

# **Transport (Victorian Ports Authority) Bill**

## **EXPLANATORY MEMORANDUM**

The primary purpose of the Bill is to co-ordinate port planning, development and operations on an integrated State-wide basis by amending the *Transport Act 1983* and the *Marine Act 1958* to provide for—

- the establishment of a Victorian Ports Authority
- the abolition of the Port of Melbourne Authority, the Port of Geelong Authority and the Port of Portland Authority
- the reconstitution of The Marine Board of Victoria
- the establishment of Local Boards to operate the Ports of Melbourne, Geelong and Portland.

The Victorian Ports Authority will be the fifth Authority established under the *Transport Act 1983* and will combine the present functions of the Port of Melbourne Authority, Port of Geelong Authority and Port of Portland Authority as well as functions relating to the remaining 13 proclaimed ports of Victoria.

### **PART I.—PRELIMINARY**

*Clause 1* provides for the short title.

*Clause 2* provides for the Bill to come into operation on days to be proclaimed.

*Clause 3* provides for the *Transport Act 1983* to be the Principal Act for the purposes of the Bill.

*Clause 4* contains the usual provisions as to repeals and savings.

*Clause 5* sets out interpretations of a number of terms used in the Bill.

### **PART II.—AMENDMENTS OF THE TRANSPORT ACT 1983**

*Clause 6* amends section 2 (1) of the Principal Act by inserting interpretations of a number of terms.

*Clause 7* inserts new sections 20A and 20B in the Principal Act.

Section 20A establishes a Victorian Ports Authority with the membership as set out in sub-section (2).

Sub-sections (3) and (4) provide for vacancies in the office of a particular member.

Section 20B provides for the area of operation of the Victorian Ports Authority.

Sub-section (2) sets out the various functions of the Authority.

Sub-section (3) provides for the Authority to have regard to the achievement of the various objects set out in the sub-section, in the exercise of its functions.

*Clause 8* inserts new sections 35A–35E in the Principal Act.

Section 35A

Sub-section (1) establishes a Port of Melbourne Local Board.

Sub-section (2) sets out the membership of that Board.

Section 35B

Sub-section (1) establishes a Port of Geelong Local Board.

Sub-section (2) sets out the membership of that Board.

### Section 35C

Sub-section (1) establishes a Port of Portland Local Board.

Sub-section (2) sets out the membership of that Board.

Section 35D provides for the Minister at any time to establish other Local Boards and also provides for giving notice of the establishment of Boards, the dissolution of Boards and the appointment of members to Boards.

### Section 35E

Sub-section (1) provides that a Local Board may regulate its own procedure.

Sub-section (2) provides for a Local Board to be responsible to the Victorian Ports Authority.

Sub-section (3) provides for a Local Board to submit budget proposals to the Victorian Ports Authority.

Sub-sections (4), (5) and (6) provide for the determination of the scope of responsibility of a Local Board.

Sub-sections (7) and (8) provide for the filling of vacancies in the office of a member of a Local Board.

Sub-section (9) provides for the appointment of the Chairman of Local Boards.

*Clause 9* makes a consequential amendment to section 37 of the Principal Act.

*Clause 10* inserts a new section 41A in the Principal Act.

### Section 41A

Sub-section (1) provides that Schedule 4A shall apply to the Victorian Ports Authority.

Sub-section (2) provides for the manner in which the Victorian Ports Authority is to exercise its powers.

*Clause 11* amends the interpretation of “Lands” in section 42 (2) (a) of the Principal Act.

*Clause 12* inserts a new section 44A in the Principal Act.

### Section 44A

Sub-section (1) provides for the Victorian Ports Authority to have power to resume possession of land the subject of a lease or licence.

Sub-section (2) sets out the circumstances in which the Authority may institute an action for the recovery of land.

Sub-section (3) provides for payment of compensation by the Authority when a person has been dispossessed.

*Clause 13* inserts a new section 46A in the Principal Act providing for the Governor in Council to vest land in the Victorian Ports Authority.

*Clause 14* inserts a new section 47A in the Principal Act.

### Section 47A

Sub-section (1) provides for the sale by the Victorian Ports Authority of any Crown land vested in the Authority.

Sub-section (2) provides for the terms and conditions on which such land may be sold.

