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Version No. 053
Port Services Act 1995
No. 82 of 1995
Version incorporating amendments as at 1 July 2010

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The main purpose of this Act is—
(a) to establish bodies to manage and operate certain commercial trading ports in Victoria; and

(ab) to provide for the establishment, management and operation of commercial trading ports and local ports in Victoria; and

(b) to provide for the economic regulation of certain port services; and

(c) to provide for the imposition of certain port charges or fees; and

(d) to require the engagement of licensed harbour masters in certain circumstances and set out their functions; and

(e) to provide for the transfer of property, rights and liabilities and the management of Crown land and to make provision with respect to the rights of staff; and

S. 1(a) substituted by No. 85/2003 s. 3.
S. 1(ab) inserted by No. 85/2003 s. 3.
S. 1(c) amended by No. 63/2007 s. 3.
(f) to amend the Port of Melbourne Authority Act 1958, the Port of Geelong Authority Act 1958, the Port of Portland Authority Act 1958, the Marine Act 1988, the Pollution of Waters by Oil and Noxious Substances Act 1986 and the Dangerous Goods Act 1985.

2 Commencement

(1) This Part and section 189(7) and (8) come into operation on the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.

(3) If a provision referred to in subsection (2) does not come into operation before 28 November 1998, it comes into operation on that day.

3 Definitions

(1) In this Act—

board, in relation to a port corporation, means the board of directors of the port corporation;

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

Central Plan Office means the Central Plan Office of the Department of Sustainability and Environment;

channel includes swinging basin, turning circle, an area alongside a berth or dock, fairway and anchorage;
channel fee means a fee under section 75;

channel operator means—

(a) in the case of port of Melbourne waters, the Port of Melbourne Corporation;

(b) in the case of any other port waters, a person who manages channels in those waters under an agreement with VRCA;

coastal vested land means—

(a) in relation to PGA, Crown land—

(i) that is vested in PGA and that was so vested by or under the Port of Geelong Authority Act 1958; and

(ii) that is coastal Crown land within the meaning of the Coastal Management Act 1995;

(b) in relation to PPA, Crown land—

(i) that is vested in PPA and that was so vested by or under the Port of Portland Authority Act 1958; and

(ii) that is coastal Crown land within the meaning of the Coastal Management Act 1995—

but does not include any land vested in PGA or PPA that is declared by Order in Council under section 5(4) not to be coastal vested land for the purposes of this Act;
commercial trading port means the port of Melbourne, the port of Geelong, the port of Portland, the port of Hastings and any other port declared to be a commercial trading port by Order in Council under section 6;

development includes—

(a) the construction, extension, demolition or removal of a building or works;

(b) the decoration or alteration of the inside or outside of a building or the alteration of works;

(c) the subdivision or consolidation of land, airspace or buildings;

(d) the installation, provision or operation of facilities or services;

Director, Transport Safety has the same meaning as it has in section 3 of the Transport Integration Act 2010;

domestic partner of a person means—

(a) a person who is in a registered relationship with the person; or

(b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

harbour master has the same meaning as in the Marine Act 1988;
* * * * *

**instrument** includes a document and an oral agreement;

**liabilities** means all liabilities, duties and obligations, whether actual, contingent or prospective;

**licensed harbour master** means a harbour master licensed by the Director, Transport Safety under the **Marine Act 1988**;

**local port** means a port declared to be a local port by Order in Council under section 6;

* * * * *

**management plan** means a safety management plan or an environment management plan required by section 91C;
member of the police force has the same meaning as member of the force has in the Police Regulation Act 1958;

navigation aid means a device used for the safety of navigation including a beacon, buoy or marine mark but not including a device on board a vessel;

owner, in relation to a vessel or cargo, means owner within the meaning of section 4;

partner of a person means the person's spouse or domestic partner;

PGA means Port of Geelong Authority;

POHC means the Port of Hastings Corporation established by Division 1A of Part 2;
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*port* means the port of Melbourne, the port of Geelong, the port of Portland, the port of Hastings and any other port declared under section 6 in relation to which port lands or port waters or both port lands and port waters have been declared under section 5;

*Port Act* means the *Port of Geelong Authority Act 1958*, the *Port of Melbourne Authority Act 1958* or the *Port of Portland Authority Act 1958*;

*port authority* means Port of Melbourne Authority, Port of Geelong Authority or Port of Portland Authority;

*port authority abolition date*, in relation to a port authority, means the date fixed by the Governor in Council by Order under section 153(2) for the purposes of that port authority;

*port corporation* means Port of Melbourne Corporation, Port of Hastings Corporation or Victorian Regional Channels Authority;

*port land* means—

(a) in the case of the port of Melbourne, the port of Melbourne land;

(b) in the cases of the port of Geelong, Portland or Hastings, the land declared by Order in Council made under section 5(1) to be the port land of that port;
port manager means—
(a) in the case of a commercial trading port, the person or body who effectively manages, superintends or controls the operation of the port or part of the port, but does not include a tenant or occupier of part of the port unless the tenant or occupier has entered into a port management agreement to manage the operations of that part of the port; or

(b) in the case of a local port, the person or body appointed under section 44A to be the port manager of the port;"

port of Melbourne means port of Melbourne land and port of Melbourne waters;

Port of Melbourne Corporation means the corporation established under section 10;

port of Melbourne land means land that is in the municipal district of the Melbourne City Council, Maribyrnong City Council, Hobsons Bay City Council or Port Phillip City Council or any land in Port Phillip Bay adjoining one or more of those municipal districts, being—
(a) land—
(i) an interest in which (being an interest that is in the nature of a freehold or leasehold interest or a
licence) is held by the Port of Melbourne Corporation; and

(ii) that is declared by the Order in Council under section 5(1A) to be port of Melbourne land; and

(b) any land that is deemed to be temporarily reserved under the **Crown Land (Reserves) Act 1978** for the purposes of the port of Melbourne by the operation of Part 4;

**port of Melbourne waters** means any waters which by Order in Council made under section 5(2) are declared to be port waters of the port of Melbourne;

**port operator** means a person who owns the business of, or is responsible for the management and operations of, the port of Geelong, Portland or Hastings or a berth located in one of those ports but does not include a port authority;

**port property**, in relation to SEC, has the same meaning as in section 85(3) of the **State Electricity Commission Act 1958**;

**port waters**, in relation to a port, means the waters declared by Order in Council under section 5(2) to be port waters of the port;

**PPA** means Port of Portland Authority;
**property** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

**restricted access area** means an area that is the subject of a declaration under Division 2 of Part 5A;

**rights** means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

**SEC** means the State Electricity Commission of Victoria;

**spouse** of a person means a person to whom the person is married;

**Station Pier land** means the land shown outlined in black on the plan lodged in the Central Plan Office and numbered OP 119746—A;

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

**VCA** means the Victorian Channels Authority as in force immediately before the commencement of section 10 of the Port Services (Port Management Reform) Act 2003;
VRCA means the Victorian Regional Channels Authority established by Division 2 of Part 2;

vessel means any kind of vessel that is used, or capable of being used, in navigation by water, however propelled or moved, and includes—

(a) a barge, lighter, floating restaurant or other floating vessel; and

(b) an air-cushion vehicle, or other similar craft, that is used in navigation by water;

wharfage fee means a fee under section 74;

works includes—

(a) any change to the natural or existing condition or topography of land;

(b) the removal of vegetation or topsoil;

(c) land reclamation and land decontamination;

(d) the construction, demolition or substantial alteration of any structure in or on land;

(e) dredging.

(2) For the purposes of the definition of domestic partner in subsection (1)—

(a) registered relationship has the same meaning as in the Relationships Act 2008; and
(b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the Relationships Act 2008 as may be relevant in a particular case.

3A Transport Integration Act 2010

This Act is transport legislation within the meaning of the Transport Integration Act 2010.

4 Owner of vessel or cargo

(1) A reference in this Act to the owner of a vessel includes a reference to—

(a) a person to whom the vessel belongs; or

(b) a person who has chartered the vessel.

(2) A reference in this Act to the owner of a vessel or cargo includes a reference to any person who, whether on the person's own behalf or on behalf of another—

(a) exercises any of the functions of the owner of the vessel or cargo; or

(b) represents to the Port of Melbourne Corporation, VRCA or a port operator that the person has those functions or accepts the obligation to exercise those functions.

(3) For the purposes of this Act, a person does not cease to be an owner of a vessel because the vessel is mortgaged, chartered, leased or hired to another person.
5 Orders in Council

(1) The Governor in Council may, by Order published in the Government Gazette, declare any lands, or 2 or more areas of lands, to be the port land of the port of Geelong, the port of Portland, the port of Hastings or any other commercial trading port or a local port.

(1A) The Governor in Council may, from time to time, by Order published in the Government Gazette, declare any land, an interest in which (being an interest in the nature of a freehold or leasehold interest or a licence) is held by the Port of Melbourne Corporation, to be port of Melbourne land.

(2) The Governor in Council may, by Order published in the Government Gazette, declare any waters, or 2 or more areas of waters, to be the port waters of the port of Melbourne, the port of Geelong, the port of Portland, the port of Hastings or any other commercial trading port or a local port.

(3) An Order under subsection (1), (1A) or (2) must contain a description of the port land or port waters that is sufficient to identify it and to define its boundaries.

(4) The Governor in Council may on the recommendation of the Minister administering the Crown Land (Reserves) Act 1978, by Order published in the Government Gazette, declare any land vested in PGA or PPA not to be coastal vested land for the purposes of this Act.

(5) The Governor in Council may, by Order published in the Government Gazette, amend a declaration of port lands or a declaration of port waters or a declaration of both port lands and port waters so as to—
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6 Ports

The Governor in Council may by Order published in the Government Gazette—

(a) name the port established by the area of lands and waters or lands or waters declared by an Order under section 5;

(b) declare the port to be a commercial trading port or a local port for the purposes of this Act;

(c) revoke the declaration of a port as a commercial trading port or a local port;

(d) declare a port that has been declared by Order in Council to be a local port to be a commercial trading port;

(e) declare part of a port that has been declared by Order in Council to be a local port to be a commercial trading port;
(f) declare a port that has been declared by Order in Council to be a commercial trading port to be a local port;

(g) declare part of a port that has been declared by Order in Council to be a commercial trading port to be a local port;

(h) amend the name of a port that has been established by Order in Council.

7 Subsidiary

For the purposes of this Act, the question whether a body corporate is a subsidiary of the Port of Melbourne Corporation or VRCA shall be determined in the same manner as the question would be determined under the Corporations Act of Victoria if the Port of Melbourne Corporation or VRCA and the body corporate were corporations within the meaning of that Act.

8 Crown to be bound

This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

9 Extra-territorial operation

It is the intention of the Parliament that the operation of this Act should, so far as possible, include operation in relation to the following—

(a) land situated outside Victoria, whether in or outside Australia;

(b) things situated outside Victoria, whether in or outside Australia;

(c) acts, transactions and matters done, entered into or occurring outside Victoria, whether in or outside Australia;
(d) 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
the Commonwealth, another State, a
Territory or a foreign country.
PART 2—PORT CORPORATIONS

Division 1—Port of Melbourne Corporation

10 Establishment

(1) There is established a body to be known as the "Port of Melbourne Corporation".

(2) The Port of Melbourne Corporation—
   (a) is a body corporate with perpetual succession; and
   (b) has an official seal; and
   (c) may sue and be sued; and
   (d) may acquire, hold and dispose of real and personal property; and
   (e) may do and suffer all acts and things that a body corporate may, by law, do and suffer.

(3) All courts must take judicial notice of the seal of the Port of Melbourne Corporation affixed to a document and, until the contrary is proved, must presume that it was duly affixed.

(4) The official seal of the Port of Melbourne Corporation must be kept in such custody as the Corporation directs and must not be used except as authorised by the Corporation.

11 Port of Melbourne Corporation not to represent the Crown

The Port of Melbourne Corporation is a public authority but does not represent the Crown.
12 Objectives

The objectives of the Port of Melbourne Corporation are—

(a) to manage and develop the port of Melbourne in an economically, socially and environmentally sustainable manner;

(b) to ensure that essential port services of the port of Melbourne are available and cost effective;

(c) to ensure, in co-operation with other relevant responsible bodies, that the port of Melbourne is effectively integrated with other systems of infrastructure in the State;

(d) to facilitate, in co-operation with other relevant responsible bodies, the sustainable growth of trade through the port of Melbourne;

(e) to establish and manage channels in port of Melbourne waters for use on a fair and reasonable basis.

13 Functions

(1) The functions of the Port of Melbourne Corporation are—

(a) to plan for the development and operation of the port of Melbourne;

(b) to provide land, waters and infrastructure necessary for the development and operation of the port of Melbourne;

(c) to develop, or enable and control the development by others of, the whole or any part of the port of Melbourne;

(d) to manage, or enable and control the management by others of, the whole or any part of the port of Melbourne;
(e) to provide, or enable and control the provision by others of, services for the operation of the port of Melbourne;

(f) to promote and market the port of Melbourne;

(g) to facilitate the integration of infrastructure and logistics systems in the port of Melbourne with relevant systems outside the port;

(ga) to manage and, in accordance with standards developed by the Director, Transport Safety, to dredge and maintain channels in port of Melbourne waters;

(gb) to provide and maintain, in accordance with the standards developed by the Director, Transport Safety, navigation aids in connection with navigation in port of Melbourne waters;

(gc) generally, to direct and control, in accordance with the Marine Act 1988, the movement of vessels in port of Melbourne waters;

(h) any other functions that are conferred on the Corporation by or under this or any other Act.

(2) The Port of Melbourne Corporation must carry out its functions under subsection (1) in a manner that—

(a) is safe and secure; and

(b) is environmentally sustainable; and

(c) is effective and efficient; and
(d) is commercially sound; and
(da) has regard to the benefits of increased competition between persons and bodies that provide services related to the operation of the port of Melbourne; and
(e) has regard for the persons living or working in the immediate neighbourhood of the port of Melbourne.

14 Powers of the Port of Melbourne Corporation

The Port of Melbourne Corporation—

(a) subject to section 15, may acquire or dispose of real or personal property;
(b) may enter into contracts, agreements, leases or licences;
(c) may employ agents or contractors;
(d) may act as an agent of another person;
(e) may form, or participate in the formation of, or be a member of, companies;
(f) may form, participate in the formation of, and may participate in, partnerships, trusts, unincorporated joint ventures and other arrangements for sharing profits;
(g) may act as trustee;
(h) may engage in any business, undertaking or activity incidental to the performance of its functions;
(i) may act as a committee of management under the Crown Land (Reserves) Act 1978;
(j) may do all things necessary or convenient to be done for, or in connection with, the carrying out of its functions.
14A Dredging by Port of Melbourne Corporation

Without limiting the generality of the powers conferred on it, but subject to obtaining any permit, consent or other authority required by or under any other Act, the Port of Melbourne Corporation, in connection with carrying out its functions as a channel operator—

(a) may alter, dredge, cleanse, scour, straighten and improve any channel in port of Melbourne waters;

(b) may reduce or remove any banks or shoals within any such channel;

(c) may abate and remove any impediments, obstructions and nuisances in any such channel that are injurious to the sea-bed or that obstruct or tend to obstruct navigation;

(d) may—

(i) place or dispose of excavated or dredged material resulting from the performance of any function under paragraph (a), (b) or (c) in port of Melbourne waters; or

(ii) undertake, in port of Melbourne waters, any works necessary to place or dispose of excavated or dredged material resulting from the performance of any function under paragraph (a), (b) or (c).

15 Acquisition or disposal of land by the Corporation to be approved by Minister

(1) The Port of Melbourne Corporation must obtain the approval of the Minister before acquiring or disposing of any interest in land.
(2) Subsection (1) does not apply to any interest in land or class of interest in land exempted by the Minister by notice in writing given to the Port of Melbourne Corporation.

16 Transitional powers under leases

Despite the repeal of the Port of Melbourne Authority Act 1958, the Port of Melbourne Corporation may decline an option on a lease that was in force immediately before the relevant date under Part 8 having regard to the requirements for port purposes pursuant to the Port of Melbourne Authority Act 1958 as if that Act were still in operation.

* * * * *

Division 1A—Port of Hastings Corporation

17A Establishment

(1) There is established a body to be known as the "Port of Hastings Corporation".

(2) The Port of Hastings Corporation—

(a) is a body corporate with perpetual succession; and

(b) has an official seal; and

(c) may sue and be sued; and
(d) may acquire, hold and dispose of real and personal property; and

(e) may do and suffer all acts and things that a body corporate may, by law, do and suffer.

(3) All courts must take judicial notice of the seal of the Port of Hastings Corporation affixed to a document and, until the contrary is proved, must presume that it was duly affixed.

(4) The official seal of the Port of Hastings Corporation must be kept in such custody as the Corporation directs and must not be used except as authorised by the Corporation.

17B Port of Hastings Corporation not to represent the Crown

The Port of Hastings Corporation is a public authority but does not represent the Crown.

17C Objectives

The objectives of the Port of Hastings Corporation are—

(a) to manage and develop the port of Hastings in an economically, socially and environmentally sustainable manner;

(b) to ensure that essential port services of the port of Hastings are available and cost effective;

(c) to ensure, in co-operation with other relevant responsible bodies, that the port of Hastings is effectively integrated with other systems of infrastructure in the State;

(d) to facilitate, in co-operation with other relevant responsible bodies, the sustainable growth of trade through the port of Hastings.
17D Functions

(1) The functions of the Port of Hastings Corporation are—

(a) to plan for the development and operation of the port of Hastings;

(b) to provide land, waters and infrastructure necessary for the development and operation of the port of Hastings;

(c) to develop, or enable and control the development by others of, the whole or any part of the port of Hastings;

(d) to manage, or enable and control the management by others of, the whole or any part of the port of Hastings;

(e) to provide, or enable and control the provision by others of, services for the operation of the port of Hastings;

(f) to promote and market the port of Hastings;

(g) to facilitate the integration of infrastructure and logistics systems in the port of Hastings with relevant systems outside the port.

(2) The Port of Hastings Corporation must carry out its functions in a manner that—

(a) is safe and secure; and

(b) is environmentally sustainable; and

(c) is effective and efficient; and

(d) is commercially sound; and

(da) has regard to the benefits of increased competition between persons and bodies that provide services related to the operation of the port of Hastings; and
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(e) has regard for the persons living or working in the immediate neighbourhood of the port of Hastings.

17E Port operations

(1) The Port of Hastings Corporation must administer any port management agreement in force in relation to the port of Hastings.

(2) The Port of Hastings Corporation must notify the Minister and the Treasurer immediately if—
   (a) a port management agreement is terminated; or
   (b) a default occurs under the agreement; or
   (c) the Corporation has reason to believe it is likely that—
      (i) the port management agreement may be terminated; or
      (ii) a default may occur under the agreement.

(3) The Port of Hastings Corporation must notify the Minister and the Treasurer of its recommended course of action consequent on a termination or default or likely termination or default notified under subsection (2).

17F Powers of the Port of Hastings Corporation

The Port of Hastings Corporation—

(a) subject to section 17G, may acquire or dispose of real or personal property;
(b) may enter into contracts, agreements, leases or licences;
(c) may employ agents or contractors;
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(d) may act as an agent of another person;
(e) may form, or participate in the formation of, or be a member of, companies;
(f) may form, participate in the formation of, and may participate in, partnerships, trusts, unincorporated joint ventures and other arrangements for sharing profits;
(g) may act as trustee;
(h) may engage in any business, undertaking or activity incidental to the performance of its functions;
(i) may act as a committee of management under the Crown Land (Reserves) Act 1978;
(j) may do all things necessary or convenient to be done for, or in connection with, the carrying out of its functions.

17G Acquisition or disposal of land by the Corporation to be approved by Minister

(1) The Port of Hastings Corporation must obtain the approval of the Minister before acquiring or disposing of any interest in land.

(2) Subsection (1) does not apply to any interest in land or class of interest in land exempted by the Minister by notice in writing given to the Port of Hastings Corporation.
Division 2—Victorian Regional Channels Authority

18AA Division not to apply to port of Melbourne waters

Nothing in this Division applies to port of Melbourne waters and channels in port of Melbourne waters.

18 Establishment of VRCA

(1) There is established a body by the name "Victorian Regional Channels Authority".

(2) VRCA—

(a) is a body corporate with perpetual succession;

(b) has an official seal;

(c) may sue and be sued;

(d) may acquire, hold and dispose of real and personal property;

(e) may do and suffer all acts and things that a body corporate may by law do and suffer.

(3) All courts must take judicial notice of the seal of VRCA affixed to a document and, until the contrary is proved, must presume that it was duly affixed.

(4) The official seal of VRCA must be kept in such custody as VRCA directs and must not be used except as authorised by VRCA.
19 VRCA not to represent the Crown

VRCA is a public authority but does not represent the Crown.

20 Objective

The main objective of VRCA is to ensure that port waters and channels in port waters are managed for use on a fair and reasonable basis.

21 Functions and powers

(1) The VRCA is responsible for ensuring that the following functions are carried out in relation to port waters and channels in port waters in commercial trading ports—

(a) the establishment, management and, in accordance with the standards developed by the Director, Transport Safety, the dredging and maintenance of the channels in the port waters;

(b) the provision and maintenance, in accordance with the standards developed by the Director, Transport Safety, of navigation aids in connection with navigation in the port waters;

(c) the general direction and control of the movement of vessels within the port waters in accordance with the Marine Act 1988.

