### TABLE OF PROVISIONS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PART 1—PRELIMINARY</strong></td>
<td>1</td>
</tr>
<tr>
<td>1 Purpose</td>
<td>1</td>
</tr>
<tr>
<td>2 Commencement</td>
<td>2</td>
</tr>
<tr>
<td>3 Definitions</td>
<td>2</td>
</tr>
<tr>
<td>3A Transport Integration Act 2010</td>
<td>14</td>
</tr>
<tr>
<td>4 Owner of vessel or cargo</td>
<td>15</td>
</tr>
<tr>
<td>5 Orders in Council</td>
<td>15</td>
</tr>
<tr>
<td>6 Ports</td>
<td>17</td>
</tr>
<tr>
<td>7 Subsidiary</td>
<td>17</td>
</tr>
<tr>
<td>8 Crown to be bound</td>
<td>18</td>
</tr>
<tr>
<td>9 Extra-territorial operation</td>
<td>18</td>
</tr>
<tr>
<td><strong>PART 2—PROVISIONS RELATING TO PORT CORPORATIONS</strong></td>
<td>19</td>
</tr>
<tr>
<td>16 Port of Melbourne Corporation—transitional powers under leases</td>
<td>20</td>
</tr>
<tr>
<td>17E Port operations</td>
<td>21</td>
</tr>
<tr>
<td>23 Accountability for damage</td>
<td>23</td>
</tr>
<tr>
<td>24 Liability of certain persons</td>
<td>24</td>
</tr>
<tr>
<td><strong>PART 2A—LOCAL PORTS</strong></td>
<td>26</td>
</tr>
<tr>
<td>44A Appointment of port managers of local ports</td>
<td>26</td>
</tr>
<tr>
<td>44B General powers of port managers</td>
<td>28</td>
</tr>
<tr>
<td>44C Delegation</td>
<td>29</td>
</tr>
<tr>
<td>44D Charges</td>
<td>29</td>
</tr>
<tr>
<td>44E Dredging</td>
<td>30</td>
</tr>
<tr>
<td>44F Other works</td>
<td>30</td>
</tr>
<tr>
<td>44G Port manager may act as harbour master if there is no harbour master</td>
<td>31</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>------</td>
</tr>
<tr>
<td><strong>PART 2B—PORT LICENCE FEE</strong></td>
<td>32</td>
</tr>
<tr>
<td>44H Liability to pay port licence fee</td>
<td>32</td>
</tr>
<tr>
<td>44I Amount of port licence fee</td>
<td>32</td>
</tr>
<tr>
<td>44J Calculation of port licence fee</td>
<td>32</td>
</tr>
<tr>
<td>44K Notice of port licence fee</td>
<td>33</td>
</tr>
<tr>
<td>44L Method of payment of port licence fee</td>
<td>34</td>
</tr>
<tr>
<td><strong>PART 3—REGULATION OF PORT SERVICES</strong></td>
<td>35</td>
</tr>
<tr>
<td><strong>Division 1—Preliminary</strong></td>
<td>35</td>
</tr>
<tr>
<td>45 Definitions</td>
<td>35</td>
</tr>
<tr>
<td>46 Construction of Part</td>
<td>36</td>
</tr>
<tr>
<td>47 Application of Part</td>
<td>36</td>
</tr>
<tr>
<td>48 Objectives of the Commission</td>
<td>36</td>
</tr>
<tr>
<td>49 Price regulation</td>
<td>37</td>
</tr>
<tr>
<td><strong>Division 3—General powers</strong></td>
<td>38</td>
</tr>
<tr>
<td>53 Conduct of inquiries</td>
<td>38</td>
</tr>
<tr>
<td>54 General power to make determinations</td>
<td>38</td>
</tr>
<tr>
<td>55 Standards and conditions of service and supply</td>
<td>40</td>
</tr>
<tr>
<td>56 Financial and business records</td>
<td>41</td>
</tr>
<tr>
<td>57 Restriction on disclosure of confidential information</td>
<td>43</td>
</tr>
<tr>
<td><strong>Division 5—Licences</strong></td>
<td>46</td>
</tr>
<tr>
<td>63A Prohibition</td>
<td>46</td>
</tr>
<tr>
<td>63B Exemptions</td>
<td>47</td>
</tr>
<tr>
<td>63C Application for licence</td>
<td>47</td>
</tr>
<tr>
<td>63D Grant or refusal of application</td>
<td>48</td>
</tr>
<tr>
<td>63E Provisions relating to licences</td>
<td>48</td>
</tr>
<tr>
<td>63F Specific licence conditions</td>
<td>49</td>
</tr>
<tr>
<td>63G Determination of fees and charges</td>
<td>49</td>
</tr>
<tr>
<td>63H Variation or revocation of licence</td>
<td>50</td>
</tr>
<tr>
<td>63I Gazetral requirement</td>
<td>50</td>
</tr>
<tr>
<td>63J Transfer of licence</td>
<td>51</td>
</tr>
<tr>
<td><strong>PART 4—RESERVATION OF LAND</strong></td>
<td>53</td>
</tr>
<tr>
<td><strong>Division 1—Reservation of land for the purposes of the port of Melbourne</strong></td>
<td>53</td>
</tr>
<tr>
<td>64 Power to reserve unalienated Crown land for the purposes of the port of Melbourne</td>
<td>53</td>
</tr>
<tr>
<td>65 Station Pier land deemed to be reserved land</td>
<td>55</td>
</tr>
<tr>
<td>66 Powers of Port of Melbourne Corporation in relation to reserved Crown land</td>
<td>55</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td><strong>Division 4—General</strong></td>
<td>56</td>
</tr>
<tr>
<td>72 Registrar of Titles to amend records</td>
<td>56</td>
</tr>
<tr>
<td>73 Exemption from stamp duty and other taxes</td>
<td>56</td>
</tr>
<tr>
<td><strong>PART 4A—REGULATION OF TOWAGE SERVICES</strong></td>
<td>57</td>
</tr>
<tr>
<td><strong>Division 1—Preliminary</strong></td>
<td>57</td>
</tr>
<tr>
<td>73A Definitions</td>
<td>57</td>
</tr>
<tr>
<td><strong>Division 2—Towage requirements</strong></td>
<td>57</td>
</tr>
<tr>
<td>73B Towage requirements determination</td>
<td>57</td>
</tr>
<tr>
<td>73C Process for making a towage requirements determination</td>
<td>59</td>
</tr>
<tr>
<td>73D Entitlement to make submissions</td>
<td>60</td>
</tr>
<tr>
<td><strong>Division 3—Notification of towage service providers</strong></td>
<td>60</td>
</tr>
<tr>
<td>73E Offence to provide towage services without notification</td>
<td>60</td>
</tr>
<tr>
<td>73F Making notification</td>
<td>60</td>
</tr>
<tr>
<td>73G Procedure for acknowledgment of notification</td>
<td>61</td>
</tr>
<tr>
<td>73H Period for which notification remains in force</td>
<td>61</td>
</tr>
<tr>
<td>73I Record of towage service providers</td>
<td>61</td>
</tr>
<tr>
<td><strong>Division 4—Towage conditions</strong></td>
<td>62</td>
</tr>
<tr>
<td>73J Determination of towage conditions</td>
<td>62</td>
</tr>
<tr>
<td>73K Limitations on making towage conditions determinations</td>
<td>62</td>
</tr>
<tr>
<td>73L Service and publication of determination</td>
<td>64</td>
</tr>
<tr>
<td>73M Coming into effect of towage conditions</td>
<td>64</td>
</tr>
<tr>
<td>73N Process for making towage conditions determination</td>
<td>64</td>
</tr>
<tr>
<td>73O Compliance with determined towage condition</td>
<td>65</td>
</tr>
<tr>
<td><strong>Division 5—General matters</strong></td>
<td>66</td>
</tr>
<tr>
<td>73P Review by VCAT</td>
<td>66</td>
</tr>
<tr>
<td>73Q Period for making application to VCAT</td>
<td>66</td>
</tr>
<tr>
<td><strong>PART 5—PORT FEES</strong></td>
<td>67</td>
</tr>
<tr>
<td>74 Wharfage fees—Port of Melbourne</td>
<td>67</td>
</tr>
<tr>
<td>74A Wharfage fees—Port of Hastings</td>
<td>68</td>
</tr>
<tr>
<td>75 Channel fees</td>
<td>69</td>
</tr>
<tr>
<td>78 Payment of wharfage and channel fees</td>
<td>71</td>
</tr>
<tr>
<td>79 Interest on overdue payments</td>
<td>72</td>
</tr>
<tr>
<td>80 Security for payment of wharfage and channel fees</td>
<td>73</td>
</tr>
<tr>
<td>81 Liability of current owners and agents</td>
<td>74</td>
</tr>
<tr>
<td>82 Waiver or refund of wharfage or channel fees</td>
<td>75</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>------</td>
</tr>
<tr>
<td>PART 5A—POWERS TO RESTRICT ACCESS TO AREAS</td>
<td>76</td>
</tr>
<tr>
<td>Division 1—Preliminary</td>
<td>76</td>
</tr>
<tr>
<td>83 Definitions</td>
<td>76</td>
</tr>
<tr>
<td>Division 2—Declaration of areas</td>
<td>78</td>
</tr>
<tr>
<td>84 Making a declaration of restricted access area</td>
<td>78</td>
</tr>
<tr>
<td>85 Effect of declaration</td>
<td>80</td>
</tr>
<tr>
<td>86 Provisions as to restricted access area declarations</td>
<td>81</td>
</tr>
<tr>
<td>87 Amendment or revocation of declaration</td>
<td>81</td>
</tr>
<tr>
<td>88 Publication of declaration</td>
<td>82</td>
</tr>
<tr>
<td>88A Operation of declaration where inconsistent with other powers</td>
<td>82</td>
</tr>
<tr>
<td>Division 3—Offences and other enforcement powers in relation to areas</td>
<td>82</td>
</tr>
<tr>
<td>88B Offence to enter restricted access area</td>
<td>82</td>
</tr>
<tr>
<td>88C Interference with activities</td>
<td>83</td>
</tr>
<tr>
<td>88D Offence not to give certain information to police when asked to do so</td>
<td>84</td>
</tr>
<tr>
<td>88E Warning to leave area</td>
<td>85</td>
</tr>
<tr>
<td>88F Powers to move vessels from areas</td>
<td>85</td>
</tr>
<tr>
<td>88G Certificates of authorisation</td>
<td>85</td>
</tr>
<tr>
<td>88H Certificate as evidence of area</td>
<td>86</td>
</tr>
<tr>
<td>PART 5B—POWERS AS TO CERTAIN HAZARDOUS OR POLLUTING ACTIVITIES OR THINGS</td>
<td>87</td>
</tr>
<tr>
<td>Division 1—Preliminary</td>
<td>87</td>
</tr>
<tr>
<td>88I Definitions</td>
<td>87</td>
</tr>
<tr>
<td>Division 2—Pollution abatement</td>
<td>87</td>
</tr>
<tr>
<td>88J Pollution abatement</td>
<td>87</td>
</tr>
<tr>
<td>88K Recovery of costs of clean up</td>
<td>88</td>
</tr>
<tr>
<td>88L Relationship with the Environment Protection Act 1970</td>
<td>88</td>
</tr>
<tr>
<td>Division 3—Hazardous port activities</td>
<td>88</td>
</tr>
<tr>
<td>88M Hazardous port activity notice</td>
<td>88</td>
</tr>
<tr>
<td>88N Hazardous port activity direction</td>
<td>89</td>
</tr>
<tr>
<td>88O Offence not to comply with hazardous port activity direction</td>
<td>89</td>
</tr>
<tr>
<td>Division 4—Abandoned or unclaimed goods or things</td>
<td>90</td>
</tr>
<tr>
<td>88P Offence to leave things in port waters or on port land</td>
<td>90</td>
</tr>
<tr>
<td>88Q Removal of things</td>
<td>90</td>
</tr>
<tr>
<td>88R Powers when moving things</td>
<td>91</td>
</tr>
<tr>
<td>88S Requirement to make enquiries as to owner of thing</td>
<td>91</td>
</tr>
<tr>
<td>88T Disposal of thing</td>
<td>91</td>
</tr>
<tr>
<td>88U Recovery of costs</td>
<td>92</td>
</tr>
</tbody>
</table>
PAYMENT OF COMPENSATION 93