Sub-sections (3)–(8) provide for the issue and subsequent operation of Crown grants where Crown land has been sold by the Authority, the variation or revocation of conditions of Crown grants, and a definition of the term “development”.

*Clause 15* inserts a new section 51A in the Principal Act which provides for interest to be payable on money overdue to an Authority.

*Clause 16* inserts a new section 54A in the Principal Act which provides for lands of the Victorian Ports Authority to be severed from the relevant municipal districts and to be exempt from municipal rates or taxes, except where there are tenements erected on the lands which are occupied for private purposes by persons other than the Authority.

*Clause 17* inserts a new section 55A in the Principal Act which provides for Schedule 5A to have effect with respect to ports and coastal waters.

*Clause 18* amends section 56 of the Principal Act by inserting new sub-sections (2A), (5A) and (5B) and amending sub-section (3).

Sub-section (2A) provides for regulatory powers of the Governor in Council in relation to port and maritime matters.

Sub-sections (5A) and (5B) provide for the penalties which may be imposed by regulations made under sub-section (2A).

Sub-section (3) is amended to allow the regulations to apply, adopt or incorporate the provisions of documents other than Acts and regulations.

*Clause 19* amends section 66 (4) of the Principal Act to exclude the Victorian Ports Authority from the requirement to pay money into the Works and Services Account.

*Clause 20* amends section 76 (1) of the Principal Act to make it clear that the sub-section extends to overdraft of current account.

*Clause 21* amends certain interpretations contained in section 208 of the Principal Act to enable the provisions of sections 209 and 210 relating to parking infringements to apply to parking areas provided by the Victorian Ports Authority.

*Clause 22* inserts a new section 218A in the Principal Act.

#### Section 218A

Sub-sections (1) and (2) provide that an officer of the Victorian Ports Authority or other person appointed by the Managing Director of the Authority for the purpose may stop and search any vehicle on land or premises of the Authority and require production of consignment notes and other relevant documents.

Sub-section (3) makes it an offence and provides a penalty of 30 penalty units for a person to fail to stop, to refuse to submit to inspection, to refuse to produce documents when so requested by an authorized officer, or to wilfully obstruct that officer or to forge or counterfeit an authority.

*Clause 23* amends section 219 of the Principal Act to empower an officer or agent of the Victorian Ports Authority to arrest a person who is believed to have committed an offence against the Act or regulations and whose name and address are unknown and give that offender in charge to a member of the police force.

*Clause 24* amends section 220 of the Principal Act to empower an officer or agent of the Victorian Ports Authority to remove an offender endangering or annoying the public or hindering an officer in his duty.

*Clause 25* amends section 225 (a) of the Principal Act to make it an offence to hinder an officer or agent of the Victorian Ports Authority in the execution of duties.

*Clause 26* inserts a new section 229A in the Principal Act providing for the responsibility of the master for the acts of persons on board vessels.

*Clause 27* inserts a new section 230A in the Principal Act.

Section 230A sets out a number of evidentiary provisions relating to the ownership of goods or property in proceedings for the prosecution of an offence in connexion with goods

or property in or on any building, wharf, land or premises of the Victorian Ports Authority and as to when a vessel shall be taken to be within the provisions of the Principal Act or regulations.

*Clause 28* amends section 250 of the Principal Act to make provision for the service of documents on natural persons on board any vessel or who own, occupy or hold a licence in respect of any property or thing including any wharf, structure, mooring, chain or obstruction.

*Clause 29* amends section 251 of the Principal Act to provide for the service of documents on corporations which own occupy or hold a licence in respect of any property or thing including any wharf, structure, mooring, chain or obstruction.

*Clause 30* inserts a new section 251A in the Principal Act providing for the service of informations on owners and masters of vessels.

*Clause 31* inserts a new section 252A in the Principal Act making provision for the method of ascertaining the amount of or enforcing the payment of any damages, costs, charges or expenses under the Principal Act or regulations where this is not otherwise provided for.

*Clause 32* amends section 256 of the Principal Act to enable regulations to be made with respect to the election of officers as members of Local Boards and to the appointment of members to Local Boards.

