior notice or further act,
30 transferred to and becomes a liability of the transferee;

- 1 (c) the transferee is, by operation of this section, substituted
2 for the transferor as a party to any specified
3 proceedings;
- 4 (d) a specified agreement or instrument has effect, by
5 operation of this section, as if (unless otherwise
6 specified) a reference to the transferee were substituted
7 for a reference to the transferor in the agreement or
8 instrument;
- 9 (e) any proceedings or remedy that might have been
10 commenced by, or available against or to, the transferor
11 in relation to an asset or liability transferred by
12 paragraph (a) or (b) may be commenced by, or are
13 available against or to, the transferee;
- 14 (f) anything relating to an asset or liability transferred by
15 paragraph (a) or (b) that was done or omitted to be done
16 by, to or in respect of the transferor before the transfer
17 and is of any effect is to be taken to have been done or
18 omitted by, to or in respect of the transferee.

19 **23. Completion of transactions for this Division**

20 If a transfer order cannot to any extent have the effect sought to
21 be achieved by this Division (whether because a matter is
22 governed otherwise than by a law of this State or for any other
23 reason), the Minister and the transferor must each take all
24 practicable steps to achieve that effect as soon as possible after
25 the transfer time.

26 **24. Effect of arrangements internal to transferors**

- 27 (1) An instrument that provides for arrangements between different
28 parts of the transferor's business or undertaking may be
29 specified in a transfer order as if it created contractual rights and
30 liabilities.
- 31 (2) An instrument specified as described in subsection (1) is to be
32 regarded as if its provisions were contractual provisions
33 between different legal entities.

- 1 (3) A contractual right or liability that is to be regarded as arising
2 because of subsection (2) is transferable under this Division.

3 **25. Records: delivery and access**

- 4 (1) In this section —

5 *record* includes a register, minute, receipt, book of account or
6 other document (however compiled, recorded or stored);

7 *relevant record*, in relation to a transfer order, means a record
8 relating to any asset, liability, agreement, instrument or
9 proceedings specified under section 21(1) in the transfer order.

- 10 (2) The Minister may give the transferor under a transfer order a
11 direction (whether in the transfer order or otherwise in writing)
12 as to which relevant records, or classes of relevant records, in
13 the possession or control of the transferor must be delivered to
14 or shared with, or be able to be accessed by, the transferee under
15 the transfer order.

- 16 (3) The transferor must deliver to or share with the transferee, or
17 enable the transferee to have access to, relevant records in
18 accordance with the direction.

- 19 (4) The transferor and transferee must make arrangements for the
20 delivery or sharing of, or access to, relevant records in
21 accordance with the direction.

- 22 (5) This section is declared to be a Corporations legislation
23 displacement provision for the purposes of the *Corporations*
24 *Act 2001* (Commonwealth) section 5G in relation to the
25 Corporations legislation generally.

26 **26. Registration of documents**

- 27 (1) In this section —

28 *relevant official* means any of the following —

- 29 (a) the Registrar of Titles under the *Transfer of Land*
30 *Act 1893*;

- 1 (b) the Registrar of Deeds and Transfers under the
2 *Registration of Deeds Act 1856*;
- 3 (c) the Minister administering the *Land Administration*
4 *Act 1997*;
- 5 (d) any other person authorised by a written law to record
6 and give effect to the registration of instruments or
7 documents relating to transactions affecting any estate
8 or interest in land or any other property.
- 9 (2) The Minister must ensure that a copy of each of the following
10 instruments is given to each relevant official —
- 11 (a) a transfer order and any schedule for it;
- 12 (b) any order made under section 21(8) amending a transfer
13 order or any schedule for it;
- 14 (c) any order made under section 27(1) correcting a transfer
15 order or any schedule for it;
- 16 (d) any notice published under section 21(2) in respect of
17 the transfer time in relation to a transfer order.
- 18 (3) A relevant official must —
- 19 (a) take notice of this Division, a transfer order and any
20 other instrument relating to a transfer order that is
21 referred to in subsection (2); and
- 22 (b) record and register in the appropriate manner the
23 instruments or documents necessary to show the effect
24 of this Division and a transfer order.
- 25 **27. Correction of errors in transfer orders**
- 26 (1) The Minister may, by order published in the *Gazette*, make any
27 provision that is necessary to correct any error in a transfer
28 order or a schedule for a transfer order.
- 29 (2) An order made under subsection (1) may be expressed to take
30 effect on and after the transfer time.

- 1 (3) To the extent that a provision of an order made under
2 subsection (1) takes effect before the order is published in the
3 *Gazette*, section 22 does not, as a result of that provision,
4 operate so as —
- 5 (a) to affect in a manner prejudicial to any person (other
6 than the State, the transferor or transferee, or a Minister,
7 officer or agency of the State) the rights of that person
8 existing before publication; or
- 9 (b) to impose liabilities on any person (other than the State,
10 the transferor or transferee, or a Minister, officer or
11 agency of the State) in respect of anything done or
12 omitted to be done before publication.

13 **Division 2 — Disclosure of information**

14 **28. Authorised disclosure of information**

- 15 (1) A disclosure of information that is authorised under this section
16 is not to be regarded as —
- 17 (a) a breach of contract or confidence or any other civil
18 wrong; or
- 19 (b) a breach of duty under any of the following —
- 20 (i) the PA Act Schedule 3;
- 21 (ii) the *Western Australian Land Authority Act 1992*
22 Schedule 1A;
- 23 (iii) the *Statutory Corporations (Liability of*
24 *Directors) Act 1996* section 5;
- 25 or
- 26 (c) a breach of, or an offence under, a provision of a written
27 law that prohibits or restricts the disclosure of
28 information.