PROCEEDS OF DISPOSAL WHERE OWNER NOT LOCATED 94

PART 6—HARBOUR MASTERS 95

OFFENCE TO FAIL TO COMPLY WITH DIRECTION, OR OBSTRUCT, HARBOUR MASTER 96

PROTECTION FROM LIABILITY 96

PART 6A—PORT MANAGEMENT PLANS 98

DEFINITION 98

APPLICATION OF OTHER ACTS 98

PORT MANAGER'S RESPONSIBILITIES FOR MANAGEMENT PLANS 99

SAFETY AND ENVIRONMENT MANAGEMENT PLANNING OBJECTIVES 101

SAFETY AND ENVIRONMENT MANAGEMENT PLANS 101

AUDITS OF COMPLIANCE 103

WHEN MUST AN AUDIT BE CONDUCTED? 104

REPORTS ON AUDITS 105

MINISTERIAL GUIDELINES 105

MINISTERIAL DIRECTIONS 106

PUBLICATION OF AUDIT 107

REPORTING 108

TRANSITIONAL PROVISIONS—MANAGEMENT PLANS 108

PART 6B—PORT DEVELOPMENT STRATEGY 109

DEFINITIONS 109

PORT DEVELOPMENT STRATEGY 110

CONSULTATION REQUIREMENTS 110

GUIDELINES 111

MINISTERIAL DIRECTIONS 111

PART 7—GENERAL 113

PORT CORPORATION MAY ACT UNDER CERTAIN AGREEMENTS AND INSTRUMENTS 113

AMENDMENT OF PLANNING SCHEMES 114

LIABILITY OF OFFICERS OF BODIES CORPORATE 115

SERVICE OF DOCUMENTS ON PORT CORPORATION 117

TREASURER MAY GIVE GUARANTEE 117

POWER TO PROSECUTE 118

REGULATIONS 118
## PART 8—TRANSFER OF PROPERTY BY PORT AUTHORITIES TO CERTAIN PORT CORPORATIONS

### Division 1—Preliminary

99 Definitions 122

### Division 2—Transfer by operation of Act

100 Transfer of certain port authority property to MPC 125

### Division 3—Transfer by allocation

101 Treasurer may direct transfer of property 126
102 Property transferred in accordance with direction 127
103 Allocation of property etc. subject to encumbrances 128
104 Payments in respect of financial obligations 128