(2) The VRCA may carry out its functions under subsection (1) in relation to a commercial trading port—

(a) by arranging for the port manager or another person to carry out those functions for the port waters and channels in the port; or
(b) in the absence of any arrangement with a port manager or person under paragraph (a), by itself carrying out those functions for the port waters and channels in the port.

(3) The VRCA also has the following functions—

(a) to provide technical advice and support to port managers about the management and operation of port waters and channels in port waters;

(b) at the request of the port manager and with the approval of the Minister, to assist a port manager with integrated planning, development, management and promotion activities for the port.

(4) VRCA—

(a) may acquire real or personal property and may dispose of any such property acquired by it;

(b) may enter into contracts, agreements, leases and licences for the carrying out of its functions;

(c) may take and hold indemnities;

(d) without limiting paragraph (b), may enter into contracts (including contracts of indemnity) for the provision of services or facilities;

(e) may employ agents or contractors;

(f) may act as agent of another person;

(g) may do all things necessary or convenient to be done for, or in connection with, carrying out its functions.
(5) Without limiting the generality of the powers conferred on it, VRCA—

(a) may form, or participate in the formation of, or be a member of companies;

(b) may form, or participate in the formation of, and may participate in, partnerships, trusts, unincorporated joint ventures and other arrangements for the sharing of profits;

(c) may act as trustee;

(d) may engage in any business, undertaking or activity incidental to the performance of its functions.

(6) VRCA may carry out its functions and exercise its powers within or outside Victoria and outside Australia.

(7) VRCA must carry out its functions in a manner that—

(a) is safe and secure; and

(b) is environmentally sustainable; and

(c) is effective and efficient; and

(d) is commercially sound; and

(da) has regard to the benefits of increased competition between persons and bodies that provide services related to the operation of the area where it is carrying out the functions; and

(e) has regard for the persons living or working in the immediate neighbourhood of the area where it is carrying out the functions.
22 Dredging

Without limiting the generality of the powers conferred on it but subject to obtaining any permit, consent or other authority required by or under any other Act, VRCA in connection with carrying out its functions—

(a) may alter, dredge, cleanse, scour, straighten and improve the bed and channel of any river or sea-bed in port waters;

(b) may reduce or remove any banks or shoals within any such river or sea-bed;

(c) may abate and remove impediments, obstructions and nuisances in, or on the banks and shores of, any such river or sea-bed that are injurious to the river or sea-bed or that obstruct or tend to obstruct navigation;

(d) may—

(i) place or dispose of excavated or dredged material resulting from the performance of any function under paragraph (a), (b) or (c) in port waters in which the function is being performed; or

(ii) undertake any works necessary to place or dispose of excavated or dredged material resulting from the performance of any function under paragraph (a), (b) or (c) in port waters in which the function is being performed.
Division 3—General

23 Accountability for damage

(1) A person who by any act done or omitted to be done on port land or port waters (including an act that causes an obstruction to navigation in port waters)—

(a) causes damage to—

(i) any property (whether real or personal) of VRCA or of a channel operator (being property used by the channel operator in connection with the exercise of its function as channel operator); or

(ii) any building, works, infrastructure or facilities erected, established, installed, provided, managed or maintained by VRCA or a channel operator under or for the purposes of this Act; or

(b) causes VRCA, or a channel operator as channel operator, to suffer economic loss—

is liable to pay damages to VRCA or the channel operator in respect of that damage or loss.

(2) If damage or loss of a kind referred to in subsection (1) is caused by a vessel or by any person employed in or about the vessel, the owner, master and agent of the vessel, or any of them, is liable to pay damages to VRCA or the channel operator in respect of that damage or loss and that liability exists despite the fact—

(a) that the damage or loss was caused by act of God or inevitable accident or otherwise without negligence or wrongful act or omission on the part of any person; or
(b) that the vessel was under compulsory pilotage.

(2A) VRCA or a channel operator may recover any damages to which it is entitled under subsection (1) or (2) in any court of competent jurisdiction.

(3) Nothing in this section prejudices any other rights which VRCA or a channel operator may have, or limits any liabilities to which a vessel or its master, owner or agent may be subject, in respect of any damage or loss caused by the vessel.

24 Liability of certain persons

(1) If any sum has been paid to VRCA or a channel operator by, or recovered from, the owner, master or agent of a vessel as damages for any damage or loss under section 23, the owner, master or agent may, if the damage or loss was due to the negligence of a person other than the owner, master or agent, recover from that person the sum so paid or recovered (together with the costs of levying and recovering it) in any court of competent jurisdiction.

(2) Nothing in this section deprives any licensed pilot of the benefit of any statutory limitation of liability.

25 Schedule 1

Schedule 1 applies to each port corporation.

26 Delegation

A port corporation may, by instrument under its official seal, delegate to 2 or more directors of the port corporation, to an officer or employee of the port corporation or, with the consent of the Minister, to a port manager of a local port or to
any other person any function or power of the port corporation, other than—

(a) this power of delegation; and

(b) any other power that is prescribed for the purposes of this section.

27 **Borrowing and investment by port corporations**

A port corporation has the powers conferred on it by the *Borrowing and Investment Powers Act 1987*.

28 **Duties of directors**

(1) A director of a port corporation must at all times act honestly in the performance of the functions of his or her office.

(2) A director of a port corporation must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions.

(3) A director, or former director, of a port corporation must not make improper use of information acquired by virtue of his or her position as a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the port corporation.

(4) A director of a port corporation must not make improper use of his or her position as a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the port corporation.

(5) This section has effect in addition to, and not in derogation of, any Act or law relating to the criminal or civil liability of a member of the governing body of a corporation and does not prevent the institution of any criminal or civil proceedings in respect of such a liability.
29 Port corporation or Minister may bring proceedings

If a person contravenes section 28 in relation to a port corporation, the port corporation or the Minister, in the name of the port corporation, may recover from the person as a debt due to the port corporation by action in a court of competent jurisdiction either or both of the following—

(a) if that person, or any other person, made a profit as a result of the contravention, an amount equal to that profit;

(b) if the port corporation has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

30 Directions

(1) Each port corporation is subject to the general direction and control of the Minister.

(1A) Each port corporation is subject to any specific direction given to it by the Minister with the approval of the Treasurer.

(2) The Minister must not give a direction under this section to a port corporation that is inconsistent with the objectives of the port corporation or a provision of this Act.

(3) As soon as possible after giving a direction to the board of a port corporation, the Minister must cause a copy of the direction to be published in the Government Gazette.

(4) The board of a port corporation must comply with a direction given under this section but an act or decision of the board is not invalid merely because of a failure to comply with such a direction.
31 Port corporation not to make loans to directors

(1) The powers of a port corporation do not include a power, whether directly or indirectly—

(a) to make a loan to a director of the port corporation, a partner of such a director, or a relative (as defined in the Corporations Act) of such a director or partner; or

(b) to give a guarantee or provide security in connection with a loan made or to be made by another person to a director, partner or relative referred to in paragraph (a).

(2) Nothing in subsection (1) prohibits a port corporation entering into an agreement or arrangement with a person referred to in subsection (1) if similar agreements or arrangements are entered into by the port corporation with members of the public on the same terms and conditions.

32 Indemnity

The powers of a port corporation do not include a power to exempt, whether directly or indirectly, a director of the port corporation from, or to indemnify (whether by paying a premium in respect of a contract of insurance or otherwise) a director of the port corporation against, any liability that by law would otherwise attach to the director in respect of a wilful breach of duty or breach of trust of which the director may be guilty in relation to the port corporation.

33 Corporate plan

(1) The board of each port corporation must prepare a corporate plan for each financial year.

(2) The board must give a copy of the proposed plan to the Minister and the Treasurer on or before 31 May in each year.
(3) The proposed corporate plan must be in or to the effect of a form approved by the Minister and the Treasurer and must include—

(a) a statement of corporate intent in accordance with section 34;

(b) a business plan containing such information as the Minister or Treasurer requires;

(c) financial statements containing such information as the Treasurer requires.

(4) The board must consider any comments on the proposed plan that are made to it by the Minister or the Treasurer within 2 months after the plan was submitted to the Minister and the Treasurer.

(5) The board must consult in good faith with the Minister and the Treasurer following communication to it of the comments, must make such changes to the plan as are agreed between the Minister, the Treasurer and the board and must deliver the completed plan to the Minister and Treasurer within 2 months after the commencement of the financial year.

(6) The plan, or any part of the plan, must not be published or made available except for the purposes of this Part without the prior approval of the board, the Minister and the Treasurer.

(7) The plan may be modified at any time by the board with the agreement of the Minister and the Treasurer.

(8) If the board, by written notice to the Minister and the Treasurer, proposes a modification of the plan, the board may, within 14 days, make the modification unless the Minister or the Treasurer, by written notice to the board, directs the board not to make it.
(9) The Treasurer, after consultation with the Minister may, from time to time, by written notice to the board, direct the board to include in, or omit from, a statement of corporate intent, a business plan or a financial statement of a specified kind, any specified matters.

(10) Before giving a direction under this section, the Treasurer must consult with the board as to the matters to be referred to in the notice.

(11) The board must comply with a direction under this section.

(12) At any particular time, the statement of corporate intent, the business plan or the financial statements for a port corporation are the statements and plan last completed, with any modifications or deletions made in accordance with this Part.

34 Statement of corporate intent: contents

Each statement of corporate intent must specify for the port corporation and its subsidiaries (if any), in respect of the financial year to which it relates and each of the 2 following financial years, the following information—

(a) the business objectives of the port corporation and of its subsidiaries;

(b) the main undertakings of the port corporation and of its subsidiaries;

(c) the nature and scope of the activities to be undertaken by the port corporation and its subsidiaries;

(d) the accounting policies to be applied in the accounts;
35 Corporate plan to be followed

A port corporation must act only in accordance with its corporate plan, as existing from time to time, unless it has first obtained the written approval of the Minister and the Treasurer to do otherwise.

36 Nothing void merely because of non-compliance

Nothing done by a port corporation is void or unenforceable merely because the port corporation has failed to comply with section 33, 34 or 35.

37 Board to give notice of significant events

If the board of a port corporation forms the opinion that matters have arisen—

(a) that may prevent, or significantly affect, achievement of the business objectives of the port corporation and its subsidiaries (if any) under the corporate plan; or

(b) that may prevent, or significantly affect, achievement of the targets under the plan—

the board must immediately notify the Minister and the Treasurer of its opinion and the reasons for the opinion.
38 Non-commercial functions

(1) The Minister, with the approval of the Treasurer, may direct the board of a port corporation—

(a) to perform certain functions that the Minister considers to be in the public interest but that may cause the port corporation to suffer financial detriment; or

(b) to cease to perform functions of a kind referred to in paragraph (a); or

(c) to cease to perform certain functions that the Minister considers not to be in the public interest.

(2) The board of the port corporation must comply with a direction given under subsection (1).

(3) If the port corporation satisfies the Treasurer that it has suffered financial detriment as a result of complying with a direction given under subsection (1), the port corporation may be reimbursed by the State an amount determined by the Treasurer and the Consolidated Fund is hereby appropriated to the necessary extent accordingly.

(4) The reference in this section to suffering financial detriment includes a reference to incurring net costs that are greater than would have been incurred if the direction were not complied with.

39 Determination of initial capital

(1) The Treasurer, after consultation with the Minister, must determine the amount of initial capital of each port corporation.

(2) In making the determination, the Treasurer must have regard to any relevant advice that the board of the port corporation has given to the Treasurer.

(3) The determination must be in writing.
(4) The value of the capital is the value specified in the determination or, if the Treasurer and the board of the port corporation agree that the value so specified does not correctly represent the value, the value agreed by the Treasurer and the board.

40 Capital

The capital of each port corporation is equal to the sum of—

(a) the amount of the port corporation's initial capital under this Act in accordance with section 39(1); and

(b) any part of the port corporation's liabilities that is converted into capital at the direction of the Treasurer; and

(c) any amounts paid to the port corporation out of money appropriated by the Parliament for the purpose of providing capital; and

(d) any part of the port corporation's reserves that is converted into capital at the direction of the Treasurer after consultation with the board—

less any amount of capital repaid under section 41.

41 Repayment of capital

(1) The capital of a port corporation is repayable to the State at such times, and in such amounts, as the Treasurer, after consultation with the Minister, directs in writing after consultation with the board of the port corporation.

(2) In giving such a direction, the Treasurer shall have regard to any advice that the board of the port corporation has given to the Treasurer in relation to the port corporation's affairs.
42 Dividends

A port corporation must pay to the State such amounts, at such times and in such manner, as are determined by the Treasurer after consultation with the board of the port corporation and the Minister.

43 Reports to Minister or Treasurer

The Minister or the Treasurer may, in writing, require the board of a port corporation to give the Minister or the Treasurer such information as the Minister or the Treasurer requires.

44 Annual report

A port corporation, in its annual report for a financial year under Part 7 of the Financial Management Act 1994, must include—

(a) a copy of each direction given to it during that year under section 30 or 38 together with a statement of its response to the direction; and

(b) a copy of the statement of corporate intent last completed.

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PART 2A—LOCAL PORTS

44A Appointment of port managers of local ports

(1) The Governor in Council may by instrument appoint as the port manager of a local port a committee of management of Crown land that is within the port.

(2) The Governor in Council may—
(a) revoke the appointment of a port manager of a local port;
(b) if the name of a port manager changes, make corresponding amendments to the instrument of appointment of the port manager.

(3) A port manager for a local port has the following functions—
(a) to manage the operations of the port, particularly with respect to shipping and boating activities in the port, with a view to ensuring that those operations are carried out safely, efficiently and effectively;
(b) to provide, develop and maintain port facilities, including wharves, jetties, slipways, breakwaters, moorings, buildings and vehicle parks;
(c) to provide, develop and maintain, in accordance with any relevant standards developed by the Director, Transport Safety, navigational aids in the port;
(d) to carry out the functions and powers of a local authority under the Marine Act 1988 in respect of any State waters within the port;
(e) to provide, develop and maintain, in accordance with any relevant standards developed by the Director, Transport Safety, navigation channels in the port;

(f) to manage the operations of the port, and the construction and operation of port facilities and navigation channels in a manner that minimises the risk of environmental damage;

(g) to participate in the control of marine and land pollution in the port as a relevant statutory authority under the Victorian component of the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances;

(h) to allocate and manage moorings and berths in the port;

(i) to exercise any other functions of the port manager of a local port under this or any other Act;

(j) to do anything else in relation to the port that is specified by Order of the Governor in Council under subsection (4).

(4) The Governor in Council on the recommendation of the Minister may declare, by Order published in the Government Gazette—

(a) that port managers are to have additional functions in relation to local ports;

(b) that a particular port manager is to have an additional function in relation to its local port or to a specified part of its local port;

(c) that a particular port manager is not to have a particular function (including a function referred to in subsection (3)) in relation to its local port or to a specified part of its local port.
(5) The Minister must not make a recommendation under subsection (4) unless the Minister—

(a) has consulted with—

(i) the Minister administering the Crown Land (Reserves) Act 1978; and

(ii) the Minister administering the Coastal Management Act 1995;

(b) is satisfied that the additional functions are necessary or desirable because of the particular operations or location of the port.

(6) The Order in Council must specify the function that is being added or removed.

(7) An Order in Council takes effect on the day after the day the Order is published in the Government Gazette, or on any later date specified in the Order.

44B General powers of port managers

(1) A port manager of a local port may do all things that are necessary or convenient to enable it to carry out its functions under section 44A.

(2) Without limiting subsection (1), a port manager may—

(a) enter into other contracts and agreements (including contracts of indemnity and contracts for the provision of services or facilities);

(b) employ staff, or engage consultants, contractors or agents;

(c) exercise its powers outside the port lands or waters of the port to the extent necessary or convenient to carry out the functions of port manager of that port or to ensure the safe operation of the port.
44C Delegation

The port manager of a local port may delegate, in writing, any power conferred on it by or under this Act (other than this power of delegation) to any of its employees.

44D Charges

(1) The port manager of a local port may impose a charge for the use of any facility in the port.

(2) A reference to the use of a facility includes a reference—

(a) to the use of a channel in the port; and

(b) to the use of any service provided by the port manager.

(3) The amount of a charge imposed under this section in respect of a facility must not exceed the maximum charge (if any) that the regulations state is to be the maximum amount that may be charged by a port manager for the use of such a facility.

(4) In imposing a charge under this section, the port manager may—

(a) make allowances for differences in time, place or circumstance relating to the use of the facility for which the charge is being imposed; and

(b) may provide for exemptions from the charge in specified circumstances.

(5) In imposing a charge, the port manager must specify who is to be liable for paying the charge.

(6) The port manager must ensure that it does not impose a charge on a person for using a facility unless it gave the person adequate notice of the charge before the person became liable to pay the charge.
(7) A charge imposed under this section is a debt due to the port manager by the person who is liable to pay it.

(8) A port manager may charge interest at the rate not exceeding the rate fixed under section 2 of the **Penalty Interest Rates Act 1983** on any unpaid charge that is due to the local authority.

### 44E Dredging

Subject to obtaining any permit, consent or other authority required by or under any other Act, the port manager of a local port may, in carrying out its functions—

(a) alter, dredge, cleanse, scour, straighten and improve the bed and channel of any river or sea-bed in port waters;

(b) reduce or remove any banks or shoals within any such river or sea-bed;

(c) abate and remove impediments, obstructions and nuisances in, or on the banks and shores of, any such river or sea-bed that are injurious to the river or sea-bed or that obstruct, or that may tend to obstruct, navigation.

### 44F Other works

Subject to obtaining any permit, consent or other authority required by or under any other Act, in carrying out its functions in relation to the provision, development and maintenance of port facilities, a port manager of a local port may—

(a) change the natural or existing condition or topography of land;

(b) remove vegetation or topsoil;

(c) reclaim or decontaminate land;
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44G Port manager may act as harbour master if there is no harbour master

(1) This section applies if there is no harbour master for a local port.

(2) Sections 26E, 26F, 26G, 26H, 26HA, 26HB, 26HC and 26I of the Marine Act 1988 apply as if a reference in those provisions to a harbour master were a reference to the local authority for the port.
PART 3—REGULATION OF PORT SERVICES

Division 1—Preliminary

45 Definitions

In this Part—

channel operator means VRCA or a person who manages channels in port waters under an arrangement with VRCA or the Port of Melbourne Corporation when acting in port of Melbourne waters;

Commission means the Essential Services Commission established under the Essential Services Commission Act 2001;

Competition Principles Agreement means the Competition Principles Agreement made on 11 April 1995 between the Commonwealth and all of the States and Territories of the Commonwealth;

prescribed channel means a channel, that under this Part, is a significant infrastructure facility;

prescribed prices means the prices specified in section 49(b);

prescribed services means the services specified in section 49(c);
regulated industry means the industry specified in section 49(a).

46 Construction of Part

This Part is relevant legislation for the purposes of the Essential Services Commission Act 2001.

47 Application of Part

This Part applies to any person, including a person who is a provider of prescribed services.

48 Objectives of the Commission

The objectives of the Commission in relation to the regulated industry are, in addition to the objectives under section 8 of the Essential Services Commission Act 2001 (but subject to section 5(2) of that Act)—

(a) to promote competition in the regulated industry;

(b) to protect the interests of users of prescribed services by ensuring that prescribed prices are fair and reasonable whilst having regard to the level of competition in, and efficiency of, the regulated industry;

(c) for the purposes of Division 4, to ensure users have fair and reasonable access to prescribed channels whilst having regard to the level of competition in, and efficiency of, the regulated industry.
49 Price regulation

For the purposes of Part 3 of the Essential Services Commission Act 2001—

(a) the port industry in a commercial trading port is a regulated industry;

(b) the prices charged for the provision of, or in connection with, prescribed services in respect of the regulated industry, other than prescribed prices for prescribed services within the meaning of the Grain Handling and Storage Act 1995, are prescribed prices;

(c) the following are prescribed services—

(i) the provision of channels for use by shipping;

(ii) the provision of berths, buoys or dolphins in connection with the berthing of vessels in the ports of Melbourne, Geelong, Portland and Hastings;

(iii) the provision of short term storage or cargo marshalling facilities in connection with the loading or unloading of vessels at berths, buoys or dolphins in the ports of Melbourne, Geelong, Portland and Hastings.

S. 49(c)(iii) amended by No. 63/2007 s. 8(a).

S. 49(c)(iv)(v) repealed by No. 63/2007 s. 8(b).

Pt 3 Div. 2 (Heading and ss 50–52) amended by No. 51/1996 s. 8, repealed by No. 62/2001 s. 86(2)(b).
Division 3—General powers

53 Conduct of inquiries

(1) The Commission must, not later than 30 June 2004, conduct and complete an inquiry under the Essential Services Commission Act 2001 to make a recommendation to the Minister administering the Essential Services Commission Act 2001 as to whether or not prescribed services are to be subject to price regulation and the form of that price regulation.

(2) The Commission must conduct a further inquiry under the Essential Services Commission Act 2001 before the expiry of each subsequent period of 5 years commencing from the date that the last inquiry commenced to make a recommendation to the Minister administering the Essential Services Commission Act 2001 as to whether or not prescribed services are to be subject to price regulation and the form of that price regulation.

(3) Subsection (2) does not apply to a prescribed service that, as a result of a previous inquiry under this section, has ceased to be subject to price regulation.

(4) The final report on an inquiry must report on transitional issues in relation to any change in the recommended form of price regulation.

(5) An inquiry under this section must be conducted in accordance with Part 5 of the Essential Services Commission Act 2001 but section 40 does not apply in respect of that inquiry.