- 1 (2) For subsection (1), a disclosure of information is authorised if it
2 is made for the purposes of a section 10 disposal by —
- 3 (a) the Government or the Authority, an associated agency
4 or a corporate vehicle; or
- 5 (b) a person acting with the authority of a body referred to
6 in paragraph (a).
- 7 (3) For subsection (2), a disclosure of information made for the
8 purposes of a section 10 disposal includes a disclosure of
9 information whenever made if the disclosure is or was made for
10 the purposes of a potential section 10 disposal.

11 **29. Auditor General may disclose information**

12 Despite the *Auditor General Act 2006* section 46(2), the Auditor
13 General may, for the purposes of a section 10 disposal, disclose
14 to any person, or provide any person with access to, information
15 in the possession or under the control of the Auditor General.

16 **30. Offence of disclosing information**

- 17 (1) Subsection (2) applies to a person (a *bound recipient*) who —
- 18 (a) obtains information connected with a section 10
19 disposal, whether through a disclosure authorised by
20 section 28 or otherwise; and
- 21 (b) has agreed or is otherwise under a duty not to disclose
22 the information to others.
- 23 (2) A bound recipient commits an offence if the bound recipient
24 breaches the agreement or duty referred to in subsection (1)(b).
25 Penalty for this subsection: a fine of \$200 000.
- 26 (3) A person who obtains information connected with a section 10
27 disposal from or through a bound recipient commits an offence
28 if, without lawful excuse, the person discloses the information
29 in a way that would have resulted in a breach of the agreement

- 4 (4) For subsections (1)(a) and (3), information connected with a
5 section 10 disposal includes information whenever obtained if
6 the information is or was connected with a potential section 10
7 disposal.

8 **Division 3 — Other matters**

9 **31. Application of proceeds of disposal**

The proceeds of a section 10 disposal must be applied by paying them to the Treasurer or as the Treasurer directs otherwise.

12 **32. Provision by State of indemnities and guarantees**

- (1) The Treasurer may, in the name and on behalf of the State, give an indemnity or guarantee in respect of a matter related to —
- (a) a section 10 disposal; or
 - (b) the action (whether under a transfer order or otherwise) by which anything is disposed of in connection with a section 10 disposal.
- (2) The Treasurer may, in the name and on behalf of the State, give to any person who is or has been a director or officer of the Authority, associated agency or corporate vehicle an indemnity against any liability determined by the Treasurer (including any civil liability under the *Corporations Act 2001* (Commonwealth)), whether or not the liability relates to a matter referred to in subsection (1).
- (3) Any money payable under an indemnity or guarantee given under this section must be paid by the Treasurer.
- (4) Payments made under subsection (3) are charged to the Consolidated Account, which this subsection appropriates accordingly.

1 **33. Takeover by State of certain obligations**

2 (1) This section applies in relation to an obligation (whether
3 contingent or otherwise) of the Authority, an associated agency
4 or a corporate vehicle.

5 (2) The Treasurer may, in the name and on behalf of the State,
6 agree to take over an obligation in connection with a section 10
7 disposal.

8 (3) If the performance of the obligation was guaranteed by the
9 State, the agreement may also provide for —

10 (a) the release by the State of any security held by the State
11 in connection with the guarantee; or

12 (b) the release of a person from an undertaking that the
13 person gave to the State in relation to any security
14 described in paragraph (a).

15 (4) The Treasurer may authorise the payment of money to discharge
16 an obligation that the State has taken over under subsection (2),
17 whether by terminating the obligation or otherwise.

18 (5) Payments authorised under subsection (4) are charged to the
19 Consolidated Account, which this section appropriates
20 accordingly.

1 **Part 4 — Provisions relating to corporate vehicles**

2 **34. Application of this Part**

3 This Part applies if, for the purposes of a section 10 disposal, a
4 port asset or associated SC asset is disposed of (whether under a
5 transfer order or otherwise) from the Authority, an associated
6 agency or a corporate vehicle (the *disposer*) to a corporate
7 vehicle (the *acquirer*).

8 **35. Acquirer's powers and duties**

9 To the extent prescribed by the regulations, the acquirer has the
10 powers, duties, rights and obligations in respect of the port asset
11 or associated SC asset that the disposer would have had if the
12 disposal had not occurred.

13 **36. Application of written laws to acquirer**

14 (1) In this section —

15 *applicable written law* —

- 16 (a) means a written law (other than this Act) that applies to
17 or in relation to, or refers to, the disposer; and
18 (b) includes a written law that, by operation of this section,
19 applies to or in relation to, or refers to, the disposer.

20 (2) An applicable written law is to be taken to apply to or in relation
21 to, or to refer to, the acquirer —

- 22 (a) to the extent prescribed by the regulations; and
23 (b) with the changes that are prescribed by the regulations
24 or are otherwise necessary or convenient for the
25 purposes of this Part.

26 (3) Without limiting subsection (2), the regulations may provide
27 that a reference in an applicable written law to the disposer that
28 relates to the port asset or associated SC asset before the
29 disposal occurred is to be taken to include a reference to the
30 acquirer.

Part 5 — Provisions relating to leases and licences

37. Term used: port facility instrument

In this Part —

port facility instrument means —

- (a) a lease or licence in respect of a port facility entered into for the purposes of a section 10 disposal; or
- (b) a lease or licence designated under section 38(2)(a) as a port facility instrument for the purposes of the section in which the term is used,

and includes that lease or licence as varied from time to time.

38. Minister may designate certain matters

(1) In this section —

associate, in relation to a lessee or licensee under a port facility instrument, means —

- (a) a related body corporate; and
- (b) a trust, joint venture or partnership where the interest of the lessee or licensee or of a related body corporate in the trust, joint venture or partnership entitles the lessee or licensee or the related body corporate to —
 - (i) control the composition of the governing body of the trust, joint venture or partnership; or
 - (ii) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the trust, joint venture or partnership; or
 - (iii) control the business affairs of the trust, joint venture or partnership;

related body corporate means a body corporate that is related to the lessee or licensee by virtue of the *Corporations Act 2001* (Commonwealth) section 50.