### Division 4—General

105 Certificate of chief executive officer 129
106 Value of former port authority property 130
107 Substitution of party to agreement 130
108 Former port authority instruments 131
109 Proceedings 131
110 Interests in land 131
111 Amendment of Register 132
112 Taxes 132
113 Evidence 132
114 Validity of things done under this Part 133

### Division 5—Rights as between transferees

115 Interim arrangements 134
116 Easements 135

## PART 9—STAFF OF PORT AUTHORITIES

117 Definitions 136
118 Rights of port authority staff 138
119 Superannuation—continuing membership 140
120 Superannuation—transfer to Local Authorities Superannuation Fund—designated port employees 142
121 Superannuation—change of employment—designated port employees 144
122 Superannuation—contributions—designated port employees 145
123 Superannuation—private sector employment—regional port employees 146
124 Taxes 148
125 Appropriation 148
## PART 11—ABOLITION OF PORT AUTHORITIES

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>153 Definitions</td>
<td>149</td>
</tr>
<tr>
<td>154 Transfer of property to SEC and abolition of port authorities</td>
<td>150</td>
</tr>
<tr>
<td>155 Substitution of party to agreement</td>
<td>150</td>
</tr>
<tr>
<td>156 Port authority instruments</td>
<td>150</td>
</tr>
<tr>
<td>157 Proceedings</td>
<td>151</td>
</tr>
<tr>
<td>158 Interests in land</td>
<td>151</td>
</tr>
<tr>
<td>159 Amendment of Register</td>
<td>151</td>
</tr>
<tr>
<td>160 Taxes</td>
<td>152</td>
</tr>
<tr>
<td>161 Evidence</td>
<td>152</td>
</tr>
</tbody>
</table>

## PART 12—TRANSITIONAL PROVISIONS—ESTABLISHMENT OF PORT OF MELBOURNE CORPORATION

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>162 Definitions</td>
<td>153</td>
</tr>
<tr>
<td>163 Transfer of property etc. from MPC to the new corporation</td>
<td>153</td>
</tr>
<tr>
<td>164 Staff to be transferred from the old corporation to the new corporation</td>
<td>154</td>
</tr>
</tbody>
</table>

## PART 13—TRANSITIONAL PROVISIONS—TRANSFER OF CERTAIN VCA FUNCTIONS ETC.

### Division 1—Definitions

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>165 Definitions</td>
<td>157</td>
</tr>
</tbody>
</table>

### Division 2—Allocation of property etc.

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>166 Treasurer may direct transfer of property etc.</td>
<td>158</td>
</tr>
<tr>
<td>167 Property transferred to the new corporation</td>
<td>159</td>
</tr>
<tr>
<td>168 Allocation of property etc. subject to encumbrances</td>
<td>160</td>
</tr>
<tr>
<td>169 Substitution of party to agreement</td>
<td>160</td>
</tr>
<tr>
<td>170 VCA instruments</td>
<td>160</td>
</tr>
<tr>
<td>171 Taxes</td>
<td>161</td>
</tr>
<tr>
<td>172 Validity of things done under this Part</td>
<td>161</td>
</tr>
<tr>
<td>173 Payments in respect of financial obligations of VCA</td>
<td>162</td>
</tr>
</tbody>
</table>

### Division 3—Staff and other matters

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>174 List of staff to be transferred from VCA to the new corporation</td>
<td>162</td>
</tr>
<tr>
<td>175 Terms of employment of staff transferred from VCA to the new corporation</td>
<td>163</td>
</tr>
<tr>
<td>176 Price determination</td>
<td>164</td>
</tr>
<tr>
<td>176A Saving of port of Melbourne waters</td>
<td>165</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>PART 14—TRANSITIONAL PROVISIONS—ESTABLISHMENT OF PORT OF HASTINGS CORPORATION</td>
<td>166</td>
</tr>
<tr>
<td>177 Definitions</td>
<td>166</td>
</tr>
<tr>
<td>178 Transfer of property etc. from HPHC to the new corporation</td>
<td>166</td>
</tr>
<tr>
<td>179 Staff to be transferred from the old corporation to the new corporation</td>
<td>167</td>
</tr>
<tr>
<td>PART 15—TRANSITIONAL PROVISIONS—ESTABLISHMENT OF VICTORIAN REGIONAL CHANNELS AUTHORITY</td>
<td>170</td>
</tr>
<tr>
<td>180 Definitions</td>
<td>170</td>
</tr>
<tr>
<td>181 Transfer of property etc. from VCA to the new corporation</td>
<td>170</td>
</tr>
<tr>
<td>182 Staff to be transferred from the old corporation to the new corporation</td>
<td>171</td>
</tr>
<tr>
<td>PART 16—OTHER SAVINGS AND TRANSITIONALS</td>
<td>174</td>
</tr>
<tr>
<td>183 Savings for existing local authorities</td>
<td>174</td>
</tr>
<tr>
<td>184 Provisions of Subordinate Legislation Act 1994 not to apply to certain ports regulations</td>
<td>175</td>
</tr>
<tr>
<td>184A Transitional provisions—2012 amendments</td>
<td>175</td>
</tr>
<tr>
<td>PART 17—STATION PIER—SAVINGS AND TRANSITIONAL</td>
<td>176</td>
</tr>
<tr>
<td>185 Definitions</td>
<td>176</td>
</tr>
<tr>
<td>186 Savings and transitional provisions for Station Pier</td>
<td>176</td>
</tr>
<tr>
<td>187 Transfer of property etc. from old body to Port of Melbourne Corporation</td>
<td>177</td>
</tr>
</tbody>
</table>

SCHEDULE 2                                                                 | 180  |
SCHEDULE 3—Table                                                          | 181  |

ENDNOTES                                                                 | 182  |
1. General Information                                                   | 182  |
2. Table of Amendments                                                   | 183  |
3. Explanatory Details                                                   | 189  |
Part 1—Preliminary

1 Purpose

The main purpose of this Act is—

(a) 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, repealed by No. 45/2010 s. 25.

