PORTS ASSETS (AUTHORISED TRANSACTIONS) BILL 2012
PROOF 17 OCTOBER 2012

Bill introduced on motion by Mr Mike Baird, read a first time and printed.
Second Reading

Mr MIKE BAIRD (Manly—Treasurer, and Minister for Industrial Relations) [11.38 a.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Ports Assets (Authorised Transactions) Bill 2012 to authorise the lease of Port Botany and Port Kembla to the private sector. The bill will enable the long-term lease of these ports and associated port land for a term of no greater than 99 years. The bill also allows for the lease of other port assets, including Cooks River and Enfield logistics terminals, with some industrial land at Enfield to be sold to the private sector, but it does not include the ports of Yamba or Eden, Sydney Harbour wharves and cruise functions, the Port Botany landslide improvement strategy functions and a range of other maritime roles including the Harbour Master, sea pilots and emergency response obligations and, obviously, the Port of Newcastle.

The freehold title to land at Port Botany and Port Kembla will remain in Government ownership and will be vested in a public sector agency. The Government is seeking approval for this important initiative to help free up billions of dollars to help fund a critical backlog of infrastructure across the State. This backlog, which the Government has already articulated, includes such vital work as the Government's billion-dollar commitment to the Pacific Highway and the upgrade of the Princes Highway as well as WestConnex, which will provide the missing links in Sydney's arterial road network and address the challenges that Sydneysiders face daily on our roads.

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The long-term lease of Port Botany and Port Kembla will enable the private sector to invest in the ongoing development of the ports to meet growing freight demands across all sectors of the economy, such as the import of consumer goods, and the export of coal and other mineral resources and agricultural commodities. Ongoing private sector investment in the ports will help drive growth in the State economy and support jobs while allowing the Government to focus its limited resources on areas that affect people's day-to-day lives—our hospitals, roads, transport and schools. Proceeds from this transaction will be paid into the Restart NSW Fund, which the O'Farrell-Stoner Government established to kick-start major infrastructure investment across the State. From the fund 30 per cent is dedicated for rural and regional areas, and $100 million from the lease of Port Kembla will be spent meeting some of the Illawarra's urgent infrastructure needs as prioritised by Infrastructure NSW.

Similar to other government transactions, the bill allows the Treasurer to direct the establishment of special purpose transaction entities, including transaction State-owned corporations [SoC] and transaction companies, to facilitate the lease of the port assets. The special entities may include trusts that are commonly used for infrastructure transactions of this kind, such as the recent Sydney desalination transaction. The bill also allows for the exercise of port State-owned corporation functions through the creation of subsidiaries for the purposes of the lease. The bill enables the Treasurer to designate associated port land vested for historical reasons in other public sector agencies, such as Roads and Maritime Services, for transfer to the ports corporations or other public sector agencies for the purpose of the transaction. The intention is that only land owned by government agencies in or around Port Kembla will be transferred, which will be important for the port lessee's future management of the port.

In addition, the bill establishes the Ports Assets Ministerial Holding Corporation, to be managed by the Treasurer or an authorised Minister, to hold the port assets to be leased to the private sector on behalf of the Crown. Consistent with other government transactions, some employees will transfer to the new private sector lessee following an employment expression of interest process. Enterprise agreement employees have the option to remain with the public sector. The bill includes a number of provisions that sets out commitments made by government to employees transferring to the private sector. These provisions are consistent with other government transactions, such as the contract for the private operation of Sydney Ferries, and include a two-year employment guarantee for enterprise agreement employees and the transfer to the lessee on at least the same terms and conditions.

Employees will have continuity of entitlements, including those relating to superannuation, sick leave, annual leave and long service leave. Finally, all employees transferring to the new lessee, whether they are enterprise agreement or contract employees, will be eligible for a transfer payment of up to 30 weeks pay, depending on length of service. To allow for continuity in the management of the ports assets by lessee, the bill allows for the secondment of public sector employees to the private sector on the same terms and conditions for a period of time after the transaction is finalised. Staff seconded to the lessee will remain employees of the port State-owned corporation concerned. The bill lays out how the operation of current and future planning controls will apply to Port Botany—the effect of which will be to remove the existing artificial limit on container throughput at the port.

The removal of the throughput limit enables Port Botany to reach its natural capacity, which was expanded significantly as a result of the addition of a third terminal at the port, which was approved by the former Labor Government. The removal of the cap is necessary regardless of who owns the port, and plans were in place by the Sydney Ports Corporation to apply to have it lifted regardless of any transaction. By allowing for the throughput limit to be removed, the Government is ensuring that taxpayers receive value for the investment, which has been made already; aligns Port Botany with major ports around the world, none of which has such a cap; and allows the State to receive full value for the lease. In terms of planning and approvals for any future development of the two ports, we intend to continue the application of the current New South Wales planning regime, subject to the changes provided by the provision addressing throughput limits at Port Botany.

The existing planning instruments applying to the two ports are being reviewed by the Department of Planning and Infrastructure to determine how they need to be rationalised to reflect the change from public to private operation. The Government is carrying out a number of major transport and freight improvements while maximising the use of existing infrastructure links to move trucks efficiently in and out of the area, noting that the vast majority—some 85 per cent of all containers—has an origin or destination within 40 kilometres of the port. It is clear that the ongoing imposition of the cap on throughput at Port Botany would result in a massive inefficiency in the future that would greatly constrain the State's economy.

