

Transport Administration Amendment (Sydney Ferries) Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to constitute Sydney Ferries, a statutory State owned corporation, and to confer on it the State Transit Authority's functions of providing Sydney ferry services and related functions,
- (b) to make consequential amendments and provision of a savings and transitional nature consequent on the proposed Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Acts and instruments specified in Schedules 1 and 2.

Schedule 1 Amendment of Transport Administration Act 1988

Schedule 1 [7] inserts proposed Part 3A into the *Transport Administration Act 1988* (the **Principal Act**), which constitutes Sydney Ferries and contains the following provisions:

Part 3A Sydney Ferries

Division 1 Constitution of Sydney Ferries as statutory SOC

Proposed section 35A establishes Sydney Ferries as a statutory State owned corporation under the *State Owned Corporations Act 1989* (the **SOC Act**). As a result, the provisions of that Act relating to functions, constitutions and other matters of such corporations will, except as provided by the proposed Part, apply to Sydney Ferries.

Division 2 Objectives of Sydney Ferries

Proposed section 35B confers on Sydney Ferries its principal objective of delivering safe and reliable Sydney ferry services in an efficient, effective and financially responsible manner. **Sydney ferry services** are ferry services provided in Sydney Harbour or the Parramatta River. Other objectives, including being a successful business and exhibiting a sense of social responsibility by having regard to the interests of the community in which it operates, are also conferred on Sydney Ferries.

Division 3 Functions of Sydney Ferries

Proposed section 35C confers on Sydney Ferries the function of operating Sydney ferry services, including services previously operated by the State Transit Authority (the **STA**).

Proposed section 35D enables Sydney Ferries to operate other transport services, including bus services, whether or not in connection with its ferry services.

Proposed section 35E confers other functions on Sydney Ferries, including conducting any business (whether or not related to its functions) that it considers will further its objectives and providing facilities and services that are ancillary to or incidental to its functions.

Proposed section 35F confers on Sydney Ferries power to acquire land by agreement or by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991*.

Proposed section 35G makes it clear that the proposed Division does not limit the other functions of Sydney Ferries, but is subject to the SOC Act, the Principal Act and any other Act or law.

Division 4 Management of Sydney Ferries

Proposed section 35H provides for the appointment of a board of directors of Sydney Ferries by the Treasurer and a Minister nominated as a voting shareholder under the SOC Act (the **voting shareholders**). The voting shareholders are to consult with the portfolio Minister (currently the Minister for Transport Services). The board is to have not fewer than 3 and not more than 7 directors, of whom one is to be an employee representative. The others must have expertise necessary to realise Sydney Ferries' objectives (including maritime safety expertise and expertise in vessel operations).

Proposed section 35I provides for the chief executive officer of Sydney Ferries to be appointed by the board of Sydney Ferries after consultation with the voting shareholders and the portfolio Minister.

Proposed section 35J enables the board of Sydney Ferries to appoint an acting chief executive officer to act during the illness or absence of the chief executive officer of Sydney Ferries.

Proposed section 35K enables the Minister to give a direction to Sydney Ferries if the Minister decides it is warranted on grounds involving urgency or public safety. The Minister must consult with the Treasurer if the Minister considers that compliance with the direction may cause a significant variation in the approved financial outcomes of Sydney Ferries. This power is to be in addition to the powers to give directions under the SOC Act.

Division 5 General

Proposed section 35L makes the proposed Part the foundation charter of Sydney Ferries for the purposes of provisions of the SOC Act relating to the legal capacity of statutory State owned corporations and assumptions that they have complied with their foundation charter.

Proposed section 35M prohibits the portfolio Minister from being a shareholder of Sydney Ferries and limits the sale of shares in the Corporation to eligible Ministers under the SOC Act.

Proposed section 35N removes the obligation of Sydney Ferries to have a share dividend scheme as required by the SOC Act and enables the Treasurer to suspend the obligation of Sydney Ferries to pay tax-equivalents under the SOC Act.

Proposed section 35O requires the board of Sydney Ferries to prepare an annual statement of corporate intent. The board must consult with the portfolio Minister about its annual statement of corporate intent (in addition to consulting with the voting shareholders). The statement of corporate intent must include ferry service performance benchmarks agreed by the board and the portfolio Minister. They may be modified by the board with the agreement of the portfolio Minister after consultation with the Independent Transport Safety and Reliability Regulator. The board may modify the statement (other than the ferry service performance benchmarks) with the agreement of the voting shareholders, after consultation with the portfolio Minister, and may be directed by them to amend the statement (other than the ferry service performance benchmarks).