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—

* * * * * * *

abandoned thing means a thing to which Division 4 of Part 5B applies;

cargo includes any substance or article and any container or other item used to contain any substance or article;
Port Management Act 1995
No. 82 of 1995
Part 1—Preliminary

**Central Plan Office** means the Central Plan Office of the Department of Transport, Planning and Local Infrastructure;

**channel** has the same meaning as it has in section 3(1) of the *Marine Safety Act 2010*;

**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*;
Port Management Act 1995
No. 82 of 1995
Part 1—Preliminary

(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 Safety Act 2010;

hazardous port activity means any activity involving the following—
(a) the transfer of dry or liquid cargoes to and from vessels or wharves;
(ab) the transfer of liquid fuel or other non-cargo liquids by flexible hose to and from vessels or wharves;
(b) hot works, being welding, thermal or oxygen cutting or heating or any other heat producing or spark producing activity;
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 Safety Act 2010;

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;
navigation aid has the same meaning as it has in section 3(1) of the Marine Safety Act 2010;

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;
police officer has the same meaning as in the Victoria Police Act 2013;

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 Development Authority 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 licence fee** means the fee payable by the Port of Melbourne Corporation under section 44H;

**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 Hastings* means port of Hastings land and port of Hastings waters;

*Port of Hastings Development Authority* has the same meaning as in the *Transport Integration Act 2010*;

*port of Hastings land* means land declared by Order in Council under section 5(1) of the *Port Management Act 1995* to be the port land of the port of Hastings;

*port of Hastings waters* means waters declared by Order in Council under section 5(2) of the *Port Management Act 1995* to be the port waters of the port of Hastings;

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

*Port of Melbourne Corporation* has the same meaning as it has in the *Transport Integration Act 2010*;
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 safety officer, in relation to the port of Melbourne, means a person appointed under section 230L of the Transport Act 1983;

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;

Quarter means a period of 3 months ending on 30 September, 31 December, 31 March or 30 June in any year;

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;
Secretary means the Department Head, within the meaning of the Public Administration Act 2004, of the Department of Transport, Planning and Local Infrastructure;

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 within the meaning of the Transport Integration Act 2010;

vessel has the same meaning as it has in section 3(1) of the Marine Safety Act 2010;
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—

(a) include an area of lands and waters or lands or waters in, or exclude an area of lands and waters or lands or waters from, that declaration; or

(b) correct any error in that description of the lands or waters.

(6) A port consists of the area or areas of lands and waters or lands or waters that are from time to time declared in relation to that port by Order of the Governor in Council under this section.

(7) An Order of the Governor in Council may describe an area of lands or waters by reference to any map or plan lodged in the Central Plan Office of the Department of Transport, Planning and Local Infrastructure.
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—PROVISIONS RELATING TO PORT CORPORATIONS

* * * * *

Pt 2 (Heading) substituted by No. 45/2010 s. 27.

Pt 2 Div. 1 (Heading) repealed by No. 45/2010 s. 28(1).

Pt 2 Div. 1 (Heading and ss 10–16) substituted as Pt 2 Div. 1 (Heading and ss 10–15) by No. 23/2003 s. 5.

Ss 10, 11 substituted by No. 23/2003 s. 5, repealed by No. 45/2010 s. 29(2).

S. 12 substituted by No. 23/2003 s. 5, amended by No. 23/2003 s. 19, repealed by No. 45/2010 s. 28(2).

S. 13 amended by No. 51/1996 ss 5(1), 10(2), substituted by No. 23/2003 s. 5, amended by Nos 23/2003 s. 20, 17/2009 s. 6, 6/2010 s. 203(1)(Sch. 6 item 36.2) (as amended by No. 45/2010 s. 22), repealed by No. 45/2010 s. 28(2).
16 Port of Melbourne Corporation—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.
17E Port operations

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

(2) The Port of Hastings Development Authority 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 Port of Hastings Development Authority 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 Development Authority 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).
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—
s. 24

(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.

* * * * * * *
Port Management Act 1995  
No. 82 of 1995  
Part 2—Provisions Relating to Port Corporations

* * * * *
S. 26  
amended by  
Nos 51/1996  
s. 7, 85/2003  
s. 28(c),  
repealed by  
No. 45/2010  
s. 33(2).

* * * * *
Ss 27–29  
repealed by  
No. 45/2010  
s. 33(2).

* * * * *
S. 30  
amended by  
No. 23/2003  
s. 6,  
repealed by  
No. 45/2010  
s. 33(2).

* * * * *
S. 31  
amended by  
Nos 44/2001  
s. 3(Sch.  
item 92.2),  
63/2007 s. 7,  
repealed by  
No. 45/2010  
s. 33(2).

* * * * *
Ss 32–37  
repealed by  
No. 45/2010  
s. 33(2).

* * * * *
S. 38  
amended by  
No. 23/2003  
s. 7,  
repealed by  
No. 45/2010  
s. 33(2).

* * * * *
Ss 39–44  
repealed by  
No. 45/2010  
s. 33(2).
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 Safety Act 2010 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;
(d) construct, demolish or substantially alter any structure in or on land;
(e) remove, decommission or make safe any existing facility.

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 221, 232, 233, 234, 235, 236, 237 and 238 of the Marine Safety Act 2010 apply as if a reference in those provisions to a harbour master were a reference to the local authority for the port.
PART 2B—PORT LICENCE FEE

44H Liability to pay port licence fee

The Port of Melbourne Corporation is liable to pay a port licence fee each financial year.

44I Amount of port licence fee

(1) The amount of the port licence fee payable in respect of the financial year commencing on 1 July 2012 is $75 million.

(2) The amount of the port licence fee payable in respect of each subsequent financial year is the amount calculated under section 44J.

44J Calculation of port licence fee

(1) For the purposes of section 44I(2), the amount is calculated in accordance with the formula—

\[
\frac{A \times B}{C}
\]

where—

A is the amount of the fee for the financial year immediately preceding the financial year in respect of which the fee is payable;

B is the sum of the consumer price index numbers for the consecutive reference periods in respect of the period commencing on 1 January and ending on the next following 31 December in the financial year 2 years earlier than the financial year in respect of which the fee is payable last.
(2) If it is necessary for the purposes of this section to calculate an amount that consists of or includes a fraction of a whole dollar, the amount is taken to be calculated in accordance with this section if the calculation is made to the nearest whole dollar.

(3) In this section—

consumer price index means the all groups consumer price index for Melbourne in original terms published by the Australian Bureau of Statistics.

44K Notice of port licence fee

(1) The Minister must cause a notice to be published in the Government Gazette specifying the amount of a port licence fee calculated in accordance with section 44J before the 1 June that immediately precedes the financial year to which the port licence fee relates.

(2) A failure to comply with subsection (1) in respect of a financial year does not affect the obligation of the Port of Melbourne Corporation under section 44H to pay the port licence fee for that year.
44L Method of payment of port licence fee

(1) The port licence fee for a financial year is payable by the Port of Melbourne Corporation in quarterly instalments.

(2) The Minister must issue a fee notice to the Port of Melbourne Corporation on or before the first day of a financial year specifying—

(a) the amount of the port licence fee payable in respect of that financial year; and

(b) the amount payable for each quarterly instalment and the dates on which payment is due.