54 General power to make determinations

(1) This section applies if the Minister administering the Essential Services Commission Act 2001 determines that prescribed services are to be subject to price regulation.
(2) Price determinations are to be made by the Commission in accordance with Part 3 of the Essential Services Commission Act 2001.

(4) The Commission may, when making a determination in relation to prescribed services in a commercial trading port, have regard to the costs associated with any service related to the prescribed services if—

(a) the related service is necessary or essential to the provision of prescribed services; and

(b) the related service cannot readily be provided by another provider; and

(c) it is not feasible to charge a separate price for the related service.

(5) Without limiting subsection (4), the Commission may, when making a determination in relation to prescribed services in the port of Melbourne, have regard to a related service required to meet the Port of Melbourne Corporation's objectives under section 12 including the following services—

(a) the provision of rail and road infrastructure within the port that is necessary for moving cargo to or from berthing facilities or short term storage facilities or cargo marshalling facilities;

(b) the provision of land to satisfy safety, security, planning or environmental requirements;
(c) the provision of safety, security, emergency or environmental management services that are required by law or to meet the reasonable expectations that the community has of the Corporation;

(d) the provision of strategic planning for the port;

(e) the facilitation of trade through the port.

55 Standards and conditions of service and supply

(1) For the purposes of Part 3 of the Essential Services Commission Act 2001, the Commission has power to—

(a) develop, issue and review standards and conditions of service and supply in respect of prescribed services; and

(b) monitor and report on compliance with those standards and conditions; and

(c) make determinations in relation to any matter specified in paragraph (a) or (b).

(2) The Commission must consult with the Director, Transport Safety before exercising a power under subsection (1)(a), other than a power relating to prescribed services referred to in section 49(c)(iii) or (iv).

(3) The Commission must exercise the powers conferred by this section in accordance with any provisions of a Pricing Order.

(4) The Commission may exercise the powers conferred by this section in respect of prescribed services (other than services that have ceased to be subject to price regulation) at any time.
(5) This section does not apply to a prescribed service that, as a result of an inquiry under section 53, has ceased to be subject to price regulation.

56 Financial and business records

(1) A provider of prescribed services must keep financial and business records—

(a) in respect of the provision of channels for use by shipping that are separate from financial and business records for other prescribed services; and

(b) in respect of prescribed services that are separate from any financial and business records for other aspects of any business conducted by the provider of prescribed services.

(2) The financial and business records must be prepared and maintained in accordance with guidelines made by the Commission.

(3) The provider of prescribed services must make the financial and business records available to the Commission when required to do so by notice in writing given by the Commission.

(4) A requirement under subsection (3) must identify the information or document required and must specify—

(a) by when the requirement must be complied with; and

(b) in what form the information or copy of the document is to be given to the Commission; and

(c) that the requirement is made under this section and must include a copy of this section and section 57.
Part 3—Regulation of Port Services

Port Services Act 1995
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(5) A person who without lawful excuse fails to comply with any requirement made under this section is guilty of an offence.

Penalty: 120 penalty units.

(6) It is a lawful excuse for the purposes of subsection (5) that compliance may tend to incriminate the person or make the person liable to a penalty for any other offence.

(7) A person must not, in purported compliance with a requirement, knowingly give the Commission information that is false or misleading.

Penalty: 120 penalty units or imprisonment for 6 months.

(8) A person must not—

(a) threaten, intimidate or coerce another person; or

(b) take, threaten to take, incite or be involved in any action that causes another person to suffer any loss, injury or disadvantage—

because that other person complied, or intends to comply, with a requirement made under this section.

Penalty: 120 penalty units.

(9) A person is not liable in any way for any loss, damage or injury suffered by another person because of the giving in good faith of a document or information to the Commission under this section.

(10) Part 4 of the Essential Services Commission Act 2001 does not apply to financial and business records kept by a provider of prescribed services.
57 Restriction on disclosure of confidential information

(1) This section applies if information or a document is given to the Commission under section 56 and, at the time it is given, the person giving it states that it is of a confidential or commercially sensitive nature.

(2) The Commission must not disclose the information or the contents of the document to any person unless—

(a) it is of the opinion—

(i) that the disclosure of the information or document would not cause detriment to the person supplying it; or

(ii) that although the disclosure of the information or document would cause detriment to the person supplying it, the disclosure would assist in achieving the objectives of this Part and the benefit of achieving those objectives would outweigh any detriment caused by the disclosure; and

(b) it is of the opinion, in relation to any other person who is aware of the information or the contents of the document and who might be detrimentally affected by the disclosure—

(i) that the disclosure of the information or document would not cause detriment to that person; or

(ii) that although the disclosure of the information or document would cause detriment to that person, the disclosure would assist in achieving the objectives of this Part and the benefit of achieving those objectives would outweigh any detriment caused by the disclosure; and
(c) it gives the person who supplied the information or document a written notice—

(i) stating that the Commission wishes to disclose the information or contents of the document, specifying the nature of the intended disclosure and setting out detailed reasons why the Commission wishes to make the disclosure; and

(ii) stating that the Commission is of the opinion required by paragraph (a) and setting out detailed reasons why it is of that opinion; and

(d) if it is aware that the person who supplied the information or document in turn received the information or document from another person and is aware of that other person's identity and address, it gives that other person a written notice—

(i) containing the details required by paragraph (c); and

(ii) stating that the Commission is of the opinion required by paragraph (b) in relation to him, her or it and setting out detailed reasons why it is of that opinion.

Penalty: 120 penalty units.

(3) Subsection (2) does not prevent the Commission—

(a) from disclosing information or the contents of a document to—

(i) an employee employed under section 24(1) of the Essential Services Commission Act 2001; or
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(ii) a member of staff referred to in section 24(2) of that Act; or
(iii) a consultant engaged under section 25 of that Act; or
(iv) a member of a Division, committee or panel acting under a delegation under section 26 of that Act; or

(b) from using information or a document for the purposes of an inquiry; or
(c) from disclosing information or the contents of a document to the Minister in a report prepared in the form required by section 45(2) of the Essential Services Commission Act 2001.

(4) For the purposes of this section, the disclosure of anything that is already in the public domain at the time the Commission wishes to disclose it cannot cause detriment to any person referred to in subsection (2)(a) or (b).

Division 4—Access

58 Application of Division

This Division applies to a channel declared by the Governor in Council by Order published in the Government Gazette to be a significant infrastructure facility.

59 Obligations of channel operator

(1) A channel operator must provide access to prescribed channels on fair and reasonable terms and conditions.

(2) A channel operator must—

(a) use all reasonable endeavours to meet the requirements of a person seeking access to prescribed channels; and
(b) make a formal proposal of terms and conditions for access within 30 business days of receiving a request or within such reasonable lesser period as is fixed by the Commission.

(3) The terms and conditions of access may vary according to the actual and opportunity costs to the channel operator.

60 Procedure if disputes arise

(1) If a channel operator has not made a formal proposal in accordance with section 59(2)(b), the person seeking access to a prescribed channel may apply in writing to the Commission for the making of a determination in accordance with the Essential Services Commission Act 2001.

(2) If a channel operator and a person seeking access cannot agree on the terms and conditions on which access is to be provided, the channel operator or the person seeking access may apply in writing to the Commission for the making of a determination in accordance with the Essential Services Commission Act 2001 specifying the terms and conditions on which access is to be provided.

(3) The Commission must, within 20 days of receiving an application under subsection (1) or (2), give notice in writing to the person making the application or to any other person from whom the Commission is entitled to require information under the Essential Services Commission Act 2001 specifying—

(a) any information that the Commission requires the person to give so that the Commission can make a determination; and

(b) a reasonable time within which the information must be provided.
(4) The Commission must not make a determination if the Commission considers that the making of a determination would substantially impede the existing right of access of another person unless that person has been given an opportunity to make a submission to the Commission in respect of the application.

(5) In making a determination the Commission must consider the matters specified in paragraphs (i) and (j) of clause 6(4) of the Competition Principles Agreement.

(6) A person who is bound by a determination may apply in writing to the Commission for the amendment or revocation of the determination on the ground that there has been a material change in circumstances.

(7) Subject to subsections (7A) and (8), the Commission must determine an application under this section within 90 days of receiving the application, excluding the period of time between the day on which notice is given under subsection (3) and the day on which the required information is received by the Commission.

(7A) The Commission may extend the 90 day time limit in subsection (7) for a period or periods not exceeding 45 days if the Commission—

(a) is unable to determine the application within the period of 90 days or any further periods of 45 days; and

(b) notifies the person seeking access and the channel operator of the extension of time and the reasons why the Commission needs further time to determine the application; and

(c) publishes the notice under paragraph (b) in the Government Gazette.
(8) Without limiting any other powers of the Commission, the Commission may refuse to make a determination if—

(a) the Commission considers that the application is vexatious; or

(b) the Commission is satisfied that—

(i) the channel operator has complied with the obligations under section 59; or

(ii) the terms and conditions of access being offered to the person seeking access do not constitute a taking advantage of a substantial degree of market power in the provision of the prescribed services; or

(iii) having regard to the objectives of the Commission under section 48 and under the Essential Services Commission Act 2001 and to any other matter that the Commission considers relevant, it is appropriate to refuse to make a determination.

(8A) A person who is aggrieved by a decision of the Commission to refuse to make a determination under this section, may appeal as if that decision were a determination for the purposes of section 55(1)(c) of the Essential Services Commission Act 2001.

(9) The costs of the Commission in making a determination under this section are to be paid equally by the channel operator and the person seeking access.

(10) A determination under this section must not be inconsistent with any relevant Pricing Order.
61 Hindering access

(1) A channel operator or any person having access to a prescribed channel must not engage in any conduct having the purpose of hindering access to a prescribed channel by any other person in the reasonable exercise of a right of access.

(2) A person who considers that his or her right of access to a prescribed channel has been hindered in contravention of subsection (1) may apply in writing to the Commission for the making of a determination in accordance with the Essential Services Commission Act 2001.

(3) If the Commission determines that there has been a contravention of subsection (1), the Commission may make a determination that the person is entitled to access on such terms and conditions as are specified in the determination.

62 Inquiry about channels

(1) The Commission must, not later than 30 June 2008, conduct an inquiry under the Essential Services Commission Act 2001 to make a recommendation to the Minister administering the Essential Services Commission Act 2001 whether or not a channel that is declared to be a significant infrastructure facility has ceased to be such a facility.

(2) The Commission must conduct a further inquiry under the Essential Services Commission Act 2001 before the expiry of each subsequent period of 5 years commencing from the date that the last inquiry commenced to make a recommendation to the Minister administering the Essential Services Commission Act 2001 whether or not a channel that is declared to be a significant infrastructure facility has ceased to be such a facility.
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(3) Subsection (2) does not apply to a channel that, as a result of a previous inquiry under this section, has ceased to be a significant infrastructure facility.

(4) For the purposes of this section, a channel in port waters is a significant infrastructure facility if—

(a) it would not be economically feasible to develop another channel providing access to the same port waters; and

(b) access to the channel would promote competition in at least one market (whether or not in Australia) other than a market for using the channel; and

(c) safe access to the channel can be ensured at an economically feasible cost.

(5) A prescribed channel ceases to be a significant infrastructure facility if the provision of the channel is a declared service under Part IIIA of the Trade Practices Act 1974 of the Commonwealth or is the subject of an access undertaking accepted under that Part.

(6) An inquiry under this section must be conducted in accordance with Part 5 of the Essential Services Commission Act 2001 but section 39 of that Act does not apply in respect of the inquiry.

63 Application for general determination

(1) A channel operator of a prescribed channel may apply in writing to the Commission for the making of a determination under Part 3 of the Essential Services Commission Act 2001 approving the terms and conditions on which access to the channel is to be provided for the period specified in the determination.
(2) The Commission must, within 20 days of receiving an application under subsection (1), give notice in writing to the person making the application specifying—

(a) any information that the Commission requires the person to give so that the Commission can make a determination; and

(b) a reasonable time within which the information must be provided.

(3) The Commission must determine whether to accept or refuse an application under this section within 90 days of receiving the application, excluding the period of time between the day on which notice is given under subsection (2) and the day on which the required information is received by the Commission.

(4) The costs of the Commission in making a determination under this section are to be paid by the channel operator.

(5) Section 60 does not apply while a determination is in force under this section unless the Commission determines that the determination does not deal with the matters that are in dispute.

63AA Procedures and powers of the Commission

(1) Except as provided in subsections (2) and (3), sections 37 and 38 of the Essential Services Commission Act 2001 apply to this Act.

(2) Section 37(4) of the Essential Services Commission Act 2001 does not apply to a requirement made under section 63AB(1).

(3) Section 38 of the Essential Services Commission Act 2001 only applies to information or a document required under section 63AB(1)(a) if the Commission proposes to disclose the
information or document to a person who is not identified by the Commission under that section.

63AB Commission may give directions in relation to a dispute

(1) The Commission, for the purposes of facilitating negotiations or determining a dispute under this Division, may require a person who is or was a party to the dispute to do, or refrain from doing, something, including—

(a) requiring a person to give relevant information or a document to one or more other persons identified by the Commission, and copies to the Commission, subject to section 63AC;

(b) requiring a person to carry out reasonable research or investigations in order to obtain relevant information;

(c) prohibiting a person from imposing, or seeking to impose, an unreasonable procedural condition on the person's participation in negotiations;

(d) requiring a person to respond in writing to another person's proposal or request in relation to the time and place of a meeting;

(e) requiring a person, or a representative of a person, to attend a mediation conference.

(2) For the purposes of subsection (1)(c) an unreasonable procedural condition includes a requirement by one party that the other party or parties to the dispute must not disclose to the Commission information or a document provided in the course of negotiations.
(3) A person must not, without lawful excuse, disobey a requirement of the Commission made under this section.

Penalty: 120 penalty units.

63AC Confidentiality agreements

(1) This section applies if—

(a) the Commission makes a requirement under section 63AB(1)(a); and

(b) the person in control or possession of the information or document (the disclosing party) notifies the Commission in writing that the information or document is of a confidential or commercially sensitive nature; and

(c) the Commission notifies the person that the information or document must still be provided in accordance with section 63AB(1)(a).

(2) If, under subsection (1)(c), the Commission notifies the disclosing party that the information or document must still be provided in accordance with section 63AB(1)(a), the disclosing party may require the person receiving the information or document (the receiving party) to enter into a confidentiality agreement.

(3) The terms of a confidentiality agreement may be proposed by the disclosing party and those terms must be promptly notified to the Commission and to the receiving party.

(4) If the Commission considers that the terms of the proposed confidentiality agreement are unreasonable, the Commission may decide to amend or delete those terms or substitute other terms.
63AD Appeals

(1) A person who is aggrieved by a requirement of the Commission under section 63AB(1)(a) or a decision of the Commission under section 63AC(4) may appeal against that requirement or decision.

(2) An appeal may only be made on the ground that—
   (a) the requirement or decision was not made in accordance with the law; or
   (b) the requirement or decision is unreasonable having regard to all relevant circumstances.

(3) The person must lodge notice of the appeal with the Commission within 7 working days after the person is given notice of the requirement or decision.

(4) On the hearing of an appeal under this section, the Commission bears the onus of establishing that—
   (a) the requirement or decision was made in accordance with the law; and
   (b) the requirement or decision is reasonable having regard to all relevant circumstances.

(5) Sections 56 to 59 of the Essential Services Commission Act 2001 apply to an appeal under this section with the following paragraph inserted after section 56(7)(d)—

"(e) in the case of an appeal under section 63AD(1) of the Port Services Act 1995—
   (i) may affirm, cancel or modify the requirement made under section 63AB(1)(a) of that Act;
   (ii) may affirm, cancel or modify the terms of a confidentiality agreement decided by the Commission under section 63AC(4) of that Act;"
(iii) may remit the matter back to the Commission to be dealt with in accordance with the decision and recommendations (if any) of the appeal panel;

(iv) must hear and decide the appeal within 7 working days after the appeal panel was constituted or, if the appeal panel requires further time, within a further period not exceeding 7 working days."

Division 5—Licences

63A Prohibition

A person who is the provider of prescribed services must not engage in the provision of prescribed services unless the person—

(a) is the holder of a licence authorising the provision of the relevant prescribed services; or

(b) is exempted from the requirement to obtain a licence in respect of the provision of the relevant prescribed services.

Penalty: 100 penalty units and 10 penalty units for each day after the day on which a notice of contravention of this subsection is served on the person by the Commission.
63B Exemptions

(1) The Governor in Council may by Order in Council published in the Government Gazette exempt a person from the requirement to obtain a licence in respect of the provision of the prescribed services specified in the Order in Council.

(2) An exemption may be of general or specific application.

(3) An exemption is subject to such terms, conditions and limitations as are specified in the Order in Council.

(4) An Order under subsection (1) may confer powers and functions on, and leave any matter to be decided by, the Commission.

63C Application for licence

(1) A person may apply to the Commission for the issue of a licence authorising the provision of the prescribed services specified in the application.

(2) An application must be in a form approved by the Commission and be accompanied by such documents as may be required by the Commission.

(3) An application must be accompanied by the application fee (if any) fixed by the Commission.

63D Grant or refusal of application

(1) Subject to subsection (2), the Commission may grant or refuse an application for the issue of a licence for any reason the Commission considers appropriate, having regard to the objectives specified in section 48.
(2) The Commission must not grant an application for the issue of a licence unless the Commission is satisfied that the applicant has the capacity to comply with the conditions of the licence.

(3) The Commission must publish a notice in a daily newspaper generally circulating in Victoria—

(a) specifying that an application for a licence in respect of the provision of the relevant prescribed services has been lodged with the Commission by the person specified in the notice; and

(b) inviting interested persons to make submissions to the Commission in respect of the application within the period and in the manner specified in the notice.

(4) Subject to this section, the Commission may decide the procedures that are to apply in respect of the issue of licences.

(5) The Commission must notify an applicant in writing of its decision to grant or refuse to grant the application and, in the case of a decision to refuse to grant the application, of the reasons for its decision.

63E Provisions relating to licences

(1) A licence is to be issued for such term (if any) as is decided by the Commission and is specified in the licence.

(2) A licence is subject to such conditions as are decided by the Commission.
63F Specific licence conditions

Without limiting the generality of section 63E, the conditions on a licence may include provisions—

(a) requiring the licensee to pay specified fees and charges in respect of the licence to the Commission;

(b) requiring the licensee to enter into agreements on specified terms or on terms of a specified type;

(c) requiring the licensee to maintain specified accounting records and to prepare accounts according to specified principles;

(d) requiring the licensee to comply with any relevant determination in respect of prescribed services;

(e) specifying procedures for variation or revocation of the licence;

(f) requiring the licensee to provide, in the manner and form specified by the Commission, such information as the Commission may from time to time require.

63G Determination of fees and charges

The fees and charges to be specified in respect of a licence for the purposes of section 63F(a) are to be determined by the Minister administering the Essential Services Commission Act 2001—

(a) in consultation with the Minister administering this Act; and

(b) having regard to the total amount of the costs and expenses of the Commission that are incurred or are likely to be incurred by the Commission in the exercise of its powers for or in connection with the performance of its functions and the achievement of its
objectives in relation to the regulated industry.

### 63H Variation or revocation of licence

(1) A licence or the licence conditions may be varied—

(a) in accordance with the procedures specified in the licence conditions; or

(b) by agreement between the Commission and the licensee; or

(c) by a notice in accordance with subsection (2) served on the licensee.

(2) The Commission must not vary a licence or the licence conditions by a notice unless—

(a) the Commission is satisfied that the variation is necessary having regard to the objectives specified in section 48; and

(b) the Commission has given the licensee an opportunity to make representations on the matter.

(3) The Commission may revoke a licence in accordance with the procedures specified in the licence conditions.

### 63I Gazetral requirement

The Commission must ensure that—

(a) notice of the grant of a licence including—

(i) the name of the licensee;

(ii) the term of the licence;

(iii) the place where a copy of the licence may be inspected; and
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Section 63J
Transfer of licence

(b) notice of a variation or revocation under section 63H—

is published in the Government Gazette as soon as possible after the grant of a licence or the variation or revocation, as the case requires.

(1) The holder of a licence may apply to the Commission for approval to transfer the licence.

(2) An application must be in a form approved by the Commission and be accompanied by such documents as may be required by the Commission.

(3) An application must be accompanied by the application fee (if any) fixed by the Commission.

(4) The Commission must publish in a daily newspaper generally circulating in Victoria a notice—

(a) specifying that an application for the transfer of the licence has been lodged with the Commission for the transfer by the holder to a proposed transferee specified in the notice; and

(b) inviting interested persons to make submissions to the Commission in respect of the application within the period and in the manner specified in the notice.

(5) Subject to this section, the Commission may approve, or refuse to approve, the application for any reason it considers appropriate, having regard to the objectives specified in section 48.

(6) The Commission must not approve the application unless the Commission is satisfied that the proposed transferee has the capacity to comply with the conditions of the licence.
(7) The Commission may decide that, upon the transfer of the licence under this section, the conditions to which the licence is subject are varied as decided by the Commission.

(8) Subject to this section, the Commission may decide the procedures that are to apply in respect of the transfer of the licences.

(9) The Commission must notify an applicant in writing of its decision to approve or refuse to approve the application and, in the case of a decision to refuse to approve the application, of the reasons for its decision.

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S. 63K inserted by No. 62/2001 s. 88, repealed by No. 75/2004 s. 75.