*Clause 33* amends Schedule 1 to the Principal Act to make provision for the courts to take judicial notice of the common seals of the Authorities or the Victoria Transport Borrowing Agency established under the Principal Act and to make provision for the appointment and removal of a Managing Director of an Authority and for the appointment of an acting Managing Director.

*Clause 34* inserts a new Schedule 4A in the Principal Act providing for further particular powers of the Victorian Ports Authority.

#### **SCHEDULE 4A**

*Clause 1* provides for the Authority to manage and control exclusively the land and waters vested in, belonging to or otherwise under the management and control of the Authority.

*Clause 2* makes provision for the Authority to license persons or vessels in respect to any business or transaction in or on land or waters of the Authority and to fix licence fees and charges associated with the business or transaction.

*Clause 3* provides for the Authority to fix charges for certain purposes.

*Clause 4* provides for the Authority to dispose of, use or deposit in a port, material raised or excavated by the Authority.

*Clause 5* provides for the installation, maintenance or removal of survey marks, buoys, beacons and other navigational aids.

*Clause 6* provides for the Authority to purchase, provide and maintain rescue apparatus.

*Clause 7* makes provision for the Authority to accept and enforce certain undertakings or other securities.

*Clause 8* makes provision for works to protect the banks of the River Yarra Yarra and the Maribyrnong River from the action of wash.

*Clause 9* provides for the Authority to construct and maintain drainage works in relation to the River Yarra Yarra and the Maribyrnong River.

*Clause 35* amends Schedule 5 of the Principal Act by inserting new clauses 28–30 to make provision for the Victorian Ports Authority to proclaim land vested in it as a public highway, the construction of roads by the Authority and the declaration of new roads.

*Clause 36* inserts a new Schedule 5A in the Principal Act containing certain provisions with respect to ports and coastal waters.

#### **SCHEDULE 5A**

*Clause 1* makes provision for the Authority to declare certain lands or waters to be part of a port.

*Clause 2* provides for the keeping of plans of lands of the Authority.

*Clause 3* provides for the Authority to collect tolls, rates and charges.

*Clause 4* provides for the Authority to collect conservancy charges.

*Clause 5* contains provisions relating to the ascertainment of the tonnage of vessels.

*Clause 6* provides for the detention of vessels for non-payment of tolls, rates or charges.

*Clause 7* makes provision for the Authority to sell goods to pay tolls, rates or charges.

*Clause 8* makes provision for sums ordered to be paid to the Authority to be leviable by distress on a vessel.

*Clause 9* provides for the Authority to be able to give directions for certain purposes including the entry of vessels into ports, the positioning or mooring of vessels within a port and the discharge of passengers or cargo.

*Clause 10* provides for the Authority to have control over the carrying out of certain works.

*Clause 11* provides for it to be an offence to put or allow to be put undesirable substances in a port or coastal waters.

*Clause 12* sets out certain special defences in relation to offences under Clause 11.

*Clause 13* makes provision for the Authority to recover the costs and expenses of the removal of undesirable substances from a port or coastal waters.

*Clause 14* sets out interpretations of certain terms used in Schedule 5A.

*Clause 15* makes provision for the Authority to require the repair, removal or destruction of sunken, stranded, unseaworthy or dangerous vessels or hulls in any port.

*Clause 16* makes provision for the removal of obstructions which impede or make dangerous the navigation or use of a port.

*Clause 17* provides for the Authority to require owners to extinguish or remove lights where desirable for the safety or convenience of navigation.

*Clause 18* makes provision for the repair of private wharves which in the opinion of the Authority constitute a danger to persons or vessels.

*Clause 19* makes provision for the removal of piles, mooring chains or other projections which in the opinion of the Authority are dangerous or injurious to the navigation of a port.

*Clause 20* sets out a number of provisions relating to lines, ropes or chains by which a vessel is moored or fastened.

*Clause 21* sets out a number of provisions relating to parking areas provided by the Authority.

*Clause 22* provides for the Authority to remove and sell unregistered and abandoned vehicles.

*Clause 23* makes it an offence to injure or destroy wharves and other facilities or buoys, beacons or marks used for the convenience of navigation.

*Clause 24* makes provision for the Authority to recover damage done by vessels.

### **PART III.—AMENDMENTS OF THE MARINE ACT 1958**

*Clause 37* provides for the repeal of Part II. of the *Marine Act 1958* relating to port and wharfage regulations.

