

Ports Acts (Amendment) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 9 November 1994

(Brought in by Mr Stockdale and Mr Smith (Polwarth))

A BILL

to amend the **Port of Melbourne Authority Act 1958**, the **Port of Geelong Authority Act 1958**, the **Port of Portland Authority Act 1958**, the **Crown Land (Reserves) Act 1978** and the **Marine Act 1988** and for other purposes.

Ports Acts (Amendment) Act 1994

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

5 The purpose of this Act is to provide for certain reforms of Victoria's ports, to introduce competition in the provision of port services and to make fresh provision for the management of the smaller ports.

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

2. Commencement

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed. 5
- (3) If a provision referred to in sub-section (2) does not come into operation before 1 January 1995, it comes into operation on that day.

**PART 2—AMENDMENT OF CROWN LAND (RESERVES)
ACT 1978**

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3. Amendment of section 3

In section 3 of the **Crown Land (Reserves) Act 1978**, after the definition of “Chief Administrator” insert—

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“**designated port**” has the same meaning as in Part 10 of the **Marine Act 1988**;”.

4. Amendment of section 4

- (1) In section 4 (1) (a) of the **Crown Land (Reserves) Act 1978**, for “Quays” substitute “Ports, quays”. 20
- (2) In section 4 of the **Crown Land (Reserves) Act 1978**, after sub-section (3) insert—
 - “(3A) Before any land within a designated port is temporarily or permanently reserved under sub-section (1), the Minister must consult with the Minister administering the **Marine Act 1988**.”. 25

PART 3—AMENDMENT OF MARINE ACT 1988

5. Amendment of heading to Part 10

In the heading to Part 10 of the **Marine Act 1988**, for “PORT AUTHORITIES” substitute “PORTS”. 30

6. *New Division 1 inserted in Part 10*

In Part 10 of the **Marine Act 1958**, after the heading to that Part insert—

‘Division 1—Designated Ports

5 **111. *Declaration of designated ports***

10 (1) The Governor in Council may, by Order published in the Government Gazette, declare any lands or waters to be a designated port for the purposes of this Act, other than any lands or waters that are part or all of—

15 (a) the port within the meaning of the **Port of Melbourne Authority Act 1958**; or

20 (b) the port within the meaning of the **Port of Geelong Authority Act 1958**; or

25 (c) the port within the meaning of the **Port of Portland Authority Act 1958**; or

30 (d) the lands and waters that, as at the commencement of section 6 of the **Ports Acts (Amendment) Act 1994**, were the Port of Hastings in accordance with section 3AA of the **Port of Melbourne Authority Act 1958**.

(2) An Order in Council must contain a description of the designated port that is sufficient to identify it and to define its boundaries.

112. *Functions and powers of local authorities*

(1) In this section—

“associated port functions and powers” means functions and powers of a kind that the Port of Melbourne Authority has and may exercise in relation to the port within the meaning of the **Port of Melbourne Authority Act 1958**;

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“local authority” means a person or body—

(a) that is declared by Order under section 3 (3) (b) to be a local authority in respect of State waters that are within a designated port; and

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(b) that is a committee of management of Crown land within the designated port.

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(2) The Minister may, in the Order under section 3 (3) (b) or in another Order published in the Government Gazette, specify any of the associated port functions and powers as functions and powers that the local authority has and may exercise in relation to the designated port, with any modifications that are necessary because of the geography of the designated port.

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(3) The associated port functions and powers conferred on a local authority by Order referred to in sub-section (2) are in addition to all other functions and powers of the local authority and it may exercise them accordingly.

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(4) A local authority may, by instrument, delegate to a person approved by the Minister any function or power of the local authority under this section, other than this power of delegation.’

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**PART 4—AMENDMENT OF PORT OF MELBOURNE
AUTHORITY ACT 1958**

7. Definition of “the port”

5 In the definition of “the port” in section 3 of the **Port of Melbourne Authority Act 1958**, in paragraph (b) for “section forty-five A of this Act to be part of the port” substitute —

“section 45A to be part of the port—

10 but does not include any land which is excised from the port by Order in Council under section 46.”.

N . 6312.
Reprinted to
No. 49/1992.
Subsequently
amended by
Nos 99/1993,
130/1993,
31/1994 and
53/1994.

8. New section 25 inserted

After section 24 of the **Port of Melbourne Authority Act 1958** insert—

15 **“25. Application of certain provisions of the State Owned Enterprises Act 1992**

Sections 41, 42, 43, 44, 53, 54 and 55 of the **State Owned Enterprises Act 1992** (with any necessary modifications) apply to the Authority as if in those sections—

20 (a) a reference to a State business corporation or a corporation were a reference to the Authority;

25 (b) a reference to the board of directors or board were a reference to the members of the Authority whether appointed under this Act or under section 8 of the **State Owned Enterprises Act 1992**;

30 (c) a reference to the relevant Minister were a reference to the Minister administering this Act.”.