S. 63J(7) amended by No. 75/2004 s. 74(2)(3).

S. 63J(8) amended by No. 75/2004 s. 74(2).
64 Power to reserve unalienated Crown land for the purposes of the port of Melbourne

(1) The Minister, in consultation with the Minister administering section 4 of the Crown Land (Reserves) Act 1978, may recommend to the Governor in Council that any Crown land that is—

(a) in the municipal district of the Melbourne City Council, Maribyrnong City Council, Hobsons Bay City Council or Port Phillip City Council or in Port Phillip Bay adjoining one or more of those municipal districts; and

(b) not reserved under the Crown Land (Reserves) Act 1978—

be reserved for the purposes of the port of Melbourne.
(2) The Minister must not make a recommendation under subsection (1) unless the Minister—

(a) has received a plan of the land signed by the Surveyor-General; and

(b) is satisfied that the land, shown on the plan signed by the Surveyor-General, represents the land that is to be reserved for the purposes of the port of Melbourne.

(3) On receiving a recommendation of the Minister under subsection (1), the Governor in Council may, by Order published in the Government Gazette, declare that any interests over the land shown in the plan, other than those specified in the Order, are surrendered to the Crown.

(4) On the publication of an Order under subsection (3) in the Government Gazette—

(a) the land is deemed to be unalienated land of the Crown, freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests other than those specified in the Order; and

(b) the land is deemed to be temporarily reserved under section 4(1) of the Crown Land (Reserves) Act 1978 for the purposes of the port of Melbourne, and the reservation may be amended, revoked and otherwise dealt with in accordance with that Act; and

(c) the Port of Melbourne Corporation is deemed to be the committee of management of the land and for those purposes is deemed to be an incorporated committee under that Act.
65 Station Pier land deemed to be reserved land

On and from the commencement of this section, Station Pier land—

(a) is deemed to be temporarily reserved under section 4(1) of the *Crown Land (Reserves) Act 1978* for the purposes of the port of Melbourne, and the reservation may be amended, revoked and otherwise dealt with in accordance with that Act; and

(b) the Port of Melbourne Corporation is deemed to be the committee of management of the land, and, for those purposes, is deemed to be an incorporated committee under that Act.

66 Powers of Port of Melbourne Corporation in relation to reserved Crown land

(1) Despite anything to the contrary in the *Crown Land (Reserves) Act 1978*, the Port of Melbourne Corporation may grant a lease or licence over any land reserved under this Part for which it is the committee of management for any period (of not greater than 25 years) for which the Corporation thinks fit, if that lease or licence is in accordance with the purposes for which the land is reserved.

(2) The power to grant a lease or licence under subsection (1) is in addition to any power the Port of Melbourne Corporation has as a committee of management under the *Crown Land (Reserves) Act 1978* to grant a lease or licence under that Act.

(3) The Port of Melbourne Corporation has the same powers to manage land reserved under this Part as it has in relation to land in which it has a proprietary interest, including, but not limited to, the power to impose wharfage and channel fees.
(4) In exercising a power under subsection (3) the Port of Melbourne Corporation must not do so inconsistently with—

(a) subsection (1) or (2); or

(b) the purposes for which the land is reserved.

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Division 4—General

72 Registrar of Titles to amend records

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(2) The Registrar of Titles, on being requested to do so, must make any amendments to the Register under the **Transfer of Land Act 1958** that are necessary because of the operation of any provision of this Part.

73 Exemption from stamp duty and other taxes

No stamp duty or other tax is chargeable under any Act in respect of anything done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part.
PART 4A—REGULATION OF TOWAGE SERVICES

Division 1—Preliminary

73A Definitions

In this Part—

notified towage services provider means a person who has given a notification under section 73F that is in force under section 73H;

towage conditions determination means a determination made in accordance with Division 4;

towage requirements determination means a determination made in accordance with Division 2;

towage service means the service of supplying one or more towage vessels to assist in the navigation of other vessels by towing or pushing those vessels into, within or out of port waters;

towage vessel means a vessel designed or intended to be used to assist another vessel's navigation by towing or pushing that vessel.

Division 2—Towage requirements

73B Towage requirements determination

(1) The Port of Melbourne Corporation may make a determination as to—

(a) the period of time for which its provisions operate (the determination period); and
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(b) the minimum number of towage vessels required to be provided by notified towage services providers during the determination period; and

c) the minimum capacity of any such vessels; and

d) the minimum requirements necessary for such vessels to be fit to provide the service that the vessels are to be used to provide; and

e) the availability required for such vessels to provide the services.

(2) The determination period determined under subsection (1)(a)—

(a) must not commence until two months after the day on which the determination is published in the Government Gazette; and

(b) must commence immediately on the termination of a previous determination period (other than in the case of the first determination made under this provision); and

(c) must terminate at a time that ensures paragraphs (a) and (b) may be complied with.

(3) In making a determination under subsection (1), the Port of Melbourne Corporation—

(a) must have regard to—

(i) the requirements that are necessary for the safe and efficient operation of the port of Melbourne for the determination period; and
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(ii) any submissions made under section 73D as to the proposed determination notified under section 73C; and

(b) must not make a determination that has greater requirements as to the number, capacity and availability of vessels than those requirements set out in the proposed determination notified under section 73C.

(4) A determination under this section—

(a) must be published in the Government Gazette; and

(b) has effect from the date of publication; and

(c) operates for the determination period.

73C Process for making a towage requirements determination

(1) Before making a towage requirements determination the Port of Melbourne Corporation must publish notice of the proposal to make the determination in the Government Gazette.

(2) A notice under subsection (1) must be published at least one month before the making of the determination.

(3) A notice under subsection (1) must—

(a) set out the proposed form and content of the determination; and

(b) the fact that written submissions may be made on the proposed determination to the Corporation; and

(c) the time within which the written submissions must be made under section 73E.
73D Entitlement to make submissions

(1) Any person who is likely to be affected by a proposed determination notified under section 73C may make a written submission to the Port of Melbourne Corporation about the determination.

(2) A submission under subsection (1) must be made within the time specified in the notice published under section 73C.

Division 3—Notification of towage service providers

73E Offence to provide towage services without notification

(1) A person must not provide a towage service in the port of Melbourne unless the person is a notified towage services provider.

Penalty: 60 penalty units.

(2) For the purposes of subsection (1), the owner of a vessel that is being used to provide a towage service is taken to be the person providing the service, unless the owner has notified the Port of Melbourne Corporation that another person is providing the service.

73F Making notification

(1) A person may notify the Port of Melbourne Corporation that that person is providing or intends to provide a towage service in the port of Melbourne.

(2) A notification under subsection (1)—

(a) must be in writing; and

(b) must be in a form approved by the Port of Melbourne Corporation; and
(c) must contain the information required by the Port of Melbourne Corporation.

73G Procedure for acknowledgment of notification

Within 2 weeks of receiving a notification under section 73F the Port of Melbourne Corporation must acknowledge receipt of that notification by notice in writing.

73H Period for which notification remains in force

A notification under section 73F remains in force from the time from which acknowledgement of the notification is given to the person who has given the notification until—

(a) the Port of Melbourne Corporation believes, on reasonable grounds, that the person no longer provides a towage service in the port of Melbourne and so notifies the person in writing; or

(b) the person who has given the notification notifies the Port of Melbourne Corporation in writing that the person no longer provides a towage service in the Port of Melbourne.

73I Record of towage service providers

(1) The Port of Melbourne Corporation must keep and maintain a record of each notified towage services provider.

(2) The record kept under subsection (1) must set out—

(a) the name and address of each notified towage services provider; and

(b) the date on which each notified towage service provider became such a notified towage service provider; and
(c) any other information that the Port of Melbourne Corporation determines should be included in the record.

Division 4—Towage conditions

73J Determination of towage conditions

(1) The Port of Melbourne Corporation may determine conditions that a notified towage services provider must comply with in the course of providing towage services in the port of Melbourne.

(2) The conditions that the Port of Melbourne Corporation may determine under subsection (1) are conditions as to the following—

(a) the minimum number of towage vessels the notified towage services provider is to supply over the period of time specified in the determination (the specified period); and

(b) the minimum capacity of any such vessels; and

(c) the minimum requirements necessary for such vessels to be fit to provide the services that the vessels are to be used to provide; and

(d) the availability required for such vessels to provide the services.

73K Limitations on making towage conditions determinations

(1) In making a towage conditions determination, the Port of Melbourne Corporation—

(a) must have regard to the towage requirements determination for the period in respect of which the towage conditions determination is to apply (relevant towage requirements determination); and
(b) must not make a determination that has the effect of—

(i) requiring the supply of a total minimum number of towage vessels for the port of Melbourne for the specified period that exceeds the total minimum number of towage vessels required by the relevant towage requirements determination for the port for that period; or

(ii) requiring the supply of a total minimum number of towage vessels of a particular capacity for the port of Melbourne for the specified period that exceeds the total minimum number of towage vessels of that capacity required by the relevant towage requirements determination for the port for that period; and

(c) must ensure that the specified period of the towage conditions determination is the same as or less than the determination period of the relevant towage requirements determination; and

(d) must not make the determination until two months after the Port of Melbourne Corporation has made the relevant towage requirements determination.

(2) Any part of a towage conditions determination that has not been made in accordance with subsection (1) is of no effect.
73L Service and publication of determination

(1) On making a towage conditions determination, the Port of Melbourne Corporation must serve a copy of the determination on the notified towage services provider to which the determination applies.

(2) A towage conditions determination must be published in the Government Gazette within 5 days after the determination is served under subsection (1).

73M Coming into effect of towage conditions

The conditions set out in a towage conditions determination—

(a) come into effect on the later of—
   (i) the day on which the determination is served under section 73L(1); or
   (ii) the commencement of the determination period for the relevant towage requirements determination; and

(b) cease to have effect if the determination is not published in accordance with section 73L(2).

73N Process for making towage conditions determination

(1) The Port of Melbourne Corporation must not make a towage conditions determination unless the Corporation has first consulted with the Director of Marine Safety.

(2) Before making a towage conditions determination, the Port of Melbourne Corporation must first obtain the approval of the Minister.

(3) Before approving the making of a towage conditions determination, the Minister must obtain the approval of the Treasurer.
Compliance with determined towage condition

(1) If a notified towage services provider has not complied with any condition in a towage conditions determination applying to the provision of towage services in the port of Melbourne by that services provider, within 2 months of the condition having been in effect, the Port of Melbourne Corporation may serve notice to that effect to the provider.

(2) A notice under subsection (1)—

(a) must set out the matters comprising the failure to comply; and

(b) may specify that within two months of the date on which the notice is served on the provider, the provider must comply with the condition; and

(c) if a specification is made under paragraph (b), must set out that it is an offence not to comply with the specification.

(3) A notified towage services provider must comply with any condition in a towage conditions determination, in respect of which a specification under section (2)(b) has been given to the provider, within two months of the date on which the notice under subsection (1) has been served on the provider.

Penalty: 240 penalty units.

Division 5—General matters

Review by VCAT

A person to whom a towage conditions determination applies may apply to VCAT for a review of a decision by the Port of Melbourne Corporation to make the determination.
73Q  Period for making application to VCAT

An application for review under section 73P must be made within 28 days of the later of—

(a) the day on which the decision is made; or

(b) if, under the Victorian Civil and Administrative Tribunal Act 1998, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

73R  Repeal of Part

This Part is repealed on the third anniversary of the day of its commencement.
74 Wharfage fees

(1) Subject to this Part, the Port of Melbourne Corporation may determine a wharfage fee in respect of the provision of a site in the port of Melbourne at which stevedoring operations may be carried out.

(2) Subject to Part 3, a fee determined under subsection (1) may be calculated by reference to the quantity, volume, weight or value of cargo loaded or unloaded at the site.

(3) Subject to this Act, different fees may be determined under subsection (1) in respect of a site or a class of site, or cargo or a class of cargo, or a vessel or a class of vessel or according to any other factors that the Port of Melbourne Corporation determines.

(4) A fee determined under subsection (1) is payable to the Port of Melbourne Corporation—

(a) in the case of cargo unloaded from a vessel at the site, by the person who, immediately after it is unloaded, is the owner of the cargo; and

(b) in the case of cargo loaded onto a vessel at the site, by the person who, immediately before it is loaded, is the owner of the cargo; and

(c) in the case of the loading of an empty container onto a vessel or the unloading of an empty container from a vessel at the site, by the person who is the owner of the vessel.
(5) If a fee determined under subsection (1), or any part of such a fee, is not paid by the person liable under subsection (4)(a) or (b) to pay it, that person and the person who, at the time payment is demanded by the Port of Melbourne Corporation, is the owner of the cargo are jointly and severally liable for the payment of the fee.

(6) Nothing in this section affects a fee payable for services specified in subsection (1) in accordance with the terms of a contract.

75 Channel fees

(1) Subject to this Part—

(a) VRCA may determine fees for—

(i) the provision of channels under this Act by VRCA in the port waters of VRCA for use by vessels, not being channels in the port waters of a channel operator; and

(ii) any service related to the provision of the service described in subparagraph (i); and

(b) a channel operator may determine fees for—

(i) the provision of channels under this Act by the channel operator in the port waters of the channel operator for use by vessels; and

(ii) any service related to the provision of the service described in subparagraph (i).

(2) A fee determined under subsection (1)—

(a) may be calculated by reference to the tonnage of a vessel or in any other manner; and
(b) may differ according the nature of any vessel or any cargo on any vessel; and

(c) may differ according to the length of time vessels are in the port waters of a port serviced by VRCA or the channel operator (as the case requires).

(3) A fee determined under subsection (1) is payable by the person or persons specified in the determination, who must be one or more of the following—

(a) the owner of any vessel that has used, is using or proposes to use the channel;

(b) the person who, immediately after any cargo is unloaded from a vessel that has used the channel, is the owner of the cargo;

(c) the person who, immediately before cargo is loaded onto a vessel that proposes to use the channel, is the owner of the cargo.

(4) If a fee determined under subsection (1) is not paid by the person liable under the determination to pay it, that person and the person who is the owner of the cargo, at the time payment is demanded by VRCA or the channel operator, are jointly and severally liable for the payment of the fee.

(5) Nothing in this section affects a fee payable for the services specified in subsection (1) in accordance with the terms of a contract.
78 Payment of wharfage and channel fees

(1) A wharfage fee or channel fee under this Part is payable on demand by the Port of Melbourne Corporation, VRCA or the channel operator (as the case requires), or at such time, or on such terms, as the Port of Melbourne Corporation, VRCA or the channel operator may determine in respect of the person liable to pay it.

(2) Agents may be appointed by the Port of Melbourne Corporation, VRCA or the channel operator for collection of wharfage fees or channel fees.

(3) A wharfage fee or channel fee under this Part is a debt due to the Port of Melbourne Corporation, VRCA or the channel operator (as the case requires) from the person liable to pay it and is recoverable in a court of competent jurisdiction.

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79 Interest on overdue payments

(1) Wharfage fees and channel fees under this Part that are unpaid by the due date may, if the Port of Melbourne Corporation, VRCA or the channel operator so requires, attract interest at a rate determined by it.
(2) Different rates may be determined for fees that remain unpaid for different periods of time.

(3) The rate determined in respect of any period is not to exceed the prescribed rate.

**80 Security for payment of wharfage and channel fees**

(1) As security for the payment of wharfage fees or channel fees that have been or may be incurred under this Part by a person, the Port of Melbourne Corporation, VRCA or the channel operator may require the person to lodge with it a security deposit.

(2) The security deposit may take the form of cash or a guarantee provided by a body permitted to use the expression *bank* under section 66 of the Banking Act 1959 of the Commonwealth or such other form as the Port of Melbourne Corporation, VRCA or the channel operator may approve, and is to be in or for an amount determined by the Port of Melbourne Corporation, VRCA or the channel operator.

(3) The Port of Melbourne Corporation, VRCA or a channel operator may appropriate a security deposit or the proceeds of a security deposit to meet liabilities of the depositor (including any interest payable) under this Part that are unpaid after becoming due.
(4) If a security deposit or the proceeds of a security deposit have been appropriated or partly appropriated, the Port of Melbourne Corporation, VRCA or the channel operator may require lodgement of further security.

(5) If at any time the Port of Melbourne Corporation, VRCA or a channel operator considers that a depositor's potential liabilities under this Part should be more adequately guaranteed, it may require the lodgement of security in a greater amount, or in a different form or both.

81 Liability of current owners and agents

(1) To the extent to which a channel fee under this Part is not paid by the person who was the owner of the vessel at the time the fee was incurred, the fee is payable by the person who is the owner at the time payment is demanded by VRCA or the channel operator.

(2) If, when a vessel left port waters—

(a) there was an agent for the berthing or working of the vessel; and

(b) there was no other agent for the vessel—that agent is liable, to the same extent as the owner of the vessel, for unpaid channel fees under this Part incurred by the vessel while in port waters.

(3) If, when a vessel left port waters, there was an agent for the vessel other than an agent for the berthing or working of the vessel, that agent is liable, to the same extent as the owner of the vessel, for any such unpaid fees.
82 Waiver or refund of wharfage or channel fees

The Port of Melbourne Corporation, VRCA or a channel operator may waive or refund the whole or any part of a wharfage fee or channel fee under this Part that is due to it in any particular case or class of cases.
PART 5A—POWERS TO RESTRICT ACCESS TO AREAS

Division 1—Preliminary

83 Definitions

In this Part—

authorised person means a person—

(a) acting under a certificate of authorisation under section 88G; or

(b) who is a member of the police force, acting in the course of his or her duties as such a member; or

(c) who is—

(i) an employee in the public service within the meaning of the Public Administration Act 2004; or

(ii) an officer or employee of a public body—

Environment Act 1987, the Pollution of Waters by Oil and Noxious Substances Act 1986 or the Water Act 1989 or any regulations made under any one of those Acts;

`port waters`, in relation to VRCA, means any waters in respect of which VRCA has functions under section 21;

`recommending authority`—

(a) in relation to an area, the declaration of which as a restricted access area is or may be recommended by the Port of Melbourne Corporation, means the Port of Melbourne Corporation; or

(b) in relation to an area, the declaration of which as a restricted access area is or may be recommended by VRCA, means VRCA;

`restricted access area declaration` means a declaration made under section 84 (whether or not amended under Division 2).

**Division 2—Declaration of areas**

84 Making a declaration of restricted access area

(1) The Minister, on the recommendation of the Port of Melbourne Corporation may declare—

(a) that any part of—

   (i) port of Melbourne waters; or

   (ii) port of Melbourne land—

   that is specified in the declaration (not being more than 12 square kilometres, in area) is an area to which access is restricted; or
(b) that, in relation to a vessel, while the vessel is in port of Melbourne waters, the area that is—

(i) within a specified distance of the vessel (not being a distance of more than 1·4 kilometres); and

(ii) within port of Melbourne waters or port of Melbourne land—

is an area to which access is restricted.

(2) The Minister, on the recommendation of VRCA may declare—

(a) that a part of any port waters of VRCA, that is specified in the declaration (not being more than 12 square kilometres, in area) is an area to which access is restricted; or

(b) that, in relation to a vessel, while the vessel is in port waters of VRCA, the area that is—

(i) within a specified distance of the vessel (not being a distance of more than 1·4 kilometres); and

(ii) within port waters of VRCA—

is an area to which access is restricted.

(3) The Minister must not make a declaration under this section unless—

(a) the Minister is satisfied that the declaration is necessary to enable the recommending authority to carry out its powers or functions and give effect to its objectives under this Act; and
(b) if any area or part of an area that is to be declared under subsection (1) or (2)—

(i) is reserved or deemed to be reserved under the **Crown Land (Reserves) Act 1978**; or

(ii) is within 100 metres of land that is reserved or deemed to be reserved under the **Crown Land (Reserves) Act 1978**—

the Minister has first consulted the Minister administering that Act.

(4) A park or a part of a park, within the meaning of the **National Parks Act 1975**, is not to be taken to be the subject of a declaration under this section, unless the Minister administering that Act consents to the application of the declaration to the park or the part of the park.

(5) If any area or part of an area that is to be declared under subsection (1) or (2) is in port waters of a recommending authority, the recommending authority must not recommend the declaration of the area unless the authority has first consulted the Director, Transport Safety.

(6) If any area or part of an area that is to be declared under subsection (1) or (2) is within 100 metres of a park or a part of a park, within the meaning of the **National Parks Act 1975**, the recommending authority must not recommend the declaration of the area unless the authority has first consulted the Secretary, within the meaning of that Act.

(7) VRCA must not recommend the declaration of a restricted access area under subsection (2) in relation to port waters of VRCA in respect of which VRCA has delegated any of its functions under section 21, unless VRCA has first consulted
with the person or body to whom VRCA has delegated the functions.

**85 Effect of declaration**

The Minister may specify in a declaration under section 84(1) or 84(2) any of the following—

(a) vessels or classes of vessels that may or may not have access to the area, and, in relation to vessels, any of the following—

(i) purposes for which vessels may or may not have access to the area;

(ii) times during which vessels may or may not have access to the area;

(iii) activities that may or may not be carried out by vessels having access to the area;

(b) persons or classes of persons that may or may not have access to the area, and, in relation to persons, any of the following—

(i) purposes for which persons may or may not have access to the area;

(ii) times during which persons may or may not have access to the area;

(iii) activities that may or may not be carried out by persons having access to the area;

(c) any conditions relating to access to the area.

**86 Provisions as to restricted access area declarations**

(1) A restricted access area declaration—

(a) must be made by instrument published in the Government Gazette; and

(b) may describe an area by reference to a map, plan or otherwise.
(2) A restricted access area declaration takes effect—

(a) on the day that it is published in the Government Gazette; or

(b) if a later day is specified in the declaration, on that day.