Proposed section 35P provides that fines and penalties for certain ferry-related offences are to be paid to Sydney Ferries.

Proposed section 35Q enables regulations to be made to confer on employees of Sydney Ferries rights to appeal to Transport Appeal Boards.

Schedule 1 [1] and [10] make amendments consequential on the amendment made by **Schedule 1 [7]**.

Schedule 1 [2] defines words and expressions used in provisions inserted or amended by the proposed Act.

Schedule 1 [3] limits the objectives of the STA to provide safe and reliable ferry services to ferry services provided in Newcastle Harbour (***Newcastle ferry services***), as a result of the function of providing Sydney ferry services being conferred on Sydney Ferries.

Schedule 1 [4] limits the functions of STA to operate ferry services to Newcastle ferry services. **Schedules 1 [5] and [6]** make consequential amendments.

Schedule 1 [8] requires Sydney Ferries to consult with the Director-General of the Ministry of Transport on a regular basis in connection with the provision and operation of its passenger services and before making any major changes, or initiating any major action, affecting passenger services.

Schedule 1 [9] enables the Independent Transport Safety and Reliability Regulator to monitor, audit and carry out other functions in relation to Sydney Ferries.

Schedule 1 [12] includes Sydney Ferries as an Authority for the purposes of provisions regulating the fixing of fares and other charges.

Schedule 1 [11] makes a consequential amendment.

Schedule 1 [13] enables Sydney Ferries to fix charges (including fares) by order made by Sydney Ferries.

Schedule 1 [14] extends requirements relating to ferry accidents to Sydney Ferries.

Schedule 1 [15] inserts proposed Division 3A of Part 9 containing the following provisions:

Division 3A Miscellaneous provisions relating to Sydney Ferries

Proposed section 106B provides that Sydney Ferries is not a common carrier but does not prevent Sydney Ferries from accepting the risk and liability of a common carrier under a contract or arrangement for the carriage of passengers. Proposed section 106C enables regulations to be made with respect to the ferry services operated by Sydney Ferries.

Proposed section 106D enables the Minister, by order in writing, to transfer assets, rights and liabilities of the STA to Sydney Ferries or the Crown. Schedule 4 to the Principal Act contains savings and transitional and other provisions applying to such a transfer.

Schedule 1 [16] applies provisions applying to the STA and relating to resolution of disputes between transport authorities, validating the exercise of functions in contravention of a Ministerial direction, enabling unpaid fees and charges to be recovered as debts, to Sydney Ferries.

Schedule 1 [17] applies provisions relating to the liability of the owner of a vehicle for a parking offence to offences committed on Sydney Ferries' land.

Schedule 1 [18] applies the provisions of Schedule 4 to the Principal Act to an order transferring assets, rights and liabilities under proposed section 106D. The effect of this is to vest those assets, rights and liabilities in the transferee and to apply savings and transitional provisions in respect of the transfer.

Schedule 1 [19] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Schedule 1 [20] inserts savings and transitional provisions consequential on the enactment of the proposed Act.

Schedule 2 Amendment of other Acts and instruments

Schedule 2.1 amends the *First State Superannuation Act 1992* to make Sydney Ferries an employer for the purposes of the superannuation scheme under that Act.

Schedule 2.2 amends the *Impounding Regulation 2003* to include Sydney Ferries as an impounding authority under that Act.

Schedule 2.3 amends the *Independent Pricing and Regulatory Tribunal Act 1992* to include Sydney

Ferries as an agency for which the Independent Pricing and Regulatory Tribunal has a standing reference in relation to prices and other matters.

Schedule 2.4 amends the *Local Government Act 1993* to include Sydney Ferries as a public body entitled to rate rebates.

Schedule 2.5 amends the *Management of Waters and Waterside Lands Regulations—N.S.W.* to exempt Sydney Ferries' passengers from liability for offences relating to distances from naval vessels.

Schedule 2.6 amends the *Passenger Transport Act 1990* to apply the Act to passenger services carried on by Sydney Ferries.

Schedule 2.7 amends the *State Authorities Non-contributory Superannuation Act 1987* to make Sydney Ferries an employer for the purposes of the superannuation scheme under that Act.

Schedule 2.8 amends the *State Authorities Superannuation Act 1987* to make Sydney Ferries an employer for the purposes of the superannuation scheme under that Act.

Schedule 2.9 amends the *Superannuation Act 1916* to make Sydney Ferries an employer for the purposes of the superannuation scheme under that Act.