(3) The Port of Melbourne Corporation must pay each instalment amount specified in the fee notice to the State within 30 days after the last day of the quarter to which the instalment relates.
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 in port of Melbourne waters, including the Shared Channels used by ships bound either for the port of Melbourne or for the port of Geelong;

(ii) the provision of berths, buoys or dolphins in connection with the berthing of vessels carrying container or motor vehicle cargoes in the port of Melbourne;

(iii) the provision of short term storage or cargo marshalling facilities in connection with the loading or unloading of vessels carrying container or motor vehicle cargoes at berths, buoys or dolphins in the port of Melbourne.

* * * * *


S. 49(c) amended by No. 63/2007 s. 8, substituted by No. 78/2011 s. 50.

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**.

(3) The Commission must not make a determination under this section in relation to prescribed services unless it has the approval of the Minister administering this Act to do so.

(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 object under section 141D of the **Transport Integration Act 2010** 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;
Part 3—Regulation of Port Services

(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.

(6) Without limiting subsection (4), the Commission may, when making a determination in relation to prescribed services in the port of Hastings, have regard to a related service required to meet the Port of Hastings Development Authority's object under section 141S of the Transport Integration Act 2010 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 Authority;

(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).

(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.

(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—

S. 56(7) amended by No. 62/2001 s. 86(1)(d) (3)(b).
S. 56(8) amended by No. 62/2001 s. 86(3)(c).
S. 56(9) amended by No. 62/2001 s. 86(1)(d).
S. 56(10) amended by No. 62/2001 s. 86(1)(h).
S. 57(1) amended by No. 62/2001 s. 86(1)(d).
S. 57(2) amended by No. 62/2001 s. 86(1)(d) (3)(d).
(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

(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 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.
Port Management Act 1995
No. 82 of 1995
Part 3—Regulation of Port Services

(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 Gazettal 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

(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.

63J Transfer of licence

(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.
PART 4—RESERVATION OF LAND

Division 1—Reservation of land for the purposes of the port of Melbourne

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—

(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.

Division 4—General

72 Registrar of Titles to amend records

(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
Port Management Act 1995
No. 82 of 1995
Part 4A—Regulation of Towage Services

(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
(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, Transport 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.

73O 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.
Part 4A—Regulation of Towage Services

Division 5—General matters

73P 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.

* * * * * *
PART 5—PORT FEES

74 Wharfage fees—Port of Melbourne

(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.

74A Wharfage fees—Port of Hastings

(1) Subject to this Part, the Port of Hastings Development Authority may determine a wharfage fee in respect of the provision of a site in the port of Hastings 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 Hastings Development Authority determines.
(4) A fee determined under subsection (1) is payable to the Port of Hastings Development Authority—

(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 Hastings Development Authority, 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, the Port of Hastings Development Authority, VRCA or the channel operator (as the case requires), or at such time, or on such terms, as the Port of Melbourne Corporation, the Port of Hastings Development Authority, 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, the Port of Hastings Development Authority, 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, the Port of Hastings Development Authority, 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.

* * * * *

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, the Port of Hastings Development Authority, 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, the Port of Hastings Development Authority, 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, the Port of Hastings Development Authority, VRCA or the channel operator may approve, and is to be in or for an amount determined by the Port of Melbourne Corporation, the Port of Hastings Development Authority, VRCA or the channel operator.

(3) The Port of Melbourne Corporation, the Port of Hastings Development Authority, 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, the Port of Hastings Development Authority, VRCA or the channel operator may require lodgement of further security.
(5) If at any time the Port of Melbourne Corporation, the Port of Hastings Development Authority, 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, the Port of Hastings Development Authority, 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 police officer, acting in the course of his or her duties as such a police officer; 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—

who is performing duties or functions under this Act, the Coastal Management Act 1995, the Conservation, Forests and Lands Act 1987, the Crown Land (Reserves) Act 1978, the Dangerous Goods Act 1985, the Emergency Management Act 1986 or the Emergency Management Act 2013, the Environment Protection Act 1970, the Fisheries Act 1995, the Flora and Fauna Guarantee Act 1988, the Land Act 1958, the Marine Safety Act 2010, the National Parks Act 1975, the Occupational...
Port Management Act 1995
No. 82 of 1995
Part 5A—Powers to Restrict Access to Areas

Health and Safety Act 2004, the
Parks Victoria Act 1998, the Planning
and 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 Division 3B of Part 6 of the
Transport Integration Act 2010;

_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; or

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

_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 port of Melbourne waters or 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.

(1A) The Minister, on the recommendation of the Port of Hastings Development Authority may declare that any part of port of Hastings land that is specified in the declaration (not being more than 12 square kilometres, in area) 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 Division 3B of Part 6 of the Transport Integration Act 2010, 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.

New s. 86 inserted by No. 63/2007 s. 14.

New s. 87 inserted by No. 63/2007 s. 14.
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.

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 Safety Act 2010, regulations made under this Act (other than in respect of this Part) or regulations made under the Marine Safety Act 2010.

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

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
Part 5A—Powers to Restrict Access to Areas

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 police officer—

(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 police officer, 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 police officer, committed an offence under this Part and that person is in charge of a vessel, the police officer 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.
Port Management Act 1995  
No. 82 of 1995  
Part 5A—Powers to Restrict Access to Areas

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 5B—Powers as to Certain Hazardous or Polluting Activities or Things

Division 1—Preliminary

88I Definitions

In this Part—

clean up has the same meaning as in the Environment Protection Act 1970;

pollute and polluted have the same meaning as in the Environment Protection Act 1970.

Division 2—Pollution abatement

88J Pollution abatement

Where—

(a) pollutants have been or are being discharged on port of Melbourne land or into port of Melbourne waters; or

(b) a condition of pollution is likely to arise on port of Melbourne land or in port of Melbourne waters; or

(c) any potentially hazardous substance appears to have been abandoned or dumped on port of Melbourne land or in port of Melbourne waters; or

(d) any potentially hazardous substance is being handled in a manner which is likely to cause an environmental hazard on port of Melbourne land or in port of Melbourne waters—

the Port of Melbourne Corporation may conduct a clean up or cause a clean up to be conducted as the Corporation considers necessary.
88K Recovery of costs of clean up

(1) If the Port of Melbourne Corporation conducts a clean up under section 88J, the Corporation may recover any reasonable costs incurred by the Corporation in conducting the clean up from the person who caused the circumstances that gave rise to the need for the clean up to be conducted.

(2) The costs that may be recovered under subsection (1) include labour, administrative and overhead costs, determined on such basis as the Corporation reasonably considers appropriate, incurred as a result of any action taken by the Corporation under subsection (1).

(3) An amount payable under subsection (1) may be recovered in any court of competent jurisdiction as a debt due to the Port of Melbourne Corporation.

88L Relationship with the Environment Protection Act 1970

These provisions do not apply in any situation in which the Authority (within the meaning of the Environment Protection Act 1970) is conducting a clean up under that Act.

Division 3—Hazardous port activities

88M Hazardous port activity notice

(1) A person who proposes to carry out a hazardous port activity in port of Melbourne waters or on port of Melbourne land, must give notice to the Port of Melbourne Corporation before doing so.

Penalty: 20 penalty units.