(3) A restricted access area declaration remains in force, for the period specified in the declaration, unless the declaration is sooner revoked, but, in any case, for no more than 12 months.

87 Amendment or revocation of declaration

The Minister may amend or revoke a restricted access area declaration in the same manner as that in which it is made.

88 Publication of declaration

The recommending authority for a restricted access area declaration must—

(a) publish the declaration in a newspaper circulating generally throughout Victoria; and

(b) publish the declaration in a manner that makes it readily accessible to a person likely to enter the area; and

(c) publish the declaration on the Internet.

88A Operation of declaration where inconsistent with other powers

(1) In the case of any inconsistency between a power that may be exercised by the Director, Transport Safety or another person under a relevant law and a power that may be exercised in respect of a restricted access area, the power that may be exercised under the relevant law prevails.
(2) In this section, relevant law means any provision of this Act (other than this Part), the Marine Act 1988, regulations made under this Act (other than in respect of this Part) or regulations made under the Marine Act 1988.

Division 3—Offences and other enforcement powers in relation to areas

88B Offence to enter restricted access area

(1) A person, who is not an authorised person, must not enter into or remain in a restricted access area, or cause a vessel to enter into or remain in a restricted access area, in contravention of the declaration of the area.

Penalty: 10 penalty units.

(2) In any proceedings for an offence against subsection (1), it is a defence if the person charged with the offence has a reasonable excuse for entering into or remaining in the area in respect of which the proceedings have been brought.

88C Interference with activities

(1) A person, who is not an authorised person, must not, in contravention of a declaration of a restricted access area—

(a) interfere with or hinder; or

(b) cause any other person to interfere with or hinder—

the carrying out of any activity in the area that is being carried out for the purpose of enabling the recommending authority for the area to carry out its powers or functions or give effect to its objectives under this Act.

Penalty: 10 penalty units.
(2) In any proceedings for an offence against subsection (1), it is a defence if the person charged with the offence has a reasonable excuse for—

(a) interfering with or hindering; or

(b) causing any other person to interfere with or hinder—

the carrying out of the activity.

(3) A person, who is not an authorised person, must not, in contravention of a declaration of a restricted access area—

(a) interfere with or hinder; or

(b) cause any other person to interfere with or hinder—

the entry into a restricted access area by a person authorised by a certificate under section 88G to do so.

Penalty: 10 penalty units.

(4) In any proceedings for an offence against subsection (3), it is a defence if the person charged with the offence has a reasonable excuse for—

(a) interfering with or hindering; or

(b) causing any other person to interfere with or hinder—

the entry.

88D Offence not to give certain information to police when asked to do so

(1) A person who is in a restricted access area must, if asked to do so by a member of the police force—

(a) give his or her name and address; and
(b) state the authority under which he or she is entitled to be in the area and provide evidence that the person has that relates to that authority.

Penalty: 5 penalty units.

(2) A person who is not entitled to enter or remain in a restricted access area without a certificate of authorisation under section 88G must, when asked to do so by a member of the police force, produce the certificate.

Penalty: 5 penalty units.

88E Warning to leave area

(1) The recommending authority for a restricted access area may warn any person to leave any part of the area.

(2) For the purposes of section 9(1) of the Summary Offences Act 1966, in exercising a power under subsection (1), the recommending authority is deemed to be the occupier of the land concerned.

(3) A person exercising a power under this section must produce evidence of his or her authority to do so before exercising the power.

88F Powers to move vessels from areas

If a person has, within sight of a member of the police force, committed an offence under this Part and that person is in charge of a vessel, the member of the police force may—

(a) take charge of the vessel; and

(b) move it to an appropriate place or direct another person to move it to an appropriate place.
88G Certificates of authorisation

(1) The recommending authority for a restricted access area may issue a certificate in writing to any person authorising the person to enter and remain in any part of the restricted access area.

(2) A certificate under subsection (1)—

(a) subject to any amendment or revocation, remains in force for the period specified in the certificate; and

(b) is subject to the conditions specified in the certificate; and

(c) may be amended or revoked at any time by the recommending authority.

88H Certificate as evidence of area

In any proceedings for an offence under this Part, a certificate, signed by the recommending authority for a restricted access area, certifying that, at the time of the alleged conduct that is the subject of the proceedings, an area was the restricted access area, is admissible evidence of the facts stated in it.
PART 6—HARBOUR MASTERS

S. 83 amended by No. 85/2003 s. 30(2), repealed by No. 9/2004 s. 28.

S. 84 amended by No. 77/2001 s. 32(4)(b), repealed by No. 9/2004 s. 28.

S. 85 amended by No. 85/2003 s. 30(2), repealed by No. 9/2004 s. 28.

S. 86 amended by No. 77/2001 s. 32(4)(b), repealed by No. 9/2004 s. 28.

S. 87 amended by No. 77/2001 s. 32(4)(b), repealed by No. 9/2004 s. 28.

S. 88 amended by No. 85/2003 s. 30(2), repealed by No. 9/2004 s. 28.
89 Offence to fail to comply with direction, or obstruct, harbour master

(1) The master of a vessel must not, without reasonable excuse, refuse or fail to comply with any direction given under this Part to the master by a harbour master.

Penalty: 120 penalty units.

(2) A person must not, without reasonable excuse, obstruct a harbour master (or a person acting under the direction of a harbour master) exercising any function under this Part.

Penalty: 60 penalty units.

91 Protection from liability

(1) A harbour master engaged for the waters of a relevant port, or any other person exercising the functions of a harbour master in relation to the waters of a relevant port, is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the performance of a function under or in connection with Part 3A of the Marine Act 1988 or a direction in regulations made under that Act; or
(b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under or in connection with Part 3A of the Marine Act 1988 or a direction in regulations made under that Act.

(2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a harbour master or person exercising the functions of harbour master, attaches instead to the person or body by which the harbour master or person exercising the functions of a harbour master is engaged.

(3) In this section waters of a relevant port means—
    (a) the port of Melbourne waters; or
    (b) the waters declared under section 5 to be the waters of the port of Geelong; or
    (c) the waters declared under section 5 to be the waters of the port of Portland; or
    (d) the waters declared under section 5 to be the waters of the port of Hastings.
PART 6A—PORT MANAGEMENT PLANS

91A Definition

In this Part—


91B Application of other Acts

(1) This Part has effect in addition to, and not in derogation of, any Act referred to in the definition of *relevant Ministers*.

(2) If a provision of this Part is inconsistent with a provision of an Act referred to in the definition of *relevant Ministers*, the provision of the Act referred to in the definition prevails to the extent of any inconsistency.

91C Port manager's responsibilities for management plans

(1) A port manager must ensure that—

(a) a safety management plan; and

(b) an environment management plan—

are prepared and certified in accordance with this Part for the port or part of the port that the port manager manages, superintends or controls.

Penalty: 240 penalty units, in the case of a commercial trading port and 60 penalty units in the case of a local port.
(1A) A port manager must ensure that—

(a) the safety management plan; and

(b) the environment management plan—

for the port or the part of the port that the port manager manages, superintends or controls are audited in accordance with this Part.

Penalty: 240 penalty units, in the case of a commercial or trading port and 60 penalty units in the case of a local port.

(2) A port manager must ensure that reasonable steps are taken to—

(a) implement the measures or strategies that are specified in the management plan to prevent or reduce the hazards and risks associated with the operation of the port; and

(b) follow the processes that are set out in the management plan to involve tenants, licensees and service providers in the port with the implementation of the management plan; and

(c) follow the procedures that are set out in the management plan for implementing, reviewing and revising the management plan.

Penalty: 240 penalty units, in the case of a commercial trading port and 60 penalty units in the case of a local port.

(3) The port manager must comply with any written direction of the Minister under section 91H.

Penalty: 240 penalty units, in the case of a commercial trading port and 60 penalty units in the case of a local port.
(4) The port manager must ensure that copies of the following documents are kept at the office of the port manager at the port—

(a) the port safety management plan and the environment management plan for the port; and

(b) the certificates required to be attached to those plans; and

(c) audit reports on the management plans prepared under section 91F.

Penalty: 20 penalty units.

(5) The port manager must ensure that copies of the documents referred to in subsection (4) are made available for inspection by a person authorised in writing by the Minister to have access to those documents.

Penalty: 20 penalty units.

91D Safety and environment management plans

(1) A management plan must—

(a) identify by a description, map or plan the area or areas of the port lands and waters to which it applies;

(b) identify the nature and extent of the hazards and risks associated with the operation of the port;

(c) assess the likely impact of those hazards and risks on the port and the surrounding area;

(d) specify the measures and strategies to be implemented to prevent or reduce those hazards or risks;

(e) nominate the person who is to be responsible for implementing those measures and strategies;
(f) set out the processes to be followed to involve tenants, licensees and service providers in the port with the implementation of the management plan;

(g) set out the procedures to be followed for implementing, reviewing and revising the management plan.

(2) The safety management plan and the environment management plan for a port must be prepared and certified in accordance with this Part within 12 months after the declaration of the port under section 6 or any later date that is fixed by the Minister with respect to the port.

(3) A management plan remains in force for—

(a) 4 years after the plan was certified in accordance with section 91E(1) or (2), in the case of a commercial trading port; and

(b) 6 years after the plan was certified in accordance with section 91E(1) or (3), in the case of a local port; and

(c) any other period that the Minister determines under section 91H, in the case of a commercial trading port or a local port.

(4) A certificate for a management plan under section 91E must be attached to the management plan at all times when the plan is in force.

91E Certification of plans

(1) A safety management plan for a commercial trading port and a local port must be certified by a person who is approved by the Minister in accordance with subsection (5) that the management plan—

(a) adequately provides for the matters required by section 91D(1); and
(b) has been prepared in accordance with Ministerial guidelines made under section 91G.

(2) An environment management plan for a commercial trading port must be certified by an environmental auditor appointed under section 53S of the Environment Protection Act 1970 that the plan—

(a) adequately provides for the matters required by section 91D(1); and

(b) has been prepared in accordance with Ministerial guidelines made under section 91G.

(3) An environment management plan for a local port must be certified by a person who is approved by the Minister in accordance with subsection (6) or an environmental auditor appointed under section 53S of the Environment Protection Act 1970 that the plan—

(a) adequately provides for the matters required by section 91D(1); and

(b) has been prepared in accordance with Ministerial guidelines made under section 91G.

(4) A person who has certified a management plan under this section must forward a copy of the certificate to the Minister within 21 days after the person has certified the plan.

(5) The Minister may, after consulting the relevant Ministers, approve a person to certify and audit safety management plans for a commercial trading port or a local port if the Minister is satisfied the person has the appropriate qualifications or experience in safety assessment or safety management to certify the plans and conduct the audits.
(6) The Minister may, after consulting the relevant Ministers, approve a person to certify and audit environment management plans for a local port if the Minister is satisfied that the person has the appropriate qualifications or experience in environmental assessment or environmental management to certify the plans and conduct the audits.

91F Audits of compliance

(1) The port manager of a commercial trading port must ensure that, within 2 years after the environment management plan for the port is certified under section 91E, an environmental auditor appointed under section 53S of the Environment Protection Act 1970—

(a) reviews the management plan to determine whether it continues to adequately provide for the matters required by section 91D(1); and

(b) conducts an audit to determine whether the port manager is complying with the management plan for the port.

(2) The port manager of a local port must ensure that, within 3 years after the environment management plan for the port is certified under section 91E, a person approved in accordance with section 91E(6) or an environmental auditor appointed under section 53S of the Environment Protection Act 1970—

(a) reviews the management plan to determine whether it continues to adequately provide for the matters required by section 91D(1); and

(b) conducts an audit to determine whether the port manager is complying with the management plan for the port.
(3) The port manager of a commercial trading port must ensure that, within 2 years after the safety management plan for the port is certified under section 91E, a person approved in accordance with section 91E(5)—

(a) reviews the management plan to determine whether it continues to adequately provide for the matters required by section 91D(1); and

(b) conducts an audit to determine whether the port manager is complying with the management plan for the port.

(4) The port manager of a local port must ensure that, at least once every 3 years after the safety management plan for the port is certified under section 91E, a person approved in accordance with section 91E(5)—

(a) reviews the management plan to determine whether it continues to adequately provide for the matters required by section 91D(1); and

(b) conducts an audit to determine whether the port manager is complying with the management plan for the port.

(5) A person who has audited a management plan under this section must—

(a) prepare a report to the port manager about the outcomes of the audit and the person's recommendations (if any) about any changes required to the plan or to the operations of the port to comply with the plan; and

(b) forward a copy of the report to the Minister within 21 days after the person has completed the report.
91G Ministerial guidelines

(1) The Minister may issue guidelines about the following matters in relation to management plans—

(a) the form of the plans;
(b) the content of the plans;
(c) the method and process for preparing the plans;
(d) the processes to enable tenants, licensees and service providers in the port to be involved in the preparation and implementation of the plans;
(e) the processes for consultation with people affected by the plans;
(f) the publication and availability of management plans.

(2) The guidelines must be published in the Government Gazette and made available for inspection free of charge at the office of the Minister.

(3) The Minister must consult with the relevant Ministers before issuing guidelines under this section.

91H Ministerial directions

(1) The Minister may, by notice in writing to a port manager, direct that a management plan for the port must be prepared within any time fixed by the Minister other than that required by this Part.

(2) The Minister may, by notice in writing to a port manager, direct that the management plan for the port remains in force for any longer or shorter period than that required by section 91D(3).
(3) The Minister may, by notice in writing to a port manager, direct the port manager to—

(a) implement any of the measures or strategies that are specified in the management plan to prevent or reduce the hazards and risks associated with the operation of the port; or

(b) follow the processes that are set out in the management plan to involve tenants, licensees and service providers in the port with the implementation of the management plan; or

(c) follow any procedures that are set out in the management plan for implementing, reviewing and revising the plan.

(4) The Minister may, after consulting with the relevant Ministers, by notice in writing to a port manager, direct the port manager to have a safety management plan or an environment management plan for the port audited in accordance with section 91F at other times to those required by section 91F if the Minister is of the opinion that the audit is necessary.

(5) The Minister may, by notice in writing to a port manager, direct the port manager to amend a management plan for the port to implement any recommendation of the person who has conducted an audit of the management plan under section 91F to make changes to the plan so that it continues to adequately provide for the matters required by section 91D(1).
91I Transitional provisions—management plans

Despite section 91C, the port manager of a port that was operating immediately before the date of commencement of section 18 of the Port Services (Port Management Reform) Act 2003 must comply with section 91C within 12 months after that date or any later date that is fixed by the Minister with respect to the port.
PART 6B—PORT DEVELOPMENT STRATEGY

91J Definitions

In this Part—

direction means a direction issued by the Minister under section 91N;

guidelines means guidelines made under section 91M;

Port Development Strategy means a Port Development Strategy for each commercial trading port prepared under this Part;

port land owner means—

(a) the owner of the land where the relevant commercial trading port is located; or

(b) if there is more than one owner of the land where the relevant commercial trading port is located, the owner of the land that comprises the largest single area of land on which the relevant commercial trading port is located;

relevant port authority means—

(a) in the case of the port of Melbourne, the Port of Melbourne Corporation;

(b) in the case of the port of Hastings, the Port of Hastings Corporation;

(c) in the case of any other commercial trading port, the port land owner.
91K Port Development Strategy

(1) The relevant port authority must at intervals of 4 years prepare a Port Development Strategy in accordance with this Part.

(2) A Port Development Strategy must include—
   
   (a) projections of trade through the commercial trading port;

   (b) current and projected land use requirements, including transitional land uses designed to protect the port from constraints on efficient operations and mitigate adverse impacts of port operations on adjacent uses;

   (c) current and projected infrastructure requirements for land and water in the commercial trading port;

   (d) current and projected transport infrastructure requirements for land and water in the commercial trading port;

   (e) any other matters specified in any guidelines.

(3) The first Port Development Strategy must be prepared by the date specified in the guidelines.

(4) A Port Development Strategy must be prepared and submitted to the Minister in accordance with the guidelines.

91L Consultation requirements

(1) If a commercial trading port is located on land owned by different owners, the relevant port authority must consult with all the other land owners in preparing the Port Development Strategy.
(2) If the port waters of a commercial trading port are managed by a channel operator who is not the relevant port authority, the relevant port authority must consult with the channel operator in preparing the Port Development Strategy.

91M Guidelines

(1) The Minister may issue guidelines about the following matters in relation to a Port Development Strategy—

(a) the form;
(b) the content;
(c) the method and process for preparation;
(d) processes to enable tenants, licensees and service providers in the port to be involved in the preparation;
(e) processes for consultation with people affected;
(f) publication and availability.

(2) The guidelines must be published in the Government Gazette and made available for inspection free of charge at the office of the Minister.

91N Ministerial directions

(1) If a relevant port authority fails to prepare and submit a Port Development Strategy in accordance with section 91K, the Minister may, by notice in writing to the relevant port authority, direct that a Port Development Strategy for the relevant commercial trading port must be prepared and submitted within the time fixed by the Minister in the direction being at least 3 months after the date of the direction.
(2) A relevant port authority must comply with a direction given to the relevant port authority under subsection (1).

Penalty: 240 penalty units.

(3) If the Minister is of the opinion that the Port Development Strategy submitted by a relevant port authority—

(a) has not been prepared in accordance with the guidelines; or

(b) does not include the matters referred to in section 91K—

the Minister may, by notice in writing to the relevant port authority, direct the relevant port authority to amend and resubmit a Port Development Strategy within the time fixed by the Minister in the direction being at least 3 months after the date of the direction.

(4) A relevant port authority must comply with a direction given to the relevant port authority under subsection (3).

Penalty: 240 penalty units.
92 Port corporation may act under certain agreements and instruments

(1) If, under section 100 or an allocation statement under section 101, the rights and liabilities of a port authority under an agreement or instrument, vest in or become liabilities of a port corporation (the first corporation)—

(a) another port corporation may, with the agreement of the first corporation and instead of the first corporation, perform personally or by an agent any obligation, act or conduct allowed to be performed by the first corporation under, or indemnify the first corporation in respect of any liability of the first corporation under, that agreement or instrument; and

(b) the performance by the other port corporation of any obligation, act or conduct allowed to be performed by the first corporation under or in relation to that agreement or instrument is for all purposes deemed to be performance by the first corporation.

(3) Nothing in this section shall be construed as imposing any liability on a port corporation in favour of any party to the relevant agreement or instrument.
93 Amendment of planning schemes

(1) In addition to any other powers to prepare or approve amendments to any planning scheme, the Minister administering the Planning and Environment Act 1987 may prepare and approve an amendment to any planning scheme to do any one or more of the following—

(a) substitute a reference to a Minister, the Secretary to the Department of Natural Resources and Environment, a port corporation, a channel operator, the Director, Transport Safety or a port operator for a reference to a port authority;

(b) change the designation of land from being reserved or zoned for the purposes of a specified port authority to being reserved or zoned for general port purposes;

(c) specify the Minister administering the Planning and Environment Act 1987, the Secretary to the Department of Natural Resources and Environment, a port authority, a port corporation, a channel operator, the Director, Transport Safety, a municipal council or a port operator as a responsible authority for the administration or enforcement of the planning scheme or of a specified provision of the planning scheme;

(d) specify a Minister, the Secretary to the Department of Natural Resources and Environment, a port authority, a port corporation, a channel operator, the Director, Transport Safety or a port operator as a referral authority for applications of a specified kind;
(e) provide that no permit is required to be obtained by a port authority, port corporation, channel operator or port operator for a use or development of land of a specified class;

(f) zone or re-zone land forming part of port land or port waters and describe the objects and purposes of those zones and of particular use and development controls within those zones.

(2) Subsection (1) authorises the preparation of only one amendment to each existing planning scheme.

(3) The Planning and Environment Act 1987, except for section 12 and Divisions 1 and 2 of Part 3, applies to the preparation and approval of an amendment under subsection (1).

94 Offences by bodies corporate

(1) If a person charged with an offence against this Act is a body corporate, any person who is concerned or takes part in the management of that body corporate may be charged with the same offence.

(2) If a body corporate is convicted of an offence against this Act, a person charged under this section with the same offence may also be convicted of the offence and is liable to the penalty for that offence unless that person proves that the act or omission constituting the offence took place without that person's knowledge or consent.
95 Service of documents on port corporation

(1) A document required or authorised to be served on a port corporation may be served—

(a) personally on a person—

(i) apparently concerned in the management of the port corporation; or

(ii) apparently authorised to accept service of documents on behalf of the port corporation; or

(b) by post to the port corporation at its principal office.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a port corporation in any other manner.

96 Treasurer may give guarantee

(1) The Treasurer may, on behalf of the Government of Victoria, execute a guarantee on such terms and conditions as the Treasurer determines in favour of any person guaranteeing the due satisfaction of amounts that become payable by a port corporation under section 104(1) or because of Part 8 or of amounts that become payable, and of other actions required to be performed, as a result of or in connection with the provision to a port corporation of financial accommodation including, but not limited to, the payment of expenses of enforcing or obtaining or endeavouring to obtain such satisfaction.

(2) Any sums required by the Treasurer in fulfilling any liability arising under a guarantee given under this section shall be paid out of the Consolidated Fund, which is to the necessary extent appropriated accordingly.
(3) Any sums received or recovered by the Treasurer from a port corporation or otherwise in respect of any sum paid by the Treasurer under a guarantee shall be paid into the Consolidated Fund.

