



New South Wales

# Ports Assets (Authorised Transactions) Bill 2012

## Explanatory note

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

## Overview of Bill

The object of this Bill is to authorise and facilitate the transfer to the private sector of the State's ports assets at Port Botany and Port Kembla, subject to the restriction that the land concerned can be leased to the private sector for up to 99 years but ownership of the land must remain with the State. The State's ports assets are currently vested in the Sydney Ports Corporation and the Port Kembla Port Corporation, which are State owned corporations and are referred to in this Bill as *port SOCs*.

The Bill has detailed provisions dealing with the transfer of ports employees and their rights and entitlements on transfer. See **Part 4**.

## Outline of provisions

### Part 1 Preliminary

**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 the date of assent.

**Clause 3** contains definitions of key terms used in the proposed Act. Schedule 1 contains other definitions. The clause defines *authorised transaction* to mean a transfer of ports assets authorised by Part 2.

## **Part 2 Authorised transactions**

**Clause 4** authorises the transfer to the private sector of the State's ports assets at Port Botany and Port Kembla subject to the restriction that the land concerned can be leased to the private sector for up to 99 years but ownership of the land must remain with the State. The clause also authorises the transfer of the Port Botany and Port Kembla ports assets to any public sector agency.

**Clause 5** requires the proceeds of the transfer of ports assets pursuant to an authorised transaction, after deduction of certain amounts for debt repayment and payment of expenses, to be paid into the Restart NSW Fund.

## **Part 3 Facilitating authorised transactions**

**Clause 6** provides that the Treasurer has and may exercise all such functions as are necessary or convenient for the purposes of an authorised transaction.

**Clause 7** provides that an authorised transaction is to be effected as directed by the Treasurer in any manner that the Treasurer considers appropriate.

**Clause 8** provides for the establishment of a State owned corporation as a *transaction SOC* for the purposes of an authorised transaction.

**Clause 9** provides for the establishment of companies as *transaction companies* for the purposes of an authorised transaction (including by means of the corporate conversion of a port SOC). Transaction SOCs and transaction companies are referred to as *transaction entities*.

**Clause 10** provides that each port SOC and each transaction entity has and may exercise all such functions as are necessary or convenient for the purposes of an authorised transaction. The clause also authorises the Treasurer to act for or on behalf of and in the name of a port SOC or a transaction entity in the exercise of any of its functions for the purposes of an authorised transaction.

**Clause 11** provides that port SOCs and transaction entities are subject to the direction and control of the Treasurer in the exercise of any of their functions for the purposes of an authorised transaction.

**Clause 12** provides for the exercise of a port SOC's functions by a subsidiary of the port SOC when ports assets are transferred to the subsidiary for the purposes of an authorised transaction.

**Clause 13** establishes the Ports Assets Ministerial Holding Corporation to hold ports assets acquired by it or transferred to it and to carry on any activities or business that relate to ports assets held by it.

## **Part 4 Arrangements for transfer of staff**

**Clause 14** provides for the transfer of an employee of a port SOC to the employment of another public sector agency.

**Clause 15** provides for the secondment of an employee of a port SOC to the service of another public sector agency or an employer in the private sector.

**Clause 16** provides for the transfer of an employee of a port SOC or a transaction entity to employment in the private sector, with a maximum 2 year employment guarantee period.

**Clause 17** provides for the continuity of the employment entitlements of employees transferred under the Part.

**Clause 18** provides for the making of transfer payments to employees of a port SOC whose employment is transferred to the private sector under the Part or as a result of a transaction arrangement entered into for the purposes of an authorised transaction.

## **Part 5 Arrangements for transfer of assets and functions**

**Clause 19** authorises the Treasurer to make vesting orders under Schedule 4 for the purposes of an authorised transaction.

**Clause 20** provides for the severance of fixtures owned by a port SOC from land owned by a port SOC or another public sector agency.

**Clause 21** provides for the Treasurer to give directions for the grant of any relevant authorisation under various laws to a person who becomes or is proposed to become the new operator of ports assets pursuant to an authorised transaction.

**Clause 22** authorises the Ports Assets Ministerial Holding Corporation to acquire land for the purposes of an authorised transaction by agreement or compulsory acquisition that the Corporation determines to be land on which ports assets of a port SOC are situated or land used or occupied by a port SOC.