(2) A notice under subsection (1) must be given in accordance with the regulations.
88N Hazardous port activity direction

(1) If a port safety officer for the port of Melbourne is satisfied that a hazardous port activity is being carried out or is proposed to be carried out in port of Melbourne waters or on port of Melbourne land, the officer may give a direction in writing to the person who is carrying out or who proposes to carry out the activity.

(2) A direction under subsection (1) may—

(a) direct a person who is carrying out an activity to cease carrying out the activity; or

(b) direct a person within a specified area of the port to leave the area; or

(c) direct a person in the port to leave the port.

(3) A port safety officer for the port of Melbourne may, if it is reasonable to do so, give an oral direction about any matter on which a direction may be given under subsection (1) to any person who is carrying out or who proposes to carry out a hazardous port activity.

88O Offence not to comply with hazardous port activity direction

A person who has been given a hazardous port activity direction under section 88N must comply with that direction, unless that person has a reasonable excuse for not doing so.

Penalty: 60 penalty units.
Division 4—Abandoned or unclaimed goods or things

88P Offence to leave things in port waters or on port land

A person must not leave any thing unattended on port of Melbourne land or in port of Melbourne waters for more than one month without the permission of the Port of Melbourne Corporation.

Penalty: 60 penalty units.

88Q Removal of things

(1) Subject to subsection (2), the Port of Melbourne Corporation may move any thing or cause any thing to be moved from port of Melbourne waters or port of Melbourne land if—

(a) the thing has been left unattended on the waters or land for more than one month; and

(b) the identity or location of the owner of the thing cannot be established or the Port of Melbourne Corporation reasonably believes that the owner of the property will not move the property.

(2) The Port of Melbourne Corporation may immediately remove a thing from port of Melbourne waters or port of Melbourne land if—

(a) the Corporation is of the opinion that the thing has been left unattended in the port waters or on the port land and—

(i) is causing an impediment to the operations of the port; or

(ii) is causing an environmental hazard to the port; or

(iii) is a risk to the safety or security of the port or port operations; or

(iv) is a danger to public health; and
(b) the identity or location of the owner of the thing cannot be established or the Port of Melbourne Corporation reasonably believes that the owner of the property will not move the property.

88R Powers when moving things

(1) In the case of a vehicle or vessel, a person acting in accordance with section 88Q(1) or (2) may enter the vehicle or vessel using, if necessary, reasonable force, for the purpose of conveniently or expeditiously moving the vehicle or vessel.

(2) The Port of Melbourne Corporation when moving a thing under section 88Q(1) or (2) must move it to a place that the Corporation reasonably believes is the nearest safe and convenient place.

88S Requirement to make enquiries as to owner of thing

If the Port of Melbourne Corporation has moved a thing under section 88Q(1) or (2), the Corporation must make all reasonable enquiries to establish the identity or location of the owner of the property.

88T Disposal of thing

(1) If, after reasonable enquiries, the Port of Melbourne Corporation is unable to establish the identity or location of the owner of a thing that has been moved under section 88Q(1) or (2), the Corporation may dispose of the thing either by gift, sale or destruction of the thing or by otherwise dealing with the thing.

(2) The Port of Melbourne Corporation must not dispose of a thing under subsection (1) unless—

(a) the Corporation has given notice about the disposal of the thing in a newspaper circulating generally in Victoria and on its website; and
(b) 28 days have expired since the giving of the notice.

(3) The requirements of subsection (2) do not apply to the disposal of a thing that is perishable.

(4) If the Port of Melbourne Corporation establishes the identity or location of the owner of a thing that has been moved under section 88Q(1) or (2), the Corporation must give the owner notice in writing that the Corporation intends to dispose of the thing.

(5) If the Corporation gives notice in writing under subsection (4) to the owner and the owner of the thing does not recover the thing from the Corporation within 28 days the Corporation may dispose of the thing after the 28 days have expired, either by gift, sale or destruction of the thing or by otherwise dealing with the thing.

(6) The requirements of subsection (5) do not apply to the disposal of a thing that is perishable.

**88U Recovery of costs**

(1) If the Port of Melbourne Corporation has moved a thing under section 88Q(1) or (2), the Corporation may recover from the owner—

(a) the costs of the moving of the thing; and

(b) the costs of storing the thing; and

(c) if the thing has been disposed of, the costs of the disposal of the thing.

(2) An amount payable under subsection (1) may be recovered in any court of competent jurisdiction as a debt due to the Corporation.

(3) If the thing is disposed of, an amount that may be recovered under subsection (1) is to be paid out of the proceeds (if any) of the disposal.
88V Payment of compensation

(1) If the owner of a thing is unable to recover possession of the thing because the thing has been disposed of under this Division, the Port of Melbourne Corporation must pay to the owner and any other person with an interest in the thing an amount commensurate with the value of the person's interest in the thing less any amount payable under section 88U.

(2) An amount payable under subsection (1) is to be paid out of the proceeds (if any) of the disposal of the thing.

(3) A person with an interest in a thing that has been disposed of under this Division may make an application to the Magistrates' Court for an order that compensation be paid in accordance with subsection (2) and the Court may make either or both of the following orders, where appropriate—

(a) an order that compensation be paid to that person commensurate with the value of the person's interest in the thing;

(b) an order that the costs incurred by the Corporation in moving or disposing of the thing under this Division may be retained by the Corporation out of the proceeds of the sale of the thing.

(4) An application under subsection (3) must be made within 12 months of the date of the disposal of the thing.

(5) Section 73(2) of the Personal Property Securities Act 2009 of the Commonwealth applies to an interest arising out of the operation of this Division.
88W  Proceeds of disposal where owner not located

If a thing has been disposed of under section 88T(1) where neither the identity nor the location of the owner has been established—

(a) the Port of Melbourne Corporation may recover the costs of moving and disposal of the thing from the proceeds of that disposal; and

(b) if no claim has been made under section 88V within 12 months of the disposal of the thing, any proceeds from the disposal of the thing, after the recovery of any costs under paragraph (a), must be paid into the Consolidated Fund.
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(d)(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(d)(b), repealed by No. 9/2004 s. 28.

S. 87 amended by No. 77/2001 s. 32(d)(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 Chapter 6 of the Marine Safety Act 2010 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 Chapter 6 of the Marine Safety Act 2010 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 port of Hastings waters.
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 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.

(1AA) A port manager may prepare a safety management plan and an environment management plan under subsection (1) as a single plan.

(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.
91CA Safety and environment management planning objectives

The safety management and environment management planning objectives are—

(a) promoting improvements in safety and environmental outcomes at Victoria's ports; and

(b) promoting and facilitating the development, maintenance and implementation of systems that enable compliance with the various safety and environmental duties that apply to the operation of the port; and

(c) promoting an integrated and systematic approach to risk management in relation to the operation of the port.

91D Safety and environment management plans

(1) A safety management plan and an environment 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 safety or environmental hazards and risks (as the case requires) 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;
Port Management Act 1995  
No. 82 of 1995  
Part 6A—Port Management Plans  

s. 91D

(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;

(h) set out those measures (if any) that the port manager intends to implement to eliminate or reduce the safety and environmental risks and hazards (as the case requires) of the port;

(i) set out the key performance indicators through which the port manager can assess the extent to which the implementation of the management plan achieves the safety and environment management planning objectives set out in section 91CA.