98 Regulations

(1) The Governor in Council may, with respect to commercial trading ports managed by a port corporation or local ports generally or with respect to a specified commercial trading port managed by a port corporation or local port, make regulations for or with respect to—

(a) the management of the ports or port;

(b) the conduct and behaviour of people within the ports or port, and the conditions on which people may be admitted to, or excluded from, any part of the ports or port;

(c) traffic co-ordination and the movement and the parking of vehicles within the ports or port;

(d) prescribing penalties not exceeding 5 penalty units for breaches of the regulations;

(e) prescribing any other matter or thing authorised or required to be prescribed or necessary or convenient to be prescribed for carrying this Act into effect with respect to the ports or port.
(2) Regulations made under this Act may be made—

(a) so as to apply—

(i) at all times or at a specified time; or

(ii) throughout the whole of the port area or in a specified part of that area;

(b) so as to require a matter affected by the regulations to be—

(i) in accordance with a specified standard or specified requirement; or

(ii) approved by or to the satisfaction of a prescribed person;

(c) so as to incorporate, adopt or apply, wholly or partially or as amended by the regulations, the provisions of any document, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—

(i) as formulated, issued, prescribed or published at the time the regulation is made or at any time before the regulation is made; or

(ii) as amended from time to time;

(d) so as to confer a discretionary authority on a prescribed person;

(e) so as to provide, in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to the extent specified.
PART 8—TRANSFER OF PROPERTY BY PORT AUTHORITIES TO CERTAIN PORT CORPORATIONS

Division 1—Preliminary

99 Definitions

(1) In this Part—

former port authority instrument means—

(a) in relation to former port authority property of which PMA is the transferor, PMA instrument;

(b) in relation to former port authority property of which PGA is the transferor, PGA instrument;

(c) in relation to former port authority property of which PPA is the transferor, PPA instrument;

former port authority property means property, rights or liabilities of a port authority that, under this Part, have vested in, or become liabilities of, a port corporation, of a subsidiary that is wholly owned by the port authority or of the State;

PGA instrument means an instrument (including a legislative instrument other than this Act and regulations under this Act and the Port of Geelong Authority Act 1958 and regulations under that Act) subsisting immediately before the appropriate relevant date—

(a) to which PGA was a party; or

(b) that was given to or in favour of PGA; or
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Port Services Act 1995
No. 82 of 1995

(c) that refers to PGA; or
(d) under which—
   (i) money is, or may become, payable to or by PGA; or
   (ii) other property is to be, or may become liable to be, transferred to or by PGA;

**PMA instrument** means an instrument (including a legislative instrument other than this Act and regulations under this Act and the Port of Melbourne Authority Act 1958 and regulations under that Act) subsisting immediately before the appropriate relevant date—
(a) to which PMA was a party; or
(b) that was given to or in favour of PMA; or
(c) that refers to PMA; or
(d) under which—
   (i) money is, or may become, payable to or by PMA; or
   (ii) other property is to be, or may become liable to be, transferred to or by PMA;

**port authority** includes, in relation to port property, SEC;

**port authority instrument** has the same meaning as in Part 11;
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**Port corporation** means—

(a) Melbourne Port Corporation, within the meaning of this Act, as in force immediately before the commencement of section 5 of the **Port Services (Port of Melbourne Reform) Act 2003**; or

(b) Hastings Port (Holding) Corporation; or

(c) Victorian Channels Authority;

**PPA instrument** means an instrument (including a legislative instrument other than this Act and regulations under this Act and the **Port of Portland Authority Act 1958** and regulations under that Act) subsisting immediately before the appropriate relevant date—

(a) to which PPA was a party; or

(b) that was given to or in favour of PPA; or

(c) that refers to PPA; or

(d) under which—

(i) money is, or may become, payable to or by PPA; or

(ii) other property is to be, or may become liable to be, transferred to or by PPA;

**relevant date**—

(a) in relation to property or rights of PMA that are transferred to MPC under section 100, means the commencement of that section;
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(b) in relation to an allocation statement under section 101 or property, rights or liabilities allocated under such an allocation statement, means the date fixed by the Treasurer under subsection (2) for the purposes of that statement;

transferee, in relation to former port authority property or port property, means the port corporation, the subsidiary that is wholly owned by a port authority or the State to which the property has been transferred under this Part;

transferor, in relation to former port authority property, means the port authority from which the former port authority property was transferred under this Part and, in relation to port property, means SEC.

(2) The Treasurer may, by notice published in the Government Gazette, fix the relevant date for the purposes of an allocation statement under section 101.

(3) Nothing in this Part enables the transfer of any Crown land.

Division 2—Transfer by operation of Act

100 Transfer of certain port authority property to MPC

On the commencement of this section, the property and rights of PMA in the land described in the folios of the Register set out below vest in MPC subject to the encumbrances (if any) to which they were subject immediately before so vesting.
Division 3—Transfer by allocation

101 Treasurer may direct transfer of property

(1) The Treasurer, after consultation with the Minister, may give a direction in writing to a port authority directing it to transfer, in accordance with the direction, property, rights and liabilities of a specified kind to—

(a) a port corporation; or

(b) a subsidiary that is wholly owned by the port authority; or

(c) the State.

(2) Within 21 days after receiving a direction under subsection (1), the port authority must give to the Treasurer a statement approved by the Treasurer relating to the property, rights and liabilities of the port authority to which the direction relates, as at a date specified by the Treasurer for the purposes of this section.
(3) A statement under this section—
   (a) must allocate the property, rights and liabilities of the port authority shown in the statement in accordance with the directions of the Treasurer; and
   (b) must be signed by the chief executive officer of the port authority.

(4) If a statement under this section is approved by the Treasurer and the Minister—
   (a) the Treasurer and the Minister must sign the statement; and
   (b) the statement is an allocation statement for the purposes of this Part.

(5) The Treasurer and the Minister may at any time direct a port authority to amend a statement given to them under this section as specified in the direction.

(6) An allocation statement under this section may be amended by writing signed by the Treasurer and the Minister.

(7) In this section, **statement** and **allocation statement** include a statement or allocation statement amended in accordance with this section.

### 102 Property transferred in accordance with direction

On the relevant date—

(a) all property and rights of a port authority, wherever located, that are allocated under an allocation statement in accordance with a direction of the Treasurer under section 101, vest in a port corporation, a subsidiary that is wholly owned by the port authority or the State in accordance with the statement; and
(b) all liabilities of a port authority, wherever located, that are allocated under an allocation statement become liabilities of a port corporation, a subsidiary that is wholly owned by the port authority or the State in accordance with the statement.

103 Allocation of property etc. subject to encumbrances

Unless an allocation statement under this Part otherwise provides, where, under this Part—

(a) property and rights vest in; or

(b) liabilities become liabilities of—

a transferee in accordance with a direction under section 101—

(c) the property and rights so vested are subject to the encumbrances (if any) to which they were subject immediately before so vesting; and

(d) the rights to which the transferor was entitled in respect of those liabilities immediately before they ceased to be liabilities of the transferor vest in the transferee.

104 Payments in respect of financial obligations

(1) If—

(a) an Order has been made under section 36D(1) or 36E(1) of the Treasury Corporation of Victoria Act 1992 relating to financial obligations of PMA; and

(b) responsibility for those financial obligations has become the responsibility of a port corporation under an allocation statement under this Part—

then—
(c) the port corporation must pay to the Treasury Corporation of Victoria such amounts, and at such times, as PMA would have been liable to pay in respect of those financial obligations if the Order had not been made, except in so far as the Corporation and the port corporation otherwise agree; and

(d) the Corporation must pay to the port corporation such amounts, and at such times, as PMA would have been entitled to receive in respect of those financial obligations if the Order had not been made, except in so far as the Corporation and the port corporation otherwise agree.

(2) An amount payable under subsection (1) may be recovered in a court of competent jurisdiction as a debt due to the Treasury Corporation of Victoria or the port corporation, as the case requires.

Division 4—General

105 Certificate of chief executive officer

(1) A certificate signed by the chief executive officer of a port authority that is a transferor certifying that property, rights or liabilities of the port authority specified in the certificate have been vested in or become liabilities of the transferee in accordance with section 100 or have been allocated under an allocation statement in accordance with section 101 is, unless revoked under subsection (2), conclusive evidence—

(a) that the property, rights or liabilities have been so vested or allocated or become liabilities of the transferee; and

(b) that the property, rights or liabilities vested in or became the property, rights or liabilities of the transferee on the relevant date.
(2) If the Treasurer and the Minister so direct the chief executive officer of a transferor in writing, the chief executive officer must revoke a certificate given under subsection (1) by issuing another certificate or certificates in place of the first certificate.

(3) The chief executive officer of a transferor—

(a) must keep a register of certificates issued under this section; and

(b) must make the register reasonably available for inspection by a transferee or other interested person.

106 Value of former port authority property

(1) The value to MPC as at the commencement of section 100 of the property and rights of PMA transferred under that section is the value determined by the Treasurer.

(2) The value to a transferee as at the relevant date of property, rights and liabilities of the transferor that are allocated to it under an allocation statement is the value shown in, or calculated in accordance with, the relevant allocation statement.

107 Substitution of party to agreement

Where, under section 100 or an allocation statement, the rights and liabilities of a port authority under an agreement vest in or are allocated to a transferee in accordance with that section or a direction under section 101—

(a) the transferee becomes, on the relevant date, a party to the agreement in place of the transferor; and

(b) on and after the relevant date, the agreement has effect as if the transferee had always been a party to the agreement.
108 Former port authority instruments

Each former port authority instrument relating to former port authority property, and each port authority instrument relating to port property, continues to have effect according to its tenor on and after the relevant date in relation to the transfer of that property as if a reference in the instrument to the transferor were a reference to the transferee.

109 Proceedings

If, immediately before the relevant date, proceedings relating to former port authority property or port property (including arbitration proceedings) of a transferor to which the transferor was a party were pending or existing in any court or tribunal, then, on and after that date, the transferee is substituted for the transferor as a party to the proceedings and has the same rights in the proceedings as the transferor had.

110 Interests in land

Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law if, immediately before the relevant date, a transferor is, in relation to former port authority property or port property of the transferor, the registered proprietor of an interest in land under the Transfer of Land Act 1958, then on and after that date—

(a) the transferee is to be taken to be the registered proprietor of that interest in land; and

(b) the transferee has the same rights and remedies in respect of that interest as the transferor had.
111 Amendment of Register

(1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument and certificate of the chief executive officer of the transferor of former port authority property or port property, must make any amendments in the Register that are necessary because of the operation of this Part.

112 Taxes

No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with the transfer of property, rights or liabilities of a port authority.

113 Evidence

(1) Documentary or other evidence that would have been admissible for or against the interests of a transferor in relation to former port authority property or port property if this Part had not been enacted is admissible for or against the interests of the transferee.
(2) The **Evidence Act 2008** applies with respect to the books of account of a port authority and to entries made in those books of account before the relevant date, whether or not they relate to former port authority property or port property, as if those books of account and entries were business records.

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**114 Validity of things done under this Part**

Nothing effected or to be effected by this Part or done or suffered under this Part—

(a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or

(b) is to be regarded as placing any person in breach of or as constituting a default under any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information; or

(c) is to be regarded as fulfilling any condition which allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or

(d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a
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change in the beneficial or legal ownership of any asset, right or liability; or

(e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or

(f) is to be regarded as frustrating any contract; or

(g) releases any surety or other obligee wholly or in part from any obligation.

Division 5—Rights as between transferees

115 Interim arrangements

(1) Each transferee of former port authority property or port property (the new body)—

(a) may, subject to any agreement to the contrary, exercise such rights and privileges (including access to goods and services) in relation to former port authority property or port property that has become property of another transferee as are reasonably necessary to enable the new body to carry out its functions in a manner similar to the manner in which the relevant port authority carried out corresponding functions before the relevant date; and

(b) must, subject to any agreement to the contrary—

(i) permit any other transferee to exercise such rights and privileges in relation to former port authority property or port property that has become property of the new body; and
(ii) make available to each other transferee such goods and services as are available from that former port authority property or port property—
as are reasonably necessary to enable the other transferee to carry out its functions in a manner similar to the manner in which the relevant port authority carried out corresponding functions before the relevant date.

(2) A transferee must pay such reasonable charges for the exercise of rights and privileges under subsection (1)(a) in respect of former port authority property or port property of another transferee as are determined by the other transferee and agreed between the parties or, if the other transferee determines charges and there is no agreement, as are determined by the Treasurer.

116 Easements

(1) A transferee may, subject to and in accordance with any agreement entered into with another transferee, exercise such rights and privileges in respect of easements to which the other transferee is entitled as are reasonably necessary to enable the first-mentioned transferee to carry out its functions in a manner similar to the manner in which the transferor carried out corresponding functions before the relevant date.

(2) A transferee must pay such reasonable charges for the exercise of rights and privileges under subsection (1) in respect of easements to which another transferee is entitled as are determined by the other transferee and agreed by the first-mentioned transferee or, if there is no agreement, as are determined by the Treasurer.
PART 9—STAFF OF PORT AUTHORITIES

117 Definitions

In this Part—

*complying superannuation fund* means a superannuation entity or a superannuation fund within the meaning of section 10 of the Commonwealth Superannuation Industry (Supervision) Act 1993 which is a complying superannuation fund or a complying approved deposit fund within the meaning of Part IX of the Commonwealth Income Tax Assessment Act 1936;

*current defined benefit scheme* means—

(a) the Port of Melbourne Authority Superannuation Scheme;
(b) the State Employees Retirement Benefits Fund;
(c) the State Superannuation Fund;
(d) the Transport Superannuation Fund;
(e) the Local Authorities Superannuation Fund;

*designated agency* means—

(a) the Environment Protection Authority of Victoria;
(b) the Director, Transport Safety;
(c) the Health and Safety Organisation;

*designated agency employee* means a port authority employee who accepts an offer of employment made by a designated agency under section 118(1);
designated port employee means a port authority employee who accepts an offer of employment made by a local authority under section 118(2);

port authority employee means a person who immediately before the commencement of this Part is an employee of—

(a) PMA; or

(b) PGA; or

(c) PPA;

port corporation means—

(a) Melbourne Port Corporation, within the meaning of this Act, as in force immediately before the commencement of section 5 of the Port Services (Port of Melbourne Reform) Act 2003; or

(b) Hastings Port (Holding) Corporation; or

(c) Victorian Channels Authority;

port corporation employee means a port authority employee who accepts an offer of employment made by a port corporation under section 118(1);

purchaser means—

(a) a port operator; or

(b) a channel operator; or

(c) a person declared by the Minister by instrument in writing to be a purchaser;

regional port employee means a port authority employee who accepts an offer of employment made by a purchaser before the expiry of the transfer period;
transfer period means in respect of each purchaser the period of 2 months commencing on the date on which the purchase is completed.

118 Rights of port authority staff

(1) If, before 30 June 1996 or such later date as is specified by the Minister for the purposes of this subsection by notice published in the Government Gazette before 30 June 1996, an employee of a port authority accepts an offer of employment made by a port corporation or a designated agency—

(a) the employee is to be regarded as having accrued an entitlement to benefits, in connection with his or her employment by the port corporation or the designated agency, that is equivalent to the entitlement that he or she had accrued, as an employee of the port authority, immediately before the commencement of his or her employment by the port corporation or the designated agency;

(b) the service of the employee as an employee of the port corporation or the designated agency is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the commencement of his or her employment by the port corporation or the designated agency, as an employee of the port authority;

(c) the employee is not entitled to receive any payment or other benefit by reason only by having ceased to be an employee of the port authority.
(2) If, before 30 June 1996 or such later date as is specified by the Minister for the purposes of this subsection by notice published in the Government Gazette before 30 June 1996, an employee of a port authority accepts an offer of employment made by a local authority within the meaning of section 112 of the Marine Act 1988—

(a) the employee is to be regarded as having accrued an entitlement to benefits, in connection with his or her employment by the local authority, that is equivalent to the entitlement that he or she had accrued, as an employee of the port authority, immediately before the commencement of his or her employment by the local authority;

(b) the service of the employee as an employee of the local authority is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the commencement of his or her employment by the local authority, as an employee of the port authority;

(c) the employee is not entitled to receive any payment or other benefit by reason only by having ceased to be an employee of the port authority.

(3) The Minister may from time to time, for the purposes of subsection (1) or (2), by notice published in the Government Gazette before the then current specified date (that is, the date specified for the purposes of that subsection by the last notice published in the Government Gazette, whether under that subsection or this subsection) specify a date later than the then current specified date.
119 Superannuation—continuing membership

(1) A port corporation employee or a designated agency employee who, immediately before becoming a port corporation employee or designated agency employee, was a member of the Port of Melbourne Authority Superannuation Scheme or the Port of Geelong Authority Superannuation Fund—

(a) continues, on and after becoming a port corporation employee or designated agency employee, to be a member of the Port of Melbourne Authority Superannuation Scheme or the Port of Geelong Authority Superannuation Fund for so long as he or she continues to be employed by a port authority, a port corporation or a designated agency or until ceasing to be a member as provided in the relevant governing instrument;

(b) is not entitled to receive any payment or other benefit by reason only of having ceased to be a port authority employee because of this Act, despite any provision of the relevant governing instrument;

(c) is entitled to payments and other benefits as if the relevant port authority, port corporation or designated agency had been the employer at all times since the port authority employee last became a member of the Port of Melbourne Authority Superannuation Scheme or the Port of Geelong Authority Superannuation Fund.
(2) A designated port employee who, immediately before becoming a designated port employee was a member of the Port of Geelong Authority Superannuation Fund—

(a) continues, on and after becoming a designated port employee, to be a member of the Port of Geelong Authority Superannuation Fund for so long as he or she continues to be employed by a port authority or a local authority or until ceasing to be a member as provided in the relevant governing instrument;

(b) is not entitled to receive any payment or other benefit by reason only of having ceased to be a port authority employee because of this Act, despite any provision of the relevant governing instrument;

(c) is entitled to payments and other benefits as if the relevant port authority or local authority had been the employer at all times since the port authority employee last became a member of the Port of Geelong Authority Superannuation Fund.

(3) On and after the commencement of this Part, the governing instrument of the Port of Melbourne Authority Superannuation Scheme or the Port of Geelong Authority Superannuation Fund has effect as if—

(a) the reference to PMA or PGA in the definition of \textit{Authority} for the purposes of the governing instrument were a reference to the relevant port authority, port corporation, designated agency or local authority;

(b) the relevant governing instrument were amended to the extent necessary to give effect to subsections (1) and (2).
120 Superannuation—transfer to Local Authorities Superannuation Fund—designated port employees

(1) A port authority employee who becomes a designated port employee and who, immediately before becoming a designated port employee, was a member of a current defined benefit scheme is upon becoming a designated port employee transferred to the Local Authorities Superannuation Fund.

(2) Despite the transfer of a member under this section to the Local Authorities Superannuation Fund—

(a) the member is entitled to receive the same benefits that he or she would have been entitled to receive had he or she not so transferred; and

(b) the member is entitled to have his or her rights and obligations determined in accordance with the provisions of the governing instrument of the current defined benefit scheme.

(3) For the purpose of subsection (2) the Local Authorities Superannuation Board has in respect of a member the duties and powers conferred on the trustees of the current defined benefit scheme by or under the provisions of the governing instrument of that scheme.

(4) With the approval of the Minister, the trustees of each current defined benefit scheme must enter into an agreement with the Local Authorities Superannuation Board which specifies—

(a) the liability of the current defined benefit scheme up to the date of transfer in respect of transferred members under this section; and
(b) the value of assets of the current defined benefit scheme equal to the liability of the current defined benefit scheme under paragraph (a) that are to be transferred to the Local Authorities Superannuation Fund; and

(c) the terms and conditions which apply to the transfer of those assets to the Local Authorities Superannuation Fund.

(5) For the purposes of subsection (4), the liability in respect of each transferred member is to be treated as being in the same proportion as the total net assets of the current defined benefit scheme are to the total liabilities of the current defined benefit scheme.

(6) If agreement cannot be reached within 3 months after the member becoming a designated port employee, the Minister may determine the matters specified in subsection (4) or which are in dispute and the trustees of the current defined benefit scheme and the Local Authorities Superannuation Board are deemed by virtue of this subsection to have entered into an agreement containing the matters determined by the Minister.

(7) The trustees of the current defined benefit scheme must transfer the assets specified in the agreement to the Local Authorities Superannuation Fund.

(8) As soon as the assets have been transferred, the assets form part of the Local Authorities Superannuation Fund.

(9) In this section, current defined benefit scheme does not include the Local Authorities Superannuation Fund.
121 Superannuation—change of employment—
designated port employees

(1) If a person to whom section 120 applies ceases to be an employee of a local authority so as to become an employee of an Authority (within the meaning of the Local Authorities Superannuation Act 1988) subject to section 42 of that Act the person becomes, from the date of commencement of employment with the Authority, a contributor with a resignation benefit and an accrued retirement benefit entitlement calculated in accordance with subsection (2).

(2) The resignation benefit and accrued retirement benefit entitlement to the date of becoming a contributor to the Local Authorities Superannuation Fund under this section are to be calculated in accordance with the provisions of the governing instrument of the current defined benefit scheme and certified by an actuary appointed by the Local Authorities Superannuation Board after having been translated into the corresponding benefit entitlements under Part 7 of the Local Authorities Superannuation Act 1988.

(3) From the date of becoming a contributor under this section a person is entitled to receive benefits as a contributor to the Local Authorities Superannuation Fund.