9. *New section 46 inserted*

After section 45A of the **Port of Melbourne Authority Act 1958** insert—

“46. *Power to excise land from the port*

The Governor in Council, by Order published in the Government Gazette, may excise from the port any land specified in the Order.” 5

10. *Amendment of section 47*

In section 47 of the **Port of Melbourne Authority Act 1958**, for “Except as” substitute “Subject to any directions given by the Minister under section 47A and except as otherwise”. 10

11. *New section 47A inserted*

After section 47 of the **Port of Melbourne Authority Act 1958** insert— 15

“47A. *Directions by Minister*

(1) The Minister may give written directions to the Authority in relation to any matter the exclusive management and control of which is by section 47 declared to be vested in the Authority that, in the opinion of the Minister, are necessary or desirable— 20

(a) to promote effective competition with respect to the provision within the port by persons other than the Authority of services specified in the directions; or 25

(b) to ensure access to the port by persons other than the Authority for the purpose of providing services specified in the directions. 30

(2) Despite anything to the contrary in this Act, the Authority may do all things necessary to comply with, and must comply with, a direction under sub-section (1).

(3) If a direction under sub-section (1) is inconsistent with a provision of this or any other Act conferring a function, power or duty on the Authority, the direction prevails.”.

12. Amendment of section 50

(1) In section 50 (2) of the **Port of Melbourne Authority Act 1958** after “vested in” (where 3 times occurring) **insert** “or acquired by or that belongs to”.

(2) In section 50 (5) of the **Port of Melbourne Authority Act 1958**, after “section” (where first occurring) **insert** “or the transfer, sale or surrender under any other Act of any land that is vested in or acquired by or that belongs to the Authority”.

13. New sections 106C and 106D inserted

After section 106B of the **Port of Melbourne Authority Act 1958 insert—**

“106c. Provision of port services in other ports

(1) The Governor in Council, by Order published in the Government Gazette, may declare any specified service provided by the Authority to be a prescribed port service.

(2) Despite anything to the contrary in this or any other Act, the Authority may provide any prescribed port service in or in relation to—

- (a) the port within the meaning of the **Port of Geelong Authority Act 1958**; or
- (b) the port within the meaning of the **Port of Portland Authority Act 1958**; or
- (c) a designated port within the meaning of Part 10 of the **Marine Act 1988**.

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106d. Annual report to include copy of direction

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The Authority must, in its annual report under Part 7 of the **Financial Management Act 1994** for a financial year, include a copy of each direction given to it during that year under section 47A”.

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**PART 5—AMENDMENT OF PORT OF GEELONG
AUTHORITY ACT 1958**

14. Definition of “the port”

In the definition of “the port” in section 3 of the **Port of Geelong Authority Act 1958**, in paragraph (c), for “Fourth Schedule;” substitute—

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“Fourth Schedule—

but does not include any land which is excised from the port by Order in Council under section 21B.”.

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15. Amendment of section 6

In section 6 (1) of the **Port of Geelong Authority Act 1958**, after “Act” insert “and to any directions given by the Minister under section 6A”.

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16. New section 6A inserted

After section 6 of the **Port of Geelong Authority Act 1958** insert—

“6A. Directions by Minister

5 (1) The Minister may give written directions
to the Authority in relation to any matter
the exclusive management and control of
10 which is by section 6 (1) declared to be
vested in the Authority that, in the
opinion of the Minister, are necessary or
desirable—

15 (a) to promote effective competition
with respect to the provision within
the port by persons other than the
Authority of services specified in
the directions; or

20 (b) to ensure access to the port by
persons other than the Authority for
the purpose of providing services
specified in the directions.

25 (2) Despite anything to the contrary in this
Act, the Authority may do all things
necessary to comply with, and must
comply with, a direction under
sub-section (1) .

30 (3) If a direction under sub-section (1) is
inconsistent with a provision of this or
any other Act conferring a function,
power or duty on the Authority, the
direction prevails.”.

17. New section 11 inserted

After section 10 of the **Port of Geelong Authority Act 1958** insert—

“11. Application of certain provisions of the State Owned Enterprises Act 1992

Sections 41, 42, 43, 44, 53, 54 and 55 of the **State Owned Enterprises Act 1992** (with any necessary modifications) apply to the Authority as if in those sections— 5

(a) a reference to a State business corporation or a corporation were a reference to the Authority;

(b) a reference to the board of directors or board were a reference to the Commissioners of the Authority whether appointed under this Act or under section 8 of the **State Owned Enterprises Act 1992**; 10 15

(c) a reference to the relevant Minister were a reference to the Minister administering this Act.”.

18. New section 21B inserted

After section 21A of the **Port of Geelong Authority Act 1958** insert— 20

“21B. Power to excise land from the port

The Governor in Council, by Order published in the Government Gazette, may excise from the port any land specified in the Order.”. 25

19. Amendment of section 24

(1) In section 24 (2) of the **Port of Geelong Authority Act 1958** after “vested in” (where 3 times occurring) insert “or acquired by or that belongs to”. 30

(2) In section 24 of the **Port of Geelong Authority Act 1958**, after sub-section (4) insert—

“(5) On the sale of any land under this section or the transfer, sale or surrender under any other Act of

any land that is vested in or acquired by or that belongs to the Authority, that land is no longer subject to any trust referred to in section 21.”.