(2) The safety management plan and the environment management plan for a port must be prepared 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) The safety management plan and the environment management plan for a port must be prepared in accordance with any Ministerial guidelines under section 91G.

* * * * *
91E Audits of compliance

(1) A safety management plan for a commercial trading port must be audited by a person who is approved by the Minister in accordance with subsection (5) to determine whether—

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

(b) the plan has been prepared in accordance with any Ministerial guidelines under section 91G; and

(c) the port manager is complying with the safety management plan for the port.

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

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

(b) the plan has been prepared in accordance with any Ministerial guidelines under section 91G; and

(c) the port manager is complying with the environment management plan for the port.

(3) A safety management plan for a local port must be audited by a person who is approved by the Minister in accordance with subsection (5) to determine whether—

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

(b) the plan has been prepared in accordance with any Ministerial guidelines under section 91G; and
(c) the port manager is complying with the safety management plan for the port.

(4) An environment management plan for a local port must be audited by a person who is approved by the Minister in accordance with subsection (5) or an environmental auditor appointed under section 53S of the Environment Protection Act 1970 to determine whether—

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

(b) the plan has been prepared in accordance with any Ministerial guidelines under section 91G; and

(c) the port manager is complying with the environment management plan for the port.

(5) After consulting the relevant Ministers, the Minister may approve a person to audit safety management plans for a commercial trading port or a local port, or an environment management plan for a local port, if the Minister is satisfied the person has the appropriate qualifications or experience in—

(a) for safety management plans, safety assessment or safety management to conduct the audits; or

(b) for environment management plans, environmental assessment or environmental management to conduct the audits.

91F When must an audit be conducted?

The port manager of a port must ensure that an audit under section 91E is conducted—

(a) within 6 months of the time fixed in a direction given to the port manager by the Minister under section 91H(1); or
Part 6A—Port Management Plans

Port Management Act 1995
No. 82 of 1995

(b) within 3 years after the previous audit was conducted.

91FA Reports on audits
A person who has audited a management plan under section 91E 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; and

(c) forward a copy of the report to any body that is prescribed in accordance with the regulations.

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;
(g) the form and content of reports under section 91HB;

(h) the date by which a report under section 91HB must be prepared.

(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.

(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) Subject to subsection (4A), the Minister may, 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 91E at other times to those required by section 91F if the Minister is of the opinion that the audit is necessary or appropriate.

(4A) The Minister must consult with the relevant Ministers before giving a direction to a port Manager under subsection (4) that a safety management plan or an environment management plan must be audited at a time that is earlier than otherwise required by section 91F.

(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 91E to make changes to the plan so that it continues to adequately provide for the matters required by section 91D(1).

91HA Publication of audit

(1) The Minister may, by notice in writing to a port manager, direct that the report of a person who has conducted an audit of a management plan must be published in accordance with the direction or any guidelines issued under section 91G.

(2) In requiring a port manager to publish a report under subsection (1), the Minister cannot require the port manager to publish any information that—
Port Management Act 1995
No. 82 of 1995
Part 6A—Port Management Plans

(a) is of a confidential or commercially sensitive nature; or
(b) relates to the personal affairs of any person (including a deceased person).

91HB Reporting

(1) The port manager must make an annual report to the Minister and any bodies that are prescribed by the regulations on the safety and environmental performance outcomes for the port.

(2) A report under this section must comply with any guidelines issued under section 91G.

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 Development Authority;

(ba) in the case of the port of Geelong, the VRCA;
(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.
PORT 7—GENERAL

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 Environment and Primary Industries, 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 Environment and Primary Industries, 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 Environment and Primary Industries, 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 Liability of officers of bodies corporate

(1) If a body corporate commits an offence against any of the following provisions, an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate—

(a) section 63A;
(b) section 73E(1);
(c) section 73O(3);
(d) section 88M(1);
(e) section 88O;
(f) section 91C(2);
(g) section 91C(3).

(2) An officer of a body corporate who is found guilty of an offence by force of subsection (1) is liable to a penalty not exceeding the maximum penalty for a natural person for the offence.

(3) In determining whether an officer of a body corporate failed to exercise due diligence, regard must be had to—

(a) the officer's knowledge about the matter concerned; and

(b) the extent of the officer's ability to make, or participate in the making of, decisions that affect the body corporate in relation to the matter concerned; and

(c) the actions taken (if any) by the officer to prevent the contravention by the body corporate; and

(d) any other relevant matter.

(4) An officer of a body corporate may commit an offence against a provision referred to in subsection (1) whether or not the body corporate is proceeded against or found guilty of an offence against that provision.

(5) In this section, officer—

(a) in relation to a body corporate that is a corporation as defined by section 9 of the Corporations Act, has the same meaning as
officer of a corporation has in section 9 of
that Act; or
(b) in relation to a body corporate which is not a
corporation as defined by section 9 of the
Corporations Act, means any person
(by whatever name called) who is concerned
in, or takes part in, the management of the
body corporate.

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.

97 Power to prosecute

Proceedings for an offence against Part 4A or Part 5B or regulations made under section 98(1)(cb), (cc) or (cd) may be brought by any person authorised in writing either generally or in a particular case by the Port of Melbourne Corporation.

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;
(cb) prohibition or regulation of the carrying out on port land or on vessels in port waters or elsewhere in port waters of hazardous port activities, including but not limited to—

(i) notification of any such hazardous port activities;

(ii) authorisation of the carrying out of any such hazardous port activities;

(iii) conditions to which such authorisations are subject and any other matters for or with respect to such authorisations;

(iv) recovery of costs associated with the regulation of the carrying out of such hazardous port activities and of any action required to be taken in relation to the carrying out of such hazardous port activities;

(v) forms and notices relating to the carrying out of such activities;

(cc) the moving of abandoned things;

(cd) procedures for dealing with abandoned things, including but not limited to—

(i) storage of abandoned things;

(ii) the nature of enquiries to be made as to the ownership of the things;
(iii) methods of collection of things by owners and notification of that method to owners;

(iv) methods of disposal for particular things;

(v) methods for recovery of costs of storage and disposal of things;

(vi) the keeping of registers of abandoned things;

(ce) prescribing bodies for the purposes of sections 91FA and 91HB;

(d) prescribing penalties not exceeding 20 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

(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;
**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;
(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—
Port Management Act 1995
No. 82 of 1995
Part 8—Transfer of Property by Port Authorities to Certain Port Corporations

(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.
Part 8—Transfer of Property by Port Authorities to Certain Port Corporations

(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.

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
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 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.
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 \textit{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.

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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
Part 12—Transitional Provisions—Establishment of Port of Melbourne Corporation

(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).
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.
(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 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

(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.
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.