(4) The Local Authorities Superannuation Board must from the separate accounting records kept in respect of persons transferred to the Local Authorities Superannuation Fund under section 120 determine—

(a) the liability up to the date of becoming a contributor in respect of a person to whom this section applies; and
(b) the adjustment to be made to the value of assets shown in the accounting records equal to that liability.

(5) For the purposes of subsection (4), the liability in respect of a person to whom this section applies is to be treated as being in the same proportion as the total net assets are to the total liabilities as shown in the accounting records at the date of becoming a contributor.

122 Superannuation—contributions—designated port employees

(1) The Local Authorities Superannuation Board must on the advice of an actuary appointed by the Local Authorities Superannuation Board determine—

(a) the extent to which the liability specified under section 120(4)(a) is unfunded; and

(b) the contribution to be paid to the Local Authorities Superannuation Fund in respect of that unfunded liability—

(i) by PMA, PGA or PPA in respect of persons who transferred from the Transport Superannuation Fund;

(ii) by PMA in respect of persons who transferred from the Port of Melbourne Authority Superannuation Fund;

(iii) by the Treasurer from the Consolidated Fund in respect of persons who transferred from the State Superannuation Fund;

(iv) by PMA, PGA or PPA in respect of persons who transferred from the State Employees Retirement Benefits Fund.
(2) For the purpose of subsection (1), the liability in respect of each person who transferred is to be treated as being in the same proportion as the total net assets of the Local Authorities Superannuation Fund are to the total liabilities of the Local Authorities Superannuation Fund.

(3) The contributions determined under subsection (1) must be paid to the Local Authorities Superannuation Board in such instalments and at such intervals as is agreed between the Local Authorities Superannuation Board and the relevant person, or in the absence of agreement, as is determined by the Minister.

123 Superannuation—private sector employment—regional port employees

(1) A regional port employee may elect during the transfer period to transfer the transfer amount to a complying superannuation fund.

(2) The transfer amount and the terms and conditions that apply in respect of the transfer are to be determined by the Minister administering the State Superannuation Act 1988.

(3) The trustees must pay out of the relevant current defined benefit scheme or the Port of Geelong Authority Superannuation Scheme the transfer amount, after deducting any tax required to be paid under the Commonwealth Income Tax Assessment Act 1936, to the relevant complying superannuation fund.

(4) Subject to subsection (5), the trustees must pay into the relevant current defined benefit scheme or the Port of Geelong Authority Superannuation Scheme payments received from the purchaser for superannuation provision in respect of each relevant scheme.
(5) The Treasurer may, in addition to any amount received under subsection (4), pay an amount to be determined by the Treasurer into the relevant scheme referred to in subsection (4) to meet any unfunded superannuation liability relating to regional port employees.

(6) For the purposes of subsection (4), the Purchaser is deemed to be—

(a) an authority under the *Local Authorities Superannuation Act 1988*;

(b) an employing authority under the *State Superannuation Act 1988*;

(c) a transport authority under the *Transport Superannuation Act 1988*;

(d) an employer under the *State Employees Retirement Benefits Act 1979*;

(e) the Authority under the Port of Melbourne Authority Superannuation Scheme.

(7) If a person—

(a) elects not to transfer a transfer amount to a complying superannuation fund under subsection (1); or

(b) fails to make an election in accordance with subsection (1)—

the person is deemed to have resigned as a regional port employee as from the date of the relevant sale for the purposes of the *Local Authorities Superannuation Act 1988*, the *State Superannuation Act 1988*, the *Transport Superannuation Act 1988*, the *State Employees Retirement Benefits Act 1979* or the governing instrument of the Port of Melbourne Authority Superannuation Scheme (as the case may be).
(8) For the purposes of the Superannuation (Portability) Act 1989, an officer to whom subsection (7) applies is entitled by virtue of this section to elect to make an application in accordance with section 5 of that Act.

124 Taxes

No stamp duty or other tax is payable under any Act in respect of anything done under this Part.

125 Appropriation

The Consolidated Fund is for the purposes of any payment required to be made under section 122(1)(b)(iii) or 123(5) to the necessary extent appropriated accordingly.

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PART 11—ABOLITION OF PORT AUTHORITIES

153 Definitions

(1) In this Part—

*port authority instrument*, in relation to a port authority, means an instrument (including a legislative instrument other than this Act and regulations under this Act and a Port Act and regulations under a Port Act) subsisting immediately before the port authority abolition date—

(a) to which the port authority was a party; or

(b) that was given to or in favour of the port authority; or

(c) that refers to the port authority; or

(d) under which—

(i) money is, or may become, payable to or by the port authority; or

(ii) other property is to be, or may become liable to be, transferred to or by the port authority—

but does not include a former port authority instrument within the meaning of Part 8.
(2) The Governor in Council may, by Order published in the Government Gazette, fix the port authority abolition date for the purposes of a port authority.

154 Transfer of property to SEC and abolition of port authorities

On the port authority abolition date—

(a) all property and rights of the port authority, wherever located, vest in SEC subject to the encumbrances (if any) to which they were subject immediately before so vesting; and

(b) all liabilities of the port authority, wherever located become liabilities of SEC; and

(c) SEC becomes the successor in law of the port authority; and

(d) the port authority is abolished.

155 Substitution of party to agreement

Where, under section 154, the rights and liabilities of a port authority under an agreement vest in, or become liabilities of, SEC—

(a) SEC becomes, on the port authority abolition date, a party to the agreement in place of the port authority; and

(b) on and after the port authority abolition date, the agreement has effect as if SEC had always been a party to the agreement.

156 Port authority instruments

A port authority instrument continues to have effect according to its tenor on and after the port authority abolition date as if a reference in the instrument to the port authority were a reference to SEC.
157 Proceedings

Where, immediately before the port authority abolition date, proceedings (including arbitration proceedings) to which the port authority was a party were pending or existing in any court or tribunal, then, on and after the port authority abolition date, SEC is substituted for the port authority as a party to the proceedings and has the same rights in the proceedings as the port authority had.

158 Interests in land

Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law, if, immediately before the port authority abolition date, the port authority was the registered proprietor of an interest in land under the Transfer of Land Act 1958, on and after the port authority abolition date—

(a) SEC is to be taken to be the registered proprietor of that interest in land; and

(b) SEC has the same rights and remedies in respect of that interest as the port authority had.

159 Amendment of Register

(1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument, must make any amendments in the Register that are necessary because of the operation of this Part.
160 Taxes

No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part, including a transaction entered into or an instrument made, executed, lodged or given.

161 Evidence

(1) Documentary or other evidence that would have been admissible for or against the interests of a port authority if this Part had not been enacted, is admissible for or against the interests of SEC.

(2) The Evidence Act 2008 applies with respect to the books of account of a port authority and to entries made in those books of account before the port authority abolition date as if those books of account and entries were business records.

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PART 12—TRANSITIONAL PROVISIONS—ESTABLISHMENT OF PORT OF MELBOURNE CORPORATION

162 Definitions

In this Part—

*commencement day* means the day on which section 5 of the *Port Services (Port of Melbourne Reform) Act 2003* comes into operation;

*old corporation* means MPC, within the meaning of this Act, as in force immediately before the commencement day;

*new corporation* means the Port of Melbourne Corporation, within the meaning of this Act, as in force on and from the commencement day.

163 Transfer of property etc. from MPC to the new corporation

Except as otherwise provided in this Act, on and from the commencement day—

(a) the old corporation is abolished and the directors go out of office; and

(b) all rights, property and assets that, immediately before the commencement day were vested in the old corporation, vest in the new corporation; and
(c) all debts, liabilities and obligations of the old corporation existing immediately before the commencement day, become debts, liabilities and obligations of the new corporation; and

(d) the new corporation is substituted as a party to any proceedings pending in any court or tribunal to which the old corporation was a party, immediately before the commencement day; and

(e) the new corporation is substituted as a party to any contract or arrangement entered into by or on behalf of the old corporation and in force immediately before the commencement day; and

(f) any reference to the old corporation in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document, so far as it relates to any period after the commencement day, and if not inconsistent with the context or subject matter, must be construed as a reference to the new corporation.

164 Staff to be transferred from the old corporation to the new corporation

(1) A person who was an employee of the old corporation immediately before the commencement day is deemed to be an employee of the new corporation.

(2) A transferred employee is to be regarded as—

(a) being employed in his or her new position with effect on and from the commencement day; and
(b) having the same terms and conditions as those that applied to the person in relation to his or her employment with the old corporation immediately before the commencement day; and

(c) having accrued an entitlement to benefits in connection with the employment with the new corporation that is equivalent to the entitlement that the person had accrued, as an employee of the old corporation, immediately before the commencement day.

(3) The service of a transferred employee with the new corporation is to be regarded for all purposes as having been continuous with the service of the transferred employee, immediately before the commencement day, as an employee of the old corporation.

(4) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the old corporation because of the operation of this Division.

(5) A certificate purporting to be signed by the chief executive officer of the new corporation certifying that the person named in the certificate was, with effect from the commencement day, employed, by virtue of this section, with the new corporation, is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.

(6) The superannuation entitlements of any person who is a transferred employee are deemed not to be affected by that person becoming a transferred employee.
(7) If a transferred employee was, immediately before the appointed day an officer within the meaning of the *State Superannuation Act 1988*, he or she continues to be such an officer.

(8) Nothing in this section prevents—

(a) any of the terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the commencement day; or

(b) a transferred employee from resigning or being dismissed at any time after the commencement day in accordance with the existing terms and conditions of his or her employment with the new corporation.

(9) This section applies to the person occupying the position of chief executive officer of the Melbourne Port Corporation immediately before the commencement day, and the amendment to this Act by section 16(3) of the *Port Services (Port of Melbourne Reform) Act 2003* does not apply to that person.

(10) In this section, *transferred employee* means an employee of the old corporation who is deemed to be an employee of the new corporation by subsection (1).

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PART 13—TRANSITIONAL PROVISIONS—TRANSFER OF CERTAIN VCA FUNCTIONS ETC.

Division 1—Definitions

165 Definitions

In this Part—

appointed day means the day on which section 20 of the Port Services (Port of Melbourne Reform) Act 2003 comes into operation;

former VCA property means property, rights or liabilities of VCA that, under this Part, have vested in or become property rights or liabilities of the new corporation;

instrument includes a document and an oral agreement;

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective;

new corporation means the Port of Melbourne Corporation established under Part 10;

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;
rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

VCA instrument means an instrument subsisting immediately before the relevant date—
   (a) to which VCA was a party; or
   (b) that was given in favour of VCA; or
   (c) that refers to VCA; or
   (d) under which—
       (i) money is or may become payable to or by VCA; or
       (ii) other property is to be or may become liable to be transferred to or by VCA.

Division 2—Allocation of property etc.

166 Treasurer may direct transfer of property etc.

(1) The Treasurer, after consultation with the Minister, may give a direction in writing to VCA directing it to transfer, in accordance with the direction, property, rights and liabilities of a specified kind to the new corporation.

(2) Within 21 days after receiving a direction under subsection (1), VCA must give to the Treasurer a statement approved by the Treasurer relating to the property, rights and liabilities of VCA to which the direction relates, as at a date specified by the Treasurer, for the purposes of this section.
(3) A statement under this section—

(a) must allocate the property, rights and liabilities of VCA shown in the statement in accordance with the directions of the Treasurer; and

(b) must be signed by the chief executive officer of VCA.

(3A) The Treasurer, after consultation with the Minister, may at any time direct the VCA to amend a statement given to him or her under this section as specified in the direction.

(3B) An allocation statement under this section may be amended by writing signed by the Treasurer and the Minister.

(3C) An amendment under subsection (3B) to an allocation statement made after the appointed day in relation to that statement may be made with effect from the appointed day if the Treasurer and the Minister are satisfied that the amendment does not adversely affect any property, rights or liabilities of a person other than the VCA or the new corporation in relation to that statement.

(4) If a statement under this section is approved by the Treasurer and the Minister—

(a) the Treasurer and the Minister must sign the statement; and

(b) the statement is an allocation statement for the purposes of this Part.

167 Property transferred to the new corporation

On the appointed day—

(a) all property and rights of VCA that are allocated to the new corporation under the allocation statement, vest in the new corporation; and
(b) all liabilities of VCA that are allocated to the new corporation under the allocation statement, become liabilities of the new corporation.

168 Allocation of property etc. subject to encumbrances

Unless an allocation statement under this Part otherwise provides, where, under this Part property and rights vest in the new corporation or liabilities become liabilities of the new corporation—

(a) the property and rights so vested are subject to the encumbrances (if any) to which they were subject immediately before so vesting; and

(b) the rights to which VCA was entitled in respect of those liabilities immediately before they ceased to be liabilities of VCA, vest in the new corporation.

169 Substitution of party to agreement

If, under an allocation statement, the rights and liabilities of VCA under an agreement are allocated to the new corporation—

(a) the new corporation becomes, on the appointed day, a party to the agreement in place of VCA; and

(b) on and after the appointed day, the agreement has effect as if the new corporation had always been a party to the agreement.

170 VCA instruments

Each VCA instrument relating to former VCA property continues to have effect according to its tenor on and after the appointed day as if a reference in the instrument to VCA were a reference to the new corporation.
171 Taxes

No duty or other tax is chargeable under any Act in respect of anything done under this Division or in respect of any act or transaction connected with or necessary to be done by reason of this Division, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with the transfer of property, rights or liabilities of VCA.

172 Validity of things done under this Part

(1) Nothing effected by this Division or done or suffered by VCA, a Minister or the new corporation under this Division—

(a) is to be regarded as placing VCA, a Minister or the new corporation in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or

(b) is to be regarded as placing any of them in breach of or as constituting a default under any Act or other law or any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or

(c) is to be regarded as fulfilling any condition which allows a person to exercise a right or remedy in respect of or to terminate any agreement or obligation; or

(d) releases any surety or other obligor wholly or in part from any obligation.
Part 13—Transitional Provisions—Transfer of Certain VCA Functions etc.

(2) The validity of any act or transaction of VCA or the new corporation must not be called in question in any proceedings on the ground that any provision of this Division had not been complied with.

173 Payments in respect of financial obligations of VCA

In the case of any obligations or rights of VCA under section 36D or 36E of the *Treasury Corporation of Victoria Act 1992*, that have been allocated under an allocation statement under this Division—

(a) the new corporation must pay to the Treasury Corporation of Victoria such amounts, and at such times, as VCA would have been liable to pay in respect of those financial obligations, if the Order under section 36D or 36E (as the case requires) had not been made, except so far as the Treasury Corporation of Victoria and the new corporation otherwise agree; and

(b) the Treasury Corporation of Victoria must pay to the new corporation those amounts, and at those times, as VCA would have been entitled to receive in respect of those financial obligations if the Order under section 36D or 36E (as the case requires) had not been made, except in so far as the Treasury Corporation of Victoria and the new corporation otherwise agree.
Division 3—Staff and other matters

174 List of staff to be transferred from VCA to the new corporation

The chief executive officer of VCA must list, in writing, the employees of VCA, employed by VCA immediately before the appointed day, who are to be employed by the new corporation.

175 Terms of employment of staff transferred from VCA to the new corporation

(1) A transferred employee is to be regarded as—

(a) being employed in his or her new position with effect on and from the appointed day; and

(b) having the same terms and conditions as those that applied to the person in relation to his or her employment with the VCA immediately before the appointed day; and

(c) having accrued an entitlement to benefits in connection with the employment with the new corporation that is equivalent to the entitlement that the person had accrued, as an employee of VCA, immediately before the appointed day.

(2) The service of a transferred employee with the new corporation is to be regarded for all purposes as having been continuous with the service of the transferred employee, immediately before the appointed day, as an employee of VCA.

(3) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of VCA because of the operation of this Division.
(4) A certificate purporting to be signed by the Chief Executive Officer of the new corporation certifying that the person named in the certificate was, with effect from the appointed day, employed, by virtue of this section, with the new corporation, is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.

(5) The superannuation entitlements of any person who is a transferred employee are deemed not to be affected by that person becoming a transferred employee.

(6) If a transferred employee was, immediately before the appointed day an officer within the meaning of the State Superannuation Act 1988, he or she continues to be such an officer.

(7) Nothing in this section prevents—

(a) any of the terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the appointed day; or

(b) a transferred employee from resigning or being dismissed at any time after the appointed day in accordance with the existing terms and conditions of his or her employment with the new corporation.

(8) In this section, transferred employee means a person listed under section 174.

176 Price determination

(1) On and from the appointed day—

(a) a reference in the price determination to VCA, to the extent that that reference applies to the exercise by that body of functions or powers within the port of Melbourne, is
Part 13—Transitional Provisions—Transfer of Certain VCA Functions etc.

Port Services Act 1995  
No. 82 of 1995

173 deemed to be a reference to the Port of Melbourne Corporation; and

(b) any powers, functions, rights and liabilities of VCA under the price determination, to the extent that they relate to the port of Melbourne, become powers, functions, rights and liabilities of the Port of Melbourne Corporation.

(2) In this section price determination means the Price Determination for the Channels of the Ports of Melbourne and Geelong, as in force immediately before the appointed day, being the price determination—

(a) that was made by the Regulator-General under section 54 (as in force before the commencement of the Essential Services Commission Act 2001); and

(b) notice of the making of which was given in Special Government Gazette Number S99; and

(c) that came into operation on 3 July 2000; and

(d) that was continued in force under Part 8 of the Essential Services Commission Act 2001.

176A Saving of port of Melbourne waters

Any waters that were declared to be port of Melbourne waters or any waters declared to be port waters of the port of Melbourne immediately before the commencement of section 4 of the Port Services (Port Management Reform) Act 2003 are deemed to be port of Melbourne waters.
PART 14—TRANSITIONAL PROVISIONS—
ESTABLISHMENT OF PORT OF HASTINGS CORPORATION

177 Definitions

In this Part—

commencement day means the day on which section 23 of the Port Services (Port Management Reform) Act 2003 comes into operation;

old corporation means HPHC, within the meaning of this Act, as in force immediately before the commencement day;

new corporation means the Port of Hastings Corporation, within the meaning of this Act, as in force on and from the commencement day;

transferred employee means an employee of the old corporation who is deemed to be an employee of the new corporation by section 179(1).

178 Transfer of property etc. from HPHC to the new corporation

Except as otherwise provided in this Act, on and from the commencement day—

(a) the old corporation is abolished and the directors go out of office; and
(b) all rights, property and assets that, immediately before the commencement day were vested in the old corporation, vest in the new corporation; and

(c) all debts, liabilities and obligations of the old corporation existing immediately before the commencement day, become debts, liabilities and obligations of the new corporation; and

(d) the new corporation is substituted as a party to any proceedings pending in any court or tribunal to which the old corporation was a party, immediately before the commencement day; and

(e) the new corporation is substituted as a party to any contract or arrangement entered into by or on behalf of the old corporation and in force immediately before the commencement day; and

(f) any reference to the old corporation in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document, so far as it relates to any period after the commencement day, and if not inconsistent with the context or subject matter, must be construed as a reference to the new corporation.

179 Staff to be transferred from the old corporation to the new corporation

(1) A person who was an employee of the old corporation immediately before the commencement day is deemed to be an employee of the new corporation.
(2) A transferred employee is to be regarded as—

(a) being employed in his or her new position with effect on and from the commencement day; and

(b) having the same terms and conditions as those that applied to the person in relation to his or her employment with the old corporation immediately before the commencement day; and

(c) having accrued an entitlement to benefits in connection with the employment with the new corporation that is equivalent to the entitlement that the person had accrued, as an employee of the old corporation, immediately before the commencement day.

(3) The service of a transferred employee with the new corporation is to be regarded for all purposes as having been continuous with the service of the transferred employee, immediately before the commencement day, as an employee of the old corporation.

(4) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the old corporation because of the operation of this Part.

(5) A certificate purporting to be signed by the chief executive officer of the new corporation certifying that the person named in the certificate was, with effect from the commencement day, employed, by virtue of this section, with the new corporation, is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.

(6) The superannuation entitlements of any person who is a transferred employee are deemed not to be affected by that person becoming a transferred employee.
(7) If a transferred employee was, immediately before the appointed day an officer within the meaning of the **State Superannuation Act 1988**, he or she continues to be such an officer.

(8) Nothing in this section prevents—

(a) any of the terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the commencement day; or

(b) a transferred employee from resigning or being dismissed at any time after the commencement day in accordance with the existing terms and conditions of his or her employment with the new corporation.
PART 15—TRANSITIONAL PROVISIONS—ESTABLISHMENT OF VICTORIAN REGIONAL CHANNELS AUTHORITY

180 Definitions

In this Part—

- **commencement day** means the day on which section 24 of the *Port Services (Port Management Reform) Act 2003* comes into operation;

- **old corporation** means VCA, within the meaning of this Act, as in force immediately before the commencement day;

- **new corporation** means the VRCA, within the meaning of this Act, as in force on and from the commencement day;

- **transferred employee** means an employee of the old corporation who is deemed to be an employee of the new corporation by section 182(1).

181 Transfer of property etc. from VCA to the new corporation

Except as otherwise provided in this Act, on and from the commencement day—

(a) the old corporation is abolished and the directors go out of office; and

(b) all rights, property and assets that, immediately before the commencement day were vested in the old corporation, vest in the new corporation; and
Part 15—Transitional Provisions—Establishment of Victorian Regional Channels Authority

(c) all debts, liabilities and obligations of the old corporation existing immediately before the commencement day, become debts, liabilities and obligations of the new corporation; and

(d) the new corporation is substituted as a party to any proceedings pending in any court or tribunal to which the old corporation was a party, immediately before the commencement day; and

(e) the new corporation is substituted as a party to any contract or arrangement entered into by or on behalf of the old corporation and in force immediately before the commencement day; and

(f) any reference to the old corporation in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document, so far as it relates to any period after the commencement day, and if not inconsistent with the context or subject matter, must be construed as a reference to the new corporation.