*Clause 38* substitutes a new section 22 for the existing section 22 of the *Marine Act*, providing for the constitution of The Marine Board of Victoria.

#### **Section 22**

Sub-section (1) provides for the membership of The Marine Board of Victoria.

Sub-sections (2) and (3) make provision for the filling of vacancies in the office of certain members of the Board.

Sub-section (4) provides for the basis on which a member of the Board shall hold office.

Sub-section (5) provides for the costs and expenses of the Board in administering the provisions of the Act to be paid out of the general fund of the Victorian Ports Authority.

*Clause 39* amends section 49 of the *Marine Act* to provide for all fees, rates, dues, charges and penalties levied by or payable to The Marine Board of Victoria to be paid into the general fund of the Victorian Ports Authority.

*Clause 40* amends section 85 of the *Marine Act* to provide for deductions from pilotage payments to be paid into the general fund of the Victorian Ports Authority.

*Clause 41* amends section 256 of the *Marine Act* to provide for the tonnage of foreign ships to be calculated in accordance with regulations made under the *Principal Act* and also amends the interpretation of “tonnage” in section 3 of the *Marine Act*.

*Clause 42* repeals section 261A of the *Marine Act* dealing with the receipt of bonds, indemnities or other securities by the port officer.

### **PART IV.—ABOLITION OF FORMER AUTHORITIES AND TRANSITIONAL PROVISIONS**

*Clause 43* provides that on the appointed day the former Authorities shall be abolished and their members shall go out of office and that the Victorian Ports Authority shall become the successor in law of the former Authorities.

#### **Clause 44**

Paragraphs (a), (b), (c), (d) and (f) provide for the transfer to the Victorian Ports Authority on and from the appointed day of property, liabilities, contracts, debts, causes of action and all other like matters relating to the former Authorities immediately before the appointed day.

Paragraph (e) provides for the continued operation of guarantees given by the Government of Victoria under Acts repealed by the Bill and subsisting immediately

before the appointed day in relation to any advances or financial accommodation obtained by a former Authority.

Paragraph (g) provides for the recovery by or against the Victorian Ports Authority of penalties, forfeitures or punishments incurred by or imposed on the former Authorities.

Paragraphs (h), (i), (k) and (l) provide for all notices, authorities, Orders in Council, by-laws, or other instruments, and all acts, matters or things of a continuing nature given, made or used to or by the former Authorities and being in force immediately before the appointed day, to continue in force in relation to the Victorian Ports Authority.

Paragraph (j) provides for funds vested in or held by the former Authorities immediately before the appointed day, to be transferred to the Victorian Ports Authority.

*Clause 45* provides that on and from the appointed day, all waters comprised in a former port shall be under the management and control of the Victorian Ports Authority.

*Clause 46* provides for contracts, deeds and other instruments in force immediately before the appointed day and entered into by or on behalf of the Minister for Public Works, the Public Works Department, the Minister for Transport or the Ministry of Transport, to be binding on and have full force and effect in favour of or against the Victorian Ports Authority, as from the appointed day.

*Clause 47* provides for all leases in force immediately before the appointed day and entered into by or on behalf of the Minister for Public Works pursuant to section 8A (2) of the *Public Lands and Works Act 1964*, to be binding on and to have full force and effect in favour of or against the Minister for Transport, as from the appointed day.

*Clause 48* requires the Victorian Ports Authority to incorporate in the statement of accounts caused to be prepared by it in respect of the financial year ending on 30 June 1986 a statement of accounts in respect to the former Authorities, which is to be audited by the Auditor-General.

*Sub-clause (3)* provides for payment of the costs and expenses of the audit of the statements of accounts.

*Clause 49* provides for the cancellation on the appointed day of inscribed stock of the former Authorities.

*Clause 50*

*Sub-clause (1)* provides for persons who immediately before the appointed day held inscribed stock of the former Authorities, to be entitled to be issued with Victoria Transport Inscribed Stock.

*Sub-clause (2)* provides for Victoria Transport Inscribed Stock issued pursuant to sub-clause (1) to have the same maturity date and bear the same principal sum and rate of interest payable on the same dates as the cancelled stock.