**Clause 23** provides for the adjustment of the objectives and functions of a port SOC to ensure that they remain appropriate following the transfer of ports assets pursuant to an authorised restructuring.

## **Part 6 Operation of other laws**

**Clause 24** provides that various State taxes and charges are not payable by public sector agencies in connection with transactions for the purposes of an authorised transaction and authorises the Treasurer to exempt other persons from liability for State taxes and charges in connection with an authorised transaction.

**Clause 25** provides for the provisions of the proposed Act to prevail in the event of an inconsistency between the proposed Act and other State legislation.

**Clause 26** provides that the *Public Authorities (Financial Arrangements) Act 1987* does not apply to any transaction, agreement or other arrangement entered into for the purposes of an authorised transaction.

**Clause 27** authorises the release of information by the Auditor-General for the purposes of an authorised transaction.

**Clause 28** exempts contracts for the sale of land from section 52A of the *Conveyancing Act 1919* when entered into for the purposes of an authorised transaction.

**Clause 29** prevents the operation of the proposed Act and the various arrangements and actions that it authorises from constituting a breach of various civil obligations.

**Clause 30** protects the State from claims for compensation in connection with the enactment or operation of the proposed Act.

**Clause 31** protects the validity of provisions of leases of ports assets entered into for the purposes of an authorised transaction.

**Clause 32** provides that a planning control is of no effect to the extent that it would operate to impose a cargo throughput limit for Port Botany.

## **Part 7 Miscellaneous**

**Clause 33** authorises the Treasurer to delegate any function of the Treasurer under the proposed Act to the Secretary of the Treasury or any other officer of the Government Service prescribed by the regulations.

**Clause 34** provides for the proposed Act to bind the State and all other Australian jurisdictions.

**Clause 35** provides for the operation of the proposed Act outside the State.

**Clause 36** provides for the construction of the proposed Act so as not to exceed the legislative power of the State.

**Clause 37** provides for when orders take effect and for evidence of and presumptions about orders.

**Clause 38** provides for how documents are to be given or served for the purposes of the proposed Act.

**Clause 39** is a general regulation-making power.

## **Schedule 1 Interpretative provisions**

**Schedule 1** contains definitions and other interpretative provisions for the purposes of the proposed Act.

## **Schedule 2 Provisions concerning transaction SOCs**

**Schedule 2** contains special provisions for the board of directors, chief executive officer, dividends scheme and other procedures of a transaction SOC.

## **Schedule 3 Corporate conversion of port SOCs and transaction SOCs**

**Schedule 3** provides the procedure for the corporate conversion of a port SOC or transaction SOC into a transaction company.

## **Schedule 4 Vesting of assets, rights and liabilities**

**Schedule 4** provides for the making of vesting orders by the Treasurer for the purposes of an authorised transaction. Vesting orders operate to vest assets, rights and liabilities comprising ports assets in the transferee specified in the order.

## **Schedule 5 Savings, transitional and other provisions**

**Schedule 5** enacts a savings and transitional regulation-making power and contains special provisions for the change of name and dissolution of the Sydney Ports Corporation and the Port Kembla Port Corporation.

## **Schedule 6 Amendment of Acts and regulations**

**Schedule 6** makes amendments to various Acts and regulations as a consequence of the future operation of Port Botany and Port Kembla by the private sector (as “private ports”), including the following amendments:

- (a) the *Marine Safety Act 1998* will be amended to provide for the appointment of officers, employees and agents of a private port operator as authorised officers for the purposes of the marine safety legislation,
- (b) the *Ports and Maritime Administration Act 1995* will be amended:
  - (i) to provide a special regulatory regime for private ports, including provision for the regulation of activities at private ports by means of directions given by the private port operator for the purpose of maintaining or improving safety and security at the port, and conferring information gathering powers on private port operators, and
  - (ii) to institute a price monitoring scheme to monitor charges imposed by private port operators, and

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- (iii) to provide for certain existing port charges to be charged by private port operators, and
- (iv) to provide for a new port charge (a port infrastructure charge to fund investment in ports) to be charged at both public and private ports.