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- 1 (2) The Minister may by order —
- 2 (a) designate a lease or licence as a port facility instrument
- 3 for the purposes of section 39 or 41, as the case requires;
- 4 (b) designate the lessee or licensee under a port facility
- 5 instrument, or an associate of the lessee or licensee
- 6 under a port facility instrument, as a port facility
- 7 instrument holder for the purposes of section 41;
- 8 (c) designate an agreement or arrangement as an agreement
- 9 or arrangement entered into in connection with a port
- 10 facility instrument for the purposes of section 39.
- 11 (3) The Minister may by order vary or revoke an order made under
- 12 subsection (2).
- 13 (4) An order under this section must be published in the *Gazette*.

14 **39. Effect of provisions of port facility instrument**

- 15 (1) In this section —
- 16 *lessee or licensee* means the lessee or licensee under the
- 17 relevant port facility instrument;
- 18 *lessor or licensor* means the lessor or licensor under the
- 19 relevant port facility instrument;
- 20 *related arrangement*, in relation to a port facility instrument,
- 21 means an agreement or arrangement designated under
- 22 section 38(2)(c) as an agreement or arrangement entered into in
- 23 connection with the instrument and includes that agreement or
- 24 arrangement as varied from time to time.
- 25 (2) The provisions of a port facility instrument, or of any related
- 26 arrangement, dealing with the following matters have effect
- 27 according to their terms despite any law or rule to the
- 28 contrary —
- 29 (a) the payment of any amount by way of premium, rent or
- 30 other moneys under the port facility instrument or
- 31 related arrangement and the retention of any such
- 32 amount by the lessor or licensor or the State;

- 1 (b) the non-refundability of any payment made on account
2 of rent, premium, option fee, outgoings, security deposit
3 or otherwise;
- 4 (c) the amount payable by the lessee or licensee in
5 consequence of a breach or early termination of the port
6 facility instrument;
- 7 (d) the continuance of the port facility instrument or related
8 arrangement and the obligations that the lessee or
9 licensee has under the port facility instrument or related
10 arrangement, including payment of rent and other
11 moneys, despite the occurrence of unintended or
12 unforeseen circumstances;
- 13 (e) the circumstances or conditions under which the port
14 facility instrument may be terminated by a party to the
15 instrument;
- 16 (f) the right of re-entry or forfeiture that the lessor or
17 licensor or the State has in respect of the port facility
18 instrument.

19 **40. Functions of lessee or licensee and the Authority**

- 20 (1) The lessee or licensee under a port facility instrument may
21 perform its functions and exercise its rights under a written law
22 or the port facility instrument despite the Authority having the
23 management and control of the Port under the PA Act
24 sections 4(2A) and 32.
- 25 (2) Despite the PA Act, the Authority is not obliged to perform
26 functions that the lessee or licensee under a port facility
27 instrument is engaged to perform under the port facility
28 instrument.

29 **41. References to port authority may include other entities**

- 30 (1) In this section —
31 *affected written law* means —
- 32 (a) regulations under the *Dangerous Goods Safety*
33 *Act 2004*;

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- 1 (b) the *Emergency Management Act 2005*;
- 2 (c) the *Jetties Act 1926*;
- 3 (d) the *Lights (Navigation Protection) Act 1938*;
- 4 (e) the *Marine and Harbours Act 1981*;
- 5 (f) the *Marine Navigational Aids Act 1973*;
- 6 (g) the *Pollution of Waters by Oil and Noxious Substances*
- 7 *Act 1987*;
- 8 (h) the PA Act;
- 9 (i) the *Shipping and Pilotage Act 1967*;
- 10 **port facility instrument holder** means a person designated by
- 11 order under section 38(2)(b);
- 12 **specified** means specified in the regulations.
- 13 (2) The regulations may provide that a reference to a port authority
- 14 in a provision of an affected written law that is prescribed by the
- 15 regulations —
- 16 (a) is to be taken to be a reference to a specified port facility
- 17 instrument holder in lieu of a specified port authority; or
- 18 (b) is to be taken to include a reference to a specified port
- 19 facility instrument holder.
- 20 **42. Making and registration of certain lease variations**
- 21 (1) In this section —
- 22 **relevant official** has the meaning given in section 26(1).
- 23 (2) If —
- 24 (a) before a section 10 disposal took place an agreement to
- 25 lease existed between the Authority, the State or an
- 26 associated agency and another entity (the **third party**) in
- 27 relation to land; and
- 28 (b) for the purposes of the section 10 disposal the land was
- 29 disposed of by way of a lease (the **acquirer's lease**)
- 30 recorded and registered by a relevant official under a
- 31 written law; and

- 1 (c) the acquirer subsequently surrendered the land in order
2 that a lease of the land could be granted to the third
3 party in accordance with the agreement to lease,
4 the acquirer's lease may be varied to re-include the land,
5 creating a concurrent lease over the land.
- 6 (3) If the Minister certifies in writing —
- 7 (a) that the matters set out in subsection (2)(a), (b) and (c)
8 occurred; and
- 9 (b) that the acquirer's lease has been varied under
10 subsection (2),
- 11 a relevant official may record and register the variation of the
12 acquirer's lease.

1 **Part 6 — Operation of port facilities**

2 **Division 1 — Preliminary**

3 **43. Terms used**

4 In this Part —

5 *designated agreement* means a port services agreement
6 designated under section 46(1) and includes that port services
7 agreement as varied from time to time;

8 *port facility operator* means a person engaged to operate a port
9 facility (the *port facility*) under a designated agreement;

10 *port services agreement* means an agreement referred to in
11 section 45(1).