Transitional provisions—2012 amendments

Despite the commencement of Part 2 of the Port Management Further Amendment Act 2012, the law as in force before that commencement continues to apply to any management plan in force immediately before that commencement.
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.
Sch. 1

amended by Nos 63/1997 s. 5(2),
43/1998 s. 47,
46/1998 s. 7(Sch. 1),
23/2003 s. 16,
85/2003 s. 26,
108/2004 s. 117(1)
(Sch. 3 item 159),
80/2006 s. 26(Sch.
item 85),
repealed by No. 45/2010 s. 41.
## SCHEDULE 2

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Situation and area of land</td>
<td>Crown Allotment 18, Section 12, City of Port Melbourne, Parish of Melbourne South, 6.867 hectares</td>
</tr>
<tr>
<td>Instrument and date of reservation</td>
<td>Order in Council dated 8 May 2001</td>
</tr>
<tr>
<td>Purpose of reservation</td>
<td>Public purposes</td>
</tr>
<tr>
<td>Extent of reservation</td>
<td>All of the land</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</td>
<td>Lease of land dated 20 May 2003</td>
</tr>
<tr>
<td>TT-Line Company Pty Ltd (ACN 061 996 174)</td>
<td>in the Central Plan Office</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</td>
<td>Variation of berthing licence dated 20 May 2003</td>
</tr>
<tr>
<td>TT-Line Company Pty Ltd (ACN 061 996 174)</td>
<td>in the Central Plan Office</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</td>
<td>Variation of car parking licence dated 20 May 2003</td>
</tr>
<tr>
<td>TT-Line Company Pty Ltd (ACN 061 996 174)</td>
<td>in the Central Plan Office</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</td>
<td>Lease dated 24 December 2004</td>
</tr>
<tr>
<td>Heavenly Pier Pty Ltd (ACN 095 763 330)</td>
<td>in the Central Plan Office</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</td>
<td>Renewal of licence to occupy land dated 14 February 2002</td>
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<tr>
<td>Incorporated</td>
<td>in the Central Plan Office</td>
<td></td>
</tr>
<tr>
<td>Delicarts Australia</td>
<td>Part of the land described in the plan numbered OP 119746—A and lodged</td>
<td></td>
</tr>
<tr>
<td></td>
<td>in the Central Plan Office</td>
<td></td>
</tr>
</tbody>
</table>
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:


Endnotes
2. Table of Amendments

This Version incorporates amendments made to the Port Management 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 Management 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 Management 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 Management 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 Management 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 Management Act 1995
Endnotes

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 Management 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 Management 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 Management 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 Management 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 Management 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 Management 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, 12, 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 Management Act 1995

Assent Date: 11.5.04
Commencement Date: S. 30 on 12.5.04: s. 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 Management Act 1995

Authorised by the Chief Parliamentary Counsel
184
Port Management Act 1995
No. 82 of 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 Management 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 Management 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 Management 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 Management Act 1995

Assent Date: 10.10.06
Commencement Date: S. 20(Sch. item 85) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the Port Management 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 Management 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 Management Act 1995

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 Management Act 1995
Port Management Act 1995
No. 82 of 1995

Endnotes

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 Management 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; ss 10, 12–14 on 1.11.10: Government Gazette 21.10.10 p. 2531
Current State: This information relates only to the provision/s amending the Port Management Act 1995

Transport Integration Act 2010, No. 6/2010 (as amended by No. 45/2010)
Assent Date: 2.3.10
Commencement Date: Ss 24(5)(Sch. 1 item 10), 203(1)(Sch. 6 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 Management Act 1995

Transport Legislation Amendment (Ports Integration) Act 2010, No. 45/2010
Assent Date: 17.8.10
Commencement Date: Ss 24–41 on 1.9.10: Special Gazette (No. 337) 24.8.10 p. 1
Current State: This information relates only to the provision/s amending the Port Management Act 1995

Marine Safety Act 2010, No. 65/2010 (as amended by No. 78/2011)
Assent Date: 28.9.10
Commencement Date: Ss 418, 419 on 1.7.12: s. 2(2)
Current State: This information relates only to the provision/s amending the Port Management Act 1995

Personal Property Securities (Statute Law Revision and Implementation) Act 2010, No. 74/2010
Assent Date: 19.10.10
Commencement Date: S. 35 on 30.1.12: Special Gazette (No. 423) 21.12.11 p. 3
Current State: This information relates only to the provision/s amending the Port Management Act 1995

Assent Date: 23.8.11
Commencement Date: Ss 22–34 on 1.1.12: s. 2(2)
Current State: This information relates only to the provision/s amending the Port Management Act 1995
Port Management Act 1995
No. 82 of 1995

Transport Legislation Amendment (Marine Safety and Other Amendments) Act 2011, No. 78/2011

Assent Date: 13.12.11
Commencement Date: Ss 50–53 on 1.1.12: Special Gazette (No. 423)
Current State: This information relates only to the provision/s amending the Port Management Act 1995

Port Management Amendment (Port of Melbourne Corporation Licence Fee) Act 2012, No. 8/2012

Assent Date: 6.3.12
Commencement Date: Ss 4, 5 on 1.7.12: s. 2(2)
Current State: All of Act in operation

Australian Consumer Law and Fair Trading Act 2012, No. 21/2012

Assent Date: 8.5.12
Commencement Date: S. 239(Sch. 6 item 35) on 1.7.12: Special Gazette (No. 214) 28.6.12 p. 1
Current State: This information relates only to the provision/s amending the Port Management Act 1995

Port Management Further Amendment Act 2012, No. 54/2012

Assent Date: 18.9.12
Commencement Date: Ss 4–17 on 14.11.12: Special Gazette (No. 373)
Current State: This information relates only to the provision/s amending the Port Management Act 1995

Transport Legislation Amendment (Marine Drug and Alcohol Standards Modernisation and Other Matters) Act 2012, No. 66/2012

Assent Date: 7.11.12
Commencement Date: S. 28 on 1.12.12: Special Gazette (No. 373)
Current State: This information relates only to the provision/s amending the Port Management Act 1995

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13
Commencement Date: S. 4(Sch. 2 item 38) on 1.12.13: s. 2(1)
Current State: This information relates only to the provision/s amending the Port Management Act 1995

Emergency Management Act 2013, No. 73/2013

Assent Date: 3.12.13
Commencement Date: S. 99 on 1.7.14: Special Gazette (No. 148) 13.5.14 p. 1
Current State: This information relates only to the provision/s amending the Port Management Act 1995
Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 128) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the Port Management Act 1995

Treasury Legislation and Other Acts Amendment Act 2014, No. 44/2014

Assent Date: 27.6.14
Commencement Date: S. 33(Sch. item 21) on 30.6.14: s. 2(5)
Current State: This information relates only to the provision/s amending the Port Management Act 1995
3. **Explanatory Details**

1 S. 62(5) (*repealed*): The amendment proposed by section 239(Schedule 6 item 35) of the *Australian Consumer Law and Fair Trading Act 2012*, No. 21/2012 is not included in this publication due to the earlier repeal of section 62 by section 52 of the *Transport Legislation Amendment (Marine Safety and Other Amendments) Act 2011*, No. 78/2011.

Schedule 6 item 35 reads as follows:

**35 Port Management Act 1995**