20. *New section 75B and 75C inserted*

5 **After section 75A of the Port of Geelong Authority Act 1958 insert—**

“75B. Provision of port services in other ports

- 10 (1) The Governor in Council, by Order published in the Government Gazette, may declare any specified service provided by the Authority to be a prescribed port service.
- 15 (2) Despite anything to the contrary in this or any other Act, the Authority may provide any prescribed port service in or in relation to—
- 20 (a) the port within the meaning of the **Port of Melbourne Authority Act 1958**; or
- (b) the port within the meaning of the **Port of Portland Authority Act 1958**; or
- (c) a designated port within the meaning of Part 10 of the **Marine Act 1988**.

25 ***75C. Annual report to include copy of direction***

 The Authority must, in its annual report under Part 7 of the **Financial Management Act 1994** for a financial year, include a copy of each direction given to it during that year under section 6A.”.

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**PART 6—AMENDMENT OF PORT OF PORTLAND
AUTHORITY ACT 1958**

No. 6340.
Reprinted t
N . 18/1989.
Subsequently
amended by
Nos 18/1994
and 31/1994.

21. *Definition of “port”*

In the definition of “port” in section 3 (1) of the Port of **Portland Authority Act 1958** after “Schedule” insert “but does not include any land which is excised from the port by Order in Council under section 15A.”.

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22. *New section 10A inserted*

After section 10 of the **Port of Portland Authority Act 1958** insert—

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“10A. *Application of certain provisions of the State Owned Enterprises Act 1992*

Sections 41, 42, 43, 44, 53, 54 and 55 of the **State Owned Enterprises Act 1992** (with any necessary modifications) apply to the Authority as if in those sections—

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(a) a reference to a State business corporation or a corporation were a reference to the Authority;

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(b) a reference to the board of directors or board were a reference to the Commissioners of the Authority whether appointed under this Act or under section 8 of the **State Owned Enterprises Act 1992**;

25

(c) a reference to the relevant Minister were a reference to the Minister administering this Act.”.

23. *New section 15A inserted*

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After section 15 of the **Port of Portland Authority Act 1958** insert—

“15A. Power to excise land from port

The Governor in Council, by Order published in the Government Gazette, may excise from the port any land specified in the Order.”.

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24. Amendment of section 17A

(1) In section 17A (2) of the **Port of Portland Authority Act 1958** after “vested in” (where 3 times occurring) insert “or acquired by or that belongs to”.

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(2) In section 17A of the **Port of Portland Authority Act 1958**, after sub-section (4) insert—

“(5) On the sale of any land under this section or the transfer, sale or surrender under any other Act of any land that is vested in or acquired by or that belongs to the Authority, that land is no longer subject to any trust referred to in section 15.”.

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25. Amendment of section 21

In section 21 (1) of the **Port of Portland Authority Act 1958**, after “Act” insert “and to any directions given by the Minister under section 21AA”.

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26. New section 21AA inserted

After section 21 of the **Port of Portland Authority Act 1958** insert—

“21AA. Directions by Minister

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(1) The Minister may give written directions to the Authority in relation to any matter the exclusive management and control of which is by section 21 (1) declared to be vested in the Authority that, in the opinion of the Minister, are necessary or desirable—

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- (a) to promote effective competition with respect to the provision within the port by persons other than the Authority of services specified in the directions; or 5
- (b) to ensure access to the port by persons other than the Authority for the purpose of providing services specified in the directions.
- (2) Despite anything to the contrary in this Act, the Authority may do all things necessary to comply with, and must comply with, a direction under sub-section (1) . 10
- (3) If a direction under sub-section (1) is inconsistent with a provision of this or any other Act conferring a function, power or duty on the Authority, the direction prevails.”. 15
- 27. New sections 26B and 26C inserted** 20
- After section 26A of the **Port of Portland Authority Act 1958** insert—
- “26B. Provision of port services in other ports**
- (1) The Governor in Council, by Order published in the Government Gazette, may declare any specified service provided by the Authority to be a prescribed port service. 25
- (2) Despite anything to the contrary in this or any other Act, the Authority may provide any prescribed port service in or in relation to— 30
- (a) the port within the meaning of the **Port of Melbourne Authority Act 1958**; or 35

- 5
- (b) the port within the meaning of the **Port of Geelong Authority Act 1958**; or
 - (c) a designated port within the meaning of Part 10 of the **Marine Act 1988**.

26C. Annual report to include copy of direction

10 The Authority must, in its annual report under Part 7 of the **Financial Management Act 1994** for a financial year, include a copy of each direction given to it during that year under section 21AA.”.