12 **44. Part 4 not affected**

13 This Part does not affect the operation of Part 4.

14 **Division 2 — Port services agreements and**
15 **designated agreements**

16 **45. Port services agreements**

17 (1) An agreement relating to a port facility entered into between —

18 (a) the State, the Authority and the lessee of a port facility;
19 or

20 (b) the Authority and the lessee of a port facility,

21 may engage the lessee to operate the port facility.

22 (2) Subsection (1) does not limit the matters that may be covered by
23 a port services agreement.

24 (3) Two or more port services agreements relating to a port facility
25 may be entered into.

Division 4 — Operating charges

48. Term used: operating charges

In this Division —

operating charges means —

- (a) wharfage, berthage, tonnage or access charges; or
- (b) port improvement rates; or
- (c) fees or charges for services or the use of infrastructure provided by or under the control of a port facility operator.

49. Power to impose operating charges

- (1) Subject to a designated agreement to which a port facility operator is a party and to subsection (2), the port facility operator may determine, levy and collect operating charges in respect of the port facility.
- (2) The access and pricing provisions as defined in section 58 apply in relation to a port improvement rate levied by a port facility operator as if —
 - (a) the port improvement rate were a charge for the time being declared to be a regulated charge under section 67; and
 - (b) the port facility operator were the service provider; and
 - (c) the reference in section 68(2)(a) to a benchmark specified by the regulations made for Part 7 were a reference to criteria specified for this paragraph by those regulations.

50. Liability to pay port charges in respect of vessels

The following people are jointly and severally liable to pay operating charges payable in respect of a vessel —

- (a) the owner of the vessel;
- (b) the master of the vessel;

- 1 (c) each person who is —
2 (i) a consignee, consignor or shipper of goods
3 carried on the vessel; or
4 (ii) an agent of the vessel,
5 and has paid or undertaken to pay any charge on account
6 of the vessel.

7 **51. Liability to pay port charges in respect of goods**

8 The following people are jointly and severally liable to pay port
9 charges payable in respect of goods carried on a vessel —

- 10 (a) the owner of the goods;
11 (b) the owner of the vessel;
12 (c) each consignor, consignee or shipper of the goods;
13 (d) each agent for the sale of or custody of the goods;
14 (e) each person entitled, either as the owner of the goods or
15 on behalf of that owner, to the possession of the goods.

16 **52. Recovery of operating charges by port facility operator**

17 A port facility operator may recover any operating charges
18 payable to it in a court of competent jurisdiction as a debt due to
19 the port facility operator.

20 **53. Collectors of operating charges**

21 A port facility operator may, in writing —

- 22 (a) authorise an officer or employee or any other person to
23 collect operating charges on its behalf; or
24 (b) revoke an authorisation made under this section.

25 **Division 5 — Planning matters**

26 **54. Application of planning laws**

27 Without limiting the PA Act section 38(1), the PA Act
28 section 38 applies in relation to the port facility operated by a

- 1 (c) prescribing the manner in which information may be
- 2 obtained; and
- 3 (d) prescribing the persons from whom information may be
- 4 obtained; and
- 5 (e) authorising information obtained by the port facility
- 6 operator to be used or disclosed for the purpose for
- 7 which it was obtained or in order for the port facility
- 8 operator to comply with a designated agreement; and
- 9 (f) requiring information obtained by the port facility
- 10 operator to be disclosed to the State or the Authority;
- 11 and
- 12 (g) requiring a person to provide information unless the
- 13 person has reasonable excuse not to do so; and
- 14 (h) prescribing what does, or does not, constitute reasonable
- 15 excuse for not providing information; and
- 16 (i) providing that provision of information as required
- 17 under the regulations does not constitute a breach of any
- 18 duty of confidentiality; and
- 19 (j) prohibiting the provision of false or misleading
- 20 information.

21 **57. Regulations as to giving directions**

22 Without limiting Part 9 or section 55, regulations may be made
23 giving a port facility operator power to give directions to
24 persons as to their conduct and —

- 25 (a) prescribing the kind of directions that may be given; and
- 26 (b) prescribing the purposes for which directions may be
- 27 given; and
- 28 (c) prescribing the manner in which directions may be
- 29 given; and
- 30 (d) prescribing the persons to whom directions may be
- 31 given; and

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- 1 (e) requiring a person to comply with a direction unless the
- 2 person has reasonable excuse not to do so; and
- 3 (f) prescribing what does, or does not, constitute reasonable
- 4 excuse for not complying with a direction.

Part 7 — Access to and pricing of services

Division 1 — Preliminary

58. Terms used

In this Part, unless the contrary intention appears —

access and pricing provisions means the provisions of this Part and the regulations;

access applicant means a person who wishes to have access to a regulated service;

access policy for a regulated service means the policy published by the service provider under section 64(3);

access request has the meaning given in section 64(1)(a);

pricing means the setting of the level of regulated charges;

regulated charge means a charge for the time being declared to be a regulated charge under section 67;

regulated service means a service for the time being declared to be a regulated service under section 62;

regulations means regulations made for this Part;

regulator means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*;

relevant port facility, in relation to a service, means the port facility by means of which —

(a) the service is provided; or

(b) a service to which the service is ancillary or incidental is provided;

service means —

(a) a service provided by means of a port facility; or

(b) a service ancillary or incidental to a service provided by means of a port facility;

- 1 **service provider** of a service means —
- 2 (a) the person who owns, controls or operates the port
- 3 facility —
- 4 (i) by means of which the service is provided; or
- 5 (ii) by means of which a service to which the service
- 6 is ancillary or supplemental is provided,
- 7 or another person engaged by that person to provide the
- 8 service; or
- 9 (b) a person prescribed for this paragraph by the
- 10 regulations;
- 11 **service user** means a user of a regulated service.

12 **59. Objects of access and pricing provisions**

- 13 The objects of the access and pricing provisions are —
- 14 (a) to provide access to regulated services on fair
- 15 commercial terms; and
- 16 (b) to promote the economically efficient use and operation
- 17 of the Port; and
- 18 (c) to promote economically efficient investment in the
- 19 Port; and
- 20 (d) to ensure that regulated charges are fair and reasonable.