182 Staff to be transferred from the old corporation to the new corporation

(1) A person who was an employee of the old corporation immediately before the commencement day is deemed to be an employee of the new corporation.

(2) A transferred employee is to be regarded as—

(a) being employed in his or her new position with effect on and from the commencement day; and
(b) having the same terms and conditions as those that applied to the person in relation to his or her employment with the old corporation immediately before the commencement day; and

(c) having accrued an entitlement to benefits in connection with the employment with the new corporation that is equivalent to the entitlement that the person had accrued, as an employee of the old corporation, immediately before the commencement day.

(3) The service of a transferred employee with the new corporation is to be regarded for all purposes as having been continuous with the service of the transferred employee, immediately before the commencement day, as an employee of the old corporation.

(4) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the old corporation because of the operation of this Part.

(5) A certificate purporting to be signed by the chief executive officer of the new corporation certifying that the person named in the certificate was, with effect from the commencement day, employed, by virtue of this section, with the new corporation, is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.

(6) The superannuation entitlements of any person who is a transferred employee are deemed not to be affected by that person becoming a transferred employee.

(7) If a transferred employee was, immediately before the appointed day an officer within the meaning of the State Superannuation Act 1988, he or she continues to be such an officer.
(8) Nothing in this section prevents—

(a) any of the terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the commencement day; or

(b) a transferred employee from resigning or being dismissed at any time after the commencement day in accordance with the existing terms and conditions of his or her employment with the new corporation.
PART 16—OTHER SAVINGS AND TRANSITIONALS

183 Savings for existing local authorities

(1) Any lands or waters that were immediately before the date of commencement of section 11 of the Port Services (Port Management Reform) Act 2003 declared to be a designated port under section 111 of the Marine Act 1988 are to be deemed to be the lands and waters of a local port for the purposes of this Act.

(2) Nothing in the Port Services (Port Management Reform) Act 2003 affects the appointment or constitution of a person or body that was a local authority for lands and waters that were declared to be a designated port under section 111 of the Marine Act 1988 immediately before the date of commencement of section 11 of the Port Services (Port Management Reform) Act 2003 and that person or body is deemed to be the port manager of those lands and waters as a local port under this Act.

(3) Any delegation made or charge fixed under Part 10 of the Marine Act 1988 by a person or body referred to in subsection (2), immediately before the date of commencement of section 11 of the Port Services (Port Management Reform) Act 2003, is deemed to be a delegation made or a charge fixed (as the case requires) under the corresponding provisions of Part 2A of this Act.
184 Provisions of Subordinate Legislation Act 1994 not to apply to certain ports regulations

(1) Part 2 of the Subordinate Legislation Act 1994 does not apply to a statutory rule made under this Act—

(a) if the statutory rule is made on or before 1 December 2004; and

(b) if the Minister has, before the making of the statutory rule, certified in writing that the statutory rule is the same in substance as the Marine (Designated Ports) Regulations 2004.

(2) The Minister must ensure that a copy of the certificate under subsection (1) is given to the Scrutiny of Acts and Regulations Committee as soon as practicable after the statutory rule is made.

(3) A copy of the certificate under subsection (1) must be laid before each House of Parliament at the same time as the statutory rule is so laid under section 15 of the Subordinate Legislation Act 1994.

(4) In this section—

Scrutiny of Acts and Regulations Committee
means the Scrutiny of Acts and Regulations Committee established by the Parliamentary Committees Act 2003;

statutory rule has the same meaning as in the Subordinate Legislation Act 1994.

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New s. 184 inserted by No. 9/2004 s. 30.
PART 17—STATION PIER—SAVINGS AND TRANSITIONAL

185 Definitions

In this Part—

commencement day means the day on which Part 12 of the Transport Legislation (Amendment) Act 2004 comes into operation;

old body means the Station Pier Committee of Management Incorporated appointed by Order in Council dated 15 May 2001 and published in the Government Gazette on 17 May 2001 at page 959.

186 Savings and transitional provisions for Station Pier

(1) On the commencement day—

(a) the reservation of the land described in Schedule 2 is revoked; and

(b) any regulations made under section 13 of the Crown Land (Reserves) Act 1978 that applied to the land described in Schedule 2 immediately before the commencement day are revoked, in so far as they apply to that land.

(2) This section does not affect the status or continuity of any lease or licence issued and any agreement or arrangement entered into under the Crown Land (Reserves) Act 1978 that applied to that land immediately before the commencement day.
(3) Each of the deeds or agreements or purported deeds or agreements described in Schedule 3, purportedly entered into by the old body—

(a) is deemed to be and to always have been validly entered into by the old body; and

(b) is deemed to continue in force on and from the commencement day, subject to its terms and conditions; and

(c) is deemed to have effect on and from the commencement day as if the Port of Melbourne Corporation were substituted for the old body as a party to the deed or agreement (as the case requires); and

(d) anything done or purported to have been done under each purported deed or agreement before the commencement day, that would have been validly done if the old body had had the powers conferred on the Port of Melbourne Corporation in relation to Station Pier land by Part 12 of the Transport Legislation (Amendment) Act 2004 at the time at which the thing was done, has and is deemed always to have had, the same force and effect as it would have had if the old body had had those powers at the time at which the thing was done or purported to have been done.

187 Transfer of property etc. from old body to Port of Melbourne Corporation

Except as otherwise provided in this Act, on and from the commencement day—

(a) the old body is abolished; and

(b) all rights, property and assets that, immediately before the commencement day were vested in the old body, vest in the Port of Melbourne Corporation; and
(c) all debts, liabilities and obligations of the old body existing immediately before the commencement day become debts, liabilities and obligations of the Port of Melbourne Corporation; and

(d) the Port of Melbourne Corporation is substituted as a party in any proceedings pending in any court or tribunal to which the old body was a party, immediately before the commencement day; and

(e) the Port of Melbourne Corporation is substituted as a party to any contract or arrangement entered into by or on behalf of the old body and in force immediately before the commencement day; and

(f) any reference to the old body in any Act or in any proclamation, Order in Council, rule, regulations, order, agreement, instrument, deed or other document, so far as it relates to any period after the commencement day, and if not inconsistent with the context or subject matter, must be construed as a reference to the Port of Melbourne Corporation.
SCHEDULE 1

PROVISIONS APPLYING TO PORT CORPORATIONS

1 Board of directors

(1) There shall be a board of directors of each port corporation consisting of not less than 3 (or, in the case of VRCA, 2), and not more than 5 (or, in the case of Port of Melbourne Corporation, 9), directors appointed in accordance with this Schedule.

(2) The board of directors of a port corporation—

(a) is responsible for the management of the affairs of the port corporation; and

(b) may exercise the powers of the port corporation.

2 Constitution of board

The board of a port corporation shall consist of—

(a) a chairperson;

(b) a deputy chairperson;

(c) subject to clause 1, such number of other directors as are appointed by the Governor in Council in accordance with this Schedule.

3 Appointment of directors

(1) The chairperson, deputy chairperson and other directors of a port corporation shall be appointed by the Governor in Council, on the recommendation of the Minister, after consultation with the Treasurer.
(2) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a director of a port corporation in respect of the office of director.

4 **Terms and conditions of appointment**

(1) A director of a port corporation shall be appointed for such term, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(2) A director of a port corporation holds office, subject to this Act, on such terms and conditions as are determined by the Minister after consultation with the Treasurer.

5 **Acting appointments**

(1) When—

(a) the office of chairperson of the board of a port corporation is vacant; or

(b) the chairperson of the board of a port corporation is absent from Victoria or is, for any reason, unable to attend meetings of the board or otherwise unable to perform the duties of the office—

the deputy chairperson of the board must act as chairperson.

(2) While the deputy chairperson of the board of a port corporation is acting as chairperson, the deputy chairperson has and may exercise all the powers, and must perform all the duties of the chairperson.
(3) The Minister may appoint a director of a port corporation to act as deputy chairperson of the board of the port corporation—

(a) during a vacancy in the office of deputy chairperson; or

(b) during any period, or during all periods, when the deputy chairperson is acting as chairperson or is unable, for any reason, to attend meetings of the board.

(4) The Minister may appoint a person to act as a director (other than the chairperson or deputy chairperson) of a port corporation—

(a) during a vacancy in the office of such a director; or

(b) during any period, or during all periods, when such a director is acting as deputy chairperson or is unable, for any reason, to attend meetings of the board.

6 Chief executive officer and other staff

(1) The board of a port corporation, with the approval of the Minister, after consultation with the Treasurer, may appoint a person as the chief executive officer of the port corporation.

(2) The chief executive officer of a port corporation holds office, subject to this Act, on a full-time basis and on such terms and conditions as are determined by the Minister, after consultation with the Treasurer and specified in the instrument of appointment.

(3) The Minister may remove the chief executive officer of a port corporation from office.

(4) The chief executive officer of a port corporation may be a director of the port corporation but may not be the chairperson.
(5) The board of a port corporation may engage such other employees as are necessary for the performance of its functions.

(6) The terms and conditions of employment of employees of a port corporation are as determined by the board of the port corporation.

7 Vacancies, resignations, removal from office

(1) The office of a director of a port corporation becomes vacant if the director—

   (a) without the board’s approval, fails to attend 3 consecutive meetings of the board of the port corporation; or

   (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

   (c) is convicted of an indictable offence or an offence which, if committed in Victoria, would be an indictable offence.

(2) A director of a port corporation may resign by writing delivered to the Minister.

(3) The Governor in Council may remove a director, or all directors, of a port corporation from office.

(4) If a director of a port corporation—

   (a) is convicted of an offence relating to his or her duties as a director; or

   (b) fails, without reasonable excuse, to comply with clause 11—

the director must be removed from office by the Governor in Council.
8 Validity of decisions

(1) An act or decision of the board of a port corporation is not invalid merely because of—

(a) a defect or irregularity in, or in connection with, the appointment of a director of the port corporation; or

(b) a vacancy in the membership of the board, including a vacancy arising from the failure to appoint an original director.

(2) Anything done by or in relation to a person purporting to act as chairperson, deputy chairperson or as a director is not invalid merely because—

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in relation to the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion for the person to act had not arisen or had ceased.

9 Proceedings of board

(1) Subject to subclause (2), meetings of the board of a port corporation shall be held at such times and places as the board determines.

(2) The chairperson of a port corporation may at any time convene a meeting but must do so when requested by a director of the port corporation.

(3) A majority of the directors for the time being of a port corporation, other than VRCA constitute a quorum of the board of the port corporation.
(3A) A quorum of the board of VRCA consists of—

(a) the chairperson of the corporation, if there are no more than 2 directors of the corporation;

(b) a majority of the directors of the corporation for the time being, if there are more than 2 directors.

(4) A question arising at a meeting of the board of a port corporation shall be determined by a majority of votes of directors of the port corporation present and voting on that question and, if voting is equal, the person presiding has a casting, as well as a deliberative, vote.

(5) The board of a port corporation must ensure that minutes are kept of each of its meetings.

(6) Subject to this Act, the board of a port corporation may regulate its own proceedings.

10 Resolutions without meetings

(1) If the directors for the time being of a port corporation (other than a director who is absent from Australia when the other directors sign) sign a document containing a statement that those directors are in favour of a resolution in terms set out in the document, a resolution in those terms shall be taken to have been passed at a meeting of the board held on the day on which the document is signed or, if the directors do not sign it on the same day, on the day on which the last director to sign signs the document.

(2) If a resolution is, under subclause (1), taken to have been passed at a meeting of the board, each director must be advised as soon as practicable and given a copy of the terms of the resolution.
(3) For the purposes of subclause (1), two or more separate documents containing a statement in identical terms, each of which is signed by one or more directors, shall be taken to constitute one document.

(4) In this clause, director in relation to a resolution, does not include a director who, by reason of clause 11, is not permitted to take part in the making of the resolution.

11 Disclosure of interests

(1) If—

(a) a director of a port corporation has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the board of the port corporation; and

(b) the interest could conflict with the proper performance of the director's duties in relation to the consideration of the matter—

the director, as soon as practicable after the relevant facts come to the director's knowledge, must disclose the nature of the interest at a meeting of the board.

(2) A disclosure under subclause (1) must be recorded in the minutes of the meeting and, unless the Minister or the board otherwise determines, the director—

(a) must not be present during any deliberation of the board in relation to the matter; and

(b) must not take part in any decision of the board in relation to the matter.
(3) For the purpose of the making of a determination by the board of a port corporation under subclause (2) in relation to a director who has made a disclosure under subclause (1), a director who has a direct or indirect pecuniary interest in the matter to which the disclosure relates—

(a) must not be present during any deliberation of the board for the purpose of making the determination; and

(b) must not take part in the making by the board of the determination.

(4) Subclauses (1) and (2) do not apply in relation to a matter relating to the supply of goods or services to the director if the goods or services are, or are to be, available to members of the public on the same terms and conditions.
<table>
<thead>
<tr>
<th><strong>SCHEDULE 2</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Situation and area of land</strong></td>
</tr>
<tr>
<td><strong>Instrument and date of reservation</strong></td>
</tr>
<tr>
<td><strong>Description of land by reference to Government Gazette</strong></td>
</tr>
<tr>
<td><strong>Purpose of reservation</strong></td>
</tr>
<tr>
<td><strong>Extent of reservation</strong></td>
</tr>
</tbody>
</table>
### SCHEDULE 3

#### TABLE

<table>
<thead>
<tr>
<th>Parties</th>
<th>Location</th>
<th>Description of purported deed or agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Station Pier Committee of Management</td>
<td>Part of the land described in the plan numbered OP 119746—A and lodged in the Central Plan Office</td>
<td>Lease of land dated 20 May 2003</td>
</tr>
<tr>
<td>Incorporated</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TT-Line Company Pty Ltd (ACN 061 996 174)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Station Pier Committee of Management</td>
<td>Part of the land described in the plan numbered OP 119746—A and lodged in the Central Plan Office</td>
<td>Variation of berthing licence dated 20 May 2003</td>
</tr>
<tr>
<td>Incorporated</td>
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<td></td>
</tr>
<tr>
<td>TT-Line Company Pty Ltd (ACN 061 996 174)</td>
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</tr>
<tr>
<td>Station Pier Committee of Management</td>
<td>Part of the land described in the plan numbered OP 119746—A and lodged in the Central Plan Office</td>
<td>Variation of car parking licence dated 20 May 2003</td>
</tr>
<tr>
<td>Incorporated</td>
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<tr>
<td>TT-Line Company Pty Ltd (ACN 061 996 174)</td>
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<tr>
<td>Station Pier Committee of Management</td>
<td>Part of the land described in the plan numbered OP 119746—A and lodged in the Central Plan Office</td>
<td>Lease dated 24 December 2004</td>
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<tr>
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<tr>
<td>TT-Line Company Pty Ltd (ACN 061 996 174)</td>
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<td></td>
</tr>
<tr>
<td>Heavenly Pier Pty Ltd (ACN 095 763 330)</td>
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<td></td>
</tr>
<tr>
<td>Station Pier Committee of Management</td>
<td>Part of the land described in the plan numbered OP 119746—A and lodged in the Central Plan Office</td>
<td>Renewal of licence to occupy land dated 14 February 2002</td>
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<tr>
<td>Incorporated</td>
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<tr>
<td>Delicarts Australia</td>
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</tbody>
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Port Services Act 1995
No. 82 of 1995

Sch. 3
inserted by
No. 110/2004
s. 62(Sch).
ENDNOTES

1. General Information

Minister's second reading speech—
Legislative Assembly: 5 October 1995
Legislative Council: 31 October 1995

The long title for the Bill for this Act was "A Bill to make further provision relating to ports, to amend the Port of Melbourne Authority Act 1958, the Port of Geelong Authority Act 1958, the Port of Portland Authority Act 1958, the Marine Act 1988 and certain other Acts and for other purposes.".

The Port Services Act 1995 was assented to on 28 November 1995 and came into operation as follows:


2. Table of Amendments

This Version incorporates amendments made to the Port Services Act 1995 by Acts and subordinate instruments.

Melbourne City Link Act 1995, No. 107/1995
Assent Date: 12.12.95
Commencement Date: S. 127 on 14.12.95: Special Gazette (No. 120) 14.12.95 p. 3
Current State: This information relates only to the provision/s amending the Port Services Act 1995

Assent Date: 18.6.96
Commencement Date: S. 134(10) on 18.6.96: s. 2(1)
Current State: This information relates only to the provision/s amending the Port Services Act 1995

Assent Date: 24.9.96
Commencement Date: S. 3 on 16.11.95: s. 2(2); ss 4(2), 5 on 14.12.95: s. 2(3); s. 4(1) on 1.3.96: s. 2(4); rest of Act on 24.9.96: s. 2(1)
Current State: All of Act in operation

Assent Date: 26.11.96
Commencement Date: S. 13 on 14.12.95: s. 2(2); rest of Act on 26.11.96: s. 2(1)
Current State: All of Act in operation

Port Services (Amendment) Act 1997, No. 63/1997
Assent Date: 5.11.97
Commencement Date: S. 9(2) on 28.11.95: s. 2(2); ss 6(1)(2), 7, 8 on 9.12.97; ss 3–5, 9(3) on 10.12.97: Government Gazette 4.12.97 p. 3290; s. 6(3)(4) on 1.7.99: s. 2(4)
Current State: This information relates only to the provision/s amending the Port Services Act 1995

Assent Date: 26.5.98
Commencement Date: S. 47 on 26.5.98: s. 2(1)
Current State: This information relates only to the provision/s amending the Port Services Act 1995

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the Port Services Act 1995
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Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 46) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the Port Services Act 1995


Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 57) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the Port Services Act 1995

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 92) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the Port Services Act 1995


Assent Date: 23.10.01
Commencement Date: Ss 86–88 on 1.1.02: s. 2
Current State: This information relates only to the provision/s amending the Port Services Act 1995

Marine (Further Amendment) Act 2001, No. 77/2001

Assent Date: 27.11.01
Commencement Date: S. 32(4) on 7.2.02: s. 2(2)
Current State: This information relates only to the provision/s amending the Port Services Act 1995

Port Services (Port of Melbourne Reform) Act 2003, No. 23/2003

Assent Date: 13.5.03
Commencement Date: Ss 3–17, 24, Sch. on 1.7.03: s. 2(1); ss 18–23 on 3.11.03: Government Gazette 30.10.03 p. 2744
Current State: This information relates only to the provision/s amending the Port Services Act 1995

Port Services (Port Management Reform) Act 2003, No. 85/2003

Assent Date: 11.11.03
Commencement Date: Ss 3, 4, 7, 8, 12–17, 20–22 on 12.11.03: s. 2(1); ss 5(2)(3), 9, 23, 26(1), 29 on 1.1.04: Government Gazette 18.12.03 p. 3208; ss 10, 24, 26(2), 30 on 1.4.04: Government Gazette 1.4.04 p. 714; ss 5(1), 6, 11, 18, 19, 25, 27, 28 on 1.7.04: s. 2(3)
Current State: This information relates only to the provision/s amending the Port Services Act 1995

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Endnotes

Assent Date: 11.5.04
Commencement Date: S. 30 on 12.5.04; ss 2(1); ss 26–29 on 1.7.04:
Government Gazette 1.7.04 p. 1843
Current State: This information relates only to the provision/s
amending the Port Services Act 1995

Assent Date: 9.11.04
Commencement Date: ss 68–75 on 10.11.04: s. 2
Current State: This information relates only to the provision/s
amending the Port Services Act 1995

Assent Date: 21.12.04
Commencement Date: S. 184 on 1.7.05: s. 3(1)
Current State: This information relates only to the provision/s
amending the Port Services Act 1995

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 159) on 5.4.05: Government
Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s
amending the Port Services Act 1995

Assent Date: 21.12.04
Commencement Date: ss 58–62(Sch.) on 1.2.05: Government Gazette
20.1.05 p. 94
Current State: This information relates only to the provision/s
amending the Port Services Act 1995

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006,
No. 80/2006
Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 85) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s
amending the Port Services Act 1995

Port Services Amendment Act 2007, No. 63/2007
Assent Date: 4.12.07
Commencement Date: ss 3–18(Sch.) on 1.1.08: Government Gazette
20.12.07 p. 3118
Current State: This information relates only to the provision/s
amending the Port Services Act 1995

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 48) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s
amending the Port Services Act 1995

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Assent Date: 12.5.09
Commencement Date: Ss 6–9 on 13.5.09: s. 2(1)
Current State: This information relates only to the provision/s amending the Port Services Act 1995


Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 1 item 43) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the Port Services Act 1995

Transport Legislation Amendment (Hoon Boating and Other Amendments) Act 2009, No. 93/2009

Assent Date: 15.12.09
Commencement Date: S. 11 on 31.3.10: Special Gazette (No. 110) 30.3.10 p.1
Current State: This information relates only to the provision/s amending the Port Services Act 1995

Transport Integration Act 2010, No. 6/2010

Assent Date: 2.3.10
Commencement Date: Ss 24(5)(Sch. 1 item 10), 203(1)(Sch. item 36) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State: This information relates only to the provision/s amending the Port Services Act 1995

Endnotes
3. **Explanatory Details**

   No entries at date of publication.