Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Ports) [12.53 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce this bill 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 landside improvement strategy functions and a range of other maritime roles including the harbourmaster, sea pilots and emergency response obligations.

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 includes such vital work as the Government's billion dollar commitment to the Pacific Highway, the upgrade of the Princes Highway and WestConnex. It will provide the missing links in Sydney's arterial road network thereby addressing the challenges that Sydneysiders face daily on our roads. 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 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, support jobs and at the same time allow the Government to focus its limited resources in areas which affect people's day-to-day lives—hospitals, roads, transport and schools.

Proceeds from this transaction will be paid into the Restart NSW Fund that the O'Farrell-Stoner Government established to kick-start major infrastructure investment across the State. Thirty per cent of the fund 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, which 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 Corporations 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 NSW Port 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, 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 expression of interest process. Enterprise agreement employees have the option to remain with the public sector. The bill includes a number of provisions that set out commitments made by the 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 transfer to the lessee on at least the same terms and conditions. Employees will have continuity of entitlements, including those that relate 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 their length of service.

To allow for continuity in the management of the ports assets by the 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 remain employees of the port concerned. The bill lays out how the operation of current and future planning controls will apply to Port Botany. The effect of the bill will be to remove the existing artificial limits on container throughput at the port. The removal of the throughput limit enables Port Botany to reach its natural capacity, which was significantly expanded as a result of approval by the previous Government to add a third terminal at the port. The removal of the cap is necessary; regardless of who owns the port. The Sydney Ports Corporation had plans in place to apply to have the cap 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 already made. It will align Port Botany with major ports around the world—none of which have 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, the Government intends to continue the application of the current New South Wales planning regime, subject to the changes rendered by the provision addressing throughput limits at Port Botany.

The existing planning instruments applying to the two ports are currently being reviewed by the New South Wales Department of Planning and Infrastructure in order 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 efficiently move trucks in and out of the area. The vast majority—some 85 per cent—of all containers have 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 Port Botany. The Sydney Airport precinct 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 our 10-year plan, NSW 2021. By 2020 the proportion of container freight movements by rail from New South Wales ports will double. The State and Federal Governments are also taking various other important steps to improve traffic flow around the port and shift greater volumes of goods from road to rail. These include the announced Moorebank Intermodal Terminal, the development of the Southern Sydney Freight Line, 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 also announced 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 motorway 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 to do so and to maintain the port in good working order.

As is usual in the long-term lease of infrastructure assets the Government retains step-in rights and can terminate the lease if the lessee is in breach of key obligations. As outlined in the bill, the Government will retain oversight and monitor prices charged by 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. There is little or no asymmetry of market power that would necessitate heavy-handed price regulation by the State.

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 to service charges and provide the rationale for how the increase is calculated and why the increase is needed. The port lessee must also provide an annual report of charges to the relevant Minister and the Minister has the power to require information be supplied to the Government relating to port charges. If it is necessary in the future the Minister has the ability to refer any inappropriate pricing behaviour by the port lessee's to the Government's independent pricing watchdog, the Independent Pricing and Regulatory Tribunal. In addition, in the event of pricing disputes a port user can always apply under Commonwealth legislation to the National Competition Council to have the asset declared as nationally significant infrastructure, but I am advised that to date this has not been necessary in respect to container ports in Australia.

Our proposed pricing regime features ongoing oversight rather than the 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 whether the directions are being complied with. 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, including the Dangerous Goods Regulation and directions given by the harbourmaster. 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 the powers of Sydney Ports Corporation and Port Kembla Port Corporation to ensure safety and security at its ports. The lessee must, in turn, report to the Minister on a range of matters including the giving or cessation of any port directions, any contravention the port lessee is aware of, 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 Sydney Ports Corporation and Port Kembla Port Corporation to take into account their changed role following the transaction. The Government's plan 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 allowing the Government to focus on key social investments. I have previously indicated that the proceeds of the transactions will underpin increased investment in the Pacific Highway, the Princes Highway and WestConnex as well as $100 million in new infrastructure spending in the Illawarra. This bill is a key part of the Government's commitment in NSW 2021 to build the infrastructure that makes a difference to both our economy and people's lives. The enactment of this bill will release funds for critical and desperately needed infrastructure in the State and will allow private sector capital to drive efficiency to drive the economy. I commend the bill to the House.