*Sub-clause (3)* makes provision for the calculation of interest payable in respect of stock issued pursuant to sub-clause (1).

*Clause 51* provides for all debentures issued by a former Authority to be deemed to be Victoria Transport Bonds.

*Clause 52* provides that persons employed by the former Authorities immediately before the appointed day shall on and from the appointed day be employed by the Victorian Ports Authority with terms and conditions no less favourable than those upon which they

were employed immediately before the appointed day and with the benefits of all rights accrued immediately before the appointed day.

*Clause 53*

*Sub-clause (1)* provides for the members of The Marine Board of Victoria to go out of office on the appointed day.

*Sub-clauses (2) and (3)* provide for The Marine Board of Victoria to be deemed to be the same body after the appointed day as it was immediately before the appointed day and that the alteration in the constitution of the Board shall not abate or affect any act, matter or thing.

*Sub-clause (4)* provides that persons employed in The Marine Board of Victoria shall on and from the appointed day continue to be employed in the Victorian Ports Authority with terms and conditions no less favourable than those upon which they were employed immediately before the appointed day and with the benefit of all rights accrued immediately before the appointed day.

*Sub-clauses (5) and (6)* make provision for references in the Marine Act to officers or servants of The Marine Board of Victoria to be construed as references to persons employed in the Victorian Ports Authority and for references to the secretary of the Board to be construed as references to the person in the Authority for the time being performing the duties of the secretary.

*Clause 54* makes provision for references to port officers or harbor masters in any Act, proclamation or other instrument or agreement to be construed after the appointed day as references to the Victorian Ports Authority.

*Clause 55*

*Sub-clause (1)* provides that persons employed in the Division of Ports and Harbors of the Ministry of Transport shall on and from the appointed day continue to be employed in the Victorian Ports Authority with terms and conditions no less favourable than those upon which they were employed immediately before the appointed day and with the benefit of all rights accrued immediately before the appointed day.

*Sub-clause (2)* provides for the Minister by Order to transfer assets or liabilities from the Ministry of Transport to the Victorian Ports Authority.

*Sub-clauses (3) to (5)* provide for the vesting of land or assets, the making of entries associated with the transfer of liabilities and for the transfer of assets or liabilities not to be subject to duty of any kind.

*Sub-clauses (6) to (8)* provide for copies of Orders made by the Minister to be laid before both Houses of Parliament and for the disallowance by Parliament of any Orders made.

*Clause 56* provides that persons who immediately before the appointed day occupied positions as members in the former Authorities created by Act of Parliament and who are appointed to a position in the Ministry of Transport or the Victorian Ports Authority with effect from the appointed day, shall be appointed with terms and conditions no less favourable than the terms and conditions of their previous positions and with the benefit of all rights accrued.

*Clause 57* provides for transferred persons who immediately before the appointed day were contributors to the Superannuation Fund, to continue to be contributors to the Fund for so long as they are employed in the Victorian Ports Authority.

*Clause 58* provides for transferred persons who immediately before the appointed day were contributors to the State Employees Retirement Benefits Fund, to continue to be contributors to the Fund for so long as they are employed in the Victorian Ports Authority.



*Clause 59* provides for transferred persons who immediately before the appointed day were contributors to the Local Authorities Benefit Contracts Account, to continue to be contributors to the Account for so long as they are employed in the Victorian Ports Authority.

*Clause 60* provides for transferred persons who immediately before the appointed day were contributors to or members of a superannuation fund or arrangement, other than those referred to in Clauses 57, 58 and 59, to continue to be contributors to or members of the fund or arrangement for so long as they are employed in the Victorian Ports Authority.

*Clause 61* gives transferred persons who immediately before the appointed day were officers of the public service a right of return to the public service.

*Clause 62* provides for all regulations made under Acts repealed by the Bill, to the extent that they are not inconsistent with the Bill, to continue in force until they are revoked or rescinded or until 1 July 1986 (whichever first occurs).

*Clause 63* contains a transitional provision as to the limits and boundaries of ports.

*Clause 64* contains a transitional provision with respect to conservancy charges.

### **SCHEDULE—AMENDMENTS AND REPEALS**

The Schedule details consequential amendments to other Acts and the Acts to be repealed.