21 **60. Application of access and pricing provisions**

- 22 (1) In this section —
- 23 **foundation contract** means a contract that was in force before a
- 24 section 10 disposal of the relevant port facility took place and
- 25 continues in force after the section 10 disposal.
- 26 (2) The access and pricing provisions do not apply to —
- 27 (a) a service to which access is provided under a foundation
- 28 contract —
- 29 (i) during the period for which the foundation
- 30 contract remains in force; or

- 1 (ii) during the period of any extension of the
2 foundation contract effected by the exercise of an
3 option to extend that existed before the
4 section 10 disposal;
5 or
6 (b) a service the access to which is, or the charges for access
7 to which are, dealt with in or under a Government
8 agreement.

9 **61. Functions, powers and responsibilities of the regulator**

- 10 (1) It is the responsibility of the regulator to —
11 (a) administer and enforce compliance with the access and
12 pricing provisions in accordance with those provisions;
13 and
14 (b) review and report on matters relating to the access and
15 pricing provisions and other matters as required by the
16 access and pricing provisions.
17 (2) The regulator also has any functions, powers or responsibilities
18 conferred on it by the regulations.

19 **Division 2 — Regulated services**

20 **62. Declaration of regulated services**

- 21 (1) The Minister may in the manner, and in accordance with the
22 procedure, set out in the regulations —
23 (a) declare a service to be a regulated service; or
24 (b) declare a service previously declared to be a regulated
25 service to no longer be a regulated service.
26 (2) Without limiting subsection (1), the regulations may provide for
27 the regulator to make a recommendation as to whether a service
28 should be, or should no longer be, a regulated service.

1 **63. Information to be published by service provider**

2 The service provider of a regulated service must publish, in
3 accordance with the regulations —

- 4 (a) notification that it is the service provider of the
5 regulated service and will provide access to the
6 regulated service; and
7 (b) information as to the price it charges for providing
8 access to the regulated service; and
9 (c) any other information that the regulations require it to
10 publish.

11 **64. Service provider to have an access policy**

12 (1) The service provider of one or more regulated services must
13 prepare and maintain, in accordance with the regulations, a
14 policy that —

- 15 (a) provides information as to how a person may make a
16 request to the service provider for access to a regulated
17 service (an *access request*); and
18 (b) specifies the information to be provided by the person
19 making an access request; and
20 (c) sets out the dispute resolution process offered by the
21 service provider in relation to access requests; and
22 (d) contains or deals with anything else that the regulations
23 require it to contain or deal with.

24 (2) Without limiting subsection (1)(c), regulations may require the
25 dispute resolution process offered by the service provider to
26 provide for the arbitration of disputes between the service
27 provider and an access applicant —

- 28 (a) by a panel of arbitrators appointed by the regulator; or
29 (b) in another manner prescribed by the regulations.

30 (3) A policy under this section must be published —

- 31 (a) on a website maintained by the service provider; and

1 (b) in any other manner required by the regulations.

2 **65. Request for information**

3 (1) A person who intends to make an access request may ask the
4 service provider of the regulated service to make available
5 information of the kind prescribed for this section by the
6 regulations.

7 (2) The service provider must supply the information asked for
8 under subsection (1) but, if the service provider requires, the
9 person who asked for the information must pay a reasonable
10 charge fixed by the service provider for the supply of the
11 information.

12 **66. Obligation of service provider in dealing with access request**

13 (1) The service provider to which an access request is made must
14 negotiate with the access applicant in good faith and must use
15 its best endeavours to provide access to the regulated service to
16 the access applicant on fair commercial terms that —

17 (a) meet the access applicant's reasonable requirements;
18 and

19 (b) are agreed between the service provider and the access
20 applicant; and

21 (c) are no less favourable than the terms on which access to
22 the regulated service is provided to comparable service
23 users.

24 (2) If the service provider to which an access request is made
25 refuses the access request, the service provider must provide the
26 access applicant with a statement of reasons for the refusal in
27 accordance with the regulations.

Division 3 — Regulated charges

67. Declaration of regulated charges

- (1) The Minister may in the manner, and in accordance with the procedure, set out in the regulations —
- (a) declare a charge payable by a service user, or other user of a port facility or the Port, to be a regulated charge; or
 - (b) declare a charge previously declared to be a regulated charge to no longer be a regulated charge.
- (2) Without limiting subsection (1), the regulations may provide for the regulator to make a recommendation as to whether a charge should be, or should no longer be, a regulated charge.

68. Regulations as to pricing

- (1) Regulations may be made as to the manner in which pricing is to be monitored or regulated, or monitored and regulated (the *pricing regime*).
- (2) Without limiting subsection (1) the pricing regime may be or include any one or more of the following —
- (a) the monitoring of the level of a regulated charge, or any component of a regulated charge, against a benchmark specified for this paragraph by the regulations;
 - (b) the specification of pricing policies;
 - (c) the specification of pricing principles including principles for the measurement and allocation of costs;
 - (d) the fixing of the level of a regulated charge or the rate of increase or decrease in the level of a regulated charge;
 - (e) the fixing of a maximum level of a regulated charge or a maximum rate of increase, or minimum rate of decrease, in the maximum level of a regulated charge;
 - (f) provision for an amount to be determined for pricing purposes by reference to a general price index, costs of

- 1 production, a rate of return on assets employed, or any
2 other specified benchmark or factor;
- 3 (g) provision for an amount to be determined for pricing
4 purposes by reference to a quantity, location, period or
5 other specified factor relevant to the rate at which, or
6 extent to which, a regulated service or any component of
7 a regulated service is provided;
- 8 (h) the fixing for pricing purposes of a maximum revenue or
9 a maximum rate of increase, or minimum rate of
10 decrease, in the maximum revenue in relation to a
11 regulated service or any component of a regulated
12 service;
- 13 (i) provision for pricing to achieve a return on, or return of,
14 capital —
- 15 (i) before any relevant capital expenditure is
16 incurred; or
- 17 (ii) over a period that is shorter than the projected
18 economic life of the relevant asset; or
- 19 (iii) on an uneven basis during a period specified in
20 the regulations.