On the matter of congestion, it is important to note that airport traffic is by far and away the biggest contributor to congestion in the Port Botany-Sydney Airport precinct. For example, the airport accounts for almost 30 per cent of all traffic on the M5 East compared to only 1.8 per cent for port-related trucks. In terms of managing future growth and mitigating impacts on local communities, the Government has a clear and achievable policy set out in its 10-year plan, NSW 2021, to double the proportion of container freight movement by rail from New South Wales ports by 2020. The State and Federal governments are also taking various other important steps to improve traffic flow around the port and to shift greater volumes of goods from road to rail. These include the announced Moorebank Intermodal Terminal, the development of the Southern Sydney Freight Line and the Enfield logistics terminal, the truck marshalling yard at Port Botany and implementation of the Port Botany landside improvement strategy.

The new operator will be required to make an annual contribution to improving road and rail landside logistics related to the port. As I mentioned earlier, the Government has announced also its support of WestConnex, an important long-term initiative to support the efficient movement of freight between Port Botany and logistics hubs in western and south-western Sydney. In particular, the widening of the M5 East to four lanes in each direction will help alleviate congestion in the area. My intention is that the port leases will include a number of important stewardship requirements to ensure the ports are managed and developed appropriately in the future. These stewardship requirements include obligations to use the land for port-related purposes only, to provide ongoing access for road and rail transport, to develop the port where feasible and to maintain the port in good working order. As is usual with long-term leases of infrastructure assets, the Government retains step-in rights and can terminate the lease if the lessee breaches key obligations.

As outlined in the bill, the Government will retain oversight of price monitoring of the ports. In accordance with principles adopted by the Council of Australian Governments, commercial outcomes should be promoted by establishing competitive market frameworks in preference to regulation, but where there is a need for regulatory oversight of prices, the introduction of price monitoring should be considered a first step. Port users tend to be large, sophisticated businesses with significant commercial bargaining power. Little or no asymmetry of market power would necessitate heavy-handed price regulation by the State. However, as part of the Government's price monitoring regime, all New South Wales ports, including the private port lessees, must give notice of any proposed change in its service charges, and provide a rationale for how the increase is calculated and why it is needed.

The port lessee also must provide an annual reporting of charges to the relevant Minister, and the Minister has the power to require information relating to port charges be supplied to the Government. If the port lessee's pricing behaviour is inappropriate, the Minister has the ability to refer the port to the Government's independent pricing watchdog, the Independent Pricing and Regulatory Tribunal [IPART], should this become necessary. In addition, a port user can always apply to the National Competition Council to have the asset declared as nationally significant infrastructure under Commonwealth legislation in the event of pricing disputes, but I am advised that to date this has not been necessary in respect to container ports in Australia. Our proposed pricing regime features more ongoing oversight than regulations put in place by the Queensland Labor Government when it recently leased the Port of Brisbane.

The bill provides an important authority to the port lessee to give directions to maintain or improve safety and security at the port. These directions could regulate port activities that include the driving and parking of vehicles and the movement, handling and storage of dangerous goods. The bill gives the port lessee some ability to enforce compliance with its directions, such as powers to enter land or premises at the port for the purpose of determining compliance with directions. The port lessee's enforcement powers do not extend to issuing fines. Importantly, the bill ensures that any directions given by the port lessee are subordinate to and cannot contravene the State's regulatory powers, such as the dangerous goods regulation and directions given by the Harbour Master. The port direction regime gives the port lessee a means of managing its commercial risks without usurping the Government's role as regulator.

These provisions are consistent with powers of the Sydney Ports Corporation and the Port Kembla Port Corporation to ensure safety and security at its ports. The lessee must, in turn, report back to the Minister a range of matters, including the giving or cessation of any port directions, any contravention of which the port lessee is aware, any exercise by the port lessee of the power to enter premises and any action taken by the lessee to enforce compliance with a port direction. The bill includes a number of other provisions to facilitate the authorised transaction, such as the inclusion of land acquired by the Ports Assets Ministerial Holding Corporation in the lease. A further arrangement allows for the adjustment of the objectives and functions of the Sydney Ports Corporation and the Port Kembla Port Corporation to take into account their changed role following the transaction.
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The Government's plans to drive regeneration in this State through greater private sector investment in our economic infrastructure will deliver both proceeds and savings by shifting capital obligations to the private sector. That will allow the Government, through balance sheet flexibility, to focus on key social investments and policy objectives. I have previously indicated that the proceeds of the transactions will underpin increased investment in the Pacific Highway, the Princes Highway, WestConnex, and Bridges for the Bush. There is also $100 million in new infrastructure spending in the Illawarra. The priority objectives for the

Illawarra will be determined by Infrastructure NSW.

We cannot underestimate the significance of this transaction on the Government's ability to deliver the infrastructure needs of this State. It is a simple case of maintaining the triple-A credit rating versus the capacity to deliver on those projects. Without this transaction those projects cannot proceed. That is why the Government is determined to complete the transaction on behalf of the people of New South Wales. This bill is a key part of the Government's commitment in NSW 2021. It is about building the infrastructure that makes a difference to both our economy and people's lives. The enactment of this legislation will free up funds that the State desperately needs and will allow private sector capital to drive efficiency to our overall economy. I commend the Bill to the House.

Debate adjourned on motion by Mr Michael Daley and set down as an order of the day for a later hour.