21 **Division 4 — Reviews and reports by regulator**

22 **69. Review of access and pricing provisions**

- 23 (1) The regulator must carry out a review of the operation of the
24 access and pricing provisions to ensure that their objects are
25 being achieved —
- 26 (a) as soon as practicable after the end of the period of
27 5 years beginning on the day on which this Part comes
28 into operation; and
- 29 (b) as soon as is practicable after the end of the period of
30 5 years after the day on which a report is given to the
31 Minister under subsection (4).

- 1 (2) The regulations may specify one or more additional purposes of
2 a review required under subsection (1).
- 3 (3) A review required under subsection (1) is to be carried out in
4 accordance with the regulations.
- 5 (4) The regulator must prepare a report based on a review carried
6 out under subsection (1) and give the report to the Minister who
7 is to cause it to be laid before each House of Parliament.
- 8 (5) In addition to carrying out reviews under subsection (1) the
9 regulator may carry out a review of the operation and
10 effectiveness of the access and pricing provisions, or any
11 portion or element of them —
- 12 (a) at a time specified in the regulations; or
13 (b) if an event specified in the regulations occurs; or
14 (c) if circumstances specified in the regulations come into
15 existence.
- 16 (6) The regulations are to specify the purpose or purposes of a
17 review authorised under subsection (5).
- 18 (7) A review authorised under subsection (5) is to be carried out,
19 and reported on, in accordance with the regulations

20 **70. Annual report**

21 As soon as practicable after the end of a financial year the
22 regulator must publish, in the manner prescribed by the
23 regulations, a report containing information specified in the
24 regulations as to the access and pricing provisions.

25 **Division 5 — Other obligations of a service provider**

26 **71. Obligation not to prevent or hinder access**

- 27 (1) The service provider of a regulated service must not engage in
28 conduct that unreasonably prevents or hinders a person from
29 having access to the regulated service.

- 1 (2) The service provider of a regulated service does not contravene
2 subsection (1) if the conduct is constituted by —
- 3 (a) the service provider refusing to alter or add to the
4 relevant port facility because, in the reasonable opinion
5 of the service provider, the alteration or addition is not
6 required for the provision of access to the regulated
7 service; or
- 8 (b) an act or omission that is in accordance with the access
9 policy; or
- 10 (c) a reasonable act done because of an emergency or in
11 order to avert or minimise an imminent threat of —
- 12 (i) death, or serious injury, to any person; or
13 (ii) loss of, or serious damage to, property; or
14 (iii) material harm to the environment.

15 **72. Obligation not to differentiate between users of services**

- 16 (1) In this section —
- 17 *differentiate* between service users means to impose different
18 terms and conditions (including in relation to the level of a
19 charge) on different service users;
20 *service user* includes a potential user of a regulated service.
- 21 (2) In the provision of access to a regulated service the service
22 provider must not unfairly differentiate between service users in
23 a way that has a material adverse effect on the ability of one or
24 more of the service users to compete with other service users.
- 25 (3) The service provider of a regulated service does not contravene
26 subsection (2) if the differentiation reflects the cost or risk of
27 providing access to the regulated service to a service user being
28 higher than the cost or risk of providing access to the regulated
29 service to another service user.

1 **73. Obligation as to complaints about access requests**

2 (1) In this section —

3 *complaint* means —

- 4 (a) a complaint about the manner in which an access request
5 is being or has been dealt with; or
- 6 (b) if the charge for a regulated service is a regulated
7 charge, a complaint about the level of the charge for
8 which the service provider has offered to provide access
9 to the regulated service; or
- 10 (c) without limiting paragraph (a) or (b), a complaint that
11 the service provider is contravening or has contravened
12 section 71 or 72,

13 but does not include a complaint about the provision of a
14 regulated service to a service user.

15 (2) The service provider of one or more regulated services must
16 prepare and maintain, in accordance with the regulations, a
17 policy that —

- 18 (a) provides information as to how an access applicant may
19 make a complaint to the service provider; and
- 20 (b) gives details of the dispute resolution process offered by
21 the service provider in relation to complaints; and
- 22 (c) contains or deals with anything else that the regulations
23 require it to contain or deal with.

24 (3) The service provider must provide the regulator with a copy of a
25 complaint within a period specified in the regulations.

26 **74. Obligation to report**

27 (1) To assist the regulator to perform its functions, powers and
28 responsibilities under the access and pricing provisions a service
29 provider of a regulated service must submit reports to the
30 regulator in accordance with the regulations.

- 1 (2) The regulations may provide for —
- 2 (a) the period to which a report is to relate; and
- 3 (b) the time within which, and format in which, a report is
- 4 to be submitted; and
- 5 (c) the matters to be dealt with in a report; and
- 6 (d) any other matter relating to reports.

7 **Division 6 — Other regulations for this Part**

8 **75. Regulations as to enforcement**

- 9 (1) In this section —
- 10 *civil penalty provision* means —
- 11 (a) section 71 or 72; or
- 12 (b) any of the access and pricing provisions prescribed for
- 13 this definition by the regulations;
- 14 *offence* means —
- 15 (a) an offence against the regulations; or
- 16 (b) a contravention of any provision of this Part prescribed
- 17 for this definition by the regulations.
- 18 (2) Regulations may —
- 19 (a) prescribe, for a civil penalty provision, the amounts that
- 20 may, in accordance with the regulations, be demanded
- 21 from or imposed on a person who contravenes the civil
- 22 penalty provision, being —
- 23 (i) an amount not exceeding \$500 000; and
- 24 (ii) an additional amount not exceeding \$20 000 for
- 25 each day or part of a day that the contravention
- 26 continues;
- 27 and
- 28 (b) provide for the demand for payment of an amount
- 29 prescribed under paragraph (a) and the enforcement of
- 30 that demand; and

- 1 (c) provide for and regulate the taking of proceedings in
2 respect of an alleged contravention of a civil penalty
3 provision, provide for the orders that can be made and
4 other sanctions that can be imposed in those proceedings
5 and provide for the enforcement of those orders and
6 sanctions; and
- 7 (d) provide for the manner in which an amount received by
8 way of civil penalty is to be dealt with and applied; and
- 9 (e) provide for the review by a person specified in the
10 regulations of a decision made under the regulations;
11 and
- 12 (f) prescribe, for an offence, a fine not exceeding \$100 000,
13 with or without an additional fine not exceeding \$20 000
14 for each day or part of a day that the offence continues;
15 and
- 16 (g) provide for the issue of a notice by the regulator warning
17 the service provider of a service that engaging in
18 conduct mentioned in the notice may contravene a civil
19 penalty provision or constitute an offence.

20 **76. Regulations as to other matters**

21 Regulations may —

- 22 (a) confer functions, powers or responsibilities on the
23 Minister, the regulator or any other person; and
- 24 (b) set out the obligations of the service provider of a
25 regulated service in respect of the segregation of the
26 functions and business of providing the service from the
27 service provider's other functions and businesses and
28 enable the regulator to add to, or waive any of, those
29 obligations; and
- 30 (c) make provision in relation to services between bodies
31 corporate that are related to each other by virtue of the
32 *Corporations Act 2001* (Commonwealth) section 50;
33 and

- 1 (d) make provision as to how access requests are made and
2 dealt with and as to the supply of information, including
3 confidential information, by access applicants.

1 **Part 8 — Provisions as to future development of port**

2 **77. Terms used**

3 In this Part —

4 ***OHCT development*** means the future development of container
5 terminal facilities to handle shipping containers on land
6 described as Lot 4552 on Deposited Plan 220690, Certificate of
7 Title Volume LR3116 Folio 733 or adjacent land;

8 ***port development*** means the design, construction, extension or
9 improvement of —

10 (a) a wharf, berth or jetty; or

11 (b) a breakwater, groyne or seawall; or

12 (c) a vessel mooring or pen; or

13 (d) a dredged channel,

14 and includes any associated reclamation of land;

15 ***port services agreement*** means a port services agreement as
16 defined in section 43 to which the principal operator is a party;

17 ***principal operator*** means the port facility operator mentioned in
18 section 78;

19 ***third party*** means an entity other than the principal operator or
20 the Authority.

21 **78. Application and effect of Part**

22 (1) This Part applies if a port facility for which there is a port
23 facility operator under Part 6 consists of or includes the land
24 described as Lot 10 on Deposited Plan 69297, Certificate of
25 Title Volume 2786 Folio 652.

26 (2) This Part does not limit section 84.

1 **79. Negotiations with principal operator as to undertaking of**
2 **port developments**

3 (1) In this section —
4 **existing Port area** means the area within the description of the
5 Port under the PA Act section 24 at the time of the coming into
6 operation of this section.

7 (2) In a port services agreement the Authority may agree that the
8 Authority will not undertake, or arrange for a third party to
9 undertake, a port development —

- 10 (a) in the existing Port area; or
11 (b) in a part of the existing Port area specified in the port
12 services agreement,

13 unless the Authority has, in accordance with the provisions of
14 the port services agreement, given the principal operator the
15 opportunity to negotiate with the Authority for the principal
16 operator to undertake the port development.

17 **80. Funds for development of outer harbour container terminal**
18 **facilities**

19 (1) The power of the Authority to levy a port improvement rate
20 under the PA Act section 37 includes power to levy a port
21 improvement rate (an **OHCT development rate**) for the purpose
22 of accumulating funds to be applied to the costs of the OHCT
23 development.

24 (2) Before levying or varying an OHCT development rate the
25 Authority must obtain the Minister's approval as to —

- 26 (a) the amount of the OHCT development rate; and
27 (b) how the OHCT development rate is to be calculated; and
28 (c) the persons who are to be liable to pay the OHCT
29 development rate.

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- 1 (3) If the Minister is not the Treasurer, the Authority cannot levy or
2 vary an OHCT development rate without the Treasurer's
3 approval as to the matters mentioned in subsection (2).
- 4 (4) If the Minister is not the Minister administering the PA Act, the
5 Authority cannot levy or vary an OHCT development rate
6 without that Minister's approval as to the matters mentioned in
7 subsection (2).
- 8 (5) Without limiting subsections (2), (3) and (4), the Authority must
9 comply with those subsections in giving effect to a direction by
10 the Minister under the PA Act section 72(1) to levy or vary an
11 OHCT development rate.
- 12 (6) Despite the PA Act —
- 13 (a) funds derived from the payment to, or recovery by, the
14 Authority of amounts payable in respect of an OHCT
15 development rate; and
- 16 (b) any interest earned on those funds,
- 17 are to be held in an account maintained by the Authority under
18 the PA Act section 79 solely for that purpose.
- 19 (7) In calculating a dividend under the PA Act section 84, no
20 account is to be taken of the funds and interest mentioned in
21 subsection (6).
- 22 (8) Despite the PA Act, the funds and interest mentioned in
23 subsection (6) are only to be expended for the purposes of the
24 OHCT development and may be expended —
- 25 (a) if the OHCT development is undertaken by the principal
26 operator, by the making of payments to, or at the
27 direction of, the principal operator on terms and
28 conditions agreed between the Authority and the
29 principal operator to contribute towards the capital and
30 associated costs incurred in undertaking the OHCT
31 development; or

- 1 (b) if the OHCT development is undertaken by a third party,
2 by the making of payments to, or at the direction of, the
3 third party on terms and conditions agreed between the
4 Authority and the third party to contribute towards the
5 capital and associated costs in undertaking the OHCT
6 development; or
7 (c) if the OHCT development is undertaken by the State or
8 the Authority, in defraying the costs incurred in
9 undertaking the OHCT development.

Part 9 — Miscellaneous matters

81. Exemption from State tax

(1) In this section —

State tax includes —

- (a) duty chargeable under the *Duties Act 2008*; and
- (b) any other tax, duty, fee, levy or charge under a law of the State.

(2) State tax is not payable in relation to —

- (a) anything that occurs by operation of either or both of Parts 2 and 3; or
- (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under, to give effect to, or for a purpose connected with or arising out of giving effect to, either or both of Parts 2 and 3.

(3) The Minister may, at the request of the transferor or transferee under a transfer order, certify in writing that —

- (a) a specified thing occurred by operation of either or both of Parts 2 and 3; or
- (b) a specified thing was done under, to give effect to, or for a purpose connected with or arising out of giving effect to, either or both of Parts 2 and 3.

(4) For all purposes and in all proceedings, a certificate under subsection (3) is sufficient evidence of the matters it certifies unless the contrary is shown.

(5) The exemption under subsection (2) does not apply in relation to a thing that occurs or is done if the Minister directs (whether in a transfer order or otherwise in writing) that it does not apply in relation to the thing.

1 **82. Effect of this Act on existing rights and obligations**

2 (1) The operation of this Act, including anything done or omitted to
3 be done under or for the purposes of this Act, is not to be
4 regarded as —

- 5 (a) being a breach of confidence or any other civil wrong;
6 or
7 (b) being a breach of a contract or instrument, including
8 (without limitation) a provision prohibiting, restricting
9 or regulating the assignment or transfer of assets, rights
10 or liabilities; or
11 (c) requiring any act to be done under a contract or
12 instrument; or
13 (d) giving rise to a right or remedy of a party to a contract
14 or instrument, or causing or permitting the termination
15 of, or exercise of rights under, a contract or instrument;
16 or
17 (e) being an event of default under a contract or instrument;
18 or
19 (f) causing a contract or instrument to be void or otherwise
20 unenforceable; or
21 (g) subject to section 33(3) and (4), releasing, or allowing
22 the release of, any surety or other obligee from the
23 whole or part of an obligation.

24 (2) This section does not limit section 84.

25 **83. No compensation payable**

- 26 (1) No compensation is payable by or on behalf of the State —
27 (a) because of the enactment or operation of this Act or for
28 the consequences of its enactment or operation; or
29 (b) because of any statement or conduct relating to the
30 enactment of this Act; or
31 (c) in connection with the disposal under this Act of a port
32 asset or associated asset.

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- 1 (2) Subsection (1) does not apply in relation to —
- 2 (a) any consideration payable under an agreement entered
- 3 into for the purposes of a section 10 disposal; or
- 4 (b) any compensation payable in connection with the
- 5 performance of an obligation arising under an agreement
- 6 entered into for the purposes of a section 10 disposal.
- 7 (3) This section does not limit section 84.
- 8 **84. Government agreements not affected**
- 9 (1) This Act does not prejudice or in any way affect any right or
- 10 obligation of a party to a Government agreement.
- 11 (2) The operation of the *Government Agreements Act 1979* in
- 12 relation to this Act is not limited or otherwise affected by this
- 13 Act.
- 14 (3) This Act does not prejudice or in any way affect any right or
- 15 obligation of a person under —
- 16 (a) the *Anglo-Persian Oil Company Limited's (Private)*
- 17 *Act 1919*; or
- 18 (b) the *British Imperial Oil Company, Limited (Private)*
- 19 *Act 1925*; or
- 20 (c) the *South Fremantle Oil Installations Pipe Line*
- 21 *Act 1948*; or
- 22 (d) the *Texas Company (Australasia) Limited (Private)*
- 23 *Act 1928*; or
- 24 (e) *The Commonwealth Oil Refineries, Limited (Private),*
- 25 *Act 1940.*
- 26 (4) This section does not limit section 28.

1 **85. Regulations for purposes of, or consequential on, section 10**
2 **disposals**

3 (1) In this section —

4 **publication day**, for regulations referred to in subsection (2),
5 means the day on which those regulations are published in the
6 *Gazette*;

7 **the State** includes a Minister, officer or agency of the State.

8 (2) Regulations may provide for —

9 (a) matters for which it is necessary or convenient to make
10 provision for the purposes of a section 10 disposal; or

11 (b) matters that it is necessary or convenient to deal with as
12 a consequence of anything contained in, or anything
13 done under, Part 2, 3, 4, 5 or 6.

14 (3) Regulations referred to in subsection (2) may be expressed to
15 take effect before publication day for those regulations but after
16 the day on which the order made under section 10(1)(a) for the
17 section 10 disposal is published in the *Gazette*.

18 (4) To the extent that regulations referred to in subsection (2) take
19 effect before publication day for those regulations, the
20 regulations do not operate —

21 (a) to affect in a manner prejudicial to any person (other
22 than the State or the disposer or acquirer under the
23 section 10 disposal) the rights of that person existing
24 before publication day for those regulations; or

25 (b) to impose liabilities on any person (other than the State
26 or the disposer or acquirer under the section 10 disposal)
27 in respect of anything done or omitted to be done before
28 publication day for those regulations.

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1 **86. Regulations generally**

2 The Governor may make regulations prescribing matters —

3 (a) required or permitted to be prescribed by this Act; or

4 (b) necessary or convenient to be prescribed for giving
5 effect to this Act.

6

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*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

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